

Strengthening Democracy?

I would like to express my thanks and appreciation to my hosts for this invitation to address you. It is an honour which I could not have imagined, when as a precocious schoolchild some decades ago I was given a book prize on speech day. I have cherished that book for a number of reasons. It was part of my induction to reading good books, a habit I still cherish and which I wish I could devote more time to. The second reason, as all of you would know, is that it was a beautiful read. I have often wondered why, of all the books my mentors could have chosen for me, they picked "Cry the Beloved Country".

I have looked at the list of illustrious speakers who have given previous Alan Paton lectures. I have read their lectures and, I must confess to being suitably intimidated by their erudition. I can only congratulate those who were in the audience on those occasions; witnessing the actual delivery by personalities I admire and have the greatest respect for. It must have been an exhilarating experience.

Unlike the speakers in the last five years, I did not know Alan Paton very well. My

*Deputy President of the Constitutional Court.

age may have something to do with that. My only meeting with him was about 1975 at a commemoration of Mahatma Ghandi at the Inanda \ Phoenix settlement. I had gone there with Ismail Meer. Alan Paton's function there was to introduce (and he did this so well!) The guest speaker, who he introduced as "the man of the moment!" Inkosi Mangosuthu Buthelezi then took the podium and gave one of his usual rousing speeches. Although it was a first meeting with Alan Paton, I knew about him of course. I had been an avid reader of his novels and I knew a fair amount of his political activities because I read any scrap of news I could come across, particularly if it had anything to do with politics, sports and law. I cannot remember in what order.

What were my impressions of him then? I knew two things about him, firstly that he was an incredibly good writer. He wrote stuff I could understand, relate to and empathise with. It was based on local geographical locations. I remember going through the beautiful prose of "Cry the Beloved Country," which made me look at the beautiful Natal countryside with new eyes. I recall being spell-bound in the relationships of a white family in "Too Late the Phalarope". I should say that this one meeting was probably the first time I had met a real flesh and blood writer in person. Secondly, I knew him as a Liberal with a capital "L" as Helen Suzman would say. He was a leader of the Liberal Party of which I read a lot. This was the

time of the good guys, relatively good guys and bad guys. The scene changed with the times and ructions among political parties. Even an innocent like me then, followed the fortunes of the United Party (which lost in 1948, when people in my community thought, relatively speaking, that they were the good guys. There were the Nats also and people had pretty strong views about them. When the split in the UP(NRP) came, the Progressives took everyone by storm and became the good guys, also relatively; there seemed no doubt then that the Liberal Party were the good guys although there were questions about their effectiveness (in bringing about change to the poorest of the poor) and influence. We did listen intently to what was being said about us in Parliament and elsewhere, the Margaret Ballingers, Edgar Brookes, Helen Suzman and others. I think these, Helen Suzman in particular, were classified as good guys. Those were my first impressions. Of course all this has some relevance in shaping those of us who later found themselves involved in the fight to achieve democracy. One has only to reflect on those old memories to realise that what we do today may have some impact on the future of this country and its people.

Speeches like this almost always begin with a definition of the word "democracy". I shall refrain from adding to all the definitions which you know. Everyone here knows, I am sure, that the term is elastic, many people, institutions and

governments, dictators and tyrants even, have appropriated the word and made it mean what they wished it to mean. It is possible that by the time this evening is over, some here will feel that I have also appropriated the word for my own ends. Well, let us see.

As a concept, democracy is taken seriously by most people. Anyone who has had any association with Alan Paton would. Not all of them have the same appreciation of what the concept encompasses, but all regard it as something good. From the point of view of the individual, it must give a good feeling to have a governmental system one regards as one's own; where there is always a theoretical possibility of changing the men and women in government whenever one disagrees with them or simply gets tired of them. From the point of view of governments, it must feel good to know that one has the mandate, the sanction of the people to govern. This is particularly so if one is part of the governing party. Some would even go so far as to identify themselves as "the people" in the slogan "the people shall govern!"

