

# POLITICS–LAW CONVERGENCE OR DIVERGENCE? ‘SMALL’ POLITICAL PARTIES, REALPOLITIK AND SOUTH AFRICA’S 20 YEARS OF DEMOCRACY

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## ABSTRACT

This article examines South Africa’s 20-year democracy by contextualising the roles of the ‘small’ political parties that contested South Africa’s 2014 elections. Through the prism of South Africa’s Constitution, electoral legislation and the African Charter on Democracy, Elections and Governance, it examines these parties’ roles in South Africa’s democratisation; their influence, if any, in parliament, and whether they play any role in South Africa’s continental or international engagements. Based on a review of the extant literature, official documents, legislation, media, secondary research, reports and the results of South Africa’s elections, the article relies on game theory, rational choice theory and theories of democracy and democratic consolidation to examine ‘small’ political parties’ roles in the country’s political and legal systems. It concludes that the roles of ‘small’ parties in governance and democracy deserve greater recognition than is currently the case, but acknowledges the extreme difficulty experienced by the ‘small’ parties in playing a significant role in democratic consolidation, given their formidable opponent in a one-party dominant system.



**Key words:** elections; democratic consolidation; democratisation; ‘small’ parties; South Africa; liberal democracy

## INTRODUCTION

As South Africa celebrates 20 years of democracy, it is appropriate to examine its record of entrenching the rule of law through legislative and political processes. The numerous ‘small’ political parties registered with the Electoral Commission suggest that democratic consolidation is on course; but party politics and interparty interactions especially between the incumbent African National Congress (ANC) and the ‘small’ parties are still seemingly premised upon realpolitik, paternalism and, in some cases, disdain for these parties. Yet, South Africa’s constitutional provisions legitimise their operations in governance.

Prior to 27 April 1994, it would have been unthinkable for all South Africans to believe in elections as an aspect of the rule of law or democracy, given the racialisation of governance by apartheid. Probably very few of the majority black South Africans saw any meaningful link between elections and the law, which was increasingly seen as an instrument of oppression by the victims of apartheid’s draconian legislation. Elections were rather used as an instrument of racial division by which some races had the vote (whites), some had it extended selectively (Coloureds and Asians/Indians), whereas some, still, were denied the vote (blacks).<sup>1</sup> Therefore, any view about possible ‘convergence’ between the law and elections would most likely have been seen as collusion between at least two apartheid instruments – irrespective of whether the law was applied locally, provincially or nationally and whether the elections in question affected ‘small’<sup>2</sup> or bigger parties, since the legitimacy of the apartheid political process was almost always questionable.

Twenty years later, South Africa is an internationally recognised democracy with a globally admired Constitution following its May 2014 national and provincial elections. Like previous elections before (1994, 1999, 2004 and 2009) the 2014 polls enjoyed the trust and legitimacy of all its citizens. Its post-1994 Constitution states that the ‘Republic of South Africa is one, sovereign, democratic state founded on the values of ... Universal adult suffrage, a common voters’ roll, regular elections and a multi-party system of democratic government ...’ (Constitution, 1996, s 1(d)). The clause concerning ‘multi-party system of democratic government’ underscores the critical role of several parties in South Africa’s new political system and that the

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1 From 1948 to 1993, South Africa granted different voting rights based on the colour of one’s skin. Therefore, Africans were seen as foreigners or ‘nationals’ of the infamous Bantustans that were deemed to be their ‘rightful’ places of abode. This effectively denied them their South African birth right.

2 In this paper ‘small’ (in quotation marks) is used to indicate the limitation of the big–small binary in defining the ‘other’ parties in South Africa’s political system.

country is a democracy, not a one-party state. Similarly, the clause on a ‘Universal adult suffrage and a common national voters roll’ underlines the fundamental role of democratic elections in governance. Such elections must be administered properly using an election register or ‘voters roll’ in order to ensure that those who vote are indeed bona fide citizens. South Africa’s legislation provides for an Electoral Commission (also known as the Independent Electoral Commission (IEC)) to manage ‘any elections’, including those for ‘national, provincial and municipal legislative bodies’ (Electoral Commission Act 51 of 1996, section 5(a) and (n)).

Arguably, the Constitution promotes convergence between elections and the law. Yet, sometimes, it seems that the law obstructs or delays the democratic political processes; a typical example is the *Moutse* (Marble Hall, in the Ephraim Mogale Municipality) case, where communities were locked in dispute regarding their relocation to Limpopo from Mpumalanga, where they prefer to be (CCT 40/08) [2011] ZACC 27; 2011 (11) BCLR 1158 (CC) (23 August 2011). The results of a referendum on this matter were apparently canned by the government some years ago; the affected communities took the matter to the Constitutional Court but lost on a technicality (CCT 40/08) [2011] ZACC 27; 2011 (11) BCLR 1158 (CC) (23 August 2011). Therefore, an observer noted:

‘... elections in South Africa have seen the proliferation of small and micro parties all vying for the electorate’s attention, but largely unable to make inroads into a significant pool of uncommitted, abstaining or disillusioned voters. Each election is characterised by increased contestation, with many new parties emerging to tap into this substantial constituency.’ (Africa 2014: 105).

The roles of ‘small’ parties in South Africa’s elections are increasingly becoming a topic of great interest, especially to South African scholars and students of politics and other disciplines, as suggested by the above statement (Petlane 2009; Southall & Schulz-Herzenberg 2014; Maphunye et al 2014). Generally, the increased contestation referred to above is a welcome development for democratic representation and participation in South African politics as it serves as a constant reminder to dominant or governing parties that voters can transfer their electoral support elsewhere. But how far the proliferation of ‘small’ and micro parties is able to attract a significant number of the electorate is equally interesting, probably because, almost at each election, such parties are undermined, overlooked or simply ignored. Yet, they undoubtedly play a crucial role not only in the country’s politics and elections but also in the legislative process once they are elected to the National Assembly and provincial legislatures.

An example of the important roles such parties play is their participation in parliamentary debates and activities; for instance, a few years ago when the ‘floor-crossing’ legislation was still in place ‘smaller’ parties were arguably best placed to negotiate ‘deals’ with the bigger parties in terms of supporting the latter’s policy and legislative amendment proposals. Arguably, this was ‘[o]ne of the most contentious

pieces of legislation that existed in South Africa from 2002 until 2008', which allowed '... the defection of elected representatives of political parties (Booyesen 2006: 751–770). 'Smaller' parties may have benefited from the ensuing uncertainty about who from the bigger parties were likely to defect to other parties based on floor-crossing processes. In some instances they did not benefit and in fact lost many of their members to the bigger parties, possibly because of the attractive resources and benefits that the bigger parties promised the defectors. Another example is the 2014 elections, in which the United Democratic Movement (UDM), Economic Freedom Fighters (EFF) and other 'small' parties took the chairperson of the country's Electoral Commission (IEC) to court based on a report by the Public Protector, which stated that the commission had not followed due process in its tendering procedures to acquire its new head office. When the IEC chairperson eventually resigned after two of the country's courts did not rule in her favour, some of the 'smaller' parties saw this as a victory. Yet, this could also have signalled victory for the rule of law, especially since in South Africa prominent figures rarely resign from their positions even if they are found guilty by the courts.

