

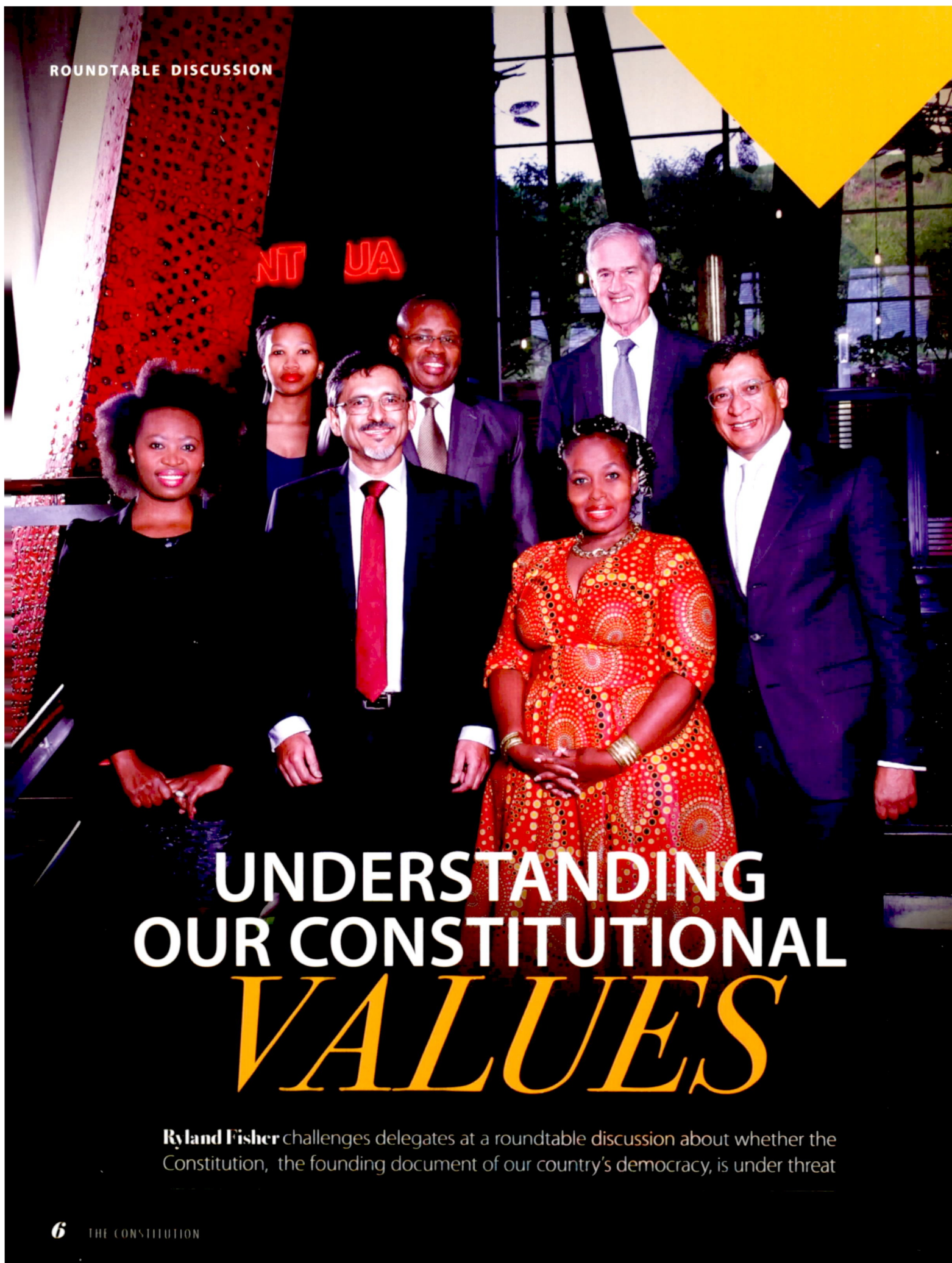
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Publication		
BUSINESS DAY - SUPPLEMENT		
Page	Date	AVE (ZAR)
6-10	Mon 10 July 2017	105895.39



ROUNDTABLE DISCUSSION



# UNDERSTANDING OUR CONSTITUTIONAL *VALUES*

Ryland Fisher challenges delegates at a roundtable discussion about whether the Constitution, the founding document of our country's democracy, is under threat

**T**he Constitutional Court stands proudly on a hill overlooking the predominantly student hangout of Braamfontein on the one side, and the poverty of Hillbrow on the other side.

