

**SPEECH BY TONY LEON
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“PARLIAMENT, THE PEOPLE AND ACCOUNTABILITY?”

Adv. Johan Kruger, Dr Ivan Meyer MEC and members of the Centre for Constitutional Rights; representatives of the Stellenbosch University School for Public Leadership and the Konrad Adenauer Stiftung; Ladies and Gentlemen.

When I first arrived in Parliament back in 1989, one of the great parliamentarians on my side of the aisle was the late Harry Schwarz MP. He once noted that the similarity between a politician and a political analyst was similar to the distinction between a criminal and a criminologist!

Having migrated, voluntarily in my case, from two decades as a parliamentarian to become a commentator and writer of the current debate, I identify with Mr Schwarz' observation.

On the other side of the aisle back then, the man who headed the government which my party opposed, was President FW de Klerk, who today heads the Foundation which founded the Centre for Constitutional Rights, the co-host of this morning's event.

President De Klerk however did not rely on his office or any special rules to protect the President from heckling or attack. He entered and enjoyed the cut and thrust of political debate to his left and right.

I do not want, however, to rhapsody about the past: the Parliament which I first entered had many deficiencies as well. The most obvious fact was its composition - fully 80% of South Africa was not represented in its chambers was just the starting point of its limitations.

It also, less obviously, suffered from a triumph of excessive, even stifling, formality in place of substantive debate: for example, parliamentary committees were then closed to media and public scrutiny; the *sub-judice* rule was monotonously used to muzzle discussion; since there was no rights-based constitution governing Parliament and its proceedings, there was no outside court of appeal against often heavy-handed rulings of the Speaker and the presiding officers, all drawn from the ranks of the ruling party. On the lesser matter of parliamentary dress and conduct, MPs were sent home if their attire was less than a matching two-piece suit and no applause, never mind any singing, was countenanced from either the ranks of MPs or from the public gallery.

Of course, it was in the realm of extra-parliamentary activity, that the iron-fist of the state was used to strong-arm (or worse) its most dangerous opponents, who were to be found in the struggle outside the hallowed halls of a largely unrepresentative chamber.

Thus, when I entered the first democratic Parliament in 1994, I had high hopes that the new assembly would cure the defects of the old. There was great expectation back then that the struggle adage “The People Shall Govern” would become the lived reality of parliamentary engagement and prove that a popularly elected assembly could deliver on the country’s expectations that it would be a cockpit for delivery on the promises of our new democracy.

When I exited Parliament 15 years later in 2009, I shared the sense of many that that we had failed in this expectation and that in so many areas and with so many failures of performance, it had drifted far from the centre of public debate and been relegated, by its own hand, often into a forum for ‘non-debates around non-issues’.

Six years later, as we meet here this morning, to discuss the issue of “Parliament, The People and Accountability?” the question mark in the title appears ever more justified.

On Sunday, reports appeared that the ANC in parliament is “proposing radical new rules” that will, among other stifling measures, “forbid MPs from interrupting President Jacob Zuma” “disallow impromptu questions to the head of state” and “apportion public gallery seats to reflect party support levels” and cure inquorate committee meetings by imposing mandatory percentages in them regardless of whether MPs bother to turn up for them or not. Truant ministers will be, also according to the proposals, shielded from sanction in the event of them failing to answer questions put to them.

Having had sight of the ANC submissions, I thought the media reports omitted the most egregious suggestion of the whole lot. This nugget of non-accountability and the supreme lack of confidence which the ruling party has in its own ministers, appears in the section dealing with “Questions Without Notice”. It attempts to shield ministers of state from having to respond to questions without notice. It reads:

*It is believed that some members **can be more interested in political point scoring than in Ministers’ response to questions put.** It is further believed that some members can unfairly rely on such questions as basis for claims **that some Ministers do not master the content of their area of deployment.** (My emphasis).*

Imagine that: a democratic Parliament being used to score political points or daring to show up ministers for incompetence in their portfolios. As Joseph Conrad wrote “The Horror, the Horror”.

When Tony Blair was Prime Minister of Great Britain, he described Prime Minister’s Question Time as “*the most discombobulating, nail-biting, bowel-moving, terror-inspiring, courage draining experience in my prime ministerial life, without question*”.

Under current, and certainly if these future arrangements are enacted, both Presidential and ministers' question time will be no more than a mild irritation, another non-event in a Parliament in danger of becoming the epicentre of mediocrity and irrelevance. Perhaps this provides yet another reason why our current government finds the Russian and Chinese models of authoritarian government so much more congenial than the robust democracies on offer in the West.

These extraordinary, draconian and unprecedented proposals doubtless are unconstitutional. They are certainly undemocratic and constitute a sort of procedural vandalism which no self-respecting parliament should countenance.

The *Sunday Times* editorial (20 September 2015) contains no exaggeration in its warning about the dangers embedded in these far-reaching proposals, nor does its call to resist them ring hollow, given the road we have travelled since 1994, mostly in a downhill direction in terms of ensuring the constitutional imperative of holding the executive to legislative account and popular scrutiny. The newspaper warns:

Be on guard...South Africans who care for our democracy should not view the battle going on over parliamentary rules as a distant scrap with little or no relevance to them. Nothing could be further from the truth. Any move by the ANC to turn parliament into a toy telephone has to be resisted, if necessary by the Constitutional Court.

To those sentiments, any self-respecting South African democrat, regardless of party affiliation, can only say 'Amen'.

