

AMBIGUITIES OF SOUTH AFRICA'S QUEST FOR DEMOCRACY

INAUGURAL LECTURE
DELIVERED AT RHODES UNIVERSITY
on 25 August 1993

by

Roger J. Southall

BA (Leeds) MA (Econ) (Manchester) PhD (Birmingham)



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INTRODUCTION

I am not sure that my students will agree, but my opinion is that this is the first time I have lectured in funny clothes. Inaugural lectures, in all the garb, are one of the institutions at Rhodes, to which all previous professorial victims heartily subscribe. However, one of my particular disappointments about the postponement of the Rhodes summit last Saturday is that I was going to propose, as a matter of urgency, that this anachronistic practice be abandoned forthwith. Deprived of that opportunity, I shall of course become a resolute defender of this glorious tradition on September 25th.

An associated aspect of this tradition is that the victim reflects upon the state of his or her discipline. I have chosen not to do that, in large measure because I am only a relatively recent arrival in South Africa, I cannot claim to be privy to any intimate understanding of how the academic study of Politics developed in this country. What I do know, however, is that under Terence Beard, the Department of Politics at Rhodes gained a formidable reputation as a place to go to be taught to think. His insistence upon the overwhelming importance of every student being compelled to rigorously encounter the great thinkers has, I would like to assure him, made a lasting impact upon our curriculum.

I made my entry to Africa in a Department headed by another scholar, Ali Mazrui, who also stressed the relevance of thinkers like Hobbes and Locke to an understanding of newly independent countries like Uganda. So my time at Makerere University immediately impressed upon me that the politics of the first and third worlds shared many similarities, and could not really be understood without reference to the other.

But Makerere also provided me with a wife, and many friends, some of whom we subsequently chased south to Lesotho. It is one of the pleasures of now being at Rhodes that so many of the friends I made at the other two African universities at which I have worked are now either visiting or coming to teach within our Department here. Indeed, my wife has a just complaint when she says that our visitors' book at home is becoming like the roll-call for an African Studies conference. None the less, however much we like to flatter ourselves that our visitors are raising research grants just to come to see us, they are actually now coming to South Africa because of the changes that have taken place since 1990. It is various aspects of these that I intend to address tonight.

AMBIGUITIES OF SOUTH AFRICA'S QUEST FOR DEMOCRACY

South Africa may have embarked on a welcome quest for democracy yet there are widespread fears and doubts concerning its capacity to claw its way to its proclaimed destination through the present period of uncertainty, strife and fear. On the one hand, South Africa's movement away from apartheid has been characterised by an at times sophisticated, debate about constitutional forms and options which has sought to balance interests, concerns and ideas of very diverse political parties; on the other hand, there have been so many brute power plays, deliberately disruptive of the negotiation process, that there are many who understandably fear that even the most skilfully honed and balanced constitutional formula can scarcely be expected to hold this troubled and deeply divided, highly armed society together.

My objective here is to propose that this widespread ambivalence towards democratisation is deeply rooted in the entire process of transition away from authoritarian rule. However, my particular argument is going to be that the historic thrust for democracy in South Africa has come from two major sources, and that whilst each of these carries within it genuinely liberating possibilities, they simultaneously deliver highly ambiguous messages. These two sources are first, the doctrine of self-determination; and second, the gospel of liberal democracy. However, before we examine these ambiguities, it is necessary to dispose of a few preliminaries relating to the genuine possibility of democracy as an option for South Africa.

South Africa's Democratic Option.

If there were no possibility of South Africa moving from authoritarianism to democracy, then the present negotiation process would clearly be centred around only a transfer of power from one regime to another, or perhaps (as clearly the National Party might prefer) the stabilisation of government by an expansion of its support base via a system of power-sharing. Now, the formation of elite pacts, whereby competing political actors negotiate a compromise under which they "agree to forego or underutilise their capacity to harm each other" (O'Donnell and Schmitter 1986: 8) is increasingly recognised as a vital step along the road to democratisation, albeit not guaranteeing arrival at the final destination. Such a process may well be reversible, particularly if a liberalising regime begins to calculate that the costs of greater tolerance of opposition are beginning to outweigh the benefits. None the less, even though the forthcoming formation of a Transitional Executive Council (incorporating representatives of all the major parties in South Africa) will constitute something of a classic pact, it is clear that at least major players, notably the ANC, are formally and actively committed to moving South Africa well beyond the stage of liberalisation.

Of course, none of this can guarantee a more thorough-going democratisation, if only because freedom loving opponents of repressive governments so often become tyrants when it becomes their turn for power. Yet the point for our present purpose is precisely that much of the effort of the negotiation process is directed towards erecting barriers against a future tyranny. Whatever the real motivations and agendas of the different negotiating parties, there is a widely shared belief that what form of constitution South Africa obtains matters, and that it should become a bastion in defence of rights. In short, whether or not the participants in negotiations are democrats, there are important dynamics at work which would seem to point South Africa at least some way towards democracy.

This does not exclude other alternatives. All too obviously, there are various armed spoilers at large who are actively working for a reversion to reaction or the greater convulsion of South Africa in a racial, civil war. Even a well intentioned clampdown upon such elements by a transitional government could carry lasting dangers for democracy by entrenching arbitrary security measures and practices. None the less, it is important to reiterate that the future remains an open one, that democracy is there for the making (Stadler 1990; Van Zyl Slabbert 1990).

