

RELIGION AND THE 1996 SOUTH AFRICAN CONSTITUTION*

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Abstract

The main proposal of the author is that inclusive well-being in South Africa depends mostly on whether the potential energy of the enlightened conscience, which he calls the ethics of power, will prevail in the crucial decade that lies ahead. The threat to the emergence of a transforming ethic in South Africa comes from, amongst others, negative aspects of our religions. In for example Christianity, the numerically dominant faith in South Africa, a great gap exists between both the message encoded in some central Christian beliefs and the actual practice of the churches on the one hand, and the quest for inclusive well-being on the other. A thorough-going 'ethical' critique of Christianity is therefore needed to unleash its significant humanising and world protecting potential. Fortunately the provisions of the 1996 constitution concerning religion are exceptionally favourable to the quest for inclusive well-being, because of the way they both limit and liberate religion.

1. Inclusive well-being and the obstacles to it

'Without vision', an ancient Hebrew sage once said, 'the people perish'. The point of departure for this paper is a vision of lasting justice, peace and well-being for all in a safe environment. Based on this vision, my main proposal is that inclusive well-being in South Africa depends mostly on whether the potential energy of the enlightened conscience, which I shall call the ethics of power, will prevail in the crucial decade that lies ahead, and that although there are some serious obstacles to this happening, the 1996 constitution has the potential to foster that outcome because of the way it both limits and liberates religion.

To set the scene for what follows, let me explain what I mean by inclusive well-being (Prozesky 1984; cf Suchocki 1987: 149ff). So far as I can see from the concerns that have driven the main liberation movements of history, it requires the meeting of six main requirements: equality, inclusiveness, freedom, difference, the flourishing of life (including, of course, the natural environment) and education for maximum learner empowerment. Most of these facets of inclusive well-being require no further discussion. The exception is the fourth one, namely difference. Especially prominent in post-modern thinking, it means the demand for acceptance of the right of everybody without exception to be the person he or she wishes to be or become at any time, subject only to the cardinal rule of not harming others (cf. Derrida 1981:26). What also needs to be emphasized is how minimally these six requirements for inclusive well-being are met or even acknowledged in much of religion and in most of our economic structures.

Despite the dramatic advent of a one-person-one-vote form of non-racial politics in South Africa, it is much too early to conclude that the country is heading towards inclusive

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well-being. The evil heritage of three centuries of racist, economic and spiritual injustice cannot be undone so easily or swiftly. Four problems seem especially worrisome.

First there is the politics of domination which is emerging in South Africa because of the absence of strong, morally credible opposition to the ANC. Most people can be intimidated into silence about the things that trouble them by the fear of reprisal, and a massively dominant political party of government is well placed to exploit that fear. The second threat comes from the understandable but still dangerous appetite for rapid material gratification that we see all around us, especially in tandem with white reluctance to yield much of the material advantages bestowed by the apartheid era. Morality is a complex reality but one clear component of it is willingness to place the interests of others before one's own. Demanding maximum personal satisfaction before any consideration of the common good, fuelled by a global economic system that inflames that demand relentlessly but in the most deceptive way, is hardly likely to make generosity of life any easier for most of us (Cobb 1994).

Thirdly, education in South Africa strikes me as being singularly barren so far as moral depth is concerned. Obviously this applies to the type of education imposed on us all under apartheid; but I am concerned that it will remain true for the foreseeable future. The recently issued draft South African Schools Bill contains little by way of attention to values education, and even if it did, just about everybody involved with the practice of education in this country carries in him or her the legacy of apartheid education, holding us all back from extensive immersion into the question of progressive values education.

The fourth threat to the emergence of a transforming ethic in South Africa comes from what I judge to be negative aspects of our religions. It would be grossly unfair not to acknowledge the great good that has been done by believers throughout the world and locally.

