Federal Arrangements as a Peacemaking Device During South Africa's Transition to Democracy

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Federal arrangements are often used as a way of keeping deeply divided societies together. In particular, where divisions, be they ethnic, linguistic, or religious, develop in violent conflict or the threat of civil war, constitutional arrangements for self-rule and shared rule have been put forward as a key to peace. The federal distribution of power is then used to satisfy sectoral demands for self-determination.

This article examines how federal arrangements were used during South Africa's transition to democracy to deal with the conflict posed by two important ethnic-based groupings: right-wing Afrikaners and Zulu nationalists. It will be argued that while limited federal arrangements were successful in containing the conflict, this aspect of South Africa's federal enterprise quickly faltered when the underlying conflicts and federal impetus dissipated. This case study, then, provides an interesting illustration of the dynamic quality of federalism; it can be a flexible political process that responds to the exigencies of the moment.[1]

FEDERALISM IN THE CONSTITUTIONAL NEGOTIATIONS

After peace was brokered between the white minority regime, led by the National Party (NP), and the African National Congress (ANC) first, in the unbanning of the ANC on 2 February 1990, and thereafter in the cessation of hostilities in June 1991, federalism was an important but not the dominant issue in the constitutional negotiations between the two parties.[2]

The ANC saw federalism simply as a method of thwarting majority rule, particularly when it came from the National Party, which, after years of extremely centralized rule, became recent converts to the idea of establishing

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[1]See, in particular, Daniel J. Elazar, *Federalism and the Way to Peace* (Kingston: Institute of Intergovernmental Relations, 1994).

[2]See generally Nico Steytler, "South Africa," *Federalism and Civil Society*, eds. Jutta Kramer and Hans-Peter Schneider (Baden-Baden: Nomos Verlagsgesellschaft, 1999), pp. 297-298.

regional autonomy.[3] Creating strong federal units would be a method of legitimating apartheid's homelands and the creating of a separate white *Volkstaat.* The ANC favored a strong central-state authority in order to effect the fundamental restructuring of the South African society.

From the NP's perspective, decentralization was not necessarily linked to the protection of territorially based ethnic interests because, except for the provinces of the Western Cape and Northern Cape where non-Africans (whites and coloreds) were in the majority, its white support-base was dispersed across the country. Rather, decentralization was seen as a brake on a strong central government. For the NP, the national government remained the locus of power, and power-sharing had to take place at that level. At the first round of negotiations at the Convention for a Democratic South Africa (Codesa), and subsequently at the Multi-Party Negotiating Forum, the key area of contention between these two parties was the control of the power to be wielded by the national executive. The breakthrough in negotiations was not the agreement on the creation of provinces and the limited devolution of power to these subnational units, but the creation of a government of national unity. The NP thus placed its faith primarily in shared rule (literally through the device of a government of national unity), rather than self-rule.

When the final political deal was made on 2 December 1993 at Kempton Park, principally between the ANC and the NP, and which was later given legal form by the tricameral Parliament as the interim Constitution,[4] two important groupings, both ethnically based–right wing Afrikaners and nationalist Zulus–were absent. They were vehemently opposed to the dispensation, and a conflict of major proportions loomed as the election date of 27 April 1994 came nearer. Both groups thought they had the capacity to scupper the holding of the election by violent means.

Conflict During the Transition Period

When the ANC and the NP agreed in July 1993 upon a date for the election at the Multi-Party Negotiating Council, a number of important players walked out of the negotiating process. They included the Inkatha Freedom Party (IFP) under the leadership of Chief Mangosuthu Buthelezi, the Conservative Party (CP), the Afrikaner Volksfront (AVF) headed by General Constant Viljoen, and the governments of the homelands of the Ciskei and Bophuthatswana. These groupings, in turn, later formed a loose alliance called the Freedom Alliance. In the main, their demands included the finalization of the constitution before the election date was set, and the establishment of a constitutional federal democracy.[5] In the case of the

[3]See David Welsh, "Federalism and the Divided Society: A South African Perspective," *Evaluating Federal Systems,* ed. Bertus de Villiers (Cape Town: Juta, 1994), p. 244.

