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Political Representation

The dawn of democracy in South Africa has fulfilled its promise to produce a consolidated representative democracy, or at least so it seems to some: although many years of 'jobless growth' have left early promises unfulfilled, the dark early morning clouds of violent upheaval, division and enmity have been replaced by the bright signs of reconciliation, periodic free and fair elections and a shared vision of the future. This spirit of reconciliation and cooperation are the results not only of the much-lauded Truth and Reconciliation Commission. It is also a direct consequence of a negotiated settlement between old and new political and economic elites, which created new forms of commercial and political representation that ensured against economic stagnation and political turmoil. But does a seemingly successful transition to democracy translate into the survival of representative democracy in the medium and long terms? Do existing forms of political representation in South Africa constitute consolidated representative democracy? More to the point, may the answer to the conundrum of two decades of mostly failed promises as regards macroeconomic management and government responsiveness to the needs of the citizenry have its source in South Africa's macro-political forms of representation?

In this chapter I argue that they do. In doing so, I suggest the South African case complicates much of the received opinion regarding the consolidation of representative democracy. Unreconstructed realists abound in these arguments, for obvious reasons: they see themselves, quite rightly, as countering the exaggerated claims of democracy's cheerleaders, who claim victory after victory as more and more countries are added to the list of new democracies (between 1980 and 2002, 81 countries moved from authoritarianism to democracy¹); however, they also tend to give off a stench of exclusivity regarding the 'democratic club' –

¹ United Nations, *Human Development Report 2002: Deepening Democracy in a Fragmented World* (Oxford: Oxford University Press, 2002), cited in I. Shapiro, *The State of Democratic Theory* (Princeton: Princeton University Press, 2003), p. 2.

they suggest implicitly that by making entrance requirements to its membership sufficiently stringent, it is less likely to lose its glow of 'western civilization'. Yet their cautionary tales are felicitous in many ways. Take but two examples. At one extreme, following on from the work of Joseph Schumpeter and Samuel Huntington, it has become conventional amongst political scientists of a certain stripe to withhold judgement that a democracy has been consolidated until the governing party has twice lost an election and peacefully handed over power.² However, by that stringent test the United States of America was not a democracy until 1840, Japan and India have not been democracies until very recently and the jury is still out on the many democratizing countries in Latin America and the former communist world.³ At another extreme, in which representative democracy is taken to be more a system of representative government than a form of democracy, other related and still quite stringent characteristics are proposed. These include the following: those who govern are appointed by election at regular intervals; the decision-making of the representatives is independent of the wishes of the electorate; those who are governed may give free expression of their opinions without fear of sanction from those who govern; and public decisions undergo trial of debate.⁴ Although this latter set of characteristics is more accommodating, I want to suggest here that the really important answer to the question regarding whether or not a democracy has been consolidated is not so much provided by whether or not elites can compete without recourse to violence or whether or not elected representatives can act independently under the clear, critical and unrepressed view of the citizenry – even if these may also all be important – but, rather, that the healthy functioning and likely survival of a representative democracy have to do with the nature of the institutions of political representation that obtain therein and the extent to which they minimize domination and thereby constrain or enable freedom as power amongst the citizenry.

My focus here is on South Africa, but in order to determine whether its new representative democracy is healthy, empowering and likely to survive, in this chapter I elucidate first the notion of representation in relation to groups, classes, individuals and freedom as power. I then move on to the South African situation

² J. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper, 1942); S. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991). For one particularly illuminating critique of these arguments, see Shapiro, *Democratic Theory*, pp. 80ff.

³ I. Shapiro and K. Tebeau, *After Apartheid: Reinventing South Africa* (Charlottesville: University of Virginia Press, 2011), p. 4.

⁴ B. Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), pp. 3, 6.

proper and argue that, in the light of my foregoing analysis of what forms of representation are necessary for real freedom, there are two glaring 'gaps' and associated persistent forms of domination that the existing South African system of political representation falls short on. In the first case, it tends to close a gap that ought to be kept open; in the second case, it is widening a gap it should be closing. First, South Africa's political representatives too readily succumb to the authoritarian temptation to close the gap between themselves and 'the people', or at least their representation thereof: they associate 'the party' with 'the people' and thus 'the state'. Second, South Africa's macro-political system has created *too much of a gap* between political representatives and citizens, especially regarding how the latter are able to articulate their needs and whether and how the government responds to and evaluates these needs. As I argue, the first of these is potentially related to an ill-conceived response to the second of these, but it is also to do with the ANC's history as a liberation movement and is undoubtedly a consequence of the electoral system chosen by the two groups of elites involved in debilitating and self-seeking compromises during the transition to democracy. In other words, in contrast to the more formal accounts of the consolidation of democracy summarized above – there are others too, but they would delay us – the fact that South Africa is struggling to consolidate democracy is not *explained* by reference to these formal tests, but in terms of the nature of the institutions of political representation and associated persistent forms of domination that were generated through its negotiated settlement (or elite compromise). Existing forms of representation in South Africa not only fail to enable citizens to overcome various forms of domination. They also generate an environment that is conducive to numerous practices that are deleterious to overcoming domination and generating liberty through political representation, practices such as pervasive rent-seeking, one-party dominance, corruption and impunity amongst representatives, centralized executive power and a dangerous overemphasis on unity and solidarity. The flipside of this, I argue, is another set of deleterious practices for freedom as power, however liberating they may feel in practice: a *marxisant*-inflected emphasis on active political participation. In its best form, this rests on unrealistic expectations of levels of virtue, duty and political obligation in an otherwise depoliticized population. In its most dangerous form, it fuels the frustration of the unemployed, working class and poorly serviced majority to the point of troubling and counterproductive levels of violence and destruction. While the latter response is understandable, especially given current social and economic conditions in South Africa, it is hardly a recipe for freedom.

The chapter ends by explaining how South Africa could have got itself into this predicament. The answer, I argue, lies in the nature of the elite compromise determined during the transition to democracy. The moral then is that elite compromises of the kind experienced in South Africa may enable a relatively peaceful transition to democracy, but their unique focus on existing elite interests sacrifices future freedom and stability at the altar of short-term strategy and security. The South African case, then, belies the arguments in support of a consociational arrangement, in which power elites in sharply divided societies secure transitions to democracy best by means of a political power-sharing deal.⁵ There is little doubt that this is ultimately what occurred and that it has been to the great detriment of real power and freedom for most South Africans.

Representative government

What we now call representative democracy has its origins in ideas and institutions that developed in the wake of the English, American and French revolutions, more often than not in direct opposition to democracy or government by the people. For example, James Madison, in America, and Emmanuel Siéyès, in France, argued in a similar vein that representation was not an approximation of government by the people made necessary by the size and complexity of large modern states; rather, it was an essentially different and superior system particularly appropriate for modern commercial societies in which individuals were chiefly occupied in economic production and exchange.⁶ Both stressed the 'huge difference' between democracy, in which citizens make the laws themselves, and the representative system of government, in which they entrust the exercise of their power, in particular their legislative or law-making power, to elected representatives.⁷ Also the kind of constitution that Siéyès thought suitable for a free state was quite similar to the kind of 'not-quite republican, but not-quite royal constitution' that the Federalists advocated for the United States of America.⁸

⁵ R. de Kadt and C. Simkins, 'The Political Economy of Pervasive Rent-seeking', in *Thesis Eleven*, 115 (April 2013), pp. 112–126; Shapiro, *Democratic Theory*, pp. 78–103; A. Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Berkeley: University of California Press, 1975); A. Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale University Press, 1977).

⁶ J. Madison, 'Federalist 10' in A. Hamilton, J. Madison and J. Jay, *The Federalist*, ed. T. Ball (Cambridge: Cambridge University Press, 2003 [1787]); E. J. Siéyès, *Political Writings*, ed. M. Sonenscher (Indianapolis/Cambridge: Hackett, 2003 [1787]), p. xv; Manin, *Representative Government*, p. 2.

⁷ Siéyès, *Political Writings*; Manin, *The Principles of Representative Government*, p. 3, fn 3.

⁸ M. Sonenscher, 'Introduction', in Siéyès, *Political Writings*, p. xv.

