

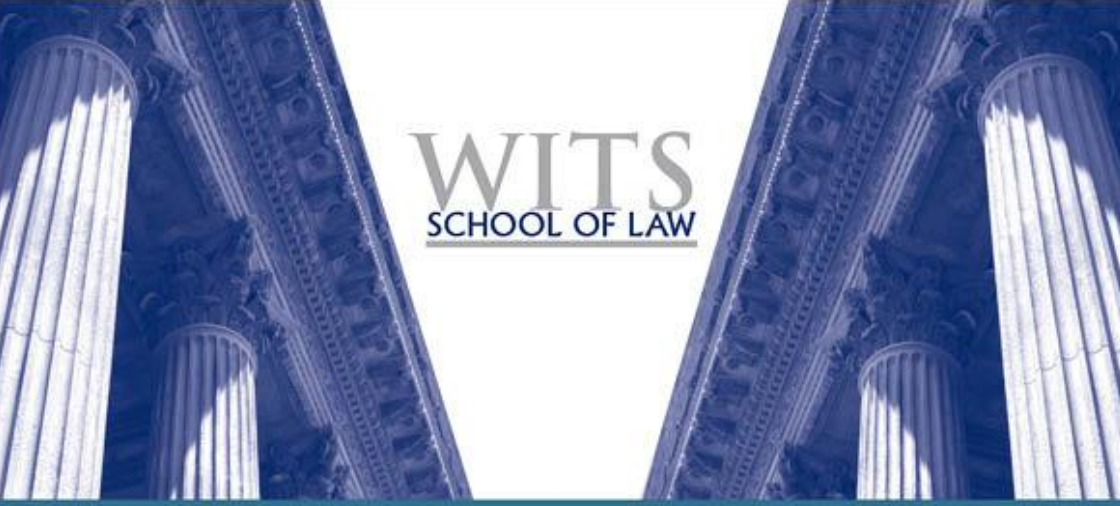
https://dspace.org/

South Africa and transition: From Autocracy to What? A preliminary analysis about a tentative process

Davis, Dennis M.

1992-06
Centre for Applied Legal Studies
https://hdl.handle.net/10539/11817

Downloaded from a DSpace repository. https://dspace.org/



Working Paper Number 17

SOUTH AFRICA AND TRANSITION: FROM AUTOCRACY TO WHAT?
A preliminary analysis about a tentative process

by

D M Davis

The Paper was originally published by the
Centre for Applied Legal Studies as Working Paper No. 18
(June 1992)

CALS
Centre for Applied Legal Studies

UNIVERSITY OF THE WITWATERSRAND
JOHANNESBURG

SOUTH AFRICA AND TRANSITION: FROM AUTOCRACY TO WHAT?

A preliminary analysis about a tentative process

by

D M DAVIS

Working Paper 18

June 1992

SOUTH AFRICA AND TRANSITION : FROM AUTOCRACY TO WHAT?: A preliminary analysis about a tentative process

When P W Botha rose to power in 1978 he replaced Verwoerdian apartheid and Vorsterian pragmatic racism and repression with the total strategy which was seen as a necessary means of combatting the total onslaught launched by 'international communism'. Within this context the necessity for a 'moderate coalition' against 'leftists, activists, humanists and materialists' was considered to be of paramount importance. Botha's government thus began to liberalise the structure of the South African state, in particular a number of institutions which were designed to give selective areas of civil society a semblance of autonomy. The 1983 constitution was in essence a creation of a consociational contract which included coloureds and Indians in central government. Similarly an attempt was made to provide autonomous municipal government for urban Africans, a pluralistic industrial relationship was established and the Regional Services Council system was created to give a measure of multi-racial sub-regional government. Notwithstanding these attempts the dominant view amongst critics was that the South African state was structurally incapable of de-racialising itself, that the process of co-option did nothing to indicate that the South African political system would change from the fundamental racial division on which it was predicated.[1]

