

The Nature of Relations Between Religion and State: The Case of South Africa

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Abstract

Historically, there have been various forms of religion-state relations in the world, most of which have evolved. The major models that characterise the relations between religion and state are the secular atheism model, theocratic model, strict separation model and the co-operationist model. These models can be generally considered as Weberian ideal types; that is, analytical representations of existing state practices vis-à-vis religion that abstracts from empirical realities. This article analyses the nature of relations between religion and state and the constitutional guarantees of religious freedom in South Africa. Having briefly discussed the four general structures of state-religion relations, the article argues that the South African model is characterised as ‘separation with interaction’. The article also argues such a model is rooted in the South African Constitution which highlights the centrality of religious freedom. The openness of the Constitution and flexible nature of relations between the South African state and religion provides a basis for the involvement of religious organisations in the public sphere has been the case with the National Interfaith Council of South Africa (NICSA).

Keywords: Politics, Religion, Constitution, Freedom, Rights, Cooperationist, Democratic, South Africa

Introduction

Some modern democracies are built on the centuries-old mutual relationship between religious institutions and political forces. The first section of this article discusses the general forms of religion-state structures; namely, secular atheism model, theocratic model, strict separation model and the co-operationist model. Democratic contexts portray religion as an effective political instrument to the extent that religious institutions collaborate with the state to implement certain policies. In Africa, religion continues to be a powerful source of positive change for facilitating democracy, addressing human rights, forming multi-religious education and contributing to the transformation of society.³¹ In some contexts, the centrality of religion

³¹ Historically, some religions have stirred conflict, discrimination and prejudice thereby promoting political instability and the undemocratization of society. For example, Muslim militant groups such as Boko Haram and Al Qaeda have often engaged in various intolerable and violent acts such as the killing of innocent people perceived

has given it the political power to continue influencing several governmental decisions based on the nature of relations between the state and religion. Having discussed the nature of relations between religion and state in South Africa, the article shows that based on South Africa's current nature and historical relationship between religion and state, religion cannot be disqualified from public involvement. The final section indicates that the Constitution creates a fundamental basis for the flexible relations between the state and different religions in South Africa.

General Forms of Religion-State Structures

When analysing the nature of relations between religion and state from both historical and contemporary perspectives, four major models can be considered: namely, secular atheism model, theocratic model, strict separation model and the co-operationist model. The major models that characterise the relations between religion and state are the secular atheism model, theocratic model, strict separation model and the co-operationist model. An atheist state suppresses religion due to its hostility towards religious groups and the general integration of explicit anti-religious sentiments into the political system. In an atheist state, atheism is considered as the official doctrine or policy of the state to the extent that religious values and beliefs are not recognised. For example, the need to uphold religious and moral principles by religious groups in the public sphere is suppressed.

A distinction can be created between the moderate and extreme or militant versions of political atheism states. Extreme or militant atheism is what Paul Cliteur (2011:152) dubs "totalitarian atheism". This form of political atheism is based on the absolute atheist-centred system of government which neither associates itself with religion nor encourages religious operations, practices or activities. The state assumes totalitarian power to impart atheist ideas and delimit the religious convictions of citizens through suppression. This means that religious values would be considered as strictly private, with no role in society; that is, religious institutions have no influence and power on any aspects of society.

By contrast, the moderate form of political atheism might tolerate the existence of religion but grant it a peripheral existence. While religious political influence in society is significantly limited, non-religious views and approaches are often encouraged. Religious activities would be tolerated under rigorous regulation and without free expression in public forums. Kurt Lash (2013:305) expresses this as follows:

Under this model, religion is treated as a problem which requires affirmative government regulation. Law under this model tends to minimize, suppress or otherwise influence citizens away from religious belief and conduct ... government has power to regulate religious expression and conduct on the basis of the idea or

as infidels or unbelievers. Moreover, the kidnapping and raping of innocent young girls and the many suicide bombers who kill people in the name of religion sometimes with selfish motives cannot be ignored. Although one might argue that such terrorist groups are not Muslim, the fact remains that they do what they do in the name of religion, often categorically following religious texts attributed to a god. This can be attached to the idea that religious claims are sometimes perceived as obligatory and are stipulated clearly without compromise.

belief expressed. All religions may be regulated or only those religions that are considered to be especially dangerous to secular political ideas.

The theocratic model is opposite to extreme secular atheism. Extreme theocracies create a very strong bond between religious rule and the state. Such states are intolerant of other world views contrary to the dominant religious framework. Sometimes, theocratic states are deemed “religious states” due to the presence of an established or official state religion.³² Thus, theocracies often operate under established official religions which provide legitimacy to the state and the political system. In theocracies, the religious bond and principle “form the legitimacy of a theocratic state ruled by a political class of a dominant creed used for consolidation and exercise of power” (Gross 1998:26). Since religious doctrine is incorporated into the political system, religious dictates are employed for the expression of the law. The favoured religious perspective is perceived as absolute to the exclusion of other religions and world views through force and law.

