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**CONSTITUTIONS, DEMOCRACY AND HUMAN RIGHTS
THE RIGHT SIDE OF HISTORY**

It is a great pleasure for me to visit Quinnipiac University.

I first met Professor David Ives several years ago at one of the annual Summits of Nobel Peace Prize Laureates. Over the years we became firm friends. Each time I met David he told me about Quinnipiac - and each time I listened to him I told him how much I would like to visit his university.

And now at last I am here.

I want to share with you tonight not only the story about how my country, South Africa, has become a much better place during the past 27 years - but also about how developments in my country have been rooted in a global process that has resulted in a world that, since the end of the Second World War, has also become an immeasurably better for billions of people.

In times of deepening national and international concerns it is very easy to forget about the enormous progress that we have made since World War II.

We seldom stop to think how radically the world has improved since the beginning of the 20th century: it is not only the material conditions in which we live that have changed out of all recognition, but perhaps, more significantly, many of our core values and social attitudes.

At the beginning of the 20th century Europeans still believed that they had a divine - or perhaps a Darwinian - right to rule distant peoples in Africa, Asia and the Americas. They thought they had a special calling to bring civilization and Christianity to what they dismissively regarded as "lesser peoples". This was despite the fact that some of these peoples - particularly in Asia - had glittering civilisations that far outshone anything in Europe before the 18th century.

As always, the expression of noble motives often masked naked exploitation. The litany is long and shameful - from the decimation of the native peoples of the Americas; to the slave trade; to the Opium Wars; to the extermination of the entire aboriginal population of Tasmania; and the awful depredations of Leopold II in the Congo.

Before the First World War many people still thought that war was a worthy national pursuit - and that it tested the moral and physical strength of nations.



Racial, gender and class discrimination were regarded as natural and acceptable facets of relationships between human beings.

- It was the era of 'Jim Crow' in the United States in terms of which black Americans were subjected to rigid racial segregation in every aspect of their lives.
- Women - who had not yet been given the vote - experienced extreme discrimination in their personal and professional lives.
- Oscar Wilde landed in Reading Jail.
- European nations were still riddled with class distinctions manifested in the rigid stratification of society - which strangely enough we now enjoy revisiting in TV series such as Downton Abbey.

After World War II attitudes toward imperialism and race began to change quite radically. A number of factors were involved:

- There was universal revulsion at the racial ideology of the Nazis and Japanese that had led to some of the worst atrocities in human history;
- European powers were exhausted and wanted to concentrate their limited resources on rebuilding their economies - rather than on retaining distant, troublesome and unprofitable colonies;
- The United States, the emergent super power, had made it clear in the Atlantic Charter that it wanted Europe to dismantle its colonial empires.

The value systems that western societies had long professed began to catch up with them:

- John Locke's assertion that all mankind were "equal and independent" and Josiah Wedgwood's slogan against slavery "Am I not a Man and A Brother" began to permeate British attitudes and raised doubts regarding the morality of subjugating "men and brothers" of colour in Britain's vast empire.
- In 1776 the founders of the United States declared that they held "these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."
- The central themes of the *Declaration of Independence* were subsequently adopted by French revolutionaries in their resounding call for "Liberte, Egalite et Fraternite".

Despite the continuation of slavery in the United States and the expansion of the British and French Empires during the 19th century, these resounding affirmations of equality had been spliced into the DNA of Western civilization.

Following the Second World War they began to emerge in a new norm in international relations and in domestic politics: it was based on the inherent equality of people -



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regardless of race, religion, class or gender - and on the rejection of unfair discrimination on any of these grounds.

In 1948 it found expression in the United Nations *Universal Declaration of Human Rights* in 1948 which proclaimed that:

“All human beings are born free and equal in dignity and rights”; and that

“Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.”

This was undoubtedly one of the most important advances in the mindset of the 20th century - and was something entirely new in world history.

It also had profound implications for my country, South Africa.

South Africa had come into existence only 35 years before the end of World War II. Like so many other imperial creations in Africa its artificial borders encompassed widely different peoples with divergent interests.

In many respects it was a microcosm of the world. It included a variety of peoples who were at all stages of economic and social development from rural subsistence agriculture to first world consumerism. As with the world, about one fifth of the population was white, economically developed and dominant.

The whites - who had already been in the sub-continent for 300 years - had developed a strong sense of nationhood and their own language - Afrikaans. In the 19th century, the descendants of Dutch settlers who called themselves Afrikaners - or Boers which means farmers - trekked into the interior of the country and established two Republics - the Transvaal and the Orange Free State.