[4]*Act 200 of 1993.*

[5]Willem De Klerk, "The Process of Political Negotiations: 1990-1993," *Birth of a Constitution,* ed. Bertus de Villiers (Cape Town: Juta, 1994), p. 8.

white right-wing, the goal was racial federalism in the form of an Afrikaner *Volkstaat,* while the other clamored for ethnic federalism. The IFP, in particular, was in favor of extensive provincial autonomy. The IFP sought enhanced legislative and financial powers as well as the entrenchment of provincial governance. To the latter end, the IFP insisted on a separate ballot for the provincial legislatures and also a name change for the province of Natal to KwaZulu-Natal.[6] A more contentious issue was the position of the Zulu monarch. In this regard, the demand was that the Zulu king be constitutionally recognized and the monarchy's position and status entrenched.

The withdrawal of the IFP from the Multi-Party Negotiating Council was unexpected because the opportunity for advocating stronger regional powers was not exhausted. One theory advanced is that the form of state and regional powers was not Buthelezi's chief concern. Rather, he had been outraged at the failure of the ANC and the NP to see him as one of the three equal partners.[7]

The interim Constitution was adopted by the Multi-Party Negotiating Council on 2 December and included the creation of a Constitutional Assembly that would write a final constitution within two years on the basis of agreed upon Constitutional Principles. It was denounced by the IFP and the AVF. They would also not participate in the election scheduled for 27 April 1994, after which the interim Constitution would come into operation. The ANC and the NP were, however, still willing to offer concessions in return for their participation in the election.

An important underlying dimension to the demands of the Freedom Alliance was the potential for violent conflict.[8] The AVF spoke of civil war while the IFP referred to secession. These possibilities had to be evaluated in the context of the endemic violence which had ravaged the country since the unbanning of the liberation movements. One aspect of the violent conflict was the open warfare in KwaZulu-Natal and on the Reef between supporters of the ANC and the IFP. Although there were differing reasons advanced for this national bloodletting, the perception was that the IFP had to be considered a serious player in the political arena even if it was only for the fact that it had the ability to destabilize any political process, including the elections.

The white right-wing, comprising the Afrikaner Volksfront, the Conservative Party, the Afrikaner Weerstandsbeweging, and, most important, retired generals from the armed forces, not only had formidable power, but also the loyalty of serving members of the armed forces, the vast majority

[6]*Hansard,* Wednesday, 22 December 1993, col. 16211.

[7]Doreen Atkinson, "Brokering a Miracle? The Multiparty Negotiating Forum," *South African Review 7: The Small Miracle–South Africa's Negotiated Settlement,* eds. S. Friedman and D. Atkinson (Johannesburg: Raven Press, 1994), p. 32.

[8]See Malyn Newitt and Mervyn Bennun, "Conclusion," *Negotiating Justice: A new Constitution for South Africa,* eds. Mervyn Bennun and Malyn D.D. Newitt (Exeter: University of Exeter Press, 1995), p. 182.

of whom would identify themselves as Afrikaners. The problem in this regard was not necessarily the loyalty of each individual member but more that of the top echelons who masterminded the war against the liberation movements during the previous decades. It was suspected that the right wing was well represented in those quarters and, furthermore, that those elements had a hand in the perpetuation of the violence ravaging the country.

Inevitably, the continued bloodletting had a negative effect on public confidence in the peace process. Although the violence never seriously influenced the process, the need for peace became the benchmark against which the negotiation process was judged.[9] It soon became clear that an inclusive election was the only viable option to a successful transition to democracy.

Constitutional Amendments to the Interim Constitution

The first step toward inclusion was the amendments to the 1993 Constitution effected in March 1994.[10] While negotiations between the ANC and the NP and the Freedom Alliance continued outside formal structures, the ANC and the NP decided on a "highly visible" attempt to meet the demands of the latter.[11] Without brokering a deal with those parties for their participation in the election, the ANC and the NP agreed upon constitutional amendments desired by the Freedom Alliance. The main parties to the Alliance, the CP and the IFP, were, however, represented in the tricameral Parliament where they continued to voice their opposition against what they considered to be the limited extent of the proposed amendments.[12]

The amendments of March 1994 sought to meet the divergent federal demands. In respect of IFP demands, the following constitutional amendments were made. First, the name "Natal" was substituted with that of "KwaZulu-Natal." Second, regional powers were enhanced. Laws passed by the provincial legislatures would in general prevail over laws passed by the national Parliament on matters reserved for the provinces. Third, greater fiscal and financial autonomy were provided for by enhancing the taxing competence of the provinces. Fourth, greater powers were given to provinces in the drawing up of their provincial constitutions by creating room for asymmetrical constitutions. Fifth, voters would be able to vote separately for national and provincial governments. Sixth, an amendment to Constitutional Principle XVIII provided that the powers and functions of the provinces could not be diminished substantially in the final Constitution.

