

Suid-Afrikaanse Onderwysersunie (SAOU)

Discipline and Violence in Schools – Saturday 26 July 2014 09h00

Claiming back the school – a constitutional perspective on discipline in schools

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The Constitution signalled a break from South Africa’s past into a new constitutional order: one that is founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms.

At the very core of the Constitution’s new approach is the value of human dignity. And unsurprisingly so, when we recall that apartheid systematically denied the inherent dignity and worth of the vast majority of the population.

S v Williams concerned the constitutionality of juvenile whipping as a punishment for certain crimes. The Constitutional Court remarked that respect for human dignity is one of the values that are the “guiding light for civilised societies”, where it is accepted that even the “vilest criminal remains a human being possessed of common human dignity”.

That judgment noted that it would be reasonable to regard the State as being foremost in upholding Constitutional values. But it is not only the State who bears this duty. The radical and energising innovation of our Constitution is that it places *all* relations of power within a constitutional framework.

So the conduct of government, corporations, prisons, private persons and schools are all subject to the Constitution. This means that the Constitution requires us to look with new eyes at the way we relate to people. And when we do so, our view must be coloured by the Constitution’s founding values: human dignity, equality and freedom.

We have to keep this in mind when addressing the pressing question of maintaining discipline in schools. Complex power relations are inherent in the school environment. Teaching is an almost necessarily hierarchical activity. Knowledge is shared between two people, one of whom is more senior and experienced and more knowledgeable than the other. Teachers are overwhelmingly in a position of authority over learners.

¹ I am greatly indebted to my law clerk Chereese Thakur for preparing a thorough first draft of this talk.

On the other hand, teachers are tasked with maintaining order over ever-increasing class numbers. They are called upon to manage learners from vastly different backgrounds, some of whom have been exposed to violence in their homes and their neighbourhoods. They have to block insidious social ills such as drug abuse from creeping into the classroom. Technological advances – generally lauded for opening up access to information – may add to problems of discipline when they make bullying easier and more difficult to detect.

But there are other reasons that it is important that discipline in schools is maintained. Teaching resources are scarce. To maximise teacher output and productivity there has to be order, which is the product of discipline. Simply put, a disciplined environment is one that is beneficial to learning. Valuable teaching time is lost when a teacher has to quieten a class, manage an unruly learner or engage in disciplinary processes. Healthy discipline and order allow that time to instead be used profitably. A teacher may choose to use the time to expand on material or simply to give more individualised attention. Discipline is a key factor in the optimisation of teacher resources.

Discipline is also necessary to respect the rights of other learners. The Constitution provides that *everyone* has the right to a basic education. This includes obedient and untroublesome learners. They have this right too.

Realising this right requires acknowledging that it includes a complex mix of factors that go beyond school books and pencils. Children need an environment that facilitates learning. Educators are at the forefront of ensuring that this right is upheld for them. If children are absent from school because of violence and intimidation, this prevents fulfilment and enjoyment of this right for them. Discipline has a key role to play.

A safe school environment that is conducive to learning also gives effect to section 28(2) of the Constitution, which provides that a child's best interests are of paramount importance in all matters concerning the child.

Another value of discipline is that it teaches the life-long habits of restraint, containment, and the postponement of gratification. The interests of children include subjecting them to a system of rules. The Court, in the *Pillay* judgment, acknowledged that rules promote an important sense of discipline in children and prepare them for the real world which contains even more rules than the schoolyard. Discipline therefore serves an educative function as well.

The question of discipline in schools has faced constitutional scrutiny before. In the year 2000, the Constitutional Court heard *Christian Education South Africa v Minister of Education*. The appellant was an association of independent Christian schools in South Africa, established to provide to learners an environment in keeping with their Christian faith. An integral part of this was the ability to administer corporal punishment to learners. It averred that the prohibition on corporal punishment in schools in the South African Schools Act invaded parents' rights to freely practise their religion and cultural life.

The appellant cited verses from scripture in support of its view. Corporal punishment, it said, was vital to raise children in the manner prescribed by the Bible. They also believed that by delegating their authority to administer punishment to teachers, they continued to comply with their biblical responsibility to discipline and train their children.

The case involved conflicting constitutional values. On the one hand, at stake was a constitutionally-protected freedom that is essential to the inner life of religious people. On the other, was the State-led project to prohibit violence in schools – notably, violence sanctioned by the State itself.

Justice Albie Sachs wrote for a unanimous court. His judgment noted that the case involved a multiplicity of intersecting constitutional values and interests – some overlapping, some competing. These included the parents' rights to order their lives and their communities according to their religious beliefs. The child – who is also a member of those religious communities – has rights to the protections afforded by the Constitution: the protection of her dignity, to freedom and security of the person and to have her best interests considered of paramount importance. Added to this were the interests of society at large in reducing violence and protecting children from harm.

In considering the parents' rights to freedom of religion and cultural life, the Court reiterated that the Constitution and the Bill of Rights are supreme: The Constitution expressly provides that the right of a cultural or religious community to enjoy their culture and practise their religion may not be exercised in a manner that is inconsistent with the Bill of Rights.

