

# FEDERALISM IN SOUTH AFRICA: A COMPLEX CONTEXT AND CONTINUED CHALLENGES

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## **FEDERALISM IN SOUTH AFRICA: SETTING THE SCENE**

Federalism in South Africa is a contested concept and reality. This is illustrated by the extent to which there are differences of opinion on whether South Africa is an example of a federal state or not, as well as differences of opinion and conviction on whether it should be or become, if it is not yet, a federal state. This opinion on the contested nature of federalism in South Africa is supported by Haysom<sup>1</sup> where he states that, during the negotiation for a democratic constitution: "... the federalism issue – the question of the extent and nature of provincial autonomy – became the most heated, intense and enduring of the constitutional disputes."<sup>2</sup> He then argues that this suggests that the question of provincial autonomy became a vehicle for expressing the expectations, insecurities and anxieties of the fundamental political changes the new constitution might put into effect. Indeed the way in which the political parties lined up on the issue is eloquent testimony to the disputed nature of the federalism debate in South Africa.

Haysom<sup>3</sup> elaborates by pointing out that the parties<sup>3</sup> which supported the maximum devolution of power and the greatest degree of autonomy of provincial governments were all associated in one way or another with the desire to retain at least some of the formal or informal features or structures of the pre-1990 South Africa, namely the National Party (NP), the Freedom Front (FF), the Democratic Party (DP) and the Inkatha Freedom Party (IFP).

On the other hand, those that were most concerned with a transformation of the institutions and patterns of privilege and power in South Africa were those that supported a unitary state. This group included the African National Congress, (ANC) and the Pan Africanist Congress of Azania (PAC). Furthermore, apart from the IFP, the parties which supported federal principles were not *per se* the representatives of geographically confined minorities or parties with a strong tradition of geographically confined support. Indeed, save for the apartheid experience, which was seen by all parties as a failed attempt at social engineering, there was either a limited indigenous tradition of federalism or none at all.

The contested nature of federalism in South Africa is of course linked to the South African context, which will receive more attention in the next section of this paper. For now it has to be noted that the historical and societal contexts of South Africa are characterised by strong conflictual societal perspectives on what the South African reality is and should be. It is also clear that South Africa is a highly complex society with serious challenges including poverty, inequality, unemployment, diversity and deep rooted racial, ethnic, political and economic divisions. All of these contextual dimensions and challenges impact on the positions of South African role players related to governance systems, including federalism. This complexity and challenges will also receive some attention in a next section of the paper.

Given these conflictual perspectives, the complex context and the serious challenges of a divided society still grappling with a troubled history of colonialism and apartheid, it is understandable that there will be differences of opinion and conflicts on the governance models and institutions that will most effectively and ethically deal with the South African reality. This includes differences of opinion on whether South Africa is or should be a federal or unitary state.

One analytical explanation of these differences of opinion and policy positions rooted in the political economy of South Africa and reflected in the stands of political parties in South Africa as illustrated

by the observation of Haysom *supra*, is to attempt to explain the differences in perspectives and perceptions in terms of the fundamental political analytical question of "Who benefits?" or "Cui bono?".

According to Clift,<sup>4</sup> this analytical approach to political economy, based on the works of, inter alia, Harold Laswell<sup>5</sup> who grounded his analysis of politics in his classical work *Politics* on the question: "Who Gets What, When and How?", and Susan Strange<sup>6</sup>, who explains political choice and behaviour in terms of interest based analyses linked to the question of choices made by political actors in terms of who benefits, and of course, whether they or their supporters will benefit and how. In adapted format the analysis is based on political actors making choices on the basis of how they perceive they will benefit in real or comparative terms given competition and conflict for available benefit and value. This interest based type of analysis will also to some extent inform the further development of the reasoning in this paper.

The "Who benefits?" question, from a federalism perspective, and the perceptions and positions of stakeholders on how to position in this regard is addressed by Rodriguez<sup>7</sup>, where she introduces a public value or value perspective to the conceptual federalism debate. She argues that the question of the value generated by federalism has no single answer. This is also true for the corollary question of how the system should to be structured to maximize its virtues. The value generated by decentralized decision-making will appear different depending on the perspective adopted when considering the matter. The impact of these perceptual differences on preference and choice is also valid for choices about the ideal design of inter-governmental relations.

Taking a perspective from within the system itself and from an institutionalist point of view, the answers will reflect the interests of the system's actors and take on partisan and bureaucratic characteristics. From an external perspective, either from a popular or scholarly vantage point, the answers will become more ideological and normative.

According to Rodriguez,<sup>8</sup> from this approach, the question of the value of federalism breaks down into several related inquiries, being:

- Of what value is it to the central government to have state and local governments to contend with?
- Of what value is it to state and local governments to be embedded in a system with a strong central government and a myriad of competing governments?
- Of what value is it to the people to have government power split and decentralized?

The reasoning thus far tends to illustrate that it would be rather naïve in general and definitely so in the South African case to assume that all role players and stakeholders will have a consensual universally held view on the value and benefits in terms of how their interests will be served and how they will benefit from a federal system in South Africa. Opinions and positions would be different in terms of perspectives and perceptions held by the stakeholders based upon their assessments of who would benefit and whether their interests will be served by having a federal state system in South Africa.

