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THE CONSTITUTION AND GOVERNANCE - AT A CROSSROADS AGAIN? (A BUSINESS PERSPECTIVE)

To state the obvious, there are diverse, sometime conflicting, business interests. The interests of manufacturers seeking protection from imports and subsidies for exports differ from the wholesaler and retailer wanting to offer consumers an expanded product range at lower prices.

The interests of a street vendor or spaza shop differ from those of a formal retailer or of a supermarket. But in a wider sense they all share the same desire and need for a business-friendly climate created by Government. That might be trite and obvious to everyone who is economically literate, but is often overlooked by anti-business ideologues, activists, officials and politicians.

The more important point is that there is little or no difference between broadly defined business interests and other interests. Maximally favourable business conditions generally coincide with maximally favourable government, labour and consumer interests, creating conditions that favour the rich and also favour the poor. When small business prospers, big business prospers. Like the tide that raises all boats, when there is prosperity for some, there is generally prosperity for all.

This truth is clearly articulated in the oft quoted wisdom of President Abraham Lincoln: “you cannot help the poor by destroying the rich, you cannot strengthen the weak by weakening the strong, you cannot bring about prosperity by discouraging thrift. You cannot lift the wage earner up by pulling the wage payer down. You cannot further the brotherhood of man by inciting class hatred. You cannot build character and courage by taking away people’s initiative and independence. You cannot help people permanently by doing for them what they could and should do for themselves”.

Rhetoric to the effect that the rich get richer and the poor poorer, is just that, rhetoric. That is not to deny that all over the world there is concern about existing and growing inequality.

Most intelligent people recognise the problem - the difference is in how we plan to address it. Thomas Piketty - and this my view. In the real world, the individual living standards of virtually all people rise or fall in unison. The assumption of adversarial interests diverts us from mutually beneficial cooperation to mutually damaging conflict.



The question posed today is: “at the crossroads again”. Being at a crossroads is NOT currently a uniquely South African dilemma. Britain with Brexit, Europe with an ageing population and a migrant crisis, the apparent rise of populism across the Western World and the Gorilla in the room - Donald Trump in the White House.

This simply to emphasises that as South Africans we always have to evaluate our situation against the backdrop of what is happening in the world at large. A helpful source to understand the current world situation is the *Global Risk Report* of the World Economic Forum, which highlights five key challenges that the world now faces.

1. Rising income and wealth disparity. This points to the need for reviving economic growth but we may have passed the stage where this alone will remedy fractures in society: reforming market capitalism must also be added to the Agenda.
2. The societal trends of increasing polarisation and intensifying national sentiment, pose the second challenge, namely facing up to the importance of identity and community. Rapid changes of attitudes have led many people to feel left behind in their own countries.
3. Although anti-establishment politics tend to blame globalisation for deteriorating domestic job prospects, evidence suggests that managing technological change is a far more important challenge for labour markets.
4. To protect and strengthen our systems of Global co-operation. Examples are the increasing number of states seeking to withdraw from various international cooperation mechanisms. Creating a shift from an outward looking to a more inward looking stance. SA appears also to be joining this list.
5. Finally, over the recent past a cluster of environment related risks, such as extreme weather events and failure of climate change mitigation and adaptation, as well as water crises, have become a feature of the global risk landscape.

Regarding the generally negative, perhaps excessive, negative climate of opinion and comment in South Africa we should remind ourselves that there is also much to celebrate. The most obvious is our peaceful transition, followed by decades of relative peace and stability, with impressive economic growth during the first decade and continued albeit modest, growth subsequently. What is less obvious is impressive gains made in living standards for most black South Africans. What has been achieved is well documented in various sources, such as the Presidency’s Twenty Year Review, and extensive data published by StatsSA. Official sources tend to focus on what government has achieved in such areas as literacy, healthcare, social grants and services, housing and infrastructure. What has been achieved in the economy through free market processes is less well-known and in some senses more impressive and significant.



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Government sources mention the fact over four million mainly black households received RDP houses, but few people realise that today more than half of the buyers of freehold title houses are black South Africans. Most new companies are registered by black people. The biggest investor on the Stock Exchange (PIC) is owned by mostly black civil servants. Black people account for most new vehicle sales, most cellphone sales, most new medical scheme members, most new insurance contracts, and so forth. Despite HIV-AIDS, we have one of the world's highest rates of increase in life expectancy and even with lamentable serious problems in our education system, nearly all youth are achieving literacy.

