

POST APARTHEID SOUTH AFRICA; EVALUATIONG SOUTH AFRICA'S INSTITUTIONAL DESIGN

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Introduction

In this paper, I aim to evaluate whether increasing or decreasing the level of consociationalism in South Africa would be beneficial for the country's stability. Analysing South Africa's political structure since the implementation of free and fair elections, I review the effects of its current degree of consociationalism and debate the arguments of those who contest South Africa's current institutional framework and its capacity to govern.

Arend Lijphart's four basic principles of consociationalism – government by grand coalition, group autonomy, proportionality and minority veto – have all influenced South Africa's constitution, and although the country's political structure does not adhere entirely to Lijphart's consociationalism, it “is still much closer to consociational than majoritarian democracy.”

The Government of National Unity and the Coalitions of post apartheid South Africa

In April 1994 South Africa held its first non-racial elections, electing African National Congress (ANC) leader, Nelson Mandela, as President. With the ANC in charge, many feared South Africa's new elite would discriminate against their previous oppressors, seeking retribution for decades of white, tyrannical rule rather than sharing power, as was agreed. As part of the exchange of power from the apartheid regime, majority rule was disbanded in post-apartheid South Africa, with the Government of National Unity (GNU) establishing as an interim government during the writing of the final constitution. The GNU established multi-party governance in South Africa by enabling minority parties who obtained 5% of the national vote a position in the cabinet, as well as pursuing a non-partisan public service and introducing proportional representation into South Africa's national assembly and provincial legislatures.

This interim constitution acted as the foundation for South Africa's permanent political structure, which adopted many of the principles established under the GNU. Whilst the end of the GNU's five year term meant an end to formal coalition agreements, under the new constitution the ANC agreed to voluntary coalitions with many minority parties. Voluntary coalitions in the GNU's executive and legislature gave greater voice to South Africa's minority parties, but reinforced the larger party's (the ANC) control, preventing the formation of potential opposition, according to Donald Horowitz. In addition, with elites dominating negotiations within these coalitions, there is some doubt as to how well this form of bargaining represents the true views of minority groups (Shapiro & Jung 1995; Lijphart 1980).

According to Lijphart, cooperation between elites is essential for democracy. While some fear that elites cannot represent the views of the masses, elite supremacy does

provide “an adequate articulation of the interests of subcultures”¹ and does not “necessarily or even usually involve the subjugation of non-elites”.² Lijphart sees grand coalitions as the most obvious solution to a fragmented society and essential for a stable democracy (Lijphart 2002). In developed democracies, political parties have put their differences aside in times of emergency and collaborated during periods of crisis. In divided societies, the country’s environment is inherently ridden by crises and the need for coalitions and consociational measures is therefore constant (Lijphart 1980). Although South Africa no longer has a formal coalition cabinet, Lijphart does not deem there to be any specific institutional arrangement that is necessary to meet this consociational principle, rather he prefers the much looser term used by Ralf Dahrendorf of a *cartel of elites*, as “informal rules generally work better because they are more flexible... [and] they reflect a higher level of trust among groups and group leaders”³ (Lijphart 1969; Lijphart 2002).

In contrast, Donald Horowitz proposes a far more centripetal and majoritarian government for South Africa. Horowitz believes that Black South African elites are usually more ethnocentric than their followers and that consequently South Africa is ill-suited to consociationalism as Black South African elites are unlikely to pursue negotiation over violence. According to Horowitz, “increased education is generally associated with negative attitudes on the part of Black South Africans toward out-groups”,⁴ but his analysis is flawed and dated. When reviewing the sources of Horowitz’s work, he examined publications prior to 1985 that were inconsistent with more recent publications, such as Thomas K. Ranuga’s book (2000)⁵ that focuses on final year graduates in South Africa, the country’s next political elite. Ranuga (2000), like many others, finds that “traditionally black universities...[are] collectively in support of power sharing” and stability,⁶ contradicting Horowitz’s conclusions that the black political elite will pursue violence over stability (Horowitz 1991; Ranuga 2000).

The Existence of Opposition

Whilst coalitions allow for minority representation, there is a concern that they will restrain opposition.