The idea that one religion should be given priority over others is often justified based on the historical significance, or statistical dominance of a favoured religious group. Moreover, the state is perceived as a religious structure and the rulers are primarily religious leaders, or at least those that ascribe to the doctrine of the state religion. For example, prior to the Weimar Constitution of 1919,³³ Germany had state churches. Theocracies require that religion grants legitimacy to the acceptance of political power, government and its officials, because religious principles and doctrine shape the values and attitudes of the people. Where there is an official religion of the state, the rule of law might reflect religious dictates in its legal system. Since public activities and moral behaviour are interpreted based on religious doctrine, theocracies are non-accommodative of other world views that are contrary to the accepted norms of the established religion or religious group. Saudi Arabia stands as a representative of a theocratic state in the contemporary world.

By contrast, a separationist state advocates an absolute separation between state and religion; it maintains a middle way position between secular atheism and theocracies. A separationist state neither favours the presence of an established religion with substantial influence on the state, nor a completely atheist state, which is aggressive towards religion. While the state has the secular function, religious bodies focus on the sacred. The model of strict separation prevents the state and society from being influenced by religion, which can occur when religious institutions are given excessive power in a theocratic state. Similarly, the state would betray the separationist principles if it grants support to religion through aid in a way that shows endorsement of any religious organisation or institution.

³² Most Islamic states are religious states since Islam as a religion does not make a distinction between religious and political affairs. Islam is one system which includes all aspects of life and society. By contrast, Christianity creates a separation between religion and politics. In this case, one cannot talk of a religious state but state religion whereby a political system which is dominantly Christian employs Christian values extensively to the detriment of other religions and worldviews.

³³ Article 37 of the Weimar Constitution of 1919 declared that “there is no established state church in Germany”. This came after the founding of democracy when the throne of the Germany emperor was abolished.

France is an example of a separationist state whose model of separation is based on the concept of *laïcité* which literally means ‘secularity.’ This system encourages neither the participation of religion in the public sphere and government matters nor the state’s involvement in religious affairs. The French political secularism applies the principle of *laïcité* through several policies and legislations such as by legally prohibiting the state from recognising any religion. Nevertheless, France acknowledges religious organisations based on the legal framework without addressing religious doctrine or interfering with religious determinism in the private sphere. The state does not uphold or recognise religion although it remains neutral and accommodative towards the existence of different religions. Regarding the *laïcité* form of the separationist model such as that of France, Paul Cliteur (2011:15) affirms:

It is more often characterised as secularism tout court. It is the explicit aim of political secularism not to choose for or against religion. The state will remain “neutral”. All religions (as far as they do not advocate violence) may be represented in society, but none of them has a privileged position...In a system that operates under the banner of laïcité, the state is not allowed to make favourable propaganda for religion, but also upholds a ban on financing churches or other religious institutions. The pretence of political secularism is that within this approach, the state does not manifest an anti-religious outlook, as its critics want us to believe, but a non-religious stance.

Contrary to the separationist states, cooperationist regimes establish neither an official religion nor act in a way that prefers one religion to another. The cooperationist model is like the separationist model in the sense that it presupposes a formal separation between state and religion. However, it remains flexible, given that it does not create a strict separation between the two spheres. The separation with interaction is based on the recognition that although the state and religion are autonomous spheres, they can co-exist and interact based on the idea of freedom of religion. This freedom is the basis of the interaction between the state and religious groups and the recognition of principles such as pluralism, equality, neutrality and tolerance. Even though the state and religion may be described as separate spheres by the Constitution, there is nevertheless “a considerable degree of cooperation and interaction between the two” (Sachs 1992:6) that is based on the mutual collaboration and understanding of the respective goals and aims of each sphere. Therefore, the relations between the state and religious communities are amicable, since there is a substantial degree of accommodation and collaboration.

Religion is not discriminated against; it is instead recognised as serving the general welfare and common good of society. As Feliks Gross (1999:367) notes, the cooperationist state is distinguished by “its neutral but positive and ‘cooperative’ stance towards religions in society”. The state remains cooperative and neutral towards the position of religious institutions and organisations in society. Although the state has a secular ideology which may or may not reflect religious sentiments, it attempts to grant freedom of religion and equal treatment towards religious and non-religious views. Thus, cooperationist regimes uphold the theory of state neutrality, regarding the contribution of both religious and non-religious views in society, since an individual or group cannot be suppressed or unfairly discriminated against.

