

**LESSONS FROM SOUTH AFRICA’S NEW DEMOCRACY:  
THE 1996 CONSTITUTION  
By Wendy Ewbank**

“The sacred rights of mankind are not to be rummaged for, among old parchments or rusty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of divinity itself; and can never be erased or obscured by mortal power.”

Alexander Hamilton (1775)

**Suggested Grade Levels:** 8 – 12

**For Use in secondary courses including:** high school civics, contemporary world problems, law, U.S. government, world cultures.

These lessons compare/contrast the South African and United States Constitutions. Students should ideally be familiar with the U.S. constitution-making process, and its fundamental principles and structure.

It is assumed that students will have some background knowledge of the recent history of South Africa (apartheid and its end). This is critical as students will need to know what motivated the behaviors of involved parties in the constitution-making process. Students should also be familiar with the basic structure of the United States government.

If students need background information on apartheid South Africa, Nelson Mandela’s autobiography (*Long Walk to Freedom*), the documentary *Long Night’s Journey Into Day*, and the feature film *Cry Freedom* are a starting point. The World Affairs Council is also publishing a series of lesson plans for teaching about South Africa in Spring of 2002.

**Rationale for teaching the unit**

The activities described will deepen students’ understanding of the United States Constitution - its foundation and enduring principles - as well as introduce them to the 1996 South African Constitution. They will contemplate what a constitution really is, and what it can mean to a nation. They will appreciate the vitality of constitutions as living documents that change over time as high courts interpret their meaning. Students will analyze political concepts like constitutional supremacy, proportional representation and tyranny of the majority. They’ll also grapple with social issues like gender equity, affirmative action, and laws that enable race discrimination.

Unlike the framing of the American Constitution, the South African Constitution was the product of an entire (and deeply divided) country’s involvement. Far from being held behind closed doors, their constitutional convention involved many months of town meetings, radio debates, written suggestions from individuals and political party representatives from all walks of life. A very transparent process yielded the most comprehensive human rights oriented constitution in the contemporary world.

Students will benefit not only from strengthening their understanding of the United States Constitution (by comparing key aspects to South Africa’s); they will learn about a peaceful power transition that emphasized reconciliation over revenge, inclusion over

ostracism, and the rule of law over tyranny of the majority. The new (albeit fragile) government of South Africa is nothing less than a miracle worth studying and duplicating.

### **Assessments**

There are several formative assessments, including worksheets (to be filled out while absorbing new material from readings and documents in lessons 1 and 2). Summative assessments include a group presentation (with oral and written components) and a discussion score as part of a constitutional convention (lesson 3).

### **Approach Used:**

To understand the constitution-making process used in both South Africa and the United States, a variety of teaching strategies is used, requiring students to:

- Examine primary documents
- Compare and contrast significant features of constitutions
- Analyze the importance of texts to the people who created them and who will live by them
- Analyze and evaluate multiple perspectives
- Support a position with logic and evidence
- Engage in discussion of controversial issues
- Collaborate with peers to reach consensus
- Explore alternative approaches to a problem
- Make informed choices
- Develop and articulate original opinions and conclusions
- Reflect on personal values and priorities surrounding an issue
- Communicate effectively in oral and written formats

### **Inquiry Based**

A central question is addressed in this unit, and should be contemplated throughout:  
*How do constitutions reflect the people who made them and the pasts that shaped them?*

(Lesson-specific questions are on the following page.)

### **Content and Organization**

The unit is organized as follows:

1. At-A-Glance overview of lessons plans
2. Related Vocabulary
3. Detailed lesson plans with Teacher Background as needed
4. Student Handouts (following each lesson)
5. Extension ideas
6. Appendix (with additional resources and bibliography)
7. NCSS Standards addressed in the unit

**Materials:** All student readings and worksheets are included (except for copies of the U.S. Constitution and full South African Constitution) Supplemental handouts are in the appendix. Questions raised by the worksheets are good starting points for whole class discussions, as well as cooperative groups.

The 1996 South African Constitution is available at:  
[www.polity.org.za/govdocs/constitution/saconst.html](http://www.polity.org.za/govdocs/constitution/saconst.html)

**Time required:**

Lessons 1 and 2: at least two 50-minute periods or one 90-minute period.  
Lesson 3: five 50-minute periods (or 3 block periods).

### **The Unit “At A Glance”**

**Lesson 1 Answers the questions: What key principles shaped the constitution?  
How are those principles revealed in the structure of the new government?**

This lesson will acquaint students with the basic structure of the 1996 South African Constitution. Students will also review foundational principles of the United States Constitution, and will compare the two documents in terms of: the members of constitutional conventions, the guiding ideas revealed in the preambles, the division of powers into three branches, the differences in representative government mechanisms, and some key differences in election of leaders and the separation of church and state. Students will read background information, participate in a whole class discussion, and work in small groups or individually to complete worksheets comparing the two constitutions.

**Lesson 2 Answers the questions: What is a right?  
How does each country’s constitution protect the rights of its citizens?**

Students will critically analyze the specific rights included in the Bill of Rights for South Africa and the United States, and United Nations Declarations on children, women and general human rights. After going over different classifications of rights (social, civil, political, economic, etc.) as a class, students will work individually or in pairs to classify rights in the two constitutions, and to consider which constitution more fully complies with U.N. declarations. In small groups, students will then discuss the implications of each country’s inclusion or omission of certain rights. Each group will record their thoughts and be prepared to discuss insights as a class.

### **Lesson 3**

#### **Answers the question: How did multiple parties in South Africa decide on key aspects of their government?**

Students will role-play as delegates to the South African Constitutional Convention. They will be given roles that reflect the real-life make-up of the political parties who were represented (making most students members of the African National Congress). Students will read background information on the constitution-making process in South Africa, as well as background on three key issues before this convention: women's rights in traditional societies, affirmative action, and representation in the new government (how the majority will balance minority rights and concerns). Members of each political party will prepare a press release or public service announcement, as well as a brief speech for an audience of fellow delegates. The entire group will then reach consensus about how to grapple with these three contentious issues (which actually came up during the real constitutional process in S.A.). In conclusion, teachers will re-visit some of the "big questions" posed by this unit, and will share with students the actual outcomes of the parties (reflecting compromise as well as majority rule).

### **Lesson 4**

#### **Answers the question: What is the role of the Constitutional Court in interpreting constitutionally protected rights?**

Students will work in teams of 8 – 10 (roughly dividing the class in thirds) to assume the roles of justices on South Africa's Constitutional Court. (At this point, they should have acquired some background info on the Court in Lesson 1.) Handouts will pose various scenarios (based on actual cases) and students will have to render a decision, based on their interpretation of the South African Bill of Rights as well as logic and reasoning. They are NOT to base their judgments on American norms. Each group will record a summary of their reasoning, and be prepared to share with the class.

### **Lesson 5**

#### **Answers the question: Should the death penalty be constitutionally protected?**

Students will be divided into thirds, for a simulation involving three countries: South Africa, the United States and Afghanistan (which is in the process of writing their own Bill of Rights for a new constitution). At issue is whether the death penalty should be constitutionally protected. All students who are "ones" will familiarize themselves with and promote the views of South Africa's Constitutional Court, all who are "twos" will familiarize themselves with the position of the U.S. Supreme Court, and all "threes" will devise questions to help determine which viewpoint they will advocate. Each group will be given a page of background information; in the case of Afghanistan, they will learn about the issue in general, and may read excerpts from court decisions in other countries. After working in large groups on their statements, all students will be placed in triads, and ones and twos will present their positions while threes will follow with questions. In the end, representatives from Afghanistan will report out their decision and the most compelling argument(s) they heard.

This activity will be followed by a homework assignment which asks kids to articulate their personal opinions on this issue in either a persuasive essay, editorial or political cartoon.

### **Lesson 6**

**Answers the question: What is the ideal form of constitutional democracy?**

Students will reflect on the salient features of the South African and United States constitutions, and will describe their strengths and weaknesses as a way to clarify their own impressions. Based on class discussion (perhaps playing the roles of the founders of each constitution), students will be asked to form original conclusions about what constitutional features are most essential to a democratic form of government. They may submit these conclusions orally or in writing.

### *Related Vocabulary*

**Constitution** = the body of rules that form the structure of the government, the relationships between its organs, their essential functions and the relationship between the individual and the state.

**Federalism** = sharing of powers between the federal government and states or provinces.

**Authoritarian** = when political power is concentrated in very few hands, and those in power are not accountable to the people. Very few political freedoms are allowed.

**Capitalism** = an economic system where the production and distribution of goods is controlled by private individuals and companies. Prices of goods are based on competition among the various businesses.

**Socialism** = a political ideology with the goal of achieving equality and whose principal means is state control of all important economic activity.

**Nationalism** = the belief that one's own nation will benefit from acting independently, rather than in coordination with other nations. Nationalists are devoted to their culture and interests.

**Liberal Democracy** = a representative democracy which involves a number of different political parties, regular elections and a commitment to civil rights.

**Civility** = self restraint, respect for others' rights, recognition of rules of conduct.

**Fundamentalism** = a belief, in any religion, that basic religious texts are sacred and must not be challenged.

**World Economy** = a global system of making, buying, selling, trading, bargaining, lending and investing, in which governments, banks, corporations, trade unions and international organizations – as well as individuals – compete with one another for profit and other forms of advantage. Wealthy, developed, industrialized countries have a stronger position in the world economy.

**Rule of Law** = a system of rules that applies to all members of society, made by authorized legislative bodies acting on behalf of the entire community. Rules reflect the prevailing views of justice held by that community and cannot be arbitrary or discriminatory. Laws are consistent, and above the interests of particular groups or individuals.

**Independent Judiciary** = judiciary that applies laws impartially, without fear or prejudice.

**Constitutional Supremacy** = a government in which the constitution is the supreme law of the land, as opposed to parliamentary supremacy in which the parliament holds the most power.

**Affirmative Action** = Action taken by government or private business to make up for past discrimination in education, work, and promotion against women and those of specific races, ethnic groups, religions or disabilities.

**Polygamy** = a practice of having more than one husband or wife (in S. Africa, multiple wives).

## **LESSON 1 A CONSTITUTIONAL COMPARISON**

**Objectives:** Students will

- Explain how constitutions embody core values and principles of the people who write them
- Compare and contrast key aspects of the United States and South African constitutions
- Articulate the functions of Bills of Rights (as they help define a relationship between people and their government) using South Africa and the United States as examples.
- Think critically about how citizens' needs are met in representative governments.

**Time required:** A minimum of two block periods (90 minutes each) or three to five 50-minute periods (depending on the amount of discussion desired and whether a Socratic discussion is used to analyze the two preambles).