[9]Mark Shaw, "The Bloody Backdrop," *South African Review 7: the Small Miracle–South Africa's Negotiated Settlement*, eds. Friedman and Atkinson, p. 182.

[10]*Constitution of the Republic of South Africa Amendment Act 2 of 1994.*

[11]Atkinson, "Brokering a Miracle? The Multiparty Negotiating Forum," p. 37.

[12]*Hansard*, 28 February 1994, second reading debate.

For the white right-wing, extensive provisions were made for giving effect to the promise of self-determination in a *Volkstaat.* A *Volkstaat* Council was included in the Constitution for the purpose of conducting further negotiations on the subject of a *Volkstaat.* In this respect, a further Constitutional Principle was added providing for self-determination of a community sharing a common culture or language. Constitutional Principle XXXIV read as follows:

1. This schedule and the recognition of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common or cultural heritage, whether in a territorial entity within the Republic or in any other recognised way.

2. The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.

3. If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its powers, structures and functions.

The CP nevertheless objected to this as inadequate provision for the establishment of a *Volkstaat.* They were seeking their own territory, constitution, and government. They wanted a guarantee prior to the election that they would receive their own state.[13]

As the deadline for the registration of political parties for participation in the election approached (a date that was moved back by the constitutional amendments of March 1994), General Viljoen broke ranks with the AVF and registered a party, the Freedom Front, which declared its intention to contest the elections. The constitutional carrot of a *Volkstaat* was thus successful in attracting significant white right-wing support.

The IFP stayed out, and the violent conflict in KwaZulu-Natal and on the Reef escalated, prompting the government to declare a state of emergency in KwaZulu-Natal. Two weeks before the election date, the ANC and NP agreed to the IFP demand for international mediation. When that failed, an agreement for reconciliation and peace between the IFP/KwaZulu government, the ANC, and the NP/South African government was reached on 19 April 1994. In terms thereof, the IFP undertook to participate in the

[13] *Hansard* col. 16342, 16393, 16734 and 16735.

elections, and all parties committed themselves, among others things, to reject violence and to do everything possible to ensure free and fair elections. The parties also agreed to recognize and protect the institution, status, and role of the constitutional position of the Zulu King (which would require an amendment to the Constitution before the elections) and, if necessary, to refer outstanding matters in respect of the Zulu monarch and the Constitution to international mediation immediately after the elections.[14]

The constitutional amendments of 25 April 1994[15]–enacted a mere two days before the election–were minor in law but enormous in symbolism. First, in an extension of the amendment passed in March, provinces could provide in their provincial constitutions, at their discretion and where applicable, for the institution, role, authority, and status of any traditional monarch in the province concerned. This provision was, however, mandatory in the case of the constitution for the province of KwaZulu-Natal. Second, Constitutional Principle XIII was amended to entrench the provisions in any provincial constitution relating to the institution, role, authority and status of a traditional monarch when the new Constitution was eventually adopted.

In light of these minimal concessions, there is much speculation as to why Buthelezi decided to join the process. He did not win any significant provincial powers, but received what he had already been offered before.[16] The Zulu monarch, King Zwelithini, may have been decisive in changing Buthelezi's mind. There was little love lost between them, and the transfer of tribal land by the South African government to the King a day before the election, may have swayed Buthelezi. Without royal support and facing the prospect of an uncertain future outside government office, there may have been little option left for him. With the IFP joining the fold, the small miracle of a peaceful democratic election was almost complete. The only violence came from white right-wing extremists who carried out a limited bombing campaign in the run-up to the election.

The election itself ushered in the final phase of peacemaking. The election in KwaZulu-Natal, marred by irregularities, produced what some observers called a "negotiated" result.[17] The IFP was given a one-seat majority in the KwaZulu-Natal legislature, a result which the ANC decided not to contest in court. This political approach to the conflict with the IFP set the tone for how the ANC, as election victor, would deal with the IFP and Buthelezi in the future.

[14]*Hansard, 25 April 1994, col. 16724.*

[15]*Constitution of the Republic of South Africa Second Amendment Act 3 of 1994.*

[16]Atkinson, "Brokering a Miracle? The Multiparty Negotiating Forum," p. 39.