Nor must we underplay the importance of religion as a positive, world-shaping force. But, confining myself now to Christianity as the numerically dominant faith and as the one in which I was nurtured, I have to say that I see a very great gap between both the message encoded in some central Christian beliefs and the actual practice of the churches on one hand, and the quest for inclusive well-being on the other.

2. Religion, faith and power

The gap is most evident in three areas. Key Christian beliefs are still either exclusivist or at best elitist in basic character, most notable so the doctrines of God and of salvation; much church praxis strikes me as more concerned with ritual satisfactions and personal assurances of salvation than with healing the wound in creation; and their internal power relations seem to me to be generally discriminatory and sub-ordinationist, especially in regard to women and laypersons.

Thus I see our churches as a cluster of sometimes quite powerful bodies devoting most of their efforts at internal agendas. I see virtually no sign of the churches turning their critical attention back on themselves and asking just how it was ever possible that a country with such massive Christian adherence could ever have produced apartheid (Prozesky 1984: 122ff). I hear of leading clerics saying that the role of the church in the new South Africa is to be the conscience of the nation, and I marvel at this assumption of moral superiority when I see a moral concern in many secularists and members of other faiths that is no less impressive than that of the finest Christians. It worries me deeply to see signs of ethical complacency and elitism in the religion that enjoys three-quarters of the broadcast time and nearly all the access to our schools. And it has dismayed me that not a single churchbody has to my knowledge objected publicly to the discrimination against non-theists contained in the Preamble to the 1996 constitution that was passed by the Constitutional Assembly in

May 1996. (I am not now referring to public objections to the draft Preamble which contained the words. 'I humble submission to Almighty God'. These objections included quite a number from official Christian bodies).

To my mind what is now therefore needed is a thorough-going *ethical* critique of Christianity coupled with measures to promote the significant humanizing and world-protecting potential latent in its own theoretical prioritizing of compassion, service and self-sacrifice. Given the numerical dominance of Christians in South Africa and the very considerable powers the churches have built up over the past centuries, I therefore see them, notwithstanding the problems noted above, as key players in the project of raising and enlarging the country's receptivity to a superior moral vision demanding well-being and justice for all, in partnership with people in our other faiths.

The justification for this contention lies to some extent in the history of religions which strongly suggests that religion at its best has been the most influential institution for the cultivation of compassion, self-sacrifice and dedication to the unsurpassably good. But the main justification lies in the nature of faith itself, or whatever else we might call the dimension of human nature that comes to expression in the religious life. To this I now turn.

Investigations into the nature of faith show that it is a generic feature of human existence with a common basic structure irrespective of the presumed objects towards which it is directed. Above all, these investigations bring to light the highly significant power latent in the human condition of faith, employing the very great energies of human freedom and self-commitment when they are focused upon what is experienced as the supremely worthy object of devotion. I shall explain this assertion by unpacking Wilfred Cantwell Smith's celebrated definition of faith as 'a capacity to live at a more than mundane level; to see, to feel, to act in terms of, a transcendent dimension' (Smith 1979:12).

What this highlights is that faith by its nature issues in action. Therefore, where faith is real in anybody's life, power is exerted, power being understood as the ability to change what would otherwise have happened. And since faith is something which anybody can experience, the power it carries is potentially a truly democratic power, a power innately vested in everybody. Next, faith has been well depicted by John Hick and others as involving the greatest freedom open to the believing person (Hick 1974:120). Like respect and love, faith cannot be coerced. Either it arises with glad acceptance in the one who sets her heart upon the object of faith, or it is not religious faith at all. Lastly, as an orientation of the self at its deepest towards what is taken to be supremely worthwhile, faith is a matter of ultimate valuation giving rise to fundamental moral norms of how to live. Thus it becomes a factor affecting the so-called public space of nature and society, shaped in its effects by the content of the beliefs it enacts. These effects can be both good and ill, both beneficial and harmful, as I have already emphasized. In light of this reality, I shall therefore distinguish between *religion as imperium* - meaning religion which harms the quest for inclusive well-being by promoting at a deep level the interests of domination and exclusion, and *religion as the servant of inclusive well-being*, where the converse tendency is present.

