Eyrice Tepeciklioglu, E. / Journal of Yasar University, 2018, 13/50, 164-175

South African Federalism: Constitution-Making Process and the Decline of the Federalism Debate[1]

Güney Afrika Federalizmi: Anayasa Yapım Süreci ve Federalizm Tartışmasının Güncelliğini Yitirmesi

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Abstract: The 1990s heralded the beginning of a historical period in South African politics with the signing of the National Peace Accord, the unbanning of black opposition movements, the release of political prisoners and, most importantly, the end of the apartheid regime. Negotiations between major political groups of the country produced the Interim Constitution of 1993 approved by the Multi-Party Negotiating Council, which resulted in the country's first democratic and multi-racial elections in 1994. The current 1996 constitution was prepared during the transition period in line with the Constitutional Principles of the Interim Constitution. This article argues that federal principles entrenched both in the Interim Constitution and Final Constitution played a key role in the transition to democracy and contributed to the success of negotiations. However, South Africa's (quasi) federal system is now highly centralized with decreasing autonomy of its constituent units. This article will first provide an analysis on how federal principles became the major bargaining tool of the constitutional negotiations before proceeding with an examination of the very reasons behind the demise of the federalism debate in South African politics.

Keywords: South Africa, South African Politics, Constitutional Negotiations, Federalism

Öz: Ulusal Barış Anlaşması'nın imzalandığı, siyasi yasakların kaldırıldığı, siyasi suçluların serbest bırakıldığı ve hepsinden önemlisi, ırk ayrımına dayanan rejimin (apartheid) ortadan kalktığı 1990'lı yıllar Güney Afrika siyasetinde tarihi bir dönemi müjdelemekteydi. Ülkedeki başlıca siyasi gruplar arasında gerçekleşen müzakereler sonucunda Çok-Partili Müzakere Konseyi tarafından 1993 geçici anayasası onaylanmış ve sonrasında da ülkenin ilk demokratik seçimleri olan 1994 seçimleri gerçekleşmiştir. Takip eden geçiş döneminde ise geçici anayasada belirtilen anayasal ilkeler çerçevesinde hala yürürlükte olan 1996 anayasası hazırlanmıştır. Bu makale, geçici anayasa ile sonrasında kabul edilen 1996 nihai anayasasında yer alan federal prensiplerin gerek demokrasiye geçiş sürecinde gerekse müzakerelerin başarısında kilit öneme sahip olduğunu iddia etmektedir. Ancak yoğun müzakereler sonucunda oluşturulan Güney Afrika'nın (yarı) federal sisteminin federal devletlerin özerkliğinin giderek azaldığı merkezileşmiş bir sisteme doğru evrildiği görülmektedir. Bu makale, öncelikle federal ilkelerin nasıl anayasal müzakerelerin en belirleyici pazarlık aracı olduğuna dair bir analiz sunacak sonrasında da Güney Afrika siyasetinde federalizm konusunun önceliğinin kaybolmasının ardındaki temel nedenleri inceleyecektir.

Anahtar Sözcükler: Güney Afrika, Güney Afrika Siyaseti, Anayasal Müzakereler, Federalizm.

Introduction

The term "federal" is derived from the Latin word, *foedus*, meaning covenant (Elazar, 1991: 5). Federalism can be roughly defined as a specific government system in which there is at least two orders/levels/spheres of government, the federal and state governments, having constitutionally recognized competencies. In a federal system, there is a power-sharing between these two levels of government. Each level has exclusive competencies while at the same time, having concurrent powers defined in the constitution. In his seminal work, *Exploring Federalism*, Elazar defines federalism as a system of "a combination of *self-rule* and *shared rule*" (1991: 5). In a later work, he also notes that it is "through constitutionalized power sharing in a noncentralized basis" (1993: 190).

South Africa has a (quasi) federal model defined in the 1996 Constitution as a co-operative government. The constitution does not define South Africa's government system as strictly federal. Some political systems, like that of South Africa, are hybrid systems. These systems combine the elements of different forms of government. In other words, such systems may carry the characteristics of a federation in paper but also have a strong central government in practice, which makes them look like a rather unitary system. These political systems are sometimes defined as quasi-federations (Blindenbacher and Watts, 2003). South African quasi-federal system emerged from the practical considerations of the transition period and the adoption of federal provisions contributed to overcome most of the dangers of this process.

Although the current constitution established different spheres of government, namely, national, provincial and local, and the current system of government has many other characteristics found in federal constitutions, the term "federalism", is not used in the constitution. It was the application of a "selective federalism" during apartheid rule that made the new South African elite into "reluctant federalists" (Murray and Simeon, 2011: 232; Simeon, 1998: 20), out of the fear that such a definition would re-awake divisions along racial lines and create further socio-political fragmentation similar to that of the apartheid era. Despite this ambivalent character of South Africa's form of government, several other students of federalism describe the country's political type of organization as federal or quasi-federal (Ahmad and Brosio, 2009;

[1] The arguements laid in this article are based on the author's PhD dissertation entitled "Federalism and Conflict Management: The Cases of Nigeria and South Africa"

Brosio, 2000; Hueglin and Fenna, 2006; Inman and Rubinfeld, 2005; Keller, 2007), having clear but highly centralized federal features (de Visser, 2010; Watts, 2003).