## CONCEPTUAL APPROACH

The conceptual approach followed in this paper is based on the theoretical underpinnings and assumptions of three theories: game theory, rational choice theory and theories of democracy and democratic consolidation.

### Game theory

In terms of this theory, one may assume that politics, elections or the law are part of a 'game' played by the different roleplayers in an attempt to gain power, retain it and share it with whomever they choose. More than three decades ago, some argued that political scientists could develop models to analyse the possible choices and behaviour of voters and election candidates in the United States (see Brams 1975: 243). While this theory has been widely used in international relations and military defence strategy (Brams 1975: 1), its relevance to politics, especially elections and party and voter behaviour, cannot be overlooked. The starting point of the theory is 'the assumption that players in a game are *rational*, a mischievous concept that has generated so much controversy and confusion in political science (and elsewhere)' (Brams 1975: xv, emphasis in original). However, the controversy here can be traced to a misunderstanding of the word 'rational', which might also suggest 'sanity'.

According to Bram (1975: xi), game theory emerged as a branch of mathematics, although it remains equally relevant to politics and political processes. This essentially relates to the idea of political science of introducing fairness into electoral competition, which, according to Blondel, '... entails introducing and strictly ap-

plying strong measures against *fraud*, which remains widespread in many countries’ (1995: 197, emphasis in original). In terms of the assumptions of game theory, incidents such as fraud, vote rigging, intimidation and other attempts to gain unfair advantage over other candidates or political parties are viewed as mere efforts to flout the ‘rules’ or to avoid playing by established rules of electoral competition. In South Africa, such rules of electoral contest are defined by the legislation (eg the Electoral Commission Act 51 of 1991, Chapters 4, 5 and 6 on the registration of parties, the role of the Electoral Court, and General Provisions, respectively). The General Provisions, in particular, state the ‘offences and penalties’ for flouting electoral rules. Whereas actors in a political game might be assumed to behave ‘rationally’, it is argued that

‘[v]ery generally, behaving rationally in game theory means acting to maximize the achievement of some postulated goal, where the outcome depends not only on chance events and ‘nature’ but also on the actions of other players with sometimes cooperative and sometimes conflicting interests’ (Brams 1975: xv).

Considering South Africa’s recent 2014 elections, this assumption might help to explain the manner in which many registered political parties across the country were always tactical (or even evasive) when asked whether they would enter into pre-election pacts or post-election coalition arrangements in the event that their parties were defeated or failed to gain a majority in a legislature.

According to Hindmoor (2006: 106), game theory assumes, among other things, that actors:

- ‘are instrumentally rational;
- must choose between the strategies often labelled “cooperate” or “defeat”;
- know the rules of the game and know the outcomes associated with each possible combination of strategies.’

While the models that are normally designed based on some of the above assumptions are eventually used as a basis for understanding voter and political party behaviour in different political processes, the models may not always be able to explain the situation accurately, owing to the prevalence of numerous dynamics and variables. Therefore, it is acknowledged that ‘[a]s psephologists and opinion pollsters are aware, the way in which people say they are going to vote in an election cannot be taken as an accurate indication of how they will actually vote’ (Hindmoor 2006: 185).<sup>3</sup>

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3 Probably a pertinent example here is the illegal ‘food parcel’ pre-election tactic that was used allegedly by the incumbent to woo voters to vote for the ANC, but the effectiveness of such ‘food parcels’ and T-shirts in wooing voters is debatable.

## Rational choice theory

As with aspects of game theory, this theory assumes that all the roleplayers in social phenomena are ‘rational’ or exercise ‘rational’ choices whenever they are confronted by different situations – in this case, political, legal and electoral situations. Such actors are therefore expected to display a certain discernible level of ‘rationality’ or reasoning which they rely on to make choices between options A or B when confronted by such choices.

### Rational or public choice theory

‘is one of the most influential and undoubtedly controversial theories used to study politics ... Rational choice can be defined as involving the application of the methods of economics to the study of politics’ (Hindmoor 2006: 1, citing Mueller 2003: 1).

One of these well-known methods is assessing the relationship between demand and supply which, in politics, would be applicable to phenomena such as the number of prospective voters for a party (supply) in relation to a party’s ability to fulfil their aspirations (demand) through the party’s manifesto. Obviously, other variables such as the party’s ideology, leadership, track record in previous elections and the behaviour of its members will, among other factors, also have an effect on whether or not a voter will choose to support such a party during an impending election.

Taking this logic or assumption further, it may therefore be assumed that all politicians, lawyers or members of the legal fraternity and the electorates generally act after carefully scrutinising each situation they face in their different roles. Yet, this might be a simplistic assumption, because far more complex scenarios and variables might be at play. These include peer and social pressure, persuasive campaign messages by political parties, the views of family and relatives, and a country’s contemporary situation (eg economic recession, natural or unnatural disasters, etc), which may all combine to affect a voter’s actions and their choices about which party or candidate to vote for in an election.

However, the main limitation of rational choice theory is that human beings are not homogeneous even in their thinking or thought patterns. Therefore, there will always be a discrepancy between what people say they want to do and what they actually do.<sup>4</sup> Some of their actions may therefore be seen to be veering from the ‘norm’ and therefore probably ‘irrational’, for example in a situation in which the voters elect a despot or a dictator while snubbing someone who may be seen as a moderate, a democrat or even one whose leadership style is consultative rather than authoritarian.

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4 Perhaps typical examples are the continual promises by voters in many provinces to respect the rule of law and relevant democratic decision-making processes and structures. Yet, once elections have passed and public representatives (usually councillors) are appointed, some residents usually attack them, force them to resign and in the process destroy government and personal property.

## Theories of democracy and democratic consolidation

Democratic consolidation ‘requires political institutionalization’ or, put differently, it ‘involves behavioral and institutional changes that normalize democratic politics and narrow its uncertainty’ (Diamond 1994: 15). He adds that, among other things, such ‘normalization requires the expansion of citizen access, [the] development of democratic citizenship and culture ...’. Political parties, especially the ‘small’ opposition parties in South Africa, it could be argued, are component parts of various roleplayers that may help to expand citizen access and develop democratic citizenship and culture.

