

MAKING THE NEW SOUTH AFRICA UNGOVERNABLE AND POST-APARTHEID
DEMOCRACY UNWORKABLE

COMMENTS ON THE NATIONAL PARTY CONSTITUTIONAL PROPOSALS

Areas of Seeming Consensus

The key task facing us all in South Africa today is to dismantle apartheid, install the institutions of democracy and encourage the widest possible confidence in the democratic process. It seemed, until the text of the NP proposals reached us, that we were making progress in this direction.

There has been growing acceptance that apartheid was a human, social and economic disaster, that South Africa is after all one country which belongs to all of us and to which we owe a common loyalty. and that elections to choose government should be conducted regularly and fairly on a non-racial basis.

There has also been increasing support for the adoption of a Bill of Rights guaranteeing the fundamental rights and freedoms of all South Africans on a non-racial basis, and giving the courts, including a new Constitutional Court, a special role in ensuring that basic freedoms and entitlements are never violated.

Such a Bill of Rights would entrench the right to use one's language, practise one's religion, and, provided one did not interfere with the rights of others, associate freely and express one's personal tastes and predelictions without interference from the State.

The proposal by the ANC and others that, in order to ensure that all significant political currents are represented in law-making bodies, we should have elections based on proportional representation rather than single-member constituencies, has also won widespread support, the more so since the system is easy to operate and avoids conflict over the delimitation of electoral boundaries.

There was also a near-unanimous consensus that urgent attention had to be paid to apartheid-created inequalities of access to health, education, housing, nutrition and other social rights; the main argument has been whether there should be an entitlement to an expanding floor of minimum conditions expressed as an enforceable constitutional principle, or whether there should be social directives of state policy and no more in the constitution. Despite rights

different views about the general place of affirmative action in a new South Africa, there was across-the-board support for the idea of affirmative action at least in the area of education.

Similarly, we seemed to be on common ground - ~~at least~~ in principle if not in practice- in seeing to it that the civil service, armed forces, police and other agencies of the state, operated as representative, impartial, competent and accountable bodies, owing their allegiance to the Constitution and the people as a whole, and not to any particular group or party.

Even in relation to such contentious issues as rights to land, there was growing appreciation of the need to search for equitable principles and fair procedures that would reconcile the need simultaneously to redress historic injustices, maintain food supplies and encourage the development of a national rather than a racial consciousness.

Finally, there was widespread agreement that we wanted as much active participation by the population as possible in government and in holding government to account, that is, that we should avoid an over-centralised and over-bureaucratic state in which a few people took all the decisions and the general population simply carried out laws imposed upon them in their name.

Evasion or Open Debate?

The NP proposals prove that in fact we are much further apart than we thought.

We understand the importance both to themselves and to the country at large of carrying the more racist section of the white population along with them, of dealing with the fears of their supporters. Yet we feel that nothing is gained by putting forward manifestly unworkable proposals that are clearly based upon selfish racial and party-political interests and have no prospect of being accepted by anyone except themselves.

We feel that open and honest debate and the direct confrontation of difficulties is a better way of dealing with fears than offering cobbled-together and inconsistent schemes that end up trying to do the impossible, namely, to reconcile racism and non-racism, apartheid and democracy. The non-racist protestations look less than skin deep when coupled with provisions that are so clearly undemocratic

To make matters worse ~~un~~governability
the diminution of power to take on the tasks of
govt. Our country will be undergoverned & overgoverned
at the same time, undergoverned because of the ~~lack of~~ forced
consensus, & overgoverned because of the ~~invention of~~ ~~NP~~ ~~govts~~
that they can only owe their existence to being thinly
disguised measures to maintain as much de facto apartheid as
possible while using the language of non-racialism.

The good features of the document, namely the absence in it of any explicit reference to race groups and its emphasis on the importance of the rule of law [we prefer the term constitutionalism], are completely undermined by pages and pages of plans, some of them quite bizarre, to ensure that the NP remains in office forever. Even if nine out of ten South Africans think the NP is unfit to govern, the present incumbents will have guarantees of places in any future government, and at least one Presidential year in three.

It is difficult to imagine a more effective way of bringing democracy and the constitution into disrepute. Indeed, one wonders what the purpose of elections and freedom of speech and assembly is if the outcome makes little if any difference to the composition of government.

Stranglehold

Where, one asks, will the vigorous opposition and right of dissent be, if everyone is holus bolus in the government? And what is the value of emerging as the winner in Senate elections when coming third or fourth brings equal power, including the right to veto almost any government proposal?

We can envisage the ludicrous situation arising where parties compete to see who can get the least support from the electorate, all trying to come third or fourth rather than first. In that way, they can exercise a stranglehold over government without having any responsibility.