Years ago, this precinct housed notorious prisons for men and women, and today it houses the Constitutional Court, a place where the final decisions on all South Africa's constitutional matters are decided.

The precinct is a stark reminder, physically, of our apartheid past, and in contrast, also our hope for a better future.

It is here, at Constitutional Hill, in the shadow of the Court, that we hosted a roundtable discussion to mark the 20<sup>th</sup> anniversary of the adoption and implementation of South Africa's Constitution, widely acknowledged to be one of the most progressive in the world.

We interrogated whether our Constitution was under threat and, if it was, what we as citizens could do to protect it. We looked back at a time before we had this Constitution and how this document represents the freedoms and equality our people collectively fought for.

It is, without a doubt, one of the few ways in which we can ensure our freedoms are never compromised again, and it is also one of a few ways we can hold our leadership to account.

Among the people at the roundtable were: Ebrahim Patel (Minister of Economic Development); Roelf Meyer (former National Party chief negotiator during the Codesa negotiations and former Minister of Constitutional Development); Dr Terence Nombembe (former Auditor General and now CEO of the South African Institute of Chartered Accountants); Advocate Anton Alberts (Member of Parliament for the Freedom Front Plus); Rudy Roberts (founder and CEO of Mega Water Corporation); Janet Love (national

director of the Legal Resources Centre and commissioner at the Independent Electoral Commission); Bulelwa Mabasa (director at Werksman Attorneys); Nwabisa Tsengiwe Modiba (senior executive for marketing and public relations at SAICA); and Jeanny Morulane (general manager for marketing at Constitution Hill).

This group represented a mix of young and old, people who had been involved in negotiating the framework of our Constitution and people who are at the forefront of implementing and promoting it.

## THE DISCUSSION

Minister Patel said that being at Constitution Hill and engaging in a discussion on the Constitution, especially with someone like Roelf Meyer, brought back many wonderful memories from the time when he was still general secretary of the South African Clothing and Textile Workers' Union. He spoke about a "Workers Charter" campaign, which was a forerunner to the Constitution, and how they involved ordinary workers.

"The Constitution is today recast as a pact of the elite, as something that doesn't have legitimacy, a compromise forced on a misguided Madiba. But this Constitution and each of its entrenched rights was something that ordinary people fought for. Lawyers played an important role in shaping and polishing it, giving it form, but it was the heart of people who were fighting for something better.

"I now serve in Cabinet and we connect with the Constitution in many ways. Any proposal that my department makes, whether it's a law or a regulation, one of the questions we always ask is: 'Is it consistent with the Constitution?'

"Having that check, at least on paper, is a good thing for a government. And when there is an impression that we got the judgment wrong, it is good to know that citizens have redress, that they don't have to live at the mercy of the interpretation of the member of Cabinet or whoever else. It is important that there is someone

who says, 'Hang on, let me hear the ordinary person.' Being in cabinet I say, thank God we have a Constitution."

Minister Patel went on to say that it is a big danger to leave it only to professionals to talk about the Constitution, and stresses that this must be a conversation that has much deeper involvement because it should not only be the Constitutional Court that protects the Constitution.

"The Constitutional Court can do what it needs to do as long as it has support among ordinary South Africans," he said.

Roelf Meyer agreed and added: "We have achieved a lot in South Africa, but it is an ongoing process. There's still a lot to do. When we initially completed the transition, I thought it would take us 15 years to complete the transformation of South Africa, socially and economically."

Meyer stressed that we are already five years past that 15 years, and if he had to answer the same question today, he would assert that the completion of our transformation must be indefinite.

"There are more challenges today than there were 15 or 20 years ago because of the new shape of many things and the rising inequality we have in our society. We need to implement the Constitution with this in mind.

"The Constitution said there shall be land redistribution, affirmative action and black economic empowerment, but the prescriptions were not clear. We have unfinished business as far as those aspects are concerned," Meyer cautioned.

Janet Love added: "There was a deep sense of mistrust at the beginning of the Codesa negotiations."

She explained: "I was a short while away from receiving my indemnity and from being on the run when I was taking part in Codesa. Two of the people who had actively questioned me or who had been looking for me, were also involved in the negotiations, so there was a sense of real mistrust."

"Many of the challenges we face (today) are rooted in history, but unfortunately, we have made some serious errors in our ▶

priorities. We've put structures in place in line with the Constitution but we are not clear what those structures are for," Love said.