This deduction is provisionally supported when observing and analysing the positions of the South African stakeholders and specifically the major political parties and the current ANC national government on the federal option for South Africa. These positions were already made clear during the constitutional negotiations prior to 1994. These positions are still mostly unchanged today with the ANC in general and seemingly increasingly supporting a more centralised and unitary governance system and the DA in general supporting a more devolved and decentralised federal governance system for South Africa. This is still very much in line with the position at time of the constitutional negotiations prior to the acceptance of the Constitution of the Republic of South Africa, 1996.

It is symbolic and significant that the Constitution does not refer to the nature of the South African state and that there is no explicit reference to federalism made in the Constitution.

There is however fair consensus amongst informed academic and legal experts that the South African state includes strong elements of federalism incorporated into the country's governance system even if the federal option was not the preferred option of the ANC who became the dominant and governing political party after the 1994 democratic elections in South Africa.

Haysom<sup>9</sup> in this regard states that if the South African constitutional schema were to be analysed against a formal federal checklist, it could, with justification, be classified as federal. The South African governance system illustrates all the hallmarks of a federal system, in that:

- It is constituted by nine sub-national political entities called provinces, with each sub-national entity possessing constitutionally protected boundaries.
- In each province the Constitution requires a democratically elected legislature and an executive accountable to it and through the democratic process to the inhabitants of that province.
- The powers of each legislature and its provincial administration are original and constitutionally protected.

However, closer examination reveals that the treatment of provincial or regional powers in the final Constitution promotes or sanctions an integrated system of government in which both national and sub-national governments are deeply implicated in each other's functioning and more so than one might expect in a federal system.

This evaluation of the South African state, as an example of a federal state, is also supported by Sturm<sup>10</sup> who refers to South Africa as an example of unitary federalism and by Brand<sup>11</sup> who refers to the South African system as integrated federalism. According to Brand<sup>12</sup> this integrated South African federal system exhibits the following characteristics:

- Constitutionally, powers are divided among the three spheres of government, namely central, provincial and local government. The bulk of powers and functions are allocated concurrently to national and provincial governments;
- Division of fiscal authority, where the bulk of the taxing powers resort with national government, and
- Cooperative government as the overarching principle requiring the spirit and commitment to act co-operatively and to support one another across the spheres of government.

The point of departure is that there is a three sphere system of government; the national government, the provincial government and the local government each with some authority in its own sphere and all encouraged to work co-operatively, but also with the power to stimulate and under select conditions ensure co-operation.

In conclusion, the concept and practice of federalism in South Africa is contested even to the extent that Haysom<sup>13</sup>, with some sense of humour, refers to the avoidance of the word federalism in the South African Constitution and constitutional and governance debate historically and currently. He states that in this debate the use of the word "federalism" became more of a hindrance than a help. Against this background, the parties tacitly agreed to drop the "F"-word from the Constitution. Federalism is to this day still a highly loaded and contested political concept in the South African context.

### **SOUTH AFRICAN GOVERNANCE: CONTEXT AND CHALLENGES**

According to Schwella,<sup>14</sup> South Africa has a very traumatic history, also linked to the heritage of the universally condemned apartheid governance system. This system has left South Africa with a plethora of governance challenges related to bad governance, poverty, inequality, and underdevelopment. This heritage continues to impact negatively on South African society, and those dealing

with present-day governance challenges in South Africa need to take this legacy into account. Since the demise of apartheid during the 1990's progress has been made, but a large number of challenges remain, many of which have some roots in the apartheid past.

In this regard, Goldman Sachs<sup>15</sup> raised 10 areas of challenge that remain pertinent in South Africa and impact on South African governance, being:

- Unemployment and inequality remain South Africa's biggest hurdles. Unemployment remains stagnant at 25 % in 2013, from 23 % inherited in 1994. Also, 70 % of the unemployed are young people, aged between 15 and 34. In respect of inequality, 85 % of African people remain in the lower income categories, while 87 % of white people remain in the middle – to upper-class categories. Unemployment has subsequent to this assessment increased and is calculated to be somewhere between 35 % with youth unemployment probably at about 50 %.
- The current account deficit remains high at 6.5 %. The deficit has increased since.
- The volatility of equity and bond flows between 1995 and mid-2007 demonstrates the vulnerability of South Africa if it relies on these flows as a major source of finance. The report estimates that a correction equivalent to around 2 % of GDP is required to remove the vulnerability and to restore the external balance.
- The poor savings rate and high consumer indebtedness have impacted on national investment into the economy. Household debt to disposable income has soared from 57 % in 1994 to 76 % in 2013.
- The contribution of mining and manufacturing to GDP has fallen to 23 % in 2013, from 38 % in 1986.
- The mining and labour uncertainties are unsettling markets and could result in diminishing investment and, even, capital flight.
- Poor education and health outcomes and an underperforming public sector remain a challenge, and service delivery is inadequate and increasingly the source of protests.

