

Chapter Six

The shape of the country Negotiating regional government

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There was a time when the very idea that the NP and ANC would reach a settlement in which they agreed on guaranteed powers for regional governments would have seemed bizarre.

The NP had spent much of its reign opposing federalism, one of the key principles of its liberal opposition. The ANC had spent some three decades fighting a system which set aside small portions of the country for ethnic black 'self-rule', arguing that this removed the need to grant the majority a political say. It viewed attempts to divide South Africa into geographic units as ploys to thwart democracy – particularly when these involved proposals that parts of the country should enjoy powers limiting those of a majority-ruled national government.

Not only did the powers of regional government become a central negotiating issue, as the NP and the FA pressed for regions with strong powers. As negotiations developed, the ANC came to see hidden merit in 'strong regional government' – so much so that some of its strategists would, in private, begin to describe themselves as 'federalists'.

A compromise of sorts was reached on regional government – one which the ANC in particular could hardly have seen itself making a few years earlier. But many aspects of the issue remained unresolved, partly because far more was at stake than debates on the virtues of 'federalism' or a 'unitary state', or on the economic and political merits of handing particular powers to regions. Deeply conflicting ideas about the sort of country South Africa is or should be lay behind the negotiations on regional powers. And, as always at Kempton Park, these rival visions neatly fitted the interests of those who argued in their favour.

Convergence of a sort

Well before Codesa, the NP had discovered, as it did on many other issues, that its traditional attitude to regional government made little

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sense if it was going to lose control of the centre. Since demographics offered the NP a strong prospect of controlling at least one region, the Western Cape, it became a keen advocate of federalism. But since the NP knew that the very mention of the word raised hackles within the ANC, it chose to refer to this preference as 'strong regional government'.

Regional government had been a key source of division at Codesa. Some progress was made towards a compromise. A bland and vague constitutional principle was agreed, allowing for elected provincial governments with unspecified powers.¹ The NP claimed that this conceded federalism, since it accepted that regions' powers and functions would be specified in the constitution. The ANC insisted that it conceded no such thing. But it was soon to begin rethinking its position in ways which would bring the ANC closer to those who favoured some autonomy for regions.

All federalists now? The ANC after Codesa

Since 1990, ANC policy on regions was shaped by its interest in a strong post-apartheid national government which it expected to control, and – inspired by the influence the civic movement had wielded locally in the 1980s – a strong new local government system. The ANC wanted strong powers at both these levels to undo the impact of apartheid. ANC negotiator Albie Sachs notes that proposals for strong regional government were seen as a form of neo-apartheid: 'We spoke of a unified country and the sovereignty of the people to emphasise the fundamental and equal citizenship of all'.²

The ANC also continued to argue into 1993 that decisions on regional powers and functions could only be made by a constituent assembly. Against this background, a detailed regional policy was neither necessary nor, perhaps, desirable. A sign of the scant attention paid to the issue is a 1991 ANC policy document, *Constitutional Principles and Structures for a Democratic State*, which deferred decisions on regional government, suggesting only that they acknowledge 'the overall integrity of South Africa'. A sign of the ANC's centralist bent was its insistence that functions would be delegated by central government to regions, which would not wield power; they would merely receive development tasks and 'carry out the basic tasks of the government at regional level'.³

But demands for regional powers from almost all other parties ensured that the ANC could not ignore regional policy; a local government policy project, directed by Thozamile Botha, created impetus for a reconsidered approach to regions.⁴ In February 1992 it published its first

document on regional government. Its title, *Ten Regions for a United South Africa*, showed a continued concern for national unity. But its choice of the phrase 'united South Africa' rather than 'unitary state' suggested a shift. And while it proposed that elected regional governments should enjoy 'significant powers within the framework of a unitary state', it seemed to stray into federalist territory. It did insist that regions should not be able to contradict national policy: they would 'help shape (it) and have considerable scope in (deciding) how best to implement (it)'.⁵ But it suggested too that regional powers be defined in the constitution – they were to be entrenched, not delegated.⁶ This, it stressed, would spare new regions the fate which befell the provinces in 1986 when their elected governments were abolished by parliament. To historians, this support for the old provinces was significant. They had been created in 1910 as a concession to the federalist lobby;⁷ were they being offered again for the same reason?

The document's approach to regional boundaries was also significant. With one exception, a proposal that the Eastern Cape be divided into two regions, it differed little from the approach of the Development Bank of Southern Africa whose nine development regions were the building blocks of the NP stance on borders. This suggested that differences between the NP and ANC over boundaries would be slight.

Having agreed that regions ought to have powers specified in the constitution, the ANC needed to decide and declare which powers these were. This – and the need to align regional powers with a strong central government role – was the focus of policy-making in 1992 and 1993. The collapse of Codesa a few months later (in which differences over the regional issue played a role) prompted a vigorous ANC debate on regional policy which continued until March 1993 when a revised policy document was adopted by a special conference.

Regional policy surfaced as a divisive issue at the ANC's policy conference of May 1992, when local government and constitutional specialists clashed in a discussion of the issue. The differences were not settled: the meeting took no major decisions on the issue, deferring them to a conference on regional issues which was held almost a year later. This provided the opportunity for a wide-ranging internal review of regional policy which was, during this period, in flux. The most visible signs of this reappraisal involved two developments in the third quarter of 1992.

The most important of these was a rethink by the SACP and ANC's Joe Slovo which was to prompt the document *A Strategic Perspective*.⁸ His analysis identified regional issues as an area in which the ANC would have to modify policy.⁹ Slovo argued that it needed 'immediately

(to) elaborate our own policy positions on future regions in all essential detail'. He asked whether it was 'unprincipled' to attempt to reach an understanding with the NP on regional powers ahead of a constitution-making body. A shared vision of a regional dispensation (among other issues) would make it difficult for 'the other side to continue blocking the transformation'. But retreats 'would be impermissible' on the right of a constitution-making body to decide on the permanent boundaries, powers and functions of regions.

Another catalyst was provided in August when a largely Western Cape-based group of ANC specialists presented boundary proposals which rejected the ten regions document and argued for a greater number of smaller regions. The proposal, which first called for 30 regions (later reduced to 16) was presented by University of Western Cape economist Phillip van Ryneveld to a conference in August 1992, but had been the subject of ANC debate in the Western, Northern and Southern Cape from the beginning of the year.¹⁰ Van Ryneveld had developed it at a UWC conference in collaboration with civic association activists from across the country.¹¹

He argued that the ANC and NP's proposed regions were too large to reflect regional diversity and 'too big and too distant to adapt national policies adequately to local conditions and strengthen local control over implementation'. Behind this lay the view that regions should be seen more as tools for development than political entities – a host of small regions could not challenge the centre, but they could help it implement its policies.

While some ANC negotiators were attracted to the idea, it was rejected by the movement.¹² But three weeks after it was floated, the ANC called senior advisers and specialists together to discuss the regional issue – a task which was given added urgency by a government document proposing wide powers for regions (see below). Delegates noted that the NP was 'trying to draw the ANC into the regional debate now', and that its strategy was to 'blur the distinction between regions in the interim and the final formulation'. But they accepted that the ANC had 'short-changed' itself, in that it was 'relatively unprepared on this critical issue'. The ANC needed to answer the 'global question': what purpose was envisaged for regions? The discussion noted that a case for regionalism could be made, since 'there was a worldwide trend away from centralist states, with people being the subjects rather than the objects of development'.¹³ A form of regionalism could assist empowerment and development. The meeting concluded that the ANC could not wait for a constituent assembly to decide its stance on regions.

A month later the ANC published its most comprehensive outline of regional policy options, based on contributions from some of its advisers.¹⁴ For the first time, it listed 15 possible regional functions; it also contained an outline of draft legislation detailing regional powers. It was the ANC's equivalent of, if not direct response to, an NP document released the month before. Entitled ANC Regional Policy, it drew heavily on German experience to propose concurrent powers for regions: they could make law in their areas of competence provided these were not repugnant to any act of the national parliament.

The document was to have been presented to a special conference scheduled for November 1992; it was finally held in March 1993. Delegates made minor changes to the document, most of them a result of their rejection of the small regions proposal. The document indicated a shift in ANC thinking, and its final version was partly a response to an initiative from outside the ANC to which we will return. But it confirmed that ANC thinkers had begun to move towards a stronger role for regions.

