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The Dutch Reformed Church

1. LAW AND RELIGION IN SOUTH AFRICA BEFORE 1994

Many scholars have tried to define the relationship between church and state in South Africa between 1652 and 1994.

Gerald Pillay divides the period in two parts. During the first 150 years, he says “that despite the presence of other Christian denominations and, indeed, other religions, there existed a state church” Round about 1800 a period started in which religious pluralism was allowed to develop... The apartheid period was a disruption of this process towards pluralism. The DRC again gained influence in ‘Ceasar’s’ household”. By 1980 the African Independent Churches overtook all the established churches in size and growth rate (Pillay 1995:86). As will be seen, I think Pillay’s description of the DRC as a state church between 1652 and 1800 can be challenged. Speaking of the “influence in ‘Ceasar’s household “ after 1948 is true in a sense but must surely not be understood in the sense of a theocracy.

Tracy Kuperus views the relationship between church and state/ Law and Religion in South Africa primarily in terms of race relations. She is of opinion that the Dutch Reformed Church’s entanglement with race issues “began soon after the first white settlers arrived in South Africa” (Kuperus 1996:2). She argues that “the NGK’s heavy political involvement with the state began in the early 1900’s when it advanced a Neo-Calvinist, ideological justification of apartheid.”(Kuperus 1996:3). Between 1948 and 1978 the state and the DRC was virtually identical according to her. “After 1961 the two entities became socially indistinguishable with the NGK following the state's lead” (Kuperus 1996:3). From 1979 up until 1994, the DRC and the State agreed on key issues like sanctions and violence. “The overlap in membership and white interests allowed both institutions to support one another. But by the 1980’s the NGK had lost its influence as a dominant political player. The state fostered reform while the NGK could not offer full support, whether the issue was constitutional restructuring or educational reform.” (Kuperus 1996:15). She argues that the reason why the DRC fell behind was because it “deferred to its conservative faction.” (Kuperus 1996:19).

For the purposes of this paper the two concepts of Theocracy and Constantinianism are important. Both the Constantinian and Theocratic models for the relationship between religion and the state are positive about the role that religion should play in society – according to Christian thinkers in this regard, society should serve the Triune God and Christianity should provide direction to society. The two models differ on who should be the guide or the leader in the role that religion plays in society. According to the Constantinian model the political authorities, often with their own understanding of what Christianity means, are dominant over church authorities. This means that the political authorities assist, influence and sometimes fully control and use the church. It also means that the state has a role to play in the advancement and support of the “true religion” even to the extent that it uses its coercive power. It is important to understand that this means Christianity or whatever religion, as it is understood by the political authorities or the state. According to the Theocratic model the control over the role of religion in society resides with the church authorities and how they
understand Christianity or the concerned religion – the church (or religion) should dominate the political authorities as well as the rest of society (Hiemstra 2005:28-29).

This paper wants to argue that it was not a theocratic model of the relationship between church and state that determined the place of religion in the South African society from 1652 to 1994 but much rather a Constantinian model where the state, in various degrees, determined the position of church and religion in society without denying freedom of religion, or perhaps better said, without denying freedom of conscience which cannot be equated with freedom of religion in the true sense of the word (see Berkhof, 1975, 200). This already started in the Netherlands and was continued at the Cape after 1652 and later in the rest of South Africa until 1994.

