

University of Pretoria
Conferral of Honorary Degree LL.D. on Karl Klare*
April 16, 2015

Acceptance Speech

Chancellor Nkhulu

Vice-Chancellor & Principal de la Rey

Senior Vice-Principal De Beer

Distinguished members of faculty

Graduates, family, friends, and guests –

Today we celebrate the graduates' hard work and achievements that brought them to this important life threshold. It is a tradition where I come from to begin by recognizing others whose contributions made it possible for the graduates to arrive here. This includes the faculty of course, but two other groups should be acknowledged: first, the University's support staff – the librarians, computer technicians, administrative assistants, secretaries, groundskeepers, food service workers, and so many others whose toil, often invisible, keeps this place running; and, second, your parents, spouses, partners, children, extended family, loved ones, lovers, and friends. They supported you, and many made significant sacrifices during your years of training. All are entitled to share in your pride and to have our thanks. I ask the graduates to stand and to join me in applauding family, loved ones, and University staff.

I am deeply honored to receive this degree from the University of Pretoria, an institution working since before the advent democracy to transform itself and to become the inclusive, nonracial, and diverse community it is today. UP faculty members participated in the constitutional drafting process and continue to this day to develop, diffuse, and deepen the culture of constitutionalism in South Africa. UP's vibrant Centre for Human Rights, founded during bleaker days in 1986, is internationally renowned for its leading contribution to human rights education on the African continent. In her recent Human Rights Day message, Vice-Chancellor de la Rey stated that the University of Pretoria as a community is committed "to high standards in terms of upholding

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human rights and respecting the fundamental human dignity of all persons.” For many years I have enjoyed fruitful working relationships and treasured friendships with UP colleagues. For these reasons, I take special pride in my new association with the University.

I have always considered it a privilege that circumstances allowed me to witness your transition to democracy, to work with South African colleagues immersed in the process, and to share your story in the US and elsewhere. In 1992, my dear friend High Court Judge Dennis Davis, then a professor at Wits, invited me to a labor law conference in Durban to deliver a mundane academic talk. I met dozens of lawyers, trade unionists, academics, and others. Many of the lawyers were around my age but because they had grown up here during apartheid, their lives had taken radically different paths from mine. Many had provided legal representation for and/or participated in the liberation struggle, and now they were deeply engaged in the transition process. Everyone I met, it seemed, was doing courageous and imaginative work. This encounter changed my life and the focus of my professional work.

You will agree, I hope, that it is not false modesty to say that any small contribution I have been able to make to the culture of constitutionalism in South Africa pales into insignificance compared to those made by my predecessors in receiving this particular honorary degree, including not only Nelson Mandela himself, but Constitutional Court Justices Arthur Chaskalson, Ismail Mahomed, and Yvonne Mokgoro, and Advocate George Bizos SC. It would be the honor of a lifetime simply to have my name mentioned in the same paragraph as theirs even if no degree were conferred. With the utmost gratitude to the University of Pretoria, I humbly accept this degree in the spirit of honoring these brave men and women and so many others who gave so much – many who suffered and died – to bring democracy and social justice to South Africa and to launch its project of transformative constitutionalism. I and all of the graduates here assembled follow in their footsteps.

Justice Mahomed once wrote, “[t]he South African Constitution is different.”¹ In Justice O’Regan’s words, it “is a document committed to social transformation.”² Or as Deputy Chief

¹ S v Makwanyane 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) para 262 (Mahomed DP).

Justice Moseneke has put it, the “Constitution has set itself the mission to transform society in the public and private spheres.”³ The Constitutional text reveals an understanding that it does not pretend to announce timeless verities drawn from on high and written in stone. The Constitution is and knows itself to be historically situated. It arose from a repressive past of hardship and injustice. It sets us and future generations on a path toward envisioning, working for, bringing into being, and protecting a society founded on social justice and equality, the realization by all people of human rights and freedoms, non-racialism, non-sexism, and a new kind of transparent, inclusive, participatory, and empowered democracy.

Crafting and adopting this Constitution through relatively peaceful, dialogic processes was a great historic achievement. Along the way to democracy, South Africans established innovative constitutional principles and legal technologies that give content to the transformative aspiration. Echoes of these approaches can be heard in other jurisdictions, notably in India and Colombia, and in some trans-national instruments. But many are uniquely South African creations or resonate with a distinctive South African inflection. These include:

- the foundational assumption that political democracy and social and economic rights are mutually constitutive;
- the imperative to interrogate and as appropriate develop all of the deeply back-grounded common and customary law rules that structure the routines of daily life so that such rules will henceforth promote the spirit, purport and objects of the Bill of Rights⁴;
- the interpretive canons that all law and public policy must be envisioned through the lens of *ubuntu* and within the ethos of inclusiveness and caring that permeates the Constitution;

² *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC) para 81 (O’Regan J) (notes and citations omitted).

