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REPRESENTATION OF OPPOSITIONAL POLITICAL ACTORS IN POST-APARTHEID SOUTH AFRICA: THE IMPLICATIONS OF PAGAD, TAC, AND COPE FOR DEMOCRATIC GOVERNMENT

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ABSTRACT

Political opposition in South Africa carries hope for the inclusion of issues that have been neglected or underrepresented in the post-apartheid era: the rampant rise of crime has instigated targeted community responses in the absence of adequate government security services, activist litigation has forced inclusion of socioeconomic entitlements in the state programs, and national-level dissent presents the possibility of more inclusive political representation and improved legislative discussion. In the ANC government's response to each of these novel challenges there exist formative consequences, and the articulation of the possibilities and limits of political action post-apartheid is ongoing. The state's balancing of the pressing demands of coercive/regulatory government with ideal democratic systems of representation, discussion, and government action carries immediate implications. While the harms of apartheid linger in economic structures, political mentalities, and party organization, the era of the struggle is over; government actors, now more than ever, should carefully reevaluate the democratic project and reconcile the triumph of victory with urgent national dilemmas in the forging of a new South Africa.

DEMOCRACY POST-APARTHEID

THE IMPLICATIONS OF PAGAD, TAC, AND COPE FOR POLITICAL REPRESENTATION

Democracy functions by providing a framework for political contention; the "mainstream" is, rather than a closed set of political positions, an ideological commitment to government as the collective and contentious product of multitudinous perspectives. In South Africa, the project of democracy grapples to formulate political structures through which to approach the harms of apartheid and to secure the future equality of its citizens. The ongoing articulation of the possibilities and limits of political action seeks to balance the pressing demands of coercive/regulatory government with ideal democratic systems of representation, discussion, and government action. The violence and tumult of the anti-apartheid struggle that emerged in the euphoria of the 1994 Constitution today confronts the realities of governing a nation beset with persistent socioeconomic crises; political opposition in this context is necessarily challenged by exigent economic and political considerations – i.e., security, fiscal responsibility, and the continuing project of state-building. Representation of diverse and divergently-interested political subjects follows a path that describes the lingering effects of apartheid and the state's attempts to forge a nation amidst rising rates of crime and economic inequalities. The

representation of oppositional political subjects signifies in two ways – in the discursive depiction of contentious actors within political and social systems, and in the inclusion of opposing perspectives in the political project of governance. This essay seeks to map the representation of political opposition in the contexts of urban crime, rising economic inequality, and national party-level politics in South Africa through case-studies of groups intimately involved in issue-specific political contention. People Against Gangsterism and Drugs, the Treatment Action Campaign, and the Congress of the People provide the frameworks for evaluating developing structures of democratic governance in South Africa, which in the contentious post-apartheid era come into being in novel encounters, clashes, and negotiations with political opposition.

RIISING CRIME, PAGAD, AND CREATING CONDITIONS FOR CRIMINAL JUSTICE

In South Africa, from 1990 to present, crime rates have risen by an average of eighteen percent; violent crime alone has climbed thirty-five percent. Every day, over 1900 serious crimes are reported, including 50 murders, 88 rapes, 187 aggravated robberies, and 431 aggravated assaultsⁱ. The unreliability of such crime statistics – a product of incomplete information or political influence in recording techniques– is well notedⁱⁱ, yet in comparison to other nations, South African crime statistics are high: since 1994 South Africa has consistently maintained the second highest murder rate in the world: 5 per 10,000 people per yearⁱⁱⁱ. The problematic implications of violent crime are undisputed. However, the prominence of lawlessness in the period immediately following apartheid is not altogether surprising, for political transitions are often marked by instability (e.g., new government security forces must adapt methods of policing), and projects of “democratization [have] been accompanied, almost everywhere, by a sharp rise in crime and violence”^{iv}. More important to the question of crime are state and citizen-led attempts to confront and prevent criminal activity. Political engagements with violence and lawlessness constitute formational moments; in their approach and resolution. Encounters

between political action and crime provide blueprints for future structures of democratic governance and thereby determine the trajectory of the developing South African state's systems of law and order.

The intersection of violence and politics is not new to South Africa; the dynamic potential contained within their combination found explicit recognition in revolutionary ideology. During apartheid, the armed liberation struggle valorized political violence as a patriotic act, and beneath the highly idealized pro-democratic rhetoric of the anti-apartheid movement there operated a power enforced by threats and displays of militant strength. Violence, with good reason, became a transgressive act by which oppressed masses and discontented individuals could reject the legitimacy of racist Afrikaner rule. Where before “knowledge of the state and respect for its might [were] inculcated through [...] [its] capacity to inflict violence on the citizenry”^v, the armed struggle offered a robust reclamation of apartheid's tools of control. The state's violent crackdowns fueled reactionary justifications for aggressive engagement, and violence became a ubiquitous revolutionary instrument and marker of anti-apartheid identification. Alex Burchart et al. contend that the regime's brutality standardized “political” violence as a non-criminal act and, through repression, initiated a dialogue with oppositional elements that consisted of escalating retaliatory exchanges:

“[Apartheid] marked the beginning of a time of bombs, guns, bulldozers and brutal tortures, a time when violence was only nominally a crime in violation of the law. Any criminal justice pretensions to the contrary were constantly contradicted by daily displays of state violence beating down on African bodies, while those very bodies fought back with the self-same weapons of sovereign power. The apartheid state thus operated in the first instance through overt political violence – conventional and counter-insurgency warfare, forced removals, assassinations, ‘disappearances’, detention and torture – as well as through myriad forms of ‘structural’ violence. In response, the ‘armed struggle’ began around the same time as the 1960 massacres at Sharpeville and Langa, and throughout the next two decades acts of violence increased exponentially”^{vi}.

