



Institute for Comparative Religion
in Southern Africa

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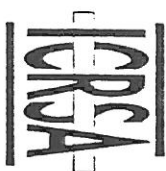
RELIGION, EDUCATION,
AND
CONSTITUTIONAL LAW

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The Institute for Comparative Religion in Southern Africa (ICRSA) is an organized research unit at the University of Cape Town devoted to the post-apartheid study of cultural forms of meaning and power, including religion, worldviews, ideologies, and human values, within the context of Southern Africa. ICRSA sponsors cooperative research projects, consultations, seminars, conferences, and occasional publications in the field of comparative religion. Housed in the Department of Religious Studies, University of Cape Town, ICRSA hopes to extend the scope of the university as a significant center for cross-cultural, interdisciplinary, and international research in comparative religion within the Southern African region and the African continent.

During 1992, ICRSA was involved in two major projects. First, the Project on Comparative Religion in Southern Africa has produced a computerized data base of resources for the study of religions in South Africa. This data base should be a valuable asset for researchers in the field. We anticipate two publications, an annotated bibliography on religions of South Africa and a history of comparative religion, localized in southern Africa, that promises to redefine comparative religion, not as something that compares religions, but as the work of comparing comparisons. This work attempts to recover the rich history of religious diversity, and reflection on that diversity, in the context of southern Africa. Second, the Project on Religion and Public Education has produced a 150-page report — *Religion in Public Education: Policy Options for a New South Africa* — in conjunction with the National Education Policy Investigation of the Education Development Trust. A copy of this report can be obtained from the ICRSA office. In addition, we have engaged in wide-ranging consultations with educators, parents, and students about the future of religion education in the schools. We have been impressed by the good will and enthusiasm with which people have entered into these discussions. In the coming years, we hope to provide one forum in which these conversations can continue, as we work together to create a new religion education for a new South Africa.

ICRSA: Workshop on Religion in Public Education

On 7 November 1992, ICRSA sponsored a workshop on Religion in Public Education that was attended by sixty delegates. Participants included university academics, teachers, parents, students, religious leaders, and other interested members of the community. A lively conversation was initiated. Discussions focussed on the public policy options outlined in the ICRSA report. In thinking about the future of religion in public education,

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as the report suggested, ten points for further reflection can be identified. These points are developed in detail in the ICRSA report.

1. Policy for religion in public education should aim to support the development of a democratic education for a democratic society. This commitment to democracy has two implications: Religious diversity in South African society must be the starting point for policy thinking, and broad-based, grass-roots participation will be essential for the successful design and implementation of any new policy.
2. The role of religion in public education must be consistent with human and civil rights to freedom of religion, conscience, thought and expression. Freedom of religion guarantees freedom for religious expression; but it also guarantees freedom from religious coercion or discrimination. Therefore, religion cannot be drawn into public schools as an instrument of coercion or discrimination. Any exclusive, single-tradition programme in religious instruction inevitably brings religious coercion and discrimination into a public institution. Therefore, alternatives must be considered.
3. One option for the role of religion in public education would be to eliminate religion as a distinct subject from the school curriculum. Since religious aims are already being served by religious institutions, educational aims, such as learning about religious diversity in South Africa and the world, could be served within the context of other subjects in social studies, the humanities, and the arts. However, the academic study of religion, like the study of literature, economics, or politics, is a distinct academic subject field. If defined in terms of clear educational aims and objectives, rather than in terms of religious interests, religion education could have an important place in the school curriculum.
4. Another option for the role of religion in public education would be the development of parallel programmes in religious instruction designed to serve the religious interests of different communities of faith in South Africa. However, this multiple, single-tradition model entails the same problems of coercion and discrimination, even multiplied, that follow from imposing one single-tradition programme of religious instruction in public schools.
5. A preferred option for the role of religion in public education appears in the prospect of a multi-faith, multi-tradition religion education. This subject has clear educational aims in teaching students about religion, rather than serving religious interests in the promotion of religion. Furthermore, the introduction of this subject promises social benefits by facilitating mutual understanding, reducing prejudice, and increasing civil toleration of human diversity. As an academic, examinable subject in the curriculum, a multi-tradition Religion Education could replace Bible Education, Religious Education, Biblical Studies, or any other sectarian religious subject in the schools.

