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Lyrics as Law: Teaching the South African Constitution through Socially Conscious Songs

LETRA DE MÚSICA COMO LEY: ENSEÑANDO LA CONSTITUCIÓN SUDAFRICANA A TRAVÉS DE
CANCIONES SOCIALMENTE CONSCIENTES

LETRA DE MÚSICA COMO LEI: ENSINO DA CONSTITUIÇÃO SUL-AFRICANA POR MEIO DE
CANÇÕES COM CONSCIÊNCIA SOCIAL

Mutondi Mulaudzi¹ and Babatunde Fagbayibo²

Abstract

The discussion of South Africa's political history is incomplete without the role of music and musicians in shaping the narrative of resistance to injustice and the quest for a better society. The violence of colonialism and Apartheid, the optimistic transition to a constitutional order, and the frustration with the post-Apartheid democratic government are documented in South African songs. While other disciplines in the humanities have explored the importance of music in South Africa's societal configuration, little attention has been given to the subject in the legal academy. As such, this article advances the argument that socially conscious songs can play a meaningful role in understanding the South African Constitution. This kind of engagement makes technical ideas and concepts relatable and enhances students' skills to see issues from a multidimensional perspective.

Keywords

Music; South African Constitution; critical legal theory; human rights; pedagogy.

Resumen

El debate sobre la historia política de Sudáfrica está incompleto sin el papel de la música y de los músicos en la formación de la narrativa de resistencia a la injusticia y de búsqueda de una sociedad mejor. La violencia del colonialismo y el Apartheid, la transición optimista hacia un orden constitucional y la frustración con el gobierno democrático posterior al Apartheid están documentadas en canciones sudafricanas. Mientras otras áreas de las humanidades han explorado la importancia de la música en la configuración social de Sudáfrica, se ha prestado poca atención al tema en el ámbito del Derecho. De esta manera, este artículo avanza el argumento de que las canciones con conciencia social pueden desempeñar un papel importante en la comprensión de la Constitución sudafricana. Este tipo de compromiso hace que las ideas y los conceptos técnicos sean identificables y mejora las habilidades de los estudiantes para analizar problemas desde una perspectiva multidimensional.

Palabras clave

Música; Constitución sudafricana; teoría crítica del Derecho; derechos humanos; pedagogía.

Resumo

A discussão da história política da África do Sul está incompleta sem o papel da música e dos músicos na formação da narrativa de resistência à injustiça e de busca por uma sociedade melhor. A violência do colonialismo e do Apartheid, a transição otimista para uma ordem constitucional e a frustração com o governo democrático pós-Apartheid estão documentadas em canções sul-africanas. Enquanto outras áreas das humanidades exploraram a importância da música na configuração

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societária da África do Sul, pouca atenção tem sido dada ao tema no âmbito do Direito. Desse modo, este artigo avança o argumento de que canções socialmente conscientes podem desempenhar um papel significativo na compreensão da Constituição sul-africana. Esse tipo de comprometimento torna ideias e conceitos técnicos relacionáveis e aprimora as habilidades dos alunos para analisar questões a partir de uma perspectiva multidimensional.

Palavras-chave

Música; Constituição sul-africana; teoria crítica do Direito; direitos humanos; pedagogia.



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INTRODUCTION¹

The discussion of South Africa's political history is incomplete without the role of music and musicians in shaping the narrative of resistance to injustice and the quest for a better society. The violence of colonialism and Apartheid, the optimistic transition to a constitutional order, and the frustration with the post-Apartheid democratic government are documented in South African songs. While other disciplines in humanities have explored the importance of music in South Africa's societal configuration (Woodward; Sloth-Nielsen; Mathiti, 2007; Vershbow, 2010), little attention has been given to the subject in the legal academy. This attitude stems from the conservative nature of legal education, one that demands disciplinary isolation (Modiri, 2014, p. 6). In this respect, law students are generally only limited to studying legal texts such as the constitution, pieces of legislation, treaties and protocols, court judgments, and publications by legal scholars. This approach ignores the social dynamics that shape the way law is construed and the impact of its implementation on societal structures. The critical voices of social actors are excluded from the pedagogical environment, thus denying students the benefit of having a multidimensional view of the nature of the law.

This article aims to advance the argument that South African music and musicians have provided considerable material for engaging in the critical reading of the South African Constitution. In this respect, Sindane and Fagbayibo (2020) have observed that the inclusion of music in the law syllabus is an important aspect of "imagining anew". As such, this article will highlight some of the songs that speak to the critical assessment of the South African Constitution and propose measures for incorporating them into the teaching of law. The article starts with an epistemic discussion of the relationship between music and law. It then moves to a discussion of relevant songs and what they mean for critical scholarship. It ends with recommendations on how to incorporate South African music into the law curriculum.

