

**The Transition from a Personal Dictatorship:  
Democratization and the Legacy of the Past in Malawi**

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In the early 1990s, numerous African dictatorships relatively rapidly and rather unexpectedly liberalized politically. The degrees to which they democratized—and speed at which they did so—varied greatly. The new forms of governance also differed significantly from country to country, as do their prospects. To a certain extent, the variations can be ascribed to decisions of key players at specific moments in time, often in bargaining with other actors. Analyses of transitions based primarily on such voluntaristic factors, such as O'Donnell and Schmitter (1986), tend to minimize the effects of the past. Others, such as Bratton and van de Walle (1994), see clear patterns in how certain types of neopatrimonial regimes in Africa democratize, placing greater emphasis on institutional history. This chapter examines the democratization process in Malawi, using Bratton and van de Walle's finding as a framework to analyze Malawi's post-authoritarian governance and prospects for further democratization.

### **Personal Dictatorship as Analytical Category**

Hastings Kamuzu Banda rule Malawi from independence in 1964 until 1994 through a highly arbitrary and personalized system. "Life President" Banda was the supreme authority; his word had the force of law and was ruthlessly enforced. Domestic resistance emerged only sporadically and was always brutally repressed. He built a vast patronage network, centered on his close relatives and clients from his ethnoregional group and funded through his personal domination of the export-oriented agricultural economy.

Bratton and van de Walle's insightful article, entitled "Neopatrimonial Regimes and Political Transition in Africa," examines four ideal-types of neopatrimonial rule: the personal dictatorship, the competitive one-party system, the military oligarchy and the plebiscitary regime. Banda's Malawi exemplified the personal dictatorship, which they describe as

highly exclusionary because the strongman rules by decree; institutions of participation exist in name only and cannot check the powers of the chief executive. The regime disallows even a semblance of political competition, for example, by physically eliminating or indefinitely incarcerating opponents. The strongman may even preempt his own removal from office by declaring himself "president for life" (Bratton and van de Walle 1994: 474),

In such as system, the dictator, which Banda epitomized,

rules personally by controlling the flow of public revenues and selectively disbursing rewards to a narrow entourage of familial, ethnic or factional clients. He takes exclusive charge of policy-making (rather than relying on technocratic planning) and implements instructions through personal emissaries (rather than formal institutions) (Bratton and van de Walle 1994: 474-75),

According to Bratton and van de Walle (1994: 454), a neopatrimonial regime's subtype has a profound influence on the transition process and its probable outcome. When power is highly personalized, "transitions are likely to be driven almost completely by forces outside the state, either in domestic society or from the international arena" (Bratton and van de Walle 1994: 475). Personal dictators are especially reluctant to give up power; they "tend to cling desperately to power" and "have to be forced out", making their demise is "usually protracted and painful", all the more since "there are few mass organizations capable of effectively contesting the

regime” (Bratton and van de Walle 1994: 475, 476). Transitions from personal dictatorships, they assert, are characteristically “driven by spontaneous street protests, focus on the fate of the ruler, and, in the absence of effective political institutions to channel political participations and contestation, tend to dissolve in to chaotic conflict” (Bratton and van de Walle 1994: 485).

Malawi’s initial transition to democracy deviated from the typical trajectory of personal dictatorships. Though much focus was indeed on the fate of the ruler and outside actors did play a fundamental part in the transition, Banda was removed from office through a referendum that rejected continued single-party rule in 1993, followed by multiparty elections in 1994. The transfer of power to the opposition was, contrary to expectations, relatively rapid, smooth and peaceful. At least in the short term, Malawi did not follow Bratton and van de Walle’s pessimistic scenario. A key reason is that Western aid donors played a central role in Malawi’s democratic transition. In the early 1990s, they withdrew their support and pressed for political liberalization, working closely with domestic actors until relatively free-and-fair elections were held and the opposition took office.<sup>1</sup>

The objective of this chapter is to consider the repercussions of the dictatorial past on post-authoritarian politics and assess to what extent there has been a fundamental shift in governance under the “new dispensation”, focusing mainly on the presidency of Bakili Muluzi (1994-2004). Bratton and van de Walle (1994: 476-77) also express pessimism about the longer-term prospects of personal dictatorships, even if democratization does take place: “The absence of institutions and habits of competition and participation combine virtually to eliminate the chances that a transition from personal dictatorship will end in the consolidation of a democratic order.” It is too early to speak seriously of democratic consolidation in Malawi, but now that the form of democracy (electoral competition and civil liberties) has largely been achieved, one can ask: How much has the practice of politics changed? How do the institutions and practices of democratic rule (including the constitution, the legislature, the judiciary, the media, party politics, transparency and accountability) fulfill the role they are expected to play in a democracy?

As shall be demonstrated, many significant improvements can be noted, but the problematic legacy of personal dictatorship is an enduring one. Having inaugurated a multiparty system only in 1993, Malawi still faces the major challenge of building democratic institutions and practices and even a democratic culture in a context of enduring personalistic neopatrimonialism, aggravated by widespread poverty and related problems (such as low levels of literacy, education and health), economic stagnation, weak civic society, limited participation, an inexperienced elite, little accountability and profit-seeking politicians. An overly powerful and unaccountable, though not quite so arbitrary, presidency was the primary inheritance. Personal, intra-party and inter-party rivalries, however, periodically created crisis and paralysis in the balance of power. This occurred in 1996-97, when opposition parties boycotted parliament, and after 2005, when his successor left the ruling party and feuded with a parliament that was hostile to him. Both times, the antagonistic struggles between executive and legislative powers effectively brought the legislative process to a halt. By referring the conflict to the judiciary, they gave the courts more power than they had ever had before, though the judiciary’s autonomy has at times been questioned and its rulings only selectively applied. Malawi’s mode of governance is therefore still in a flux, but it is clear that the weak institutionalization that characterized personal rule continues to hinder democratization.

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<sup>1</sup> A fuller analysis of Malawi’s transition can be found in Brown (2004).

## The Birth of a Personal Dictatorship

Before answering the questions posed above and assessing the length of the shadow of the past, it is important to understand how Banda built up one of Africa's strongest dictatorships, beginning with the power relations established through colonization.

### *Colonial Domination and Decolonization*

When Scotsman David Livingstone first explored much of southern Malawi in 1858, he encountered a number of different ethnic groups living side-by-side without any centralized rule. British missionaries and commercial interests subsequently established themselves in the region. Together, they convinced the British government to declare Nyasaland—as Malawi was then known—its protectorate in 1891, creating an entirely new geographical entity. The British expropriated African land and established tea and tobacco plantations and introduced a labor system that exploited the local population, as well as a taxation system that forced Africans into the cash economy. In 1907, the United Kingdom converted the protectorate into a colony, signaling its availability for further white settlement. At times, many Nyasalanders resisted violently, but their uprisings were relatively small and localized and were quickly and brutally suppressed by the British.

After the Second World War, nationalist sentiments and demands for equality and self-determination reached a critical mass across Africa and a generation of mission-educated Africans campaigned for independence from colonial powers. Young intellectuals founded the Nyasaland African Congress (NAC) in 1944, building on 17 previously existing “native associations” (ethnically and regionally based organizations of educated Africans), with the objectives of universal suffrage and eventual independence from Britain. Due to dynamic leadership and mass campaigns, it quickly became the main national organization to challenge colonial rule.

Hastings Kamuzu Banda, a Nyasaland-born and US-trained physician who had long resided in Britain and the Gold Coast (Ghana), returned to Nyasaland in 1958 at the invitation of the NAC in order to spearhead the independence movement. The young Congress leaders felt that 60-year-old Dr. Banda enjoyed the stature and commanded the respect that they perhaps lacked in order to build a new nation. They deliberately encouraged him to assume a Messianic role. Anxious for independence, the party officials did not pay sufficient attention to how the leadership modalities would affect future rule (Lwanda 1993: 34).

The NAC, re-established as the Malawi Congress Party (MCP), led a non-violent nationalist campaign. Banda was elected to the white-dominated Nyasaland Legislative Council in 1961 and made Minister of Natural Resources and Local Government. In these elections, in which Banda personally selected his party's candidates, the MCP obtained more than 99% of the votes of the enfranchised Africans<sup>2</sup>—marking the beginning of *de facto* single-party rule (Short 1974: 252). The MCP achieved this almost unanimous support through intimidation and by casting supporters of any of the smaller parties as traitors to the nationalist cause and sell-outs to the British. When the British granted self-rule to Nyasaland in 1963, Banda became chief minister. Because of MCP intimidation, smaller parties did not dare compete against the MCP in the pre-independence elections. Since all MCP candidates would have run unopposed, the polls

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<sup>2</sup> About 100,000 out of 4 million Nyasalanders had a sufficient level of wealth and literacy to qualify to vote (Taylor 1967: 273).

were canceled and the smaller parties subsequently all disbanded. Banda retained his post as head of government when the country became independent in 1964, adding to his own portfolio the ministries of health, natural resources, surveys and social development, and soon after external affairs as well.