**Materials: Overheads** (in appendix, including: a quote from the Constitutional court, a Timeline of South Africa's constitution-making process, and Key differences between the U.S. and South African constitutions) **student copies of the reading:** Basics on the South African Constitution (Handout 1.1) and worksheets 1.2 and 1.3.

### **Opening**

Share with the class on an overhead (master in appendix) the following quote (issued by the Constitutional Court in reference to the Interim Constitution):

*“The foundational concern of the constitution is to form a bridge between an unjust, undemocratic and closed system of the past, and a future concerned with openness, democratic principles, human rights, reconciliation, reconstruction and peaceful coexistence between people of the country. If the constitution is to fulfill its stated purpose it must be interpreted in such a manner to give clear expression to the values it seeks to nurture for a future South Africa, but this should be done in a way which makes it a living document for all the citizens of the country.”*

Ask students to reflect on:

Who needed to reconcile? Can a constitution – a blueprint for a government – actually facilitate reconciliation? Peaceful coexistence?

How was the “foundational concern” of South Africans different from the founding principles of the U.S. Constitution? How were the priorities of the two groups similar?

What do you think the court meant by a “living document?” Why might this be important?

### **Body of the Lesson**

Distribute copies of **Basics on the South African Constitution**, which outlines the milestones in creating the 1996 Constitution and some core ideas.

Included in this reading are the **Preambles to the South African and United States Constitutions**.

*It may be worthwhile to take an extra class period to conduct a Socratic Discussion using the two preambles as texts.*

After hearing their observations, point out to students that the South African Preamble contains **4 themes** (which may not be self evident):

- 1) healing the divisions of the past
- 2) creating a new order and an open society
- 3) improving the quality of life of all citizens
- 4) building a united and democratic South Africa.

These themes are not explicitly stated, but are clearly implied in the text.

Now, working in teams, students will be asked to compare the U.S. Constitution to South Africa's, just in terms of the core ideas mentioned (in handout 1.1), and to complete worksheets 1.2 and 1.3. The questions in worksheet 1.2 can initiate a meaningful whole class discussion, and will assist all students in comprehending the sophisticated material.

**Conclusion:** In a wrap-up discussion, ask students to think about the last presidential election, or student council election. Did party platform matter more or did candidates' individual appeal win votes?

Why does it matter? What are the advantages and disadvantages of voting for parties instead of individuals?

Also ask students to think again to the founding conventions for the two constitutions – one, an exclusive, secretive gathering of influential white men; the other, a large, very public series of meetings over two years that included as many ideas as people from all segments of the society wanted to contribute. What key differences in the two documents would they expect to emerge?

## **Background Information for Teachers:**

### Legal Separateness

Under the nationalist, apartheid constitution, political rights did not exist for black South Africans. Beginning particularly with the Population Registration Act of 1950, all South Africans were grouped into one of four racial categories: whites, Indians, \*coloureds, and blacks. This led to the Group Areas Act in that same year, which divided all urban areas into racial zones and only permitted Africans to pass through white areas for employment. The law defined black areas as alien communities or homelands. Those black homelands were not considered part of South Africa, so their inhabitants were not considered legal citizens. (Thus, blacks lacked all of the rights and privileges of citizenship.) Being white in South Africa meant receiving the protection and services of the government while paying for it by taxing others.

It is interesting to note that this legal construction of separateness is not unique to South Africa. In the United States, the Supreme Court's Dred Scott decision ruled that people of African descent lacked citizenship rights. Then as southern states enacted Jim Crow laws beginning in the 1890s, blacks were treated as legally inferior under the law, undoing the civil rights gains made just after the Civil War. On an even greater scale, the United States only allowed whites to be naturalized as U.S. citizens from post Civil War Reconstruction until the mid 20<sup>th</sup> century. Only in 1952 was citizenship "de-racialized."

There is an important difference between the experiences of black South Africans and African Americans. Africans in colonial South Africa were objects of conquest, but managed to keep their numerical superiority and some aspects of autonomy (for example, tribal customs). In this way, they were more comparable to Native Americans than African Americans (except the former were largely annihilated due to contact with Europeans).

### Recent Developments

Since the fall of apartheid, there have been substantial continuities between the old regime and the new democratic leadership; this was symbolized in the Government of National Unity (GNU) between the National (apartheid party) and the ANC. The ANC (African National Congress) is an umbrella movement, a coalition of varied stakeholders who share a vision of nation building, African liberation, and empowerment.

The Mandela government faced huge challenges in its first years in power. No member of the ANC had ever before participated in governing a country and had to learn - actually to re-create - their jobs from scratch. The legacy of the past had to be put to rest, and the way government served people be entirely re-structured. The government inherited an economy weakened by a decade of international isolation and divestment; there were enormous disparities in government spending based on race classifications; there was widespread poverty, unemployment, and violent crime. The majority of people were under-skilled due to discriminatory education practices for decades. Private enterprise and a free market philosophy were rampant, so the new government had to contend with a demanding business community - both at home and abroad. Mandela's

cabinet had to balance the need to satisfy its poor black constituency with the interests of businesses whose investment in South Africa were sorely needed.

One of the ways the new government has addressed its long history of discrimination is to embrace **affirmative action**. The constitution implies that unfair discrimination is unconstitutional, but that fair discrimination is just. Race and gender are both mentioned in the constitution as grounds on which no one is allowed to discriminate. Students will probably point out that this is exactly what affirmative action does. Note that the topic **will be further explored in Lesson 3**.

\* **Coloureds** were people who were not white or native. White people were defined as “a person who in appearance obviously is, or who is generally accepted as, a white person.” To resolve doubtful cases officials used a “pencil in hair” test. (If a pencil placed in the hair remained, it signified kroes (frizzy hair), and classified the individual as being Coloured or African Black. If the pencil fell out, the hair was deemed straight and the person was classified as Coloured or White.) Coloured persons were **further defined as being Cape Coloured, Cape Malay, Griqua, Indian, Chinese and other Asiatic and other Coloured**.

## Basics on the South Africa and its New Constitution      Handout 1.1

### Brief Background on South Africa

Apartheid was an attempt to make race the defining factor in all questions of rights and relationships. The country created wealth by exploiting people, and mineral resources (especially gold). This newly acquired wealth enabled the apartheid government to create a strong enough economic base to gain independence from Britain (the colonial ruler). Whites in power began to repress the black majority on an unprecedented scale. They did so until 1990, when the African National Congress was unbanned after 30 years. (70 other political organizations were likewise legalized again.) Nelson Mandela was released from 27 years' imprisonment. (He was given a life sentence in 1964 for "terrorist activities.") Mandela would become the first democratically elected leader of a new South Africa that included all peoples.

### Constitution-Making

It is important to begin with a basic understanding of what a constitution is: a blueprint for a government, which outlines 1) the institutions through which a country will be governed and 2) how powers of those governing will be distributed and separated. Even a government that is fairly and freely elected should conform to constitutional principles which are more enduring than temporary wishes of men and women.

Because of South Africa's suffering under the apartheid system, the goals of their constitution were somewhat different from the goals of the United States' founders. Delegates to the U.S. Constitutional Convention (all of them white, male property-owners) were trying to unite strong-willed states in a system that would create stability and cohesion; they also wanted to protect private property and liberty. The numerous contributors to South Africa's final constitution wanted to include (and get "buy-in" from) all segments of the diverse population, to heal the divisions of the past, and to build a unified country that improved the quality of life for all people.

**As you learn more, think about how the presence or absence of key voices (ie: women and minorities) changed the priorities and key ideas in the two constitutions.**

**Compare the preambles of the two constitutions below:**

*We, the people of South Africa,  
Recognize the injustices of our past;  
Honor those who suffered for justice and freedom in our land;  
Respect those who have worked to build and develop our country; and  
Believe that South Africa belongs to all who live in it, united in our diversity.  
We therefore, through our freely elected representatives, adopt this Constitution as the  
supreme law of the Republic so as to  
Heal the divisions of the past and establish a society based on democratic values, social  
justice and fundamental human rights;  
Lay the foundations for a democratic and open society in which government is based on  
the will of the people and every citizen is equally protected by law;  
Improve the quality of life of all citizens and free the potential of each person; and  
Build a united and democratic South Africa able to take its rightful place as a sovereign  
state in the family of nations.  
May God protect our people.  
Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.  
God seNn Suid-Afrika. God bless South Africa.*

Preamble to South Africa's 1996 Constitution

*We the people of the United States, in order to form a more perfect Union, establish  
Justice, insure domestic tranquility, provide for the common Defense, promote the  
general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do  
ordain and establish this Constitution for the United States of America.*

Preamble to the United States Constitution, 1787

It's important to know that legislatures pass preambles separately from their constitutions, and that **studying a nation's preamble gives us clues about the mindsets of the founders and the wrongs they sought to address.**

### Key Traits of the New Constitution

The primary goal of the new constitution was to transform South Africa into a united, **non-racial, non-sexist and democratic country**. The following values are evident in the preamble and especially Section 1 of the Constitution:

- Human dignity, the achievement of equality and advancement of human rights and freedoms
- Supremacy of the Constitution and the rule of law
- Universal adult suffrage, free and fair elections, and a multi-party system of democratic government to ensure accountability, responsiveness and openness.

The Constitution brings an end to the apartheid era system of black “homelands.” Those homelands were literally considered “alien areas,” meaning the undesirable patches of land were not considered part of South Africa, and their inhabitants were not really South Africans. Since blacks weren’t legal citizens, they lacked constitutional rights. The white minority ran the government in a system that made parliament all-powerful, with unlimited powers to legislate unfair laws. (Parliament was supreme, above even the constitution.) While the black majority now governs, they must obey the basic principles spelled out in the Constitution. Thus, they must respect the fundamental rights of everyone in society.

Like the United States, South Africa’s Constitution guarantees equal protection under the laws, meaning no one can be unfairly discriminated against. This was such a priority for South Africans who had been oppressed that they made certain provisions of their constitution “off limits” – in other words, legally unalterable. A set of constitutional principles are contained in their Interim Constitution of 1993; these were cast in stone for the period of its operation from 1993 – 1996, when the present constitution was signed by President Mandela December 10, 1996. The 1996 Constitution had to be compatible with the constitutional principles as well. Those principles commit the country to observe fundamental human rights, to achieve equality between men and women and people of all races, to reflect a separation of powers between three branches of government, and to recognize and protect the diversity of languages and cultures that are South Africa.

In the current South African Bill of Rights, there is a long list of fundamental rights which must be respected, including: the right to life, dignity, freedom and security of the person, freedom from servitude and forced labor, privacy, freedom of religion, speech, etc. In fact, the rights enumerated [spelled out] in South Africa's Constitution go far beyond those included in the U.S. Bill of Rights. While ours are primarily civil and political rights, South Africa's Constitution guarantees many social, economic, cultural and environmental rights as well. Whether these rights will be fulfilled for the population will remain to be seen.