However, democratic prospects **would** seem to hinge particularly upon the answers that will be given to dilemmas posed by the thrusts for self-determination and liberal democracy.

Ambiguities of Self-determination

The right of nations to self-determination asserted by the victors after World War One was directed principally at the liberation of Eastern European peoples from the shackles of the defeated German, Austro-Hungarian and Ottoman empires, and was not intended to apply to the so-called inferior races colonised by European powers. None the less, the obviously discriminatory nature of its application served as an important lever for African and Asian nationalists when, after the Second World War, they too were in a position to effectively demand the right to self-rule.

In South Africa, this ambiguity of the Versailles Treaty had of course been preempted by the settlement of 1910, which had accepted the right of the minority whites to self-determination, whilst denying it to the majority blacks. It was precisely because South Africa, effectively autonomous if not fully independent after 1910, internalised colonial relations, by **subjecting** blacks to white **citizens**, that the 'national question' was to assume such importance amongst the political debates of both the racial oppressors and the racially oppressed. This was to lead to the elaboration of three major perspectives, which we may identify as liberal nationalist, Afrikaner nationalist and African nationalist.

Liberal nationalism was directly descended from the European context which eventually gave rise to President Woodrow Wilson's formula of self-determination in 1918. In short, whilst proposing the ideal of democratic self-rule by identifiable peoples, it was shot through with the self-same racism which justified the continuation of European colonial rule. In the South African context, whilst this implied the forging of a common white nationalism out of Anglo and Boer, a project which found institutional expression in the formation of the United Party in 1934, it did so upon the basis of explicit refusal to extend citizenship to blacks. Indeed, the immediate fruit of 'fusion' (as the formation of the United Party out of Hertzog's National Party and Smuts' South African Party was called) was the diminution of residual political rights allowed to qualified Cape Africans in 1936. Indeed, all that was remotely liberal about this perspective (apart from its vision of democracy for whites), was its supposed commitment to the eventual 'civilisation' of non-whites, and hence their potential incorporation into political-constitutional structures on a basis of equality at some remote point in the future (No Sizwe 1979: 26-32; Rich 1984).

In the interim, the South African population was regarded as composed of four culturally diverse racial groups, whose differentiation provided an ideological legitimisation of the practices and policies of segregation. Even after the capture of the state by Afrikaner Nationalism in 1948, when apartheid sought to carry segregation to its logical conclusion by totally extinguishing any prospect of blacks participating with whites in a common polity, the Liberal Party - which broke away from the increasingly racist United Party in 1953 - could do no more than reassert the paternalist notion of the gradual enfranchisement of civilised people. It was only to be after white minority rule had come under the extreme pressure of black revolt after the Soweto revolt of 1976 that the Progressive Federal Party, the lineal embodiment of the Liberal tradition, was to reluctantly adopt a democratic programme of votes for all in 1981. None the less, it is undoubtedly this eventual marriage of liberalism with democracy, with its subtext of forging a common nation out of diversity, which has provided the predominant intellectual framework for the present process of constitutional negotiations.

However, if liberalism quailed before the prospect of mass enfranchisement, it was **Afrikaner nationalism** which most notoriously distorted the doctrine of self-determination to politically redress the demographic imbalance in favour of whites. Of course, in the decades after 1910, when the natives were suitably subordinated and powerless, Afrikaner Nationalism took shape around two intimately related struggles, one anti-imperialist (seeking final freedom from Britain for an emergent white South African nation), the other ethnic exclusivist, seeking to mobilise Afrikaners as a nation to challenge the

domination of the commanding heights of the economy by English-speakers. When finally this latter struggle triumphed with capture of the state by Malan's purified National Party in 1948, the scene was set for the ultimate distortion of self-determination into separate development.

Apartheid theorising became increasingly elaborate as it sought to ward off the rising challenge of African nationalism. To do this, it put forward the notion of South Africa as a multi-national state. Each of these diverse nations wanted to retain its identity and to determine its own future. South Africa was therefore made up of white, Indian, coloured and (variously) eight or ten Bantu peoples. Each of these peoples - with the awkward exception of the Indians - aspired to, or was connected to, a particular territory or homeland, with 'history' (in reality, past conquest) determining the size of such lands. Hence whites, who had emerged as a common nation out of past ethnic strife, were defined as owning the 87 per cent of South Africa as originally laid down by the Land Act of 1913. Of course, the advanced, industrial economy of the whites and the backward, agricultural economies of the Bantu were interdependent, and could not be unscrambled, but as the various homelands developed economically, so they would become increasingly able to absorb their 'national' populations which were, presently, so distressingly misplaced in white South Africa. Meanwhile, under the benevolent guidance of the South African government, the Bantu nations would be awarded increased constitutional responsibilities under a programme of internal decolonisation. Finally, full independence and political rights would be devolved on to each separate nation when, hey presto, their populations would no longer be able to make any political claim upon Pretoria (Rhodie and Venter 1960).

