

Editorial

Constitutional Court Review Beyond the Global Pandemic

This issue of *Constitutional Court Review* (CCR) was born at a time when ‘social distancing’ was a technical term with currency only among specialists in public health circles. In August 2019, our annual conference was held over two days in which a fascinating array of papers was discussed and honed — face-to-face — by participants united in the common enterprise of engaging in-depth with the work of the Constitutional Court of South Africa. Backward looking in one sense, this journal reflects on recent jurisprudence of the Court and its development over time. In so doing, scholars play a critical role in the constitutional schema that holds the Court to account for its reasoning and decisions. In another sense, the journal is forward-looking, revealing alternate paths not taken or engaging with issues that inevitably will come before the Court. While the interplay of past, present and future is perhaps characteristic of the legal enterprise as a whole, it is of particular value to the constitutional project that aims to transform South African society fundamentally.

There is nothing like a health pandemic to highlight societal and institutional deficiencies. Many bad habits, reminiscent of a past against which the constitutional order is a firm counterpoint, resurfaced during this time. Mureinik’s bridge to a culture of justification became shaky as latent authoritarian tendencies re-emerged. Security forces dealt violently with people struggling to comply with lockdown regulations; South African citizens and non-citizens alike struggled to access social assistance with migrants and refugees facing additional burdens; and Ministers imposed a raft of regulations restricting individual rights, a number of which were nonsensical (such as banning exercise outdoors — essential for mental health and with low risk of viral transmission — and specifying which clothes could be bought in retail stores). It became evident that there are significant differences between measures required to address public health emergencies and those required for conflict- or public order-related emergencies. Derogation clauses in constitutions such as ours are better suited to the latter. The executive did not employ this framework with its in-built safeguards, but instead used disaster legislation to issue a raft of regulations with very limited parliamentary oversight. These, and other matters, are working their way through the courts and no doubt will provide the basis for much analysis in future editions of this journal. This period highlights the importance of deepening our commitment to constitutionalism which becomes ever-more important when societal systems are under strain. Sadly, this is likely to continue into the foreseeable future as the economic impacts of COVID-19 continue to bite.

CCR is not the project of a singular individual but rather of a group of dedicated, autonomous people working towards a collective aim. Starting with this issue, four editors were appointed to a volume-specific editorial committee (VSEC), each responsible for shepherding a batch of articles to publication. I am deeply grateful to them for their hard-work: Jason Brickhill, Khomotso Moshikaro and Franziska Sucker — a very sincere and deep thank you!

The VSEC is complemented by an editorial board whose members are responsible for taking submitted articles through the rigorous review process. *CCR* prides itself on its editors who engage deeply with articles, subjecting them to thorough scrutiny and ensuring the high quality of contributions. I thank these editors for their hard work in bringing this volume to fruition; it is deeply appreciated and the greatest reward is to see the excellent pieces that have resulted from our collective efforts. The support and dedication of the managing editor, Michael Bishop, is also deeply appreciated. A particular thank you must go to the editor-in-chief, Stu Woolman, for his deep commitment to this journal and for ensuring that it continues to publish articles of outstanding quality. We hope you are proud of our work, Stu!

Of course, editors have no material without the authors who are at the heart of the academic enterprise. We are privileged to have attracted submissions from an excellent and diverse array of authors who have produced outstanding pieces. We are grateful to them for joining us at the conference, contributing to our journal and working to meet deadlines. We also very much appreciate the work of our reviewers who perform a hidden and thankless task but contribute so much to scholarship.

A big thank you must go to the Konrad Adenauer Stiftung (KAS) who have supported the journal since its inception, enabling us to host the annual conference and generously contributing to the production costs of the journal. We are grateful to Henning Suhr, resident representative for South Africa, and project manager Nancy Msibi for their continued assistance with the journal.

CCR is also closely associated with the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC) which I direct. A centre of the University of Johannesburg, SAIFAC has taken charge of organising the journal's annual conference and, in a sense, providing a physical home for the journal at its seat on the iconic Constitution Hill. I thank Naomi Hove for her administrative excellence which ensured that the 2019 conference ran according to plan, as well as Mispa Roux, Justin Wanki and Nabeelah Mia for their assistance. We also value and appreciate our institutional connection to the University of the Witwatersrand's School of Law.

Last but definitely not least, a journal cannot survive without a high-quality publisher and *CCR* has found just such a publisher in NISC. We are deeply grateful to their publishing editor, Jane Burnett, for her efficiency, diligence and responsiveness in producing this edition of our journal. We thank NISC's managing director, Mike Schramm, for believing in the journal and helping to grow its global reputation and footprint.

To our readers, we hope you find these articles stimulating, challenging and enlightening.

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