The governments of South Africa and the United States are separated into three branches: executive, legislative and judicial. Both systems contain aspects of a federal system of government. In a federal system, powers of the regions (states in the United States, provinces in South Africa) are entrenched in the Constitution and cannot be taken away by the national government. Powers are divided between a central government and regional units under an overarching system that allows each to maintain some autonomy (self rule). However, when a state's or province's laws come into conflict with the national government, the national (or federal) government overrules the regional law.

### **Some unique aspects of the South African Constitution**

**(To compare the to the United States, you'll need a copy of the U.S. Constitution.)**

To begin, we need to think about where South Africa was coming from. In the latter part of the 20<sup>th</sup> century religious leaders and communities played a central role in easing the nonviolent transition from apartheid rule to democracy, and to begin reconciliation among various groups. Desmond Tutu (winner of the Nobel Peace Prize) was especially influential. Many religious leaders were also involved in the liberation movement.

Perhaps because of this, there was an expectation that the new government would incorporate some of the ideals expressed by these leaders. The South African constitution does not create a Jeffersonian "wall of separation" like the United States. Instead, the preamble itself has references to God, and religious services can be conducted at state institutions. In fact, there are no clauses that prevent the government

from considering religious views in making laws - or even from establishing a religion - as long as it does so in a way that upholds dignity, equality and freedom.

Like the United States, South Africa has three branches of government, each with independent jobs and the ability to prevent the other branches from abusing their power. This **separation of powers** is broken down as follows.

#### Making the Laws

Like the United States, South Africa's legislative branch is divided into two houses of congress. The first house, the **National Assembly** (or parliament), is made up of a minimum of 350 and maximum of 400 members of parliament (MPs) and is based on **proportional representation**. What this means is that citizens vote for the party they like, not the person they like. Each party selects its own candidates for parliament. Thus, it is much more important that voters understand what the party stands for than who individual candidates are. MPs don't represent a specific geographic region or constituency. And MPs are not allowed to change parties during their term of office. (To do so would mean losing their seats!) Minority parties can win seats in parliament even if they don't have enough support to win any one region, as long as they have enough voters in the entire country who support them. Every minority party with at least 5 percent of the votes gets representation. The majority party has the right to make decisions with a 50% plus one majority. However, when amending the Bill of Rights in any way, 75% must vote yes.

The second house of congress is the **National Council of Provinces** (NCOP), made up of ten representatives from each of the nine provinces (for a total of 90 members). Their purpose is to represent the interests of the provinces at the national level. Again, the NCOP reflects the proportion of votes each political party got in that province. (So voters are voting a party, not a person, into office.) NCOP reps only vote on those laws that affect the provinces, or on changes to the Constitution (which must be approved by six of the nine provinces).

#### Enforcing the Laws

The Constitution says there must be regular elections, and these happen on a national level every five years. The majority party in Parliament gets to select the President of South Africa, so like Parliament, he/she is not directly elected by the people.

Only MPs are eligible for election to the presidency. The president can only serve two five-year terms. He/she also has to resign if the members of the National Assembly pass a vote of no confidence (which would be a political action) or impeaches the president for criminal misconduct (which would be a legal action by 2/3 of the MPs). The powers given to the president include signing (and sometimes initiating) laws, appointing diplomats and justices, convening sessions with cabinet members, negotiating and signing international treaties.

The president cannot veto laws (refuse to accept a bill passed by both houses of parliament), but he/she can send them back if there is a question about their constitutionality. If the court rules that a bill is constitutional, the president must sign it.

### Interpreting the Laws

The judicial branch of government is a system of courts described in the Constitution as “independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favor or prejudice.” This is a big change from the past, when the courts were unable to stop the abuses of apartheid. In addition to a Supreme Court (which is the highest court of appeal) there is a specific **Constitutional Court** that is the highest authority on all constitutional matters. The Constitution created such a court for the first time, charged with ensuring that all branches of government are in line with the new constitution. This Court can declare null and void any act of government that violates the Constitution.

This permanent court of 11 justices interprets and protects the rights and values in the Constitution. All justices can serve for 12 years, but must retire at age 70. The justices are appointed by the President, after consulting with the Judicial Services Commission (who gives the president a list of names to choose from). The make-up of the court is supposed to reflect the racial and gender composition of South Africa. Its judgments, like those of the U.S. Supreme Court, often have far-reaching social and political consequences.

### Final Thoughts About Rights

The apartheid years saw great abuses of police power, so the new constitution explicitly limits what police or others can do to individuals. Citizens’ freedom and security are guarded, as they now have the right:

- A)not to be deprived of liberty arbitrarily or without just cause
- B)not to be detained without trial
- C)to be free from all forms of violence from either public or private sources
- D)not to be tortured in any way
- E)not to be treated or punished in a cruel, inhuman or degrading way

The integrity of their physical person is further upheld by the following rights to:

- A)make decisions concerning reproduction
- B)To have security and control over one's body, and
- C)not to be subjected to medical or scientific experiments without one's informed consent.

The new South African state also may not “unfairly discriminate” against anyone, but fair discrimination is permissible. In fact, affirmative action (preferential treatment given to people who have suffered discrimination in the past) is seen as necessary, even if there are negative consequences for people who have enjoyed power and privilege up to now. Policymakers (including parliament and the constitutional court) determine when discrimination is “fair” and when it is just arbitrary (illegitimate, senseless). Among the grounds on which is illegal to discriminate: race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. As far as sexual orientation is concerned, the South African Bill of Rights is the most progressive in the world. It was the first to include sexual orientation in the equality provision of its national constitution.

A final feature worth mentioning is that of environmental protection. South Africa took another bold step in guaranteeing its citizens the right to an environment that is not harmful to their health or well-being. The government is also charged with protecting the environment for the benefit of present and future generations. This means the constitution supports the notion of sustainability (conserving and preserving natural resources) and that the government must act on its duty.

It is this concept of government action that really sets apart the South African Constitution. Whereas many constitutions describe what government cannot do (in the interest of preserving people's civil liberties), this constitution outlines what the government can and must do to improve the quality of life for all Africans.

## Questions on South Africa's Constitution and Bill of Rights      Worksheet 1.2

(Write answers in complete sentences, providing as much detail as you can.)

1) In the United States, the government is prohibited from establishing any religion, or from interfering with religion. (Find those two clauses in the First Amendment.) The founders of the U.S. Constitution wanted to protect people's right to worship freely. What do you think was the goal of the founders of South Africa's new constitution, regarding religion?

2) In the United States, people often vote for candidates based on personality rather than issues. In South Africa, they vote for a political party's platform (its philosophy of government, what it wants to accomplish), rather than for individual candidates. Which system of electing leaders in government do you think is more democratic? More effective? (Explain!)

3) What could be a drawback to not allowing members of parliament to change political parties? (Could there ever be an effective opposition force to the ruling majority?)

4) During the first 200 years of the American democracy, the U.S. Supreme Court struck down 135 congressional Acts as unconstitutional. In just the first three years of South Africa's democracy, 30 parliamentary laws were declared unconstitutional. Why is this important?

5) Compare the groups who cannot be discriminated against in the U.S. Constitution with the groups protected by the South African Constitution. Why do you think there is a difference?

**Understanding Key Differences between the South African and U.S. Constitutions**  
**Worksheet 1.3**

Below, draw two large circles representing the constitutions of South Africa and the United States. Complete a Venn diagram, based on rights you've read about so far in South Africa, compared with rights spelled out in the U.S. Constitution.

**SOUTH AFRICA**

**UNITED STATES**

After reading the Preambles to the two constitutions, describe how each voices the goals of the new democracy and the wrongs it is seeking to address.

**South Africa**

**United States**

## **Lesson 2 Clarifying Rights in South Africa and the United States**

Objectives: Students will

- Identify types of rights and explain their importance
- Analyze bills of rights and classify rights by category (civil, economic, etc.)
- Describe how some rights limit what the government can do while others require an “activist” government

**Overview:** Students will analyze rights included in **five documents**

- **the United States Bill of Rights**
- **the South African Bill of Rights**
- **the United Nations Declaration of Human Rights (UDHR)**
- **the U.N. Convention on the Rights of the Child**
- **the U.N. Declaration on the Elimination of all Forms of Discrimination Against Women**

**Materials:** the three **U.N. documents** are in the appendix and **copies of Handout 2.1 and worksheets 2.2 and 2.3**. A **simplified South African Bill of Rights** is in the Appendix).

The full South African constitution is available at

[www.polity.org.za/govdocs/constitution/saconst.html](http://www.polity.org.za/govdocs/constitution/saconst.html). The Bill of Rights is contained in sections 9 – 37.

**Opening:** Let students know that South Africa’s Constitutional Assembly incorporated numerous human rights into their final document. They looked to the United States’ and other countries’ constitutions, and to United Nations Declarations concerning women and children and the U.N. Declaration of Human Rights. South Africa had already ratified these documents, but entrenching them in the constitution gives South African citizens legal recourse through the Constitutional Court if their rights are violated.

### **Body of the lesson:**

Distribute the five documents, and handout 2.1. Go over each type of right with students, using the definitions provided. Ask students for real-life examples of each kind of right and scenarios in which the right would be applied and/or tested.

Next, ask students to compare the United States rights with South Africa’s by completing the worksheet (2.2). As the S. African Bill of Rights is so extensive, you may want to assign groups to cover specific pages in the document. After filling in the categories of rights, it should be clear that the United States Constitution addresses mainly civil and political rights, while South Africa addresses all types. Are there types of rights not included that students think are important?

**Discuss in small groups** (of 4 – 5 students) and then ask groups to **share their thoughts** on the “big questions” (on worksheet 2.3).

**Conclusion:** Use the questions in a whole class discussion to provide closure and – if possible - measure overall understanding.

Stress that the government of South Africa has a responsibility to ACT on certain rights, like socio-economic rights. So while the government of the United States is often reactive, South Africa's is called upon to be proactive. Also, rights are not just applied vertically (top down) between people and their government, but horizontally – between private citizens. Thus, people's rights and freedoms are protected in the fullest way possible. In cases where it's tough to see whether a right has been violated, the Constitutional Court decides. (They'll have a chance to experience that process in Lesson 4.)

## Student Handout 2.1      Types of Rights

First of all, it is necessary to clarify differing kinds of rights. The United States Constitution is primarily concerned with civil and political rights. As you analyze the documents, ask yourself: Is this also true of the South African Constitution? Does the United Nations - as well as S. A. - aim to expand people's rights to ensure all peoples are treated with dignity and fairness?