In the Netherlands the Reformed Churches confessed the Dutch/Belgic Confession of Faith¹. This Confession also became part of the Dutch Reformed Church that came to South Africa in 1652 as was also the case in the Dutch Reformed Churches in the other colonies of the Dutch Republic. Article 36 of the Dutch Confession states that “--- the government’s task is not limited to caring for and watching over the public domain but extends also to upholding the sacred ministry, to remove and destroy all idolatry and false worship of the Antichrist; to promote the kingdom of Jesus Christ and to see that the Word of God is preached everywhere so that God might be honored and served by everyone, as He commands in His Word (Belgic Confession, 2000, Harare). For the churches the intention of this article was that it was the governments task to enable churches to do their work. However it soon became clear in the Netherlands that the government not only saw it as their concern to enable the church but also to control ecclesiastical matters. In those early years after 1571 the government wanted churches to avoid constraint of conscience, they wanted to retain authority to call Reformed ministers. They wanted a regulation by which elders would be chosen from among and by the city administration and they even wanted a decisive vote in matters of doctrinal difference (Blei, 2006, 23-24). At the 1578 National Synod of Dordrecht the church underscored it's independence in the calling of ministers and the election of elders and deacons. However the government would not agree to this, fearful that the church would interfere in matters of state. (Blei, 2006, 24). In 1586 at the National Synod of The Hague church and state came to an agreement. In a revised church order the desires of government were more or less met. The church retained the right to elect elders and deacons but the city administration could appoint one or two of its members as additional members on the church council. In the synod meetings the authorities were represented by political commissioners who had to assure that the church meetings would never make decisions on governmental matters. They often intervened forcefully. In the calling of ministers the government maintained its influence and they often supported ministers with divergent opinions. As a “public church” (i.e. an officially recognized church for the whole nation) absolute freedom from state interference (Constantinianism) was and remained an unattainable ideal for the Reformed Church. The church could not emphasize its own identity in an unlimited way (Blei, 2006, 25). In South Africa between 1652 and 1994 the situation was no different. A few examples from history proofs the argument.

From 1652-1665 religion and the spiritual care for the people at the Cape resided with the Political Council under the leadership of the Commander. (Vorster, 1956, 38). From 1665 onward

¹ At the Synod of Emden, held in German East Friesland from 4-13 October 1571, the confessing character of the Reformed Church was underscored. The participants signed the Dutch Confession of Faith ‘to prove the unity in doctrine among the churches of the Netherlands’.
when the Cape got its first permanent minister and church council the spiritual care and ecclesiastical matters were their responsibility. However all decisions that the church council took first had to be submitted to the Political Council before they could be implemented. The Political Council did the election of elders and deacons from a pair of names that the church council submitted to them. Political Commissionars represented the Political Council at all the meetings of the different church councils. In the documents (Vorster, 1956, 39) there are ample evidence of the authority that the Political Council had in church matters: they appointed sick comforters and readers, placed ministers and church wardens, decided on the baptism of heathen children, the time and place of worship services, the care for widows and orphans, the founding of congregations and the building of churches. In 1689 the Political Council refused the request of the French Refugees to install their own Church Council in Drakenstein (Resolutie Pol. Raad, 28 Nov 1689)

About the situation in the eighteenth century McCall Theal, as quoted by Vorster writes: “The Church was in one sense merely an engine of the State, and was always and in every sense subordinate to the Council of Polity.” (Vorster, 1956, 39). Apart from the matters mentioned above many more examples can be added of the Council of Polity controlling ecclesiastical matters (Vorster, 1956, 39 – 43). In 1759 they even refused the churches at the Cape permission to continue meeting in a local major assembly thus putting back the ecclesiastical development of the church in South Africa for many years.

All of the above attests to the fact that between the years 1652 – 1795 the Council of Policy had a typical Constantinian approach towards the church in South Africa. One of not merely protecting the church but also controlling it, just as it was the case in the Netherlands.

In 1795 the British took over the Cape for the first time, the occupation lasted until 1803. In the official Act of Surrender it was stated that the colonists would retain their existing privileges, also those pertaining to religious privileges. Very soon it appeared that the authorities would lay claim to their patronage rights such as that the political commissioner maintained his position in church meetings; the custom pertaining to the election of elders and deacons continued; the authorities saw it as their legal right to remove a minister from a congregation without consulting the church council. Church councils had to make an oath of allegiance to the British monarch and in 1802 British troop were quartered in a church building in Graaff-Reinet during military actions in the region (Van der Watt, 1976, 69).

