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Ghana and South Africa*

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The Overall Quality of Democracy

While the Third Wave of Democracy swept through many African countries in the 1990s, South Africa and Ghana stand out as two of the continent's real success stories politically.ⁱ Beginning in the late 1980s, South Africa's leaders successfully steered the country out of the shadow of apparently irreconcilable conflict and unavoidable racial or ethnic civil war to create a common nation. Since 1994, they have negotiated two democratic constitutions, and held four successful nation-wide elections for national and local government. South Africa's Constitution has become the darling of liberals and social democrats the world over because of its inclusion of an extensive set of political and socio-economic rights.ⁱⁱ Starting in 1993, Ghana has enjoyed ten years of democratic, constitutional rule, holding three successful multi-party elections (with the third producing a peaceful electoral turnover).

Both countries have received plaudits from international observers of democracy and governance. Both are now rated as "free" by Freedom House: two of only ten African countries to be so labelled. And since both are functioning multi-party democracies, they also qualify by Diamond's definition as "liberal democracies."ⁱⁱⁱ Yet while Ghana has recently joined the even more exclusive club of one the few African countries to turn a ruling party out of power peacefully at the ballot box, a range of professional expert ratings see South Africa possessing a significantly higher quality of democracy than Ghana. Freedom House, for instance, gives South Africa a slightly higher 1.5 "status of political

freedom” score than Ghana (2.5). Other ratings produced by Freedom House, the World Bank, and Transparency International also consistently give South Africa higher (or better) scores in terms of press freedom, rule of law, corruption and responsiveness.

Yet once we shift to the perspective of mass judgment, we arrive at least two conclusions at odds with professional, “expert” judgment. First, ordinary Ghanaians generally judge their country to have a higher quality of democracy than do South Africans. Second, both South Africans and Ghanaians would appear to be more pessimistic than organizations such as Freedom House about the quality of their country’s democracy. In late 2002, just one half of the South African public (52 percent) told Afrobarometer interviewers that their country was a “full democracy” (14 percent) or a “democracy with minor problems” (38 percent). In contrast, three in four Ghanaians (76 percent) felt their country was completely (30 percent) or largely democratic (47 percent). A slightly lower 47 percent of South Africans say they are “very” or “fairly satisfied” “with the way democracy works” in their country, compared to three quarters of Ghanaians (72 percent).^{iv} While we may not have directly comparable data to test this, it would not seem that these would be the responses yielded by mass publics in two equally high quality democracies. But are these popular responses accurate reflections of the quality of democracy in their respective countries?^v Are the South African responses evidence of what South African writers widely refer to as the “whinge factor,” a supposedly prominent feature of their political culture? Conversely, do the Ghanaians responses evince a post-turnover “euphoria”?

Table 1: Various Professional Ratings of Ghana and South Africa
Ghana

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Rule of Law*				-.11 (54%)		-.06 (58%)		-.16 (55%)		-.15 (54%)	
Political Stability*				-.06 (42%)		-.07 (45%)		-.10 (45%)		-.11 (41%)	
Regulatory Quality*				-.17 (44%)		.21 (54%)		.11 (51%)		-.29 (45%)	
Corruption **						3.3 (55 of 85)	3.3 (63 of 99)	3.5 (52 of 90)	3.4 (59 of 91)	3.9 (50 of 102)	
Control of Corruption *				-.44 (36%)		-.44 (43%)		-.41 (41%)		-.40 (43%)	
Voice & Accountability				-.33 (41%)		-.53 (34%)		.00 (53%)		.01 (51%)	
Index of Political Freedom ***	4.5 (Partly Free)	4.5 (Partly Free)	4.5 (Partly Free)	4 (Partly Free)	3.5 (Partly Free)	3 (Partly Free)	3 (Partly Free)	3 (Partly Free)		2.5 (Free)	
Political Rights***	5	5	5	4	3	3	3	3		2	
Civil Liberties***	4	4	4	4	4	3	3	3		3	
Press Freedom***		63 (Not Free)	62 (Not Free)	62 (Not Free)	59 (Partly Free)	60 (Partly Free)	61 (Partly Free)	61 (Partly Free)	55 (Partly Free)	27 (Free)	30 (Free)

South Africa

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Rule of Law*				.34 (68%)		.21 (67%)		.30 (65%)		.10 (60%)	
Political Stability *				-.74 (17%)		-.71 (22%)		-.11 (44%)		-.09 (43%)	
Regulatory Quality*				.18 (65%)		.33 (60%)		.13 (54%)		.60 (69%)	
Corruption**			5.6	5.7 (23 rd of 54)	5.0 (33 rd of 42)	5.2 (32 nd of 85)	5.0 (34 th of 99)	5.0 (34 th of 90)	4.8 (38 th of 91)	4.8 (36 th of 102)	
Control of Corruption*				.59 (79%)		.41 (74%)		.50 (74%)		.36 (68%)	
Voice and Accountability*				.65 (68%)		.87 (72%)		1.05 (80%)		.73 (71%)	
Index of Political Freedom ***	4.5 (Partly Free)	4.5 (Partly Free)	2.5 (Free)	1.5 (Free)	1.5 (Free)	1.5 (Free)	1.5 (Free)	1.5 (Free)		1.5 (Free)	
Political Rights***	5	5	2	1	1	1	1	1		1	
Civil Rights***	4	4	3	2	2	2	2	2		2	
Press Freedom***		38 (Partly Free)	30 (Free)	30 (Free)	27 (Free)	28 (Free)	28 (Free)	25 (Free)	23 (Free)	23 (Free)	25 (Free)

* World Bank

** Transparency International

*** Freedom House

Following the conceptual outline of this conference, the rest of this paper will interrogate these overall judgements by breaking the quality of democracy into constituent dimensions of rule of law, accountability, responsiveness, freedom and equality. Within each dimension, we will review recent developments and events of elite behaviour, take note of professional “expert” assessments, and compare these with the judgements of ordinary citizens as measured by the Afrobarometer (and other surveys where available). We assume that citizen opinions -- regardless of what professional evaluators think, of what constitutions say, or of what elected leaders actually do -- are ultimately what matters most in terms of the feasibility of the democratic project.^{vi} However, a completely “user” based approach focussing only on citizen perceptions faces significant limitations: in the great majority of instances, to paraphrase Mill, citizens are indeed most likely to know where the democratic shoe pinches; but in some cases, demanding citizens may be overly critical of the quality of democracy, in other cases, uncritical and uninformed citizens may be overly generous. Thus, the best and most complete academic assessment of the state of democracy must take into account both subjective and objective measures, by both professionals as well as citizens. We will then conclude with an analysis of the factors that account for citizen perceptions and shed light on whether their judgments (as well as the international elite judgements) of the quality of democracy are overly generous or overly critical.

Rule of Law

Democracy, above all, is a system of rules and procedures by which leaders, groups and parties compete for power, and in which free and equal people elect representatives to make binding decisions. The quality of democracy depends on the extent to which the ruling party and state subjects itself and its citizens to rules that are not arbitrary and capricious, but are known, predictable, stable, justiciable and consistently applied by

autonomous and impartial institutions (Karl, 1990). Only through this can democracy produce political equality and protect fundamental rights and freedoms.

Both Ghana's and South Africa's evolving constitutional and legal framework guarantee a rule of law that extends to all areas of the respective countries and to all groups (though in the name of affirmative action and transformation, the South African Constitution allows certain types of discrimination if it can be shown that the discrimination is not "unfair"). In neither case is the authority of the state absent in any identifiable geographic area. With some few exceptions, the shortcomings in the quality of the rule of law tend to occur in its application rather than in the legal framework itself.

