

Identity and Democracy: Building Multicultural Democracies

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Introduction

There is little doubt that the modern state in increasing measure and due to a variety of factors including the relatively free and easy movement of people across countries and continents, a growing rights consciousness, a deepened understanding of democracy to include human development as well as economic globalization has seen the growth and development of diverse populations, bringing with it its own demands and challenges often located in language, culture and religion and having at its base the notion that the recognition of one's humanity carries with it the recognition and the respect of those things that make and shape who and what we are, that give content to our character and that enable us to give meaning to our world.

Professor Alan Brudner of the University of Toronto wrote and I quote that: -

“ By culture I mean the shared ways, speech, wisdom, memory, and self interpretation (through histories, literature, song, dance, art etc) of families that are united in a firm disposition to live and perpetuate those ways, to transmit the wisdom to the next generation, and to interpret in their daily lives the customs and traditions held in collective memory”

How states respond to such demands ultimately determines the basis on which those groups construct their relationship with the State, impacts on the quality of life and the development agendas of those communities and invariably goes to the nature and the stability of the democracy building process. The sense of ‘ we ‘ of belonging of a shared patriotism will certainly flounder when a state is unreceptive to the demands that increasingly emerge in multicultural societies.

South Africa in 2005 continues to grapple with the demands of a multicultural society emerging as it did some 10 years ago from a dark and sad chapter in its history that saw culture, language, religion and the quest for development shackled, undermined and in some instances re-written by race and politics located within a system that the international community declared a crime against humanity.

The Constitution and some key provisions

The constitution making process represented a historic compromise between the white regime and the liberation movements and the manner in which we resolved many of the substantial challenges that we faced, including justice and accountability, land and the economy, continuity in governance and the treatment of minorities were in many respects shaped by this compromise. I imagine any examination or critique of the constitution and its provisions (including shortcomings) must have some regard and an appreciation of this compromise and the constraints it created.

There are many however who argue that notwithstanding such constraints the drafters failed in locating the Constitution on “an indigenous moral foundation and a rootedness in local culture. The omission for example in the final Constitution to the value of African humanism embodied in the concept of ‘ubuntu’ is cited as proof of the euro-centric nature of the document.

Notwithstanding these criticisms I believe the Constitution goes a long way in laying a solid constitutional and legal basis for the pursuit of multiculturalism, which is understood to mean the right of a people to retain their cultural identity and uniqueness even in a political state concerned with the creation and promotion of an overarching national identity. Linz, Apan and Yadav speaking of ‘state nation policies’ articulate the need to create a sense of belonging (we feeling) with respect to state wide political community, while simultaneously creating institutional safeguards for respecting and protecting politically- salient socio-cultural diversities.

Some key provisions in the Constitution

The Preamble to our Constitution proclaims that ‘South Africa belongs to all who live in it, united in our diversity’ and the founding values reflect a commitment to one sovereign democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms amongst others.

Languages: 11 official languages are recognised with a commitment to the development and use of other languages especially those that were historically disadvantaged.

While the equality provisions are at the centre of the Bill of Rights there are provisions that guarantee the right to freedom of religion, belief and opinion including the recognition of personal and family law under tradition or religion. Individuals are assured of the right to use the language and participate in the cultural life of their choice while persons belonging to cultural, religious or linguistic communities are guaranteed the right with others to enjoy their culture, practice their religion and use their language as well as the right to form and maintain associations.

However the rights to culture, language and religion are recognised only to the extent that that they may not be exercised in any manner inconsistent with the any provision in the

Bill of Rights. This may be seen in some quarters as relegating them to some secondary status and Moosa argues that ‘the Constitution may be tolerant of multiple moral centres, as long as they do not threaten the rights centred juro-moral authority.’ Others argue that culture is not static and to the extent that it is constantly evolving, adapting and adjusting it also needs to find a of synergy with the values that underpin the society and that indeed the values in the Constitution may justifiably be used to check and vet the claims brought in the name of cultural diversity.

The Constitution goes on to provide for the establishment of an independent body known as the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities with the object in the main of promoting respect for the rights of cultural, religious and linguistic communities.

Finally the institution, status and the role of traditional leadership, according to customary law, are recognised. In this regard the role includes that of governance at the local level and the application of and development of customary law.

The above represent a summary of the relevant constitutional provisions and while they are impressive on paper the litmus test must obviously be how they have worked in practise. It is relatively easy to draft sound constitutional and legal texts. Giving them life and content is a more formidable undertaking.

