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A Debate on the Political Culture in (Southern) African States

We have previously in *Africa Spectrum* initiated debates on various issues, such as land rights and the future of anthropology. We would hereby like to invite contributions on the political culture in (Southern) African states. At the end of July 2013 the elections in Zimbabwe provoked controversial analyses and exchanges (see also the article by Cornelias Ncube in *Africa Spectrum* 3/2013, <http://journals.sub.uni-hamburg.de/giga/afsp/article/view/678/676>). Since then, internationally supervised elections were held in Madagascar, and in 2014 elections will also be held in South Africa, Malawi, Mozambique and Namibia. In this issue, we offer Roger Southall and David Moore the opportunity to share their critical reflections and we invite contributions directly commenting on and adding to their analyses (not to exceed 3,000 words). We hope that this will allow for a productive exchange about the nature of democracies in African states over the course of our next few issues. Reflections are not limited to a regional focus on Southern Africa and should be submitted electronically at <http://journals.giga-hamburg.de/index.php/afsp/index>.

The editors

Threats to Constitutionalism by Liberation Movements in Southern Africa

Roger Southall

Keywords: Southern Africa, Namibia, South Africa, Zimbabwe, rule systems, constitutionalism, political culture, independence movements/ liberation movements

Roger Southall is Professor Emeritus, Department of Sociology, University of the Witwatersrand. During 2013, when he presented this paper as a keynote to the Stellenbosch Annual Seminar on Constitutionalism in Africa (4–6 September), he was the Van Zyl Slabbert Visiting Professor in Politics and Sociology, University of Cape Town.
E-mail: <roger.southall@wits.ac.za>

On 4 July 2013, the Constitutional Court of Zimbabwe rejected an application by Prime Minister Morgan Tsvangirai and Minister of Industry Welshman Ncube that sought to delay an election which had been unilaterally scheduled for 31 July by President Robert Mugabe. Tsvangirai

and Ncube were objecting to an earlier application made by Minister of Justice Patrick Chinamasa, in which the latter, an appointee of Mugabe's Zimbabwe African National Union – Patriotic Front (ZANU-PF) had formally appealed to the court to postpone the election until August 14. The petition for postponement had been made to honour a request by the Southern African Development Community (SADC) that the election be delayed in order to allow the government to implement reforms required by the Global Political Agreement (GPA) of 2008 to provide for free and fair elections. Tsvangirai and Ncube, the leaders of the majority and minority wings of the Movement for Democratic Change (MDC), respectively, and partners in a coalition with ZANU-PF formed under the GPA, argued that the elections were supposed to be conducted under new electoral laws in line with provisions of a recently drawn-up constitution and that Mugabe had acted unconstitutionally by not consulting them in proclaiming the election date. However, Chinamasa indicated that the President had asked for the date to be postponed in order to adhere to the request made by the SADC, and that ZANU-PF did not oppose 31 July as the day for the contest. In short, the MDC leaders were claiming that Chinamasa's application had been designed to fail. Suffice it to say here that the Constitutional Court gave no reasons when it ordered the election to go ahead on 31 July. Both wings of the MDC caved, and indicated that they would abide by the decision. Subsequently, they proceeded to a massive defeat in an electoral contest whose terms were dictated by ZANU-PF (Southall 2013; Ncube 2013).

This sorry tale tells us much about the state of constitutionalism in southern Africa. Formally, the supremacy of the Constitutional Court in Zimbabwe was upheld, even while it was endorsing a proclamation of the election date by Mugabe which was of dubious legality, and in outright defiance of the letter and substance of the GPA. In turn, the MDC chose to comply with the judgement, stating that it had little choice in the matter, even while a decision not to participate in the election would have deprived any contest held on 31 July of political legitimacy. Meanwhile, the SADC rolled over, allowed Mugabe to have his way, and implied that its hands were tied by its commitment to constitutionality – despite the fact that the "constitutionalism" involved in this case was thoroughly phoney.

On paper, Zimbabwe is a constitutional state: Laws inconsistent with the Constitution are unconstitutional (Linington 2012). In practice, while legal forms prevail, the substance of constitutionalism has been subverted by ZANU-PF's manipulation of the judiciary, and the appointment to the Constitutional Court of judges who are biased in fa-

vour of the long-ruling party (Southall 2013: 148-150). ZANU-PF knows this, the MDC knows this, and the SADC knows this, but the pretence that the incumbent judiciary is neutral goes on. In short, in 2013 no one in politically salient quarters had the gumption to raise a fundamental objection to how constitutionalism in Zimbabwe had been hollowed out, or to how, if the election were to proceed on terms dictated by ZANU-PF, the hard work that had gone into the drawing up of a new constitution would, in almost all certainty, be thrown away.

In what follows, I argue that this unhappy state of affairs in Zimbabwe is reflective of wider threats to constitutionalism which have greater or lesser degrees of salience across Southern Africa.