This moral ambivalence in the historical record of religion presents us with a problem: which aspect of religion will prevail, the one that serves the interests of domination and exclusion or the one that serves the interests of justice and well-being for all on an equal basis? There must be no under-estimating the importance of this issue, for unless religion as imperium - of which we have plenty in South Africa and elsewhere - is transformed into religion as moral service, we are unlikely to see positive changes in the other great person-making processes of society: parenting, education, politics and the economy.

3. The ethics of power

While we would be very unwise to underestimate the ability of the negative forces I have identified to obstruct the achievement of justice, peace of well-being for all with environmental integrity, nor should we underestimate the potential power of what I consider to be the most effective world-changing force of all in the long term. I am referring to the gradual unfolding of a *moral* vision of inclusive human well-being with roots going back at least to the Axial Age, with an associated criticism, challenging and gradual changing of the way power is distributed and used.

My term for this great phenomenon is 'the ethics of power'. History shows, I contend, periodic upwellings of profound moral criticism directed at key aspects of prevailing religious, economic and political practice. In the ancient world especially where religious belief of some kind appears to have been universal, these upwellings of moral concern invariably occurred in conjunction with the religious beliefs of the day, for example as a sense of divine commandment. But while I myself understand the ethical phenomenon under discussion as *spiritual* in a broad and non-dualistic sense, I do not think that the evolution of the ethics of power from and in the religious cultures of antiquity makes ethics a province of religion, for it is just as true that the moral abominations denounced in these moral upwellings, such as child sacrifice, the oppression of the vulnerable, or apartheid, were sanctioned by the same, prevailing of religion, broadly considered. And in modern times, to further emphasize the distinction I am making between being religious and being moral, it is simply a fact that secular people disavowing all religion can and do manifest just as much moral concern as any believer.

I want to suggest that the ethics of power, given what it has already achieved, has the potential to produce religious regeneration leading to educational and political counters to the economism that lies behind the destruction of both human communities and the environment in our time. But it is no more than a potential, with no guarantee that this potential will materialize.

The history of religions makes it quite clear that religion itself has been extensively reshaped under the impact of ethics. Who can doubt the moral factor in Muhammed's rejection of Meccan religion, or in the biblical picture of Moses, Amos and Jesus, or in the feminist critique of religious patriarchy? This history of the moral transformation of religion therefore points us to something beyond religion as the basis of the ethics of power, to a moral demand that appears to well up spontaneously in certain people, for example in the outrage of Gandhi at racism or of women at the sacralizing by powerful males of gender discrimination. Whatever their ultima source, these judgements about the morality of prevailing political and religious forces have been a world-changing force, redirecting the course of religious as well as political history. And when they do succeed in drawing into their service the energies of religious faith and the religious commitment it typically engenders, in the form of ethical or prophetic religion, the result is a very potent, positive socio-personal force indeed.

I believe that a highly significant emancipatory moral dynamic of this kind has been gathering momentum in recent centuries and especially in the past half century, targeting the mostly male, western and white-skinned controllers of political, economic, cultural and spiritual power, with important though still very limited humanizing results. I suggest that it now has the form of the conviction that no religious, political or economic structure can be tolerated if it does not foster the well-being of all life and its natural environment. But it will achieve very little so long as it remains a half-conscious, ad hoc and very fragmented series

of moral insights and demands. To change things it must become an explicit, well-directed, networked, transformative praxis. It must identify the main threats facing such a praxis. Above all it must enlist the energy potential of religious faith in order to redirect political, educational and economic power.

This is a truly vast project which I shall not even try to define except for one crucial aspect, namely optimizing the relationship between faith and political power. And it is here that the 1996 South African constitution is so important.

4. The 1996 Constitution

I shall not repeat here what people can easily read for themselves in the text of this historic document. What I shall do is to indicate the logical structure of this provisions concerning religion and then say why I see them as exceptionally favourable to the quest for inclusive well-being.