The state grants equal status and encouragement to all religious educational facilities provided they conform to the required norms regulated by the Constitution. It also recognises and accommodates the presence of religion-based, humanitarian organisations seeking to uplift citizen standards and welfare, so contributing to the wellbeing of society. This means, there is no state or established religion that would be given priority over minority religious groups. Thus, while the separationist model perceives neutrality to mean the strict separation between religion and state, whereby religious influence is expunged from public life, cooperationist regimes employ neutrality in relation to both religious and non-religious stances. Cooperationist regimes do not ignore the role of religion in society, since the state's openness to religion recognises that religious communities have a positive role to play in society. As such, they are part of society and the public sphere. For example, religions may have an influence on policies through lobbying and engaging with the state on issues of public interest such as developmental and economic matters.

The Three Possibility that were Rejected

The nature of the relations between religious bodies and the state in South Africa is rooted in the Constitution. When the South African Constitution was being conceived, there were substantial discussions on the model that would characterise the relations between religion and state. The four possibilities discussed in the preceding section are the atheistic state, theocratic state, separationist state and cooperationist state.³⁴ Only the last possibility was considered as the one that would characterise the relations between state and religion in South Africa. The possibility of an atheistic state which is “hostile to religion, a state that had nothing to do with religion or did not encourage it” (Rasool 2004:99) was found to be inappropriate to the South African context. Creating an atheistic state would have been a betrayal of the diversity of the South African society, the ongoing contribution of religion and the religious nature of the country. South Africa has been and continues to be highly religious. Based on the 1996 census, the year the Constitution was promulgated, Lipton (2002:135) established that:

The country has a total area of 470,462 square miles and its population is approximately 43,680,000. According to the 1996 census, approximately 87 percent of the population adhere to the Christian faith. Approximately 3 percent of the population indicated that they belong to other religions, including traditional indigenous, Hinduism, Islam, Judaism, Buddhism, Confucianism, and Rastafarianism.

In 2013, the General Household Survey on religious affiliation found that 84.2 per cent of the population was Christian, 2 per cent was Muslim, 5 per cent belonged to traditional African religions (mainly animist, ancestral and tribal) and that 1 per cent belonged to Hinduism

³⁴ Ebrahim Rasool and Albie Sachs provide a brief discussion on the four theoretical possibilities that were considered by the drafters of the Constitution. See, Rasool, E 2004. ‘Religion and Politics in South Africa’ in Tayob, A, Weisse, W & Chidester, D (eds). *Religion, Politics, and Identity in a Changing South Africa*. New York: Waxmann Publishing, p. 99, and Sachs, A 1992. *Religion, Education and Constitutional Law*. Cape Town: Institute for Comparative Religion in Southern Africa, p. 6-7.

(Schoeman 2017:3).³⁵ The statistics results also revealed that 0.2 per cent of the country's population belonged to the Jewish religion and that 0.2 per cent was atheistic and agnostic. Given the religious demographics, demonstrating that most South African citizens are religious, creating an atheist state suppressing, eliminating, or allocating religion to a marginal existence would have been counterproductive. Historically, different religions and faith communities have played a central role in the public sphere. During apartheid, religions such as Islam and Christianity joined liberation movements and organised various mass protests in the struggle for liberation and freedom.

For example, Muslim organisations such as the Muslim Youth Movement, Qibla Mass Movement and Call of Islam were dominant in the fight against apartheid. In the period of transition from apartheid to democracy, various religions contributed to the process of reconciliation and creating space, where political negotiations and deliberations could take place.³⁶ For example, in his work *Religion and Conflict Resolution: Christianity and South Africa's Truth and Reconciliation Commission*, Megan Shore (2009) upholds that Christianity was one of the key factors in the formation and implementation of the Truth and Reconciliation Commission.³⁷ Opting for an atheist state, which suppresses religious expression and participation in public issues, would have betrayed the contribution of religion in the construction and founding of a democratic South Africa (Sachs 1992:7).³⁸

The second possibility for creating a theocratic state, also thought to be an option for South Africa was found to be unsuitable for various reasons. Historically, during apartheid the South African legal system had favoured Christianity:

The Preamble of the 1983 Constitution, the 'Christian national' and 'Christian' education policies for white and black children (Sections 2(1)(a) of the National Education Policy Act of 1967 and 3(3) of the Education and Training Act of 1979), Section 1 of the Publications Act of 1974 and a series of laws covering Sundays and public holidays (Panel of Constitutional Experts 1995:3).

³⁵ The statistics results also revealed that 0.2 of the country's population belong to the Jewish religion, 0.2% of the population is Atheistic and agnostic.

³⁶ Many thinkers have produced works on the contribution of Christianity during the transition period. See, Borer, A T 1998. *Challenging the State: Churches as Political Actors in South Africa*. Notre Dame: University of Notre Dame Press, p. 173; Macozoma, S 1990. *The Church and Negotiations. Standing for Truth Campaign Worksop, March 7, 1990*. Johannesburg: SACC Achieves, p. 10 and Hay, H 1998. *Ukubuyisana: Reconciliation in South Africa*. Pietermaritzburg: Cluster Publication, p. 47.

