

Power-Sharing Democracy in the New South Africa

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INTRODUCTION

In their recent analysis of South Africa's negotiated transition from the authoritarian apartheid regime to a "consociational" democracy, Courtney Jung and Ian Shapiro argue that democracy has taken a backseat to a power-sharing system, which does not bode well for the future of democracy in South Africa.¹ The authors raise a number of important points in their analysis that address the question of whether power-sharing arrangements present a solution to the problems of societies in conflict. Their argument that power-sharing leads to the demise of oppositional politics will be briefly summarized in Part I of this article. Part II defends both the concepts of consensus-oriented and consociational democracies and shows that there is a difference between these two institutional arrangements in theory and practice. Part II also suggests that Jung and Shapiro's theoretical assertions concerning the benefits of majoritarian systems are incorrect. Part III illustrates that Jung and Shapiro's practical recommendations are likely to produce precisely the opposite result of what they intend to bring about—namely the silencing of opposition rather than its development. Part IV develops a number of suggestions by which the current constitution could be improved to attain a well-balanced constitutional arrangement based on the principles of consensus-oriented but not consociational democracy. We strongly maintain that a consensus-oriented constitution is the only path by which South Africa will attain a stable democratic regime.

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PART I: JUNG AND SHAPIRO'S MAIN ARGUMENT

Jung and Shapiro argue that South Africa's new, interim constitution is a serious impediment to any progress toward a true democracy. This contention is based on one crucial proposition: that power-sharing systems of government do not allow for a viable, institutionalized opposition. True democracy, in their view, depends on such opposition. Because the interim constitution represents a hard-won compromise between the African National Congress (ANC) and its rivals in the National Party (NP) and the Inkatha Freedom Party (IFP), it necessarily contains provisions for accommodation between the major political parties. However, precisely this feature of the interim constitution is, to the authors, the most worrisome. If the permanent constitution incorporates power-sharing arrangements at the executive level, the authors fear, opposition forces will be marginalized and eventually completely displaced from political discourse and participation.

The current constitution lacks the "basic ingredients of a viable democracy."² It does not create a space for powerful actors to play the role of "loyal opposition." Building upon Dahl's criteria that democracy must entail the right to vote, the right to be represented, and the right of an opposition to appeal to voters against the government in both elections and in Parliament, Jung and Shapiro assert that the current constitution does not encourage opposition, but rather participation and representation in government. The culprits are the constitutional arrangements, which the authors believe are based upon consociational principles. Consociational systems, so the argument goes, emphasize representation in the governing coalition to the "virtual exclusion of opposition."³ "Throwing the rascals out" becomes virtually impossible since elections are only a precursor to the much more important task of building governing coalitions between the contending political elites. These political elites may find themselves in office despite having suffered electoral setbacks. Although Jung and Shapiro do not cite any examples for their assertions, it is possible to substantiate this argument by pointing to numerous European examples where proportional representation systems, as in the Netherlands, Austria, Belgium, or Italy, have produced such outcomes. For example, in the last Dutch elections, the *Partij van de Arbeid* lost some 8 percent of its votes and still managed to retain its role in the governing coalition as the major government party.⁴

Consociational systems are said to undermine the legitimacy, the functionality, and the public interest role of opposing parties because they encourage participation in government. Because opposition is not valued, the incentives are structured toward cooperation among the elites rather than presenting opposing points of view. The voting public is therefore deprived of a real political debate because the political leaders minimize their differences in order to build governing coalitions. Because most political parties participate in the governing coalition, there are few incentives to inform the voter of misdeeds, of failures in policy, or of corruption. What this produces is "insider clubism" and a situation where no one dares to

criticize the government or its policies because all are “reluctant to give up influence, perquisites, and patronage that accompanies their positions as part of the government.”⁵ Not even the President of the Republic of South Africa has the capacity to intervene; his powers are so limited by the constitution that the executive in Parliament completely dominates the agenda-setting and policy-making process. The short and long of the argument is summarized in the following passage:

Facilitating and institutionalizing loyal opposition was not a goal of those who wrote the 1993 constitution. They mandated a government of national unity. They designed a parliamentary and electoral structure that limits effective opposition politics, gives substantial amounts of political power to elites who represent salient minorities, minimizes party competition and conflicts between the executive and the legislature and renders backbenchers impotent. That this is not a recipe for a viable democratic order should be clear from our discussion.⁶

