

# THE ROLE OF THE SPEAKER IN POST-APARTHEID SOUTH AFRICA: POLITICAL IMPARTIALITY OR PARTISANSHIP?

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## *Abstract*

*The role of the Speaker in the South African Parliament has recently been steeped in controversy when the sitting Speaker, Ms Baleka Mbete, was accused of partiality and strong partisanship towards the ruling party. This controversy highlighted the cardinal role of a Speaker in parliament to ensure impartiality and fairness to all political parties. The South African Parliament is based on the British Westminster system in which the impartiality of the Speaker is accorded a very high premium and a distinguishing feature of that legislature. The aim of this article is to investigate the office of the Speaker with reference to its historical background and development as an official position in a parliamentary system. The purpose is to highlight the Speaker's important role, not only as the chairperson of the National Assembly, but also as the custodian of the powers and the dignity of the Assembly. The article also points out the inherent dangers of the Speaker's embrace of partisan interests above that of parliament and the implications for the future role of the institution.*

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**Keywords:** Speaker; Westminster parliamentary system; South African parliament; power; procedures.

**Sleutelwoorde:** Speaker; Westminster parlementêre stelsel; Suid-Afrikaanse parlement; mag; prosedures.

## 1. INTRODUCTION

The speakership of parliament is an official position within the parliamentary system of government and is of critical importance on multiple levels. The position is not only critical in relation to the foundational history of the institution, but also in the modern era to ensure the effective functioning of parliament both at a political and management level. The speakership of parliament consists of an office and a person – an elected member who holds that office. However, in South Africa the Speaker's position has been compromised, as argued in this article, and has raised concerns about its future status, role, powers and ability to ensure fair debate in parliament.

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The Speaker of parliament – the holder of that office in a parliamentary system – could in general terms be described as a chairperson of a special kind. This broad understanding of the role of a Speaker, however, simplifies the Speaker’s all-encompassing historical and symbolic complexity. As will be explained in the article, the Speaker and the roles that he/she plays are pivotal to the success and the orderly functioning of parliament.

The “chairperson” of the British House of Commons was historically named “Speaker”, because the incumbent, then just an ordinary member of the House, was the person who spoke on behalf of members of the House of Commons when the institution was still developing in the 16th century. The principle task of the Speaker at the time was to submit petitions to the King on behalf of members of the House of Commons (Wiechers 1983:272).

However, in its symbolic context and in full understanding of the Speaker’s status and position, his or her role amounts to much more than just a chairperson of a legislature. In reality, the value and importance of the position exceeds that of an ordinary chairperson by far. On a broader level the Speaker represents *the powers and the dignity of parliament, the history, the tradition and embraces and represents the deeper values of the institution* (emphasis added).

The office of the “chairperson” or Speaker has developed over centuries in tandem with the historical development of parliaments. The position of the Speaker in the majority of modern parliaments is unmistakably a pivotal figure of critical importance in view of the composition and divided nature of legislatures along party, class and personality lines. The importance of a dignified and impartial Speaker is essential for a fully functioning parliament (Rautenbach and Malherbe 1996:124). When the image of a Speaker gets tarnished, then the dignity, credibility and legitimacy of that institution will also be under threat.

During South African parliamentary sessions in 2014, recent developments regarding the impartiality of the Speaker are therefore unsettling for the pursuit of vigorous parliamentary debate and democracy. The question marks and concerns about the Speaker’s impartiality have drawn the office of the Speaker and the incumbent of the office into the centre of fierce national debate. The impartiality of the Speaker’s role was heavily debated in the media, among political parties and within civil society (*Pretoria News* 2014a; 2014b). In an almost unprecedented step the parliamentary opposition united and demanded in a strongly worded motion, tabled in August 2014, that the Speaker, Ms Baleka Mbete, be removed from office as a result of her alleged partisanship towards the ruling party and her lack of impartiality. Although the motion was defeated when the ruling African National Congress (ANC) used its majority in the National Assembly to defeat the motion, the determination of the opposition to end what they termed the partiality of the Speaker was a rare event in the parliamentary history of the country (*Beeld* 2014).

The motion was followed by a further request in November 2014 for the Speaker to leave office when opposition members of parliament (MPs) chanted, “You must go” during a parliamentary uproar to which the Speaker responded, “You wish”. This uproar was provoked by the Speaker’s ruling on the order paper of the day (Speaker of parliament 2015).