### *A Stable Personal Dictatorship*

The colonial period, which had brought centralized rule to Malawi for the first time, was characterized by paternalistic rule by the British colonial power and its local (European) representatives, becoming particularly repressive in 1959-60 as a response to demands for independence. At independence, Prime Minister Banda took over this authoritarian system. Rather than trying to modify it substantially, he kept himself at the pinnacle and quickly installed a highly personalistic neopatrimonial regime. The MCP officials at the time were principally mission-educated members of a small African middle class, previously working in the colonial civil service in low-level clerical and teaching positions or running small businesses. They were relatively disconnected from the peasant majority and had more interest in fostering their own advancement in state structures through independence than pursuing a more radical agenda for the benefit of the rural masses (Kaunda 1992: 64-65).

The concentration of power in Banda's hands displeased his fellow political elites. Within a couple of months, a confrontation occurred between Banda and his more left-leaning ministers. Though the disagreement was ostensibly about relatively minor policy matters, such as the pace of indigenization, the underlying issue was Banda's role in setting policy or more precisely the nature of participation in decision-making. The younger politicians had deliberately chosen Banda to play the figurehead role of father of the nation, but once in power Banda insisted on total personal control and refused to allow any pluralism or dissent in the party. Banda required that his "boys," as he called his ministers, follow his instructions without discussion. In 1964, after he dismissed four members of his cabinet and two others resigned in protest, these and several other senior MCP officials as well as many supporters went into exile. Thousands were arrested, killed or exiled in the crackdown that followed. This purge deprived Malawi of many of its best political minds, leaving behind "increasingly sycophantic" party officials (Kalinga 1998: 532).

The "cabinet crisis," as it is known, further centralized power in Banda's hands. For many, this first year of independence marked the early death of pluralism within the MCP. Some trace it a bit further back, arguing that the nationalists' methods had fostered "hero-worship, centralised authoritarianism, exclusiveness and a low tolerance for criticism or internal opposition" (Mhone 1992: 4). Others convincingly argue that the MCP was never a democratic party in the first place, illustrated by its intolerance of rival political parties prior to independence. Indeed, this suggests that the origins of the dictatorship can be traced to the foundation of the MCP in 1959.

In any case, Banda and the MCP ruled Malawi with an iron fist for 30 years under the "four cornerstones" of Unity, Loyalty, Obedience and Discipline. He deftly manipulated historical and cultural symbols to legitimize his authority, especially among rural and traditional constituencies (Forster 1994). Rural party elites and "traditional" authorities (in reality created by colonial officials for the purposes of indirect rule and later co-opted by Banda) were allowed some policy discussion at the local level, as long as it could not be construed as challenging Banda himself. Under the 1966 Republican Constitution, Banda became President and the MCP

the *de jure* sole party. In 1971, Banda was declared Life President of both the party and the country. Absolutely no opposition to the ruling party or its leader was tolerated. Political opponents were often imprisoned or sometimes died under suspect circumstances. For instance, semi-open discussion re-emerged in the cabinet in 1983, but was short-lived. Three ministers and a member of parliament (MP) who were rumored to be exploring institutional changes to limit Banda's power soon died in a supposed car accident. Their death eliminated any chance of internal political reform, a characteristic of some other types of neopatrimonial rule and democratic transitions in other parts of the world.

Banda's patronage was the key to enrichment. It allowed those with no capital to acquire land and assets: owning a tobacco plantation was the quickest road to wealth in Malawi. Banda controlled all business licensing and land allocation, as well as access to credit at favorable terms. Thus Banda and his closest associates, as well as most top politicians and civil servants, gained title to large tracts of land, while the vast majority of Malawians were fortunate if they could grow enough to feed themselves (Mchombo 1998: 24-25). As a result, the new political/economic elite was indebted to Banda. Those who betrayed Banda—or whose allegiance was merely under suspicion—saw their permits withdrawn. Sometimes all their personal property was summarily seized or they were detained indefinitely, even killed. Between one-fifth and one-third of the Malawian economy was controlled by the Press Holdings, a huge conglomerate of some fifty companies belonging to Banda himself (supposedly “in trust” for the Malawian people). Press commanded large shares and even monopolies of key sectors of the economy, including agribusiness, industry, general trading, oil, banking and insurance, making competition impossible.

People were afraid to speak because informers were ubiquitous. All Malawians were forced to present a party card in order to undertake such mundane activities as riding the bus, entering the market, obtaining health care or drawing water from the well. Women were obliged to dance for Banda when he passed through town. The government restricted which crops a peasant could grow. The media was tightly controlled by the party. Such domination effectively maintained a system of extreme exploitation of the disenfranchised peasant majority for the benefit of a small elite. On isolated occasions, students and local residents demonstrated against the regime's political and economic policies or the police. However, they never succeeded in seriously threatening stability, which was assured by the mechanisms of patronage and control as well as selective violence. Western donors played a large role in sustaining Banda's authoritarian rule, providing vital political, economic and military support, while never raising the issue of human rights or democracy until the late 1980s.<sup>3</sup>

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<sup>3</sup> At independence, unlike many of his African counterparts, Banda did not quickly Africanize the public sector or nationalize the private sector. Because of the absence of a radical or even reformist program (and the fact that whites were allowed to keep their properties and continue their economic activities relatively unimpeded), Britain maintained very close ties with its newly independent former colony, including substantial financial support. Banda was virulently anti-Communist, supporting US intervention in Vietnam and opposing international recognition of the People's Republic of China. He also showed no sympathy for national liberation movements in nearby countries, including Rhodesia and South Africa. Malawi furthermore hosted up to one million Mozambican refugees, equivalent to about 10% of Malawi's population, which further endeared the country to many Western donors and UN agencies. Donors rewarded his pro-Western foreign policy generously and remained silent on the massive inequality and injustices that characterized the country. When Prime Minister Margaret Thatcher visited Malawi in 1989, despite being an avid promoter of human rights in Eastern Europe, she ignored the massive rights violations in Malawi and even promised to increase foreign aid (Lwanda 1993: 161). The Bush (Senior) administration praised Malawi for being a “reliable partner” in the region (*New York Times*, April 3, 1990). Malawi retained World Bank and IMF support, despite evidence since the early 1980s of economic mismanagement.

## **Institutions under the New Dispensation**

This section analyses the functioning of institutions, including the constitution, the three branches of power, newly created bodies and the media. It finds that Bakili Muluzi and his party, the United Democratic Front (UDF), during his two-term presidency (1994-2004), ignored obligations that they considered deleterious to their own interests—without any other political party or constitutional body being able to hold them to account. His successor, Bingu wa Mutharika, does not promise to fare much better.

### *The New Constitution*

In neopatrimonial systems, rulers usually either ignore the constitution or modify it to suit the government's (and especially the executive's) purposes, eliminating checks on its power. In post-authoritarian countries, when the government follows neopatrimonial logic, a democratic constitution is often insufficient to ensure that the government abides by democratic rules.

Malawi revised its constitution before the multiparty elections were held and finalized it afterwards. The drafting of the interim constitution was hurried, not a particularly open process and dominated by the various political parties, not independent constitutional experts or civic organizations. Some copies of the proposals in Malawi's three main African languages were distributed, but they drew little public attention. During the electoral campaign, very little mention was made of constitutional arrangements, due to the parties' focus on the past, their emphasis on "name recognition" and their lack of forward-looking strategies. As a result, the post-electoral constitutional amendment process was not meaningful for the rural majority. Indeed, the 1995 constitutional review conference was also dominated by politicians. Even two years later, few people reportedly had "any idea what a constitution is" (NDI 1997: 6) The constitution thus lacks popular legitimacy, especially in a society with no experience in democracy (see Kanyangolo 1998: 371).

There was much contention among elites over the contents of the constitution. For example, from the initial draft, the UDF and MCP did not want a separate, direct election for the presidency, preferring that parliament choose the leader (as per the Westminster system), because both parties believed that they would obtain a parliamentary majority or at least a plurality. But third-largest party, the Alliance for Democracy (AFORD), with the support of smaller parties, successfully pressed for separate presidential elections because they believed that its candidate, Chakufwa Chihana, was more likely to win that way. Since the president would not necessarily have the confidence of parliament, the latter provision encourages the practice of inciting MPs to cross the floor in order to give the president's party a parliamentary majority. The UDF and MCP opposed the complete separation of powers and ensured that the parliament was much weaker than the presidency.<sup>4</sup> For instance, parliament has no say in ministerial appointments. This resulted in a hybrid system that is often ill-defined and sometimes leads to confusion. For example, the constitution is unclear on whether MPs can also be cabinet ministers.