³⁷ Megan Shore argues that Christianity was central to the formation of the Truth and Reconciliation Commission by shaping its initial mandate and functioning process. See, Shore, M 2009. *Religion and Conflict Resolution: Christianity and South Africa's Truth and Reconciliation Commission*. Burlington: Ashgate Publishing Company.

³⁸ The article, *Religion and Politics: The Western Dilemma* by Raimon Panikkar offers a philosophical and sociological reflection on religion and politics. For Raimon Panikkar, the nature of the relationship between politics and religion in the West has been historically underlined by a dilemma: either the two are considered as 'mutually incompatible and antagonistic forces' or as identical. He challenges the dualistic view which limits religion to the eternal, supernatural and sacred and politics to the earthly, profane or natural. He argues contra the monism stance which perceives religion and politics as totally indistinguishable. Panikkar, R 1983. 'Religion or Politics: The Western Dilemma' in Merkl, H P & Smart, N (eds). *Religion and Politics in the Modern World*. New York: New York University Press.

Since there are many religions and customs in South Africa, any bias against a religion or religious group was eliminated. A theocratic state would have betrayed the principles of a secular state where religion and state are primarily distinct. Creating a theocratic state suppresses the diversity central to South Africa as a democratic state. For example, Barney Pityana, a Christian theologian and human rights lawyer, in his address at a seminar at the University of Natal, Pietermaritzburg, suggested that since the majority of the population is Christian, South Africa should be a Christian state (Durham 2011:364). Among the respondents were Anil Sooklal and Suleman Dangor. However, the theocratic model was never discussed in detail as a potential possibility, because it overlooks the diverse nature of South African society. Thus, a government structure that is constitutionally religious with a strong link between state and religious institutions was considered as unacceptable to the South African context (Durham 2011:364).

The third possibility was that of creating a secular state with strict separation between religious bodies and the state. Although this would have created absolute autonomy and sovereignty on both sides, it was not considered an appropriate option, partly because it would strictly consider religion as a private affair; and religious interaction between the state and society would be seriously curtailed. To secularise all state institutions and to place all religious institutions completely outside the sphere of the state was not found to be a solution for South Africa (Sachs 1992:6). The indispensable role of religion in the struggle for freedom during apartheid, its centrality in the reconciliation process and the fact that most South African citizens subscribe to a religion contradicts the creation of a strict separation between state and religion.

The South African Model

The fourth possibility that was considered and eventually adopted was that of a cooperationist state which is essentially secular but allows for interactions between the state and religion. Although the two are independent of each other, there is 'separation with interaction' and religious organisations play an active role in the public sphere. There is no 'wall of separation' between religion and the state in South Africa. At the most basic level, the idea of 'separation with interaction' means that "there is no wall of separation between religious groups and the state; interaction is encouraged, as is the input of religious groups into the formation of public policy" (Catholic Parliamentary Liaison Office 2005:4). Thus, state-religion relations have undergone modification in the new South Africa since the official adoption of the new Constitution in 1996.

The complexity underlining the relations between state and religion, especially the extent to which religious bodies can influence society and play a role in the public sphere is explicit in the discussions around freedom of religion in academia by scholars. For instance, Pieter Coertzen (2008:262) maintains that though in "1994 (1996) South Africa got a Constitution which guaranteed freedom of religion", it "does not clearly identify in detail what freedom of religion implies".³⁹ Given that constitutional provisions, such as sections 30(1), 14(1), 15(3),

³⁹Lourens Du Plessis discusses the relations between state and religion in South Africa from the perspective of religious freedom and based on recent development within the South African legal system. See, Du Plessis, M L

15(2) concerning religious freedom do not expound on what this entails, religions in South Africa have drafted the South African Charter of Religious Rights and Freedoms (SACRRF). Once parliament approves this Charter, law will protect the rights and freedoms of religion; and “the place of religion in South Africa will be clearer than it is in the Constitution at present” (Mutelo 2017:21). Neither has this transpired, nor is it likely to transpire in the near future.

From the time the Constitution was officially adopted in 1996, the Constitutional Court has dealt with various cases concerning the meaning of freedom of religion and its limitations.⁴⁰ Although the Constitutional Court continues its attempt to interpret the constitutional rights related to religion, the process has not been smooth, especially in cases where religious rights conflict with other rights and values. Nevertheless, as a liberal state that supports the interaction between state and both religious and non-religious organisations and institutions, South Africa exhibits the principle of neutrality. Constitutionally, the state safeguards the freedom and liberties of individuals, institutions and groups. For example, in his discussion of the concept of liberalism, Andrew Heywood (2007:46) argues that in a liberal state, individuals and groups should enjoy maximum liberty and freedom. The State, as the guardian of the general welfare of citizens, upholds impartiality in dealing with religious and irreligious groups. Regarding the position of different religions, religious pluralism and equality are central elements underlining the freedom of religion in South Africa. Piper (2007:71) stresses the notion of plurality of religions in South Africa:

Today the Constitution affirms all religions and not only one; the state does not promote religious purposes through law and policy; it does not restrict freedom of religion; and no religious body has any special constitutional standing.