Anton Alberts went further and added that despite the Constitution, there were shifts in our society where polarisation is taking place. "There is increasing polarisation based on race. This is putting it simplistically, but we know that the reality is more complex. A large part of the (problem) is the fact that we have such a large portion of people who are still unemployed or mired in poverty. Most of whom are black."

He added that we need to find a way to talk to each other and find a way of moving this country forward, "especially regarding economic growth, to create job opportunities so that the rights enshrined in the Constitution become tangible."

Rudy Roberts said the Constitution should be seen in the context of the national democratic revolution. "The Constitution guarantees a way of life for South Africans, so we need to take the Constitution and make it a living document for our leadership. When we talk about land and compensation, we need to accept that land was dispossessed.

"This is not politics, this is not negotiable. It is a fact. It was dispossessed and must be given back. But what is the process?"

Bulelwa Mabasa added that it was important to talk about how we will heal the wounds of the past, something that is not clear in the Constitution. "The discussion around healing will necessitate discussions around notions of inferiority or superiority. Apartheid was something that affected black people in terms of making people feel inferior, but there are also people who feel it is their birth right to be superior.

"The polarisation in our society comes from these two positions. Some people feel that affirmative action equals racism and that BEE undermines equality, so we need to have these discussions so that everyone can understand what is needed, even in terms of radical economic transformation. White people

need to understand that, if you grow the economy, they will also benefit. It's not a chicken or egg situation."

Minister Patel said it was easy to underestimate the value of the Constitution and the role that it has already played in transforming our society. "The first electricity in South Africa was connected in 1892 in Cape Town. Between 1892 and 1996 when the Constitution was adopted – in that period of 104 years – something like 5.2 million households were connected through electricity.

"In the 20 years from 1996 to 2016, an additional 10 million houses were connected. That's double the number in 20 years. This is what democracy has to do – it forces power structures to adjust to the needs of the people.

"The day before the Constitution was signed there was about 380 000 people enrolled at universities, today it's about a

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– Janet Love

million people. Less than 50 per cent of those people who were at universities in 1996 were Africans. Today it's just over 70 per cent.

"What the Constitution tried to do was to deal with much more than the racial divide. It created the framework within which the racial issues must play themselves out in an orderly and systemic way within the constitutional principle of equality. It was important to deal with this in this manner, because it wasn't just a racial divide, there were also the colonial challenges.

"The other challenge was economic

concentration. We didn't find a society that was just racially skewed, it also had enormous concentrations of wealth.

When we deal with competition issues, we're really focusing on the fact that the structures in the economy are a lot more concentrated than in other societies. How do you deconcentrate and transform, but in a pro-growth model, that still promotes sustainable economic growth, that expands the size of the economy?"

"A third challenge is urbanisation. The end of apartheid, the end of pass laws, changed the game. Last year there were 400 000 additional households in our cities. Just think about that... 400 000 more houses requiring electricity and water connections.

"There is also the demographic challenge. South Africa has many young people, which is a fantastic thing for the future. It could be a great dividend for the democracy. But it also produces huge pressure because those young people come into the economy wanting opportunity and access, but there is enormous poverty around us and inward migration.

"Unemployment is high but why has the number of the unemployed gone up so significantly? Is it simply a failure of policy or have we not created enough jobs fast enough? In the 20 years since we have had the Constitution, the population has grown by 38 per cent. Because of our demographics, the number of people of working age has grown significantly faster, by 49 per cent.

"Part of the reason why unemployment has grown by almost 77 per cent in the last 20 years, is because of urbanisation. Large numbers of people from the rural areas, who were not regarded as economically active, have moved into the cities and they have become part of the national labour market. Urbanisation is disruptive. In the long run, it's a great way of creating wealth because cities and urban densities of the urban environment creates wealth," Patel said.

Nombembe added that one of the problems with the Constitution was that it was written in a legal manner, and

more cumbersome for ordinary people to understand it. "One of my favourite clauses in the Constitution deals with dignity. As a professional, you need to make sure that you align the impact that you have in society to improving the dignity of that society. We have to take all these constitutional and supreme values, and practice them without seeing them simply as a legal construct."

Love stressed that one of the problems that we have is that South Africans believe that there are simple solutions to our problems. "Part of the problem is that we believe that there is a silver bullet somewhere. There's a quick solution. If we do this, that's going to solve everything. Healing and building a culture is about grappling with the moral imperatives with what we have to do as a society and that's where leadership comes in.

