

S O L I D A R I T Y

MEANINGFUL PARTICIPATION OF POLITICAL MINORITIES

REVISED SUBMISSION TO WORKING GROUP 2

I want to begin my submission by making a few preliminary remarks.

Firstly: So that our position is understood very clearly at the outset, I wish to state that we draw a clear distinction between minority protection and minority inclusion. From the time of our formation in 1984 the party's policy called for minority protection. About two years ago we abandoned the concept in favour of minority inclusion. This was a fundamental change. Minority protection saw us as an ethnic community. Minority inclusion sees us as part of larger political groupings, be they majorities or minorities. Minority protection is needed by weak groups such as the Bushmen of South Africa, the Indians in Canada and America, the Aborigines in Australia. Such protection is of necessity afforded by statutory definition on an ethnic basis. We reject ethnic minority protection.

Secondly: What then do we mean by minority inclusion? In terms of our definition, the largest and smallest opposition parties in Parliament are all minority parties. We understand minorities in the same context as we understand majorities, in the ordinary pluralistic democratic sense of political parties in multiparty systems promoting various interests in society.

Thirdly: We do not see the formation of minorities and majorities in dichotomous terms which result in absolutising minorities against majorities. They are not to be mutually exclusive entities. Minorities should not and cannot exist at the expense of majorities. They must relate in complementary terms rather than in contradictory or antagonistic terms. In the clearest terms we speak of minorities within majorities, they are a part of the whole, not apart from the rest.

Fourthly: Our case for minority inclusion is based on democratic principles. We will argue that where minority parties have been excluded in winner-take-all domination models, they have been excluded contrary to democratic principles. Those that argue for exclusion then also do so contrary to democratic principles.

Fifthly: We state that in view of South African society being stratified both vertically along ethnic, linguistic and cultural lines and horizontally along ideological lines, it is of fundamental importance to ensure that we re-examine the democratic short-cuts which other societies less stratified than ours have taken in relation to their particular circumstances, so that we avoid short-circuits in our own model in the future.

Sixthly: We see democracy based on the fundamental normative principle that government must be based on the consent of all the governed. Consent is crucial. However, since total unanimity or consensus is impractical, a dilution of the concept becomes necessary. Such dilution is necessary only to the extent of not rendering government ineffective - not more.

The greater the consensus, the greater the level of democracy, the lesser the effectiveness of government. Conversely, the greater the effectiveness of government, the lesser the consensus, the lesser the level of democracy. We are essentially faced with a choice of paradigms - Consensual versus Effective. Consociational models tend to emphasise too much of the former whilst Westminster models tend to emphasise too much of the latter.

The issue for solving before us is to find an optimal balance between these paradigms. We will attempt to trace that balance.

SUBMISSION

Our submission is made on the premise that South African society is sufficiently stratified socially and culturally to be classified as a plural society in constitutional terms.

It is a well known constitutional maxim that for constitutions to endure, they must relate to and reflect the social conditions of the society in which they prevail. For if they do not, they ultimately tend to subvert the constitution itself or defeat its objectives, an end none of us assembled here would desire.

Both President Mugabe of Zimbabwe and former President Kaunda of Zambia have strongly supported the concept of unipartism or "one-party" states on the grounds that where societies are ethnically stratified, elections are characterised by a destructive resurgence of tribalism. Dr Kaunda in fact drew a distinction between vertical stratification characterised by tribal and religious cleavages and horizontal stratification

characterised by ideological divisions. He argued that in societies such as Zambia where there was a low level of industrialisation, vertical stratification took precedence over horizontal stratification and engendered tribalism in the electoral process. In such situations there was a need to create social instruments which benefit the units they represented. Political democracy could not be seen in isolation from economic democracy if independence was not to mean a mere "change of the guard".

Therefore, before venturing on a new constitutional path, he advised South Africans to agree on a common definition of the prevailing situation as seen presently from different perspectives and ideologies.

Whilst we may not agree with the idea of unipartism because it is essentially undemocratic in that it restricts free choice, we would do well to heed the motivation for such a remedy by an unbiased elder statesman.

One of the prime objectives of this Convention for a Democratic South Africa is to produce a system of groundrules, or principles relating to these, regulating political conduct and activity which are just and fair to South African society as a whole. In other words, to frame a fair set of rules for the game. It is therefore of fundamental importance that, having found a common definition of the prevailing situation, there be broad agreement amongst players about the basic rules of the game. If the basic groundrules do not enjoy the support across the spectrum of the vertical and horizontal stratification that Dr Kaunda spoke of, our efforts will be in vain.