For Ghana, the return to constitutional rule on 7 January 1993 represented the first step towards the re-establishment of the rule of law and a serious attempt to create a rule bound state and government, after 11 years of official arbitrariness and impunity under the quasi-military Rawlings-Provisional National Defence Council (PNDC). In contrast, *apartheid* South Africa was nothing if not rule-based; virtually every act of separation, removal, oppression and repression carried out by the state could be located in or derived from an Act of Parliament.^{vii} Thus, the introduction of a constitution and the concept of a *rechstaat* served a slightly different purpose: it replaced the colonial heritage of parliamentary sovereignty that prevented judges from ruling on the legality or morality of apartheid legislation, yet also placed a significant check on the concept of mass "people's power" that had long fuelled the anti-apartheid movement. Its drawn out process of constitutional negotiations has been marked with a fascination with institutional design and experimentation (with new institutions such as the National Council of Provinces, a National Directorate for Public Prosecutions (NDPP) with its own high profile elite unit with powers of investigation and arrest (called the Scorpions) and a range of so called Chapter Nine

institutions such as Human Rights Commission, Gender Commission, Land Commission, Youth Commission

In Ghana, the Courts and the Commission on Human Rights and Admin Justice have demonstrated their political independence by delivering several important decisions against the government and ruling party, for example overturning the celebration of the anniversary of the second Rawlings coup as a public holiday, and ruling that government must return unlawfully confiscated private assets. In South Africa, the Courts have handed down stiff fines and jail sentences to high profile figures from the ruling African National Congress, such as Allan Boesak, Tony Yengeni and Winnie Mandela. The Constitutional Court has told the government that it must honour constitutional rights to housing, and begin to administer anti-retroviral drugs in public hospitals and clinics to AIDS sufferers. While there has been characteristic grumbling, the government has consistently accepted, at least rhetorically, these adversary decisions. A variety of law enforcement institutions such as the Special Investigating Unit, the Assets Forfeiture Unit, and the NDPP/Scorpions have in their different areas developed real prowess. The South African Revenue Service (SARS) has steadily increased capacity to monitor tax compliance and financial movements, consistently collecting more than anticipated.

Yet in neither case has the road been smooth. In Ghana, the military was not effectively brought under proper democratic control until 2001[?]. An elite unit, the 64 Infantry Battalion, operated largely outside of the regular military command. As recently as 1999, military personnel and municipal authorities acting upon instructions from above razed down a brand new privately owned hotel without a court order.^{viii} And while they have paid nominal lip service, the two Rawlings / National Democratic Congress (NDC) administrations, from 1993-96 and 1996-2001, and to a lesser degree, the Kufuor / New

Patriotic Party (NPP) administration has complied with the constitution only in a minimalist manner. The seriously underdeveloped state of regulatory frameworks and administrative law in Ghana gives public officials wide discretionary powers which lead to official arbitrariness. Generally, it is still too easy for powerful officials to circumvent the law or evade sanction.

In South Africa, while specialized enforcement agencies described above have develop impressive capabilities, the police remain largely ineffectual, badly trained and overstretched. And while the Constitutional Court has handed down some major rulings against the government, its recent failure to find any contradiction between the Constitution's requirement of an electoral system that results in proportionality, and legislation allowing representative to cross the floor to other parties (which can severely disturb such proportionality) has prompted at least one prominent political analyst to conjecture that the Court will never challenge the government on an issue that is politically strategic to the ANC.^{ix}

In some cases, however, cases where the Court has ruled against it, such as the landmark case on anti-retroviral drugs, the Government has moved extremely slowly to comply. In other cases, the ANC government has simply failed to heed key Constitutional provisions such as the requirement that it pass legislation to enable Parliament to amend spending bills (currently, MPs can either accept a spending bill or reject it altogether), or to replace expiring electoral legislation. In general, the Government has amended the Constitution with worrying frequency and speed. In 200X, it introduced two pieces of legislation containing seven separate amendments to the Constitution (that reordered the relationship between the Appellate and Constitutional Court, scrapped constitutional limits on the tenure of Constitutional Court justices, putting the matter in the hands of Parliament

(and thus the ANC majority), enabled the President to appoint two Deputy Ministers from outside Parliament, allowed national government intervention in municipal governments that do not comply with financial management standards, and broadened the finance minister's monopoly on introducing financial legislation). Not only did such rapid and far-reaching changes have grave implications for the integrity of the Constitution, but the omnibus manner in which it was passed denied opposition parties the opportunity to take positions on each provision separately.^x

The Government has also amended the Constitution purely for partisan reasons. To take advantage of growing conflict between the key partners of the main opposition coalition Democratic Alliance (DA), the ANC suddenly dropped its steadfast opposition to floor crossing primarily to allow Cape Town city councilors from the New National Party (the direct heirs of the architects of apartheid) to leave the DA and cross into an alliance with the ANC (thus giving it control of the only city government it did not already dominate). Constitutional amendments then applied to all levels of government, and subsequent floor crossings gave the ANC a solid two-thirds majority in the National Parliament, control of 8 of 9 provincial governments, and control over all major municipal governments.

Perhaps most seriously, the ruling ANC has shown itself quite capable of simply dissolving or discrediting independent institutions, even those of its own creation, if they are seen to turn against the interests of the ruling party. Take, for instance, the Special Investigative Unit (SIU), more popularly known as the Heath Commission. Headed by Judge Willem Heath, the unit was created by the Mandela government to investigate and prosecute official corruption in the Eastern Cape province, as well as to recover stolen state funds. As the Commission grew in popularity, disclosing increasingly higher level instances of corruption, it finally set itself up in direct conflict with the government, culminating in its

decision to begin investigating charges related to the government's 199X arms deal. Based on a finding / decisions that Heath's appointment violated the separation of powers (he still retained his Judgeship even as he was running an Executive Branch commission), he was conveniently shown the door in 200X and the Commission disbanded.

Most recently, the head of the NDPP Bulelani Ncguka came into conflict when it launched simultaneous enquiries into the business dealings of recently departed Transport Minister Mac Maharaj and allegations surrounding the involvement of former ANC guerilla leader Shabir Shaik in the arms deal, including the possibility that he arranged a bribe for Deputy President Jacob Zuma. After Maharaj and Shaik leveled charges that Ncguka had been a spy for the *apartheid* government, President Mbeki gave credence to the claims by creating an official commission of investigation. At the same time, under the guise of unclear jurisdictional lines between police and Scorpions, Mbeki also asked a Cabinet Committee to investigate and report on the status and jurisdiction of the Scorpions. The government has also moved to discredit and suppress a report by the country's Medical Research Council that directly contradicted Mbeki's attempts to minimize the impact of AIDS.^{xi}

Consistent with these observations, professional judges have given Ghana and South Africa relatively mediocre ratings in this area. The World Bank currently assigns Ghana a score of -0.15 for overall observance of the rule of law (which places it only in the 54th percentile internationally), a score that has not progressed markedly over the past seven years. South Africa receives a +0.10 (putting it in the 60th percentile internationally), a score that has remained stable since 1996.

