

# Public policy uncertainty, regime contests and divestment

## The case of South Africa

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### ABSTRACT

*Public policy uncertainty has become as destructive and inhibiting to developing political economies seeking entrance into the new, information-driven international political economy as uncivil contests between the state and society had been in the aftermath of decolonisation. The notion of a weak state persists as well as the doggedness of authoritarian urges in the guise of dispersed power politics beyond the distributive interests of the liberal-democratic experiments. This article reflects on the contest between two dominant, but contending regime preferences; the information-age-driven (market) political economy versus the distributive interests of systemic patronage. The latter might well infuse a degree of legitimacy in times of inadequate extraction, but could also be the reason for divesting in the economy and the policy uncertainty which precedes the low economic growth trajectories since 2009. The conclusion is that depending on which of these two regime preferences prevail over the other in the milieu of rapid transformation within the international (political and economic) regime South Africa's prospect for social stability can be mapped.*

### INTRODUCTION

The origins of public policy formulation can be formal as well as informal. The formal process is embedded in the constitutional and statutory jurisdiction of the institutional relationship between state and society while the informal process could be described as institutional as well as relational, but with the latter being operative beyond the *de jure* jurisdiction of



constitutional oversight and verification. Political outcomes or policy regimes are rarely (if ever) the product of unadulterated technocratic contestation (cost-benefit analysis) or even the result of an inclusive consensus. Mamdani (1996:37) suggests that policy regimes are often conceived in personal relations (systemic patronisation being one variant) or the result of (informal) contestation between dispersed authorities operative beyond the institutional realm of the state.

The *Constitution of the Republic of South Africa*, 1996 and the supportive legislation designed to facilitate the extractive, distributive and/or managerial praxis of the relationship between state and society is reflective of the institutional imperatives of accountability, oversight and decentralisation. It is the modernising trends within the South African political economy which not only juxtapose the institutional imperatives *vis-à-vis* the relational imperatives, but that may well emphasise the predatory attributes of the relational imperatives to be at the expense of good governance, the *greater good* interests of constitutional processes as well as the technocratic requirements of policy design which are aimed at maximising the balance within the cost-benefit-dichotomy.

According to Anthoni van Nieuwkerk (2014:12), the *National Development Plan* (NDP), which is not applied with bureaucratic vigor by either the majority party or the executive - as a road map for growth and development - in the way it was envisaged, demonstrates a sense of awareness of the destructiveness of systemic patronage in its recommendation that the Public Service's role is strengthened at the expense of the an encroaching executive and governing political party (NDP 2012:88). The NDP envisions an efficient and effectively managed political economy by 2030 and advocates a *strategic* separation between the executive and the public officials with the aim of embedding the ideals of a (more) technocratic master-narrative for good governance. The greatest impediment to service delivery and the consolidation of a constitutional (institutional) architecture remains the indistinctness between the respective *de jure* occupations of politicians and that of public officials (Macedo 1999:65).

If approval for the appointment of bureaucratic functionaries - in technocratic positions - needs to be filtered through the normative requirements of systemic patronage, as it currently inevitably is with the liberationist tissue binding the governing party to the state, the role of the state as representative of a constitutional regime might continually be compromised in favour of an informal (operative beyond the constitutional and statutory policy framework) distributive regime. The statutory requirement for the executive to approve the heads of government departments, including the police and the army, as well as that of Chapter 9 institutions and state-owned entities, becomes untenable in the context of an inseparable (liberationist) connective tissue between the state and the party. The *formal* and *informal* represent a dichotomy of contending policy regimes determining both the extractive and distributive policy outcomes/practices of the relationship between the state and society and perhaps even more so the relationship between the state and the economy.

## **THE THEORY – THE DICHOTOMY OF INCREMENTAL MODELS AND RATIONAL CHOICE**

Dye (1995:4) suggests that “public policy is whatever governments choose to do or not to do”. Such a definition not only relies heavily on David Easton's well-known depiction

of policy as reflecting the "... (authoritative) allocation of values ...", but also focuses primarily on the state as engineering policy unilaterally. Fox and Meyer (1995:107) apply a greater degree of specificity and define policy in terms of its institutional origins as the "authoritative statements made by legitimate public institutions about the way in which they propose to deal with policy problems". Anderson (1997:9) adds a dimension which could be construed as resonating with conceptualisations which reflect on the personalisation of authority when defining policy as "... a proposed course of action of a person, group, or government within a given environment providing obstacles and opportunities which the policy was proposed to utilise and overcome in an effort to reach a goal or realise an objective". Importantly, though, is that Anderson envisages policy to be the culmination of individual – or group interests operative in a multivariate system of either or both personal and technocratic relations.