**Civil Rights** are personal rights which exist between the individual and the government. They limit the government's power over the individual. The civil right to due process means the individual is presumed to be innocent until proven guilty. Civil rights include freedom of speech and religion, the right to a speedy and public trial, the right to an attorney and a jury of one's peers, the right to privacy, etc.

**Political Rights** are those rights of citizens to form and facilitate government. The right to vote, elect leaders and to petition the government are political rights.

**Economic Rights** have to do with money. This might mean producing and managing money, or acquiring material wealth. The right to be supported by the government after retirement, or the right to certain tax breaks to reward desired behaviors are economic rights.

**Social Rights** promote personal and community well-being, and have to do with health, family, schools and other institutions. The right to practice family planning is a social right.

**Cultural Rights** have to do with education, recreation, artistic expression, and the right to preserve one's cultural identity and development. The right to speak one's native language is a cultural right.

**Group Rights** protect a certain group within the population, such as indigenous peoples, women, children or homosexuals.

**Environmental Rights** describe the rights of a person to live in conditions that are healthy and safe.

\* **Human Rights** are the fundamental freedoms and protections to which all human beings are entitled, simply because they are human. Human rights are not granted by law, (even though some governments write them into their constitutions) but are part of every person...a person is born with them.

As you familiarize yourself with these basic rights, remember that *civil and political rights in a society seem frivolous to people who are poor, hungry, sick and/or living in a state of fear*. Can you think of a country where that is true today?

United States

South Africa

Civil Rights

Political Rights

Economic Rights

(over)

**Social Rights**

**Cultural Rights**

**Group Rights**

**Environmental rights**

Uncertain of which category:



## LESSON 3 Constitutional Convention, South African Style

**Objectives:** Students will

- Understand that constitution-making involves negotiation, persuasion and compromise among people with differing political opinions and values
- Evaluate, take and defend positions on three constitutional issues
- Assume the perspective of a political party member in South Africa and demonstrate understanding of and respect for other parties
- Participate in a civil discussion of controversial issues

**Overview:** Students role-play some of the various stakeholders, positions and forms of participation employed in South Africa's constitution-making process, 1993 – 1996. Parties represented proportionally will be the ANC, Inkatha Freedom Party, the National Party, and the Pan African Congress. (There are about 20 other parties not included, as their numbers were small, and their concerns are largely covered by these groups.)

A primary focus will be on the Zulu tribe in the Natal Province (home region of the Inkatha freedom Party), which was the most vocal in its opposition to a strong national government (dominated by the African National Congress, ANC).

**Time required:** A minimum of three block periods (90 minutes each) or five 50-minute periods.

**Materials:** Copies will need to be made of all handouts (background on the Convention 3.1, background on individual student roles 3.2 and on the issues 3.3 and 3.4) are included. The handout on Provincial representation is in the Appendix.

**Opening:** Divide the class into groups representing roughly 62%, 20%, 10% and 8%. (For example, a class of 30 would be divided into groups of 19, 6, 3, and 2.) Inform them that these groups signify the major players – and their numerical strength – in the constitutional assembly in South Africa.

62% = African National Congress or ANC

20% = the National Party (former apartheid regime)

10% = Inkatha Freedom Party (largely representing Zulu tribal interests)

8% = Freedom Front (white Afrikaaners who wanted their own homeland)

8% = Pan Africanist Congress (PAC)

\* The final two groups would have actually had 1 rep, but it's not fair to ask a student to work solo in this exercise. It's advisable to have those working in the two pairs be motivated, highly capable students.

### **Body of the Lesson**

Distribute the background student reading (3.1) and read aloud as a class to make sure all students comprehend the material.

As it would be an overwhelming task to re-create the multiple topics and interests that were actually discussed in the South African conventions, the topics have been narrowed for this assembly. Student delegates will discuss three issues:

**1)treatment of women**

Rights of women vs. traditional authority and cultural practices.

**2)affirmative action**

Protection against discrimination vs. affirmative action, which does discriminate but with the goal of compensating groups previously disadvantaged.

**3) Representation** in the new government

How will members of parliament and the Council of Provinces be represented?

How will the assembly ensure that **tyranny of the majority** does not threaten the new democracy?

A primary theme will concern the role of tribal authority in the new democracy.

Place students with their party groups (breaking down the ANC into 3 –4 groups) and distribute copies of Handout 3.2 *Understanding Your Party* (specific to each group), and handout 3.3 (background information on Women’s Role in traditional cultures) and handout 3.4 (Affirmative Action). Also distribute the handout (in the appendix) showing population distribution in the provinces.

Ask students to prepare to present to the entire assembly in two formats:

- 1) a press release or public service announcement that conveys the party’s position on each
- 2) an oral statement before the entire assembly regarding each issue

The ANC group (now split into 3 or 4 working groups) should have each group present, to be fair. (Even though it means the ANC position will be heard more than anyone else’s, this is realistic.)

Encourage groups not just to arrive at what their political position is on the issue, but any suggestions they have for treatment of the issue consistent with the constitutional principles. (It’s important to stress that **the constitutional assembly was bound to those principles.**)

Note: Encourage groups to be reasoned in their policy statements, taking into consideration the beliefs and values reflected in the background information and role sheets. For example, if a group were to suggest giving women in tribal societies more equality by letting them have multiple husbands, this is not realistic. There is no established set of cultural beliefs or practices to suggest this would mesh with tribal customs. It would be an alien idea.

## **The Assembly**

Students will work in their teams for approximately 2 class periods to a) create their video or radio PSA (public service announcement) or press release, and b) write up their oral presentation for the Assembly. They do not need to write up detailed plans (for example, a specific affirmative action plan with numbers of people, specific kinds of jobs); they simply need to make their party's policy on each of the three issues (women in tribal societies, affirmative action and representation) clear.

In some cases, the "Understanding Your Role" pretty clearly indicates a policy preference. In others, students will have to read between the lines, do a little additional research and speculate as to how this group of people would likely feel about the three issues.

Encourage members of different parties to visit others, to see if they are allied in their positions on any of the issues. Remind students that real politicians are always in search of coalitions; this is how majority votes are ensured to accomplish policy agendas. You may want to host a mixer (social event enabling groups to mingle and share thoughts on the issues) prior to the Assembly.

The assembly itself should take an entire class period (possibly two, if 45 – 50 minutes). You may want to open with groups sharing their parties' PSAs and press releases. Next, ask for groups to present their position on the first of the three issues: treatment of women in traditional societies. (Let all groups present and take brief questions before moving on to the next issue.)

Do the same for the remaining topics: affirmative action and representation.

In the end, arrange all chairs in a circle and conduct a discussion (still in character) of the issues. This is when students will actively attempt to persuade others to their policy positions. This will likely be done on the second day of the simulation.

Throughout the assembly, record all suggestions that could be stated as policies and voted on.

Finally, ask groups to sit together and come to consensus ("yea" or "neh" on each of the policy alternatives you've recorded). (Make sure to subsume redundant ones or this will take forever!) It should be pretty clear that the ANC dominates the policy agenda in the end.

## **Conclusion of the Lesson**

Share the resulting outcomes of real-life constitution-making on the issues raised in this simulation. You may want to copy the following outcomes on overheads, to read aloud with the class.

Distribute the **diagram in the appendix on Proportional Representation** when discussing the outcome of that issue.

**Outcome: Women in traditional societies**

Polygamy is allowed as long as the husband has a written contract approved by a court, which will then regulate the property system of his marriage. Couples can choose to have a civil marriage rather than a traditional one, which will result in a woman being freed from “minor” status.

On the other hand, the ANC and National Party (who formed the transitional Government of National Unity) agreed to “recognize and protect,” through provisions in the constitution, “the institution, role, authority and status of a traditional monarch in the province, and shall make such provision for the King of the Zulus and the Kingdom of KwaZulu/Natal.” What this means is that the provincial constitution can legally be different from the National constitution.

A Commission on Gender Equity was established in the new constitution, with the responsibility to make recommendations to lawmakers to promote gender equality. They will be consulted regarding any laws or proposed legislation which affects the status of women. The Commission is empowered to influence all levels of legislation (local, provincial, national). This commission is likely to engage in ongoing debates with the Council of Traditional Leaders concerning customary laws, issues affecting rural women and children. (For example, adequately representing women in all government structures of traditional authority.)

The Constitutional Court will eventually have to sort out how to balance the rights of traditional leaders with the rights of women in traditional societies, all the while upholding constitutional principles. Just like the U.S., South Africa is bound to see certain constitutional rights come into conflict with others, and the courts will have to weigh varying concepts of “the common good.”

**Outcome: Affirmative Action**

Affirmative action is seen as necessary, permitting those with a history of discrimination to be advantaged to the detriment of the historically advantaged on the basis of race and gender. In other words, fair discrimination is approved of, but only if it is legitimate. The needs of both groups (disadvantaged and privileged) must be balanced with the socio-economic needs of the whole community. It is recognized that large-scale, indiscriminate affirmative action could hurt the country’s economy in the long run.

**Outcome: Representation**

The principle of proportional representation is established in the new electoral system, and a minority veto exists in that one-third or one-fourth of the members of Parliament and the National Council of Provinces can block majority decisions on critical issues that require more than a majority consensus; (for example, when amending the constitution).

In addition:

Each party that received more than 5 percent of the vote in national elections got representation in the Government For National Unity on a proportional basis. In the future, if a majority party has less than 60% of the seats in the National Assembly, a coalition government must be formed. If the number is between 60 and 70%, a coalition government is optional. If the number is more than 70%, no coalition is required.

A Council of Traditional Leaders was established with an advisory role to parliament. They are consulted on any matters specifically impacting traditional communities. Chiefs may also end up as elected members of local, regional or national government. In this case, they could participate in democratic decision-making and make recommendations on behalf of the traditional interests they represent.

Unfortunately, because traditional communities in South Africa have been governed by un-elected men in a patriarchal system, there is currently an all-male Council of Traditional Leaders, with basically no chance that a woman will rise to assume leadership in.

On a final note: If there is a large majority in parliament (as is the present case for the ANC), they effectively assume control of parliament, the presidency and the courts. And most of the decisions of parliament – even as to who will be president – are based on an ordinary majority vote. If the constitution – particularly this constitution – truly is the law of the land, and the rule of law prevails in South African society, no majority party need ever be a threat to democracy.