No useful purpose will be served by launching into the familiar critique of this theory. Rather, all that matters in our context are two points. The first is that despite the talk of white South Africans having forged a common nation, the National Party was to remain extremely ambivalent about repudiating its ethnic exclusivism. On the one hand, to consolidate its rule, it increasingly sought to attract English-speaking votes; on the other, from the late 1960s, it needed to contain the appeal of parties which broke away to the right, and which pitched their appeal to disaffected Afrikaners in mainly exclusivist terms, accusing the National Party of abandoning the volk (Adam and Giliomee 1979).

The second significant point is the partial manner in which Separate Development appropriated the language of liberalism. It could not, of course, handle any notion of individual rights, for it dealt only with peoples as aggregates. None the less, to render its distortion of self-determination credible, it formally de-racialised its theory, moving away from previous notions of blacks as inherently inferior to acceptance of their nations as equals. Ironically, of course, it was to this particular aspect, the suggestion that the bantustans might eventually become independent, to which the supposedly more liberal United Party particularly objected, proposing instead a notion of 'race federation' which held out no realistic prospect for blacks except perpetual subjection. In the long run, however, as the establishment of the bantustans became a reality, so both liberal and Afrikaner nationalist thought converged upon the notion of using the homelands as bases for a South African federation or confederation.

This convergence will be explored later, but for the moment what is of interest is that it was anathema to mainstream **African nationalism**, which viewed federal or confederal schemes only as projected means whereby the white minority might circumvent the apocalypse of black majority rule. None the less, African nationalism rejected the theoretical baggage of neither liberal nor Afrikaner nationalism in toto. Indeed, these differential approaches to the concept of nation were to work themselves out in the three major varieties of African nationalism, associated respectively with the ANC, PAC and Inkatha, that are on display today.

The dominant position, that of the ANC, remains a somewhat inconsistent amalgam of ideas drawn historically from South African liberalism, communism and what has become known as Africanism. From liberalism, apart from borrowing the language of individual rights and insisting that they apply to all South Africans, the ANC acquired the perspective of South Africa as composed of four racial groups. From the old Communist Party of South Africa, which under the influence of

Moscow committed itself to the objective of an 'independent Native Republic' in 1928, it absorbed the idea of blacks being an oppressed nation, whose liberation demands the overthrow of the white oppressing nation. Finally, from Africanism, it drew the idea of South Africa belonging to all who live in it.

Africanism was of course originally developed by young radicals who, in reaction to the strategy of the then conservative leadership of the ANC in cooperating with white created 'dummy' institutions for blacks, created the ANC Youth League in 1944. Its initial position stressed that Africans were an oppressed people and that members of no other race or nation could co-determine their struggle for freedom. However, following the formation in 1952 of the Congress Alliance (which linked the ANC to the white Congress of Democrats as well as to Indian and Coloured counterpart organisations), Africanism moved in two directions.

On the one hand, there were those who moved in the direction of what came to be known as non-racialism. Enshrined in the Freedom Charter in 1955, this concept continued to differentiate between the oppressive white and oppressed black groups, yet looked towards the eventual dissolution of racial barriers. In the meantime, whites who committed themselves to the struggle against racialism were regarded as harbingers of a new, all inclusive South Africanism which could be constructed upon the basis of an overthrow of structures of racial oppression. This approach was broadly consistent with the approaches to nationalism absorbed from liberalism and the SACP, and was to subsequently inform the mainstream position of the ANC (No Sizwe 1979, *passim*).

In contrast, a second, more exclusivist Africanist approach culminated in the formation of the PAC in 1959. This had its foundations in concern in the mid-fifties that whites and other 'non-Africans' were misdirecting the energies of the ANC. Only Africans, the majority people, could guarantee the overthrow of oppressive racial structures to form a democracy in which all people, of whatever race, would share a common citizenship. Non-racist in abstract, this particular brand of Africanism gave rise to a political practice that Neville Alexander has branded as racially chauvinist (No Sizwe 1979: 115-21).

This is far less chauvinist, however, than the narrower ethnic nationalisms of certain bantustan leaders who have so absorbed the divisive theories of apartheid, that they themselves are unable to move beyond an African, or South African nationalism, that means anything more than a composite of groups. Indeed, ironically, the nearest approach to the Africanist position is offered by Inkatha, which chooses to absorb individual whites as Zulus!

Self-determination has always been an ambiguous doctrine, and clearly never less so than in South Africa! It is an ambiguity which has had major implications for the attempted transition to democracy.

The first of these is that the varying approaches to self-determination were to translate into fundamentally different stances towards negotiations. The argument has been developed by Steven Friedman (1993), who lays particular stress on how both the major parties to negotiations have reason to regard a negotiated transition as a second-best option. On the one hand, the National Party was only forced to the negotiating table out of weakness; economic crisis, mass unrest, international isolation and so on. Yet for the NP, democracy summoned up the prospect of all that the strategy of separate development had striven historically to avoid. Universal franchise implied permanent black majority rule, and permanent exclusion of itself from the seat of power. Calculating that the ANC itself would likely control such a majority, it further believed that simple proclamation of rights to free association and interparty competition would not be enough to secure it a role in a post-apartheid government. This could only be ensured if minority parties were to be guaranteed a share in government under a new constitution, if only for an interim period. Hence it was that the De Klerk government's strategy throughout CODESA I and II was not to negotiate a smooth passage to democracy, but to actually stall a transition and frustrate the ANC into diluting majority rule by accepting a constitutionally entrenched governing role for minorities.