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<sup>4</sup> Author interview with Justice Elton M. Singini, Law Commissioner and Co-Chair of the Human Rights Commission, Lilongwe, February 6, 1998.

*Balancing Old Institutions: The Executive, Parliament and the Judiciary*

Under Banda, although a formal division of power existed, the presidency was the only institution of import. Power was exceedingly concentrated in his hands. Under the new constitution, Malawi has created an institutional configuration that tries to balance the three branches of power—the executive, legislative and judiciary—and their constitutionally prescribed roles. Nonetheless, the executive remains excessively strong.

There are many cases where the government has acted above the law, even unconstitutionally, and there is no body to which it is held accountable. For instance, in 1997, a High Court judge ruled that Fred Nseula ceased to be an MP when appointed deputy minister because one cannot constitutionally hold two public offices at the same time. Although the High Court thus decided that cabinet ministers could not simultaneously serve as MPs, the government appealed the ruling to Supreme Court, but then withdrew its appeal, preferring to ignore the decision rather than draw more attention to it.<sup>5</sup>

The case of the Senate is a combination of poor constitutional design and unconstitutional government action. The Malawi constitution specifies that parliament was to be composed of the National Assembly and the Senate, a rare case of bicameralism in Africa. The Senate was to be constituted of district-based, indirectly elected representatives of chiefs, women's organizations, trade unions, farming and business interests, the disabled, religious groups and other special groups. Muluzi and the UDF opposed its retention at the 1995 constitutional conference, preferring a single chamber. In the end, the Senate was retained thanks to strong support from other parties and civic representatives. In a compromise, the conference agreed to delay the establishment of the Senate until 1999, to coincide with the second multiparty elections for the presidency and the National Assembly. However, the government first ignored then succeeded in abolishing that constitutional provision, presumably (and plausibly) fearing that the UDF would not command a majority in the Senate, thereby reducing executive power.

Another example of the executive's selective application of the constitution is Article 88 of the Constitution. This clause, in the interest of transparency, commits the president and cabinet ministers to declaring their assets and placing them in a blind trust within three months of their appointment. This provision has been universally breached, without any sanctions for failing to comply. As a further example, in 1999, the speaker of parliament (a top party official and former UDF cabinet minister) refused to rule that the four independents sitting in parliament had crossed the floor when they joined the UDF, which would have thereby triggered by-elections in their constituencies.

Muluzi did not enforce the rule of law within his cabinet. His control of the UDF was not comparable to Banda's complete domination of the MCP. He was indebted to many of his supporters and bound by the politics of patronage. As a result, Muluzi turned a blind eye to ministerial abuses. Many powerful cabinet ministers continued to hold high-level positions, despite well-publicized corruption scandals. The first such case occurred in 1996. Sam Mpasu, the education minister, ordered school notebooks after holding a public tender in which companies were given only one day to bid. Though the notebooks would have been available locally, the contract went to a British company, allegedly allowing it to make \$2.4 million in profit on a \$3 million purchase (Ihonvbere 1997: 242). After the scandal surfaced, Mpasu was

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<sup>5</sup> Most of Muluzi's cabinet ministers were chosen from parliament, as is the normal practice in parliamentary systems. To secure a minimum of regional representation (given the overwhelmingly Southern origin of UDF MPs), some cabinet ministers had to be nominated from outside parliament.

dropped from the cabinet but made party secretary general. Citing insufficient evidence, the High Court cleared him of wrongdoing in 1997, after which Mpasu was brought back to the cabinet as information minister. In another instance, the Anti-Corruption Bureau revealed in 2000 that it was investigating Cassim Chilumpha, the minister of finance, for personally deciding to award a large contract to a British company. Donor pressure led Muluzi to remove him from his position. However, rather than drop him from the cabinet, Muluzi assigned him the education portfolio. No charges were ever brought against him.

In myriad ways, Muluzi often refused to be subjected the rule of law, whether handed down by the constitution, parliament or the courts. All too often, the executive simply has disregarded legal obligations that did not suit it. In many ways, the future of democracy in Malawi depends on the respect of the rule of law, on “developing and nurturing,” in Ng’ong’ola’s (1996: 86) words, “the culture of legality and legalism,” after decades of disdain for it. Based on the opposition politicians’ behavior, it is probable that they would not behave any differently in power. Muluzi’s successor, Bingu wa Mutharika, has not thus far shown much more determination in respecting the rule of law.

As the legislative power, parliament has been a weak institution since independence. Banda personally selected its members and there was no career for those who did not toe his line. As mentioned above, independent-minded MPs would lose their economic livelihood, since Banda controlled business licenses, and sometimes could also lose their freedom or even life. Under Muluzi, opposition parties in parliament have few means to force compliance with the law or to press for a compromise when faced with an obstinate or unresponsive executive. They therefore took recourse to boycotting. In 1996, AFORD MPs walked out of parliament when the Speaker of the National Assembly did not declare vacant the seats of AFORD MPs who were still serving in Muluzi’s cabinet, despite the dissolution of the UDF/AFORD coalition, which had given the government a majority in parliament (see below). For nine months, parliament was totally paralyzed since both opposition parties boycotted its sessions, in effect shutting down the political system. The executive and the legislative powers could not agree on the matter of what constituted a parliamentary quorum and had the judiciary decide for them. The latter ruled in favor of the government in 1997, citing a “doctrine of necessity”. The underlying issue was the practice of opposition MPs crossing the floor to join the government without having to resign their seat and seek re-election, thus permitting the government to “poach” opposition members and achieve a parliamentary majority. Local donor representatives encouraged inter-party dialogue, mediated by a coalition of church groups, which eventually brought the standoff to an end and thus prevented this crisis from potentially killing the nascent democracy.<sup>6</sup> An equally or perhaps even more important factor was the government’s threat of cutting the salaries and allowances of MPs who did not physically sit in parliament.

Another battle between legislative and executive emerged in 2005. Mutharika, handpicked by Muluzi as the UDF presidential candidate, was elected in 2004 in a poll that was characterized by an unlevel playing field. Though opposition parties launched legal challenges over the validity of the results, evolving political events rapidly overshadowed the issue of the results. Soon after assuming power, Mutharika clashed with Muluzi, who stayed on as UDF party leader, over control of the party, removing several Muluzi loyalists from cabinet over

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<sup>6</sup> This crisis could have led to a state of emergency, civil war (given the regional bases of the parties), the assumption of absolute power or a military takeover if civilians proved unable to run the country (author interview with Shyley Kondowe, Malawi Institute for Democratic and Economic Affairs, Lilongwe, November 13, 1997). This was perceived as a clear possibility, especially after a military coup plot was uncovered in 1995.

allegations of corruption. In early 2005, Mutharika resigned from the UDF, but not from the presidency, and later formed his own Democratic Progressive Party (DPP). Some MPs followed him, leaving parliament highly fractured. The latter initiated impeachment measures against Mutharika on constitutionally dubious grounds. In early 2006, Mutharika tried to remove his vice-president, Cassim Chilumpha, a Muluzi loyalist—though the Supreme Court ruled that he could not do so.

The third branch of government, the judiciary, has gained independence since the advent of multiparty politics. It was never totally under Banda's thumb, even if he did dismiss "disloyal" judges at will.<sup>7</sup> The judiciary is still not completely independent today: judges can be removed by political actors. Some have traced a decline in judicial independence towards the end of Muluzi's presidency. For instance, in 2001, parliament impeached three High Court judges, apparently for their anti-UDF/government decisions.<sup>8</sup> Moreover, the judiciary's functioning has been extremely slow, in large part due to a serious lack of resources.

The independence of the judiciary and the respect of its decisions are central to the rule of law, all the more since the courts are often called upon to make decisions that shape the future of Malawian politics. The issue of cabinet ministers being able to simultaneously serve as MPs (mentioned above) is an example. Even more important is the courts' role in defining unclear constitutional provisions or sorting out contradictory ones. For instance, Section 80(2) stipulates that "The President shall be elected by a majority of the electorate" (Government of Malawi 1995: 38). It is unclear whether the electorate refers to registered voters or people who actually voted. Since Muluzi obtained a majority of the actual votes cast in 1999 (51%), but only a plurality of registered voters (48%), the opposition alliance unsuccessfully challenged in court the legitimacy of his presidency.<sup>9</sup>

For most of Muluzi's presidency, there was a systematic weakening of all institutions of accountability.<sup>10</sup> Power was centralized in the hands of the executive, with the president distributing power to his cabinet ministers in exchange for loyalty, a favor that Muluzi could withdraw at any time. When the president loses control of parliament, as in 1996-97 and with the fracturing of the parties since the 2004 parliamentary elections, the legislative acquires a stronger role. This increase in power has not been used to ensure accountability or otherwise promote a democratic agenda, but rather to paralyze the policy-making process. In such instances, especially since 2005, with the executive and the legislative mired in their power struggles, the judiciary is increasingly called upon to mediate among competing parties, playing a key decisional role in determining the outcome—though it is not clear that its decisions will be applied.