South Africa ended up in a deplorable state as a result of the negotiated transition settlement of 1990 to 1994. Jung and Shapiro claim that such negotiated settlements are, by their very nature, quite undemocratic. Two sets of political leaders negotiated the transition, neither of which came from an organizational base that fully encompassed democratic values. Government reformers in the NP held most of the trump cards in the negotiations with their opponents, the ANC moderates. Although the NP leaders could not impose all of their wishes on their opposition, the ANC was not in a position to force the NP into major concessions because the ANC was not, militarily or otherwise, well positioned to take over the country without collusion from the apartheid regime. South Africa was, as a result, provided with a constitution that gives a great deal of power and leverage to its “old establishment.” Jung and Shapiro hereby echo the sentiments of Hermann Giliomee who makes a similar assertion in his recent analysis.⁷ Giliomee convincingly claims that the negotiated transition of 1990-1994, far from indicating the collapse of the old regime or power structure, actually reflects the persistence of an established distribution of social and economic power. Power-sharing is a product of the strength of the former (and present) political and economic elite. Negotiated settlements are likely to end up looking like consociational democracies because there is a balance of power between the contending parties that forces a compromise rather than an agreement to share power between contending and equal elites.⁸

JUNG AND SHAPIRO'S RECOMMENDATIONS

What should be done to provide South Africa with a truly democratic regime? Jung and Shapiro favor a majoritarian system of government. The noxious power-sharing arrangement under the interim constitution should be abandoned in favor of an executive based on a majority in Parliament. To facilitate such a clear distinction between those in power and those in opposition, the authors support a *first-past-the-post* (FPTP) electoral system. More important, a strong

opposition should be encouraged and again a FPTP system will facilitate a clear electoral winner and loser. Further, Jung and Shapiro appear to advocate a system of relatively weak political parties, but strong constituency representation similar to the U.S. system. Finally, the President of the Republic ought to be given much more extensive powers of policy making and influence over the legislative process.

Their preferences seem to be largely driven by political considerations. The justifications for institutional choices and arrangements are presented in terms of the benefits one or the other party may derive from such an arrangement. For instance, the ANC is portrayed as a political movement on the verge of breaking up into constituent parts such as a social democratic party, a trade union movement, an African nationalist party, and so forth. Jung and Shapiro suggest that it may be in the interest of the National Party to encourage such disintegration by pushing for a reform of the electoral system. If the ANC were to lose the ability to put up candidates on its lists, then backbenchers might become a great deal more vocal in their opposition to government policy. Similarly, the ANC might benefit from weakening the NP by forcing it to drop their demands for power-sharing and having to campaign at the grassroots level as any other party instead of being the political voice of a small, but powerful White socio-economic elite.

PART II: WHAT IS INSTITUTIONALIZED
CONSOCIATIONALISM AND IS THE SOUTH
AFRICAN INTERIM CONSTITUTION CONSOCIATIONAL?

Arend Lijphart has clearly set out criteria for consociational democracy. Such systems are characterized by four institutional mechanisms: proportional representation (PR), segmental autonomy, grand coalition building, and minority vetoes. Although PR comes in a number of guises, the main justification for such an electoral arrangement is that it allows for the fair representation of all societal segments and groups. Majoritarian electoral systems discriminate against minorities and frequently hinder their representation—a fact well documented in Britain, the United States, Canada, and New Zealand.⁹ Segmental autonomy refers to a form of territorial federalism as well as cultural autonomy in which all societal groups are given considerable powers of self-determination concerning their educational systems and cultural practices. Grand coalition building refers to the process of forming governments after elections have been held. In this process, the major parties agree to share power and divide government responsibilities between them. Minorities are provided with a veto in either or even both legislature and executive, particularly on issues of education and cultural policy. The basic idea is to encourage cooperation among the political elites rather than confrontation, inclusion rather than exclusion, and agreement rather than discord.

There are important differences, both theoretically and practically, between consociational systems and consensus-oriented systems. Both types of system

contain power-sharing provisions, but are based upon different structures, objectives, and, most important, rest on different premises. Consociationalism rests on the premise that society is *deeply divided* along ethnic lines, what Robert Price calls "politicized ethnicity," segmented into a number of nonconversing and antagonistic cultural groups. Voting affiliation is primarily driven by such "ascriptive identities." The institutional prescription for such a divided society would be classic consociationalism.¹⁰ Although Lijphart has stressed the importance of consociation for deeply divided societies, other types of societies may be able to manage socio-political conflicts with consensus-oriented systems in which some of the institutional mechanisms of consociation are practiced, but not all of them are institutionalized. Such consensus systems rest on the premise that society is conflictual (and may indeed be divided), but those divisions and voting behavior are not motivated primarily by ascriptive identities. Other cleavages along the lines of class, wealth, regionalism, and clan may be more salient. Institutionally, consensus democracy would call for PR and grand coalitions (if the conflict were serious enough), but not minority vetoes (based on ethnic parties), federalism (based on ethnic groups), and segmental autonomy. Minority cultural rights under a consensus government would be taken care of by a strong individualistic bill of rights.