Representative democracy has certainly seen changes over the past 200 years, for example, the extension of voting rights and the establishment of universal suffrage.⁹ Certain central elements, however, have not been affected by these developments. These include the following: those who govern are appointed by election at regular intervals; the decision-making of the representatives is independent of the wishes of the electorate; those who are governed may give free expression of their opinions without fear of sanction from those who govern; and public decisions undergo trial of debate.¹⁰

However, Siéyès' theory of representation in particular went more emphatically beyond established usage by referring to something systematic in any durable and extensive modern human association: the division of labour and its link to increased specialization and representation. He made a distinction between two kinds of representation in modern commercial societies that both belonged to a single system. One kind of representation was to be found in all the non-political activities of everyday life. For example, he argued that the person who makes my shoes is my representative. He is representing me in utilizing a capacity common to both of us to carry out a vital function (or means) to satisfy a need of mine. Moreover, in utilizing a representative for my capacity to make my own shoes, I am reducing the amount of effort involved in meeting my need to protect my feet and thus freeing myself up to undertake other activities. Siéyès thought that this division of labour and associated plurality of representation would increase the enjoyment of people's lives and was a necessary component for the development of the arts and the sciences and thus all durable human association.¹¹

The other kind of representation was the kind to be found in political society – my member of parliament is my representative, or so we assume (but see below). If either of these two replaced the other, Siéyès argued, the representative system would collapse. Although both kinds of representation have their origins in the means individuals marshal to meet their needs, they are, according to Siéyès, also fundamentally different: the kind of representation found in daily life is essentially plural whereas that of political life, essentially singular. The former was associated with the means individuals use to meet their individual needs. The latter was made up of the means individuals use to meet their common needs. Here, and in subsequent chapters, I adopt this distinction directly: by

⁹ P. Rosanvallon, *Le Sacre du citoyen: Histoire du suffrage universel en France* (Paris: Gallimard, 1992); G. Eley, *Forging Democracy: The History of the Left in Europe, 1850–2000* (Oxford: Oxford University Press, 2002).

¹⁰ Manin, *Representative Government*, pp. 3, 6.

¹¹ Sonenscher, 'Introduction', in Siéyès, *Political Writings*, p. xv.

‘informal’, ‘economic’ or ‘commercial’ representation I mean what Siéyès means by ‘commercial representation’, and by ‘formal’ or ‘political’ representation I mean what he meant by ‘political representation’, in this case representation within the political structures of South Africa’s representative democracy, in particular parliament; I also show how both kinds of representation can take the form of principal–agent representation, representation as trusteeship, representation as identification or aesthetic representation, or any combination of all four, as discussed below and in greater detail in my book *Freedom is Power*.¹²

However, given my argument in the first chapter regarding needs and interests and their necessarily partisan nature, although I will make reference to common needs of a kind, and do not of course deny that their exist a few common needs of the citizenry (and of the state) as a whole, when I do infrequently refer to common needs, I will mean the partisan needs felt by subsections or subgroups of the polity in question (in this case South Africa).¹³ Siéyès, like Hobbes before him, overemphasized common needs, interests or natural rights in a more general quest for unity and singularity of the sovereign for very understandable reasons: both lived within highly divided polities where war was either ever-present or a constant threat and both pointed out, quite correctly, that besides representing individuals and groups in different sorts of ways, political representatives also represent the state. States, like other forms of association, depend upon representation in order to function at all, but to function as states they depend upon a wider claim to legitimacy than other kinds of association: a distinctive claim to represent all their citizens. Although the history of representation shows that there is nothing inherently democratic about the idea of representation, in our democratic age, we assume that to be legitimate, political representation must be democratic.

And yet these older, pre-democratic ideas regarding representation remain helpful in clarifying some incorrect assumptions regarding representative government in our democratic age. The conception of political representation that emerges from these insights is in strong contrast to the common assumption made today that political representatives represent the individual interests of particular citizens. The question of whether they do or not, most commentators assume, depends on a choice between representatives doing what their constituents want and doing what they, the representatives, think is

¹² L. Hamilton, *Freedom is Power: Liberty Through Political Representation* (Cambridge: Cambridge University Press, 2014), ch. 5.

¹³ For more on the nature of needs, see L. Hamilton, *The Political Philosophy of Needs* (Cambridge: Cambridge University Press, 2003).

best, that is, in the ‘common interest’, which Hannah Pitkin calls the ‘mandate-independence controversy’.¹⁴ But this is too simplistic. As elaborated on further below, representatives could represent the interests of members of their constituency, say, without necessarily doing what the members want, and yet not have to revert to a notion of ‘common interest’: the representatives could do what they think is in the best interests of the members, which may *not* be what the members in fact want, and yet still successfully represent the individual interests of the members and *not* the common interest.¹⁵ Moreover, whether or not political representatives represent individual constituency member’s interests or common interests, and thus what exactly is meant by representation, depends upon a number of factors, which prove vitally important to understand the argument of this book. The history of the concept of representation is full of various conceptions of representation drawn not only from politics, but also from law, economics, literature and the theatre. These are concerned with how we represent individuals, groups, the state and, increasingly, non-governmental structures and organizations.

However, given that these pre-democratic conceptions of representation constitute a corrective to the simplistic, atomistic contemporary assumptions regarding representation, they do have some currency in contemporary thought.¹⁶ The result is that contemporary understandings of political representation are caught between two equally problematic, related polarized positions: the representation of extreme ‘diversity’ – directly tracking the expressed interests of the represented (usually via some means of aggregation) – or the representation of ‘unity’ – the collective whole and its interests.¹⁷ This unhelpful dichotomy is also played out within contemporary *normative* models of democracy in both their ‘aggregative’ and ‘deliberative’ forms, with both sides assuming for different reasons that all relevant interests exist antecedent to the process of

¹⁴ H. F. Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press, 1967); H. F. Pitkin, ‘Representation’, in *Political Innovation and Conceptual Change*, ed. T. Ball, J. Farr and R. L. Hanson (Cambridge: Cambridge University Press, 1989), pp. 132–154.

¹⁵ R. Geuss, *The Idea of a Critical Theory* (Cambridge: Cambridge University Press, 1981); Hamilton, *Needs*.

¹⁶ D. Runciman, ‘Hobbes Theory of Representation: Anti-democratic or Proto-democratic?’, in *Political Representation*, ed. Shapiro et al. (Cambridge: Cambridge University Press 2009), pp. 15–34.

¹⁷ For classic examples of the latter, see T. Hobbes, *Leviathan*, ed. R. Tuck (Cambridge: Cambridge University Press, 1996 [1651]), pp. 121, 128, 184; E. Burke, ‘Speech to the Electors of Bristol’, in *Selected Works of Edmund Burke* (Indianapolis, IN: Liberty Fund, 1999 [1774]), pp. 3–13; J.-J. Rousseau, *Social Contract*, in J.-J. Rousseau, *The Social Contract and Other Later Political Writings*, ed. V. Gourevitch (Cambridge: Cambridge University Press, 1997 [1762]), pp. 41, 58–65; Siéyès, *Political Writings*; and of the former, see R. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989); A. Przeworski, S. Stokes and B. Manin, *Democracy, Accountability and Representation* (Cambridge: Cambridge University Press, 1999), p. 2.

representation itself and thus that legitimate representation must track revealed interests: the former runs scared from even a hint of paternalism, takes interests as fixed and formed and argues that the function of democratic politics is simply to find a means of aggregating avowed interests; the latter assumes the antecedent rationality of certain human interests and that reasonable deliberation under ideal, non-coercive conditions (enabling the right forms of speech act) will reveal these pre-political interests for all to agree upon.¹⁸

As regards individuals, there are three ways people have thought about representation that complicate the distinction between 'mandate' and 'independence': (a) as a principal-agent relation, where one person (the *principal*) appoints another (the *agent*) to perform some action or function on their behalf; (b) the idea of representatives as trustees, in which as owners of the trust for its duration, trustees act independently, but in the interest of their beneficiaries; (c) representation as identification, in which, unlike in the cases of the former two, no conscious decision to *appoint* a representative is needed, but there remains a sense in which the representative promotes my interests – this occurs when an individual identifies with the actions of another person in a way that gives that individual a stake in the other's actions.¹⁹ Moreover, representation in politics is infrequently simply a matter of direct representation of individuals and their interests. It normally also involves groups, their interests and formal and informal representatives. This complicates political representation even further, especially given the complexity and division of labour of modern states and that our lives within and between these states are characterized by membership of a whole variety of overlapping and interdependent groups and various forms of associated representation. As will be argued, our freedom as power is therefore determined to a significant degree by a number of different variables to do with the nature, power and control of these groups and their representatives; moreover, given the nature of representation, the notion of 'control' here is complex and indirect. To understand this, it is necessary first to get to grips with the nature of groups, classes and social perspectives.