Militancy was valuable currency, and was regularly employed by ANC leaders. The permission, encouragement, and reward of violence played a central role in the “practical politics” of the movement, which sought to unite “all-inclusively” disparate segments of the population in effective engagement with the state^{vii}. Acts of terror and guerilla combat offered opportunities to display power. Even the ideological voice of the mass democratic movement, the United Democratic Front (UDF) – a “heterogeneous”^{viii} coalition of black, Indian, and white students, civic associations, and trade unions

that would ultimately be credited with ending apartheid – engaged in armed combat not only with the state but with competing groups like the Azanian People’s Organization in an attempt to establish its primacy. The extremely violent milieu of the struggle goaded individual members of the UDF to commit acts that blurred the line between the political and the criminal: widespread reports emerged of “vigilante groups [that] operated freely in ‘reign[s] of terror’” over their adversaries, “adopting a practice that would become notorious – burn[ing] people with gasoline-filled tyres around their necks, [a] technique known as ‘the necklace’”^{ix}.

The power attached to terrifying acts translated into fear that could be manipulated to produce political outcomes, and movement’s ferocious potential motivated the government to reassess the feasibility of apartheid. Additionally, violence permeated politics and everyday life with formational consequences for subjective identification, for the anti-apartheid movement called for “a broader political strategy to ensure that revolutionary battles were fought on all possible fronts, involving not just an army but the whole masses of the oppressed people”^x. Men who were violent “freedom fighters” were praised and most easily proved their masculinity in battle with the state or other adversaries. Beyond the more “quotidian” manifestations of violence – domestic abuse, physical strength, etc. as being marks of manhood– the armed struggle permitted and *asked* for men to carry the potential to act violently. Even despite the horrifying nature of some behavior, the Truth and Reconciliation Commission would later exonerate perpetrators who had acted under the auspices of a recognized political group. Yet significantly, this permission to violence was circumscribed in collective/political rhetoric as “temporary” and “reluctantly condoned” – an accoutrement of the struggle that would be shed along with apartheid, making all the more paradoxical the surge of criminal activities post-1994, and most unsettlingly, the rising occurrence of violent immoral crimes – specifically, the beating and rape of women and girls, which is being recorded at “an unprecedented rate”^{xi}.

Does crime continue a political act? The end to the violent struggle heralded by the 1994 revolution and the new inclusivity of democracy finds a cruel surprise in rising lawlessness, which for the ANC carries historical connections to political demonstrations of discontent. Certainly, high crime prevalence demonstrates a major failure within the political system and a lack of respect for law and

order; but are crimes intentionally committed as a means of confronting the state? During apartheid, “being ungovernable” was the primary everyday method by which black South Africans contributed to the struggle, and lawlessness possessed positive and revolutionary qualities: demonstrating against government regulation, circumventing pass laws, and even stealing from work were all political acts. To some extent, this ethos survives today. The enormous economic gaps between rich and poor offer easy justification for traffickers in illegal goods who self-idealize as “social bandits”, and the state lacks the moral capital to condemn, for example, the operator of an illegal shebeen whose profits feed her family. For the most part, economic factors are the main drivers of crime. Unemployed individuals lacking marketable skills often find relatively lucrative livelihoods as dealers, car thieves, or muscle-men, and poverty provides a justification for crime, for many among “the poor and the marginalized still look skeptically upon statues protecting the rich, [and] a large proportion of them see crime as an acceptable means of redistribution”^{xii}. Most accurately, economic inequality conspires with social pressures to fuel crime and violence: men increasingly turn to crime as a means of earning a livelihood, and the government’s inadequate provision of security and welfare services to the poorest neighborhoods creates a vacuum that is easily filled by gangsters who may provide “alternative citizenship”^{xiii} to residents through private policing and even service provision in exchange for the ability to operate freely as a crime unit within the neighborhood.

The rising rates of criminality find a culprit in the younger population of black and coloured males, many of whom find themselves unemployed, living in poverty, and closed off from representation within the state. Their increasing participation in crime is rooted in their self-conceptions of masculinity. Where only just a twenty years ago to be a man was to be a “young lion” who devoted his life to the struggle, the end of apartheid left many men searching for an identity. The lack of sufficient employment opportunities through which to affirm oneself as a provider has increasingly pushed men into crime. In the Cape Flats, criminals “emerge as respected men through being ‘bad mother fucker[s]’”^{xiv} – an identity that engenders fear and deference. Though men engage in dangerous and often violent criminal activity in search of recognition and self-affirmation, crime is more regularly committed in the somewhat contradictory project of being a good father or son^{xv}. Men

seek to fulfill socially-idealized models of masculinity but must confront the socioeconomic impossibility of doing so, and crime is a ready alternate mode of self-definition. The disturbing prevalence of sexual violence flows from the same source, as masculine identity within sexual relationships encounters “insecurity and inadequacy rather than [...] a seamless continuation of patriarchal domination”^{xvi}; rape expresses the insecurities of men who, in the absence of substantive means through which to define their manhood, turn to abuse of women and girls as a method by which to demonstrate a macho sexual prowess or to rebuke a woman for challenging the man’s authority.