Based on the openness of the state to all, South Africa can be considered as a ‘religiously neutral state’ especially due to the dominant role of different religious organisations in politics, humanitarianism and social activism. As such, Africa is best described as a religiously neutral state rather than a secular state given that religion continues to participate in politics. Conformingly, Simangaliso Kumalo (2013:636) maintains that “South Africa is not just a religious country simply because the majority of the people are alleged to belong to some religion, but even the Constitution of the country declares it to be a religiously neutral state”. Such a position is appealing given that all religions are equally respected by the state, both in the private and public spheres. Unfair discrimination against a specific religion, custom or world view “by the state or any other person, group or institution are forbidden” (Mutelo 2017:32) constitutionally, based on section 9 of the South African Constitution.

2010. ‘State and Religion in South Africa: Open Issues and Recent Development’ in Ferrari, S & Cristofori, R (eds). *Law and Religion in the 21st Century: Relations Between States and Religious Communities*. Burlington: Ashgate Publishing Company.

⁴⁰ The cases that have been dealt with by the Constitutional Court concerning the meaning of freedom of religion and its limitations include the *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the Time Being and Another* (CCT223/14) [2015] ZACC 35 / [2015] ZACC 35; *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19 / [1 SA 524 [2006]; *Christian Education South Africa v Minister of Education* [2000 (4) SA 757 (CC)] and *Prince v President of the Law Society of the Cape and others* [(2002 2 SA 794 (cc))].

The openness of the Constitution enables religious organisations to interact with the state in issues of nation building; the democratisation process and the process of making and implementing certain policies. In the democratic South Africa, religions such as Christianity and Islam have created several organisations that have been able to engage within the public sphere, thereby making substantial contributions to society. Religions such as Christianity and Islam in post-apartheid South Africa have been part of broader interfaith organisations, which represent major faiths, and who also interact with government on specific issues. Interfaith solidarity has helped Islam and other faith communities in South Africa to collaborate not only among themselves, but also with the government on public issues. After 1994, President Nelson Mandela spearheaded the creation of the National Religious Leaders Forum (NRLF), a nationwide interreligious organisation that was formed by several religious groups including Muslims. When the NRLF met, both the MJC of South Africa and the Council of Muslim Theologians (Jamiat al-Ulama) Gauteng were well represented at national level (Omar 1998:2). The major aim of this interfaith organisation was to collaborate with the ANC government on diverse issues relating to development and the moral reconstruction of the country.

Through the formation of interfaith organisations such as NRLF after the demise of apartheid, “religious bodies became development arms of government service delivery initiatives” (Kumalo 2013:638). Such efforts reaffirm the idea that religious organisations are welcomed to play a role in the broader South African society. The NRLF engaged in several consultations and discussions with the state and government officials on various issues geared towards nation building or developmental initiatives, governance and the new democracy which was developing. At a summit with religious leaders in 1997, Nelson Mandela addressed the NRLF saying:

The transformation of our country requires the greatest possible cooperation between religious and political bodies, critically and wisely serving our people together. Neither political nor religious objectives can be achieved in isolation. They are held in a creative tension with common commitments. We are partners in the building of our society (African National Congress Parliamentary Caucus, 2010).

In 1997, the National Religious Association for Social Development (NRASD) was formed for further collaboration between the state and various religions in South Africa. The NRASD has since remained a “network of religious groups with the aim of fostering the role of religious organisations in social development projects” (National Religious Association for Social Development, 2018). In 2009, Ray McCauley, a Christian Pastor, spearheaded the formation of the National Interfaith Leadership Council (NILC), which maintained close links with the ANC government. In 2011, the NRLF and the NILC merged to form the National Interfaith Council of South Africa (NICSA). The organisation was formed to collaborate with the government on diverse social, economic and political issues. Since its formation, NICSA has been working with the government on nation building initiatives and issues of public policy and development thereby indicating that the input of religious organisations is welcomed in South African politics. This also shows that NICSA continues to have a political voice in South Africa through its focus on issues of public policy, human rights, governance, service delivery and development in its political engagement.