¹⁸ Rousseau's argument regarding a rationally identifiable 'will of the people,' 'common good' or 'general will' (see Rousseau, *Social Contract*) is the locus classicus of both traditions, the aggregative tradition exemplified by K. Arrow, *Social Choice and Individual Values* (New York: Wiley, 1951), and J. M. Buchanan and G. Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), and the deliberative tradition, exemplified by J. Habermas, *The Theory of Communicative Action, 2 Vols*, trans. T. McCarthy (Boston: Beacon Press, 1984/7). For more on the problems of both models, see C. Hayward, 'On Representation and Democratic Legitimacy', in *Political Representation*, ed. Shapiro et al., pp. 111–135; C. Mouffe, *The Democratic Paradox* (London: Verso, 2000); and S. Wolin, 'Fugitive Democracy', in *Democracy and Difference*, ed. S. Benhabib (Princeton: Princeton University Press, 1996), pp. 31–45.

¹⁹ M. B. Vieira and D. Runciman, *Representation* (Cambridge: Polity Press, 2008), p. 66–81.

Groups, classes and social perspectives

A group is 'a collective of individuals who are connected with each other in ways that are relevant to them, and/or others, and thereby affect their behaviour and/or that of others'.²⁰ The connection that binds the members of a group may be as a result of their gender, class, form of employment, lack of employment, material condition, political cause and so on. A group is therefore distinct from other kinds of associations. It is characterized by a durable connection amongst the members and one that is of significance or is meaningful. So a gathering of a collection of friends on a Sunday morning in the park is not a group in this sense, unless of course they happen to be gathering as members of, say, the Westdene – the Johannesburg suburb in which I live – Sunday morning football club, where the same (or similar) set of individuals gathers every Sunday.

Elsewhere I have compared at greater length than is possible to rehearse here the concept of 'group' and other associated concepts such as 'class' and 'social perspective'.²¹ But it is probably a good idea to state unambiguously that the notion of 'group' as articulated here does not, for a moment, assume that any single individual's identity is determined by a group identity. Individuals can and normally are 'members' of various groups within society determined by various classes, interests, perspectives and roles.²² Individual or group identity is therefore not conceived of as essential and unchanging. Rather, resorting to the language of 'groups' is shorthand for speaking about the various groups, classes and social perspectives that exist in all modern polities. Moreover, what I say regarding groups is about the nature of groups, and not the individuals that constitute them: especially under modern conditions, individual ideals, interests and perspectives are informed and influenced by a whole range of social groups, some of which membership is not intentional – individuals often simply find themselves included within certain groups – whereas in other cases it is, that is, it involves deliberate choice. Nor does anything follow from this discussion regarding group rights: along with liberals and in opposition to communitarians, if rights turn out

²⁰ Vieira and Runciman, *Representation*, p. 86.

²¹ See, in particular, Hamilton, *Freedom is Power*, ch. 5.

²² I. Shapiro and W. Kymlicka (eds), *Ethnicity and Group Rights: NOMOS XXXIX* (New York: New York University Press, 1997); and I. Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), esp. Chapter 4. I borrow the idea of 'social perspective' from the latter work. However, unlike Young, who develops it in response to sustained critique of her earlier emphasis on 'groups', I don't think it is fully workable; 'group', properly problematized, works better as a catch-all notion.

to be the best means of formatting politics,²³ I remain sceptical of the idea of group rights, especially regarding normative or ethical primacy. Individual rights must trump group rights because group rights can and often are used to justify traditional institutions and practices that act against the empowerment of individuals, as has been the case historically in South Africa. Also, you might very well ask, what is wrong with the notion of class? Well, not much, as will become apparent; the only problem is that it is an insufficiently broad category, for although our class perspectives and interests are of paramount importance in politics, so are other kinds of group membership and associated interests, particularly those related to gender, geography, street and satisfaction.

The individual members of groups often share similar interests, but this depends on the type and often the size of the group in question. Distinctions can be drawn between voluntary and involuntary groups, between cooperative and non-cooperative groups and between groups that have and those that do not have their own agency. Involuntary groups are normally groups into which we are born, not ones we choose or can exit at our own discretion. Voluntary groups, in contrast, are groups we join by choice and also exit freely. Then there are cooperative groups, in which the members are jointly committed to some agreed-upon goal and non-cooperative groups where this shared commitment does not exist.²⁴ A good example of the former is a class-based pressure group and the latter a group of actual or potential creditors. The members of the latter kind of group act of their own initiative and for their own particular goals and preferences; what makes them a group is that they may share common concerns, knowledge, interests and rules of engagement and obligation. Finally, groups can be agents and non-agents. The former have the capacity to *act* in ways that resembles individuals: they can define goals for themselves, perform tasks, appoint representatives and so on, for example, committees, governments and joint stock companies. Groups that are non-agents lack any formal organization and have no capacity to coordinate their efforts, although they share common interests. These three kinds of distinctions often cut across one another: so a group can be voluntary and cooperative and have agency, such as a labour union, and a group can be involuntary, cooperative and not have agency, such as those born into a group of unemployed, cooperative but unrepresented shack dwellers on the margins of Johannesburg, and so on and so forth.

²³ Something contested in R. Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001), Hamilton, *Needs* and R. Geuss and L. Hamilton, 'Human Rights: A Very Bad Idea', *Theoria*, 60.2 (2013), pp. 83–103.

²⁴ Vieira and Runciman, *Representation*.

The assumption is often made that for groups to act they must have clear and explicit rules for the election or selection of representatives, which is only therefore possible for groups with agency. But this is to miss *the most important fact of the nature of many groups* and their relation to various forms of economic and political representation: groups normally acquire agency by virtue not of direct rules for the selection of representatives but of *more informal forms of representation*.

Group representation

Western political thought tends to focus on two distinct groups of people – the rulers and the ruled. The rulers are the government, sovereign powers, lawmakers or *representatives*; and the ruled are the citizens, people, voters or the *represented*. The relationship of representation holds these two groups together, and in representative democracies it enables the ruled to exercise some form of control over the rulers (at the very least via the ballot box). However, this picture is too stark: even ‘the rulers’ may comprise various different groups, not to mention the large diversity of groups that constitute ‘the ruled’. The extent of control any subsection of the ruled has over the rulers will depend therefore upon *the relationship of representation their group or groups have with the rulers*.

As in the case of the representation of individuals, the representative of a group can be given a warrant to act on behalf of the group in various ways. First, if the group is an agent it can act as a *principal* and appoint another *agent* to perform some function on its behalf. For this to be possible, rules must exist by means of which the decisions of the group’s members are put together to generate a collective decision, normally achieved through unanimity or majority decision. However, although some groups are like this, for example small-scale workers cooperatives, most groups are not as they lack the capacity for collectivized reason. Second, another possible candidate comes from the legal model of a ‘trust’, where property is managed by an entity (the *trustee*) for the benefit of another (the *beneficiary*) without the latter being said to own the property in question. It rests on the creation of a legal fiction: representatives or trustees act independently but in the group’s name, in accordance with rules that treat the group *as if it were a principal*, and without having to be given any direct orders.²⁵ A third form of representation involves the identification

²⁵ F. W. Maitland, *State, Trust and Corporation*, ed. D. Runciman and M. Ryan (Cambridge: Cambridge University Press, 2003).

of interests or identities. There is no *appointment* of a representative. Rather, a representative brings forward a claim to represent a group, evidence for which is found in their capacity to attract a following, for example, NGOs acting as representatives; or a group can create a representative as they identify with something they do – representation by ‘one of us’, for example, national creditors. Members have a *presence* in the actions of the representative by dint of what the representative has in common with the group – interests, identities or values.²⁶

Group representation and group freedom

As I have already stated, in western political thought political representation is normally conceived of in terms of either ‘mandate’ or ‘independence’, that is, that political representatives do or ought to respond directly to the expressed opinions and interests of the citizens they represent or, in contrast, they do or ought to act independently of these interests and judge for themselves what is in the best interests of the citizenry and state. The warrant that a representative is given is then explained by reference to a *principal-agent* relation, a relation of trusteeship or the identification of interests/identities.

In other words, all three of these accounts of representation do not escape the theoretical straightjacket of ‘mandate’ versus ‘independence’. And this is because they all rest upon one or both of two erroneous assumptions regarding groups: (i) that the interests of group members cohere in such a way as to make them a plausible principal; and (ii) that there exist a set of shared interests or identities antecedent to and necessary for political representation. In fact, citizens’ and states’ needs and interests are not pre-existing and fixed, waiting to be tracked through representation. Rather, they require identification, articulation, expression, evaluation and even construction. Needs and interests are more objective than wishes, opinions and preferences. They are more easily detached from any specific group of ‘holders’ (e.g. the collective interest in a sustainable environment), but they are never totally unattached either. Similar to needs, interests have a dualistic nature – they are attached and unattached, subjective and objective – and this lies at the heart of the *ambiguities of any form of interest group representation*.²⁷ Individual and group interests become *present* as a result

²⁶ Vieira and Runciman, *Representation*, pp. 111, 103.