- Infrastructure is under pressure, and there is a need for improved maintenance and increased infrastructural investment and development.
- Computer and internet access, research and development, and new patents registered remain a challenge, and show a lack of capacity to innovate.
- Sovereign credit ratings are under pressure and the credit ratings have declined over the last number of years, impacting on the cost of foreign loans and finance. There is currently (2016) a real threat that South Africa's credit rating may deteriorate even further into junk status.

An important political economy question, especially in the South African context related to the role of the state and governance system, is whether and how the system provides for the dual and simultaneous necessity, to, firstly create wealth, and then, secondly to distribute this created wealth productively, equitably and fairly. This dual political economy challenge links directly to the context and challenges experienced by South Africa economically, socially and politically and is directly linked to the issues of unemployment, poverty, inequality and bad governance.

The inequality and unemployment challenges are also linked to the apartheid heritage as well as to the challenges of the current underperforming governance and service delivery system. These issues have been raised consistently by other observers including in the National Planning Commission's<sup>16</sup> Diagnostic Report of the National Development Plan.

It is accepted that the massive backlogs resulting in deficient service delivery in the areas of governance are still to some extent a consequence of the legacy of apartheid. It is however proposed and argued here, that a complementary hypothesis for the continued challenges in the South African context may be that the backlogs are now increasingly the result of the underperforming South African government and public sector, in combination. It cannot therefore



be denied that the apartheid legacy still impacts on service delivery and creates governance challenges, especially given the continued levels of poverty and inequality. However, as the past dissipates over time the quality of governance, linked to public service capacity – or lack thereof – will increasingly need to be part of the explanation for inadequate performance of the state in service delivery.

Having referred to the challenges remaining as a consequence of the apartheid system it is now possible to focus on the current challenges. The challenges identified in the Diagnostic Report on the National Planning Commission (NDP) present a good base to relate to the current South African governance challenges.

While introducing the NDP in Parliament during the State of the Nation Address debate in 2013, the then Minister in the Presidency, Minister Trevor A. Manuel summarised the challenges identified in the NDP for South Africa as follows: "The two main objectives we arrived at in the plan are that we want to eliminate poverty and reduce inequality."

This statement calls for the consideration of the political economy considerations about the creation and distribution of wealth recorded *supra* and which should guide and inform good governance choices for South Africa including the form, structuring and functions of the state and governance system.

The NDP Diagnostic Report<sup>17</sup> identified and elaborated on these challenges faced by South African society starting from the premises and confirming that widespread poverty and extreme inequality still persist in South Africa. The Report emphatically states that the key South African strategic objectives are the elimination of poverty and the reduction of inequality.

From this point of departure the nine priority challenges for South Africa are then identified as:

1. Too few South Africans are working, the unemployment challenge.
2. The quality of school education for most black people is sub-standard, the education challenge.

3. Poorly located and inadequate infrastructure limits social inclusion and faster economic growth, the infrastructural challenge.
4. Spatial challenges continue to marginalise the poor, the marginalised poor challenge.
5. South Africa's growth path is highly resource-intensive and hence unsustainable, the sustainability challenge.
6. The ailing public health system confronts a massive disease burden, the health challenge.
7. The performance of the public service is uneven, the public service capacity challenge.
8. Corruption undermines state legitimacy and service delivery, the corruption challenge.
9. South Africa remains a divided society, the divided society challenge.

For current purposes, a brief elaboration will be given on challenges of unemployment, the marginalised poor, corruption and South Africa as a continued divided society as identified by the National Planning Commission in their report.

The unemployment challenge is again also linked to inequality. The NDP Diagnostic Report<sup>18</sup> provides some perspectives on this challenge.

It is argued that poverty and inequality are largely driven by high unemployment. Although real per capita income has increased by 2 % per annum since 2001, this rate is inadequate to make a significant impact on poverty and inequality. The proportion of people living below the poverty line has dropped from 53 % in 1995 to 48 % in 2008, but is still very high, and it seems as if the trends are set or are becoming even worse. The share of income for the poorest 40 % South Africans has remained stable since 1994, but now comes from social grants, rather than income and remittances for work done.

There are a number of causes for this seemingly persistent unemployment. These include growth in the labour force outstripping employment creation, while many of these workers also lack skills

in line with the needs of a modernising economy. The persistence of the problem is illustrated by the fact that almost 60 % of all unemployed people have never worked.

An inadequate number of jobs are created, and most of the jobs created are in skills-intensive sectors for which the South African labour supply is not properly qualified. Employment growth has been concentrated in less labour-intensive sectors. Salary increases have often exceeded productivity growth, and the economic environment is not conducive to small business. All these factors contribute to the challenge of unemployment, and reinforce patterns of poverty and inequality.

The marginalised poor challenge, according to the NDP Diagnostic Report, is related to apartheid settlement patterns and lack of infrastructure where the poor continue to live. Reversing the effects of spatial apartheid will be a central challenge in the decades ahead. In this regard, there are three major related challenges, namely:

- The fact that the poorest still live either in former homelands or in cities far from where the jobs are.
- A failure to coordinate delivery of household infrastructure between provinces.
- The challenge for government either to move people to where the jobs are or to move the jobs to where the people are.

