

UBUNTU AND THE LAW IN SOUTH AFRICA

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Summary

The new constitutional dispensation, like the idea of freedom in South Africa, is also not free of scepticism. Many a time when crime and criminal activity are rife, sceptics would lament the absence of ubuntu in society and attribute this absence to what they view as the permissiveness which is said to have been brought about by the Constitution with its entrenched Bill of Rights.

Firstly, I would like to take this opportunity and (attempt to) demonstrate the irony that the absence of the values of ubuntu in society that people often lament about and attribute to the existence of the Constitution with its demands for respect for human rights when crime becomes rife, are the very same values that the Constitution in general and the Bill of Rights in particular aim to inculcate in our society.

Secondly, against the background of the call for an African renaissance that has now become topical globally, I would like to demonstrate the potential that traditional African values of ubuntu have for influencing the development of a new South African law and jurisprudence.

The concept ubuntu, like many African concepts, is not easily definable. In an attempt to define it, the concept has generally been described as a world-view of African societies and a determining factor in the formation of perceptions which influence social conduct. It has also been described as a philosophy of life.

Much as South Africa is a multicultural society, indigenous law has not featured in the mainstream of South African jurisprudence. Without a doubt, some aspects or values of ubuntu are universally inherent to South Africa's multi cultures.

The values of ubuntu are therefore an integral part of that value system which had been established by the Interim Constitution.

The founding values of the democracy established by this new Constitution arguably coincide with some key values of ubuntu(ism).

Ubuntu(-ism), which is central to age-old African custom and tradition however, abounds with values and ideas which have the potential of shaping not only current indigenous law institutions, but South African jurisprudence as a whole.

Ubuntu can therefore become central to a new South African jurisprudence and to the revival of sustainable African values as part of the broader process of the African renaissance.