

Acknowledgments

When I started my Master's studies in 2017 at the Centre for Human Rights, University of Pretoria, I was struck by the centrality of judicial precedent in the legal reasoning and argumentation of my fellow students. What further impressed me was the almost reverential treatment of courts and tribunals as instruments of social change and as bulwarks against tyranny and lawlessness. The emphasis placed on public interest litigation as a strategic tool to give effect to fundamental rights was equally revealing. As a young legal scholar trained in a civil law tradition, this orientation was entirely new to me. It was only upon our engagement with the South African Bill of Rights and the jurisprudence of the South African Constitutional Court that I fully grasped the extent to which apex constitutional jurisdictions could function as more than mere technical expounders of (constitutional) law.

This exposure led me to a series of questions that would guide my doctoral research: whether, and to what extent, apex constitutional jurisdictions in the Francophone world participate in the broader transformative constitutional project ushered in by Africa's third wave of democratisation; whether the revolution of rights has lived up to its emancipatory promises; and whether, through comparative engagement, these courts might learn from each other to strengthen the protection of fundamental rights.

My inquiry proceeded from the assumption that the constitutionalisation of rights and the empowerment of constitutional courts to protect them should not be understood as mere technical exercises. Rather, they were conceived as normative and institutional mechanisms intended to transform lives, reshape political and legal practices, embed universal values of human rights, democracy, and good governance in domestic constitutional orders, and place effective constraints on the exercise of political power. In this transformative vision, constitutional judges are not passive interpreters but active agents of change, institutions that recognise, support, and protect fundamental rights, and that hold violators accountable. The post-1990 constitutional revolution imagined constitutional judges as agents, and indeed, as servants, of democratic and constitutional transformation.

This conception may seem radical, even sacrilegious, to many legal scholars in particular those trained in traditional civil law countries. Yet, it is this theoretical framework that underpins the present work, as it did for my doctoral project. Regardless of the legal tradition to which they belong, constitutional jurisdictions must deploy their interpretive authority to promote a culture of human rights and fundamental freedoms.

This book aims to bring to the fore the experience of three African constitutional jurisdictions in interpreting fundamental rights and freedoms, a subject that remains underexplored in both French and English legal and constitutional scholarship. In particular, comparative studies that systematically examine their approaches and draw meaningful conclusions are rare. To the best of my knowledge, this is the first academic work to undertake a comprehensive comparison of the human rights jurisprudence of African constitutional courts operating within the common law and civil law traditions. Adopting an instrumentalist view of constitutional interpretation, I argue that the Constitutional Courts of Benin, the Democratic Republic of Congo and South Africa are not merely capable of adjudicating constitutional or human rights matters; they are uniquely positioned to serve as transformative institutions.

Observing a lack of rigorous engagement with Francophone constitutional jurisprudence, I present in this book the work of two civil law constitutional courts which I compare and contrast with the South African Constitutional Court. This book will ultimately serve as a point of departure for common law scholars in Africa seeking to understand and appreciate the rich human rights jurisprudence emerging from civil law traditions. This objective accounts for the descriptive emphasis in the initial chapters, prior to embarking on comparative analysis. It is essential that readers unfamiliar with the jurisprudence of these courts grasp the substance of cases that are typically excluded from comparative discourse.

Comparative constitutional adjudication risks becoming irrelevant or skewed if constitutional jurisdictions are treated as equally represented in the literature when in fact some have received disproportionately greater scholarly attention. Although this study does not address the full range of fundamental rights, one of my greatest regrets being the exclusion of socio-economic rights, due largely to the paucity of relevant comparative jurisprudence in civil law

countries, I hope that this book may serve as a foundation for future critical engagement with African constitutional jurisdictions and their contribution to human rights in Africa.

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