In their research, J.E Spence (1999) found that voting behaviour in South Africa’s 1999 elections largely conformed to race, while James L. Gibson (2003) found that “whites [were] more supportive of democratic institutions and processes”⁷ in South Africa. This

¹ Lijphart, Arend, (1969), *Consociational Democracy*, in Arend Lijphart’s book *Thinking about democracy, Power sharing and majority rule in theory and practice*, Routledge, 2007, Chapter 2, p.36.

² Lijphart, Arend, (1980), *Democracy in Plural Societies*, New Haven: Yale University Press, p.50.

³ Lijphart, Arend, (2002) *The Wave of Power-Sharing Democracy*, in Andrew Reynolds edition of *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*, Oxford University Press, Chapter 2, p.54.

⁴ Horowitz, Donald H., (1991), *A Democratic South Africa? Constitutional Engineering in a Divided Society*, Berkeley: University of California Press, p.140.

⁵ Ranuga, Thomas K., (2000), *South Africa under majority rule: a study in power sharing, racial equality and democracy*, Lewiston, N.Y.: E. Mellen Press.

⁶ Ranuga, Thomas K., (2000), *South Africa under majority rule: a study in power sharing, racial equality and democracy*, Lewiston, N.Y.: E. Mellen Press, p.23.

⁷ Gibson, James L., (2003), *Racial Differences in the Legitimacy of Democratic Institutions and Processes in the New South Africa*, Vol.36, No 7, p.796.

disparity is part of the legacy of apartheid, and is of grave importance. During the apartheid era, the education available to whites was far superior to that available to non-whites, dramatically altering the perceptions and legitimacy of democracy in the eyes of non-white South Africans. When the political culture of a country is not highly democratic and when parts of the population are deficient in democratic values, removing voluntary coalitions could mean that a dissatisfied electorate directs its malcontent towards the political system rather than the government, leading to a break down in democracy (Jung & Shapiro 1995; Gibson 2003). In addition, the inflexibility of a majoritarian system means that minority parties can only realise a position in government via coalition, and hence coalitions in South Africa are essential (Jung & Shapiro 1995).

Furthermore, under consociationalism there is still room for party opposition. The disapproval of government action can be expressed in parliament and the proportional representation (PR) electoral system means that new parties can obtain a voice in parliament far easier than they would have under a majoritarian system (Lijphart 1980).

Whilst those involved in coalitions may be less likely to forgo any influence and patronage they have by “shining light[s] in dark corners, and exposing abuses of power.”⁸ (Jung & Shapiro, 1995), “coalition cabinets tend to be a good deal less secretive and more open”⁹ and allow dissatisfied parties meaningful expression without which they could become discouraged and disband in the face of a large majority opposition, such as the ANC (Koelble and Reynolds, 1996).

Electoral Systems & Proportionality

South Africa’s highly contested electoral system uses closed list proportional representation, an electoral system that is far more representative of minorities but has a disputed capacity to govern (Lijphart 1991 *b*).

Electoral systems adopted in divided societies can be contentious, with political scientists often disagreeing on the appropriate means to build and sustain democracy in fragile states (Reilly 2001). Consociationalists believe proportional representation electoral systems “enable all significant ethnic groups...to ‘define themselves’ into ethnically based parties and thereby gain representation”¹⁰. Majoritarians proclaim that to quell hostilities in divided societies an electoral system that will encourage the negotiation and cooperation of issues across ethnic lines is needed (Reilly 2002).

Jung & Shapiro (1995) advocate a first past the post (FPTP) electoral system in South Africa as they believe strong opposition to be integral to democratic stability. However, the substantial majority of the ANC means that this system can lead to a permanent one party state where unrepresented minorities violently resist their disenfranchisement (Horowitz 1991). Yet with recent election results demonstrating that political support in South Africa crosses ethnic lines, some are calling for the introduction of a majoritarian electoral system. In the 2004 National Assembly elections, the New National Party

⁸ Jung, Courtney & Ian Shapiro, (1995), *South Africa’s Negotiated Transition: Democracy, Opposition, and the New Constitutional Order*, Politics and Society, Vol. 23, No. 3, p.272.

