

# RELIGION IN SOUTH AFRICAN PUBLIC SCHOOLS – ORED V RANDHART PRIMARY SCHOOL

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*Dealing with religious diversity and freedom of religion in public schools has been the source of disputes in many countries. Although religion has lost its impact on social life, religion is important and respect for religious diversity is still a moral tenor of society. Models for dealing with religious diversity in multicultural schools include the European faith-based schools, American fundamentalist secularism, and the South African Co-operative Model. The decision in Randhart affirms that religious observances may be practiced at public schools in South Africa if attendance is free and voluntary, equitable, and in accordance with schools' policies, legislation, and the Constitution because provincial legislation prohibits indoctrination of students. The paper explains detrimental aspects of the rigid secularism education of the US, presenting Evolution Theory as a possible example of indoctrination at public schools. The papers suggest school policies based on tolerance and the accommodation of all religions.*

## I INTRODUCTION

The accommodation and tolerance of religious beliefs and practices in public schools is an ongoing, contentious issue in most pluralistic societies. Nord dramatically stated that ‘many of the most violent battles in our ongoing culture wars have been fought over the proper place of religion in public education.’<sup>1</sup> This article examines the South African model of allowing religious observances in public schools in view of the recent case of *ORED v Randhart Primary School (Randhart)*.

This article addresses the following key themes with regard to freedom of religion, belief, and conscience in education: the continued importance of religion for life and human dignity; secularism and religion in public schools; the Co-operative Model in South African public schools. It also examines free and voluntary attendance religious observances plus freedom from indoctrination in classrooms, the *Randhart*-judgment, the principle of subsidiarity, and policy implications for schools.

## II BACKGROUND: IMPORTANCE OF RELIGION

Religion has lost much of its impact on social life in many Western countries. Yet, freedom of religion and respect for religious diversity is still a moral tenor of society. Given that 62% of the world's population, or approximately 4, 4 billion people, regard themselves as religious,<sup>2</sup> it is clear religion plays a major role in the lives of many people. For most religious people, including schoolchildren, religion is not just a mere question of belief or doctrine, it is a part of a way of life and in many cases the essence of human dignity, of life and existence.

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Sachs J. eloquently explained the importance of religious freedom in *Christian Education South Africa v Minister of Education*:<sup>3</sup>

‘There can be no doubt that the right to freedom of religion, belief and opinion in the open democratic society contemplated by the Constitution is important. The right to believe or not to believe, and to act and not to act according to his or her beliefs or non-beliefs, is one the key ingredients of any person’s dignity... For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe. Religious belief has the capacity to determine concepts of self-worth and human dignity which form the cornerstone of human rights. Religion regulates human behaviour and sets the moral rules for what is acceptable for society. It determines their work ethic and sense of responsibility, and founds the distinction between right and wrong. In general schools with an ethos of religious freedom tend to develop a culture of tolerance and respect, experience increased levels of kindness, support and participation and gain a framework for individual growth and social stability.’

Despite the importance of religion for individuals, communities, and society in general, and despite the formal protection of freedom of religion as a human right in most democracies, there is a patent intolerance of religious expression in the public realm in many Western countries as is evident from the abundance of litigation.<sup>4</sup> There seems to be an abhorrence of anything religious in some Western states where public prayer, religious symbols, religious clothing, and reading from scripture are banned from schools. This stems from the secular notion that strict separation of church and state is the only way of dealing with differences in values and customs.

### III ‘SECULARISM’ AND RELIGION IN SCHOOLS

Secularism essentially refers to the absence of religion in state affairs: ‘this principle contains the notion that government and society must be protected from religious overreaching in order to preserve the secular nature of government and the public’. Yet, the meaning of ‘secularism’ or ‘neutrality’ is far from simple and may have different meanings, definitions and applications in different states.<sup>5</sup>

Taylor<sup>6</sup> identifies four forms of secularism, maintaining that it:

- can mean the complete removal of God and religion from the public sphere. This version is described as a strict separation of church and state wherein religion is simply removed to the private sphere, as is the case in the United States and France;
- may refer to the level of religiosity of the population. In this version, there is a measurable reduction of religious belief and practice in the population has already taken place in much of Western Europe;
- may mean that religious belief is just one option for states and their people. Here religion is not removed from the public sphere but is just one voice among many in a pluralistic society, including those with no religion;
- has a common understanding is rooted in the philosophy of humanism and is compatible with atheism’s shunning religion due to its having no belief in the supernatural or any deity.<sup>7</sup>
- It is usually accepted without critical reflection that secular education is ‘neutral’ or unbiased.