1. MUSIC AND LAW: AN EPISTEMIC INTERFACE

Humankind has grasped the strong nexus between music and the law for centuries, and the epistemic relationship between them has evolved over time. Ancient civilisations of Europe, Asia, and Africa were able to strategically deploy music as a tool for designing and transmitting the law. The underlying rationale for this approach stems from the understanding that music is a cultural product, one that captures situational and aspirational values of a society. In addition, music was also seen as an easier mechanism for ensuring the memorisation of legal norms. In reference to the Greek civilisation, Thomas Hobbes (cited in Grossfeld; Hiller,

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2008, p. 1150) noted: “Laws were many times put into verse, that the rude people taking pleasure in singing, or reciting them, might more easily retain them in memory”. Similarly, in ancient India, the Rig Veda and the Law Code of Manu were committed to human memory and daily recited through musical chants as it was believed that “writing... would make people lazy about their memorization and actually shrink the human mind and the capacity for memorization” (Naegele, 2008, p. 66).

In pre-colonial African societies, the jurisprudential value of music was widely recognised, as music was instrumental in preserving and transmitting cultural precepts and norms. According to Okot p’ Bitek (cited in Leman, 2011, p. 29): “The artist proclaims the laws but expresses them in the most indirect language: through metaphor and symbol, in image and fable. He sings and dances his laws”. Similarly, Soyinka (1985, p. 546) observed that ethnic groups, such as the Idoma people in present-day North-Central Nigeria and the Watutsi in present-day Burundi and Rwanda, practised litigation through songs and proverbs.

Although music no longer serves the role of preserving and transmitting laws, several scholars continue to highlight the importance of appreciating its epistemic value in engaging societal normative structures. This is often done through two broad interrelated prisms. In the first one, scholars have drawn similarities between the performative techniques of both law and music. In their analysis of the similarity of performance in law and music, Balkin and Levinson (1999, p. 1518-1519) noted:

Law, like music or drama, is best understood as performance – the acting out of texts rather than the texts themselves. The American Legal Realists distinguished “law on the books” from “law in action.” Our claim takes this distinction one step further: “Law on the book” – that is, legal texts – by themselves do not constitute the social practice of law, just as music on a page does not constitute the social practice of music. Law and music require transforming the ink on the page into the enacted behaviour of others. In an important sense, there is only “law (or music, or drama) in action”, in contrast to poetry or fiction, whose texts do not require performance but can be read silently to one’s self. Like music and drama, law takes place before a public audience to whom the interpreter owes social responsibilities. Legal, musical, and dramatic interpreters must persuade others that the conception of the work put before them is, in some sense, authoritative. And whether or not their performances do persuade, they have effects on the audience.

In the same vein, Manderson (2010, p. 1) argued that law and (classical) music “are both performative disciplines... concerned with practices of textual interpretation, and with questions of the authority of those texts and the legitimacy of those interpretations”. Grossfeld and Hiller (2008, p. 1153) referred to how statutes have been likened to musical scores, legislators to music composers, and conducting courtroom trials to performing a sonata.

The second prism deals with how scholarly writings have highlighted the role of music in enhancing the critical study of the law. In fields such as international law, criminal justice, human rights, family law, and intellectual property, legal scholars have shown the extent to which socially conscious lyrics can expand students' knowledge (Fagbayibo, 2019; 2023; Newman, 2018; cummings, 2019; Bridgewater; cummings; Tibbs, 2015). By providing relatable contexts, this exercise humanises otherwise technical, abstract concepts. In the context of this article, the inclusion of South African music in the classroom can achieve three main goals:

- : Serves as an interesting tool for engaging with otherwise rigid materials, thus making it more useful for students.
- : Due to the multiple ways in which lyrics and visual representations of music can be interpreted, music facilitates debate and discussion on various legal topics and themes.
- : Provides students with the skills to engage with legal issues through multidimensional, multi-, inter- and trans-disciplinary lenses.

These points are addressed in the subsequent sections of this article.

2. A MUSICAL (RE)READING OF THE SOUTH AFRICAN CONSTITUTION

The South African Constitution tells a story, one that may be described as a legal form of storytelling. It actively speaks about South Africa's history while telling a story about an enigmatic, yet optimistic future. In other words, it contains legal narratives of South Africa's past, present, and future. As discussed above, the relationship between various modes of storytelling, including music, and pedagogy is not random or even arbitrary. One of the primary criticisms of legal education in South Africa is its inability to equip students with the understanding of the law as a social dimension as opposed to technical black letter law that exists in a silo and is beyond or outside of our society (Modiri, 2016). In order for legal practitioners, judges and any other interpreters of our law to analyse the law effectively, they must have an understanding of the historical underpinnings of the law and the existing implications of that history. Music as a tool for legal education thus presents an opportunity for teaching law in a contextualized manner, as it exposes the reality and conditions in which it was composed. In other words, music has the potential to tell a story that is representative of the societal dimensions of our law.