The post-apartheid rise in violent interpersonal crime is the complex product masculinity establishing itself in new circumstances, economic pressures, as well as the exacerbating growth of an informal narcotics and arms economy. André Standing points to the post-apartheid “opening up of the country’s borders”^{xvii} as the major cause of recent growth in gangsterism and crime. The new availability of guns, imported from Southern Africa conflict zones like Mozambique, explains the movement of crime to more violent methods^{xviii}. Yet more influential are transnational syndicates – Nigerian, Chinese, and Italian – which, in the words of ex-Minister for Safety and Security Steve Twhete, “have extended [their] tentacles into South Africa [since] the country’s return to the global arena”^{xix}. *Mafiosi* and triads today thrive off illegal activity battle violently over territory. However, foreign organized crime has only capitalized –literally and figuratively – on the collapse of apartheid policing systems and the ensuing confusion of the new state’s attempts at law enforcement. Where before the Afrikaner regime conceived of its stability as hinging upon repressive oversight of the black townships, by contrast, liberation – economic and political – “ha[s] implied, as [its] dark underside, an ipso facto deregulation of monopolies over the means of legitimate force, of moral orders, of the protection of persons and property”^{xx}.

However, this “deregulation of monopolies” on force is not the result of government inaction. Since 1994, the South African state has “extensive[ly] overhauled its institutions and laws”^{xxi} in an effort to adapt policing practices to effectively prevent crime and enforce laws. The 1996 National Crime Prevention Strategy required regional and local officials to construct comprehensive plans for improving policing practices and established long-range goals for addressing the “root causes” of

crime^{xxii}. To a large extent, NCPS has concentrated in producing short-term reductions in crime through intense search and seizure campaigns, and has called upon communities to collaborate with government in preventing crime and addressing the underlying causes of criminal behavior. Civic participation has taken many forms: from a “gate, fence, or dog” requirement for the south-western Johannesburg suburbs of Slovo Park and Mandela Square, to community-led discussions of the effectiveness of *muhtis* as providers of spiritual protection^{xxiii}. The state’s encouragement of citizen-led initiatives mirrors the organization of anti-apartheid campaigns to address specific social issues, like education requirements or service charges, but the ANC government’s partial delegation of its authority over crime prevention to the general populace offers an ambiguous impetus to community action.

Out of this context emerged People Against Gangsterism and Drugs (PAGAD) – a group of Muslim men formed in November 1995 “to protest against the destructive culture of drug peddling and powerful gangs in Cape Town”^{xxiv}. PAGAD rose to national prominence after its members murdered the head of the Hard Livings gang, Rashaad Staggie, in brutal fashion: Staggie was shot in the head by a crowd outside his house, trampled, hit with a petrol bomb, and taken down by a “volley of gunfire from the crowd” as he ran away^{xxv}. From this initial success, the organization built a comprehensive “repertoire of mobilizing tactics” – first marching and demonstrating on the homes of known drug dealers and issuing ultimatums that the gang member cease all criminal activities, and then, in the event of noncompliance, resorting to murder through bullets and bombs^{xxvi}. PAGAD embodied a transformative reclamation of control over the Cape Flats community through confrontationally violent means; it represented a culmination of the social resentment surrounding crime and the lack of adequate state gangbusting measures. Individuals testified to the empowering sentiment contained in the success of a community-level group in tackling the “plague” of gang activity head-on. Ashwin Desai reports the experience of “S”, a woman who had been the victim of rape before joining PAGAD; she states, “PAGAD empowered me in a way. I was able to make a meaningful contribution to my community. We could either sit back and allow the drug dealers and gangsters to take over our lives, or do something about it. All we did was pass on the message”^{xxvii}. Yet while S’s support of PAGAD contains the venerable intention of fulfilling exactly what the government demanded in the period

immediately following apartheid – that all citizens contribute to building a just and equitable democracy, her embrace of violence as an acceptable avenue through which to approach crime presents a troubling scenario for government. The state’s response to PAGAD contains serious implications for the future of crime and crime prevention.