In theoretical parlance this operational feature complies with a fusion between rational actor and incremental models. It assumes a complicated network of diverse interest configurations operative within a civil society feeding *needs* and *ideals* through bureaucratic or political actors with no alternative but to manage state-societal relations with the aim of benefitting the greater good. The incremental model of policy formulation, though, adopt a so-called *disjointed* architecture which Lindblom (1959:55) described as the science of bureaucrats *muddling through* policy designs with a limited understanding of the complexity of the interests they endeavour to accommodate or serve. Public policy is thus the culmination of various and contending exploratory experiences in the domain of governance.

However, similarly to democratic political culture, policy design - and the institutional architecture thereof - is embedded in a history or codified narrative (*cf.* Dalton and Eichenberg 1998). That does not imply that the rituals and practices of policy design have not been or will not be subject to change or transformation, it merely suggests that whatever variation there is will be subsequent to changing social, political and economic relations; or be resultant of the varying outcomes of contest and contestation between social or political agents (Keane 2009:xv).

The point made by McCormick (2004:323) that "... how public policies are made and implemented is often less a question of knowing the formal rules of government than of appreciating how power is informally manipulated among and within government institutions", probably holds sway in systems of opportunistic patronage as much as it is prevalent in the institutionalism of constitutional democracies. Theoretically, policy comes about as the (constitutionally prescribed) representative structures merge the interests of civil society with that of the state. In reality, it is also possible to describe policy as *elitist, bureaucratic, authoritarian and corporatist*.

William *et al.* (2015:33) address the question of whether the structure of public policies indeed affects patterns of political change. The question is, thus, under what conditions public policies - as a means of political management - will *produce politics*. Within the formal and institutional realm, well designed public policies are conceived in the statutory rituals of representation. This dynamics provide for a consolidated relational tissue between elites, interest groups and civil society. This is the operational scenario of established democracies with a codified history of civil state-societal relations.



## THE CASE OF SOUTH AFRICA – LIBERATIONISM AS AN OBSOLETE IDEOLOGY

In Africa and certainly also to a degree in South Africa, civil societies are typically dominated by urban elites presiding over largely uneducated, impoverished rural populations (Roniger 2004:45). The urban elite is heavily reliant on the efficiency of the market economy for purposes of resource and capital (taxes) extraction, but to consolidate the *legitimacy* of the political regime, the complex network of patron-client relationship have to be maintained at the expense of financial and economic prudence. A rapidly growing migrating and urbanising population becomes a dominant feature of poverty and underdevelopment along and around urban metropolises, culminating in unyielding demands for opportunities, employment and social services to relief the dire consequences of being left beyond the reach of the market, but also outside the patronage networks of rural living.

The liberationist-embedded democratic dispensation has a historical and genetic dependency on the predatory relational tissue between the extractive and distributive regimes of the weak state; a precondition for enhancing or consolidating the legitimacy of the urban elite. In this ambiguous policy domain the imperatives of accountability and oversight is defied or contested as a stigmatised, contending regime preference rooted in colonialism or the operational concept common to public contestation in South Africa, *white monopoly capital*.

There is virtually no evidence of resource-rich political economies which translate that dividend into broad prosperity. The starting point from which to examine this inconvenient phenomenon will be the ever-prevalent conflict between the relational and institutional configurations of power and authority. Relational patronage, argues Kawata (2006:33) is a common feature of most political economies, but if it is allowed to proliferate at the expense of institutionalism (oversight and verification), it not only leads to policy uncertainty, but is in conflict in an international political economy which rewards astute policy design and punishes weak states. The competitive dynamics of both national and international trade and political relations require policies which are contrary to unmerited preferential access.

Obsolete ideologies – a feature excessively interventionist as opposed to regulatory states - stifle growth and development in an era of information-economics. According to Bishop (2015), only approximately 22% of the South African labour market is unionised, which should be an indication that the unstable political relationships within the tri-partite alliance comes at an disproportionate price to a policy design aimed at enhancing South Africa's competitive edge in the global economy.