## **Teacher Background for Constitutional Assembly Simulation**

On May 9, 1994 South Africa's democratically elected Parliament met for the first time. On May 10, 1994, President Nelson Mandela and two Deputy Presidents (Thabo Mbeki and F.W. de Klerk) were sworn in. The Constitutional Assembly met for the first time on May 24, 1994 and comprised 490 members representing 7 political parties in parliament: the African National Congress (ANC), the National Party (NP), the Inkatha Freedom Party (IFP), Freedom Front (FF), the Democratic Party (DP), the Pan Africanist Congress (PAC) and the African Christian Democratic Party (ACDP).

When the Constitutional Assembly voted in favor of the adoption of the Constitution, there were 421 votes (well in excess of the 2/3 requirement of 327 votes). Groups voting in favor were the ANC, NP, DP and PAC. The Freedom Front abstained from casting its 10 votes and the IFP labeled the constitution "a foundation for autocracy and tyranny."

The transition government in South Africa (which was in place until the first election under the 1996 Constitution) was **legitimate** in two ways: 1) the new constitution had a broad majority of South Africa's political parties voting to adopt it and/or \*swore allegiance to it when taking political office and 2) it was adopted according to rules for transition that were agreed on by the participating parties (primarily the ANC and the National Party, who had a power-sharing agreement).

The new democracy had four features:

- 1) a grand coalition government was made up of all major segments of the population to ensure minority participation in the executive
- 2) proportional representation assured that members of all segments of the population gained fair access to political positions
- 3) Each segment was guaranteed autonomy in decision-making on issues of particular concern to them, and
- 4) As a guarantee against domination, each segment held the right to veto majority decisions that were seen to interfere with autonomy granted in certain issues.

## **Constitutional Assembly Simulation**

### **Student Background Information, Handout 3.1**

South Africa's transformation from an apartheid state to a modern democracy is miraculous in many ways. It was a peaceful transition rather than a violent revolution. The constitution itself was the product of multi-party meetings and feedback from the entire public. Thousands of public meetings were held in almost every South African town and village. People were encouraged – for the first time – to express themselves in their own language. And express themselves they did ... no less that 2.5 million people offered written feedback in response to a newspaper ad that read: “The constitution will be written by the most important person – YOU!”

(The right to use your cultural language was never recognized by previous governments; English and Afrikaans were the only official languages. Now, there are 11 official languages.)

#### **Leading up to the Constitutional Assembly**

A People's Conference in 1955 was attended by thousands of South Africans (representing all racial groups) in Kliptown. Attendees came up with a ground-breaking document: the **Freedom Charter**. This charter outlined the principles upon which a non-racist and democratic South Africa would be built on a common South African national identity. This common identity would unite the diversity of peoples, languages and cultures that is South Africa. The Freedom Charter set in motion the black political agenda for the next fifty years; it is really the heart of the new constitution

The previous apartheid regime (National Party government) ruled on the principle that the legislature – rather than the constitution – was supreme. There was no Bill of Rights under the former constitution, and certainly no proportional system of electoral representation. The fact that the National Party agreed to fundamentally reverse its previous position on these and other issues is what makes the birth of democracy in South Africa truly unique. The negotiations that took place required communication and understanding among groups from enemy camps of the past.

One reason the nonviolent transition and resulting democratic constitution were possible is that groups were willing to compromise in a negotiated settlement. Although the African National Congress (ANC) has the largest amount of representation, its members have pledged that majority rule will not mean domination of the white minority by blacks. A broad coalition government assured minority parties of political representation; that regional government would be vested with actual powers; that provisions must be made for granting amnesty to members of the previous regime; and that government workers in the apartheid state would be given some future job security and benefits. (Note that critics of the compromise agreement said it would prevent a true radical transformation of South Africa because too much influence and control would remain in the hands of the old regime.

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## **Uniqueness of Constitution-making in South Africa**

Unlike the framing of the American Constitution, the South African Constitution was the product of an entire (and deeply divided) country's involvement. Far from being held behind closed doors, their constitutional convention involved many months of town meetings, radio debates, written suggestions from individuals and political party representatives from all walks of life. A very transparent (open) process yielded the most comprehensive human rights-oriented constitution in the contemporary world.

This is no less than a political miracle that South Africans encourage the rest of the world to duplicate.

### **Your task for this Assembly Project:**

You will work with members of your political party to make policy statements that truly reflect your party's beliefs and values. You are to put aside your own personal ethical positions, and play the role of party representative. You will not be instructed as to how you should think; rather, you will read the **Understanding Your Party handout** and think critically about what you would have to say on the three issues below. You will be given handouts on two of the three issues (1 and 2) below.

Your preparation will be in two formats:

- A) a press release or public service announcement that conveys your position on each
- B) an oral statement before the entire assembly regarding each issue

It is crucial that each member of your group play an active role so the spirit of a constitutional assembly is reflected.

**You have been assembled to discuss and make recommendations on the following:**

#### **1)treatment of women**

Rights of women vs. traditional authority and cultural practices.

#### **2)affirmative action**

Protection against discrimination vs. affirmative action, which does discriminate but with the goal of compensating groups previously disadvantaged.

#### **3)Representation in the new government**

How will members of parliament and the Council of Provinces be represented?

How will the assembly ensure that **tyranny of the majority** does not threaten the new democracy?

## **Understanding Your Party, Handout 3.2**

### **THE ANC**

As was originally envisioned in the Freedom Charter of 1955 – which has since then been the heart and sole of the liberation movement – the democracy in South Africa will be based on the following principles:

- a unitary, non-racial state
- there will be a centralized legislature, executive and judiciary
- power will be invested in the people
- provinces will have certain powers, but will be subordinate to the national government
- the government will be active in promoting a single national identity while preserving and giving recognition to the diversity of languages and cultures represented
- internationally accepted fundamental human rights will be respected and guaranteed
- all individuals will have the right to political participation as long as parties agree to stamp out racism, hatred, regional exclusiveness and the inequalities of apartheid
- opportunities will be rapidly expanded to ensure that all South Africans may live in conditions of equality and dignity
- gender equality will be realized through government legislation to bring equal rights to women in society and in politics

The goal of an ANC-led government will be to reverse the negative past of apartheid, which created social ills even where there was harmony. The previous regime did this by fostering boundaries, divisions and conflicts between groups. What the new constitution should avoid at all costs is vesting political rights in different linguistic, cultural, ethnic or religious groups (which would only divide those groups and perpetuate “haves” and “have-nots”). Giving power to sub-groups in our society would sew the seeds of division and conflict. To accept such demands (for self determination for ethnic communities) from groups like the IFP and Freedom Front would contradict our fundamental idea of a common national identity.

Our vision of democracy can be simplified into four basic principles: constitutional supremacy, representativeness, openness and participation. All interests will be heard and respected. Government will reflect the will of the people (the majority), but that majority will not be all-powerful. The national government will be representative of the diverse South African society.

Since the new constitution will be the “supreme law of the land,” the undemocratic aspects – particularly those that impact women – are no longer acceptable. In communities with traditional leaders (like the Zulu monarch), participation and empowerment of women, and more accountability of the government is necessary.

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We want a powerful state that unifies all colors and peoples ... a rainbow coalition government. We would like a unified language, unified museums and history books, sports and monuments. Such a culture will be ethnically neutral, but racially representative. This is the only way to progress without in-fighting. Language and education differences have the capacity to drive our country back into conflict.

## **Understanding Your Party, Handout 3.2**

### **THE NP (Nationalist Party)**

The good of South Africa will only be realized if the needs of particular ethnic groups are satisfied. The good of the whole is inseparable from the good of the parts. We are concerned that the majority party could exert tyranny over minorities – particularly a minority they wish to punish. Thus, we have the following demands of a new constitution:

- the security forces and government workers from the previous regime must be protected
- provinces will be vested with sufficient powers to control their own economic development
- Recognition – for example, through representation and provincial powers – will be given to cultural, ethnic and religious minorities
- Political institutions will protect the diverse interests of society
- A free market economic system will ensure that companies will continue to flourish in South Africa and this will benefit everyone and attract new investment

Decentralization of the federal government is necessary to enable citizens to interact with their government directly.

To achieve unity, South Africa must sustain its growth economically. To win the war against poverty, we have to win more investors. They won't have confidence in South Africa if we don't accommodate certain concerns of the elite who still run many South African businesses.

## **Understanding Your Party, Handout 3.2**

### **THE PAC (Pan-Africanist Congress)**

The unequal society created by years of apartheid can only be healed through a socialist program of revolution. The apartheid regime must surrender to the will of the majority of South Africans. We must prevent the misuse of cultural identity as a smoke-screen for continued racial domination and maintenance of privilege by whites and other elites. The constitutional principles still reflect a western-dominated value system. We need to reflect the African experience. This means that traditional leaders must be accommodated in the new National Council of Provinces. The tribes, particularly the Zulu, have shown resilience to domination in the past, and we would be wise to handle them with sensitivity and interaction (constructive dialogue). Human rights and traditional laws don't have to be at odds.

The idea that the transitional government has to be an enforced coalition between the ANC and the apartheid regime is repugnant. The old regime does not reflect majority rule, which is the only legitimate rule in a democracy.

We need to re-examine the powers of provinces to make sure the national government ensures uniformity of standards and one South African nation-hood. We are pleased that our Bill of Rights includes civil and political rights as well as socio-economic and environmental rights.

The constitution should also embody the principle that the land belongs to the nation and cannot be owned by individuals. Thus, the state should re-distribute the 87 percent of the land currently held by only 15 percent of the population! The right of access to land, especially to those who have been disadvantaged by dispossession and apartheid, must be granted. Individuals or groups who lost land due to conquest of discriminatory laws from 1652 onwards should be able to seek restitution.

The PAC would also like to address the impact of violent crime on the justice system. We fear there will be abuses of the rights accorded to accused people, most of them black and poor and under-educated. We must keep in mind that the purpose of our criminal justice system in the new South African democracy is to be restorative (in other words, to rehabilitate) and to respect human dignity. So even punishment must be dealt in a human rights context.

We have the makings of a good constitution which will help address the root causes of crime and other social ills: unemployment, poverty, illiteracy, lack of housing and other apartheid inequalities. But the people will demand to see changes in these areas sooner, not later.

## **Understanding Your Party, Handout 3.2**

### **THE FREEDOM FRONT (FF)**

To ensure that the black majority does not dominate the white population – already threatened with violent crime – the new government must accommodate the need for segregation and total self-determination for the white population. This means a separate state (Volkstaat) within a South African federalist system. In that Volkstaat, there will be an Afrikaner majority. (Here, we agree with the Inkatha Freedom Party, who likewise want a separate Zulu state where that culture will be a majority.)

Within a confederation of provinces – each with powers to be autonomous – there would be considerable independence. This is the best way to minimize potential aggression between segments of society. Besides, certain ethnic and cultural groups are already concentrated in specific areas.