Politics, Economics and Constitutionalism in Southern Africa: A Basis for Instability?

The route to democracy in Southern Africa has been an immensely painful one involving war and political struggle against colonial and white minority rule, ruthlessly and brutally maintained by regimes which, until the collapse of the Soviet Union in the late 1980s, were backed by major Western powers. The end of white rule was foreshadowed by the abrupt withdrawal from Angola and Mozambique of a bankrupt, fascist-colonial regime in Portugal in 1975, yet it took another two and a half decades before – via the victories of liberation forces in Zimbabwe in 1980 and Namibia in 1989 – South Africa acceded to an internally negotiated settlement (effectively, between the African National Congress [ANC] and the National Party) in 1994. Yet the triumphs of the liberation movements, whilst real, were reflective of a regional stalemate. In essence, whilst the liberation movements gained political power, the pivotal economic power remained in white hands.

Whilst it is true that in the Zimbabwean case, a further year or two of liberation war would have brought the defeat of the illegal settler regime, this would have destroyed not only Zimbabwe's economic infrastructure, but also those of its black-ruled neighbouring states. Consequently, the Western powers, South Africa and other African regional leaders pressured Mugabe to accede to a compromise. Likewise in Namibia, pressures exerted by the West upon the South West Africa People's Organisation (SWAPO) and the South African government (whose rule in the territory had internationally been declared illegal) resulted in the drawing up of a constitution and accession to independence. In contrast, although in the post-Cold War era the South African minority regime was subject to major pressures to reach an agreement with the

ANC, the democratic settlement of 1994 resulted not just from the prevailing politico-military stalemate, but also from genuine negotiations between the major contending forces.

All three settlements resulted in constitutions constructed around the principal tenets of liberal constitutionalism: bills of rights, (inclusive of property rights, albeit subject to the right of the state to compulsorily purchase designated property according to due procedures); provisions for democratic elections; separations of powers between legislatures, executives and judiciaries; and the independence of judiciaries. Yet, while the constitutional settlements brought a welcome end to the regional wars, the basis these agreements provided for constitutionalism and democracy was more uncertain. The argument here can be reduced to three key dimensions:

First, as Van Zyl Slabbert (1992) noted in the early 1990s, the constitutional settlements in Zimbabwe and Namibia were externally imposed. To that extent, it was unlikely that they had as sound a basis as he reckoned would be the case in South Africa, where the negotiations taking place at that time were being conducted only between internally contending parties. Van Zyl Slabbert's argument has yet to be proven in Namibia, where threats to constitutionalism have been hitherto largely contained. By contrast, he has been proven woefully right in Zimbabwe, whose independence constitution resulted from a toxic mix of a forced agreement between a profoundly racist and authoritarian regime and a reluctant liberation movement that proclaimed its commitment to Marxism-Leninism rather than to liberal democracy. The liberation movement, furthermore, remained determined to assert its supremacy over the Zimbabwe African People's Union (ZAPU), its rival, with which it had always enjoyed a very uneasy relationship. Suffice it to say that the institutionalization of democracy in Zimbabwe had extremely weak foundations, with limited internal support from a civil society which had played a limited role in the struggle for independence.

In South Africa, in contrast, where the outgoing white government retained a much stronger hand than had been available to Ian Smith (*inter alia*, it retained a much higher level of military and repressive power), the ANC represented a far more complex and diverse movement than ZANU-PF, given the former's roots in urban as well as rural areas, and its support amongst a diverse cross-section of middle and working classes. Furthermore, the ANC's ideological commitments were a contested mix of communism, social democracy and liberalism. Even so, despite the fact that the internally negotiated settlement in South Africa recorded a genuinely high level of agreement between contending elites, it was a

product of what the ANC likes to term the "balance of forces". The implication of this, of course, is that over time, the "balance of forces" may change – either reinforcing or undermining the foundations of constitutionalism.

Second, the levels of racial inequality between minority whites and majority blacks in all three cases were enormous. Settler-colonial capitalism was highly productive and built economies which were far more advanced than African economies that had been subject to "normal" colonialism. However, these systems were profoundly repressive and exclusionary, based as they were upon massive appropriation of African land; the exploitation of valuable minerals; the use of coercion to secure ample supplies of black labour for industry and agriculture; and the deliberate blocking of African competition to white dominance in agriculture, trade, industry, certain professions and running the state itself. Unsurprisingly, the outcome was to forge nationalist alliances between small African colonial elites, emergent working classes and the peasantries trapped in "reserved" areas. Equally unsurprisingly, the post-liberation agenda of liberation movements was in all cases to effect "Africanization" or "transformation", justified by the need to correct colonial racial imbalances.