Constitutional Guarantees of Religious Rights

In a democratic South Africa, the 1996 Constitution is the basis and foundation for the relations between religious institutions, the state, society and the public. The Constitution contains several stipulations concerning rights that explicitly and implicitly relate to religion and its parameters as a general limitation of the freedom of religion. In the pre-1994 South Africa, the concept of toleration of religions and other faith groups existed with some Christian denominations dominating through close links with the state. For example, the *Nederduitse Gereformeerde Kerk* held a favourable status since it initially offered a theological basis as justification for certain apartheid policies, such as the doctrine of separate development, resulting in the intensification of racial classification and segregation.⁴¹ Hennie Serfontein (1982:71) summarises the position of the *Nederduitse Gereformeerde Kerk* during the apartheid political dispensation:

Virtually blind support of the government in all its policies and actions; blind support for apartheid political principles, apart from minor criticisms of details of application; a golden rule that nothing must be said or done to “embarrass” or “confront” the government; the maintenance of special liaison machinery and committees through which the NGK, without any fuss and publicity, could be in contact with the government or government departments.

With reference to the dominance of certain Christian values pre-1994, Lourens du Plessis (2001:439) contends that the traditional Christian bias in South African law was apparent in many ways. He highlights the existence of laws concerning, for example, the Sunday observance; the “Christian form of the oath in criminal proceedings; and a constitutional confession of faith in section 2 of the 1983 Constitution as well as statements showing a bias for Christianity, as understood by Afrikaner Calvinists, in its preamble” (Du Plessis 2001:439).⁴² The legal system furthermore attempted to prioritise a Calvinistic Christian perspective in law, such as legal censorship.⁴³

In the new South Africa, the Constitution defines the general place of religion through the guarantees of religious and related rights that apply to all religions. Regarding the right to religious freedom, section 15(1) of the Constitution resolutely states that “everyone has the right to freedom of conscience, religion, thought, belief and opinion”. This clause is in accord

⁴¹ Nscokovane provides a detailed discussion on the close relationship between the *Nederduitse Gereformeerde Kerk* and the apartheid state under the NP. See, Nscokovane, C 1989. *Demons of Apartheid: A Moral and Ethical Analysis of the NGK, NP and Broederbond’s Justification of Apartheid*. Braamfontein: Skotaville Publishers, p. 39; and Serfontein, J P H 1982. *Apartheid Change and the NG Kerk*. Emmarentia: Taurus Publications, p. 71.

⁴² Thinkers such as Johan van der Vyver offer a substantial discussion on the affirmed bias and some of its major effects. See, Van der Vyver, J D 1999. Constitutional Perspective of Church-State Relations in South Africa. *Brigham Young University Law Review* (2)8, 635-673, p. 636-642.

⁴³ In the case of censorship legislation, the notion of blasphemy was perceived as criteria though it reaffirmed the centrality of Christian values and principles.

with the Universal Declaration of Human Rights, which according to Ninan Koshy (1992:22) stipulates:

Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Fundamentally, both the South African Constitution and the Universal Declaration of Human Rights place the freedoms of religion, thought and conscience on an equal footing without explicit or implicit discrimination. This reaffirms the values of equality and the principle of religious liberty that are also found in sections 15(2) and 15(3) of the South African Constitution. Regarding the freedom of religion in academic institutions, section 15(2) permits religious observances provided such conduct is based on unbiased grounds; free and unbiased attendance at such functions; and non-violation of the principles of the relevant public authorities.⁴⁴ Without tackling the complex question of religious values and observances in religious, academic institutions,⁴⁵ it is essential to note that section 29(3) grants everyone the “right to establish and maintain, at their own expense, independent educational institutions” considering relevant provisions. Furthermore, section 15(3)(a) recognises marriages conducted under religious systems, family law, personal law or any tradition on the condition that other constitutional provisions are followed and observed. Under this clause, only a marriage that is solemnised by a marriage officer appointed by the state is recognised. Moreover, section 31(1) of the Constitution enshrines the freedom of religious, linguistic and cultural communities regarding the actual formation, practice and preservation of respective values and beliefs:

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.

The affirmed rights are to be exercised in a manner that is consistent with the provisions of the Constitution enshrined in the Bill of Rights.⁴⁶ The guarantees of religious rights are also contained in the constitutional stipulations on political rights. According to section 9(1), everyone has the right to make political choices; form or join a political party; campaign for a

⁴⁴ Section 15(2) of the Constitution states that “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”.

⁴⁵ Many thinkers have explored the place of Christian values and observance in religious schools and state-aided academic institutions. See Mestry, R 2006. ‘The Constitutional Right to Freedom of Religion in South African Primary Schools’. *Australia & New Zealand Journal of Law & Education* (12) 2, 57–68; and Mawdsleya, R D, Cumming, J J & de Waal, E 2008. Building a nation: religion and values in the public schools of the USA, Australia, and South Africa. *Education and the Law* (20)2, 83-106. There have also been many Constitutional Court decrees that have dealt with the subject such as *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the Time Being and Another* (CCT223/14) [2015] ZACC 35 / [2015] ZACC 35; *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19) / [1 SA 524 [2006]; *Christian Education South Africa v Minister of Education* [2000 (4) SA 757 (CC)]; and *Prince v President of the Law Society of the Cape and others* [(2002 2 SA 794 (cc)].

