

DENEYS SCHREINER, former vice-principal of the University of Natal, challenges the view of David Welsh, professor of political studies at the University of Capetown, that the vision of a non-racial democracy based upon 'simple majoritarianism' is not only seriously flawed but is incapable of realisation. Schreiner contends that majoritarianism is fundamental to democracy: no viable alternative can exclude it.

ONLY ONE WAY

The second thread again leads to his conclusion that majoritarian government may be defined as "non-democratic", and leads him to advocating the legitimacy of a pact or pacts which depart from democracy — this is done by post-election collusion in an "institutionalised coalition" at government level. This is introduced to overcome the assumed, and quite possibly actual, inability of the minority to become a majority.

Three examples, Northern Ireland, Israel and Ceylon, are used to provide evidence of the permanence of powerless minorities (33%, 18%, and 12% respectively) and the tyranny of their majorities, despite each country having, in large measure, many of the trappings of democracy. Again I quote: "As Sammy Smooha notes, Israel (excluding the occupied territories) qualifies as a political democracy on many counts: there is universal suffrage (including for Arabs) a multi-party system, fair elections, reasonably regular changes of government, civil rights, an independent judiciary, and a free press. *While Arabs enjoy the vote, they are nevertheless second-class citizens* who are in practice subject to various forms of discrimination. Arab or preponderantly Arab parties have never participated in a (coalition) government . . . Israeli democracy (is presented) with the severe problem of the "tyranny of the majority"."

But the origin of this tyranny, and all similar ones, needs to be examined. It arises because the Israeli majorities have ignored a fundamental requirement for the proper existence of democracy. This is that democracy demands from each of its citizens, and, therefore, from any aggregation of those citizens, the recognition that every person, every citizen, who belongs to that nation, that country, has exactly the same rights and privileges. *There can be no 'second class citizens' and the majority, in a democracy, however*

great it may be, is not released from its obligations to those citizens who belong to its minorities.

If one takes the "social contract" view of democracy one cannot limit the state/individual contract as applying only to the majority group. Northern Ireland and Ceylon are just as guilty of ignoring this fundamental democratic principle.

WE CANNOT ignore the evidence from Horowitz and others that Welsh sets out. When he says of "non-racial democracy" that "if it refers to an attitudinal predisposition that animates ordinary individuals on a large scale and penetrates the warp and the woof of political and social life, it will be a long time in the making", one cannot easily disagree with him. Nor can one quarrel with his recognition that the "tender plant of real democracy" will need the opportunity to grow rather than to wither under "majority tyranny" with the possibility of even deepening divisions, whether based on ethnicity, class, or religion. There is no question that the democratising of South Africa involves the wish that the new rules within which we are to be governed will not be perfect. They are unlikely to be as imperfect as those by which we have lived in the past. But if there is to be a time in which South African democracy is to be allowed an opportunity to grow, it must be under a system of rules which themselves nurture, or at least do not damage, the concept itself, and therefore its potential to grow.

Those liberals who are convinced that South Africa is so deeply divided that majoritarian democracy would lead to a disaster, are entitled to advocate "consociational government", "enforced coalition government", "institutionalised coalition", or a "government of National Unity". But, if they do, they must realise two things: They are abandoning a fundamental principle of democracy for another system, and that this new system, while it is in place, does

not lead automatically to a strengthening of democracy. It does not lead to a smooth transition to democracy at some later stage. The nature of parliament must necessarily change: for political parties that are embedded in government cannot preserve the same cutting edge of criticism as the official opposition.

Crawford Young, as quoted by Welsh, says of India "at the summit is a national political elite who are committed to reconciling differences through bargaining amongst themselves."

Welsh himself refers to the Congress Party as having "itself been a broad-based coalition providing a roof for many of India's disparate minorities", but he rightly excludes it from his own concept of "broad-based (institutionalised) coalition", which enables "any and every minority to plug into power and exert leverage that is roughly proportional to its size". Both systems, the formal separate-party coalition and the overarching dominant single party coalition lead to just what Crawford Young has described: a system which distances the electorate from ultimate decision making, and which enables an elite to exert its final power by reformulating and amending the expressed will of the majority. The longer such a system lasts the more complete is the divorce of the electorate from an understanding of decision making, and the more are the voters denied their rightful knowledge of how and why the compromise bargains have been struck.

BEFORE THE decision that a consociational or coalition compromise must be chosen, it is necessary to be certain that there are not alternative democratic constitutional provisions which can be used to curb outrageous majority tyranny, and leave the principle of majoritarian government in place.

A written constitution contains the social contract between the state, on the



one hand, and its citizens and their aggregates, on the other. Governments and citizens are equally bound by its explicit provisions and by the rules that allow for its variation. But such a constitution can only warrant the appellation "undemocratic" if it is recognised that it implies also a contract between individuals, and therefore also between aggregates of individuals, whether they are majority or minority aggregates. This is the contract which outlaws the establishment of "second-class citizens".