²⁷ Pitkin, *Representation*.

of representation, that is, they may only be experienced, identified and expressed as a result of the actions and concerns of representatives.

Thus, representative institutions will not be freedom-enhancing if they simply 'track' interests; rather, they must encourage the formation of new political interests, especially in conditions in which existing relations of power create or reinforce situations of domination. This is most obvious in a place like South Africa today, where many existing felt needs and interests have been formed under conditions of racist policies, extreme poverty, inequality and unemployment. Domination under these conditions could never be overcome by means of representation, simply 'tracking' articulated interests. Representatives have to generate new interests actively that enable groups to escape these situations of domination. Therefore the relationship between group representation and group freedom is one in which the freedom of the group is dependent upon whether or not the representative of the group can generate the right kinds of new interests *and* then can defend them in the relevant formal institutions of representation. It follows from all this that the individual freedom as power depends upon four associated variables: (a) the nature and relative power of the groups of which one is a member; (b) the relationship of representation that exists between the members of the group and the group's representatives; (c) the relative power of the groups' representatives; and (d) the relationship between one's groups' representatives and the formal political representatives of one's polity.

There exists, though, another more helpful alternative account of representation, an 'aesthetic' theory of political representation, that escapes these erroneous presuppositions. As we know from the world of art and literature, representation is never simply the copy of some pre-existing external reality.²⁸ Representation always creates something new. For example, Leo Tolstoy's account of the Napoleonic War does not simply replicate the historical events; it creates a new version of it in the act of representing it. There is therefore always a 'gap' between an object and the representation of that object and this holds in politics too: as Frank Ankersmit puts it, 'political reality is not first given to us and subsequently represented; political reality comes into being after and due to representation.'²⁹ Political representatives can never therefore merely speak for the interests of the people as they existed before being represented; instead the act of *representing them creates a new version of the people and their interests*, and this creative process gives representation its dynamism. Some people,

²⁸ Vieira and Runciman, *Representation*, pp. 138–139.

²⁹ F. Ankersmit, *Aesthetic Politics: Political Philosophy Beyond Fact and Value* (Stanford: Stanford University Press, 1997), p. 47.

such as Rousseau and certain nineteenth-century ‘anarchists’, interpret this negatively, in the sense that they suppose that it follows from this that political representation and freedom are antithetical.³⁰ What is novel about the aesthetic approach is that it highlights the positive, creative aspect of this characteristic of political representation. It provides a means of understanding that political representation is not designed as a means either to ‘track’ pre-existing interests or to provide an *exact* reflection of the people and their interests or identities; rather it is designed to give the people an image of themselves upon which to reflect.³¹ This ‘gap’ between the rulers and the ruled is itself filled by groups and their representatives, and so it is in this gap that the degree of a group’s freedom is played out.

But how exactly does the aesthetic theory help us grasp the way group representation is related to group freedom?

First, the aesthetic theory of representation establishes that representatives give the people an image of themselves upon which to reflect. Representation itself opens up a gap between the government and the people.³² I add the idea that it is possible to see this best if we *analyse how this gap is filled* by various group representatives with varying relations of power between themselves and those that govern, power relations that are characterized by more or less domination and thus enable more or less freedom as power for the representatives and thereby for the groups in question.

Second, the aesthetic approach to representation highlights the important fact that needs and interests are never pre-existing and fixed in politics, as discussed earlier.

Third, in any system of representative democracy there will be more than one version of ‘the people’ at work. There is ‘the people’ conjured up by formal political representatives in the act of speaking for them; there are conflicting views of ‘the people’ generated by group membership and representation, what Dunn has called the ‘capacity for protracted and confident self-organization of the bearers of different social interests’³³; in addition, there are ‘the people’ who pass judgement on these conjuring acts. Indeed, the functioning of representative

³⁰ Rousseau, *Social Contract*; and P.-J. Proudhon, *What Is Property?*, ed. D. R. Kelly and B. G. Smith (Cambridge: Cambridge University Press, 1994).

³¹ Vieira and Runciman, *Representation*, p. 139; F. Ankersmit, *Political Representation* (Stanford: Stanford University Press, 2002), pp. 112ff.

³² Ankersmit, *Aesthetic Politics*; Ankersmit, *Political Representation*; C. Lefort, *Democracy and Political Theory* (Minneapolis: University of Minnesota Press, 1988).

³³ J. Dunn, ‘The Politics of Representation and Good Government in Post-colonial Africa’, in *Political Domination in Africa*, ed. P. Chabal (Cambridge: Cambridge University Press, 1986), p. 147.

democracy depends upon politicians being able to offer *competing versions of the people to the people*, in order for the voters to be able to choose the one they prefer.³⁴ Given this, the aesthetic theory of representation allows us to view representative democracy as a form of politics that *accommodates* aspects of all three of the other models of representation, and it does so by emphasizing the central role played by political judgement amongst both the representative and the represented. If groups and their representatives are given increasingly greater parity of power and control (and thus freedom), it is possible to see how groups and their representatives can have principal-agent, trustee and identity relationships of representation: the people with an active role, as the arbiters of representation, act much like principals; the people with a passive role, as the objects of representation, act much like trusts; and in their judgement of the image offered to them by their various representatives, individual citizens often side with whom they identify or with whom they think will defend their interests. Moreover, in most instances of these three cases, their interests and thus forms of representation are partisan, not general or common.

Finally, none of the versions of the 'the people' on offer to 'the people' ought ever to succeed in *closing the gap* between the represented and their representatives. Even the attempt to close the gap between the people and their representatives is futile and dangerous: it is not the realization of democracy but an invitation to tyranny because it thwarts any opportunity for the people to reflect on and judge the decisions and actions of their representatives.³⁵ As Niccolo Machiavelli and James Madison have argued, this is the case because the effect of *closing the gap* – and at the extreme the complete identification of the rulers and the ruled – is (paradoxically) to *exclude* the people from politics in their active, or judgemental, role. If the gap is closed there is no longer any room for the various groups and associated partisan interests that constitute 'the people' to evaluate the images of themselves on offer. The effect of closing the gap will be to remove the possibility for the portrayal of other competing images or visions of the polity (and associated often-competing interests).

So, thus far I have argued that freedom is power in the sense that an individual's freedom depends on her power to act and the requirements for that power across four dimensions; and that, given complex modern states, that power depends on the nature and power of group representatives and the power of represented and representatives to enact critical, political judgements.

³⁴ Vieira and Runciman, *Representation*, p. 141.

³⁵ Ankersmit, *Aesthetic Politics*, pp. 51–56; and Ankersmit, *Political Representation*, pp. 112ff.

But before I continue, there is one important caveat. This is not an exhaustive account of freedom: power and control across the four dimensions I outlined in Chapter 1 are necessary (but not sufficient conditions) for freedom. Freedom as power via group representatives allows for the possibility that individual freedom may only be fully accomplished by the individual, and that may vary depending on the individual in question. Freedom for some might be about being true to oneself whatever the demands of others, for others it may be about being embedded and determined by these duties and for yet others it might even be the life of the ascetic.

Minding the gaps in South Africa

South Africans lack meaningful representation in all of the four ways just outlined. In particular, they lack the power to affect interests, policies and representatives for three main reasons. First, in South Africa the *unemployed* as a group tend not to have meaningful representation, despite dubious claims to the contrary by the ANC that they represent them and despite the fact that many vote for the ANC. And this is not only because they lack organization and representatives, but also because their situation of poverty makes their immediate interests poor competitors in the race to reflect a successful version or vision of 'the people'.