The incomplete application of the rule of law in these two countries can also be seen in the fact that while their Constitutions have become popular normative reference points for large majorities of the public, significant minorities show no sense of attachment. Roughly six in ten Ghanaians (65 percent) and South Africans (61 percent) agreed in 2002 that “Our Constitution expresses the values and hopes” of the citizenry, meaning that roughly four in ten did not. At the same time, large sections of both publics feel that the President often rules outside the limits of that Constitution. Less than one half of Ghanaians (46 percent) and just over one third of South Africans (37 percent) think that the President “never” “ignore[s] the Constitution”: in fact, fully in five South Africans (20 percent) say that it happens “often” or “always,” as do 14 percent of Ghanaians.

Beside the general requirement that governments conform to Constitutional and other legal rules and procedures, another fundamental part of the Rule of Law has to do quite simply whether the state is able to enforce the law and provide citizens with a modicum of security in their property and person. In this respect, rampant crime presents a serious limitation to the rule of law in South Africa. In contrast, Ghana has a relatively low crime rate, despite an ineffective and thinly stretched police force.

Accordingly, only one half of South Africans (49 percent) reported feeling secure in their home over the past year, saying they “never” “feared crime” in their own home, as opposed to seven in ten Ghanaians (71 percent). Surveys conducted by the Human Sciences Research Council showed that the proportion who said they felt “safe” or “very safe on most days” fell dramatically from 73 percent in 1994 to 44 percent in 1999.^{xii} While Ghanaians and South Africans are roughly similar in their security against home break-ins (25 and 31 percent respectively said they had had something stolen from their house), the especially violent nature of crime in South Africa is reflected in the fact that twice as many

South Africans (16 percent) as Ghanaians (9 percent) reported being physically attacked in the preceding year.

Not only have most kinds of crime in South Africa -- especially violent crime -- increased substantially since 1994, but the number of prosecutions launched and convictions attained has *declined*.^{xiii} A recent study indicates found that only one in twenty reported crimes are eventually successfully prosecuted.^{xiv} Law enforcement is so hard-pressed to fight ordinary crime that the national police commissioner recently refused the minister of health's request to commit personnel to enforce newly passed anti-smoking legislation. He also said that there were no resources available to enforce new legislation on domestic violence or on banning the use of cell phones by drivers. Significant proportions of police are annually charged for themselves committing crimes.^{xv}

In Ghana, improvements in the rule of law have been reflected in the withdrawal of military personnel from ordinary policing with increasing emphasis on the police as the main guarantor of internal security, especially since 2001. However, the rule of law continues to be subverted in Ghana by weak administration of justice with an ineffective and inadequate police force (approximately 15,000 officers for a population of around 20millionXX) and an inefficient judiciary. This has resulted in persistent vigilantism by private militias that guard land holdings or in the form of mob lynching.

This has led to a declining confidence that authorities are actually willing to enforce the law. One in ten South Africans (13 percent) feel that that it is "not very" or "not at all likely" that "the authorities" would enforce the law if a person like themselves committed a serious crime. One in five says the same things with regards to tax evasion (19 percent) or obtaining household services without paying (22 percent). In contrast, the relevant

proportions of Ghanaians are 4 percent, 7 percent and 10 percent respectively. Thus, while two thirds of Ghanaians (65 percent) say their government is handling crime “fairly” or “very well,” three quarters of South Africans (76 percent) say their is doing so “fairly” or “very badly.” Of greater concern is the possibility that lawlessness may become indelibly linked in the public mind with the democratic transition: 52 percent of Ghanaians say that “safety from crime and violence” is better or much better now than it was under the Rawlings authoritarian regime, while six in ten South Africans (60 percent) say that safety is worse now than during *apartheid*. Moreover, while most Ghanaians (59 percent) felt that state law enforcement capacity had increased since the advent of multi party democracy, a plurality of South Africans (41 percent) say it has *decreased*. As one consequence, South Africa now has one of the largest private security industries in the world.^{xvi}

Another fundamental aspect of the Rule of law is whether officials are encouraged to subvert the law, neglect their duties or dish out unequal treatment in return for cash or other favours. Perhaps equally important to the quality of democracy is that officials are seen to be free from corruption. In Ghana, the Government’s inability to pay lower level civil servants a living wage has created fertile ground for petty corruption. Moreover, it has failed to elaborate and promulgate a credible code of conduct for public officials, or to reform the weak asset declaration regulations for public officials. At present, public officials must declare their assets only once every four years, and do so out of public sight to an agency with limited independence from the Executive branch. Thus, the declarations fail the vital test of easy verifiability and monitoring.

According to Transparency International’s Corruption Perception Index, neither South Africa nor Ghana rate as one of the world’s cleanest governments. Since its inclusion in the CPI, Ghana has received steadily negative ratings ranging between 3.3 to 3.5 out of 10,

placing it between 52nd to 63rd of ranked countries. South Africa has fared better, though hardly positively. Its 1995 and 1996 ratings were 5.6 and 5.7, placing it 23rd internationally, but since then, it has ranged between 4.8 and 5.2 placing it between 32nd to 38th internationally.

Ordinary South Africans are more likely to see corruption amongst elected and government leaders than Ghanaians: one in ten (13 percent) say that “all” or “most” officials in the Presidency are involved in corruption, and one in five (23 percent) say the same about “elected leaders” and one in four (29 percent) say this about “government officials”; in contrast, 9, 13 and 23 percent of Ghanaians give these answers respectively (though it should be noted that consistently higher proportions of Ghanaians also say that they “don’t know” or “haven’t heard enough about them to say”). The situation reverses itself when it comes to officials and institutions closer to the people. One half of Ghanaians say that most or all police (53 percent) and border officials (48 percent) are corrupt, and one third say so about judges and magistrates (35 percent): the figures for South Africa are 38, 28 and 15 percent.

Ghanaians are also consistently more likely to report being a victim of corruption in the past year. More than one in ten say they had to pay a bribe, give a gift or do a favor for a government official in order to cross a border (13 percent), get a service like water, electricity or phones (13 percent), obtain a document or permit (13 percent), avoid a problem with the police (8 percent), or get their child into school (9 percent): the comparable figures for South Africans are 3, 5, 6, 7 and 4 percent.

When asked in an open ended question what they would do “if you were waiting for a government permit or license, but kept encountering delays,” the plurality of both Ghanaians (35 percent) and South Africans (37 percent) responded that would just wait, that

the permit will eventually come. But perhaps reflecting the practices entrenched by a corrupt civil service, 19 percent of Ghanaians volunteered that they would offer a tip or gift to the official in contrast to just 2 percent of South Africans.

On the other hand, the World Bank awards South Africa relatively higher scores in terms of official efforts to control corruption, awarding it a +0.36 in 2002 (in the 68th percentile internationally). Significantly, this has fallen steadily since 1996 when it scored +0.59 (79th percentile). Again, Ghana fared considerably worse, getting a -0.40 (43rd percentile internationally), though this is an improvement over the -0.44 (41st) of 1996. Yet, in contrast to professional evaluations, 63 percent of Ghanaians approve of government efforts in fighting corruption, compared to just 29 percent of South Africans (where 63 percent say it is doing fairly or very badly). Looking backward, most Ghanaians (47 percent) say that multi party democracy has resulted in *less* corruption; in contrast, over half of South Africans (52 percent) say the current government is *more* corrupt than the apartheid government.