During the time of the Batavian Rule at the Cape 1804 - 1806 the ideas of equality and tolerance were very prominent. Commissioner De Mist wanted a separation of church and state which meant that there was no longer a privileged church. However in practice the government still controlled the church. Government appointed ministers in congregations, moved them to other congregations, paid their salaries, the election of elders and deacons were subject to the approval of the authorities, in new congregations the magistrate appointed the new church council, the salary of ministers was determined by government as well as baptismal-, membership-, marriage- and burial fees. The financial statements of a congregation had to be approved by the magistrate. In some cases even the time of worship services was determined by government. While there was no longer an established or public church in South Africa, churches in fact became not much more than a department of government (Van der Watt, 1976, 70).

In 1806 the British once again occupied the Cape. Once again there was a guarantee that that
no exceptional changes would be made to church-state relations. The Church Ordinance of de Mist was to be maintained and government was determined to apply the Ordinance. The church was controlled in more than one way. The Political Commissionair continued to have a seat in the church council of Cape Town congregation and in 1814 the practice was expanded to include all the congregations; the names of chosen elders and deacons still had to be submitted to government for their approval. At a certain stage the governor required that he make the choice for deacons from two names that had to be submitted to him; the official functions of a church minister was completely controlled by the government; government appointed, placed and dismissed ministers and in some cases even disciplined them. Under the rule of Lord Charles Somerset it was an intentional goal of the government to anglicise the Dutch Reformed Church – for this purpose it used the Scots ministers which it appointed to congregations. (Van der Watt 1976:70-71).

In 1843 the Church Ordinance of De Mist was replaced by the Ordinance no 7 of 1843. This Ordinance apparently made the church more free from control by the government such as that Political Commissioners no longer took a seat in church meetings, and the church received the power to regulate it's own internal affairs. The Ordinance was presented under the heading of “The Separation of Church and State Petition”. Yet in practice the church remained subject to government in as far as the government controlled the church through the so called power of the purse and the privilege of presenting ministers to congregations. Furthermore the Ordinance restricted the church with regard to its faith character, its organization, it's competence and its geographical limits (Kleynhans 1973:80-84). It was generally accepted that Ordinance nr 7 of 1843 severely restricted the freedom of the church (Van der Watt 1980:44 – 46).

The Dutch Reformed Church in South Africa (The Cape Province) eventually decided on 21 October 1957 to ask the Government to revoke Ordinance nr 7 of 1843.

“The Dutch Reformed Church in South Africa declares and confirms its historical view that this Church as a organized body had an independent existence in own competence even though always subjected to the articles of law applicable to the church. Since the existence of the church is not dependent on the articles of law, Synod, given the legal advice which was obtained, mandates the Moderature to approach the authorities to revoke Ordinance nr 7 of 1843”

In 1948 the Nationalist Party came into power and very soon it started to enforce its policy of “apartheid” on the whole of the country – including the churches in South Africa. It cannot be said that there was no tolerance of different faith convictions in the country but all along the government was controlling the churches through it’s policies. In many cases Afrikaans speaking churches not only subscribed to the policies of the government but also encouraged them. Examples of this is Act 55 of 1949 which prohibited marriages between couples from different race groups; 1950 the Immorality act; 1957 – the Consolidation act on immorality; 1957 The Act on Group areas; 1957 the Amendment Act on Native affairs with the so called church-article (article 29(c)). According to this article non-whites could be prohibited to attend church services in white areas. Later it was explained that the intention was not to prohibit bona fide church meetings as long as these meetings were not used to disturb the public order (Van der Watt 1987:84-86). Fact remains that religion and elements of freedom of religion were controlled by the policies of the government.
In December 1960 the Cottesloe deliberation took place between delegates from different churches in South Africa as well as members of the World Council of Churches. The Dutch Reformed Church was part of the deliberation. At the end of the deliberation a statement was issued with decisions which was seen as very contentious by some. The most contentious of these regarded the following: (1) all race groups in South Africa were seen as living permanently in the country, sharing in all privileges and responsibilities. (2) The natural diversity amongst people is not eradicated by the unity of the body of Christ – yet the unity must also be expressed. This meant that nobody could be excluded from a church on the grounds of race or colour. (3) There is no Scriptural grounds to prohibit mixed marriages. (4) It is the responsibility of the authorities to look after matters such as insufficient salaries, job reservation, the negative effects of migratory labor on families; the planning of urban areas for people of color in which ownership was to be taken into account and the poor standard of communication between the different race groups and their leaders in the country.