Second, the system of closed party list proportional representation used in South Africa excludes alternative versions or visions of the polity since it is based on a conception of political representation in which the legislature directly reflects the electoral tally of parties rather than either the interests of the electorate as a whole (or vision thereof) or the partisan interests of constituents and groups. This is the case due to the nature of the electoral and institutional system that, in 1993, was chosen for post-apartheid South Africa. Ostensibly, the choice was made for its simplicity, inclusiveness and fairness, with those involved in the choice arguing that by promoting broad representivity and equity it would be sensitive to the divisions in the country, the volatility of the political situation and the urgent need for reconciliation. In effect, the entire country is taken as one voting district, and the 400 members of the National Assembly are all elected by voters choosing political parties whose pre-published party lists then determine in exact proportion to their electoral success who becomes a national political representative. Moreover, the members of the other house in this bicameral system, the National Council of Provinces, are not even voted in by the general public; they are appointed by provincial legislatures to represent each province. This latter, supposedly 'upper' house has turned out to

be ineffectual. In other words, for the legislature that counts, or is supposed to count (about which more is discussed later), the National assembly, not only do electors not select individual representatives but parties, but also the political representatives who are selected are not linked to or emanate from specific geographical areas (or constituencies).³⁶ In this sense, South Africa's electoral system is in fact very rare. Only Israel has the same system. In every other democracy in the world citizens are represented by where they live, though exactly how and what proportion of the representatives is elected in this fashion vary quite widely.³⁷ In South Africa, identical proportionality of party support in parliament – or a miniature, exact copy of 'the people' – sacrifices the 'gap' between the representation of the people and the people themselves, and the potential for competition amongst various visions and interests.

In recent times this has been exemplified by the ruling party as it repeatedly and aggressively claims that it alone represents 'the people'; as it erodes the power of the legislative arm of government; and as it fails to distinguish between the state and the party. Two examples of the latter stand out: (a) when the party makes a decision it claims that it is a decision made by 'the people' (as with the recall of Mbeki as president); and (b) when it is suggested that democracy in South Africa is safe since 'the party' structures are fully democratic. *These claims mistakenly identify 'the party' with 'the people' and thus 'the state'*, which not only gives the party the unique and complete legitimacy of rule that it seeks, but also *silences all other* claims to represent 'the people' – a distinct stench of stalinism. This is a deeply ironic and unfortunate development since in healthy polities political parties are some of the many important groups and representatives that occupy the gap between the rulers and the ruled.³⁸ At present in South Africa the ruling party is usurping the power of the people as it situates itself as a microcosm or exact copy of the democratic polity it ought to be creating: the party attempts to represent the people (in the sense of being a copy of them) rather than act as one amongst many representative versions of the people and their interests for the people to judge and choose. The fact that one party is still so dominant only exacerbates this lack of freedom, as does the fact that the party rules as part of

³⁶ The Forum for Public Dialogue (FPD), 'Electoral Systems and Accountability: Comparative Case Studies and Lessons for South Africa', Working Paper Draft, 23 July 2013, pp. 46–48. The ANC does now link representatives to geographic areas, but the link is random, only determined following the election process and few if any representatives seem to take it seriously – they do not reside in or feel that it is necessary to visit the citizens who live in the areas they are supposed to represent. I am very grateful to Kathlena Walther and Roger Southall for allowing me to see and sending me a copy of this unpublished document.

³⁷ A. Rehfeld, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design* (Cambridge: Cambridge University Press, 2005), p. 3.

³⁸ Ankersmit, *Political Representation*, pp. 125–132.

a tri-partite alliance with the South African Communist Party (SACP) and the main Trade Union umbrella body (COSATU). However, this dominance of one party does not explain many of South Africa's problems, as many commentators assume. It itself requires explanation, and part of that explanation at least can be found in the various (deleterious) effects of South Africa's electoral system combined with the fact that the head of state and the head of government – normally kept separate by the office of the constitutional monarch/president and that of the prime minister – are equivalent, in the sense that they are both held by the same person, the president. Moreover, the president is chosen by parliament and is thus normally also the majority party's president or leader. Hence, it is no wonder the necessary, firm distinctions between state, government and ruling party can become easily blurred.

Third, at least one-third of the population is either unemployed or no longer economically active (either as a consequence of illness, age and disability or because they are actively discouraged work-seekers, that is, those who are able to work but have not been able to find work for so long that they have stopped looking for work). The number of South Africa's unemployed now stands at 4.54 million, or a formal unemployment rate of 25.7%; the number of economically inactive workers stands at a staggering 14.35 million (with actively discouraged work-seekers comprising just under 2 million of this total); thus, even if we consider only the actively discouraged work-seekers and the formally unemployed, we have a *real unemployment rate of approximately 37% of the population*.³⁹ If this percentage is combined with that proportion of the population that is involved in menial and underpaid jobs (quintiles two and three of the 'household head income survey'), whose representatives come from trade unions *affiliated to COSATU, the union umbrella body that rules with the ANC and thus provides little critical purchase on the rulers or representatives*, and we assume that the unemployed household heads occupy the lowest quintile, on a conservative estimate we can only conclude that a staggering 77% of South Africans have little or no meaningful representation.⁴⁰ In terms of my argument here regarding

³⁹ Statistics SA's Labour Force Survey, quoted in *Business Day*, Friday 29 July 2011; the situation has worsened since the previous survey, when 4.3 million were unemployed, giving a formal unemployment rate of 25.3% – see 'Labour Force Survey 2009' in Statistics South Africa Quarterly Labour Force Survey Quarter 2, 2010, Available from: <http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2010.pdf>. This calculation is corroborated by the latest (2011) census, which in fact puts this 'expanded' unemployment rate at a staggering 40% of the population. See Statistics South Africa, Census 2011: Statistical Release (Revised), P0301.4. Available from: <http://www.statssa.gov.za/publications/P03014/P030142011.pdf> [accessed 25 May 2013].

⁴⁰ There are five quintiles of household head income. The three lower quintiles include all those with an income of R30,000 (\$4,000) per annum or less; 72.5% of the 'black' population, 44% of the 'coloured'

freedom and representation, this large section of South Africa's population lack freedom as a direct result of their lack of meaningful representation: *either* they have no agents, trustees, defenders of their identities/interests or varieties of possible images upon which to reflect *or* they have powerless representatives, whose powerlessness is a consequence of the persistence of domination within existing power relations or institutional arrangements that do not enable effective representation. South Africa is not unusual in Africa: according to John Dunn, this poor representation of the interests of what he calls the 'middling ranks' and the proletariat is common across Africa.⁴¹

The remaining 23% of South Africa's population vary in wealth and are no longer homogeneous in terms of race, but two related things can be said of them. First, they have much more meaningful representation, especially economic representation, in the form of identification with state creditors and in terms of either being or being represented by South Africa's capital-owning class, who, before and following political transition, gained assurances from the new political elite that their capital would not be threatened.⁴² Second, despite this, they too lack freedom, if for slightly different reasons. In order to maintain their 'secure' existence they have to lock themselves up behind high walls and gated communities, only to find that this fails. Reality bites anyway in the form of powerlessness in the face of crime, fear and a depleted, privatized existence. They lack power for different reasons to the 77% of the population discussed earlier, but this lack of freedom as power still results from an environment of poor political representation.

One of the ruling party's *responses* to these problems regarding meaningful representation has been to focus on possible developments at the *local* government level. But this is not a response to the problem for two main reasons. First, given apartheid's obsession with separate development, locality, land and place in particular, and much of the history of colonial and post-colonial Africa in general, the emphasis on the representation of local community is often deeply retrogressive and the opposite of freedom-enhancing, as the continued political

population, 15% of the 'indian' population and 3% of the 'white' population (all post-apartheid government statistical agencies still use these apartheid race categorizations) are situated within these lowest three quintiles; hence, given the demographics of South Africa the lower three quintiles comprise 55% of the population earning a monetary income. The figure of 77% is reached by adding together the real proportion of the population that is unemployed (37%) and the percentage of the population that is employed but occupy quintiles two and three (40%). Statistics South Africa. 2009. *Income and Expenditure of Households 2005/2006*. Available from: <http://www.statssa.gov.za/publications/P0100/P01002005.pdf>.

⁴¹ Dunn, 'Representation and Good Government in Africa', pp. 151ff.

⁴² L. Hamilton and N. Viegi, 'Debt, Democracy and Representation in South Africa', *Representation*, 45.2 (2009), pp. 193–212.

power of non-elected chiefs in South Africa's rural areas and the associated poor representation of women's interests exemplifies well.⁴³ Second, the various attempts to enhance democratic participation of the citizenry at the local level is misplaced as it is based on the premise that the problem regarding national representative politics arises as a consequence of lack of citizen participation. However, as I have argued, *the problem is not about the degree or form of citizens' political participation but about the way in which representation is being enacted in South Africa*. Moreover, even if we were to assume for argument's sake that the logic behind these initiatives is a good one, it amounts to nothing more than window-dressing. Although citizens are given some access to deliberation prior to decision-making, it is ward councillors who ultimately make the decisions behind closed doors and most have firm party loyalty, not least of all because, in accordance with the electoral system specified in the constitution, half of the councillors are instated through proportional representation, whilst the remaining half are ward constituent representatives. Therefore, as is the case at the national level, *councillors are not accountable to their constituencies but accountable to party leaders*.⁴⁴ The other problem is, of course, that ward councillors have very little power. Most of the more important decisions regarding policy and resource allocation occur at the provincial and national levels, and increasingly – due again to the structural power inadvertently handed to the ruling party – at the level of the national executive (and thus the ANC as majority party) as opposed to the legislature, the legitimate forum and source for these deliberations and decisions.