The unitary-federal debate

All democrats must favour effective democratically elected governments at regional and local levels as well as at the centre. We in the ANC have long acknowledged the importance of regions both in the structure of our organisation and in the life of the nation. We do not want excessive concentration of power at any level; what we are offered instead by the ~~National Party~~ proposals is ~~un~~governability at all levels. ~~Recent~~ ~~constitutional~~

The ANC is always accused of being excessively reliant on the State, yet today it is the NP not us who are advocating a huge multiplication of what they call "governments". In addition to a large, multiplex and powerless government ~~based on forced consensus and minority veto~~ at the national

We ~~will~~ strive for democracy throughout the country.

Our proposals acknowledge the importance of regions in at least four respects:

- 1. Elects - 2. house
- 2. Elects - small - equal rep. people in regns. - local init & resp for implen.
- 3. Regnal govt - they want large, convoluted and powerless governments in each of nine proposed regions. Whether or not there should be more or less spending by government can be debated, but surely no-one wants more spending on government.
- 4. Policy of regional equal. - Not fed because -

level, they want large, convoluted and powerless governments in each of nine proposed regions. Whether or not there should be more or less spending by government can be debated, but surely no-one wants more spending on government.

overly fragmented -
framework
united SA
power harmonised rather than fragmented.

Instead of one Prime Minister, we will have ten, each with his or her official house, car and entourage. There will be ten Cabinets, ten Chief Justices, ten Ministers of Health, Education and Water Supplies. A robber wishing to escape apprehension in the PWV would just have to cross the state border into the Eastern Transvaal to complicate the life of the police.

~~including regional govt in the regions,~~

It is one thing to prevent excessive concentration of power in one person or one institution; we support the principle of strong checks and balances within an overall democratic framework. It is another arbitrarily to divide up the country into artificial units with no coherent historical or cultural base.

Federations work where they evolve historically. Normally, they result from independent states coming together and surrendering part of their sovereignty, while retaining part for themselves. Just the opposite is being proposed for our country.

For 80 years the white minority happily accepted an integral and harmonious relationship between Parliamentary-type institutions at central and provincial levels. Now, after the disastrous experience of dividing the country in terms of Bantustans, tricameralism and own affairs, they wish to split the country up in terms of regions. Our harsh experience has been that fragmentation has always resulted in more rather than less oppression.

One only has to look concretely at any area of South African life to see the impracticality of placing impenetrable walls between national and regional government. Without a national endeavour, national funds and a broad national framework, how will it be possible to advance education, create an effective health care system and tackle the terrible housing problem? Are we to have a multitude of police forces and para-military formations, each operating according to its own rules and each going its own way?

We want democratic control and local implementation in all these areas, with allowance being made for regional particularities, but not total autonomy. In addition, we urgently need a policy of regional equalisation such as they

have in Germany, if the huge economic and social disparities between regions are to be overcome.

Regional units cut off from the mainstream of national life are by no means guarantees of liberty. They could just as easily become bastions of local autocracy, warlordism, private armies and chauvinist backwardness. We only have to recall the actions of the racist Governor Wallace in Alabama and the authoritarianism of Huey Long in Louisiana in the United States to see how building constitutional laagers around the regions can become a means of denying rather than buttressing democracy.

Instead of trying yet once more to invent artificial formats for South Africa, let us articulate in a clear and practical way the powers and sources of funding that the centre, the regions and the localities will each need in order to carry out their respective tasks democratically and effectively, giving special attention to encouraging harmonious interaction between the three levels.

The result might be a unitary state with federal features. The political scientists might use another phrase; it is not the description that counts, but the reality.

What is urgently required is the establishment of core democratic values and smoothly functioning democratic institutions throughout the length and breadth of the country. The constitution has a key role to play in this connection. It must breathe the spirit of equity, justice and openness. It must give equal protection to all, establish manifestly fair rules of a national character, so that everyone says: this is my Constitution, and I adhere to its rules because they are clearly the best for everyone; today I am in opposition, tomorrow I might be in government; the rules are the same, whether at this moment I win by them or come out the loser.

From Tri-Cameral to Tri-Cabecial

The NP seems to like the number 3. Having failed with the Tricameral Parliament, it is now trying out the Tricabecial [three-headed] Presidency. Once more, for the sake of clinging to power, what should be a resolute step forward becomes a clumsy stumble backwards.

We need as much stability as possible. We have to develop a culture based on shared values and symbols, get used to the fact that we are all South Africans, not just a collection of races and tribes inhabiting the same territory. If the

sporting bodies, including Rugby, can unify, then surely we do not need a federation of Presidents. The NP are helping nobody, least of all their followers, if they pretend they can postpone forever the day when the country might in its wisdom choose to have a President whose name might not be de Klerk and whose skin might not happen to be white.

Forced Coalitions

Right now it appears that what we have called the NP-SAP Alliance is not only player, referee and owner of the ground, and not only does it bus in its supporters; it wants to make the rules and determine the outcome as well. Rule number one would be that no matter how many tries or goals the opposition scores, the NP emerges the winner, or at worst, earns a draw. We are left not with a contest but with a show.