However, this is an overly simplistic understanding of a complex issue. As Gibson cogently contended, ‘secularism appears in liberal and fundamentalist forms; liberal secularism only requires religion to be removed from any position of power, whereas fundamentalist secularism

is the removal of religion from society altogether'.<sup>8</sup> For the sake of argument, this article applies the term secular or secularism to mean the last definition, namely avoidance of anything religious and the absence of a belief in the supernatural.

Detrimental consequences of fundamentalist secularism in public schools are many. Students and educators cannot openly and freely, without fear of reprisals or negative consequences, practice their religion while in secular public schools. Further, educators in public schools have become so wary of moral issues that they avoid teaching values at all costs. In many classrooms, teaching has become a sterile activity dealing only with issues of instruction, pedagogy and curriculum content. Many teachers have thus become "the bland leading the bland." Also, students lack resilience as they do not encounter and learn to critically evaluate moral and religious issues; the "neutral" state 'wins the hearts and minds' or indoctrinates students with a state monopoly on secular values. Religious parents who opt to send their children to independent schools are taxed to support public schools as well as having to pay tuition fees of independent schools.

Other consequences are the degrading of the rights of parents, as guaranteed by international law, to determine the values, culture, and religious upbringing of their children. Public school teachers have the autonomy to choose to teach controversial curricular content such as sex education, slanted history, and Evolution. Parents and students whose religious values are pitted against opposing "secular" values are discriminated against. In fact, school officials are not allowed to opt for policies accommodating religious expression due to the underlying secular tenor of intolerance. Other human rights are protected, but religious freedom and expression are not tolerated in secular public schools. School choice is limited or unavailable for parents who cannot afford independent faith-based schools and the amassed controversies of religion in school seem to be never-ending.<sup>9</sup>

It should be noted, though, that there is now an increasing recognition in the fields of sociology, literary studies, art studies, education, philosophy, theology, psychology and political science that Western societies are becoming progressively post-secular.<sup>10</sup> Post-secularism denotes a range of theories about the persistence or resurgence of religious beliefs and practices in the contemporary society. In the wake of the mass Muslim influx to Europe in 2015 Habermas, a leading European secular liberal thinker, argued that secular citizens must be open to religious influence, especially insofar as the very identity of Western culture is rooted in Judeo-Christian values.<sup>11</sup>

There is, nonetheless, a deep-rooted schism wherever secular education merely allows freedom of religion in the private sphere but suppresses the freedom to exercise religious beliefs in the public realm. After all, Christianity has communal observances such as mass or assembled worship, baptism and communion, as well as corporate activities such as confession, guidance, and celebration practiced in public settings with fellow believers rather than privately.<sup>12</sup> It should be borne in mind that requiring the 'government to be devoid of religious affiliation does not necessarily require that society be secular as well.'<sup>13</sup>

To acknowledge the importance of religion in society, it therefore seems essential to place greater emphasis on protecting the right to freedom of religion of various faith communities and to enable freedom of education, not only for believers but also for the proper, orderly, and effective functioning of schools and society.

#### IV MODELS OF DEALING WITH RELIGIOUS DIVERSITY ON SCHOOLS

States can deal with religious diversity in schools in at least four ways. Álvarez and Essomba<sup>14</sup> identified three models of religious education in European states, namely:

- I. Denominational teaching of religion in which religious institutions are in charge of the subject. Denominational teaching of religion, or the Faith-based Schools Model, is found in European countries such as Belgium, the Netherlands, Ireland, Germany, and Britain.<sup>15</sup> This model endorses religious justice in education as it allows for denominational faith-based public schools such as Catholic and other schools based on a religious or secular ethos while providing for state funding of independent faith-based schools such as Jewish and Muslim. This model allows freedom of education and freedom of school choice. Countries that apply this model usually rank highest on the Freedom of Education Index.<sup>16</sup>
- II. Non-denominational religious teaching, the Religious Education Model, allows teachers to expand on different religions.<sup>17</sup> This approach teaches about religions as a subject that is part of a curriculum or course to study different religious customs, holy or sacred texts, plus special days and beliefs.
- III. Secular education, the Fundamentalist Secular Model, maintains strict separation of “church and state” as in the US and France. This model avoids state sponsored religious practices and beliefs in public schools altogether and aims to provide only ‘neutral’ secular education.