The controversy surrounding the sitting Speaker’s lack of impartiality and her perceived partisanship are uncommon in Westminster systems. The British Westminster system has over the centuries developed conventions and unwritten rules on how to ensure the impartiality of the Speaker. In a general election in the United Kingdom, for example, when the sitting Speaker stands in a constituency, the opposition parties would not oppose his or her re-election. This is done on the historical understanding and convention that the Speaker should not be opposed as long as he or she refrained from discussing party politics in the run up to the election (Barry 2004:115).

In the parliamentary history of South Africa during the pre-democratic phase (1910-1994), the Speaker’s position and rulings were relatively controversy free and the matter of his or her impartiality never surfaced very strongly. As referred to below, this is borne out by references made to Speakers of the period by some of those members who differed strongly with the Speaker’s party of origin. This tradition has been maintained throughout the early phase of the era of democracy, when consecutive Speakers set a good example by elevating themselves above party politics, serving the broad interests of parliament. The tradition of impartiality was maintained by Dr Frene Ginwala, the Speaker in the first South African democratic parliament (1994-2004). Much of the controversy around the speakers arose from about 2004 onwards, as referred to below.

The actions of Ms Baleka Mbete, the current (2014-2015) Speaker of parliament, and the accusations of partisanship and a lack of impartiality levelled against her, have moved the office of the Speaker into the public domain and into the centre of controversy. The feature of a dignified and impartial Speaker, which is the characteristic of a well-functioning parliament, was suddenly put in doubt and at risk. The logical fear was that the questioning of the impartiality of the Speaker would undermine the status of the legislature whose stature and importance has been globally on the decline (Jackson and Jackson 1996:57).

## **2. AIM AND FOCUS OF THE ARTICLE**

The introductory section has served as a background to the focus in the article. The aim and focus of the article is to emphasise the important role and functions of the Speaker in the Westminster parliamentary model in relation to the partiality or impartiality of the position. The focus in this article will be narrowed to an

examination of the parliamentary or Westminster model, rather than the presidential model of government. By examining the history and development of the position of the Speaker, a conclusion will be drawn as to whether a Speaker can function as an impartial chairperson despite his or her political party affiliation. The focus of the article is to emphasise the importance of the Speaker's role to guide debate in a deeply divided legislature with dignity and to reflect and personalise parliament's historical values.

The aim of the article is therefore to:

- i. provide a short review of the literature sources on the Speakership.
- ii. explain the evolutionary position of the Speaker with specific reference to its historical development in Britain.
- iii. outline the historical and constitutional development of the position of the Speaker in South Africa and also to examine the role of the Speaker in relation to the parliamentary rules in South Africa.
- iv. reflect on the importance of the office of the Speaker to be impartial and dignified and to reflect these values in the National Assembly.

## **2.1 Literature on the office of Speaker**

The office and role of a Speaker in general has not received a great deal of scholarly attention in the literature and more particularly in the South African context. The literature that exists is divided between the Speakership in the United States of America and the British and Westminster experience. In the British context, Armitage (2010 and 2012) for example, deals with the Speaker, parliamentary ceremonies and power, and with recent reforms and cultural changes in the United Kingdom House of Commons speakership elections. Stallard (2013) writes on Speakers and speakership and the role and function of parliamentary questions. Roberts (2010) takes a historical view of Speaker William Lenthall of the Long Parliament (1640-1660), Paley (2010) of the Speakership and the House of Lords (1660-1832) and Laban (2014) of the office of the Speaker across the Commonwealth. Roskell (1965) made a major contribution to the history of parliament, especially the role of the Speaker. Roskell wrote a comprehensive work, *The commons and their Speakers in English Parliaments 1376-1523*. Betty Boothroyd (2010), a former Speaker of the House of Commons, provides an overview of, mainly, the ceremonial role of the Speaker in the House. This literature deals largely with historical and ceremonial aspects of the speakership in Britain. Not a great deal is written on the legal, constitutional and political role of the speakership.