The extent to which democracy, whether participatory or representative, is entrenched in a society continues to be of interest to scholars and practitioners of elections, politics and law. Held (1993b: 15) therefore identifies ‘three basic variants or models of democracy’, namely ‘direct or participatory democracy’, ‘liberal or representative democracy’ and ‘democracy based on a one-party model’. Similarly, using this typology, South Africa can be described as a liberal democracy, although its political system also encourages direct participation in processes such as government *izimbizo* (public gatherings), Integrated Development Programmes and other public forums.

Arguably, South Africa’s liberal democracy is premised upon its proportional representation (PR) electoral system which emerged from the country’s pre-1994 political compromises. According to Molomo (2010: 53, in Matlosa et al 2010), electoral systems

‘... are important because they define the rules of the game – how elections are won and lost. They determine the basic parameters of the electoral law and the frontiers of representation and inclusion.’

Used in both Namibia and South Africa, the main advantage of the PR system, as Molomo (2010: 55) elaborates, is ‘its inclusive nature ... [which] ensures that all shades of political opinion are reflected in the decision-making structures of government’.

Therefore, the 2014–2019 parliament not only saw Agang-South Africa and the Economic Freedom Fighters (EFF) as an addition to the already diverse ‘shades of political opinion’ in the country, but also as increasing sensitivity to gender, race and other characteristics. Furthermore,

‘[i]ts appeal lies in the fact that every party that contests an election receives a share of the available seats in proportion to the percentage it wins of the popular vote, and the voices of the people are well represented in political office’ (Molomo 2010: 55).

Put in this way, the PR electoral system seems to be the ‘best’.

However, it is not without its limitations. In South Africa, its main limitation is that voters do not vote for a constituency member of parliament (MP) but for a party

in the national and provincial elections.<sup>5</sup> Before these elections, the party compiles a list of candidates (whom they may or may not know) from which voters select their choices. Therefore, critics argue, despite the PR being ‘... viewed as the most representative of all, it lacks accountability because voters cannot single out any candidate as their representative’ (Molomo 2010: 55). In addition, visible constituency representation would arguably enable the voters to confront their public representatives and register their disaffection on any matter within their own constituencies, should they need to do so. Currently, disaffected voters usually take to the streets in frustration, as seen in the ‘service delivery’ protests that are a regular phenomenon countrywide. Therefore, the stark contrast between the PR and constituency systems clearly suggests the need for electoral reform that will seek to address voters’ and parties’ current concerns with the party list PR, if South Africa’s democratic system is to be seen to cater to the aspirations of the majority of its citizens.

In such a democratic system, elections produce public representatives through a democratic participatory process of engagements between political parties and citizens. Such representatives are then expected to be accountable to those who elected them in the first place:

‘Elections straddle the divide between participatory and representative aspects of democracy and therefore issues of representation are equally important as those of participation in Africa’s democratisation’ (Maphunye 2014: 2284).

Theories of democracy attempt to unpack the quality and nature of democracy and seek to answer questions such as ‘what kind of democracy?’, ‘which regime types are more democratic than others?’, and ‘what are the strengths and limitations of democracy?’ – questions that have been asked by scholars since a few decades ago (eg Dahl 1971; Held 1993b; Ljijphart 1984).

This also applies to theories of democratic consolidation. Observers emphasise that ‘[a] genuinely consolidated democracy is perhaps best judged to be one in which the alternation of parties in power is regular and accepted’ (Hall 1993: 283, citing Dahrendorf 1990).<sup>6</sup> By this yardstick alone, and if one excludes the post-1994 provincial changes of power in KwaZulu-Natal (from the Inkatha Freedom Party (IFP) to the ANC) and the Western Cape (the ANC to the Democratic Alliance (DA)), South Africa cannot claim to be a ‘genuinely consolidated democracy’ since the alternation of parties in power, though accepted in principle, has never occurred. However, by virtue of its holding of regular, all-inclusive and democratic elections since 1994, respect for the rule of law and fundamental human rights (eg freedom of expression), acceptance of a multi-party system of government that fairly enjoys the

5 In municipal or local government elections, however, South Africa relies on a mixed electoral system that incorporates the party list PR and a constituency form of electing representatives, namely ward councillors.

6 Ralph Dahrendorf. 1990. *Reflections on the revolution in Europe*. New York: Times Books.



legitimacy of an overwhelming majority of citizens, South Africa is a democracy as earlier described by Held (1993).

Still, given the foregoing argument, the assumption is that it is not enough for a country or regime to claim to have achieved democracy merely because it conducts regular elections. Rather, it is the extent to which democracy is being ‘consolidated’ or entrenched that matters. However, one observer cautions that we must not ‘[equate] ... the mere breakdown of authoritarian regimes with the successful transition to consolidated democracies’ (Hall 1993: 271). Hall was challenging Francis Fukuyama’s earlier contention that contemporary society had reached the ‘end of history’, since ‘liberalism, capitalism and [liberal] democracy’ had triumphed over Soviet-style authoritarianism.

Furthermore, Hall (1993: 272) argues that there are factors which may enable democratic consolidation but with a caveat ‘... that such factors ... so vary in salience over historical time as to rule out any simple model for consolidation of democracy’. He therefore offers the following ‘feasible possibilities’ that, he argues, may ensure democratic consolidation (Hall 1993: 272–274):

‘the workings of settled institutions;  
growth of a legitimate opposition;  
creation of a party system;  
the creation of political trust within a political class;  
the spread of civil society.’

Observers have noted that

[f]or all the meanings that ‘democracy’ has acquired, there is a broad scholarly agreement that it can best be defined and applied in terms of the procedural criteria that Robert Dahl (1971) has specified: a political regime characterized by free and open elections, with relatively low barriers to participation, genuine political competition, and wide protection of civil liberties’ (Burton et al in Higley & Gunther 1992: 1).

Reference to elections, participation and competition alludes to a wide spectrum of processes and activities that are part and parcel of what is commonly referred to as ‘electoral democracy’. But such activities and processes require the law to be able to fit neatly into a country’s political system.

It is further argued that

[d]emocratic consolidation is conducive to long-term stability for several reasons. First, acknowledging the legitimacy of democratic institutions and respecting rules of democratic procedure discourage governing elites in new democracies from trampling on the rights of opposition groups’ (Burton et al in Higley & Gunther 1992: 30).