⁴⁶ Section 31(2) of the Constitution.

political party; and vote for their chosen party.⁴⁷ Such political rights grant both religious and non-religious groups, organisations, institutions and individuals' freedom of political participation and engagements in society, leading to the formation of several religious, political parties in a democratic South Africa. However, the constitutional stipulations on religious rights and freedoms ought to be understood and interpreted from the broader perspective of South African law, including the jurisprudence of the Constitutional Court and the ongoing legal negotiations and development of legislation. Lourens Du Plessis (2010:17) asserts:

The South African law on state and religion is embodied in the Constitution of the Republic of South Africa, 1996, as prime source; in the common law knowable from (and developed through) case law; in legislation, and in administrative/policy directives.

Although the Constitution as the supreme law of the land stipulates general rights related to religion, such rights could only be fully understood from the perspective of certain constitutional limitations and the ongoing interpretation of rights and freedoms by legal platforms. The constitutional guarantees and protection of the values and rights including "those relating to religion can be examined and reinterpreted in accordance with the limitation clause (Section 36)" (Mutelo 2017:23). Under section 36(1), the limitation clause stipulates:

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 reasonably (reasonable)? and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors ...

In limiting the rights and freedoms contained in the Bill of Rights, the relevant factors that should be considered include "the nature of the rights"; the necessity giving rise to limitations; the presupposed link between the reason for the limitation and the limitation itself; the degree or scope and nature of the limitation; and the most possible and reasonable way to undertake the limitation.⁴⁸ Section 36(2) of the limitation clause upholds that the rights contained in the Bill of Rights may not be limited, except based on the limitations stipulated in section 36(1) and other related constitutional provisions. For example, in executing its rights and freedoms guaranteed by the Constitution, religious rights may not be exercised in such a way that any other provisions, rights and liberties are violated.

Based on the constitutional guarantees of religious rights, religious institutions and associations may have a role to play in society. The South African Constitution mandates the state to safeguard the common welfare of citizens; this sometimes involves a certain amount of limitation on the involved values and rights based on the constitution itself and jurisprudence (Gray 1995:77). This affirmation considers the stipulations of the limitation clause and other related provisions. While advocating for diversity and pluralism of cultures, religions, linguistic communities, world views, beliefs and opinions, the state somewhat limits rights and freedoms,

⁴⁷ Section 9(1) of the South African Constitution states that "(1) Every citizen is free to make political choices, which include(s) the right to – (a) form a political party; (b) participate in the activities of, or recruit members for, a political party; and (c) campaign for a political party or cause".

⁴⁸ Section 36(1)(a), (b), (c) and (d) of the Constitution.

in a fair and justifiable way, in the pursuit of the common good. This does not only enable the state to ensure the existence of equal liberty for all, but it also ensures ‘freedom under law’ (Heywood 2007:46), so that fundamental constitutional rights may be exercised and applied in a manner consistent with other liberties and freedoms.

Such observations and constitutional guarantees of religious freedom indicate why the South African model of separation with interaction encourages the involvement of religion in social, moral, political and economic issues facing the country. The model is based on the values of democracy and the constitutional guarantees of religious and related rights. As such, it is because of such constitutional openness and the flexible relationship between religion and state in South Africa that the religious organisations have been able to participate in South Africa’s public sphere. Such positive political participation can be considered as both a constitutional right and a positive contribution to South Africa’s democracy.⁴⁹ Religions such as Christianity and Islam have in some cases opted to support the government where the policies and laws are in line with the religious ethos and constitutional values. As argued, such involvement is rooted in the constitutional guarantees of religious freedom and the flexible relationship between religion and state. The same accommodationist conditions inspired the formation of interreligious organisations such as the National Religious Leaders Forum (NRLF), the National Religious Association for Social Development (NRASD) and the National Interfaith Leadership Council (NILC).

Conclusion

The article argued that the South African model of state-religion relations is based on the principle of ‘separation with interaction.’ Although the state and religious bodies are primarily autonomous, they interact on certain social, political and economic issues. In post-apartheid South Africa, the openness of the Constitution has become the basis for religious participation in public issues and engagement with the government. Generally, the constitutional provisions on religious freedom have given various religions a framework upon which to interact with the government and maintain political influence in the country. Thus, the public role which religious organisations continue to play in the new South Africa is not only based on the state-religion model which upholds principled cooperation between the state and religious bodies but also on the constitutional stipulations on religious freedom and other related rights.

