

KADER ASMAL HUMAN RIGHTS AWARD LECTURE
UNIVERSITY OF THE WESTERN CAPE, 23 JULY 2014

TREVOR MANUEL

I want to focus on the 'role of democratic institutions of governance in promoting human rights and civil liberties', and wish to start with a caveat – human rights and civil liberties are ends, not means. The Preamble to the constitution uses three words of two letters each to mandate the purpose of the very adoption of the constitution, "so as to". This mandate covers four key tasks –

“Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person, and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.”

The relevant debate today is not a narrow one about civil liberties. It is, rather, a discussion on the quality of the democratic project. There is no doubt that the constitution provides a strong basis for democracy. Too frequently, we attempt to abstract rights and liberties, and the checks – such as the Chapter 9 institutions – and ignore the entire mechanics of what produces a democratic impact in the lives of ordinary citizens.

The Financial Times published a recent article by Christopher Caldwell under the rubric, “Democracy is not a synonym for good government”, an argument which compels one to sit up and take notice. Caldwell drew extensively on a recent book by John Dunn of Cambridge University. Caldwell writes, “While never undervaluing the people’s right to choose their leaders, Professor Dunn draws a sharp distinction between that and self-government. No one inspecting the United States today could sanely conclude that it is governed by its people,” he writes – granting at

the same time that the people's right to choose their rulers is not for nothing."

So, when the people have chosen, as we have recently done in fulfilment of our obligation to participate each five years, and we have a constitution as strong and articulate as ours is, what happens then?

The Institute for Democracy and Electoral Assistance, (IDEA) recently published a paper entitled "Assessing the quality of Democracy". They present five key principles to be considered:

- Democratisation is a process that requires time and patience
- Democracy is not achieved through elections alone
- Democratic practices can be compared but not prescribed
- Democracy is built from within societies; and
- Democracy cannot be imported or exported, but can be supported.

The IDEA paper describes the principles that guide the assessment of democracy as being "popular control over decision makers and political equality of those who exercise that control". President Nelson Mandela in his last address to Parliament on 26 March 1999 alluded to this issue when he said, "Because the people of South Africa ... chose a profoundly legal path to their revolution, those who frame and enact the Constitution and laws are in the vanguard of the fight for change. It is in the legislatures that the instruments have been fashioned to create a better life for all. It is here that oversight of government has been exercised. It is here that our society, in all its formations, has had an opportunity to influence policy and its implementation." And then he raised the all-critical question of that popular control when he said, "we do need to ask whether we need to re-examine our electoral system, so as to improve on the nature of our relationship as public representatives with the voters."

The key responsibility is to evaluate how all parts of the government interact. We frequently tend to overlook the important role of the Executive in shaping policy and overseeing its implementation.

It is important to recognise that as and when policies are adopted, there are no absolutes. All of the mandates drawn from the constitution need to co-exist, and in balance to ensure that the overall quality of democracy, provided for in our Constitution, is implemented. As it happens, this quarter of the parliamentary calendar is devoted to

precisely that task. In respect of all functions, the question of whether the provisions are adequate, “within available resources”, and within each line function whether the selection of programmes and the metrics for implementation are adequate. This is what the departmental budget debates ought to be about. Perhaps we have allowed this important annual period of accountability to be debased. Parliament has become a sausage machine, operating with a single objective, that every vote has been debated, however superficially. It is not possible to place all of these commitments side-by-side and answer whether on the basis of these decisions; the democratic project is on track. I should point out that this is not a problem of the fifth parliament. The slide has been steady and continuous.

Optimally, the budget vote debates should inform the public on whether South Africa is any closer to realising the commitments framed in the Constitution. To put it more generally, are we progressively realising the rights enshrined in the Constitution?

Parliament is the final arbiter. There is no ‘democracy inspector’ sitting outside of parliament assessing whether it discharges its mandate in the letter and spirit of the constitution.

Within the mechanics of our Constitutional order, parliament also has a role as the legislature. In the past while, too many pieces of legislation have been returned from the Constitutional Court as being non-compliant. Furthermore, there is a great unevenness in the quality of legislative crafting – again, I want to emphasise that this is not a flaw of the fifth parliament. The Public Protector Act (Act 23 of 1994) has a curious crafting at Clause 9, which was amended in 2003 to read – “No person shall – insult the Public protector or the Deputy Public Protector”;. No such provision exists for the President, the Speaker of the National Assembly, the Chief Justice... perhaps it should be inserted into the SABC Act to provide similarly for the COO – acting, or otherwise!

So with this state of affairs, how does democracy explain the words of Madiba when he said, “those who frame and enact the Constitution and laws are in the vanguard of the fight for change”?

We have an obligation to ensure that discussions such as this; about law, rights, the strength of our democracy and the quality of life of our people neither becomes nor remains the preserve of a small elite.

These issues are important in understanding the statement by Christopher Caldwell, that democracy is not a synonym for good government.

There are a series of questions that we have to grapple to better understand the challenge of good governance. Do we know what, as South Africans, our sense of common purpose is? How do we define common purpose in a society as grotesquely unequal as ours? Is good governance possible in the absence of the essential threads that bind societies – the intangibles such as trust and hope?

We are a young democracy, and ought to be the most aspirational. The key issue is why good men and women appear to disengage.

In our parlance, the message is clear, “Unzima lomtwhalo, sifuna simanyane”.