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<sup>7</sup> Moreover, in 1971, to avoid untimely acquittals, Banda set up in 1971 "traditional" courts, where the rules of jurisprudence did not apply. Evidence was not required, the defendant had no right to a lawyer and the outcome was easy to influence. Under the new law, there was no prohibition of "double jeopardy": people could be repeatedly retried in a "traditional" court until the "correct" verdict was reached.

<sup>8</sup> Author interview with Janine Shors, Consular/Political Officer, US Embassy, Lilongwe, July 1, 2003.

<sup>9</sup> The constitution does not specify what is to be done if no candidate obtains a majority. This issue was not raised in 1994, when Muluzi obtained a plurality of 47% of the presidential vote, nor in 2004 when Mutharika obtained only 35% of votes cast. This points to the opposition parties' opportunism in using the constitutional clause when it suits them to try to invalidate elections, rather than a conviction that the constitution must always be followed.

<sup>10</sup> Author interview with Grant Hawes, Director, Malawi-Canada Program Support Unit, Canadian International Development Agency, Lilongwe, July 9, 2003.

## *New Institutions*

With the transition to democracy in Malawi, several new institutions of democratic rule were introduced: the National Compensation Tribunal, the Anti-Corruption Bureau, the Electoral Commission, the Law Commission, the Human Rights Commission and the Office of the Ombudsman. The status of their work provides important insight into the state of democracy in Malawi. In general, these bodies have so far proved disappointing. They were slow to begin to operate, inefficient and sometimes blatantly biased in favor of the ruling party.

One of the first new institutions to be created was the National Compensation Tribunal, established in 1996 in order to deal more systematically with claims made against the government. The tribunal was charged with making payments for a period of ten years to the victims of the previous regime, both former detainees and exiles, as compensation for lost property or income (though not indemnifying, that is to say, awarding damages). A large number of those benefiting from compensation were senior UDF officials, most notably Brown Mpinganjira and Justin Malewezi, while detainees that were vocal in their criticism of the government, such as Vera Chirwa, received nothing (see Cammack, forthcoming). It was dissolved in 2004, having received “nearly 25,000 claims, of which 342 were compensated fully and 5,247 were awarded interim compensation payments” (US Department of State, 2005).

In recognition of the problems with corruption, another new institution, the Anti-Corruption Bureau, was established in 1996.<sup>11</sup> It faced a number of problems, since in neopatrimonial systems such as Malawi, there is a certain expectation that public office will be used for personal gain. This is not necessarily seen as wrong, unethical, or a misuse of other people’s money. The bureau therefore identified a need to change attitudes.<sup>12</sup> How to do so is less than clear.

Corruption is also an intrinsic part of neopatrimonial relations. Muluzi tolerated corruption in his cabinet in exchange for support, even if he made public statements against such practices. Only in late 1999 did the bureau begin to investigate a few cases of top-level government officials defrauding the government of revenue, when even the pro-UDF newspapers had exposed schemes and called for action. A clear problem for pursuing politically sensitive cases is that prosecutions must be made by the Ministry of Justice, effectively allowing the government a veto power—which it used, for instance, in an investigation of Chilumpha’s practices.<sup>13</sup> The government also used the existence of the Anti-Corruption Bureau as an excuse for not investigating allegations, especially against high-level officials. For example, in 1998, Vice-President Justin Malewezi stated that there was insufficient evidence on ministerial corruption and he preferred to leave any investigation to the bureau.<sup>14</sup> The bureau’s focus is mainly on lower levels, such as immigration officials selling passports to foreigners. Under Mutharika, however, the bureau began to indict senior officials, mainly identified closely with

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<sup>11</sup> There is no doubt that corruption existed under Banda. His rule itself was extremely nepotistic and no one profited more than he from the chains of patron-client relationships that pervaded the system. However, generalized corruption was held in check by the dangers of opposing Banda’s interests. Since the advent of multiparty democracy and the UDF’s election, there has been a veritable explosion of corruption at all levels and all sectors. Neither the Anti-Corruption Bureau nor other bodies have been able to check the spread of graft.

<sup>12</sup> Author interview with Paul Russell, DFID/Anti-Corruption Bureau, Lilongwe, October 27, 1997.

<sup>13</sup> Author interview with Michael Nevin, Political/Press & Public Affairs Officer, British High Commission, Lilongwe, July 3, 2003.

<sup>14</sup> Author interview with Justin Malewezi, Vice-President of Malawi and Minister of Finance, Lilongwe, February 5, 1998.

the UDF, including Muluzi himself. Political considerations still appear to play a large part in the decision to prosecute or not.

A key institution for procedural democracies is an independent body in charge of constituency delimitation, voter registration, candidate nomination and other election-related tasks. The Malawian Electoral Commission was often criticized for being slow to act or incompetent (for example, with voter registration) and complicit with the UDF. On one hand, the commission lacked a secretariat of its own and was hampered by insufficient governmental support, including enabling legislation and funding. On the other, it did not seem to be trying very hard to get its work done.<sup>15</sup>

Worries of a pro-UDF bias multiplied in 1998 when Muluzi unconstitutionally sacked the commission and unilaterally appointed new members. Three months before the 1999 elections were scheduled to take place, the new commission chairman announced the creation of 70 new constituencies, of which 42 (or 60%) were in the UDF-dominated South, causing an uproar. The commission backed down, creating only 17 new constituencies (nine in the South and eight in the Central Region).

Further worries over the commission's partisanship emerged a month later, when it ruled that the MCP and AFORD could not proceed with their plan to present a joint slate, with the new MCP chairman Gwanda Chakuamba for president and AFORD's Chakufwa Chihana for vice-president. The High Court defused the potentially explosive crisis, ruling that running mates from different parties were to be allowed, since the constitution is silent on the matter and there was no law impeding it. The commission appealed, even though it was supposed to be a neutral, disinterested party. The commission chair subsequently resigned and the chief electoral officer was removed, lowering tension over partisanship. Minutes before the Supreme Court's verdict on the MCP/AFORD alliance, the new commission chair withdrew the appeal, but the ruling was still announced, upholding the High Court's decision.

The commission's organization of the 1999 general elections was disappointing. The elections themselves were marred by many technical problems and unexplained irregularities, including faulty ballot papers and insufficient registration materials in the opposition-inclined Central and Northern regions. By the commission's own admission, over 100,000 people, mainly in the North and Center, were unable to vote due to a lack of registration materials (Afrika News Network, June 19, 1999). Had these voters not been disenfranchised, they might have altered the outcome of the presidential election, since Muluzi won a majority of only about 65,000 votes. As a result, four out of nine commissioners would not certify the results. Two of them were suspended a few months later for sympathizing with the opposition. The narrowness of Muluzi's victory in the presidential race highlighted the importance a poll's legitimacy. The opposition tied to have the Supreme Court order a rerun, based on alleged fraud—as well as the definition of “the majority of the electorate” mentioned above—but the case was repeatedly postponed on technical grounds.

Of all the new institutions, the Office of the Ombudsman was initially the least effective. The first ombudsman, James Makoza Chirwa, appeared to spend much of his time abroad, attending meetings, rather than dealing with Malawians' grievances. In fact, he referred many cases to NGOs such as the Civil Liberties Committee, rather than taking action.<sup>16</sup> In 1998, he was removed from office for the gross misuse of public funds. His replacement, Enock

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<sup>15</sup> Author interview with Bradley Austin, National Democratic Institute for International Affairs, Lilongwe, October 24, 1997.

<sup>16</sup> Author interview with Emmie Chanika, Civil Liberties Commission, Blantyre, December 17, 1997.

Chibwana, proved more active, for example agreeing to represent four MBC employees who were dismissed after the 1999 elections, allegedly because of their pro-opposition sympathies. The High Court issued an injunction to prevent him from investigating the case and, moreover, ruled that the ombudsman's activities are subject to judicial review (U.S. Department of State 2000: 6). Still, the Office of the Ombudsman remained one of the most respected and pro-active institutions, despite chronic underfunding and understaffing.<sup>17</sup>

The other new institutions are similarly lackluster or lacking. The Law Commission, one of Malawi's best-performing bodies, has been slowly reviewing laws to bring them in line with the new constitution. Its enabling legislation, as well as the Human Rights Commission's, took years to be passed. In 1998, the government announced that it would no longer provide the latter with any funding. Lacking resources, it has achieved very little thus far. It met for the first time in February 1999 but "took no significant action during the year" (U.S. Department of State 2000: 6-7).