⁹ Lijphart, Arend, (1991 *a*), *Double checking the evidence*, in Arend Lijphart’s *Thinking about democracy, Power sharing and majority rule in theory and practice*, Routledge, 2007, Chapter 12, p.176.

¹⁰ Reilly, Benjamin, (2002), *Electoral Systems for Divided Societies*, Journal of Democracy, Vol. 13, No. 2, p.157.

received 1.65% of the vote, the Inkatha Freedom Party 6.97% and the ANC 69.69% of the vote,¹¹ percentages not proportional with country demographics or past voting. Despite political parties clearly appealing across ethnic lines, deficient democratic values in non-white South Africans, as shown by Gibson (2003), makes minority representation imperative. Furthermore, political parties in countries with deep divisions typically attempt to outbid their opponents on ethnic issues; these centrifugal forces mean that moderate parties will not be able to obtain a significant proportion of the vote and hence I believe proportional representation (PR) is essential for South Africa (Benjamin Reilly 2002; Horowitz 2000).

Instead of the FPTP system endorsed by Jung and Shapiro (1995), Horowitz (1991) advocates the alternative vote (AV) for South Africa, another majoritarian system which asks voters to list candidates in order of preference. Horowitz strongly disagrees with FPTP electoral systems for any divided society as he believes they are more likely to intensify conflict than control it. Horowitz believes AV systems force political parties to appeal to voters across ethnic lines and will consequently reduce inter-segmental aversions (Horowitz 1991). However, Horowitz's alternative vote (AV) proposal, according to Lijphart (1991 *d*), provides precisely the same incentives as FPTP. Supporters of a clear minority will not want to squander their votes on a doomed candidacy; hence, the country's larger parties will appeal and most likely win the votes of minorities regardless of whether it is an AV or FPTP system, especially if the minority party disbands in the face of its certain loss (Lijphart 1991 *d*). Furthermore, while an AV system has the intent of broadening the appeals of parties, it does make it more likely that minorities will be represented by members of another party. Whether one deems this "narrower meaning of representation"¹² undemocratic is overshadowed in South Africa by the ANC's overwhelming support, meaning they do not even have to broaden their appeal. By Horowitz's own admission, "if a party can win on first preferences, second preferences are irrelevant."¹³ With the ANC receiving by far the majority of the national vote - 69.69% of the vote at the 2004 national assembly elections,¹⁴ an alternative vote electoral system in South Africa would be highly disproportional. Even if distribution requirements were requisites for electoral victory, South Africa's provincial elections show the ANC dominating in all nine provinces,¹⁵ and thus an alternative vote system in South Africa is entirely incongruous.

In the absence of an AV electoral system, Horowitz advocates the use of the single transferable vote (STV). The STV is similar to the Alternative Vote but is actually a system of proportional representation. The AV electoral system enables voters to rank their favoured candidates in an election with one winner. The STV system ranks candidates but elects multi-seat constituencies, thus small minorities can be represented in government if there are a large number of seats available (Reilly 2001).

In 1994, however, STV was considered far too complex for South Africa's first fully representative national election. With 4.7 million South Africans still completely illiterate

¹¹ Data from the African Elections Database taken on (6th January 2008):

¹² Lijphart, Arend, (1991), *The alternative vote: a realistic alternative for South Africa?*, in Arend Lijphart's book *Thinking about democracy, Power sharing and majority rule in theory and practice*, Routledge, 2007, Chapter 13, p.185.

¹³ Horowitz, Donald H., (1991), *A Democratic South Africa? Constitutional Engineering in a Divided Society*, Berkeley: University of California Press, p.194.

¹⁴ Data from the African Elections Database taken on (6th January 2008):

¹⁵ Data from the African Elections Database taken on (6th January 2008):

and a further 4.9 million functionally illiterate (left school before Grade 7)¹⁶ this complexity remains. In addition, STV systems involve “the expression of intra-party preferences for individual candidates.”¹⁷ This negatively affects the cohesion and discipline in parties and can therefore prove to be a hindrance in inter-party negotiations. The closed list proportional representation system in South Africa does not involve intra-party choices and can thus aid cohesion and minimise the difficulties in inter-party negotiations (Lijphart 1991 *d*). Furthermore, as the “AV resembles the majority run off method”¹⁸ and “merely accomplishes in one round of voting what requires two ballots in the majority run-off system”,¹⁹ the run off electoral system faces similar criticisms to those of AV and FPTP.