The current interim constitution in South Africa is clearly not consociational, contrary to the claim made by Jung and Shapiro. It does not contain provisions for segmental autonomy, nor do minorities have a veto. Although there is power-sharing in the executive and PR, these two criteria do not fully satisfy the definition of a consociational system. The best that can be said for the interim constitution, contrary also to Lijphart's more recent claims,¹¹ is that the constitution is a consensual arrangement. But for Jung and Shapiro, this distinction is lost because their concern is really with only one aspect of both consociational and consensual democracy, namely the concept of power-sharing, which they find offensive to democratic theory and practice.

Similarly, the permanent constitution is very unlikely to be a consociational one. PR with a multiparty Government of National Unity (GNU) and weak federalism is a liberal democratic constitution leaning toward consensualism. PR without the GNU would lead to a liberal democratic constitution leaning toward majoritarianism. The constitution is not likely to provide minorities with veto powers, nor is it likely to encourage power-sharing in terms of grand coalition building or, for that matter, true segmental autonomy.

DOES MAJORITARIANISM EQUAL "REAL DEMOCRACY"?

The underlying assumption running throughout Jung and Shapiro's article is that consensual elements of South Africa's interim constitution offend "real democracy," which is characterized as classic "Westminster" majoritarianism.

They go as far as to say that “guarantee of power-sharing is only a guarantee of one thing: that real democratic politics cannot get started”¹² and that Lijphart’s power-sharing prescriptions “occupy a position at the far end of a democratic continuum from the opposition [Westminster] model” they promote.¹³ In doing so, they buy in lock, stock, and barrel to the common misnomer that *original democracy* and, by implication, the *best* democracy faithfully follow the precepts of majority rule and minority opposition. Lijphart characterizes this as the “tenacity of a flawed paradigm,” and points out that it is not only wrong, but dangerous to argue that majority rule is the only legitimate form of democracy.¹⁴ The view that associates majoritarianism with real democracy is wrong on three levels, and thus poses a very real danger to the essence of good constitutional design.

First, in practice, strict applications of majority rule principles are extremely rare as most democracies adopt various institutional mechanisms, which give primacy to some degree of consensus decision making, or at the very least, restrain simple majority rule. In his 1984 study of 21 established democracies, Lijphart found that pure majoritarian democracy was very much the exception rather than the rule and most countries were located on a continuum between the extremes of majority rule and consensus democracy.¹⁵ Second, even the most basic definition of majority rule, that is, that 50 percent plus one of the population govern with, or without, the support of the remaining 49 percent, is almost never achieved in majoritarian systems. The vagaries of the FPTP electoral system may award an absolute majority of the seats to a single party, but, more often than not, that majority is merely based on a plurality of the popular vote with the combined “opposition” outnumbering those who control the wheels of government. In the five established Westminster democracies (Canada, United States, United Kingdom, India, and New Zealand until 1993), governments based on absolute majority support have only been in office for 30 percent of the time since 1945.

Last, and perhaps most important in the context of South Africa, in the developing nonwestern world, there is a much stronger case to be made for consensual democracy as the original brand, and the type of government that best reflects democratic traditions and cultural norms. Raul Manglapus notes that the “common characteristic” of nonwestern democratic traditions is “the element of consensus as opposed to adversarial [majoritarian] decisions,” and a process based on a strong “concern for harmony.”¹⁶ Indeed, Nelson Mandela himself makes it explicit in his autobiography that he considers consensus democracy the “purest form” and most in tune with the cultural traditions of southern African societies. In a fond recounting of Thembu tribal meetings in the “Great Place” of Mqhekezweni, Mandela describes how:

the meetings would continue until some kind of consensus had been reached. They ended in unanimity or not at all. Unanimity, however, might be an agreement to disagree, to wait for a propitious time to propose a solution. Democracy meant that all men were to be heard,

and a decision was taken together as a people. Majority rule was a foreign notion. A minority was not to be crushed by a majority.¹⁷

The exclusionary notion of democracy that Jung and Shapiro present is dangerous in its anglocentrism and ultimately to the detriment of good constitutional design in fledgling democracies and plural societies. If majoritarianism (and its brand of adversarial politics) becomes the only choice, then the benefits for divided societies of more consensual structures will be overlooked. As Sir Arthur Lewis argued, majority rule may be acceptable in homogeneous societies, but in countries with deep social divisions, "it is totally immoral, inconsistent with the primary meaning of democracy, and destructive of any prospect of building a nation in which different peoples might live together in harmony."¹⁸ Although South Africa may not, in fact, need to adopt a full-blown consociational system because it is not a fundamentally divided society in the sense that its ethnic and racial groups do not communicate with one another, its political elite would do well to incorporate consensus-oriented mechanisms into its final constitution.