It is also common cause that the standard against which we measure such basic rules must be democracy. Our difficulties lie in the fact that democracy is not a firm and fixed standard, it is characterised by several species and variations. The arguments each party proffers will no doubt emphasise the particular brand we have empathy with.

The earlier principle in many political systems identified democracy with decisions reached unanimously. Its contemporary justification in the liberal democracies tends towards a dilution of the principle in favour of pragmatism. If it is not possible to achieve unanimity of political opinion, (the optimal situation) then for convenience and practical necessity the will of the bare majority should prevail. This obviously derogates from the normative principle of democracy that government rests on the consent of all the governed. This derogation is justified on the need in practice for effective government. The normative principle in fact challenges the conventional notion which simplistically

equates democracy with majority rule. Majority rule does not equal democracy, it is merely one form of dilution of the normative principle. Democracy is more than just majority rule.

The relationship between majority rule and democracy is explained by W A Lewis in terms of a primary and a secondary rule. Democracy is thus said to have both a 'primary rule' - that those affected by political decisions should have a chance of participating directly or indirectly in their making; and a 'secondary rule' - that the will of the majority should prevail.

Since absolute democracy implies the consent of all the governed, majoritarianism is thus a practical formulation of relative democracy. Both the primary rule (indirect participation since direct participation is also impractical) and the secondary rule are in fact derogations from absolute democracy. These derogations are justified on the grounds that they circumvent democracy from remaining a utopian ideal.

Within relative democracy itself, however, majoritarianism does not have a single or fixed standard of measure. Majoritarianism is itself characterised by various standards, such as overall majority, absolute majority, relative majority, simple majority, qualified majority and concurrent majority.

TYPES OF MAJORITIES

- Overall majority - 50% + 1 of those voting in an election. (sometimes not possible to attain when more than 2 candidates).
- absolute majority - same as above 50% + 1 except that percentage usually calculated in terms of those entitled to vote as apposed to those actually voting.
- relative majority - plurality of votes (where more than 2 candidates a relative majority could constitute an overall minority).
- simple majority - 50% + 1 (as against a qualified majority).
- qualified majority - two thirds of three quarter majority.
- concurrent majorities - majorities within specified sub-groups or even unanimity.

MAJORITY DECISIONS

Rousseau differentiated between the majorities necessary for 'grave and important' matters (near unanimity) and matters requiring an instant decision (a majority of one vote). In the context of the above analysis majority rule, important as it is, is not necessarily democracy, but a practical mechanism to give effect to the norm that government should be based on the consent of those governed. Nor does majority rule necessarily imply correct or good rule. It is merely a practical form of consent. The terms 'practical' and

'consent' are therefore crucial in understanding democracy. Mahatma Gandhi's perception of democracy was therefore incorrect when he said "Democracy means majority rule". On this assumption he then expressed criticism of unqualified support for the notion of democracy by stating: "In matters of conscience the law of majority has no place it is slavery to be amenable to the majority no matter what its decisions are". What concerned him, however, was the capacity for the abuse of power within relative democracy, in what de Tocqueville regards as the 'tyranny of the majority'. There is therefore clearly a need to limit the unbridled consequences of relative democracy when such democracy impinges upon the rights of those whose consent is, for practical reasons, absent in terms of relative democracy. It is that minority that we refer to when we speak of political minorities - the minority whose consent is absent for practical reasons.

We therefore deduce that for good government in the new South Africa, it must:

- (a) be based on consent, and
- (b) be effective, and
- (c) must not lead to an abuse of power

Within these parameters, it is our task to find a suitable model that will serve our country's democratic needs.

(a) Consent

In homogenous societies this criterion presents no difficulty in terms of relative democracy so much so that those governed consent to the groundrules generally being based on the concept of relative majority in determining representativity.

This is so because if the elected representatives do not measure up to the standards of the voters, they can change such representatives by commonly accepted rules. The straight-forward Westminster model is therefore successful in countries where society as a whole accepts the ordinary majoritarian concept as part of its constitutional groundrules.