A fourth option, the Co-operative Model applies in South Africa by allowing the state and public schools co-operate to allow for religious expression and observances in public institutions in a fair and non-coercive manner. In South Africa, unlike the US and other states, the Co-operative Model accommodates and tolerates religious observances and expression in public, allowing religious observances in public schools if they comply with the Constitution of South Africa (the Constitution), the South African Schools Act (The Schools Act), and provincial legislation on education.

#### V SOUTH AFRICAN SCHOOLS AND RELIGIOUS DIVERSITY: LEGAL PRINCIPLES OF THE ‘CO-OPERATIVE MODEL’

South Africa has a long history of religious observance in public schools in all sectors of its population. However, in pluralist societies and liberal democracies, such as South Africa, diversity of values, worldviews, religions and cultural traditions are a certainty in public schools. During the constitutional negotiations in the early 1990s, the parties were acutely aware of the fact that the strict separation between the secular state and religion in the US had developed into intolerance of almost anything religious in the public realm. Consequently, the drafters of the South African Constitution steered the constitutional ship on a religious course diametrically opposed to that of the United States.<sup>18</sup>

##### *A State Impartiality*

In *S v Lawrence*,<sup>19</sup> the Constitutional Court, in a judgment by O’Regan J, confirmed, that section 15 of the Constitution does not include an “establishment clause” as in the American Bill of Rights and that provisions or principles pertaining to the advancement or inhibition of religion by the state should not be read into the Constitution. O’ Regan J made an important distinction between the concepts neutrality and impartiality. According to O’ Regan J the “establishment

clause” in the American Constitution addresses neutrality, while South Africa’s Constitution requires state impartiality, implying that the state may not favour any religion or worldview above another in either a direct or an indirect manner, but that religion is allowed and tolerated in public institutions. State impartiality implies and requires that any belief system or worldview, including secularism, should not be favoured by the state above another.

Under the Co-operative Model, the state neither establishes nor favours particular religions but co-operates with religious communities by permitting religious observances at state and state-aided institutions, subject to specified constitutional provisos. In order for the Co-operative Model’ to function optimally, a measure of tolerance and resilience among diverse religious and non-religious communities and individuals is required.

### *B Three statutory conditions for lawful religious observances at public schools*

Section 15 of the Constitution provides that everyone has the right to freedom of religion, belief, conscience, thought, and opinion. Religious observances may be conducted not only independent schools but also at state and state-aided institutions such as public schools, colleges, and universities in South Africa under section 15(2) of the Constitution.<sup>20</sup> This section places three conditional requirements on the manner in which religious observances may be conducted: they must follow rules made by the appropriate public authorities; they are conducted on equitable bases; and attendance is free and voluntary.

Section 7 of the South African Schools Act<sup>21</sup> specifically provides that religious observances may be conducted at public schools and echoes the conditions of the Constitution by requiring religious observances to follow rules made by school governing bodies; are conducted on an equitable bases; and attendance is free and voluntary.

### *C Freedom of Religion does not mean freedom ‘from’ religion*

In the High Court matter of *Wittmann v Deutscher Schulverein, Pretoria and others*<sup>22</sup> Van Dijkhorst J held that:

the concept ‘religion’ when used in section 1 of the [Interim] Constitution is not neutral. It is loaded with subjectivity. It is a particular system of faith and worship. It is the human recognition of superhuman controlling power and especially of a personal God or gods entitled to obedience and worship (The Concise Oxford Dictionary). It cannot include the concepts of atheism or agnosticism, which are the very antithesis of religion. The atheist and agnostic is afforded his protection under the freedom of thought, belief and opinion part of this section. There is conceptually no room for him under the freedom of religion part. Freedom of religion does not mean freedom from religion.