6. Policy thinking must be informed by international developments in the field of religion education that have formulated and implemented multi-tradition programmes in the academic study of religion.
7. Policy thinking must be informed by African developments, particularly by recent innovations in Central and Southern Africa, in which multi-tradition programmes in religion education have been developed and implemented as the most appropriate educational policy in Africa.
8. Policy thinking must be informed by a concern with social justice. In this regard, a multi-tradition religion education programme is also a multicultural, anti-racist, and anti-sexist education.
9. Teachers must be partners in curriculum development and must be supported through a period of transition toward a multi-tradition religion education. Guidelines and resources are available to provide the necessary support. The wheel does not have to be reinvented in the design and implementation of religion education.
10. Successful development of a new religion education will require cooperation among universities, teachers' colleges, and schools. Transferable skills developed in other fields, such as the skills in textual, historical, and social analysis developed in Biblical Studies, can be adapted for a broader religion education programme. Based on clear educational grounds, consensus can be reached in the design and implementation of a new multi-tradition programme in religion education for a new South Africa.

ICRSA: Second Annual Lecture

In the context of the Religion in Public Education workshop, we invited Professor Albie Sachs to deliver the annual institute lecture on the topic, 'Religion, Education, and Constitutional Law'. We were impressed by the personal warmth and generosity of spirit with which Albie Sachs met this occasion. Although he raised significant points concerning the constitutional relations between religion and the state, it was his recurring emphasis on the crucial importance of nurturing a sense of human comfort, especially during a period of disruption and transition, that remained as the lingering impression from his lecture. In publishing his address, we have kept its informal, conversational tone. We think that this lecture provides hope for open, fruitful conversations, with broad-based participation, about the role of religion in education, as well as in other arenas of public life, in a new South Africa.

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RELIGION, EDUCATION, AND CONSTITUTIONAL LAW

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I think, as we are all discovering, that this is an area in which one just cannot be too careful. When we were planning the sessions for CODESA I, which was something new in South Africa, where you had for the first time the majority of South Africans represented at a big public occasion of great significance to everybody, we were discussing the format. Many of us felt that something had to be done to give a certain texture to the occasion, a feeling of South Africanness, something that would touch people in a way that ordinary political discourse cannot. We wanted something that would bring out the variety that exists in South Africa in a way that was natural and comfortable and would make everybody feel at home. This concept of everybody feeling at home was central to our vision. So a number of us suggested that instead of starting off CODESA with a speech, we should start off with prayers. Instead of the prayers being from one faith, we thought we should have a diversity of prayers, so everybody would feel that they were represented. Their spirituality, their custom, and their sense of being would be represented in a non-competitive, non-hegemonic, natural way. The sense of comfort was very strong in our minds. We wanted everybody to feel comfortable. We felt, naively as it turned out, that if we had Christian prayers, and not just from one denomination, along with Muslim prayers, Jewish prayers, and Hindu prayers, then we would establish that sense of universal comfort. I might say that one of the ironies of the occasion was that all the religious leaders ended up making quite long political speeches, while the political leaders made religious speeches!

As it turned out, however, the proposal actually produced extreme discomfort, especially for no less a person than the State President, who was seen on television with his eyes closed during the Muslim prayers. This provoked extreme disquiet among many persons who regarded themselves as supporters of the State President and his party. They felt that the State President should not be seen closing his eyes during prayers that were not Christian prayers. A friend of mine who is in the National Party (I think it's the first time I have ever said that!) was explaining the level of discomfort people felt seeing President De Klerk's eyes closed during the Muslim prayers. But he said that the president was closing his eyes to shut them out! Now it is pretty bad if you have reached the stage that you have to falsify what is really going on. What he suggested was that the president was shutting out the other prayers so he could pray to his God, the only true God, in order to repel the thoughts of the infidel and their false gods. It was certainly not our intention to produce a result of that kind when we made the proposal for beginning CODESA with prayers.