This localized attempt at greater participation is, as introduced earlier, the other, related way in which the poor regulation of the requisite gap between citizens and representatives is being maintained in South Africa. In this case, it is not that the gap is being closed too vigorously, but rather that the gap between representative and citizen is too wide. As elaborated on above, the effect of identical proportionality of party support in parliament or a miniature, exact copy of 'the people' sacrifices the 'gap' between the representation of the people and the people themselves, and the potential for competition amongst various visions and interests. For the effect of greatest consequence of the choice of this

⁴³ Cf. Shapiro, *Democratic Theory*, p. 102; Dunn, 'Representation and Good Government in Africa', pp. 152–153.

⁴⁴ C. Tapscott, 'The Challenges of Building Participatory Government', in *Participatory Governance: Citizens and the State in South Africa*, ed. Thompson (African Centre for Citizenship and Democracy: University of the Western Cape 2007), p. 87. Available from: <http://www.accede.co.za/downloads/monograph.pdf> [accessed 15 August 2010]; L. Piper, K. Barichievy and B. Parker, 'Assessing "participatory governance" in Local Government: A Case-study of Two South African Cities', *Politeia*, 24.3 (2005), pp. 370–393.

form of electoral system is the decoupling of parties from class or group bases. The kind of electoral system that currently prevails in South Africa in effect provides impetus for all parties to be as catch-all as possible, and thus it is no surprise that the largest, predominant and now most catch-all party was once the alliance that spearheaded the liberation from apartheid. Ironically, this has meant not just a decoupling of parties from classes, but a decoupling of this ruling alliance from the people they are supposed to represent: this second sense, where what has followed, is too much of a gap between the people and the ANC-headed ruling alliance. The combination of supposedly meaningful local participation within local, municipal structures with little power and the complete dislocation of national representatives from the people has generated a very dangerous blend of citizen frustration and poor accountability regarding the country's elected national representatives. The only individuals to whom local residents can realistically appeal in order to have their vital needs satisfied do not have the means to generate much change of policy or direction of funds, nor do they have the will as their jobs depend more on pleasing their party masters than the public they are supposed to serve. The result has been a sharp increase of violent unrest often directed at local councillors, many of whom face the very real prospect of death or serious harm as their offices and homes are razed to the ground. At the same time the country's elected national representatives can 'linger in indecision, laze in complacency and deliver poor (or no) service while local communities have no visible culprit at whom to point a finger'.⁴⁵

National representatives are not held accountable because the gap between them and the people is so wide and well guarded by party interests that many feel a kind of impunity regarding their every action or lack of action. This is the case because the electoral system ensures against any quick change in ruling party or support thereof, as does the very inefficient and meagre forms of social welfare provided by the ANC-led governing alliance. A closed party list PR system may ensure exact proportionality of representation in parliament, but it does so by sacrificing the accountability that is necessary to keep the government working for the people. If there is no real prospect of losing the next election, due in part to a population socialized by the history of apartheid into accepting powerlessness and now further placated by social grants, there is no incentive either to be more efficient in the provision of public services or put in place macroeconomic policy that enables growth and employment or, most importantly, change the macro-political structure of election and legislation adopted in 1993. Moreover,

⁴⁵ FPD, 'Electoral Systems and Accountability', p. 50.

this kind of political structure lends itself not only to patrimonial politics – keeping resources and power within the ruling party – but also to rent-seeking by both economic and political elites. Once you have the right, basic training and party contacts, it becomes relatively easy to seek out and charge very high rents. The new ‘black’ and ‘white’ economic and political elite have been quick to pick up on this, and it is no wonder that the same faces and names keep cropping up, for after having spent six months in one managerial position they can charge an even higher rent and move to another. This merry-go-round of rent-seeking may be good for the pockets of a few, but it is very bad for the efficient running of South Africa’s large quasi-public parastatal corporations and private corporations, many of which directly serve the poor and unemployed. In other words, one of the main sources of the lack of freedom as power of the majority of the population is the near-complete irrelevance of accountability for the ‘functioning’ of the macro-political structure and associated forms of debilitating rent-seeking that ensues.⁴⁶

This condition of little or no meaningful representation and little or no elite accountability, that is, simultaneously and ironically too little and too much of a gap between the people and their representatives, is unhealthy for any state, let alone a new, emerging democracy and it does not bode well for the future. The exact causes of the poor health of South Africa’s polity and economy may not be plain for all to see, but what is currently unambiguously clear is that large cracks are beginning to appear in the ruling alliance’s representation of ‘the people’. From well before the FIFA Football World Cup in 2010, the country has been wracked by prolonged strikes and service delivery protests, only the most infamous of which was widely reported, the Marikana massacre of 34 miners during an unprotected strike at the Lonmin Platinum mine in the North West Province. Matters were coming to a head even prior to Marikana: in 2012 alone there were more than 400 community demonstrations and protests, popularly termed ‘service delivery protests’, easily the highest per annum since 2004, and 88% of them were violent.⁴⁷ The lucky few who are employed and can pay to have their vital needs met or those who are able to meet some of their vital needs via government provision of free services and social grants of various sorts are often willing and able to contest the image that the ruling alliance has tried to conjure up of them, but due to existing forms of political representation

⁴⁶ I owe a special debt to Nicola Viegi for insightful comments on rent-seeking and poor public service; see also De Kadt and Simkins ‘The Political Economy of Pervasive Rent-seeking.’

⁴⁷ FPD, ‘Electoral Systems and Accountability’; and Research by Municipal IQ, cited in ‘Police Not Backing Down on Violent Protests, says Minister’, *Business Day*, 9 August 2012.

they lack the real freedom to contest this image by means of legal, non-violent channels. Outrage over years of jobless growth and very poor 'service delivery' driven by corruption and incompetence is manifest and there is evidence that the three parts of the ruling alliance no longer portray the same unified image. The possible outcomes are revolution or a successful decoupling of the alliance and the institution of effective and meaningful representation for all groups.⁴⁸

In other words, there is now real and serious evidence that the inadequate macro-political forms of representation and selection of elite rulers and its concomitant effects, such as rent-seeking, one-party (ANC alliance) dominance, an oft-rolled-out and ideologically distorted discourse of unity and social solidarity generate not only various deleterious indirect costs on freedom as power, but also actual or threatened weekly violent strikes. That very real frustrations and inequalities are becoming manifest as very real and dangerous violent expressions of extreme discontent is understandable, given the social and economic conditions of much of South Africa's population. However, that it is being expressed and legitimized by activists and civil society leaders in terms of a warped, *marxisant* account of political participation is troubling, not least of all because it is a prime example of illusion and false hope in politics. As I argued in the first chapter, especially if conceived of in terms of defending human rights, it acts as the modern version of Marx's notion of religion as the opiate of the people. It does so because it not only is unsuccessful in its goals and engenders worse forms of authoritarian reactions from the government, but also gives citizens with no real institutional means to express and demand their needs a *feeling* or *sense* that they do have means of doing so, even if it is 'on the street', via illegal and violent means. Moreover, it depends upon and is articulated in terms of unrealistic expectations of citizen virtue, duty and political obligation from an otherwise depoliticized and powerless citizenry. To espouse the idea that these methods will generate anything like freedom as power – or even rectify the parlous state of delivery of economic and political goods to a previously disadvantaged majority – is to be guilty of naïvete, at best, and the purveyance of false hope, at worst.