With regard to South Africa and its colonial ancestry, the speakership has not received a great deal of scholarly attention in the literature. Worrall (1971:49) makes a cursory reference to the most important office-bearer of the former House of Assembly as being the chairman generally known as “Mr Speaker”. Similarly, Venter (1989) and Venter and Johnson (1991) also make only a cursory reference to the Speaker of the former House of Assembly and their election by majority vote. The lack of scholarly attention can probably be ascribed to the past uncontested roles that Speakers have performed. Johnson (2013) refers in a cursory way to the Speaker in the South African parliament and opposition during the period 1994-2010.

The various constitutional experts in South Africa, Wiechers (1983), Basson and Henning (1987), Carpenter (1989), Rautenbach and Malherbe (1996) and Devenish (1998 and 2005), wrote extensively on Constitutional Law in South Africa. The authors have similarly included references in their books on the role of the South African Speaker, but these references are limited and form part of more comprehensive publications on South Africa’s constitutional development.

## 2.2 The historical evolution of the office of the Speaker

Rautenbach and Malherbe (1996:124) describe the position of the Speaker as a historical relic and point out how the position has developed and historically has been aligned with the development of parliament as an institution. The first parliament developed in the 1300s in England from the English King’s *magnum consilium*, an institution which was referred to as the National Assembly. The National Assembly, later known as the Commons, increased in importance under King Edward II (1284-1327), while the powers of the King were eroded over time. Parliament, as with the later House of Commons, and after the *Act of Settlement* (1701) was accepted, assumed autocratic powers and became institutionally very strong. The Speaker became an integral and imbedded part of this historical development and arrangement (Carpenter 1980:75).

According to Van Zyl (1974) the speakership in England originated in the 13th or 14th century when members of the House of Commons began to choose one of their members to be their spokesman when it was necessary to make their representations known to the King at the time. Kilpin (1955:146) similarly describes the origins of the speakership as, “veiled in the mists of the past when no records were kept by the House of Commons of their domestic proceedings”.

Roskell (1965) was able to trace the first Speaker back to 1376 and documented this in his book, *The commons and their speakers in English Parliaments 1376-1523*. Historically the role of the Speaker was predominantly to submit petitions to the King on behalf of the House of Commons (Roskell 1965:11).

Following rivalry between the Royal prerogative and the people, the independence of the Speaker as the spokesman and servant of the House of Commons was eventually established in 1642 when Speaker Lenthall threw his lot in with the Commons (Kilpin 1955:146). During the struggle between the Royal prerogative and the privileges of the people in 1642, a climax was reached when Charles I (1600-1649), thwarted by the House of Commons, entered the House and boldly “borrowed” the chair in which Speaker Lenthall was sitting in order to arrest five of its members (Kilpin 1955:146-147). Speaker Lenthall rose to the height of the occasion and, falling on his knees, made the historic reply, “May it please your Majesty, I have neither the eyes to see nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here.” (Kilpin 1955:146-147)

According to Kilpin (1955:147), the King tenaciously held on to the theory that the Speaker was the servant of the King, but the Commons successfully maintained that the Speaker must be their own free and independent choice. Later on with the growth of the party system, Speakers thought it their duty to serve their party as they had previously served the King in parliament. Onslow (1727-1763), a Speaker in the 18th century, stated that we, “set those high standards of impartiality, taken for granted today, under which all members are regarded as being equal” (Kilpin 1955:147).

The position of the Speaker was well-established in the British parliamentary system and in the constitutional development of the Westminster system, both in Britain and many Commonwealth countries. By 1820 the post of Prime Minister was firmly established in the British parliamentary system and the members of cabinet acted and functioned as a unit. The subsequent development of political parties and the struggle between the House of Commons and the House of Lords followed, which was settled in the passing of the *Parliamentary Act of 1911*. The important point to be noted is that, generally, South African constitutional law during the period 1910-1983 was essentially Westminster in character (Carpenter 1987:74-77). The office of the Speaker of the South African parliament as an institution was part and parcel of an inherited parliamentary system and was heavily influenced by its historical roots extending back to the pre-1910 colonial period until the present.

### **2.3 The constitutional and legal position of the Speaker in South Africa**

When the Union of South Africa was formed on 31 May 1910 as a constitutional entity, it was created on the basis of the *South Africa Act of 1909*. The strong influence of the Westminster parliamentary system is evident from the institutional and structural choices that were made to carve out a parliamentary system for South Africa. Although there were specific differences between the Westminster and the South African parliamentary system, the two house system of

an assembly (lower house) and the senate (upper house) was adopted. The executive that formed part of the legislature and represented a fused system with little regard for the separation of powers, also became part and parcel of the South African parliamentary system. The judiciary enjoyed a substantial degree of autonomy, but did not have the authority to conduct judicial reviews of parliamentary legislation and procedures (Carpenter 1989:81).