Such transformations were most readily achieved within the political sphere, as the incoming liberation movements "captured" the state. However, it was a far more difficult prospect to challenge inequalities in the economic sphere. First, the constitutional settlements had imposed constraints upon appropriations of property; second, whilst former white settlers (now citizens) had been empowered economically over time by massive local historical advantage and a European cultural legacy (of capitalism and industrialism), blacks had been disempowered by inferior colonial education, denial of opportunity to accumulate significant capital, and a non-industrial African cultural legacy. Hence, while new governments put in place many transformative policies designed to address structural racial inequalities, the outcomes were highly uneven. It was one thing to Africanize or "transform" public sectors which were under state control; it was quite another to tackle inequalities in private sectors which remained under white control, whether domestic or international. Indeed, even to the extent that the private sector embraced "change" (and, on the whole, private sectors tended to move extremely cautiously), lack of education and skills amongst previously disadvantaged majorities inhibited upward mobility.

The result is that post-liberation economies have remained profoundly unequal, despite such strategies as Black Economic Empower-

ment (BEE) or "indigenization" which have sought to advance black ownership and control within the private sector. In turn, structural inequalities have stoked enormous political tensions. In Zimbabwe, these were to result in the massive eruption in land seizures and forced, uncompensated dispossession of white farmers from the year 2000 onward. Today, racial disparities in Zimbabwe may have been significantly addressed (not least by the massive departure of whites from the country), but at massive cost to the economy and to the standard of living of virtually all but the party-state elite. In Namibia and South Africa, meanwhile, racial disparities at the top may have been ameliorated by transformative measures, yet the unhappy fact remains that these two countries remain amongst the most unequal in the world, and racial inequalities there are profound.

Third, when liberation movements came into power, circumstance and inclination led them to abandon the substantive commitments to socialism which had characterized their struggles. The reality was that economic advancement required appropriate agreements to be made between new governments and business, thereby providing a welcoming environment for foreign investment and market-related policies – which I have elsewhere (2013: 212-220) referred to as the construction of viable "reform bargains". The sustainability of such "bargains" was dictated by a host of different circumstances, not least the abandonment of liberation-struggle-era commitments to "nationalization" and the provision of sufficient external economic aid to allow the new governments to achieve some of their aspirations (such as land reform, expansion of educational opportunity, healthcare provision, and extension of basic services to both urban and rural populations). However, this was also the era of "neoliberalization".

The settlement in Zimbabwe was never backed by the promised aid from the West. Despite some considerable advances in social and educational spheres, the government was soon thrown into debt and into the arms of the IMF. "Structural adjustment" followed, and while the story is far more complicated than I have space to elaborate, economic crisis was soon to follow: the collapse of the currency, skyrocketing inflation, mass unemployment, out-migration, and the decimation of the health and education sectors. In turn, all of this was a product of the collapse of the "reform bargain" with capital; the rise of a predatory party-state bourgeoisie; and the government's resorting to desperate measures following land seizures by war veterans that led the economy into a free fall (Southall 2013: 80-84).

In Namibia and South Africa, the "reform bargains" between the state and capital were to be more firmly based (not least because of sounder "racial bargains" based upon larger relative sizes of the white minorities and the greater relative strength of white-owned capital to the state). Both SWAPO and the ANC were initially committed to highly equalizing social programmes. Nonetheless, they were to severely ameliorate these as a result of pressures to prioritize growth over redistribution, and to attract investment by adopting market-oriented policies. While such policies did reverse the economic decline associated with the latter years of apartheid, "business as usual" failed to address the structural legacies of acute inequality.

"Transformative" policies such as affirmative action and BEE have, indeed, promoted the expansion of a (relatively small) black middle class in both countries, as well as fostering the rise of a party-state bourgeoisie. Furthermore, growth has facilitated the expansion of praiseworthy systems of social grants for the poor. However, levels of unemployment have remained alarmingly high; formal employment regimes outside the state have eroded; and, in line with the socially polarizing trends in neoliberal capitalism globally, the income gap has widened rather than narrowed. In short, the class systems of both Namibia and South Africa may, to some extent, have been de-racialized, but they remain profoundly unequal. Below I argue that this inequality represents a looming threat to constitutionalism.

Before that, however, we need to turn to dimensions of liberation movement thought that relate to commitments to constitutional democracy.[1]

Liberation Movements and Democracy

The struggle for liberation was one far more for majority rule and national self-determination than for liberal democracy. Whereas liberal democracy envisages the principle of majority decision-making as being constrained by respect for the rights of individuals and minorities, there was (and is) a tendency embedded in national liberation thought which equates majoritarianism with democracy. This does not mean that the liberation movements had no regard for individual rights – their members had been the victims of arbitrary killings, violence, torture and other gross offences against human rights, and there was a shared sense of

1 The following three sections borrow heavily from Southall 2013: 65-77.

determination that such things should not happen again. Notably, the ANC was insistent upon writing a host of individual rights into the constitution (including some, such as rights for gays and lesbians, which undoubtedly went beyond the wishes of the majority of its own constituency). This stance had been presaged by its important policy document, *Ready to Govern*, issued in 1992, which had stressed the need for the separation of powers and for a bill of rights to be upheld by the courts. Nonetheless, much of national liberation theorizing was at odds with liberal democratic thinking.