There are two reasons for this. First, to try and paper over the problem regarding the consequences of South Africa's distorted representation by supposedly bolstering local participation and civil society is, as I've argued, disingenuous, not least of all as direct political activism ultimately takes the form of 'private' legal action against the government focused on particular parts

⁴⁸ Cf. A. Mngxitama, 'Tripartite Tussle? Get Real, It's Just a Game', *Mail & Guardian*, 3–9 September 2010.

of existing law that is in conflict with constitutional law. It does not enhance political agency, power and thus freedom.⁴⁹ The combination of 'private' activism and unelected court officials can significantly skew the agenda under conditions of little or no representative accountability combined with the supremacy of the constitution and its articulation in terms of human rights, about which more is discussed later. Owing to the lack of political agency created by macro-political institutions of representation, citizens have little other avenues but to enact their agency, especially when criticizing existing policy or law either by hyper-legal and atomistic rights-based means or by means of extra-legal and often violent expression of frustration on the streets. Little then has changed for South Africa, especially regarding the poor and poorly represented taking to the streets in an attempt to expel frustrations and express their needs – for they have no other means to do so. As the very unsuccessful programme of land reform since 1995 in South Africa attests well, human rights-based litigation, in the main, remains the preserve of those with the financial means to access the law courts, exceptions such as the Treatment Action Campaign for adequate roll-out of antiretroviral treatment for HIV/AIDS notwithstanding.⁵⁰

Human rights activism, civic duty and consensus

This lack of political power and thus freedom via meaningful political representation has deep roots in South Africa's apartheid past, despite the seemingly novel institutional departures framing contemporary South Africa's politics. The tragic irony is that the attainment of freedom articulated in terms of human rights is partly the result of three highly significant moments in the struggle against apartheid, including two apartheid massacres. The first is the Freedom Charter, which was formally adopted on 26 June 1955 at a Congress of the People in Kliptown, the oldest residential district of Soweto, Johannesburg. It is the statement of core principles of the South African Congress Alliance, which consisted of the ANC and its allies in the South African Indian Congress, the South African Congress of Democrats and the Coloured People's Congress.⁵¹ The significance of the charter is manifold. First, it is one of the first formal

⁴⁹ Cf. A. Barry, 'The Moral Psychology of Human Rights in South Africa', unpublished MA thesis, University of Johannesburg.

⁵⁰ Hamilton, *Needs*; L. Hamilton, 'Human Needs, Land Reform and the South African Constitution', *Politikon*, 33.2 (2006), pp. 133–145; cf. Barry, 'Human Rights'.

⁵¹ ANC, 'The Freedom Charter' (2011 [1955]), Available from: <http://www.anc.org.za/show.php?id=72> [accessed 30 July 2013].

documents produced by the ANC following its first serious strides in becoming a mass, non-racial movement, following the adoption in 1949 of a Programme of Action and the Defiance Campaign of 1952–1953, where unjust laws were breached by protests that courted arrest.⁵² In a short space of time Congress membership soared from less than 5,000–100,000.⁵³ Second, it was the result of widespread consultation. The ANC sent out 50,000 volunteers countrywide to collect ‘freedom demands’ from the people of South Africa.⁵⁴ Third, the Charter has been of great historical significance for the ANC and its partners in the Alliance. It became the basic vision of the ANC and has remained so to this day: by 1958 all provincial congresses of the ANC had adopted the Freedom Charter as had all of its partners, it was re-emphasized in 1994 and was highlighted as a goal of the 2007 52nd ANC National Conference in Polokwane by both the Deputy Minister of Finance, Jabu Moleketi, and Head of Policy in the Presidency, Joel Netshitenze.⁵⁵ Unfortunately, you would be hard pressed to find the realization of any of its substantive demands in South Africa today. Some of its claims for formal equality and rights have been successfully institutionalized; but, as Chapter 2 showed in detail, opportunity for all does not exist, the doors of learning are not open for all, poverty, inequality and unemployment statistics have hardly changed (and in some cases have worsened) since the end of apartheid; illiteracy is still extant; land reform is stalled; free, adequate medical care is a distant dream; fenced locations and ghettos abound and grow by the day; racism is rife and the heralded reconciliation of the Truth and Reconciliation Commission has given way to the harsh realities of a still deeply divided society.

The two apartheid massacres were those at Sharpeville on 21 March 1960, approximately 30 kilometres south of Kliptown, and at Soweto on 16 June 1976. Both have similarly reverberated through South Africa’s subsequent history. At Sharpeville, a crowd of about 5,000 protesters (the police supposedly believed they were confronted by a crowd of 20,000), led by the Pan-Africanist Congress (PAC), assembled peacefully and amiably before the police station to protest against the pass laws and pass books that ‘blacks’ were forced to carry on their person at all times. There, completely unprovoked, 168 police officers armed with .303 rifles, Sten guns and heavy machine guns opened fire, discharging

⁵² W. Beinart, *Twentieth-Century South Africa* (Oxford: Oxford University Press, 2001), p.154; B. Turok, *From the Freedom Charter to Polokwane: The Evolution of ANC Economic Policy* (Cape Town: New Agenda, 2008), p. 35; T. Karis, and G. M. Carter, *From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1964, Vol 2* (Stanford: Hoover Institution Press, 1973), p. 337.

⁵³ T. Lodge, *Politics in South Africa: from Mandela to Mbeki* (Cape Town: David Philip, 2002), p. 34.

⁵⁴ ANC, ‘The Freedom Charter’.

⁵⁵ Turok, *Freedom Charter*, p. 23.

1,344 rounds of ammunition (some explosive ‘dum-dum’ rounds) into the crowd, killing 69 people (including women and children) and wounding at least three times this number, many of whom were shot in the back as they ran away from volley after volley of gunfire.⁵⁶ During the Soweto student uprising, between 10,000 and 20,000 high school students protested in the streets of Soweto in response to the introduction of Afrikaans as a medium of instruction in schools, against whom the police opened fire, killing at least 176 people (some estimates suggest a figure as high as 700).

These two massacres have been very significant for South Africa’s subsequent history for seven main reasons. First, they showed beyond doubt to South Africans and to the world the lengths the apartheid regime would go to, to crush mercilessly any protests against it. And yet, second, the massacre and its associated happenings ‘certainly constituted a political crisis, creating an atmosphere in which serious weaknesses in the state’s authority could become apparent even to senior officials and amongst privileged citizens.’⁵⁷ Third, they portrayed graphically the level of mass support that existed for those involved in trying to liberate South Africa. Fourth, thus they spurred on an entire echelon of ‘black’ political leadership to commit itself to doctrines of revolutionary political change. Fifth, they left those who were willing to absorb realistically what they had heard and seen in no doubt of the extent to which apartheid South Africa disempowered, disenfranchised, impoverished, oppressed and dominated most of its own population. Sixth, they drew the world’s attention to the anti-apartheid struggle in ways that the ANC alone could never do: ‘after 1960 “anti-apartheid” became a global preoccupation ... international anti-apartheid campaigning is acknowledged to have built “one of the most influential post-war social movements”’.⁵⁸ Finally, they showed, if in different ways, that the power and desire to confront the apartheid state was by no means the sole property or concern of the ANC and its leadership.

Importantly, as Lodge argues convincingly, despite the fact that the South African police had, on many occasions prior to Sharpeville, opened fire on protesters, and on one occasion killed many more (the Bulhoek massacre on 24 May 1921 when 183 members of the millenarian Israelite sect were killed by 800 police), and the fact that the colonial history of the continent as a whole is filled with massacres of this sort, something different happened at and following

⁵⁶ T. Lodge, *Sharpeville: An Apartheid Massacre and Its Consequences* (Oxford: Oxford University Press, 2011), pp. 10–23; 94–108.

⁵⁷ Lodge, *Sharpeville*, p. 23.

⁵⁸ Lodge, *Sharpeville*, p. 234, citing H. Thorn, *Anti-Apartheid and the Emergence of a Global Civil Society* (Basingstoke: Palgrave Macmillan, 2009), p. 5.

Sharpeville. It elicited compassion and empathy worldwide on a scale not conceivable until that time, 'feelings that helped mobilize a powerful movement of international solidarity, a movement that had it not been for the massacre may well have remained a limited concern of informed minorities and special interests'. This internationalized the anti-apartheid cause, which was a major factor in helping to 'ensure that South Africa's political transition was through a relatively orderly process of negotiation'.⁵⁹ The sheer brutality of the massacres coupled with international cultural and political shifts generated a level of empathy with 'black' South Africans in Europe and North America on a scale that had not been seen before. Moreover, and most importantly not only for the ultimate success of the liberation struggle but also for the important role played by international activists, this empathy and solidarity was articulated expressly and repeatedly in the language of human rights. In fact, besides becoming one of the most influential post-war social movements, the struggle against apartheid in South Africa also became the standard-bearer of the new language of human rights.⁶⁰

This might have been a good thing for the struggle itself, but once liberation was achieved it has become an ideological cloak for a skewed and corrupt political order that has not generated real freedom as power and under current conditions of representation cannot generate real freedom as power. Those who claim that the current ANC-led political order has failed South Africans as it fails to live up to the founding principles of the Charter or that it pours scorn on those who lost their lives at Sharpeville or Soweto and beyond are right in one sense and wide off the mark in another. They are right in the sense that many of the leaders of the ANC today are corrupt and inept. But they are wrong to assume that the models of how best to achieve real freedom under conditions of formal political liberty can take anything from the language, models and precedents of the actions of those who fought the oppressive apartheid regime. The Freedom Charter, for example, is essentially a cry for political freedom: liberation from alien/colonial/apartheid rule; specified freedoms and rights for all, in particular rights to association, freedom of speech and electoral participation; and the institutional requirements for all to live a meaningful life. It is, in essence, an appeal to overthrow the unjust and tyrannical regime of apartheid. Moreover, being a document of its time, the Charter's emphasis on rights is a direct consequence of the global currency of these notions at the time, thanks, in part, to the adoption by the United Nations (UN) General Assembly on 10 December

⁵⁹ Lodge, *Sharpeville*, p. 23.