³ D Moseneke, “Transformative Constitutionalism: Its Implications for the Law of Contract” (2009) 20 Stellenbosch Law Review 3, 4.

⁴ See Constitution of South Africa s 39(2).

- the commitment to an empowered ideal of democracy that goes beyond the classic institutions of voting and representation to include transparency, grass-roots participation, and the meaningful engagement of all affected constituencies;
- the assumption that poverty is prima facie unconstitutional and that government is charged with obligations to alleviate and eventually abolish it; and,
- the affirmative obligation of government to gradually bring into being political, social, and economic conditions that will enable all people living in South Africa to experience the authentic enjoyment of human rights.⁵

These constitutional principles and guidelines are precious achievements in the long human striving to discover and entrench institutional foundations of freedom and self-determination. South Africans are called to be the guardians of these accomplishments for all of the world's people. Lawyers have a special responsibility to fulfill this duty. This means, firstly, the need to be alert to any threat to the culture of constitutionalism. But it also means that in whatever you do in your professional lives you must be thinking about how to advance and diffuse constitutional values, to give them concrete meaning in the lived experiences of daily life, to make them responsive to changing social needs, and to hold social and political practice, and your own conduct, to account in the name of equality, human rights, and real democracy.

You need not be a human rights lawyer to play a part. Constitutional responsibility and transformative aspiration apply wherever one is situated, whether in practice, government, business, civil society organizations, or in the community. In whatever context you find yourself professionally, you must constantly ask, is what I am doing today consistent with the hopes of our Constitution? Am I making a contribution to nudging society in the egalitarian, caring, democratic direction that the Constitution mandates it to evolve? Am I treating all whom I encounter in legal processes with dignity?

⁵ See Constitution of South Africa, s 7(2).

In an interview, the late, great Chief Justice Pius Langa reminded us in his characteristic, magisterial understatement that while the Constitution is a beautiful document, that is what it is – a document, *paper*. What matters is whether we *live* the constitutional project, whether people actually experience the constitutional aspiration in their lives.

Graduates: Many of you were “born free.” Perhaps you believe that all the great battles for freedom and democracy were in the past and that you missed out on them. This is mistaken. Trust me: as with all prior generations, you will be called upon to make your mark in the quest for social justice. Problems loom that you must confront – heartbreaking failures of service delivery; stubborn, persistent inequality; horrific violence against and exclusion of women; xenophobia, homophobia, and continuing marginalization of people with disabilities; a remote executive left unconstrained by a complacent Parliament; corruption staining South African dreams of liberation. There is no shortage of battles ahead. Rising to these challenges will require all of your generation’s commitment, energy, and imagination. To address them will take intellectual courage and a capacity to resist the intense pressures in our legal and political cultures to accept the status quo as inevitable. You will also need hope, a willingness to believe that the institutional worlds we inhabit are not fixed and immovable but are in fact permeated with transformative possibilities. Hope is the conviction that people have the capacity and the vocation to remake our world in ever closer approximations to freedom.

Almost exactly 50 years ago, one of the United States’ great liberation heroes, the Rev. Dr. Martin Luther King, Jr., led a voting rights march about 50 miles through very hostile territory from Selma, Alabama, to the state capitol in Montgomery. Although officially they were eligible, in practice Black people in the American South were not permitted to vote. Some who insisted on accessing the franchise paid for their trouble with their lives. Some courageous African-Americans in Selma decided to do something about it – they decided to turn constitutional paper into lived reality. So they determined to march to the capitol to demand voting rights. Initially they were turned back with clubs, whips, and tear gas. Thousands of people – Black and white, from all over the country – answered their appeal for help, and eventually the march succeeded. This and similar mobilizations led to widespread voting reform. Access to voting remains imperfect in my country. Powerful political forces continue to

subvert the promise of our Voting Rights Act, and our Supreme Court condones voter suppression. Still, today I have a Black president. As a young man, I never dreamed this would happen in my lifetime; and it is a great sorrow to me that my late wife Hallie did not live to witness it.

In his speech at the end of the Selma voting rights march, Dr. King acknowledged the weariness of the activists and their concerns about what seemed an endless journey still ahead. This is what Dr. King said to them: “[T]he arc of the moral universe is long, but it bends toward justice.”

As he knew, of course, the arc does not point that way automatically. It only bends toward justice if people are constantly tugging on it, pulling it in that direction. This takes everyone, but as lawyers you are uniquely situated to tug the arc of history in the right direction.

So, graduates. Here, most respectfully, is my charge to you. Enjoy this day. Savor it and revel in your achievements. Let your families, loved ones, friends, and other special people in your lives take pride in you.

Beginning when the sun rises tomorrow and in all that you do thereafter, ask yourself always: Is there something I can do in my context to tug the arc of the moral universe an inch closer to justice? In what I do today, is there some way to affirm and promote “the democratic values of human dignity, equality and freedom”?⁶

Congratulations, graduates, and go well.

⁶ The Constitution of South Africa, s 7(1).