

# Democratising South Africa: Towards a ‘Conflictual Consensus’

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## *A. Introduction*

A significant drop in voter participation in the space of a mere two decades suggests that the representative model of democracy is in trouble in South Africa.<sup>1</sup> To make sense of this trouble, this chapter explores the potential and the possibilities of different meanings of democracy in South Africa, as proposed by the representative and deliberative models, before considering Mouffe’s conceptualisation of a radical democratic practice that approaches democracy as a ‘conflictual consensus’.<sup>2</sup>

The point of departure is to avoid the hierarchisation of democracies which positions African democracies as perversions of the ideal, Western form. Rather, democracy is approached as nowhere completely achieved – neither in Africa, nor in the West – which explains the inherent democratic deficit that representative democracy historically suffers from: ‘[R]epresentation has been the most ingenious invention constitutional designers have created to neutralise political participation by making the people a legitimising force at the instant they renounce their ruling power’.<sup>3</sup> Election as the basic mechanism of accountability in representative democracy is severely limited, in part due to its one-way communication: political elites ask voters a question, usually to confirm who should rule, and the ruled cannot ask questions back.<sup>4</sup> However, South Africans promised each other

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- 1 The author thanks the organisers, hosts and participants at ‘The End of the Representative State? Democracy at the Crossroads’ conference in Berlin, Germany, for lively intellectual conversation and the anonymous reviewers for their useful engagement. All errors remain the author’s.
  - 2 *Chantal Mouffe*, *The Democratic Paradox*, London and New York, 2005, p. 103.
  - 3 *Nadia Urbinati*, *Representative Democracy. Principles and Genealogy*, Chicago and London 2006, p. 4.
  - 4 *Claus Offe*, *Political disaffection as an outcome of institutional practices? Some post-Tocquevillean speculations*, in: Mariano Torcal/José Ramón Montero (eds.), *Political disaffection in contemporary democracies. Social capital, institutions and politics*, New York 2012, p. 38.

more than merely the right to vote, as attested to by the remarkable combination of first and second-generation human rights in their social contract crafted during the democratic transition – the Constitution of 1996.<sup>5</sup>

Institutionally, measured by criteria for institutional design, the South African parliament should be a sterling example of a vehicle for deliberative democracy. The constitutional clauses providing for oversight over the executive (Section 55) and public involvement in legislative and oversight functions (Section 59),<sup>6</sup> along with the participation of parties big and small across the political spectrum, brought about by a system of proportional representation (PR), should add to the deliberative character of democracy. Institutional design is crucial for the deliberative model. As a response to the shortcomings of representative democracy, this model foregrounds voice – consultation and deliberation between the elected and the electorate – as the central requirement for the substantiation of representative democracy.<sup>7</sup>

Nevertheless, I argue that the representative and the deliberative models of democracy are both inadequate in comprehending the seemingly intensifying tumult in South African democracy. These schemas run up against politics, which they do not account for, as they emphasise proceduralism at the expense of politics. It is here ventured that South Africa's democracy is a terrain of contestation about the very terms of democracy and of representation, with different political positionalities vying for dominance. While South Africa's colonial history injects its present with different political elements to those found in the rest of Africa, what is occurring at the southern-most point of the continent has resonances with developments regionally, captured by Lust and Ndegwa in their description of the effects of the changed governance environment on the continent:

‘The first is the rise of new institutions, and changes in the significance of older ones, and the demands that citizens make in liberated spaces, which reveal gaps and tensions in state performance. The second is the rapid mutation of public spaces within which contestation occurs, especially with regards the role of the state, its autonomy, and the function that existing institutions are serving in a transformed environment. Third is a

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5 *Republic of South Africa*, Constitution of the Republic of South Africa No. 108 of 1996, Pretoria 1996.

6 *Republic of South Africa*, note 5, p. 1279, p. 1281.

7 *John S. Dryzek/Patrick Dunleavy*, *Theories of the democratic state*, Basingstoke 2009, p. 220.

rise in uncertainty as reforms reveal the efficacy of new claims and new coalitions, but also expose the insufficiency of institutions – old and new – and the limits of change, suggesting impermanence to rules and uncertainty in presumed outcomes. This results in a tense status quo that may lead to legitimacy crises, especially when the state is unable to manage competing claims.<sup>8</sup>

Mouffe's proposition is most apt for grasping these complexities at the current juncture: that a radical democratic practice must be pursued that recognises procedures as not standing outside of politics but as part of ongoing ethico-political contestation about the terms of democracy, in the form of a conflictual consensus.<sup>9</sup> Combining this insight with Torcal and Montero's understanding of political disaffection<sup>10</sup> suggests that South African democracy suffers from institutional disaffection rather than political disengagement, an argument that is explicated below. This analysis pins the source of institutional disaffection on the ruling African National Congress's political culture and its attempts at warding off accountability with the proceduralism of the representative democratic model. This approach would explain why sections of South African society use socio-economic demonstrations as springboards for appeals targeting elected representatives, including at election time. Finally, it provides a reading for the newly emerged Economic Freedom Fighters' (EFF) direction of its political energies at the institution of parliament in the form of a hitherto unseen direct activism that breaks through the proceduralism of representative democracy. It could be read as an opportunity for a renewal of South Africa's parliament through a conflictual consensus that overturns the condition of institutional disaffection. Finally, this analysis serves as a response to Dryzek and Dunleavy's question<sup>11</sup> about how radical democratic engagement could occur in regular institutions of state, as it reveals the EFF moment as an example of such interaction.

The chapter is structured as follows. The next section examines the insufficiencies of representative democracy and their causal relationship to

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8 *Ellen M. Lust/Stephen Ndegwa*, *The Challenges of Governance in Africa's Changing Societies*, in: *Ellen M Lust/Stephen Ndegwa* (eds.), *Governing Africa's Changing Societies. Dynamics of Reform*, Boulder/London 2012, p. 10.

9 *Mouffe*, note 2, p. 103.

10 *Mariano Torcal/Jose Ramon Montero* (eds.), *Political disaffection in contemporary democracies. Social capital, institutions and politics*, New York 2012.

11 *Dryzek/Dunleavy*, note 7, pp. 303-305.

political disaffection. The discussion then moves to the extent to which deliberative democracy provides a panacea to that which ails representative democracy. Thereafter recent developments in South Africa are sketched, pertaining to diminishing voter participation and increasing social protests. The simultaneity of these phenomena is analysed as signalling institutional disaffection, rather than political disengagement, as the ruling African National Congress (ANC) wields majoritarianism and proceduralism to weaken institutions and thereby avert accountability. It is argued that the deliberative democratic features of the parliamentary system are rendered ineffectual due to the ANC's political project. The politics pursued by the ANC is due in part to the stubborn colonial and apartheid legacies of socio-economic inequality and deprivation and in part to the vanguardist political culture of the party, both of which effects are bolstered by a prevailing neoliberal rationality. The rise of the EFF is then critically examined as a radical democratic challenge to the procedural strictures of representative democracy, particularly through a reactivation of parliament as political space. In conclusion, it is argued that reading democracy as a conflictual consensus is more productive than the models of representative or deliberative democracy in understanding South African democracy at this historical juncture.

### *B. Representative democracy's deficit*

Western governments might be called democratic but critics hold that 'their institutions were designed to contain rather than to encourage democracy'.<sup>12</sup> Urbinati describes direct participation in the system of representative democracy as an intermittent phenomenon when people make their otherwise ignored opinions heard through voting, petitions and demonstrations. The only formal rights are voting and public speaking. Elections are paradoxical moments, because at the moment of direct participation citizens delegate their power.<sup>13</sup>

Following the work of Schumpeter, a liberal consensus emerged around a model based on instrumental rationality and self-interest that emphasises procedural and institutional arrangements in opposition to participation.<sup>14</sup>

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12 *Urbinati*, note 3, p. 1.

