



The Multiparty Promise Betrayed: The Failure of Neo-Liberalism in Malawi¹

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Abstract

The advent of multiparty politics in Malawi in June 1993 was not immediately perceived as the harbinger of a myriad of political twists and turns that have now confounded many. Emerging from the grip of a 30-year-old totalitarian regime, Malawians had every reason to jubilate when the pro-multiparty politics movement triumphed after the June 14, 1993 national referendum results were announced in which the movement was awarded a 64 percent victory of the vote cast to allow multiparty politics to be re-introduced into the country. First, this paper argues that the new multiparty system of government in the country is caught up in neo-liberal and neo-patrimonial puzzles that undermine the process of democratisation. Second, that this state of affairs is rooted in the failure of neo-liberalism in Malawi; thus, the Malawian case has demonstrated that when neo-liberalism flounders, despotism recurs in a cycle of regime change. Third, that the selective application and the strange interpretation of constitutional law in Malawian politics is a clear manifestation of the existence, and draconian domination, of this despotism. Fourth, and finally, that liberal ideology, by its very nature, is a major drawback to the creation of a truly just state in Malawi.

Résumé

L'avènement du multipartisme au Malawi en juin 1993 n'avait pas été immédiatement perçu comme le présage de jeux politiques qui en ont étonné plus d'un. Les Malawites, qui sortaient tout juste de 30 ans de régime totalitaire, avaient toutes les raisons de jubiler lorsque le mouvement pro-multipartisme avait triomphé, après que les résultats du référendum national du 14 juin 1994 avaient été annoncés, accordant 64% des votes à ce mouvement, permettant

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ainsi le retour au multipartisme. Cet article commence par affirmer que le nouveau système de gouvernement multipartite de ce pays se trouve piégé dans un labyrinthe néolibéral et néopatrimonial, qui porte atteinte au processus de démocratisation. Ensuite, il soutient que cette situation trouve ses origines dans l'échec du néolibéralisme au Malawi. Le cas du Malawi a ainsi démontré que lorsque le néolibéralisme échoue, le despotisme réapparaît. Troisièmement, cet article avance que l'application sélective, ainsi que l'étrange interprétation de la loi constitutionnelle au Malawi, est une démonstration claire de l'existence, et de la forte prédominance du despotisme. Quatrièmement, cet article affirme que l'idéologie libérale, par sa nature même, constitue le principal frein à la mise en place d'un État juste au Malawi.

Introduction

Malawi, like many other developing countries, has embarked on a path to consolidate democracy and sustainable development. Having emerged from 31 years of authoritarian rule only in 1993 when the country adopted multiparty politics, many questions are now being posed now about the future prospects of the new system. Under the rubric of multiparty politics, for example, some Malawians are now asking, 'why are we denied our freedom of expression and association? Why do the people from the ruling party beat us up? Why do the police stand by and watch such atrocities being committed? Why are opposition parties denied permission to hold public meetings?'² Indeed, eloquent questions are being asked about the absolutist conduct of the political parties in this multiparty state: 'what makes the ruling party so special that they are the only seemingly God-sent rulers of our country and not anybody else?'³

In Malawi today, denials of civil and political liberties and economic, social and cultural rights have been consolidated through the manipulation of state institutions, of the public policy process and by tampering with the laws of the country. Section 65 of the Republican Constitution of Malawi is perhaps the hallmark of this process. This section has perhaps been the culmination of oligarchic efforts by the ruling elite to accumulate exclusive state powers against popular demands for liberal democracy in the country, however foreign the paraphernalia of liberal democracy may sound. More than anything else, this amended section empowers the Speaker of Parliament to 'declare vacant a seat whose Member of Parliament (MP) voluntarily leaves the party that sponsored him into the National Assembly and *joins* another within or outside the House or *an association or an organisation* whose objectives are political in nature'.⁴ This section, to say the least, has contradicted and infringed upon certain

fundamental sections of the Constitution launched in 1995, notably, the right to freedom of association, the freedom to form associations, the freedom not to be forced to belong to any association and the freedom to form, hold, receive and impart opinions. Section 65 of the constitution has thus subverted basic principles and values of a liberal political system to which Malawi aspires. It is a simple task to mention sections of the constitution and values of liberal democracy that have been violated and breached by section 65 of the constitution. Notable among these constitutional provisions is Chapter 4, which provides for 'civil and political freedoms'. Chapter IV is the 'Bill of Rights' which, as an entrenched chapter, calls for a 'national referendum' in order for it to be 'evolved'. The Bill of Rights includes freedom of association. The amended section 65, therefore, contradicts the constitution and poses a major threat to the consolidation of democracy in the country. Thus, whatever may become of section 65, an indelible mark has nonetheless been made by this amendment on the democratic development of this country.

Much as questions have been raised on the democratic process in Malawi, this paper is not an attempt to provide summary answers to all of them. This paper has three objectives. First, to argue that the interpretation of section 65 based purely on the legal technicalities of constitutional law is limited. This section has broad social and political parameters that need to be appreciated and taken into consideration when evaluating its impact especially as related to the role of the constitution as the supreme law of the country upon which the very processes of democracy and governance rest. By doing this, the analysis is not by any means a replacement of the legal interpretations of section 65. The analysis rather gives further dimensions to the interpretations and application of this section. Particularly in Malawi, where the political use of constitutional law has basically revealed that moral partnership and the resilience of the neo-patrimonial state transcend the obvious and popular articulations of liberal democracy, this is important. Here, 'tenets of liberal democracy co-exist with notions of moral partnership, of enduring relatedness, with ideas of accountability, personhood and of the 'self' which are distinct from what is implied by the ideas of metropolitan liberalism'. In other words, 'despite liberal reforms, personified notions of power continue to be integral to a particular state formation which, in Malawi, has long promoted neo-patrimonialism'.⁵ This is because 'new institutions', including democratic constitutions, 'do not simply displace old ones; global forms do not take over local dispositions'.⁶

Second, to argue that the seemingly selective application of this section in parliament is not inadvertent but that it is rather a calculated strategy hatched in the echelons of power to perpetuate certain political interests using constitutional law. That this tendency is rooted far beyond neo-patrimonialism and liberalism. To understand this, I argue, we need to delve into the dynamics of state formation in Malawi characterised by exclusive and personified state power, extensive patronage, coercion and violence.⁷ Widespread notions of moral partnership, therefore, are a reaction and consequence to the political and moral deficit of this process or, as Lemarchand (1996) calls it, 'the moral discredit incurred by the state'. Third, to elucidate on the trans-systemic impact left by the legacy of section 65 of the constitution on the democratic and governance processes of the country. That the monstrosity of law as typified by section 65 of the constitution is a countervailing force against popular rights, freedoms⁸ and democratic efforts to fill in this political and moral bankruptcy. Political violence and corruption, in this sense, constitute the heart of the problem.