Other observers, notably Diamond (1994: 16), argue in favour of the important role of civil society but also add political institutions as prerequisites for democratic consolidation

... the single most important and urgent factor in the consolidation of democracy is not civil society but political institutionalization. Consolidation is the process by which democracy becomes so broadly and profoundly legitimate among citizens that it is very unlikely to break down. It involves behavioural and institutional changes that normalize democratic politics and narrow its uncertainty. This normalization requires the expansion of citizen access, development of democratic citizenship and culture, broadening of leadership recruitment and training, and other functions that civil society performs. But most of all, and most urgently, it requires political institutionalization' (Diamond 1994: 15).

Therefore, in South Africa's case political institutions, for example an independent judiciary, impartial courts and Chapter 9 Institutions Promoting Constitutional Democracy are also important for democratic consolidation. The Chapter 9 Institutions in particular add an extra layer of checks and balances despite the negative manner in which some politicians have recently viewed their roles, especially that of the Public Protector. In addition, and in what might resonate with one political party's message (eg the EFF), one writer argued in favour of less concentration of property in a democracy since

'[t]he greater the concentration of property, the less likely it is that democratic rule will be consolidated. Fundamental land reform and attacks on excessive concentration of industry are necessary for democracy' (Hall 1993: 278).

Similarly, consolidation of democracy also needs to result in tangible benefits for citizens because '... if in the long run democracy does not bring at least some measure of economic success, it may well be doomed' (Hall 1993: 280).

## ROLE OF POLITICAL PARTIES IN SOUTH AFRICA'S DEMOCRACY

The role of political parties in a system of government that is deemed to be democratic cannot be over-emphasised. As Yves Mény (1987: 48) argued,

[t]he existence of political parties all competing for power within a framework of rules that guarantee equal chances for all is one of the fundamental characteristics of pluralistic Western democracies.

Indeed, it would be unthinkable or hard to imagine South Africa's contemporary system without political parties. Such parties generally nurture the system's culture of democratic participation. For instance, parties do this by, among other things, recruiting citizens to become members, articulating political ideals and outlining what they see as public concerns, enticing prospective voters to vote in elections, organising and rallying supporters around perceived public grievances and urging them to do their part in upholding the social contract between citizens and the state.

Yet, Mény's views above are not unchallengeable, since mere mention of terms such as 'competition', 'framework of rules' and 'equal chances' inevitably evokes controversy and questions such as: Whose rules? How fair are they? How equal are the chances, and based on whose criteria of fairness? The legitimacy and relevance of such questions cannot be denied, but this paper nevertheless does not seek to provide any answers here. Instead, the questions are merely raised to highlight their significance in terms of the debate on the relationship between the law, politics and elections 20 years after South Africa's democratisation:

'Twenty years might be regarded as a very long time when analysing the role of parties in a democracy, especially in a country that has enjoyed a continuous or unbroken spell of one party at the helm of government administration since 1994 when the ANC took over power from the National Party' (Maphunye et al 2014: 104).

## Characteristics of a 'small' party in South Africa

It is acknowledged that

'[t]he South African political terrain is a tough one for small political parties, especially for new entrants. Not only is the funding environment and media coverage skewed towards larger parties, but the DA<sup>7</sup> also usually runs aggressive campaigns against smaller parties' (Africa 2014: 106).

But the big question that is usually left unanswered is: What is a 'small' party and on what basis are such parties so defined?

According to Heÿn (2009: 162):

'[a] smaller political party in the South African context can be defined as one that achieves less than 4% of the vote at the national level and has at least one representative in the National Assembly. Such parties are more a national than provincial phenomenon although in some provinces there are entities with only a regional focus or existence ....'

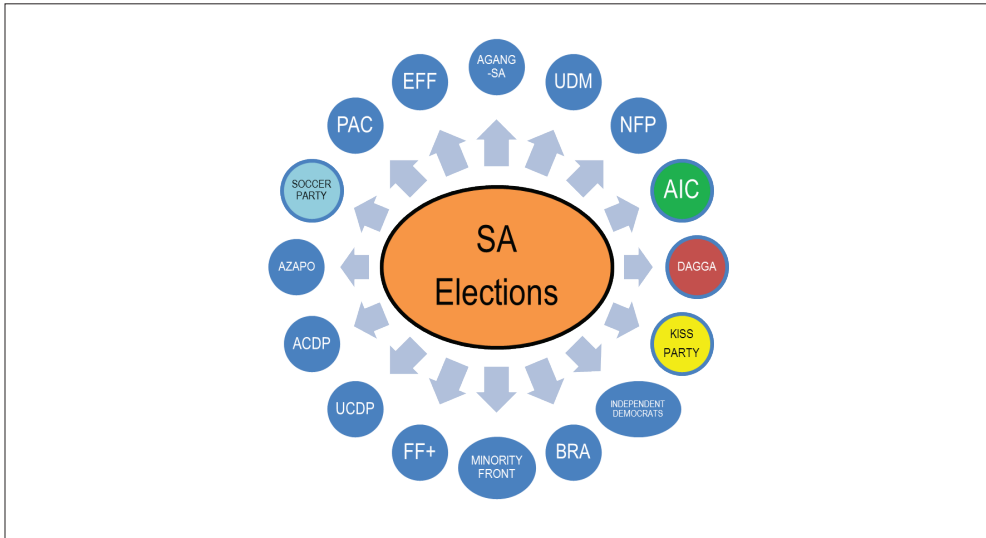
Put in this manner, 'small' suggests comparison based on electoral support and number of seats in parliament. Yet, in the literature on political parties, the definition of a 'small' party often evokes controversy and it is acknowledged that scholars 'remain divided on what Small describes ...' (Ward 2011: 229; see also Maphunye et al 2014: 106).

Despite this apparent difference of opinion, scholars have undoubtedly been fascinated by the role of 'small' parties in the democratisation process and some wonder whether 'small is beautiful' is the apt phrase to use for such parties (Shoesmith 2012). Sometimes these 'small' parties are also searching for a role and fighting for survival (Petlane 2009). In the South African case, many of the following parties are

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7 Democratic Alliance.

usually viewed as ‘small’ parties and have been involved in an unceasing struggle for survival (see Figure 1):<sup>8</sup>



**Figure 1:** Parties regarded as 'small' who contested South Africa's 2014 elections

Source: Own analysis

In many ways, despite their limitations or shortcomings, the above parties have over the years challenged the electoral might of the ANC and have persisted even after they suffered heavy defeats in each election contest, whether in a by-election, a national and provincial or a local government election. Probably one reason for such defeat is cynicism or the fact that some South African voters seemingly do not take such parties seriously, especially when names such as Dagga<sup>9</sup> Party, KISS Party, Soccer Party and BRA are seen on campaign posters and ballot papers.