This was not simply a concession to other parties. Thozamile Botha notes that while some regions – notably the Western Cape and Natal Midlands – argued against federalism, 'in their own operations within the ANC they were acting federally'¹⁵ since they often challenged ANC policy. The ANC's internal workings, he believes, helped to promote a more sympathetic look at some federal principles. Similarly, some ANC constitutional specialists felt that its commitment to popular participation, which they believed had suffered in post-independence Africa, could be strengthened by regional powers. Sachs notes that he was very influenced by his exile experience in Mozambique where the government had failed to develop regional institutions: 'it made me feel that we would get more development nationally if the regions had a more active role'. With support from others, he argued against 'a very strong central executive moving the whole country'.¹⁶

Equally important was an exposure to the American and German federal systems. In 1992, ANC constitutional specialists visited both countries, returning with insights which suggested that regional powers did not prevent the central government from making policy. Botha notes that the US experience showed that central government power had grown over time, largely through its pivotal role in financing the redressing of economic inequality. Court decisions in disputes between states and central government had tended to favour the latter and were a 'critical way of eroding the states and strengthening central government intervention'.¹⁷

But the ANC's thinking was influenced far more by the German than the US system.¹⁸ After its constitutional committee visited Germany in mid-1992, a leading member said he saw a much easier settlement here.¹⁹ For the ANC, the most attractive feature of the German system involved 'concurrent powers', which allow the national and regional governments a parallel role: it argued that regions should participate fully in policy formulation, but final power should rest with the centre. In Germany, relations between the states and centre are dominated by the inclusion of the *Länder* (states) in national policy-making, mostly through participation in the upper chamber of parliament. But the centre has clear overriding powers.²⁰ Sachs notes admiringly the German system's 'sophisticated network of interrelationships, with a lot of negotiation' between the centre and regions.²¹

This was not how German federalism began: originally there was a clear line between the centre and regions, but this gave way to overlapping powers and joint responsibilities: a German analyst notes that a 'unitary ... state form has been established behind the federal facade'.²² But whether or not Germany really is a federation, there is no doubting its effect on ANC thinking. Sachs argues that on visiting Germany, he found that the local debate 'was all wrong': it was dominated by whether the region or centre had power, as if one gained it at the expense of the other. Germany showed that all three levels could enjoy powers, but that in all major areas these were concurrent or exclusive to the centre. This 'fitted in very well with what we wanted for South Africa'.²³

These influences were reflected in the September 1992 meeting: participants agreed that the ANC 'should be careful not to counterpose too starkly the ... rôles of central and regional government'²⁴ – particularly, presumably, since a clear consequence of elected regional governments, which the ANC backed at this meeting, was that they could be ruled by parties other than the one which controlled the centre.²⁵

The shifts were balanced by important continuities, of which the most notable was an insistence that national government should enjoy the capacity to set standards on all functions. Sachs notes that some in the ANC were 'preoccupied with the need for national development policies; anything that would inhibit this was seen as an obstacle'.²⁶ Even when delegates at the crucial September meeting accepted that regionalism had merit, this was counterbalanced by a 'strong emphasis' on the need for the central government to have the 'final word' on any dispute with the regions – and some still saw the regions merely as interpreters of national laws.²⁷ The ANC's economic approach consist-

ently held that minimal economic and financial powers would be vested in regions.

The ANC had, as Kempton Park prepared to reconvene, moved towards accepting a political role for regions: but continuing concern that they could be prevented from steering an independent economic or development course prompted it to want a national government veto on all decisions. Shortly before negotiations began, the ANC's March meeting was to nudge it part of the way to a form of federalism.

Fractured federalists? The NP after Codesa

The NP emerged from Codesa determined to ensure that any debate on regional government dealt with specifics. But precisely what these specifics were was to become increasingly unclear.

Its chief Codesa negotiator, Tertius Delpont, insisted that Codesa had taught that it was 'absolutely no use to formulate agreements aimed at papering over differences rather than resolving them'.²⁸ A regional system was of paramount importance to the NP – so much so that there was 'not much point in ... coming to an agreement' if this issue was not settled. The ANC's position that only a constitution-making body could decide on 'mere details' amounted to 'neatly side-stepping the problem'.

Delpont's remarks sought to force the ANC to elaborate its regional policy, but ironically they also applied to the NP's position. While it insisted after 1990 that it wanted regional government, NP documents and speeches by ministers in this period rarely moved beyond justifying the idea of a new system to describing its detail. FW de Klerk, while urging in late 1990 the need to rethink regional government, could only point to preliminary findings of a Department of Finance committee which saw little scope for devolving fiscal powers to regions.²⁹

For the NP, regional government was only a component, albeit a critical one, of its commitment to power sharing. It argued that dividing decision-making between levels of government would counter 'unbridled exercise of the authority of the central government'.³⁰ De Klerk later described the goals of NP constitutional policy as ensuring that a 'constitution must be drawn up in such a way that not now or in ... 100 years' time a Hitler, Mussolini or Idi Amin will be able to stand up in South Africa'.³¹ The early beacons of regional policy were minority representation in regional government (power-sharing); devolution of political and fiscal powers through the constitution (original powers); and a rejection of the four provinces, in favour of the DBSA development regions.³²

NP policy on regions was often clothed in ambiguity, making it difficult to establish exactly what its bottom lines were. One reason for this was the tension between pressing for a share of power at the centre, and its devolution to regions. Unlike more aggressively federalist parties, the NP remained, as its name suggested, a national party. It had ruled the country, and still wished to do so as part of a power-sharing government: it could not pin all its hopes on presiding over a region, leaving the centre to another party. This gave it an interest in the powers of the centre as well as the regions. Even if federalism made more sense than power-sharing – advice which the US government offered the NP³³ – to accept a regional role only would have been, for the NP, too great a come-down.

One sign of the problem was an important speech by chief government negotiator Gerrit Viljoen in March 1992. He said the NP could not flesh out its policies before Codesa 2 since it was still searching for a model between classical federation and the centralisation of 'all real government power'.³⁴ 'All options' should be kept open to ensure the decentralisation of administration and the devolution of power. Not only did he indicate that the NP was still searching for a model but, more crucially, he indicated that it had ruled out orthodox federalism: it was more concerned with power-sharing at the centre. Its regional proposals, Viljoen said, were 'in no way' a substitute for full participation by minorities in central government.

Later in the year, as Codesa approached, the NP produced its *Constitutional Rule in a Participatory Democracy*, approved by a federal congress in Bloemfontein in September 1991.³⁵ Consistent with Viljoen's concerns, its regional proposals were permeated by its general concern for power-sharing: its most controversial element was a suggestion that each region's seats in an upper chamber of parliament should be allocated equally to parties which received more than an unstated share of the vote in that region: a party which won 10 per cent would hold the same number of seats as one which won 60 per cent. Its proposals on regional powers insisted only that the powers of each level of government be entrenched in the constitution. While some functions could be allocated entirely to one tier, others might have to be spread across all three. This hardly amounted to a detailed policy.

But if the NP/SAG was not unveiling a policy, it was devoting time out of the public eye to exploring one. Finance's interdepartmental committee, the Department of Constitutional Development and the joint provincial body, the Administrators' Conference, all examined options for a new regional order. And, like the ANC, the NP used the post-Codesa

period to review and develop policy. Its approach seemed to become more federal (critics and the ANC said confederal) as it began to soften its insistence on enforced power-sharing: the most notable indicator was unveiled at a September 1992 conference convened by De Klerk to, as a cabinet minister put it, 'stimulate open debate on federalism'.³⁶

The meeting was presented with a report by Francois Venter, a Department of Constitutional Development³⁷ consultant, which proposed seven provinces, many of whose boundaries bore little resemblance to the nine development regions: it divided the pwv, linking Pretoria to the Northern and Eastern Transvaal; excised Port Elizabeth from the Eastern Cape region, linking it to the Western, Northern and Southern Cape; and linked districts in the far Northern Cape and Western Transvaal.

Its rationale was that regional autonomy was 'directly dependent' on sources of income – provinces could not wield power without funds. Therefore, borders had ostensibly been changed to ensure that each region could stand on its own financial feet. Even more far-reaching proposals, which aimed to ensure that each region had identical economic strength, had been floated by other departments: but the required geographical contortions verged on the ludicrous and were quickly dismissed by others in government.³⁸ Venter's report did not insist on equality – it sought a balance between the 'political importance of regions, and economic viability'.³⁹ But it sought boundaries which would ensure that regions were as financially independent as possible.

The rest of the report confirmed that this stress on economic viability was aimed at laying a foundation for strong regional autonomy. It proposed that the only powers which ought to be clearly vested in central government were defence, national security, foreign affairs and constitutional planning. The rest, it implied, were functions of regional government. There was no mention of central government power to set minimum standards. While De Klerk, in his opening address to the meeting, insisted that the report was not a government document, he later gave it his approval.⁴⁰ This served to confirm ANC suspicions that the NP wanted an extreme form of federalism with a weak central government.