After the delegates of the Dutch Reformed Church in Africa (Nederduitsch Hervormde Kerk van Afrika) issued a statement in which they rejected any form of integration in South Africa. The delegates of the Dutch Reformed Church also issued a statement in which they confirmed that the policy of differentiation was the only realistic solution for the problems of the country. However they also stated that it was the task of the church to be the conscience of the government – in other words it was the task of the church to test the whole of reality against the principles of Scripture.

The fact that the deliberation made some negative sounds towards the policy of the government caused reaction – some positive, some negative. The Prime Minister dr H F Verwoerd reacted very negatively in his annual New Years’ radio address stating that the decisions were not the official viewpoint of the Dutch Reformed Church. The official viewpoint would be stated by the Synods. In the press and in different congregations of the DRC there were heated reaction by members of the Church. In 1961 the Federal Council of Dutch Reformed Churches, the Synodical Commission of the Orange free State as well as the synod meetings of Natal, South West Africa, the Transvaal and the Cape rejected the decisions of Cottesloe (Van der Watt,1987,105-112).

Although the DRC delegates to Cottesloe made it clear that they saw it as the task of the church to be the conscience of the government and to measure the whole of life against the principles of Scripture, the fact remains that the church in its major assemblies made a roundabout turn when it became clear that the decisions of Cottesloe criticized the policy of the government. Once again the government succeeded in controlling the church, once again a Constantinian relationship between Church and State prevailed.

Contrary to the argument of Kuperus that the DRC did not develop in its view on the relationship between church and state and that it actually only deferred to its conservative members, while the state continued with its reform efforts after 1979, this paper would like to argue that after Cottesloe there was serious reflection within the DRC on various matters regarding its relationship to the state. The argument is substantiated by the fact that the General Synod of the DRC came into being in October 1962. The Church developed in its view on freedom of religion. In this regard it is very interesting to compare the formulation on freedom of religion in the first Church Order of the General Synod in 1962 where it was said

“The Church accepts with gratefulness the protection by the authorities as well as the recognition of it’s undeniable right to freedom of religion in confession and assembly
with the proviso that these freedoms will not be misused to undermine the foundations of state authority or to cause chaos in the public sphere” (Church Order 1962: art 65 c).

and the formulation in Church and Society of 1990

“The principle of religious freedom must be maintained at all times. This means that the government must be impartial to all churches and religions, that scope must be given in which the church may continue with its work without government interference and that no one will be discriminated against on account of their religious convictions.” (Church and Society 1990: paragraph 301).

It is also significant how the DRC grew in its view on the relationship between church and state. In 1962 the Church Order reads:

“The Church accepts with gratefulness the protection by the authorities (Church Order 1962: art 65).

In the same art 65 (Church Order 1962) the church claims that it is independent in own competency which means that the church has an inalienable right to freedom of religion in terms of its confession of faith and right of association. It also claims that it is the church’s sacred calling to address the state and the world in a prophetic manner according to the gospel. The 1962 Church Order also makes no pronouncement on the state’s duty towards the church as it is found in art 36 of the Belgic Confession of Faith. The article does declare that the church is subject to the laws of the country in as far as they are not in conflict with the Word of God. (see also: Strauss 2003:253).

In 1990 we read the following in paragraph 290 of Church and Society

“This implies inter alia that the government will create a climate in which it is possible for the true church of Christ to withstand all idolatry and false worship, by means of the proclamation of the Word of God, to oppose the kingdom of the antichrist and to promote the kingdom of Christ.” (Church and Society,1990:par. 290)

In conclusion to this part of the paper it can be said that from 1652 until 1994 it was a predominantly a Constantinian model of the relationship between church and state that to a lesser or larger degree controlled the relationship between church and state in South Africa. This meant that the church was subjected, nearly always with its own consent, to control by the authorities. After 1948 it can be said that the control by government was largely inspired by the political policies of the National Party. During these times one cannot really speak of freedom of religion that churches and religions had in South Africa – it was much rather a case of denominations and religions being tolerated. But it was also a toleration that went just as far as the policy of the government in power. Many examples from history right up until 1994 can be called as witness to this fact. At the same time it must be admitted that from 1961 onwards serious thinking on the relationship between church and state took place within the Dutch Reformed Church although to a large extent a Constantinian relationship between church and state continued to exist up until 1994.