Opposition parties, big or small, serve as a regular reminder to the electorate not to constantly vote for an incumbent even when they (voters) discern that the incumbent is not delivering on election promises. Smaller opposition parties in particular cater for unique political and other interests, influence policy and legislation, albeit not in significant ways, help in ensuring the balance of power between the incumbent and the opposition, and generally ensure that the incumbent government

8 Agang-SA (Agang South Africa), EFF (Economic Freedom Fighters), NFP (National Freedom Party), ACDP (African Christian Democratic Party), AIC (African Independent Congress), UCDP (African Christian Democratic Party), UDM (United Democratic Movement), FF+ (Freedom Front Plus), BRA (Bushbuckridge Residents Association), MF (Minority Front), DAGGA (*Iqela Lentsango*), KISS Party (Keep it Straight and Simple Party), AZAPO (Azanian People's Organisation), PAC (Pan-Africanist Congress)

9 Marijuana or cannabis in South Africa.

accounts to the electorate, for instance, during question time in parliament. Generally, this helps to promote checks and balances as would be expected in a multi-party Westminster-type system. Despite this, minimal financial and other resources, general weakness, composition along ethnic, racial and other lines, and the fact that they operate in a one-party dominant system, remain their main flaws (Maphunye et al 2014: 109–111).

## How the ‘small’ parties fared in the 2014 elections

The results of the 2014 elections (Figure 2) have several implications for the country’s electoral democracy as well as the relationship between politics, the law and elections.

Party	No. of Valid Votes	Percentage Share	Seats
ANC	11,436,921	62.15%	249
DA	4,091,584	22.23	89
EFF	1,169,259	6.35	25
IFP	441,854	2.40	10
NFP	288,742	1.57	6
VFP	165,715	0.9	4
AIC	97,642	0.53	3
ACDP	104 039	0.57	3
UDM	184,636	1.00	4
Agang-SA	52,350	0.28	2
COPE	123 235	0.67%	3
PAC	37,350	0.21	1

**Figure 2:** The 2014 election results for ‘small’ parties

Source: IEC data

As the above results indicate, elections in South Africa might be seen as almost a zero-sum game or relationship between the governing ANC and the relatively ‘smaller’ opponents that contested the 2014 elections. With a dominant 249 seats (62,15%) that it gained in the National Assembly in the 2014 elections, the ANC remains the predominant player in South Africa’s politics, followed by the DA with less than a hundred seats. The rest of the ‘small’ parties hold far fewer seats compared to these two parties, suggesting that South Africa’s electoral and legislative politics is dominated by two parties. However, in realpolitik terms, the situation is usually far more

complex as the EFF, with its 25 seats, the IFP with its 10 seats, and the NFP with its 6 seats in the South African parliament have recently been seen to be punching well above their weights as they have engaged in robust parliamentary debates since the 2014 elections. Judging by the robustness of the newly elected 5th parliament, it would seem that boring debates which might have led to some sleepy MPs being caught napping occasionally on live television might be a thing of the past. In fact, the parliamentary procedures, systems and tradition seem to have been up for scrutiny since the likes of the EFF were sworn in as MPs, resulting in heated debates about what constitutes parliamentary decorum and behaviour. If it was the strategy of the EFF and the ‘small’ parties to challenge the dominant party in the legislature, then perhaps their goal has been achieved, since they have increasingly enjoyed the public limelight in the new parliament.

Arguably, despite its great majority, the ANC inevitably needs other (‘small’) parties in the different legislatures to continue arguing that South Africa’s is a constitutionally enshrined multi-party system. Moreover, despite (or because of) the abolition of floor-crossing in South Africa’s parliament, ‘small’ parties are also needed to form tactical (however undeclared or acknowledged) alliances on policy debates in parliament, especially whenever the government and the major opposition party, the DA, disagree.

The above results also suggest a dilemma for the ‘small’ parties: they have not done well, since none of them managed to win at least ten seats (save for the IFP) in parliament in 2014. Therefore, they might not effectively match the governing party and the major opposition party, especially in terms of person power in many parliamentary committees. The few seats that they won, however, indicate that they will continue playing a role, however minimal, in politics and parliament.

## POLITICAL GLADIATORS, ELECTORAL CONTEST AND THE LAW

The relationship between politics, the law and elections might be overlooked as it is now part of the mundane life of citizens in democratic countries. Yet, this relationship can be shaky, sometimes ambiguous, tension-filled and fluid. It is usually tension-filled since politics essentially entails competition among rival parties, individuals and forces eager to gain and retain power and control the allocation of resources in society. The following excerpt neatly summarises this relationship:

Voting is generally a geographically dispersed activity which often has to be organized and implemented within very tight time frames, providing a cost-effective voting service for all eligible voters whilst maintaining high standards of integrity, security and professionalism is a major challenge to electoral management bodies’ (Ace Project 2011: 1).

Conversely, elections fundamentally entail the regulation of the contest between two or more political actors aimed at ensuring that the contest is conducted according to certain agreed-upon standards (Molomo 2010: 53). In Africa, such standards include the African Union (AU) Principles on Democracy and Governance, the AU Charter on Democracy, Elections and Governance as well as the Southern African Development Community (SADC) Principles on Election Management, Monitoring and Observation (PEMMO). Naturally, in a liberal democracy such as South Africa, politics is defined and determined by constitutionally enshrined rules and regulations. Such rules and regulations underscore the political terrain and define the level playing fields of elections, proscribe certain behaviours and entrench others that are generally agreed upon by communities or societies. Therefore, South Africa's politics is largely defined by a multi-partyism; the existence of many parties is now regularised under the normal process of contesting for power and influential positions locally, provincially and nationally, including those in civil society organisations.

Inevitably, any discussion about politics and elections touches on the law and its role in defining governance in the country. However, almost always, the approach followed is that of formal legal frameworks, usually premised on the Roman-Dutch Law that was inherited from colonialism. Owing to the negative roles played by colonial and apartheid regimes before South Africa's democratisation, indigenous or African legal and cultural rules and regulations were ignored or suppressed and hardly feature in the contemporary legal and electoral systems.

Other scholars and researchers also acknowledge the relationship between elections, politics and the law, including the nature and role of the electoral system, as in the case of the SADC countries. As Dingake explains:

[p]ost independence SADC countries adopted, in the main, the electoral systems followed by their former colonial masters, particularly those of Britain, which colonized a majority of the countries in the region. In consequence, a number of countries which were ruled by Britain adopted the Westminster form of government which used the first-past-the-post electoral system' (Dingake 2006: 43).