In order to deal with these challenges, the NDP Diagnostic Report<sup>19</sup> also referred to the need for much more effective institutions. In this regard, the fact that infrastructure is poorly located and inadequate, creates limits to social inclusion and growth. Simultaneously, the modernising of infrastructure is complex, involving high costs while also helping the shift towards a more labour-absorbing, knowledge-intensive economy incompatible with the skills of the current workforce.

Corruption undermines state legitimacy and service delivery. On corruption, the NDP Diagnostic Report states at the outset that, having declined after 1994, corruption may once again be on the

rise. Rising corruption undermines state legitimacy and services. Corruption is defined as the misuse of an official position for personal gain. Corruption occurs in both the public and private sectors, but it is particularly damaging the good relations between citizens and the state. It undermines confidence in the democratic system by enabling the better-off to exert undue influence over the policy process or obtain preferential access to services.

Perceptions that corruption is high in government are increasingly held by more members of society, and are confirmed by state agencies tasked with fighting corruption. These state agencies are also of the view that corruption is at a very high level. Furthermore, weak accountability and damaged societal ethics make corruption at lower levels in government almost pervasive. It seems as if efforts to fight corruption are fragmented, and institutions dealing with the prevention and combating of corruption are often weak. As a result of corruption in infrastructure procurement, prices rise and thus result in poorer quality of service.

Corruption is also exacerbated by deficient and lacking capacity within the institutions and organisations tasked with the mandate to curb corruption, for example the Special Investigating Unit, which is not able to investigate all the major cases referred to it. This is of particular concern because the probability of being caught and successfully prosecuted has a major impact on the level of corruption. The numerous anti-corruption agencies, laws, and forums also present their own problems, due to overlapping mandates and the lack of strategic coordination of investigating bodies.

The divided society challenge indicates that, despite significant changes since 1994, South Africa remains a divided society. Overall, for South to achieve the social and economic objectives set out in the Constitution, South Africa needs to make faster progress in uniting the South African people. This requires improved implementation of redress measures, and faster expansion of opportunities for historically disadvantaged South Africans through improved education, job creation, career mobility, and entrepreneurship. In the absence

of progress in improving educational standards and in getting more people into work, redress measures on their own are likely to be ineffective and to contribute towards social strife rather than unity.

The following challenges remain and require attention:

- The redress of the past and the broadening of opportunities for the future are societal imperatives.
- Building national unity and inclusiveness is vital.
- Strong economic growth and expanding employment are conditions for success.
- South Africa requires a broad social compact to create jobs while growing the economy.

Finally, the NDP Diagnostic Report relates all the other challenges to a good governance- and societal leadership challenge by stating: "We need leaders and citizens to commit to a bold programme to build a better future, based on ethical values and mutual sacrifice. The leadership required will think and act long term, rising above short-term personal or political gain. They will think and act in the interests of the nation as a whole, and avoid promoting the interests of one group of South Africans at the cost of others."<sup>20</sup>

Over and above the institutional leadership and citizen competencies, deficient and declining institutional capacity challenges the optimal structuring and functioning of the state and governance institutions. The capacity of South African institutions will be critical to deal with the dual considerations of creating wealth effectively and ethically as well as distributing wealth productively and equitably.

These challenges and considerations need to be considered within the context of state and governance institutional architecture considerations, including the optimal way to organize this state institutional architecture into a more federal or unitary system from a political economy perspective. It is clear that the current configuration as provided for in the South African Constitution and the way in which this is institutionalised provide for a hybrid approach

with characteristics leading to the system being classified by experts as a unitary federalist system<sup>21</sup> and an integrated federalist system.<sup>22</sup> It is now indicated to further consider the conceptualisation and institutionalisation issues in the South African system of federalism.

### **FEDERALISM IN SOUTH AFRICA: PROBLEMS AND PROSPECTS – A POLITICAL ECONOMY ANALYSIS**

In an analysis of federalism in South Africa from a "who benefits?"-perspective linked to the question on how governance models and systems can contribute to the creation and sharing of wealth in an effective and ethical way, it is indicated to focus on how aspects of these questions are dealt with in related research. In this regard the work of Simeon and Murray<sup>23</sup> and Inman and Rubinfeld<sup>24</sup> provide useful insights.

Simeon and Murray<sup>25</sup> contextualise their work on multi-level government in South Africa within broader contextual and conceptual frameworks by asking the question if federalism is an appropriate system of governance for developing countries, facing the challenges of democratization, the need for economic development and the reduction of poverty, and the threat of divisive ethnic, cultural, linguistic and religious differences.

According to them, the theoretical advantages of federalism, or decentralized systems generally, are well known. Some of these advantages are:

- Federalism serves democracy by increasing opportunities for participation, bringing governments closer to the people, and introducing checks and balances that may minimize opportunities for majority tyranny.
- Federalism also serves developmental goals by allowing policies and programmes to be tailored to the specific needs and preferences of particular regions, and may increase transparency and accountability; again by bringing officialdom closer to the people they serve.