In the first Union parliament that was established in 1910, the Speaker was chosen from members of the House of Assembly in terms of the *South Africa Act of 1909*. The provisions of this Act stipulated that during the first sitting of the newly elected Assembly, after the new members have been sworn in, a new Speaker had to be elected. (*South Africa Act of 1909* 1909). According to May (1955:111) the duties of the Speaker in the first Union parliament included, “the presiding over debates and protecting the rights of the minority and of individual members. Failure to protect the minority in the House or undue harshness or unfairness to a member may be grounds for a motion of censure [...]”. May (1955:111) continues that, “The Speaker holds a position of dignity; he is entitled to use the prefix ‘honourable’, and he has many important duties. He presides over a joint sitting of both Houses, and he is placed high on the table of precedence.”

The duties of the Speaker in much of South African constitutional history have been essentially similar to the Speaker in the House of Commons under the Westminster parliamentary system. The general duties of the Speaker entail *inter alia*:

- i. To chair meetings/debates of the National Assembly.
- ii. To maintain order in the National Assembly during debates.
- iii. To apply rules of procedure and of form in the National Assembly.
- iv. To ensure that proceedings in the National Assembly take place “fairly and impartially”.
- v. To ensure that the rights of the members of parliament are protected (Rautenbach and Malherbe 1996:124).

The duties of the Speaker will be highlighted and elaborated upon in the subsequent subheadings. Special reference will be made to the stipulations of the successive constitutions of the Republic of South Africa since the formation of the Union in 1910.

#### **2.4 The 1910 and the 1961 Constitutions**

The election, duties and responsibilities of the Speaker will be discussed with reference to the provisions in both the 1910 and 1961 Constitutions. The discussion



refers to both constitutions, because only marginal changes were made in 1961 to the 1910 Constitution when the South African constitutional status was transformed to that of a Republic.

The general responsibilities of the Speaker under the 1910 and 1961 Constitutions were predictably in line with the Westminster system. The Speaker in both constitutions was considered as an office bearer who held a specific office in the House together with the Deputy Speaker, Chairman of Committees, Leader of the Opposition and Party Whips. The Speaker was the chairman of the House of Assembly and also represented the House as the bearer of the powers and the dignity of the House (Carpenter 1987:247).

Both constitutions stipulated that, “The House of Assembly shall [...] choose a member to be the Speaker of the House [...]” (*South Africa Act of 1909* 1909; *Constitution of the Republic of South Africa* 1961) after the members of parliament were sworn in. The Clerk of the House acted as the Acting Speaker until the appointment of the new Speaker. The elected Speaker in turn presided over the election of a Deputy Speaker. As a rule the previous Speaker was re-elected if he or she was willing to stand, unless there was a change of government (Carpenter 1987:247).

After the election of the Speaker, he or she presented himself or herself to the Governor-General under the 1910 Constitution and to the State President under the 1961 Constitution. This was a formal procedure marked by great pomp and ceremony which reflects his prestigious and symbolic position (Carpenter 1987:247).

The Speaker’s principal duties under the 1910 and 1961 Constitution were to maintain order in the House and to decide on the matter of form. This includes the rules and procedure for the election of a new State President and the rules for the nomination of the candidate for the Presidency. The Speaker must also describe the form of a secret ballot (section 9 (8) (a)) (Wiechers 1983:230). The Speaker also informs the House of a vacancy among its members to allow the election of the new member as State President.

Section 9(8) made provision for the role of the Speaker when amendments were made to Acts in parliament. When amendments were made, the Speaker, acting in his capacity to decide on the matter of form, will ask if the House accepts the amendments. This is just a formal question and the House, according to convention, never responded in the negative. Section 63(2) stipulates that an Act that was accepted by the House dealing with the availability of income of money, endorsed by the Speaker, was not legally challenged (Wiechers 1983:320)

Under the 1910 Constitution the most assertive responsibility and strongest authoritative power was bestowed on the Speaker when the House was constituted to act as a High Court in terms of the *High Court of Parliament Act, Act 35 of*



1952. This Act outlined the powers of the parliament as a High Court and the penalties that the House can decide on. In this regard the role of the Speaker is very important, because he/she could issue summons to arrest someone (sections 12 and 13) and if a person disturbed or disrupted a meeting of the House as a High Court could be arrested without a summons (Wiechers 1983:230).

