

## THE EXECUTIVE IN A SOUTH AFRICAN CONSTITUTION

### Introduction

It has been clear for some time that one of the main concerns of the National Party is that the negotiated introduction of a non-racial democracy should not lead to a loss of its control over executive decision making. This explains its continued interest in consociational theory despite having abandoned the group concept which originally provided the rationale for consociational constitution making in National Party thinking.

It is clear also that their *constitutional engineers* are familiar with and are drawing eclectically upon a considerable body of mainly conservative Political Science literature. Some of the more important contributors to this body of literature included Arendt Lijphart, Donald Horowitz, Jürg Steiner, Robert Dahl, Juan Linz and Arendt Lipset.

The strength of this literature is that it focuses attention on the relationship between *institutional design and transition*, and the role of political *leadership*. *Its weakness is that its central concern is with stability rather than change*. Three forms of executive government are debated in this literature; viz *presidential, parliamentary and consociational forms of executive authority*.

## The Perils of Presidentialism and the Virtues of Parliamentarism

The US and France have presidential systems, in which the Presidency is independent of Parliament. The President may be directly or indirectly elected.

Juan Linz argues that presidentialism introduces an undesirable element of 'winner takes all politics' into societies that need conciliation mechanisms instead.

Conflict is promoted in Linz's view by the separation of *executive and legislative* powers characteristic of Presidential systems. The fixed term of a separately elected President makes for rigidity between elections and leads to deadlocks between these two branches of government.

Donald Horowitz in response argues that Parliamentary Systems which make executives dependant upon the continued support of the legislature, will frequently produce *weak unstable governments* and that the defects in Presidentialism identified by Linz can be overcome by an electoral system which ensures that the president has broadly based support.

*The Nationalists have apparently rejected both Presidentialism and Parliamentarism because neither system, following a non-racial election guarantees them access to the Executive.*

He recommends that a president be elected by the single transferrable vote system which will probably allow for the election of a second choice, 'moderate' President in South Africa (De Klerk).

### Power Sharing

Consociationalists argue that the 'Westminster Parliamentary System' is inappropriate in deeply divided societies because it produces 'winners' and 'losers'. They therefore advocate *entrenched* coalition government as opposed to the government versus opposition pattern characteristic of competitive democracies.

### Consociationalism and Ethnic Minorities

The rationale for applying consociational theory to South Africa has always been that in a deeply divided society such as South Africa, a non majoritarian form of decision making is necessary to accommodate *ethnic* minorities. *This* rationale has clearly been abandoned or at least can no longer be sustained. Their approach is now based on mandatory sharing of executive authority by *political* parties. It is important to identify this shift publically because it is much more difficult to justify mandatory power sharing on *this* basis. It is not at all clear on what basis they seek to justify their view that *political parties* competing for electoral support should be guaranteed a share of executive authority.

### Executive Government and Party Systems

(a) Consociationalists argue that in deeply divided (segmented) societies, a government versus opposition pattern characteristic of competitive democracies operates as a principle of exclusion. Minorities may be *permanently* excluded from government. Of course, this may be the case where the most politically salient line of cleavage are ascriptive and where *political party and segmental* cleavages overlap. This is clearly not the way the party system in South Africa is developing. Both major parties are classic *aggregating parties*, already representing a broad coalition of interests. The National Party itself is in the process of diversifying its constituency. Under these conditions, it is not at all unlikely that political parties *will alternate* in power.

Don't treat  
ETHNIC MINORITIES  
+ POLITICAL  
MINORITIES  
in same way.

(b) One of the characteristics of the transition currently under way in South Africa is that social interests and party systems have not yet crystallised. Under these conditions, it is arguable that *shifting* coalitions characteristic of competitive democracies are more likely to achieve a stable, legitimate outcomes, than Grand Coalitions. Under conditions of rapid change, mandatory power sharing would in fact exclude new, emerging political forces.

- (c) The real dangers of the National Party's proposals become clear when one examines them in the context of wider political processes. The processes of *consolidation* occurring on the left, will probably not add much to our electoral strength.

In any case, it is clear that the only party of the left likely to win a place on the collegial executive is the ANC. On the other hand, 'the centre right' coalition is much more likely to take the form of an *alliance of parties* representing distinct constituencies. In effect, therefore, parties losing the elections are likely under the NAT formula to control the executive for four fifths or two thirds of the executive's fixed term.