Accountability

In the first instance, we understand accountability as the extent to which (1) citizens may “get at” elected representatives who have failed to do what they wanted them to do, have done it badly, or have done it illegally, and either remove them from office or influence them in a way that they change their behaviour. In other words, we see accountability in its strong[est?] strong form of influencing behaviour, rather than simply accountability as requirement as reporting or as answerability. In the second instance, we see accountability as the extent to which various parts of government can “get at” other parts of government who have performed their tasks badly or illegally. Given the towering advantages of Presidents,

especially in African politics, our bias is to concentrate on the extent to which legislators and judges can influence the behaviour of the Executive, and do their own jobs free from undue Executive influence.

Three factors aide the development of a culture of accountability in Ghana. First, its 1992 Constitution limits government powers and provides for an, at least formal separation of powers and checks and balances. In addition, the creation of a Commission on Human Rights and Administrative Justice (CHRAJ) as an independent constitutional body (with a human rights, administrative justice and anti-corruption mandate) has provided a focal point for the promotion of public accountability and fighting corruption.

Second, parliamentary elections -- conducted on a first past the post constituency basis and administered by an increasingly effective and independent Electoral Commission -- are increasingly competitive such that a large number of incumbent office holders have good reason to fear the next election. While the first parliament of the 4th Republic of Ghana was a de facto one party affair with only two independent members, the opposition gained significant strength in the 1996-2000 Parliament controlling 67 out 200 seats, expanding to over 90 seats in the current Parliament. The emergence of a reasonably strong opposition presence in parliament has aided the resurrection of a Parliament with formal powers of parliamentary oversight. This has fostered a more vigorous vetting of ministers and executive appointees to key public offices and helped to make the review of the annual budget less casual. The Public Accounts Committee and the Committee on Government Assurances have become increasingly active in scrutinizing the Auditor General's Report and following up on government promises, thereby beginning to give meaning to public accountability. The Audit Service has also been revived somewhat: the annual audit report is

relatively timely (only about three years in arrears!!) and parliamentary review of the report has become relatively serious.

Finally, the relaxation of censorship and the liberalization of the airwaves have led to the emergence of vibrant media and an increasingly vibrant civil society. While Ghana had no private daily newspapers, or radio or television stations as late as the early 1990s, there are now approximately one dozen newspapers (10 independently-owned) and approximately 70 radio stations (only 2 are state-owned) and 4 television stations (3 are independently owned). They have helped to increase demand for accountability through the risk of exposure and sanction. These three developments have helped to promote public accountability in the 4th Republic in ways that go beyond mere political rhetoric.

However, severe limitations and challenges confront the institutionalization of accountability in Ghana today. First, enduring neo-patrimonial authority relations and its accompanying patronage and corruption remain entrenched.^{xvii} weakening horizontal accountability, particularly legislative oversight of the Executive. Second, parliamentary oversight is also inhibited by the partial constitutional fusion of the Legislature and Executive. And third, vast constitutional powers give the President amply opportunity to make use of these neo-patrimonial authority relations. The 1992 Constitution fosters a “hegemonic presidency” by granting the President near monopoly control over the public purse (as noted above, the Public Account Committee of Parliament has a backlog of Audit Reports to review, with the 1999 Report scheduled for review only in 2003) and vast powers of appointment, placing no ceiling on the number of Ministers or Supreme Courts justices he can appoint. Members of Parliament are highly susceptible to Executive cooptation through blandishments such as appointment to lucrative Ministerial positions or other prebendal positions such as public boards. Presidential patronage and largesse has been

effective in rendering parliament pliable: for example, the Speaker is part of the President's kitchen cabinet and is frequently the beneficiary of scarce overseas medical treatment; ruling party backbenchers are picked appointed as Ministers of state or to other prestigious and lucrative positions in the ever expanding presidential retinue. The self-confidence and independence of important official watchdog and investigative agencies such as the Serious Fraud Office and the Auditor General have been effectively undermined by the practice of keeping heads of key oversight agencies in "acting" positions and without confirmation in perpetuity. Combined with chronic under-resourcing, such agencies are rendered too weak to offer meaningful oversight over the political executive and the president. Thus, Executive dominance is a major factor undermining the effectiveness of the countervailing institutions and processes in Ghana's new democracy. It keeps constitutional bodies and other institutions of democratic governance deficient in independence, credibility, trust, and even legal and technical competent.

As competitive as they have become, serious problems remain with the conduct of elections. The ruling party and President enjoy unequal access to both state and private sector funds (via political extortion) and other crucial election resources such as radio and television exposure and advertising.

The courts remain weak. The continued absence of a constitutional or statutory ceiling on the maximum number of judges that can be appointed to the Supreme Court enables the President to pack the Court with political allies and fuels public perceptions of a lack of independence and corruption in the judiciary. Their financial and operational dependence on the Executive results in a severe lack of resources and administrative weakness.

The ability of the news media to promote accountability has been hampered by huge gaps in levels of professionalism and integrity among practitioners as well as by disturbing but credible reports of emerging practices of shake-downs, blackmail and “pocket book” journalism. And while civil society is enthusiastic about public accountability it is weak, divided and vulnerable to manipulation and cooptation by government. Moreover, civil society organizations, including ones that preach good governance and anti-corruption do not always practice the virtues of transparency, accountability and anti-corruption that they preach. The average civil society body does not adhere to any credible code of conduct or basic rules of corporate governance, and many are veritable personal empires, with no succession plan or meaningful internal accountability, seriously compromising their ability to demand official accountability.

Besides its wide array of classic political and socioeconomic rights, South Africa’s 1996 Constitution contains an, at least formal separation of powers between the President (who, elected by the majority party in Parliament is actually a “suped up” Prime Minister), a popularly elected Parliament and Court. Accountability is also putatively enhanced by the presence of elected Provincial Governments and local municipal councils. There are also a range of supposedly independent watchdog agencies and commissions.

Yet virtually all of this is compromised by three factors: first, the separation of powers is actually a separation of functions, but a fusion of powers between executive and legislative; other than a formal voter of no confidence, few mechanisms exist with which the legislature may check executive action. Second, the electoral system (pure proportional representation with no thresholds) increases the power that that party leaders -- and for the ANC this means the President and his Ministers -- has over individual legislators. It also severely limits the ability of voters to hold any single person in government accountable for

their actions. Third, Constitutional provisions eject from Parliament any member that leaves or is forced out of a political party; this both makes legislators even more reliant on their party bosses, as well as further reduces any incentive for MPs to represent public opinions running counter to the party line. Any rigorous parliamentary oversight by majority-party MPs places them in the difficult position of criticizing senior party leaders, who could eject them from the party and hence from Parliament. Any doubts that the governing party would resort to such measures were removed in 1997 when it jettisoned one of its most popular figures, Bantu Holomisa, because he publicly accused a sitting cabinet minister and former Bantustan ruler of apartheid-era corruption. Indeed, imposing party discipline has become an increasing preoccupation. At a 2000 national party meeting, Secretary-General Kgalema Motlanthe reminded members that “the principles of democratic centralism still guided party structures.” New ANC members must promise to combat “any tendency toward disruption or factionalism.”^{xviii} This ability to substitute loyal MPs for disloyal ones also potentially enables the governing party to preclude any vote of no confidence. Taken together, these factors simultaneously place severe limits on the ability of the legislature or other institutions to hold the Executive to account horizontally, and the ability of voters to hold anyone to account vertically.