As to religion in schools, Van Dijkhorst J distinguished between four concepts:

- Religious training or religious instruction – Instruction in a particular religion or worldview with the view to establish belief, to convert, or proselytise a person to a particular religion or to strengthen that belief by way of upbringing;
- Religion education – A school subject that is part of a curriculum or course to study different religions, their holy or sacred texts, special days, and beliefs and rituals;
- Religious observances – The practice of customs, rites, and traditions of a religious character manifesting belief and are in accordance with it, such as prayer, reading sacred texts, praise and worship, witnessing, fasting and dietary observances, dress, observance of days of special significance, and gathering of adherents;

- Religious orientation – The ethos, life- and worldview, directional choice, or foundation of beliefs. Ethos is the characteristic belief system and spirit of a person, community, culture or era as manifested in its attitudes and aspirations; the prevailing character of an institution.

Based on these distinctions, it follows that religious instruction, also called religious training, evangelising, and/or proselytising) by educators or school personnel, is not allowed in public school classrooms because students are captive audiences and attendance is neither free nor voluntary. All public schools in South Africa include Religious Education as a school subject or as part of the Life Orientation subject. Most public schools in South Africa have an ethos that is religious in orientation that allows officials to conduct religious observances. However, religious instruction remains the responsibility of parents and the religious community.

## VI FREE AND VOLUNTARY ATTENDANCE - THE PROHIBITION OF INDOCTRINATION AND ADVANCEMENT OF CRITICAL THINKING

A core aspect of the ‘Co-operative Model’ is that attendance of and participation in religious observances at public schools must be free and voluntary. Legislation and guidelines by the provincial and national departments of education in South Africa contain provisions prohibiting the indoctrination of students while promoting critical thinking and freedom of expression.

Indoctrination is the antithesis of academic freedom. The Oxford Dictionary defines indoctrination as compulsory or forceful, closed rather than open and transparent, and fake communication of a doctrine or dogma in a manner not allowing for alternative views and critical thinking.<sup>23</sup> Indoctrination is a process of teaching a person or group to accept a set of beliefs uncritically. According to the Merriam Webster dictionary, indoctrination is the act of inculcating a doctrine or ideology, or to imbue with a usually partisan or sectarian opinion, point of view, or principle.<sup>24</sup>

### *A Academic freedom, prohibition of indoctrination and encouragement of critical thinking - Statutory and policy provisions*

Under section 16(1) of the SA Constitution, everyone has the right to freedom of scientific research, including academic freedom. Academic freedom is the principle that scholars or scientists have the freedom of inquiry and the freedom to teach or communicate ideas or facts without being targeted for repression, reprisal, job loss, and/or imprisonment.<sup>25</sup> Academic freedom involves many facets beyond the scope of this article. Yet, academic freedom is not unrestrained or absolute and may be limited in accordance with section 36 of the Constitution on grounds of academic or public policy.

The Directive principles of National Education Policy provides that the education policy shall be directed toward-

- (a) the advancement and protection of the fundamental rights of every person, and in particular the right-
- (vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;
- (b) (i) encouraging independent and critical thought.<sup>26</sup>

Section 10(1) of the North-West Schools Education Act<sup>27</sup> contains the following provisions on freedom of religion, freedom of expression and freedom of conscience: “No person employed at any public school shall attempt to indoctrinate students into any particular belief or religion.”

The directive principles of the Northern Cape Education Act<sup>28</sup> on school policy provides that “Every learner and educator shall have the right to freedom of conscience, religion, thought, belief, opinion, speech and expression and the education process shall promote a culture of tolerance.” In addition, it declares in section 20(1) that “No person employed at any public school shall attempt to indoctrinate learners into any particular belief or religion.”

The Limpopo Province School Education Act<sup>29</sup> provides in section 4(1) that:

- (f) Every learner and educator shall have the right to freedom of conscience, thought, belief, opinion, speech, expression and the education process shall promote a culture of tolerance.
- (m) The education process shall be aimed at fostering independent and critical thought.

The Gauteng Education Policy Act<sup>30</sup> dictates in section 5 that all education policy must contribute to the development of an education system which:

- (a) enhances democracy and human rights by—
  - (vi) fostering the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;
  - (v) encouraging independent and critical thought.

It thus follows that the prohibition of indoctrination and the encouragement of independent and critical thought are to be understood in conjunction with the freedom of conscience, religion, thought, belief, opinion. These rights protect the transfer of knowledge, skills and attitudes.

