Religion in education in South Africa: was social justice served?

Johannes L van der Walt
hannesv290@gmail.com

The promulgation of South African policy regarding the place of religion in public education was delayed until 2003, after a lively debate. The National Policy on Religion in Education effectively banned confessional, sectarian religion from public schools, but allowed for the teaching of Religion Studies as an academic subject and for religious observances, on condition that these were offered in a fair and equitable manner. Given the nature of the debate around religion and education in South Africa,[1] it can be asked whether the state has served social justice through this Policy. A discussion of human rights, social justice, morality and the role of the state leads to the conclusion that although the state never actually mentioned the philosophical or moral driving forces behind the Policy, it is most likely that it applied tenets of secularism, value-plurality, pragmatic political expediency and modus Vivendi*. This was probably the best route for the state to follow considering how, in the past, education suffered from the over-emphasis of divisive factors. Revised policy could arguably take cognisance of how actors on the ground dealt with this conundrum.*

Keywords: human rights; morality; religion; religion/religious education; religion in education; social justice; South Africa; state

Background and research problem

From 1996 to 2003, the issue of religion in public education (schools) was heavily debated in South Africa. The discussions took place within the context of the overhaul that education was undergoing at the time. Its controversial nature[2] can be inferred from the fact that, while the rest of the education sector had undergone substantial changes by 1996, the matter of religion within education was held in abeyance until 2003, when the Department of Education saw its way clear to promulgate the *National Policy on Religion and Education* (2003) under the umbrella of the South African Schools Act (Act 27 of 1996). The Policy had been preceded by guidelines in the Constitution of the Republic of South Africa (Act 108 of 1996), the Schools Act (1996) and in various discussion papers. The Policy followed after lengthy consultations with religious groups, including the National Religious Leaders' Forum.

Although the debate seemed to have died down somewhat after the promulgation of the Policy in 2003,[3] a visit to schools, particularly schools that used to be based on a Christian ethos, will show that it has been business as usual. Many schools continue marketing themselves as having a Christian ethos, and in some of them, confessional or sectarian Christian religious education is still being offered. These practices did not go unnoticed. Researchers such as Ferguson and Roux (2004), Roux (2003; 2005; 2006), Roux and Du Preez (2005:280) regard such practices as detrimental to effective inclusive praxis (Roux, 2006b:160), and therefore contrary to the *Policy*. A non-educationist, George Claassen, also threatened to legally prosecute the offending schools but eventually backed down after much criticism[4] (Du Preez, 2009:388-389). The debate about religion in education gained new impetus when

Coertzen (2010), a theologian, mobilised a number of interested parties to become signatories to a new *Manifesto*, one that, as Coertzen explained (RSG, 3 November 2010), was not intended to replace or negate the *Policy* but rather aimed at explicating the religious rights and duties of the various religious groupings, as enshrined in the Constitution (RSA Act 108 of 1996, chapter 2: the Manifesto on civil rights).[5] All these occurrences attest to the fact that South Africans are not quite satisfied with how the state had dealt with the issue of religious diversity in public education.

Has justice been done to the interests of all the religious denominations and groupings in South Africa? Can the banning of confessional or sectarian religious education from public schools be justified in view of the fact that religious groups ideally would have had their children taught their respective religions in public schools as an extension of home and religious institutions? What would the ramifications have been if confessional, sectarian education had been included in the curricula of the public schools? Would confessional schools not have led to ghettoising?

How can social justice be served in an area in which controversy is endemic (refer a press release by the News Service of the South African Commission for UNESCO, 2003:4)? South Africa is not unique in having to deal with this problem (see, for instance, Westerman, 2004; Hull, 2005, Goodstein, 2005). Grayling (2010:315-316) observed a tendency towards "noise and bad-tempered quarrel between religious people and non-religious people in contemporary society. … Both sides of the current dispute (in Britain, the United States, South Africa, for instance) agree that the current quarrel over religion raises important questions about the place of religious belief in modern society".[6] The state/government[7] in Britain has been as accommodating, concessive and inclusive as it can be to all the religious groups that now exist in the country. This, according to Grayling (2010:316), is well-intended but misguided, as the single example of faith-based schools in Northern Ireland shows: if children are ghettoised by religion from an early age, the results are disastrous. In the last decade (2000–2010), such segregation has been given a publicly funded boost in the rest of the United Kingdom, at a time that religion-inspired tensions and divisions in society are increasing. Tax money has gone to deepen the problem because government thinks that by giving sectarianism its head it will appease it. This, despite the fact that as Grayling (2010:317) contends, "History teaches that appeasement never satisfies appetites, it only feeds them". Similar conflict also occurs between the Religious Right and the non-religious people in the United States of America (refer Grayling, 2010:318; also, Grayling, 2009:314).