The neo-patrimonial state and constitutional interpretation

One of the causes for constitutional problems in Malawi is the vague understanding of the nature of the political rubrics under which the constitution is made, amended, interpreted and applied. It is the weak relationship between the constitution and the wider political system that parented it. Thus, the process of state formation in Malawi 'has retained more than a measure of continuity through the strong executive powers of the state president'. The multiparty system of government itself, apart from a short period of coalition government between the United Democratic Front (UDF) and the Alliance for Democracy (AFORD), 'has been mostly ruled by a *de facto* one party government since the 1994 general elections'.⁹ Under the UDF-led government, the state has virtually monopolised the public media, undermined the Anti-Corruption Bureau, the Law Commission, the Human Rights Commission, the Office of the Ombudsman and the now folding National Compensation Tribunal. The ruling party has often engaged in politically corrupting and terrorising tactics among opposition members of parliament. As Englund argues, this 'blatant abuse of power by UDF politicians has occurred in the context of establishing a toothless Anti-Corruption Bureau which, by early 1998, had yet to complete its first case'. Indeed, 'some abuses reveal clearly how the paraphernalia of liberal democracy often fails to curb neo-patrimonialism and greed under the Malawi state formation'.¹⁰ What is

crucial is that the law has sometimes been used as an anchor for political abuse. This is because the moral equality and goodness of law cannot be asserted quite absolutely. The law 'is relative to the constitution and consequently a bad state will be likely to have bad laws. Legality itself then is only a relative guarantee of goodness, better than force or personal power, but quite possibly bad'. The essence of this point is that 'a good state must be ruled according to law but this is not the same as saying that a state ruled according to law is good'.¹¹ The argument implies that it may not only be that statecraft in Malawi has been largely unconstitutional, as the legal technocrats would argue, but rather that the nature and philosophy of the constitution itself may not be morally good.

The other impression is that law, generally, is not an absolute moral good. At times, law and democratic constitutions may be interpreted to reflect deviant human desires. For example, there are several interpretations and applications that have been made on the amended section 65 of the Malawi Constitution, of course with different consequences. However, the terminology of the section is also elusive. The meaning of organisations with 'objectives that are political in nature', for example, is a vague term. This lack of clarity has meant that political parties, the church, civil society organisations such as the Forum for the Defense of the Constitution (FDC) and Non-Governmental Organisations (NGOs) have invariably been accused of peddling 'partisan politics'. Since the said section affects organisations and associations both inside and outside parliament, it is difficult to see how people's rights, freedoms and liberties would be preserved of themselves and as safeguarded by the law. The NGO Act (2001) is also debatable because of its interference through the NGO Board in the regulation of the political conduct of Malawian NGOs. The Act empowers the Board to cancel the registration of NGOs involved in 'partisan politics'. The NGO Act does not define what is 'partisan politics'. A further problem, relating to the 'impeachment' of judges by parliament (section 119 [6]) on the grounds of 'incompetence', is that the constitution does not clearly define what constitutes 'incompetence', thereby leaving the process open to political abuse. Coupled with section 111 [1] that empowers the president to appoint the Chief Justice, this section compromises the autonomy and independence of the judiciary.

Thus, the interpretation of section 65 has recently provoked awareness of other relevant sections of the constitution that have a significant impact on the political and democratic process in Malawi. For example, section 63 (3) of the Constitution, which empowers MPs to ask for postponement of declaring a seat vacant, has mostly been by-passed by those who seek

political surgery in courts of law. Legal experts have wondered ‘why do MPs look at the court as a hangman when you have powers to ask the Speaker to postpone declaring a seat vacant?’¹² This is because even MPs themselves interpret section 65 as a ‘political sword’ against which they have to fight and survive when the need arises. Similarly, section 108 of the constitution, which demands that the law has to be respected, has come under scrutiny. The law includes Supreme Court precedents because, according to the Speaker’s Lawyer, Shabir Latif, arguing in a recent case, ‘insofar as the decisions of the Supreme Court are concerned, they have to be followed. Any Supreme Court decision is law’.¹³ Yet Supreme Court precedence has come into conflict with statutes in a current case in which Jan Van Sonke is seeking an injunction to stop the Speaker from declaring his seat vacant following his resignation from the UDF. Sonke, it is said, is also asking the court to review section 65 of the constitution and determine whether or not it is constitutional. However, this has opened up another sticky problem – which law should prevail when Supreme Court precedence and statutes come into conflict? To this effect, High Court judge Dunstain Mwaungulu, has argued that because of this conflict of laws he is ‘caught between following a precedence set by the Supreme Court and respecting the law as enshrined by the country’s Constitution on section 108’.¹⁴ In this dilemma, he added, ‘in the case where the Supreme Court was peculiar, he would rather be bound by the statute’.¹⁵

Indeed, Supreme Court precedents are made and set by appointed legal professionals. As law, therefore, Supreme Court precedents have no more popular basis and mandate than law made by elected officials in parliament and can rarely reflect the national will, constitutional supremacy and political sovereignty of the country – except where they do not contradicting popular statutes. In any event, it is the Constitution which is the supreme law and not the Supreme Court of Appeal, because the Constitution is the supreme law of the people. The Court, in this regard, is like an overall worn by the law but it is not the law unto itself. To preserve democracy in Malawi, therefore, the rule of law must be upheld and not necessarily the courts. And this law must be law that is morally good and just. This means that if section 65 is unconstitutional, the court must say so regardless of what a Supreme Court precedent might lay down.

In his submission to the court, Shabir Latif further argued that the High Court Judge should not grant the sought injunction stopping the Speaker from declaring Sonke’s seat vacant because the Speaker had been procedurally fair, adding that ‘rules of natural justice were applied by giving Sonke a chance to be heard’.¹⁶ He added that the injunction would

not be materially necessary since the seat has already been gazetted. This is surprising considering that rules of justice entail fairness and full and equitable access to information by all parties involved in a dispute. It seems that the way the seat in question was declared vacant and quickly gazetted as such without formally allowing the other parties' access to full information about these developments may have undermined the principles of natural justice.

Political parties and government itself have been dazzled with the political implications and difficulties emanating from interpreting section 65. The ruling UDF party has perhaps revealed the greatest irony behind this section by abandoning sections of its own party constitution that violate civil liberties and freedoms. For example, the party has discarded the 'preceding ten year membership to the party' as a 'prerequisite for contesting the party's presidency' on the ground that 'it is inconsistent with the provision of the Republican Constitution in this regard, and, for that matter, it encroaches on freedom of association'.¹⁷ And yet, it (the ruling party) has failed to see this point when section 65 of the Republican Constitution is applied to discriminate against members of parliament critical of the ruling party agenda. It is clear that the interpretation and amendment of the party constitution now suits the convenience of the UDF oligarchy to pave way for its anointed presidential candidate to stand in 2004 presidential elections. Little is left in terms of values and principles of liberal democracy in this scenario.