The tendency in the three country cases to equate majority rule with democracy was demonstrated by the manner in which the various liberation movements consolidated their hold on power following transitional elections. ZANU-PF enforced its domination by brutally subjugating ZAPU during the 1980s, and blatantly manipulating electoral procedures and flouting the constitution when it faced major challenges by the MDC from the election of 2000 onward. By contrast, neither SWAPO nor the ANC have yet to be endangered electorally (although neither are consistently tolerant of political opposition, from either within or outside of their own ranks). Nonetheless, from the moment of taking power, liberation movements have used their domination of the political arena in a manner which often belies the commitment to constitutional democracy and which significantly shifts the balance of powers in favour of the executive, justifying the movements' actions by reference to their possession of majorities in parliament (Southall 2013: 134-173).

The ambiguity toward democracy can be seen as rooted in liberation political culture. Three aspects need to be highlighted: first, a predisposition to "exclusive nationalism" and the use and abuse of history to solidify the identification of the liberation movement with "the people" and "the people" with the liberation movement, with particular emphasis upon the "armed struggle" as providing historical legitimacy; second, the forging of international solidarity links between the different liberation movements to shore up their legitimacy; and third, the blending of liberation thinking with the post-1927 Comintern thought which gave rise to the theory of the national democratic revolution (NDR). All three sources of liberation thinking clash with the values that underlie constitutionalism.

Exclusive Nationalism and Reinventions of History

Writers from different intellectual traditions stress the monopolistic tendencies within national liberation thought which challenge democratic

ideals and the legitimacy of political difference. From this perspective, the liberation struggle was conceived by liberation movements as principally revolving around "self-determination" (or in the South African case, the overthrow of apartheid) rather than around achieving democracy. This was far from illogical, for there was no democracy under colonialism. However, the problem was that for the liberation movements, "self-determination" and "democracy" became conflated, though they were neither identical nor necessarily congruent (Melber 2003). In other words, the struggle for self-determination was more about the equality of peoples as "nations" than it was about equality for people as individuals (Southall 2003). The implication was that once the liberation movement had vanquished colonialism, history would dictate that it should (or would) stay in power forever. R. W. Johnson (2001) clarifies this when he writes of national liberation movements (NLMs) as sharing a "common theology":

> National liberation is both the just and historically necessary conclusion of the struggle between the people and the forces of racism and colonialism. This has two implications. First, the NLMs – whatever venial sins they commit – are the righteous. They do not merely represent the masses but in a sense they are the masses, and as such they cannot really be wrong. Second, according to the theology, their coming to power represents the end of a process. No further group can succeed them for that would mean that the masses, the forces of righteousness, had been overthrown. That, in turn, could only mean that the forces of racism and colonialism, after sulking in defeat and biding their time, had regrouped and launched a counter-attack.

This essentially totalitarian mindset has a number of consequences. First, it demands a conception of the colonially oppressed "people" or "nation" as one. In the context of anti-colonial struggles, in which liberation movements were trying to forge national consciousness against a background of colonial divide-and-rule tactics, it made sense for them to stress the "oneness" of the "oppressed nation". Yet this supposed that they, as liberation movements, indubitably represented the will of the people, or in Rousseauian terms, "the general will" – whereas in practice it meant that diversity amongst the oppressed along lines of ethnicity, gender or development was denied or suppressed. A second outcome was that, because liberation movements could claim the authority of history, challenges to their rule were therefore morally and politically illegitimate. Dissent was translated into disloyalty to the nation, as internal democracy transmogrified into obeisance to an authoritarian leader.

Then again, a third outcome was what Terence Ranger (2003) has called the construction of "patriotic history".

There is now an extensive literature on the uses and construction of "patriotic history" and the associated tendency to officialize liberation movement interpretations of the past in public memorials. Furthermore, the thrust of much official discourse is to promote "the military image of the liberation struggle, the focus of the victorious and now ruling party and its claim to perpetuity" (Kössler 2010).

In Zimbabwe, Mugabe designated his post-2000 land reforms as the "Third Chimurenga", claiming historical continuities with the wars of primary resistance against colonialism in the 1890s (the "First Chimurenga"), and the war for liberation of the 1960s and 1970s (the "Second Chimurenga"). This interpretation served two purposes. First, identifying the 1987 incorporation of ZAPU into ZANU-PF as the consummation of national unity, it projected ZANU-PF as the ultimate embodiment of the nation (Mugabe 1989). It followed, then, that when the MDC arose to challenge the ruling party, it was reviled as illegitimate, treacherous and as being "outside of" the nation. Second, the presentation of politics (notably land reform) as war enabled those opposed to ZANU-PF's initiatives to be depicted as enemies rather than simply opponents, this implicitly justifying violence against them.