IS CONSOCIATIONAL OR SENSUAL DEMOCRACY UNDEMOCRATIC?

It is simply untrue that consociational or consensus-oriented democracy does not allow for opposition, hinders policy choices, mitigates against alternation in government, encourages corruption and elite collusion, or over determines one political cleavage over another. Nevertheless, the arguments in favor of a majoritarian system warrant some close examination because they provide the basic foundation for Jung and Shapiro. But before we turn to the recommendations for majoritarianism and their possible repercussions, let us examine the argument that institutionalized power-sharing encourages corruption and does not allow for opposition.

One of the most serious charges against consociationalism, or rather power-sharing arrangements, is the argument that it produces "elite cartels," "insider clubism," and all sorts of collusion among the political elites at the expense of their voters and constituencies. Although no system of government is entirely devoid of log-rolling and bargaining between the major political parties or representatives, or free of corruption and various kinds of collusion, it is incorrect to argue that consensual systems are more corrupting than others. The majoritarian Westminster system practiced in Britain has certainly produced its fair share of corruption. The latest debate in the British Parliament concerning the sale of access to MPs is a noteworthy example of the kind of corruption that may take place if a party is in power for an extensive period of time in an era of privatization.¹⁹ In this case Conservative Party MPs were charging various companies consultation fees while Parliament was discussing legislation that might affect these firms. Corrupt practices are not necessarily a function of the institutional

structure of the political system, but a question of cultural practices, legislation, supervision, as well as many other factors.

Jung and Shapiro appear to favor a system not unlike that in the United States where backbenchers actually oppose their own government from time to time. They argue that such backbench control is a good democratic device. It is then quite surprising to hear these authors claim that collusion is the most likely outcome of consociationalism because collusion, log-rolling, and insider clubism are the hallmarks of Congressional behavior.²⁰ Precisely the opposite of what Jung and Shapiro might want to achieve in South Africa would occur if their recommendation for less backbench control was introduced. Jung and Shapiro's recommendation for such backbench independence is, in any case, a concession to consociationalism because majoritarian systems of government exhibit little backbench independence.

But what about the main point that the interim constitution does not allow for opposition? If that were really the case, the public debate in South Africa and other power-sharing democracies would indeed be a poor one. But precisely the opposite is the case. Anyone following the constitutional and policy debates in the "new South Africa" cannot but be impressed by the level of public and parliamentary debate concerning issues of democracy, participation, and policy direction.²¹ Although the NP and IFP may be part of the GNU, they also vociferously represent an opposition to the ANC in Parliament, at the national, regional, and local levels. Opposition in South Africa is every bit as capable of getting its message across as in other consociational systems, be they in Belgium, the Netherlands, Switzerland, or Austria. Examples of oppositional politics are numerous, but the debates concerning federalism, electoral rules, power-sharing, and local government responsibilities provide enough support for the contention that there is a very vocal opposition in South Africa, despite the fact that its leading members are part of the GNU.²² Democracy, by any standard, is alive and well in South Africa, contrary to the claims Shapiro and Jung might make.

Indeed, the ANC has noted, with some disquiet, the NP's oppositional tactics. In an October 1995 discussion document, they identified the NP's "surreptitious destabilization strategy," which seeks to portray the ANC as "incapable of governing; of dealing with crime; improving socio-economic conditions; attracting investment and giving leadership to economic revival."²³ They also claimed that, far from being a mute puppet of the GNU, the NP was using "whatever capacity it has to stall the transformation process and the de-radicalization of South African society." Jung and Shapiro argue that "no potentially effective parliamentary group exists outside of the cabinet but inside Parliament to oppose government."²⁴ Although it is true that the ANC is not likely to be defeated in a vote on the floor of the new Constituent Assembly (a very majoritarian- rather than consensus-oriented situation), a degree of effective opposition has been mounted by the small Democratic Party (DP) that sits outside of the GNU. The seven DP MPs have a

disproportionate effect on the standing committees and have been responsible for more than half of the searching questions put down for cabinet ministers.

Jung and Shapiro want to claim that power-sharing is undemocratic and argue that only majoritarian systems allow for Dahl's third and most important criteria to come into play. This is patently false: Not only can consociationalism be defended on the grounds that it provides for as broad a representation of social interests in the formation of governing coalitions—that is, democracy is not majority rule, but rule by as many as possible—it can also be defended on the grounds that it, in fact, provides the opposition with more, not fewer, powers of intervention and self-defense. The British Labour Party has languished in opposition for many years. It is deprived of information as to policy failures or successes because the government controls access to information; it is limited to question and answer periods in Parliament; it has been subject to legislation weakening its major ally, the trade union movement, and limiting its funding sources. The Tories have been able to humiliate the Labour Party on numerous occasions either through the media or through control of parliamentary procedure. That is the reality of life in a majoritarian system as practiced in Britain. Consociational systems provide all political parties much greater access to information as well as much better access to the media than the British system. Oppositional parties in the Netherlands or Switzerland enjoy access to information the Labour Party can only dream of.