With further evidence from Koelble & Reynolds (1996) showing that “plurality elections in Southern Africa give rise to the classic elements of a de facto one-party state”,²⁰ I am convinced that closed list proportional representation systems in South Africa should remain.

Segmental Autonomy

In the drafting of South Africa’s permanent constitution, the IFP party’s reservations over federalism led the party to boycott several negotiations. The party’s leader, Bulthelezi, believed that a weakly decentralised South Africa would be the “advanced death certificate...of a country which, constitutionally speaking, is committing suicide by instalments.”²¹ Eric A. Nordlinger also believed that granting regional autonomy would strengthen the distinctiveness of ethnic groups, increasing the likelihood of secession (Lijphart 2002). Lijphart (1980) does not doubt the nature of segmental autonomy to increase plurality, but he sees the objective of consociationalism as “not to abolish or weaken segmental cleavages but to recognise them explicitly and to turn the segments into constructive elements of stable democracy.”²² Robert Gurr’s empirical study shows that “neither in theory nor in practice is there anything inherent in autonomy agreements that leads to future civil war or disintegration of the state.”²³ Despite this, many South African political leaders agree with Nordlinger, perceiving federalism to conflict with the idea of an undivided country.

When segmental autonomy was introduced in South Africa it did not lead to an established Volkstaat for the Afrikaner minority, nor were provincial governments given

¹⁶ Data from the South African Government Information website taken on (16th January 2008).

¹⁷ Lijphart, Arend, (1991 *d*), *The alternative vote: a realistic alternative for South Africa?*, in Arend Lijphart’s *Thinking about democracy, Power sharing and majority rule in theory and practice*, Routledge, 2007, Chapter 13, p.188.

¹⁸ Lijphart, Arend, (1991), *The alternative vote: a realistic alternative for South Africa?*, in Arend Lijphart’s *Thinking about democracy, Power sharing and majority rule in theory and practice*, Routledge, 2007, Chapter 13, p.182.

¹⁹ Lijphart, Arend, (1980), *Democracy in Plural Societies*, New Haven: Yale University Press, p42

²⁰ Koelble, Thomas & Andrew Reynolds, (1996), *Power-Sharing Democracy in the New South Africa*, *Politics & Society*, Vol. 24, No. 3, p.231.

²¹ Bastian, Sunil & Robin Luckham, (2003), *Can Democracy be Designed?*, London; New York: Zed Books, p.78

²² Lijphart, Arend, (1980), *Democracy in Plural Societies*, New Haven: Yale University Press, p.42.

²³ Lijphart, Arend, (2002), *The Wave of Power-Sharing Democracy*, in Andrew Reynolds edition of *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*, Oxford University Press, 2002, p.44.

much legislative power, but autonomy did arrive in the realm of education (Bastian & Luckham 2003). The constitution stated that “every person shall have the right...to establish, where practicable, educational institutions based on common culture, language or religion”²⁴ (Lijphart 1998). The consociational principle of segmental autonomy was consequently incorporated in South Africa’s constitution; the perceived lack of this principle came from the expectation of a highly decentralised state.

The future of South Africa’s federalism

Arguments often espoused for federalism include party proliferation and the preservation of democracy. The logic follows that if parties are able to obtain some provincial power then previously deterred voters may allocate their vote to these smaller parties, increasing proliferation and opposition. The control of the centre then becomes less decisive, with the provincial level creating an environment for politicians to confront issues before they reach the national stage, which “lower[s] the high temperature of politics at the centre by reducing the all-or-nothing nature of the stakes at that level”²⁵ (Horowitz 1991).