The discovery of diamonds in Kimberley in 1867 and gold in Johannesburg in 1884 brought thousands of adventurers to the sub-continent. It also focused the attention of British imperialists on the two bothersome Boer republics that were blocking the northward expansion of the British Empire.

All this led in 1898 to the outbreak of the Anglo-Boer War, which turned out to be the biggest and most expensive of the 80 or so wars that the British fought between the Napoleonic Wars and the First World War. It involved the deployment of 430 000 British troops - compared with the 65 000 troops that Britain deployed in the American Revolutionary War. In May 1902, the Boers finally surrendered - but only after their farms had been burned and 28 000 of their women and children had died in concentration camps.



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During the 19th century the British completed their conquest of the other principal peoples of South Africa - the Xhosas in the Eastern Cape (Nelson Mandela's people) and the proud Zulu nation in what is today the province of KwaZulu-Natal.

At the beginning of the 20th century Britain found itself in possession of an assortment of expensive and troublesome territories in Southern Africa - that one historian quipped it had acquired in a fit of absent-mindedness.

What to do with them? Why not create a federation as it had so successfully done with its colonies in Canada and more recently in Australia. Accordingly, in 1910 the British colonies of the Cape of Good Hope and Natal and the conquered Boer republics of the Transvaal and the Orange Free State were joined together in the Union of South Africa.

In keeping with the values of the times, Britain gave white South Africans a monopoly of political power in the newly established Union. It simply ignored the interests of the country's blacks, coloreds and Indians who comprised 75% of the population.

For the next 40 years South Africa developed more or less along the lines of the other Commonwealth dominions. Until the mid-fifties, in a continent that was still dominated by European powers, white minority rule in South Africa seemed unexceptional. In a world in which racial discrimination was still shockingly the rule, South Africa's segregation policies elicited little criticism.

However, as the tide of imperialism ebbed from Africa South Africa was left stranded and floundering in the continent's last pool of white rule. Its apartheid policies were an affront to the new international norms of racial equality and non-discrimination.

Newly independent African and Asian countries saw South Africa as a painful reminder of their recent subjugation by, and continuing dependence on, European powers. Prime Minister Michael Manley of Jamaica proclaimed at the United Nations that apartheid was simply the other side of the coin of the Third World's relationship with the West.

The Western countries - anxious to distance themselves from their own imperialist and racist pasts - vociferously joined in the growing chorus of condemnation.

South Africa presented an irresistible target: the crass segregation of apartheid; the denial of rights to the black majority; and what was perceived as the dour Calvinism of its leadership contributed to its image as the pre-eminent international bogeymen.

All this was the absolute antithesis of the new global norm of non-racialism, non-discrimination and the pursuit of equality that had emerged after the Second World War.

South Africa was on the wrong side of history.



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The world was demanding that white South Africans should dismount the tiger of minority rule and accept one-man, one-vote elections and the inevitable transfer of power to a black government. However, whites had existential fears about this process:

- It would mean the end of their own right to national self-determination - which they had defended against the mightiest empire in the world. For them, this evoked the same fears that Israelis would have if they were ever asked to accept a one-man, one-vote election in a broader Middle East election.
- Secondly, they were deeply concerned about Communist influence in the ANC. Throughout the 1970s and 1980s virtually all the members of the ANC's National Executive Committee were also members of the South African Communist Party. The Soviet Union was deeply involved in the conflicts in Southern Africa and had supported the deployment of 50 000 Cuban troops in neighboring Angola.
- Thirdly, white South Africans were worried about chaos. Most one-man, one-vote elections in the rest of Africa had not resulted in functioning democracies: many had descended into tyranny, corruption and economic collapse. By the mid-1980s there had already been more than 80 *coup d'etats* in Africa.

White South Africans were faced with the unacceptable prospect that retention of their right to rule themselves could be achieved only by denying the black majority's equally valid right to self-determination. They knew that that this course would inevitably lead to a hopeless downward spiral of repression, injustice and conflict.

During the 1980s the ruling National Party government searched desperately for solutions. It tried reform: by 1986 it had repealed more than 100 apartheid laws; it had recognised black trade unions and had extended political rights to Coloured and Indian minorities.

However, by then, the demand was no longer for reform: it was for a transfer of power.

By 1985, the situation seemed hopeless:

- South Africa was increasingly isolated and subjected to international sanctions;
- The economy was on the verge of collapse;
- There was growing violent resistance throughout the country; and
- There was a growing threat from Soviet backed forces on the border between Angola and Namibia - a territory that South Africa continued to rule in terms of a disputed League of Nations mandate. In October 1987 South African forces were involved in one of the biggest battles in Africa since the Second World War against Angolan and Cuban forces - in which it destroyed 93 Soviet-made tanks.