This federal system is the result of the political settlement achieved during the country's historic constitutional negotiations. However, federalism does not have a good reputation in South Africa. This disrepute is particularly related with the application of a selective federal-like regime after the South Africa Act of 1909. The Act, accepted as the country's first federal initiative, not only united four separate British territories under one rule but also created a system which benefited only the white population while gradually excluding black people from many walks of life, including the denial of basic political and socio-economic rights (Collins and Burns, 2007: 344-346). The creation of the "bantustans" or "black homelands", during the apartheid era further contributed to the existing segregation policies. The bantustans designed to provide separate territories for the non-white population. The major underlying reason behind the creation of bantustans was to create "homogenous national states" thereby encouraging ethnic nationalism to satisfying the national aspirations of the black population. It was thus a strategy of the ruling apartheid regime to provide a political alternative to granting citizenship rights to especially black inhabitants, who were excluded from the national political participation process (Egan and Taylor, 2003: 95-98).

Another federal-like initiative took place with the creation of a tri-cameral legislature under the 1983 Constitution. This legislature was comprised of three different chambers, each of which allowed the membership of one ethnic group: While the House of Assembly had 178 white members, the House of Representatives and the House of Delegates had 130 coloured and Indian members in total. Even though in principle, the three chambers could together legislate in matters defined in the constitution as "general affairs", in practice, the rights and powers of chambers was limited with on their "own affairs" (Republic of South Africa Constitution Act 110 of 1983, Sections 37-67 and Part IV). This legislative structure did not include any political rights for the black population. It was designed to include the coloured and Indian/Asian population in the political process because these population groups could not be included in the Bantustan policy (Egan and Taylor, 2003: 102-103).

The true federal process began in the mid-1990s with the end of the apartheid regime and the transition to democracy. However, the transition made possible through the constitutional negotiation process did not occur overnight. Rather, the South African constitution is the product of a compromise between political actors representing different ethnic and racial groups (Bastian and Luckham, 2003: 6). The diverging demands of those groups became influential in the constitutional outcome. In order to provide mutual understanding, the leaders of ANC (African National Congress), sought to ensure that negotiations were as inclusive as possible, and formed of various groups representing different parts of society. As Powell (quoted in Başaran, 2013) emphasizes, successful negotiation also requires ensuring that no party should feel excluded or disadvantaged. The engagement of different groups at every stage of the constitution-making process thus provided a strong base for the legitimacy of the constitution (Simeon, 1998: 20). The main argument of this paper is that the idea of federalism and federalist promises were central in the success of South Africa's historical constitutional negotiations. This is not to deny the role of other (f)actors but, rather, it means that the federal bargain played the key role in the peaceful transition to democracy.

The diverging claims of different groups and the debate on federalism are key to understanding the major dynamics of this process given that the distribution of powers between different spheres of government constitutes the most contentious issue during negotiations. For example, Inkatha Freedom Party (IFP) and some right-wing parties demanded self-determination whereas National Party (NP) sought the incorporation of federal principles such as provincial autonomy in the new constitution along with a Bill of Rights and protection of minority rights. On the other hand, the ANC hesitated to adopt fully-fledged federal principles due to federalism's identification with the apartheid era. Advocating a strong unitary government for better development, the priority of the ANC leaders was nation-building and economic restructuring. As James Selfe from the official opposition party, Democratic Alliance (DA) -the Chairperson of the DA Federal Executive and a former member of the Democratic Party (DP)- who was involved in constitutional negotiations said, "the ANC was trying as much as possible to centralize things, and the NP was trying to decentralize things as much as possible" (Interview with James Selfe at the Parliament of the Republic of South Africa, 27 February 2015). The result was a quasi-federal system with federal structures being the major instruments of negotiations. On the other hand, the ANC leaders used federal promises effectively as a problem-solving device during the negotiation process and as a way to convince all participant groups that their rights would be included in the new constitution. The following section concentrates on this constitution-making process in order to understand how federal principles became the major bargaining tool of the negotiations.

1. On the Way towards a New Constitution

South Africa's transition from apartheid to democracy was hailed as a "negotiated revolution" (Steytler, 2005: 36), a "miracle", a "historic compromise" (Hamill, 2003: 1) or "a success story" (Bastian and Luckham, 2003: 6). Although it was indeed the beginning of a historical period in South African politics, South Africa's path to democracy was in no way smooth and easy but rather the product of many interrelated factors and actors. International society's pressure on the government, including UN Security Council resolutions condemning the apartheid government for its discriminatory policies against the black population and the resulting diplomatic, political and economic sanctions had a direct influence in the demise of apartheid rule. In the last years of the regime, South Africa's isolation in sporting, scientific and academic

circles increased. The country's diplomatic isolation also increased as many countries broke off relations with South Africa and its membership in various international institutions was suspended. The pressure of the great powers, sanctions (particularly economic) and the withdrawal of an important amount of foreign investment were also important in bringing about an end to the apartheid system (Crawford, 1999; Ebrahim, 1990; Giliomee, 1995; Klotz; 1999; Levy 1999; Mangaliso, 1999). These external pressures coupled with the internal discontent and resistance of the black population that were denied basic social-economic, political and educational rights. The resulting protests caused the apartheid system to lose its legitimacy in the eyes of many South Africans including the Afrikaner (an ethnic group comprising from the early Dutch, German and French settlers in South Africa speaking the language of Afrikaans as their mother tongue) churches, universities, students and theologians, the main supporters of apartheid ideology (Du Preez, 1995: 35; Giliomee, 1995: 90). In order to address the significant problems that the country faced, a new political framework was needed to end the increasing isolation of country, fix the deteriorating economic situation, attract foreign investors and manage inter-racial cleavages.