The natural resources-economy of South Africa ties it to global economies such as China and Russia in an unequal relationship (mutually) beneficial to elites with no obvious advantage for civil society beyond the distributive regime (embedded in preferential access) of the weak, African state (Kalu 2012:2). Policy design by a weak, patronage-prone state - under conditions of information-age economic and political contestation may well soon not only be frowned upon, but deliberately disconnected from being a reckoned agent in the international political economy through downgrades by international ratings agencies (Salmon 1987:66). Low levels of economic growth coupled with a state encroaching on the domain of both civil society and the economy through a plethora of complex networks of political patronage are - often referred to in South Africa as state capturing - obviously less

than ideal for the prudence or policy design which will address the trust deficit between the state (including the ruling party) and the economy (Gumede 2008:22). The operational architecture of a *trust deficit* is reflected in the indicators of (policy) uncertainty

## **PUBLIC POLICY FORMULATION – INFORMAL VIS-À-VIS INFORMAL AUTHORITY AND DISTRIBUTIVE REGIMES**

The provisions made by the *Constitution* for public participation in policy and legislative design could be considered a specific response to the authoritarian past of South Africa. The involvement of organised public interest occurs in virtually every sphere of the state's managerial reach, including the Chapter 9 institutions, which include the: Public Protector, South African Human Rights Commission, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Commission on Gender and Equality, Youth Commission, and the Electoral Commission. These institutions account to the National Assembly (NA) and recommendations about their heads or leadership are approved by the executive via the recommendations of the NA. It is generally understood, though, that the approval thereof is the prerogative of the President rather than that of Cabinet.

The informal, institutional origins of public policy (incremental policy designs) is merged with the formal architecture of the policy regime (assuming a rational choice theory) when policy proposals are presented to Cabinet committees for perusal. These committees should be functioning in cooperation with the Forum of South African Director-Generals (FOSAD). Cabinet committees are broadly tasked with the responsibilities to:

- review medium and long-term priorities for the identification of policies which require more substantive deliberation;
- enable cooperative and integrated government; and
- review capacities and systems for integrated planning, monitoring and evaluation (Gumede 2008:22).

The formal architecture of policy tracks through the provincial and local legislative architecture. The provincial legislature is governed by the *Constitution* and all provincial acts must comply with the limitations set by the *Constitution*. As with the national legislature, the provincial executive is accountable to the provincial legislature and in that respect, all legislative authorities in South Africa have an oversight function with regards to their institutional relationship with the executive. The oversight function is in specific reference to the implementation of policy and legislation. Perhaps the most distinctive feature of the legislative process is the constitutional obligation of legislatures to ensure public participation and involvement during the design phase of the process. Public involvement is considered during the debates in portfolio or *ad hoc* committees.

The vertical imposition of constitutional governance reaches to the local sphere - the state's managerial jurisdiction through municipalities with the legislative and executive authority vested in a municipal council. In line with federalist features of South Africa's *Constitution*, the municipal council has the right to exercise its jurisdiction and constitutional obligations without interference from the provincial or national governments. Municipal councils pass bylaws with the aim of administering the (local) managerial responsibilities of the state.



Considering the dictates of the *Constitution*, the intention of the writers of the master-narrative of state-societal relations seems to have been to entrench accountability, good governance and institutional capacity by designing a regime for policy decentralisation. How these intentions have since evolved might well be better understood in the context of the informalisation of both policy design and authority.

Outside of the formal domain of the state, a large number of formalised institutions and agencies are active in the process of policy design. Some are more dominant in the formal policy domain than others. The *National Economic and Labour Council* (Nedlac), for instance, represents the collective will and interest of labour, capital and the state with regard to a complex range of social and economic policies (Konstantinos 2009:139). Although the philosophy and justification for Nedlac is to find either a compromise or preferably a consensus regarding policies in the highly cantankerous domain of labour relations and economic policy, it often becomes a battlefield for contending regime preferences. The *Congress of South African Trade Unions* (Cosatu) - even though it is a formal member of the tri-partite alliance, for years - refuses to involve itself in any discussion about the implementation of the *National Development Plan* (Van Nieuwkerk 2014:12).