We believe that provinces, rather than the central government, should be the primary government of the people. However, as it stands now, any five provinces voting together can block the intentions of any one province. There is no chance of a dissenting province bringing about policy ideas different from the majority. That means the likely scenario of five provinces with a black majority can block the wishes of the white minority.

There is not enough protection given to minority rights in the Bill of Rights. That is why we feel quite strongly the need for a separate state.

## **Understanding Your Party, Handout 3.2**

### **THE IFP (Inkatha Freedom Party)**

Federalism – giving the provinces a lot of control and leaving things like foreign affairs and national finances to the federal government – will ensure that the needs of all Africans are taken into account. Certain ethnic and cultural groups are concentrated in specific areas. People will have more of a chance to participate in powerful regional governments. This will soothe the fears of minority groups.

We agree with the Freedom Front on one point: that the good of South African society will only be realized if the good of the ethnic group is respected. We thus wish to have political autonomy within a confederation. In other words, a separate Zulu state where we can continue to observe traditional customs through traditional laws.

We also agree with the National Party in demanding that groups should enjoy protection from the state, and have constitutional rights guaranteed. However, that does not mean that white supremacy will be accepted. As Buthelezi said in the 1990 Inkatha Declaration, “There is a black majority in South Africa, which will find political expression as a majority. That is totally inevitable.”

Both individuals and minorities should thus be granted rights to live within cultural groups in ways that don't conflict with general democratic principles. We would like to replace the previous homeland system to one of multiethnic states in their respective territories under a federal constitution. (This might resemble the former United States government under the Articles of Confederation.) De-centralizing the federal government is necessary to enable citizens to interact with authorities (something they've been denied), especially those in remote, poor and illiterate communities.

As far as the criticisms leveled at traditional societies like ours (especially regarding the status of women), revival of cultural traditions is part of what the liberation struggle was all about. Reviving institutions of African pride, dignity and local distinctiveness should be encouraged. If our ways are different from the majority, should we be subjected to their domination?

As far as representation in the new government, the power must not be controlled by large population centers. This is reminiscent of the apartheid government, which was highly urban based. As a result, the voices of the most impoverished and least organized segments of society – those in rural areas – were never heard from. As these communities make up more than 40 percent of South Africa's population, this must be changed. These people demand a voice, and if they are denied, they may redress the imbalance by resorting to violence. The Zulu tribe – located in rural KwaZulu Natal Province – demand a voice in the new government.

At the very least, we would like traditional leaders to be given some special status within the new government, perhaps on their own council of chiefs.

## **Women's Role in Traditional South Africa**

### **Handout 3.3**

In tribal societies, there are some traditional practices different from ours in the United States and other Western societies, and even different from the concept of democracy spelled out in the new constitution. For example, polygamy is culturally acceptable. In the Zulu Kingdom (which is the nation's most powerful tribe politically), the King has eight wives. Women are not able to have multiple husbands. Many people feel that a nation now dedicated to modern democracy should enforce standards that are accepted internationally. Others feel a fundamental concept in the new constitution is the right to participate in the culture of their choice, rather than the culture of the powerful.

A second controversial custom is the husband's payment of "bridewealth" to the woman's family. (A groom gives cattle or other material possessions to the bride's family, which will be managed by her father or other male head of household.) Because of the notion that a woman is being "bought" and has little control over the process, many feel this is in conflict with concepts of dignity, equality and non-sexism. In addition, women often stay in unhappy marriages, because if they seek a divorce, they have to return the "bridewealth." Sometimes this is impossible, and other times there is pressure not to from the bride's family. So many women feel bound to even harmful unions.

Under African customary law, women are considered minors. Fathers have the power to arrange the marriages of their children. A bride's father can delay his daughter's marriage by refusing the "bridewealth" offered, making unreasonable demands or accepting the offer of a competing suitor. Women (because they are perpetual children under tribal under customary law) are often given to husbands without clear consent. Yet they are never free of the need to obtain the guardian's consent. The only way a woman can invalidate a traditional marriage due to lack of consent is to show that there was a reasonably held fear of force (or threat of force).

Husbands, as well as fathers, exert a lot of control over women in traditional cultures. During marriage, anything a woman contributes to the household becomes the man's property. They can punish wives physically and demand sexual favors. They alone decide whether to buy a house, how to educate children and whether a wife may work. A man can seek to divorce his wife on the grounds of witchcraft, adultery or the inability to have children. Women have no similar grounds for seeking a divorce. In the event that a husband dies, a widow essentially loses everything. Since she never technically owned any of the family's property, she loses whatever she contributed.

There are a few ways to deal with these issues. One would be to prove that there has been a long-term negative effect on women as a group resulting from their inferior status in tribal societies. This would be unconstitutional, as discrimination is prohibited. Another would be to maintain the status quo (the way things are), but to give couples the option of having a civil marriage, recognized under international law, that would change her status to one of equal footing. (Women raised in traditional cultures, however, may feel reluctant to reject the customary marriage.)

## **Affirmative Action in South Africa**

### **Handout 3.4**

There are several groups who have been discriminated against in South Africa's history. The new government of South Africa cannot "unfairly discriminate" against anyone on the grounds of "race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation age, disability, religion, conscience, belief, culture, language or birth." By saying the government can't "unfairly discriminate" it is implied that "fair" discrimination is approved of. This idea is unique to South Africa.

The constitutional principles we are bound to clearly state that all people in South Africa are entitled to equal protection of the law, and an equal share of any advantages provided by the state. Thus, some sort of affirmative action is necessary to level the playing field. Affirmative action would permit those with a history of discrimination (basically, on any of the grounds listed above) to be advantaged in educational and employment opportunities. Even if giving minorities and women priority means lessening the chance for a historically privileged person, this kind of treatment is seen as remedying past inequalities.

The quest for gender equality would be used to empower women. Likewise, the goal of a non-racist society means that racial groups who have previously been denied access to the full range of jobs would be given increased access.

It could be argued that the concept of dignity, as well as that of equality, comes into play. If affirmative action is viewed as a "handout," it must be changed to be viewed as "earned." Thus, any affirmative action program we use must be viewed as legitimate by everyone.

There are two types of discrimination, both unconstitutional:

Indirect discrimination = when a seemingly neutral test (ie: literacy or other test) could disadvantage a particular group due to past or present circumstances. This could apply to private industry as well as the government.

Direct discrimination = circumstances where membership in one of the above groups brings prejudicial treatment.

There is a need to balance the needs of the two groups (victims of the past and potential victims of preferential treatment). We also need to balance the socio-economic needs of the whole community. Large-scale, indiscriminate affirmative action could hurt the country's economy in the long run.

## LESSON 4: You be the Constitutional Court

**Objectives:** Students will

- identify and weigh alternatives
- take and defend a position
- make decisions using prior understanding of the South African Bill of rights

**Time required:** One class period (at least 50 minutes).

**Materials:** Required worksheets are provided. Students should also have a copy of the South Africa's Bill of Rights. Additional research (optional) may require internet access, using the Constitutional Court website (in the appendix).

**Introduction:** Review with students the role of the Constitutional Court: deciding whether new laws or current government practices violate constitutional principles.

NOTE: The Court is not restricted to applying the new Bill of Rights vertically ("top-down" from government to the people); the rights are also to be enforced horizontally, between citizens or private entities. This contrasts with the U.S. Bill of Rights.

For our purposes today, we will be examining issues that have come before the Court in real life.

Divide the class into three groups. Each group will function as an independent Constitutional Court (which has 12 members, but only requires 8 to hear a case).

### **Body of the Lesson:**

Have students read the attached Case Studies (Handout 4.1) one at a time. (These are brief summaries of recent S.A. cases.) Their job is to clarify South African citizens' constitutionally protected rights. Inform them they'll be rendering decisions that determine whether a specific right was or was not violated. They will base their decisions on their understanding of key aspects of South Africa's new Bill of Rights, not on norms in American society or law.

Students should take turns recording their decisions on the *Opinion of the Court* worksheet (#4.2). Their opinion should state:

- 1) the specific right involved,
- 2) whether the right was or was not violated
- 3) the Court's line of reasoning

After each group has completed their decision-making process, ask for a summary judgment in each case (time permitting).

### **Conclusion**

Share with students the outcome of the actual cases in South Africa.

## Outcomes of Selected Constitutional Court Cases

Case 1 S v. Lawrence, S. v. Negal and S. v. Solberg: Three justices felt the right of freedom of religion was breached, because this freedom required the government to act even-handedly, not to prefer one religion to the exclusion of others. They also found the law was not “reasonably justifiable” as the effect of the prohibition on Sundays did not outweigh the harm caused by limiting the right. Two other justices dissented, saying the violation of the right was justifiable. However the majority (of 6 justices) said the law did not violate the plaintiffs’ freedom of religion. One reason may be that the plaintiffs did not use the Equality Clause in their defense. As of yet, the Court has not introduced an equality element into the religion right (which would bind laws to treat all religions equally).

Case 2: Christian Education South Africa v. Minister of Education

The Court unanimously upheld the Schools Act prohibition on corporal punishment, saying “believers cannot claim an automatic right to be exempted by their beliefs from the law of the land.”

Case 3 The Constitutional Court agreed with John’s parents that their freedom of religion was violated.

Case 4 The Constitutional Court agreed with Captain Langemaat that she was discriminated against on the basis of her sexual orientation.

Case 5: The Independent Broadcasting Commission denied Radio Islam a license, on the basis of discrimination against women. The Commission asked that women be allowed on air for at least 3 hours/day. The radio station refused and was subsequently closed down.

### Extending the Lesson:

Have students research a case in the United States and a case in South Africa regarding hate speech. In the U.S., some states punish crimes motivated by hate with enhanced penalties (e.g.: doubling the prison time). Advocates say this is a way to deter hate crimes, and to make a bold statement to the public about the particularly harmful impacts of hate speech on the community. What has the South African Constitutional Court said?

Other topics that would lend themselves to comparison:

- affirmative action (in hiring, in education)
- freedom of expression (in school, in criticizing the government)
- Right to terminate a pregnancy
- Right to use an illegal drug as part of a religious ceremony. Compare Prince v. President of the Law Society of the Cape of Good Hope, (a South African case in which Rastafarians seek permission to use dagga) to Department of Human Resources of Oregon v. Alfred Smith et al (a case that overturned an Oregon Supreme Court decision and denied Smith’s claim that Native Americans’ use of peyote is protected by the “free exercise” clause in the First Amendment. Use of peyote in religious ceremonies was banned by Oregon state law.

## **CASES for the Constitutional Court of South Africa Handout 1**

**Case number 1** A Liquor Act in South Africa (passed in 1989) banned the sale of alcohol on Sundays. Three employees of a 7-11 supermarket chain were charged and convicted for selling beer, wine and cider. They claimed their convictions were unlawful because the prohibition on selling alcohol on “closed days” (defined as Sundays, Good Friday and Christmas Day) violated the right to freedom of religion.