Essentially, this means that there is a strong link (convergence) between the law, politics and procedural issues pertaining to a country's politics such as the electoral system. During the country's negotiations for a new constitution before 1994, South African negotiators chose the proportional representation system as it was deemed to ensure greater inclusivity and accommodation of the country's divergent political and other interests. However, judging by the issues that were raised by subsequent public forums on the question of the electoral system (eg ETT Report 2003; FPD debates 2013),<sup>10</sup> it is clear that the electoral system issue in South Africa remains

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10 Electoral Task Team Report, also known as the 'Van Zyl Slabbert Report'; Foundation for Public Discourse.

unresolved.<sup>11</sup> Yet, the majority party seems to be generally satisfied with the system as it has so far won all the major post-1994 elections. In its report, the South African Electoral Task team defined the objectives of an electoral system, stating that it must ensure fairness, inclusiveness, simplicity and accountability (ETT 2003: 16–17). Another observer notes that an electoral system should have the following characteristics for it to enjoy legitimacy (Dingake 2006: 38):

‘Firstly, a system should be chosen that is able to best reflect the wishes of the electorate. Secondly, whatever system is chosen must be able to empower citizens to make [a] meaningful contribution to the shaping of the policies by which their future is determined. Thirdly, an electoral system has to create a legislature that is representative, stable, and accountable.’

Dingake’s last point about representativeness, stability and accountability reminds us of the critical roles of elections and the law in these processes, whose close collaboration can ensure these requirements.

In practice, the manner in which politics operates can be attributed to what is termed ‘realpolitik’.<sup>12</sup> According to Wayman and Diehl (1994: 3), the word

“‘realpolitik’ conjures up images of tough leaders and armed forces. The term has also come to imply a certain amorality or immorality in action, choosing a course that may be the most effective but not one overly concerned with what is right or proper. Realpolitik has been used in many ways, some for purely self-serving political interests and others for mere intellectual debate. Regardless, realism (as realpolitik is alternately known) has been a guiding influence in policy-making across national capitals of the world as well as the ivory towers of academia.’

They add: ‘Broadly speaking, realism in social science is the analysis of human relations emphasizing power and strategy’ (Wayman & Diehl 1994: 3).

Furthermore, Bruno Latour (2005: 4) states that

‘While the German Reich has given us two world wars, the German language has provided us with the word *Realpolitik* to describe a positive, materialist, no-nonsense, interest only, matter-of fact way of dealing with naked power relations.’

What are the issues that have been informed by realpolitik in South African politics and elections? First, whenever there are grey areas, parties and even the IEC have followed pragmatism in dealing with issues such as the flouting of electoral laws or regulations. A typical example is the placement of ‘side tables’ by political parties not far from voting stations, usually on voting days; such tables are usually set up

11 In the run-up to the 2014 elections, the DA in particular challenged the present electoral system and proposed legislative amendments for its reform. However, the proposals were rejected by the ANC using its parliamentary majority and the IEC seems reluctant to change the system.

12 Politics ‘based on practical rather than moral or ideological considerations’ (*Concise Oxford Dictionary*, 1999).



by the parties to attract voters and presumably convince them to vote for them. Yet the Electoral Act (73 of 1998) clearly stipulates that campaigning effectively stops a few hours before voting starts and bars ‘certain political activities’ such as ‘political meetings, marches, demonstrations or other political events on voting day’ (s 108(a) and (b)); therefore, such parties are clearly flouting the law whenever they turn a blind eye to such incidents or do not dissuade their members from engaging in such activities. It may also be that the Election Management Body (EMB) undermines the integrity and impartiality of elections when it seemingly overlooks or ignores this practice, which has previously been criticised by AU and SADC election observers in their previous reports.

Another anomaly is that of posters that are perennially left on lamp posts, walls and other public spaces long after an election was held. Legally, such posters must be removed at least one month after an election has passed or soon thereafter, failing which municipalities must fine parties that flout this rule. However, the rule is often not enforced and more than six months after the 2014 elections many party election posters were still visible in many public areas and on lamp posts. Probably, these two examples clearly signify that realpolitik is at play in election matters since some municipalities, once their elected representatives assume office, simply ignore this legal requirement and deliberately avoid enforcement of it (especially if the posters in question happen to belong to the party in power).

## RELATIONSHIP BETWEEN THE LAW, POLITICS AND ELECTIONS

The relationship between the law, politics and elections is a fascinating trilateral process which presents as many opportunities for democratisation as it does dilemmas or challenges. First, it would appear that the law, politics and elections enjoy what may be called a ‘symbiotic’ relationship, which suggests interdependence and inter-relationship. Secondly, the roleplayers or stakeholders in elections almost always have to encounter the law and politicians as well as the broader political processes such as parliament, the executive, the judiciary and the electoral system. Thirdly, it would be difficult if not downright impossible for an EMB to run an election without any reference or recourse to the law and political parties in a democratic system. Therefore, as an observer has noted, ‘[in] March 2001, the SADC Parliamentary Forum released “Norms and Standards for Elections in the SADC region”. This document provides a framework that prescribes the necessary political environment conducive for the holding of free and fair elections, from a parliamentary perspective. Subsequent to that, the “SADC Principles and Guidelines Governing Democratic Elections” were adopted in Mauritius in 2004’ (Dingake 2006: 16).

The mere mention of the SADC Principles and ‘norms and standards’ hints at the region’s approach to elections and that the regional leaders are wont to veer from

elections that are chaotic, questionable and not run on the basis of the rule of law. This suggests that the relationship between the law, elections and politics is strong in the SADC region. However, if one looks at the outcome of the 2002 Zimbabwe elections, which were arguably won by the opposition Movement for Democratic Change (MDC) even though the governing Zimbabwe African National Union-Patriotic Front (ZANU-PF) felt embarrassed to admit this, it would appear that the SADC was reluctant to abide by the letter and spirit of the law and enforce the PEMMO.

By the same logic, SADC countries are not immune from the conditions or provisions of continental instruments such as the African Charter on Democracy, Elections and Governance (ACDEG). The importance of this charter to Africa's governance and democratic consolidation cannot be overlooked, despite the limitations or dilemmas which confront its implementation (Maphunye 2014).

The role of the law in elections and politics is clearly discernible in the processes that are usually undertaken by a country's EMB to deal with election appeals, electoral disputes, electoral objections and general complaints (IEC 2011: xiii–xv). In fact, in the South African situation, the entire process of establishing this body, appointing its staff and executive office-bearers, identifying their roles and even firing them where the need arises, is a process characterised fully by adherence to and informed primarily by the law (eg Electoral Commission Act, 1996, ss 3 and 5). The following pieces of legislation play a critical role in this regard:

- ACDEG (African Charter on Democracy, Elections and Governance)
- ACHPR (African Charter on Human and People's Rights)
- Constitution of the RSA, Act 108 of 1996 (as amended)
- Electoral Act 73 of 1998 and Regulations
- Electoral Commission Act 51 of 1996 and Regulations
- Local Government: Municipal Electoral Act 27 of 2000
- Municipal Demarcation Act 27 of 1998.