### *B Worldviews, paradigms and scientific revolutions*

All persons, including scientists, educators, and students, regardless of whether they realise it, understands the issues of life within the context or mind set of a worldview. There are three fundamental components of a worldview namely: the nature of reality (metaphysics); how to acquire knowledge and know what one knows (epistemology); how people live their lives (ethics).<sup>31</sup>

A worldview is a network of basic pre-commitments, *a priori* assumptions, that cannot be proven by scientific procedure; they are basic and foundational faith or belief commitments.<sup>32</sup> These presuppositions are the filters through which every aspect of knowledge and the experiences of life are understood. According to Nickel, facts are always understood in the context of presuppositions.<sup>33</sup> Worldview indoctrination could occur and academic freedom could be suppressed by ideological dogmatism in fields of study such as history, literature, sociology, psychology, philosophy, theology, and life sciences.

In his seminal work *The Structure of Scientific Revolutions* Kuhn explained that periods occur when the conceptual continuity in normal science is interrupted by periods of revolutionary science.<sup>34</sup> Kuhn added that in most of the paradigm shifts throughout history, it was neither churches nor religious communities that hindered scientific progress. Rather, the “orthodox” scientific community resisted the advancements of new scientific paradigms.<sup>35</sup>

One famous episode in the history of science occurred when, in the early Seventeenth Century, the Vatican, in line with the consensus of the mainstream academic community of the

time, dogmatically upheld the Ptolemaic geocentric theory, ignoring Galileo Galilei's assertions of evidence in support of the Copernican heliocentric theory.<sup>36</sup> One should therefore be careful to attribute scientific discord to intolerant or dogmatic religious views because they may not be a true reflection of the underlying conflicts.

### *C Teaching Evolution theory in the classroom– is it indoctrination?*

It depends on the specific facts, the context and particular circumstances of every situation whether the education provided at public schools or in classrooms is completely 'neutral' or impartial or whether it amounts to indoctrination. The prime example of possible indoctrination that readily comes to mind is the compulsory teaching of the Theory of Neo-Darwinian Evolution (the Evolution Theory).<sup>37</sup>

In South Africa approximately 30% of the content of the Life Sciences (Biology) subject in the Grade 12 curriculum is comprised of Evolution Theory.<sup>38</sup> The *a priori* assumptions or worldview on which the Evolution theory is based is natural materialism.<sup>39</sup> The two main worldviews in modern science, namely natural materialism and theistic creationism,<sup>40</sup> are discordant and lead to incompatible scientific interpretations of the same phenomena or data, especially in the fields of biology (life sciences) and geo-sciences.

Some South African studies indicate that Christian and Muslim teachers often hold strong religious views that make acceptance of the Evolution theory or Macro Evolution difficult.<sup>41</sup> Many Life Science teachers display poor content knowledge of evolutionary biology and hold religious objections that make them apathetic or skeptical of Neo-Darwinian Evolution.<sup>42</sup> Deckard, DeWitt, and Patana<sup>43</sup> demonstrate that freedom of religion, thought, and conscience, and academic freedom of students is inhibited by secular indoctrination in classrooms. These authors contend that academic freedom in the US is actively and intentionally restricted by the secular scientific community as a result of the conflict between natural materialism and theism.<sup>44</sup>

### *D Denunciations of the neo-Darwinian Evolution theory*

Ironically, at present it is not a religious body or a Church, but the mainstream secular scientific community that has been dogmatically suppressing scientific evidence refuting Evolution theory.<sup>45</sup> This accords with Kuhn's explanation of scientific revolutions. Contemporary dissenting scientists<sup>46</sup> have data and hard scientific facts that controvert the Evolution theory.

The first scientific fact refuting the Evolution theory is: The Primary Axiom of neo-Darwinian theory is that Evolution is the result of random natural selection and mutation. According to Sandford, natural selection and mutation, the basic mechanisms of Evolution, do not function as suggested, because natural selection reduces, removes, eliminates genetic information<sup>47</sup> and likewise, mutation damages (destroys, harms, impairs, reduces) pre-existing genetic information.<sup>48</sup> Even beneficial mutation, gene duplication and polyploidy are not viable mechanisms for Evolution as these methods still require the presence of pre-existing genetic information.<sup>49</sup>

Evolution theory does not explain where the initial genetic information came from or how the first single celled organism acquired complex genetic information. In other words, neither natural selection nor mutation create new genetic information as these mechanisms function only because of already existing genetic information in an organism. There is thus no increase of genetic information through natural selection and mutation, because the genetic information degenerates at measurable and calculable rates, which leads to the opposite result, genetic entropy. Sandford



cogently proves that the Primary Axiom of Evolution theory is dead in the water as natural selection and mutation are going in the wrong direction by eliminating information instead of “creating” new information.<sup>50</sup> The first fact alone is enough to obliterate the Evolution theory.

