


S O L I D A R I T YMEANINGFUL PARTICIPATION OF POLITICAL MINORITIES  
WORKING GROUP 2

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.

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 there be broad agreement amongst players about the basic rules of the game.

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.

It is also common cause that the standard against which we measure such 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, such derogation being 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.

Democracy is 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. (W A Lewis).

Since absolute democracy implies the consent of all the governed, majoritarianism is thus a practical formulation of relative democracy. Both the primary (indirectly participating) and the secondary rules 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 (50% plus 1), absolute majority, relative majority, simple majority, qualified majority, concurrent majority etc.

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. 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 needs.

(a) Consent

In homogenous societies this criterion presents no difficulty in terms of relative democracy so much so that the those governed consent to the rules generally being based on the concept of relative majority in determining representativity. This is so because if the elected representative does not measure up to the standards of the voters, they can change the person by commonly accepted rules.

In heterogenous, and particularly deeply divided societies, this does not necessarily happen. Candidates often bid for

loyalty support rather than value based support and offer the same in return. The consent then becomes limited to a group or component of society, and a vicious circle begins. The normative principle of democracy is then violated with regard to those who are locked into a position of being unable to bail out of the rigid compartment. This then results in an abuse of power. In order to overcome this problem, constitutionalists sought to find an answer in segmentalising consent, in other words, in the concept of concurrent majorities. This form of democracy, known as consociation, however, impinged on the criterion of effective government often leading to paralysis and breakdown. Thus far a balance between the two seemingly conflicting concepts of consent and effectiveness has not been found in this type of democracy, and often the side-effects of this system are sometimes worse than the remedy - when sub-cleavages begin to rear their 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 equally a recipe for conflict.

In the South African context we will therefore have to reject consociation and contend with the workable majoritarian mechanism, acknowledging its deficiencies. 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, 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 also a multiparty cabinet by convention. 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 these rules and they 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 in Mugabe's cabinet). Without prejudice, one can count the number of token inclusions of English - speaking cabinet ministers under previous National Party governments.

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 such an electoral process. Such would be the natural consequence of a consistent and non-discriminating application of the principle. There must be equality not only in the procedure but also in the result. An exception can only be made on the grounds that its application makes the functioning of the democracy impossible or at least ineffective. There is no evidence to suggest that such in fact is the consequence.

The argument for 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.

(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 it conditionally limits 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. 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 adds to the checks and balances.

### MINORITIES

Problems in plural societies <sup>may</sup> 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 a ~~deadly~~ divided society.

Many don't even want to play the game, leave 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 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 ~~from~~ 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.

We are not averse to alternative sets of rules provided that there is potential within the enforceable set to "shout foul" and to be able to remedy the breach.

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. Power-sharing is in effect such a mechanism that compensates for the rigidity of segmental voter loyalty which precludes 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 microsm, is looking at us to provide alternatives.

**2 March 1992**