---

1 See N Alexander *Sow the Wind* (1985); H Wolpe *Race, Class and the Apartheid State* (1988).

F W de Klerk's speech on February 2 1990 confounded these critics. Whereas P W Botha's policy of co-option was extremely tentative and hence easily dismissable as a tactical device based to a large degree on a response to the growing crisis of apartheid and capitalism's imperative for restructuring, De Klerk's far more serious and extensive corporatist strategy took everyone by surprise, particularly the mass opposition. Before February 1990 opposition strategy was one of isolation and non-collaboration primarily aimed at rendering South Africa ungovernable. Now everything was turned on its head with insurrectionism converted into elite pacting, armed struggle into legalism, non-collaboration into political partnership, political unionism into a restraint of industrial militancy, and the sanctions campaign into long term appeals for investment for the growth of a post-apartheid South Africa. Simply stated the dominant discourse changed and the process of crafting a constitutional pact out of the process of negotiations at CODESA replaced an aging neo-Marxism which explained apartheid as a specific form of capitalist state based on the exploitation of black labour and incorporation of white labour. Numerous theoretical variants dominated this discourse but in all cases the functional requirements of capital were seen as a major determinant of the state. Hence all reforms introduced by the state were considered to be ideological subterfuges and instruments of racial control. Although it was conceded that the state's reforms influenced the terrain of struggle, the concession extended to the view that resistance had to be directed not only at overt oppression but also at the policies of co-option. No real democratic concessions could be forced out of apartheid. Suddenly this had all been confined to a previous history and South Africa was launched into a different era, a period of constitutional debate towards a new and democratic constitution.

The purpose of this paper is to examine this process of transition in the light of the respective approaches of the major players in the process, as well as within the context of the comparative literature. My objective is to take a critical look at these developments which appear to raise as many problems as solutions for the future of democracy. It is hopefully provocative as it is designed to stimulate debate concerning processes which are accepted as politically and historically inevitable.

1. O'Donnel and Schmitter and the theory of transition

While these developments seemed somewhat unusual to South Africans, fond of claiming to be beset by unique political problems, the recent developments find parallels in other societies which have experienced similar transitions from autocracy to democracy. For the purposes of this paper I rely heavily on the concluding section of the exhaustive study by O'Donnel and Schmitter, a project which consists of case studies of five southern European states, namely Italy, Greece, Portugal, Spain and Turkey together with eight countries in Latin America, namely Argentina, Bolivia, Brazil, Chile, Mexico, Peru, Uruguay and Venezuela all of which have in recent decades engaged in some form of transition from dictatorship or a military junta to a measure of democratic government. In examining these thirteen countries, O'Donnel and Schmitter suggest that there are some general trends which can be extracted from the particular case studies. They suggest that there are three particular processes involved in a transitional movement, namely, liberalisation, democratisation and socialisation. Liberalisation involves the extension of the general range of civil liberties to individuals and groups which have hitherto been denied such rights as freedom from detention, freedom of speech, freedom of movement, freedom of association.

The process of liberalisation begins when the state is under considerable pressure whether as a result of economic crisis, military defeat or general political opposition. The process of liberalisation is introduced under authoritarian rule with the rulers counting on the fact that they can afford to extend some rights without having to initiate true democratic changes. Liberalisation inevitably involves political reform and it does have unintended consequences for it creates further space for political organisations to engage in individual and collective action and hence putting more pressure on the regime to extend reform.

As O'Donnel and Schmitter note democratisation is 'preceded by significant yet unsteady liberalisation'.[2] Democratisation involves the extension of citizenship and of participation and representation of all in the society in the political processes and collective choices. Citizenship is defined as 'both the right to be treated by fellow human beings as equals in respect of the making of collective choices and the obligation of those implementing such choices to be equally accountable and accessible to all members of the polity'.[3]

While the process of liberalisation can proceed further towards democratisation the same cannot be said for the third element in the process of transition, namely socialisation which is concerned with social and economic equality. O'Donnel and Schmitter note from their study that

---

2 G O'Donnel & P Schmitter *Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies* (1986) 10.

3 Ibid.

the transition from authoritarian rule to a political democracy may 'have the effect of freezing existing social and economic arrangements. This is most obviously the case where the basis of the compromise rests on the mutual recognition of income, shares and property rights'.[4] Although the process of transition invariably does not achieve socialisation the authors note 'all we can do is reaffirm our earlier presumption that political democracy per se is a goal worthy of attainment, even at the expense of foregoing alternative powers that would seem to promise more immediate returns in terms of socialisation. Not only is the probability of their success much lower and the likelihood of their promoting an authoritarian progression much higher, but the taking of such powers would seem to require, at least in the interim, the installation of a popular authoritarian regime which is unlikely to respect either the guarantees of liberalisation or the procedures of political democracy'.[5] En passant this particular analysis runs counter to the old two stage revolution thesis so popular amongst members of the South African Communist Party!