Why are the new institutions ineffective overall? It is not clear what is lacking more, ability or will. The new institutions of democratic rule only slowly became operational, but they started from nothing, since they are the first bodies of their kind ever to operate in Malawi. Still, they have clearly not been a government priority. Their lack of funding and supporting legislation is a stark contrast with the new government's provision of free primary education to all within a year of being elected.<sup>18</sup>

### *The Media*

An independent media is an important actor in a democracy, allowing the dissemination of pluralist views and oversight of authorities' behavior. Under Banda, the regime controlled all newspapers and radio (there was no local television until 1998). In 1993-94, because of donor pressure, Banda tolerated opposition newspapers and even granted greater independence to the state-owned Malawi Broadcasting Corporation (MBC).

The MBC radio network is the only domestic one heard across the country. It is an important source of information, especially among illiterates. After the 1994 elections, however, the new government actually reduced the MBC's autonomy. It began to report Muluzi's every move, just as it had done for Banda in the past. Under pressure from donors and civil society for years to grant the MBC autonomy and allow independent stations to broadcast, the government passed new legislation in 1998. However, its provisions are not being followed. The MBC's pro-government bias was particularly evident during the 1999 and 2004 electoral campaigns. One week before the 1999 elections, the High Court ordered the Electoral Commission to ensure that MBC provided fair coverage to all parties. Nonetheless, Article 19's media monitoring project noted no change in the strong pro-UDF bias (Article 19, 1999: 3). Malawian television's partisanship was equally blatant, a fact that the ruling party readily admitted. Joseph Kubwalo, the minister of defense and UDF campaign director, is quoted as saying: "It was him [Muluzi] who started it and he has all the right to make use of the television" (*Africa Confidential*, June

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<sup>17</sup> Author interviews with Western embassy staff and Malawian NGO officials, Lilongwe, July 2003.

<sup>18</sup> The UDF did meet its audacious electoral promise of universal free primary education. Once in power, it abolished fees and the uniform requirement, against World Bank advice. Enrollment surged from 1.9 to 3 million students (Banda, Nankhuni and Chirwa 1998: 82). This demonstrates that the government is capable of quickly mobilizing efforts to carry out plans of high priority, even when faced with great difficulty and donor opposition.

25, 1999). The effect, however, is not as important as for radio, since few Malawians own televisions.

During the 1993 referendum campaign on multipartyism, a large number of newspapers sprang up. At one point in 1993, Malawi counted more than 30. However, many folded when structural adjustment raised the cost of (imported) newsprint (Lwanda 1996: 164). This would be an ironic anti-democratic effect of economic liberalization, but it might also be that the small country with low literacy rates simply could not support that many (Chimombo 1998: 222). The papers' reach has been also limited by the purchase price being beyond the means of the poor majority and the problems of distribution in a country whose physical infrastructure is collapsing.

On the whole, the press has tended to be a tool of blatantly partisan interests (Minnis 1998: 143). There have been occasional incidents that interfere with press freedom.<sup>19</sup> Threats and intimidation have promoted self-censorship. Muluzi hushed any investigations into his past, especially allegations of corruption, including by threatening opponents with a 1930 British-era sedition law for "inciting dissent" by "slandering" him and his party, using "bad language under the guise of democracy and free speech" (*IPI News* 1996/97: 60). Under Mutharika, two newspaper reporters were arrested and detained for a day, though never charged, for quoting an official who stated that the president was afraid of ghosts in State House. These incidents—and government interference in freedom of the press more generally—can be considered "echoes of the past", reminiscent of the Banda era where criticism and dissent were considered treason.<sup>20</sup>

## Party Politics

This section examines the party politics that emerged during the transition and for a decade characterized Malawian politics. In particular, it analyzes the overlap of ethnicity and regionalism and its effect on the party system. It then focuses on the parties themselves, their shifting alliances and the behavior of parliamentarians, which have generally been detrimental to further democratization.

### *Ethnicity, Regionalism and the Party System*

During Banda's rule, ethnoregional differences were increasingly integrated into policy. Banda's nation-building efforts, as was the case elsewhere, involved creating and promoting images of a new people, in this case the Malawians. In spite of an official mythology of national unity,

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<sup>19</sup> For example, the army raided the *Daily Times* offices on January 16, 1998, causing some material damage, ten days after the newspaper published a story on the prevalence of AIDS in the military. It is not known if the soldiers were acting on their own or had orders from above. However, army commander Joseph Chimbayo apologized for the incident at the end of July, unconvincingly asserting that the soldiers were acting on an anonymous tip that arms were being stored there (*Afrika News Network*, August 6, 1998).

In another example, after the 1999 elections, on June 18, about 500 MCP/AFORD alliance supporters demonstrated in front of the High Court, where an injunction was being heard to halt the announcement of the election results. They clashed with UDF supporters and, when the police and army arrived to quell the disturbances, they reportedly chanted "Take over, take over." Two *Malawi News* journalists who reported this were arrested for incitement to mutiny in the army, which carries a life sentence. They were detained for two days, but never been charged. The case was officially dropped over a year later.

<sup>20</sup> Author interview with Samson B. Lembani, National Co-ordinator, Konrad Adenauer Foundation, Lilongwe, July 10, 2003.

Banda's strategy had a central weakness: he equated Malawian with Chewa (his ethnic group) and celebrated the Chewa language and culture to the deliberate exclusion of other languages, cultures and traditions. In fact, by elevating Chichewa (native tongue of about 50% of Malawians in 1966, if one includes the Nyanja and Mang'anja dialects) above other indigenous languages, Banda "mirrored" the colonial authorities' English-centered policies and extended their "brutalizing and programmed humiliation" onto non-Chewa Malawians (Kishindo 1994: 140-41). Language policy failed to reduce ethnic differentiation or develop a national identity. Banda vilified the better-educated Northerners, while Southerners were not so much discriminated against as ignored. This regional focus reified regionalism. However, by emphasizing Chewaness, Banda's policies reinforced ethnic awareness among the non-Chewa, creating what Kaspin (1995: 614) calls "ethnicity in the negative, reactive rather than proactive, defined by a relationship of contrast to the hegemonic group as the significant, self-defining 'other.'" This polarization of Chewa/non-Chewa and Central Region/non-Central Region served to define a base of support for Banda and the MCP, but eventually it also helped the opposition to rally a counter-hegemonic coalition to remove Banda from power.

In the 1993 referendum, more than four-fifth of Northerners and Southerners voted for a multiparty system, but almost two-thirds of inhabitants of the Central Region expressed a preference for continued single-party rule under the MCP. With the advent of multipartyism, regional cleavages clearly emerged. Politicians chose to capitalize on their territorial home base to build support and remained silent on the fact that regionalism was mainly a legacy of colonial and single-party rule, rather than part of a natural division of the Malawian people or a fundamental antagonism among groups (Dzimbiri 1998: 98). For the first decade of post-authoritarian rule, regionalism was a major characteristic of Malawian politics, more so than ethnicity, even if the two categories usually overlap (though imperfectly) and tend to be conflated. Because of entrenched regional loyalties, only three parties were represented in parliament between 1994 and 2004, and one was dominant in each of the three regions. None could win a majority of seats on its own in general elections. Effective rule therefore required either a stable coalition of two parties or a number of defections to the governing party.

The 1994 election results illustrate how each of the three main parties and leaders became identified with and received overwhelming support from one region. Chihana obtained 85% of Northern presidential votes, Banda 70% of votes in the Center and Muluzi 75% in the South. Since the South is the most populous region, Muluzi won the presidency with 47% of national votes. A similar result occurred in 1999, albeit under a modified form. Since Chakuamba of the MCP ran with AFORD's Chihana as his running mate, the joint slate obtained majorities in the North and the Center, while Muluzi retained three-quarters of the votes in the South. Significant support for Muluzi in the Center (aided by campaign and polling unfairness) allowed him to barely achieve a majority of votes cast nationally.