- Federalism promotes inter-group harmony by giving each constituent group a political space of their own in which they are able to express their own values, identities and interests without fear of domination or veto by a central government controlled by an ethnic majority.

Simeon and Murray, however also refer to counter-arguments on whether federalism is the most appropriate governance option for developing countries. These counter arguments are:

- With respect to democracy, there is the danger that local interests may frustrate the will of a democratic majority.
- There are also conflicting views as to whether decentralized decision-making is actually less prone to problems such as elite domination and corruption.
- Federalism in many ways is designed to create competing centres of power in weak, fragile states. This may generate instability as rival elites exploit this for their sectional benefit.
- With respect to economic and social development policy and delivery, fragmented authority may impair the ability to mobilize the financial and human resources to address massive developmental challenges successfully.
- Intergovernmental beggar-thy-neighbour policies may frustrate development, and decentralization may make redistribution of wealth, or sharing, more difficult.
- Finally, in respect of diversity, federalism can potentially entrench, institutionalize, perpetuate and exacerbate the very challenges it is designed to manage. It may provide nationalistic ethnic elites with a platform from which to promote secession or ethnic cleansing.

Simeon and Murray<sup>26</sup> then state that the debate cannot be conducted in the abstract as much depends on the specific design of federal or decentralized institutions. Even more depends on the particular circumstances of individual countries, namely:

- the number and character of diverse groups;
- their colonial legacies;
- the distribution of wealth and resources across the territory;
- the skills and capacities available to governments at local, provincial and national levels; and
- the design and effectiveness of other elements in the institutional structure, such as legislatures, electoral systems, the judiciary and Bills of Rights.

Simeon and Murray examine the South African case from the point of departure that throughout the democratisation processes of South Africa, the majority of South Africans were reluctant federalists. They confirm that the preferred position of the African National Congress (ANC) and the broader anti-apartheid movement when entering into constitutional negotiations in 1990 was overwhelming for a unitary South Africa. They also state that this is still the case when assessing the positions in 2008 after more than a decade's experience in operating a multilevel, quasi-federalist regime. Doubts about the efficacy of federalism continue and fundamental reform is up for discussion of the federalism issue as well as many other South African governance issues are firmly on the agenda. This remains the case in South Africa and may even have become more dramatic and important into the second term of the government of President Jacob Zuma in 2016.

Simeon and Murray<sup>27</sup> provide a concise, but rather clear exposition of the reasons why the liberation movements were and remain, what they term, "reluctant federalists".

In the process of designing a new constitutional model for a democratic South Africa, the African National Congress (ANC) and others in the freedom movement were deeply suspicious of federalism in contrast to the out-going white-dominated apartheid regime and the Zulu-nationalist Inkatha Freedom Party which insisted on federalism as a condition of a final constitutional settlement. The ANC supported by the other liberation parties, believed that feder-



alism would contribute to limited government and restrain the majority that was about to take office. Some in the National Party nurtured the dream that in a federal South Africa there might be room for an Afrikaans province or homeland. Inkatha aspired towards a highly autonomous KwaZulu-Natal.

According to Simeon and Murray, as for the ANC, federalism and decentralization were indelibly linked to the apartheid model of Bantustans – quasi-autonomous puppet regimes that would deny Black South Africans full citizenship in South Africa itself. ANC leaders had also studied at the feet of teachers in Britain, Moscow and elsewhere. In this process Harold Laski at the London School of Economics had taught them that federalism was obsolete in a world dominated by capitalism and class differences. ANC leaders were also acutely aware of the immense developmental tasks that would face a democratic non-racial South Africa.

The considerations from the perspective of the ANC at the time were:

- What political system could address the enormous disparities between black and white, rural and urban, that the new regime was to inherit?
- Who could address the challenges of educating South Africans, and providing them with housing, water, electricity, and health care?
- Who could engineer the redistribution of wealth in one of the world's most unequal societies?

For a number of reasons federalism and decentralization advocated by *inter alia*, The World bank, had little appeal for the ANC as the new leaders of South Africa. These reasons included:

- an assumption that dealing with developmental challenges called for a strong unitary state and powerful central government,
- a fear for the possibility of the manipulation of tribal and ethnic rivalries in a divide and rule strategy,
- concerns that the lifting of the repressive apartheid rule might result in linguistic and ethnic rivalries and conflicts.

Simeon and Murray<sup>28</sup> conclude this part of how the ANC leadership was and still remain reluctant federalists and how in spite of this they acceded to a form of federalism in South Africa with the following narrative: "Accepting a federalist system was a difficult pill for the ANC to swallow. It was made a little easier by two visits of delegations of constitution-writers made to Germany – a culturally homogeneous federation that emphasizes cooperative and consensual decision-making and provincial implementation of national legislation. Indeed, the South African system draws heavily on the German model, most obviously in its conception of provinces as primary administrative bodies, implementing legislation that is agreed nationally, and in the design of the NCOP. The perceived centralism of German federalism allayed the worst fears of the ANC negotiators. A senior member of the ANC's negotiating team reported back after a visit to Bonn that Germany 'is not federal at all'."