After 1994 with the new Constitution a new era with regard to freedom of religion came into existence in South Africa. Freedom of religion became a constitutionally guaranteed right. The question is what does that mean and how must freedom of religion be understood and managed in the New South Africa.
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2.1 A new era

In 1994 and 1996 with the new Constitution a new era with regard to freedom of religion and the relationship between church and state and state and religions came into existence in South Africa. The relationship between law and religion took on new dimensions after 1994/1996 when the new Constitution was approved. Freedom of religion became a constitutionally guaranteed right. The question is what does that mean for the relationship between law and religion and how must freedom of religion be understood and managed in the New South Africa.

2.2 Under the new Constitution

1. The South African State can be defined as a Constitutional State which means that the State makes use of a written Constitution and a Bill of Rights (Chapter 2 of the Constitution) to obtain unity among the diversity of legal groups and legal interests in the country.

2. The Constitution is the highest authority in the country (Constitution a.2).

3. The Constitution distinguishes between organs of the State (a.239) and organs of civil society [a.31(1)(b)]

4. According to the Constitution, persons from a certain language, cultural and, religious group cannot be prohibited to enjoy, together with other members of their group, their culture, use their language and practice their religion [a.31(1) (a)];

5. The Constitution also provides for the possibility that the citizens of South Africa may form cultural, language and religious associations or other organs of civil society, maintain such associations and also join such associations [31(1) (b)].

6. The Constitution also guarantees the right to freedom of conscience, religion, thought, conviction and opinion [a15 (1)]. Under certain conditions religion may also be practiced at certain state or state aided institutions [a 15 (2)] while marriages may i.a.
be conducted according to a religious system as long as it can exist in accordance with other articles of the Constitution [a 15 (3) (a) and (b)].

7. The Bill of Rights in the Constitution is prescriptive for the State and organs of the State [a.8(1)] as well as for natural and legal persons, such as churches and religious communities [a.8(2)].

8. Article 36 of the Constitution makes it possible for the State as well as for organs of civil society to limit certain rights of the Bill of Rights [a.36].

   • (a) The State can limit rights either by way of an internal limitation article within an article [a.9(2), 15 (2) (a), 25 (2) and 29 (2)] or by means of an external law which is acceptable within the context of a just democratic society.

   • (b) Institutions of civil society can use the limitations clause [a.36] of the Constitution to limit certain articles of the Bill of Rights in their own internal constitutions and regulations, given the provisions and conditions made for such a limitation in article 36 (Landman,2006,6-8).

   • (c) Article 234 of the South African Constitution allows for charters of rights “In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution.

According to statistics there is a majority religion in South Africa – the Christian religion. However within the Christian religion there is no majority denomination - all are minority denominations. At the same time none of the other religions in South Africa can claim to be a majority religion – rather to the contrary! With regard to religions and religious denominations there are no majorities in South Africa – all are minorities (South African Christian Handbook,2005-2006,28-34).

South Africa is indeed a country of pluralities. The total population of about 50 million is made up of 80% black people, 9.1% whites, 8.9% Brown People and 2.5% Indians. The plurality of cultures within the different cultural groups is reflected in the fact of eleven official languages which are here below reflected in the percentage of speakers of each language in comparison with the total population: The languages with their percentage of speakers are Isizulu 23.8%; IsiXhosa 17.6%, Afrikaans 13.3%, Sepedi 9.4%, SeTswana 8.2%, English 8.2%, SeSotho 7.9%, Xitsonga 4.4 %, SiSwati 2.7%, Thsivenda 2.3%, siNdebele 1.6%. Other 0.5%.