But if this was what the NP wanted, nothing it did or said after the meeting suggested that it wanted it badly. Only days after the gathering, Roelf Meyer said the NP wanted a federalism 'comparable to the German system'⁴¹ which, as we have seen, allows for very strong central government. It never raised Venter's ideas again, and accepted a constitution in which regions have no exclusive powers. Why did the NP not insist on very strong regional powers? After all, Delpont notes that its

shift to federalism was aided by polls showing that it could win enough voter support in parts of the country to win some regions, depending on how borders were drawn.⁴²

One theory held that the NP's commitment to strong regions was always lukewarm: its insistence on a place in national government took precedence. In this view, the NP's enthusiasm for radical federalism in late 1992 was not a product of conviction but of a leakage of white support to the IFP – by January 1993, a survey found, 19 per cent of white voters were backing Inkatha.⁴³ MPs who favoured more vigorous federalism were threatening to join the IFP if they did not get it. Once the haemorrhage turned out to be less severe than was initially feared, the NP's interest in federalism began to wane.

NP strategists insist that it did want stronger regional powers. But the transition had to be complete by the end of its term of office in mid-1994. Since they expected it to take much longer than that to wear down ANC opposition to stronger powers, they concluded that there was not enough time to secure what they wanted. Their goal, therefore, was an interim constitution which would allow regional pressures for greater powers, if they emerged, to erode the scope of the centre. Winning one province was crucial to the strategy because it would provide a base to push for more powers, although they also hoped for regional pressures within the ANC and the constitutional court. Instead of seeking a constitution which guaranteed regional powers, they banked on one which would offer room to press for them. This position was most clearly argued by Meyer and his former deputy, Fanus Schoeman.⁴⁴

Federalists also faced a strong lobby from government departments which wanted central government to retain crucial powers – so much so that a cabinet minister noted that 'if it was left to the civil servants, we would have a totally unitary state'. In 1992, the Department of National Education published a document arguing that central government had to retain decision-making on national standards.⁴⁵ The Department of Finance consistently pointed to the limits of fiscal decentralisation;⁴⁶ the Department of Water Affairs lobbied ceaselessly against devolution, and the Department of Environmental Affairs pleaded for national standards.⁴⁷ In the last 18 months of negotiations, government departments were consulted on possibilities for regionalisation: their responses helped to ensure a position which favoured strong central government and national guidelines.⁴⁸

The NP's experience of some 'homeland' governments also influenced it. In 1992 and 1993, reports alleging maladministration were released. The SAG had earlier imposed 'structural adjustment' commit-

tees on 'homelands' in an attempt to enforce fiscal prudence. Delpont says the 'homeland' system taught the NP that regional government carried dangers of weak administration and consequent corruption. Among some in the NP, this prompted an approach similar to Venter's - Schoeman argued that while 'homelands' enjoyed political responsibility, they lacked the finances to exercise it: the constitution had to ensure that regions could rely on the funds they needed. But, Delpont recalls, there was also a 'nagging doubt' about the ability of some regions to govern themselves, given the quality of their administrations. And Schoeman argued that the own and general affairs system, introduced in the 1983 constitution, failed to recognise the extent to which the tasks of separate administrations were interwoven. This led to constant tension which the interim constitution would reduce by allowing for national norms.⁴⁹

Whether the NP's stance was based on realism about prospects of winning concessions, or influenced by doubts about the feasibility of strong regional powers, it approached Kempton Park with a commitment to regional autonomy which, while stronger than the ANC's, was less than total. A compromise was eminently possible - as events in 1993 were to show.

A patch of our own: the Freedom Alliance

Whatever the differences between the ANC and NP on regional government, they were narrower than those with Kempton Park's strongest champions of regional powers - the FA and particularly its two strongest elements, the IFP and the white right. They insisted that regional power was not just one plank in their platform: it was *the* plank, the one from which all others flowed.

Talking past each other: the IFP

The IFP, like the NP, feared majority rule and sought protection from it. But, like some of its FA partners, it differed from the NP and ANC in one crucial respect: it was, despite protestations to the contrary, largely a regional party.

Not only, as election results would show, was its support concentrated in one region. It was also used to wielding power at a regional level; this shaped both its stance and those of its 'homeland' allies. When, as it frequently did, the IFP pleaded for a 'bottom-up' process of

constitutional change, the clear implication was that those at the bottom who would shape the new order were regions, not citizens.

In the short term, it was in the IFP's and other 'homeland' parties' interests to remain in control of their administrations for as long as possible. They therefore wanted a transition in which the existing order would remain until a new regime was elected. In March 1993, IFP leader Mangosuthu Buthelezi demanded an assurance from De Klerk that 'self-governing territories' would not be disbanded until a new constitution was agreed,⁵⁰ a demand also implicit in Bophuthatswana's insistence that it would resist reincorporation until regional powers and boundaries were agreed; later, the IFP expressed concern about a proposal which would reduce KwaZulu's power prior to an election.⁵¹ It was the belief that the government was willing to retain 'homelands' for three years which helped woo the IFP back into negotiations in 1993 (see chapter 1); later, Buthelezi would repeatedly warn of dire consequences if the TBC attempted to override KwaZulu's authority (see chapter 3).

Throughout negotiations, it was never clear whether the IFP and its allies wanted to remain in control of their regions so that they could use their administrations to strengthen their electoral chances, or were simply insisting on retaining their power bases until they won the constitution they wanted. What was clear was that they were intent on halting the transition until they won 'federalism'.

A close look at the IFP's position reveals that it was less concerned with the principle of federalism than with endorsement for, and implementation of, a particular document in a particular region. The document was the *Constitution of the State of KwaZulu/Natal*, adopted by the KwaZulu Legislative Assembly on 1 December 1992 and, by all accounts, largely authored by IFP adviser Mario Ambrosini⁵² - although an IFP insider claims too that Buthelezi 'participated directly in drawing it up'.⁵³ This constitution received an early blow when it was rejected by organised Natal business. Buthelezi thereupon was at pains to deny, as business implied, that it was a charter for retiring from a non-racial South Africa - a view the IFP maintained doggedly throughout the negotiations.

But while the constitution did insist that KwaZulu/Natal would be part of a 'Federal Republic of South Africa', lawyers pointed out that it barred the federal government from sending troops to the province without its consent, allowed its courts to override any national law, and made it very difficult for the federation to impose any taxes on the province's citizens.⁵⁴ If it was not designed to opt out of the new republic, it seemed to make opting in virtually meaningless.

Throughout the negotiations, the IFP implicitly or explicitly demanded that the constitution be implemented in KwaZulu/Natal. Besides arguing repeatedly for the adoption by each province or state of its own constitution,⁵⁵ it repeatedly advanced the notion of 'asymmetry', which insisted that states could adopt different powers and functions: it even floated 'as an extreme possibility' the idea that parts of the country could be 'organised as a unitary state' while others were federal.⁵⁶

That it had strong ideas on which part would be federal – and governed by which constitution – was confirmed by the fact that its transition timetable listed a referendum on its constitution as a stage in the process.⁵⁷ More explicitly, it insisted on a 'special and expedited process for approval of the constitution of the state of KwaZulu/Natal ... in recognition of the fact that KwaZulu/Natal has gone further than any other region in ... erecting its territory into statehood within the parameters of a federal system'.⁵⁸

In other words, the IFP was battling not for the rights of regions but for those of one in particular. But which one? On the surface, it wanted a territory combining KwaZulu and 'white' Natal – that had, after all, been its concern since the Buthelezi commission had advocated federalism a decade earlier. But some of Buthelezi's rhetoric raised doubts. From the middle of 1992, he began asserting the claims of KwaZulu and its legislative assembly, rather than those of Natal. The territory was not, he insisted, a creation of apartheid – it had predated and would survive it.⁵⁹ Its assembly was an expression of Zulu nationhood. This raised the possibility that Buthelezi, concerned that the IFP might not win a Natal election, was keeping an autonomous KwaZulu alive as an option – most analysts agreed that the IFP would have little trouble winning an election in KwaZulu.

A senior IFP negotiator hotly denied this, insisting that, for Buthelezi and the IFP, 'KwaZulu' was short-hand for the entire province – a view which seemed later to be confirmed when the Zulu king demanded a sovereign state reflecting the Zulu kingdom's pre-1838 boundaries (which would include 'white' Natal). But the same negotiator went on to confide that the IFP received regular reports on popular opinion in Natal, 'and they are not encouraging'.⁶⁰ Why then was it fighting for the sovereignty of a territory it was told it was unlikely to control? A later comment by IFP negotiator Joe Matthews suggested that it hoped to form part of a ruling coalition in the province,⁶¹ but there were suspicions in 1992 that it might be interested in autonomy for a 'homeland', not a province.

Whether a sovereign 'homeland' ever was an IFP option will probably remain moot forever: ultimately the IFP hitched its star to a sovereign KwaZulu/Natal, either in the belief that it could win a majority there or that, since a majority there was possible while a national one was not, this was its best chance of continued power – which in the end it was.