In societies where an alternative majority government is unlikely, and, particularly, where the population divisions are acute and harsh, the protective balance contained in a constitution must be swung toward the individuals and their voluntary aggregations. The deeper the divisions, the more specific must the constitution be in limiting the powers that could be used by a majority government to introduce inequality of treatment.

The restriction of majority power can be achieved by a number of different constitutional techniques, federal groupings with devolved power, bills of rights, etc. Their suitability will depend on many factors, the most important of which is the level of trust that exists between the competitive groups when the agreed constitution is reached.

In South Africa this is likely to be very low because of past behaviour patterns, of ethnic differences, of long standing and current levels of violence, of major differences about suitable economic policies and because of the separation of the press into two groups whose readership, in large part, coincides with ethnic and economic differences.

But perhaps most immediately important is the major problem that, while the National Party adheres to the belief that "power sharing by enforced coalition" and "democracy" can comfortably coexist, the ANC insists that "democracy" demands "power transfer" to the majority, and accepts that "very generous provisions for language and cultural rights" coupled with "a justiciable bill of rights" and a "proportional representation electoral system" will ensure that minorities will be adequately represented. Therefore, fears of "the tyranny of the majority" are unfounded. Included in the ANC package is an Upper House with regional representation, but not, as in the Nationalist proposal, with inflated representation of minority parties.

Welsh dismisses the National Party

proposals very briefly: "It won't fly." But his final judgment is that we need to achieve "constitutionalised coalition government", if not by constitutional methods, then by "pacts solemnly agreed to by major players". Although this appears to be an attempted compromise, it only adds to the potential confusion. For the "pacts" to be effective, they could only be so for as long as the "major players" remained just that.

Would a new major political party, formed of dissident members of the original major players and some others, be bound by such "pacts"?

If the "pacts" can be adequately formulated, why could they not form a part of a constitution, and derive from that fact greater force?

Despite his statement that "the vision of a non-racial democracy, based upon 'simple majoritarianism' is not only seriously flawed but incapable of realisation" Welsh seems to be seeking an interim period in which a general and genuinely democratic climate can be created, because he asks the question "is this not another reason for supporting the view that a *power-sharing coalition is likely to be the most hopeful instrument for ushering in a democratic South Africa?*"

But does his "institutionalised coalition" differ in principle from the National Party proposals? I would suggest not, and that it, too, will not fly.

THE MOST constructive way of "ushering in a democratic South Africa" should not start by abandoning the principle of majoritarianism and by placing real power in the hands of a composite elite.

The limitation of majority tyranny should be controlled constitutionally so that if there is government error, it can be seen to be caused by one party and blame can be appropriately apportioned.

It is true, if Horowitz's conclusion about the close coincidence of ethnic political parties and ethnic origins is valid, that this kind of government will not produce the obligatory inter-ethnic daily working co-operation that coalition demands. To this extent the growth of inter-ethnic individual respect and trust could be slower. But the consociational principle can itself be used practically to encourage or ensure inter-ethnic contact.

A SIMPLE example will suffice: An "independent judiciary" is an agreed essential by all concerned with our new constitution. The power of appointment is quite rightly vested in the

government of the day, and "independence" of the judges is ensured by life appointments and by conventional behaviour that excludes them from party political involvement and pressure.

But the South African tradition has in the past included in the power of appointment the power of selection. This is not necessary, and in deeply divided societies selection itself may tarnish the image of the chosen person in the eyes of many, and, therefore, potentially discredit the system of justice itself.

This could be avoided if, constitutionally the power of selection of judges was made by consensus in a consociational committee. The introduction of a wide measure of consociational selection, not only of judges, but also of senior civil servants, members of government commissions of inquiry, and of administrative boards of various kinds, could do much to formalise and promote the influence of minorities, and to control, in part, majority tyranny. This is itself a departure from "simple democracy", but it does not insert the "consensus concept" into the major structures of government, and leaves the lines of democratic disagreement open to public knowledge.

THIS TYPE of use of consensus methods on the fringes of government has an obvious and immediate appeal because it means that representatives on opposite sides of deep divisions must meet, talk, and agree to compromise. This could be a useful process, blurring inter-ethnic differences and leading toward a tolerance which could further democracy. But, if ethnically based political minorities derive their major power from being admitted to coalition structures, they will be driven more strongly to maintain their separate ethnic bases.

Welsh asks for a constructive debate which seeks to find a viable alternative to simple majoritarianism. But he states that "Black and White are not monolithic categories . . . blacks are politically as divided as whites."

I hope that it is a constructive contribution to say that the most hopeful path to follow is to accept that majoritarianism is fundamental to democracy; that no viable alternative can exclude it; and that a power-sharing coalition is highly unlikely to further the cause of democracy. A firm constitution based on majoritarianism but setting out the responsibilities of the majority in relation to minorities and individuals is the most acceptable starting point. ●