### **Mandatory Power Sharing versus Voluntary Pacting**

Even if it is conceded that some form of pacting is necessary in the process of negotiating a new constitution, it does not follow that the best way to achieve this is by constitutional gerrymandering. Mandatory power sharing can lead to immobilism, lack of popular responsiveness and policy incoherence. Jonathan Hartlyn's comments on the Colombian experience are worth noting: "...the danger of immobilism, if elites cannot reach agreements because of party or inter-party differences. The difficulties many democratic regimes find in establishing working majorities for policy purposes and managing executive legislative regulations can be considerably magnified in consociational cases such as Colombia when the need for inter-party support or a two third congressional majority are built into a prior agreement. Support could be held

back due to intractable policy differences or for narrow partisan reasons, resulting in either case in immobilism. Another possibility is policy incoherence as the regime is continually forced to change policies as different groups successfully pressure for measures that further their interests or prevent the implementation of policies they believe oppose them'.

It is therefore strongly arguable that constitutionally entrenched power sharing could in fact become a source of instability.

### **Consociationalism and Democracy**

The relationship between consociationalism and democracy is not as unproblematic as the concept *consociational* democracy suggests. Even if we define democracy in its most *restricted* sense, in purely procedural terms, as the *free choice of governors by the governed*, consociationalism does not qualify because it violates the requirement of *competition*. Secondly, consociationalism is based on a model of politics which excludes mass participation. It assumes a degree of independence of political elites 'from the masses' which they do not have and ought not to have.

### **Consociationalism and Socio-Economic Change**

Consociationalism is based on a static conception of the country's social structure. As Sam Nolutschungu has pointed out, 'the great weakness of consociational theory is that it is not developmental : it disregards the question of economic difference and structure in the process of large scale social change and it is therefore unable to deal

with the nature of the political demands and configurations of alignments that might, as a matter of fact, and as of right, be appropriate to different developmental situations.

### **Conditions favourable to Consociationalism**

Jurg Steiner a prominent theorist of consociational decision making in Europe has identified conditions which are necessary to facilitate consociational decision making. He suggests that there should preferably be more than two 'segments' of more or less equal size and that the overall load of unresolved socio-economic problems in the country should not be very great. It is not at all clear therefore that South Africa, where the impoverished majority is about to be enfranchised, provides the best conditions for consociational experiment.

When the National Party introduced its 1983 triagameral constitution, it relied heavily on consociational theory to legitimise that constitution. Lijphart claimed with some justification that they had implemented a vulgarised form of consociationalism. This time, nationalists have also been selective. They have for instance not consistently applied the consociational principle of proportionality to the army, the police, the civil service or the executive. Clearly, the nationalists if their recent proposals are anything to judge by are not ready for consociationalism or democracy.

## THE COMPARATIVE EXPERIENCE

The concept 'Consociational Democracy' has been used by Arendt Lijphart to describe the political process and type of political regime found in the smaller European democracies namely, Austria, Switzerland, Belgium and the Netherlands. He has also analysed forms of government in countries outside Europe.

The first post-colonial governments in Lebanon and Malaysia were consociational in form. Cyprus began its existence as an Independent State in 1960 with a constitution which entrenched power sharing between the Greek and Turkish Cypriot communities. A consociational constitution was introduced in Northern Ireland in 1974. Some South American countries, including inter alia, Colombia, Venezuela and Uruguay have experimented with consociational forms at different times of their political history.

### Austria

Consociationalists rely strongly on the Austrian case to support their theory. After its defeat in World War 1 and the demise of the Habsburg empire, Austria introduced a democratic constitution on the 10 October 1920. At this time, Austria was a society deeply divided between the so-called 'Reds' and the 'Blacks'



Austrian democracy was competitive in form, rather than consociational. From 1920, the blacks *governed* and the social democrats were in *opposition* until being outlawed in 1934. This period was characterised by instability and civil strife. In 1938, the Nazi army annexed Austria.

The first free parliamentary elections since 1930 were held on 25 November 1945. The OVP (Blacks) obtained 50% of the votes and an absolute majority of parliamentary seats. The SPO (Social democrats) obtained 45%. The leader of the majority party then invited Karl Renner's social democrats to join a coalition government which ruled Austria until 1966.