Kilpin (1955:151-152), writing in 1955 on the preceding 45 years of Union, and his relationship to a political party stated that, “[S]o completely does Mr Speaker sever his relations with political parties that he is apt to become a recluse. As Speaker he visits nobody except on special occasions of official importance.” Kilpin (1955:152) continues that, “although he does not speak or vote in the House he remains the representative of his constituency on non-political matters and is frequently asked to represent its claims in the proper quarters”.

## 2.5 Constitution Act 110 of 1983

The 1983 Constitution, which created a tri-cameral parliament, has retained *mutatis mutandis* – the same provisions as contained in the 1961 Constitution. The Speaker acts as chairperson during debates and carries the responsibility towards form and procedure in the House. One such example is when a petition asks for the discharge of the President. It must be handed to the Speaker who must form a committee (section 9(3)) to investigate the grounds for misconduct or ability to perform efficiently (Basson and Viljoen 1988:50). The role of the Speaker had a strong procedural connection to ensure that the processes are conducted on the basis of prescribed rules and procedures.

The 1983 Constitution created a tri-cameral parliament for whites (House of Assembly), coloured (House of Representatives) and Indians (House of Delegates). The Constitution prescribed a complicated set of provisions to decide on own affairs applicable only to a specific House and general affairs applicable to all three Houses. The Speaker played an important and elevated role in this regard. According to section 17(a) the Speakers of all three Houses had to be consulted when the State President (article 31) decided if an issue was an own affair or a general affair. The Speakers also, according to sections 18(1) and (2), could determine if the correct procedure had been followed (Basson and Viljoen 1988:50). In summary, the role of the Speaker was elevated during the 1950s and 1980s to achieve the National Party apartheid objectives of the time.

## 2.6 The 1993 (interim) Constitution and the 1996 Constitution

The provisions of the two constitutions, *Act 200 of 1993* and *Act 108 of 1996*, do not differ substantially in terms of the position of Speaker other than by way of section 41. The 1993 interim South African Constitution was more specific than in

the past by virtue of section 41 by stating that the majority party, on the basis of its majority, could elect the Speaker, but that the Deputy Speaker should come from the minority party (Basson 1995:76-77). The stipulation that the Deputy Speaker should be from the opposition or minority party was honoured by the ruling party in the spirit of reconciliation (Basson and Viljoen 1988:76-77).

The 1996 Constitution does not prescribe the qualification for being elected to the office of Speaker except in section 47(1) which sets out the qualifications for membership of the National Assembly – that is the ability to vote for that Assembly in terms of section 19(3) of the Constitution. No mention is made of any further qualifications, including party affiliation or the election of a minority party Deputy Speaker. The performance of the Speaker thereafter is guided by the rules and orders of parliament and precedent. Section 52(4) provides for the removal of the Speaker or Deputy Speaker from office by resolution of a majority of the members of the National Assembly.

The Speaker, in similar fashion to the time of Union in 1910, was chosen by majority vote by members of the legislature and is likely to be a member of the majority party. His or her loyalty will most likely be with the majority party. No tenure of office is stipulated in the relevant legislation and this is usually determined by the political party from which he or she originates. In the South African experience this has been the practice in the pre- and post-1994 periods. In the pre-1994 period, when the House of Assembly was elected on a constituency basis, the Speaker would usually be unopposed by the opposition parties in his or her constituency, but from 1951 onwards in terms of a change in the relevant legislation, Speakers were legally unopposed in general elections.

Chapter 3 of the current rules of parliament refers to the Constitution of 1996, section 52 and the election of Speaker and Deputy Speaker in support of the election of these officers. Most of the acknowledgement given to the speakership is procedural in nature. The one acknowledgement given to the elevated status of the office of Speaker is in terms of chapter 3, section 13(2) where, “The member elected shall from his or her place, express his or her sense of the honour conferred upon him or her”. Further elaboration on the role of the Speaker not set out in legislation is given in a web site referred to as *Speaker’s Corner* (2015) under the heading “Institutional mandate”.