This attempt to ensure that the IFP's home province was governed by rules which it would devise informed an IFP stance which insisted that the 'form of state' – federalism – be agreed before negotiations tackled any other issue.⁶² The IFP also argued that federalism implied 'residuality' whereby 'only those powers which cannot be exercised adequately ... at (regional) level should be devolved upwards ...'.⁶³ For the IFP, the region – or state – was the source of power. It would decide what to give to the centre: 'asymmetry' would be achieved not by the central government handing out differing powers to regions, but by the latter 'delegating upwards' those powers they were prepared to give to the centre. Even 'UDI' was possible.⁶⁴

On one level, the distinction between this and the NP position seemed only semantic – did it matter whether powers were 'delegated upwards' or 'devolved downwards'? After all, the powers exercised by each level of government might be much the same, whatever words were used. But it was anything but a matter of semantics for the IFP and its critics.

One commentator, Stephen Ellman, notes that the US constitution, repeatedly cited by the IFP as its model,⁶⁵ begins with the words, 'We, the People of the United States': this was held, in an early supreme court ruling, to mean that the powers of the federal government derived from the people, not the states.⁶⁷ This, he notes, is the precise opposite of the IFP view that 'KwaZulu/Natal is a sovereign ... state'.⁶⁸

Ambrosini, the lawyer who wrote most IFP position papers, saw federalism as an article of true faith, not to be soiled by the debate over practicalities which exercised the NP. For him, the most efficient way of ordering the affairs of the South African state was not an issue. South Africa was merely a 'geo-political expression'⁶⁹ – it would become a state only if the IFP decided that it should.

The IFP view entailed the idea of 'subsidiarity', whereby powers are exercised by the lowest possible level of government. While some in the NP also used the term, they did so in a different way. For them, if it could be shown that it was efficient to exercise a power at a lower level of government, it should be transferred to that level. For Ambrosini, regions would be assumed to be able to exercise powers – and therefore

would enjoy them – if it was shown that it was possible to exercise them, even if it was most efficient for them not to exercise them. It might, for example, be possible to show that it would be more efficient to adopt one code of commercial or criminal law for the entire country. But 'experience throughout the world shows that member states of federations are very capable of adopting and administering commercial and criminal codes', and that this power was essential 'for the development of all-encompassing policies at state level'.⁷⁰ The states would therefore have separate codes if they wanted them.

Ambrosini and his opponents never tired of arguing about whether this vision was 'federalism', or his eccentric version of it. But the debate over whether Ambrosini knew his federalism was less important than the reality that, for much of the negotiating process, the product he was selling had many willing buyers within the IFP. For it fused in a single symbol the key concerns of many of its various strands.

All feared majority rule. All saw ethnicity, the Zulu version in particular, as both a key rationale for diluting 'majoritarianism' and a tool for mobilising against it: the IFP repeatedly stressed that federalism was needed to express and accommodate the country's ethnic or 'cultural' diversity. All, but Buthelezi in particular, felt slighted by the ANC and NP's assumption that they were the leading players;⁷¹ what better way of securing recognition than an acknowledgement from the other parties that they would enjoy only the powers KwaZulu/Natal offered them? Finally, all felt more comfortable with building the future on control of the region they knew.

Most potently of all perhaps, this brand of 'federalism' struck a chord with a Zulu feudal hierarchy whose distrust of non-Zulus (the ANC was seen as a 'Xhosa' movement) and fears of losing traditional power was catered for by Ambrosini's elaborate and, his critics insisted, arcane theories. The KwaZulu/Natal constitution, an IFP source maintained, was 'central to Zulu culture'.⁷² It was no accident that Ambrosini's theories were to be used to justify the king's demand for a sovereign territory reflecting 1838 boundaries.

Ambrosini's academic pedigree was less important than the fact that his verbiage neatly met the concerns of those who feared loss of power, and who felt slighted by a 'big party cabal'. But there was a possible, and crucial, difference between lawyer and client. Despite dark hints at secession by Buthelezi, the IFP was at pains to stress that it was not opting out of South Africa, but simply trying to claim its rightful place within it.

The IFP expressed 'astonishment' at claims that its constitution was confederal⁷³ – and with some justification. For all its seeming secessionism, the KwaZulu/Natal constitution stressed the region's role in 'the Federal Republic'. The IFP repeatedly and indignantly denied claims that it favoured confederalism (a loose arrangement between independent states) and, when its CP ally raised this option at Kempton Park, hastened to repudiate it. It repeatedly talked of 'split' or 'shared' sovereignty between the 'states' and 'federal government'.⁷⁴ Buthelezi, one IFP source claimed, had not given up hopes of becoming president of the entire country and hoped to use control of KwaZulu/Natal as a base.⁷⁵ IFP negotiator Joe Matthews insisted that the party planned to win enough votes to form part of a national government.⁷⁶ The same Matthews was at pains to explain to a 1992 conference that federalism would not prevent central government redistributing wealth, or implementing major development programmes.⁷⁷

This was not simply schizophrénia; the IFP was not a separatist movement. While parts of it (and its chief ideologue) may have entertained leaving the country, its dominant strain did not. For one thing, it was difficult for people, many of whom had commuted to the mines and factories elsewhere in the country to work (or had a family member who did) to see the territory outside KwaZulu as a foreign land. Nor would it have been easy for a party which often cited its refusal to 'balkanise' the country by accepting 'homeland' independence to explain to its loyalists that balkanisation was now a goal. The IFP wanted to remain within the country, even if it wanted to dictate the terms of membership. In this, it differed from its most visible ally.

Opting out: the *volksstaat* lobby

Although the strains of the white right which joined the FA endorsed many IFP positions in the abstract, they harboured a different vision of the role of regions. All of them wanted a *volksstaat*, a state ruled by the *volk* (Afrikanerdom), even if they had different ideas of what this meant.

The *volksstaat* became a rallying cry of the right. Until the 1990s it had demanded white rule over the whole country; now it was willing to concede much of it to a non-racial order while reserving only a part for itself. The ideological roots of the retreat had been planted, ironically, by a figure who remained on the fringes of the right for much of the transition – Carel Boshoff, son-in-law of Hendrik Verwoerd, the ideologue of 'separate development'.

It was Boshoff who had, for a time, alienated himself from the right-wing mainstream by declaring that rule by a minority over a majority was untenable. If Afrikaners wanted self-rule, they would have to find it in a territory in which they were a majority. While his father-in-law had insisted on claiming most of the country for his *volk*, relegating the majority to separate 'homelands', Boshoff accepted the logic of turning Verwoerd's theory on its head: the majority would have to own most of the country while the *volk* carved out a patch of 'homeland' for itself. Boshoff, unlike some of his later disciples, seemed aware of the chief obstacle to this vision – that there was not a single district in the country in which white Afrikaners were a majority. He proposed to remedy this by laying claim to an area of the Northern Cape which no one else seemed to want.

A pioneer existence in an arid patch of the country never took hold among all but a zealous minority on the right. The idea of recognising the inevitable by demanding only a part of the country did: by the time the right joined the Kempton Park negotiations, the *volksstaat* had become a symbol for all but its most extreme factions (who did not join the negotiations). But throughout the right's brief sojourn at the talks – and beyond – it was clear that if it agreed that the *volksstaat* was desirable, it was less than clear on what it was or where it should be.

There was, firstly, division on whether it would be part of the country at all. The CP, in contrast to the IFP, insisted that it wanted confederalism⁷⁸ – the *volksstaat* would be independent, but would co-operate with South Africa. Later it softened, saying that it was willing to accept 'at least a federal system'.⁷⁹ IFP strategists claimed that they persuaded the CP to accept federalism.⁸⁰ That, however, was almost where the CP's vision ended. By the time it left the negotiations, it had been unable to decide where the state's boundaries would be or to move beyond convoluted formulae describing how its citizenship would work, which served to confirm suspicions that it didn't know. Most CP formulations did not go beyond defences of Afrikaner 'self-determination', bolstered with selectively interpreted international evidence 'proving' that multi-ethnic societies did not work.⁸¹

The CP's vagueness was a symptom not of incompetence but of the impossibility of its task. By now it had conceded, implicitly at least, some of the key tenets of the transition: that racial domination was untenable and that it could not claim the *volk's* rights at the expense of others.⁸² So the *volksstaat* would have to be formally non-racial: this meant that it would harbour a natural white Afrikaner majority. This could be achieved only by a form of gerrymandering which defied all

administrative logic, or by cajoling black inhabitants to leave. Since neither seemed feasible, the CP was forced to play for time in the hope that inspiration would turn up. By the April elections, it had not.