[17]Steven Friedman and Louise Slack, "The Magic Moment: The 1994 Election," *South African Review 7: the Small Miracle–South Africa's Negotiated Settlement*, eds. Friedman and Atkinson, p. 325; Newitt and Bennun, "Conclusion," p. 188.

THE 1996 CONSTITUTION

After the election, the Freedom Front and the IFP sought to exploit the federal promise embedded in the interim Constitution. Both were chasing mirages.

The *Volkstaat* Council was convened and commenced with the search for a homeland. In its submission to the Constitutional Assembly, the *Volkstaat* Council had to concede that there was no geographical territory in which Afrikaners were in the majority. The goal of self-determination was, then, deferred to the distant future. At the same time, the threat of a right-wing insurrection evaporated as the new ANC government slowly but surely secured its grip on the levers of power in the armed forces.

The KwaZulu-Natal legislature commenced with the drafting of a full-fledged federal provincial constitution, which was totally at odds with the letter and spirit of the interim Constitution. Inevitably, this constitution was rejected by the Constitutional Court. It refused to certify that the constitution was in accordance with the interim Constitution because the provincial legislature sought to give itself more powers than the interim Constitution had conferred upon it.[18]

The IFP withdrew in March 1995 from the Constitutional Assembly (Parliament sitting as the constitution writing body) barely two months after it had commenced work. The reason advanced was that the IFP's demand for international mediation had not been met. On the table they left their constitutional proposals, drafted by their American advisor, Mario Ambrosini. These posited a fully fledged federal constitution like that of the United States. While remaining a party to the government of national unity with three cabinet posts (one occupied by Buthelezi), the IFP engaged in another round of brinkmanship. At the same time, the key demand of the IFP, for the Zulu King to be the monarch of the province for KwaZulu-Natal, did not came to fruition. The ANC effected a breach between King Zwelithini and Buthelezi with the result that there was little political demand for the king's installation as provincial monarch.

When the final Constitution reached completion in May 1996, a different reality pertained to that of two years before. Although violence remained endemic in KwaZulu-Natal, there was little need for specific deals. There was a clear shift away from the interim Constitution's asymmetrical federal features placating specific constituencies, to symmetrical but watered down federal elements.

Self-Determination in the 1996 Constitution

Bound by the Constitutional Principles, the final Constitution had to reflect the notion of self-determination. Constitutional Principle XXXIV was thus effectively repeated in section 235:

[18] *In re Certification of the KwaZulu-Natal Provincial Constitution* 1996 11 BCLR 1253 (CC).

> The right of South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

Capturing the Constitutional Principle in a section reduced a powerful principle into a meek non-operative provision. The right to self-determination, in the legal sense, was reduced to, at most, a political claim. Any federating process along the route of self-determination would not be in the hands of any self-selected community, but will be governed by Parliament itself.

The *Volkstaat* Council lost its constitutional protection. As a sop to the Freedom Front,[19] a new commission was created–the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. Its primary objects are:

> (a) to promote respect for the rights of cultural, religious and linguistic communities;
>
> (b)to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
>
> (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.[20]

The mismatch between the commission and operationalizing the notion of self-determination is obvious. First, firmly wedged in between the cultural and linguistic communities is a new community, the religious. With religion not being territorially, culturally, or linguistically based, but cutting across such cleavages, the focus of the commission is dispersed. Second, while the commission must promote respect for cultural, religious, and linguistic rights, which in any event are protected in the Bill of Rights,[21] and which bind all organs of government,[22] the focus is on the second object–to seek harmony between the listed groups within a unitary state. Rather than seeking separateness, the commission must pursue "friendship," "tolerance,"

[19]See Anthony Johnson, *Cape Times*, 21 August 1998.

[20]Section 185(1) *Constitution.*

[21]Section 31 reads: "(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-

(a) to enjoy their culture, practice their religion and use their language; and

(b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society. (2)The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights."

[22]Section 8(1) *Constitution.*

and "national unity." The rationale for the commission would thus undercut the notion of separateness on which the *Volkstaat* idea is premised. As a possible consolation prize to the *Volkstaat* Council, the new commission could, in a way prescribed by Parliament, recommend the recognition of a cultural or other council. This could include the *Volkstaat* Council.

The certification process of the final Constitution before the Constitutional Court provided the final opportunity for parties to affect the contours of that Constitution. In particular, it allowed parties outside the Constitutional Assembly, such as the IFP and the Conservative Party, to participate in the debate.