The main opposition movement in South Africa, the ANC, also had strategic interests in starting official negotiations with the ruling NP government. In order to understand the major ANC concerns, it is important to consider that the Soviet Union and some neighbouring African states, which were providing political support and important sources of funding to the ANC, also urged the party to negotiate (Levy, 1999: 415). As Levy (1999) notes, the ANC lost a significant source of financial and technical assistance with the collapse of the Soviet Union. This process, however, had a twofold impact as discussed by Buthelezi, leader of the IFP: the end of the Cold War and the demise of the Soviet threat also removed Western support for the NP so F.W. De Klerk, the then leader of the party, was also urged by major Western powers and African countries that an immediate change in the political life of the country was necessary (2015: 37). Pik Botha, South Africa's then foreign minister (1977-1994), claimed that peace with neighbouring countries also had an impact on the unbanning of the ANC and the start of negotiations (2015: 37). In short, both the ruling NP and the opposition had realized that negotiations were necessary, particularly because developments could not continue as they were (Giliomee, 1995: 90-91; Maharaj, 2008: 17). These interrelated developments led to an understanding that the apartheid system must be dismantled and replaced by a new constitutional framework in order to establish a new democratic order.

As Spears points out, power-sharing principles are appealing both to the parties "whose power is declining" and the parties "whose power is rising." The former support the principle of sharing power because they believe they risk losing their dominance in the new democratic system. Thus, power-sharing represents one of the best strategies to protect their own interests, which explains why DeKlerk insisted on the inclusion of federal or power-sharing principles in the new constitution in order to protect white interests. As for the latter, sharing power is still appealing because it attracts foreign aid and/or international legitimacy and provides internal legitimacy to the political process. The weakness of both sides in South African case and the recognition that they needed peace forced them to accept a power-sharing pact (2002: 128-132). However, South African constitution-making process which made a new political order possible involved a series of slow and complex negotiations with the diverging demands of two main parties being influential on the future shape of the government.

1.1. Drawing the Borders: Centralism versus Federalism

The start of the negotiations between the NP and officially-banned ANC leaders started in the late 1980s with the beginning of formal negotiations in 1991, which resulted in the writing of the Interim Constitution. During this process, there were internal splits both within the ruling NP and the main opposition party, the ANC, on the main conditions for negotiation. There was white opposition against DeKlerk among right-wing, some of whom sought an Afrikaner Volkstaat, while militant left-wing opposition within the ANC forced Mandela not to negotiate with Inkatha or meet Buthelezi (Huntington, 1991: 160). Each side therefore had to consider the demands of these opposition groups within their parties in order to maintain their support and loyalty. However, this also meant that both DeKlerk and Mandela had an interest in helping each other deal effectively. Such developments also led the parties to become more willing to compromise and negotiate their imcompatibilities (Huntington, 1991: 160-161).

The black population was not only represented by the ANC of Nelson Mandela, but also by the IFP of Gatsha Buthelezi, an important regional political force, and another key player in the constitution-making process. In contrast to the ANC's vision of a united South Africa, the IFP demanded self-determination or extensive provincial autonomy for (KwaZulu-)Natal (Buthelezi, 1985, 1990; Steytler and Mettler, 2001). Meanwhile, Inkatha and Buthelezi was criticized by other black opposition movements for having separatist demands and fostering ethnic divisiveness, which they saw as an obstacle to an egalitarian South Africa. In turn, Buthelezi was held responsible by ANC leaders of dividing black opposition against white rule, thereby weakening the opposition movement (Jung, 1996: 48; Lowe, 1990: 398; Piper, 2002: 79). However, in spite of all these cleavages, the ANC sought to include Inkatha in the constitution process (Steytler and Mettler, 2001: 102). This was probably because the inclusion of Inkatha in the constitutional negotiations was crucial given that in the first multi-racial election of South Africa, IFP won a 50.3 percent victory in KwaZulu-Natal. IFP's majority in the province made the party to seek a political system organized around districts based on ethnicity/race since regional decentralization was the only way to sustain its political power (Lowe, 1990: 400). The IFP even wanted South Africa to be called the "Federal Republic of South Africa" (Egan and Taylor, 2003: 104). Along with other concerns like the role of the traditional leadership, the major concern of the IFP was provincial self-determination, which led the party to boycott several negotiations and withdraw from the negotiating process completely at one stage (Temkin, 2003: 154).

On the other hand, Buthelezi argues that IFP never advocated a secessionist constitution but, instead, proposed classical federalism to South Africa's problems (Constitutional Talk Number 12: 8 September 1995- 21 September 1995).