13 *Urbinati*, note 3, pp. 2-3.

14 *Mouffe*, note 2, p. 23, 94. *Urbinati*, note 3, pp. 18, 230.

Democracy is approached as 'a mere method for making public decisions'.<sup>15</sup> Representation is understood as internal to the state, in that consolidated democracy consists of formal procedures pursued by collective representative actors. Thus citizens do not have much of a role to play and public apathy becomes regarded as a strength, as it indicates consent and diffuse support for the regime and mode of operation.<sup>16</sup> However, critics point out that citizens' voices are reduced to an electoral numbers game. Offe quotes De Tocqueville about how a disaffected, depoliticised citizenry paves the way for despotic deformations and loss of liberty.<sup>17</sup>

Adding to the 'democratic deficit' in liberal democracies is the concurrence between economic and political power. This is unlike the Athenian model's political equality where 'every' citizen (except women and slaves) could speak and engage in law making irrespective of their class position.<sup>18</sup>

Unsurprisingly, the result of the socio-economic exclusion of citizens and the reduction of democracy to procedure is widespread political disaffection, defined as

'Estrangement or detachment from politics and the public sphere, [including] critical evaluation of their core political institutions, their representatives and the democratic political process. This attitudinal attribute is characterised by a number of specific symptoms, including a sense of personal inefficiency, cynicism and distrust, lack of confidence in representative institutions and/or the representatives elected, the belief that political elites do not care about the welfare of their citizens, and a general sense of estrangement from both politics and political processes.'<sup>19</sup>

The threat of political distancing is notable in new democracies, with further repercussions in the form of non-participatory and non-informed citizenship.<sup>20</sup> The next section discusses deliberative democracy as panacea for representative democracy's ills, and the idea of a conflictual consensus as alternative.

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15 *Mouffe*, note 2, p. 23.

16 *Offe*, note 4, p. 30.

17 *Offe*, note 4, p. 31.

18 *Urbinati*, note 3, p. 3.

19 *Mariano Torcal/Jose Ramon Montero*, Political disaffection in comparative perspective, in: *Torcal/Montero*, note 10, p. 5.

20 *Torcal/Montero*, note. 10, p. 6.

C. *Democracy as deliberation, or as ‘conflictual consensus’?*

Participatory democracy was pursued as an alternative model in the 1960s and 1970s to address the shortcomings of representative democracy. It waned and the notion of deliberative democracy came to the fore as an alternative.<sup>21</sup> Supporters of deliberative democracy believe that representative democracy is about voice: for it to work, opportunities for voice need to be multiplied. ‘Presence through ideas and speech’ creates the link between participation and representation as part of political action.<sup>22</sup> In deliberative democracy, votes are not the only line of transmission of public opinion. Other modes of communication exist through ‘the informal discursive character of associations, political movements and opinions’ that form part of deliberative action.<sup>23</sup> Citizens are free to discuss policies and ideas but their positions do not manifest in decisions, unlike the elected who have both deliberative and direct decision-making powers. Still, in Urbinati’s view, political judgment is a key indirect action brought to bear on elite behaviour in representative democracy. Deliberative politics creates a relationship between the assembly and the citizenry in which the latter can ‘reflect upon itself and judge its laws, institutions and leaders’.<sup>24</sup> ‘Reflection’ is a key concept in deliberative democracy. ‘Discursive legitimacy’ is achieved when policy decisions echo discourses in the public sphere, to the extent that rational, reflective actors produce these discourses.<sup>25</sup>

Critics of deliberative democracy point out its reliance on a similar mode of rationality as representative democracy with a different emphasis, namely on communicative action alongside free public reason. Mouffe argues that an emphasis on rationality excludes the essential role that affect plays in adherence to democratic values.<sup>26</sup> Emphasising proceduralism does not avoid the pluralism of competing and irreconcilable notions of the good life because procedures are not neutral processes – they involve ethical considerations and commitments. The multiplicity of human values, interconnected with passions and affects, make free, impartial and

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21 *Dryzek/Dunleavy*, note 7, p. 213.

22 *Urbinati*, note 3, p. 3.

23 *Urbinati*, note 3, pp. 15, 218.

24 *Urbinati*, note 3, p. 16.

25 *Dryzek/Dunleavy*, note 7, p. 219.

26 *Mouffe*, note 2, pp. 90-100.

conflict-less deliberation impossible, Mouffe argues. Ultimately deliberative democracy envisages conflict-free engagement in a rational, universal consensus. This proposes creating a sphere of social relations without or outside of power relations, which is an impossibility because the existence of a pluralism of values entails antagonism. The ultimate question is therefore not 'how to eliminate power but how to constitute forms of power more compatible with democratic values', and 'not to eliminate passions [and conflict] from the sphere of the public, in order to render a rational consensus possible, but to mobilize those passions [and conflict] towards democratic designs'.<sup>27</sup> 'Democratic individuals can only be made possible by multiplying the institutions, the discourses, the forms of life that foster identification with democratic values.'<sup>28</sup> Therefore, democratic politics should recognise and validate conflict; the aim should be to create what Mouffe calls agonistic pluralism: politics that turns antagonism (struggle between enemies) into agonism (struggle between adversaries that acknowledge each other's legitimacy).<sup>29</sup> From the viewpoint of agonistic pluralism, 'the aim of democratic politics is to construct the "them" in such a way that it is no longer perceived as an enemy to be destroyed, but as an adversary, that is, somebody whose ideas we combat but whose right to defend those ideas we do not put into question.'<sup>30</sup> Mouffe agrees that a measure of consensus is necessary for a pluralist democracy to exist. However, ethico-political principles of liberty and equality are necessarily constructed through differing interpretations divided according to differing positionalities of social-democratic, neoliberal, radical-democratic, and so forth. Agonistic confrontation happens in a 'conflictual consensus' that recognises and allows varied positions competing to install their hegemony over citizen identification.<sup>31</sup> For Mouffe, contestation constitutes democracy itself, and is the opposite of authoritarianism, which seeks to suppress dissent.

Mouffe's thesis opens a way out from a discourse in the social sciences that presents African states as 'pathological deviations from the script of modern political society', due to the proposition of 'an ideal form of the modern state [where] some of us live [...] [while] the rest of us live in var-

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27 *Mouffe*, note 2, p. 100, 103.

28 *Mouffe*, note 2, p. 96.

29 *Mouffe*, note 2, pp. 98-105.

30 *Mouffe*, note 2, p. 102.

31 *Mouffe*, note 2, pp. 103-104.

ious degrees of perversions of it, departures from it, and failures of it'.<sup>32</sup> Conteh-Morgan conjures actual existing state forms, as opposed to ideal ones, with his proposition that coercive rule, democratisation and democracy 'are not pure opposite ideal types' but rather overlap, in that repression and 'liberalism' appear in all three stages.<sup>33</sup> To avoid a hierarchisation of democracies as ideal (Western) types and pathological (African) types, Mouffe's theorisation of radical, plural democracy is useful: it moves from the recognition of 'the impossibility of the complete realisation of democracy and the final achievement of the political community. Its aim is to use the symbolic resources of the liberal democratic tradition to struggle for the deepening of the democratic revolution, knowing that it is a never-ending process.'<sup>34</sup> This approach reminds us that democracy nowhere exists as an accomplishment fulfilled once and for all but, instead, is a condition of continuous movement<sup>35</sup> as different forces seek to hegemonise the political space. As will be further discussed below, majorities are formed and re-formed all the time as they seek to make their voices count and to demand accountability from the elected.<sup>36</sup> Harrison in his discussion of sub-Saharan African politics<sup>37</sup> suggests democracy and democratisation as being overlapping conditions. Democracy is an on-going production, being 'as good as people's capacity to construct and defend it', while democratisation 'is a process of struggle to participate in the affairs of state, and this is a process which does not start and stop according to the caprice of academics' periodizations. Rather, it has a history as long as the state itself, and has been part of Africa's postcolonial politics generally'.