One of the results of the increasing influence of religious bodies in society is the threat to the *de facto* secular arrangement that allows all views to co-exist. History shows, according to Grayling (2010:318), that in societies where one religious outlook becomes dominant, an uneasy situation ensues for all other outlooks. On the other hand, the proponents of mainstream religions reject this secular view by arguing that since their own religion has the only true god and hence operates with revealed truth, it would be good for society to be guided by it. They also insist that their particular confessional religion education, or at least education linked to their own religion, be included in the public school curriculum. They argue that education, particularly religion education, is a unity, and that no gap should exist between parental home, church and school education. Since a child is a unity, such a gap would be detrimental to holistic upbringing. Confessional differentiation should be introduced, which would ensure that each religious denomination or grouping has its own religiously defined schools to which to send their children (compare the Dutch *pillarized* system,[8] refer Miedema, 2006:121; Wolhuter,

Lemmer & De Wet, 2007: 80 *et seq*.). Not to differentiate in this manner and to ban sectarian religion education from public schools, as has been done in terms of the 2003 *Policy*, is to serve the interests of only one religion or faith, namely, secular humanism or rationalism (refer, for instance, Van der Walt, 2007:221 *et seq*).

Opponents of this position argue that providing for sectarian or confessional (faith) religion in public schools would be detrimental to nation building and to the inculcation of religious literacy in a diverse, plural society such as that of South Africa (Kruger, 2006). Confessional or sectarian religion education is seen as a private matter and therefore a task for parental homes and religious institutions. The South African Minister and Department of Education sided with this view in stipulating in the *Policy* (2003) that only Religion Studies, an academic subject, and religious observances may be included in the school programme, provided that they are offered in an equitable manner.

Kruger (2009:12) raises an interesting point about the situation in South Africa. Whilst siding with the group that insists on a space for confessional religious education in public schools, he doubts whether its inclusion would have the desired effect. Because of the superficial manner in which religious confessional education tends to be offered in schools he feels that other avenues should be explored for reaching the desired pedagogical and religious goals. Parents and religious institutions should take up this gauntlet.

To what extent have the rights, duties and responsibilities of the different parties involved in this controversy in South Africa been respected? The fact that some of the schools siding with the 'confessional/sectarian party' are continuing with their pre-*Policy* practices, that others have been complaining about current practices in some schools, that government has been keeping a low profile about the problem since 2003, that others feel it not worthwhile to insist on confessional education in the schools, and still others resort to a new *Manifesto*, all seems to suggest that justice has not been fully served. My purpose in this paper is to examine the ideas of social justice, human rights, interests, and the role of the state as arbiter/impartial facilitator in conflicts to be able to decide whether the South African state has indeed acted in a socially just manner.

Research method and structure

Two methods were applied for finding an answer to the problem outlined above. The first was to interpretively and constructively understand the role of the state as well as the concept 'social justice'. The second was, since social conflict poses a moral conundrum, to examine some of the moral options open to the different parties, particularly the state.

The structure of the paper reflects the research steps taken. Attention is firstly devoted to the role of the state. This is followed by a discussion of social justice, in which certain aspects of morality come under scrutiny. Although there is no escape from the horns of the dilemma sketched above, this investigation can cast light on whether the *Policy* could have served justice more adequately or appropriately.

Conceptual-theoretical framework

The role and competency sphere of the state — in principle

According to the principle of sphere-sovereignty, the state is only one of many societal relationships. As such, it has no natural or inherent right to infringe upon the affairs of other societal relationships such as religious institutions, parental homes, the school, businesses, sports bodies and so on, since all of these are autonomous (self-governing/independent)

societal relationships in their own right.

The state's task is restricted to the maintenance of orderliness (law and order) in society, and it uses legislation, the legal justice system, law enforcement, retributive justice, the civil service, rules and regulations for doing so. It dispenses justice, regulates and "socialize(s) the demands of competing egotisms" (Comte-Sponville, 2005:21). It harmonises the various interests which arise from the respective legal sphere-sovereignties of the various social structures (Strauss, 2009:568; also refer LaFollette, 2007:3) but has no right to meddle in the internal affairs of other societal relationships.