South Africa's political spectrum also included some radical black parties including the Pan Africanist Congress of Azania (PAC), the Azanian People's Organization (AZAPO), the South African Students' Movement and the Black Peoples' Convention. All of these parties called for the abolition of apartheid while the Pan Africanist Congress argued against power-sharing out of the belief that such an arrangement would provide the white population the necessary means to veto all legislative decisions. On the other side of the political spectrum, the Conservative Party (CP) and various right-wing extremist organizations, including the Afrikaner-Weerstandsbeweging, the Boere-Vryheidsbeweging and the Afrikaner Volksfront (AVF), demanded a form of racial federalism, with self-determination for Afrikaners demanding their own state (Ebrahim, 1990: 28-29; Marasinghe, 1993: 832). They sought to limit the political power of the ANC through decentralization in order to prevent it imposing discriminatory policies against its previous oppressors (Hopper, 2008; Simeon, 1998). Afrikaner groups demanded the creation of a Volkstaat out of the fear that, if they did not gain the right of self-determination, they would lose both their linguistic and cultural heritage. The Constitutional Talks indicated that the Volkstaat was also seen as a means to sustain their privileges provided through the apartheid regime (Constitutional Talk Number 3: 10 February 1995; Constitutional Talk Number 1: 13 February 1995; Constitutional Talk Number 8: 29 June 1995; Henrard and Smis, 2000: 33; Marasinghe, 1993). The desire to establish a separate homeland for the Afrikaner population and to meet the territorial nationalist ambitions of the Afrikaners was an important bargaining tool for the white-right during the constitutional negotiations. Representatives of the coloured and Asian/Indian population, including the South African Labour Party, the National People's Party and the Solidarity Party also embraced the idea of devolving power through a non-racial federal South Africa. In the pre-1994 election period, they were even willing to form an electoral alliance with the NP rather than the ANC (Marasinghe, 1993; Van der Merwe, 1990; Steytler and Mettler, 2001; Viljoen, 1990).

The white population, represented primarily by the NP, but also by the Conservative Party (CP) and the (DP), also feared that, if a black dictatorship were established, they would be exposed to racial discrimination like those of the apartheid era, in addition to the loss of their political power. The CP was also among those advocating self-determination. However, in contrast to the NP and the DP, the CP opposed power-sharing whilst claiming that such checks and balances in South Africa were a myth. The DP and NP, on the other hand, asked for the devolution of power, autonomy for minorities or regions, decentralization and proportional representation in order to counter ANC control (Marasinghe, 1993: 833; Van Der Merwe, 1990: 38; Viljoen, 1990).The NP government also sought to secure certain rights for the future in order to reduce the "damage of giving up power." Initially, the party did not defend power-sharing as its primary goal but focused on the protection of minority rights (Henrard, 2002a: 21, 108-109), given that the white population would now be constitutionally defined as a minority in the new South Africa. The DP also called for ending apartheid through self-governing states, separation of powers, autonomy for linguistic, cultural and religious groups, a bicameral legislature, proportional representation and a federal constitution, which would ensure these principles (Worrall, 1990: 45).

The task of South Africa's leadership was thus to combine all these diverging interests to find a compromise that could create a widespread consensus on the writing of the new constitution. During the negotiations, South Africa's leaders effectively used federal promises as a problem-solving device to accommodate those different demands. During the slow phase of negotiations with the interruptions and withdrawals of particular groups, both the ANC and NP had to drop some of their demands in order to keep the process alive and make the new constitution as inclusive as possible. Thus, DeKlerk gave up his demand for a white veto over black majority rule while Mandela stopped insisting on a strong central government. In Gray's words, "Then both leaders … sold it to their followers" (Henrard and Smis, 2000; Gray quoted in Spear and Keller, 1996: 123).

The subsequent negotiations were thus a bargaining process of finding a middle way between the diverging claims of the so-called centralists and federalists on the future shape of the government. Before the adoption of the 1996 Constitution, a transitional constitution laid down 34 Constitutional Principles (CPs). The Constitutional Court would only ratify the 1996 constitution if it complied with these CPs. However, in 1994, an Interim Constitution (IC) was prepared which was planned to last for only two years before being replaced by the new constitution. In the initial phase of negotiations, the entrenchment of federal principles in the IC was essential to gain the consent of all parties apart from the ANC and some other black opposition groups. Yet, the inclusion or exclusion of these principles in the interim or permanent constitution led intense debates between the various parties (Shapiro, 1997: 317-318). The following part concentrates on these federal principles entrenched in both constitutions with a further discussion about the most contentious issues during constitutional negotiations.

1.2. Federal Principles in the Interim and Final Constitutions

With the principal aim being to satisfy demands over devolution of power, the Constitutional Principles in the Interim Constitution included many federal or decentralized features (For these CPs used within the following paragraphs, see: South African Government, The 1993 Constitution of the Republic of South Africa Act 200). For example, CP XVI ensured the establishment of three spheres of government: national, provincial and local (Simeon, 1998). While recognizing "legitimate provincial autonomy", CP XX stipulated that "each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively." The IFP's demand for the recognition of traditional leadership was also secured in both constitutions under the rationale of preserving the country's cultural diversity. The main assertion here was that traditional leaders and indigenous law were

important parts of the culture in many of South Africa's provinces. Provisions on the status of traditional leaders who observe indigenous/customary law were therefore included both in the Interim Constitution of 1993 (Chapter 11, Sections 181-184) and the Final Constitution of 1996 (Chapter 12, Sections 211-212).