Therefore, the position adopted in this chapter disagrees with the insinuation of once-off accomplishment in Ishiyama's notion of democratisation as the process by which the rule of law, free and fair elections, civil society institutions and leadership accountability are 'established', with

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32 *Suren Pillay*, Campaigning and mobilizing, University of Cape Town, <https://www.youtube.com/watch?v=zO19OnmDx-Y> (last accessed on 6 June 2015).

33 *Earl Conteh-Morgan*, Democratization in Africa: The Theory and Dynamics of Political Transitions, Westport/London 1997, p.7.

34 *Chantal Mouffe*, Democratic Citizenship and the Political Community, in: Chantal Mouffe (ed.), Dimensions of Radical Democracy. Pluralism, Citizenship, Community, London/New York 1992, p. 238.

35 *Charles Tilly*, Democracy, New York 2007, p. 189.

36 *Elaine Spitz*, Majority rule, Chatham 1984, pp. 131-132.

37 *Graham Harrison*, Issues in the Contemporary Politics of Sub-Saharan Africa. The Dynamics of Struggle and Resistance, Basingstoke 2002, p. 82.

democracy being the condition where all of these items occur.<sup>38</sup> It suggests a stasis that does not capture the contestation involved in democracy and imposes an impossible removal of procedure from politics. This imposition is highlighted by Ishiyama's omission from his definition of essential 'ethico-political'<sup>39</sup> determinants of the quality of democracy, such as political equality.<sup>40</sup> While he allows an 'expansion' of democracy through greater participation and competition,<sup>41</sup> this mono-directional movement fails to capture the dynamic adversarial flux that the idea of a conflictual consensus encapsulates. Perhaps the answer lies in Tilly's idea of de-democratisation alongside democratisation, with de-democratisation as the opposite of democratisation, understood as a 'net movement towards broader, more equal, more protected, and more mutually binding consultation'.<sup>42</sup> It is argued here that de-democratisation and democratisation stand in constant dynamic tension to each other.

The next section homes in on democratic contestation as it happens in South Africa, with a particular focus on the ruling ANC and its relationship with parliament as the primary representative institution in the country, before discussing a significant challenge to the proceduralism of representative democracy in the form of the newly emerged populist political party the EFF.

#### *D. South Africa: A radical democratic challenge to institutional disaffection?*

At first glance representative democracy in South Africa<sup>43</sup> exhibits typical ills associated with the model. The trouble is signalled by withdrawal from the electoral process, which is the bare minimum requirement for representation. After a mere two decades of universal franchise, voter turnout

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38 John T. Ishiyama, *Comparative Politics: Principles of Democracy and Democratization*, Chichester 2012, p. 30.

39 Mouffe, note 2, note 32.

40 Nicola de Jager/Pierre du Toit (eds.), *Friend or Foe? Dominant Party Systems in Southern Africa. Insights from the developing world*, Claremont/Tokyo/New York 2013, p. 15.

41 Ishiyama, note 38, p. 30.

42 Tilly, note 35, p. 59.

43 South Africa has a national parliament and nine provincial legislatures, for which national and provincial elections take place every five years.

as a proportion of the voting age population dropped from 86% in 1994 to 57% in 2014.<sup>44</sup> The steady decrease in the overall voter participation rate since 1994 suggests that the ability of the ANC to capture the popular imagination as former liberation movement is lessening. The trends show not only a decrease in voter turnout but also a decrease in ANC support.<sup>45</sup> Its percentage of votes reached a pinnacle of 70% in 2004 to drop to 62% in 2014. Of the voting age population, its support dropped from between 39-40% for the 2004 and 2009 elections to 35% in the 2014 election.

These figures also reflect the crisis of the plethora of opposition parties, as they are unable to provide adequate alternatives to mobilise voting. The only party to significantly buck the trend, particularly with reference to the 2014 election, is the largest opposition party called the Democratic Alliance (DA), which grew its support by 39% since 1994, to 22% in 2014,<sup>46</sup> breaking through the ceiling of 20% that the National Party, which had instituted apartheid, set for opposition party support in the first democratic election in 1994.

In the rest of this section I contextualise dropping voter participation with reference to rising social protests, before making the case that it is institutional disaffection, rather than political disengagement, that grips the citizenry. Evidence is provided with reference to the ruling ANC's politicisation of institutions, which weakens or paralyses them and inhibits their ability to execute their constitutionally mandated functions. Simultaneously, the ANC attempts to demobilise and depoliticise civil society and the citizenry at large, in an echo of Schumpeterian conceptions of representative democracy, aided by a globally prevailing neoliberal rationality. The argument is made that the ANC utilises the distancing effects of representative democracy to undermine accountability, a manoeuvre that seems to have found its institutional resistance in the EFF, an opposition party that brings an unprecedented form of activism that challenges and may even expand the possibilities of parliamentary procedure.

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44 *News24.com*, Election data 'trickery' hides ANC weakness, <http://www.news24.com/elections/news/election-data-trickery-hides-anc-weakness-20140602> (last accessed on 7 June 2014).

45 *Collette Schulz-Herzenberg*, Elections and accountability in South Africa, ISS Paper 188, Cape Town 2009, pp. 1-2.

46 *Collette Schulz-Herzenberg*, Trends in electoral participation and party support 1994-2014, ISS Post-Election Synopsis, Cape Town 2014, p. 8.

I. Demanding accountability in the 'protest capital of the world'<sup>47</sup>

Spitz remarks that majorities are not passive, as some democratic theories seem to suggest. Rather, majorities are formed all the time as they employ 'every device at hand to make their voices count.'<sup>48</sup> Accountability from the elected is demanded through elections, petitions, demonstrations, civil disobedience, violent resistance, and competition.<sup>49</sup> In South Africa, shrinking voter turnout coincides with growing community-based protests as 'an almost daily feature',<sup>50</sup> dubbed a 'rebellion of the poor'.<sup>51</sup> Police figures show between 8000 and 11000 incidents of 'crowd management' from 2004 to 2012. Protests aimed specifically at service delivery shifted from just below 100 in 2007 to a new maximum of 218 in 2014, with specific increases in the election years of 2009 and 2014.<sup>52</sup>

The context for the related phenomena of decreasing voter participation and increasing demonstrations is that, while the ANC achieved some initial successes in overturning the legacies of apartheid, 27 million people or 46% of the population continue to live under the poverty line of R779 (59 euro) or less per person per month.<sup>53</sup> A high Gini coefficient is exacerbated by a toxic mix of structural unemployment at 35,8%<sup>54</sup> and faltering service delivery due to state incapacity, incompetence, corruption,<sup>55</sup> especially at the local government level, and neoliberal cost-recovery.<sup>56</sup> South

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47 *Peter Alexander*, *Protests and Police Statistics: Some Commentary*, Johannesburg 2012.

48 *Spitz*, note 36, pp. 131-2.

49 *Spitz*, note 36, pp. 128-131.

50 *John Daniel*, *The politics and challenges of delivery*, in: John Daniel/Prishani Naidoo/Devan Pillay/Roger Southall (eds.), *New South African Review* 1 2010: *Development or decline?*, Johannesburg 2010, p. 160-161.