In Namibia, SWAPO-sympathetic historians have encountered the particular difficulty that the wars of subjugation waged by the Germans affected peoples inhabiting the central and southern areas of the Police Zone, and left the Ovambo in the North largely untouched. Thus, the Herero genocide by the Germans was successfully appropriated by the nationalist forces allied with SWAPO in the years leading up to independence; immediately after independence it became the preserve of Herero elites opposed to the new government. Whereas these elites began seeking a formal apology and reparations from Germany, the SWAPO government (whose support base was largely to be found among the Ovambo) sought to ensure that their demands remained muted or couched within the nation-state they controlled (Gewald 2003). Meanwhile, alongside public activities which emphasize the armed struggle, public holiday celebrations are largely monopolized by SWAPO, and the glorification of sacrifices on the battlefield is articulated in memorials such as Heroes Acre, built in Stalinist-heroic style by the North Koreans outside Windhoek.

In South Africa, the complicated historical terrain, along with an official discourse which celebrates unity amongst diversity, has placed significant limits on attempts to project the ANC as the sole embodiment of

the struggle against apartheid. In protest of what Bonner (2011) has termed "the smoothing down" of patriotic history, academic historians have joined with past participants and present partisans to assess the contributions to the struggle made by liberalism, black consciousness, Trotskyism and other schools of thought. Nonetheless, a developing heritage trail centred around monuments which celebrate the heroism of "struggle heroes", such as the Apartheid Museum, Robben Island, the prison at Constitutional Hill in Johannesburg, the Rivonia Farm Museum, and the new Liberation Park outside Pretoria, all contribute to a framing of history which stresses the centrality of the ANC. Hence, Butler (2011) notes the ANC's tendency to recast insurrections of ordinary communities in the 1980s as the creation of Umkhonto we Sizwe, and to re-militarize the political imaginations of the "born frees" (those born after 1994).

Liberation movements' predisposition to exclusive nationalism, defining themselves as representatives of fused conceptions of "the nation" and "the people", reinforce majoritarian conceptions of democracy, and hence are at odds with central tenets of constitutionalism.

Liberation Movement Solidarity

NLMs construct patriotic histories interwoven with narratives of solidarity among other regional NLMs in order to reinforce citizens' acceptance of the NLMs' inherent legitimacy. Thus, ZANU-PF National Chairperson Simon Khaya Moyo declared at a meeting of the party's National Conference in December 2010 that

> no liberation movement will ever be replaced by people coming from nowhere. This applies to ZANU-PF in Zimbabwe, ANC in South Africa, FRELIMO[2] in Mozambique, SWAPO in Namibia, MPLA[3] in Angola and Chama Cha Mapinduzi in Tanzania. We are not just neighbours with South Africa. We share a common liberation history, culture and values. Any of us who are not part of this revolutionary journey should think again. (Cited in Ndlovu-Gatsheni 2011)

When members of liberation movements come together at regional meetings, memories of the past are rehashed for the purpose of rein-

2 Frente de Libertação de Moçambique (Mozambique Liberation Front).

3 Movimento Popular de Libertação de Angola – Partido do Trabalho (People's Movement for the Liberation of Angola – Labour Party).

forcing convictions that the NLMs are a breed apart. There is a need to do so, for such sentiments brush over much that is inconvenient in the past, inventing unities in struggle which were often totally absent in practice. Interrelations between different liberation movements were infused with rivalries, mutual suspicions and ideological disputes, even apart from the impact of the Sino-Soviet split which aligned them with different international patrons. ZANU-PF, for instance, was closer to the Pan-Africanist Congress than it was to the ANC, and deeply resentful of movements like the MPLA and ANC that had close ties with ZAPU.

Against this backdrop, there has been a need for a conscious reinvention of history to stress commonalities rather than differences. Since 2000, ZANU-PF has been particularly active in efforts to cultivate stronger links with movements such as the MPLA, with which it had weak ties prior to 1980. Similarly, whereas links between ZANU-PF and SWAPO during the latter's years in exile were virtually non-existent, a close relationship between Mugabe and Nujoma developed during the mid-1990s as a result of a perceived threat to struggle hierarchies represented by the global celebration of the leadership of Mandela and the admission of South Africa into the SADC.

Inter-NLM solidarities build upon the continued resonance in nationalist discourses of anti-colonialism and anti-imperialism. These have been used to particular effect by Mugabe to shore up wider African support for his land reforms, and more generally to blunt regional criticism. The reluctance of an ANC government to deal harshly with a regime which has crudely trashed human rights and presided over a regionally damaging political-economic meltdown manifestly compromised the independence of SADC-backed efforts by Thabo Mbeki to mediate a resolution of the post-2008 crisis in Zimbabwe. Thus Raftopoulos (2010) sees Mbeki's strategy as centred around the hope that Mugabe can be convinced to stand down as president and that governing will be assumed by a reformed ZANU-PF rather than by a democratically endorsed MDC. Whatever the excesses, there is a tendency for liberation movements to close ranks in the face of the challenges presented by parties of opposition. Hence, South African President Jacob Zuma endorsed the results of the disputed 2013 elections in Zimbabwe as "the will of the people" (*Business Day*, 5 August 2013).