⁴⁹ Some religious organisations have found themselves affirming the government in its positive nation building programs and policies while criticizing it in cases where constitutional values are violated, and injustices perpetuated.

References

- African National Congress Parliamentary Caucus, 2010. *Speech by Dr Mathole Motshekga, Chief Whip of the Majority Party in Parliament, at The Sitting of the Religious Parliament*. [Online webpage]. URL = <<http://www.anc.org.za/caucus/show.php?ID=1649>>.
- Catholic Parliamentary Liaison Office, 2005. *South Africa's Developing Model of Religion-State Relations: Occasional Paper 18*. [Online webpage]. URL = <www.cplo.org.za/?wpdmdl=27&ind=0>.
- Cliteur, P 2011. 'Why Religious Education should not be Exclusively Religious, in *Religious Education in a Plural, Secularised Society A Paradigm Shift*, Ed. Leni Franken, Patrick Loobuyck, Postfach: Waxmann Verlag.
- Coertzen, P 2008. 'Freedom of Religion in South Africa: Then and now 1652 – 2008'. *Verbum Et Ecclesia JRG 29/2*: 345-367.
- Inkomati-Usuthu CMA, 2020. *Constitution of the Republic of South Africa, 1996*. [Online webpage]. URL = <http://inkomaticma.co.za/images/Constitution_of_the_Republic_of_South_Africa_1996.pdf>.
- Durham, C W 2011. Patterns of Religion State Relations, in *Religion and Human Rights: An Introduction*, Ed. John Witte Jr and Christian Green, New York: Oxford University Press.
- Du Plessis, M L 2010. State and Religion in South Africa: Open issues and recent Development, in *Law and Religion in the 21st Century: Relations Between States and Religious Communities*, Ed. Rinaldo Cristofori, Silvio Ferrari, Burlington: Ashgate Publishing Company.
2001. Freedom of or Freedom from Religion? An Overview of Issues Pertinent to the Constitutional Protection of Religious Rights and Freedom in the New South Africa. *Brigham Young University Law Review 2/3*: 439-466.
- Gray, J 1995. *Liberalism*, Buckingham: Open University Press.
- Gross, F 1998. *The Civic and the Tribal State: The State, Ethnicity, and the Multiethnic State*, London: Greenwood Press.
- Heywood, A 2007. *Politics*, New York: Palgrave Macmillan.
- Koshy, N 1992. *Religious Freedom in a Challenging World*, Geneva: World Council of Churches Publications.
- Kumalo, S R 2013. 'Facts and Faction: The Development of Church and State Relations in Democratic South Africa from 1994–2012'. *Journal of Church and State 56/4*: 627–643.

- Lash, T K 2013. Five Models of Church Autonomy: An Historical Look at Religious Liberty Under the United States Constitution, in *Church Autonomy: A Comparative Survey*, Ed. Gerhard Robbers, Berlin: Peter Lang.
- Lenta, P 2009. The South African Constitutional Court's Reading of the Right to Freedom of Religion, in *Religion and Spirituality in South Africa: New Perspectives*, Ed. Duncan Brown, Pietermaritzburg: University of KwaZulu-Natal Press.
- Lipton, E P 2002. *Religious Freedom in Africa*, New York: Nova Science Publishers.
- Mutelo, I 2017. *The Influence of Christian Values in Post-1996 South Africa: A Philosophical Perspective*, Scottsville: University of KwaZulu-Natal. [MA Dissertation].
- National Religious Association for Social Development, 2018. *Home*. [Online webpage]. URL = <<http://www.nrasd.org.za/>>.
- Osman, A & Scott, F 2002. 'Identity, African-Americans, and U.U. Foreign Policy: Differing Reactions to South African Apartheid and Rwandan Genocide' in Ambrosio, T (ed). *Ethnic Identity Groups and U.S. Foreign Policy*. London: Praeger.
- Piper, L 2009. Faith-Based Organisations, Local Governance and Citizenship in South Africa, in *Religion and Spirituality in South Africa: New Perspectives*, Ed. Duncan Brown, Pietermaritzburg: University of KwaZulu-Natal Press.
- Rasool, E 2004. Religion and Politics in South Africa, in *Religion, Politics, and Identity in a Changing South Africa*, Ed. Abdulkader Tayob and Wolfram Weiße, New York: Waxmann Publishing.
- Sachs, A 1992. *Religion, Education and Constitutional Law*, Cape Town: Institute for Comparative Religion in Southern Africa.
- Serfontein, JPH 1982. *Apartheid Change and the NG Kerk*, Emmarentia: Taurus Publications.
- Schoeman, W J 2017. 'South African Religious Demography: The 2013 General Household Survey', *HTS Teologiese Studies/Theological Studies* 73/2: 1-7.