O'Donnel and Schmitter observe that a marked feature of the starting point of all transitions under review was an authoritarian state and the absence of civil society, meaning self organised and autonomous organisations and institutions independent of the state such as churches, universities, labour unions, civic organisations. The main institutions of civil society, even if they existed previously, were systematically destroyed under authoritarian rule so that the state controlled the public arena in a unilateral

---

4 At 12.

5 At 14.

fashion. Although pressure upon the existing political system is a contributing cause of the initiatives of the process of transition, O'Donnel and Schmitter claim that at least at the outset authoritarian rulers are not seriously threatened by popular initiatives from below for 'no transition can be forced purely by opponents against a regime which maintains cohesion'.[6]

Nonetheless, as the system experiences increasing crises, whether through military defeat or economic failures, divisions begin to emerge within the regime between 'soft-liners' and 'hard-liners'. Whereas hard-liners see no reason to change policy soft-liners begin to demand various modifications and reforms to the harsher aspects of authoritarian rule justifying their approach on the basis that the regime is strong enough not to be threatened by a limited and controlled extension of first generation rights. As these experiments in limited liberalisation begin, political space opens through lowering the costs of individual expression and collective action with a consequent cycle of mobilisation leading to the beginnings of actual democratisation. Soft-line liberalisation reforms are rejected by the opposition as being shams and concealed attempts at co-option. However the space created helps to resurrect civil society and civic organisations, trade unions and religious groups exert themselves for the first time in many years. As the momentum for political opposition increases grassroots movements proliferate and civic organisations, student movements and women's groups congeal in a broad political front all supporting 'each other's efforts towards democratisation' comprising a 'greater whole which

---

6 At 21.

identifies itself as the people'.[7]

Hard-liners are faced with the problem of initiating a coup d'etat, but depending on the growth and cohesion of the popular movement, the costs of wholesale repression may prove even too high for them. By contrast soft-liners have broken so irrevocably with the hard-liners that they now have a clear interest in ensuring that the transitional process continues even though they might not be able to continue to control it unilaterally. While popular uprising does not initiate transition it ensures that the process extends far further than otherwise would have been the case had it been left to the exclusive control of the soft liners.

At this point society enters a point of negotiation involving transitional pacts. The soft-liners have realised that there is no possible return to an authoritarian past and hence they participate in a negotiated process with the forces of opposition who after years of struggle in certain cases realise that they are unable to assume power unilaterally or overthrow the state. Hence a mutual recognition arises for the need for a transitional pact.

The authors define a pact as an 'explicit but not always publicly explicated or justified agreement among a select set of actors who seek to define (or better to redefine) the rules governing the exercise of power on the basis of mutual guarantees for the vital interests of those entering into it'.[8] In essence a pact is an agreement on the part of actors to 'forego or under-utilise their capacity to

---

7 At 54.

8 At 37.

harm each other by extending guarantees not to threaten each other's corporate autonomies or vital interests'.[9] Pacts, as defined, are not democratic for they are negotiated at the leadership level and do not involve extensive grassroots participation; they are essentially conservative for in the end for they aim to restore a semblance of order to the process to allow the transition to continue unimpeded.

The stage of democratisation is attained when the founding election for a new constitutional order occurs with a consequent institutionalisation of democratic politics. This phase occurs when the transitional authority announces an election for representative positions for which both the soft-liners and the opposition decide to participate, thereby bringing credibility to the process. Political parties now re-emerge as key political agents of the popular front and the liberation movements and civics transform themselves into political parties geared to participate in electoral and parliamentary politics.

2. South Africa and the theory of transition

To a South African readership it is quite obvious that much of the O'Donnel and Schmitter thesis resonates in our history.[10] In the 1970's South Africa experienced the division between the 'verligtes' and the 'verkramptes' with the 'verligtes' holding sway during the initial period of P W Botha's reformist policies. In the early 1980's as a result of

---

9 At 38.

10 For an application of this see, F van Zyl Slabbert *The Quest for Democracy* (1992).

Botha's liberalisation South Africa experienced a resurrection of civil society, the founding of the UDF in 1983 being a particularly significant moment. The popular political uprisings between 1984 to 1987, the economic crisis during that period in which the economy hardly achieved any growth and the military defeat in Angola all contributed to the new phase of the transitional process after February 2 1990 in which the process towards democratisation gained momentum and culminated in CODESA and the potential for the negotiation of a transitional pact.

Two characteristics of the CODESA process reinforce the O'Donnel and Schmitter analysis, namely the 'top down' process of negotiation and the absence of any attention to economic transformation and hence the achievement of socialisation.

In many ways CODESA has suited the De Klerk government's method of policy making. As in the past the present form of government is very much a 'top down' elitist style of decision making, with instances of popular participation in decision making being rare. Furthermore the CODESA framework fits the South African government's new policy initiatives. The National Party has recognised that South Africa needs a new form of government in which the major forces are represented on all levels by credible leaders. Two major alternatives put forward by government theorists reflect this approach. Some argue that government should strive to constitute an ethnic coalition as in Malaysia. This system is based upon an electoral system in which the representative parties seek substantial support across communal lines. Alternatively, policy can ensure that all parties have to represented on the executive level and that decisions be taken by way of consensus. The latter apparently reflects present National Party thinking as

represented by phase II of its proposed transitional structures in which parliament is constituted by a national assembly voted on a 'one person one vote' basis, a senate with blocking powers, the composition of which is still to be negotiated, a rotating president and a multi-party cabinet.