51 *Alexander*, note 47.

52 *Civic Protest Barometer 2007-2014*, <http://www.mlgi.org.za> (last accessed on 21 February 2015).

53 *Mail & Guardian*, *Infographic: Poverty in South Africa*, <http://mg.co.za/data/2015-02-05-infographic-poverty-in-south-africa> (last accessed 15 February 2015).

54 *Statistics South Africa*, *Quarterly Labour Force Survey Quarter 3*, Pretoria, 2014.

55 *Vino Naidoo*, *The state of the public service*, in: John Daniel/Roger Southall/Jessica Lutchman (eds.), *State of the Nation 2004-2005*, Cape Town 2005, pp. 112-134.

56 *Prishani Naidoo*, *Indigent management: A strategic response to the struggles of the poor in post-apartheid South Africa*, in John Daniel/Prishani Naidoo/Devan Pillay/Roger Southall (eds.), *New South African Review* 1. 2010: *Development or Decline?* Johannesburg 2010, pp. 184-204.

Africa now has the vastest social security system on the African continent which ameliorates the effects of economic policy except for those aged between 18 and 60, but the government's macroeconomic policy hinders further expansion.<sup>57</sup>

Judging by the level of electoral withdrawal, South Africa displays significant levels of political disaffection. Political disaffection exists in two permutations, according to Torcal and Montero.<sup>58</sup> First, institutional disaffection, where a confidence gap emerges due to lack of responsiveness by public representatives. Second, political disengagement, encompassing a general distrust of politics and lack of engagement with political process. In new democracies disaffection may not lead to more non-conventional political action but rather to lower political involvement. However, political disaffection does not necessarily amount to loss of support for democracy as political regime.<sup>59</sup> This seems to be true for South Africa, where political disaffection seems to take the form of institutional disaffection, rather than political disengagement. It resonates with recent evidence in other African countries indicating a shift from previous findings showing disengagement from the state when service delivery falters to a new situation where social actors persist with placing demands on the state.<sup>60</sup> In South Africa, citizens demand accountability through direct political action in the streets simultaneously with the reduction in participation in narrow electoral politics. In a further sign that political disaffection is not due to loss of trust in democracy, protestors direct their demands at elected representatives,<sup>61</sup> which suggests they remain convinced that representatives can respond to their needs using the levers of state. Also, as mentioned, protests peak in election years, suggesting a targeting to coincide with a time when politicians are most aware that their positions are contingent upon voters' choices.

The confidence gap that emerges due to institutional disaffection can be read as critical citizens advancing the transformation of democratic institu-

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57 Haroon Borat, An income grant to all South Africans, United Nations Development Programme Poverty in Focus, Brasilia 2006, p. 9.

58 Torcal/Montero, note 10, pp. 6-7, 14-15.

59 Torcal/Montero, note 10, pp. 6-7.

60 Ellen M. Lust/Stephen Ndegwa (eds.), *Governing Africa's Changing Societies. Dynamics of Reform*, Boulder/London 2012.

61 Zachary Levenson, *Image and Realities of Politics: Social Movements in South Africa*, 2012, pp.14-16; [https://www.academia.edu/10272427/Social\\_Movements\\_in\\_South\\_Africa](https://www.academia.edu/10272427/Social_Movements_in_South_Africa) (last accessed on 15 February 2015).

tions, especially the relationship between themselves and their representatives.<sup>62</sup> Offe proposes that disaffection is a consequence of institutional practices. Institutional practices condition 'the understanding of what the system is about and what the relevant alternatives are': in the ongoing tussle that is democracy, '[w]e learn what "we" the citizens "are" through the hidden curriculum of day-to-day politics and its formative impact.'<sup>63</sup> Thus political institutions 'make' citizens by engendering in them and political elites a view of obligations, opportunities and meanings. Another dimension of the hidden curriculum that elites pass on to citizens and that causes disaffection, is the strictures of globalised political economy, party-politics and media workings that circumscribe choice, with political elites opting for whatever is on offer, argues Offe.<sup>64</sup> The processes here described can be ameliorated or exacerbated by countries' histories and whether political elites comply with the letter and spirit of institutional rules.<sup>65</sup> To unpack the latter in the context of South Africa, the next section probes why the country's democracy suffers from institutional disaffection, applying the notions of institutional practices as a hidden curriculum and the challenge of multiplying democratic practices to produce democratic individuals. It discusses the ruling ANC and the lessons it hopes to teach the citizenry with its politics.

## II. Lessons in 'democracy' from the African National Congress

Deliberative democracy foregrounds voice – consultation and deliberation between the elected and the electorate – as the central requirement for the substantiation of representative democracy. Institutional design is crucial for deliberation.<sup>66</sup> Measured by Dryzek and Dunleavy's criteria for institutional design,<sup>67</sup> the South African system should add to the deliberative character of democracy. The system features a multi-party parliament, including parties with single digit support, brought about by the system of proportional representation (PR), and a plethora of parliamentary commit-

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62 *Torcal/Montero*, note. 10, p. 5.

63 *Offe*, note 4, p. 34.

64 *Offe*, note 4, pp. 44.

65 *Offe*, note 4, p. 35.

66 *Dryzek/Dunleavy*, note 7, p. 220.

67 *Dryzek/Dunleavy*, note 7, pp.220-221.

tees to thrash out laws and hold the executive to account. Public consultation is enshrined in the Constitution (Section 59). The public participation model of the South African parliament should be a sterling example of a vehicle for deliberative democracy. In the first few years of the democratic parliament, it seemed like the body lived up to its potential – for example, with the extensive public consultation when parliament doubled as constitutional assembly from 1994-1996 and MPs drafted the 1996 Constitution.<sup>68</sup> However, by 2006 the Constitutional Court declared two laws invalid due to insufficient public consultation.<sup>69</sup> Thereafter, instead of embracing consultation anew, parliament became painstaking in following the letter but not the spirit of public consultation. Parliament goes through the motions of alerting the public to a new bill, asking for public comment through newspaper advertisements, inviting public submissions, and hosting public hearings. Nevertheless, there would be scant indication of public inputs influencing the proposed law if the impetus for the law derives from a political conundrum internal to the ruling party which it seeks to resolve. These conundrums frequently involve corruption which is used as a political weapon in factional infighting in the party. Examples in this regard include the dismantlement in 2008 of a hybrid police and prosecutorial unit known as the Directorate of Special Operations, or ‘Scorpions’,<sup>70</sup> and the adoption of the Protection of State Information Bill in 2013. These will be discussed in greater detail below but, suffice to say, public submissions in these processes were treated with outright animosity by elected representatives and a minimum of the inputs found their way into the final versions of the laws.<sup>71</sup> Another example is the Traditional Courts Bill, which seeks to reward traditional leaders, a key constituency of the ruling ANC, with greater powers in return for rural black votes.<sup>72</sup> The bill’s effect would be a violation of the principle of equality before the law as traditional leaders’ ‘subjects’ would be relegated to a parallel system of law without the same rights as urban South Africans. At the flawed public hearings, democratic procedures were undermined by ANC representatives’ politically expedient reverence for traditional leaders, which had the

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68 *Christi van der Westhuizen*, Working Democracy. Perspectives on South Africa’s Parliament at 20 Years, Cape Town 2014, pp.10-20.

69 This next section draws on *van der Westhuizen*, note 68.

70 *Van der Westhuizen*, note 68, pp. 117-128.

71 *Van der Westhuizen*, note 68, pp.178-195.