In heterogenous, and particularly deeply divided societies, the ordinary majoritarian concept is not accepted without insistence on a wider spectrum of consent because of the potential of candidates being able to exploit group loyalty support rather than value based support. The reward for such loyalty is reciprocated to the group rather than the constituency. A vicious circle of exclusion ensues. The consent in this kind of competition then becomes limited to being that of a group or component of society rather than a general consent. The normative principle of democracy is violated with regard to those who are locked outside of the group and whose consent is in essence irrelevant. The result is an abuse of power to those whose consent is irrelevant. In order to overcome this problem, constitutionalists sought to find an answer in segmentalising consent, in other words, in

the concept of concurrent majorities, or consent of the majority within groups. This form of democracy, known as consociation, however, impinged on the criterion of effective

government as a result of the failure of the group components to agree on decisions often leading to paralysis and a breakdown of government. Thus far a balance between the two seemingly conflicting concepts of consent and effectiveness has not been found in consociational democracy, hence its failure wherever it has been applied. Furthermore, the side-effects of this system are sometimes worse than the remedy - when sub-cleavages begin to rear their ugly heads. Donald Horowitz in "Conflict in Ethnic Societies" gives ample illustration of sub-cleavage emphasis in componential democratic competition. We had similar experiences in the tricameral situation. Segmental voter cores are therefore equally a recipe for conflict.

In the South African context we will therefore have to reject consociation and contend with a workable majoritarian mechanism, concentrating on improving on its deficiencies when applied to heterogenous societies. It might do no harm to adapt it to our circumstances as in Mauritius in an effort to achieve as broad a consent as possible.

(b) Effective

Ineffective government is in effect no government. And democracy is about government. Therefore no government means no democracy but chaos and instability. So government has to be effective. But effective does not mean exclusive, a distinction that often appears blurred.

The argument for exclusivity, that only uniparty executives are effective is, however, based on a false premise. The American Cabinet, for instance, is

(a) nominated by the President, and

(b) is not party based

has not rendered that government impotent or ineffective. The Swiss cabinet is a multiparty cabinet by convention. The cabinet of Namibia is also a multiparty cabinet, not by constitution or convention but on the concept of "inherent goodwill". Often, though not always, the "effective" argument is used to conceal the "why should my party be denied the spoils of victory" motive. The Westminster system has, within the context of its own social conditions, devised the rules of exclusive executives and these enjoy the consent of that society as being fair. But it can hardly be considered as fair rule by those in plural societies who perceive the possibility of, let alone the fact of, permanent exclusion or token inclusion. (Joshua Nkomo's inclusion in, then exclusion from and finally inclusion in Mugabe's cabinet). Without meaning prejudice to those past incumbents of office, one can count the number of token inclusions of English - speaking cabinet ministers under previous National Party governments.

Dr Nelson Mandela recently extolled the virtues of ANC thinking when he stated that this organisation had many years ago recognised the deficiency of domination in such models and had tempered this by introducing the concept of proportional representation into its policies. His statement was made in the context of minorities. Precisely. What remains is to give full import to his organisation's assurance in this regard, not to qualify its effects.

It is our submission that the acceptance of the principle of proportional representation implies representation not only to a primary office but also to secondary or consequent office that flows from an electoral process. Such would be the natural and logical consequence of a consistent and non-discriminatory application of the principle. There must be equality not only in the procedure but also in the result. One cannot win a motor car in a competition without the right to its use. An exception, if it has to be made, may only be made on the grounds that application of the benefits makes the functioning of the democracy impossible or at least ineffective. There is no evidence to suggest that such in fact is the consequence in such a case.

The argument for proportional inclusivity in fact supports the notion that democracy itself is thereby more functional and also acceptable to a wider majority of the people, lending emphasis to the principle of being based on the consent of the people.

There is no inviolable democratic injunction which decrees that a party gaining a simple majority (not the consent of all) must have the sole monopoly of access to executive power and thereby the control of various ancillary institutions.

In fact the main argument against exclusion is that it violates the primary rule of democracy, namely that those affected by political decisions should have a chance of participating directly or indirectly in their making.

And since we are seated here to promote democracy, not one of us would want to derogate from its principles in pursuit of exclusive decision-making power.

Once the premise of proportionality is accepted, the onus of establishing good cause for its limitation in any regard rests on those who seek such limitation. They would have to demonstrate:

- (a) that the exclusion of elected public representatives from the forum of executive decision-making is more democratic than their right to inclusion, alternatively
- (b) that by their inclusion government becomes ineffective or the democratic process becomes impractical

Those that accept the principle of inclusivity but argue that it should not be based on the criterion of proportionality but by the vague and ad hoc concept of "inherent goodwill" should demonstrate why the will of a party should supercede the will of elected representatives, resulting in democratic distortions of the proportionality principle as in Namibia.