CP XVIII provided that "the powers, boundaries and functions" of the first two spheres shall be defined in the Constitution while the following CP XIX, ensured that both national and provincial levels would have "exclusive and concurrent powers" (The 1993 Constitution of the Republic of South Africa Act 200). The CPs from XX to XXVII defined those powers and rights of national, provincial and local levels. CP XXXIV, concerning recognition of self-determination, was added at the very last minute, after the IC came into effect, in order to satisfy Afrikaner and Inkatha demands for self-determination and ensure their continued participation in the negotiations (Brooke, 2005: 18-19). This CP recognized "the right to self-determination by any community sharing a common cultural and language heritage … provided there is substantial proven support within the community concerned for such a form of self-determination." CP XXXIV(3) also ensured that "if a territorial entity … is established … before the new constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions" (The 1993 Constitution of the Republic of South Africa Act 200). As noted by Brooke and Gloppen, by inserting this principle into the interim constitution, it was also intended to prevent the Inkatha boycotting the Constitutional Assembly (CA) and to resort to violence (Brooke, 2005: 19 and Gloppen quoted in Brooke).

This principle of self-determination was also the basis for the establishment of a Volkstaat for the Afrikaner population. The Amendment Act 2 of 1994 of the Interim Constitution authorized the establishment of a Volkstaat Council having 20 members elected by members of Parliament (Chapter 11A, Sections 184/A) and specified its functions, including "to pursue the establishment of such a Volkstaat" (Section 184/B1). Although the ambiguous meaning of CP XXXIV created intense debates while preparing the final constitution, by promising a Volkstaat in the initial phase of negotiations and including related provisions such as provincial autonomy in the interim constitution, the ANC indeed secured the participation of the right-wing Afrikaners and the Inkatha in the negotiations (Steytler and Mettler, 2001). In June 1995, the Volkstaat Council released its report on Afrikaner Volkstaat. The report acknowledged that Afrikaner population did not constitute a majority in any territory but it also noted that "the Afrikaner's desire for freedom can be addressed only through territorial self-determination… This constituent unit can function as a federated unit within the rest of the Republic" (Constitutional Talk Number 8: 9 June 1995- 29 June 1995).

However, some of the negotiated federal principles including those on Afrikaner Volkstaat were only included in the final constitution with major revisions (Henrard, 2002a). After several meetings with the participation of different parties, the ANC formulated the establishment of cultural councils and rights instead of the implementation of provisions such as a Volkstaat in the Final Constitution. Constitutional Talk Number 3 (18 May 1996) noted that on 19 April, 1996, political parties reached an agreement on the founding of cultural councils in order to protect cultural rights. The establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities in the 1996 Constitution (Chapter 9, Section 185), the inclusion of a section with additional "cultural rights" in the Bill of Rights (Section 31 on cultural, religious and linguistic communities) and the inclusion of a loose constitutional provision on self-determination (Section 235) were the direct result of this process. The 1996 constitution, which prohibits any kind of discrimination, provides an enormous range of civic rights under its comprehensive Bill of Rights (Chapter 2). Section 31(a) of the 1996 Constitution, for example, ensures that "persons belonging to a cultural, religious or linguistic community may not be denied the right… to enjoy their culture, practice their religion and use their language." Although the ANC opposed special treatment for ethnic groups from the very beginning of the negotiations, the establishment of the Commission was a concession given to those groups (Curie quoted in Henrard, 2002a: 117). The principle on self-determination in the final constitution was as ambiguous as CP XXXIV in the interim constitution. Moreover, the 1996 constitution and the establishment of the Commission no longer recognize the right of self-determination that might result in a Volkstaat (Henrard, 2002a: 114-116; 2002b: 32-35).

Although the founding of a Volkstaat could not be realized, some other constitutional provisions were included to acknowledge the underlying factors behind white population's fears of black domination, in addition to the establishment of the Commission. For example, the status of official languages was also a sensitive issue during negotiations. There were two main camps the first of which involved the ANC, the NP and African Christian Democratic Party (ACDP) who argued that the present system of languages having equal representation should be retained but provinces should be allowed to use any of those languages for official purposes. Although the DP and the Freedom Front (FF) supported the constitutional recognition of those 11 languages, they also argued that only those most often used should be promoted. The NP, on the other hand, also emphasized that the status of languages including Afrikaans should be preserved (Constitutional Talk Number 12: 8 September 1995- 21 September 1995). Meanwhile, the Constitutional Assembly received petitions by more than a million people to have Afrikaans as an official language (Constitutional Talk Number 12: 8 September 1995- 21 September 1995). In order to satisfy the Afrikaner demands and to improve the status of African indigenous languages (Henrard, 2002b: 26), both the Interim Constitution (Section 3) and the Final Constitution (Section 6) included detailed and extensive provisions on the use and protection of South Africa's languages, including nine indigenous African languages and Afrikaans (in addition to English) among the eleven official languages of South Africa.