Initially, government officials praised PAGAD’s anti-gang endeavors, and after the killing of Staggie, Minister of Justice Dullah Omar stated that the group had “wakened the soul of the community”^{xxviii} to the laudable project of crime prevention. It seemed that PAGAD offered a supplement to local police forces, filling gaps where the state simply failed to provide sufficient solutions. In many ways this ability of the community to assume the role of violent adjudicator is a traditionally recognized possibility, especially in circumstances where the state cannot or will not involve itself. For example, violence in retaliation against the perceived use of witchcraft is regularly condoned in Soweto as an appropriate response to actions for which the state offers no system of accusation or justice. However, by encouraging intimidation and murder of criminals by community members the state treads into murky territory. It is difficult to prosecute actors who wield the support of an entire township, yet it is equally troubling to permit vigilante justice within a nation that aspires to affirm the democratic principles of rule of law, a fair trial, and a prohibition on all forms of violence. Crime immediately and violently jeopardizes the livelihoods and safety of the population, but authorizing groups like PAGAD to confront crime of their own initiative is a threat to the democratic project. While it may seem hypocritical for the government to condemn community drives to enforce the law and reduce crime, the strictly regulate grassroots violence to reign in its chaotic potential. What is at stake is not crime at its present levels, but the trajectory of the South Africa’s future approaches to law enforcement.

POLICY PROPOSALS FOR STATE ACTION ON PAGAD

Eventually PAGAD would be labeled a terrorist group by government authorities after a shootout with local police over members who were being held for trial. PAGAD participants were rounded up and severely reprimanded – one man receiving a twenty-five year sentence for possession of an unlicensed firearm^{xxix}. Under repression, PAGAD splintered into small “G-Force” cells, yielding to

semi-jihadist Islamic Qibla elements and engaging in guerilla-style battles with gangsters and police. By labeling them criminals and terrorists, the state broke the power of PAGAD^{xxx} and reduced it to a fragmented and essentially impotent organization. This violence between similarly-concerned forces is disturbing in its shifting of priorities from the necessary goal of crime reduction to internecine battles for primary; yet PAGAD proves that vigilantism “can rapidly radicalize and grow into a movement that questions the legitimacy of the entire social and political order”^{xxxi}. There are major incentives for the state to engage collaboratively with citizen groups in fighting crime, but PAGAD’s unrestrained militancy demonstrates the need for enforceable limits to community activism. The political representation of such oppositional elements that make claims upon the state (and who then turn violent when not satisfied) must be improved, and the necessity of suppressing PAGAD should not obscure the legitimacy of their original demands. Nevertheless, it is up to the state to demarcate the rules of the game: in the framing of the “problem” and “solution” of crime lies the future of criminal justice. The ANC government faces rampant crime and the severe economic deprivations, insecure masculinities, and failures of prevention programs that lies at its roots, but the suppression of PAGAD demonstrates the state’s ideological commitment to creating as genuinely as possible the legal conditions for the future flourishing of exemplary criminal justice.

ECONOMIC DISPARITIES, COURT ACTIVISM, TAC AND OPPOSITION SUCCESS

Similar to crime, economic inequality presents a contentious site for political opposition in the post-apartheid era. Socio-economic rights have always constituted a central tenet of ANC discourse and found explicit recognition in the anti-apartheid movement’s ideological document, the 1955 Freedom Charter. The Charter posited a future national in which “mineral wealth, banks and monopoly industry [would] be transferred to the ownership of the people as a whole; land [would be] re-divided amongst those who work it; and the state [would] recognize the right and duty of all to work, and to draw full unemployment benefits”. These declarations committed the movement to providing equal economic opportunities and redistributing wealth, promises that “remained at the heart of [ANC] campaigning for many years”^{xxxii}. The 1996 democratic Constitution affirmed these socialist pledges by including positive socioeconomic rights in its declaration of entitlements and liberties: “everyone has the right to

have access to adequate housing; [...] health care services; [...] sufficient food and water; and social security” – “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights”^{xxxiii}. In the context of widespread poverty, these requirements assume significance as loci for claims upon the state, and the ANC’s negotiation of its legal commitments and overwhelming task of addressing socioeconomic inequalities produces carefully-tailored outcomes for South African society. The legal opening/foreclosing of paths to fulfillment of Constitutional entitlements has immediate consequences for people without homes, suffering from health problems, or unable to provide for their families.

Economic reorganization post-apartheid has brought different tidings for different sectors of the population. Jeremy Seekings and Nicoli Nattrass report growing prosperity among black South African wage-earners and the booming of a new black middle class, but this success masks an out of control explosion in unemployment and intraracial inequality^{xxxiv}. While black wages are rising, the numbers of jobless and underemployed are also climbing, and positive reports from the black middle class belie the reality of extreme deprivation that persists among almost half of the population. Unemployment has risen by some measures to as high as 40% within township and rural areas – not including underemployment. The number of households living below the poverty line – \$60 per month – increased from twenty-eight percent in 1995 to thirty-three percent in 1999^{xxxv}.

The expansion of income gaps in the midst of overall economic growth has multiple causes. First, apartheid’s legacy of racially-disproportionate service provision “set back human capital creation more than a generation” through inadequate education and continues to constrain possibilities for present growth^{xxxvi}. Additionally, social and religious affiliations play a role in the rising poverty gap. The birth of the ZCC and Pentecostalist churches among the black middle class provide new justifications for cutting family ties, which traditional involve the redistribution of wealth to the poorest members of a clan. A worker who may twenty years ago have shared his wages with his brothers, sisters, and cousins now finds that through membership in his church he may deny helping those who are not yet “born again”, or may simply chose to give to the congregation, which stands in as a new “family” for many middle-class laborers. The sustained gap between job-holding earners and

unemployed poor is also the product and cause of a high prevalence of HIV/AIDS among the poorest populations. Those with AIDS are unable to hold long-term jobs because of their health, and some employers screen possible hires with routine medical checkups^{xxxvii}; and poverty heavily increases the probability of infection. The lack of financial flexibility forces some to resort to survival tactics like prostitution, which skyrockets the risk of contracting the virus, the low provision of preventative health services and education to poorer areas (coupled with inadequate education systems for youth) raises the probability of disease. These disadvantages, coupled with the fact that a sick worker with HIV may lose his or her job and fall into the ranks of the unemployed poor, presents a enormous prevalence gap between wage-earning citizens and the poor unemployed. UNAIDS reports that HIV prevalence increased from 10.1 percent in 1995 to 22.8 percent in 1998^{xxxviii}.