The *Volkstaat* Council, joined by the Conservative Party, argued that the Constitutional Principle XXXIV established an expectation about the creation of a *Volkstaat* among a significant number of Afrikaners which the final Constitution did not realize. Nothing concrete was given in the form of self-determination, and its achievement had been made much harder.[23] Moreover, they claimed, the internationally recognized right to self-determination, which included the right to secession, was made subject to the discretion of Parliament.

The Constitutional Court showed little sympathy and held that "whatever subjective hopes any parties might have had as a result of the insertion of Constitutional Principle XXXIV," it was a permissive rather than an obligatory provision.[24] The only mandatory aspect was that if a territory was established in terms of the interim Constitution, it had to be entrenched in the final Constitution. Because no such territory was established, no obligatory entrenchment had to be made. All that the final Constitution had to effect was that the door on the right to self-determination, opened by Constitutional Principle XXXIV, was kept ajar. That was done by section 235.

The legal attack on the diminution of provincial powers, which the IFP joined, was more successful. The Court held that the overall effect of the Constitution was that there was a substantial diminution of provincial powers. As a result, the Court refused to certify the Constitution. After a few minor changes were effected by the Constitutional Assembly in September 1996, the Constitutional Court certified the Constitution in December 1996 as being in accordance with the Constitutional Principles.

Implementing the 1996 Constitution

When the 1996 Constitution came into operation on 4 February 1997, the only unfinished "federal" business was, as far as the Freedom Front was concerned, the implementation of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. At the first public conference of the commission, held in October 1996,

[26] *Cape Times*, 5 August 1998.

[27] The national support of the IFP dropped from 10.5% in 1994 to 8.5% in 1999. In KwaZulu-Natal,

only the Freedom Front showed an interest in the institution. Church leaders were indeed sceptical about the wisdom of churches participating in a state institution. The Freedom Front, seeking to grasp the commission as theirs, had to wait nearly two years before the first parliamentary debates on the commission occurred in August 1998. When the debates did occur, a vision different from theirs was advanced by the government. The then deputy president, Thabo Mbeki, saw the role of the commission as a way that South Africans could organize themselves to unite as a people around common national aspirations and a common identity, while also honoring and respecting their diversity.[25] For the Freedom Front, however, hope sprung eternal, and their spokesperson, Dr. Corne Mulder, argued that the commission should not be a culture "talkshop" but must have the power to ensure that laws were passed to safeguard communities' rights, chief among which was the right to self-determination.[26]

The next step in the life of this institution was the appointment by the Minister of Constitutional Development of Chris Nissen, the former ANC leader in the Western Cape, to investigate the establishment of the commission. Even if the commission might have a role to play in safeguarding communities, the Volkstaat was not high on Nissen's agenda. Far from visiting Orania, the only exclusive Afrikaner settlement on the banks of the Orange River in the semi-desert of the Northern Cape, Nissen was meeting with a San community, a people who have almost disappeared from the face of South Africa, living in the same arid area of the Northern Cape. By the end of 2000, there was not yet draft legislation on the table, operationalizing the Commission.

In contrast to the marginal position into which the white right-wing drifted, the IFP was brought onto center stage by the ANC. For the ANC, the solution to the continuing violence between ANC and IFP supporters in rural areas of KwaZulu-Natal was political, not constitutional. Ever since the adoption of the final Constitution, there have been concerted efforts by the ANC for political reconciliation with the IFP. There was even public discussion of a merger of the two parties. Indeed, whenever both President Mandela and Deputy President Mbeki were out of the country, none other than the erstwhile fierce federalist Buthelezi was appointed acting president on a number of occasions. It was under his eight-day acting presidency in September 1998, and with full support of the president and deputy president, that South African armed forces (under the cover of the Southern African Development Community's legitimacy) entered Lesotho to restore stability.

This political process of accommodation continues. After the second democratic elections of June 1999, the constitutional mandate for a government of national unity lapsed. Yet, despite the decreasing popular

the IFP lost its majority in the provincial legislature; in the 80 seat legislature the IFP with 34 seats formed a coalition government with the second placed ANC with 32 seats.

support of the IFP,[27] and in the absence of any prior election pact, President Mbeki included, as in 1994, three IFP members (including Buthelezi) in his cabinet.