The ANC have resisted government's enthusiasm for co-option. In its first proposals for transitional government the ANC argued that CODESA, through an interim government council, will oversee the tricameral parliament, the National Party cabinet as well as the TBVC governments and will appoint a range of committees in order to supervise the essentials of government. After national elections phase II envisages a constituent assembly which would appoint an interim government to act as a legislature as well as a constitution-making body with its main task being to draft a constitution of the country.

Two major question arise in respect of the application of O'Donnel and Schmitter's thesis to South Africa, namely, i) the respective positions of soft and hardliners in the National Party and ii) the ability of a CODESA orientated process to achieve democracy.

2.1 *Beyond the process of liberation?*

Some commentators have viewed CODESA as the means by which liberalisation can flower into democratisation.[11] This approach certainly reflected the common wisdom that after February 1990, the National Party had set course towards democratisation and that this process had become irreversible certainly by the time of the referendum victory

---

11 Slabbert op cit note 10 at 60.

earlier this year.

Recent events call this approach into question. Both the National Party's constitutional proposals referred to above and its obdurate insistence on a double barrelled majority (regional and national) of 75% to approve a new constitution have raised a fundamental doubt about the National Party's bona fides in negotiating a democratic constitution.

This submission unfortunately raises the problematic definition and question of democracy. Put briefly and for the purposes of this argument there are two basic requirements for a democracy. First there must be a social practice whereby all parties, even a majority party with overwhelming support, recognise the potential for each party to attain majority support and to campaign therefor. In other words the possibility of a minority party becoming the majority party and forming a government is recognised and respected by all participants. Secondly, the constitution operates to ensure that certain fundamental rules of political action are respected, recognised and applied by all. Democracy combines a social practice of politics with a social practice of rights.

For years the government favoured unfettered power as the basis by which to rule the country. As the popular uprisings of the 1980's became irresistible, a rights discourse emerged. Rights were seen as the means of curtailing the effects of majority rule. The government's performance at CODESA illustrates how its policy ship has become becalmed in rights waters, the captain and the crew showing no willingness to negotiate a genuine politics as defined above in order to arrive at democracy. The government appears determined to ensure that a post-

apartheid South Africa heralds the end of politics. A carefully crafted constitution replete with rights will prevent even a majority party from having any meaningful power to transform the society from the status quo at the time of the original compact than would a minority party. The constitution will create a bounded political certainty to the extent that there would be no need for elections. Win or lose one still is in power. Not only is the government unwilling to conclude a pact which could provide a democratic outcome as defined above but elements within the government are prepared to go further and use all manner of means to destabilise the ANC, seen correctly by the government as the main obstacle to the attainment of its particular political goal.

It would have been highly surprising after a decade of P W Botha's total onslaught and strategy for the security forces to complete a Damascan conversion immediately. Years of destabilisation, emergency rule and total strategy ensured that a significant element within the security establishment would continue its war against the ANC, the 'old enemy'. This fissure within the state has ensured an escalation in political destabilisation and consequent alarming growth in patterns of violence. Between January 1990 and March 1992, some 7 000 people have been killed. Although much of the violence must be understood in terms of the result of the breakdown of apartheid which had used a divide and rule policy to disorganise and then reinterpolate black South Africans in its own image, direct government action has been sufficiently proved to make out at least a prima facie case against F W de Klerk's government. A few illustrations can be offered to support this submission.

(i) As Mocambique in its support of Renamo and pre-independence Namibia where the government used

front organisations to reinforce the anti-SWAPO parties and used hit squads against SWAPO, it now is common cause that the government at various times funded Inkatha actively and helped to create the anti-COSATU union UWUSA.

(ii) Whatever the limitations of the Harms Commission (and there were plenty) it did confirm the role of the state-funded CCB in illegal activities and found that the CCB killed Mamelodi physician Fabian Ribero.

(iii) The Goldstone Commission has found that 32 Battalion acted violently against residents in Phola Park, a predominantly ANC stronghold. In a report of 10 June 1992, the Commission reported that it could find no justification for such violence which it said 'constituted unlawful acts of assault'. It recommended that the Attorney-General urgently complete investigations into acts of violence including murder and rape allegedly committed by members of 32 Battalion who were sent to Phola Park as a 'peace keeping force'! There has also been evidence to the Goldstone Commission of extraordinary police inefficiency and lack of commitment to solving cases of violence.[12]

(iv) Further evidence of the government's almost cavalier attitude to the present violence was the release of notorious Kwa Zulu Police constable Khelani Shongwe after serving nine months of a 27-year sentence. The presiding officer in this trial, Mr Justice Gordon, had described Shongwe as 'a beast

---

12 *Weekly Mail* 12 June 1992.

in policeman's clothes'.