In preparing for CODESA II, the same issue arose. But once you have established the concept of the universality of faith, and a universal presentation of faith, you cannot go back. If you go back on that, and you insist that there is one religion that is somehow superior in political terms to every other religion, then you are actually moving backwards. And so, hours and hours were devoted to developing some kind of formula. One formula proposed was silent prayers. Quite a lot can be said for that. However, silence can be very threatening. Not many people can handle silence. If you have silence on TV, people will switch off. At the same time, many of us were hoping for the actual musicality of the prayers to come through, the buzzing sounds, the incantations. In any case, there was none of that, because there was far too much speechifying. So the idea of silent prayer was dropped as rather meaningless and against everybody's tradition.

In the end, as it turned out, with the secret dealings that most of us were not even aware of, the prayers were divided into two: the opening prayers, which were Christian and Jewish, and the closing prayers, which were Christian, Hindu, and Muslim. However, there was one vacant seat for the closing prayers at CODESA II. There was no walk-out, but the president just was not there. Pik Botha was there praying for two. His eyes were closed like I have never seen anybody's eyes! That was the kind of stratagem that was arrived at. But, of course, we don't want that kind of thing. Our objective was not to catch anyone out or put anybody on the spot. We wanted to create a context of comfort. The effect of comfort was in fact achieved by many people, but it was unfortunately achieved at the price of discomfort for others.

I must say that if we had held this kind of discussion a few years ago, it could have been much more intense. Those called 'secularists' might have made a stronger stand. I might have even been in their ranks, saying that there should be a strict separation between one's political, public, or institutional life and one's religious life. There has to be a total guarantee of the rights of believers who organise themselves to believe. It is a right that has to be acknowledged by the state. It is not a right that comes from the state, but from the relationship that believers have with their Lord and with each other. Nevertheless, we would have argued that the religious sphere should be separate from political life. I think many of us would have insisted on a position like that. However, having made that insistence, we would then rise to sing the national anthem, 'Nkosi Sikelel' iAfrika'. In other words, in singing, 'God Bless Africa', we would have been undermining the very position that we were arguing in favour of. Anybody who tries to take that hymn away from the ANC is robbing us of something that's very precious. For believers and non-believers alike, it is part of our patrimony, our culture, our heritage. It is part of who we are. It has been sung in the prison, very softly. It has been sung by people going to the gallows about to be executed. It has been sung in exile. We used to sing it all over the world, wherever we were. It has been a very unifying, encouraging, and uplifting kind of a hymn. We never saw it as associated with a particular faith, or denomination, or religion. It was just something that bound us together and gave us a sense of strength and comfort.

You will notice that I use the word 'comfort' quite a lot. I feel that comfort is an important dimension that can be lost in a strict separation between religion and public life.

In the field of religious education, this sense of comfort can be overlooked in the debate over whether the role of religion in schools should be purely educational or should be devoted to evangelisation. In between these extremes, the dimension of comfort, of feeling at home, needs to be nurtured. Comfort softens what might otherwise be a rigid divide. It makes the options a little more flexible, more nuanced, than they otherwise might be if one had to choose between religion as an expression of faith in the schools and religion as just simply part of the world's cultural heritage that everybody ought to know about. Attention to creating a sense of comfort can help to bridge the divide between these two positions.

If we look at the possible relationships between religious bodies and the state, there are four basic models that one can imagine on a kind of continuum. You can have the state that is itself a religious structure. In a theocratic state, the priests are the rulers. World history is strongly imbued with examples of this theocratic model. To this day there are countries where that theme is strongly pronounced, and there are all sorts of relics. In Britain, for example, the queen has a very special relationship with the Church of England. That relationship is a relic of those days when the two were seen as indistinguishable. In South African conditions, it is obvious that a theocratic state is absolutely unacceptable for all sorts of reasons.