States have in the past not paid due regard to this principle. Fascism prior to World War II is an illuminating example (refer Gray, 2003:50-51). The state dominated all the other societal relationships, resulting in the collapse of society. Autocratic state tendencies can also be observed in the nationalisation of mining and business; since doing business is not a state function, such businesses often fail. Not only states are guilty of overstepping their boundaries; the dominance of the Church in the Middle Ages in Europe is a case in point.

The recognition of basic human rights has two primary purposes: to shield citizens and their societal relationships against state dominance as well as the vagaries of other citizens. Civil liberties protect individuals against the arbitrary use of state power. Rights are defined by public rules (Rawls, 2007:571), and these include rights to individual freedom, privacy, the secure possession of private property, the expression of opinion without prior restraint, and freedom to hold and exercise personal beliefs provided doing so does not harm others. Central to civil liberties is the idea of a due process of law, consisting of a set of procedural formalities and restraints that protect the innocent, assure equal treatment to everyone, and require the authorities to show good cause as to why they exert state power over citizens (Grayling, 2010:259). The main point of civil liberties is to provide a space for individuals to choose their own way of realising what they wish to value, without harming others or their respective rights. The highest good for an individual is autonomy and the varied relationships freely nurtured within that autonomy. This autonomy is qualified in the sense that it means doing what one wants to do within the limitations of the health, safety and autonomy of others (Harris, 2003:87). Without the protection of civil liberties, individuals are all too likely to have lives chosen for them by others (Grayling, 2010:261-262). The (role of the) state should therefore be minimal (Nozick, 2007:578).

How did states acquire the right to pass education laws and stipulations about education (the school), given the fact that the education (schooling) sector in principle should have governed itself? Although parents and teachers should have provided (funded) and governed (managed) education, they were in practice unable to do so, not only because of the complexity and size of the education systems that evolved but also the heavy funding required. States began intervening, especially with the rise of *volksonderwijs* (people's education) during the late 19th century, with the result that school education is nowadays regarded as a state-run enterprise. Parents, teachers and religious denominations have in practice abdicated their right to running the schools; their participation has been limited to serving on advisory bodies. (Vestiges of the original desired state of affairs can still be detected in independent schools.)

The dominance of the school by the state can also be blamed on a misapplication of the principle of sphere-universality, the counterpart of sphere-sovereignty: the affairs of all societal relationships are closely intertwined despite their independence or autonomy. The same person can be a member of several societal relationships. The state has a stake in education because the school children are in the process of growing into adult citizens of the state. Most states

have, as a result of the practical circumstances of parents and religious denominations sketched above, expanded their interest in public schooling from merely holding a stake in school education to total dominance of the education system. As Grayling (2010:216) observes, "Among both our legislators and ourselves there continues to be a muddle about the degree to which a state can intervene in the lives and practices of individual" and the groups they belong to "before it crosses the boundary to … the diminution of individual liberty".

The state as a social contract: implications for conflict resolution

The thinking of Rousseau and more recently Rawls (refer Strauss, 2009:509) enables us to approach the problem of the role of the state from another perspective, namely by seeing it as a group of people who form a society on the basis of a social contract (Rawls, 2007:565, 567, 568; Grayling, 2009:201). The existence of a social contract is a prerequisite for speaking about social justice. Antecedent to the social contract there are no principles of justice in force, Rawls maintains. The social contract emerges from a joint decision by rational individuals. According to Rawls, two principles emerge from this contract, of which the first is relevant to the present discussion. It embodies the idea of basic (free and equal) liberties: "Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" (Rawls, 2007:571). The second is specified as "social and economic inequalities … to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all" (Rawls, 1999:53; Young, 2007:591). These principles, says Rawls (2007:571), apply to the basic structure of society and provide a way of assigning rights and duties to the basic institutions of society. They also define the appropriate distribution of the benefits and burdens of social cooperation (Rawls, 2007:565, 567, 569).

According to Strauss (2009:511), Rawls wishes to account for the way in which a well-ordered society is "effectively regulated by a shared conception of justice". In such a society, there is a public understanding as to what is just and unjust. This "theory of justice" not only sets the terms by which different ways of life may coexist (Gray, 2009:33) but also conforms with the principle of sphere-sovereignty in positing that the state is responsible for the efficient running of society.