The "cooperative government" principle also binds different spheres of governance that have interdependent relations in legislative, administrative and financial areas (Simeon, 1998). This is also the basic principle for intergovernmental relations in South Africa as defined by Chapter 3 of the Constitution (Sections 40-41), which stipulates that all three spheres of government must "co-operate with one another in mutual trust and good faith by ... assisting and supporting

one another" (Section 41, h(ii)). Both the Interim Constitution of 1993 and the Final Constitution (Section 40(1)) provided that "federal, provincial and local spheres of government are interdependent and interrelated." The 1996 constitution also provides a provincial framework, ensuring that each of the provinces has its own legislature and executive powers. As indicated in Section 42(4) of the Constitution, the National Council of Provinces (NCOP) was established in order to "ensure that provincial interests are taken into account in the national sphere of government." The NCOP is composed of a single delegation from nine provinces, 10 delegates from each province, making 90 in total (Section 60). The 1996 Constitution recognized local governments as the third sphere of government that are not subordinate to the central government or provinces but have their own competencies. Chapter 7 specifies the status of local governments, consisting of municipalities.

The debate on the division of competencies and the distribution of national revenues between national, provincial and local governments constituted one of the most contentious issues during the national constitution-making process. For example, Pan-Africanist Congress representative, Patricia de Lille, said their party argued for concurrent powers and a very strong central government. Lille also noted that the new constitution should not list any exclusive powers for provinces but local governments "should be as independent as possible from provincial governments." On the other hand, the ANC supported "a balanced and practical system of provincial government" while the ACDP stressed out the need for the establishment of strong provisional governments. Similarly, the NP advocated a strong and viable provisional government whereas the DP emphasized that provinces should be able to pass their own legislation (Constitutional Talk Number 10: 11 August- 1995- 25 August 1995).

However, the chapter on local government was initially overlooked by the Final Constitution. This was later remedied following the call of the Major Urban Areas Association (MUAA) for greater autonomy of local governments especially in the financial area. The delegation from the MUAA stressed out the need to limit "undue interference by provincial and national government" (Constitutional Talk Number 2: 8-28 March 1996). These diverging demands produced Section 214 of the South African Constitution which provides that the revenue should be equally shared among national, provincial and municipal governments, while Section 220 is on the establishment of the Financial and Fiscal Commission, an impartial body which, as stated in the Section 222, has the obligation to allocate an equitable share of national revenue between different spheres of government. Section 227(a) further notes that both provincial and local governments have the right of an equitable share of revenue. As emphasized by Selfe, the distribution of powers between the national, provincial and local governments listed in various CPs was absolutely not in the ANC's agenda at that time. Moreover, right-wing parties wanted a bigger basket of powers to be granted to the provinces and local authorities but considering where the ANC was coming from, what they got was an incredible achievement (Interview with James Selfe at the Parliament of the Republic of South Africa, 27 February 2015). Bantu Holomisa, the president of the opposing United Democratic Movement – who was also a part of constitutional negotiation process as Selfe- reiterated Selfe's claim that the issue of provinces was never at the agenda of the ANC and its allies during negotiation process but the ANC had to accommodate demands on provincial autonomy (Interview with Bantu Holomisa at the Parliament of the Republic of South Africa, 12 March 2015).

Prior to the adoption of the 1996 Constitution, the Constitutional Court examined if the new Constitution complied with the CPs. After nearly five months of examination, on 6 September 1996, the Court rejected the proposed draft constitution and sent it back to the CA for the noncompliance of the Text with the CPs in several areas. One of those areas was that the Constitution "fails to comply with CP XXV in that it does not provide for appropriate fiscal powers and functions for local government" and it did not comply with the CP XVIII "in that such powers and functions are substantially less than and inferior to the powers and functions of the provinces in the IC" (See: Constitutional Court of South Africa. Certification of the Constitution of the Republic of South Africa. (1996). Case CCT 23/96, Item 482). While representatives from the political parties including the DP, the NP, the FF and the ACDP welcomed the Constitutional Court's decision on a reconsideration of provincial and local government, Pan Africanist Congress noted that they wanted less power to provinces. The party is against the emergence of any federal character because of the uneven distribution of wealth and resources between the provinces. On the other hand, Mohammed Valli Moosa from the ANC noted that the ANC welcomed the decision of the Court as well and pointed out that all parties should focus on making those changes in order to comply with the judgment of the Court (Constitutional Talk Number 4: 17 September 1996).

As seen, the ANC used decentralization as an instrument to secure the support of various parties in the transition process, especially the IFP and Afrikaner groups, for the draft and final constitutions. However, having obtained their goal, the party moved towards centralization (Lake and Rothchild, 2005: 116-117) in that just one year after the adoption of the new constitution, Thabo Mbeki, the then ANC president, started to centralize power in order to appoint and dismiss ANC officials including provincial premiers (Dickovick, 2014: 562-563). South African federalism is indeed moving away from decentralization, with the political system evolving towards a more centralized federation. The following part of the article will focus on the underlying reasons behind the demise of the federalism debate in South African politics.

2. The Decline of the Federalism Debate

There are many interrelated reasons for the inclination towards centralization and the decline of the federalism debate in South African politics. This process has been facilitated first by the demise of the right-wing as an influential political actor and the later decline of IFP's electoral support in KwaZulu-Natal (Steytler and Mettler, 2001: 100-106), reflected in ANC victories in the 2004, 2009 and 2014 elections in the province. Ethnic-based national ambitions almost

disappeared in the new political context when ethnic politics lost much of its appeal following the inclusion of different ethnic groups both into the federal and provincial governments. Another centralizing feature in South African politics is the dominant party status of the ANC which has been strengthened by the absence of any serious parliamentary opposition able to pose an electoral threat to ANC power. The ANC is indeed the predominant party, having consolidated its power through each successive election.