NAMIBIA

Members of National Assembly

Swapo	41
DTA	20
United Democratic Front (UDF)	5
Action Christian National (ACN)	3
National Patriotic Front (NPF)	1
Namibia National Front (NNF)	1
Federal Convention of Namibia (FCN)	1
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Members of opposition parties in Cabinet

UDF	2
NNF	1
NPF	1

The DTA was offered posts in Cabinet but declined the offers because they felt that this would compromise their status as opposition. The ACN and FCN were not offered posts.

The argument that inclusive executives result in impotent or no opposition in the legislature is at most hypothetical and at worst a tortuous attempt at redefining democracy to include the concept of "opposition" as being a material element of democracy. A case could be made to support the converse.

In our view the claim that public representatives will oppose bad, inefficient or corrupt government only if they are totally excluded from having representatives in executives is to make a sweeping generalised commentary on human behaviour that is not premised on any sound known principle.

To the contrary, it could be argued that multiparty cabinets could actually be a constraint on illegitimate government action - the opposition watchdogs are in the secret sanctuary itself. Uniparty executives could, and often do, act in their own political interest at the expense of the national interest.

What is suggested by proportional inclusivity is not any special privilege but the right to be in the executive "as of right". Since no consociational type of vetoes are suggested, there is no impingement on the will of the majority nor on the principle of effectiveness of government. What is challenged is the concept of exclusivity resulting in domination, a principle deficiency in Westminster which even the president of the ANC concedes has to be remedied. The IFP already acknowledged the principle in its support of the Kwa Natal Indaba proposals of multiparty executives.

The assumption is made that proportional representation taken to its logical conclusion amounts to enforced coalition. Coalitions by their nature involve trade-offs and bargaining often resulting in a compromise of policy in return for a share of government. None of these elements are present in proportional inclusivity, hence the assumption is patently incorrect. A Communist Party in opposition, for example, in terms of inclusivity, under a National Party government:

- (a) is not obliged, but has the right, to be in the Cabinet,
- (b) does not have to sacrifice any of its policies or principles but may nonetheless make its input in the national interest, and
- (c) could have the right of simple dissent.

In addition the free mandate system (freedom to vote according to conscience) would better serve to loosen the linkage of executives to the rigid caucus system of Westminster in terms of which criticism is reserved within the secret caucus chamber and not the open Parliamentary forum.

(c) Government must not lead to an abuse of Power

Inherent in democracy is anti-democracy. Hitler used the democratic process to destroy democracy. That is an extreme example. But the maxim that power corrupts and absolute power corrupts absolutely is substantially true in most systems and most societies. Democracies are therefore also characterised by features which limit the exercise of power even to the extent that they conditionally limit the popular will. Another derogation from the concept of absolute democracy justified on the grounds of its own protection.

Various constitutional devices are employed to limit the scope of majority rule in order to curtail its potential for abuse, often referred to, quite inappropriately, as constitutionalism. A constitutional democracy is based on division, diffusion, limitation and sharing of authority, avoiding concentrations and monopolies in institutions of state.

Some of the techniques traditionally adopted are:

- *Bicameralism
- *Separation of powers
- *Checks and balances
- *federal/regional division of competence
- *Proportional electoral systems
- *Qualified majorities in deliberative bodies
- *Constitutional rigidity
- *Justiciable bill of rights
- *Judicial review
- *Free mandate system
- *Multi-party standing committees of Parliament
- *Legislative review

Devices adopted by convention are inclusive executives and consensus orientated sub-institutions.

A further technique we suggest revolves around the symbol of a state's unity, namely the Head of State. This office represents the supreme symbol of power and therefore a President who could stand for direct elections with up to five running mates as Vice Presidents (on a free choice basis) could serve importantly to address the diversity of our country. It furthers the separation of powers concept by rendering executive decision-making independent of the Party Caucus. An executive responsible to a different constituency is a fundamental principle in the concept of the separation of powers.

Powersharing

We have confined ourselves to ordinary principles of democracy in order to demonstrate that no extraordinary or undemocratic procedures are necessary for the meaningful participation of minorities. All that is required is that full and logical effect be given to existing and known principles of constitutionalism. In this regard we have expressed criticism of that point of view which acknowledges the democratic deficiencies of Westminster, recommends its procedural remedy but falls short of accepting its consequential implications. Such is the case with regard to those who, despite accepting constitutionalism, nevertheless continue their bias in favour of Westminster in their proposals.

Others might believe that additional or extraordinary measures are necessary in order to secure meaningful participation of minorities. We do not share that view. We believe that participatory power-sharing inherent in constitutionalism is sufficient. Whilst consociational power-sharing may be of the stronger variety, it makes too much of an inroad into the ability of a majority to govern effectively. On those grounds it cannot be justified.