It is true that we have one of the world's highest enduring unemployment rates; yet the black middle class has grown from less than one million in 1994, to six million; that is more than the entire white or coloured population. This has implications few seem to have considered, politically, economically and socially. The phenomenon manifests itself visibly in shopping centres and business environments. The majority black middle class people have achieved this status by themselves in the private sector.

The figures go on and on. Yet there is a surreal silence, even denial about them. What inspires the prevailing rhetoric appears to have more to do with problems within the ANC Alliance.

A common response is to call for "radical transformation", including erosion of constitutional protections against discrimination and of property rights. What is clear is that some of the policies being proposed will cause lasting harm to our economy and retard progress in all respects.

There are factually incorrect claims to the effect that "nothing has changed", that "whites still own everything", that there's a "slow pace of change", that there is "increasing inequality".

These are dangerous claims. Our government must ensure that its policies are formulated on the basis of facts, not emotive hype. We must build on and learn from our successes, rather than reverse successful pro-market policies.

Let me refer to but one example: according to research done by Intelledix, the value created by BEE transactions implemented by the Top 100 companies listed on the JSE was R317bn at 31 December 2014 - nett of all debt. This excludes other (non-top 100) listed companies, unlisted companies, large commercial farmers etc.

To put the number of R317bn in context - at 31 December the total market capitalisation of the Nigerian Stock Exchange was (\$62.5bn) R715bn (in December 2016 it was only half that). In other words, if the beneficiaries of SA's BEE deals in the Top 100 acted collectively in December 2014, they could have bought 44% of the Nigerian Stock Exchange listed companies. Pretty impressive if one considers that the GDP of Nigeria is slightly bigger than that of SA.



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To deal with our current problems we have, *inter alia*, the National Development Plan and our world-class Constitution. Both will serve us well if implemented and upheld respectively.

Our Constitution declares in its first section, that South Africa is founded on the “supremacy” of the Rule of Law. Unfortunately, old fashioned rule of law principles have been eroded. The most serious seems to me to be the erosion of the separation of powers principle. The Constitutional Court and jurists have given erudite justifications for this, but the effect of which is: the ominous conflation of legislative, executive and judicial powers in the executive branch of government. Not only is this a problem because it dilutes one of the essential checks and balances against real or suspected abuse of power, but because of the practical reason that the three branches are structured to be fit for purpose. When substantive laws are made by the Executive, few if any of the carefully crafted legislative checks and balances are implemented, such as public participation, public hearings, green papers, white papers, readings in two houses of Parliament, multi-party portfolio committees, constant media scrutiny and so forth.

Quasi-courts in the Executive, called ombuds, tribunals, boards, and even courts, they also by-pass crucial checks and balances, meant to ensure due process.

We need to restore and protect the idea that the legislature legislates, the executive executes and the judiciary adjudicates.

The Rule of Law simply means that rights and obligations should be derived from unambiguous laws rather than the exercise of administrative discretion. Care should be taken that the Rule of Law is not perverted to come to mean “the rule of lawyers”. It seems to me that too much discretionary power in the so-called “public interest” is being created. This not only generates uncertainty, but promotes opportunities and incentives for abuse, corruption and nepotism.

I believe that what promotes prosperity can no longer be seriously debated. The plain fact, apparent from all the empirical studies comparing economic systems, is that market economies out-perform non-market economies. Much fuss is made by anti-market fundamentalists that the recent financial crisis disproved the market hypothesis. It did nothing of the sort. Apart from the evidence that the crises in the USA (“subprime crisis”) and Europe (“sovereign debt crisis”) were caused or aggravated by preceding government policies. The fact remains that the world’s market economies are the strongest and richest economies. There is absolutely no reason to question the superiority of free or nearly free markets, unless you regard North Korea as a paradise.

Leading sources on the subject include the World Economic Forum’s “Competitiveness Index”. In essence, it defines market economies as more “competitive”. The countries towards the top of the index tend to outperform those towards the bottom. Then there is the Freedom House Index, which measures mainly civil liberty and democracy, but includes an economic component. It too shows that the market-oriented economies tend to outperform ones that are less so. As do a host of other studies.



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The government should not be flirting with notions of “a bigger role for government” and “market conduct” regulation, and should rather promote an appreciation within government for how and why competitive markets work.