The first two 'legal instruments' above are usually binding on all governments that have signed, ratified and deposited the relevant credentials with the appropriate bodies, for example the SADC and the African Union (AU) in this case. However, in a possible case of *realpolitik*, African governments have not been energetic in domesticating or enforcing such instruments, especially the charter, as it contains clauses that may be deemed 'unacceptable' to some incumbent governments. In fact, one of the limitations of relying on such 'instruments' is that governments may 'play games' and either sign without ratifying or ratify without implementing ('domestication') the relevant instrument (see Maphunye 2014). These approaches ultimately undermine the good intentions of the drafters of such charters.

The relationship between the law and politics, especially with respect to elections, can be encapsulated in the role played by the above electoral laws, which es-

entially regulate the conduct of elections in South Africa at the national, provincial and local government levels. Therefore, it would be unthinkable for the country's EMB to run any election without referring to the provisions of any one of the above national legislative provisions as justification for undertaking any election-related process.

## Politics–law convergence

The term 'convergence' suggests the fusion or moving in tandem of two or more variables, in this case the law and politics.

South Africa's elections have shown a healthy recourse to the law, especially where disputes, disagreements and uncertainty have arisen on election-related matters. Thus, there have been numerous incidents since 1994 in which parties have taken the country's EC to court demanding some services, legal amendment, a re-run of elections or a recount of results. These have included a host of other instances that generally cover a vast area of electoral democracy (see IEC 2010).

Accordingly, in the numerous recorded incidents in which the country's EMB was summoned to court by the different political roleplayers, a mixed trend has emerged in which the IEC won some of the court challenges but lost others. Famous cases of the parties that mounted a legal challenge against the IEC include those of the DA and others who had taken the commission to court over the rights of 'over-seas voters' (ie out of country) to vote which, at that time, was not permitted by the electoral law (De Vos 2008). Another was a case in which prisoners' rights to vote was challenged by the National Institute for Crime Prevention and Rehabilitation of the Offender (NICRO) and other civil society organisations<sup>13</sup> on the basis that this flouted their constitutional right to vote. As De Vos further explained:

'In the *Nicro* case the Department of Home Affairs argued that some categories of prisoners are being denied their right to vote and justified this by saying that special voting procedures involve risks for the integrity of the voting process. As there is a danger that special votes (in this case, cast in foreign countries) may be tampered with, special measures will have to be taken that could be cumbersome and costly. Moreover, the provision of special arrangements of this nature puts a strain on the logistical and financial resources available to the Commission for the purpose of conducting the elections and this too has to be taken into account' (De Vos 2008, online).

In both instances above, the law was interpreted to mean that the commission was not complying with the Constitution and therefore should allow these sectors of

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13 Several non-governmental organisations (NGOs), including the Centre for Applied Legal Studies (CALs), University of Witwatersrand and the Penal Advocacy Network (PAN), which includes organisations such as the Lawyers for Human Rights, Centre for the Study of Violence and Reconciliation and the Human Rights Committee (Case No CCT 9/99, 19 March 1999, IEC 2010: 67).

society to cast their votes. The court decision were implemented. In the case regarding prisoners' voting rights in particular (*August & others v Electoral Commission, (CCT8/99) [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363* (1 April 1999)), the order of the Constitutional Court was as follows:

'It is declared that all persons who were prisoners during each of and every period of registration between November 1998 and March 1999, who are not excluded from voting by the provisions of s 8(2) of the Electoral Act 73 of 1998, are entitled to register as voters on the national common voters' roll.

'It is declared that all persons who are prisoners on the date of the general election are entitled to vote in that election if they have registered to vote in terms of [the above provision]' (IEC 2010: 77–78).

The convergence in this case might be attributed to the fact that the prisoners were ultimately allowed to exercise their rights to vote, whereas the law also came to their support to enforce their constitutional rights.

## Politics–law divergence?

While South Africa's elections have shown a healthy recourse to the law on election-related matters, there are instances where the relationship between elections, politics and the law appears to suggest divergence.

Perhaps, one visible example of divergence between politics and the law was the recent legal tussle between the IEC and a few 'small' political parties, notably the EFF, UDM and Agang-SA, which approached the court to have the commission's head suspended before the 2014 elections following allegations of tender irregularities (*Sowetan* 4 April 2014). The matter had earlier been brought to the attention of the Public Protector, who ruled against the commission's head; hence the 'small' parties called for her resignation. At that time, public opinion seemed to be against the election body's head in this case and many had thought that the law would support the removal of the head of the EMB.<sup>14</sup> However, the majority party and the official opposition did not support her removal and the elections were held under the authority of the election body's head despite the 'small' opposition parties' protest. However, after the elections these parties were apparently vindicated as the IEC head eventually resigned following the loss of her appeal to the country's Constitutional Court. Ultimately, it would seem that the rule of law prevailed and South Africa's record as a country that upholds the rule of law was not compromised in this instance.

Another example of divergence relates to the number of voters compared to all citizens who are eligible to register to vote and those who actually do so on election

<sup>14</sup> Argument based on an analysis of print, electronic media and public discourse in the run-up to the 2014 elections: *Mail & Guardian* 15 August 2014; SAFM-PM Live 15 March 2014.

day in relation to the entire population. In the case of the 2014 elections, the relevant figures were as follows:

- 52,98 million population<sup>15</sup>
- 25 million registered voters
- 18 million actually voted
- 73,4% voter turnout.

As the above figures indicate, less than half of the country's population voted in the 2014 elections, although about half of the population had registered to vote. Thus, given that only 18 million voters cast their ballots on election day, perhaps the role of elections in promoting democracy in South Africa might be overstated and perhaps elections might be said to 'diverge' from the constitutional requirement of 'universal suffrage'. By the same token, one could argue that even the role of the law in this process may be affected, since all the candidates who were elected on 7 May 2014 eventually ended up in the national assembly and other provincial legislatures as law makers despite their mandate to do so seemingly not being based on the will of the actual majority of the country's population.

As for the voter turnout reflected above, perhaps this is the only figure which suggests that there is still reason for South Africans to believe in the legal and electoral processes, since the 73,4% turnout is still very high compared to international trends, which normally hover around the 50% mark.