(v) On 23 April 1992, SAP Captain Brian Mitchell and four special constables were found guilty by Mr Justice Wilson on 11 counts of murder relating to an attack on a funeral vigil in Trust Feeds in December 1988. In his judgment Judge Wilson said that

> 'a distressing feature of the trial was that as it progressed it became clear that the evidence of senior policemen could not be accepted, and that official records produced from the file were suspicious or wholly unreliable. ... it causes us great distress that we can no longer accept semi-formal documents provided by the police. In the past such documents had been accepted as reliable.'[13]

(vi) Commenting on violence in Mooi River in 1991, the Goldstone Commission stated in its interim report to the State President that there was reliable evidence which suggested a strong bias on the part of the SAP towards the IFP.[14]

(vii) In its second interim report (29 April 1992) the Goldstone Commission noted that the government 'has failed to take sufficiently firm steps to prevent criminal conduct by members of the security forces and the police and to ensure that the guilty are

---

13 (1992) *Human Rights Update* 13.

14 Amnesty International *State of Fear* (1992) 60.

promptly and adequately punished'.[15] In the report to the State President, the Commission found that it was

> 'quite unacceptable that even the limited ban on the carrying of weapons to political meetings has been ignored by the Inkatha Freedom Party on at least one occasion during a march through the streets of Johannesburg. This public flaunting of the law in the presence of a large South African Police presence is unfortunate and should not be allowed to occur again in the future. Steps should be taken urgently to prohibit the carrying in public of any dangerous weapons at any time at all. This constitutes provocative and unacceptable behaviour in any decent society. It is calculated, furthermore, to create a climate of violence.'[16]

Notwithstanding this strongly worded warning the SAP, having confiscated a massive quantity of IFP weaponry in the Transvaal prior to June 16 protests, returned what it termed 'cultural weapons' to IFP members on the very next day.[17] So much for the SAP's commitment to the Goldstone Commission!

---

15 *Commission of Inquiry re The Prevention of Public Violence and Intimidation* (The Goldstone Commission) Second Interim Report 29 April 1992 at 6.

16 Ibid at 9-10.

17 *The Star* 16 June 1992.

While the government bewails the one sided nature of criticism against the police, there is undisputed evidence at the very least of: a) state support for Inkatha at least up until 1990; b) SAP bias in favour of the IFP; c) violent behaviour by an army unit; and d) murder by agents of the state including the police and determined efforts at a cover up by senior police officers who remain in the force.

In the light of the continued violence in the country often peaking at critical political meetings or events (eg ANC Conferences, Peace Accord Signing Ceremony, visit by OAU officials, ANC campaigns for mass action) there are only four probabilities regarding government involvement,

a) the government knows of elements within the security forces who are engaged in old style destabilisation but does not have the power to prevent such action. After all F W de Klerk is a civilian who unlike his predecessors Verwoerd, Vorster and Botha has no major state bureaucracy as his fiefdom;

b) the government has the power but not the desire to prevent violence;

c) it does not have the relevant knowledge;

d) the government (or segments therof) are actively and covertly promoting destabilisation through violence.

The only other alternative that there has been no security force involvement in violence is not supported by the uncontested evidence.

Each of these scenarios is frightening and destructive

of the democratic enterprise. Coupled with its constitutional agenda, the government at this stage has not yet shown an unequivocal commitment to democratisation although doubtless elements within a non-monolithic state structure have variants of this agenda and will probably succeed, given the prevailing political and material conditions, to pass political muster with the ANC, thereby pulling CODESA or its successor back on track.

2.2 *CODESA and Democracy*

But even if CODESA begins to operate to constitutional fruition, what potential is there for achieving a resilient, democratic constitution?

While CODESA and its aim of achieving a formula for interim government fits within the O'Donnel and Schmitter thesis, the attainment of the stage of democratisation is not free of problems. Hagopian[18] notes in connection with Brazil that the most appropriate strategy for consolidating civilian rule conflicts with the optimum means of achieving democracy. A smooth transition from authoritarian rule paradoxically ensures not a strong, vibrant democracy but a perverted one skewed towards the representation of elites. An interesting variant of this analysis is developed by Maxwell[19] concerning Portugal where the inherent weakness of the economy rendered Portugal helpless to

---

18 F Hagopian 'Democracy by Undemocratic Means?' (1990) 23 *Comparative Political Studies* 148.

19 See G O'Donnel, P Schmitter & L Whitehead *Transitions from Authoritarian Rule : Comparative Perspectives* (1988).

resist the supply side economics of the IMF and World Bank and hence contributed to a reversal of the state policy of nationalisation. Portugal's paralysis and external dependency were fatal obstacles to transformation.