Governing the constitution is the set of Constitutional Principles which the constitution itself must honour. The operative principle so far as religion is concerned is the third one. It states that 'The Constitution shall prohibit racial, gender and *all other forms of discrimination* and shall promote racial and gender equality and national unity' (Emphasis added). I contend that the most reasonable interpretation of these words in a context where the greatest possible justice for all is being sought, is that discrimination on grounds of belief, including the belief that there is no God, is prohibited and that there must therefore be equal status for all forms of belief.

Confirmation of this contention comes from the second Constitutional Principle. It states that 'Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties'. What civilized country includes belief, both theistic and non-theistic, from recognition and equality? Moreover, the first of the Constitutional Principles states that the new South African constitution shall provide for 'a democratic system of government committed to achieving *equality* between men and women and people of all races' (Emphasis added). I interpret this as a general stipulation about equality and not just about racial and gender

equality. In that case, the first Constitutional Principle can be taken as stipulating that equal treatment for all shall be a fundamental right in the new South Africa. That means there must be no discrimination against anybody on grounds of belief.

Next in the logical hierarchy is the Bill of Rights which forms chapter 2 of the constitution. Three of the clauses here are relevant to my theme, namely those that provide for equality (Clause 9), freedom of belief (Clause 15(1) and what we could call the right of access to state institutions in Clause 15(2). These clauses stipulate, respectively, that all South Africans have equal constitutional status and are thus protected against all unfair discrimination on grounds which include religion, conscience and belief; that everyone has the right to freedom of conscience, religion, thought, belief and opinion: and that religious observances are permissible in state-aided institutions (such as schools and public broadcasting) provided that they are approved by the appropriate authority, that access is equitable and that involvement in them is free and voluntary.

At the bottom of the logical hierarchy is the Preamble. The last part contains the words 'May God protect our people', followed by the opening line of the national anthem in a number of languages, namely 'God bless Africa'. While the Preamble is reportedly not justifiable and is subject to the Bill of Rights and the Constitutional Principles for its validity, and while it may not in its present form be certified as acceptable by the

Constitutional Court because the words I have quoted appear to be discriminatory, it has great symbolic value as the opening words of the new constitution. I myself consider its discriminatory content in the face of plenty of significant support for an inclusive preamble to be a moral and spiritual disgrace, but as it may not survive the scrutiny of the Constitutional Court, I will concentrate on the legally binding parts of the constitution.

What is significant is that the 1996 constitution both limits and liberates the spiritual life of the nation. It sets limits to particular forms of religion by treating all forms of belief as equals enjoying the same rights of expression and practice, and by effectively (though not explicitly) separating religion or any secular philosophy and the state. The main practical benefits of these stipulations are to protect society from any legal continuation of what I regard as a very serious source of harm past and present, namely state buttressing and hence also corrupting of favoured Christian elements in the country, and, concomitantly, to prevent state fostering of what I earlier called religion as imperium - the tendency in important parts of Christianity towards domination, exclusion and the suppressing of the right of every person to be a creator of spiritual meaning and practice.

Similarly, state neutrality towards all belief-systems means that secularistic philosophies can never be installed as the established ideology of the South African state, an important limitation from the point of view of fostering the positive content of religion and of ensuring even-handed treatment for all.

The constitution sets faith free, to turn now to that side of its implications, precisely because freedom of belief and conscience on the part of every single South African now has the strongest protection possible in a democracy, namely the protection of the Bill of Rights itself, watched over by an impartial Constitutional Court. It is most important to see that this provision not only protects religious and secular bodies; it also protects the freedom of belief and conscience of every single individual. I said earlier in this paper that I did not think the igniting of passionate moral conviction could be deliberately brought about, but that it is possible to improve the prospects of others responding to such a conviction. It is precisely here that I find great encouragement in the freedom of belief and conscience clauses in the Bill of Rights. Gone, at least legally, are the days of religious bullying by entrenched stakeholders; open now is the way for people to develop and express their own spirituality and moral vision.