"I don't have any despair or problem or sadness about the Constitution. I have a real sadness about the absence of leadership to lead in the realisation of the Constitution," Love added.

Nwabisa Modiba questioned whether we had the leadership or the culture to help us live out the values in the Constitution.

"We all have something that we can bring. How can we work together? I think it is possible, but it is a conversation. The challenge for young people who have to take this on now, is to determine how do you work collaboratively."

Roberts added that the biggest threat to the Constitution came from government and people who are denuding our country through their selfish conduct.

"We are at a critical juncture. This Constitution is a reality to people. In the rural areas, they say that we cannot eat the Constitution, because they want to have real food, and then that translates into the quality of life, the quality of education and healthcare. "The contradiction is that this powerful instrument is also used to stifle their success. Is the Constitution

the cornerstone of our democracy and is it sufficient to replace everything else?" Mabasa cautioned that the Constitution should not be expected to exonerate the three pillars of government from doing their work. ▶



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“The Constitution is not a magic pill that is going to take us forward. What is going to take us forward is the ability of the three arms of government to do their work efficiently and effectively.

“My concern is that we are finding the Constitutional Court, more and more, having to deal with the failures of other arms of government. For instance, the SASSA judgment, with the Court being at pains to strike a balance between not overreaching itself and concerning itself with the day-to-day administrative running of the social grant system, but also assisting in weeding out illegalities.

“Because of the weakened state, we are finding more of a blurring between the sacrosanct nature of the separation of powers. The Constitution is not under threat.

“It is less effective governance that leads to an ineffective way of how the Constitution works and how it should work,” Mabasa added.

Jeanny Morulane adds though that we all should take responsibility for the way in which the Constitution can and does protect us all. “It is important to instil the spirit of leadership into ordinary South Africans. Leadership cannot be abdicated to somebody else.

“I cannot let anyone else be the leader and then if anything goes wrong I’m not to blame. At the end of the day we all have to account to the next generation.”

### **Protecting the Constitution and promoting growth**

Nombembe explained that the accounting profession, through SAICA, aligned themselves to constitutional principles, including dignity; and the

National Development Plan has most of the diagnosis and answers needed to solve South Africa’s problems. “We have committed ourselves to be an active participant in building a better economy and a better society. It is about using the fundamental backbone of financial excellence to build institutions and to build a society that is going to promote economic prosperity,” he said.

Love added that we need to develop the talent we have in South Africa, through practical experience, but also develop respect. “It pains me that we have the talent and young people whose talent is there to develop; and instead we denigrate that acquisition of intellectual excellence by throwing people aside by calling people ‘clever blacks’.

“Instead we put people in positions who don’t have a skills base and don’t have the competence. That is offensive because it doesn’t treasure what we are investing in as a society,” she said.

Mabasa said that reflecting on the past 20 years, government needed to be commended for having put in place a legal framework and policies designed to take us forward. “I do not believe the private sector has come to the party enough. We can talk about radical economic transformation, but the private sector undermines its role.

“The private sector must take more accountability for its inability to move the transformation agenda forward,” she said.

Alberts agreed and said government has done well with regards to transformation, to the extent that the public service is probably over-transformed in terms of what the Constitution requires. “We must think

about growth while also looking at the existing structures that might prohibit people to advance based on race.”

Modiba suggests that collaboration between the private and public sector is important. “One of the challenges is that we do not have enough conversations where people can find out about all the work that is being done to take this country forward.”

Roberts concurred and stressed that big capital did not do enough on transformation issues. “Part of it is probably related to the unfolding political situation in our country. There is a multilayer of complexities in our society and, because of this, we are facing a number of challenges.

“We thought that, post-94, everything was hunky dory, but not now.”

Patel closed by saying that we should deepen the constitutional roots among the people. “It would include telling the history of the Constitution in a better way than how we are telling it now.

“The idea that the state delivers everything is dangerous, not only because the state has limited resources and not only because there are things that the state can’t do as well as others, but also because it is profoundly disempowering.

“An active citizenship comes with no guarantees and a lot of pleasure – yet, it is absolutely vital.”

The consensus is that there certainly is a need for more discussions on the Constitution to ensure that it becomes a living document and not one that is only discussed by lawyers and judges.

The Constitution is a progressive document which must be implemented in a progressive manner. 🌍