To address inequalities, the government has engaged in broad-based economic adjustment programs, most recently – GEAR, which placed an “emphasis upon fiscal and monetary ‘discipline’”^{xxxix} and sought to provide the economic conditions for growth to the detriment of more direct forms of redistribution. GEAR’s predecessor – the RDP, offered a more redistributive approach, but the macroeconomic challenges of the RDP economy demanded a more tight-fisted approach. Understandably, in its choice to *indirectly* address unemployment and poverty by stabilizing financial systems, GEAR ultimately failed to produce positive outcomes for wealth disparity, and the rate of formal employment growth was actually negative after four years^{xl}. The geographic and social divides that align with socioeconomic inequality map onto a divided picture of political representation. Middle-class blacks find their interests often adequately voiced within the ANC and possess little incentive in including non-workers in their lobbying. The party makes room for advocates of labor guilds and unions within its system of legislative development and apportioning of attention, but in pursuing the interests of employed South Africans, unemployment is relegated the status of a secondary concern. Naturally, the political concerns of each group differs: while the unemployed lobby for increased service provision and better job opportunities, the already-employed are more concerned with wages and employment regulation. The separate nature of these demands promises little possibility of combined lobbying. In this context, the Constitutional guarantee of socioeconomic rights becomes a rallying place

for poor and underrepresented to demand aid. The South African Constitutional Court provides a mechanism for these rights claims upon the state that bypasses the pragmatically dismissive posture of the ANC-controlled legislature/executive, and the listing of socioeconomic, positive rights within the Constitution provides significant space for representation of minority interests.

However, the Court's recognition of socioeconomic, positive entitlements treads carefully in the realm of government accountability. The euphoric political residue of the 1994 birth of a black South African-led democracy already binds the state to a rhetoric of social concern and a dedication to eliminating remaining barriers to equality, life-sustaining wages, and essential services: like health, education, and security; yet in contrast to other, more socialist African states, the ANC government has concerned itself with maintaining a fiscal balance that requires relative austerity with respect to social welfare funding. Basic services are provided, but the government gains easy maneuvering capital by asserting its fundamental inability to satisfy completely the socioeconomic rights that the Bill of Rights contains. For the Court, a decision must weigh its real world consequences on the government actor concerned, and only if the extension of an entitlement does not excessively burden government will the Court hold the state accountable for fulfilling it.

The primary caselaw that describes the razor's edge of the Constitutional Court's interpretation structure are *Soobramoney* and *Grootboom*. In the 1998 case of *Soobramoney v. Minister of Health (Kwazul-Natal)*, a man dying of kidney disease was denied dialysis because his hospital only had 12 machines with which to treat 300 patients, and hospital officials decided to exclude him in order to provide for a more worthy candidate – e.g., a child. The man brought suit before the Court, claiming that the hospital's denial of health care violated the Constitution's guarantee of health service provision. The Court ruled that the hospital made a difficult but laudable decision in apportioning its dialysis services and could not be at fault for not having enough funds to provide for all kidney disease sufferers in the surrounding area:

“By using the available dialysis machines in accordance with the guidelines more patients are benefited than would be the case if they were used to keep alive persons with chronic renal failure, and the outcome of the treatment is also likely to be more beneficial because it is directed to curing patients, and not simply to maintaining them in

a chronically ill condition. It has not been suggested that these guidelines are unreasonable or that they were not applied fairly and rationally when the decision was taken by the Addington Hospital that the appellant did not qualify for dialysis”^{xli}.

The *Soobramoney* decision embedded a commitment to pragmatism within the Court’s approach to positive entitlements that while requiring the government to provide for its citizens to the best of its ability, excused the ANC for failure to completely meet its obligations.

The second case, *Government of South Africa v. Grootboom* (2000), rendered a winning verdict for landless squatter settlement dwellers who were forcibly removed from their homes by a state actors. The claimants argued that they were left without adequate housing as a direct result of government action, and they argued that the Constitution entitled them to some form of shelter. The squatters held no title to the land, and therefore were not entitled to any compensation through eminent domain statutes, but the Court answered with a denial of the government’s claim to the right to actively remove housing from its citizens in the event that such action left them homeless. While it is true that many more South Africans are homeless, or live in “less than adequate” dwellings, the previous logic of *Soobramoney* would provide a plausible excuse for government negligence even in this scenario, if the intrusion was deemed unavoidable. However, Section 26 of the Constitution bars the state from being directly responsible for removing shelter, and in *Grootboom* the state actively participated in the creation of homelessness:

“The judgment of the Court was not to be understood as approving any practice of land invasion for the purpose of coercing the State into providing housing on a preferential basis to those who participate in any exercise of this kind. [But it is understood the state’s] land invasion was inimical to the systematic provision of adequate housing on a planned basis”^{xlii}.