Then one can have a situation of separation between religious bodies and the state. Each has its own sphere. Each has its own sovereignty or autonomy. The separation can be a strict one, with no overlap, with no interaction. That would mean that all state institutions would be completely secularised. All religious institutions would be completely outside of the state sphere.

As a third possibility, you can have your separate spheres. The state, as a state, has its secular functions. The religious bodies, as religious bodies, exercise sovereignty in their areas. Separate spheres are recognised by the constitution, but there is a considerable degree of cooperation and interaction between the two. In reality, we are single, integrated human beings. To say that for three hours of the day I am a citizen, while for another three hours I am a believer, is actually not consonant with reality. The reality is that there is an enormous amount of interpenetration between the two, in their organised forms, in their material forms, and in their cultural forms. I would say, speaking as an ordinary member of the ANC, that overwhelmingly we support an acknowledgement of that relationship. We welcome that relationship, not reluctantly, as if it were something that we are stuck with as part and parcel of the country that we are in, but with enthusiasm. The majority of ANC people are believers in many different faiths and denominations. We acknowledge that the great majority of South Africans are believers and that religion is very meaningful for the great majority of South Africans. It is not something that one wants to deny or lament. It is an important part of our reality. If an appropriate relationship can be established, it can be a source of tremendous upliftment for the whole of society, and a means of helping us to establish the maximum input for lacking and resolving the considerable problems facing our country. In other words, without the commitment and engagement of religious bodies, it is virtually impossible to see us solving the problems of

health, education, housing, the environment, and everything of importance to us in South Africa.

The last model would be the model of the secular state that actually suppresses, or tries to deny or eliminate, religious organisations. They might be tolerated or permitted and given a marginal kind of existence. Or there might be active utilization of the state machinery for the propagation of an atheist kind of position. In any case, such a state that tries to suppress religion is obviously and completely unthinkable in South Africa.

In the light of these four options, we will probably agree that the best model allows for both separation and cooperation between religion and the state. The state is primarily a secular institution that has a secular task in the modern world — making peace, maintaining good order, relating with other countries, finding the revenue for all sorts of social projects, attending to the nation's basic health, education, and housing needs, developing infrastructures, and so on. Religious bodies are primarily concerned with the religious dimension of life and the centrality of religion for the believers. I think it is important that these two poles be accepted if the actual relationship is to be most fruitful. In other words, if the state does not take over the functions and tasks of the religious bodies, and vice versa, then I think a very fruitful relationship, based on mutual acknowledgement and general respect, can be established.

There is one grave danger for religious bodies. If you cooperate with the state, does that mean that you are coopted by the state? If you work together on projects of mutual concern, does it mean that you lose your right to criticize? The right to criticize is central to the sovereignty of religion. One has to have the right to bear witness. I think that our constitution will be the first in the world that will actually enshrine in the Bill of Rights the words, 'the cooperation between the religious bodies and the state will be encouraged, but this will not in any way take away the right to bear witness'. The phrase, 'the right to bear witness', is acceptable to many faiths and denominations. It is not associated with any particular confession. We feel that it is a very valuable constitutional principle. It fits in with what is an emerging, developing view of the very nature of the state and of society. In that view, we are not only dealing with the state, individuals, and political parties. In the constitution there is a recognised sphere for organisations of civil society that exist before the state, outside of the state, and after the state. They do not owe their existence to the state. People come together on the basis of mutual interest to establish a whole variety of structures and organisations. They must have the right to exist and the right to function. If there is any form of registration, it would be for administrative purposes, but not for the purpose of determining an organisation's right to be. This would fit in very well with the overall concept of the rights of organisations in civil society, using 'civil' in the sense of non-state, but not in the sense of secular. Organisations in civil society would include bodies as diverse as trade unions, student bodies, business organisations, and the multitude of religious bodies we have in this country, as well as stamp collectors, or even people who want to set up a 'Flat Earth Society'. That's their right. It's not based on rationality. It's not based on logic. It's based simply on the desire of people to associate and express themselves in a particular way.