From theory to practise

The dominant theme of the constitution is one of equality while considerable importance has been given to cultural diversity and language rights. Justice Albie Sachs, a justice of the Constitutional Court characterised the challenge as follows: -

‘ In my view, the Constitution should be seen as providing a bridge to accomplish in a principled yet emphatic manner, the difficult passage from State protection of minority privileges, to State acknowledgement and support of minority rights. The objective should not be to set the equality principle against that of cultural diversity, but rather to harmonise the two in the interest of both. Democracy in a pluralist society should accordingly not mean the end of cultural diversity, but rather it’s guarantee, accomplished on the secure basis of justice and equality, ‘

How then have we approached and negotiated this challenge of advancing cultural diversity while at the same time seeking to build a new nation out of the fragmentation of the past?

Given our separation as people from each other there was clearly a need to bring us together and forge a sense of nationhood. Common symbols such as the coat of arms, the flag and the national anthem provided a vehicle not just for nation building but also for advancing multi-linguism and multi-culturism. The coat of arms and the motto in the language of the virtually extinct Khoi language says ‘ diverse people unite ‘ (! ke e / xarra

// ke), the national anthem is sung in 4 languages, isiZulu, Sesotho, English and Afrikaans and while initially it was sung in 4 parts by different linguistic groups (in other words people singing in the language that they were comfortable with) it is increasingly being sung by all South Africans as a single anthem, again a positive indication that even in our search for unity we are able to advance the diversity that enriches our nation.

The customs and traditions of our people are being elevated to the status they deserve so it is not uncommon for praise singers to introduce and sing the praises of the President before he is sworn in to office. We hear the many languages of our nations being spoken in Parliament and legislation being introduced in language other than English and Afrikaans (the dominant languages of the past). In the arts we see the exciting fusion of classical Indian dancing with that of traditional Zulu dancing in a single dance form.

In other areas however the challenges have been more complex, the harmonisation more elusive and the choices more difficult to make. The commitment to diversity on the one hand requires a broadening of the democratic landscape to accommodate diverse demands, where such demands in order to be accommodated, requires only resources and space they are easier to negotiate in that they may not require a choice to be made or constitute a conflict between competing imperatives. When it becomes more complex is when there is a clash of values and where competing demands cannot be accommodated and choices need to be made. It is in these areas, where indeed the stakes are considerably higher, that matters become more complex, the risk of alienation higher and the threat to the democracy making process greater (depending of course on how these deeply contested matters are resolved).

The approach to multiculturalism must take into account that often and notwithstanding (as in the South African instance a formal commitment to equality) a history of neglect, of assumption has meant that special measures may well be required in order to achieve substantive as opposed to formal equality for the various claims that may emerge from a genuine commitment to multiculturalism. Whether one calls this affirmative action or positive discrimination matters not – if there is a real commitment to creating a healthy multicultural and multilingual society we must take the context and prevailing environment into consideration in devising policies and programmes that advance multiculturalism.

An additional concern and one that is raised by Nhlapo is that multiculturalism will work when it is accompanied by a commitment of genuine tolerance to difference. If however it manifests itself as ‘ implacable resistance to living with any cultural variation that is unfamiliar to the received value system ‘ then it would simply be tantamount to a defence of privilege – the privilege of the elites. He goes on to caution that even as we applaud the attribute of culture that we call dynamic not static we seem to have our eye firmly fixed on the particular result of such dynamism and that we expect the end result to be progressive and conform to some ideal that we have in mind. For instance we may be happy to leave indigenous cultures alone, secure in the knowledge that slowly they will become more like us – literate, ambitious, mortgaged to the hilt and, above all fully

clothed. We may not say it , he argues , but we have a firm idea of the kind of butterfly we would like to see bursting out of the cocoon.

Some examples of how we have grappled with these issues

Initiation Schools and the practise of circumcision

In many communities the passage from boyhood to manhood is accompanied by a period of initiation in an school where circumcision is also performed. Concerned by reports of the deaths of many initiates as a result of unprofessional and unhygienic surgical methods, there was an outcry and a call for the closure of such schools in order to protect the rights of the young initiates. With the assistance of the Human Rights Commission who convened a dialogue between all the relevant stakeholders we have made progress by ensuring the retention of these schools as an integral part of the customs and culture of our people while regulating the circumstances under which circumcisions takes place to ensure the safety and the good health of the initiates. Government regulation is thus not seen as intrusive but rather a necessary intervention and the objective of harmonisation is substantially achieved.