The more permanent legacy of the peacemaking efforts has been the bolstering of the provincial system. The constitutional amendments of March 1994 further entrenched provincial legislative powers, including the power to draft provincial constitutions with legislative and executive structures and procedures different from those in the national Constitution, and increased taxing powers. Most important, the enactment of Constitutional Principle XVIII ensured that powers and functions of the provinces could not be substantially diminished in the final Constitution, a principle which the Constitutional Court enforced by not certifying the 1996 Constitution the first time around.

Even the constitution-making power of the provinces has turned out to be limited in scope. After the IFP's failed attempt at a provincial constitution, it has only been the Western Cape legislature, governed by the National Party, that has utilized this power. The Western Cape relied on the provision that a provincial constitution may provide for "legislative and executive structures and procedures that differ from those provided for" in the national Constitution when it sought to draft an electoral system different from that in the national Constitution. The national Constitution provides for proportional representation determined solely with reference to party lists. In the draft Western Cape constitution, elections in the province would be held in terms of provincial legislation which is "based predominantly on the representation of geographic multi-member constituencies; and result in general in proportional representation."

In refusing to certify that the provincial constitution is in conformity with the national Constitution, the Constitutional Court shied away from adopting a pro-provincial interpretation of the term "legislature structure" and held that it referred to no more than the nature and the number of the elements constituting a legislative structure, which excluded the manner in which members are elected.[28] After the Western Cape legislature deleted the electoral provisions, the Court approved the amended provincial constitution.

The provincial constitution has had at least one positive result for the Western Cape thus far. A 42-member legislature is provided for by the constitution, which is three more than the 39 members subsequently prescribed by a national formula authorized by the national Constitution. The Constitutional Court upheld the provincial constitution in April 1999 as it was a true example of a "legislature structure" different from that

[28] *In re: Certification of the Constitution of the Western Cape, 1997* 1997 9 BCLR 1167 (CC).

[29] *Premier of the Province of the Western Cape v Electoral Commission* 1999 (11) BCLR 1209 (CC).

[30] Ronald L. Watts, "Contemporary Views on Federalism," *Evaluating Federal Systems*, ed. Bertus de Villiers (Cape Town: Juta, 1994), p. 7 (emphasis added).

provided for by the national Constitution.[29] The origins of this small victory for provincial interests lie in the conflict-ridden days of March 1994 and the constitutional efforts at peacemaking.

FEDERALISM AS A DYNAMIC PROCESS

Federal arrangements are often not static but are elements of a flexible and dynamic political process. Ronald L. Watts has written that "[f]ederalism is not an abstract ideological model to which political society is to be brought into conformity, but rather *a way or process of bringing people together* through practical arrangements intended to meet both the common and diverse preferences of people."[30] The South African experience of peacemaking through federal arrangements exemplifies the notion of federalism as "a way or process of bringing people together." It is a dynamic process that reflects the exigencies of the time. As a way of bringing people together, the "federal process" had a beginning but no clear end. The process commenced with the promise of a federal option that could culminate in a full-blown federal structure. It was the promise of a *Volkstaat* that brought the right-wing Afrikaners into the political compact of the new South Africa.

A dynamic dimension to federalism is particularly pertinent where federal solutions are central to a peacemaking process. The practical arrangements developed in the process of peacemaking may be transitory in nature and inappropriate when the immediacy of the conflict has subsided and normalized political processes dominate. The strength of the 1993 South African Constitution was that it institutionalized the element of process, of ongoing constitution-making. The 1993 Constitution was to some degree a peace pact, seeking to bring people together in a democratic South Africa. It was labelled "interim" or "transitional" precisely because it was not the product of a democratic political process, but was influenced to some degree by the politics of power in its crudest form–the capacity and the will to use violence. The key battle which the ANC won was to make the 1993 Constitution a peace pact and not a final political compact.[31] However, the very nature of peacemaking often involves giving long-term guarantees, and this makes unlikely a watertight division between a peace pact and an eventual political compact. The 1996 South African Constitution had to comply with the broad framework set by 35 negotiated Constitutional Principles, which included elements of the asymmetrical federal peacemaking deals.

In the final Constitution, all the asymmetrical federal features disappeared. It is trite to say that any federal process is without an inevitable

[31]Nico Steytler, "Constitution-making: In Search of a Democratic South Africa," *Negotiating Justice: A New Constitution for South Africa*, eds. Mervyn Bennun and Malyn D.D. Newitt (Exeter: University of Exeter Press, 1995), p. 62.