It is relatively easy and intensely depressing, to itemise the milestones on Parliament's journey in just 21 years from the height of its democratic promise in 1994, to the pit of its current stagnation. Instead of creating a brave new world of public participation and accountability, we have descended into a shadow world of non-accountability where the central legislature has been strong armed into as a shield against disclosure and answerability rather than as a sword of political confrontation and debate. This list would include:

- Ever more partisan presiding officers (today, for example, and for the first time in two decades, not a single house chair includes an opposition member) and using tame or even non-existent opposition members to chair the key parliamentary oversight standing committee on public accounts;
- Subordinating the independence of Parliament as an institution to the needs and wishes of the ruling party. The Nkandla whitewash is simply the latest example of a clear trend which began when the Arms Deal report was strong-armed in a direction favourable to the ANC back in 2001.



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- Bloating the size of government excessively. Leaving aside, the fiscal incontinence of having an executive of nearly 70 MPs (Ministers and deputy ministers), this means that the nearly one in three ruling party members profit from state office. Adding in the ANC dominance as well of all portfolio chairs, house chairs and the like, this provides every incentive for ruling party members not to rock the boat with any displays of pesky independence. Few will challenge state control if it involves a loss of profit.
- The trend toward executive kowtowing is reinforced by the closed party list system which ensures further the cutting off of independent voices.
- The decline in status of Members of Parliament - and the lure of more lucrative positions in the private sector and the upper reaches of the state - has witnessed a corresponding withering of high calibre professionals and activists entering and refreshing the ranks of Parliament (there are, obviously some notable exceptions here). But if you think back to the calibre of MPs and ministers back in 1994, from Joe Slovo to Albertina Sisulu and Ahmed Kathrada, to Max Coleman and Johnny Copleyn, you have not just impressively credentialed individuals, but in the ruling party people unafraid to 'speak truth to power.'

I will not elaborate further on these items, but more usefully perhaps could provide some explanations for the situation in which Parliament finds itself today.

The first Speaker of the democratic Parliament, Dr Frene Ginwale, in the main but with some blemishes, had considerable regard, alongside President Nelson Mandela, for establishing a Parliament in which all voices and viewpoints were aired and parliamentary questions could act as a check and balance on executive overreach. But she, loyal and long standing members of the ANC in exile, realised the clash between the habits of a lifetime of struggle and the needs of democratic transparency. She once noted candidly:

The liberation movements have also brought a military style authoritarianism, combined with a tendency to close ranks defensively when criticised.

Not just in Parliament today, but pretty much across the whole of the country, we witness the contradiction between the limits and requirements of a constitutional democracy and the limitless appetites of the 'national democratic revolution' precisely along the lines warned of by Dr Ginwale.

While the current President of South Africa was steeped precisely in this latter tradition and seems uncaring in his approach to the Constitution, there is less excuse for younger members of the executive. But the point is plain: the President dominates the ruling party and the ruling party dominates, in many respects, the country and its Parliament. Simply stated; the requirements of struggle do not sit easily with the rigours of modern democracy.

Deceased Dr Van Zyl Slabbert, at a late stage of his life, was more sympathetic to the governing party under Thabo Mbeki at the time, than he was to the opposition cause which



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he once led in this country. He was clear-eyed, though, on an essential analysis which he believed explained much about contemporary South Africa and is certainly reflected in our democratic deficits. His biographer Hermann Giliomee in *The Last Afrikaner Leaders* (Tafelberg 2012) provides a summary of his latter view which is also central to understanding the current dysfunctionality of Parliament.

Four years before his death, Slabbert published a final book “The Other Side of History”, which attacks some of the myths about the transition. More importantly, it briefly analyses where his scheme went wrong...He wrote his idea had been to help (Thabo) Mbeki build a non-racial liberal democracy functioning under a constitution that ‘does not celebrate majoritarianism, but constrains the use and abuse of power. That is why the separation of powers, rule of law and respect for human rights forms such a distinctive part of liberal democracy.’ Slabbert now admitted that the ANC’s non-racialism was mainly a façade...He also expressed serious concerns about the new order. He recognised that liberation movements tend to have a deep distaste for any constraint on their use, or even abuse of power...

This meant, Slabbert continued, that one had to be on the lookout for how key constraining institutions were co-opted, or how the executive ignored the legislature or other organs of government. He noted that serious tensions had developed between the demands of a liberal democracy, and the tendency of the ruling party to establish democratic centralism, in which the ruling party controls virtually everything. It was, he remarked pointedly, a practice ‘made famous by the government of the USSR.’

However, one must remain an informed, though not starry-eyed optimist, notwithstanding that nine years later, Slabbert’s citing of ‘serious tensions’ have metastasised into full-blown institutional crises today.

I remain among the ranks of the optimists. After Saturday night, I still support the Springboks!

But actually there are some important signs of renewal at hand. The opposition today is larger and more robust in its push back than it has ever been since the dawn of democracy here. It has recently refreshed the leadership of the Official Opposition. The varied ranks of the parties ranged against the government, generally, are more of one mind in resisting executive overreach and less amenable to co-option by the ruling party than they ever were when I led the parliamentary opposition during the late 1990s and the first decade of the 2000s. The media and civil society are more awake and alive to the predations against democracy; and, the judiciary is less executive minded than many in government hoped it to be and civil society feared it might become. The business community, pummelled by government *diktat* and frustrated by low growth and policy confusion, is much less quiescent than it has ever been in the past two decades.



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As Van Zyl Slabbert concluded, *“Out of the current confusion, something extraordinarily creative may yet emerge. I am not without hope for the future.”*

I find myself in respectful agreement with one of my predecessors on this vital point.
Thank you.