Traditional Healers. They play a crucial role in consulting; dispensing and advancing the physical and spiritual well being of many cultural communities and individuals yet enjoy no formal recognition .The Traditional Health Practitioners Bill will provide for the recognition and registration of traditional healers. This will enable them one hopes to issue sick notes, consult under similar circumstances as medical practitioners and be eligible to claim from medical aid schemes in respect of such services as they may render.

Customary law of inheritance

Current rules of customary law provide that a women married in terms of customary law may not inherit from the estate of her spouse. The estate would devolve on the next male heir. The operation of the rule has resulted in real prejudice for many women, who as equal and contributing partners to a marriage, are excluded from the proprietary consequences of such marriage. The Human Rights Commission and others have taken the matter to the Constitutional Court and again the stance we adopt is not to challenge the existence of customary marriage but rather to deal with one of it's unfair consequences. This we suggest is a clear case of how the institution of customary marriage can evolve and adapt in a dynamic way in response in meeting the equality challenge which is at the heart of our transformation.

Religion

This area involving the convergence of faith and public interest has predictably been more difficult to navigate.

In a fascinating case on Gareth Prince a, member of the Rastafarian religion was denied the right to practise law as he had been convicted of the possession of cannabis and had indicated his intention to continue using cannabis as part of the practise of his religion. In recognising the Rastafarian religion as well as the use of cannabis as an integral part of it's various religious practises, the Constitutional Court had to simultaneously contend with the argument that the State had a legitimate right and indeed a duty to proscribe the possession of cannabis as a dangerous dependence producing substance. While the majority of the Court found that the prohibition was valid and constitutional a powerful majority argued that it was possible for the law to make provision for the exemption of Rastafarians from it's operation thereby achieving the twin objectives of advancing the public interest by in general terms proscribing the use and possession of cannabis, while allowing it's use for religious purposes.

The minority judgment of Justice Sachs is worth recalling: -

‘ The appellant has shown himself to be a person of principle, willing to sacrifice his career and material interests in the pursuance of his beliefs. An inflexible application of the law that compels him to choose between his conscience and his career threatens to impoverish not only himself but all of South Africa and dilute its burgeoning vision of an open democracy. Given our dictatorial past in which those in power sought incessantly to command behaviour, beliefs and taste of all in society, it is no accident that the right to be different has emerged as one of the most treasured aspects of our new constitutional order. Some problems might by their very nature contain intractable elements. Thus, no amount of formal constitutional analysis can in itself resolve the problem of balancing matters of faith against matters of public interest. Yet faith and public interest overlap and intertwine in the need to protect tolerance as a constitutional virtue and respect for diversity and openness as a constitutional principle. ‘

Christian Education Case

The Khomani San

Conclusion

The pursuit of cultural diversity, in an environment where it is not shackled by race or politics enriches all of us and consolidates our democracy. On a daily basis we come to learn about the customs and cultures of the diverse peoples who represent our nation and in learning we become less suspicious of the other and we come to realise that indeed we can share the common space that the new order has created,

Of course there will be times when we have to confront matters that may appear intractable and times when the choices we seek to make run counter to other imperatives that we have decided for ourselves. But that is the very nature of living in a democracy

that has the space and opportunity to hold a dialogue, to seek a compromise, to advance an accommodation and when all that fails to make a choice between contesting positions.

As long as individuals and groups can have a sense that their aspirations have the spaces and the room to be dealt with we remain on track to achieve unity in diversity. It does however require vigilance, understanding and an ability to see one's destiny inextricably intertwined with that of the other.

At the same time cultural diversity and respect for it cannot mean that we simply leave cultural, linguistic and other groups alone to get on with their lives. We live in a dynamic, fast changing world that has implications for the individual and the group and any argument that proceeds along the lines that says you have a choice – you either live in splendid isolation in order to protect the culture that warrants protection or you abandon your culture in order to live and survive in the modern world provides no choice to cultural communities and is as good as denying or negating their right to culture. What we are challenged to do is to interrogate and face the challenge of how we insist that we protect the cultural diversity that makes us who we are while at the same time having the flexibility and in some instances the creativity to create the conditions for its survival in a modern world. It is a difficult task but by no means an impossible one.

Jody Kollapen

Chairperson: South African Human Rights Commission

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