Simeon and Murray then assess the current state of the functioning of the federalist approach in South Africa, drawing on ANC and government documents and conclude that the drive is towards a continued revision of the federalist characteristics of the South African government system.

The assessment is not overwhelmingly positive about the functioning of the federalism state version in South Africa and also advances some reasons for this negative assessment. In this regard Simeon and Murray argue as follows: "After more than a decade of experience with multi-level government, few today argue that it is serving South Africa well."

They base their assessment on observations which, according to them, seem to indicate that multilevel government is apparently more of a problem to be managed than a contributor to democracy and effective governance in South Africa. From their perspective few of the benefits usually associated with federalism, being that of governments closer to the people and greater opportunities for participation, public policies more closely attuned to local needs and preferences, appear to have been met in the South African case.

With a few important exceptions, neither provinces nor cities have become centres or leaders of economic growth and development. Delivery of basic services to citizens – the primary role of provincial and local government frequently falls short of demonstrated needs.

According to Simeon and Murray,<sup>29</sup> in seeking to understand these weaknesses, three explanations dominate. The first explanation is linked to the lack of political commitment to any form of federalised decentralised model for the South African state and governance system on the part of the ANC starting with its initial reluctance to embrace federalism or, more specifically, a provincial system. As a result, the ANC, the ANC government and the South African state have no clear rationale for, nor a clear vision of the role that provinces should play. There is no strong political commitment of leaders to develop the provincial system, and no mass support for provincial governments.

A second explanation for the difficulties experienced with decentralist proposals in developing countries, and also in South Africa, is governmental capacity – or the lack of it. This can be a problem at any level of government, but in South Africa it is particularly acute at the provincial and local levels. Lacking capacity is a multi-dimensional phenomenon and includes:

- Political capacity – the ability of governments to establish a presence in the minds of citizens as an important centre of authority and initiative.
- Legislative capacity – the ability of legislatures and their ministers to develop and formulate legislative initiatives responsive to their citizens' needs and preferences, and the ability of legislators to monitor and scrutinize the executive.
- Fiscal capacity – the ability to command the resources necessary to carry out assigned responsibilities.
- Bureaucratic capacity – the ability to actually deliver services to citizens.

- Intergovernmental capacity – the ability of all the units and levels to cooperate and coordinate their activities in ways that maximize service delivery and minimize pointless battles over turf, blame avoidance and credit-claiming.

Simeon and Murray then evaluate the South African provinces along these dimensions and conclude that most provinces have not established themselves as autonomous political actors.

With respect to legislative capacity, municipalities are not expected to engage in law-making in any substantive way. As a result of the subordination of provincial governments to the centre, provincial governments have also done little in the way of initiating new legislation, either in exclusive or concurrent areas of jurisdiction. The lead is taken from the centre. Provinces largely act as administrative agencies, implementing and delivering a wide range of services mandated in national legislation.

According to Simeon and Murray<sup>30</sup> a constraint in respect of capacity for service delivery is that Provinces have very few revenue-raising powers. The vast proportion of their budgets – about 95 % – consists of transfers, unconditional and conditional, from the national government. The Constitution mandates that provinces should receive an "equitable share" of national revenue sufficient to meet their responsibilities. Provinces are largely dependent on this central government provided funding to operate, making them dependent upon the central government for most of their funding with implications for their autonomy.

Although there are complaints that provinces are underfunded, there is evidence that the system of transfers and fiscal equalization is working efficiently. The bigger challenge seems to manifest on the spending side where most provinces have great difficulty. Service delivery problems have arisen in key areas of provincial responsibility in most provinces and affect all public services including health, education, social services across the spectrum of constitutionally mandated services. While the relatively urbanized Western Cape

and Gauteng seem to govern and manage well, it is the poorest provinces, and particularly those which inherited the bureaucracies of former Bantustans, that have the greatest difficulties.

Similarly at local level, large dynamic "Metros" such as Johannesburg, Cape Town and Durban have proven a considerable success, embarking on expansive plans to become "global cities". It is the smaller, more rural and new district and local municipalities that have struggled.

The third set of challenges for decentralised governance systems in developing countries is intergovernmental capacity. According to Simeon and Murray the high degree of concurrency in the division of powers, the close fiscal ties, and the extent of central supervision over provinces and local governments and cooperation among all levels or spheres of government is critical in the South African case.

The South African Constitution in this regard calls for "cooperative" government, but the general relationship is less that of a partnership between three levels of government with equal status than it is a paternalistic, centrally dominated process. Elaborate guidelines for these monitoring, supervision, and intervention processes have been developed at the centre. The intergovernmental relations process is also highly structured. It is governed by legislation and for coordination purposes, a wide range of intergovernmental bodies have been set up. However despite attempts to institutionalize the system of intergovernmental relations, co-ordination remains a serious challenge and coordinated governance and service delivery suffer as a result.