However, by the end of the 1980s everything had changed - history had suddenly opened a window of opportunity for an inclusive constitutional settlement:

- By 1987 Nelson Mandela had accepted that there would have to be negotiations.



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- In 1988 South Africa, Angola and Cuba reached an agreement on the withdrawal of Cuban troops from Angola - which led the next year to the successful implementation of the UN independence plan for Namibia.
- In February 1989 FW de Klerk - who was committed to a negotiated constitutional settlement, took over from his irascible predecessor President PW Botha. In September 1989 he became President and began to initiate essential moves toward a comprehensive negotiated settlement;
- In November 1989 the fall of the Berlin Wall signaled the collapse of Soviet Communism and the victory of liberal democracy and free market economics.

De Klerk realised that the circumstances for successful constitutional negotiations would never again be so propitious. So on 2 February 1990 he leapt through the window of opportunity and commenced negotiations.

The ensuing negotiations were difficult and often bitter. They were marred by faceless violence by extremists on both sides who did not want a peaceful settlement. They were halted by the withdrawal from the negotiations, first by the ANC and its allies and then by the Zulu-based IFP and conservative parties.

One of the central questions that faced negotiators from 23 South African parties during the following four years, was how they would be able to entrench the principles of non-racialism, equality and non-discrimination in a new Constitution. They also needed to find a fair balance between the concerns of the whites and other minorities - who had much to lose - and the justifiable demands of the black majority, who had much to gain.

One of the biggest stumbling blocks was the ANC's insistence that a new Constitution should be drawn up after free and fair elections by the majority in a newly elected constituent assembly. The minority parties, on the other hand, insisted that the Constitution should be agreed to first - and only then should the first election take place.

An ingenious compromise was reached in terms of which the negotiating parties would first agree on an Interim Constitution under the first elections that would be held in April 1994. The newly elected Parliament, sitting as a constituent assembly, would then adopt a final Constitution which would have to comply with 34 immutable principles that would be entrenched in the Interim Constitution.

The new Constitution included a comprehensive Bill of Rights that makes provision not only for the assurance of all the basic human rights - but also the progressive provision of such social rights as housing.

In addition, it creates independent institutions to support constitutional democracy - including a Human Rights Commission, a Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities - as well as a Public Protector - who plays a national ombudsman role.



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It also established strong and independent courts - presided over by a Constitutional Court which has the power to strike down any executive action or legislation that does not comply with the Constitution.

The core of the Constitution is, however, section one, which sets out the values on which the new South African State has been founded. These include

- Human dignity, the achievement of equality and the advancement of human rights and freedoms;
- Non-racism and non-Sexism;
- The supremacy of the Constitution and the Rule of Law; and
- A genuine system of multiparty democracy with regular elections - that is accountable, open and responsive.

These values - from which all the other provisions of the Constitution flow - can be amended only by a 75% majority in Parliament.

The South African Constitution is now regarded internationally as one of the most advanced in the world. It has ensured that South Africa is now in full accord with the values of equality, non-discrimination and human rights that have changed and improved the lives of billions of people throughout the world since 1945.

When FW de Klerk surrendered power on 10 May 1994 - he did not hand it to Nelson Mandela and the ANC. He transferred it instead to an entirely new constitutional dispensation.

However, we have failed to promote the values in section one of our constitution for the great majority of our people. South Africa is more unequal than it was in 1994; human dignity and human rights still elude too many of our people; and there are disturbing signs of the reracialisation of politics.

Since he became President in 2009, Jacob Zuma has systematically eroded the safeguards that we built into the Constitution to avoid abuse of executive power. He has 'captured' key institutions - including the intelligence services, the National Prosecuting Authority (our version of the FBI), the Public Protector and the Revenue Service. He is using these institutions to protect himself against 783 outstanding fraud charges and to facilitate the almost industrial scale looting of state resources by his family and his associates.

So, South Africa is once again faced with serious challenges to its constitutional system.

However, we have free and outspoken media; we have active and energetic civil society organisations and we have powerful independent courts. The great majority of the old leadership of the ANC are appalled by President Zuma's actions and the ANC's popularity has dropped below 43%.



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I am confident that the institutions that we built into the Constitution will ultimately prevail - and that we will resume our journey toward the fulfillment of the constitutional values on which our new society has been established.

However, being a South African has always meant that there is never any room for complacency. Every morning since I was 17 or so I have woken up and worried about the future of our country. That is not going to change. But despite all the ongoing crises South Africa is still a far, far better country than it was before 1994.

And we are now on the right side of history.



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