If you decide that the right was violated, is the government’s infringement of the right to freedom of religion “reasonably justified” by the purpose and effect of the law? (meaning does the common good – in this case reducing alcohol consumption on those days – outweigh the individual’s right?)

**Case number 2** There are 196 independent (meaning private) Christian schools in South Africa, with approximately 14,500 pupils. These schools viewed “corporal correction” (physical punishment) as an integral part of the schools’ philosophy, and they wanted to be exempt from section 10 of the Schools Act. Section 10 bans corporal punishment because it “violates children’s constitutional rights to equality, human dignity and freedom and security of the person.” The schools claim the Act infringes on their freedom of religion. Keep in mind that the act does not prohibit believers from physical punishment in their homes, just from the institutional environment of schools.

**Case number 3** Captain Jolande Langemaat wanted to register her female partner of 11 years as a dependent on her medical aid policy. The South African Police Service Medical Aid Scheme (POLMED) refused to allow this. POLMED’s definition of dependents did not include same-sex partners. Capt. Langemaat said this policy discriminated against her on grounds of sexual orientation.

**Case number 4** John, who was 12 year old, belonged to a rastafarian community. He was registered at his local school, but they refused to admit him until he cut his hair. (Rastafarians often wear their hair in dreadlocks.) His parents refused to cut his hair, saying it violated their right to freedom of religion. In addition, the school was discriminating against John on the grounds of religion and culture.

**Case number 5:** Radio Islam, a South African radio station, did not allow female broadcasters on the air because they said this went against their religion. Abeeda Ganief was refused a job as an announcer under this rule. She argued that the policy was discriminating on the grounds of gender. The station said it was not discriminating against women because it allowed women to work “behind the scenes” doing research, editing and program scanning. Radio Islam also claimed it has a right to freedom of religion.

**Opinion of the Constitutional Court**  
Handout 2

Case #1

Specific right at issue: \_\_\_\_\_

Decision: \_\_\_\_\_

The Court's rationale (reasoning):

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Case #2

Specific right at issue: \_\_\_\_\_

Decision: \_\_\_\_\_

The Court's rationale (reasoning)

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Case #3

Specific right at issue: \_\_\_\_\_

Decision: \_\_\_\_\_

The Court's rationale (reasoning):

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(over)

Case #4

Specific right at issue: \_\_\_\_\_

Decision: \_\_\_\_\_

The Court's rationale (reasoning):

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Case #5

Specific right at issue: \_\_\_\_\_

Decision: \_\_\_\_\_

The Court's rationale (reasoning):

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## LESSON 5: Justice and the Death Penalty

**Objectives:** Students will

- identify and weigh alternatives
- understand others' perspectives
- take and defend a position
- make decisions
- apply knowledge gained (and their personal value position) to the question: Does the death penalty violate the constitution a) of South Africa b) of the United States?

**Time required:** One class period (at least 50 minutes) plus homework time for follow-up assignment and one additional period (optional) to de-brief and discuss students' personal feelings on the issue.

**Materials:** All handouts are provided. Refer to the bibliography for websites for additional research as needed (for extending the lesson).

**Opening:** Divide the class into three groups. All ones will assume the position of the United States regarding the death penalty. All twos will represent South Africa's position, and all threes will be members of Afghanistan, which is in the process of writing a bill of Rights for its new constitution.

At issue today: constitutionality of the death penalty!

Ask students if they know the definition of capital punishment.

Inform them that the death penalty is an option at the penalty phase of murder trials in 38 states in the United States. The Constitutional Court of South Africa, on the other hand, declared the death penalty unconstitutional in 1995 (while Nelson Mandela was president). While this is still a controversial issue in both South Africa and the United States – where many people feel strongly on both sides – for today's purposes, they will assume the most recent position of the Supreme Court in each country.

**The main reasons many oppose the death penalty :**

It is administered in an *arbitrary* way.

It is uniquely cruel and unusual.

Even former U.S. Supreme Court justices have found the death penalty a violation of the 8<sup>th</sup> Amendment (which bans cruel and unusual punishment).

Justice Brennan, in *Furman v. Georgia*, wrote “This principle derives from the notion that the State does not respect human dignity when, without reason, it inflicts upon some people a severe punishment that it does not inflict on others. A vast number of murders are committed, a large number of accused charged and convicted, but relatively few are ultimately executed. No one has yet suggested a rational basis that could differentiate the few who die from the many who go to prison. A penalty should be considered “unusually” imposed if it is administered arbitrarily or indiscriminately.”

Justice Stewart agreed with Brennan, saying “the 8<sup>th</sup> and 14<sup>th</sup> Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.”

Make sure students understand the meaning of the word arbitrary or arbitrariness. An analogy may be a good idea. Ask how they’d feel about a new principal who doled out punishments for the same offense (for example, loitering in the halls without a pass) based not on the prior record of the offending student or his/her behavior while loitering. Let’s say the severity of punishment was sometimes based on time of day, sometimes on what the students were wearing, what year they were in school, and often depended on whether they were boys. This principal punished with no reliable or rational set of standards; thus the punishments seem arbitrarily imposed. They are inherently unfair.

**Body of the Lesson:**

Distribute to each group their position sheet (5.1). Give them 15 – 20 minutes to meet with members of their same side to read the handout and summarize the most powerful arguments. (Encourage them to think of original arguments as well.)

Next, divide the class into triads, with a 1, a 2, and a 3 in each (scattered around the room). All ones will summarize their position first, followed by the twos. Finally, the representative from Afghanistan will ask questions of each side to make a determination on whether their new constitution should condemn the death penalty. (This process should take about 15 minutes.)

Bring the group back together, and spend 5 – 10 minutes hearing from each member of Afghanistan, to give a vote and state the most compelling argument they heard. (This way, if you don’t have a chance to circulate and hear every student individually, you’ll get a good idea about the quality of their participation.)

**Conclusion:** Ask the students whether they think American opinion is still in favor of the death penalty. (The Supreme Court last considered this issue in a 1989 case involving a mentally retarded defendant. At this point, even being a juvenile or a mentally retarded individual is treated as a \*mitigating factor; it does not exclude one from being considered for the death penalty.)

In South Africa, on the other hand, public opinion is actually in favor of bringing the death penalty back (by as much as 70% in a recent opinion poll) even though the government is morally opposed to it.

For homework, ask students to communicate their own personal opinion about the constitutionality of the death penalty, in either a persuasive essay, an editorial or a political cartoon.

\*mitigating factors can lessen the culpability (blameworthiness) of the defendant. Examples of mitigating factors: being a juvenile at the time the crime was committed, mental illness, mental retardation, having been abused as a child.

### South Africa Position

In South Africa, as of 1995, the state cannot execute criminals, even if they've committed murder.

In *S v. Makwanye*, the **Constitutional Court decided the death penalty** was cruel, inhuman and degrading and **violated a person's right to both life and dignity**. The Court went on to say that the death penalty was not equally applied. Poor people were often sentenced to death because they couldn't afford good legal representation. Thus, the ultimate penalty was unfairly applied because defendants who could afford good lawyers were less likely to be punished with death. The Court in this case of *S. v. Makwanye* said:

“We have moved from a past characterized by much which was arbitrary and unequal in the operation of the law to a present and a future in a constitutional state where state action must be such that it is capable of being analyzed and justified rationally. Arbitrariness, by its very nature, is dissonant with these core concepts of our new constitutional order. It leads to the unequal treatment of persons.”

They reasoned that the South African Constitution, in section 11, goes beyond the 8<sup>th</sup> Amendment of the U.S. Bill of Rights.

The 8<sup>th</sup> Amendment bans punishments that are “cruel and unusual”

While the S.A. Bill of Rights bans punishments “cruel, inhuman or degrading.”

According to the Universal Declaration of Human Rights (which both South Africa and the United States have ratified), the cornerstone of human rights is a respect for the dignity of all human beings and the \*inviolability of the human person. These principles cannot abide the death penalty, a punishment unique in its cruelty and finality. In every country where it exists, the death penalty is applied with prejudice, error and arbitrariness. These facts have led countries around the world to abolish capital punishment. Members of the European Union, for example, are united in their opposition to it in all circumstances, calling it “an inhuman, medieval form of punishment and as unworthy of modern societies.” (Declaration by the EU President Chris Patten, Feb. 8, 2000)

The framers of South Africa's Constitution borrowed in part from article 19(2) of the German Basic Law which provides that, “In no case may the essence of a basic right be encroached upon.” We are not contrasting the death penalty with no punishment at all but between the death sentence and “severe punishment of a long term of imprisonment.” We need to abolish the death penalty and – at the same time - assure society that unreformed murderers or rapists will not be released from prison.”

The United States may stand with the majority of nations in the world in using the death penalty, but NOT the majority of industrialized nations. In fact, very few industrialized nations still use this outdated form of punishment. It has obviously not had much impact on violent crime in the U.S., as they have the highest crime rate in the developed world.

Inviolability = Not able to be violated for any reason.

## United States Position

In the use of the death penalty, the United States stands with the majority of nations in the world. However, many of these nations have reduced the number of crimes punishable by death, and many that allow it have not used the death penalty for years.

The United States is unusual in that the law regarding the death penalty is not uniform throughout the country. It varies from state to state. In no other country in the world can the punishment of death vary from area to area.

The position of the U.S. government – upheld by a majority in all three branches of government – has been that the death penalty IS constitutional. The Supreme Court has upheld the right of individual states to execute criminals, although often by a narrow 5 – 4 margin. The death penalty was suspended from 1972 to 1976, because the justices (and many American citizens) felt that there weren't any real guidelines established about who should get the penalty, so it was administered in a discriminatory and arbitrary way in many states. In 1976, the Court approved laws that allow the death penalty as long as they met certain standards. As Justice Potter Stewart wrote, "the death penalty is a legitimate expression of society's moral outrage."

There are concerns about the use of the death penalty in 38 states and the District of Columbia. Studies reveal that a disproportionate percentage of minorities and the poor are sentenced to death (particularly if their victims were white). Statistics show that violent crime – especially among juveniles – has not been deterred by the threat of this ultimate penalty. In addition, mistakes have been made which almost resulted in innocent inmates being sent to death. (The *Stanford Law Review* found 350 cases of wrongful convictions in the 20<sup>th</sup> century.) These arguments, and the belief that capital punishment violates a basic human right (to dignity) have led almost all industrialized nations to abolish it.

