

Enshrining Biblical Values

Whats going on in the law currently

- Employment Equity
- Departmentalisation of occupations
- Amendment of marriage laws
- Hate Speech Bill
- Discrimination Act (PEPUDA)
- Prostitution Bill
- Anti-money laundering legislation
- Regulation of religious workers
- WHO Health Regulations
- Amendments to Education laws

How the civil law works

A crash course in basic constitutionalism

Determine the 'god' of the system

- Grounds planning in realism and not secular legalistic dogma.
- Recognise the risks and limitations of civil law.
- More accurately gauges when to allow the state into the gates or when to build walls.
- Prevents statism
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- Allows for truly independent institutions

Determine the 'god' of the system

- What is the final arbitrator of truth in the system
- What is the dominant interpretative tradition in the system?
(What informs the hermeneutical approach to the interpretation of what the law says)
- How are morality and justice determined?
(By system players or by some outside source?)

Christian consensus

- Recognition of ontic / natural law
- The law can be tested against higher Law
- Apodictic nature
- Negative rights (obligations)
- Recognises multiple sources of authority (*Politca*)

Secular consensus

- Formula / rationalist-based expression of norms
- System actors alone determine the content of the law – emphasis on constitutional texts
- Casuistic nature
- Positive rights
- Statist-individualist nature

Christian consensus

- High emphasis on religious freedom (religious tolerance in public space)
- High emphasis on truth, societal roles, office and *imago dei*

Secular consensus

- Low emphasis on religious freedom (religion deemed purely private affair)
- High emphasis on egalitarianism and homogenisation

Constitutions & Transnationalism

- More potent socio-political forces determine the interpretative tradition that gives meaning to legal texts
- Majoritarian rule
- Arbitrary source of authority and rules
- Secular rule
 - Morals sourced from unbiblical sources
 - Religion is not given sufficient weight and value in society

Constitution 1996

- Founded on principles of human dignity, equality, dignity and freedom (section 1)
- However

In *President of the RSA v Hugo*, Kriegler J stated:

The South African Constitution is primarily and emphatically an egalitarian Constitution. The supreme laws of comparable constitutional states may underscore other principles and rights, but in the light of our particular history and our vision for the future, a Constitution was written with equality at its centre. Equality is our Constitution's focus and its organising principle.³⁴

Constitution 1996

9 Equality

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

10 Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

Constitution 1996

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Constitution 1996

15 Freedom of religion, belief and opinion

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that-
 - (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising-
 - (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.(b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

16 Freedom of expression

- (1) Everyone has the right to freedom of expression, which includes-
 - (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to-
 - (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Constitution 1996

29 Education

(1) Everyone has the right-

(a) to a basic education, including adult basic education; and

(b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-

(a) equity;

(b) practicability; and

(c) the need to redress the results of past racially discriminatory laws and practices.

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that-

(a) do not discriminate on the basis of race;

(b) are registered with the state; and

(c) maintain standards that are not inferior to standards at comparable public educational institutions.

(4) Subsection (3) does not preclude state subsidies for independent educational institutions.

Constitution 1996

30 Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

31 Cultural, religious and linguistic communities

- (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-
 - (a) to enjoy their culture, practise their religion and use their language; and
 - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Constitution 1996

36 Limitation of rights

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

Constitutional concerns

- Justice is accepted if it aligns with the primary principle of equality
- Knowledge of the law must conform with the dominant views of the Constitution as the final arbiter of all law.
- Faith is personal - Two Kingdoms
- Principles of faith can only be applied in public law if its meets the requirements of reason – Rationalism and enlightenment is the secular stick to beat faith in law.
- Education must meet the abovementioned requirements

Constitutional concerns

- South Africanism - conformity in what?
- Statist-individualist view of the world - The only arbiters of truth is the state (Constitution) and the desires of the individual. Scriptural constraints are deemed an assault on the freedom of the individual.

Constitutional motivators

- Balancing of power - Religious & educational institutions
- Church plays a similar role to Courts - Judgment on power
- Independent authority undermines totalitarian and oppressive regimes.

Some good news

- Law (*usus*) requires public consensus (*opinion iuris*) to operate effectively.
- Unjust laws – where consensus is not present – require an exceptionally effective state to enforce
- Norm formulations on paper do not automatically equate to law.

Institutions

- External threats
- Internal threats

Institutions - Internal

- Decisionmakers
- Founding documentation/values
- Staff
- Students
- Parents

Institutions - External

- The state
- Legislation
- Media
- Activist groups

Legislation

- Accredited training vs unaccredited education
- Accreditation vs Credence

State

- Hard targets
- Don't sign over independence and authority
- Create strong real-world institutions

Practical advice

- Statements of faith
- Institutional safeguards on control
- Do the paperwork
- Keep proper records
- Deal with the threat immediately
- Proper oversight by overseers