

South Africa's Negotiated Compromise

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At the end of three centuries of colonial and racial domination, South Africa adopted a new constitution in 1996 that established a non-racial democracy. The transition from minority rule to majority rule was a “negotiated revolution”. The constitution that emerged displays some federal features but nevertheless ensures dominance by the Centre. While nine provinces were established, neither the Constitution nor the political discussions and debates before or after the Constitution used the word “federalism” to apply to South Africa’s federal system. With no written reference to itself as a federal country, debate continues on the nature of the new South African state.

The aim of the Constitution was to liberate and empower the oppressed majority in order to rectify past injustices. Coupled with this objective was the desire to unite a country historically divided along racial and ethnic lines. The nation-building enterprise was based on the individualist thrust of human rights that would cut across the old racial divisions, establishing a republic that, according to the preamble of the 1996 Constitution, “belongs to all who live in it, united in our diversity”.

The current decentralized system was the product of negotiations - a tug of war between two opposing points of departure: centralism and federalism. The proponents of federalism argued that, given the character of the very centralized pre-1993 government, the new constitution should guarantee that no centralized national government can dictate to the whole country. They argued that a greater dispersal of powers would provide a greater guarantee of democracy. The proponents of centralism – largely represented by the liberation movements – argued that a strong central government was necessary to carry out the important process of transformation. They maintained that the only means to change the conditions of those previously excluded was a strong central government.

South Africa adopted two constitutions in the 1990s – an interim constitution accepted as the result of negotiations in 1993, and a permanent constitution adopted in 1996, two years after the country’s first non-racial elections, held in 1994. **The federal elements eventually built into the 1993 and 1996 Constitutions were the result of the give and take of the negotiation process, and the state that emerged should be seen as a negotiated compromise, not as a product of a single clear vision.** Both the interim and the 1996 Constitutions articulated two important points of departure from the previous racially-divided democracy. First, the Constitution was based on classical liberal democracy’s philosophy of individualism rather than on the protection and entrenchment of groups, be they ethnic, racial, or linguistic. Second, although subnational entities were established, the resulting Constitution avoided a competitive relationship between the subnational entities and the Centre. Nation-building was the overriding concern.

South Africa’s Constitution is of interest to other federations for the way power has been dispersed among three spheres of government (national, provincial, and local) and for its explicit articulation of certain principles of cooperative government.

Currently, South Africa has a strong national government and is attempting to develop strong local governments. Yet the Constitution provides a provincial framework indicating that provinces are meant to have a significant role in governance. However, provinces have limited powers of taxation and are dependent on transfers from the Centre for 96 percent of their revenue. Ongoing public debate questions whether the structure of provinces should be strengthened to play a greater role in governance or whether the provincial structure should be watered down.

Before the 1994 democratic elections in South Africa, municipalities were created by statute and organized on a racial basis. While the interim Constitution included a chapter on local government, municipalities were placed under the direct control of provinces. The 1996 Constitution fundamentally changed this concept of local government being the lowest tier and instead elevated it to its own sphere alongside those of the national and provincial governments. Furthermore, the 1996 Constitution mandated democratic local governance across the entire country.

A number of factors contributed to this shift in status. Politically, within the liberation movements, local communities played a significant role in the protracted struggle against *apartheid*, giving rise to a strong civic movement. The drafters sought to direct this social movement towards a people-centred development enterprise. The vision of local government as a driver of development also reflected modern development theories wherein local buy-in and initiative are seen as indispensable to social and economic development. Given the fact that the creation of provinces was an uneasy compromise, the strengthening of local government has been at the expense of provinces.

While the sphere of local government is guaranteed a measure of autonomy, there is still a considerable degree of supervision by both the national and provincial governments. Financially, local government has a great measure of autonomy. It has original powers of taxation in the area of property rates and user charges, and currently raises 83 percent of its revenue.

The 1996 Constitution made cooperative government the bedrock of decentralization and has spelled out in broad terms its guiding principles. In the words of the Constitutional Court, the Constitution does not embody “competitive federalism,” but, to the contrary, “cooperative government.” An important principle of cooperative government is the avoidance of litigation to resolve intergovernmental disputes. The rationale for this principle is that disputes should, where possible, be “resolved at a political level rather than through adversarial litigation”. Thus far relations between the Centre and provinces have been cooperative rather than conflictual, much influenced by the dominance of one party in the governance of the provinces and municipalities.