The strong regional pattern was repeated in the results of the simultaneous parliamentary vote. The parties were even more dependent than the presidential candidates on regions for their source of support. In 1994, AFORD MPs were elected in all Northern constituencies, but nowhere else; the MCP captured 77% of Central seats; and the UDF 94% of the Southern ones. In 1999, the electoral results were broadly similar, but not as strongly correlated: the UDF and MCP broadened their regional base slightly, AFORD lost some ground in the North, and four independent candidates were elected. However, the MCP's seats in the South were almost all in and around Nsanje, presidential candidate Gwanda Chakuamba's home area. Overall, though, the parties' share of parliamentary seats remained almost unchanged. As was the case for the 1994

parliamentary elections, the South's large population and therefore number of constituencies again gave the UDF a plurality but not a majority in parliament. After the 1999 results were announced, the High Court overturned an MCP victory in the Center in favor of the UDF, the four independents (who had tried but failed to secure the UDF nomination for their constituencies) defected to the UDF and three by-elections were held. As a result, the government soon controlled 98 seats to the opposition alliance's 93 (MCP 64, AFORD 29).

Some commentators portray regional voting as completely understandable, related to patronage in a fundamentally neopatrimonial system: where politicians are expected to "line first their own pockets, then those of their family, then those of people from their own district," it makes sense to support the "local" candidate (Young 1994: 15). Several expected the pattern to endure in Malawi. For instance, Chirwa (1998: 68-69) predicted increased regionalism, since: people become more parochial in times of worsening economic situation; parties were resorting to and consolidating regional bases of support; politicians and bureaucrats were creating patron-client chains along regional lines; and new freedoms promote ethnic consciousness (for a similar prediction, see Kaspin 1995: 620). However, they were proven wrong. In the 2004 elections, eight different parties were elected to Parliament. Because of the splits within the three traditional, regionally dominant parties (AFORD in the North, MCP in the Central region and UDF in the South) and the cross-regional alliances among the factions, the neat regionalism disappeared from parliament in 2004. Most notably, AFORD lost its dominant position in the North, winning only 6 out of 31 seats, with the rest divided among six other parties, including the UDF, as well as several independents. However, a majority of voters in each region still voted for a different presidential candidate (the UDF's Mutharika in the South, the MCP's John Tembo in the Centre and the Mgwirizano Coalition's Gwanda Chakuamba in the North), though not as strongly as during past elections.

### *Political Parties*

Political parties—their practices and interactions—are themselves barriers to the deepening of democracy in Malawi. Their approach to politics has been more one of competition for spoils (for themselves and their supporters) than for the betterment of the lives of the majority of Malawians. While many of their negative characteristics are shared with parties in "consolidated" Western democracies, they have displayed a far greater degree of problems without a concomitant internalization of democratic values.

From the beginning, while still under the one-party system, relations between the UDF and AFORD were very tense. Popular pressure, especially from churches, for AFORD and UDF to merge was not acceptable to the politicians (van Donge 1995: 257). From 1994 to 2004, the MCP, UDF and AFORD were the dominant parties, especially the former two, with the latter on occasion holding the balance of power. Small parties also emerged, but initially gained little prominence. In the 1994 elections, the UDF's Muluzi was endorsed as their presidential candidate by four of them—reportedly in exchange for promises of cabinet positions (Decalo 1998: 98). Subsequently, small parties grew in number (to twelve) but not in size or influence. In the 1999 elections, three small parties fielded presidential candidates, but together obtained less than 3% of the popular vote and not one seat in parliament. In 2004, presidential candidates from two other parties won almost 11% of the vote.

The electoral campaigns have been generally without substance. In 1993-94, neither major opposition party worked for change; they just criticized the MCP and each other. The three

major parties try to present different images, but lack clear platforms. On economic policy, for example, it is hard to distinguish between the parties. All parties agree on macroeconomic reform, or at least feel that there was no escaping its imposition. On social issues, their platforms are likewise almost identical, identifying the need for poverty alleviation, improved health care and education, and so on (Reynolds 1999: 147). With little to distinguish them, they have essentially fallen back on personalities and run very negative campaigns in which region usually gained much importance. A recent study found “little evidence suggesting a potential for political competition to become more issue-based or performance-oriented in the near future” (Booth et al. 2006: 14).

The antagonisms among the three main parties tend to mask their commonalities. Very early in the transition, even before the first multiparty elections, some observers noted that many emerging opposition elites had previously been economic beneficiaries of Banda’s regime. At the time, Guy Mhone (1993: 37) prophetically wrote of a fear that the opposition movement had already been hijacked by elites from the Northern and Southern regions. He worried that their agenda would be to deepen existing economic interests, merely couched in the language of democracy. He thus accurately foresaw that politics would “degenerate into mud-slinging and appeal to regional loyalties without necessarily clarifying the substantive economic, social and political issues at stake in form of coherent party programmes.” Moreover, all parties function with a fundamental lack of internal democracy, often resembling a personal following more than an actual institution. For that reason, senior politicians often leave a party after failing to become its leader, taking their followers with them to form a new party.

### *Shifting Party Alliances*

In Western democracies, mainly those with proportional representation systems, shifting party alliances are neither uncommon nor necessarily problematic. Broad coalition governments are the rule rather the exception in countries such as Italy, Switzerland, Austria and Norway, among many others. A series of compromises are made by each participating party in order to reach an agreement acceptable to all.

In Malawi, however, political parties manifested such reciprocal antagonism that any subsequent alliances, in the eyes of observers, discredited their integrity, making them appear merely vehicles for achieving personal power—all the more when the alliances shift back and forth, as they have in the case of AFORD and more recently the Republican Party. This has severely handicapped the government and delegitimized the parties themselves and the institution of parliament. Because the UDF won the presidency in 1994 but only a minority in parliament, it entered into negotiations with AFORD over a coalition government. Such an alliance would have made a strong distinction between Banda’s MCP on one hand and the new opposition parties on the other, a move that would have been seen by many as a positive one for democracy (wa Mutua 1994: 51; Venter 1995: 178). Muluzi, when appointing his first cabinet, had left open three minor positions, which he then offered to AFORD. This would have been humiliating for them. Instead, Chihana demanded an executive vice-presidency and eight ministries, including the foreign affairs or interior portfolio for himself, as well as justice, works and supplies, and agriculture, plus 43% of deputy-ministerial, diplomatic and parastatal appointments. This was completely unrealistic and, since Chihana attempted to keep his demands secret, he apparently realized it (Ihonbere 1997: 246).

Neither side was willing to compromise and negotiations quickly fell apart. AFORD signed instead a “Memorandum of Common Understanding” with the MCP. Toted as a move to protect security and national unity, it was extremely hard for many surprised supporters to accept. During the referendum and election campaigns, Chihana had countless times called the MCP “the party of darkness and death” and promised never to work with it. This “unholy alliance” appeared to be “the most unlikely event to happen in Malawian politics” (van Donge 1995: 246). Some politicians left the party, defecting to the UDF. Others criticized more privately. Chihana lost much political and moral credibility in the process. Rumors of a \$800,000 bribe began to circulate, while AFORD’s main financial burdens disappeared overnight (van Donge 1995: 249-50). In exchange, Chihana, formerly one of Banda’s harshest critics—a man whom Banda had imprisoned for seven years—suddenly demanded respect for Banda as father of the nation (Ihonvbere 1997: 238). The two parties formed a joint shadow cabinet and controlled some important parliamentary committees, electing their members as speaker and deputy speakers of the National Assembly.

The UDF was scared of governmental paralysis resulting from the MCP/AFORD control of parliament. Before three months were up, Muluzi appointed Chihana Second Vice President (a new position with no real role) and Minister of Irrigation and Water Development and four other AFORD politicians were given cabinet positions. AFORD’s votes gave the UDF the parliamentary majority it needed to pursue its legislative agenda. Strangely, AFORD insisted that its memorandum of common understanding with the MCP was still in place.

In June 1996, Chihana pulled his party out of the coalition—reportedly due to objections from within his party (Kaunda 1998: 62)—and courted the MCP again, accusing the UDF of massive corruption, nepotism and bribery. This move decisively split AFORD, as five AFORD ministers refused to resign from the cabinet and remained on the government side, allowing the UDF to retain a parliamentary majority. Before long, talks began on the possible merger of AFORD and the MCP. To many AFORD cadres, the proposed merger sounded more like an MCP takeover. The issue also brought to the fore a cleavage in the MCP. Secretary General Chakuamba actively sought a new image for the MCP under his leadership, while second-in-command John Tembo held on to the idea of the MCP’s “glorious past,” which to AFORD was anathema. By June 1997, though, the merger was presented as a done deal, with a few details to work out (Wiseman 1998: 238). At a party leadership convention in July 1997, most MCP delegates backed Chakuamba, since he was the candidate more likely to keep the Central Region and win in the South (where he is from). Tembo was supported by “unreconstructed Kamuzuites,” nostalgic for the past, and by those who felt that Chakuamba was a “political chameleon” with personal goals of his own (Wiseman 1998: 242). Nonetheless, a merger proved unpalatable to most MCP officials. The convention rejected the merger, while confirming Chakuamba as new party president over Tembo, who was then acclaimed vice-president to maintain a semblance of unity.

