

Acceptance Speech by Mr Bakone Justice Moloto
for the honorary degree, “Doctor of Laws”
from the University of the Witwatersrand

Chancellor;

Vice Chancellor;

Chairman of Council;

Deputy Vice Chancellors;

Dean of Faculty of Commerce, Law & Management;

Senior management and members of the Academy;

Graduating Students and their families.

Good afternoon.

It is with immense gratitude that I accept this great honour.

Thank you, first, to the University for the honour of the conferral of a Doctor of Laws upon me.

I understand the weight of such a distinguished title.

It was in 1987 that I, in this auspicious institution, alongside my brothers and family, felt the reverence watching my mother, Mrs. Ellen Kuzwayo, receive her very first honorary Doctorate – also of Laws.

And, like she; who went on to serve our country as a member of our first Parliament in 1994, and all honorees before and after her; I appreciate the responsibility that comes with this:

To continue to contribute my decades of expertise and passion for our country, to the marketplace of ideas and higher learning.

Thank you, also, to the graduating students for allowing me to share in this auspicious day of your own: congratulations to you all on an incredible feat, particularly under the pressures of the unprecedented

past two years. I am grateful we have come far enough through this time to enjoy this day in one another's personal company.

With today's academic achievement, you will equally have the opportunity and responsibility to contribute to the academic lexicon.

You might choose to do so through theoretical or practical avenues. Whichever you choose, you have been more than adequately given the "edge" that the University of the Witwatersrand has spent a full century, this year,

developing, crafting, revising and optimising alongside graduates just like yourselves.

And as alumni, one anticipates you will continue this practice of refinement, revision and reinforcement for the century to come.

This is certainly the case in my discipline.

The Law, itself, is not static.

It is as dynamic as its society and its scholars allow it to be.

Our simple understanding of case precedent is a reminder that, with our every legal contribution, we are writing and refining our laws, every day. Our judicial contribution in that regard is central to our lasting, recorded building of society.

Perhaps, no period in South Africa's democratic history has been more demonstrative of this than the past decade.

In ordinary times, we know that the three pillars of state – the Executive, the Legislature and the Judiciary – have operated fiercely independently of one another, designed

to allow voters to hold the Executive accountable through their constituent representatives in the Legislature, while the Judiciary held all citizens and residents accountable to our Laws.

This decade of 'accountability inertia' exposed to us that the Legislature; filled with representatives on all sides of the multi-party ecosystem, more beholden to their political parties than to the voters to whom they are Constitutionally accountable; became increasingly toothless at holding the Executive to account.

And as a result, the Judicial pillar of the State, over time, became increasingly drawn in by opposition parties, think tanks like the Helen Suzman Foundation or Freedom Under Law, civil action organizations like OUTA (Organisation Undoing Tax Abuse) and lobby groups like AfriForum to exact, by law, the very accountability from the Executive to citizens, the Legislature failed to achieve.

What should have been exceptional events, became the norm. Holding the Executive to account by court ruling, rather than by debate and votes by conscience in the Legislature – to such an extent that some have even unfairly accused the Judiciary of overreach.

Is it not, then, time for us to restore the norm that was intended? That the Legislature be filled with representatives of the people – not of the parties they are members of?

The debate over South Africa's electoral system has been long and heated, with views from many corners, some very invested in the *status quo*.

One thing that has been proven without question by our recent history is that the *status quo* is not serving the majority of the population. And that our Proportional

Representation system does *not* allow the views of the people full representation within the Legislature.

Parliamentary representation is a matter of ***civic***, not political duty.

We as a society are to hold one another to the Oath taken to abide by the Constitution and represent constituents.

That is why Parliament is known as “The People’s House”.

There can be no accountability for civic service if decisions in Parliament are made on a political basis – by career

politicians, no less. Career interest will, then, always trump country interest, or citizens' interest, as this decade of inertia demonstrated so clearly.

By example, members of our Legislature, the House of Parliament, failed to unseat former President Jacob Zuma out of his role as President of the Republic by vote of no confidence no fewer than eight times. And on the eighth, despite being secured a secret ballot to protect themselves individually from political persecution, ANC members still voted on that day in August 2017, in majority in favour of his confidence and – as instructed and widely publicized – in favour of the party.

Not in favour of the country.

But all is not lost: here you sit, a fresh cohort of brilliant legal, management and commercial minds, about to be released into the world, with opinions about yours and our collective future!

Would you not, also, like to have your say, in who represents your opinions in those hallowed halls of the Legislature – holding the Executive accountable to **you** – not one another?

Voting for a political party of several thousand – or even hundreds of thousands – of members, who turn inward and decide amongst themselves the leadership of all sixty-million of us, is in no way demonstrative of what **we** all know to be Democracy.

“The people shall govern!”

So, commanded the ANC’s Freedom Charter in the demand for Democracy. The very doctrine that ushered the first era of legal dynamism into Democracy in 1994’s election: the hard-won right for every single South African voice to be heard. That vote was too costly – in life and

livelihood – to be squandered by exclusion from the most critical vote: that for *which* people shall govern.

The people shall govern, it declared.

Not, the party shall govern.

The United Kingdom offers a perfect example of the constituency based electoral system suggested.

A system in which candidates from various parties vie for election in a particular constituency with the candidate

winning the majority of the votes representing that constituency in the Legislature.

The representative naturally pioneers what she promised her constituents instead of blindly following party policy.

To do otherwise might see her not returning to Parliament at the next elections.

Thus, accountability to constituents becomes the responsibility of the Parliamentary representative.

Where the Executive is concerned, in the UK example, rather than simply comprising political colleagues of the Legislature, the civil service is precisely that: civic.

It is a permanent, professional army of technocrats. Experts in their fields, with depths of institutional knowledge with the ability to advise their Ministers – with emphasis on actual best outcomes.

Outcomes that are truly best for the country - knowing that being held accountable by constituents, not political pals, their jobs are not - and should never be - secure without performance.

Now, we can all agree, the United Kingdom has its own shortcomings in the practical application of this electoral system. But, as a blueprint for an effective closed feedback loop, theirs offers myriad guidelines – both of what to emphasise and what to avoid.

One learning is clear: **a decade** of policy and political inertia, and guaranteed place-holding in the Executive or Legislature regardless of performance, is nearly impossible in that accountability loop.

- Constituencies know they at least each have a balanced representative seat at the proverbial table, and can recall representatives that do not perform.
- Civil service is technocratic, rather than politically stacked. Institutional memory remains in the departments and can be passed forward to other expert technocrats. We know that South Africa's decade of inertia and corruption successfully hollowed out even some of our best public institutions, historically highly technocratic, purposefully leaving political stooges in their wake.
- Debate is fierce and focused on issues that affect citizens' daily lives, more so than personality.

A second era of legal dynamism, that might embrace these principles once more, is most certainly within the realm of possibilities in bringing about the dream of what the President calls a “capable state” – certainly with the brilliant minds in this room, and all your peers!

The people **should** govern.

That is democracy.

And the law **is dynamic**.

We have seen this in the past 100 years of this fine institution.

We have certainly seen it in the past 28 years of our country's democracy.

As your minds are unleashed onto the world, think about what contribution you might make to the legal dynamism necessary to ensure the South Africa of the next 100 years is truly shaped by a people-driven democracy, that we and those who come after us can be proud of.

With this mission I leave the rest to you and your generation.

Thank you, once again, for the honour of your time.

Congratulations, my fellow alumni.