For the ANC, meanwhile, negotiations implied the failure of armed struggle. Since its banning in 1963, the ANC had dedicated its efforts primarily to the project of liberating the oppressed nation by overthrowing the white state. The democracy which would result would then recognise individuals as citizens, not as members of racial or ethnic groups. Consequently no concept of 'minority rights', or minority participation in government, would need to be guaranteed in any post-apartheid constitution. The object of negotiations was therefore viewed as rapid progress to an elected constituent assembly which, having achieved the end of white rule, could arrange matters of state, confident that democracy would be coincident with black majority rule.

The inevitable outcome of these contradictory approaches was deadlock. All the more so when, to the left of the ANC, the PAC was decrying any departure from liberationist posture as treachery, and on the right, Inkatha had withdrawn into a belligerent, defensive posture as its status as a regional, rather than, as it had once hoped, a national, player became increasingly evident.

The deadlock was only broken towards the end of 1992, as it dawned upon both the ANC and the government that the costs to them of continuing confrontation were becoming much greater than compromise. For the ANC, this realisation was brought home by the failure of mass action to secure gains. Attempts to bludgeon the government by the mobilisation of popular power had led only to the massacres of its supporters at Boipatong and Bisho (Southall 1993). Elsewhere, the ANC found itself increasingly engaged in violent confrontations on the ground with political rivals, notably Inkatha, and increasingly, with sinister, mysterious so-called 'third force' elements, whose murderous activities consistently eluded the police. For the government, meanwhile, pressure to return to the negotiating table in search of a real agreement with the ANC was exerted by the spiralling decline of an already battered economy, foreign governments, and not least, its loss of support to the parties of the right.

The culmination of these influences was the Record of Understanding of 26 September 1992 whereby the ANC and the government, as well as agreeing upon various security measures, also came to the important agreement that an elected constitution-making body should double up as an interim legislature under an interim constitution. Subsequently, too, further meetings produced agreement, first, on a timetable for the creation of a Transitional Executive Council to prepare for a universal franchise election some time in 1994; and second, that a government formed as a result of that election would be composed proportionately of all parties that won an agreed minimum share of the poll, and would rule for five years thereafter. In short, whereas for its part the government had now unambiguously recognised the ANC as its key partner in managing the transition, the ANC had equally openly signalled its recognition of the necessity of its conceding a sharing of power (Friedman 1993).

This progress was to be confirmed in early July 1993 when all parties to a third round of constitutional negotiations agreed upon 27 principles which would provide the framework for a new constitution (Eastern Province Herald 27 July 1993). It is at the difficult stage of actually translating these principles into a draft constitution acceptable to all parties that the negotiation process is currently lodged.

Including commitment to the notions of constitutional supremacy over government, the separation of powers, regular universal suffrage elections, fundamental human rights and freedoms, and equality before the law and so on, these principles seem to register a final triumph of liberalism over the liberationist philosophy of the ANC and the ethnic nationalist philosophy of the NP. Indeed, a rather smug DP commentator has claimed that the principles embody almost all the proposals which that party originally put forward as its precursor to CODESA I.

This claim is, if anything, too right. I say this because, as well as the above virtues to which the constitutional principles pay homage, they also contain a strong commitment to federalism. This, I suggest, rather than strengthening liberalism, threatens to bury it in a continued battle between liberationist and ethnic nationalist philosophy.

It is consequently to the ambiguous implications of liberal democratic ideas for the achievement of a South African democracy to which we now must turn.

Dilemmas of Liberal Democracy

One of the most fundamental problems facing democracy in South Africa is that of property. In a country where an enfranchised white minority has historically systematically disempowered a black majority to produce one of the most unequal distributions of income in the world, how can grant of universal suffrage not result in an equally systematic assault by a democratically elected government upon either the existing distribution of, or even the basis of, private property? If such an assault did take place, would not property owners either flee (with their skills and as much of their wealth as they could expatriate) or fight, with disastrous results for the economy? And supposing a democratically elected government did appropriate private wealth, either arbitrarily or via a system of agreed compensation, would democracy survive a determined attempt to collectivise the economy? It is these, and related questions which, I would argue, have framed the course of the current constitutional debate. But in this, South Africa is not unusual.

Borrowing from C.B. Macpherson (1977: 10), I am going to make a distinction between what he terms protective and developmental democracy. This he sees as the first and second phases in the evolution of the concept of liberal democracy, which became possible only in the nineteenth century when liberal theorists found reasons to convince themselves that universal suffrage could be compatible with private property and with the continuance of the class divided, market societies in which they were living.

Protective democracy, argues Macpherson (1977: 34), was the answer to a double problem: how to produce governments which would nurture a free market society whilst simultaneously protecting the citizens from rapacious governments. Ultimately the answer was reached that nothing less than democracy could in principle protect the governed from oppression by government. In practice, however, this conclusion was reached only very reluctantly via a combination, first, of liberal theorists' ahistorical assumption that all people were bourgeois maximisers, from which it followed that they all had an interest in maintaining the sanctity of property; and second, via successive extensions of the franchise, of their observation of the habitual deference of the lower to the higher classes.