By 2000, tension between the two party officials re-emerged on the public stage, aggravated by Chakuamba’s decision to run in 1999 with AFORD’s Chihana, rather than Tembo, as his vice-presidential candidate. In June, Tembo gained the upper hand when the UDF speaker of the National Assembly (illegally) suspended Chakuamba from parliament for one year for repeated absences, with the collusion of some MCP MPs, after which Tembo became the official leader of the opposition.<sup>21</sup> The pro-Tembo and pro-Chakuamba factions each held their own

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<sup>21</sup> Tembo is believed to have, in exchange, supported Muluzi’s bid to modify the constitution to allow him to run again in 2004. Author interview with a Western donor official, Lilongwe, July 2003.

convention, while condemning the other one as illegitimate. As a result, the MCP emerged with two rival presidents. The courts decided that Tembo's faction got to retain the MCP banner, a decision that suited the government, after which Chakuamba left to form the Republican Party.

Chakuamba was a key figure in the Mgwirizano Coalition of new, smaller parties that presented a joint slate in the 2004 elections, with Chakuamba as its presidential candidate. After the UDF victory, Chakuamba and his Republican Party MPs abandoned the coalition and crossed the floor to join the Mutharika government, with a seat in cabinet for Chakuamba. When Mutharika left the UDF to form his own party, Chakuamba and his MPs joined him. However, Chakuamba was dropped from cabinet in 2005, after which he and "his" MPs rejoined the opposition, rallying behind its call for the impeachment of the president.

Thus, after the 1994 and 1999 elections, amid multiple accusations of bribery, the UDF managed to secure a slim parliamentary majority by securing the loyalty of AFORD (1995), its rebels who stayed in government when Chihana left the UDF/AFORD coalition (in 1996), or the independents (1999). Likewise, in 2004-05, enough MPs, mainly from the Republican Party and 22 independents, crossed the floor to (temporarily) give the UDF a small parliamentary majority.

## **Democratic Values**

### *A Culture of Democracy?*

Given Malawi's lack of democratic history and other impediments, it is not surprising that democratic values have difficulty taking root. The British practiced detentions without trial, applied rules arbitrarily and did not respect human rights (in fact, it was almost unthinkable for colonial administrators that Africans should enjoy full rights). They did leave in place, though it was hastily assembled, a democratic system. Banda and the MCP elite subverted and dismantled it for their profit. In its place, an authoritarian, highly personalized neopatrimonial system took root.

After 1994, the new government appeared to desire perquisites of power similar to the previous regime's. It set up a number of programs to benefit its cadres as the new elite. Under the new political dispensation, however, mere presidential decrees were no longer an acceptable shortcut to privilege and enrichment. Measures that followed a more democratic form were required, though neopatrimonialism endured in the personalized allocation of benefits and rewards. Faced with politicians' self-enrichment ploys, rural Malawians especially soon began to re-evaluate the "tremendous sense of empowerment" they felt in electing their president and MP. As the urban elite continued to benefit and they saw no material improvement, a "suspicion grew in the popular mind that the political change had amounted to little more than a game of 'musical chairs' among the small dominant elite" (Ross 1996: 47), with a largely Southern elite replacing one mainly from the Central Region.

Part of the democratic culture is a civic one, requiring the existence of civic organizations for democracy to function efficiently. However, NGOs were not permitted to operate under Banda's regime. Human rights organizations first emerged during the referendum campaign, working on civic education and monitoring the political situation, but with very few resources (Kasambara 1998: 244). Banda's legacy left Malawi devoid of any tradition of civil society, competitive politics or a strong trade union movement. At times, the mainline churches have entered the political arena. They were very important in the transition process and on occasion in

the decade that followed. For instance, they spearheaded a successful movement to oppose a constitutional amendment that would have allowed Muluzi to run again in 2004. Except for these rare instances of grand coalitions on a very specific issue, civil society is too weak to influence policy (Brown 2004).

Several studies have published findings that are extremely discouraging on the state of democracy in Malawi and, by extension, for its prospects. One found that during the transition period, democracy was understood as the alternative to a *status quo* that was unacceptable to the majority of the population, rather than a particular system of government with positive attributes (Poeschke and Chirwa 1998: vii-viii). In the referendum, most Malawians voted for change—against continued MCP domination—rather than for multipartyism *per se* (de Gaay Fortman 2000: 88). As a result, most Malawians were rather vague on what was supposed to replace single-party rule—some in fact questioned the need to vote in the 1994 elections since they felt they had already expressed their desire for change in the 1993 referendum.<sup>22</sup> Many Malawians, especially from the older generation, were reported as believing that “multiparty” was a political party (van Dijk 2000: 200).

A series of focus-group interviews found that 36% of respondents in 1997 defined democracy “as the availability of affordable food and fertilizer” (of which there was a serious shortage because of the cutting of subsidies) and 20% stated they did not know the meaning of the term, while only 27% mentioned multiparty politics (NDI n.d. [1998]). Interviews carried out in 1996 found the same use of economic terms to describe democracy and freedom. Participants were quoted as making statements such as “Democracy is when a person finds the things he or she needs—finding food and money without difficulty”. The report summarizes that for most respondents, “the economic hardships of the post-election period overshadow the benefits brought by the new government” (NDI 1997: 5). Malawians link democracy and economic performance, since: “Without economic achievements, democracy soon became a meaningless concept for the majority of its advocates and mass supporters” (Banda, Nankhuni and Chirwa 1998: 70). It is clear that the high expectations that Malawians had of democracy have not materialized.

The politicians themselves, people feel, “still behave as if they were above everybody” and are concerned more with their own power and rewarding supporters than representing their constituencies (Poeschke and Chirwa 1998: 104). Malawians reportedly have a weak sense of national identity, national unity, common good, loyalty to the state, and sense of duty or responsibility as citizens. As a result, “they are bound to treat government as an external institution they do not own,” which “in turn, gives them no sense of guilt when they misuse public office and facilities” (Poeschke and Chirwa 1998: 94). On a more positive note, a recent survey found Malawians are nonetheless highly supportive of a democratic system (Khaila and Chibwana 2005), while Malawians with a primary school education “have a firmer grasp on meaning: not only do they support democracy but they have a better understanding of why they are supporting it”, which points to the necessity of basic social spending to strengthen democratization (Evans and Rose 2006: 13).

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<sup>22</sup> Author interview with Justice Anastasia Msosa, Electoral Commission Chairperson and Supreme Court Judge, Blantyre, December 17, 1997.

## *Dealing with the Past*

The building of a democratic culture in Malawi faces an unresolved tension that lies barely below the surface of political interactions: how to deal with the past. Like other countries that emerged from a brutal regime, Malawians have to come to an understanding of what happened and how to confront it now. Like post-Communist Russia and many countries in Eastern Europe, but unlike post-WWII Germany and Italy, the dictatorial party of yesteryear is still prominent in politics after democratization. Unlike most reformed European communist parties (but like Russia's), the MCP stands by its past achievements and refuses to break decisively with its heritage—a heritage that is essentially Banda's legacy. "We have no apologies; we don't feel bad," stated high-level MCP official Hetherwick Ntaba.<sup>23</sup>

Many observers remarked favorably on the new government's initial refusal to dwell on past wrongs, undertaken in "genuine spirit of reconciliation and tolerance" (Posner 1995: 143). For example, Banda was permitted to keep Mudi House, an official residence, as his own. In a *New York Times* interview after his election (May 20, 1994), Muluzi said: "I consider [Banda] to be the father of the nation.... We are not looking for vengeance or retribution at all," promising there would be no "witch hunts". The UDF had also promised a Truth Commission, with a mandate to publish its findings, but not punish any crimes. Once in power, the party reiterated its commitment to investigate human rights abuses under Banda. But the government did not pursue this commitment, quite possibly because the UDF wanted to avoid light being shed on its prominent members' prior activities. For instance, there is reportedly some evidence that Muluzi was responsible for detentions without trial, as well as unanswered allegation regarding his financial management while a senior MCP official (*Africa Confidential*, May 6, 1994).

Of all the past abuses, the Muluzi government decided to investigate and prosecute just one incident: the Mwanza murders, mentioned above.<sup>24</sup> Despite Muluzi's prior pledge to eschew witch-hunts, Banda and his close associate John Tembo, along with Cecilia Tamanda Kadzamira (Tembo's niece and Banda's companion), were arrested in 1995 over their alleged role. The trial was meant to embarrass the MCP and specifically humiliate Tembo; newspapers printed photographs of the former "untouchable" being hauled away in handcuffs (van Donge 1998: 27). Muluzi justified the charges as follows: "We're not wanting vengeance on this matter. We're not even wanting to use it as a political issue. But according to the laws of Malawi, you kill, you are tried" (*New York Times*, January 26, 1995).