But perhaps more than having the power to evict its members, parliament has interpreted its constitutional powers to include the mandate to amend the constitution and change the structure of government without seeking a popular mandate. The unanimous abolition of the *senate* by parliament in 2001 because it was 'economically expensive' for the country to run; the repeal of the *recall provision* from the constitution in 1995 which empowered the electorate to remove under-performing MPs from office; and the dwarfing of the *quorum* requirement, are cases in point. The recall provision, which some civil society and church organisations are trying to bring back, was repealed because 'members of parliament argued that it would be open to abuse'¹⁸ while the two-thirds quorum requirement was cumbersome for the members of the house to satisfy in order to transact business. Civil society itself, especially the NGO community, is not entirely immune from calculated legal suffocation.¹⁹ The abolition of the senate changed the structure of parliament from bi-cameral to unicameral. The repeal of the recall provision turned the political system into one less participatory, while the change of the quorum requirement

from two-thirds to a simple majority (50+1 percent) plunged the political system into what Andrew Heywood describes as the danger of majoritarianism in which 'the majority' may substitute itself for 'the people' and exercise unfettered power. Democracy could simply become 'the rule of the 51 percent, a tyranny of the majority in which the interests of both the individuals and minorities are sacrificed in the name of the people'.²⁰

The neo-patrimonial state: constitutional applications as a survival niche for the oligarchy

The issue of party defections in Malawi politics has been around for some time. By 1996, it was common to learn about opposition members of parliament defecting to the ruling UDF *en masse*. Asked about the constitutional implication of these defections, the UDF Legal Advisor, Peter Fachi, curtly countered: 'I don't see anything wrong with that, it's provided for in Section 40, Subsection 1 of the Constitution'.²¹

However, democratic Constitutions can be interpreted and applied in many ways. It has been said that when the ruling UDF party had problems with its breakaway group, the National Democratic Alliance (NDA), political defections became a political threat to be tackled. The UDF reacted to the perceived threats by hatching the amendment of section 65 of the constitution to tame its own political offspring that threatened to leave the fold. The application of section 65 of the Constitution of Malawi has, however, been overtly selective and discriminatory, infringing upon people's rights, liberties and freedom from discrimination at times. For example, while the Speaker found it plausible to declare vacant the seat of Sonke because he had resigned from the ruling UDF party, the circumstances that 'forced him to resign' notwithstanding, the Speaker declined to declare vacant the seats of AFORD President Chakufwa Chihana, and others who openly associated with the UDF in a 'Government of National Unity' and conduct joint political rallies. Indeed, expelled members of AFORD have contended that 'under section 65 of the Republican Constitution any coalitions, alliances or government of national unity are unlawful'.²²

The State President also admitted having associated with Malawi Congress Party (MCP) President, John Tembo, without his ruling party invoking Section 65 against him and his loyalists. Even in UDF itself, those who were critical of the 'open term' and 'third term' bills like Joe Manduwa and Jan Van Sonke have had to fight legally to protect their seats from being declared vacant. Clearly, the application of this section of the Constitution is an illustration of double standards in the house and beyond.

When it suits the ruling party, section 65 is applied; otherwise, the section is not invoked. This politics of the stick and carrot is also practised in parliament where the Speaker has often interpreted and applied section 65 in a manner that strikes some onlookers as altogether weird. However, what is interesting is the way people have treated section 65 since its inception. Most MPs have simply sought to challenge their expulsion from parliament on the basis of this section and once the courts reinstate them in parliament, they have not pursued the struggle by pressing for a review of the section in court. It is only recently that the situation has changed. Jan Van Sonke is seeking judicial review of this section but only after many casualties. This review is far overdue bearing in mind the consequences of maintaining and applying section 65 for the consolidation of democracy in Malawi.

Meanwhile, it must be noted, the wealthy oligarchy in Malawi has hijacked the democratic process. 'What everybody means by oligarchy is a government by the rich, just as a democracy is a government by the poor'. However, 'the essence of the matter is that there are two distinct claims to power, one based upon the rights of property and the other upon the welfare of the greater number of human beings'.²³ Like Amitai Etzioni's 'legalized corruption' in the American context, this oligarchy in Malawi, apparently enjoying an absolute claim to power, often works by corrupting public life. They seek to turn a government of, by and for the people into one of the wealthy. Political corruption is typically perpetrated by private interests seeking illicit public favors and finding quite willing officials.²⁴

The Malawian state's claim to adhere to democratic practices is contradicted by electoral chasms, corruption and widespread economic exploitation, and is no more than a criminal facade. One reason is that the neo-colonial deficits of our electoral laws limit political participation by requiring that parliamentary aspirants speak English for them to qualify for the contest. And yet, 'there is no provision in our Constitution that states that English is our official language'. Further, new rules governing the presidential and parliamentary elections also require that a candidate for the office of president pay a fee of K50, 000, overlooking the fact that 'the franchise is not only for the rich people'.²⁵ Similarly, it is a criminal façade because 'a plundering democracy is no more honest than an exploiting oligarchy'.²⁶ As one opposition MP argued, in Malawi 'greed has taken root in the hearts of the elite. Opportunistic approach is their strategy. That approach, by the way, includes corruption and fraud... political power is their weapon. They exploit the poor without shame. The consequences,

Mr. Speaker Sir, are unbearable. A *gini* co-efficient of 0.64 is, at best shocking, at worst, criminal'.²⁷

It can be argued that there have been coalitions, cabinet appointments and governments of National Unity in Malawi that have breached the spirit of the law. That is, when it suited those in power, coalitions and alliances have been formed contrary to law. Indeed, the oligarchy has used the law merely to justify its mutations in all these developments. 'That the constitution fails to clearly spell out whether an MP could double as cabinet minister or appointing opposition members as ministers'²⁸ without contradicting section 65 is a fact. In other words, the constitution is unclear. It fails to answer the question as to whether the country operates under a presidential or parliamentary system of government – opting, rather vaguely, for a 'hybrid' system of government with strong presidentialism. That is to say, much as law is a technical terrain, the constitution reflects a wobbly appreciation of the way the political system permeates through the entire body of law.

The violent rise and sublimation of trans-systemic oligarchy

The failure to entrench the UDF grip on state power at the national level through arbitrary constitutional amendments did not put the matter to rest. Indeed, the oligarchy in its determined attempt to capture the state machinery mutated and transited from one regime to the other; from the superstructure or the national political system to the sub-system, and shifted its focus from parliament to the party machine and the legal infrastructure. Instead of amending the national constitution, it now became imperative to amend the party constitution to serve similar motives - consolidating personal rule, the patrimonial state and the myriad benefits of its cronies. While in the one party state this was led by the *Ngwazi* and his self-styled royal family, this time around it is couched in the convenient language and images of liberalism. The underlying essence is that of a trans-systemic oligarchy that has survived beyond the one party state, marginalised its religious and political counterparts, and is now manifested with all its undemocratic paraphernalia in the multiparty system of government in Malawi. Its manifestation is a betrayal of the promise of multiparty politics. Among other factors:

One reason for the government's failure to sustain the democratic momentum may be the background of some top UDF officials who were prominent in previous MCP governments. The democratic transition has introduced the marginalization of the religious and intellectual contingent, who were at the forefront of opposition to the Banda regime, in favor of astute politicians with considerable involvement in commerce taking over the scene.²⁹

This development is not entirely new in Malawi. The Nyasaland African Congress (NAC), established in 1944, which later became the Malawi Congress Party (MCP), drew the rank and file of its leaders from 'self-employed businessmen, partly because of their earlier harassment by white employers and the lack of autonomy in the colonial civil service'. However, even at that time success in business and commerce 'brought resources to foster a moral partnership which, in turn, was integral to political prominence'.³⁰ The difference in the current set up is that the source of resources used for patronage has also shifted significantly from private business and commerce to the rampant abuse of state coffers. While the opposition and civil society in Malawi have repeatedly accused the UDF-led government of corruption, mismanagement and have called for a stop to the use of public resources to finance UDF functions, the UDF has gone ahead to claim that people should support it because 'it has access to development' resources. It is difficult, therefore, to distinguish party from state functions because 'Muluzi's public meetings have always been UDF events whose party symbols and yellow colours are displayed in abundance'.³¹ Due to widespread poverty in the country, where around 65 percent of Malawians live below the poverty line (US\$1 a day) mostly in rural and semi-urban areas, 'the political elite, including President Muluzi, seemed to think that popular support required acts of direct patronage'.³²

The oligarchy-dominated democratic process in Malawi is a fledgling one which faces numerous challenges. Political and democracy experts gathering in Lilongwe recently aptly noted that the problem of democracy in Africa and Malawi in particular is that 'we have life presidents in political parties, permanent leaders in NGOs'. In Malawi, argued Thandika Mkandawire, 'we have little Ngwazis everywhere. This is a culture that we need to stop. It's not a problem of donors but our own problem which we need to sort out'.³³ Underpinning these problems is perhaps a lack of 'sound political ideologies, weak civil society, inappropriate institutions, absence of political coalitions to come up with pro-poor policies and economic crisis that have made the country to swallow policies that are not developmental'.³⁴ Poverty, political violence and intimidation, corruption and lack of equitable media access have routinely been pointed out as anti-democracy problems besetting the country.