Religious and moral liberation for and of all our people are also greatly facilitated by the access clause. This legally enables the voice of conscience in quest of inclusive well-being to be heard in the schools and over the public broadcast media of the new South Africa, though much work still needs to be done to translate what is now legally possible into effective practice. (It is especially because of this access clause, so different from the rigidly separationist character of the American constitution, that I regard the 1996 constitution as post-modern rather than modern; it recognizes the validity and diversity of the nation's modes of believing and seeks to facilitate them even-handedly, rather than lock them out of public and state structures. Thus I would see the American provisions of 1776 as modern but ours of 1996 as post-modern in this respect).

The next aspect of religious and moral liberation in the new constitution concerns our minority faiths and our secularists. The way is now legally open for them to be heard as never before. Students of religion and of the history of morality know that there is great moral convergence amongst all the great faiths and philosophies espoused by humanity. Compassion and self-denial occur from Moses to Muhammad and Marx. It therefore follows that society as a whole will benefit the more *all of them* can influence and enrich the conscience of the nation.

Who, reflecting on the impact of Mahatma Gandhi, a Hindu who actively drew on the central moral principles of Jainism, Islam, Judaism and Christianity, in contrast with the ethic-spiritual monoculture of a D F Malan or an Ian Paisley, could think otherwise?

The final way in which religious and ethical regeneration can be fostered by the new constitution mainly affects secularists. Unknown to most believers, secularist writers are often an important source of very significant, valid criticism of the negative aspects of religion. Most of them are secularists because of personal experience of destructive tendencies in prevailing religion, and many are familiar with the main intellectual objections to religion that have emerged over recent centuries. They have much to contribute to the transforming of religion as imperium in South Africa into religious as servant of justice, equality and well-being for all.

In Weberian terms, my proposal is thus that the 1996 constitution involves both a salutary weakening of the religious centres of power in South Africa and an equally salutary strengthening of the margins - from which, historically, the most potent messages of moral transformation have come (Weber 1983).

5. Looking ahead

Much will, of course, depend on how the new system is put into effect. My own hope is that we will now see in South Africa's Christian majority a very radical reappraisal of the kind of part it can appropriately play in a constitutional democracy where religious affiliation is irrelevant in the so-called public sphere, and where majority domination is a very real danger, especially in connection with belief.

A device like a constitution provided a binding frameworks of norms. It does not itself mean that people will focus their energies on the quest for inclusive wellbeing. I therefore also hope that in the prevailing climate of making new beginnings South Africa will experience a flowering of theological creativity, starting with three key matters: the critique of the kind of traditional theism that co-existed to happily with apartheid, asking above all to what extent a world of liberated subjects, every one of whom has the *moral* right to be different, can continue to give assent to the concept of a deity who expects submission and controls everything, including the amount of freedom we have - for the concept of God is surely even more subject to the ethical critique of power than anything else; next, the critique of the very concept of orthodoxy, which I for one regard as inherently oppressive; and thirdly the critique of the Christian doctrine of salvation in the light of religious pluralism and ethical acceptability. A country where liberation from a Christian-sanctioned apartheid was the work of Muslims, Hindus, Africanists, Jews, atheists, agnostics and others as well as being the work of progressive Christians, makes an ideal, and urgent, context in which to address this third theological issue.

What is needed if religion is to be a vanguard factor in the quest for inclusive well-being is thus a thorough-going decolonization of religious consciousness, identifying and changing everything in our faiths that is there because of imposition, exclusiveness, ignorance, lack of self-criticality and inability on the part of ordinary people to use to the full their power to create religious meaning. In post-modern idiom, we need a celebration of religious particularity, resulting in the unfettering of personal spiritual growth. We need the liberation of understanding the history of religions as the ceaseless enthroning and dethroning of false gods to which everybody has an equal right to contribute.

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