The South African Constitution, the supreme law of our country, is the perfect example of how we can merge the seemingly (or potentially) unconventional relationship between legal

education and music. Constitutions are often, if not always, representations and responses to political instability or social oppression and anticipate a shift from the historical inequality that has shaped a particular jurisdiction. For example, the preamble of the Rwandan Constitution (2003) explicitly references the tragic 1994 Genocide: “Conscious of the genocide committed against Tutsi that decimated more than a million sons and daughters of Rwanda, and conscious of the tragic history of our country”. Similarly, the preamble of the Kenyan Constitution (2010) also notes its history of colonial imperialism by making specific mention of “those who heroically struggled to bring freedom and justice”. In essence, Constitutions often signify a transition from one place (often an oppressive place marred by injustice) such as dictatorships or colonialism and inequality to a more hopeful, and potentially democratic, equal place.

The South African Constitution is a response to a history of colonial imperialism and Apartheid, a history of legally sanctioned inequality and injustice. The 1996 Constitution and much of the laws and jurisprudence that have come after its enactment are, therefore, a perfect example of the importance of law in context, and music can play a meaningful role in critically exploring these contexts. Indeed, scholars have debated and critically engaged with the role that law should play in the social transformation of South African society (Klare, 1998; Van Marle, 2000; Madlingozi, 2007; Modiri, 2012). Scholars have also argued for an approach to constitutionalism and the interpretation of Constitutions that place less emphasis on a rigid and formalistic notion of the law. They argue, instead, for an approach to constitutionalism that is formal on the one hand, but also sociological on the other. In other words, engagement with the Constitution must recognise “a societal engagement with foundational rules” and an emphasis on the societal context (Blokker, 2017).

The relationship between constitutional norms and artistic expression is well-represented in the South African context. Art was strongly embedded in the anti-Apartheid movement within and outside the country. The most common example is the relationship between music and resistance. Musicians all over the world participated in the use of music as a form of resistance. Music, as discussed further below, was often used as a critique of Apartheid and a way to promote awareness of the atrocities caused by this system. In South Africa, music also played an important role in protest culture on the ground (Le Roux-Kemp, 2014). Protest music was lyrically composed with the intention to highlight the political climate and the effects of Apartheid on black South Africans, becoming an important tool for activists. As is discussed below, the incorporation of music in protest culture continues to be crucial in South African politics.

The relationship between art and law is also reflected in the Constitutional Court’s art collection. The collection, which is described as a “visual interface between art and justice for the public entering the highest court in South Africa”, consists of over 600 pieces (Constitutional Court Art Trust, [s.d.]). It includes artworks that also belong to the Court’s architecture. All of the pieces at the Court symbolise South Africa’s transitional justice process and

explore themes such as human rights, social justice, and reconciliation. Garnsey (2016) describes the collection as a visual jurisprudence framed around the right to human dignity in the South African Bill of Rights.

2.1. THE SOUTH AFRICAN CONSTITUTION AS A MONUMENTAL AND MEMORIAL STORY

According to du Plessis (2000, p. 385), the South African Constitution is a narration of both memory and promise. He observes that the ability of the Constitution to fulfil its promises is anchored to how we deal with it as a memory (du Plessis, 2000, p. 385). Du Plessis (2000, p. 385) identifies the Constitution as both monumental and memorial. These two approaches, although contradictory, can co-exist and benefit the promises set out in the Constitution. For du Plessis (2000, p. 386), monumental constitutionalism represents remembrance and celebration, whereas memorial constitutionalism has elements of remembrance, however, it commemorates. He separates parts of the Constitution into these two categories. Provisions that highlight constitutional values such as sections 1, 7, and 36 as well as chapters 3 and 10, are monumental (du Plessis, 2000, p. 386-387). They highlight the optimistic side of the constitution such as its grounding within the principles of non-racism and non-sexism, the advancement of human rights, cooperative governance, value-based limitations of rights, and the values of public administration (du Plessis, 2000, p. 386-387). Memorial constitutionalism signifies a constitution that is still coming to terms with an undecided future and still getting to grips with a particular future (du Plessis, 2000, p. 393).