ANC behavior demonstrates that all of this is more than a theoretical possibility. On several occasions, it has invoked party loyalty to prevent Parliament from conducting effective oversight of executive action. In 1996, party leaders reportedly ordered members of the Portfolio Committee on Health to refrain from any tough questioning of the health minister during hearings on the unauthorized expenditure of R14 million for a dubious HIV/AIDS education musical called *Sarafina II*.^{xix} And just recently, President Mbeki reportedly blocked internal party demands that Majority Whip Tony Yengeni appear before

Parliament's Ethics Committee to explain why he received—but did not report—a discounted luxury 4x4 from a European defense company that was bidding for an arms subcontract. The most profound crisis in executive-legislative relations, however, occurred in relation to the controversial R29.9 billion arms deal of 1999. Parliament's Standing Committee on Public Accounts (SCOPA) (which traditionally operates on non partisan lines and is headed by an Opposition MP) launched an inquiry, which was to include the Heath Special Investigating Unit, and the entire Parliament unanimously adopted a resolution in support of the enquiry. Senior Government leaders subsequently attacked the investigation and were able to replace the leader of the ANC delegation in SCOPA and pressure committee members into distancing themselves from the inclusion of the SIU. This indicated clearly, that while Parliament may continue to play an active role in developing and amending legislation in areas of little strategic interest to the Executive, when push comes to shove on an issue that does matter, the Executive will always prevail.

Yet a Schumpeterian, minimalist theory of democracy would argue that, even with this inadequate constitutional framework, sufficient public influence over government can still be secured simply by holding regular free and fair elections: the threat of the next election will force the ruling party to “anticipate the voters’ reactions” to current policy decisions and thus brings about an acceptable level of popular control and accountability. But two factors are important here. First, the nature of the electoral system means that no single individual has to worry about the next election, especially party leaders comfortably ensconced at the top of the election list, only the legal fiction of the political party is held accountable.

Second, the electoral dominance of the ANC limits any real reason to be concerned about the next election. What is in theory a multiparty system is in fact completely

dominated by one party. The ruling African National Congress (ANC) won 66 percent of the vote in 2000, up 4 percent from 1994, just one seat shy of the two-thirds majority necessary to amend the Constitution unilaterally (a threshold they finally crossed as the result of the amendment to allow floor-crossing). It is the majority party in seven of the nine provincial governments — enjoying overwhelming dominance in at least five—and has decisive control in five of the country’s six largest city governments. Part of this dominance is due to positive voter evaluations of its performance, but part of it is also thanks to the substantial number of dissatisfied black voters who do not identify with the ANC yet have thoroughly negative views of virtually all other parties.^{xx} For all intents and purposes, the ANC has few reasons to worry about future voter reactions to its current decisions. (The proportional cabinet, a feature of the Interim Constitution, did serve to ensure a higher degree of accountability even in a context of one party dominance because a dip in support for the governing party, from 65 to 60 percent, would mean a loss of one Minister and possibly a few Deputy Minister posts, causing several senior party officials to sit up and take notice).

Retreating even farther, a “responsible party” theory of electoral competition might reason that dominant political parties can still be held accountable by their rank and file, either in the form of nominations to election lists, or First of all, there has been a trend toward centralism within the ANC. National party structures have increasingly extended their powers at the provincial and local levels, as candidates for provincial premierships and local mayoralities are now nominated by a central committee rather than by provincial or local branches. Several provincial party structures have simply been dissolved and reformed by the national party, ostensibly because of “disunity” or “ill discipline,” but critics have viewed these actions as attempts to head off grassroots movements critical of the president.

The national party machinery has also deposed several provincial premiers, some of whom have been popular leaders widely seen as future challengers for party leadership. Finally, the interval between party conferences has been extended from three years to five, thereby limiting opportunities for the rank and file to elect senior party organs.

Regardless, of the very different electoral situations, the World Bank places South Africa sits among the top third of all countries in terms of what it calls “voice and accountability.” In 2002, it received a +0.73 placing it in the 71st percentile across the world (though the Bank does appears to have detected a sharp drop off of accountability since it awarded South Africa a +1.05 (80th) in 2000. Again, Ghana scores substantially lower, with a +0.01 (51st percentile), though this is a substantial gain over where it was in 1996 with a -0.44 (41st percentile).

What do the people have to say about their ability to hold democratically leaders accountable and make them respond to their preferences? Available survey data yield two questions about the freeness and fairness of elections, and whether voting can make a difference. Looking back at their 1999 elections, one in five South Africans told Afrobarometer interviewers in the 2000 Round 1 survey that the 1999 election was either “free and fair, but with major problems” (14 percent) or “not free or fair” (6 percent). Almost four in ten Ghanaians said the XX election was either “somewhat dishonest” (19 percent) or “very dishonest” (19 percent). And to another question asked in 1999 in Ghana, two thirds (68 percent) agreed that “We can use our power as voters to choose leaders who will help us improve our lives,” and one third (32 percent) felt that “No matter who we vote for, things will not get any better in the future.” In a 2000 South Africa survey, just less than two thirds (62 percent) felt that “the way you vote could make things better in the future.” Whereas 36 percent said “No matter how you vote, it wont make things any better in the

future.” [Similar results, but could be due to different reasons: ANC voters happy, other not, whereas in Ghana, it could be equal amounts across partisan decide--check]

Responsiveness

The line between accountability and responsiveness is a thin one. If voters have no ability to call their leaders to account, those leaders have no incentive (apart from high moral principles) to be particularly responsive to public opinion. Responsiveness between elections in any democratic society depends on elected representatives seeking out the opinions and preferences of their constituents, and at least some critical core of citizens communicating those preferences to representatives.

Regardless of how it has been measured, Afrobarometer results demonstrate extremely low levels of contact between ordinary South Africans and their elected representatives. A key prerequisite to contact is knowing who your MP is: in 1999-2000, 49 percent of all Ghanaian respondents were able to provide the correct name of their Member of Parliament. In South Africa, less than one in ten could even hazard a guess let alone give the name of an MP of any party that has been assigned to their area.

In 2000, just 6 percent said they had contacted a government or party official in the previous year to give them their views, a figure which was the lowest in southern Africa. Double the proportion of Ghanaians had done so (11 percent). When we asked South Africans in an open ended question who it was they contacted, just 0.2 percent -- that is, only four of the 2,200 respondents -- recalled that they had made contact with a sitting member of Parliament. Absolutely no one in the sample said he had attended any hearing or meeting organized by Parliament or by an MP.

In 2002, people were prompted about whether they made contact with a range of specific institutions. Measured in this way, 4 percent of South Africans said they had contacted a member of Parliament in the past year “for help to solve a problem or to give them your views.” This apparent increase is probably almost wholly due to the change in question format; the important fact remains that using this question, South African rates of contact are still low (three times as low as in Ghana: 12 percent). Turning to local government, where South Africa does have an important element of constituency representation, equal proportions of South Africans and Ghanaians (16 and 15 percent respectively had contacted a local councilors in the preceding year). Though the numbers are not directly comparable, South Africa’s contact rates with local councilors appear to have risen sharply since the introduction of a strong element of constituency representation in local government in 2000.

This passivity cannot be traced to a lack of information, for South Africans have very high rates of getting news from radio, television, and newspaper. Neither can it be traced to poverty, since South Africa’s much poorer neighbors tend to have far higher rates of contact. It is not a result of cultural dispositions, since other questions demonstrate that South Africans are most likely of all respondents in the region to have taken part in protest behavior in the past.