72 *Van der Westhuizen*, note 68, pp. 234-245.

effect of silencing the voices of marginalised rural people negatively affected by the bill, among other problems.<sup>73</sup> The consultation was marred by the hosting of multiple rounds of public hearings in an apparent approach of 'consult until you get the answer you want'.<sup>74</sup> Still, a robust civil society effort caused the bill to fail twice in parliament. At the time of writing, its third return was mooted.<sup>75</sup> Therefore, proceduralism advancing deliberative democracy runs up against politics and passions that demonstrate the converse of democratic identification, as per Mouffe's proposal.

Why has the institutional design of parliament not delivered on the promises of deliberative democracy? A step back is necessary, to look at the national context. Two related factors spilled into political messiness that proves proceduralism wanting. The first is socio-economic inequality. Tilly<sup>76</sup> argues that citizen-state engagement that is arranged according to prevailing social inequality – in this case South Africa's colonial and apartheid legacies – weakens democratic politics. This happens through the uneven distribution of political resources, giving advantaged groups the means to reinforce disparities when democratic outcomes do not accord with their interests. Tilly adds that South Africa's transition to democracy signals only a 'partial' removal of public politics from inequality. Democracy is threatened by the country's inordinately high level of inequality. The effects of this inequality are demonstrated directly in relation to parliament: inequality and vast geographical distances make access for poor people, who are frequently rural and mostly female and black, difficult. Later more on this.

The second is corruption. The turning point was in the year 2000 when the fledgling democracy's nemesis arose in the form of a R60 billion (4.5 billion euro) arms deal.<sup>77</sup> The decision of parliament's most powerful watchdog committee, the standing committee on public accounts, to inves-

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73 *Alliance for Rural Democracy*, Third round of hearings on the TCB fails to change minds, 22 November 2013, [www.customcontested.co.za](http://www.customcontested.co.za) (last accessed on 13 June 2015).

74 *Custom Contested*, NCOP in disarray over TCB, 12 February 2014, [www.customcontested.co.za](http://www.customcontested.co.za) (last accessed on 13 June 2015).

75 *Sindiso Mnisi Weeks*, South Africans braced for new confrontation with government over controversial law, *The Conversation*, 8 June 2015, <http://theconversation.com/south-africans-braced-for-new-confrontation-with-government-over-controversial-law> (last accessed on 13 June 2015).

76 Tilly, note 35, pp. 110-120, p. 130.

77 This next section draws on *Van der Westhuizen*, note 68.

tigate allegations of mass corruption against ANC officials in government was systematically undermined by the speaker's office acting on behalf of the presidency, hobbling the committee and undermining the course of the law. The interests of the party elite were elevated to the detriment of the rule of law and constitutional institutions. This inaugurated a period in which political control over institutions became paramount. Parliament has since been utilised to provide a legal veneer when the ANC's majority is used to weaken key institutions protected by the Constitution. Examples include the dismantlement of the highly effective anti-corruption unit the 'Scorpions' and the dismissal of the National Director of Public Prosecutions, Vusi Pikoli, in 2009 for refusing to postpone the prosecution of the police commissioner on corruption charges. The Scorpions had an impressive success rate in criminal corruption cases until its path crossed with the political forces' intent on elevating then ANC deputy president Jacob Zuma to the country's presidential office, which was achieved in 2009. In order to prevent prosecution of Zuma on myriad charges of corruption related to the above-mentioned arms deal, the Scorpions was implicated in internal power politics involving Zuma's predecessor as president of country, Thabo Mbeki. This served as justification for its disbanding using a process driven through parliament. The Scorpions' replacement, the Directorate for Priority Crime Investigation, or 'Hawks' police unit, does not enjoy the Scorpions' unique combination of policing and prosecutorial powers, the reason for the Scorpions' efficacy. The Constitutional Court has since found the independence of the Hawks wanting because it is not sufficiently insulated from political interference.<sup>78</sup> Regarding parliament's decision to dismiss Pikoli, this followed after he failed to heed then President Mbeki's pressure to postpone the prosecution of the National Police Commissioner Jackie Selebi on charges of corruption. Pikoli's removal paved the way for the politicisation and fatal weakening of the National Prosecuting Authority, along with the police, as the factional infighting in the ruling party spilled over into state institutions.<sup>79</sup> Subsequently, after

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78 *Mail & Guardian*, Concourt: Hawks not sufficiently independent, 27 November 2014, <http://mg.co.za/article/2014-11-27-concourt-hawks-not-sufficiently-independent> (last accessed on 13 June 2015).

79 *Van der Westhuizen*, note 68, pp. 141-144, pp. 159-162; *Mail & Guardian*, Hawks boss offered R3m to walk away, 27 March 2015, accessed at <http://mg.co.za/article/2015-03-27-hawks-boss-offered-r3m-to-walk-away> (last accessed on 13 June 2015).

mounting revelations of corruption in the media, parliament adopted the controversial Protection of State Information Bill to suppress the exposure of malfeasance in the public sector by criminalising the possession or publicising of public information even if in the public interest. Its effect will be to hinder citizens' access to state information and discourage whistleblowing and investigative journalism.

For the above events to unfold in this way, the ANC had to use its preponderant majority in parliament.<sup>80</sup> In short, political decisions and laws subverting the functioning of institutions include the dissolution or removal of politically inconvenient agencies and officials, the appointment of pliant officials, the obstruction of those institutions beyond the party's political reach, and the extension of security powers. That institutions hold the potential to provide accountability is therefore attested to in the negative in South Africa, in the sense that the ruling party weakens institutions to prevent full functioning and hence their ability to demand accountability.

The ANC response to the challenge of corruption in party ranks seems a dangerous version of political elite manoeuvres around the demands of contemporary politics – manoeuvres that contribute to citizen disaffection.<sup>81</sup> It is here argued that such elite opportunism is informed by the political culture of a party. A short discussion of ANC internal culture is warranted: a salient feature of ANC culture is its aim of establishing 'a hegemony of ideas' across 'all social strata' for a 'national democratic revolution' (NDR),<sup>82</sup> led by itself as vanguard party in Leninist mould. It exhibits an intolerance of pluralism, as it does not exhibit 'an unconditional acceptance that other parties have a right to organise and to compete with the dominant party irrespective of arguments over the historical record.'<sup>83</sup> The quest for hegemony, playing out in the unfolding events de-

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80 A complexification is needed because the ANC also used its majority in parliament to ensure the passage of laws that advance and give effect to the Constitution, e.g. the Choice on Termination of Pregnancy Act and the Civil Union Act legalising gay marriage. In these cases, the overbearing executive and party leadership used the parliamentary majority of the party to give effect to the Constitution.

81 *Offe*, note 4, p. 35.

82 *Joel Netshitenzhe*, *The State, Property Relations and Social Transformation*, Umrabulo 5, Marshalltown 1998.

83 *James Hamill/John Hoffman*, *The African National Congress and the Zanufication debate*, in: John Daniel/Prishani Naidoo/Devan Pillay/Roger Southall (eds.) *New South Africa Review 2. New Paths, Old Compromises*, Johannesburg 2011, p. 58.

scribed above, is characterised by the conflation of party and state, which includes the confusion of party interest with public interest, the politicisation of state institutions and the privileging of the role of party functionary above that of public representative. In the Constitution, Section 42 (3) reads that the ‘National Assembly is elected to represent the people and to ensure government by the people under the Constitution’. This constitutional mandate runs up against the ANC’s conception of itself as ‘the people’. The ANC imagines itself in the image of the NDR, which replaces the objective of a democratic society with that of a narrowly defined nation consisting of selected persons.<sup>84</sup> The cult of the leader looms large, a vestige from the ANC’s period in exile when ‘criticisms of the leader [were] an attack on the movement and its legacy’.<sup>85</sup> This strengthens conformism and censorship within and outside the party, ensuring an inordinate elevation of the party elite in relation to the rank and file and, generally, a top-down approach to politics and, ultimately, democracy.