Rawls uses the concept of "justice" in the non-legal sense of "justice as fairness" (Rawls, 2007:572; also see Scott & Marshall, 2009:379-380; Strauss, 2009:511). His aim is to show how citizens in a well-ordered society can come to acquire a sense of justice as fairness, "a disposition to act not simply according to, but also for the sake of justice, as defined by the principles of justice and the legal and social norms that satisfy them" (Strauss, 2009:512). According to Rawls (in Strauss, 2009:512), justice as fairness has the characteristics of a natural rights theory (see Blackburn, 2009:178 *et seq.*). Not only does it ground fundamental rights in natural attributes and distinguish their bases from social norms, but it assigns rights to persons by principles of equal justice. Social justice is concerned with the basic structure of society, i.e. the major institutions responsible for the distribution of fundamental rights and duties as well as for "the division of advantages from social cooperation" (Rawls, 1996:6). Citizenship, according to Rawls (2001:577) "is a relation of free and equal citizens who exercise ultimate political power as a collective body" (refer Strauss, 2009:515).

The state's "responsibility to render justice to each legal interest could … be … described as preventing the excessive satisfaction of each of these interests at the expense of others". Interests may in many ways be opposed, especially when communities contend for power

(Gray, 2009:26-27). Moral conflict may also emerge because of different ways of life. In fact, conflict of value go hand-in-hand with being human (Gray, 2009:27, 28) and with, *in casu*, belonging to different religious groupings. There is, in other words, "a close link between 'public social justice' and the 'harmonizing of interests'". This harmonizing process should consist of weighing all the interests against each other in a retributive (i.e. a balanced rendition) sense, based on the relative independence of the various social relationships (Strauss, 2009: 569).

A state is entitled to pursue the ideal or value of peaceful coexistence because "nearly all ways of life have interests in common that make *modus Vivendi* (peaceful coexistence) desirable and beneficial for them" (Singer, 2003:15). Even ways of life that do not recognize any ideal of toleration may have reason to seek peaceful coexistence (Gray, 2009:39). Without institutions in which different ways of life are accorded respect there cannot be peaceful co-existence between them. Conflicting rights, liberties or even parties should be regarded as dilemmas to which different solutions can be reasonable (Gray, 2009:39). In practical life, Gray avers (2009:43), seeking compromises amongst irreconcilable aims is a mark of wisdom. It is recognition of the fact that coexistence cannot be made contingent upon an expectation of increasing convergence in values but rather that different value systems and ways of life have to be respected. When it is applied to the ethical life of individuals, value-pluralism suggests that seeking a compromise between values and ways of life whose claims cannot be fully reconciled need not be unreasonable. On the contrary, the struggle to honour incompatible claims may be a mark of the richness of our lives (compare Francis, 2004).

States can strive for *Modus Vivendi*, a form of liberalism (Gray, 2009:51). *Modus Vivendi*, according to Gray, does not see liberalism as a "system of universal principles; we can think of it as the enterprise of pursuing terms of coexistence among different ways of life. Instead of thinking of liberal values as if they were universally authoritative, we can think of liberalism as the project of reconciling the claims of conflicting values". States can also follow a more pragmatic approach, namely of doing "something in the morally right or acceptable direction" (Grayling, 2010:18). In this regard, the state may seek a reasonable balance between its own political concerns and what it could do without interfering too far with other legitimate concerns.

Grayling finds Isaiah Berlin's distinction between positive and negative liberty useful in the context of this discussion. Berlin favoured (negative) freedom from external compulsion because he thought the former (freedom to seek and realise various goals) could tempt the state to prescribe and even enforce behaviour that it believed would be in its citizens' best interests — and therefore what every citizen should desire, whether or not in fact he/she does so. By contrast, negative liberty defines the area within which people should be left to their own choices and preferences without interference from others, including the state. The latter is the classic conception of liberty as formulated by John Stuart Mill (Grayling, 2010:217).