Indeed while negotiations at CODESA might eventually achieve a constitutional and political compact the sheer scale of maldistribution of wealth and inequitable access to resources constitutes a major obstacle to achieving political democracy. Simply put, the attainment of political democracy without economic reconstruction is highly unlikely.

To cite but two examples: the figures based on rural and urban households in 1989/90 reflect the following proportions of representative populations with households with a total monthly income of R 2 000,00 and above : Africans 4%, coloured 19,6%, Asians 35,9% and whites 75%.[20] While the percentages have increased for Africans, Indians and coloureds over the past decade and while the percentage of African households living in poverty diminished between 1985 and 1990 the stark reality of maldistribution continues to haunt policy makers. The second example relates to social effectiveness of governmental expenditure. Although South Africa in 1988 spent a higher percentage of GDP on health than Zimbabwe, Sri Lanka, Brazil, Argentina and Korea, it had a far higher infant mortality rate.[21] In short South Africa's health

---

20 C Cooper et al *Race Relations Survey 1992* (1992) 256.

21 N Nattrass & A Roux 'Making Welfare Spending Work' in P Moll et al *Redistribution, What Can Work in South Africa?* (1991).

expenditure focused upon curative as opposed to preventative and primary medical care thereby emphasizing the needs of relatively affluent whites. The challenge awaiting a future South African government is not only to produce a more responsive budget but also to introduce equity into public spending and administration.

In order to achieve racial parity of public services the level of government expenditure as a percentage of GDP will have to rise considerably. Based on 1986 fiscal expenditure patterns Van der Berg[22] suggests that parity in racial spending will imply a rise in state expenditure of GDP from 27% to between 42 and 49%. A report by Economextrix concludes 'that the only conceivable route is to spread an action programme over the next ten years. Even then the bill would be a staggering R 20-30 billion per year - equal to a 30-50% increase in the annual national budget'.[23]

The sheer magnitude of inequality in this country means that political democracy predicated on the recognition of the present economic and social status quo can only succeed if first generation rights are massively eroded when the state attempts to dampen the political protest, which must inevitably follow the entrenched, partial or whole of the economic status quo. To expect major benefits to flow to the disadvantaged on day one of post-apartheid South Africa is to engage in economic utopianism or to over-estimate the amount of the post apartheid dividend. Hence the question arises as to how to reconcile political

---

22 S van der Berg 'Meeting the Aspirations of South Africa's Poor' (1990) April *Monitor* 34.

23 *The Star* 13 February 1991.

democracy with economic accountability to the legitimate demands of the majority.

While CODESA is precluded from debating economic issues it is interesting to note what have become dominant proposals for social transformation. Albie Sachs, for example, has argued for the creation of a bill of rights to provide for the protection of three generations of rights, the first order concerning political rights, the second concerning socio-economic rights and the third catering for environmental rights. Recently Sachs[24] has argued for extensive forms of affirmative action to be supervised by a range of statutory commissions accountable to parliament with the courts having the role of judicial review over the fairness of the procedure and the faithfulness to the constitution. This trend of thinking has been absorbed into the dominant political discourse combining as it does the potential for centralised planning with a rights flavour. After the collapse of Eastern Europe what could be better for centralists then to couch their old policies in Rights talk?

2.3 *The Economics of Democracy*

On one level the objective of holding a new government to its economic and social promises, thereby stimulating political integrity is most desirable. In a way it affords an opportunity to the citizenry to ensure that economics does not become the dismal science of a post-apartheid government. However such a bill of rights which is designed to guarantee the existence of a civil society could easily become the medium through which the powers of the

---

24 A Sachs *Affirmative Action and Good Government* (1991).

executive are vastly extended at the expense of civil society. A hierarchy which elevates social rights above first order civil liberties would serve as a justificatory framework for the executive to override civil liberties in the name of the social question. The adjudication of a bill of rights by a commission accountable to parliament is surely a recipe for increased powers of the executive to allocate and distribute resources according to its interpretation of the constitution. Political problems of interpretation inevitably occur in any constitutional process but the guarantees of commissions answerable to 'volksgeist' through being accountable to the peoples' parliament offers but a thin defence against the substitute for the autonomy of civil society.

> Sachs concedes that
> 'if good non-racial, non-sexist democratic and open government is the main guarantee that the effects of apartheid will be overcome, then the organs of civil society are the principal guarantees that good government will exist'.[25]

However in this discourse it is not civil society which guarantees economic egalitarianism but a bill of rights supervised by state commissions and bureaucrats.