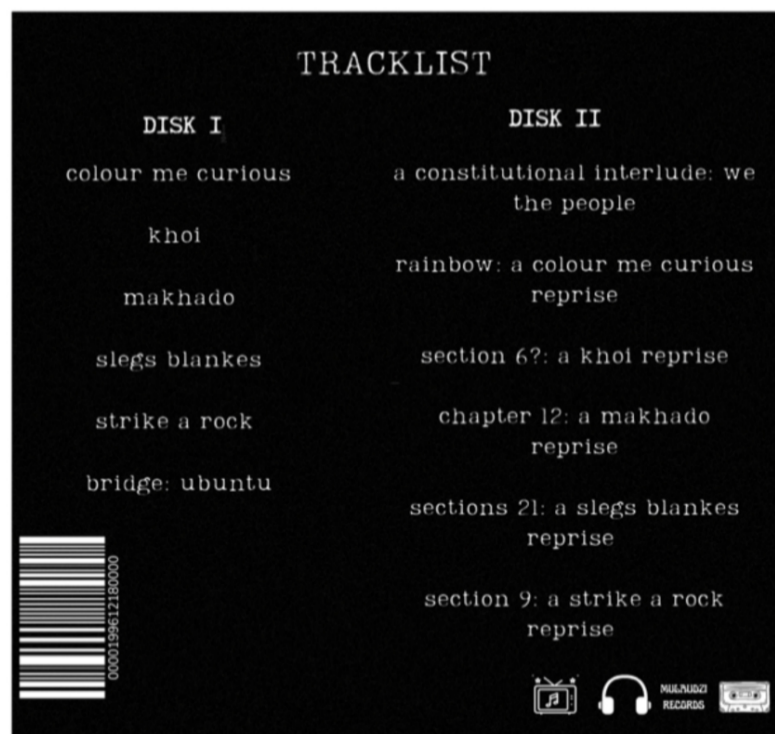
For the purpose of this article, we use elements of the distinction between the monumental and the memorial modes of memory set out by du Plessis to split some of the music we have selected for our (re)reading of the Constitution into two groups. These modes of memory help us develop a contextual analysis of the selected music for the (re)reading of parts of the constitution. Some of the pieces in the musical rereading highlight the monumental position as they symbolise the wave of hope that was introduced in 1994, which heralded the enactment of the democratic Constitution in 1996. These songs represent the constitutional vision for an equal society, based on the values set out in the Constitution. They are a melodic representation of the Constitution and the rights-based progress that has been made. The other compositions engage more with the memorial mode by (re)telling stories that highlight the injustices of the past and the present. In other words, it highlights the context of the disadvantaged and dispossessed in post-Apartheid South Africa.

FIGURE 1 – IMAGINING THE SOUTH AFRICAN CONSTITUTION AS AN ALBUM (FRONT COVER)



Source: Photograph © Musa Nxumalo (published in this article with Mr. Nxumalo's permission), Isigxagxa (16 shots exhibition, 2017, Johannesburg), designed by the authors.

FIGURE 2 – IMAGINING THE SOUTH AFRICAN CONSTITUTION AS AN ALBUM (BACK COVER)



Source: Designed by the authors.

Figures 1 and 2 above imagine the South African Constitution as a concept album design. The album is titled “The Republic”, and the front cover features an image of a young man taken at a protest in 2017, symbolising the ongoing struggle for rights in South Africa. The tracks on the album reflect various aspects of the legal landscape in South Africa during Apartheid. Themes include racial segregation, land dispossession, cultural erasure, and the marginalisation of black women. *Disc I* ends with a track representing the bridge to the Interim Constitution of 1993. *Disc II* symbolises a democratic South Africa with reprises that represent the constitutional efforts to address and repair the Apartheid legal landscape on *Disk I* and the injustices of the past.

2.2. THE SOUNDTRACK: CONSTITUTIONAL STORYTELLING AND ANALYSIS THROUGH MUSIC

The standard elements of a story timeline consist of a beginning, a middle, and an end as well as the time and setting. Some narratives also include an exposition, which features the history and other details of the past that are essential for understanding the story. The passing of the 1996 Constitution is not the beginning of the story. The story of the 1996 Constitution includes an exposition that expresses the historical context necessary for comprehending its existence. In other words, if the constitutional story were a contemporary music album, the adoption of the 1993 interim Constitution and the 1996 final Constitution would be an interlude, an intervening period in an ongoing composition (see Figures 1 and 2 above). The picture we are attempting to paint with the analogy above speaks to the purposive and contextual interpretations of the Constitution (Currie; De Waal, 2013, p. 135-142). In order for the Constitution to fulfil its promise of an equal society, readings and interpretations of South Africa’s constitutional story cannot be ahistorical. Engaging with an ahistorical study would lead to the misreading and misinterpretation of the Constitution as a document that is divorced from the history of South Africa. In this respect, section 39 of the 1996 Constitution compels interpreters of the Constitution to “promote the spirit, purport and objects of the Bill of Rights”. Similarly, music requires contextual interpretation, as it must be understood and interpreted according to the time, place, and climate in which it was written (Manderson, 2010).