Keane (2009:xxvii) used the word *monitory democracy*, which suggests an *impending danger*, to describe institutions meant to protect the constitution or the political system from forces from within. He contends that since 1945 a post-Westminster practice took hold with watchdogs being established within political systems - in protection of constitutional principles - which fundamentally changed the political geography of democratic systems as they were known. The conflation between systemic patronage and representative institutions of democracy may well be considered a natural evolutionary evolution of a connective tissue binding, opportunistic but justifiable economic distributive practices with the need to eradicate political inequality. Political power or authority does not necessarily evolve into economic authority, and certainly not without radical institutional interventions or adjustments.

However, at the point of merger, (between systemic patronage and technocratic efficiency) the contest between agents of authority and/or change may escalate to less representation and in favour of (more) legitimacy. Representation, does not necessarily precede legitimacy; the preference in many if not most emerging democracies for (state) interventionism is a testimony to that phenomenon. The politics of *big men*, as Hyden (2006:169) calls it, is a metaphor for systemic patronage which sustains individuals and impoverished communities yearning for preferential access to authority and the state's resources. Systemic patronage, thus, contrary to the theories of many of its detractors, often provides a livelihood to whole communities and not only the small elite which admittedly creams off a disproportionate benefit of the resources allocated through informal means.

Jun ichi. (2004:88) makes the important point that patron-client relationships of exchange are not necessarily typical only of the strongmen of weak states, but as a means of distribution also appeal to elites in the United States of America and certainly similarly to dispersed authorities in Japan and Mexico. However, elites in those countries have to rely on a much wider support base to extract sufficient legitimacy from these relations of preferential access. To explain systemic patronage in South Africa as primarily an elite project might well deprive it of an important explanatory variable in the rationalisation of political legitimacy.

What could be argued is that policy design needs a degree of coherence which is lacking due to the executive's infatuation with liberationist antagonism towards dominant constituencies in the private economy, populist or communist rhetoric in an era of a competitive economic regime, an ideologically driven anti-Western bias and a mounting reliance of patronage as fundamental to affirming political legitimacy (Redl 2015:11). These concepts are reminiscent of cold war policies rather than of the modern, information-driven political economies of the *global village*. The ambiguity which emanates from a state at odds with the dominant trends within the international political economy converts into uncertainty; the most fundamental adversary to capital formation and growth. A simple axiom is that capital flows towards policy certainty even if it has to deal with the bureaucratic complications which may vary from country to country and it flows away from policy contradictions and uncertainty.

## QUANTIFYING POLICY UNCERTAINTY

Bishop (2015) describes policy uncertainty as follows:

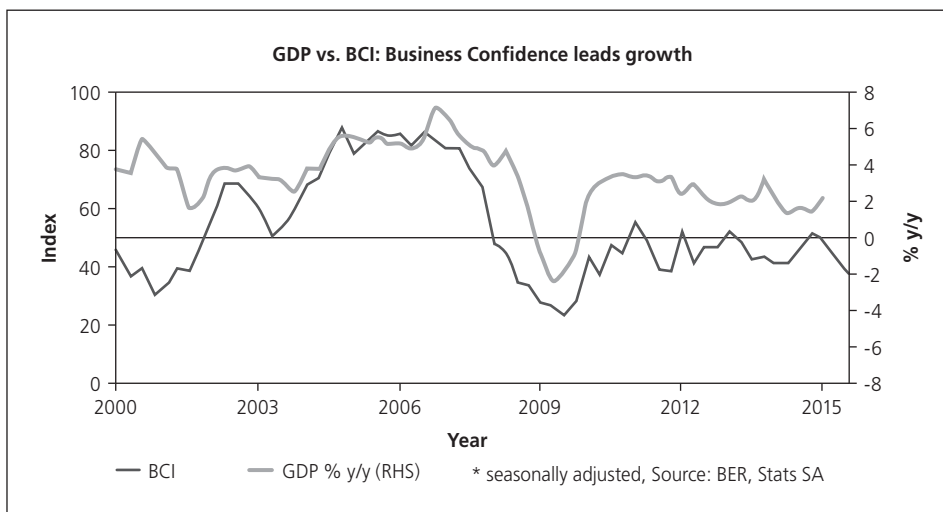
*South Africa's uncertain policy environment negatively impacts on business confidence, particularly policy proposals that threaten private sector property rights such as land reform, the **Mineral Rights Bill** and the **Expropriation Bill**. This is because there is typically a substantial financial outlay to acquire ownership of property rights, and any increased risk to the returns, or ownership of the property rights, tends to increase costs, and so decrease the confidence of business to invest, expand and employ (also see Kawate 2006). Ongoing proposals, changes and amendments to the labour laws add to the uncertain policy environment businesses face, negatively affecting sentiment and so economic growth.*

The fact is that South African politics is largely stable with no uncivil political challenge to the legitimacy of either democratically elected government or the state. The uncertainties which is typical of central and west Africa and which is likely to be advanced as reasons for capital scarcity or divestment in the national economy, are not present in the South African political economy. Uncertainties in sub-Saharan Africa and South Africa, with the exception of Zimbabwe, relate to either instabilities or contraction in the economies of its main trading partners in Asia and Europe or policy uncertainty within the domestic managerial domain.