While ethnic politics has lost its appeal in South African politics, race continues to feature in voting preferences with the majority of black South Africans hesitating to vote for a white party independent from this party's political agenda. Being the official opposition party, the DA, associated with apartheid politics, is perceived as serving the interests of the white and coloured population, so lacks electoral support among the black population. The same perception prevails for the FF Plus, which was later joined by the CP and the Afrikaner Eenheids Beweging before the 2004 elections. This party is viewed as being another party serving "white" interests. Black people, frustrated by the ANC's poor performance in providing basic services, welcomed the Economic Freedom Fighters (EFF) as an alternative to the ANC rule, although its leader, Julius Malema, is as controversial as Jacob Zuma, the president and leader of the ANC. Despite all the critiques against the ANC government, the corruption scandals involving several senior politicians, and continued acute poverty with rising unemployment levels, the majority of South Africans, who were denied political participation during apartheid rule, still vote for the ANC. This will probably not change within the near future as long as the opposition parties remain weak and unable to present any alternative to ANC rule, while the ANC still benefits from the image of being the oldest liberation movement in Africa. However, there is an important decrease in voter turnout following 1994 elections. For a great majority of ANC supporters, access to basic services as well as the right of political participation they were denied during apartheid era is more urgent than the proper application of constitutional federal principles. Those voters are not impressed when the opposition call for more provincial autonomy. This priority difference can be accepted as the third factor contributing to the decline of federalism debate.

The fourth factor is that the federal agenda is not even listed among ANC policy priorities. In 2009, Collins Chabane, Former Minister for Performance Monitoring and Evaluation in the Presidency said in a media briefing that South Africa is not a not a federal state but a unitary one that was divided into spheres for governance purposes. After a debate at the ANC policy conference in June 2012, an ANC commission even adopted a proposal to review the number of provinces in the country. Following this debate, ANC National Executive Committee (NEC) legislature and governance sub-committee chairwoman Nomaindia Mfeketo reiterated Chabane's claim that South Africa was a unitary state. The Commission later recommended to reduce the number of provinces to six, under the rationale of making them more effective. Following this discussion, concerns were raised that it might be a political tactic to merge the DA-run Western Cape with part of the ANC-run Eastern Cape in order to end DA's rule in the former (City Press, 2012; Ndenze, 2012; News24, 2012).

Interestingly, the decline in the application of constitutional federal principles does not seem to be an important matter of concern even for the opposition parties except, perhaps, the DA. On the other hand, Buthelezi of Inkatha emphasizes that "IFP is and remains proudly federalist" (The Star, 2014), and the party's official webpage declares Inkatha as the "champion of federalism in South Africa." The focus on the need for strong federalism is also visible in the party's constitution. However, Inkatha has not voiced strong objections to South Africa's current inclination towards centralization, the gradual loss of provincial autonomy and malfunctioning of local governments. The leaders of FF Plus, claiming to represent South African minorities (Afrikaners), and viewing federalism as one of the building blocks of constitutional dispensation, have also not involved themselves in the federal debate. The DA, however, is the one major party that has emphasized the need to strengthen provincial and local governments and properly apply the federal principles in the Constitution. For example, among the policy objectives of the party on governance and electoral system in 2009, "dynamic and effective provincial government" is one item on the party's priority list. According to this policy document, provincial governments could be empowered "through activating the federal elements in the South African Constitution to their fullest potential." In order to enable federalism to provide its various benefits, the party has been particularly concentrating on the need for fiscal autonomy, recommending that provinces should be able to generate their own revenues and that more power should be devolved to local governments (Democratic Alliance, 2009). However, the general loss of appeal of the federalism debate among the opposition parties, representing the major ethnic groups who advocated the adoption of federal principles during negotiations, is among the very reasons of its demise in general.

The gradual loss of autonomy in the two spheres of government must be a matter of concern, especially for the opposition, who strongly advocated devolution in the constitutional negotiations. Calls for strengthening provincial and local governments, and the true application of federal principles are also important given that those federal principles laid down the framework for constitution-making and ensured the inclusiveness of negotiations. This brings us to the last factor, that South African provincial and local spheres of government have weak state capacities coupled with a high degree of fiscal centralism. This eventually precludes those spheres to voice strong objections to the gradual loss of their autonomy in various fields. The provincial legislatures are also inable to influence national policy through the NCOP (Murray, 2006: 30). Murray (2006) argues that provincial legislatures view themselves as agents of the federal government because they lack provincial autonomy. This, clearly, was not what Inkatha, DP and other right-wing parties asked for when they demanded decentralization or provincial autonomy.

Central government's extensive control of provincial issues, especially fiscal, is partly related to the provinces' limited taxation powers, as they receive 96 percent of their revenue through national government transfers. However, the revenue-raising capacity of regional governments is significant in the sense that fiscal autonomy is an important

determinant of greater provincial autonomy (Fessha and Kirkby, 2008: 261-263). This lack of fiscal autonomy is compounded by disparities in wealth and revenue-creation capacity among the provinces. Section 227(b) is the only article that refers to conditional and unconditional grants that those two spheres receive from the national government. As outlined by Simeon, the provinces are mostly free to allocate unconditional grants as they like contrary to conditional gransts. In such a division, it is no surprise that, if unconditional grants could predominate, the provinces would have more independence to choose their priorities (1998: 14).