Developmental democracy, in contrast, subsequently imported a moral dimension whereby democracy became a means of individual self-development. Based initially upon the twin perceptions that the working class was beginning to seem dangerous to property and that the material conditions of its existence were morally repugnant, this model saw the personal improvement that democracy allowed resulting in collective advance and betterment. This led eventually to notions of the welfare state, yet importantly, although the equalising implications of this extended to ideas of some control over capital, they never challenged the basis of capitalist relations as such. Indeed, the notions of exploitation and class, which had always been inextricably associated with market society, became forgotten as the regulatory state became viewed as capable of achieving what could be done to bring about the good society.

Dick Sklar (1986: 27) has subsequently argued that the meaning of developmental democracy should be broadened out so that it will accommodate the goals of social construction in non-industrial countries. Less rigorous than Macpherson's notion, Sklar's version none the less suggests both that the idea of developmental democracy can be reworked to absorb diverse experiences of democracy in the

the dictatorship of material poverty and the poverty of political dictatorship are inextricably linked.

I am now going to propose that the constitution that seems likely to be adopted in South Africa seems more akin to protective democracy, yet it is only developmental democracy that can provide a basis for liberal democracy to succeed. Furthermore, I am going to argue this in relation to the constitutional proposals and positioning of the NP, Inkatha, the DP and the ANC towards federalism in particular.

It is well known that the federalist lobby at the negotiating forum is principally composed of the NP, DP, and the Concerned South African Group, or COSAG, (which links Inkatha to the Ciskei and Bophuthatswana bantustan regimes as well as to the Conservative Party and other white right wing organisations).^{*} Ranged against them as the unitarist lobby (although they actually eschew that label) are the ANC, SACP and the PAC. The resulting compromise has been the adoption of the idea of regionalism, which in essence embodies federalism under a different name (Cull 1993).

According to the constitutional principles which were adopted in July 1993, government shall be structured at national, regional and local levels, the powers of the national and regional tiers including exclusive and concurrent powers; each level of government shall have a constitutional right to an equitable share of revenue, with a Fiscal Commission recommending equitable financial allocations to the regional governments from revenue collected nationally; and regional powers shall be entrenched by the authority of an impartial judiciary to safeguard the constitution. Meanwhile, the allocation of powers between the different levels of government shall be decided according to which function they are deemed as most effectively able to perform, with the national government being constrained from encroaching upon the integrity of the regions. Against this, the national government shall where necessary be able to intervene to secure essential national standards for a particular function, and to maintain economic unity and national security. Finally, in the event of dispute concerning legislative powers allocated by the constitution to both national and regional governments, precedence shall be given to the powers of the national government.

According to federalist commentators, the federal aspirations which were presented by the constitutional principles were subsequently not embodied in the (incomplete) draft constitution which was subsequently presented to the negotiating forum by a technical committee of jurists (e.g. Ngubane 1993). On the one hand, the jurists argued that it was impossible to allocate powers to regions that had yet to be constructed from bits and pieces of the existing provinces, TBVC states and non-independent homelands, and that accordingly an interim government should finally determine the extent of the legislative and executive competence of each new region (Robertson 1993). In contrast, the federalists argued that no post-election central government could be trusted to guarantee the regions grant of substantial and exclusive powers. There was also dispute over whether a new constitution drawn up by an elected constituent assembly should have to be submitted to an equally new constitutional court, as the federalists propose, to certify that it adheres to the 27 constitutional principles adopted by the parties to the negotiations last month. It was precisely this issue, the question of guarantees, that led to Inkatha's various walk-outs from the negotiation process in June and July (Ngubane 1993; Owen 1993).

Of immediate interest to us at this moment are the problems which a federal constitution will be supposedly designed to address, and how it is that federalism has come to loom so large in a country where, hitherto, there has been such a resolutely unitarist tradition. Where, in short, has this push for federalism come from?

An easy, but incomplete, answer is that it has come out of South Africa's liberal, yet as I argued above, segregationist tradition. Indeed, it was that great South African liberal, Leo Marquard, who in 1971 published his famous book entitled **A Federation of Southern Africa**. Pessimistically assessing the prospect of the ruling white minority conceding democracy within a culturally and racially divided plural society under a centralised, Westminster-style of government, this argued eloquently for the adoption of a rigid, federal constitution, whose constituent units would be based upon the four provinces and the ethnic homelands, with Botswana, Lesotho and Swaziland being included if they wished. More recently, another major Liberal, Charles Simkins (1986: 22) proposed that the more power within the political system that could be countervailed by other power, the better: "This", he said, "is the most important argument for division of functions between a central assembly and regional assemblies".

With such an intellectual tradition to draw from, it is unsurprisingly the Democratic Party (1992) which has presented the most coherent case for federation. Federalism, noted its constitutional proposals published in October 1992, will achieve three main objectives. First, it will distribute power to a variety of different sites, thereby bringing government closer to the people and promoting accountability of politicians to their constituents. Second, it will serve as a defence against tyranny. Warning against what it terms an "over-concentration of power in central government", it argued that federalism works in contrast to disperse power and thereby to make "the retention of central government power relatively less important". Thirdly, the DP proposed that federalism will cater for South Africa's cultural, linguistic, geographic and political diversity by multiplying the sites of power, although it rejected explicitly any notion of regions being delineated on racial or ethnic lines.