Rather, it is the result of South Africa’s type of electoral system which both limits the ability of citizens to know which MP they must contact let alone find that MP, as well as (for reasons outlined above) reduces the electoral incentives for MPs to listen to public opinion. In fact, it introduces strong disincentives to do so because canvassing the views of your voters might introduce conflict between constituency demands and the party line: the best way to avoid such cognitive dissonance is simply to avoid talking to voters. South Africans

do not contact parliamentarians or attend parliamentary “outreach” hearings at least in part because they do not know who their parliamentarians are, and because MPs have no incentives to reach out to people and listen to their opinions.

The strong impact of electoral systems is seen in Round 1 Afrobarometer results from southern Africa. In Namibia and South Africa, the two countries with proportional representation, the rate of contact with an MP or attendance at a parliamentary meeting or hearing was 1 percent and 0.2 percent, respectively. Among the five countries with first-past-the-post systems, contact rates are 7 percent in Zimbabwe and Zambia and 5 percent in Malawi and Lesotho. (Botswana was the “outlier” with a contact rate of 2 percent.). While all these figures may sound low, there is a huge difference between one out of every ten or 20 people in each community having had contact with their elected national representatives and one out of every 100 or 200. It can also be seen in Round 2 results where the countries with proportional representation systems for which data is now available (South Africa and Mozambique) both have contact rates of 4 percent, where the average contact rate for countries with constituency systems (Ghana, Mali, Uganda, Cabo Verde and Senegal) is almost three times as high, at 11 percent.

While large majorities in both South African and Ghana hold pessimistic views about their elected leaders, South African are especially caustic. When asked “How much of the time do you think elected leaders, like Parliamentarians, or local councilors, try their best to listen to what people like you have to say,” one fifth (20 percent) of Ghanaians offer a positive assessment (“Always / Most of the time”) while three quarters (73 percent) give a negative answer (“Never / Some of the time”): the balance was even more in the negative direction with a 11:86 percent ratio. Almost identical results were gathered by a question

that asked “how much of the time” elected leaders “look after the interests of people like you.”^{xxi}

This has produced in South Africa a political system that on many key issues is extremely out of touch with both the organized and unorganized electorate. With regard to economic restructuring, the ANC in 1996 veered away from its Reconstruction and Development Program, on which it has based its 1994 election campaign, and imposed a neo liberal “Growth, Employment and Reconstruction” (GEAR) program—over the strong objections of its alliance partners, the South African Communist Party and the South African Congress of Trade Unions, and endured in the face of multiple nationwide strikes. On a range of other fundamental issues, survey research has demonstrated wide gaps between ANC policies and a public that favors capital punishment, opposes abortion, has little use for traditional leaders, wants a strong constituency element in the electoral system, and wants the government to focus its attention on job creation and fighting crime.

In contrast, the last few years have seen significant improvements in government responsiveness. The NNP administration has enjoyed frequent praise in the local media as a “listening government,” especially after it backed away from a controversial attempt to acquire a \$1 billion loan from a dubious overseas source, and also decided not to privatize Ghana’s retail banking outfit, the Ghana Commercial Bank. Political leaders and state officials are increasingly accessible to the news media through occasional Presidential and regular Ministerial “meet the press” type of arrangements. Government spokespersons and public officials are readily available to answer questions on radio and television talk-shows.

At the same time, both the Rawlings and Kufuor administrations have been highly unresponsive to intense popular demands for employment, education, health care, poverty

reduction and other basic needs (despite an official embrace of IFI poverty reduction). Unimaginative responses to pressing micro economic challenges such as domestic revenue mobilization or the rationalization of public service salaries, and restructuring debt-ridden and non-strategic state-owned enterprises such as Ghana Airways indicates weak political responsiveness. Furthermore, news media interrogations of public officials are often superficial.

Given the major transformations in political power embodied in the transition from white minority rule to an open democracy, it is surprising that just one half of South Africans (50 percent) say that “the ability of ordinary people to influence what government does” is better or much better now than it was during apartheid. Almost six in ten Ghanaians (58 percent) think that they are better able to influence government now than under Rawlings’ military regime.

Freedom and Rights

Ghana’s return to democratic constitutional rule under the 1992 Constitution has brought steady improvements in the enjoyment of freedoms and rights by Ghanaians. Reflecting the application of *habeas corpus*, the cells of the notorious internal security agency, the Bureau of National Investigations, were empty by 1994. Extra-judiciary public tribunals have also been curtailed and brought under the jurisdiction of the Appellate Courts. After initial hesitations and obstructions, freedom of assembly has been fully restored. Following a Supreme Court ruling, the legal requirement to notify the police prior to a public demonstration or protest is now widely interpreted only to mean serving notice and that the burden lies with the police to provide reasonable grounds to prevent the demonstration.

Increasing right to association is also reflected the proliferation of religious and voluntary civil society organizations, as well as a multiplicity of political parties.

Expanding freedoms of expression and speech are reflected in the decriminalization of speech, and the opening of the airwaves and print media, all of which have taken on a greater velocity speed since 2001. Although not a major problem under the previous autocratic regimes, Ghana now enjoys a nearly absolute freedom of religion and conscience, reflected in a proliferation of religious bodies. In terms of gender, longstanding offensive practices of Ghanaian culture such as female genital mutilation and slavery of vestal virgins (TROKOSI) have been officially outlawed since the late 1990s and the CHRAJ and other civil society human rights bodies have waged sustained campaigns against such practices.

Notwithstanding constitutional guarantees, the advance of political freedom and civil liberties was slowed by the reluctant democrats dominating the Rawlings-NDC government, who often attempted to intimidate the courts whenever it lost a case, or delayed the implementation of constitutional provisions they saw as inconvenient or inexpedient, such as opening up the airwaves until a 1996 court order forced them to do so, or insisting on celebrating the anniversary of the second Rawlings coup as a public holiday until the Supreme Courts overturned it. On several occasions, the government has failed to comply with *habeas corpus*, especially in matters affecting President Rawlings, his family or close associates: in one particularly severe example, the son of the daughter of President Rawlings was tortured in detention for several days at the presidential office at Christianborg Castle in 2000. This shallow commitment to human rights partly reflects the persistence of traditional cultural values, values that are not necessarily liberal and do not foster popular sensitivity to human rights.

In addition, severe resource constraints and political intimidation hobble institutions established to monitor abuses and foster [adherence] such as the Judiciary, CHRAJ and Legal Aid Board. And generally weak access to formal justice as well as ineffective policing and insensitivity toward human rights seriously detracts from the actual enjoyment of formal rights. Elites and urban dwellers are far more likely to enjoy the protection of these rights than the poor, or those living in rural areas. Inadequate access to justice in rural areas allows traditional rulers to compel citizens to seek justice in the traditional realm and the chief's palace, where liberal values are far less likely to apply. Limited access to formal justice is also reflected in occasional mob lynching and vigilante justice in poorer neighbourhoods and urban centres. Prison conditions remain atrociously inhuman, despite campaigns by the CHRAJ and others on behalf of prisoners and against mandatory custodial sentences for frivolous offences.

On paper, South Africans are guaranteed a wide range of political rights and freedoms (as well as socio-economic ones) by their Constitution.