Parliament is a key institution for the elaboration of the ANC’s vanguard, elite-driven politics of capturing all ‘strata’. It serves as one of the institutions with which patronage is extended through posts – so necessary to gain access to state resources. With the so-called deployment of cadres<sup>86</sup> the state is turned into a loyalty scheme. The PR system might enhance representation of many positions in a fractured society but its other outstanding characteristic is to disproportionately empower party leaderships in relation to parliamentarians and, ultimately, vis-à-vis citizens. Ascendance to parliament depends on party lists controlled by party leaderships. Control is exerted by awarding the most senior positions in the executive arm of the state to the most senior ruling party officials. In this way, the ruling party’s headquarters and the executive become the highest authorities in determining parliamentarians’, and ultimately parliament’s, agenda.<sup>87</sup> Indeed, these two centres of power become interchangeable. Cadre deployment ensures loyalty to the party, and the PR system

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84 *Ivor Chipkin*, *Do South Africans exist? Nationalism, Democracy and the identity of ‘the people’*, Johannesburg 2007, p. 119.

85 *William Gumede*, *Building a democratic political culture*, in: William Gumede/Leslie Dikeni (eds.), *The poverty of ideas. South African Democracy and the retreat of intellectuals*, Auckland Park 2009, p. 17.

86 *Sam Sole*, *State of corruption and accountability*, in: John Daniel/Roger Southall/Jessica Lutchman (eds.), *State of the Nation 2004-2005*, Cape Town 2005, p. 109.

87 *Van der Westhuizen*, note 68.

ensures that such comradely behaviour can be rewarded, while the reverse is also true. In the process appointments are made irrespective of competence – and are even made *despite* substantive indications of lack of fitness. Compromised individuals are seemingly more likely to be appointed to significant posts to do the bidding of jostling party factions. In the parliamentary context, certain individuals were promoted to committee chair-personships *after* implication in Travelgate (widespread fraud in which MPs colluded with travel agents to cash in on false travel claims).

As the social pressures of high inequality build while state capacity falters in meeting the needs of the ANC's primary constituency, 'the rebellion of the poor' intensifies. In response, the ANC adopts an increasingly defensive posture. Zuma promised that the ANC 'will rule until Jesus returns'. Deliberation is highly constrained, as the ruling elite seeks to tighten its hold on power in the face of a multiplicity of contrary positions. As part of its counter-offensive, a public discourse of majoritarianism vs constitutionalism circulates, drawing on its NDR vision of hegemonisation. The Constitution and the Constitutional Court are positioned as fetters on the 'will of the people', as personified by the ANC leadership. This discourse serves to legitimise anti-democratic moves, such as the imposition of the Protection of State Information Bill. The discourse draws new lines of exclusion, in which a critical stance towards the ANC is met with claims of anti-majoritarianism and serves to disqualify the critic from belonging to 'the people', the ANC's nation.<sup>88</sup> A related strand in the ANC dismisses the Constitution and its principles of separation of power, of equality before the law and of the division of party and state as bourgeois ruses designed to maintain white privilege and rob 'the majority' of their democratically earned right to rule.<sup>89</sup>

The exclusionary discourse can be traced back to the 1990s, when a demobilisation of civil society occurred,<sup>90</sup> with the ANC's encouragement,

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88 This section draws on *van der Westhuizen*, note 68.

89 For example, see *Ngoako Ramatlhodi*, ANC's fatal concessions, *The Times*, 1 September 2011, <http://www.timeslive.co.za/opinion/commentary/2011/09/01/the-big-read-anc-s-fatal-concessions> ((last accessed on 21 February 2015).

90 *Devan Pillay*, The stunted growth of South Africa's developmental state discourse, *Africanus – Journal of Development Studies* 37/2 (2007), pp. 198-215; *John Appolis*, The transformation of the South African trade union movement and the challenges, in: Gorm Gunnarsen, Patrick M. Manus/Morten Nielsen/Hans Erik Stolten (eds.), *At the end of the rainbow. Social identity and welfare in the new South Africa*. Copenhagen 2007, pp. 103-113; *Shireen Hassim/Amanda Gouws*,

given that 'the people now ruled'. These moves suggest that the ANC prefers the truncated version of democracy originally supported by French and American elites when representative government gained traction two centuries ago.<sup>91</sup> Its rhetoric of demobilisation is bolstered by the neoliberal practice of technocratic responses, which seek to remove politics from governing. The neoliberal mode latches onto the democratic deficit of participative democracy in its Schumpeterian form where democracy is a mere mode of decision-making to be executed by technocrats; apathy is therefore deemed a strength. South Africa, similar to other postcolonial states, experiences a 'displacement of the political'.<sup>92</sup> In the neoliberal frame, politics becomes disaggregated and flattened into a plethora of 'issues', without overarching normative principles that could bind these 'issues' together in a coherent plan or set of priorities.<sup>93</sup> Rights and obligations are reduced to costs and interests and, as cost calculating requires technical 'expertise' that many citizens do not possess, public policy and action becomes technical exercises.<sup>94</sup> 'Under ANC rule, the category [people] has been thoroughly depoliticised. The people have become a succession of numbers, countless services to be delivered by a clientelist state that treats its citizens as dependants.'<sup>95</sup>

To conclude this section, Offe proffers an idea of day-to-day institutional practices as a hidden curriculum teaching citizens the extent of democratic possibilities, which resonates with Mouffe's proposal that democracy requires practices that encourage identification in an ongoing, dynamic process of *making* democracy. Offe<sup>96</sup> further posits that an overwhelming majority hinders political challenge, which causes mediocrity and opportunism at the elite level and, at mass level, conformism and lack of free-

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Redefining the public space: women's organisations, gender consciousness and civil society in South Africa, *Politikon: South African Journal of Political Studies* 25:2 (1998), p. 69.

91 *Pierre Rosanvallon*, *Counter-democracy, Politics in an age of distrust*, Cambridge 2008, pp. 292-293.

92 *Jean Comaroff/John Comaroff*, *Naturing the Nation: Aliens, Apocalypse and the Postcolonial State*, *Journal of Southern African Studies* 27:3 2001, p. 636.

93 *Offe*, note 4, p. 36.

94 *Offe*, note 4, p. 37.

95 *Achille Mbembe*, *Juju prances into the gaps left by ANC*, *Mail & Guardian* <http://mg.co.za/article/2014-07-31-juju-prances-into-the-gaps-left-by-anc> (last accessed on 28 August 2014).

96 *Offe*, note 4, p. 31.

dom of opinion. We have seen in this section ample evidence of mediocrity and opportunism at the political elite level, not only due to majority rule but due to an ideology of majoritarianism. These manoeuvres are incompatible with democratic values and stymie identification with democratic forms of citizenship. Nonetheless, despite the ANC's efforts at demobilisation of civil society and depoliticisation of the citizenry, the 'rebellion of the poor' suggests that the expected conformism and lack of freedom of opinion have not gripped 'the people', even if members of parliament may be in thrall to their leaders. This accords with findings on the changing governance in African states, with citizens taking up newly liberated public spaces to make claims on public goods – as opposed to patronage.<sup>97</sup> In the process, 'gaps and tensions in state performance' are revealed. Contestations arise about the state and state-society relations, and defining the autonomy and authority, which require resolution through institutions.<sup>98</sup> In the South African context, resolution through institutions is complicated by institutional disaffection. The next section discusses the emergence of a political party that seemingly sparks changes that could overturn institutional disaffection and produce new parliamentary modes for democratic identification. It brings a populist politics of the street into the hallowed chambers of representative democracy, otherwise known as parliament.