The government must strive to fulfill to the best of its ability the requirements of the Bill of Rights and must not actively contribute to economic deprivation in its actions.

In the uncertain milieu of legislative debate surrounding socioeconomic rights, community groups and NGOs have seized upon the South African Constitutional Court as an avenue through which to hold the government accountable to the promises contained within the Constitution. In the context of rising inequality and unemployment, the Court’s affirmation of socioeconomic entitlements

effectively provides political representation for those most often excluded from the democratic process. The Court “play[s] a role in filling the gap, enhancing deliberation and generating a presumption of accountability that fulfills many of the functions for democratic opposition”^{xliii}. Oppositional groups who find themselves excluded from legislative and executive decisionmaking can turn to the Court’s interpretation of the Bill of Rights to win immediate victories for minority interests. To some extent the embrace of the judicial process as a means through which to bring issues of underrepresentation to the forefront of politics in South Africa has indeed provided groups greater visibility and lobbying power within the whole of the government apparatus. The Treatment Action Campaign (TAC), and drug and health service NGO, has been the most successful, winning in 2001 a requirement that pregnant mothers with HIV must be provided with Nevirapine to prevent passage of the virus to their infants. For the TAC, litigation presents the most productive means of activism; treasurer Mark Heywood argues that “litigation both emerges from and feeds back into a social context [and] can also help to catalyse mobilization”^{xliv}. Indeed, after the Nevirapine victory, TAC seized its moment and began importing new drugs to treat opportunistic AIDS infections, though doing so broke national and international law. The organization’s dedication to “rolling out” antibiotics and ARVs eventually drew the attention of pharmaceutical companies in the United States who decided to drop prices, and the South African government agreed to cooperate in the importation and distribution of free drug treatments to HIV/AIDS victims^{xlv}. It appears that within Court acknowledgement of a community group’s legitimacy as a political rights claimant there lies the transformative gift of political capital, which may be subsequently translated into lobbying power with the state.

POLICY PROPOSALS FOR STATE ACTION ON ECONOMIC INEQUALITY

The ability of non-state actors – especially those like TAC that claim to represent the interests of those the state “overlooks” – to challenge government inaction and to redirect welfare programs to meet the needs of the severely deprived is a vindication of the 1996 Constitution’s promises. The disappointing fact that in the ANC’s rise to victory social equity concerns took a back seat to the project of economic stability finds due compensation in Court activism. The antagonism between the judiciary and the legislative/executive bodies of the ANC as well as the dynamic of simultaneous “co-operation

and confrontation^{xlvi} that appears in the relationship between government and the TAC displays the functioning of a healthy democratic balance. The mandated provision of available health care to indigent and suffering citizens is perhaps the most promising outcome, for in exchange for the drugs the government buys and distributes for free it receives nothing in return, only the knowledge that its actions make part of the population healthier. Most importantly, in its admission of the reasonability and worthiness of a critical and oppositional group's demands, the South African state proves its ability to dialogue, reevaluate, and act disinterestedly (with regard to political considerations like electoral calculations – for even though ARVs may win over new supporters, the fact that AIDS victims' concerns are not represented in normal legislative processes contradicts this supposition) in the common good. Through Court action, the Bill of Rights has emerged as a locus for opposition elements – even those underrepresented in other political venues – to engage the state and to actively influence the development of the systems through which the government approaches the issues of socioeconomic inequalities and entitlements.

COPE AND THE ANC'S RESPONSE: POTENTIALS FOR DEMOCRATIC OUTCOMES

In national-level politics, opposition and debate have emerged gradually and cautiously, and the African National Congress has almost singularly directed the post-apartheid democratic project. The ANC, as the party of the revolution, rose to power under Nelson Mandela in 1994 and has since dominated government at all levels. In claiming the legitimacy as “voice of the people”, the ANC administrates in Leninist fashion: the head office directs all subordinates (whose ideas theoretically influence the decisions of national leaders). However, the Congress's Leninist structure makes for strict control and planning, with “elitist” and thoroughly “undemocratic” implications; and indeed, party rhetoric often asserts the ANC's capacity for unilateral action and “continues to utilize the discourse of revolution [to exert] pressures to toe the party line and not be too critical of the leadership”^{xlvii}. This is not to cast ANC leadership in an authoritarian light; on the contrary, robust political discussion regularly appears in local and Congressional debates. However, the party's apartheid-era popularity and the powerful political mandate it alone received in 1994 has limited the ability of competing factions to enter into and thrive in national politics.