Consensus in government works if it is based on real and not enforced agreement, that is, if it represents a true meeting of minds. Consensus is just another word for chaos if it is rigid and prescribed, as the tragic histories of Cyprus, Uganda and the Lebanon show. Enforced power-sharing actually intensifies rather than reduces conflict; indeed, in addition to all else that divides the people, they fight over the terms of the constitution and the allocation of positions under it.

If the people of South Africa decide that the tasks facing any new government are so huge, and the damage done in the past so great, that at least for the initial period the only way to go ahead would be through as broadly based an administration as possible, then it will give such a mandate to the political parties, and they will voluntarily form a coalition government of national unity. This is what happened in Namibia, where the present government contains representatives of every single party except one small right wing one which declined to participate. Coalitions, like marriages, work if they are based on consent; they become scenes of misery and strife if they are imposed.

Thus we support multi-party democracy as an inflexible constitutional principle, and keep an open mind on multi-party government as a possible political option. The NP proposals would really have the opposite effect. There would never be any chance to change the government, only the internal combination of its parts. The result would be a sort of multi-party One Party state, with no open debate, no Opposition, everything done by supposed consensus behind

closed doors, with the public none the wiser, and elections making no real difference.

What the people of South Africa and the world want to know is: if the Nationalists lose the first non-racial elections in this country, will they accept the verdict of the electorate, or will they refuse to vacate office? Their proposals tell us in advance what their answer is. They are preparing a constitutional coup d'etat which will make them part of a Government-for-Life, whatever the electorate might say.

The result can only be permanent constitutional crisis and paralysis of government at every level. The proposals encourage parties to fragment rather than coalesce, and institutionalise sectional intransigence rather than promote the creation of a broad South African vision. Nothing more dangerous can be imagined than enabling small minorities to hold the whole country to ransom and block any moves towards real equality. The minorities do not protect themselves this way, they make themselves more vulnerable.

What is needed is a democratic system that encourages good government and protects all sections of the population against abuse, whether they be majorities or minorities or individuals. What has to be avoided at all costs is a constitutional arrangement that makes any form of government impossible and that entrenches the privileges of the minority. If the National Party is to be true to the pronouncements it is frequently making that apartheid is dead in the country, it must remove the pillars of apartheid from its own thinking.

The battle for the soul of white South Africans is on. Their choice is simple - a continuation of doomed baasskap or swift and steady negotiation of democracy. It is painful and abhorrent to us that yet once more a decision on the destiny of our country is being taken by a minority of 15% of the population. We condemn any form of racial referendum and cannot give any legitimacy to the present one. Those of our members who happen to be white are faced with a awesome dilemma. They have joined the ANC because of their belief in non-racialism, yet here they are being asked to identify themselves as whites and not as South Africans. We understand their difficulty and do not pretend that the answer is easy. In our view however they should not step back from the opportunity to make a direct contribution towards ending white domination in this country. We want white South Africans to declare themselves unequivocally in favour of democracy and against racism.

This is not a contest between De Klerk and Treurnicht. This is not a presidential campaign, no matter how many babies are kissed. The only issue is whether the movement towards democracy, as represented by the negotiations at CODESA, will be halted. A "yes" vote means that we all sit round a table as South Africans, and work out the best means of installing a democratic system in which all feel secure. We have to get away from notions of domination and subordination and accept the principle of equal rights for all. There are no magic solutions. To us it is unthinkable that we will return to era of banning orders, imprisonment, torture and death sentences. There can be no going back to the days when soldiers and police were sent into the townships with sten guns, sjamboks and teargas to disperse schoolchildren. The age of lies, disinformation and CCB assassination squads has to be put behind us forever. There can be no revival of the hated pass laws, the Group Areas Act and the obnoxious signs on buses, in parks and at swimming pools. If the hopes of the majority of South Africans for a decent and dignified life are once more thwarted, the stress and upheavals of the past will be like a game of marbles. There can be going back to baasskap. We have already extensive progress in clearing the way towards a negotiated means of achieving democracy. Old antagonists are now sitting down together and working out how we can all live as equals in this country. The path has been stony and many rocks still lie in our way, yet we have to move forward and deal with the obstacles one by one.

We are all South Africans. Our destinies are intertwined. There is no cloud-cuckooland into which people can escape from this reality. At the same time there is no issue that we cannot discuss, provided that we do so in the framework of democracy and equal rights. Our white compatriots have a chance to show that they repudiate, once and for all, the cruel policies that have brought so much shame to our country and that have caused us so much pain. We want them to walk boldly and with head high into the new South Africa. We wish them to leave behind, once and for all, arrogance, insensitivity and inhumanity. This country is rich enough and spacious enough to provide a dignified life for all its inhabitants. We urge all those who have the privilege to vote to use it for the last time. The next elections must be truly non-racial in which all South Africans affirm their rights of citizenship.