Under this heading the Speaker is referred to as the Leader of the House and he/she is responsible for providing political leadership and strategic direction to the House, and exercising impartiality at all times in pursuance of these duties. Under this heading, it is furthermore stated that the impartiality of the Speaker, “is one of the prime values in which the integrity of South African parliament is measured. The Speaker has the responsibility for being the custodian of this integrity, preserving parliamentary integrity, supporting the decorum of the House, serving

as the executive authority for the House and ensuring the smooth running of the House business and its committees (Speaker's Corner 2015).

The question then is how should or does the Speaker conduct himself or herself in an impartial manner in practice and in line with the Westminster tradition, going back to the time of Speaker Arthur Onslow referred to above? A further question is how should the speaker relate to the political role referred to in the *Speaker's Corner* above?

### **3. THE ROLE OF THE SPEAKER: PARTISANSHIP OR IMPARTIALITY?**

Van Zyl (1974:210), in referring to the role of Speaker from the early times of Cape Colony rule and the advent of the Union of South Africa in 1910, says that the Speaker withdraws from active party politics and is, "traditionally the guardian of the rights of minorities, but his task is also to ensure that the balance is observed between the right of the majority to have its way and the minority to have its say". Devenish (1998:121; 2005:229) describes the office of Speaker as, "one of great distinction" and its "history is characterised by dignity and fearless independence". Devenish (2005:229) continues that, "(In) an authentic liberal democracy, parliament cannot fall under the monopoly of one particular party, or the executive. The governing party, similar to all other parties, is subject to the rules and norms of parliamentary conduct, as interpreted and applied by the Speaker". Kilpin (1955:146) refers to the office of the Speaker in the South African House of Assembly as being, "the embodiment of the dignity and authority of the House itself. It rests with him to uphold the biblical injunction written nearly two thousand years ago 'Let all things be done decently and in order'".

Kilpin (1955:147), when referring to the early history of the speakership in the British House of Commons, refers to the injunction of the Lord Chancellor of the Upper House to, "elect one, a discreet, wise and learned man, to be your Speaker". Modern writers, according to Kilpin (1955:147), stress the importance of discretion which includes a capacity for wise management. Kilpin refers to Delane (a famous editor of the *London Times*) who listed the essential personal qualifications for a Speaker as being: imperturbable good temper, tact, patience and urbanity; having previous legal training; absence of bitter partisanship in a former career; the possession of innate gentlemanly feelings which involuntarily command respect and deference; and personal dignity in voice and manner.

South African parliament has for most of its history, beginning in 1910, included members and political parties with sharply divergent views. Despite this, it is not often that the partiality or impartiality of the Speaker is referred to in the literature or called into question in parliament itself or in the public domain.

A few recent instances of where the Speaker was complimented or criticised are referred to below. One early exception was on 21 May 1954. During a meeting of a joint sitting of South African parliament, the leader of the opposition gave notice that he would move a motion of censure in the Speaker following the naming and suspension for seven days of a former cabinet minister. However, the motion was not pursued as the former minister in question was later allowed to resume his seat (Kilpin 1955:147).

Helen Suzman, an opposition Member of Parliament for some 36 years (1953-1989) and for most of that period an exponent of views strongly opposed to those of the governing party, was complimentary with regard to the impartiality and fairness accorded her by several Speakers. In her autobiography, Suzman (1993:249) lauded Speaker Louis le Grange who was “always courteous”. She refers to Le Grange as a Speaker as very courteous, despite having clashed with him in a previous portfolio of Law and Order. She also acknowledges the role of another Speaker, HJ Klopper, a hard line Nationalist who did not “agree with a word she said”, but nevertheless allowed her more speaking time than other Members of Parliament (MPs) and even ruled against MPs of his own party who passed unruly remarks against her (Renwick 2014:46-47).

Andrew Feinstein (2007:89) writes in a critical vane as a former Member of Parliament of the ceding of power to the party at the expense of parliament. He ascribes this ceding of power to the party as a result of the proportional representation electoral system under which, “a party leadership demands loyalty and is quick to dispense patronage”. These two factors, Feinstein argues, removed, “the backbone of the ANC backbench in spite of our constitutional responsibility for holding the Executive to account”. Feinstein continues that the leaders with the greatest responsibility to fight for the primacy of parliament were, at the time of writing, former Speaker Dr Frene Ginwala and Deputy Speaker Baleka Mbete – the latter being the current Speaker in 2014-2015.