Irrespective of how we theoretically, philosophically or morally ground the competency sphere of the state, there can be no dispute about the fact that it is the duty of the state to arbitrate in the case of potential conflict, as in the case of religion in the public domain. It is part and parcel of the state's duty of running a well-ordered society. Opponents in a conflict may each claim justice for his or her side, and when both parties may be right in claiming, for instance, on the one hand, that sectarian, confessional forms of religion be assigned a place in the public school because of the unity of the child as a person and hence of his or her edu-cation, and on the other hand, that sectarian education does not belong in the public domain

because of its divisive effect and conflict potential, the state is faced with a tough moral dilemma (Grayling, 2010:38). A rule laid down by the state should be fair to all the conflicting parties. The concept of justice is intimately connected with that of equity and fairness; injustice will be felt as injury (Grayling, 2010:39).

The role of the state in serving social justice

States differ about the requirements of (social) justice and human rights. It is not just that the demands of one right may clash with those of another. A single right, such as in the present case the right to freedom of religion in the public domain, may make incompatible demands, depending on who demands what. There is therefore no uniquely rational way of resolving these conflicts, Gray (2009:38) concludes.

Claims about rights and justice are enmeshed in conflicts of value. If, for instance, we differ about the good life, we are bound to differ about justice and rights. Social justice can therefore not stand aloof from conflicting claims about the good. Conflict, in turn, as Comte-Sponville (2005:15, 19) points out, presupposes the state as an arbiter that can "work us towards a convergence of our interests". What justice demands varies with history and circumstances. Even universal values do not generate a single view of justice; they only frame constraints on what can count as a reasonable compromise between rival values and ways of life. In this way, universal human values set ethical limits on the pursuit of peaceful coexistence (Gray, 2009:38). This truth has large consequences. It means that there can be no such thing as an ideal regime. Because rights make conflicting demands that can reasonably be resolved in different ways, the very idea of such a regime is a mistake. Different regimes tend to resolve conflicts among vital human rights in different ways (Gray, 2009:34).

It is the same with social justice. We cannot avoid arguments of justice as fairness regarding the distribution of goods, such as rights and freedoms, in society. No contemporary society contains a consensus on fairness that is deep or wide enough to ground a single universal "theory of justice". Among the virtues, justice is one of those most shaped by convention, and for that reason it is among the most changeable (Gray, 2009:34). Differences are therefore to be expected. They mirror differences in moral outlook in the wider society; different views of the good support different views of justice (Gray, 2009:35, 36).

In the absence of a universal theory of justice, a state could follow the tenets of the ethical theory of value-pluralism (Gray, 2009:25), which affirms that the good is plural but that it also harbours conflicts for which there is no single solution that would be acceptable by all (Gray, 2009:26; also see Harris, 2003:90-91). "However variously (values) may be understood, (the values of) peace and justice are universal goods; but sometimes they make demands that are incompatible" (Gray, 2009:26). In line with value-pluralism, a state may argue "that inasmuch as (say, a particular mainstream religion) prescribes a single way of life, or a small family of ways of life, as being right or best for all humankind, [it is] incompatible with the truth of value-pluralism" (Gray, 2009:39). The ethical theory of value-pluralism is based on the thesis that common experience and evidence of history (with reference to Ulster, for instance) show human beings thriving in forms of life that are very different from one another. None can reasonably claim to embody the flourishing that is uniquely human. If there is anything distinctive about the human species, it is that it can thrive in a variety of ways (Gray, 2009:40). Despite this, Hampshire (2003:134) believes that consensus can be reached by a "rational deliberative process of hearing both sides." He is convinced that conflict resolution through convergent reasoning is at the heart of political justice (Hampshire, 2003:141-142).

A state may alternatively decide to follow what Blackburn (2009:186) sees as a kind of 'arid scholasticism': the human rights decided upon by negotiating parties, and thereafter enshrined in the Constitution of the country, must be good and therefore applied in legislation. In such conditions, law students and even the Constitutional court scrutinise the language of the Constitution "with the most minute and pedantic care and a huge battery of previous interpretations to draw from". The result of such scholasticism can be laughable from the standpoint of what may be regarded as the good society, or what would be good for society (Blackburn, 2009:182-183). Such scholasticism is unacceptable in view of the argument that morality is categorical; "it is about intrinsic questions of right and wrong, the good and the bad, obligation and duty, consequences and intentions, as these apply in our conduct and rela-tionships, where the right and the good are under consideration in themselves and not merely as instrumental to some non-moral goal such as profit, corporate image, or the like" (Grayling, 2010:15). Human rights and other values are not necessarily valuable because they have been agreed upon by political parties negotiating a political settlement. Talk of human rights is an ongoing task of asking what is required for individuals to have a chance of making lives for themselves that by their own and any reasonable standards are good and flourishing (refer Jansen, 2010:256 *et seq*. about the application of critical theory in a post-struggle context). This is, says Grayling (2010:26), centrally an ethical enterprise. Ethics is about character and the quality of one's life as a whole, and how one lives it. In short, it is about what sort of person one is — from which the nature of one's specifically moral agency normally flows. It is the sum total of those things that an individual imposes on himself or denies himself, not primarily to further his own interests, welfare or happiness (to do so would amount to egotism) but in consideration of the interests and/or the rights of others, in order to avoid being a villain or to stay true to a certain conception of humanity and of the self. It is the law that one imposes on the self, independently of the judgement of others or of any expectation of reward or sanction (Comte-Sponville, 2005:5).