MINORITIES

Thus far we have discussed democracy, its relationship to the concepts of participation in decision-making and the rule of majority, the role and limitation of the concept of consent (the majoritarian type being preferable to the consociational type even in heterogenous societies), the need for government to be effective and the techniques preventing the abuse of power, including the principle of proportionality which also remedies a deficiency in majoritarian models, (where for example a minority government could take power as happened in 1948 in the 'whites-only democracy' when the National Party assumed power although it had less votes than the United Party).

We have shown that selectively abandoning proportional representation in some institutions of government tends to perpetuate the deficiencies sought to be remedied in the first place.

We now wish to touch, briefly on the relationship between participatory powersharing (inherent in constitutionalism) and minorities.

Problems in plural societies may be addressed in one of five ways:

1. Assimilation
2. Consociation
3. Partition
4. Mass emigration
5. Genocide.

Assimilation

Political assimilation must be an evolutionary and not a coercive process in order to ensure its ultimate success. Majoritarian models that adopt procedures for evolutionary or free will assimilation must also place additional emphasis on the concepts of national unity, governments of reconciliation, loyalty to, and the stability of, the state.

Coercive assimilation or the fear thereof ultimately threatens the integrity of the state and encourages separation or secession.

In this context we believe the concept of minority inclusion counters the negative effects of coercive assimilation. But in order to do so, the levels of majoritarianism are balanced with the progress of assimilation at any given point in time.

South Africa is at the moment, for historical reasons of coercive apartheid, in many respects indeed a divided society.

Many do not even want to play the game, let alone agree a common framework of rules. A constitution at this juncture will therefore have to take note of these conditions and temper the levels of majoritarianism by democratic means in order to achieve a successful, united country in the future. Power-sharing that is not inconsistent with democracy will have to be included in constitutional form to maintain a loyalty to and the unity, security and stability of, the state.

Failure to do so will result in an inevitable reaction toward secessionist tendencies with its concomitant instability. Limited sharing of power in a stable and growing state is infinitely better than full power in an unstable and impoverished state.

The rationale for the adoption of such power-sharing measures is to institute factual equality between members of minority groups and other individuals thus ultimately ensuring full rights to all citizens.

Adversarial and competitive democracies work adequately in homogenous societies with a long culture of political assimilation. These systems are characterised as majoritarian models. In our view they do not function adequately in divided societies. The classic current example of this phenomenon is Sri Lanka.

The challenge before us is to find a system of government based on the consent and the will of the people, majorities and minorities included. This can be achieved under a system of government that is accommodative, cooperative and deliberative. Such systems invariably involve some form of power-sharing.

The lesson for us from failed systems is to progress from the known to the unknown, from reconciliation towards competition rather than the other way around.

Many who recognise the problems of divided societies are nonetheless averse to adopting constitutional mechanisms to deal with them. They rely on convention and the mechanisms of the party system. This approach negates the condition for successful constitutions, namely that constitutions must reflect the social conditions in a given society. To seek alternatives outside of constitutionalism might be tantamount to expressing a lack of faith in the capacity of constitutionalism to deal with conflict potential in society.

It is tantamount to adopting parallel sets of rules, one an agreed set and another a unilateral set based on the theory of inherent goodwill, one that is enforceable and the other not. This type of approach veers us more towards unipartism rather than multipartism. The former can hardly be said to be more democratic than the latter.

We are not averse to alternative sets of rules if this route has to be adopted, provided that there is potential within the enforceable set to "shout foul" and to be able to remedy the breach when it takes place.

Since segmental voter loyalty is generally incompatible with the democratic objective of a fluid alternation of government from time to time resulting in permanent majorities and permanent minorities, a balance mechanism is necessary. We suggest participatory power-sharing as the mechanism that compensates for the rigidity of segmental voter loyalty which could preclude a fluid state of political mobilisation.

Partition, on the other hand, is in effect an expression of no confidence even in power-sharing as a mechanism that can reconcile social diversity in common political terms.

Conclusion

It must be acknowledged that we can draw on international analogy only to a point since no country in the world has found the pragmatic balance. We can take confidence from the fact that no country is concentrating its efforts so focally as we in South Africa are towards finding alternatives.

If we could identify an existing successful model elsewhere, then there would be no challenge. The challenge therefore

really lies in finding innovative approaches. We must draw from the piecemeal experiences of the world but not look elsewhere for a complete model if only for the reason that the world, of which we are a microcosm, is looking at us to provide alternatives.

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