If we accept that the constitution, in this respect, will be based on the concept of a separation between the spheres and activities of the state and those of religious bodies, on cooperation between them, and on the principle of religious bodies maintaining their right to bear witness, how does all this bear on concrete situations in particular areas? More than just the question of education is involved. A whole variety of issues are raised, ranging from rules dealing with the slaughter of animals, to rights associated with circumcision, to marriage ceremonies, to dietary prescriptions in hospitals, schools, or prisons, to chaplains or other religious officers in the army. There is a multitude of areas in which these questions need to be addressed.

So the issue of religious education in schools is not something that is totally autonomous. It is not unrelated to all these other areas. At the same time, you can never come up with a completely blanket approach to all these things. You dig and delve in the area where you are primarily concerned. I do not think that these are the kind of issues where you start off with a clear definition and then try to fit your reality into that definition. We have far too much of that in South Africa. We get it in the debate over whether we should have a unitary state or a federal state. It is the wrong way around. You should start off with asking, what does the country need? You build up the structures, and then you leave it up to the professors to tell us that we have a unitary state with federal features, or a federal state with unitary features, or whatever it might be. We do love our metaphysics, but it is not necessarily the best way, and it is certainly not the best way to deal with the specific issues that arise with respect to religion.

In South Africa, as elsewhere, religion is a question of faith and belief. But religion is also very much a matter of culture and community. It is a way of being. You see it so strongly in Cape Town. The day after I arrived in the Western Cape, I was told that there was a meeting of Muslims that I might find interesting. The next thing I knew, I was up on the platform, asked to say a few words about the ANC's position on religion. I was given five minutes to prepare! But the point is that seeing people from my city, with the dress, the bearing, and the confidence that Islam now has, filled me with pride. Although I'm not a Muslim, just to see it gave me pleasure. What a change from when I left, when Muslims were marginalized and ghettoized in the city. Now it was a different thing. It came through in terms of dress and bearing and relationship and a confidence with which people spoke. That is part and parcel of the life of our city, of our people, and of our country. What we in the ANC would like to see, instead of Islam being marginalized, is Islam coming into South African life, with Muslims, as Muslims, as citizens, and as people, bringing Islam naturally and spontaneously into the new South Africa, just as Christians bring in Christianity, Jews bring in Judaism, Hindus bring in Hinduism, and so on. You carry with you your beliefs or your spirituality, and you bring it in with pride and you share it with others. You don't impose it on somebody else, but you don't retreat into a corner to be outside of the life of the nation. You come in and contribute and enrich the life of the nation with what you are and what you believe.

Another basic thematic structure of the constitution that touches on the question of religion is what I call 'the right to be the same and the right to be different'. Some confusion

has arisen about this concept in this country, because we are fighting for the right to be the same, but we are also fighting for the right to be different. The right to be the same means the right to share the same fundamental civil, political, and legal rights. As a voter, as a sick person, as a litigant, as somebody buying a stamp in the post office, whether he or she speaks English or Zulu, is white or black, that person is a South African with the right to be the same. That is a fundamental, anti-apartheid concept. We are all the same — all citizens, all equal, all human beings. But the right to be different is also part of this equation, an equally important part. The right to be the same is not the duty to be identical in terms of belief, culture, values, or personality, whether in the private sphere or in our public life. With the right to be the same, therefore, we have the right to be different. The right to be different belongs to each one of us. I have been made different because I lost my arm. Now I associate with the Disabled People of South Africa, a very wonderful, very strong movement in the country. We are different, by birth, by accident, whatever it might be, but we want the same rights — legal, civil, political — to move in society, to be employed, and not to be discriminated against because we might have one arm instead of two arms or because we are in a wheelchair instead of able-bodied people. So we want the right to be the same on the one hand, and the right to be ourselves on the other.