### III. Activist politics in parliament: Conflictual consensus in action?

The previous section foregrounded how the ANC engages the twin phenomena of persistent, prevailing inequality and related socio-political disquiet, on the one hand, and mounting corruption, on the other. It pursues a politics that seeks to shore up its ruling position amid rising conflict among different political positionalities by capitalising on representative democracy's democratic deficit, as exacerbated by neoliberal depoliticisation. These permutations of ruling power are lately subject to a new challenge in parliament, despite the ANC's preponderance in parliament and despite institutional disaffection in the South African democratic system. An opposition party called the Economic Freedom Fighters (EFF) gained

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97 *Lust/Ndegwa*, note 8, p. 10.

98 *Lust/Ndegwa*, note 8.

seats in the 2014 general election. Its promise is to give voice to the economically excluded and to advance inclusion through land expropriation and other interventions. South Africa's extreme inequality and its socio-economic consequences manifest in lack of access to public forums, including parliament: 'important positions are easily shut out because those holding such opinions are too poor to influence party leaders or gain access to institutions such as the media or parliament'.<sup>99</sup>

The EFF phenomenon hints at what Offe calls 'strong causes with low confidence as to the capacity of established political institutional processes to respond to and process the issues that make up these causes'.<sup>100</sup> The outcome is 'non-conventional' politics developing new and mostly legal forms of representation, in addition to existing practices. However, Offe's discussion is of new social movements. The EFF, a breakaway group from the ruling ANC bloc, entered parliament for the first time after the 2014 election, as the third largest party with 6.35% of the votes and 25 seats out of the total of 400. Its leader Julius Malema was known for rambunctious and populist politics as youth leader of the ANC, contributing to his expulsion from the party. It therefore represents a fraction of the dominant classes. Hart, drawing on Laclau, points out the distinction between populism-from-above and populism-from-below: the former is always repressive because, while the existing parliamentary regime seeks to stem popular, insurrectionary politics, the populism of the fraction seeks to exacerbate the antagonism but only insofar as it serves its own narrow, class-based agenda.<sup>101</sup> Malema's rise to ANC youth leader happened on the back of factional violence within the ANC Youth League. He was instrumental in Zuma's ascension to the top of the ANC, threatening opponents that he would 'kill for Zuma'. His penchant for materialist trappings confirms his class position. However, Mbembe argues that even if the EFF might be 'simply simulating identification with the proletariat and, in the process, trying to con the poor', the qualification for fascism would be populism accompanied by violence in the service of the middleclass and big capital. Instead, the EFF fosters 'a new wave of politicisation and radicalisation of subaltern classes and ... escalating political contestation'.<sup>102</sup>

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99 *Gumede*, note 85, p. 20.

100 *Offe*, note 4, p. 42.

101 *Gillian Hart*, *Rethinking the South African crisis. Nationalism, Populism, Hegemony*, Scottsville 2013, p. 195.

102 *Mbembe*, note 95.

The party potentially provides a voice to an economically excluded majority of young citizens who are marginalised and frequently jobless due to their lack of economic and social capital. Mbembe's evaluation occludes three significant elements: the EFF's position as splinter from the dominant bloc; the use of violence in the Malema grouping's political advancement; and the grouping's indulgence in conspicuous consumption. Indeed, Mbembe does not address the Malema grouping's discourse which during its ascent bore the hallmarks of an exclusionist populism seeking to rid 'the people' of all foreign elements, as per Rosanvallon's analysis of counter-democratic populism.<sup>103</sup> Finally, EFF leaders cut their political teeth in the ANC. As shown above, the ANC's political culture includes lessons in the denial of democratic accountability.

But, perhaps under the impression of his political fortunes being directly contingent upon voters, rather than the ANC party leadership, Malema changed tack with his arrival as EFF leader in parliament. Some suggest that the party's parliamentarians rejuvenate portfolio committee meetings with serious and critical engagement with policies and laws as part of the exercise of oversight over government departments. Added to that, the EFF introduced an unprecedented activist politics to National Assembly sessions from late 2014 onwards. In what could be read as a democratisation of proceduralism, EFF MPs extended democratic engagement to enable accountability, all the while acting within and using the very procedures of representative democracy and related constitutional protections. EFF MPs repeatedly asked Zuma 'to pay back the money'. This demand was based on the finding by the Public Protector, an oversight entity created in terms of Chapter 9 of the Constitution, that Zuma should reimburse the state, after the office's investigation implicated him in the abuse of R246 million (18,7 million euro) in public monies to expand his private homestead in rural Nkandla. The EFF first stated this demand on 21 August 2014, to which the speaker instructed them to leave the house. The police – an agency of the executive – illegally entered the premises, at the behest of the police minister, and maintained a threatening presence.<sup>104</sup> At the second session on 13 November 2014, where the ANC wielded its majority to adopt a report exonerating Zuma from wrongdoing in the Nkandla

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103 *Rosanvallon*, note 91, p. 266.

104 *Mail & Guardian*, Mapisa-Nqakula: EFF's partly actions a national security threat, 27 August 2014, <http://mg.co.za/article/2014-08-27-mapisa-nqakula-effs-partly-actions-a-national-security-threat> (last accessed on 15 February 2015).

corruption, public order police injured four MPs in their attempt to remove an EFF MP who called Zuma a ‘thief’. The EFF and the DA pursued a strategy of filibustering within the ambit of parliament’s rules during that session, tabling a record number of notices of motions and motions without notice, respectively 166 and 41, over three-and-a-half hours.<sup>105</sup> Another significant intervention came during the president’s annual state of the nation address on 12 February 2015, when EFF MPs used parliamentary rules on raising points of order and of privilege in an unprecedented way to demand accountability on Nkandla, acting within a legally defensible interpretation of the rules.<sup>106</sup> In response, parliament’s presiding officers illegally commandeered the police to remove elected representatives, a move afterwards justified with an interpretation of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act of 2004. As during the previous time, MPs sustained injuries – the member who previously called Zuma a thief was severely assaulted – and charges were due to be laid against the police.

The presiding offices, including the speaker of parliament and the chairperson of the national council of provinces, acted in conjunction with the executive through the irregular deployment of police to prevent members of the legislative arm from exacting accountability from the executive, particularly the president. Through their political activism, the EFF managed to draw renewed attention to the hollowing out of parliament as a democratic institution. Specifically, the EFF demonstrated how parliament serves as a ‘rubberstamp’ that the ANC wields at its own whim, using its majority. The ANC’s partiality to the Schumpeterian-type inhibition of democracy was reconfirmed, in that it emphasised and used procedural techniques to justify interference with accountability. Moreover, in its media response afterwards, the ANC sought to depoliticise its leadership’s violently repressive action against its parliamentary opponents as mere adherence to rational deliberation: ‘...the EFF does not see parliament and

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105 *Mail & Guardian*, Parliament in a brawl as police remove EFF MP, 14 November 2014, <http://mg.co.za/article/2014-11-14-parliament-in-a-brawl-as-police-remove-eff-mp> (last accessed on 15 February 2015).