Figure 1 is an illustration of the low growth trajectory of the South African economy in the aftermath of the international economic meltdown in 2009 and the even lower trajectory of the confidence that capital owners has shown in new state-designed policies pertaining to private ownership and economic growth. With business confidence in decline or suppressed, the consequences for capital investment, employment and economic growth are morbid. Corporate savings are still substantial and measured at R680 billion, which should be an indication of an investment, rather than a scarcity of investment capital. The rate of private sector investment is contracting for most of the post 2009 period. To statisticians, business confidence is a leading indicator either expansion or contraction of Gross Domestic Product (GDP). From the figure, it is obvious that the trajectory of growth in GDP dovetailed business confidence almost perfectly.



**Figure 1: Growth Domestic Product versus Business Confidence Index**



Source: Investec: 2 June 2015

When effective and efficient states intervene in the economy, it often leads to an increase in business confidence. When, however, a weak, patrimonial state seeks to involve itself in the economy in an effort to address issues of legitimacy and delivery, investors either withdraw from the economy or find alternative avenues for dividend extraction.

Redl (2015) constructed an index of economic uncertainty – based on a design by Dendy *et al.* (2013) – for the period 1990-2014, which is approximately the period since negotiations about democratic government started until the previous financial year (2014). The index is constituted of three indicators of uncertainty prevailing in the political economy:

- disagreement among professional forecasters about macroeconomic conditions;
- a count of international and local newspaper articles discussing economic uncertainty in South Africa, and
- mentions of uncertainty in the quarterly economic review of the South African Reserve Bank (SARB).

The inability of economists and political analysts to reach sufficient consensus about macro-economic conditions is particularly disturbing since the operational features of macro-economics and the contemporaneous political policies are likely to be spelled out in either the macro-political framework (currently the National Development Plan) or the annual (February of each year) budget speech of the Minister of Finance. Newspaper articles tend to contextualise or reflect on uncertainty in the broader political environment (Hassan 2013).

Following analysts, the media also reflect the responses of policy makers to contestation within the political economy. The SARB designs fiscal policy, to a measure, whereas the Treasury designs fiscal policy. International capital owners will again rely on international ratings agencies (such as Standard & Poor, Fitch or Moodys) to collate diverse policies in an index of *certainty versus uncertainty*. The argument pursued by Redl (2015), is that *uncertainty* is a leading indicator of economic recessions, regardless whether it is political or economic



uncertainty. Thus, *uncertainty* is a necessary, but not sufficient condition for an economic recession. Business confidence (see Figure 1) can be the result of various exogenous, but complicating variables. However, policy uncertainty is a natural indicator of low levels of business confidence.

## CONCLUSION

Systemic patronage might well be responsible not only for inhibiting growth in the economy, but also nourish the uncertainty which alienates credit ratings agencies and local as well as international investment capital. The tolerance in the international political economy for the justifications for preferential access to resources and authority is diminishing rapidly and post-colonial, paternalistic sentiments are also evaporating. The diminishing interest in South Africa as a prospect for direct foreign investment may well be as a consequence of the prevalence of contending regime preferences which manifests in policy uncertainty.

Even though the constitutional regime of South Africa assumes a *rational choice operational interface* between state and society, the liberationist prism through which the normative assumptions of justice and social order is filtered requires an incremental model for analysis of the social origins of policy principles and designs. As liberationism is conceptually embedded in an ideology of preferential justifications of (re)distribution, the rational choice dimensions of policy design is being diminished by subjective and often contending (opportunistic) interests operative in the informal political economy. This feature of state-societal relations provides for the social relations of patronage which precedes preferential distributive practices beyond the dictates of the constitution; also referred to as corruption. Liberationism might well provide the moral justifications for the informalisation of public policy, setting up at least two contending regime preferences in the policy realm of South Africa.

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