The other major argument in favor of majoritarianism is that it allows the voters to “throw the rascals out” if they do not like their policies. Alternation in power is a potent argument to underscore the democratic nature of majoritarian systems. Consociational systems, on the other hand, are held to mitigate against such punishment of the political elites because the elections are only a first step toward the formation of government. In proportional representation systems, governing coalitions must usually be formed because no party normally has a clear majority of votes and seats. There is some truth to this argument in the sense that proportional representation systems encourage party formation and proliferation. Governments usually are coalition governments and it is true that some political parties are consistently in government despite weak electoral performances from time to time. The Dutch example is illustrative, but it would be stretching the argument to claim that the Netherlands does not meet democratic criteria just because the PvdA has been in government for a number of years in coalition with a few other parties.

PART III: POSSIBLE OUTCOMES OF SHAPIRO AND JUNG'S RECOMMENDATIONS

If some of the arguments by Shapiro and Jung do not hold water in principle, what about their suggestions for political practice? What are the likely consequences of their proposals? The adoption of a FPTP system of elections is likely to lead to only one outcome: an ANC majority in Parliament and an ANC

government for the foreseeable future. This outcome may not be drastically different under another electoral system, but a consensual system would provide other parties with a better chance to present opposing points of view. The introduction of the FPTP system would lead to precisely the kind of situation that Shapiro and Jung want to avoid: the weakening and silencing of opposition in South Africa.

WILL FPTP IN AFRICA PRODUCE
VIABLE OPPOSITIONS PERCEIVED
AS "GOVERNMENTS IN WAITING"?

Jung and Shapiro's notion of successful adversarial government requires that an opposition party is "perceived as a realistic alternative to the government of the day," for if it is not, then "crises for the government are more likely to become crises for the democratic regime."²⁵ They cite this as a functional argument against power-sharing and one of its institutional planks—proportional representation. Conversely, majoritarianism and winner-take-all districts are praised as being most "likely to produce two-party systems and, as a result, strong parliamentary oppositions."²⁶ However, these two "laws" of electoral system design do not hold true in the ethnically and territorially divided fledgling democracies of Southern Africa.²⁷ In practice, other factors have submerged pressures for two-partyism in the four southern African countries, which use FPTP districts. In Malawi, the strength of regionalism led to nearly proportional parliamentary results, a strong three-party system, and subsequent coalition government, after the first multi-party elections were held in 1994. In Zimbabwe, the Anglo-American system has facilitated a *de facto* one-party state with Robert Mugabe's Zimbabwe African National Union–Popular Front (ZANU–PF) winning every seat but three in both 1990 and 1995, despite the severely disadvantaged opposition polling nearly 20 percent of the popular vote. In Zambia, Frederick Chiluba's Movement for Multi-party Democracy ironically managed to crush multi-partyism by taking 125 out of 150 parliamentary seats in 1991, and in Botswana, which does have a two-party system, there has never been an alternation in government in the entire 30 years of post-colonial history.

FPTP majoritarian constructs in Africa lead to "frozen party" systems where the alternation of parties in government and opposition is not perceived as likely, or natural, occurrences. The fact that oppositions are not a "realistic alternative to the government of the day" leads precisely to Jung and Shapiro's fear that crises for the government become crises for the democratic regime. The following table illustrates that elections held under plurality in Southern Africa have provided a paucity of key competitive battleground seats, which are the lifeblood of the Westminster system of government.

Jung and Shapiro state that "given the unpredictability of unconstrained PR versus the predictability of the first-past-the-post plurality system in generating

Table 1
Marginal Seats in Plurality Elections

Election	Number of Marginals ^a	Percentage of Total Seats	Largest Party	Average Vote in Seats Won (%)
<i>Southern Africa</i>				
Zimbabwe 1995	0	0	ZANU PF	82
South Africa 1994 ^b	13 (5)	3.2	ANC	80
Zimbabwe 1990	4 (1)	3.3	ZANU PF	81
Zimbabwe 1985	3 (1)	3.7	ZANU PF	91
Zambia 1991	6 (4)	4.0	MMD	81
Malawi 1994	12 (5)	6.8	UDF	72
Namibia 1994 ^b	5 (2)	6.9	SWAPO	85
<i>Established democracy</i>				
USA 1994	88	20.2	REPUBLICAN	65
Canada 1993	63 (37)	21.4	LIBERAL	56
UK 1992	171 (92)	26.3	CONSERVATIVE	52
India 1980	157	29.7	CONGRESS	52
New Zealand 1993	30 (15)	30.3	NATIONAL	44