Consociationalists explain the stabilisation of Austrian democracy after the war as a consequence of the practice of an 'Elite Cartel' institutionalised in the grand coalition of the two major parties between 1945 and 1966. Brian Barry has criticised this 'voluntarist' explanation on the basis that it does not give sufficient weight to changes in the International environment and Austria's improved economic performance. He also contrasts the First and Second Austrian republics with the Wimer Republic which was unstable under a competitive regime, and the Federal Republic which has been stable and prosperous despite a competitive relationship between the main political parties.

## Switzerland

In Switzerland, 'power sharing' has developed organically over the century. The Constitution provides for a seven person Federal Council holding office for a *fixed term* of four years. The members of the Council are elected by the Federal Assembly. The positions on the Federal Council are, by convention, allocated proportionally to ensure equitable representation of CANTONS and political parties.

The effect is that there are usually four or five German speakers, one or two French speakers and one Italian speaker on the Federal Council. Three political parties - the Christian Democrats, the Social Democrats and the Free Democrats share the seven executive positions proportionally according to the formula 2:2:2:1. The Office of the President rotates annually among the members of the Federal Council. The President serves as Chairperson of the Council and has a casting vote.

The Swiss Executive is unique in that it is neither *parliamentary* or *presidential*. The Federal Council is not headed by a Prime Minister and the Council is not dependent for its continued existence on the confidence of the legislature. On the other hand, the Council is not, like the presidency in the US, a separate branch of government, and it does not have the power to veto parliamentary legislation.

It is doubtful whether the Federal Council can be described as a coalition government. The members of the Council are not thought of as party leaders reaching concordats binding on their followers, but rather as individuals administering departments. It is

also doubtful whether the form of decision making in Switzerland can be described as 'consociational' because of the role of referenda and the popular initiative in decision making.

### Belgium

In its present constitutional structure, Belgium consists of three regions (the Flemish region, the Walloon and the Brussels/Capital region) and three 'communities' (the Flemish, the French and the German speaking communities). The regions and communities do not coincide as to the territory over which they exercise their powers. The regions deal mainly with the local economy, employment, the environment, housing and urban planning, and transport infrastructure. The communities are empowered to legislate on matters related to the personality of their inhabitants, such as language, culture, social life, and education. Since 1970, more powers have been devolved to the communities and regions.

The 'grand coalition' idea has not been institutionalised in the National Executive. Although virtually all the cabinets have been coalitions, several major parties have been in opposition at various times. Shifting cabinet coalitions have been complemented by extra constitutional pacts eg. the 1958, School Pact which settled the issue of state aid to religious schools.

Although 60% of Belgians are Dutch speakers and 40% are French speakers, cabinet positions are distributed equally between the two communities. The Prime Minister is usually a bi-lingual Flemish politician. Party membership cuts across language ? cleavages.

### Northern Ireland

In the early 1970's both the Conservative and Labour parties became convinced that a political accommodation between Catholics and Protestants in Northern Ireland could only be achieved through the institutions of consociational democracy. A White Paper of March 1973 declared that the British Government would devolve power to a new Northern Ireland legislative assembly only on condition that there was an agreement to the effect that 'executive powers will not be concentrated in the elected representatives from one community only'. A 'Power sharing' executive was set up under the provisions of the White Paper and took office at the beginning of 1974 but collapsed at the end of May under the impact of a general strike by protestant workers. Professor Claire Palley's comment on the consociational experiment in Northern Ireland is worth noting : *'the exercise proves that consensus is not created by institutions and that where a majority of the population is strongly opposed to particular constitutional arrangements, these cannot be maintained'*.

## Cypress

All the principles of consociational democracy/grand coalition, proportionality, segmental autonomy and mutual veto - were elaborately embodied in the 1960 Constitution. It provided for a presidential regime with a Greek president elected by the Greek community and a Turkish Vice President elected by the Turkish community. The cabinet had to consist of seven Greek ministers designated by the President and three Turkish ministers designated by the Vice President.

The seven to three ratio over-represented the Turkish minority. The same ratio was applied to the composition of the legislature and to civil service appointments. Army and police appointments were to be made on the basis of a six to four ratio. The constitution also devolved exclusive legislative powers over religious, educational, cultural and personal status matters to two separately elected communal chambers.

Again, Professor Claire Palley's comments are instructive : 'such complicated communal arrangements, even in the most amicable of atmospheres, run the risk of unworkability'. The consociational experiment lasted for four years, from 1960 until December 1963 when civil war broke out. The United Nations Peacekeeping Force was sent to the Island in 1964 to maintain a fragile ceasefire.