Feinstein (2007:90) illustrates his argument that parliament had ceded power to the party by referring to the former Minister of Mineral and Energy Affairs, Penuell Maduna, who in mid-1997, in reply to a question in parliament, accused the Auditor-General of hiding the receipts of an oil transaction by the state owned agency. When it was pointed out to Minister Maduna that there had been an accounting write-off with regard to the amount in question, he refused to withdraw his remark. An *ad hoc* committee was set up to investigate the matter. Feinstein continues that, “the ANC used a variety of stalling mechanisms to prolong the investigation [...] and then finally concluded with a weak report which effectively exonerated the Minister”. Feinstein concludes that, “[T]he Speaker’s support for the cynical approach of the party ahead of the interests of parliament was shameful

and stood in contrast to the spirited defence of the institution during the first few years of democracy”.

Calland (2013:138), writing from the perspective of an outside observer, notes that, “the Speaker’s role is relatively limited”. In his view it is, “more by omission than commission that the Speaker exerts a negative influence over the balance of power between institutions of governance”. Calland (2013:138) argues that when 13 South African soldiers had been killed in the Central African Republic in March 2013, Speaker Max Sisulu could have recalled parliament to consider a matter of national interest, but did not do so. He did nothing to stamp his authority on parliament, which as an institution meanders along. Calland also refers to the Deputy Speaker, Nomaindia Mfeketo (2009-2014), who, he argues, came in for criticism by issuing a number of “partisan rulings”.

Douglas Gibson (2014), a former opposition member of the National Assembly and Chief Whip from 1994 to 2007, having served under five Speakers over a period of 16 years, notes the differing styles of Speakers, some more personable than others. Speakers were generally accommodative of the opposition. Gibson also notes the importance of the role of the Speaker and the great deal of work entailed in carrying out the functions of a Speaker. He maintains that the current Speaker (2014), Ms Baleka Mbete, should not hold political office in the governing ANC as chairperson of the National Executive Committee as the holding of this office must affect her impartiality as a chairperson of the National Assembly. Speakers should ideally, he maintains, have legal backgrounds and divorce themselves from active party politics.

In May 2014, following South Africa’s fifth post-1994 election, Speaker Baleka Mbete was elected for a second time by the majority party – the ANC – into the office of Speaker in the South African National Assembly. Mbete previously held the office of Deputy Speaker (1996-2004) and Speaker (2004-2008). In the interim, Mbete was elected in 2007 as the Chairperson of the National Executive Committee (NEC) of the governing ANC, an overtly political position in South African party politics.

On two occasions Speaker Mbete’s conduct was called into question. In an earlier 2006 debate, during her first term as Speaker (2004-2008), Speaker Mbete dismissed Westminster norms on neutrality by arguing that, “it is wrong to assume that our system is the same as Canada or the House of Commons or whatever because this is South Africa. In fact here we have decided that we [the Speaker] remain political. I remain a member of the ANC caucus and I go to it, unlike in Lesotho where the speaker is not even a member of parliament.”

The conduct of Speaker Mbete again emerged in 2014 during her second term as Speaker. Successive rulings, which were believed by the opposition parties to be partisan rulings, were made by Speaker Mbete and this prompted a rare motion

being presented on 12 August 2014 by five opposition parties to have the Speaker removed from office. The motion was rejected by the governing party (*Beeld* 2014). The opposition, although defeated by the majority vote of the ruling ANC, was united in their condemnation of the current role of the Speaker which they viewed as neither impartial nor an upholder of the dignity of the National Assembly.

#### 4. AN ASSESSMENT

There are two critical variables that influence the impartiality of the Speaker. The first relates to the impact of the electoral system on the election and execution of the duties of the Speaker. From early times Britain adopted a single member constituency electoral system and, similarly, the pre-Union South African colonies and republics and post-1910 South Africa adopted a similar single member constituency system. From 1994 onwards South Africa adopted a proportional representation (PR) electoral system in which political parties nominated their members on a preferred candidate list in rank order. Since those ranked were ranked on a party affiliation basis, they were not directly elected by the electorate. They could be nothing other than party nominees and were subservient to the wishes and accountable to their political party of origin.