It is clear from the preamble to the Constitution that the story of a constitutional South Africa did not begin with the adoption of the 1996 Constitution. The preamble to a Constitution acts as an exposition and prologue to the story that the Constitution tells. It could also be equated to the opening sequence song of a TV show or the opening title of a musical. The South African Constitution’s preamble and the founding provisions, as set out in section 1 of the Constitution, work as the opening title for our musical rereading. As mentioned above, the preamble falls under monumental and memorial modes of memory. By setting out the intention to heal the divisions of the past and improve the lives of all citizens, it reminds us of the injustices of the past, whilst simultaneously celebrating the hope for a better future.

It also highlights the importance of interpreting the Constitution as a response to our history by its call to “recognise the injustices of our past; honour those who suffered for justice and freedom in our land” (Constitution of the Republic of South Africa, 1996). Furthermore, it highlights that one of its purposes is to “heal the divisions of the past [...]”. A major part of the anti-Apartheid revolution was the adoption of music as a tool for protest against injustice, both locally and internationally. Songs by anti-Apartheid activists were released and often banned by the authorities. These included songs such as Stevie Wonder’s “It’s Wrong (Apartheid)”, which compared Apartheid to slavery and the Holocaust; Miriam Makeba’s “Sophiatown is Gone” (1977), which recalled the forced removal of black, coloured and Indian communities for the creation of white-only suburbs and epitomised the need for eviction laws and housing rights; and Abdullah Ibrahim’s “Mannenberg”, a jazz composition without lyrics, which was the anti-Apartheid anthem for Cape Town and symbolised the experience of coloured people in Apartheid South Africa (Mason, 2007). The preamble also highlights the promises that the Constitution makes. It presents its constituents with hope for a better tomorrow and shifts to an identity marred by the brutality of imperialism and brutality toward an equal future for everyone.

Also, several contemporary pieces invoke hopeful promise and modes of memory. An example is Freshlyground’s “Doo Bee Doo” (2004). The song speaks of the achievement of freedom and a life thereafter wherein all people can live together in harmony. The lyrics set out at the beginning of freedom in South Africa:

Politicians have agreed
 To honour and obey
 They’ll come down and listen
 To what the people say

Adopting monumental modes of memory, this song celebrates the transition to a democratic South Africa. Furthermore, it explores themes such as unity, peace, and the onset of freedom and democracy by describing the excitement around the introduction of voting rights and other politics for disenfranchised South Africans. It also alludes to the “conclusion” of the transitional period in South Africa and the euphoria that engulfed the country at the time.

Similarly, Brenda Fassie’s “My Black President” (1990) adopts both the monumental and memorial modes by using the detention and subsequent release of anti-Apartheid figure, Nelson Mandela, to explore human rights issues. This includes themes such as police brutality and torture, the persecution of anti-Apartheid activists in the 1960s, the liberation movement, and, finally, a depiction of what the release of Nelson Mandela meant for black South Africans. In this case, Brenda Fassie monumentalises his release while memorialising his detention.

The memorial mode of memory is focused on people's day-to-day lives. In other words, "it commemorates past (and present) victims of gross human rights violations, socio-economic inequalities and injustices in their daily (public and private) lives" (Modiri, 2012, p. 249). The current political climate and discourse on transformative equality and economic transformation in South Africa (Sibanda, 2011) present a unique opportunity to use music to juxtapose black disenfranchisement at the height of rights-based discourse in the 1970s and 1980s with current discourse and critical readings of the Constitution. In particular, it focuses on the failure of the Constitution to transform the lives of people in South Africa, as promised in its preamble. Freshlyground presents another piece of music that is useful for the interpretation of some of the failures of the Constitution to achieve transformation. Freshlyground's "Banana Republic", released more than ten years after the more hopeful "Doo Bee Doo", explores opposing themes related to the failure of the constitutional promise such as the collapse of schools, emergency, insecurity, and the absence of opportunity:

All your people dying in freedom
 Suffering a profound lack of leading
 Are you even there when we call? Are you a human, man?
 Full of lies, can't believe what I'm hearing
 From your lips a river of scheming
 Poisoning all the water we're drinking

Socially conscious music is a useful tool for the rereading of the South African Constitution in the context of teaching and understanding the Bill of Rights and rights-based discourse. In this respect, it is useful for understanding labour rights, prisoners' rights, the right to education, and the right to equality among others. These compositions highlight the memorial and monumental modes of memory associated with the promise of the Bill of Rights while guiding students and teachers towards contextual interpretations of the rights discourse. We have selected three rights to show the relationship between human rights and music as well as how music can be used as a tool for teaching human rights and constitutional law.