The Court ultimately concluded that the prohibition on corporal punishment in schools was reasonable and justifiable in a society based on human dignity, equality and freedom. The prohibition formed part of a national programme to transform the education system in order to bring it in line with the Constitution. A coherent and principled system of discipline is integral to educational development.

The Court also took into account the State's constitutional duty to take steps to reduce violence in society and to protect persons – particularly children – against maltreatment, abuse or degradation. The right to freedom and security of the person, including the right to be free from all forms of violence, whether from public or private sources; and the right to bodily and psychological integrity, are additional to the right not to be punished in a cruel, inhuman or degrading way. They are not a substitute.

And violence begets violence.

A distinction must be drawn between corporal punishment in the home and that in schools. The latter is what is called a “detached and institutional” environment. Context demands that we consider that South Africa's past includes the use of force to meet protesting students. This is a further factor against allowing corporal punishment.

All this is exacerbated by the wholesale spectre of child abuse – a persistent scourge that makes violence all too real for too many children.

The ban on corporal punishment was thus much more than a reform of disciplinary conduct – it had a principled and symbolic function, intended to promote respect for the dignity and physical and emotional integrity of all children. Viewed through a constitutional lens, corporal punishment administered by schools could not be accepted.

From this, we may ask - where does discipline come from if not from corporal punishment? How can children be made to modify their behaviour in schools to the benefit of themselves, their fellow learners and educators?

To me, discipline can be said to stem from authority of the educator, backed by a supportive institutional framework and power.

Where does authority come from? It comes from inherent stature. By this, I mean stature rooted in experience, knowledge and teacher's own power and dignity.

As I have mentioned, teachers are in a position of immense authority over learners, but that authority is never properly exercised through corporal punishment. Power exercised from fear produces mistrust and resentment. Authority borne of stature has as its product respect and mutual understanding.

It is obvious, and I need not tell anyone present this – all teachers should aim to apply this the insight that punishment to achieve discipline should be fair. It should seek to educate the learner

as to how she has transgressed and why she should not do so again. In so doing, the dignity of the learner is respected, even as she is being punished.

That said, the nature of the problem of the lack of discipline is clearly far too complex to expect teachers to handle alone. The reality is that even the most respected and admired educator is vulnerable to violent attacks by learners. Therefore, the educator's authority cannot derive from stature alone. It must come also from institutional support and backing. Teachers should be able to rely on their schools, school governing bodies and, most important of all, their department for support.

Teachers are supported when disciplinary processes are speedy, clear, fair, and directed towards validating and reinforcing the teacher's authority in the classroom. While procedural protections for learners are an important component of fairness, they should not render disciplinary processes incapacitated and cumbersome. To do so is counterproductive: tying teachers in excessive process strips them of their authority.

This said, ensuring fair process in disciplinary action against students does not mean that students are granted more rights than teachers or other students. The Constitution acknowledges that fairness requires that *both* sides be heard in a dispute. The challenge is to develop a streamlined yet robust disciplinary procedure that ensures fairness to all parties.

The important thing is that processes should be speedy and efficient. One of the burdens of our post-constitutional ethos is that process all too often becomes mired in inefficiency, bad faith points-taking, and lack of will to push through.

What, then, does the Constitution demand of the means chosen to achieve discipline in schools?

- First, the upholding of the founding values in the Constitution.
- Second, respect for the rights in the Bill of Rights – rights that ensure dignity, bodily integrity and the paramountcy of the child's best interests.
- The means chosen should not obstruct the achievement of the right to education.
- There should be a coherent system of rules in place.
- Disciplinary processes should be imbued with procedural fairness, including the principle that the other side should be heard.
- And wise, enlightened and efficient departmental support should be a given.

Maintaining discipline in schools is essential for a functioning school environment that is effective in achieving the aims of the broader constitutional project.

The preamble to the Constitution provides that “We the people recognise the injustices of the past”. A most grave injustice perpetrated by the undemocratic apartheid government was the creation and propagation of an unequal and deeply divisive education system that awarded privileges based on skin colour. Schools today are left with the legacy of these policies, facing severe infrastructural and resource constraints.

And more so, twenty years after democracy, it would be idealistic to presume that the psychological scars of apartheid have fully healed, or that they have not been shared with younger generations who are too young to have lived under apartheid themselves.

But how does this bear on discipline in schools? We should consider that the character of indiscipline and violence in schools is complex and difficult to pin down. There is reason to draw links to the injustices of the past. We must place the issue in its appropriate context. And, in moving forward, we must seek out solutions that are rooted in the values espoused in the Constitution.

The Constitution does not provide answers as to how to “claim back” schools from the grip of disorder and violence. It is rather the lens through which we look for solutions. It directs us towards good ones and filters out those which are harmful and unsound. It facilitates clarity of purpose: to seek out ways to effectively apply discipline in schools in a way that upholds the rights of learners and educators, and above all, the constitutional values of human dignity, equality and freedom.