Despite being the lowest tier, local governments have greater autonomy, especially financially, than the provinces. This is simply because local governments have been given a crucial role in rebuilding and developing local communities (Koelble and Siddle, 2014: 610). Through property rate taxes and user charges, local governments raise 83 percent of their revenues (Steytler, 2005: 38). Moreover, local governments can recruit their own staff in contrast with the provinces (Reddy and Maharaj, 2008; Fessha and Kirkby, 2008. Also see: Section 161(1) of the 1996 constitution). However, both provincial and local governments remain weak and mostly unable to perform the functions expected from them. Part of the problem, according to Manor, is that local authorities are held responsible from highly complex tasks (2001: 7). Here, The White Paper on Transforming Public Service Delivery (1997), therefore, provided strategies in order to improve service delivery of local governments. Following this document, the Local Government Turnaround Strategy of 2009 reported that not much had been made for more than a decade to change the capacity of local governments, with many municipalities remaining dysfunctional and unable to deliver basic services to their communities.

The same year, South Africa's then Deputy Minister of Cooperative Governance and Traditional Affairs declared that local governments were not working (Bratton and Rothchild quoted in Reddy and Maharaj, 2008: 185). On January 2015, Cooperative Governance and Traditional Affairs Minister, Pravin Gordhan, recommended to merge several municipalities in six provinces (Local Government Action). Gordhan later recommended to merge nine municipalities in Eastern Cape with neighbouring municipalities to make them more functional (Phandle, 2015). However, because this initiative lacked strong support within the party, it failed to produce any results. On the other hand, the demise in the application of federal principles is likely to continue with a gradual loss of autonomy at the two lower levels of government.

3. Conclusion

In the constitution-making process, a political compromise has to be achieved between the cultural majority and minorities (Fleiner et al,. 2003: 50). The success of this process is also dependent on the extent that competing parties prefer to find a settlement in their efforts to manage conflicts. The major argument of this paper is that the promises of federalism that were introduced into South Africa's tedious constitution-making process have been effective in promoting the transition to democracy, with the role of the leaders in negotiations, especially DeKlerk and Mandela, being influential in enabling a peaceful transition. As discussed above, the diverging claims of the two rival groups shaped the constitutional outcome. On the one hand, the adherents of federalism, particularly the formerly ruling NP, IFP and other right-wing parties, asserted that the new constitution should include provisions guaranteeing a devolution of power, strong provincial governments or self-determination of particular ethnic groups. On the other hand, the centralists, notably the ANC and some other black opposition movements, sought a powerful centralized government in order to carry out the transformation process and guarantee economic development (Steytler, 2005: 37). It is therefore no surprise that the debate on federalism was an important part of the political negotiations, not only due to the concerns of several groups against ANC rule but also because of the suspicions of many ANC politicians who believed that federalism contradicted the idea of an undivided South Africa (Hopper, 2008).

Even though some of the federal principles of the interim constitution were not included in their original forms in the final constitution and the inability of the Afrikaner population and Inkatha to gain any territorial concessions or ethnicity-based rights, they were soon satisfied by clauses concerning provincial autonomy and a detailed Bill of Rights focusing on individual rather than (ethnic) group rights. This indicates that federalism is indeed a bargaining process with federal principles preparing legitimate grounds for conflicting parties to negotiate over their incompatibilities. Despite the application of a selective federalism in the apartheid era, the inclusion of federal applications to the new constitution was related with their radical departure from apartheid federalism. While the federal practices in the former era were designed to sustain white rule through separate development and ethno-territorial politics, the post-apartheid constitutional negotiations represented the determination of various parties to accommodate existing conflicts and establish a unitary, non-racial, democratic system. The architects of South Africa's current constitution believed that, without the consent of different South African groups involved in the constitution-making debate, no permanent solution to the existing cleavages could be achieved. The constitution-making process was, therefore, an attempt to gain the consent of all parties on the new form of the state – the most contentious issue during negotiations. The inclusion of provincial interests and federal principles especially in the Interim Constitution was thus the key in the negotiators' constitutional peace-making efforts, which, in a sense, satisfied the demands of the two major parties while ensuring their support for the national constitution-making process.

However, nearly twenty years of its adoption, South African federalism faces several structural and systemic problems with the gradual loss of provincial autonomy and the limited capacity of local governments. The dominance of one strong party with no concrete agenda for strengthening provincial and/or local governments has not contributed to empowering federal principles. It is acknowledged that granting a sufficient degree of political, administrative and

financial autonomy to different levels in any federal system is important in order to claim it is truly federalist. If instead, as in South Africa currently, the regions are largely dependent on resources transferred from central government and are unable to generate at least some part of their own revenue, it makes the practice of federalism problematic. Thus, it would not be wrong to conclude that together with the loss of ethnic politics, the demise of the right-wing as an influential political actor, the decline of IFP's electoral support in KwaZulu-Natal, the priorities of ANC supporters and the inability of opposition parties to strongly voice their objections to the decline in provincial autonomy, those factors contribute to the decline in the determined application of constitutional federal principles. So, although the federal principles listed especially in the Interim Constitution played a key role in the transition to democracy and contributed to the success of constitutional negotiations, the federalism debate has lost its appeal in South African political life for the reasons discussed here.

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