From this work of Simeon and Murray<sup>31</sup> and the evidence they present on the challenges faced by the South African state and governance system, it is clear that there are major differences from a "Who benefits?" set of perceptions and perspectives in the South African polity on the value of federalism for the political role players. The evidence is that the current ANC government has been and still is of the opinion that their political interests as well as their views on how wealth should be created and redistributed will be

better served by a strong, centralist and unitary state rather than by a decentralised federal state.

Although this analysis and conclusions of the ANC may be and are often contested by other role players, the ANC and the South African ANC dominated government act in terms of these perceptions resulting in a lack of political will to pursue a federalist agenda. This lack of political will weakens the potential benefits of the already existing federalist institutions in South Africa to optimise the potential benefits of a federalist approach in South Africa. This is in some ways a self-fulfilling prophecy as well as an objective reality grounded in the lack of capacity to implement value adding federalist possibilities given the complexity and capacity challenges inherent in federalism as well as in the South African reality.

There is further evidence of the weakening of the potential of the federal option for South Africa due to political perceptions on who benefits as well as the implications of bad governance in South Africa indicated in the work of Inman and Rubinfeld.<sup>32</sup>

Inman and Rubinfeld<sup>33</sup> develop a formal model explaining how the South African Constitution and its institutions of federalism can provide self-enforcing protection for the economic interests of the largely white economic elite that had ruled during the apartheid era. They show how federal governance, appropriately specified, creates a "hostage" game between a majority controlled central government and elite run provinces (which would eventually be a single province, the Western Cape) that provide important redistributive services to majority residents. This game provides benefits for both sides and they are therefore willing to accept the compromise as both sides derive more benefits than disadvantages from the outcomes of the compromise.

When specified against the actual performance of the South African public economy, Inman and Rubinfeld<sup>34</sup> show that the fiscal allocations from 1996 to the beginning of the current regime of President Jacob Zuma were sustainable as a long-run policy equilibrium with less than fully redistributive taxation.

Inman and Rubinfeld further develop their propositions along the lines of which conditions will be favourable for federalism in the South African context based on their theoretical scheme. They provide an overview of the transition to democracy and a description of the South African political economy which they argue are in many ways a prototypical transition economy with a poor majority ruled by once dominant but now threatened economic elite.

They then deal with three aspects related to the probabilities of success for a federal approach. The first is how a federal governance system can be structured to provide sufficient protection for the economic elite in such a way that they will find the transition to a peaceful majority rule-democracy preferable to the current threatened and therefore costly autocratic regime. Calibrating this model to the South African economy at the time of transition, the proposed federal institutions are seen to provide a stable, majority rule-democracy with less than fully exploitative taxation of the economic elite.

Secondly, Inman and Rubinfeld estimate the long-run economic gains of the transition to the poor majority and the once ruling elite based upon the actual performance of the South African public sector.

They conclude that compared to the alternative of remaining in apartheid, both parties enjoyed significant aggregate economic benefits from the transition. South Africa turned to federal governance as a solution to one of the central challenges of transition politics, being how the new poor majority can credibly promise not to exploit the now vulnerable rich minority?

There are conditions where a federal constitution can provide such protections. Based upon what they term the assignment constraint, the elite must be a low cost provider of redistributive services important to the majority and those services must be assigned to provincial governments. The elite must also have an incentive to punish the majority by capturing intended redistributive transfers when the redistributive tax rate of central government gets too high.

A related constraint which they introduce – namely the border constraint – requires that there must be enough majority residents

in the elite-run provinces so that redistributive capture by the elite hurts the country's average majority resident, but not so many majority residents that the elite loses political control over provincial policy making.

Finally, both the rich minority and the poor majority must be sufficiently patient that the long-run economic benefits of the cooperative, federal outcome. Under these conditions, democratic federalism does offer the promise of elite protection from excessive redistributive demands.

Inman and Rubinfeld then consider whether this promise has been realized in the South African transition and conclude positively. Based on their analysis, compared to the alternative of remaining in apartheid, they conclude that both the poor majority as well as the once ruling elite enjoyed significant aggregate economic benefits from the transition.

Thirdly, Inman and Rubinfeld<sup>35</sup> use their analysis to explore the future of South Africa's federal bargain as protection for elite economic interests and the future sustainability of the federalist option for South Africa. According to them, after the initial successes, the future is less certain. They argue that the current ANC leadership under President Zuma has been responsive to the demands from the ANC rank and file for increased redistributive services, rising by more than 40 % since the last of the Mandela-Mbeki budgets, significant pressure for even greater redistributive spending remains. Were the ANC leadership to significantly increase required redistributive services there is the risk that the assignment constraint will be violated and elite high capture will no longer be a credible threat to maximal taxation.

Inman and Rubinfeld then argue that given the increased demand for redistributive actions there are three options open to the ANC government, being:

First, continue to control ANC policy by isolating the ANC factions pushing for increased redistributive spending and elevate to importance representatives from the emerging black middle class.



Second, relax the assignment constraint's value of the maximal feasible public service expenditures by lowering the protest penalty through increased police presence (a central government function) in the elite province, thereby raising the incentive for the elite to adopt high capture.