Despite PR campaigns and repeated assurances by ministers and officials, we are faced with the prospect of draconian expropriation laws. One of the cornerstones of our Constitution and one of the preconditions for a prosperous economy is secure property rights. No one will invest optimally, especially not with a long-term view, if their future rights are uncertain and insecure.

We need to walk the talk.

One of our most serious scourges is unemployment. There are many who doubt the wisdom of introducing a minimum wage under these conditions. Many studies conclude that it will increase unemployment and differ only as to the degree. It seems obvious that making something more expensive and difficult will reduce demand. In principle, I do not object to the introduction of a minimal wage (example UK living wage). However, if there is to be a minimum wage as contemplated, the damage it might do can be off-set by high rates of economic growth. That can be achieved only by such market-friendly policies as radical red-tape reduction and the benefits of competitive outsourcing and policy certainty.

That we have a governance problem in some parts of government is no secret. Poor governance promotes and rewards inefficiency and corruption. It appears that the government does not accept that King Governance Principles should apply not only to state-owned enterprises, but to all of government.

Turning to the issue of inequality: the hysteria that followed the release of the Oxfam report at Davos is part of an ongoing vilification of commercially successful people. For some reason people who become very wealthy through sport, entertainment, or writing best-sellers are exempt from criticism. Criticism is directed only at people who make money by employing thousands of people and supplying society, especially the poor, with goods and services competitively. Nowhere have I seen an allegation that what any of the other “billionaires” did to become “wealthy” was unfair or unjust to anyone. It can validly be argued that all they did was make offers people were free to accept or reject.

The problem with the mounting “inequality” narrative in South Africa is that factually incorrect and extreme claims can lead to reckless policies to promote a supposedly more “equitable” and “just” distribution of wealth. There is a perverse obsession about the rich with little or no regard for what would happen to the poor if the rich are pulled down. Money is not idle. It is always invested. The question government must ask is who are better to be managing and investing money than those with a proven ability to earn it justly?

Even if the wealth distribution suggested by Oxfam and others were true, no case will have been made for the ideologically radical policies recommended. But the alleged facts are not proven. To reach their sensational conclusion, they have to make many dubious



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assumptions. The mere fact that the few who supposedly own too much keep changing should get them to ponder the fluid and fickle nature of wealth. Proving that there is no such group as “the rich”.

I am not suggesting that policies to alleviate poverty are not needed - they certainly are - but they should at the very least be evidence-based and economically sound. The harsh truth is that poverty is the problem, whereas the narrative implies that the problem is wealth.

Let us also consider the question of race. Whether there really is growing racism “on the ground” or whether the perception is driven by people with racial agendas is unclear to me. What I do know is that it is very ugly. The degree of racial harmony we achieved is what matters. It would be tragic to lose it. References to “white monopoly capital”, an undefined term, are accompanied by real or implied suggestions that it should be seized and redistributed.

All sorts of numbers float around as if someone somewhere researched and verified them. Whites supposedly own 80% of “the land”, 94% of the stock exchange, all the banks and all the mines, etc. etc.

Most of these numbers bandied about, are malicious and racially charged disinformation. “The land” is never defined. Does it include all land including state land, commercial land, residential land, farm land, traditional land and so on? Is the supposed percentage by area, number of properties or, what matters, value?

We are also never told what is meant by stock market “ownership”. Does it refer only to personally held shares? What about foreign ownership, and institutions (many of which are predominantly black-owned). Where do institutions like the IDC and the PIC fit in?

For example: it is, alas wishful thinking that politicians often will place the interests of our country above pure party political interests. Yet, in spite thereof there are so many aspects of our national life on which South Africans can agree without getting into ideological stand-offs.

I agree with Julius Malema when he says that what white people do not seem to understand is that Black South Africans also want to be owners. This is indeed an achievable ideal for instance, FMF initiative. In this regard, it can also be noted that according to the Institute of Race Relations in the 300 years since the arrival of Jan van Riebeeck up to 2001 we built six million formal housing units in SA. In the decade thereafter we built another six million. These are two examples of how we can intelligently address one of the many problems resulting from our unfortunate past.

In conclusion, as South Africans, in these turbulent times, we should remember firstly, in the words of Adlai Stevenson, that the fearful are never free. Secondly, that we have every reason to continue to rely, in Lincoln’s words, on: “the better angels of our nature”, and



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thirdly, Lincoln's guidance: "a majority held in restraint by constitutional checks and limitations and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people".