As mentioned at the beginning of this article, both South Africa and Ghana are rated as “free” by Freedom House. South Africans are said to enjoy the highest level of political rights possible (1) but have some notable limitations on civil liberties, receiving a (2). Ghana gets a “2” for political rights and a “3” for civil liberties. Both countries are also called “free” in terms of press freedom, receiving similar overall scores. In Ghana's case, this is a sharp and recent advancement, **[caused mainly by Kufuor's reforms / abandonment of old legislation ...]**

Yet more than one third of citizens in both countries (34 percent in South Africa and 37 percent in Ghana) perceive significant limitations on their own freedom of speech, saying

that “people have to be careful of what they say about politics” “often” or “always.” At the same time, reminiscent of Richard Rose’s formulation of the Churchill Hypothesis, large proportions in both countries see big improvements in the “freedom to say what you think” over the *ancien* regime: 69 percent in Ghana and 76 percent in South Africa say that that it is “better” or “much better.”

Turning to other political rights, a consistent three quarters of Ghanaians say that they are now freer to “join any political organization you want” (69 percent), “to choose who to vote for without feeling pressured” (68 percent), and “freedom from being arrested even when you are innocent” (69 percent). Even larger majorities of South Africans see improvements since *apartheid* in freedom of speech (76 percent), association (80 percent) and voting (77 percent), but are notably less positive when it comes to freedom for unjust arrest (59 percent say things have improved).

Equality

Both Ghanaians and South Africans enjoy a constitutionally guaranteed right to equality. In Ghana, the Increasing sensitivity to gender equality and representation has been reflected in the creation of a separate Ministry for Women and Children’s Affairs and the appointment of a [deputy] minister in charge of girl’s education in the Ministry of Education, as well as the announcement by the current government to reserve fifty percent of appointees to District Assemblies for women.

Despite these formal guarantees and positive developments, Ghanaians face enduring class inequalities with significant income gaps. Disproportionate numbers of women continue to live in poverty. These income gaps result in uneven access to rights. In rural areas, middle class Ghanaians enjoy more political rights than the poor, who are far more

likely to be victims of police extortion and brutality. Women are poorly represented in public life and elective positions (there are only 20 women currently serving in Parliament). Poor women lack access to basic state services, and widows face persistent discrimination in terms of inheritance and widowhood rites.

In South Africa, the principal source of political inequality lies in massive economic inequality, with the wealthy able to buy unequal amounts of political influence, and the poor facing huge obstacles to participating effectively in democratic process. Public and private affirmative action initiatives in education, business ownership and hiring have created a sizeable black middle class^{xxii} and the extension of access to basic necessities such as housing, health care, sewage and electricity has reached historic proportions since 1994.^{xxiii} Yet the country's sluggish economy has actually shed 500,000 **formal** jobs over this period and deprived hundreds of thousands of households of the income needed to make ends meet. Broadly defined, unemployment now stands at 36 percent.^{xxiv} Interracial inequalities have been reduced as a result of increasing black incomes and the redistributive effects of government spending, **but inequality within all race groups has increased. Among blacks the top one-fifth of all households have made impressive strides while the bottom two-fifths have moved backwards.**^{xxv}

Lack of regulation of party funding and campaign donations means wealth can buy extraordinary amounts of influence with the governing party. Inadequate of state legal aid means that many poor people still appear in court without representation, or even without proper translation so that they can follow the case in their own language.

Yet regardless of the country's staggering levels of economic inequality, just one quarter (26 percent) say they are personally worse off than other South Africans (compared

to 38 percent of Ghanaians). However, when asked to compare the economic fortunes of their self-defined identity group against other groups, almost four in ten (39 percent) say they are worse off (40 percent in Ghana). Significant minorities in Ghana (28 percent) and South Africa (35 percent) feel that people are “treated unequally under the law” “often” or “always.” When asked more directly about their self-defined identity group, South Africans (27 percent) are significantly more likely to say that their group is “treated unfairly by the government” “often” or “always” than are Ghanaians (15 percent). Finally, when asked to compare political equality under multi party democracy with the *ancien* regime, a bare majority of Ghanaians (54 percent) saw an improvement in “equal and fair treatment of all people by government,” 24 percent saw no change, and 12 percent felt things were worse. In South Africa, the balance of opinion is significantly more negative: 48 percent say equality has increased, 19 percent see no change, and 29 percent say that it has gotten worse.

The Overall Quality of Democracy Revisited

1. Apply Shin and Chu’s test of electoral democracy, liberal democracy,
2. We note that the entire focus of this approach is on the “supply” side, in terms of how well the design of the system, its institutions, and its incumbents follow the law, are accountable and responsive to voters, and uphold their rights and equality. However the quality of democracy in any country is also a function of the “demand” side: the extent to which citizens are willing to demand greater democracy and defend democracy against either a rapid overthrow or gradual erosion. – Detail extent of public support for democracy / opposition to authoritarian rule.

Explaining the Quality of Democracy

1. Few credible analysts would argue that either South Africa or Ghana does not qualify as a democracy. Its elections are now free and fair and there are few limitations on political rights or civil liberties. Yet among the global family of democracies, neither can yet be said to provide its citizens with a high quality of democracy (and in neither country, can the continuation of democracy be taken for granted: in other words, it is unconsolidated). Thus, both cases attest to the need for political science and democracy

watchdogs to develop sharper criteria with which to discriminate amongst functioning democracies. Given the evidence reviewed, one wonders whether it makes any sense at all to award these countries the same label (“liberal democracy”) given to places like Canada, Switzerland or Germany.

2. The levels of democracy that we do see in Ghana and South Africa owe their existence to the forces that drove the Third Wave of Democracy throughout Africa:
 - a. groups of citizens and civil society organizations who drove the initial protests and opposition against the *ancien* authoritarian regime and who now constitute the core of internal democracy advocates,
 - b. a governing party that may not necessarily be deeply committed to democratic norms but is at least open to and tolerant of them,
 - c. and an evolving international norm that uses minimal democratic criteria as prerequisites to international financial and political standing.
3. It is far more useful to attempt to identify the factors that limit the quality of democracy in each country.
4. In Ghana, these dynamics can be traced to six factors:
 - a. a residual authoritarian political culture
 - b. the persistence of neo-patrimonialism
 - c. flaws in constitutional design, especially the fusion of Executive and Legislative that reinforce Executive hegemony;
 - d. civic incompetence leading to low expectations of democratic performance and a high tolerance of official wrongdoing;
 - e. under resourced institutions;
 - f. personality.
5. In South Africa, we locate limitations to an enhanced quality of democracy emanating from:
 - a. a flawed constitution;
 - i. An internationally praised constitutional framework designed to facilitate multi-party participation and advance individual rights has not enabled accountability of the executive to parliament, of individual MPs to Parliament itself, or of the overall political system to the voters. An elite centred Constitutional design that encourages elected representatives to neglect citizen opinions, and provides few incentives for citizens to participate between elections.
 - ii. two decades of attention to finding the right process and institutional arrangements that could accommodate the country’s political leaders across the spectrum; these arrangements not always conducive, sometimes antithetical to the demands of ensuring a system that is accountable to voters and responds to their needs.