The first ones we have identified are labour rights and employment equity (under the right to equality in section 9 of the Constitution). The preamble of the Employment Equity Act no 55 of 1998 (EEA) reminds us of the context of economic inequality, disparity, and disadvantage in South Africa. The EEA also deals with the introduction of affirmative action in labour rights discourse in South Africa. The EEA defines affirmative action as "measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer." The designated group refers to black people, women, and people with disabilities (EEA, 1998). Affirmative action is the theme of Lucky

Dube's 1995 composition titled "Affirmative Action". This song presents an interesting opportunity for facilitating discussions on labour rights discourse and debates in South Africa.

One of the major areas of the debate was, and continues to be, the introduction of affirmative action policies in South Africa (Ramalekana, 2022). Questions on the purpose, effectiveness, and fairness of affirmative policies; the stigma attached to these policies, and the relationship they have with formal and substantive equality have been central themes in employment equity laws and jurisprudence (Adam, 2000; Alexander, 2007; Ramalekana, 2022). Lucky Dube's composition presents a perspective on the debates that still surrounds employment equity policies in South Africa:

For people like you Georgie
Who still live in the past
When you couldn't do things
For yourself, you blamed it on Apartheid

An initial reading of the first verse of the song alludes to anti-affirmative action rhetoric and the stigma that is often attached to affirmative action policy and its beneficiaries (Ramalekana, 2022). However, a further and fuller reading of the composition may allude to a criticism of the abuse of affirmative action policies rather than an affirmation or confirmation of anti-affirmative action rhetoric. Dube presents an interpretation of affirmative action as a system that is abused by unqualified politicians instead of upskilling beneficiaries:

We are tired of people who
Think that affirmative action is the way out
And, is another way of putting puppets

Dube's descriptive term "putting puppets" is one that has found expression in South Africa's political lexicon as "cadre deployment". Critics note that cadre deployment has been used by the ruling party, the African National Congress (ANC), to place loyal party members with little or no requisite qualifications in strategic government positions, a factor that has led to gross inefficiency of state institutions and widespread corruption (Swanepoel, 2021). Dube stresses the prioritization of access to education over the nominal implementation of affirmative action:

Education is still the key
Even though we have Affirmative action

Dube's composition shows the benefit of using musical pieces in the classroom to introduce concepts and facilitate discussion. Whether intentionally or unintentionally, this piece can be interpreted in several ways and may bring forward different perspectives and opinions.

This song may be used for teaching human rights law (labour rights themes) and labour law (employment equity themes) modules.

The application of the Bill of Rights to juristic persons (section 8 of the Constitution), and fair labour practices such as the right to strike (section 23 of the Constitution) are also common themes in contemporary South African music. Unfair labour practices such as unsafe working conditions, low wages, and the violent policing of strike action in mining companies have always been a problem in South Africa (Magaziner; Jacobs, 2013). South Africa has experienced major strike action such as the African Mine Worker's Strike in 1946 to the Marikana Massacre in 2012. This is highlighted in DJ Bongz's "Underground":

Is it safe to be underground
 Is it safe enough to work underground
 Tell me, cause my man is digging for gold, and I don't know whether
 He'll sleep home tonight

The second theme we have identified is the right to education and to protest, as well as the rights of arrested, detained, and accused persons. Scholars have explored the debates around the meaning of the right to education, the inclusion of disenfranchised people in higher education (Kenyon; Madlingozi, 2021), and the right to be taught in one's language (Munyai; Phooko, 2021). They have also analysed the linkages between the fight against the Bantu education systems in 1976 and the 2015/2016 "Fees Must Fall" movements (Ndlovu, 2017; Kenyon; Madlingozi, 2021). The 1976 uprising has been the central thesis of several South African music pieces. An example of this is Miriam Makeba's "Soweto Blues", which was penned by Hugh Masekela. Makeba sings of how the news of the banning of Bantu languages from the education system affected students and the effect of protest action on black families. Although "Soweto Blues" is about education in 1976, language and education remain topical with growing jurisprudence on the right to be educated in one's home language.

Access to education is often interlinked with protest action met with police brutality, arrests, and the infringement of rights. This was the case in 1976 and during the "Fees Must Fall" protests in 2015/2016. Regarding the 1976 protests, Makeba sang:

That's when the policemen came to the rescue
 Well children were flying, bullets, dying
 Oh the mothers screaming and crying

The brutal police response to uprisings has had a devastating impact on black families. With this, Makeba and Masekela explore themes such as police brutality as an affront to the right to protest, the relationship between language and education, and the impact of the infringement of rights on family life and society.