The skewed distribution of party political power in South Africa is first a function of the transitional period. The ANC emerged at the helm of the revolution and was granted the authority to steer the new nation, as the representative of newly liberated “black” South Africa, in the necessary project of building a democratic society out of the collapsed structures of apartheid. In this context, vocal minorities could be marginalized and suppressed if it meant that the nation could move forward. For example, the implementation of GEAR in 1996 outraged the Congress of South African Trade Unions (COSATU) who saw in the development program’s fiscal austerity a “violation of [...] the central tenets of social unionism”^{xlvi}. COSATU played a prominent role in the organization of labor movements during the anti-apartheid struggle, but party decisionmakers found it expedient to sideline union interests in national economic policy; Mandela would later admit that in the creation of GEAR “[the ANC] did not have sufficient consultation with other members of the alliance”: “We ignored those who put us in power”^{xlix}. Yet the mandate of the revolution continues to provide the ANC an “ambiguous” license that can be “adopt[ed] and appl[ied] to fit arbitrary circumstances”^l, thereby securing a relatively stable position from which to control the directionality and substance of politics.

Additionally, opposition movements face the difficulty of distinguishing themselves from the ANC and drawing a constituency away from a popular party. The all-inclusive discourse of the ANC forecloses the possibility for new parties to capitalize on specific issues, and ultimately opposition will closely resemble ANC political campaigns and promises in most respects and will “rely on the same constituencies”^{li}, which undermines efforts at mobilization against the incumbent party. However, the recent splitting of the Congress of the People (COPE) from the ANC presents the potential development of new contention on the national stage.

Thabo Mbeki supporters and Jacob Zuma enemies have coalesced in the new party and challenged Zuma’s run for the presidency this April, albeit unsuccessfully. The split occurred after Zuma, as President of the ANC, ousted Mbeki from office in September 2008, and disaffected ANC members decided to organize their opposition. COPE’s main platform will be electoral reforms that

would allow representatives to be directly elected by the people as opposed to the current list system¹, and the platform has already scored a victory in the Western Cape: in provincial byelections at the beginning of December, COPE won ten of the twenty-seven seats previously held by the ANCⁱⁱⁱ. It is likely that COPE, whose leaders are mostly Mbeki supporters - interim chairman Mosiuoa Lekota and his deputy Mbhazima Shilowa, will pursue an agenda that closely resembles the ex-Presidents economic and social programs; however, significant political potential lies in highlighting ANC failures and casting the new party as the solution to persistent problems like economic inequalities and crime. In the promulgation of a coherent strategy for crime prevention and wealth/employment redistribution, COPE could reach the most marginalized sections of ANC membership – the poor and victims of crime, which is a promising possibility for more inclusive democratic representation. The situation presents itself as a win-win for representation, for even if COPE fails to win over population groups that seem naturally “vulnerable” to a change of political alliances, an engagement with the ANC on a national scale would at the very least require the ruling party to pay more attention to these currently underrepresented members to prevent the loss of their support. South African Institute of International Affairs political analyst Malsetse Mbeki argues that a small percentage of the vote it could completely alter the political landscape. If COPE takes just five per cent of the vote, it would have “widespread consequences”; for if other “opposition parties retain their vote and Cope would be agreeable to a coalition, they would break the ANC’s absolute majority in parliament, which allows them push through whatever laws they see fit at the moment”ⁱⁱⁱⁱ. Yet within the promise that COPE offers for the reorganization of South African politics lies a precursory question: will the Zuma-led ANC even grant COPE the political space to mount a democratic challenge to its control?

¹ COPE’s proposed change to the electoral system has ambiguous implications for democratic challenges to the ANC: while in theory the direct election of representatives would diminish party influence over contests for regional positions, such a change is not likely to provide significant benefits for COPE’s electoral chances, unless support for the new party concentrates itself in isolated areas: e.g., Western Cape support for COPE has proved to be the most intense, thus direct elections could possibly result in more seats overall in national government than under the national list system. More detailed information about COPE’s platform and strategy became public on Tuesday, December 16, when the party’s first conference came to a close; its leaders are expected to address the nation with a comprehensive program this spring.

Thus far, the reaction of ANC leaders to COPE's split and antagonistic posture has been hostile. The Congress recognizes the prospective threat to its authority in COPE's possible appeal to those "totally left out" of ANC politics – specifically, "the trade unions, black youth, [and] other blacks who feel their expectations are not being met"^{liv}. ANC and COPE supporters have clashed verbally in the media, and Zuma has condemned the breakaway party as a body of "witches"; speaking to a crowd in Port Elizabeth, he acknowledged the threat COPE posed to ANC leadership, but described the challenge as a sinister plot against the national "family":

"It is better when you have an enemy that you don't know. If you know the enemy, then it is more difficult. In Zulu we refer to a form of witchcraft called 'ukuphehla amanzi' where your enemy would mix dirt from your body in a calabash and stick a spear into the mixture [...] this would cause you sharp body pains. When a witch is a family member, we know that it's more dangerous than an enemy from outside"^{lv}.