Various scholars and scientists contend that the Evolution theory is in a crisis<sup>51</sup> and that additional scientific proofs refute the Evolution theory, such as the impossibility, based on mathematical probability calculations and information science, that undirected “evolution” of the even the simplest single-celled organism such as *Mycoplasma genitalia* could ever occur by random unguided natural processes;<sup>52</sup> the repeated discovery of soft tissue such as red blood cells, DNA, protein in “fossilised” dinosaur bones contradicts the assertion that dinosaurs became extinct 65 million years ago;<sup>53</sup> the irreducible complexity of every organic cell and many other features of living organisms point to the inevitable, namely intelligent design;<sup>54</sup> the complete absence of gradualism and the “instantaneous” appearance of new kinds of animals and plants throughout the fossil record;<sup>55</sup> the absence of any viable evolutionary explanation for abiogenesis and the repeated long term failure of the Miller-Urey experiments to produce any life or living organisms from chemical mixtures;<sup>56</sup> and the absence of any visible or testable empirical evidence that shows one kind of organism evolving into another kind of organism.<sup>57</sup>

Insofar as is strong scientific evidence refutes the Evolution theory, the continued adherence to or belief in it probably ascribable to the *a priori* commitment to natural materialism.<sup>58</sup> The continued teaching of Evolution theory could amount to indoctrination, per definition, if it were communicated in classrooms as one-sided dogma in a manner not allowing for alternative views and critical thinking. Freedom from indoctrination and freedom of belief and conscience were some of the sub-issues in *Randhart*.

## VII ORED V RANDHART PRIMARY SCHOOL

### *A The facts*

The right to conduct religious observances such as public prayer, reading from Holy Scripture, singing hymns, and delivering sermons at public schools in South Africa remained uncontested for approximately two decades since the promulgation of the Schools Act. However, an issue came to the fore when, in June 2017, the Johannesburg High Court heard the controversy in *Organisasie vir Godsdienste Onderrig en Demokrasie* (English: *Organisation for Religions Education and Democracy*, acronym: ORED) *v Randhart Primary School and others* about religion and worldviews in public schools.

The applicant in *Randhart* was represented by one person, Mr. Hans Petersen, an atheist. ORED, the Applicant, had pro bono support from a legal team and instituted action against six public schools that identified themselves as Christian schools as well as the National Minister of Basic Education and other respondents. ORED applied for six declaratory orders based on the National Policy on Religion in schools and the Constitution. In addition, ORED, in one fell swoop, applied for seventy-one interdicts against all public schools *inter alia* to prohibit religious activities such as commencement of school with Bible reading and prayer; reference to God in the school song or anthem; and reference to Christian values in the school’s code of conduct.

ORED also sought to prevent teaching the biblical version of creation according to Genesis or creation science at public schools; allowing Christian activities and Christian School Association Club activities during break time; distribution of Bibles by the Gideon’s Organisation at schools; singing of religious songs or hymns; evangelising students at schools or during school time;

formulation a school's mission within a Christian framework; distribution of Christian literature; making a school room for prayer. Finally, ORED sought to ban advertising or branding a public school as a "school based on Christianity" and displaying slogans and/or references to God on school insignia.

*Randhart* received widespread media attention and many and varied religious communities united their efforts to launch a public awareness campaigns in favour of religion at schools. The Respondents and *Amici Curiae*, including Christian denominations, the Jewish Council, Islamic Organisation, FEDSAS and Afriforum, contested the application.

ORED wanted all religion and religious activities banned from public schools. Even so, ORED could not substantiate all its averments about purported unfairness, inequity, unconstitutional conduct, or discrimination by the Respondents with convincing evidence or proof. The court commented on ORED's lack of sufficient proof and the exaggeration of many of its claims.