A more plausible attempt to grapple with the problem was that of the Afrikaner Volksunie, whose members broke away from the CP chiefly because it would not negotiate with the ANC (see chapter 1). It was the AVU which first proclaimed what the CP later came to accept – that the *volksstaat* was only saleable if it was non-racial and did not imply forced removals.⁸³ Equally importantly, the AVU propelled itself into the mainstream by endorsing federalism – the *volksstaat* would not be independent, but would be a state within the South African federation. As AVU strategists acknowledged,⁸⁴ it would be bound by a bill of rights and other strictures of a majority federal government. Like the IFP, its concern was to lessen the effect of majority rule, not to escape it entirely.

But this did not remove the key difficulty which faced the CP: the absence of a portion of the country in which a *volksstaat* could be created without dispensing either with non-racialism or with the better part of the region's inhabitants.

In principle, the AVU stance did open the way to a compromise which 'liberation' movements could have accepted without loss of face or principle. This lay in its insistence that it sought a region not for a race, whites, but a cultural group, Afrikaners. If it chose to define this group as those who spoke a common language and shared a culture, it would have acquired some four million members who were not 'white' – they were defined as 'coloured' by the apartheid order – but who met all criteria for an Afrikanerhood based on culture. Not only would this have swelled Afrikanerdom; it would have made an Afrikaans region fairly easy to negotiate. One region on which all parties agreed, the Western Cape, had an Afrikaans-speaking majority (though not a white one); the North West Cape had a similar profile.

Nor was it clear why the AVU or those on the right not motivated by race alone should reject this. Their central fear was being outnumbered by a majority with very different lifestyles, attitudes, and views on the distribution of wealth and the sanctity of property. As the NP's election victory in the Western Cape was to show, millions of 'coloured' people harboured the same fears and might have been strong allies in the fight to retain 'middle-class civilisation'.

The AVU toyed with this option. AVU member and AVF leader Constand Viljoen indicated that 'coloured' people 'who regarded themselves as Afrikaners' were welcome to join the AVF.⁸⁵ And the AVU talked of a

region in the Western Cape for 'Afrikaans-speakers'. But it had not re-treated from race quite as much as it implied. It still distinguished between 'Afrikaans-speakers' and 'Afrikaners' – the former category was non-racial, the latter white. And it would not accept the 'Afrikaans speakers' region only – it demanded one in the Transvaal for 'Afrikaners' too.

Unlike the CP, it was willing to say where this region was: it centred on Pretoria, and included parts of the East Rand and Eastern Transvaal: it housed, the AVU claimed, one and a half million Afrikaners and one million 'people of colour'.⁸⁶ Its proposals rested on imaginative border drawing which would keep many apartheid boundaries intact – such as that between 'white' Pretoria and its surrounding black townships – and create new ones. Liberals, let alone the ANC, warned against perpetuating boundaries based on race. But this debate was less pertinent than it seemed, since the AVU's population calculations were flawed: its negotiators conceded that its proposed region would *not* have an 'Afrikaner' majority.⁸⁷ They were, therefore, reduced to vague claims that a significant minority of 'Afrikaners' would, by a process they were reluctant to describe, somehow impart to the region a *volksstaat* character, presumably while someone else governed it.

The reason for this curious position was a caution to those who insisted that political visions were always a pure expression of strategic interests. It rested largely on a preoccupation with Pretoria's symbolism as a centre of Afrikanerdom, which prompted an insistence that a *volksstaat* centred on the city was not negotiable – even if the result was that the *volk's staat* would be run by someone else. It also ruled out the only right-wing position on regions which could have delivered a negotiated *volksstaat* out of Kempton Park.

The practicalities of these positions are less important than their irreconcilability – and that of the IFP's vision – with the assumptions which underpinned ANC and NP thinking. At the time Kempton Park began, however, this was not entirely clear. By then a compromise had been brokered which seemed to end conflict on the regional issue. For the ANC and NP, it did; for the FA, much conflict lay ahead.

CBM's consensus

By late 1992, the ANC-NP Record of Understanding signalled that negotiations would resume, and bargaining over regions with it. Slovo's document and Meyer's interest in the German model suggested the basis of

a compromise. But seasoned students of the negotiations knew better than to assume that one was now inevitable.

Against this background, the Consultative Business Movement, a group of business people committed to aiding a settlement, intervened to encourage further convergence on the regional issue. With 'passive approval' from the major parties, it linked local academics with foreign counterparts to frame suggested principles regulating the powers of the regions and central government. Many of the local participants were advisers to, or had close links with, the major parties. 'Fink' Hayson and Paul Daphne were ANC advisers; Bertus de Villiers and Ig Rautenbach were linked to the NP, and the IFP was represented by Matthews; Marinus Wiechers, later an IFP nominee to the Kempton Park constitutional technical committee, also participated, as did Eax Nomvete, who was to co-chair the negotiating forum's regional demarcation commission.

At the CBM group's first meeting, many participants expressed interest in examining convergence between proponents of regionalism and federalism.⁸⁸ This meant, the DP's Colin Eglin argued in a presentation to the team, that federalists would have to allow central government an important role in socio-economic reconstruction. In turn, supporters of a unitary state would have to allow regions a significant role.⁸⁹ The inquiry, conducted out of the public eye in February 1993, allowed the ANC and NP in particular to explore convergence – it became a dry run for the Kempton Park negotiations.

The team's final report, *Regions in South Africa*, debated options without firmly choosing between them. Wiechers notes, however, that it was a 'highly political document presented as a technical document', which gave contours to the debate.⁹⁰ It was also underpinned by clear acceptance of the need for regions to enjoy important powers. Its major impact lay in the way it developed criteria for regional-central relations, bridging earlier ANC and NP positions. It largely rejected exclusive regional powers, noting that the growth of functions of the modern state 'made it unrealistic to think of allocating all, or even most, functions exclusively'. All tiers of government had to work in a complementary way: 'The positive side of regions must be encouraged ... and the negative side minimised.'

The dilemma was how to allocate concurrent powers so that each tier 'possesses a genuine measure of autonomy' while avoiding 'incoherence of policy and continual wrangling over jurisdictional boundaries'. It proposed that legal principles, similar to those in Germany, be used to establish when the centre could override state laws. These could

be restricted to national standards for the provision of public services, measures necessary to maintain the legal and economic unity of the country, and central government responses to actions by a region which prejudiced the interests of another region or the country. The courts would decide whether these conditions existed.⁹¹

The ANC and NP welcomed the thrust of the report when a CBM delegation briefed them on its findings.⁹² During the ANC briefing, Nelson Mandela noted that the ANC's experience with regional government had not been a happy one. But regional government was not always considered on its merits: it did hold some advantages for efficient government, and could also help build national unity. The two 'critical issues' were that mobility of people be allowed, and that the country should have one tax base. Zola Skweyiya, chair of the ANC constitutional committee, applauded the discussion on overriding powers, while constitutional lawyer Peniel Maduna felt the report coincided with ANC policy. For the NP, Meyer argued that it was an important contribution to the debate; Leon Wessels was impressed by its consensus nature, while Delpoit said it could be examined as the basis of a possible compromise.

The document played a role in shaping ANC thinking at its March policy conference. The document which emerged from it moved from a position in which regional powers were to be granted by parliament, to one where they were to be guaranteed by the constitution. Here the ANC drew on federal theory, while pointing out that there were great differences between federal systems. Federalism, it accepted, did have a 'democratic pedigree' since it could represent and mediate tensions between local and national interests.⁹³ After the conference, ANC strategists Thozamile Botha and Billy Cobbett revealed that there were issues on which regions would have powers which could only be overruled by the centre if they committed 'proven contraventions' of the constitution. Botha noted that on issues such as education and health, the centre and regions would enjoy concurrent powers.⁹⁴ On the surface, this seemed to suggest exclusive and concurrent powers for regions: in reality, as we will see, this may have been illusory.

The IFP responded ambivalently. Buthelezi noted that aspects were helpful to its position, but added that it also contained 'certain slants': the Zulus had been driven into the Union in 1910, and federalism was paramount to the IFP. While one proponent of the CBM approach was later to insist that even the IFP and its allies would find the report's approach hard to reject,⁹⁵ his lack of enthusiasm was not surprising. The report's vision of regions and centre working together was far removed from IFP demands for 'residuality' or 'split sovereignty'. Nor did the

'clear' legal principles it proposed offer much to a party which demanded a ring of steel around the powers of the centre – they were vague enough to allow a court which did not share the IFP's vision to override all regional powers. The IFP would not join the consensus which the CBM report brokered. For the ANC and NP, however, it formed the framework for a deal.

Adding flesh to the bones: the Kempton Park negotiations

The CBM team's approach proved decisive at Kempton Park, where the ultimate agreement closely mirrored its report. Despite protestations to the contrary, negotiation fell firmly within the parameters which it had set.

