

The Constitution in the Classroom: Law and Education in South Africa (1994–2008)

STU WOOLMAN AND BRAHM FLEISCH, 2009

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REVIEWED BY ANDRE KEET

After weaving through a myriad of legal and educational analyses whilst engaged with this book, I was left with two divergent viewpoints. On the one hand, this book represents an impressive portrait of educational law as well as education and the law, and on the other it confirms the growing dominance of the juridical discourse in almost every aspect of our lives brought about by the weakness of the political public sphere. In fact, the authors acknowledged that they needed to focus on six themes and thus a vast body of knowledge, regulatory frames and practices are not considered. However the themes, which range from school choice to school fees, have been well chosen and cover some of the pertinent questions in educational law.

This book is a must read for a few groups of people. Firstly, for those who want to make sense of the semi permanent appearance of education in South African courts, this book will be as great a companion for school principals and education authorities who would like to stay out of court. Secondly, education authorities and education law and policy analysts will find the legal arguments of great value in how they raise the possible weaknesses in the regulatory frameworks. Moreover, the jurisprudential developments in relation to education are succinctly analysed within the broader contexts of socio economic and other rights. Thirdly, parents, teachers and learners will find the book possibly the only one available that locates everyday regulatory practices related to schooling as constitutive of a broader rights and responsibilities regime. In addition, students of education and law now have a solid basis from which to advance some central education law questions.

Though there are some gems to be found, as a synthesis the book struggles to present broad shifts in educational and legal reasoning. So the reader will wade through familiar waters but will find the interpretations more comprehensive and integrative. Apart from the standard legal renditions on an educational stage, this book contains a few solid and intellectually stimulating analyses of law and its impact on education. Its major contribution lies in its engagement with legal loose ends in education, its examination of a legally (and other) anchored quasi school market, its analysis of the equality legislation (PEPUDA) in relation to educational reasoning, and its presentation of SGBs as the “fourth tier of democratic governance”. In this process it takes a friendly swipe at a few education and legal experts but, to its credit, settles for a non ghettoised and over arching conception of “equality”.

As with most books that deal with the history of education, this one has its contradictions, most notable in its presentation of the historical context that shaped education law in post 1994 South Africa. On this score the analysis is inadequate and the authors thus struggle to link the sociology of education to that of law making. They therefore fail to give account of the disjuncture between the validity of educational norms and the facticity of education law. In essence, it fails to assess whether or not the constitutional ‘idolatry’, and the ‘impressive’ education law that it spawned, diverged substantively from the normative educational ideals of the majority of our society. This point is weakly made in relation to quasi markets in education and “democracy, social capital and school governing bodies” but it is not sufficiently emphasized. Instead, the book follows the familiar pattern of privileging the juridical form and discourse, thus setting it up as an adjudicatory frame for educational practice. The upshot of this logic is to reduce educational practice to educational law compliance.

Despite its omissions, the book's value is beyond doubt. Apart from its value for school governance, one can easily consider how this book can form the basis for educational rights monitoring or be utilised to craft indicators. Further, it can form the basis for developing or assessing South Africa's country reports as treaty obligations or assist organisations in helping people and communities exercising their educational rights. Its significance for further research is obvious; so is its merit in forming a basis for new policy developments.

The book does not address one of the major contemporary educational rights concerns, that is, the tendency of the rights language to replace the political vision of communities in relation to education with a legal arbiter to which our responsibilities have been abdicated. The challenges facing our education system might not be solved by educational rights implementation or further developments of its regulatory frame. These challenges can best be dealt with by developing educational rights as both juridical and non juridical forms so that action around educational rights can be given political content beyond its legal substance. It is about time that books on education law place themselves within the broader context of the juridification of society and reflect on their own contribution to such juridification. Without this self reflexivity, we may lose sight of the fact that the educational arena is slowly becoming a judicial landscape buttressed by an adversarial logic. Instead of legal analyses that end up supporting public deliberation and participation as a way to deal with educational challenges, we are more or less prisoners of legal analyses that call for tighter juridification which by extension builds out the adversarial logic against which we should work. The experiences of the fractured educational communities which are left behind every time education appears in the court, should be enough reason to reflect on the consequences of the juridification process.

What education in South Africa needs today is for education law experts not to confine their trade to the illumination of the law or to quibble about legal interpretations. Society will be better served by a law that is aware that its over extensions limit public deliberation and participation and in some instances contribute to the reproduction of existing educational inequalities and the creation of new ones. Stated differently, education law will do better by creating a space for authentic public participation in education rather than focusing on over regulation which tends to stupefy those it aims to benefit. This is true even in the case of SGBs as the "fourth tier of democratic governance". Books of this nature are challenged to fully embrace transdisciplinary approaches to intellectual engagement to anticipate and respond to the limits of academic endeavours that are discipline bound. Strangely, the title of the book gives one the impression of a classroom interpretation of the Constitution – the Constitution within educational practice. In the light of what has been said in this review, *Education in the Courtroom* rather than *the Constitution in the Classroom* would be a more appropriate title for this book.

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