- iii. SA's constitutional designers have long suffered from the "Field of Dreams" theory of institutional design: "Build it and they will come." Based on assumption that people participate because they have an inherent civic need to participate, never considered the need to create incentives for participation.
- b. one party dominance that further entrenches these tendencies / lack of any significant level of trust in opposition parties
- c. under demanding citizens;
- d. personality / arrogance
 - i. ANC as "sole representative" / guardian of the will of "the people."
 - ii. Mbeki
 - 1. stance on HIV/AIDS.
 - 2. "the plot" (Phosa / Sexwale / Ramaphosa)^{xxvi}

Deepening the Quality of Democracy

Ghana

- 1. continued electoral competitiveness
- 2. constitutional change

South Africa

- 1. more realistic view of what drives citizen behaviour
 - a. requires institutions that encourage meaningful participation. South African constitutional designers need to rethink their assumptions about how institutions interact with ordinary people, and they must abandon the view (implicit in the present constitution) that citizen participation emanates from a sense of duty rather than from incentives and self-interest.
- 2. constitutional change
 - a. Therefore, public participation in democratic government should be encouraged not through special processes or forums but by giving citizens reasons to engage with their elected representatives nationally, provincially, and locally. This requires legislators and councilors who can listen to identifiable constituencies and be persuaded by them, and who can in turn act according to the wishes of the voters.

- b. Electoral system change: Greater popular mandate for MPs allow them to act as counterforce to party leaders, provide incentive for MPs to better represent citizens
 - c. amend the Constitution so that MPs have to give up their seats only if they *choose* to leave their political party, not if they are forced out.
- 3. shift the focus onto problems of citizenship / building a grassroots culture of citizenship to go along with culture of elite accommodation. This requires renewed emphasis on civic education by schools and civil society organizations, in order to teach citizens the intrinsic value of democracy and equip them with the resources necessary to participate more fully in the political process.
- 4. legitimate political alternatives

Prospects for Change

- 1. equilibrium model as guide to future
- 2. missed window for electoral reform in South Africa, though still open, if slightly.

Endnotes

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- ⁱ Mauritius and Botswana would be the other candidates.
- ⁱⁱ See Klug? Sunnstein?
- ⁱⁱⁱ Larry Diamond, "Introduction," in Larry Diamond and Marc F. Plattner, eds., *Democratization In Africa* (Baltimore: Johns Hopkins University Press, 1999), ix–xxvi.
- ^{iv} These results *exclude* those who said that they "don't know" or did not understand the question. In Round 1, national research partners decided whether to present the word "democracy" in English, or a slightly indigenized version of the word (e.g. "edemocracy" in Xhosa), or a wholly indigenous translation. Beside Botswana, Ghana was the only country where national researchers decided that a wholly indigenous version would be better received. In Round 2, however, it was decided that for consistency sake, the word "democracy" would always be put in English. This has resulted in slightly higher levels of "don't know" in most countries, but far higher levels of Ghana (and Botswana): 24 percent said they did not understand the question about how democratic their country is, and another 17 percent said they did not know (in contrast to just XX percent in the 1999 Round 1 survey); 36 percent said they did not know how satisfied they were with democracy (compared to just XX percent in 1999).
- ^v Across 12 countries in Round 1, popular perceptions of the extent of democracy in their own countries correlated with Freedom House ratings at .XX. The two major exceptions were South Africans, who were far more pessimistic than the experts, and Zambians, who were more optimistic.
- ^{vi} See Michael Bratton, Robert Mattes & E. Gyhimah-Boadi, *Learning About Reform: People, Democracy and Markets in Africa* (forthcoming).
- ^{vii} James Gibson & Amanda Gowus, "South Africans Attitudes Towrd the Rule of Law," *Internatinal Social Science Journal* XXXX.
- ^{viii} Hutchful 2001; Baffour Agyeman Duah, 2002.
- ^{ix} Steven Friedman *Business Day*.
- ^x Patrick Laurence, "Debate These Changes One at a Time," *Focus* 23 (September 2001): 13–15.
- ^{xi} Nicoli Nattrass, *Ethics, Economics and AIDS Policy in South Africa*, CSSR Working Paper No. 1 (Cape Town: Centre for Social Science Research, University of Cape Town, August 2001); Howard Barrell and Jaspreet Kandra, "Shocking Aids Report Leaked," *Mail and Guardian* (Johannesburg), 5–11 October 2001, 2. **For a detailed review of Mbeki's statements on the disease, see Drew Forrest, "Behind the Smokescreen," *Weekly Mail & Guardian* (Johannesburg) 26 October to 1 November 2001, p. 25.**
- ^{xii} Nedbank/ISSS, "Criminal Justice Monitor," *Crime Index* 4/1 (January–February 2000).
- ^{xiii} David Bruce, "Suspect Crime Statistics Cannot Obscure Grim Truth," *Sunday Independent (Johannesburg)*, 10 June 2001, 9; Michael Dynes, "South Africa's Huge Steps on Long Walk to Prosperity," *Sunday Independent (Johannesburg)*, 26 August 2001, 4; S. Pedrag, "Crime out of Control in South Africa," *MSNBC News*, 29 May 2000; *The Economist*, 24 February 2001, cited in John Daniel, "Discussion Paper on Socio-Economic Issues."
- ^{xiv} South African Law Commission XXXX.
- ^{xv} Mark Shaw, XXXX
- ^{xvi} Mark Shaw XXXXX

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- ^{xvii} Oelbaum and Sandbrook, 1999; Gyimah, 2003.
- ^{xviii} Cited in Tom Lodge, "Romantic Aspiration," *Mail and Guardian* (Johannesburg), 10–16 August 2001, 17.
- ^{xix} Richard Calland, ed., *The First Five Years: A Review of South Africa's Democratic Parliament* (Cape Town: Idasa, 1999), 36.
- ^{xx} Robert Mattes and Jessica Piombo, "Opposition Parties and the Voters in South Africa's 1999 General Election," *Democratization* 8 (Autumn 2001): 101–28.
- ^{xxi} It appears that this formulation generates especially negative replies. In 2000, a differently worded question which asked people [how interested differing officials were in what they or people like themselves thought], found that 46 percent of South Africans felt that the president was interested in their opinions; 48 percent and 42 percent, respectively, felt similarly toward Parliament; and only 33 and 31 percent said so about their local governments.
- ^{xxii} Andrew Whiteford and Dirk San Deventer, *Winners and Losers: South Africa's Changing Income Distribution In the 1990s* (Johannesburg: WEFA, 1999), 25–26.
- ^{xxiii} Reg Rumney, "A Question of Perceptions," *Mail and Guardian* (Johannesburg), 3–9 August 2001, 15; Howard Barrell, "Back to the Future: Renaissance and South African Domestic Policy," *African Security Review* 9/1 (2000): 87; **"Housing: A Good News Story,"** *RDP Monitor* 7/5 (May 2001), p. 2; **"Electricity: Seeing Clearly Now,"** *RDP Monitor* 6/7 (July 2000), p. 2; and Josey Ballenger, "Troubled School Feeding Plan Is Still Essential," *Reconstruct* 11 October 1998, p. 1.
- ^{xxiv} John Daniel, "Discussion Paper on Socio-Economic Issues," Presented to U.S. Department of State, Bureau of Intelligence and Research seminar on "South Africa: Future of Democratization," (Washington D.C.: Meridian International Center, 5 April 2001); Jonathan Katzenellenbogen, "Jobless Figures Remain Over 25%," *Business Day* (Johannesburg), 27 January 2001, 3.
- ^{xxv} Andrew Whiteford and Dirk San Deventer, *Winners and Losers*, 11–19; **Debbie Budlender, "Earnings Inequality In South Africa, 1995-1998" *Measuring Poverty In South Africa* (Pretoria: Statistics South Africa, 2000).**
- ^{xxvi} Barry Streek, "Tshwete Was 'Wrong' to Name Plotters, Says Mbeki," *Mail and Guardian* (Johannesburg), 1–7 June 2001, 1.