Contained within Zuma's responses to COPE's growth is an implicit incitement to clash. Explicitly, he makes no appeals to ANC supporters asking them to attack or disrupt the opposition, but neither does he accept the rise of COPE as the beginning of a legitimate political discussion. As a result, several masses of pro-ANC demonstrators have targeted COPE meetings around the nation with the aim of disrupting them. So far, confrontations have not turned violent, with the exception of a meeting in November in which "200 ANC supporters, wearing T-shirts emblazoned with Zuma's face, descended on the hall and hurled chairs at Cope supporters, [forcing] the meeting to be abandoned" (*Sunday Times* 16 November 2008). Yet the relative restraint of demonstrators is accompanied by more militant responses – ANC Youth League leader Julius Malema has pledged his organization's unconditional loyalty to Zuma and expressed his willingness to violently confront the "splitters":

"All these people in COPE are behaving like cockroaches and should be destroyed. By distorting the history of the organisation, by behaving as if history started yesterday, they are behaving like cockroaches and cockroaches should be killed. We're not talking about killing human beings here, we're talking about cockroaches. When you see a cockroach in your house what do you do? You kill it"^{lvi}.

Malema's vocal outbursts forebode not only of the possibility of authoritarian repression but also present the readiness of specific groups to violently engage the opposition in the service of the state. Government response also displays nascent intimidation of possible defectors: Zuma recently threatened public officials who support COPE with the loss of their jobs. However, a dominant tone

and framework for discussion and debate has yet to be settled upon, and the ANC's response may ultimately depend upon how popular COPE becomes.

POLICY PROPOSALS FOR THE ANC AND COPE

The rise of the new party presents South African democracy's first significant political challenge, and in the ANC's response lies a decisive determination of the political landscape. If the Congress restricts its criticism of COPE to political issues and engages the opposition on its proposed platforms, South Africa may see a renewed democratic vibrancy in national-level discussion and even policy. But if the ANC begins to mobilize its enthusiastically militant elements, or to refuse to restrain their violent action, a disturbing tendency towards authoritarian repression could emerge. The hostility of exchanges between COPE and ANC leaders indicates both the potential for an energetic democratic outcome and the possibility of a draconian crackdown. December 16th will see the revealing of COPE as an organized body, and an ANC meeting later this month may determine the tenor of collective response from ruling factions.

2009 GENERAL ELECTIONS AND A ZUMA PRESIDENCY

The general elections on April 22nd of this year saw, unsurprisingly, an enormous victory for the African National Congress. Jacob Zuma, President of the ANC, is now the Executive-in-Chief, and so soon after the election there remain ambiguous forebodings of the directions Zuma's agenda is likely to take.

International policy should continue to be determined by macroeconomic austerity, sensitivity to the global market, and conservative positions on issues like Western interventionism. The national agenda, however, could rapidly change in the coming years. Zuma found strong support among the Coalition of South African Trade Unions (COSATU) during the elections and promised more populist regulations on big business: specifically, improved labor standards, expedited propulsion of black skilled workers to higher-level positions, and, most popular, wage increases. These proposed changes necessarily risk discouraging foreign investors, but more directly, Zuma's economic agenda, though popular, may continue to exclude the unemployed. Wage-earners stand to benefit the most, possibly at

the expense of South Africans seeking work, as business may need to invest more heavily in the labor that it already employs rather than by hiring new bodies.

Yet perhaps the biggest unknown is Zuma's moral agenda. Before his corruption and rape charges last year, he spearheaded the Moral Regeneration Movement. A program of "community discussions" directed at solving a "moral crisis that lies at the heart of the nation". Significant interdenominational mobilization among churches occurred after a young man was convicted of raping a two-year-old child in 2004. Zuma, as the unofficial leader of the Regeneration movement, has oscillated between vague appeals to a return to traditional values and authoritarian promises to take away "irresponsible mothers' babies" until these women to go to school and learn "good values". Zuma's moral maneuvering power has since been eroded by a very public, though unsuccessful corruption trial, and general uncertainty about his character (if not his ability to lead) may undermine any large-scale initiatives coming from the Executive.

CONCLUSIONS

Political opposition in South Africa carries hope for the inclusion of issues that have been neglected or underrepresented in the post-apartheid era: the rampant rise of crime has instigated targeted community responses in the absence of adequate government security services, activist litigation has forced inclusion of socioeconomic entitlements in the state programs, and national-level dissent presents the possibility of more inclusive political representation and improved legislative discussion. In the ANC government's response to each of these novel challenges there exist formative consequences. The state's suppression of PAGAD's mobilization to confront Cape Flats crime defended principles of criminal justice against popular, but violent, attempts to address out-of-control crime. Court activism on economic and health issues had revived the Freedom Charter's socialist promises, and offers a dependable avenue for citizen claims upon government in a time of insufficient state action in solving economic inequalities. The rise of COPE presents a transformative moment for party politics, and the outcome of its challenge will determine the future of democratic representation and the ability of opposition groups to engage in debate and competition with the ANC government. The articulation of the possibilities and limits of political action post-apartheid is ongoing, and the state's balancing of the

pressing demands of coercive/regulatory government with ideal democratic systems of representation, discussion, and government action carries immediate implications. While the harms of apartheid linger in economic structures, political mentalities, and party organization, the era of the struggle is over; government actors, now more than ever, should carefully reevaluate the democratic project and reconcile the triumph of victory with urgent national dilemmas in the forging of a new South Africa. As Constitutional Court justice Albie Sachs aptly states: “When we consummate and extinguish our most precious asset, our hope for the future, [...] victory [is] destabilized[.] [...] Now we must let go of the dream so that it can transform itself”^{lvii}.

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