## A VOTE FOR A 'SMALL' PARTY: A WASTED VOTE?

The controversy surrounding the roles of 'small' parties in a democracy such as South Africa's must be understood partly from their own continuing performance in each by-election and in national and provincial or local elections. Probably owing to the predominance of the ANC in South Africa's domestic politics, many 'small' parties have not done well in elections and have actually borne the brunt of stiff electoral competition from their bigger rivals. As a result, '[s]ome small parties performed worse at provincial than national level, while some picked up a provincial seat but were unable to secure national representation' (Africa 2014: 113–114). To this extent, this might have led some critics to assume (as the DA has reportedly declared) that a vote for a 'small' party was a 'wasted vote'. If by 'wasted' is meant a vote that will not change the political landscape of the country nor ensure fundamental policy change, perhaps this assumption might be sustainable. However, if by 'wasted' is meant that the 'small' parties do not play any role whatsoever in the country's political system, then clearly this assumption is misplaced, given the fact that 'small' parties in South Africa continue to appeal to certain political interests (eg local issues

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15 As at 2013 (source: SABC, 2014).

that the bigger parties may be either unwilling or unable to tackle), however ‘small’ they may be perceived to be. As MPs and MPLs, their mere presence suggests that they will somehow influence the passing of (especially non-controversial) legislation.

The above situation of dismally performing ‘small’ parties might change in 2016, when the country will be holding its fourth local government elections, given the fact that there are stark differences between South Africa’s national and local government elections. As Africa (2014: 113) states, ‘... the EFF, IFP and NFP, the ACDP, AIC, COPE, UDM and FF+ won enough support to obtain seats in the NA and gained representation at provincial level’.<sup>16</sup> These are immense achievements, given the serious hurdles impeding the success of these parties in South Africa’s one-party-dominant system that seems to undermine the constitutional provision legalising the existence of such parties.

## CONCLUSION

Based on the discussion above, it is the contention of this author that ‘small’ political parties play a critical role in South Africa’s democratisation, especially if one examines their roles in the country’s past elections and politics and the way they have used the law to their advantage wherever applicable. This is despite the limitations or challenges that they face as opposition parties in a one-party-dominant political terrain largely defined by the governing ANC (see Maphunye et al 2014). Probably the greatest hurdles faced by the ‘small’ parties are the limited or few resources (financial, human and material) at their disposal, unlike those of their bigger rivals. Similarly, they often face an uphill struggle for media coverage during elections as some media houses either ignore or undermine them in one way or another. Moreover, media coverage during elections is also subject to the requirements of the proportional representation system, which essentially gives them far less coverage than is required to make an impact on the voters. Furthermore, the fact that these parties almost always do not have experience in government will always serve as a major disadvantage since the majority of government officials, diplomats, public servants etc are generally drawn from the ranks of the governing ANC. Ironically, not only does the numerical strength of the bigger parties overwhelm them but this disadvantage coupled with proportionally limited financial allocations from the Represented Political Parties Fund<sup>17</sup> also serves as a major hurdle to the ‘small’ parties.

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16 Congress of the People (COPE); National Assembly (NA).

17 Figures from the Represented Political Parties Fund indicate that the biggest parties (ANC and DA) enjoy the largest slice of funding whereas parties such as the Azanian People’s Congress, AZAPO and PAC receive far less (*Annual Report 2014: 7*).

Among the positive roles that these parties play is the fact that they exert some influence in the legislative processes of the country, a pertinent example being the pressure exerted on the governing party during recent (August 2014) parliamentary debates when they heckled President Jacob Zuma during question time. Although they are terribly outnumbered, their continued pressure on the ANC during parliamentary debates often creates awkward moments for the governing party and in some cases shifts the political limelight from their goliath-like adversary to them, albeit doing no serious damage to the ANC's overall control of parliamentary procedures.<sup>18</sup>

In terms of South Africa's continental or international engagements, 'small' opposition parties, like the rest of the opposition in the country, do not appear to play any significant role, probably because most of the international engagements are undertaken by the government's functionaries, most of whom are drawn predominantly from the ranks of the governing ANC. As South Africa celebrated 20 years of democracy in 2014, this happened against the background of numerous 'small' political parties that are registered with the IEC, which suggests that South Africa's democratic consolidation is on course. But the reality of party politics and interparty interactions especially between the incumbent ANC and the 'small' parties is seemingly premised largely upon *realpolitik*, paternalism and in some cases disdain for these parties' roles despite constitutional provisions that legitimise their operation in and contributions to South Africa's governance system. The paternalism and disdain for these parties are usually discernible through the incumbent's regular public pronouncements and skilful use of its parliamentary majority to sideline them. Furthermore, given the country's proportional representation system, the bigger parties themselves are too dominant over political processes and systems, which weakens public representatives' accountability to the electorates.

This article has attempted to contextualise the 'small' parties that contested South Africa's 2014 elections through the prism of South Africa's Constitution, electoral legislation and the African Charter on Democracy, Elections and Governance. It relied on game theory, rational choice theory and theories of democracy and democratic consolidation which, in the author's view, help to examine the role of 'small' political parties in South Africa's political and legal systems, including the electoral processes. Based on such theories, it may be argued that politics, elections and the law in South Africa involve an interplay of some 'rationality' (eg 'national interest' or 'nation-building'), political gamesmanship, and use of the law to support the whole edifice through elections that also rely on the law.

Finally, it would seem to this author that in South Africa democratic consolidation is still shaky but is largely dependent upon the contributions and roles of 'small' parties – irrespective of the levels of their contribution, and their perceived or actual

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18 Arguably, on the 'Nkandlagate' matter (alleged excessive expenditure on the president's private residence in KwaZulu-Natal), they continually acted like a thorn in the ANC's side in parliament.

weaknesses. Such contributions or roles might easily be overlooked, undermined or even deemed ‘irrational’ based on the assumptions of game theory or rational choice theory. But just as the development or metamorphosis of the ANC from liberation movement to a majority party in the post-1994 parliament was widely hailed as a victory for democracy after apartheid authoritarianism, so, too, the emergence of ‘small’ political parties deserves as much recognition and acceptance. Besides, their roles are more positive than negative in South Africa’s political system. Love them or hate them, their continuing appearance on South Africa’s ballot papers, while not signalling any remote possibility that they will win elections and wrest power from their bigger rivals, at least assures voters that their constitutionally enshrined multi-party democracy is not nominal but real.<sup>19</sup>

It is only by taking serious steps to recognise ‘small’ parties in South Africa’s governance, and by fully domesticating the African Charter, that democratic consolidation will be attainable and sustainable. Such democratic consolidation will obviously be underpinned by the relationship between the law, politics and elections, although such relationship may in some instances veer between convergence and divergence.

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19 This observation merits the caveat that former liberation movements in Angola, Mozambique, and Zimbabwe, including South Africa’s ANC, have never tasted defeat in a single national or general election. Therefore, given the ANC’s continuing electoral successes since 1994, it is probably too early to make loud claims of democratic consolidation.



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