Increasing territorial federalism in South Africa may increase party proliferation but the majority held by the ANC in all provinces could frustrate those unable to obtain power. Horowitz (1991) believes that competition will take place within the ANC rather than between parties in South Africa, and as such he advocates a strong federalist South Africa. However, I do not believe it beneficial for South Africa to increase the current degree of federalism. Strong entrenched federalism was initially opposed due to fears of secession. Strengthening federalism now could increase the proliferation of parties, with appeals for votes along ethnic lines exacerbating conditions and potentially leading to secession or discriminatory legislation against regional minorities. While this is a severe judgement, the probable benefits from increasing federalism are small and the negatives are highly hazardous, thus I do not believe that the degree of segmental autonomy in South Africa should change. South Africa’s current degree of segmental autonomy has so far successfully aided the country’s transition to a stable democracy and provided proportionality via autonomy (Dawn Brancati 2006).

Minority Vetoes

South Africa’s constitution contains a minority veto, but one that is practicably futile. For minorities to exercise a veto, one third of parliamentarians have to concur in opposition. This does constitute a minority veto but this requirement makes a non-Black veto impossible (Lijphart 1998). Furthermore, the ANC’s 69.69%²⁶ majority allows the party to alter the country’s constitution and thus, South Africa’s minority veto is at present essentially ineffective. However, strengthening the mutual veto could immobilise decision making in South Africa, stagnating the country and increasing instability (Lijphart 1980).

The voluntary coalitions in South Africa give minorities’ expression and representation to some degree in the executive, but the dominance of the ANC can easily lead to the

²⁴ Lijphart, Arend, (1998), *South African Democracy: Majoritarian or Consociational?* Democratization, Vol. 5, No 4, p.146.

²⁵ Horowitz, Donald H., (1991), *A Democratic South Africa? Constitutional Engineering in a Divided Society*, Berkeley: University of California Press, p.222.

²⁶ Data from the African Elections Database taken on (6th January 2008).

subordination of minority interests. The implementation of an effective minority veto in South Africa would give complete political protection to all segments of society (Lijphart 1980). However, “the danger of the minority veto is that it will lead to minority tyranny”²⁷. Lijphart (1980) describes vetoes as ‘potential weapons’ which can halt the decision-making process; however, he believes the very fact that they have the ability to cease proceedings will mean they are infrequently used.

According to Lijphart, the problems inflicted on all parties by one not adhering to the popular interest means that minority vetoes are often only used when there are infringements in vital interests. Furthermore, the threat of the use of a veto would lead to the incorporation of minority interests in South African decision-making and form a more representative and stable society. However, entrenching minority vetoes in South Africa could have unpredictable effects, as Horowitz (1991) explains.

Horowitz believes empowering such small minorities with a veto would be destabilising. The resentment by those the veto would be imposed upon is unlikely to create stable relations, and with the IFP’s prior boycott of constitutional negotiations demonstrating its unwillingness to compromise, empowering them and other minorities with a veto could lead to stagnation in South Africa’s parliament. In addition, South Africa’s segmental autonomy in matters such as education and language protects these groups’ vital interests and so diminishes the significance of the minority veto.

In Belgium, an ‘alarm bell procedure’ was introduced to suspend the passing of a law rather than extinguish it completely, leading to a process of mediation (Wolff 2005). If Belgium’s weaker mutual veto was granted to minorities in South Africa it might increase stability in the country, although further investigation is needed. However, the ANC has dealt successfully with minority interests so far and been broadly representative of all groups. While the implementation of this form of minority veto may increase representation, it is not essential for stability and may hinder the decision-making process. Certainly the entrenchment of strong mutual vetoes is undesirable and will most likely lead to stagnation if pursued (Horowitz 1991).

Conclusion

South Africa’s current institutional design is in parts similar to Lijphart’s perception of consociationalism and is certainly closer to consociationalism than majoritarian democracy. Given South Africa’s current demographic and paucity of democratic values, consociationalism is essential. Despite criticisms from many theorists, South Africa’s current institutions should not be altered. With majoritarian systems reliant on accommodation, their implementation could lead to a break up of the established peace and stability in South Africa, whilst adopting a more consociational approach is likely to have similarly adverse effects, as this essay has explained. Thus, I believe the status quo in South Africa’s electoral system should remain.

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²⁷ Lijphart, Arend, (1980), *Democracy in Plural Societies*, New Haven: Yale University Press, p.37.

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http://africanelections.tripod.com/za_2004provincial.html

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Data from: South African Government Information website (taken on 16th January 2008):

<http://www.info.gov.za/aboutsa/education.htm#npdoe>