In the early phases of its work on constitutional principles, the technical committee on the constitution drew virtually verbatim on the CBM document and its principles of override.⁹⁶ It proposed that regions be granted exclusive or concurrent powers 'as may be necessary ... for ... regional planning and development, and the delivery of services and aspects of health, welfare and education ...'

The influence was less marked in early drafts of the committee's proposed interim constitution: the 21 July draft simply noted that regional laws would only be valid if they were not repugnant to parliamentary laws. This amounted to concurrency, but one which provided little constraint on central government's ability to override. More importantly, it proposed that the scope of regional legislative competence could vary between regions; but it proposed that the centre would hand out powers to regions,⁹⁷ using a vague formula which seemed to promise endless disputes between the central government and regions.

The regional issue was, however, hardly debated at Kempton Park. While Ramaphosa, in an attempt to encourage IFP participation, had insisted at the pre-Kempton Park planning conference that federalism be debated at the forum,⁹⁸ the debate consisted largely of CP presentations on 'self-determination' and a host of critical responses to it.

'Leaks' in NP newspapers suggested that it might be taking the CP demand for 'self-determination' more seriously than the debate suggested. One idea reportedly considered in the government was that Pretoria and Bellville in the Western Cape become 'white interest areas', an idea which was never explained but which would clearly not have enthralled the ANC: it was quickly dropped and replaced by an Afri-

kaans-speaking (not 'Afrikaner') region in the Northern Cape⁹⁹ – which, as noted above, found no takers on the right. There was also some enthusiasm within the government for 'sub-regions' which might be small enough to accommodate either 'homelands' or the right. But while Meyer was still floating this option even after the interim constitution was agreed,¹⁰⁰ it never left the drawing board.

The IFP did not join battle at all. Its fight with the two 'major' parties never went beyond the process by which the decisions on the regional issue were to be taken. For the IFP, this was primary: it insisted that only its negotiating agenda could ensure a 'process capable of establishing federalism'.¹⁰¹ A constituent assembly could not produce federalism, and neither could a process driven by the NP and ANC: IFP strategists insisted, then, that the debate about 'process' was crucial to the 'substance'.¹⁰²

As chapter 1 shows, the one 'breakthrough' achieved on regions concerned process – a May agreement that, through constitutional principles, regional powers would be decided at Kempton Park and ratified by a constituent assembly. But there was another dimension to this agreement – an ANC commitment that regions would have 'original powers'.¹⁰³ What that meant was never clarified; deadlock over process prompted the IFP and CP's departure from Kempton Park. Bophuthatswana, Ciskei and the AVU remained, but the first two had not developed a considered position on federalism. And gradually, the illogicality of the AVU position seems to have dawned on its leading figures, who began to drift away to other parties or to private life. Party leader Andries Beyers and his lieutenant Cehill Pienaar, having reconciled themselves to a non-racial order, took the retreat to its logical conclusion, abandoned the *volksstaat*, and joined the NP and IFP respectively, leaving little more than a student group behind. With the withdrawal of the most fervent federalists and confederalists, pressure to debate federalism disappeared.

The *volksstaat* did not die as a negotiating option with the CP's departure from Kempton Park and the AVU's demise. Viljoen continued negotiating until the ANC conceded a *volksstaatraad* (*volksstaat* council) which would have statutory recognition to negotiate for a *volksstaat*.

But at Kempton Park, regional issues were thrashed out in a series of ANC-NP bilaterals. An extensive three-day meeting in October laid the groundwork for a common formulation on the central government's override, which formed the basis of the provisions in the interim constitution. While the negotiators were hammering out deals on regional powers, however, the public fight over the shape of the new regional order had turned to the boundaries of regions.

Border skirmishes

In a step which was seen by some as a concession to Kempton Park's federalists, the negotiators agreed in May 1993 to appoint a regional demarcation commission which was meant, in six weeks, to generate 'scientific' proposals on regional boundaries.

For some, the key issue was whether it would demarcate a *volksstaat*: it did not – according to commission sources, the criteria it agreed for boundaries made a *volksstaat* impossible from the start. But its brief life showed that there were interests which cared very much about regional boundaries.

It confronted a set of disputes over boundaries too numerous to detail here. Perhaps the most important was the controversy over the shape of the Eastern Cape: established interests in Port Elizabeth, backed by the NP and DP, fiercely resisted uniting in one region with the overpopulated, poor and overwhelmingly ANC-inclined Transkei and Ciskei 'homelands'. In the country's economic heartland, the PWV, the capital, Pretoria, was also a site of contest. Not only did the *volksstaters* claim it as their own, but its white leadership fought a strenuous battle to avoid inclusion in the PWV, where it feared domination by Johannesburg. The latter city's business interests also argued for Pretoria's excision. In Natal, local interests fiercely resisted the incorporation of the East Griqualand area into Transkei; in Transkei's Umzimkulu, traditional leaders, alienated by what they saw as shoddy treatment by the territory's former rulers, sought a place in Natal. In the Western Cape, key interests argued that it ought to include the province's north as well, while those in the north insisted that it should not.

Some real political and economic interests were at stake in these clashes. The Eastern Cape controversy was seen by some as a sign that its white elite was determined to avoid a common future with the black poor. Demands for a separate Northern Cape, which would house less than half a million voters, were seen as an attempt to create a *volksstaat*, an NP bid to control a second province, or both. But the edge was taken off many of the controversies by the fact that they cut across parties: repeatedly, local interests with competing party loyalties joined in demands for inclusion in or exclusion from regions.

This, a commission member, Ann Bernstein of the Urban Foundation, was later to argue, gave it an ideal opportunity to listen to local interests from all parties. It chose not to take this opportunity: while it did try to cram into its schedule hearings in some disputed regions, its report seemed to pay little attention to local lobbies. Demands for two

Eastern Cape regions, for Pretoria's exclusion from the PWV, or East Griqualand's desire to remain in KwaZulu/Natal were all ignored.

Some critics insisted that the commission had simply reflected another big party deal – the NP had got its Northern Cape province, the ANC its single Eastern Cape. But, while there was little doubt that the commission had been far more concerned with hearing voices in Kempton Park than in the rest of the country, this seemed to be questioned by the fact that its report angered many in the negotiating council. This was why the negotiators, having politely welcomed its report, told it to go back and do it again. While it dutifully began a series of public hearings, the ANC and NP addressed the issue in their favoured bilaterals. If the original report had not been a big party deal, the final outcome seemed sure to be one.

The outcome was a vintage Kempton Park compromise – negotiated largely by the NP's André Fourie and the ANC's Botha – which disposed of difficult issues by leaving them unresolved. Most of the boundaries proposed by the commission were unchanged. Instead, the parties identified several 'sensitive' areas in which boundaries were in dispute, and decided that their votes would be counted separately in the 1994 election and the outcome used as a test of opinion. Regional referendums could be held in these and other areas which were listed, to decide boundaries.

The weeks after the election showed that this compromise had deferred, rather than settled, boundary disputes. While the IEC had by then not managed to count the votes separately, constitutional development officials received a host of enquiries from local interests – including several in areas which had not been listed – requesting a change of status. And in Umzimkulu and East Griqualand, the issue had triggered controversy between interest groups. Some time would have to elapse, it seemed, before regional borders were finalised.

But, important as it might prove to be, the border issue was always a sideshow at Kempton Park. By the time the compromise on boundaries was agreed, the ANC and NP had agreed on an elaborate formula which would fudge the central issue – regional powers.

Fudging federalism?

The agreement on powers hammered out in bilaterals allowed the provinces concurrent powers with central government on a wide range of issues. But the latter would have overriding powers on matters which could not be regulated effectively by provincial laws; any issue which 'requires to be regulated or co-ordinated by uniform norms or stand-

ards'; if this was necessary to set minimum national standards for rendering public services; a matter necessary for determining national economic policies; or if a provincial law prejudiced the economic, health or security interests of another province or the country. Central government intervention had to apply uniformly and could not be restricted to specific provinces. Residual powers were to vest in central government.

This formula, while broad enough to accommodate ANC and NP positions, was so vague that it seemed certain to promise a battle between the regions and central government in the constitutional court. The NP claimed that it amounted to exclusive powers for the provinces which would put in place a 'very decentralised, federal type of government'.¹⁰⁴ A SAG constitutional adviser argued that it 'arguably constitutes a stronger federation than the German model', since regions would enjoy law-making and executive responsibility; in Germany law-making tended to concentrate in central government. Clauses stipulating conditions for override would be 'justiciable by the constitutional court and not unilaterally decided upon by central government'.¹⁰⁵ A key ANC constitutional adviser privately shared this view.¹⁰⁶

But a constitutional lawyer, Etienne Mureinik, noted that 'the language is so loose, that whether we actually get a federation is being left to the judges'. He pointed out that the override criteria would give a federalist judge the latitude to confer strong regional autonomy, and an anti-federalist one the license to destroy it.¹⁰⁷ It seemed hard to contradict this view: in effect, the parties had left the issue unresolved. NP strategists had won their platform to fight for more powers; the ANC had succeeded in conceding to regions not a single exclusive power.