## Lebanon

Lebanon's social structure is characterised by sharp divisions which at least in form are of a religious nature. The main groups are the Marinite Christian, Suni Muslims, Shiite Muslims and Greek Orthodox Christians.

From Independence in 1943 to the Civil War which broke in 1975, Lebanon had consociational form of government. An informal, unwritten pact concluded at the time of Independence prescribed government by a grand coalition in a quasi-Presidential system. Cabinet posts were allocated on a confessional basis.

Convention required the President to be a Marinite Christian, the Prime Minister, a Suni Muslim, the Chairman of Parliament, a Shiite muslim. An ethnic balance was also maintained in the Chamber of Deputies.

Palley's comments as follows on the experiment with ..... consociational government in Lebanon ' the cabinet elites also engaged in inter-confessional deals, avoided conflict within their own communities, and relied on the operation of the mutual vetoes. *Consequently, there was little coherent policy, future planning or development of national attachments*'.

### Malaysia

Malaysia is composed of three large communities, Malays, Chinese and Indians. In the first post independence elections in 1955, an alliance of Malay, Chinese and Indian political parties won four fifths of the popular vote in all but one of the parliamentary seats. The alliance then formed a cabinet in which all three 'segmental' parties were represented. Arendt Lijprat admits that the Malaysian experiment with consociational democracy cannot 'be judged an unqualified success' because it did not achieve long term stability. It broke down after the 1969 elections in which the alliance parties lost much of their popular support, although not their parliamentary majority to a number of anti-alliance communal parties.

### Columbia

In 1958, a consociational National Front regime, constituted by two political parties, the Liberals and the Conservatives replaced the military junta. The National Front Agreement, subsequently embodied in the country's constitutional arrangements, sharply limited the operation of mechanisms of majoritarian representative democracy in the country. It stipulated that from 1958 to 1974 the presidency would alternate between members of the two parties, and that all cabinet officers, legislative and judicial posts were to be divided equally between the two parties. In addition, most legislative measures would require a two thirds majority vote in the legislature for approval.

In 1968, Constitutional reforms reinstated the simple majority vote in the congress, opened elections to all political parties, and eliminated parity representation in the legislative branch at municipal and national level. Competitive presidential elections were held in 1974, although parity in the Cabinet and Public Sector Employment was extended until 1978.

From 1978 onwards, the majority party has been required *to offer* 'adequate and equitable representation in the executive branch to the party receiving the second highest number of votes in elections'.

### Uruguay

Uruguay has experimented with a Swiss Style plural executive in which grand coalitions of the two dominant parties were constitutionally prescribed.

From 1919 to 1933 and again from 1952 to 1967, Uruguay was governed by a *collegial* executive imposed on nine representatives from the two major parties (the *colegiado*/patterned after the seven member Federal Council of Switzerland).

The *colegiado* was restored in the early 1950's after a coup d'etat in 1933 had abolished both the Council and the legislature. The Council differed from its Swiss counter part in a number of important respects. First, it was slightly larger, second, representation was restricted to the two major parties, unlike the multi-party Swiss Council. Third, Uruguay's Council was elected by popular vote instead of by Parliament.



Fourth, presidency of the Council rotated annually among the six *majority* party members. Fifth, the nine counsellors were not in charge of the Executive Departments but appointed by *majority vote* ministers for this purpose.

### Conclusion

The main proposition advanced by consociationalists that consociational decision making increases the probability of democratic stability in culturally fragmented societies emerging from a recent experience of authoritarian rule is not borne out by the comparative experience. The best evidence in support of consociationalist claims is based on the experience of a *small* number of *small* European countries. It is strongly arguable that consociational decision making in these countries is a result rather than a cause of an underlying homogeneity and political consensus. Moreover, consociational decision making in these countries is based primarily on *informally negotiated pacts* rather than on *constitutional entrenchment*.

The experience outside Europe must give little joy to those who see consociationalism as the most appropriate way to reconcile intractable *ethnic* conflicts. Consociational experiments have almost always ended in civil war.

The most successful consociational societies have in fact been societies in which main source of cleavage has been *ideological* rather than *ascriptive*, (Austria; Colombia). As indicated earlier, these two cases hardly provide strong support for consociational decision making.

In short, the National Party will be hard pressed to marshal evidence from the comparative experience in support of the particular form of *mandatory power sharing* recommended in their most recent proposals.