In terms of education, the right to be the same means that we all have the right to a broad, sound education. We have the right to learn about the world, to learn about ourselves and our country, our bodies and our minds, our history and geography. In that context, it doesn't matter what our beliefs are. One and one makes two to a Muslim, to a Christian, to a Jew, to a Hindu. But we are different and we come to school with our differences. Each school has its own ethos and atmosphere. I can't say that we have worked out very definite positions on all of this. It is something that is evolving. The non-racial aspect is absolutely fundamental. We cannot allow students to be excluded from knowledge on the basis of race. Against the background of South African history, with so much hurt and indignity, that is totally unacceptable. Non-racism is a rigid, inflexible principle. But within that context, and affirming that everybody has a right, to begin with, for at least primary education, and then, with backing, to get secondary and tertiary education, there is enormous scope for adjustments and variations in practice. I think that most of us would look primarily to the educationists to develop policies. Although religious education has not been addressed as an ANC issue, our function, together with other political organisations, is to create conditions in which people themselves can sit down and work out within the framework of non-racism and equality the kinds of solutions they want to all these questions.

I have come today to listen. I have not come to prescribe. I would be foolish if I tried to prescribe, because this is such a tricky area. It is not for lack of courage, but it is really the way these things have to be dealt with. This is something new to South Africa. We are not used to trusting people with making decisions about their own lives and entering into real dialogue. We are much more used to secret committees, sitting in the background somewhere, working out what they think is best and then selling it, either clandestinely, not even trying to promote what they are doing, or just doing it, in a covert way, or else

using all the mechanisms of a modern state, all the forms of bribery and inducement, to try to impose a certain kind of policy. I think that's very wrong. What we really need is something that comes from inside of people. Even if people are bigoted, or intolerant, or harsh, that's the way they are. We must listen. We must establish forms of dialogue. We must work out, for example, policies in relation to religious broadcasting, chaplains, diet, and so on. Family law, in particular, is a very difficult area. Should Muslim family law be recognized as part of state law? Many Muslims would say: 'No, it belongs to us. It has nothing to do with the state. We cannot allow ordinary judges to pronounce on it, even with Muslims as expert witnesses. It is part of our sovereignty. Let the state deal with the secular side of the law. We will deal with our own side. Then individual Muslims can choose which regime they want applied in a particular case'. There are many other approaches, and in many countries different approaches are being adopted. Similar questions might arise in the application of traditional African law, which sometimes has a religious background. Should there be recognition of diversity of family regimes or not? This question is an important part of the broad debate that is needed.

In conclusion, all I can suggest is that two principles be followed. The one is the democratic, participatory approach. This has to be predominant. This conference is a very good example of that, even though it obviously does not represent all interested parties. The other principle is that we should think in terms of phases and transition. The development of the new South Africa is very disruptive for many people. It is enabling people who have been oppressed and denied to disrupt and undermine many of the things that have kept them back. That is marvellous. But there are many other people who have gotten so accustomed to privilege that they are very shaken now. We do not want this latter group to respond by becoming fanatical and resistant to any change. We want to ease them as much as we can into the change without allowing the discomfort to block the whole process. One of the things that anchors many people, and enables them to deal with this transition, is their religion and their association within their religion. We see the religious bodies, particularly those in the privileged communities, playing an important role in giving people a sense of comfort in the midst of transformation and disruption.

It might be that changes in the role of religion in public education will be experienced by many people as a little destabilising. That must be addressed within your internal debate. However, provided that there is honest debate within the ranks of the communities, rather than policies imposed from outside by the state or government departments, I think the process of change will be much less destabilising. Those outside the debate might well prefer to maintain more of a hands-off policy, while those inside might prefer a more creative and active policy. I don't see any contradiction between the two. This is something that those of you who are participating in the debate about the future of religion in education will have to work out in a way that we can hear, in a way that we can apply in terms of basic constitutional, legislative principles, in a way that will work in the schools and that will function well. But also, as I have suggested, a programme for religion in public education can be worked out that will provide essential comfort, not comfort in the face

of misery and oppression and denial, but comfort for people who are adapting to change. That comfort, I feel, will be very important in the transition to a new South Africa.