The deal, and some of its interpretations, seemed to solve one of the riddles of Kempton Park: the ANC, which in March had seemed to promise both exclusive and concurrent regional powers, and had offered the IFP 'original powers' in May, seemed by November to have abandoned the concession, opting only for concurrent powers. One view suggested that after the IFP had left Kempton Park, pressures for concessions ended. Until then, it was said, the NP had been able to extract compromises from the ANC by insisting that they were essential to keep the IFP in the process. But once the IFP left, the rationale for the strategy disappeared and the ANC reverted to its favoured option. This seemed partly confirmed by an NP negotiator who noted that it had concluded that 'there was no point in negotiating on behalf of other parties'. A more imaginative explanation suggested that the ANC and NP had withdrawn some powers promised to provinces not because they had given up wooing the IFP, but as a means to that end: they would, it

suggested, offer it some entrenched powers to entice it back. By 'conceding' what they had always intended to give, they would grant it a victory without losing anything.

Both views seemed to miss the point that, in the view of both NP and ANC strategists, the final deal *did* grant regions original powers. Nor did it necessarily contradict Cobbett and Botha's promise that regions would be overridden only if they breached the constitution: after all, the final deal allowed the centre to override only if the constitution was violated – even if it was so vague that it was anyone's guess what a clear breach of the constitution was. This suggested that the ANC position had not changed since March; its meaning had simply become clear.

What was equally clear was that the prediction that this formula would satisfy the IFP and its allies was hopelessly wrong.

Kempton Park by other means: tinkering with the constitution

The interim constitution was not the last word on the regional issue. Negotiation with the FA continued – and finally, some of the substance of the divide was broached.

Talking to each other?

In principle, the divide seemed so great, so much a difference of principle rather than detail, that compromise seemed unlikely. While debate on the nature of federalism continued, there was wide agreement that, by agreeing to entrenched regional governments, the ANC had conceded the minimum requirements of federalism. But that mattered little – it had hardly moved at all to the IFP's vision of federalism (let alone that of the white right).

But as negotiations continued after the FA left the talks, it seemed that the debate was one over detail after all. By December the FA was willing to accept most of the clauses giving central government the power to override regions. It was also willing to concede 17 exclusive powers to the central government, including considerable economic powers. It demanded in exchange 34 exclusive regional powers, of which the most important were police, taxation (concurrent with national taxes), education, health, agriculture and local government, and a stipulation that provinces could write their own constitutions subject to the 33 principles agreed at Kempton Park.

Negotiation on these demands dragged into February 1994 and floundered, in the FA's view, on the ANC's refusal to concede exclusive powers and on its insistence that the constituent assembly retain the right to alter regional powers.¹⁰⁸

While this showed that there was still a wide gulf, the FA had conceded the role of central government and was now negotiating not on the nature of South Africa (a country or a 'geo-political expression') but on the powers to be exercised by centre and regions in a common country. IFP criticism of the constitution once it had been adopted highlighted similar themes: it complained that it denied the provinces 'full competence' over issues such as their civil services, police, budgets and finances; their competences could be overridden by the centre 'at any time'; and they would have no independent funding sources to exercise their powers.¹⁰⁹ Again, the complaint was not that sovereign states had been colonised, but that provinces did not enjoy enough power.

But these concessions advanced the IFP and its partners no closer to their stated goal; a compromise on regions was never reached. In March the ANC proposed – and the NP accepted – some changes to the constitution designed to woo the FA into the election. But the only changes to regional powers were minor amendments to extend taxing powers, and a constitutional principle which recognised the right to self-determination in a territorial entity. The package seemed to meet one IFP demand by allowing provinces to write their own constitutions. But since the overrides remained in place, they were restricted to framing 'differing legislative and executive structures and procedures',¹¹⁰ provided these did not contradict the constitution's bill of rights. By then the FA was beginning to splinter as Viljoen joined the election, and Bophuthatswana and Ciskei collapsed. Then the IFP joined, in exchange for a concession entrenching the status of the Zulu monarch in the KwaZulu/Natal constitution.

The FA settled for far less than it demanded: even before it conceded, it had shifted from its radical brand of regional sovereignty. Was all the talk of sovereign states and 'subsidiarity' therefore just a case of brinkmanship, an attempt to squeeze out as many regional powers as possible by challenging the very idea of a sovereign central government? After all, an IFP strategist notes admiringly that Buthelezi is 'a genius at the politics of disguise'.¹¹¹ Or had the FA, and the IFP in particular, been forced to recognise that sovereignty was unattainable, and that it should take what it could get in the circumstances?

The answer is unclear. Certainly, it is unusual for political parties to adopt uncompromising visions and then modify them quickly. This

would support the idea that the Ambrosiniques verbiage was simply a bargaining tactic. But the evidence also suggests that the IFP position was not simply a convenient tactic – it tapped into powerful currents within the IFP constituency. Given the IFP's continued insistence that it was not opting out of South Africa, it seems safe to suggest that some of Ambrosini's theories were adopted by IFP strategists when they conformed with their goals, but that they were not wedded to them. The goal remained a regional power base, as immune as possible from ANC control. The theories were a dispensable means. Whether the goal could be achieved after the election, and whether, therefore, the IFP would remain within the new order, depended more on political developments than constitutional visions.

A federal future?

The post-election order seemed to represent a near total defeat for the regional lobby. There was no *volksstaat*, no sovereign states with 'residual' powers, and the 'strong regional governments' the NP favoured could be overridden on every issue.

But this judgment is premature. None of the regionalists had abandoned their demands – they had simply agreed to fight by other means. The *volksstaatraad* was established, Buthelezi was vowing only days after the election to continue the unfinished fight for federalism, and the NP won its province, the Western Cape, from which to press for more powers if it wished.

Of these goals, the *volksstaat* seemed most likely to remain elusive. Viljoen's Freedom Front seemed to harbour no great expectations that it would win a *volksstaat* soon: its strategist Pieter Mulder had by mid-1994 begun to talk of a negotiated 'struggle' which would last years or decades. The FF would, he implied, hang in there until events forced the ruling majority to concede that the idea was a solution to conflict after all. It seems unlikely that his hopes will be vindicated: a pre-election survey, for example, found that only 11 per cent of white right-wingers expressed unqualified support for a *volksstaat*.¹¹² They would like one, but they believed that they would not get one other than on terms similar to Boshoff's pioneer option. Despite its symbolic power, the *volksstaat* always was a rallying cry rather than a programme or a viable option – hence the contortions into which its proponents were forced at Kempton Park. This seems likely to remain the case.

And however hard the IFP and NP planned to fight for greater regional powers from within the new order, there was evidence that some

unlikely allies were beginning to fight harder than they: it was, in the weeks after the election, ANC premiers who led a charge for more regional powers and funds. This suggested that NP strategists' hope that the battle for stronger regions could be waged more effectively from within the system was not a vain one. And if the IFP decided to fight its battle from within the new constitutional order, it might win gains which eluded it when it battled from without.

This said something, too, about the interim constitution, and the CBM report which inspired it. Contrary to IFP rhetoric, the interim constitution was not a charter for a unitary state. It created provinces with elected governments and powers, and left it to the political process and courts to determine how much autonomy they would have. Whatever the intentions of ANC strategists, the future of regional government was left unresolved. And it may have created the seeds of a federalism which could emerge from within the new order – from a battle led by ANC regional politicians, not federalist ideologues.

Notes

1. See Steven Friedman, (ed), *The long journey, South Africa's quest for a negotiated settlement*, Ravan Press, Johannesburg, 1993, pp 65 ff.
2. Interview, Albie Sachs, Cape Town, 11/2/94.
3. African National Congress, *Constitutional principles and structures for a democratic South Africa*, University of the Western Cape, Bellville, 1991, pp 9-10.
4. The project focused, inter alia, on metropolitan governments. This raised the issue of the appropriate relationship between metropolitan areas and regional authorities.
5. African National Congress, *Ten proposed regions for a united South Africa*, University of the Western Cape, Bellville, 1992, p 19.
6. The 1991 document on constitutional principles had spoken of delegated powers.
7. See comments by Rodney Davenport in S Friedman and R Humphries (eds), *Federalism and its foes*, Centre for Policy Studies, Johannesburg, 1993, p 80.
8. Friedman, *The long journey*, pp 161, 162.
9. Slovo argued that Codesa had seen the ANC concede 'special regional involvement in the determination of the final boundaries, powers and functions of future regions'.
10. The conference was organised by the CPS and the Institute for Multi-Party Democracy. See Van Rynveld in Friedman and Humphries, *Federalism and its foes*, pp 136-138.
11. Interview, Phillip van Rynveld, Cape Town, 11/2/94. He noted that the map took 30 minutes to draft.
12. See comments by Thozamile Botha in *Mayibuye*, April 1993.