There is particular hostility to critiques of liberation movement dominance. Any suggestion that democracy requires the eventual replacement of NLMs as governments are dismissed as counter-revolutionary. Thus a communiqué issued after a meeting between ANC leader Zuma, Namibian President Hifikepunye Pohamba and former Namibian

President Nujoma in December 2008 denounced the "recurring reactionary debate around the need to reduce the former lib[e]ration movements on the continent".[4]

As Ndlovu-Gatsheni (2011: 16) has perceptively observed, the MDC has fallen victim to such "liberation war conservatism". With the passing away of liberation war veterans, the myth-making of solidarity and the common front may have less effect on younger generations. However, it is difficult to believe that it will disappear from a region that is "still saturated with anti-colonial and anti-imperialist memories".

The Theory of the National Democratic Revolution

ZANU-PF, SWAPO and the ANC all propounded the view that the transfer of political power to NLMs would prove meaningless unless they were to embark upon a fundamental restructuring of their respective economies. Once achieved, it would be the responsibility of NLM governments to press ahead with nation-building, the continued democratization of society and the struggle for development.

Such goals were formalized in the theory of the NDR, although here an important qualifier is required. Successive versions of the ANC's *Strategy and Tactics* documents are presented in turgid quasi–Marxist-Leninist terminology, with the notion of the NDR at the heart of them, implying that the party's actions are guided by theory. In practice, the theory of the NDR is used selectively, employed only to guide particular policies. One reason for this is that as a broad church, the ANC includes groupings of different ideologies, and that various precepts of liberalism (although that term is rarely used by the ANC) are embedded in the history of the party.[5] However, what the ANC's employment of the NDR does do is simultaneously hark back to the revolutionary spirit of the party in exile and cement its longstanding relationship with the South

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4 Joint Communiqué between the SWAPO Party and the African National Congress, 9 December 2009, online: <www.anc.org.za/show.php?doc=ancdocs/pr/2008/pr1209.html> (25 March 2010).

5 Liberalism has a long, if chequered, history in South Africa, yet its association with white parliamentary oppositional politics under apartheid has rendered it identical to white interests for that strand of thought which wishes to declare all open opposition to the regime which took place after the ANC went into exile as illegitimate (unless operating under ANC guidance).

African Communist Party, for which justification of actions in Marxian terms is *de rigeur* to convince itself and others that it is on the path to revolution. In contrast, whereas ZANU-PF in its earlier years made occasional references to its pursuit of the NDR, and some Zimbabwean Marxist academics have chosen to analyse post-independence developments from within its frameworks,[6] it meant very little in practice to either Mugabe or the party. One reason may have been that the theory's Soviet provenance rendered it somewhat embarrassing once ZANU-PF had moved into the Chinese orbit. SWAPO, likewise, has had little time not only for the theory of the NDR, but for theory in any shape or form. Nonetheless, despite these reservations, the logic of the NDR is embedded in ZANU-PF and SWAPO perspectives.

The theory of the NDR was built upon ideas developed after 1927 in the Soviet Union about the strategies to be pursued by revolutionary parties under colonial conditions. Because imperialism had blocked the local flowering of capitalism, nascent anti-colonial, national bourgeoisies were deemed to have a progressive role to play in alliance with other nationally subordinated classes. However, while providing analytical justification for class alliances in the struggle for independence, the theory of the NDR left much room for debate about the actual content of "national democracy" and the class dynamics it would encourage.

The thrust of the theory is that because capitalism has left the colony in a state of backwardness, the forces of production must be developed under capitalist auspices before a progression to socialism can become possible for the postcolony. During the struggle for national liberation, the small native bourgeoisie, inhibited by colonial restrictions, throws in its lot with the working class and peasantry, guided by the revolutionary party. Once liberation is achieved and the national democratic phase commences, this native bourgeoisie must be encouraged to spearhead a process of national capitalist development – that is, to become a "patriotic bourgeoisie" (its patriotism contrasted with the metropolitan affiliations of imperialist capital). The danger is obvious, however, for even a native capitalist class is likely to put profit before patriotism. Consequently, the historic task of ensuring that the patriotic bourgeoisie remains loyal to the project of the revolution falls to the party. In short, capitalism can be encouraged so long as it is under the control of the party.

6 Exemplified, for instance, by Ibbo Mandaza (1986), who strongly argues the need for a "patriotic bourgeoisie".

Not least of the advantages of such an approach is that it is sufficiently elastic to justify a wide variety of policies. Just as the accommodations with large-scale capital made by the ANC and SWAPO can be described as necessary compromises made in order to develop the productive forces of the economy, the "revolutionary land programme" implemented by ZANU-PF can be transcribed as the seizure of productive resources from unpatriotic settler-farmers toward the cause of empowering a patriotic bourgeoisie.[7] Yet, at the heart of the theory of the NDR is the notion that its pursuit demands that the liberation movement extend its control over state and society.