There is much discussion about democracy, or aspects of it, in this country today. This is only right because many regard it as indispensable for stability and good governance. Whatever arrangements other countries may have, one strong feature of our democracy is a multi-party system of government. In this we are not unique.

Multi-partyism is the general trend in what our Constitution refers to as “open and democratic countries”. Indeed, President Mbeki is reported recently to have stated that by and large, the African continent has decided that a multi-party system of government is the only correct way to go, and that the confinement of political opinion into one political party, however permissive of diverse views within it may be, is a denial of “democratic rights”. He said that he did not know of any serious contemporary African politician or intellectual today, who argues in favour of a one party system of government.¹ Now, we do not have to deal with the spectre, if such it is, of a one party system of government; multi-partyism is enshrined in our Constitution.²

You will have noted that the title of my speech is phrased in question form. What I will do is raise some of the questions and issues which come to mind whenever the issue of democracy is broached, in the South African context.

South Africa graduated into a democracy in 1994. I say “graduated” advisedly; the proponents and apologists of the previous political system never ceased to claim, quite unblushingly, that the pre-1994 South Africa was a democracy. In a cynical

¹ *The Sunday Independent*, October 3 1999.

² Section 1(d) of the Constitution.

way, they had a point. There was a “representative” multi-party Parliament which made laws in accordance with accepted procedures; there were regular elections; those qualified to vote took part in the elections and in standing for office, and so on. Indeed, if one were to somehow wish away some four-fifths of the population, it could be said that South Africa then had a democracy that was alive and well. That perception and distorted reality still serves to enable some to see no evil and to hear no evil regarding our ugly past and to see nothing and hear nothing that is good and positive about the present. What is conveniently forgotten is the very essence of what was so devastating about that shameful history: the untold suffering that was caused to the majority of the country’s population by the enforced exclusion from the rights of normal citizenship, which was being carried out with impunity, as a matter of state policy. Democracy South African style was an exclusive heritage for the few, unshared by the majority. Of course, that is democracy as it was never meant to be. It was a system that was deservedly doomed. It deserved no protection, no strengthening. To the credit of some, there were voices raised, there were campaigns mounted, there were books written and published. There was a divergence of strategy in fighting that system. In the anti-apartheid camp, there were those who believed that any means could and should be used to overthrow the system. Others disagreed on the means. This resulted in serious debates about use of violence and economic sanctions/ disinvestment. We

saw, even then, admirable selflessness, courage and commitment to a culture of decency and human rights, not only from certain individual South Africans but also from members of the international community. Many illustrious names, from all racial groups, come to mind. Many of us watched their experiences with interest. We understood what was happening; it made sense and gave us a glow of pride when people like, Chief Luthuli, Nelson Mandela, Monty Naicker, Ismail Meer, Archie Gumede, Lillian Ngoyi and others were fighting for the same cause as Helen Suzman, Peter Brown, a Margaret Balingier, Alan Paton or a Bram Fischer. They all committed themselves into a battle which, at one level, could be characterised as essentially Black/White, but was really a fight for democracy.

Things had to change and the drastic transformation in 1994 came with much excitement. That is when the other four-fifths suddenly became recognised as citizens who could, and were entitled to take part in the political life of the country. Democracy began to take centre stage in the political life of the country and, in political terms, things could never be the same again. Henceforth, the country's governance was transformed into -

“... one, sovereign, democratic state founded on the following values:
(a) Human dignity, the achievement of equality and the advancement of human rights . .

”³

³ Section 1(a) of the Constitution.

The Constitution naturally places a lot of emphasis on democracy. The Preamble, for instance, proclaims:

*“... We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -
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 attributes and parameters of that democracy infuse every sphere and each organ of government. It is the spirit that moves through all structures and informs their functioning. It should accordingly come as no surprise that so much hope reposes in the very idea of democracy, particularly by communities who suffered the most under the previous undemocratic rule.