It can therefore be expected of the state to arbitrate, in the present case regarding religion and education, on categorical moral grounds, and not primarily on grounds of political ex-pedience.

Discussion

The fact that public schooling has become widely accepted as part of the task and duties of the state explains why the South African government in 2003 saw its way clear to promulgate a *Policy on Religion and Education*. That is only part of the rationale, however: the state is entitled to do so in view of the fact that it has to maintain orderliness in society. If it had not promulgated the Policy, chaos could have been the order of the day. The South African government acted in accordance with what is expected of governments when it intervened as ostensible impartial facilitator in the conflict about religion in (public) education. The question remains, however, whether justice was served by the stipulations of the *Policy*.

If ethics is, as Grayling (2010:14-15) puts it, either the organised study of the concepts and principles involved in systems of morality, or the set of principles, attitudes, aims and standards adopted by individuals and organisations by which they live and act, neither the Minister of Education nor the Department of Education proffered any ethical (moral) grounds or social justice theory behind the Policy. On the face of it, they merely wished to avoid ten-sions and intolerances regarding religion in public schools, and in doing so, to comply with the stipulations of the Human Rights Manifesto (Chapter 2 of the Constitution, RSA Act 108 of

1996). To achieve this, the *Policy* relegates confessional, sectarian religion to the parental home and religious institution because of the segregating, divisive and ghettoising effect that it could have in public schools. The state strove for schooling that is as mixed, plural and secular as possible. This conclusion is drawn despite denials by the Minister about the *Policy* promoting secularism (refer Asmal, 2003:6).

The state furthermore seems to have implicitly and pragmatically followed the tenets of the ethical theory of value-pluralism (Gray, 2009:25), which affirms that the good is plural but that it also harbours conflicts for which there is no single solution that would be acceptable to all (Gray, 2009:26). The state may have argued along the same lines as Gray (2009:39), namely "that inasmuch as (a particular mainstream religion, in this case) prescribes a single way of life … as being right or best for all humankind, [it is] incompatible with the truth of value-pluralism". In this process, the state might also have practised the form of scholasticism that Blackburn so deplores, namely the uncritical application of human rights as entrenched in the Constitution (refer Ministry of Education, 2001). The stipulations of the *Policy* were not based on categorical moral grounds.

Conclusion

The South African state never openly declared the philosophical or ethical stance from whence it promulgated its *National Policy on religion in education* (2003). The following philosophical and/or ethical motives can nevertheless be inferred from the stipulations of the *Policy*: *de facto* secularism (the banning of all forms of sectarian religion from the public sphere because of their potentially divisive or ghettoising effects), pragmatism (the elimination of a potential threat to the stability of the state, and considerations of political expedience; seeking a reasonable balance between its own political concerns and what it could do without interfering too far with other legitimate concerns), value-pluralism (not to take a value-motivated stance — although secularism can of course also be construed as a value-driven choice — and to provide space for a variety of ways of life; refer Richardson, 2003:12 *et seq*.; also refer paragraphs 8, 29, 30, 31 of the *Policy*); and the theory of *modus Vivendi* (peaceful coexistence), based on a form of liberalism that thinks in terms of coexistence among different ways of life and of reconciling the claims of conflicting values. In all likelihood the state also followed the pragmatic approach of doing "something in the morally (and politically) right or acceptable direction" (Grayling, 2010:18; also refer Kruger, 2006).