Contemporary musicians like Thandiswa Mazwai (in *Belede*) and Zoe Modiga (in *Intsha*) have also stressed this theme. In her offering titled “Belede”, Thandiswa offers the perfect tool for a musical (re)reading. Her album analyses this painful experience as almost a revival of 1976. “Belede” was released in 2016, at the height of the “Fees Must Fall” protests. The album is a compilation of songs in which she samples and/or covers the work of musicians who were known for anti-Apartheid music in the 1970s and 1980s. The opening track is a cover of Letta Mbulu’s “Jikijela” (Don’t Throw Stones). Mazwai noted that Mbulu’s “Jikijela” was a way to express sadness at the violence meted out to the student movement during the “Fee Must Fall” protest, pointing out that history does not live in the past (Nkosi, 2016). Her cover starts with a sample of the voice of a young woman who was arrested during a protest. She asks, “From who must I run?”. She samples another voice that answers: “We understand and we know clearly who the enemy is”. The last voice she samples says “Our futures and the futures of our children are at stake.” This strongly mirrors the themes we have extracted from Makeba’s “Soweto Blues”. The works of Mazwai, Masekela, and Makeba, could similarly be used as an analytical tool of the law. Mazwai’s criticism of history as issues that persist in our current realities is a key example of some of the rights-based discourse and debates in the areas of constitutionalism and decolonial theory.

This is in stark contrast to HHP’s “Harambe”, which is monumental rather than memorial. In HHP’s 2004 composition, the constitutional goals of equality, human dignity, freedom, and access to socio-economic opportunities for black people in South Africa had already been achieved. HHP addresses the banning of hate speech with lines such as:

I’m not the political type
 Not the type to fake an image for the sake of this whole consciousness hype
 Never been called a kaffir before (Serious?)

He further engages with the right to peaceful protest:

Can’t say what tear gas smelled like
 Can’t even imagine what a rubber bullet on your back felt like
 Can’t imagine holding guns in my palms
 Can’t imagine ke go bona (seeing you) carrying Hector Pieterse in your arms

The song, then, delves into language and education rights, as well as freedom of movement:

But it’s because of you that I don’t speak Afrikaans today
 I have a chance today, because of you, Joe, I can dance today
 Without having to show you my pass

Furthermore, he highlights the rights to economic freedom, equality, and education:

Self-employed because of you, I don't call no one a baas
 Because of you, Joe, I'm educated
 Because of you, the black youth of today is emancipated

An analysis of HHP's "Harambe", considering the time and context it was written, provides an opportunity to understand the constitutional story in context. In "Harambe", the South African dream has been realised. HHP's rights-based discourse must, however, be understood in that context. The feelings about the South African dream ten years after Apartheid and more than twenty years after it are in stark contrast. Discourse on hate speech in the 1990s differs from the early 2000s and the present time. In the past decade, the courts have seen an increase in hate speech cases and have to grapple with the nuances of the meaning of freedom of expression and the prohibition of hate speech (Dugard; Sánchez, 2021). Like Mazwai, HHP discusses the impact of police brutality as a response to peaceful protest action. In "Harambe" (2004), protest action and police presence in schools no longer exist in South African schools, whereas Mazwai's "Jikijela" (released in 2016) highlights the continuation of the violent policing of protests in South Africa. Youth unemployment rates are also at their highest level, and the socio-economic divide is widening (Parker, 2022).

3. TEACHING THE SOUTH AFRICAN CONSTITUTION THROUGH MUSIC: SOME RECOMMENDATIONS

The analysis above shows that there is enough material to enhance the critical teaching of the South African Constitution through music. To ensure that this becomes a reality, law schools and teachers have to engage in more proactive and creative pedagogical practices. As Al Attar and Tava (2009, p. 10) observed, critical scholars have to actively confront and sidestep institutional and hegemonic obstacles by "undertaking reform at the periphery". This means that scholars should not wait for "order from above" or be constrained by excessive bureaucracy before designing and implementing programmes and modules to enhance the critical consciousness of learners. In the context of the subject matter of this article, we propose two options: designing a stand-alone law module on music and constitutional law in South Africa and incorporating music into existing undergraduate law modules.