The incidence of poverty and underdevelopment notwithstanding, political discrimination has resulted in opposition constituencies being sidelined in the allocation of development resources by the state. State institutions including the media, parastatals and the police have tended to exacerbate this political trend by subsidising or protecting the partisan

interests of the ruling party. Similarly, section 65 of the Constitution has been used in an attempt to entrench 'the little Ngwazis everywhere'. For example, the ruling UDF is failing to proceed as usual without the incumbent party president when his two five-year consecutive terms come to an end in 2004. The UDF has hurriedly amended its party constitution and has created the position of *national chair* specifically to accommodate him. Even if the UDF presidential candidate and running mate win the general elections in 2004, 'they will be under the chairperson on party matters'. Further, the chairperson 'will be in charge of the party' since the party will have no president or vice president.³⁵ It must be noted that the process of despotisation here is trans-systemic. As Jack Mapanje has argued, while in the one party state Malawi was ruled by Dr. Banda and his extended 'self-styled royal family' or the Banda-Tembo-Kadzamira triumvirate³⁶ with all its political vices, the country is now on the verge of descending into the grip of an oligarchic political elite that intends to perpetuate itself in power. The fact that the three top positions—those of the presidential candidate, the running mate and the national chairman—have all been awarded to individuals by a joint clique composed of the national executive committee and the cabinet before a national convention has been held frustrates the democratic process in the UDF. After all, 'political parties are the central institutions through which people express their democratic will at the polls'.³⁷ Undemocratic tendencies among the ruling elite in Malawi are ubiquitous, leading to the perception that Malawi is now a 'crony capitalist state'³⁸ in which the sustenance of clients, cliques and the oligarchy in power is more important than upholding the popular will of the people.

Parliament itself has suffered the consequences of the amendment. These have been self-inflicted injuries. Soon after the amendment was passed, for example, seven senior members of the MCP and NDA were thrown out of parliament and only a court injunction restraining the Speaker from declaring their seats vacant. Indeed, it was said that these MPs were sacked from parliament because their MCP and NDA leaders had 'joined forces to vigorously campaign against a possible third term bid by President Bakili Muluzi when his two five-year terms expire in 2004'. Several other MPs have since been thrown out of parliament on the grounds that they have 'crossed the floor' from the party on whose ticket they entered parliament to another organisation or association with political objectives. Some MPs have either just been 'abducted' or 'bought' mysteriously when the ruling UDF party faced a crucial vote and possible defeat in parliament, as with the 'third term' bill. Nor have political parties

been spared the brunt of this political crusade by the oligarchy. Parliamentary candidates for the opposition MCP, AFORD and the People's Democratic Party (PDP), for example, were abducted and induced to resign from their parties and abandon their candidature in by-elections sometimes with the direct involvement of the State President.³⁹

Even the attempted 'impeachment' of three High Court Judges in 2001⁴⁰ was clearly linked to political manipulations aimed at creating presidential longevity and prolonging the tenure of power by the ruling party and its oligarchy in Malawi. To begin with, all the movers of the motions that initiated the impeachment were UDF MPs. They accused the judges of 'passing judgments that have not been favourable to the United Democratic Front (UDF) government, and are seen as tools for the opposition'.⁴¹ The MPs argued, *inter alia*, that 'Judge Mwaungulu should be removed for questioning the presidency while analyzing the 1999 general elections results. That was wrong and unbecoming. It clearly demonstrated that the Judge was a politically interested party. His judgment was clearly partisan and colored with his political thinking'. Similarly, it must be remembered that when the opposition was contesting the results of those elections in court, the Attorney General, Peter Fachi's, response to the proceedings was, among other things, that 'Muluzi will remain president of this country until another candidate is sworn in after holding fresh elections. Muluzi may even become life president regardless of what the court rules'. For his part, Judge Chimasula Phiri was accused of being National Democratic Alliance (NDA) president, Brown Mpinganjira's 'personal assistant as he continuously served Mpinganjira's interests through his court rulings'. And Judge Chipeta 'had lowered the dignity of parliament by reversing the suspension order' against another opposition leader, MCP president, Gwanda Chakuamba, from parliament for 'disrespecting the State President'.⁴²

True to the sentiments of the Attorney General, the ruling UDF party relentlessly pursued the indefinite extension of Muluzi's presidency through political campaigns and parliamentary manipulation. This culminated into the drafting and subsequent tabling of the defeated 'open term' bill, which sought to make Muluzi's tenure of the presidency open – reminiscent of the defunct 'life presidency' of Dr. Banda. This bill was rejected by Parliament on 4th July 2002 after it failed to muster the two-thirds requirement for such a constitutional amendment. However, the political resilience of the UDF and the oligarchy was revealed when the party later crafted the 'third term' bill, rationalised on the premise that,

unlike the open term bill, the third term bill would assuage popular fears of a return to a life presidency as it restricted the extension to only three consecutive terms for 'any president in Malawi not only Muluzi'. The 'third term' bill was introduced into parliament in March 2003 but was later referred to the Parliamentary Legal Affairs Committee for 'fine tuning' by the Attorney General, Henry Phoya, after it was clear that the bill was not going to attract the required two-thirds majority of MPs voting. The bill is still being reviewed by Parliament although Muluzi and the UDF have since identified Bingu Wa Mutharika and Cassim Chilumpha as ruling party presidential candidate and running mate respectively in the forthcoming 2004 tripartite elections. Implicitly endorsing its humiliating failure, the ruling party said that 'we already made a position as a party that we no longer want the third term bill. Our president also said it clearly that he does not want the bill to proceed. What we are now waiting is the official withdrawal'.⁴³ Indeed, the ruling party has set a clear precedent in attempting to perpetuate 'the little Ngwazis' in Malawi by pursuing the *open term*, the *third term* and now, within its own party, the *national chair* that almost combines absolute powers of the party president and the national chair itself in one person – Muluzi himself. This personality cult follows sharply on revelations by senior cabinet ministers early in 2003 in the media that the UDF party cannot survive without President Muluzi because he owns the finances, property and resources on which the party depends for its survival and operations. Ruling UDF Deputy Secretary General, Paul Maulidi, disclosed that 'president Bakili Muluzi is the sole financier of the ruling party and that UDF would "struggle badly" if he were to leave'. Indeed, it was acknowledged that 'UDF is a very poor party. It has no money. Without President Muluzi's financial help, we would only be relying on the funds that parties get from parliament'.⁴⁴ The UDF receives K1.8 million every quarter a year from parliament. The MCP is given K1.2 million and AFORD K800, 000 respectively. The situation is so bad in the UDF that 'almost everything that the party has comes from the president. So, what can we do without the President?'⁴⁵ A personality cult is being engrained into the country's politics despite earlier fears raised by the Malawi Law Society that such tendencies 'would be a breach of national understanding... considering the history of Malawi... history had shown that presidents turned into dictators by overstaying in power', and that the extension of their tenure of power creates the danger of having 'further or unlimited terms of office with ultimate loss of legitimacy, dictatorial tendencies and loss of power in disgrace'.⁴⁶ Typical of a despotic regime, the UDF thrived on the logic