In the end, one has to say that (social) justice has been served by the state. None of the contending parties got exactly that for which they wished. The banning of sectarian religious education from the schools is to the satisfaction of the secularists and the state itself, but not to the satisfaction of the mainstream religions and religiously conservative parents. The retention of Religion Studies as an academic subject should be to the satisfaction of all since it enriches the school curriculum. Allowing a place for religious observances in schools can also be welcomed by all concerned.

Ironically, social justice is being served by how things have turned out at grassroots level: some schools (their governing bodies) have since 2003 used the space provided in the Constitution (clauses 15.1 and 15.2) and the S.A. Schools Act (clause 7) for dealing with the issue of religion and education as they see fit. This is democracy at work along the lines envisaged by Malherbe (2004:256) shortly after the promulgation of the *Policy*. Since the *Policy* is unenforceable, he said, "no school or governing body needs to apply it. They may simply ignore it". What the schools are doing in practice runs counter to some of Kruger's (2006)

views about school ethos, but this should not be a problem if no learner feels marginalised or excluded.

The *Policy* could be revised to provide greater freedom of choice to schools as well as to be able to deal with incongruities such as the artificial divide between confessional religious instruction (which is not allowed in public schools) and the concomitant religious observances (which are allowed).

Notes

1. An outline of the debate can be found in footnotes 2 to 5.
2. Newspaper articles and correspondence appeared under headings such as "Concern about religion", "Proposed new policy will prevent indoctrination", "Religion in schools will in future be more meaningful", "Court chastises (Minister) Asmal for abusing his powers", "Prayer to be banned at school assemblies", "Asmal scratches where there is no itch", "We need cool heads in this debate", "Faiths fight for religion in schools", "Parents should not shift their duties to the school", "Religion is the duty of the church", "Asmal receives many reactions to his proposals", "Asmal is saddling a crazy horse with his proposals", "Parents will still have a say about religion in schools", "General religious education to be offered in schools", "Proposed new policy disturbing to the church", "Christians prepare for a holy war against Asmal", "Sparks fly about proposed policy", "Religion according to a political agenda", "Asmal bans God from schools", "Some schools welcome the proposed new approach", "The church in prayer about the proposed policy". A number of academic discussions were also published, refer Oosthuizen, 2000.
3. After the promulgation of the Policy in 2003, the tone of the debate changed, as can be seen in the newspaper headings: "Groups 'can live' with Asmal's policy", "Parents will still have a say about religion in schools", "This is how the Policy works". Authors such as Claassen (2003a & 2003b), Davies (2003), Malherbe (2003a &2003b), Colditz (2003), Martins (2003) Jackson (2003), and Westerman (2004) were critical of the Policy, whilst Kruger (2006) admired it for a variety of reasons.
4. Among others, the South African Teachers' Association (2009) rushed to the defence of the schools.
5. Despite this claim, item 4.4 of the Coertzen Manifesto seems to run counter to the Policy on religion and education in that it insists on a place for confessional religious education in public schools.
6. Class issues may have complicated the issue in the United Kingdom. At the current time, the issue of confessional schooling or education in the United Kingdom is heated with some faith groups feeling that they are being "unfairly" treated (clearly a social justice issue). However, underlying much of the debate is the fact that confessional schools tend to have better outcomes in terms of educational achievement. That this is the case has led to middle class parents professing faith in order to get their children into successful schools and, on the other hand, to criticism of confessional schools as inequitable because of their "better" results. This criticism is often accompanied by criticisms of segregation. In this manner, the debate about confessional schools and equity is being complicated by social class issues. This may be the case in other countries as well. (I hereby extend my gratitude to an unknown reviewer of the paper for adding this insight.)
7. 'State' refers to a political entity such as a nation or a country, whereas 'government' refers to the agency that governs such an entity, among others through legislation. For the sake of brevity, only 'state' is henceforth used.
8. Since the late 19th century, the Dutch began a system of arranging aspects of civil society in groups that in time became referred to as "pillars". Christian schools, newspapers, radio stations, sports clubs and so on arranged themselves in, for instance, a reformational pillar or a Roman Catholic pillar. Secularists, Muslims, Buddhists (et cetera) all enjoy the right to arrange their confessional affairs in own pillars. However, because of the growing diversity of Dutch society, the pillar system is now slowly but surely crumbling.

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Author

Hannes van der Walt is Emeritus Dean of the Faculty of Education at the former Potchefstroom University, and is currently a Specialist Researcher and research capacity builder at North-West University. His interests are philosophy of education and religion in education.