106 *City Press*, Parliament vs EFF: What do the rules say? <http://m.news24.com/news24/Archives/City-Press/Parliament-vs-EFF-What-do-the-rules-say-20150429>; *Pierre de Vos*, SONA chaos: Preliminary legal and strategic points, 13 February 2015, <http://constitutionallyspeaking.co.za/category/eff> (last accessed on 15 February 2015).

legislatures as forums for the contestations of ideas, advancement of superior arguments and space for pursuit of alternative policies [instead] their opinions are forced unto others through thuggery, mayhem and dastardliness'.<sup>107</sup> ANC doubletalk – calling the EFF's actions 'thuggery' while unleashing thuggery by police on elected representatives, in contravention of Section 58 of the Constitution – extended to the executive insisting that the procedures of and by themselves are in fact the quintessence of democracy: the EFF's disruption of procedures during the first sitting 'undermined the institution of parliament, it undermined the Constitution and everything we are representing here,' according to the defence minister at a briefing held after the first incident.<sup>108</sup> The police minister justified calling in the police as necessary 'because the order of the house had degenerated'; police action against MPs is about 'how we execute and enforce the provision that we have in the law'.<sup>109</sup>

The EFF's non-conventional politics of parliamentary activism is an unexpected expansion of the possibilities for deliberative democracy's aim to bring discourses in the public sphere into the institutional space where policy decisions are taken. In another example, EFF MPs staged a silent protest in the National Assembly by displaying cards with bold letters demanding 'Release Marikana Report', with reference to an official commission report on the worst case of police violence in the democratic era when 34 miners were killed.<sup>110</sup> The problem of representation in parliament and alternative – mostly procedural – ways of confronting hindrances to accountability were introduced into the public discourse. The failure to translate these discourses into policy decisions is indicative of the constraints of deliberative democracy. Deliberative democracy as model is inadequate in the face of a defensive majoritarianism elaborating itself through the messiness of politics.

The EFF's attempts to expand representative democracy within the rules and formalities of the parliamentary system heighten contestation in

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107 *Daily Maverick*, The day madness ruled: Mayhem in parliament as EFF demands Zuma #PayBackTheMoney, <http://www.dailymaverick.co.za/article/2014-08-22-the-day-madness-ruled-mayhem-in-parliament-as-eff-demands-zuma-payback-themoney/#.VXxQxIJHnCQ> (last accessed on 15 February 2015).

108 *Mail & Guardian*, Note 104.

109 *Mail & Guardian*, Note 104.

110 *The Citizen*, EFF interrupts Zuma in National Assembly again, 26 May 2015, <http://citizen.co.za/390560/eff-interrupts-zuma-in-national-assembly-again/> (last accessed on 15 February 2015).

unprecedented ways. The party's reactivation of parliament as political space returns the institution to the midst of political struggles, from which the ANC attempted to insulate it. This new style of opposition refreshed choices for the official opposition party, the Democratic Alliance (DA), and other smaller parties regarding the options for opposition in parliament. The DA with its significant presence of 89 seats stepped forward in support of the EFF action. It collaborated with the EFF in November 2014 in using filibustering to voice resistance at the ANC using its majority to absolve Zuma from the Public Protector findings. In February 2015, when police under the guise of 'security personnel' forcefully removed all 25 EFF MPs during the president's state of the nation address, the DA staged a walkout from the National Assembly in protest. It took this further in a court challenge to explicate whether police<sup>111</sup> may be deployed against elected representatives, with the High Court declaring the relevant clause in the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act unconstitutional.<sup>112</sup>

The EFF moment could be an answer to Dryzek and Dunleavy's<sup>113</sup> questioning of the practicability of radical democratic engagement in regular state institutions. It could be read as an example of radical democratic practice in state institutions, as it brings a previously excluded voice that is socio-politically marginalised into the parliamentary discourse and, with its activism, multiplies the discourses that form democratic citizens. Laclau and Mouffe propose a radical democratic practice in which 'the political struggle is not unified... but always remains decentralised and in a state of ferment, as new oppressions are discovered, old ones refined, and new possibilities for linking different movements combined'.<sup>114</sup> This seems a model that captures the flux and fury of South African democratisation and the potentials for new alignments. The EFF's parliamentary activism enables an unexpected political realignment of opposition parties that links new possibilities of configurations of power. In particular, the

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111 The white-shirted 'security personnel' turned out to be police in unmarked clothing.

112 *Democratic Alliance*, DA wins court case to keep police out of parliament, 12 May 2015, <http://www.da.org.za/2015/05/da-wins-court-case-to-keep-police-out-of-parliament>. See also [http://parliament.gov.za/live/content.php?Item\\_ID=7510](http://parliament.gov.za/live/content.php?Item_ID=7510) for Parliament's official rejection of the court finding and its intention to appeal (last accessed on 15 February 2015).

113 *Dryzek/Dunleavy*, note 7, p. 303-305.

114 *Dryzek/Dunleavy*, note 7, p. 303.

strategic collaboration between the EFF and the DA might be an example of Mouffe's agonistic pluralism. The DA and EFF are, on the face of it, ideologically far removed from each other – that is, if the EFF leader remains steadfast with his leftist populism, as opposed to the DA's liberal individualism and neoliberal capitalism. Time will tell, but presently these two former foes-turned-adversaries defend each other's right to put forward their ideas. This represents a position of conflictual consensus that is a radical departure from the 'kill for Zuma' stance that Malema previously held as member of the ANC. It is notable that the EFF MPs' actions in parliament are expressly addressing parliament's dysfunctional accountability and has been non-violent throughout.<sup>115</sup> At this stage, the EFF's activism in parliament can cautiously be understood as allowing for an open confrontation of democratic positions. It also mobilises political passions towards an identification with the democratic value that members of the executive and legislative arms must be answerable to those who elected them and to constitutional oversight bodies protecting the public. That said, this radical democratic moment risks being thwarted by the political origins of the EFF and its leaders.

### *E. Conclusion*

The suggestion that democracy is never completely won, is borne out by the stubborn democratic deficit of representative democracy. Deliberative democracy seeks to alleviate this ailment but also flounders due to its insistence on rational deliberation. Therefore, like representative democracy, it seeks to exclude passions and politics from democracy, an impossibility. In South Africa, the vanguardist ruling ANC capitalises on the limits of representative democracy to avoid accountability for its growing inability to address socio-economic inequality and exclusion, exacerbated by rampant corruption. This deteriorating situation is not prevented by the deliberative democratic design of the parliamentary system, despite the constitutional entrenchment of public involvement in parliamentary processes.

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115 *Africa Check*, Fact Sheet: Is it legal for 'security forces' to be deployed in South Africa's parliament?, February 2015, <http://africacheck.org/factsheet/factsheet-is-it-legal-for-security-forces-to-be-deployed-in-south-africas-parliament> (last accessed on 13 June 2015).

Nevertheless, the (anti-)democratic teachings of the ANC through its institutional practices have not produced a people depoliticised, as desired. While institutional disaffection besets the citizenry, as more and more citizens withdraw from representative democracy's one-way communication in the form of elections, political engagement surges upward in what is dubbed a 'rebellion of the poor' in the 'protest capital of the world'. A new opposition party, the EFF, could provide a political escape valve for disaffected voters, bringing the vast numbers of socially, politically and economically excluded people into institutional representation, but its political genesis casts a shadow over this potential.

Still, the EFF moment of unprecedented parliamentary activism serves as an example of Mouffe's concept of radical democratic practice in state institutions, as it multiplies the discourses for citizens to identify with democratic values of the accountability of the elected to those who elected them. Moreover, the unexpected political realignment of opposition parties links new possibilities of configurations of power. The EFF moment is an actualisation of politics that addresses the criticism that radical democratic practice is impossible in the regular institutions of state. Indeed, South Africa 20 years into democracy undermines the notion of rational consensus that underpins representative democracy in its procedural form. Rather, the country exemplifies an understanding of democracy as a conflictual consensus in that confrontations among different ethico-political interpretations compete for citizens' identification. This practice is the opposite of authoritarianism, which seeks to suppress conflict. The dynamism of possibilities at this historical juncture speaks to democracy as unceasing process. It holds expansionary potential for democracy beyond representative democracy's fatal limits.