13. ANC consultation, 15 September 1992, summary of discussions, pp 1-4.
14. They included Albie Sachs, Fink Haysom, Arthur Chaskalson and Phillip van Ryneveld; the document was collated by Billy Cobbett.
15. Interview, Thozamile Botha, Cape Town, 11/2/94.
16. Interview, Albie Sachs.
17. Interview, Thozamile Botha. See also ANC regional policy, p 2.
18. Interview, Fink Haysom, Johannesburg 5/4/94.
19. Interview, Albie Sachs.
20. For a description of the German system, see Hartmut Klatt in Friedman and Humphries, *Federalism and its Foes*.
21. Interview, Albie Sachs.
22. Klatt, in Friedman and Humphries, *Federalism and its Foes*, p 33.
23. Interview, Albie Sachs.
24. ANC, Consultation notes, p 3. Much of the public debate of the time tended to assume this.
25. The ANC conceded this in the September 1992 document, p 2. But it objected to 'mini-states ruled by ethnically based parties pulling in different directions'.
26. Interview, Albie Sachs.
27. ANC, Consultation notes, p 3.
28. Typescript copy of speech delivered to House of Assembly, 21/5/92.
29. Address to administrator's conference, 4/10/90, p 5. The committee, Kifisa, examined policy options for fiscal relations between the tiers of government.
30. Gerrit Viljoen, address to United Municipal Executive, 21 March 1991, p 6.
31. See his speech to the Natal NP congress, 1992, p 2.
32. See, for example, De Klerk's speech to the Administrator's Conference, 4/10/90.
33. Friedman, *The long journey*, p 157.
34. Gerrit Viljoen, 21/3/91, p 12.
35. National Party, *Constitutional rule in a participatory democracy*, Pretoria, 1992.
36. *Eastern Province Herald*, 4/9/92.
37. Department of Constitutional Development, *A new regional dispensation*, Pretoria, 1992.
38. For example, a Department of Regional and Land Affairs proposal attempting to equalise economic resources between the provinces saw the Johannesburg magisterial district as a region in its own right. See R Humphries and K Shubane, *A delicate balance: reconstructing regionalism in South Africa*, CPS transition series, 1992.
39. Interview, Fanus Schoeman, deputy minister of Constitutional Development, Pretoria, 14/2/94.
40. During his address to the NP's Natal congress some two weeks later, De Klerk noted that the NP 'could live' with the principles and approach adopted in the report. Transcript of address, p 8.
41. *Daily Dispatch*, 18/9/92.
42. Interview, Pretoria, 10/2/94.
43. *The Citizen*, 20/1/93.
44. For comments by Roelf Meyer, see *Beeld*, 11/4/94; *Business Day*, 26/7/94. Interview, Fanus Schoeman.
45. Department of National Education, *Education renewal strategy*, Pretoria, 1992.

46. Department of Finance, 'Working paper regarding future system of fiscal relations between different levels of government', July 1992.
47. *The Citizen*, 28/5/94.
48. Interview, Fanus Schoeman.
49. Interview, Fanus Schoeman.
50. *Natal Mercury*, 12/3/93.
51. *Business Day*, 9/5/93.
52. Interview, technical committee member, 9/4/94.
53. Interview, IFP negotiator, 12/2/94.
54. For these details and a critique of the constitution see Stephen Ellman, 'Federalism Awry: The Structure of Government in the KwaZulu/Natal Constitution', *SA Journal of Human Rights*, 9, 1993.
55. See, for example, Inkatha Freedom Party, *Annexure A: The Need For SPR Constitutions*, 9/7/93.
56. 'Position Paper of the Inkatha Freedom Party on a Process of Transformation Capable of Establishing Federalism: Prepared in Relation to the Work of the Technical Committee on Constitutional Matters', July 1993, p 6, 7.3.
57. IFP, 'Action Agenda to Implement the One-Stage "Model C" Transition', July 1993.
58. 'Position Paper', July 1993, p 8, 9.5.
59. See *Umxoxi*, Journal of the KwaZulu government, November 1993.
60. Conversation with IFP negotiator, 1992.
61. *Eastern Province Herald*, 28/5/93.
62. 'The form of state is surely at the core of the negotiating process, and on the resolution of this issue alone hinges the possibility of an overall political settlement ...' Therefore, the form of state needed to be decided as a 'preliminary matter'. IFP, 'Technical Subcommittee Number One on Constitutional Issues: Position of the Inkatha Freedom Party', 18/5/93.
63. Position Paper, July 1993, p 6, 7.2.
64. Position Paper, July 1993, p 6, 7.3.
65. *The Need for SPR Constitutions*, p 4. Admittedly, the document describes this right as 'theoretical', arguing instead that regions could enjoy 'statehood within the parameters of a federation'.
66. 'Since 1972 the (IFP) has been advocating a federal system for South Africa, modelled after the experience of the United States', 'Position of the IFP', May 1993.
67. Ellman, 'Federalism Awry', p 171.
68. KwaZulu/Natal constitution, article 3.
69. IFP, 'Position Paper of the Inkatha Freedom Party, Submission to Technical Committee', May 1993, p 4.
70. IFP, 'Position Paper', May 1993, p 4.
71. Interview, IFP negotiator, 12/2/94.
72. Interview, IFP negotiator, 12/2/94.
73. *The Natal Witness*, 5/2/93.
74. IFP, 'Position Paper', July 1993, p 4, 5.3.
75. Interview, IFP negotiator, 12/2/94.
76. *Eastern Province Herald*, 28/5/93.
77. Friedman and Humphries, *Federalism and its Foes*, p 180.

78. *The Citizen*, 12/1/93.
79. *The Citizen*, 19/7/93.
80. Interview, IFP negotiator, 4/4/94.
81. See SC Jacobs and CP Mulder, 'Heads of Argument of The Conservative Party of South Africa to the Technical Committees', 18/5/93; CP Mulder, PWA Mulder and SC Jacobs, 'The Conservative Party of South Africa's Analysis of the Present South African Situation and Its Proposals for a Peaceful Resolution to This Question', Submission to Technical Committee on Constitutional Matters, 7/7/93.
82. This concession became explicit in October when the CP endorsed a manifesto rejecting racism. *Business Day*, 13/10/93.
83. AVU leader Andries Beyers said: 'There will be no forced removals or racial discrimination, and there will be equal voting rights for all.' *Sowetan*, 12/5/93.
84. Conversation with AVU negotiator, February 1993.
85. *The Citizen*, 26/5/93.
86. *The Citizen*, 4/2/93.
87. Conversation with AVU negotiator.
88. See comments by participants during the opening session. Minutes of meeting, 3/2/93.
89. Minutes of meeting, 3/2/93, pp 4-5.
90. Marinus Wiechers, interview, Pretoria, 12/4/94.
91. See *Regions in South Africa*, pp 13, 33, 36.
92. Notes of meetings generously provided by Colin Coleman, CBM secretariat.
93. ANC consultation notes, p 3.
94. *Business Day*, 23/3/94.
95. *Eastern Province Herald*, 23/5/93.
96. See its third report on constitutional principles, dated 27/5/93.
97. See pp 12-14 of the document.
98. *The Natal Witness*, 2/4/93.
99. *Beeld*, 25/6/94.
100. *The Star*, 23/11/93.
101. See 'The KwaZulu Government's Position Statement Delivered by Dr BS Ngubane to the Negotiating Council', 15/6/93, p 1. This phrase appears repeatedly in other IFP documents.
102. Interview, IFP negotiator, 12/2/94.
103. *Business Day*, 19/5/93.
104. *Business Day*, 1/11/93.
105. Johan Kruger of Potchefstroom University, in a document entitled 'German and South African Federalism compared', released by the Department of Constitutional Development, December 1993.
106. Interview, Johannesburg, April 1994.
107. *The Star*, 5/11/93.
108. See Democracy Trust, 'Information Broadsheet: Understanding the Negotiation Deadlock', undated.
109. MG Buthelezi, 'Remarks at a Business Briefing Meeting', Johannesburg, 21/3/94.
110. See R Meyer, in *Hansard*, 25/4/94, Column 16724.
111. Interview, IFP negotiator, 12/2/94.

112. Lawrence Schlemmer quoted the findings at a Human Sciences Research Council symposium, Pretoria, 2/2/94.