On the other hand, the Respondents and *Amici* provided copious volumes of affidavits and proof that, by and large, public school officials managed to comply with the constitutional and legislative requirements to a remarkable extent by equitably and fairly accommodating students from diverse religious and cultural backgrounds. This evidence showed that students, parents, and the Christian, Muslim, Hindu and Jewish faith-based communities were able and willing to tolerate and accommodate diverse religious expression and observances. The Respondents contended that the school governing bodies and local school communities were ultimately in the best position to arrange and manage the fair accommodation and toleration of religious diversity.

### *B The Court decision*

Van der Linde J gave the opinion on behalf of the full bench court. While the court did not grant a single interdict, which is somewhat revealing, it did enter two declaratory orders that first, it offends section 7 of the Schools Act for a public school to promote or allow its staff to promote, that the public school adheres to one or predominantly only one religion to the exclusion of others. Second, the court ruled that it is unlawful for public school officials to promote the interests of one religion over others. In other words, the court held that while all of the listed religious observances and conduct at public schools were lawful and constitutional, public school officials may not brand or market their institutions as Christian schools or as schools predominantly adhering to a single religion.

### *C The outcome*

ORED claimed that the judgment was a "victory" for secularism. Yet, the truth is that this judgment was an affirmation of the Co-operative Model to cope with religious diversity in South African schools. Far from removing religion from schools, the judgment directed school officials to create spaces where all students, whether Christian, Muslim, Hindu, and/ or other should feel free to give outward expression of their beliefs.

### *D The court's rationale*

In its reasoning, the court explained that because South Africa is not a secular state, its educational system is not secular. The court noted that ORED had followed the incorrect legal procedure by failing to cite all interested parties as respondents and by neglecting to utilise or exhaust the internal provincial dispute resolution mechanisms in terms of provincial regulations.

The court dealt with the core issues of fairness religious observances at schools and whether public schools may hold themselves out as schools with particular religious ethos', by invoking the legal principle of subsidiarity, discussed in the next section.

## VIII THE PRINCIPLE OF SUBSIDIARITY AND IMPLICATIONS FOR SCHOOLS

Carpenter<sup>59</sup> explains that subsidiarity means that the power of decision-making and conduct originally rests with the smaller, lower or more local entities, and this authority is delegated “upwards” at the discretion of the latter, not at the discretion of the central authority. The essence of subsidiarity is the recognition that specified responsibilities and powers do not belong to the centre but to the lowest local level. Carpenter observed that the principle of subsidiarity, which applies in South Africa, simply means that it is wrong for the higher echelons or central functionaries to usurp the autonomy of local functionaries. In this regard, the higher echelons and central powers play a subsidiary role, hence the term subsidiarity, insofar as they provide support and, possibly, take over the functions of the lower functionary if the latter is unable to perform them adequately.

The *Randhart* court determined that an applicant who contends that religious conduct at a public school is unconstitutional must base its case on a contravention of an applicable rule of the school governing body. Alternatively, the court maintained that if an applicant avers that conduct is unconstitutional despite being consonant with school governing body rules, it must attack the relevant rules as being unlawful or unconstitutional. In other words, the correct procedure would be first to contest the legality of religious conduct or the school governing body's rules at the local, or school, level, exhausting its internal dispute mechanisms and provincial dispute mechanisms before seeking judicial review.

On the whole, the outcome in *Randhart* is welcomed. Still, the court erred in finding that a public school may not brand itself as a predominantly single religion school because its reasoning was based on an incorrect approach to the principle of legality. The principle of legality circumscribes the authority of the state, whether legislature or executive, in terms of legal rights and duties, that is negative rights, conferred on it based on specific legislative enactments.

On the other hand, the opposite applies to individuals and members of school communities who have *ex lege* (positive rights) or freedoms to act. Neither the Constitution nor the Schools Act or any provincial legislation expressly prohibits school governing bodies from formulating policies identifying with a certain religious ethos. If a school has a homogenous religious community or an overwhelming majority of adherents to a single religion, then it is democratic, practical, and fair to brand it with a particular predominant religious ethos, as is the case with Faith-based or Denominational public schools in Europe. However, if a school community consists of notable religious minorities, then obviously officials should not label it as predominantly of one faith.