Or third, give in to the demands for increased redistributive services, violate the assignment constraint, and expose the current regime of democratic federalism to the possibility of maximal taxation and de facto unitary governance.

Inman and Rubinfeld<sup>36</sup> indicate that according to their evaluation President Zuma has, to date, adopted the first strategy.

Finally, and more generally they indicate that going forward South Africa may provide a direct test of the Weingast theory of democratic transition based upon self-enforcing constitutions.

The Weingast analysis stresses:

- the importance of an unsustainable autocratic status quo because of civil war or outside threats,
- the necessity for any new democratic agreement to be self-enforcing, and
- that self-enforcing compacts require preferences immune to opportunism.

According to Inman and Rubinfeld<sup>37</sup>, the third Weingast condition is now being tested by the pressure for increased redistribution by the more radical wing of the ANC.

Given their specification of the South African political economy and the central role of majority demands for redistributive services, a concrete prediction as to the future of the original democratic agreement between the majority and the elite, can be made.

This prediction is that:

- If the demand for redistributive services moves outside the set of feasible self-enforcing federal constitutions,
- then the original democratic compact will collapse,
- with maximal taxation of elite economic interests, and

- the emergence of de facto unitary governance as final outcomes.

From the political and governance analyses of Simeon and Murray<sup>38</sup> and the political economy analysis some conclusions on the current and future state of federalism in South Africa as well as the federalism of the South African state can be drawn. This will be done in the next section of this paper.

### **SOUTH AFRICA: ANALYTICAL FUTURE PERSPECTIVES IN THE CONTEXT OF THE SOUTH AFRICAN DYNAMICS FROM A FEDERALISM PERSPECTIVE**

It is the thesis of this paper that the future of federalism in South Africa will depend on:

- Perceptions on who benefits and who will benefit from federalism, linked to who holds these perceptions and how powerful the holders of the perceptions are to influence the outcomes related to federalism. This will impact on the political will of the significant decision makers who can determine the future of federalism in South Africa.
- The extent to which the South African state and governance system succeeds in creating through their governance, policy and service delivery actions a functional system capable and capacitated to create and distribute welfare effectively and ethically and re-distribute the created wealth, effectively, ethically and equitably.

Given the historical and current South African context and challenges related to poverty, inequality, unemployment and a fractious social cohesion, linked to increasing worsening governance and declining economic growth the predicted outcome for federalism to sustain and deliver on its promises to provide innovative and productive options for improving the lives of all South Africans are in a range from under pressure to on the way out.

This conclusion is based on the current South African government, the ANC who have never shown a political commitment to a federalist option for South Africa. This deficient political commitment is now amplified under conditions where, due to the bad governance on the part of the ANC government, the governance system to generate wealth effectively and ethically either is not in place or deteriorating. This leads to increasing demands and pressures for radical re-distribution from contesting political parties such as the Economic Freedom Front (EFF) and, increasingly also from a growing faction in the ANC itself.

Should these increased demands be conceded to, the probabilities of the Weingast outcome may well be on the increase. This possible outcome, dealt with *supra*, which essentially postulates that excessive demands for radical re-distribution may result in the collapse of the original democratic compact and a *de facto* unitary state.

The probabilities of the worst outcomes of the Weingast proposition materialising is exacerbated by the perceived complexity of federal systems and the professed capacity constraints in South Africa to deal with sophisticated governance challenge posed by a federal governance system elaborated upon *supra*. It is however the submission of this author that these are at best untested and false assumptions based on interest based ideological and emotional perceptions rather than on evidence based facts. It is in any case also possibly a fallacy to assume that the governance of South Africa as a centralised unitary state will be less complex, or require less capacity than governing South Africa as a decentralised federal state.

There are some conditions that may mitigate the possibilities of the worst case scenario becoming the realised outcome in South Africa resulting in the emergence of a centralised unitary state.

The first is the Constitution of the Republic of South Africa, 1996 and the institutions created under this Constitution which have proven to be resilient and resolute under trying conditions.

Not only does the Constitution provide for a federation in South Africa, but it has also been shown to stand up against political expediency. The constitutional institutions related to the rule of law and the independence of the judiciary and especially the Constitutional Court have consistently resisted the short term political expediency of the government in an exemplary way. It is probable that it will continue to do so in respect of the possibility of the government attempting to tamper with the Constitution and its institutions.

Secondly, there are indications that the ANC may be under pressure through losing electoral support and subsequently power in government. This may, however prove to be a double edged sword. If this losing of power results in the formation of moderating coalitions federal sense may prevail. If, however it results in an authoritarian power grabbing response, unitary centralised senseless autocratic governance may emerge.

It is necessary to engage and work towards the desired outcomes rather than to passively succumb to the possible negative outcomes. In this way all will benefit and the system will increase its capacity to create and distribute wealth effectively, ethically and equitably.

## **SUMMARY AND CONCLUSIONS**

South Africa is currently facing many challenges again and the outcomes are unsure. There is a need for a call for all concerned to contribute to the probabilities of a desired outcome where constitutional democracy with good governance prevail and good governance and economic growth impact positively and constructively in South Africa.

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**NOTES**

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