

Teaching Social Security Law

By:

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Introduction

The basic categories of pedagogy are personality formation, upbringing, education and instruction². In the interest of maintaining a diversity of topics for instructors of law, the researcher spent some time searching and designing syllabi for courses in law. The researcher came across one in particular, **Social Security Law**, that the researcher thought offered a number of interesting readings and dealt with administrative issues and over all course structure quite well.

Law is examined as an institutionalized field of contests over the rules of social life. The historical development of core institutions such as courts, codes and constitutions. It must further be examined the extent to which society could use changes in legal form to understand changes in social relations. For example, how do some legal rules acquire legitimacy for members of a society and why other rules are ignored or despised.

Do legal rules and their enforcers inevitably serve powerful political or economic interest or does law have some autonomy, and how do legal institutions enable and constrain movements for social justice. These issues will be discussed in the research paper as it progresses.

The basic problem

Until recently, socio-economic rights were a foreign concept to most South African lawyers, perhaps also to lawyers throughout the world and could easily be ignored as irrelevant. However, the position has drastically changed by the acceptance of a Bill of Rights for South Africa³. Social security is recognized as one of the fundamental rights and section 27(1) of the South African Constitution⁴ provides that “everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, an appropriate social assistance”.

Thus this research is propelled by the conviction that without the active involvement of all state organs and civil society, the hard-won rights will remain only on paper. A fundamental reform of the social security system is one of the ways of redressing past injustices⁵.

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² <http://thesocietypages.org/teaching/2009/04/03sociology-of-law-and-legal-institutions.syll...1/13/2011>

³ Choma H.J *Protection and Enforcement of Socio-economic Rights in South Africa* 5 David Publishing Company 2009

⁴ . Act 108 of 1996.

⁵ Choma H.J referred to above

The question of the entrenchment of social and economic rights, including the right to labour, education, housing, health and social security in the South African Constitution comprised one of the central issues in the controversy regarding the South African Constitutional dispensation. These rights are often described as second-generation human rights, since they were first acknowledged as human rights during the mid-nineteenth century. Traditional civil and political rights, first –generation human rights, on the other hand, have enjoyed recognition since the end of the eighteenth century⁶.

Motivation

The purpose of this research is to examine the role and operation of the South African judiciary, in a system of constitutional supremacy. It has been explored by various scholars that South African Constitutional tradition was based on the legislative supremacy. Scholars have written pioneering books on the South African judiciary. Although these studies cover a wide range of subjects, they are confined mainly to the role and attitudes of the judiciary during certain specific periods, and do not deal specifically and directly with the constitutional role of the judiciary and the influence of the doctrine of legislative supremacy in relation to this role⁷.

Related hypothesis

This paper investigates the extent to which economic, social and cultural rights are constitutionalised in South Africa. Frames of references that are relied upon for the justifiability of these rights are in the international treaties and national legislation, as well as in international and national case law. The scope of this paper is limited to the illustration of general trends, problems and possibilities.

- To identify the problems that influence socio-economic rights on the development of constitutional law and constitutionalism in South Africa.
- To assist government in progressively realizing the implementation and enforcement of socio-economic right.

⁶ De Wet E *The Constitutional Enforcement of Economic and Social Rights* ix Butterworth 1996.

⁷ Cameron E *Nude Monarchy: The case of South Africa's Judge 1987 SAJHR* 338