

28 January 1995

FREEDOM FRONT: SUBMISSION TO THEME COMMITTEE 2
BLOCK 1 - SEPERATION OF POWERS

INTRODUCTION

1. The constitution is the skeleton or essential framework of orderly government and the fundamental concept of democracy, ie the concept of restraints upon government is the main underlying principle of orderly government. What is important in this respect is the functional built-in systems of control, which is not there for the sake of academic correctness but to accommodate the hopes, fears, aims, prejudices, fundamental drive and conflicts of the people involved in the state - both individuals and groups. The constitutional built-in mechanisms is there to forgive them existential security, which can facilitate happiness and make people content.

2. The traditional separation of powers, which goes back a long way, between legislative, executive and judicial powers, is perhaps the main built-in mechanism designed to place certain restraints on the use of power in government. The purpose is to avoid the accumulation of all governmental power in a single individual or institution.

3. It was particularly Montesquieu in the 18th century that articulated this constitutional device to ensure civil liberty. The concentration of and the monopoly over power in a few hands under circumstances not conducive to the functioning of a true democracy. Hence the strict separation of powers.

Montesquieu pointed out that it is the separation of powers that best ensure that the nature of government remain that of a servant and not of a master over the people.

4. The Freedom Front, with its main emphasis on Freedom under all circumstances will insist on this principle of separation of powers being honoured in the writing of the constitution in accordance with Constitutional Principle VI, which states:

"There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness. "

5. From the point of view of its constituency and their precarious position within the political changes in the country, the Freedom Front find even more reason now to support this basic principle of democratic government as the constitution of South Africa will be decisive for the establishment of a volkstaat and is thus seen by our supporters as also securing their existential security within South Africa.
6. This principle must also be employed at all levels of government as far as it maybe applicable.

THE LEGISLATURE

7. The legislative authority of the Republic shall, subject to this constitution, vest in Parliament, which shall have the power to make laws for the Republic in accordance with the Constitution." (1 993 Constitution, Section 37).
8. "Parliament consists of the National Assembly and the Senate." (1993 Constitution, Section 36).
9. The National Assembly. The National Assembly or Lower House, should represent the electorate on the principle of democratic elections based on the equality of all voters on an individual basis. Representation can be arranged through the delimitation of constituencies and the nomination of candidates for the election process, through proportional representation or through a combination of both. The duration of office should be five years.
 10. The Senate. (See Appendix A for "The Role of the Senate in South Africa".) The Senate or Upper House, must reflect the true soul and character of peoples of South Africa. It is this House that should distinguish South Africa from any other democracy in the world. The Senate should therefore have the following Functions:
 - 10.1 The protection of provincial interests. It should also ensure that centralist monopolistic behaviour and bureaucratic red tape do not frustrate the efficient functioning of provincial and local government.
 - 10.2 Nation building and the protection and development of the different languages and cultures of South Africa.

- 10.3 The protection of minorities and minority rights within the framework of the constitution.
- 10.4 To seek consensus through dialogue without violating the democratic process.
- 10.5 The protection of the Constitution. Thus the Senate must have the power to:
 - a. Review, revise or even veto legislation related to the functions of the Senate. There should however be a deadlock breaking mechanism.
 - b. To initiate judicial review of legislation.
- 10.6 To seek consensus through dialogue without violating the democratic process.

The Upper Chamber is of such importance that the Freedom Front proposes that a workshop be held as soon as possible to determine the possible roles and functions of the Senate in South Africa.

THE EXECUTIVE

1 1. The Freedom Front proposes that Sections 75 and 76 of the 1993 Constitution should be maintained. Thus:

- 11.1 The Head of State shall be the President. Because of the workload involved, the separation of the offices of the Head of State and Head of Government should seriously be considered.
- 11.2 The President shall appoint the Cabinet, supervise the functioning of the Cabinet and consult with the Cabinet on important issues.

12. The President must be elected by parliament and could be a member of the National Assembly or the Senate.

13. Due to the workload, the President must be assisted by a Deputy President or a Prime Minister.

14. The executive must be accountable to both the Head of Government and Parliament.

THE JUDICIAL AUTHORITY

15. The Judiciary must be independent, impartial and subject only to the constitution and the law.

16. There must be an independent Constitutional Court that has the power to nullify an Act of Parliament if the act is in conflict with the Constitution.

(Senator P.H.Groenewald) maj-genl Freedom Front.

THE ROLE OF THE SENATE IN SOUTH AFRICA

INTRODUCTION

The composition of Upper Chambers such as the Senate in the USA and the House of Lords in the UK differs. They can be constituted through election, nomination or qualification. The Upper House is usually a smaller chamber and is used in the overall system of democratic government as a mechanism of control and moderation for the sake of stability and peace.

Upper Chambers have in recent times, drastically declined in stature and usage in Western Democracies. Relatively weak institutions, such as the House of Lords in the UK, the Canadian Senate or the French Senate still play an important role in polishing and clarifying legislation. But they have become distinctly secondary in nature and stature in that they have become chambers of reflection, revisionary debate, protest and delay. Many of them have become the dumping grounds of failed politicians or even worse; political Siberias. The British House of Lords is a relic of the insistence of feudal barons that they should advise and in a way control the monarch whose power constituted a threat to their own domains.

But society has changed. Class orientation is diminished. The need for effective government with as little frustration as possible, is overriding and a second chamber which is little more than a duplication of the first chamber, without a "distinctly defined" nature and task, has become an irritation in majoritarian democracy. It can then be seen as an unnecessary expensive luxury and irrelevant to the real political process. Many of the existing second chambers are also not clearly democratic in its composition and purpose.

THE FREEDOM FRONT PROPOSAL

Serious consideration should be given to the second chamber in the South African parliament to ensure that its nature is representative of South African society and of that which is good and noble in our people. Its role within the overall political process must be defined in such a way that it becomes a cost effective goal orientated institution which will command respect and earn dignity in fulfilling a crucial role in government. It should not frustrate democracy but play an indispensable role in facilitating not only effective and stable government but also the building of culture and common purpose in Southern Africa. Constitutionally, the South African Senate should give the world something truly South African.

The Freedom Front thus proposes that:

- 1 The Senate should, without increasing the number of Senators, be elected as follows:
 - 1.1 Equal representation from the provinces. (60% of its members).
 - 1.2 The true pluralistic nature of South African society must be represented. Thus the Traditional Leaders and any community seeking self-determination should each elect a fixed number of representatives to the Senate.
 - 1.3 The larger and nationally organised corporate entities in South African society, which in their constitutions honours the constitutional demands and criteria, should also elect a fixed number of representatives. Examples of such institutions are:

- a. Organised labour,
Organised business,
 - c. Organised agriculture,
2. The Senate should have the following Functions:
- 2.1 The protection of provincial interests. It must ensure that centralist monopolistic behaviour and bureaucratic red tape do not frustrate the efficient functioning of provincial and local government.
 - 2.2 Nation building and the protection and development of different languages and cultures of South Africa.
 - 2.3 The protection of the Constitution. Thus the Senate must have the power to:
 - a. Revise or even veto legislation related to the functions of the Senate. There should however be a deadlock breaking mechanism.
 - b. To initiate judicial review of legislation.
 - 2.4 To seek consensus through dialogue without violating the democratic process.
 - 2.5 The protection of minorities and minority rights within the democratic system.

WORKSHOP TO DETERMINE THE ROLE AND FUNCTIONS OF THE SENATE

The Upper Chamber is of such importance that the Freedom Front proposes that a workshop be held as soon as possible to determine the possible roles and functions of the Senate in South Africa.

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