that 'you do not necessarily need to go through a referendum in order to change such a fundamental provision as the number and length of presidential terms. A parliamentary two-thirds majority can be sufficient as it was in Namibia... in reality, a vocal and proselytizing youth wing of the ruling party, which mobilizes the party membership with the blessing of the president may be quite sufficient for the purpose of re-writing the constitution. In other words, a ruling party accrues to itself the prerogative of changing the constitution to keep its leader in power for as long as it may dim fit!'⁴⁷

It must be pointed out that the run up to the parliamentary tabling of both the *open term* and *third term* bills as means for accumulating political power and all its emoluments was heavily characterised by political corruption and violence in the country. Apparently, political violence and corruption have often supplemented the inadequacies of using section 65 to silence political critics and prevent them from associating with political groupings other than their own political parties. Thus these vices too have become vicious instruments of power. It may be appreciated in that context generally that 'the state is still the source of that power, accumulation and wealth for those who wield control over it. The notion of sharing the power or rotating positions of power is still unacceptable to most of the ruling elites in Southern Africa'.⁴⁸ We link corruption and power here because '... it is possible that a law could be stated that would say that the degree of corruption varies inversely to the degree that power is consensual'.⁴⁹ Since 1997, political corruption has risen in Malawi although the Presidential and Parliamentary Elections Act (1993), the Communications Act (1998), the Corrupt Practices Act (1995) and the Constitution (1995),⁵⁰ among others, were put in place partly to deal with such challenges. Political corruption here 'refers to any behaviour which 'violates and undermines the norms of the system of public order which is deemed indispensable for the maintenance of political democracy'. As a general term, political corruption covers 'all illegal or unethical use of governmental authority as a result of considerations of personal or political gain'.⁵¹ The purchase of voter certificates, elected members of parliament inducing voters not to register and vote, abduction of political opponents, use of governmental development resources for party campaigns, political intimidation of High Court Judges and, in fact, the manipulation of law to eliminate popularly elected political representatives, have all undermined the norms of democracy in Malawi since 1995. The national radio station, the Malawi Broadcasting Corporation (MBC), remains the sole mouthpiece of the ruling party contravening rules and regulations laid down to govern

its operation.⁵² Where legal postulates are adopted in their colonial and western caricatures, these become infirm weapons to tackle the subtle modes of neo-patrimonialism, paternalism, clientelism and outright political corruption.

The path to the national chairmanship in the UDF has not been free of political violence either. For example, in 1997, a Land Rover belonging to the opposition MCP was burnt to ashes during a by-election campaign in Chiradzulu district. In another by-election in Machinjiri, Blantyre district two years later a UDF supporter was killed in clashes between the ruling party and the UDF. In 2002 a UDF constituency governor in Mulanje district died in clashes between the UDF and the NDA. In the same year, members of parliament were beaten on their way to parliament and some had their vehicle burnt in full view of police after the State President had opened parliament in Lilongwe.

The long-term campaign to retain power exclusively in the hands of the oligarchy in the ruling UDF party reflects this trend. This now is evident in the fact that the only avowed contender to the post of national chairman, Hon. Joe Manduwa, has been under siege for his political ambitions to the extent that he has been warned not to attend the party's mini-convention in Blantyre where the party constitution will be amended to accommodate the new post.⁵³ Similarly, two UDF district governors, Ackim Ntaja for Chiradzulu district and Māwu Lumwira for Zomba district, were physically manhandled at Sanjika Palace in Blantyre on July 5 and were fired from their posts and lost all the resources and benefits they enjoyed from the party for protesting together with the party's Treasurer General, Patrick Mbewe, against the appointment of Wa Mutharika as UDF presidential candidate in 2004. Lumwira argued that 'you cannot just impose a choice on millions of people. If that is what is called democracy, then I would rather be undemocratic'. At root here appeared to be political greed and hunger for power among the ruling oligarchy and its hangers-on. Indeed, the creation and allocation of the post of party national chairman to Muluzi was based on this premise and logic. As Lumwira argues, 'it is wrong that after you have already had your food, you queue up again when other people have not eaten. It is called greed, and this is what Muluzi is doing'.⁵⁴ This greed and illiberality led to, among other things, the banning of public demonstrations for or against the third term bill by the State President, and before that to 'the banning of public meetings held by the Malawi Congress of Trade Unions intended to address the Malawian economic crisis after the democratic transition'.⁵⁵

What becomes clear, cautions Englund, is the fact that not all 'primordial identities, whether regional or "tribal", have become the sole parameters of politics' in Malawi because of the impact of moral partnership on political discourse and transited clientelism typified by the colonial sycophant, the nationalist and now the democrat.⁵⁶ What is trans-systemic about this tension is that the colonial sycophants in Africa generally, and Malawi in particular, mutated to become nationalists as independence approached and, once again, changed colours to become democrats with false promises to fill in the moral and political bankruptcy left by both the colonial state and the one party authoritarian state. The essence of this mutation and the influence of the 'piggy banks' mark the umbilical cord of the politics of the regimes and systems of this process. In the face of transition and mutation, therefore, primordial identities may not exclusively account for the fact that both Lumwira and Ntaja, for example, come from the southern region - home to the State President and power base for the ruling UDF party. In trying to remain in power, primordial identities of tribalism, regionalism and religion are resources exploited by the ruling oligarchy but, more importantly, state institutions such as the judiciary, the law, the police and the legislature are subjected to personification and the consolidation of personal rule. In Malawi, beyond what Harri Englund calls 'locally-established moral partnership and top-down neo-patrimonialism' lies the captured state.

These political excesses have damaged both the institutions and process of democracy in Malawi. The legislature, political parties and the democratic process have been undermined. One major dimension of political corruption that became widespread in the course of the debate for a constitutional amendment was legislative and institutional corruption. A culture of political corruption in Malawi is undeniably growing where the moral standards in public life have been lowered to such an extent that people believe they can buy the public mandate and vote. Indeed, if public figures such as MPs can be bought with money what is left for ordinary Malawians? This buying of power and even human souls is rooted in the belief of the oligarchy that their property rights, education and social status in society accords them, as a class, absolute moral right to power that perpetuates and resonates their tenure of office at party, governmental and state levels. This grip on power defeats the principle and value of democratic accountability.⁵⁷

We need not belabour the point that the application of section 65 of the constitution, for whatever purposes, has left the legislature in Malawi with tattered integrity. The amendment is an instrument designed for the

consolidation of power in the hands of the ruling party and its leadership rather than in the people of Malawi. Signs of this legislative damage included the abduction of some opposition MPs in area 23 in Lilongwe in March 2003 allegedly by government cabinet ministers and ruling party officials to induce them with lucrative financial offers to vote for the *third term* bill when time came for voting. Some of the MPs were said to have received bribes while other resisted them and blew the whistle in the media. The battle was to diminish the voting power on the anti-third term side while illegally and corruptly inflating that of the pro-third term movement. The media, opposition parties, donors, the church and civil society groups condemned these acts, leading to the Anti-Corruption Bureau (ACB) probing the matter. The ACB, which is largely funded by foreign donors, is yet to demonstrate its efficacy in tackling political corruption in the country. For example, the probe into allegations of political corruption among the MPs has dragged on without result primarily due to a lack of resources.