As far as religion is concerned 79.8% of the population profess that they are followers of a form of Christianity. Of this 79.8% of Christians, Reformed churches make up 7.2%, Anglicans 3.8%, Methodists 7.4%, Lutherans 2.5%, Presbyterians 1.9%, Congregational churches 1.4%, Roman Catholics 8.9%, Pentacostal churches 7.3%, other churches 12%. African Independent Churches have a membership of 40.8% of the total Christian population. Apart from Christian followers in SA there are also 0.2% followers of the Jewish religion, 1.1% Islam followers, 1.3% Hindu followers, and 0.1% Buddhist believers. There is also a large segment of African Traditional Religion in SA. It is estimated that 12% of the total of African Traditional Religion followers are in SA.( SouthAfrica.info The Official Gateway. http://www.southafrica.-info/pls/procs/iac. page?p_tl=2779&p_t27372&p_t3=0&p_t.: 13/4/2011; South African Christian Handbook 2007-2008: 69,74.)
Not only is there a plurality of cultures as is shown by the fact that the country has eleven official languages, there is also a plurality of religions which all claim their legitimate share of the public space.

Very soon after 1996 the question was asked what the implications of article 15 are for the religions of the land as well as for the whole of society. These questions lead to the formulation of a South African Charter of Religious Rights and Freedoms. Already in 1990 Judge Albie Sachs wrote “Ideally in South Africa, all religious organizations and persons concerned with the study of religion would get together and draft a charter of religious rights and responsibilities. ... it would be up to the participants themselves to define what they consider to be their fundamental rights.” (Sachs 1990: 46-47).


The total of practising religious believers represented by the signatories is estimated to be approximately 10.5 million of the total South African population.

The Charter defines the freedoms, rights, responsibilities and relationship between the state of South Africa and her citizens of religious belief. The Bill of Rights in the Constitution recognizes that everyone has the right to freedom of religion while article 234 of the Constitution makes allowance for charters of rights to be drawn up by civil organisations which may then be enacted by parliament. The Charter of Religious Rights and Freedoms is the first such charter to be developed in South Africa. Apart from addressing the freedoms and rights of religion over and against the state the Charter is also very useful for organizing the relationship between the different religions of the land. It helps them to understand that the charter is not trying to bring about one religion in the country, or that each religion can be seen as one of many routes that can be followed. The charter defines the rights and freedoms that each religion in the country can claim while working together with other religions in the public sphere for the common good of the country. The Charter is also a very useful tool for religions to determine their own identity in terms of the rights and freedoms that they can legitimately claim. If religions do not use this tool they will find that their rights and freedoms
will be determined by the courts of the country. Even if parliament does not enact the Charter, religions can always make it part of their own body of rules and regulations which will have to be taken into account by the courts.

The Charter consists of a preamble of 8 articles which expresses the needs for a charter. This is then followed by the 12 articles with subdivisions of the Charter itself in which the religious rights and freedoms of religious people and communities in South Africa is stated. The Charter expresses what freedom of religion means to those of religious belief and of religious organizations within a South African context, as well as the daily rights, responsibilities and freedoms that are associated with this right. These include:

- The right to gather to observe religious belief,
- Freedom of expression regarding religion,
- The right of citizens to make choices according to their convictions,
- The right of citizens to change their faith,
- The right of persons to be educated in their faith,
- The right of citizens to educate their children in accordance with their philosophical and religious convictions,
- The right to refuse to perform certain duties or assist in activities that violate their religious belief.

Currently the Charter is available in Afrikaans, English, Zulu, Xhosa, Suthu, Tswana and also in German.

After the public endorsement of the Charter a South African Council for the Promotion and Protection of Religious Rights and Freedoms was established to oversee the process of the Charter being formally enacted into South African law. The passing of the Charter into law will mean that every religious believer and organization will have legal impartiality and protection to practice all elements of religious belief under the Constitution.

Currently the Council for the Promotion and Protection of Religious Rights and Freedoms are engaging with various financial, academic and cultural bodies in society as well as with various trade and labor unions for their support in taking the Charter to Parliament. Eventually political parties will also be engaged to inform them about the Charter and the effort to have it enacted by Parliament.

WORKS CONSULTED


Tydskrifte Maatskappy van die NG Kerk.