It remains to be seen whether Americans will ultimately pressure elected officials to abolish the death penalty. At present, there is more vocal pressure to keep it, in an effort to deter crime, to make the community safe by eliminating the most heinous criminals (those who could kill again), and to bring justice to victims and their families by sentencing people who "deserve to die." Supporters of the death penalty often feel that people who commit the most violent crimes have forfeited their rights to dignity and to life.

Even in South Africa, where the Constitutional Court has declared it a constitutional violation, many think they should bring back the death penalty. Polls suggest that a majority of South African citizens would favor a return to capital punishment to deal with an exceedingly high murder rate.

At present, the United States has chosen to go against the 1966 United Nations *International Covenant on Civil and Political Rights*, which says "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age."

## Position of the International Community

Since 1976, more than thirty nations have abolished the death penalty. Eleven others did away with it in all but the most exceptional circumstances (like wartime offenses). In those countries where the death penalty is permitted, 28 of them have not executed anyone in over ten years. Today, most industrialized nations of the world have banned the death penalty. Here are some of those countries' views:

Zimbabwe's Supreme Court, in a 1993 case *Catholic Commission for Justice and Peace in Zimbabwe v. Attorney-General*, Zimbabwe, ruled:

"The constitution guarantees that punishment of the individual be exercised within the range of civilized standards. Any punishment incompatible with the evolving standards of decency that mark the progress of a maturing society, or which involve the infliction of unnecessary suffering, is repulsive. What might not have been regarded as inhuman decades ago may be revolting to the new sensitivities which emerge as civilization advances."

In *Gandhi v. Union of India* (a 1978 case), one of India's constitutional court justices said "It is virtually impossible to avoid elements of arbitrariness in the imposition of any punishment. However, the consequences of the death sentence, as a form of punishment, differ so radically from any other sentence that the death sentence differs not only in degree but also in substance. It strikes me as being cruel and inhuman."

While the United States still upholds the death penalty as constitutional, some Supreme Court justices have disagreed with this. Justice Brennan said "the calculated killing of a human being by the state involves, by its very nature, a denial of the executed person's humanity ... A prisoner remains a member of the human family ... the deliberate extinguishment of human life by the state is uniquely degrading to human dignity."

California and Massachusetts forbid the death penalty in their state constitutions. One Massachusetts judge said "The death penalty is unacceptable under contemporary standards of decency in its unique and inherent capacity to inflict pain. The mental agony is, simply and beyond question, a horror ... we conclude that the death penalty, with its full physical and mental tortures, is impossibly cruel when judged by contemporary standards of decency."

On the other hand, supporters of the death penalty argue that the death penalty is justified by the most heinous crimes, and it not only addresses offenders, but reduces the likelihood of future victims. Many countries that strictly enforce the death penalty (like Singapore, Sri Lanka, Argentina and China) report very low crime rates.

There is international evidence that contradicts this. A United Nations study found "no conclusive evidence" of "the deterrent value of the death penalty." Even in the United States, there are states (like Texas and Florida) that have put the most criminals to death, which have higher crime rates than states like New York, which hasn't executed anyone since 1963.

## Lesson 6: What Does a Model Democracy Look Like?

**Objectives:** Students will

- describe important similarities and differences between the South African and U.S. constitutions (based on what they've learned in the unit)
- identify some key purposes and organizational elements of the two governments
- contrast how South Africa and the U.S. might view the proper role of government in citizens' lives – (Do they advocate an *activist* government?)
- explain how individual rights and the common good are addressed in a constitutional democracy

**Time Required:** The discussion will be one class period, but – depending on the level of sophistication and preparation desired – students may need a few days of independent work time to prepare.

**Materials:** None required unless selected readings are located and copied by the teacher. You may want to excerpt ideas of Montesquieu, Locke, Madison, Jefferson, Hamilton and the like.

### Introduction

Having learned about the similarities and differences between the United States and South African Constitutions, students will articulate their original responses to the question: **What is the ideal form of constitutional democracy?**

Would the ideal system necessarily look like either one studied, or would it be a new creation? What elements (of the American and South African government structure) do students see as critical strengths and weaknesses?

Post these questions as students prepare by outlining their reflections on what they've learned.

The lesson could be done as a **role-play**, with **founders of the American Constitution discussing the question with founders of the South African Constitution**. You might even assign some students to represent members of a new Afghan coalition government, looking for advice. Visitors from the past – perhaps even from ancient Greece – could be invited to participate.

### Body of the Lesson:

Arrange all of the students in a circle. If they are playing assigned roles, place a “table tent” in front of them, identifying their perspective. Assess students on their content knowledge and effectiveness as a discussion participant (building on others' ideas, not monopolizing the discussion, encouraging others to respond by asking thoughtful questions). You may want to assign a position paper following the discussion, in which students answer the above question based on their personal views.

**Conclusion**

Leave students with the idea that the United States Constitution broke new ground and has served as a model for many newly democratized nations. Likewise, South Africa is viewed by many as a contemporary success story, a model of coalition-building and peaceful transition. The question for all persons who promote democratic ideals will be: Do these countries live up to the ideals stated in their constitutions? Stay tuned!

## **EXTENSIONS -- Ideas For Further Study:**

1. Ask students to illustrate the proportional representation system, and to then draw a political cartoon that conveys a position for or against this system.
2. In South Africa today, 29.8% of members of parliament are women, and women now make up 38% of Ministers and Deputy Ministers. Are a significant number of women involved in these highest levels of decision-making in the United States?
3. Compare the roles of the first presidents of the two new democracies: George Washington and Nelson Mandela. Each had the overwhelming support of their country, and each led a revolution, a liberation from a perceived oppressor. But the two men, and the conditions that shaped them, were very different. Compare/contrast their presidencies.
- 4. Clashes concerning South Africa's Bill of Rights today (not addressed in the unit)**
  - People dispossessed of land have a right to claim compensation vs. general right (of white landowners) to hold onto property.
  - "1<sup>st</sup> generation rights" (guaranteeing free political expression, etc.) favored by some over "2<sup>nd</sup> generation rights" (emphasizing welfare and standard of living, housing, employment). The latter focuses on making a capitalist system more humane and equitable.

## **5. Looking to the Future -- Rights during a State of Emergency**

How do students think the two countries will handle the impacts of terrorism? Which civil liberties might be curtailed in the two countries, and how might differences in the two reflect differing belief systems/cultures/histories?

6. The more people question the legitimacy of their government, the more coercive the authorities must be to maintain control. Compare the policies of the apartheid regime in South Africa to one or more of the following:

Pinochet in Chile

Somoza in Nicaragua

Saddam Hussein in Iraq

The Duvaliers in Haiti

Ceausescu in Romania

The Taliban in Afghanistan

7. Ask students to pretend they've been elected by the Parliament to be the next president. They were chosen for strong advocacy of economic rights balanced with human rights. What would such a balance look like? (For example, how might addressing the immense need for public housing conflict with the priority to attract investment?) Ask students to write a short speech describing how the two might be addressed. This could also be done in triads, with 1/3 of the kids playing the president,

1/3 playing squatter camp residents and 1/3 playing potential business investors Labor ministers.

Extensions, cont'd.

8. The following critical questions could be explored in small group discussions as a follow-up part of this unit, or a point of reflection between lessons.
  - What is the fairest way to establish new rules (especially when the new system follows a repressive regime)?
  - How do differing needs and interests shape group decisions?
  - In a democracy, how do we balance majority and minority viewpoints?
  - What freedoms are most important (most fundamental to democracy)?
  - Which individual rights might conflict with the common good?
  - What is the proper role of government (activism versus restraint)?
  - How are people represented in government?
  - What is the importance of preambles and declarations?
  - What societal conditions are essential to democracies?
  - Is democracy a luxury for societies in which people's basic survival needs are met?
  - How does our concept of human dignity shape the way we punish criminals?
  - What are the costs and benefits of
    - representative government (federal system)
    - affirmative action
    - majority rule (single party dominance)

The Constitutional Court in South Africa said the following about the new Interim Constitution of 1993:

**“The foundational concern of the constitution is to form a bridge between an unjust, undemocratic and closed system of the past, and a future concerned with openness, democratic principles, human rights, reconciliation, reconstruction and peaceful coexistence between people of the country. If the constitution is to fulfill its stated purpose it must be interpreted in such a manner to give clear expression to the values it seeks to nurture for a future South Africa, but this should be done in a way which makes it a living document for all the citizens of the country.”**

**(Majority decision in  
Qozeleni vs. Minister of Law and Order)**

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[www.law.wits.ac.za](http://www.law.wits.ac.za)

For complete copy of the 1996 South African Constitution:

[www.polity.org.za/govdocs/constitution/saconst](http://www.polity.org.za/govdocs/constitution/saconst)

**NCSS Standards met by this unit at the Middle School level:**

V. Individuals, Groups and Institutions

- e. Identify and describe examples of tensions between belief systems and government policies and laws

VI. Power, Authority and Governance

- b. Describe the purpose of government and how its powers are acquired, used and justified.
- c. Analyze and explain ideas and governmental mechanisms to meet needs and wants of citizens, regulate territory, manage conflict, and establish order and security.
- e. Identify and describe the basic features of the political system in the United States, and identify representative leaders from various levels and branches of government.
- i. Give examples and explain how governments attempt to achieve their stated ideals at home and abroad.

IX. Global Connections

- f. Demonstrate understanding of concerns, standards, issues and conflicts related to universal human rights.

X. Civic Ideals and Practices

- a. Examine the origins and continuing influence of key ideals of the democratic republican form of government, such as individual human dignity, liberty, justice, equality and the rule of law.
- d. Practice forms of civic discussion and participation consistent with the ideals of citizens in a democratic republic

**NCSS Standards met by this unit at the High School Level:**

V. Individuals, Groups and Institutions

- e. Describe and examine belief systems basic to specific traditions and laws in contemporary and historical movements

VI. Power, Authority and Governance

- b. Explain the purpose of government and analyze how its powers are acquired, used and justified.
- c. Analyze and explain ideas and governmental mechanisms to meet needs and wants of citizens, regulate territory, manage conflict, establish order and security, and balance competing conceptions of a just society.
- e. Compare different political systems (their ideologies, structure, institutions, processes, and political cultures) with that of the United States, and identify representative political leaders from selected historical and contemporary settings.
- i. Give examples and explain how governments attempt to achieve their stated ideals at home and abroad.

IX. Global Connections

- f. Analyze or formulate policy statements demonstrating an understanding of concerns, standards, issues and conflicts related to universal human rights.

X. Civic Ideals and Practices

- a. Explain the origins and continuing influence of key ideals of the democratic republican form of government, such as individual human dignity, liberty, justice, equality and the rule of law.
- d. Practice forms of civic discussion and participation consistent with the ideals of citizens in a democratic republic.