Against that background, it becomes easy to overstate, to exaggerate, the real meaning of democracy. For those who are very poor, who are hungry; the unemployed and the homeless, the temptation might be to expect that democracy will be the great and immediate deliverer. For those who have been forced to endure rightlessness, the very attainment of democracy might cause them to expect the full, immediate and tangible delivery of the fruits of those rights. The dying kidney patient who approached the Constitutional Court for access to ongoing renal dialysis treatment on the basis that he had a right not to be refused “emergency” treatment

and the right to life, must have hoped that a democratic Constitution and a Bill of Rights would make a material difference and place the life-giving treatment within his reach.⁴ There would be equally pressing demands and expectations in the spheres of education,⁵ housing,⁶ health care, food water and social security,⁷ legal representation,⁸ and so on.

What seems necessary therefore is for the nation to make a correct assessment of what democracy really means to this country. In order to do that, it may also be important to examine its relationship with other institutions which deal with the woman and man in the street on a daily basis. It may be necessary also to examine how democracy enhances the promotion and protection of fundamental rights; as well as how the wishes of both majorities and minorities are accommodated in a democracy.

Protection of Democracy

I think it is fair to say that our democracy is still fragile and needs protection and

⁴ See *Soobramoney v Minister of Health, KwaZulu-Natal*, 1998(1)SA765(CC); 1997(12)BCLR1696(CC).

⁵ Section 29 of the Constitution.

⁶ Section 26.

⁷ Section 27.

⁸ Section 35(3)(f).

support. Its institutions need to be strengthened and to be encouraged. The effects of the apartheid legacy will be with us for some time to come. This has implications for all institutions, old and new. They must all be seen to be restructured, transformed, to meet the requirements of the value system of the new order. Some changes are going to follow naturally, others will have to be hastened along, sometimes giving rise to tensions and frustrations. The Constitution has made careful provisions for this transformation to find expression in all spheres of government, including the courts, which are the judicial authority in the Republic. In order to safeguard the Constitution and the Bill of Rights, a new Court, the Constitutional Court was established as the final arbiter in all constitutional matters. Other state institutions, specifically designed to support constitutional democracy. These are the Public Protector, the Human Rights Commission, the Commission concerned with the rights of Cultural, religious and linguistic communities, the Gender Equality Commission, Auditor General and the Electoral Commission. They are independent and subject only to the Constitution and the Law. The Constitution demands that other organs of state must assist and protect these institutions to ensure their independence, impartiality, dignity and effectiveness. What is important is that those institutions and the courts must exercise their functions with integrity and independence. Democracy can only be enhanced if people know that there are institutions whose integrity and impartiality they respect, who stand

between them and the power wielded by the state and its organs. The demands of a healthy democracy however go beyond properly functioning courts and efficient structures. They go beyond the document which embodies this very progressive Constitution and its entrenched Bill of Rights.

Civil Society

In this respect, we may benefit by looking at what has happened in one or two of the older democracies. Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States recently drew parallels between the situation of women in nineteenth and early twentieth-century America and the tremendous advances in the rights of women in this century. She recalls that in the American Constitution, signed in 1787, produced by the "founding fathers" who were 55 men, women were "unacknowledged in its text, uninvited in its formulation, [and] unsolicited for its ratification." The provisions of the Constitution were broadly framed and did not in themselves worsen the plight of women. No role for women was however consciously envisioned. She makes the point that the ratification of the Bill of Rights (1791) did not have much effect on the legal status of women. She quotes the English poet, Alfred Lord Tennyson's words that: "a wife stood in legal relation to her spouse as something just "better than his dog, a little dearer than his horse." She traces the advances made and concludes that those advances, both in the United

States and in other countries, came about because of the work of women's suffrage movements which were at the forefront of securing equal treatment and gender equality. From this and other historical facts she draws a lesson which I commend to us all today: "change, whether by court or legislature, has a much better chance of succeeding when it follows, rather than leads, public opinion".