But even if this theoretical critique is problematic, in practice the outlook for this form of policy initiative remains even more gloomy. Malaysia is a good example of an attempt of an economic policy which was designed to eliminate the identification of race in economic function. The policy initiated in 1971 was designed to better the lot of the Malay community. The most important measure was a plan

---

25 Op cit note 24 at 22.

to redistribute 30% of the nation's corporate assets to Malays by 1990. The special position of the Malays was to be safeguarded by reserving for them a portion of civil service posts, scholarships, university places as well as business permits and licences. At the same time freedom of speech was curtailed and the sensitive issue of race was banned from public discussion even in parliament (Plout 1992).

Government statistics showed that the policy did enjoy considerable success. By 1990 Malays had acquired 20,3% of the corporate assets of Malaysia compared to 2.4% in 1970, other Malaysians increased their share from 32,2% in 1970 to 46,2% in 1990 whereas foreigners' shares decreased from 63,3% to 25,1% by 1990. Yet the quotas have left an indelible anger within Malaysian society. Thousands of the best non-Malay students have chosen to continue their studies abroad and few have returned. The Malay elite has grown rich from acting as fronts for Chinese businessmen trying to win government contracts and the licences necessary to continue business. Income disparities are now greater within the Malay community than within any other ethnic group. In short many businesses continue to be controlled by Chinese and Indian owners operating through nominee companies owned by Malay fronts. The Malaysian experience illustrates that while quotas might achieve some nominal change, in substance very little is altered.

Hartlyn[26] in his extensive work on the politics of coalition in Colombia notes that the built-in bias of

---

26 J Hartlyn *The Politics of Coalition Rule in Colombia* (1988).

consociationally orientated constitutions tends towards conservative rather than redistributive policies combined with immobilism and policy incoherence which points to 'the difficulty of consolidating democratic politics in less developed countries from a consociational beginning'.[27] As Hartlyn notes in

> 'countries where vast sectors of the population still have basic unmet material needs, effective democratic consolidation would appear to require not only the strengthening of democratic institutions so that social groups are not perceived as going outside the democratic process as an appropriate response in a crisis situation, but also progress and the perception of that progress of meeting socio-economic needs. Consociational practices in some developing countries often provide a more humane politics than likely alternatives, yet their inevitable requirement of considerable elite autonomy and their fear of mass mobilisation may inhibit the development of a broader democratic practice'.[28]

2.4 *Implications for Democracy*

The very nature of negotiations at CODESA is guaranteed to ensure pacted government based on a premise of bounded certainty. A carefully defined state will become all important in promoting the desired polical objectives. To a considerable

---

27 At 24.

28 Ibid.

extent, this suits government's strategy but is not completely alien to that of its opposition which places considerable emphasis upon rights which will mandate the state to achieve desired political and economic goals. Civil society is out, administration, commissions and the judiciary are in! For very different reasons both sides emphasize only one requirement for a democracy, namely rights at the expense of politics. Neither side has shown any tangible attempt to come to terms with civil society, the government because it wishes to slam the door shut on the entry of democratic politics into its desired constitutional model and the ANC because of the importance attached to the state as the exclusive vehicle by which to arrive at transformation.

Pacted government erodes civil society and reinforces an economic status quo. However the key to the attainment of democratisation is held by a resilient civil society. Civil society is no free floating institution which can be counterposed to the state. Modern civil society is no longer (or might never have been) an autonomous sphere independent of the state. The institutions of law, of corporations and voluntary associations and the conditions of their existence are all determined by the state. Between civil society and the state there has to be some form of mediation for if each particular interest of civil society lobbies a state institution for its own private concerns, the judgement of their claims and priorities between them are left in the hands of one body, namely the executive. If the executive is not to be the universal mediation between the state and elements of society, a system of political representation is the only available method of representation.

If the history of Africa and Eastern Europe teach something significant it is that in modern society political

parties are either a universal form of mediation or a felt absence when suppressed. In South Africa the suppression of the party system by apartheid for the majority of the population resulted in the denial of representation of the people defined as black. The impact of this history of repression on the opposition movement has been contradictory. On the one hand it has been deeply felt so that the struggle for a multi-party parliamentary democracy has been a major thread within liberation culture. On the other hand, it has been internalised in the political consciousness of the liberation movement itself: if the myth of national identity was used by the apartheid state to justify its repression of the party system the substitution of national movements for political parties and the interests of the people perpetuated this illusion.