Like many other political parties in the country, the ruling UDF has a youth wing. Having a youth wing, it is said, in itself is not a problem in itself, 'the difference lies in their relationship with the police'. The police in Malawi have, probably, been the most abused in orchestrating lawlessness and consolidating political power in the hands of the ruling UDF party and its leadership. In this exercise, police officers have often developed cold feet when the UDF Young Democrats terrorise political opponents of the ruling party.⁵⁸

It has been stated that 'Malawi is a republic. There is no room now for perpetual ruling chiefs to be protected by abuse of power. There must be free competition between political parties for the support of the people. It is the duty of the police to see that no one group invades another'⁵⁹ and that people's life and property are secured equitably. Indeed, 'police officers should know that first and foremost they are servants of the state and the state means the people as a whole, not leaders of the ruling political party'.⁶⁰ Similarly, it is important to note that the meaning of the rule of law has two aspects. First, 'that all people abide by the law', and second, that 'those who hold official positions should perform their duties according to the law; that which the law requires them to do they must do without fear or favour to anyone. That which is unlawful officials must not do regardless of who commands them to do it'.⁶¹

Beyond political and institutional corruption, democracy in Malawi faces fatal philosophical flaws. This is demonstrated by the illogical argument both at state and party levels that derives an *ought* from an *is*.

The argument, used by both the MCP regarding Dr. Banda and the UDF with respect to Muluzi, that 'because a particular person *is* good, then there *ought* to be a provision that allows presidents to remain in office for a third, fourth or indefinite term. By the same token, it is illogical to argue that because a particular president has not been a good president then there ought to be term limits'.⁶² This kind of opportunistic empiricism is bereft of the normative values and principles required to guide the democracy debate in Malawi.

Conclusion

This paper has argued that section 65 of the constitution of Malawi is a retrogression in the efforts and processes of consolidating democracy in Malawi. This section has been used virtually to entrench the interests and exclusive powers of a dominant oligarchy in multiparty Malawi. The real monster in this process, however, is cosmopolitan liberalism in which 'states must look "democratic", whatever the moral discredit they accumulate locally. In a more profound sense, liberalism promotes the exclusiveness of power that has come to characterize the neo-patrimonial state in Malawi. The reason is the individualist presuppositions of liberalism: subjects are linked to the highest state officials as pawns rather than as the *constituents* of their power'.⁶³ As Van Binsbergen (1995) and Kalstrom (1996), cited by Englund, H. in Cowen, M. & Laakso, L. (2002:185), have argued, these 'precepts of liberal democracy lend themselves to greed and the consolidation of exclusive power'. In Malawi, the ability of the ruling oligarchy to use patronage and clientelism to capture the state machine in the name of liberal democracy has particularly resulted from the manipulation of the constitution and some statutes.

Since the judiciary and the law are usually regarded, even by the most doubting Thomases, as technically sacrosanct institutions, the lack of popular control over these institutions becomes a major problem for the consolidation of democracy in a country where illiteracy and poverty levels are as high as 65 percent. This situation undermines the opportunity to use trans-regime 'indigenous resources'⁶⁴ for consolidating democracy. Indeed for Malawi, 'the conclusion that no class has an absolute claim to power re-enforces the principle that the law must be supreme, since its impersonal authority is less subject to passion than men can claim to be'.⁶⁵ As Plato told us, 'man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all'.⁶⁶

This paper has argued, therefore, that when law is bad law political evil feasts on it. Worse still, when law is not understood in relation to the

wider political system in which it is embedded, little sense can be made of the legal regime which, having lost a popular mandate, is captured by the oligarchy as an arbitrary political tool for the rich few. In the ensuing drama, law lingers in the air to the chagrin and hysterical fear of the people the same way a loaded gun would in the hands of a raving mad man. The situation is no better when the law, having lost a popular basis, perches on the shoulders of the oligarchy who use it to wreak havoc on the poor. Indeed, neither poverty nor wealth is a moral yardstick for the monopoly of power. Law and justice demand equity and fairness among the classes competing for power. These values set the parameters for the construction and consolidation of a just state in Malawi. That liberal democracy as imported from the west is the best form of government in Malawi is not certain. What is clear though is that democracy in Malawi has been hijacked by the oligarchy and that the process of democratisation has betrayed the promise of multiparty politics.

Notes

1. This paper was presented to the Political and Administrative Studies (PAS) Students Society Forum at the University of Malawi, Chancellor College, Zomba, Thursday 12 June 2003. The constitutional amendment of section 65 passed by parliament in June 2001 in Malawi has had widespread political repercussions in the country. In spite of its political significance and implications, however, little has been argued about it outside purely legalistic commentaries. In its current state, I would like to thank students at Chancellor College who gave me their preliminary comments on the manuscript; Dr. Arne Tostensen of the Christen Michelson Institute (CMI) in Norway and the two anonymous peer reviewers for their insightful comments on the manuscript of this paper. The usual disclaimer applies.
2. These are issues raised by a concerned observer, 'Malawi's Democratic Vices', *The Nation* 23 June 2003 p. 17.
3. Ibid.
4. This constitutional amendment of June 2001 is apparently in conflict with Chapter IV of the same constitution section 32 (1), which among other things, provides that 'every person shall have the right to freedom of association, which shall include the freedom to form association'. Furthermore, section 32 (2) states that 'no person shall be compelled to belong to an association'. Similarly, section 34 says 'every person shall have the right to freedom of opinion, including the right to hold opinions without interference to hold, receive and impart opinions'. See also 'Sonke asks court to review section 65', *The Daily Times*, June 4, 2003, p. 3.