As expressed by the ANC in 1998, "transformation of the state entails, first and foremost, extending the power of the NLM over all levers of power: the army, the police, the bureaucracy, intelligence structures, the judiciary, the parastatals, and agencies such as regulatory bodies, the public broadcaster, the central bank and so on" (ANC 1998). In essence, the NDR prescribes a project of the revolutionary party exercising a political monopoly, justifying this in quasi-scientific terms. It is a prescription which has allowed some analysts to go overboard and to describe the ANC as totalitarian, even though in practice the party's capacity to impose its will on society at large is severely compromised (by, *inter alia*, the power of large-scale capital, dissident popular forces, and not least, the Constitution). Nonetheless, notionally the ANC's strategy of extending its reach over all "levers of power" is revolutionary, and deeply at odds with the notions of separation of powers and constitutional supremacy that are embedded in the Constitution.

They may not explicitly subscribe to the theory of the NDR, but both ZANU-PF and SWAPO embrace the values and practice of "transformation" and the theory of state power which accompanies it, at considerable cost to democratic values (Raftopoulos 2006).

Liberation Elites, Party Predation and Instrumental Populism

The capture of the state by liberation movements has facilitated the rise of party-state bourgeoisies whose commitment to constitutionalism is more instrumental than rooted in democratic values. To be sure, this is a

7 On Zimbabwe, for instance, see Moyo and Yeros 2005.

sweeping statement which overlooks many complexities. Fundamentally, however, the argument is that

- the political settlements in Zimbabwe, Namibia and South Africa facilitated the capture of the state by the incoming liberation movements, which understandably viewed state power as the necessary tool for achieving "transformation";
- state power was utilized (via strategies of BEE, indigenization, and so on) to promote black entry into the bastions of white capital, with the latter responding eagerly by throwing largesse at an emergent class of party-aligned black capitalists in order to forge a productive relationship with the new political elite;
- such an emergent alliance was destined to promote local variants of "crony capitalism", whilst generally marginalizing independent African capitalists who lacked or abjured direct links to the party;
- although "reform bargains" were required to promote the growth upon which the realization of liberation movements' developmental aspirations depended, these bargains remained fragile, not least because the crony capitalist relationships they fostered between the state and capital were destined to promote an African capitalist class which was more predatory than productive; and
- when "reform bargains" were placed under stress (notably in Zimbabwe by the late 1980s) by slowed growth, tensions with labour, rising unemployment and so on, the party-state was encouraged to resort to greater state intervention in the economy.

Such intervention took different forms. In Zimbabwe, the "reform bargain" – already compromised by the ZANU-PF elite's greed for consumer imports at great cost to domestic manufacturing from as early as the 1980s – finally collapsed when the state endorsed the seizure of white farms, in response to the invasions of white-owned land by war veterans (and in response to the need to win a prospective election) in 2000. In contrast, while in both Namibia and South Africa the "reform bargains" between the state and capital have been more carefully maintained, they have stimulated internal party factionalism (as opposing elements scramble for access to state resources and favours) at the same time as the limits to the neoliberal model that is being pursued encourage political backing for "the developmental state".

Emphasizing the importance of a "developmental state" is politically and economically defensible. The advocates of such a strategy quite rightly point to the need for the state to compensate for market failures to address social needs, to take risks and direct capital to long-term,

large-scale infrastructural projects, and to steer the economy in directions which will foster the interests of all rather than of the few. Yet, even apart from the issue of whether the post-liberation states have the capacity to take on such functions (given human resource limitations, often grossly inefficient administrations, etc.), the concern must be that promotion of a "developmental state", rather than re-fashioning a productive relationship between the state and private capital, will provide cover for the furtherance of the interests of party-aligned elites, now enabled to disguise their crony linkages to the state under the guise of "developmentalism".

While the terminology favoured is different, the Mugabe government's current gospel of "indigenization" is effectively a predatory version of the ideology of the "developmental state". The ZANU-PF manifesto in the recent election was titled *Taking Back the Economy*, which the party proclaimed was designed to empower the indigenous people of Zimbabwe by enabling them to fully own their country's "God-given natural resources", anchored in a strategy of transferring to local entities at least a 51 per cent controlling equity in all existing foreign-owned businesses. Written in terms of anti-imperialism, national sovereignty, patriotism and national liberation, the manifesto proclaimed its commitments to the state driving the re-capacitation of the economy in the interests of "broad-based empowerment" (ZANU-PF 2013). Suffice it to say that it was designed to appeal to the ordinary, impoverished Zimbabwean, its programme of popular empowerment wholly sidestepping the awkward issue of the ZANU-PF elite's massive gains from the seizure of the country's most valuable resources, from land to diamonds – and henceforth, the party hopes, also from industry and finance.