Democracy and Human Rights

One of the cornerstones of our constitutional democracy is the Bill of Rights. It enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom.⁹ There is no doubt that many of the upheavals elsewhere in the world have been caused by undemocratic practices and resistance to democracy. Civil wars have wracked numerous countries in the world over the last few years. Many commentators believe that we, particularly in this province, escaped by the skin of our proverbial teeth from violence of civil war proportions at our transition to democratic governance. There have been examples elsewhere of attempts to forestall or curtail conflict: the Bosnian Peace Accord, the Arab-Israeli agreements, are just two of the more recent examples. At the root of some of these upheavals, some of which take the form of ethnic strife, are a number of different causes, including a basic disregard for the rights of others

⁹ Section 7(1) of the Constitution.

considered "different from us". South Africa has suffered greatly from the highlighting of differences, and the granting of privileges on the basis of "us" and "they".

Invariably, the victims in all these upheavals are the weakest and the poorest in our society, those with the least education and those with little or no knowledge of the law and the Constitution and its protections. For them the abstract concept of rights is a nebulous and irrelevant phenomenon; it does not matter to them that we have a democratic Constitution with entrenched fundamental rights and that there are structures set up to support it. What matters to them is the daily, nay, hourly battle for survival. And they become victims because they do not have the choices some of us have; they become the most vulnerable and they live from day to day clutching at whatever straw presents itself. Because the word democracy seemed to promise much, they are baffled when nothing tangible seems to change in their day-to-day lives.

It is these people who make it imperative that those who have the means and the education should continue to do what Alan Paton and others like him did throughout their lives; that is fulfilling a watchdog role and continually articulate the imbalances and inequities which are still part of our lives. It is these people who

give us the best reason to seek the strengthening, rather than the weakening of democracy and its institutions.

We need also to give content to the rights enshrined in the Bill of Rights. Many ask, what is the value of the right to life where the quality of life is nothing to speak of, where poverty and disease are rampant and where that life has no shelter or home. When we adopted this Constitution with its value system, we were choosing to be a caring, more humane society. When we adopted the equality clause, we appreciated that the achievement of equality could not be a simplistic affair. We knew that there would be those for whom enjoyment of the right would be impossible unless they were assisted to overcome the legacy of disadvantage and dis-empowerment. We knew that the adoption of a new Constitution did not translate into instant banishment of ignorance, poverty and disease. We knew there was work to do to develop this country and all its people and that it was our work and not that of anyone else. After all, respect for basic human rights must include the notion of concern that those rights are a reality for all, irrespective of diversity. That concern is for me the defining feature of the democracy we want to be and remain.

I am convinced that the test of whether democracy takes root and flourishes, or

whether we merely have the trappings of it while the substance remains an unachievable ideal, will be the way we address the developmental challenges facing the country. We need to make absolutely sure that the worst that we have gone through in the past is not replaced by a new form of economic slavery and helplessness. The culture of rights cannot flourish in that environment, nor can democracy.

Conclusion.

Finally, I shall make the assumption that there is a consensus in this country, at least “substantially”, that the democracy we have is worth promoting, protecting and strengthening. After all, for better or for worse, we are stuck with it for the foreseeable future. If that premise is correct, the question of how best to strengthen it arises. Here we have to examine our respective roles as individuals, as well as the roles of structures and institutions which have been set up, to determine what contribution each makes to the strengthening of democracy. The corollary to that is to determine which actions, practices or conduct impact negatively on the democracy. As Justice Sandra Day O’Connor would say, courts and legislatures are of much assistance. But democracy lies in the hearts of the men and women of our country. It is them we need to galvanise. Then the courts and legislatures will endorse and give the seal of legality to our ideals.

I thank you.