⁶⁰ L. Hunt, *Inventing Human Rights: A History* (New York: Norton, 2008); Lodge, *Sharpeville*.

1948 of the Universal Declaration of Human Rights. In any case, besides some revolutionary flourishes, again a consequence of context – the fact that it is the foundational document for the ANC's drive to become a mass movement in opposition to apartheid – its central claims, such as '[a]ll people shall have the right to live where they please, be decently housed, and to bring up their families in comfort and security' and '[t]he law shall guarantee to all their right to speak, to organize, to meet together, to publish, to preach, to worship and to educate their children', are reminiscent of a whole range of liberal thinkers from Locke⁶¹ to J. S. Mill⁶² and Rawls.⁶³ The Freedom Charter is therefore hardly a revolutionary document in the socialist or communist sense of that term or in the sense that is needed today in South Africa – to revolutionize existing forms of political representation to generate real freedom for all. Those who hold it up as policy panacea for all of South Africa's current political, economic and social problems are abusing the significance and function of this historical document.

In other words, to interpret such a Charter as a set of policy directives set in stone for continued populist uprising in terms of continued struggle for human rights is to undermine both the letter and the point of the document. It is a set of broad means and goals for the power necessary for all South African citizens to overcome political tyranny and a rallying cry for a movement attempting to become properly a mass movement to disrupt the normal, orderly functioning of an oppressive state. The means are constant insurrection; the goal human rights for all. Thus, my use of the idea that the 'revolution is still pending' is not intended to suggest that the revolution of the future is a good idea; rather, it is intended as a warning to all South Africans that without serious non-revolutionary changes to our economy and polity, real, uncontrolled and potentially self-defeating populist revolution is feasibly around the corner. Ironically, the constant recourse to the Freedom Charter, to Sharpeville and to Soweto as historical exemplars of how best to fight for human rights and thereby gain real freedom undermines the possibility of attaining the forms of political representation under conditions of formal political liberty that are necessary for real political freedom, or freedom as power. This is the case because the idea that we can attain freedom as power by means of incessant human rights-based political activism without or beyond the role of strong, efficient and properly representative government is to miss the wood for the trees. The substance of many human rights may articulate some

⁶¹ J. Locke, *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988 [1689]).

⁶² J. S. Mill, *On Liberty and Other Essays*, ed. John Gray (Oxford: Oxford University Press, 2008 [1859]).

⁶³ J. Rawls, *Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1996).

of the substance of real modern freedom, but the discourse provides no guide as to how these substantive goals may best be achieved and maintained, especially when mobilized against realistic citizen agency through effective political representation. My claim here is that the institutional means of generating real freedom as power for all citizens (and some other necessary components of freedom as power) can only be achieved and maintained through empowering forms of political representation. Human rights discourse is deleterious to our felicitous understanding and formatting of a politics that empowers in this sense as it misses this all-important point. Moreover, it makes citizens think they haven't missed the point at all; it makes them *feel* powerful even under conditions when they have no meaningful political agency and representation. Human rights therefore often make people feel as if they have real political agency, when in fact they have very little power at all. 'Human rights are the modern form of opiate for politically neutered populations.'⁶⁴

Leaving civil society activists and discourse to one side, what should be even more concerning for South Africans is the fact that the lauded National Development Plan, a plan drawn up in 2011 by the newly created National Planning Commission and adopted by the ANC government to reduce poverty to zero and unemployment to 6% by 2030, also expresses the same kind of naiveté. It formulates the main task as 'creating a virtuous cycle of expanding opportunities, building capacities, reducing poverty...all leading to rising living standards' and claims that 'such a virtuous cycle requires *agreement* across society about the contributions and sacrifices of all sectors and interests... *in the new story every citizen is concerned about the wellbeing of all other citizens*'. 'We must build our social solidarity' it submits, as the basis of reaching the ambitious targets it sets.⁶⁵ The emphasis on agreement, that all should be concerned with the well-being of everyone else and the basis for this is social solidarity, seems to me and a few other critics as nothing more than wishful thinking.⁶⁶ Given existing power relations and forms of economic and political representation, agreement or consensus is completely unrealistic, as it is in most forms of political or collective action. To expect, for example, the extremely well-remunerated master (most are male) of the powerful corporate enterprise within the infamous core of South Africa's economy – the Minerals Energy Complex (MEC) – or the newly empowered, enriched ANC politician to sacrifice some

⁶⁴ Geuss and Hamilton, 'Human Rights', p. 103.

⁶⁵ Cited in S. Terreblanche, *Lost in Transformation: South Africa's Search for a New Future since 1986* (Johannesburg: KMM Review Publishing, 2012), p. 116–117.

⁶⁶ S. Terreblanche, *Lost in Transformation*, p. 118.

component of their power and wealth without being compelled to do so is pie in the sky. It rests on a completely unrealistic assumption regarding human motivation – that humans in general are driven more by civic duty than by self-interest – that, ironically, has pervaded the arguments and propositions of many of the more astute and progressive minds in South Africa's history, not least of the famous claim made by Mandela discussed in this book's introduction: 'For to be free is not merely to cast off one's chains but to live in a way that respects and enhances the freedom of others.'⁶⁷ More exactly, there are three main unrealistic assumptions that underpin the human rights discourse, Nelson Mandela's vision and the National Development Plan: that consensus is possible over the set of interests or rights that will generate freedom for all; that sacrifice and civic duty are necessary for their realization; and that therefore both depend upon unity and solidarity amongst all citizens. All three assumptions are very wide off the mark: consensus is unlikely, duty is unnecessary and solidarity is dangerous for the simple reason that the needs and interests of South Africans, as are those of citizens in most polities worldwide, are not only extremely diverse but the satisfaction of one group's or class's needs and interests – let's say the poor and unemployed in South Africa – are likely to be in direct conflict with the satisfaction of the needs, interests and rights of another group or class, for instance, those of the masters of the MEC. The National Development Plan ends up in a terrain of unrealistic platitudes because it fails to take this seriously; and fails to do so because it does not analyse or even consider the historic trends of the past 130 years or more, especially regarding the perpetuation of skewed power relations and forms of economic and political representation that underpin the dire problems of poverty, unemployment and inequality analysed in Chapter 2.

Conclusion

As I have argued in this chapter, the possible outcomes of the distorted forms of representation that prevail in contemporary South Africa are revolution or a successful decoupling of the alliance and the institution of effective and meaningful representation for all groups. To avoid revolution, South Africa must change now the power relations that exist between groups, their representatives and the people's formal political representatives; in order to do so, it has to

⁶⁷ N. Mandela, *Long Walk to Freedom: The Autobiography of Nelson Mandela* (Johannesburg: Macdonald Purnell, 1995), p. 617.

transform not only its electoral system and the structure of its ruling party, but also its property ownership, distributive mechanisms and macroeconomic policies. I only discussed the first few steps in this argument here, though; the rest are discussed in Chapter 4, especially as regards macroeconomic management.

My main submission in this chapter, is that few will even begin to see what is necessary to generate freedom through representation in South Africa unless and until representative democracy is understood in terms not just of a relation of individual and state autonomy for freedom and representation, but also of *group freedom and group representation, linked together via an account of freedom as power, in particular the power of individuals and groups to determine their economies and politics via the relative power of their representatives.*⁶⁸ I also argued that the discourse of human rights, although central to the liberation of South Africa from apartheid, now acts as an ideological foil, giving South Africans the sense of real political agency, when in fact they have none or at least very little.

In the concluding chapter I provide a series of specific institutional suggestions for South Africa regarding how best to bring about freedom as power through political representation, especially given this and the next chapter's diagnosis of the disease that cripples South Africa.

⁶⁸ 'It is in the selection of economic policies that in peacetime the holders of modern state power most crucially exert the impress of human understanding and will on the actual life chances of those they rule.' Dunn, 'Representation and Good Government in Africa', p. 156.