*Randhart* is somewhat disappointing because the court did not provide guidelines about the requirements for equitable practice of religious observances. So, instead of bringing more legal certainty, *Randhart* has unsettled the issue of religious freedom and freedom from indoctrination in schools. Importantly, the court did not address or reference the plea to secularise the subject or curriculum content. The court judiciously avoided a decision on these matters, leaving it to be resolved in future fact-specific litigation.

## IX CONCLUSION AND RECOMMENDATIONS

*Randhart* affirmed that religious observances may be conducted at public schools during extracurricular activities and at school excursions, provided they take place on equitable bases and that attendance is free and voluntary. *Randhart* did not resolve the issue of secularisation of lesson content in classrooms, a remaining burning issue. In accordance with the principle of subsidiarity, school governing bodies should draft policies on religion and rules about religious observances with due regard to the religious composition of their school communities and the practicalities of equitable accommodation of religious diversity.

At the commencement of each academic year, governing bodies should conduct surveys to establish the number of adherents of each religion in a school. Participation in surveys must be voluntary without identifying non-participants who cannot be victimised or treated unfairly in any way. The purpose of the surveys is to facilitate the practical arrangements about attendance at religious observances at the school. School management teams may only use the data and information obtained from surveys to organise the equitable attendance of religious observances by students.

School governing bodies may delegate the responsibility to establish rules about attendance and venue arrangements during religious observances to principals, subject to the proviso that they must give final approval of these rules. Principals must ensure that students of the various religions are accommodated to meet at alternative venues such as large classrooms, sport clubs, houses, gymnasias, libraries, assembly squares, staffrooms, or the like in order to allow equitable religious observances. Participation in religious observances must be optional. Still, non-adherents to faiths must demonstrate respect, tolerance and appropriate demeanour towards the religious observances practiced by other faiths. Policies make it clear that non-adherents must be free from unfair discrimination or victimised in any way.

Insofar as legislation prohibits indoctrination at schools, educators should be sure to handle contentious appropriately; such ideas should be accommodated if the consequences are minimal or negligible. However, officials need not tolerate unconscionable ideas or conduct if they would violate the rights of others and the resultant harm surpasses an acceptable threshold. False information in school textbooks should be removed or educators should explicitly inform students of such errors.

Educators must avoid any indoctrination, proselytisation, evangelisation or coercion of students in any religion or worldview. Instead of teaching one-sided dogma, educators must teach students to deal with controversy by studying evidence on both sides and by thinking critically about the scientific theories. Because class attendance and academic subject instruction is compulsory, religious observances may not be conducted in classroom situations. If students feel aggrieved, they may opt out or ask that the grievances be settled.

Walking the fine line between religious belief and academic freedom requires critical thinking and an awareness of the underlying assumptions of every worldview. Insofar as conflicting values, worldviews, and religious are certainties in pluralist societies, controversial ideas in schools should be tolerated and respected to allow for freedom of religion, belief, conscience, thought, and opinion.

### ACKNOWLEDGEMENT

This article is based on a research project supported by the National Research Foundation (NRF) of South Africa (Grant Number: 109348). The grant holder acknowledges that opinions, findings and conclusions or recommendations expressed in any publication generated by the NRF-supported research are those of the author, and that the NRF accepts no liability whatsoever in this regard.

*Keywords:* Freedom of religion, religious observances, indoctrination, academic freedom, subsidiarity, public school, education, secularism, Evolution theory, worldviews.

## ENDNOTES

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- Proceedings of the National Academy of Sciences (2006) 103 (2) 425-430. Available at: <https://doi.org/10.1073/pnas.0510013103>. The simplest bacterium, *Mycoplasma genitalium*, which can only exist as a parasite, has 482 proteins comprising 580,000 bases. The probability of the random chance formation of a hypothetical functional ‘simple’ cell, given all the ingredients and the ordered processes, is less than 1 in 10 to the power of <sup>57800</sup>. Such an immense improbability is operationally impossible and absolutely infeasible by any natural means, because it is even greater than the estimated number of all the electrons in the universe.
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Our willingness to accept scientific claims that are against common sense is the key to an understanding of the real struggle between science and the supernatural. We take the side of science *in spite* of the patent absurdity of some of its constructs, *in spite* of its failure to fulfil many of its extravagant promises of health and life, in spite of the tolerance of the scientific community for unsubstantiated just-so stories, because we have a prior commitment, a commitment to materialism.
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