It would be glorious to say that it was the erudition and elegance of the DP's case that now put federalism high upon the constitutional agenda. Unfortunately, reality is less glamorous, for as Simkins (1986: 1) has further noted, liberal proposals may have much merit, but liberals occupy no significant place in the South African power constellation, and therefore cannot themselves achieve the realisation of their principles. Instead, it was because the National Party, the holders of central state power, themselves adopted it as the basis for their own constitutional proposals that federalism subsequently became central to the negotiation process. When, after years of struggle to overthrow the state, the ANC was now compelled to think how to restructure it, the logic of the DP's liberal democratic arguments concerning the dangers of concentrated power were explicitly recognised (ANC 1992). None the less, it was the need to search out an accommodation with the state it had been able to weaken but not defeat that now led the ANC towards a quasi-federal regionalism. This progression was subsequently reinforced by the need to make sufficient concession to draw Inkatha and the other forces represented by COSAG into negotiations which they increasingly, and resentfully, came to view as co-determined by an unholy alliance of the NP and ANC.

But this is to anticipate, for it needs to be recalled that the NP's starting point had been a constitutional model which in effect sought not so much to control a central government as to abolish it. Let us recap briefly.

First, whereas the idea of federalism normally refers to an entrenched division of powers between federal and state governments, the National Party constitutional proposals (National Party 1992) staked a claim that, in a new South Africa, they should be divided between three tiers, that is, at local as well as at the two superior levels, with due protection being erected against central 'fiscal federalism' by the provision to each and every tier of its own guaranteed tax base.

Second, as under conventional federalism, the NP proposed a legislature composed of two Houses. In the Lower, or popularly elected House, the NP conceded the inevitability of majority dominance, but understandably sought to secure the mathematically correct representation of minorities via proportional representation. However, in the Upper House, which would represent the regions, political minorities would be overrepresented, for not only would an equal number of seats be allocated to each region (however large or small its population might be), but - as is definitely **not** customary under existing federalisms - political parties would gain representation in the Upper House according to the amount of support they have gained in the Lower House. (In contrast, direct elections for the US Senate secures representation for only candidates securing a majority or winning plurality of votes in any state).

Third, it was proposed that, whatever the result of an election, the government would be headed by a collective Presidency consisting of the three largest parties in the Lower House, with a veto power being delivered to the smallest party by the requirement that all decisions be made by consensus.

So it went on, with the NP further proposing that the emphasis on over-representation of minorities and power-sharing between minority and majority parties be replicated at regional level. Yet it was at the local level that the protective purpose of the NP proposals was most eloquently demonstrated, for the dangerous potential here was that a democratically elected authority might

engage in a swingeing redistribution of local resources. Hence it was that at this level, the NP came up with a variety of ideas whereby the more wealthy element of the population might be offered 'minority protection' against the poor, so as once again to dilute the strong drink of democracy. These included: weighting representation in favour of wealth, determining the franchise in such a way as to deny squatters the vote, and requiring special majorities for so-called 'sensitive matters'. It also held out the prospect of 'self-determination' for neighbourhoods which might be entrusted with the autonomous right to ensure standards, grant licences, provide community facilities and manage security and so on. Not three levels of federalism, but four! (Southall 1992).

The point is not that the National Party has had everything all its own way in the negotiation process. Far from it! Yet it is the case that the ANC has moved a very long way to meet the federalists' prescriptions. Let us recall the ANC's own vision of regionalism for what it termed a "united South Africa" which it published in 1992, before negotiations began (ANC 1992b). Regions were required to avoid an over-concentration of power at the centre; regions would provide for social and cultural expression, and go towards developing a sensitive and functional language policy; regions would assist in the smooth re-integration of the TBVC states and homelands; the Upper House of the central legislature would be representative of regions and would have special responsibility for their development; and whilst regions would have entrenched powers, national and regional tasks would be viewed as complementary rather than competitive, and the general pattern would be one of overlapping or concurrent powers rather than segmented and competitive powers. Regions would become bases for active development, argued the ANC, not "bunkers into which people retreat in order to get away from the nation".

The second draft constitution, delivered in July 1993, made it clear that the ANC has moved well away from this prescription (whereby the regions would have enjoyed a role not unlike the provinces in post-1910 South Africa). In short, the ANC has conceded not only a considerably greater allocation of power to regional governments than its proposals had suggested, but also a greater allocation of exclusive power. Second, the door has been opened to 'asymmetrical federalism', (some regions having more power than others), so as to allow greater autonomy for regional governments of a different political complexion to the national government; and third, rather than a uniform model being imposed from the centre, it seems that each region will be allowed to draw up its own constitution (Eastern Province Herald 18 May 1993; 11 August 1993).

Of course, at this present time, the battle continues, especially concerning the final definition of the regions. Yet there is already sufficient evidence to suggest that the constitution will bear the stamp of a protective, rather than a developmental, democracy.