5. See also Harri Englund 'Winning Elections, Losing Legitimacy – Multipartyism & the Neopatrimonial State in Malawi', in Cowen, M. & Laakso, L. (eds.) *Multiparty Elections in Africa*, 2002 p. 172-186.
6. Ibid, p. 173.
7. As Chazan *et al* (1998 p. 157-160) in Harri Englund (ibid) has pointedly argued, after independence states in Africa came to be personified by their charismatic leaders and, as a result, 'assumed grossly autocratic proportions in Malawi. Promoted as "father and founder" of the nation, Kamuzu Banda embarked on an extreme centralization of political and economic power even before the country was declared independent in 1964. All "development" came to be identified with his personal efforts and wisdom, and all politicians and the populace at large were expected to display wholehearted loyalty'. The state that emerged in Malawi 'percolated through virtually every sphere of Malawian society, sometimes bringing extensive patronage, at other times coercion and violence... Popular participation consisted in expressions of support and obedience for the Head of State known as the *Life President* since 1971'.
8. See chapter 4 of the Constitution of Malawi, 1995.
9. Harri Englund, *op cit.* p. 175.
10. Ibid p. 175.
11. Sabine, G.H. & Thorson, L.T. *A History of Political Theory*, 1973 p. 107.
12. *The Daily Times*, *op cit.*
13. See also 'Sonke's Case Puzzles Judge', *The Nation*, 10 June 2003 p.1.
14. Ibid. p. 2.
15. See 'Judge Quizzes Attorney General's Lawyer Over Sonke', *The Daily Times*, 10 June 2003 p. 3.
16. Ibid.
17. These were views of the UDF deputy secretary general and Minister of Justice, Paul Maulidi. See Gedion Munthali, 'UDF to have no party president', *The Nation*, 18 June 2003 p. 2.
18. See Gideon Munthali, 'Church Presses for MPs' Recall', *The Nation*, 23 October 2003 p. 3.
19. The NGO Act (2001), section 23 (1) [C] leaves them vulnerable to political manipulation sanctioned by the parent Act. This section empowers the NGO Board in Malawi to 'cancel or suspend the registration of an NGO if it is satisfied that the NGO – has been engaged in partisan politics'. What 'partisan politics' means, however, is not clearly defined.
20. Heywood, A. *Political Ideologies - An Introduction*, 1992 p. 275.
21. 'UDF Attacks Commission', *The Nation*, 4 December 1996. Section 40 (1) of the Constitution of Malawi reads, *inter alia*, as follows: 'subject to this constitution every person shall have the right:
 1. to form, to join, to participate in the activities of, and to recruit members for, a political party;
 2. to campaign for a political party or cause;

3. to participate in peaceful political activity intended to influence the composition and policies of the government; and
 4. to freely make political choices’.
22. This argument was advanced by former secretary general of Aford, Dan Msowoya, who was expelled from the party (AFORD) together with his six colleagues apparently for disagreeing with their party president, Chakufwa Chihana, on the issue of the *third term* bill. Chihana has since been appointed Second Vice President in the UDF-led ‘government of national unity’. See McCarthy Mwalwimba, ‘Axed Aford Members Reinstate Themselves’, *The Nation*, 18 June 2003 p. 3.
 23. Sabine & Thorson, p. 106.
 24. Heidenheimer et. al. (eds.), *Political Corruption - A Handbook*, 1997 p. 10.
 25. See Joseph Chimbuto, ‘Constitution’s Roles Inconsistent’, *Daily Times*, 17 July 2003 p. 11.
 26. Sabine & Thorson op cit.
 27. These were arguments raised during a budget sitting of parliament by one prominent opposition member of parliament who is also an economist, Hon. Mapesi Gondwe on 15 June 2003. See Joseph Langa, ‘No Hope for Economic Development – Mapesi’, *The Nation* 16 June 2003 p. 3. For example, civil society queried government at a budget briefing meeting in Lilongwe on 16 June 2003 over the more than 100 percent raise in financial allocations to the Office of the President and Cabinet (OPC) and the ruling party instrument – the National Intelligence Bureau (NIB), while pro-poor sectors suffer.
 28. Joseph Chimbuto, ‘Constitution’s Roles Inconsistent’, *Daily Times*, 17 July 2003, p. 11.
 29. Lwanda (1996) in Harri Englund, op. cit. p. 175.
 30. Harri Englund op cit. p. 177.
 31. Ibid, p. 179.
 32. Ibid, p. 180.
 33. See Joseph Langa, ‘Experts Attack MW Democracy’, *The Nation*, 5 June 2003 p. 1. ‘Ngwazi’ is a symbolic Chewa (local language) name, which Malawians had given the former dictator, Hastings Kamuzu Banda, as a sign that he was almighty, infallible and *life president* of the country. See also Thandika Mkandawire, ‘Threats to Democracy in Malawi’, *The Lump Magazine*, July-August 2003.
 34. Ibid, p. 2.
 35. Gedion Munthali, ‘UDF to have no party president’, *The Nation*, 18 June 2003 p. 1.
 36. See for example, Jack Mapanje, ‘The Orality of Dictatorship: In Defense of My Country’, Harri England (ed.) *A Democracy of Chameleons – Politics and Culture in New Malawi*, 2002, pp. 178-189.
 37. See Kondwani Mwalughali, ‘Who will be laughing in 2004’, *The Chronicle*, 8-13 July 2003, p. 6.
 38. Ibid.

39. For example, Harri Englund observes that in Machinga, one of the districts in the southern region and home to the state president, the PDP candidate in a parliamentary by-election was taken to go and see the state president. The same day's lunch hour bulletin broadcast on MBC announced that the candidate had resigned from the PDP and given up his candidacy. UDF Publicity Secretary later admitted that Muluzi had supported the opposition candidate 'with cash and material assistance' because the opposition candidate was 'a boy from home who needed help'. Candidates for MCP and Aford, Edward Mlongoti and Evance Kapesi, respectively were allegedly abducted by UDF officials when they wanted to stand for the opposition in a hotly contested parliamentary by-election in Ndirande township in 1997. p. 182.
40. Justices Dunstain Mwaungulu, George Chimasula Phiri and Anaclet Chipeta were 'impeached by Parliament' in 2001 for 'incompetence and misconduct' until president Muluzi, after intense domestic and international pressure, refused to assent to the impeachment. However, their impeachment was clearly a case of political harassment.
41. African Church Information Services, <http://search.yahoo.com/search?fr=ieas&p=Africa+church+information+services>, 5 November 2001.
42. UN Integrated Regional Information Networks, <http://search.yahoo.com/search?fr=ieas&p=un+integrated+regional+information+networks>, 19 November 2001.
43. See also Joseph Langa, 'Budget Still on Drawing Board', *The Nation*, 18 June 2003 p. 2.
44. Pilirani Semu-Banda, 'Why UDF Wants Muluzi as Chair', *Weekend Nation*, 26-27 April 2003 p.1.
45. Ibid, p.2.
46. See also *African Church Information Services* ibid. 5 November 2001.
47. Sachikonye (2001:5).
48. Sachikonye (2001:6).
49. For a main discussion of ethics and corruption in government see, for example, Heidenheimer et al. (eds.) *Political Corruption – A Handbook*, 1997.
50. For example, section 58 of The Presidential and Parliamentary Elections Act (1993) as amended in 1997 and 1998 provides that 'every public office and public entity or authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely'. The Communications Act (1998) section 45 (1) provides that 'The [Malawi Communications Regulations] Authority shall regulate the provision of broadcasting in Malawi in the manner which it considers is best suited (f) to ensure equitable treatment of political parties and election candidates by all broadcasting licenses during any election period'. And The Corrupt Practices Act (1995) prohibits corruption among public officers generally under section 24.
51. Ibid, p. 7.