Note: Marginals defined as those seats won with majorities of less than 10 percent of the total district valid vote. Figures are for lower houses of parliament only.

a. The number of marginal seats won by the largest party appears in brackets.

b. plurality SMD simulation of the actual election.

two-party politics” they would choose plurality “if the goal were to produce oppositional parliamentary politics.”²⁸ But the evidence from Southern Africa clearly shows that if there is any hope for some degree of opposition to one-party hegemony, it comes from inclusive power-sharing arrangements and not exclusionary FPTP electoral systems. As outlined in Reynolds, plurality elections in Southern Africa give rise to the classic elements of a de facto one-party state where governing parties are insulated from oppositional challenges.²⁹ In Malawi, Zambia, and Zimbabwe, the largest parties won their seats with huge slices of the vote making them largely invulnerable. Marginal seats are categorized as those seats won with a majority of less than 10 percent of the valid vote; these are then considered battleground seats, the winning or losing of which determines which party forms a government. In the five established democracies shown in Table 1, between one-fifth and one-third of the seats were considered marginal, but in Southern Africa competitive seats have never amounted to more than a fraction of the total legislative body. In Zimbabwe, no seat has ever changed hands when it was contested in the following election by the incumbent party. If the constitutional designers in South Africa had followed Jung and Shapiro’s advice and used plurality, a simulation of the results shows that there would have only been 13 (3 percent) marginal seats and the average ANC seat was taken with more than 80 percent of the popular vote.

The point is that the introduction of such a system would produce overwhelming ANC majorities at this point and long into the future. Although one may argue that such majorities are justified, one cannot assume that such overwhelming

support for one particular party will strengthen, in any way, oppositional movements. What is far more likely is that a one-party system will emerge and different currents of thought within the ANC are likely to clash over policy. It is quite unlikely that a strong opposition will emerge as a result of a merger between various White African parties (NP, DP) and Black African opposition groupings such as the Pan Africanist Congress (PAC). In effect, plurality systems in heterogeneous societies freeze the number of seats won and create an environment where a political earthquake becomes necessary to jar loose the patterns of voting and party voting concentration. This finding is a serious blow to the case for plurality in South Africa because if plurality leads to a *de facto* one-party state, then there are no incentives for losing parties to remain loyal parliamentary opposition parties. In contrast, PR systems may be more sensitive to evolving vote patterns by facilitating shifting government coalitions or forcing single-party cabinets to include others when its support falls below an absolute majority of the population.

Jung and Shapiro are undoubtedly correct when they argue that institutional outlets for dissent are crucial in allowing dissatisfied groups meaningful expression within the system to forestall against separatist and antidemocratic tendencies. But this is precisely the argument used for power sharing in South Africa and the area in which the majoritarian argument is weakest. It is clear from the pronouncements of Kader Asmal, the effective author of the electoral system found in the interim constitution, that the ANC appreciated the way in which PR could facilitate an inclusive polity, which would convert potentially anti-system minority parties into pro-system parties with incentives to play their democratic roles as constituent segments of a "loyal opposition."³⁰ If the South African elections of April 1994 had been re-run under FPTP, two potentially violent anti-system parties, the Afrikaner Freedom Front and the Pan Africanist Congress, would have been excluded from representation within the new parliament.

PART IV: THE NEW CONSTITUTION

Jung and Shapiro should be pleasantly surprised that their fear of the interim constitution "hanging on for decades" is, in its most important respect, unfounded. It is highly likely that the constitutionally entrenched government of national unity will be dropped from the permanent constitution as the only party seriously proposing its retention is the NP, which cannot muster the one-third of the vote to block such change. The debate on power sharing is strictly along party lines. The ANC favors a stronger presidency in which the president appoints a deputy president and the cabinet, which is composed of representatives drawn from a parliamentary majority. The NP would agree to the appointment of a deputy president if the cabinet were based on proportional representation of all political parties. The DP has suggested a third option, namely that the president appoints a prime minister with independent powers of appointment.

Because none of the smaller parties can block the constitutional arrangements outright in Parliament, but the ANC does not have enough votes to push through the reformed constitution without at least 15 votes from other parties, the “deadlock-breaking” mechanisms in case of an impasse become quite important. If the Constitutional Assembly cannot reach agreement, the constitution goes to a popular referendum. If the constitution is approved by 60 percent of the electorate, which is likely given the ANC’s enduring popularity, then it is accepted.³¹

One of the more ironic aspects of the ANC’s rejection of constitutional power-sharing is that they have repeatedly expressed a willingness to informally continue the government of national unity (if they achieve a majority in 1999) by inviting leaders of the NP, and any other “substantially” supported parties, to join the cabinet.³² This is in line with the practice in other nascent democracies in Southern Africa. In 1980, despite winning an absolute majority, Robert Mugabe invited three former members of Ian Smith’s Rhodesian Front to join the cabinet³³ and similarly Sam Nujoma’s South West African Peoples’ Organization (SWAPO) government in Namibia appointed non-SWAPO White politicians to key ministerial positions in 1990.³⁴ In 1994, President Bakili Muluzi of Malawi went outside of a majoritarian constitution to appoint three ministers from the opposition Alliance for Democracy (AFORD) and invited AFORD’s leader, Chakufwa Chihana, to become one of two vice presidents.