Banda was placed under house arrest and tried in absentia, considered *non compos mentis* (he was reportedly suffering from a shrunken brain). Tembo was held in prison, while Kadzamira was released on bail after one day, after which the charges against her were dismissed on a technicality. While it was clear that state security forces had murdered the four politicians—members of the police had already confessed to carrying out the killings—, the prosecution did not present any clear evidence that Banda and Tembo were responsible or that orders had come from the top (Power 1998: 381). The prosecution's case was based on a weak general argument

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<sup>23</sup> Author interview with Hetherwick Ntaba, MCP treasurer-general and former Banda cabinet minister, Lilongwe, January 23, 1998. Ntaba is currently a spokesman for President Mutharika's Democratic Progressive Party.

<sup>24</sup> In 1983, three cabinet ministers and one MP, who all favored political liberalization, were beaten to death, thrown in to a car and pushed into a ravine near Mwanza. They had last been seen alive in government custody.

that nothing was done without Banda's orders (Wiseman 1998: 240). The High Court found the accused not guilty.

The trial prompted the MCP to address the question of past abuses. Soon after, Banda issued a statement that was the closest to an official apology ever offered:

During my term of office, I selflessly dedicated myself to the good cause of mother Malawi... but if within this process, those who worked in my government or through false pretence in my name or indeed unknowingly by me, pain and suffering was caused to anybody in the country in the name of nationhood, I offer my sincere apologies (quoted in Ross 1998: 339).

Banda neither names any acts, nor admits any personal responsibility, portraying any human rights abuses as aberrations rather than integral parts of his rule. Banda, a defeated dictator, was trying to recast himself as an elder statesman.

The appeal dragged on for 18 months, even longer than the trial. In July 1997, Banda retired from the MCP "life presidency" and from political life, trying to place himself above party squabbles. This strategy was initially successful: a few days later, Muluzi publicly recommended to the Director of Public Prosecutions that the appeal be abandoned. The latter resisted, stating that it was up to the judiciary, not the president to decide. However, within a few days, the Supreme Court dismissed the appeal—which was unlikely to be purely coincidental (Wiseman 1998: 240).

In retrospect, the Mwanza trials backfired on the UDF government. For one, they concluded with Muluzi openly trying to interfere with the independence of the judiciary. More generally, the government had tried to establish guilt by association, which is tricky because of the vulnerability of many UDF officials who were senior MCP politicians in the past. The trials once again raised the issue of Muluzi's role in nine years as an MCP official, especially in 1979-82 when he was secretary general of the party, the highest position after Banda.

The issue of UDF members' culpability is most likely the reason why the Mwanza accident was investigated and charges made, while other political assassinations were not, which all would have focused attention on Muluzi's and other ex-MCP senior UDF officials roles (van Donge 1998: 49). Soon after being elected the new MCP leader, Gwanda Chakuamba asked Muluzi to apologize for his 1980 imprisonment, in which Muluzi allegedly played a role.<sup>25</sup> Muluzi repeatedly claimed that his "hands are clean" in these matters, but his denials of complicity were not very credible. The past has not been dealt with collectively, nor is it clear how one could proceed. Van Donge (1998: 51) perceptively points out that Malawi needs to deal with the "diffuse political cultures" that provided a context for such extreme abuses of human rights, and not just the incidents independently.

## Conclusion

Under Banda, Malawi knew three decades of brutal personal dictatorship, but since 1993 multipartyism has transformed the Malawian political scene. Several fundamental characteristics

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<sup>25</sup> Chakuamba had been a high-ranking MCP official in the 1960s and '70s, but had fallen out of favor. In 1980, he was sentenced to 22 years' imprisonment for sedition. Chakuamba joined the UDF while in prison, but after his release in 1993 he defected back to the MCP and was appointed secretary general of the party.

of Banda's rule are no longer applicable, such as the climate of fear that pervaded the country and people's inability to speak their minds. The Muluzi and Mutharika governments were elected in competitive elections and civil liberties have increased dramatically. However, many autocratic practices and other problems of the past still remain, though often in a new form. The poor majority may speak, but are not heard. They are still largely excluded from participating in government, not by armed thugs and repressive laws, but by a lack of institutional mechanisms of representation and participation, as well as by significant socioeconomic barriers. Thus, political opportunities for most Malawians have not improved. The post-transition national elections have been less than fair and the government operates behind what some have called a "façade of democracy" (Phiri and Ross 1998: 12).

In many ways, the transition to multiparty democracy has resulted in an alternation in ruling elites in a fundamentally neopatrimonial state, but not a democratic restructuring of the polity, society or socio-political relations. It appears that the very ease of the transition, relatively speaking, left in place socioeconomic structures and personalistic neopatrimonial practices that are incompatible with or at least inimical to further democratization (see Phiri and Ross 1998: 12). For instance, the vast majority of Malawians still live in an extreme state of social exclusion, barely able to feed themselves, lacking opportunities for improving their living conditions, and unable to exercise political rights or participate in decision-making. Self-serving elites generally perceive power as a reward and those in power channel state resources to themselves and their followers, rather than pursue goals of national benefit. A fundamental lack of transparency, accountability and rule of law remains and the building of a new democratic culture has not progressed beyond an embryonic stage.

As described above, the executive retains a very strong hold on power (marking continuity with the past rather than a break) and established checks and balances are unable to hold it accountable. The constitution lacks legitimacy and the executive chooses to ignore many of its provisions. The legislature is very weak and sets no agenda of its own, other than trying to obstruct the presidency when government loses control of parliament, effectively paralyzing the political system. Political parties rarely articulate group interests, while their leaders appear to be motivated by a desire to benefit from power, not to implement positive policy reform, including further democratization. A reduction in ethnoregionalism in recent years could be seen as an encouraging sign; however, the opportunism and factionalization that caused it and the concomitant increased personalization of political parties are hardly positive achievements. Although the judiciary does show some independence, despite instances of intimidation, its rulings are often ignored. At times, when the executive and legislative powers are locked in conflict, the judiciary plays a key decisional role, but this only makes a difference if the rule of law is respected. For lack of domestic checks and balances, the international community plays a potentially important watchdog role.

Bratton and van de Walle (1994: 476) write that the demise of personal dictatorships is "usually protracted and painful". Though Banda was removed from power relatively smoothly and replaced by an elected opposition candidate in 1994, the fits-and-starts democratization process in the decade that followed has been somewhat painful, though not characterized by "chaotic conflict" (Bratton and van de Walle 1994: 485), but it certainly has been protracted. It is not clear that Malawi is fundamentally any more democratic today than it was in 1994.

It is probably premature to envisage democratic consolidation in a poverty-stricken country like Malawi. Most of the population faces a social and economic reality that "exhibits a dismal continuity" with the past (Wiseman 1998: 248). Though widespread indigence and the

improbability of living conditions improving in the short or medium term might be expected to make support for democracy tenuous, a great majority of Malawians still believe that it is better than any other form of rule. Still, consolidation cannot occur unless all the domestic actors, or at least the elites, fully embrace the rules of democratic competition. Building a democratic culture where none has existed before is an arduous task, all the more when grafted onto enduring personalistic neopatrimonial practices.

Bratton and van de Walle's (1994: 476-77) pessimistic prognosis for personal dictatorships is likely to apply to Malawi, since the country lacks institutions to encourage constructive competition and channel popular participation. For the time being, it seems realistic to hope only that this weak democracy can be gradually strengthened. What does the future of democracy in Malawi hinge on? Some authors, such as Posner (1995: 144) and Dzimbiri (1998: 87, 101), focus on the quality of leadership. Indeed, a new approach to politics by all parties is necessary. But the issue is significantly more complicated than the behavior of individuals. For instance, institutional reform could increase incentives for compromise and consensus building, as well as executive accountability. However, modifying institutions in a way that counters the interests of those in power is never a simple task. It is also difficult to overcome the structural impediments to further democratization, for instance achieving sustained economic growth, rapidly improving education levels and fostering an active civil society (see Brown 2005: 183-84). With a weak democratic culture and adverse institutional and economic conditions, there is little that will undergird the democratization process in Malawi.

Post-authoritarian Malawi thus exhibits cases of both continuity and breaks with its past. Despite marked progress in several areas, the legacy of personal rule and the challenge it poses to democratic institutionalization will long continue to influence the political scene in Malawi. Though Malawi deviates in some ways from Bratton and van de Walle's ideal-type and the days of Banda-style personal rule are over, it remains clear that the shadow of the past is a long one.

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