52. The ruling party monopolises the MBC in violation of The Communications Act (1998) section 87 (1) [b] which states that ‘MBC shall provide public broadcasting services in accordance with the following principles – the encouragement of free and informed opinion on all matters of public interest; [d] respect for human rights, the rule of law and the Constitution of Malawi; (2) [a] function without any political bias and independently of any person or body of persons; [b] support the democratic process; [d] provide balanced coverage of any elections’.
53. *Daily Times*, 9 July 2003 p. 1.
54. Gideon, Munthali, ‘Anti-Mutharika Governors Fired - Forced to Walk From Sanjika’, *The Nation*, 11 July 2003 p. 1-2.
55. Harri Englund op.cit. p. 176.
56. Partly because parties in Malawi lack ideological bases for their policies, the politics of the ‘personality cult’ are so pervasive such that, to borrow Harri Englund’s words, ‘the big men’ or ‘piggy banks’ syndrome, the self and their numerous social networks and welfare politics give politics another distinctive dynamic in Malawi. This is, as Harri Englund notes, ‘the imagery of prominent persons as piggy banks whose participation in party politics is merely an aspect of their authority. Through their moral partnership with their subjects, party politics is a consequence, rather than a source, of their authority’. It is also important to note that it is the same colonial sycophant that has gone through a metamorphosis to become the ‘nationalist’ agitating for independence and now the ‘democrat’ fighting the stigma of tyranny in Africa.
57. For example, Kanyongolo (2002) argues that accountability both as a constitutional value and a principle of national policy is guaranteed when leaders timely and constitutionally leave office to allow for public scrutiny of their office transactions so that they account properly and without undue influence for the activities carried out during their tenure of office.
58. On January 29 2003, ‘four MPs were roughed up at the Parliament buildings by youths believed to be UDF Young Democrats for allegedly expressing negative views on the Third Term Bill. The four MPs were Peter Kaleso, Green Mwamondwe, Jan Sonke and Joe Manduwa’. On February 1 2003, pro-Third Term demonstrators protected by the police clashed with University of Malawi students at the Polytechnic in Blantyre. The result was that 4 students were arrested for allegedly setting ablaze a UDF regional office at Chitawira in Blantyre but none of the UDF demonstrators was arrested despite the fact that they had also destroyed property at the University campus including the windows of the Polytechnic library and bus. Perhaps the ugliest scene took place on March 6 2003 when the UDF Young Democrats, in solidarity to UDF Blantyre district governor, Eric Chiwaya who was involved in a case, invaded the Blantyre Magistrates Court, beat up and injured 4 people. Similarly, a man who chanted ‘*sayimanso!*’ (the president will not stand for office again) in Limbe when Muluzi was coming from abroad was brutally hacked by panga knife wielding UDF Young Democrats. On August 17 2000, main opposition

MCP President, Gwanda Chakuamba and his party Treasurer General, Dr. Hetherwick Ntaba, 'escaped a night of shooting as they drove from a rally at Chulu in Kasungu in preparation for a by-election. Youths led by UDF Young Democrats leader, Sam Zimba, trailed the Chakuamba/Ntaba vehicle to Kasungu police station' and 'Zimba attacked a policeman who tried to block the intimidators from intruding into a cell and lay their hands on chakuamba'. What is more, 'after failing to get at their target, the youth smashed the windows of the car in which Chakuamba and Ntaba had arrived at the police station'. Although some arrests were made after some time and pressure on the police, the case has made no progress through courts up to now. In fact, Zimba himself was never arrested. As if this was not enough, on July 30, 2002 Kasungu South East MP, Kizito Ngwembe (MCP), 'was beaten up by over 30 youths at Kasungu Police Station' and was left for dead in full view of police officers. No arrests were made and the police are still investigating the matter (this catalogue of political violence was compiled by former UDF First Vice President and long time Cabinet Minister, Aleke Banda. See 'Politics of Intimidation, Harassment', *The Nation*, 23 and 25 June 2003 p. 16 and 14. Banda argues, inter alia, that the rule of law and state security apparatus in the country have been deliberately flouted by those wielding political power to intimidate and harass political opponents even though Malawi is a multiparty state now.

59. Ibid.

60. Ibid.

61. Aleke Banda, 'Politics of Intimidation, Harassment', *The Nation*, 23 June 2003, p. 16.

62. Kanyongolo, 'Constitutionalism and the Removal of Presidential Term Limits from the Constitution of Malawi', 2002, p. 6.

63. Kanyongolo (2002) and Williams, (1993) cited in Harri Englund (2002).

64. In classical terms, David Held (1987:33-34) has referred to a 'democratic' Athenian city-state and the 'oligarchic' republic of Rome as polities or 'face-to-face societies' that shared "oral cultures, with elements of popular participation in governmental affairs and little, if any, centralised bureaucratic control. Both sought to foster a deep sense of public duty, a tradition of civic virtue or responsibility to the 'republic' - to the distinctive matters of the public realm. In both polities, the claims of the state were given a unique and privileged priority over those of the individual citizen. The Malawian case has, however, shown that public virtues as an indigenous resource obtaining in a particular society and associated with a certain political regime may be discarded as the regime collapses. For example, as Phiri, K.M. (in: Ott, M. et al, 2000:82) has aptly argued, 'during the political transition of 1992-94, the forces concerned castigated and condemned all self-help initiatives sponsored by the Banda government because of the authoritarian culture with which they were associated. The result is that in many parts of the country it is an uphill struggle to rebuild the same self-help spirit in relation to the requirements of the poverty

alleviation program'. Similarly, Poschke, R. & Chirwa, W. (1998: 79) emphasised that in the countryside of Malawi there is a great deal of focus on individual freedoms and a corresponding lack of interest in the pursuit of collective goals or projects that are for the common good. The challenge though is to tame the negative aspects left by a 'culture of orality' or the 'orality of dictatorship' (Mapanje, J. in: Englund, H. 2002: 185) in Malawi and turn that 'indigenous' resource into an 'orality of democracy'.

65. Sabine & Thorson op.cit.

66. Cited in Sabine and Thorson, op cit. p. 101.

References

- Coen, M. & Laakso, L., eds., 2002, *Multiparty Elections in Africa*, London, Palgrave.
- Constitution of the Republic of Malawi*. 1999, Gothenburg, Novum Grafiska AB.
- Englund, H., ed., 2002, *A Democracy of Chameleons: Politics and Culture in New Malawi*, CLAIM/Mabuku.
- Held, D., 1987, *Models of Democracy*, Cambridge, Polity Press.
- Heidenheimer, A.J., 1997, *Political Corruption – A Handbook*, Transaction Publishers.
- Heywood, A., 1992, *Political Ideologies – An Introduction*, London, Macmillan Press Ltd.
- Heywood, P., ed., 1997, *Political Corruption*, Oxford, Blackwell Publishers.
- Kanyongolo, F.E., 2002, 'Constitutionalism and the Removal of Presidential Term Limits from the Constitution of Malawi', unpublished paper presented at the University of Malawi, Law Students Symposium, Blantyre.
- Kaniki, A.O.J., 2001, 'Africa: Constitutions Without Constitutionalism - A threat to Democracy', *Southern Africa Economist*, SAPEM, Vol. 14, No. 5.
- Ott, M. et al., eds., 2000, *Malawi's Second Democratic Elections: Process, Problems and Prospects*, Kachere Series, CLAIM/claim.
- Poschke, R & Chirwa, W., 1998, *Democracy in Malawi: Socio-Anthropological Conditions*, A study commissioned by the German Agency for Technical Cooperation (GTZ), Bonn and Lilongwe, May.
- Sachikonye, L.M., 2001, 'Changing Constitutions for Convenience', *Southern Africa Economist*, SAPEM, Vol. 14, No. 5.
- Sabine, G. H. & Thorson, T.L., 1973, *A History of Political Theory*, Rinehart & Winston Inc.