Mugabe, Nujoma, Muluzi, and, no doubt, the next South African president all recognized that stability and nation-building were best served by some degree of inclusive power-sharing—even if that power-sharing went against their majoritarian constitutions. If such power-sharing is required, even as a sign of good faith, in the fragile years of democratic, but divided, societies, then it seems foolhardy to leave such an important provision of governance to the whim of the single party that has managed to gain a plurality of votes at the ballot box. Indeed, the evidence from countries that have followed this path is disturbing. Un beholden by constitutional restraints, Mugabe has become increasingly exclusionary and contemptuous of opposition views. Muluzi’s political incentives may well press him into ending the multi-party cabinet before the next elections and the SWAPO government is increasingly consolidating its one-party power at the expense of other voices. In other words, promises of “voluntary power-sharing” must be seen in the wider context of the Southern African experience and should be viewed with a great deal of skepticism.

An exclusive focus on the issue of power-sharing, however, would be misleading in the discussion of the constitutional debate. Besides that vexing issue, numerous other important areas have not as yet been discussed, despite the publication of a working draft. Of particular importance are the powers of local government, the distribution of authority and responsibility between national and state governments, the representation of the states in either a Council of Provinces or a Senate,

the extent of the Bill of Rights, and, above all, the willingness of the contending parties to come to an agreement. The IFP has withdrawn from the constitution-writing process altogether and opposes any scheme that does not provide KwaZulu with autonomous powers bordering on independence and its own constitution. The issue of expropriation and land tenure rights is also likely to become highly controversial as well as central to the constitutional debate.

What is likely to occur is that the ANC will push through its suggestions for majority rule tempered by a form of "voluntary power-sharing." It is our belief that such an arrangement may satisfy the yearning for majority rule among the ANC elite and their followers, but it is unlikely to lead to a consolidation of democratic practices and principles. It is also likely that a form of federalism is adopted, which entrenches the current nine provinces with a Council of Provinces in which the ANC-held provinces will be able to outvote KwaZulu and the NP stronghold in the Western Cape consistently. Such an arrangement will be opposed vociferously by the IFP, most probably resulting in the continuation of the low-level civil war that has plagued KwaZulu for the last several years. The entrenchment of so many state governments is also likely to have another negative consequence—the introduction of multi-tiered government opens the door to corruption and exploitation, particularly in the poorer provinces where the state and local authorities will be hard pressed to adequately compensate their civil servants.

Douglas North convincingly argues that the shape of political institutions is a key in explaining economic growth, social and political stability. The constitutional debate in South Africa is of enormous importance in the future trajectory of the country and its neighbors because it will set the tone for the future course of the region. Constitutions set the rules of the political game and provide the standards for political action and interaction. Given the experience in other African contexts and the long and troubled history of race and ethnic relations in South Africa, the development of a truly consensual constitution appears to us the only viable option to safeguard the country from civil unrest. To placate the economically powerful but internally divided White constituency with guarantees on property rights and political power-sharing seems a small price to pay when compared with the upheavals that have accompanied majoritarian rule in other parts of Southern Africa.

CONCLUSION

At the crux of the whole institutional design debate rests the realities of South African political, economic, and social life. A year after the gloriously inclusive multi-party elections, South Africa is still a country of two halves. Political power may now lie within the hands of the non-White majority, but economic power still decisively rests in the pockets of White South Africa, and few doubt that it will remain there for many years to come. Therefore, the debate over whether power-sharing is a good or bad thing is moot. Power-sharing is an unavoidable reality

and the question becomes in what way should power sharing be operationalized, and who has ownership and oversight over the decisions made? Jung and Shapiro's majoritarian recommendations would certainly give the Black African majority the opportunity of unrestrained parliamentary power, but they would not end power-sharing per se. All that would happen is that negotiations between various power nodes would be less visible, less transparent, and less accountable. ANC leaders would meet with White business leaders behind closed doors in a type of covert corporatism. Recognizing the reality of shared power in South Africa and institutionalizing its political manifestations may not end the murky deals of state and business, but it offers a much better hope that such decisions will be taken in the public eye and by a far more inclusive segment of the polity.