[32]The Freedom Front gained 0.8% of the vote (and three seats), (down from 2.1% and nine seats in 1994). The Afrikaner Eenheidsbeweging, which included the Conservative Party, gained 0.2% of the vote and one seat.

logic or destination because its trajectory is influenced by many factors. Reverses to the process of decentralization have much to do with the very reasons that ignited it in the first place. Where conflict initiates the process and peacemaking is the objective, the federal process is fed and kept on course by the continued existence of the underlying conflict. Where the conflict or the threat of conflict disappears, or the conflict is resolved politically, the federal process may peter out.

This process is well illustrated by the demise of the *Volkstaat* initiative. The collapse of the Afrikaner right-wing as a political force after the 1994 election was spectacular. The militancy of the Afrikaner Weerstandsbeweging has been reduced to a whimper. The Conservative party returned to the fold and contested the 1994-1995 local-government elections but fared dismally. With no gains to show, the right-wing remained fractured and, in the 1999 national election, gained a total of only four seats in Parliament.[32] The ANC government secured control over the armed forces, and the threat of armed insurrection is a thing of the past. As a language or cultural community, those who call themselves Afrikaners are fractured across the political spectrum.

Whether the federal process proceeds beyond the practical arrangements that were occasioned by the initial conflict depends much on whether the conflict was an articulation of the "federal qualities" of that society.[33] Key elements of these federal qualities are territory and political commitment around some bonding interest, such as language, culture, or religion.

Watts has observed that federal political systems have been a response to the need to accommodate territorially distributed concentrations of diversity within a society.[34] Although territory is not a *sine qua non,* and non-territorial segmentation is possible, the latter is the exception rather than the rule. In the case of the *Volkstaat* idea, the absence of an identifiable territory not only meant that the promise of the interim Constitution could not be realized, but it also dissipated political mobilization. As few federal proponents were located in an identifiable territory, there has been little enthusiasm among Afrikaners for a *Volkstaat* because it would entail, at best, exchanging leafy urban suburbs of wealth for a barren patch of desert poverty somewhere in the Northern Cape. Non-territorial segmentation is the only other avenue left. However, the protection of collective cultural and language rights in the Bill of Rights has to be on a non-racial basis, which contradicts the real gravamen of white right-wing aspirations.

[33]See W. S. Livingston, *Federalism and Constitutional Change,* (1965), quoted in Ronald L. Watts, "Federalism and Fragmented and Segmented Societies," *Federalism and Civil Society,* eds. Jutta Kramer and Hans-Peter Schneider (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 146.

[34]See Watts, "Federalism and Fragmented and Segmented Societies," pp. 149-151.

[35]See Watts, "Federalism and Fragmented and Segmented Societies," p. 146.

Even where there is a territory, the political will of its inhabitants must be committed to self-rule. Although KwaZulu-Natal forms a historical and geographical entity, the political will to mobilize around culture and language under the umbrella of the IFP is lacking. First, there is no longer a majority of "federalists" in the province. In the 1995 local-government elections, the ANC captured most of the major cities and towns in the province, and in the 1999 election, the IFP gained only 42.5 percent of the provincial vote. Moreover, the alienation between the Zulu king and the IFP has deprived the latter of a key symbol of Zulu nationalism. Second, politically the IFP, and Buthelezi in particular, has been drawn onto the center stage of the nation. If Buthelezi's ambition was the driving force behind holding out for a fully fledged federal state during the negotiations in 1993, as some commentators have suggested, then the real cause of the conflict has been addressed. The ANC sensed that the solution of KwaZulu-Natal conflict lay in political accommodation, not in the legal stratagems of federal arrangements.

Although the South African case study suggests the transitoriness of federal arrangements where they respond to the exigencies of the time, one should keep in mind Watts'[35] observation that institutionalizing a federal process may provide a dynamic of its own, feeding into or nurturing subnational interests. Although the immediate forces driving the federal impulse have dissipated, others may emerge. The asymmetrical provisions of the 1993 Constitution were recouched in symmetry; no group would get special treatment. The institutionalization of the right to self-determination in the 1996 Constitution may yet attract unforeseen adherents. Other provinces may still find, and parade, their royalty. More important, however, will be the development of the provinces. Whatever political ambivalence the ANC may harbor about the role and function of the provinces, the political dynamics that federal structures have unleashed could determine its own trajectory.