The appeal of ZANU-PF to the voters was clearly "populist", if populism is taken as an ideology promoted by an elite to "pit a virtuous and homogeneous people against a set of elites and dangerous 'others' who (are) together depicted as depriving (or attempting to deprive) the sovereign people of their rights, values, prosperity, identity and voice" (Albertazzi and MacDonnell 2008: 16). Often appropriating Africanist themes, it promotes an agenda which identifies the interests of its driving elites with those of the people, overlooking exploitative relations which may occur between them, and proclaiming that democracy must reflect the undiluted will of the nation. Unsurprisingly, it is a programme which has received the endorsement of the Economic Freedom Front (EFF), the new party launched by Julius Malema, who, deprived of the opportunity to pursue his parasitical interests from within the ANC, is now directing a similar appeal to the poorest segments of the South African

population. Suffice it to say, if ZANU-PF's total disregard for the niceties of constitutional rule are any guide, the prospect of the EFF making headway in the next election is a distinctly uncomfortable one. Nonetheless, the continuing levels of extreme inequality in South Africa suggest that that prospect is a real one.

Conclusion: Liberation Movements and Constitutionalism

Constitutional democracy requires more than a formal adherence by political actors to the text of the Constitution, demanding commitment to constitutional ideals. It implies that the Constitution guarantees the democratic rights of all citizens, balances majority against individual rights, and sets up obstacles to arbitrary rule by promoting the rule of law and by specifying an appropriate separation of powers between the executive, legislature and judiciary. This paper began by demonstrating how these requirements had been abused, in the most egregious fashion, by ZANU-PF, backed by regional African elites, in a display of formal but phoney constitutionalism. This dismal story emphasizes that constitutional democracy, where it exists, is a product of particular historical circumstances, usually reflecting mass struggles for democratic rights and resultant compromises between elites and popular forces – and in many countries is not easily attained. It follows that for us to understand the basis upon which constitutionalism rests in Southern Africa, we have to understand the nature of the political settlements which provided for transitions to democracy.

Clearly, from this perspective, the imposed settlement in Zimbabwe provided a far more fragile basis for constitutionalism than was the case in South Africa, where the settlement was negotiated by competing nationalist elites. In the former case, both the Smith regime and ZANU-PF were cajoled into a settlement by international and neighbouring elites, with both parties regarding the constitution as primarily embodying a set of protections for whites, rather than promoting the rights of the Zimbabwean people as a whole. As such, the constitution lacked widespread support, most notably amongst the incoming political elite. In contrast, in South Africa, although the constitution was a product of "elite compromise", it was an outcome of genuine negotiations between competing nationalist elites, and accordingly exacted higher levels of commitment from them. If in Namibia the settlement was also largely imposed upon SWAPO, the latter was more heavily constrained by the latent power of the white minority (backed by South Africa) than had ever been the case

in Zimbabwe. Nonetheless, the argument here, akin to the long intellectual tradition that spells out the "social requisites of democracy" (such as levels of education, equality and development), is that the conditions for constitutionalism and democracy in Southern Africa can be undone by continuing (if not deepening) levels of inequality, and (contradictorily) transformational initiatives pursued by liberation movements which (albeit unintentionally) undermine the prospects for continuing growth and implementation of effective socially redistributive policies.

The proponents of the formal constitutional states would argue that the constitutions of the three countries in question provided the basis for "development" (notably, by providing protections for property, subject to balance against the public interest). Perhaps this was so. However, not least because key constitutional provisions lacked the unanimous support of incoming political elites, adherence to constitutional rule was open to challenge by key aspects of liberation movement culture. The most notable features of this culture, as highlighted here, are liberation movements' tendencies to narrowly interpret democracy along majoritarian lines; to embrace exclusive versions of nationalism which assume that those not "for" them are traitors; to adhere to liberation movement solidarities, whereby national elites proclaim the sanctity of national sovereignties over constitutional conformity with international demands for the recognition of human rights; and to be guided by a theoretical formula (the NDR) which justifies liberation movements' "capture" of state power and the consequent disregard for constitutional separations of power, all in the interests of "transformation". Furthermore, it is argued that where these pathologies reach fruition, they give rise to a party-state and the formation of a party-state bourgeoisie whose behaviour is predatory rather than productive, this in turn compounding both the visibility and levels of social and economic inequality. A turn to populism, either by state elites in response to crisis, or by elite elements excluded from being able to "eat" by party factionalism, is one possible – and not unlikely – outcome that represents yet another threat to constitutionalism.

Liberation movements represent a heritage of struggle which is simultaneously emancipatory (seeking to free oppressed peoples from the chains of the past and from the social and economic deprivations of the present) and repressive (in that liberation elites claim for themselves the right to interpret the will of the people). If constitutional rule is to survive and advance in Southern Africa, it will need the support of counter-elites and wider society to contest the repressive components of liberation movement culture in order to secure the freedoms for which the liberation movements themselves claim to have fought.

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