NOTES

1. Courtney Jung and Ian Shapiro, "South Africa's Negotiated Transition: Democracy, Opposition, and the New Constitutional Order," *Politics and Society* 23, no. 3 (1995): 269-308.

2. *Ibid.*, 270.

3. *Ibid.*, 273.

4. Steven Wolinetz, "The Dutch Parliamentary Elections of 1994," *West European Politics* 18, no. 1 (1995): 188-92. The irony in the Dutch case is that the PvdA became the largest party in the Parliament because their competitor, the Christian Democratic Appeal, lost even more votes. Consequently, the PvdA was able to retain its position as the pivotal party in the government coalition.

5. *Ibid.*, 277.

6. *Ibid.*, 277-8.

7. Hermann Giliomee, "Democratization in South Africa," *Political Science Quarterly* 110, no. 1 (1995): 83-104.

8. Jung and Shapiro, "South Africa's Negotiated Transition," 296.

9. See Wilma Rule and Joseph Zimmerman, *Electoral Systems in Comparative Perspective: Their Impact on Women and Minorities* (Westport, CT: Greenwood, 1994).

10. The four key institutional planks of Lijphart's consociationalism are proportional representation, a grand coalition, segmental autonomy (territorial or nonterritorial federalism), and a minority veto. See Arend Lijphart, *Democracy in Plural Societies* (New Haven, CT: Yale University Press, 1977), 25-52.

11. See Arend Lijphart, "Prospects for Power Sharing in the New South Africa," in *Election '94 South Africa: An Analysis of the Campaigns, Results and Future Prospects*, ed. Andrew Reynolds (New York: St. Martin's, 1994), 221-31.

12. Jung and Shapiro, "South Africa's Negotiated Transition," 301.

13. *Ibid.*, 273.

14. Arend Lijphart, "Majority Rule in Theory and Practice: The Tenacity of a Flawed Paradigm," *International Social Science Journal* 129 (1991): 483-93.

15. Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven, CT: Yale University Press, 1984).

16. Raul Mangapus, *Will of the People: Original Democracy in Non-Western Societies* (New York: Greenwood, 1987), 6.

17. Nelson Mandela, *Long Walk to Freedom* (New York: Little, Brown, 1994), 18-19.

18. Arthur Lewis, *Politics in West Africa* (London: Allen & Unwin, 1965), 64.

19. *New York Times*, 7 Nov. 1995, A4.

20. The literature on congressional politics is, of course, vast, but a brief glance at David Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), provides ample evidence for this proposition.

21. David Welsh, "Drafting the Final Constitution," *Indicator South Africa* 12 (Summer 1994): 17-20.

22. Susan Booysson, "The Changing Face of Opposition Politics in South Africa" (Paper presented at the conference on Parliamentary Dynamics, Cape Town, 11 Aug. 1995), 30, which argues that opposition politics in South Africa is vibrant and not just confined to the parliamentary arena.

23. African National Congress, *ANC Discussion Document* (Johannesburg: ANC, 1995), 2.

24. Jung and Shapiro, "South Africa's Negotiated Transition," 277.

25. *Ibid.*, 272.

26. *Ibid.*, 274.

27. See Reynolds, "Constitutional Design in Southern Africa," *Journal of Democracy* 6, no. 2 (Apr. 1995): 86-99 and "The Case for Proportionality," *Journal of Democracy* 6, no. 4 (1995): 117-24.

28. Jung and Shapiro, "South Africa's Negotiated Transition," 274.

29. Reynolds, "Constitutional Design in Southern Africa," 120-2.

30. Timothy Sisk, *Democratization in South Africa* (Princeton, NJ: Princeton University Press, 1995), 190.

31. This appears more and more likely. See the article by Raymond Louw, "ANC Prepares to Push the New Constitution," in *Southern Africa Report* 14, no. 6 (9 Feb. 1996): 3-4.

32. Saki Macozoma, MP, repeated this widely held ANC view during the "Parliamentary Dynamics" conference held in Cape Town and sponsored by the Centre for International and Comparative Politics, University of Stellenbosch, on 10 Aug. 1995.

33. All three were prominent members of the business and agricultural community. Dennis Norman became Minister of Agriculture, David Smith became Minister for Trade Commerce, and later Chris Andersen was appointed Minister for Public Works.

34. Cabinet posts were offered to Reggie Diergaardt (UDF), Vekuii Rukoro (NNF), and Dr. Sed Ngavirue, Otto Herrigel, and Gerhard Hanekom who had not been elected to the Assembly. The DTA were also offered a cabinet post but the party turned it down. See Lindeke, Wanzala, and Tonchi, "Namibia's Election Revisited," *Politikon* 18, no. 2 (June 1992): 134.