Such a view is not accepted uncritically in South Africa. In leading SACP theorist, Jeremy Cronin's review of a book co-authored with Bob Fine, he writes:

> 'Fine and Davis's contrast with the political party and the liberation movement to the detriment of the latter, provokes a troubling thought . . .(for very different motives granted) it is exactly a negative contrast that Viljoen and company are daily pushing . . . that the ANC should transform itself into a political party and that it should drop the SACP. What the regime most fears, and with good reason, is a combination of a working-class political party with a relatively large following and a massive national liberation movement. The regime hopes to present the South African situation as a relatively "normalised" bourgeois democracy with a variety of political parties. Competing for the centre in this conception will be the ANC that hoists the flag for

> social democracy and the NP and friends would hoist another flag for Christian democracy. But the democratisation of our society requires a broad, national democratic front not the charade of a Western-European democracy.'[29]

It is interesting that Cronin endorses a national democratic front based on an alliance of a mass nationalist movement and the Communist Party. But what is a national democratic front if it is not an alliance of independent parties? And if not, does it then mean a government establishment of a national unity in which the ANC shares power with its old adversaries, such an outcome offering a far more statist solution and a less independent role for democratic forces in civil society than the bourgeois party system which Cronin spurns.

The key to the evolution of civil society in South Africa must lie in the emancipation of party politics from the repressive heritage of apartheid. Elite pacts tend to reinforce a national politics without recourse to civil society. However without the latter, transitional pacts tend towards elite rule and lack of attention to the transformation of the economy and the promotion of social and economic justice.

This is not simply a theoretical issue. It is being borne out in the day-to-day violence in South Africa. As

---

29 J Cronin 'Looking for the Future in the Past' (1991) 76 *WIP* 47 at 49.

Byerley and Hindson[30] have noted, for the National Peace Accord to work it is necessary to build peace at a local level. Given the relative autonomy of local power structures it is essential that rival local political bodies with their involvement in the violence be brought to the negotiating table area by area. To a large extent the National Peace Accord, as with other forms of politics, has been predicated at a national level and has ignored that the parties in conflict at a local level often act independently of the national political organisations though they may be formally identified with them. Similarly, elements within the repressive state forces appear to operate at local level and beyond the law. The authors argue that if the Peace Accord is to be effective the process must take place area by area and not just at national level. In short, an active civil society which is represented by legitimate political and social movements at the local level are as essential to the attainment of democracy as is an agreement at national level. It is only through a vibrant system of civil society in which the process of democratisation might well be pushed through to the ultimate stage of economic socialisation.

Conclusion

At present the prevailing discourse promotes a debate in favour of a token civil society. Given the ANC's fear of federalism and consequent lack of developed proposals for local government, its overwhelming faith in charters of demands couched as rights, as well as the emphasis upon the distribution of social and economic goods being resolved exclusively through some form of statist mechanism, the

---

30 M Byerley & D Hindson 'Peace Pacts and Urban Reconstruction' (1992) 80 *WIP* 31.

prevailing constitutional route could well steer South Africa away from an authoritarian past, at least in the short term, which achievement should of course not to be underestimated. But on this basis alone democracy will continue to be a theoretical construction, particularly if one is concerned with the medium and long term future of the country. In the long run, however, a consociational model favoured by government and the not too distant statist approach of the ANC will both threaten democratic development. Consociational models reinforce a status quo, however inegalitarian, while an over emphasis on social and economic commissions can only endanger an unequivocal commitment to first generation rights.

So we arrive at a depressing conclusion. At the time of writing the government appears ill-prepared to comply with the two fundamental requirements for democracy and elements within the state seem more interested in creating conditions for legitimating the use of state power to render the political climate conducive towards variants of the politics of P W Botha. Should the real soft-liners succeed in re-establishing the legitimacy of the negotiation process, pacted politics with frozen economics looms as a massive barrier to the attainment of even a minimum of transformation which will be necessary to secure long term democratic politics. Should I be proved wrong, technocrats policing commissions will ensure an absence of civil liberties at least in the form of trumps over the policies of the technocrats.

Hopefully the present anger at government intransigence will be converted into a more careful analysis of the politics of pacted constitutions, its limitations and potential so that the problems of economic transformation are considered not only within the lens of a pact or yet

another Charter of Rights. Perhaps the significance of the present political impasse is that the ANC has realised the true limitations of CODESA and pacted politics and wishes to renegotiate the terms of transition. Should this perception be translated into a vibrant politics able and willing to place transformation on the public table, democracy might yet not be stillborn. If the present impasse is merely a side show to gain marginal bargaining advantages, not for the first time will mass political energy be dissipated into the problematic future of co-option and pacts albeit of the sophisticated model of the 1990's.

D M DAVIS
Director
Centre for Applied Legal Studies
June 1992