By contrast, a representative elected directly by the voters in a geographic constituency, although elected under a party banner, is directly accountable to the electors as well as the party which nominated the representative. There is therefore no single loyalty as is the case with a proportional representative. A constituency representative is more likely to look towards the interests of the voters with a view to being re-elected and less likely to look solely towards the interests of the party. Allied to this variable is that, despite the constitutional and electoral changes which have occurred in South Africa from the early 1990s, the method of selection of the Speakership has not changed to keep pace with wider constitutional changes. The method of selection and election are virtually the same as a century or more ago.

The second critical variable is the dominant party theory where the ANC has dominated South African politics for over 20 years and in five general elections has never obtained less than 63 percent of the vote cast. The party sees itself as unlikely to be defeated in an election; it sees little distinction between party and state; it conflates party and state and because of its strength and self-confidence, it is in a position to harass and alienate its opposition. Baleka Mbete, as referred to above, conceded that she saw no conflict in performing her role as a non-partisan speaker and performing a high profile party political role simultaneously.

## 5. CONCLUSION

It is only in the last decade prior to 2014 that the rulings of the Speaker in the South African parliament have been increasingly questioned within parliament itself. The explanation for this is the increasing role that the governing party, the ANC, has begun to assume in South African society in line with its national democratic revolutionary beliefs. It is therefore considered not inappropriate for a high profile person to occupy the position of Speaker in the National Assembly who would control debate, but still permit a façade of democratic debate to prevail. In recent years the South African National Assembly has become increasingly dominated by the executive that is the ruling party in that Assembly. The belief in the separation of powers between the legislature and the executive is not very strong in ANC circles, which supports the argument by opposition parties that recent speakers are not impartial in their rulings.

Despite many changes which have taken place in the constitutional and electoral areas, the selection and election of speakers has not been reformed in line with current day South African realities since the early days of Westminster electoral democracy. As has been suggested by opposition parties and others, a new selection process should be instituted which might provide for the appointment of a person as Speaker from outside party ranks. Such a person might have a legal background and might be selected by a parliamentary committee of representatives from each of the political parties represented in the legislature. In this way, Speakers can become an impartial chair rather than a party functionary.

However, in the final analysis, various procedural and statutory measures could be put in place to ensure the impartiality of the Speaker with the same negative end result. It is not procedure, structures and provisions that will ensure impartiality, but values. The fact is that the *grund norm* for parliament rests on deeper philosophical and ethical considerations which stretch much deeper and farther into the realm of history. This is an underpinning ethos, value and a standard which is beyond the reach of procedures and statutes.

The Speaker has chairperson duties, but in the final analysis he/she is the bearer of not only these powers, but importantly the *dignity of the House* (added emphasis). The legislature has multiple functions to perform, both as a transformative institution, namely the capacity to convert proposals into law, and as an arena for debate (Jackson and Jackson 1996:278-279). In either case, parliament provides the platform for the duties and function on the basis that the inner workings of the institution should be effective and functional. The role of the Speaker is to ensure that functionality and efficiency is maintained and that it takes place in a dignified and in a fair manner. If the Speaker is not impartial and does not allow room for vigorous, but fair debate, it will seriously undermine the



efficiency of the functions of parliament. It is the duty of the Speaker as custodian of parliament to oversee the process and to safeguard the institutional integrity and the primary duty of parliament and not to be merely a rubber stamp for the majority party. In a dignified manner, the Speaker should ensure that the proceedings in the House are conducted in that manner and spirit. The Speaker should be the watchdog of parliament and act in service of that higher principle which elevates his or her position above party politics.

In the final analysis the respect and deeper understanding of the speakership in the National Assembly and what it stands for should be the guiding principle. The guiding principle should never be what is good for the ruling political party, but what is good for parliament as an institution. In a global context, legislatures in parliamentary systems are on the decline. If the Speaker in South African parliament stifles healthy debate and favours the governing party, it will certainly undermine the status of the institution. Further, partisanship will undermine the separation of powers and will in the long run undermine South Africa's status as a constitutional state and a democracy. It will also be a serious indictment on the maturity of South Africa as a democracy and democratic consolidation and lower the status of the country in the international community. South Africa's history and the voters will be the final adjudicator.

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