For a start, the federalist position has been driven, above all, by minority parties' determination to limit the power of any national government as much as possible. Hence the NP's vigorous lead on federalism has been followed by a host of other minority political forces which the prospect of democracy has placed upon the defensive. Indeed, the more any political party can be defined as a potential loser from a transition, the more extreme its support for federalism and its demand for greater regional autonomy (Riordan 1993). Although Ciskei's effective resistance to reincorporation into South Africa was buried under the Gqozo regime's responsibility for the Bisho massacre, Bophuthatswana's more wily negotiating strategy - keeping a tight grip on the ANC, unions and the university within its domain, whilst continuously insisting upon its status as a legally independent entity - has enabled it to secure a definition of a North West region which looks suspiciously like a consolidation of the hitherto fragmented Tswana homeland. Similarly, whilst the Conservative Party and the extra-parliamentary groupings to its right have been wholly unable to agree upon boundaries of a "volkstaat", the definition of the Northern Cape region, where the overwhelmingly dominant language will be Afrikaans, has gone a long way to meeting their demands (TECCOMM 1993; Robertson 1993b). What is more, these groups' para-military insistence upon the right of whites to "national self-determination", backed by the enormous influence they wield within the security forces, has played an important role in pushing the ANC into bartering a compromised settlement for an uncertain civil peace in the future.

However, none of these groups has been more fractious than Inkatha, which to this day is still playing hard for a special status within a federation (akin to Quebec's bid for so-called 'sovereignty association' within Canada) whereby the authority of the central state would be wholly excluded from Kwazulu/Natal, except in so far as the latter would need the services of a national government to represent it as one of a group of regions internationally.

Federalism, for all these diverse groups, has been principally versed in terms of the "protection of minorities". In contrast, the DP's advocacy of federalism has been framed in the classic liberal democratic terminology of protecting individual liberties by dividing and hence limiting power. Yet ironically, it is precisely the DP's position which most clearly illustrates the employment of federalism as a device for locking up the present inequitable national distribution of property and resources. Indeed, no more forthright statement of protective democracy has been offered than by Martheanne Finnemore of the DP in her protest against the recent Demarcation Commission's recommendation that the present Eastern Cape, inclusive of the Port Elizabeth-Uitenhage metropolitan area, be incorporated into a much larger Eastern Cape/Kei region which would also include Ciskei and Transkei. Having noted, in terminology that harks back to segregationism, that the representatives from the more populous Border-Kei region would "swamp" East Cape representatives in a regional assembly, and further that the "culture" of the two areas is quite different, and hence likely to lead to conflict in policy formulation, she goes on:

East Cape Gross Geographic Product (per) Capita is R3 257 and Border-Kei is R953. The implementation of a regional taxation policy and subsequent redistribution of funds is likely to favour the upliftment of the Border-Kei area.

(Eastern Province Herald, August 13, 1993).

Similarly, another DP spokesperson has argued: "There is just not enough money in this part of the country to go around". (Eastern Province Herald, August 19, 1993). In short, although the present Eastern Cape may have a strong case to make against incorporation on other grounds, the DP's position, unsurprisingly, represents the perceived interests of its overwhelmingly white, and propertied, constituency: what we have, we hold, and the barbarians must be kept at bay. In contrast, the Demarcation Commission is backing the developmental proposition that the larger region is a functional economic whole, and that the legacy of segregation will only be overcome if the political and economic fortunes of the PE/Uitenhage metropolitan area are deliberately bound to their hinterland.

I must now sum up this section of my argument. This is that whilst a compromise around federalism is proving necessary to secure a political settlement between opposing forces which are unable to defeat each other, the federal solution being brokered seems likely to usher in, not the developmental democracy that South Africa needs, but a protective democracy it can ill afford. It must be stressed that this is most certainly not to discount the suggestion of federalism that concentrated power is dangerous to liberty, and that every effort must be made to prevent the rise in this country of another dictatorial and highly repressive regime. However, it is to argue both that there are other methods of rendering a central government accountable other than fragmenting the country into regions, and that federalism is unlikely to promote the development which most observers regard as crucial for the prospects for South African democracy.

Consider the following. First, despite provision for fiscal equalisation payments from the centre to promote equity between regions, federalism seems more likely to obstruct than to promote implementation of national policies for economic development and the delivery of services such as health, education, housing and social welfare.

Second, whereas South Africa so evidently needs less, not more, division, a federalism which promotes regional separatisms threatens to undermine prospects for the achievement of one nation which a common citizenship for all is intended to achieve. Development economists and liberals alike have long decried the duplication inherent in apartheid South Africa being run by one central and ten homeland governments. The eleven government post-apartheid South Africa on offer threatens to provide no more than a rationalisation of that wasteful absurdity.

Third, for all that federalism is trumpeted as a bastion against tyranny, in South Africa it seems more likely to entrench regional warlords. The objective of Mangope and Buthelezi alike is clearly to secure control of their regions, yet their credentials as democrats is woefully suspect. Indeed, it is this that makes the acceptance that regions will be able to write their own constitutions so immensely alarming. For all that a substantial body of survey data, conducted by bodies such as the HSRC, indicates that neither leader's party would emerge as the major force within their region following a free and fair election, it is precisely the prospect that their present control of state machinery will enable them to rig a vote which worries many observers. Indeed, it is precisely because they are seeking to secure their positions that they are presently pushing so hard for a constitution entrenching regional powers to be promulgated before an election. South Africans would be better advised to be less obsessed with the division of central and regional powers, and more concerned with the securing of individual rights and a strong central mechanism to uphold them (Barber 1993).

This raises in conclusion the urgency of South Africa moving beyond the protective democracy it appears likely to inherit.

The Necessity of Developmental Democracy

Let me now attempt to pull the diverse threads of my argument together.

First of all, many South Africans are apprehensive about their country's projected transition, some because they sense that majority rule cannot or will not be productive of liberal democracy, others because they fear that democracy will work against their present possession of property, privilege or power. None the less, the momentum away from racially-defined minority rule is recognised as unstoppable, and the various political forces at large in the country are all attempting to impose their rather different interests and visions upon a constitutional settlement. Furthermore, it is precisely because the political parties and groupings are mutually suspicious, and because, in particular, there is a determination that no central government should be able to wield the dictatorial power that the National Party seized for itself after 1948, that South Africa is being pushed and shoved away from authoritarian rule. In short, the consensus which has emerged around the need to limit the power of a new government, and to render it popularly accountable, indicates that, despite many contrary factors, South Africa's transition to a democracy, wherein governments are restrained by the disciplines of competitive, regular and universal suffrage elections, remains a not wholly unlikely option. Yet the quality, and perhaps indeed the longevity of that outcome, will rest in considerable measure upon the responses made to dilemmas posed by major political actors' varying definitions of self-determination and democracy.

I have argued that the liberal approach to self-determination in this country has been severely flawed by its historical association with segregation. None the less, at the end of the day, it has been liberalism which has shaped the arena within which the NP and the ANC, embodiments of Afrikaner nationalism and African nationalism respectively, have fought to a draw in the negotiation process. The result appears to be a constitution which will be structured around the values and protections of liberal democracy. However, I have also suggested that this not inconsiderable achievement stands to be undermined by the forthcoming settlement's having to rest upon a founding commitment to federalism.

The NP, DP and the parties of COSAG may have arrived at federalism via different routes, yet they have all converged upon it as a model of protective democracy. Despite much talk of federalism being a device for bringing government closer to the people, the federalists' objective has been damage limitation rather than the development of South Africa. On the one hand, the NP, Inkatha and the like see federalism as a way of clinging to as much power as possible; on the other, the DP views it as a defence against misuse by the ANC, whose successful conversion from an ideologically driven liberation movement to a pragmatic political party it deeply distrusts. Meanwhile, for its part, the ANC has made its commitment to federalism, not out of conviction, but out of the need to broker a second-best political settlement.

We now come to the crux. For South Africa to move from apartheid to even a protective democracy would represent a remarkable progress. The defence of life, liberty and property against arbitrary rule, by the institutionalisation of free elections, freedoms of speech and association, and the rule of law, would represent a fundamental change for their better in the daily lives for the majority of citizens. But can such a democracy, whose protective capacities will revolve around a hastily constructed federalism, survive without a much more expansive commitment to human development? In my view, it cannot and it will not.

A recent HSRC survey of Africans living in South Africa's non-metropolitan and rural areas has shown a surprisingly high proportion (46%) of such people, who represent about 79% of the total African population, whose chief expectations of life after an election relate mainly to improvements in individual liberty. In contrast, only some 20% expect to see immediate material benefits (Kock, Mareka, Rhooie and Schutte 1993: 15). This is instructive because it demonstrates that even poor South Africans attach a high value to the liberal freedoms that protective democracy would seek to promote, and comforting because, any government, of whatever political complexion, is going to have a hard time meeting popular economic expectations. However, the proportion of poor South Africans expecting gains in Rands rather than rights can only be expected to increase during an election campaign, for the politicians cannot be expected to hold back from promising the earth - indeed, the PAC will likely promise precisely that to the landless! Yet South Africa, by most accounts, cannot expect to see particularly rapid economic expansion. In short, the post-apartheid era may well inaugurate a period of widespread and manifest economic discontent, unless - perhaps - the majority of people can be convinced that the government is attempting to balance the drive for growth with justice and equity.

Historically, protective democracy was associated with the defence of free markets, and its contemporary South African version is no different. Free markets, it is said from this quarter, will maximise economic growth, thereby facilitating either a gradual redistribution of wealth, or obviating the need for it entirely because everyone will become better off (Malherbe 1993).

Such a model is scarcely appropriate for South Africa.

For a start, the operation of free markets tends to widen the gap between rich and poor, yet - as we have already noted - in South Africa that gap is already one of the widest to be found anywhere in the world. Whatever the level of commitment to fiscal equalisation between regions, the protective motivation that lies behind the letters' creation threatens to entrench rather than overcome existing geographical disparities. Even if a political settlement produces a rapid expansion of a black middle class, an uncontrolled economic polarisation which deepens the divide between haves and have-nots will almost certainly erode the political legitimacy which the stability of a new constitutional system will require. And stability is necessary to attract the level of investment that the country so vitally needs.

There is another factor, too. If South Africa is to compete in a highly competitive and continuously changing international order, wherein national economic growth and global market share is increasingly driven by mass access to the basic, applied and information sciences, any government will need to adopt a substantial package of appropriate, and interventionist, developmental policies. These will need to be geared to providing basic human needs such as minimum standards of health

care, education, and housing for all, as well as making massive investments in human capital and technological development (MacGowan 1993).

In sum, if South Africa wants economic growth, it will need to go beyond the largely negative freedoms associated with protective democracy to actively pursue the positive freedoms associated with developmental democracy.

***COSAG** has subsequently reformed as The Freedom Alliance.

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