The option of designing a stand-alone module that looks at the nexus between music and the legal order already exists in the U.S. In 2012, U.S. law academics, Donald Tibbs and andre douglas pond cummings, designed an elective law module called "Hip Hop and the American Constitution", the first of its kind in any American law school (cummings, 2019, p. 8). This course was built upon the scholarly works both academics have jointly and individually published in the preceding years (cummings, 2019, p. 8). A stand-alone module of this nature can

be designed at both undergraduate and/or postgraduate levels. Another important point was the publication of an edited anthology (which served as the textbook for the module), “Hip Hop and the Law”, of works by several scholars on how lyrics have challenged existent laws in the U.S. (cummings, 2019; Bridgewater; cummings; Tibbs, 2015). This approach provides law scholars with a template that can be adopted and adapted to suit the South African context. While there is very little scholarly consideration of the link between music and the South African Constitution, scholars can start with distilling relatable concepts and ideas from existing scholarship in other jurisdictions, and then create a module around this. Such an approach has the potential to inspire law lecturers to publish more works on this topic and use feedback from students to enrich the module. In addition, it will spark conversation and dialogue across law schools in the country, with scholars sharing ideas and strategies on theories and the practicalities of implementing the module.

The second option refers to incorporating ideas and lyrics into existing law modules. Lecturers teaching undergraduate and postgraduate modules such as constitutional law, jurisprudence, customary law, human rights, criminal law, legal interpretation, and international law can begin experimenting by introducing relevant lyrics to students and showing how such songs can assist with enhancing their knowledge. In the classroom, music can be used to present course material and facilitate discussion. Music and lyrics can also be used in assessments. In both formative and summative assessments, students can be provided with lyrics of a particular song or songs and then asked to provide a discussion of how such lyrics explore and/or challenge legal ideas and the constitutional order (Fagbayibo, 2019). The advantage of this option is that, unlike the first option, it has less cumbersome processes, as lecturers can start to incorporate music into their teaching practices and into course material and literature as required reading. In this respect, we identify and briefly discuss below three modules in which music can be incorporated into teaching and assessment methods. This includes modules such as legal interpretation, constitutional/human rights courses, and labour law. We further provide examples of formative and summative assessment questions.

The selection of music discussed in our (re)reading of the Constitution speaks to both options. The playlist (see Figure 3 below) may be used for facilitating teaching and classroom discussions in various law modules. The first, and most obvious one, is the incorporation of the playlist into teaching methods for legal interpretation. Much of the discussion above focuses on the importance of contextual and holistic interpretations of the law.

The first course that we have identified for incorporation is legal interpretation. South African theories of interpretation such as the text-in-context approach, the influence of the supreme constitution, the mischief rule, and the preamble as an internal language tool for interpretation (Botha, 2012) are all principles of legal interpretation that can be taught with the use of music. Box 1 shows examples of legal interpretation questions based on music.

BOX 1 – LEGAL INTERPRETATION QUESTIONS

Using Stevie Wonder’s “*It’s wrong (Apartheid)*” and Freshly Ground’s “*Doo Bee Doo*”, discuss the interpretative value of the preamble to the constitution. Refer to a case law in your answer.

Using HHP’s “*Harambe*”, discuss the aim of the mischief rule in the context of freedom of expression and the new hate speech act. Refer to a case law in your answer

Source: Elaborated by the authors.

Similarly, contextual, purposive, and historical dimensions of interpretation are also central to constitutional law and human rights law modules and courses. Students are taught the interpretation of the Bill of Rights in terms of section 39 and the various methods of interpretation of the Bill of Rights. This includes purposive, generous, contextual, and systematic interpretation (Currie; De Waal, 2013). Students are taught to use these tools of interpretation when engaging with a particular right. For example, the right to education and the jurisprudence on the right to be educated in your home language or language of choice in section 29(2). Box 2 shows an example of a human rights law question based on music.

BOX 2 – HUMAN RIGHTS LAW QUESTION

“Never been called a kaffir before (Serious?)
Can’t say what tear gas smelled like
Can’t even imagine what a rubber bullet on your back felt like
Can’t imagine holding guns in my palms
[...]
But it’s because of you that I don’t speak Afrikaans today
I have a chance today, because of you, Joe, I can dance today
Without having to show you my pass”
HHP, *Harambe* (2004)

Identify and discuss the content of the rights alluded to in the excerpt above. In your answer, discuss the disenfranchisement of specific groups in pre-constitutional South Africa versus the position established by the Bill of Rights.

Source: Elaborated by the authors.

The last question deals with labour law (Box 3).

BOX 3 – LABOUR LAW QUESTION

“...while stigma is a pervasive and persistent predicament that attaches to the beneficiaries of affirmative action, it is not caused by affirmative action. Stigma predates and operates independently of affirmative action. It is rooted in unequal power relations inherent in systems of domination and oppression, in the South African employment context - white supremacy, patriarchy and ableism.” – Nomfundo Ramalekana

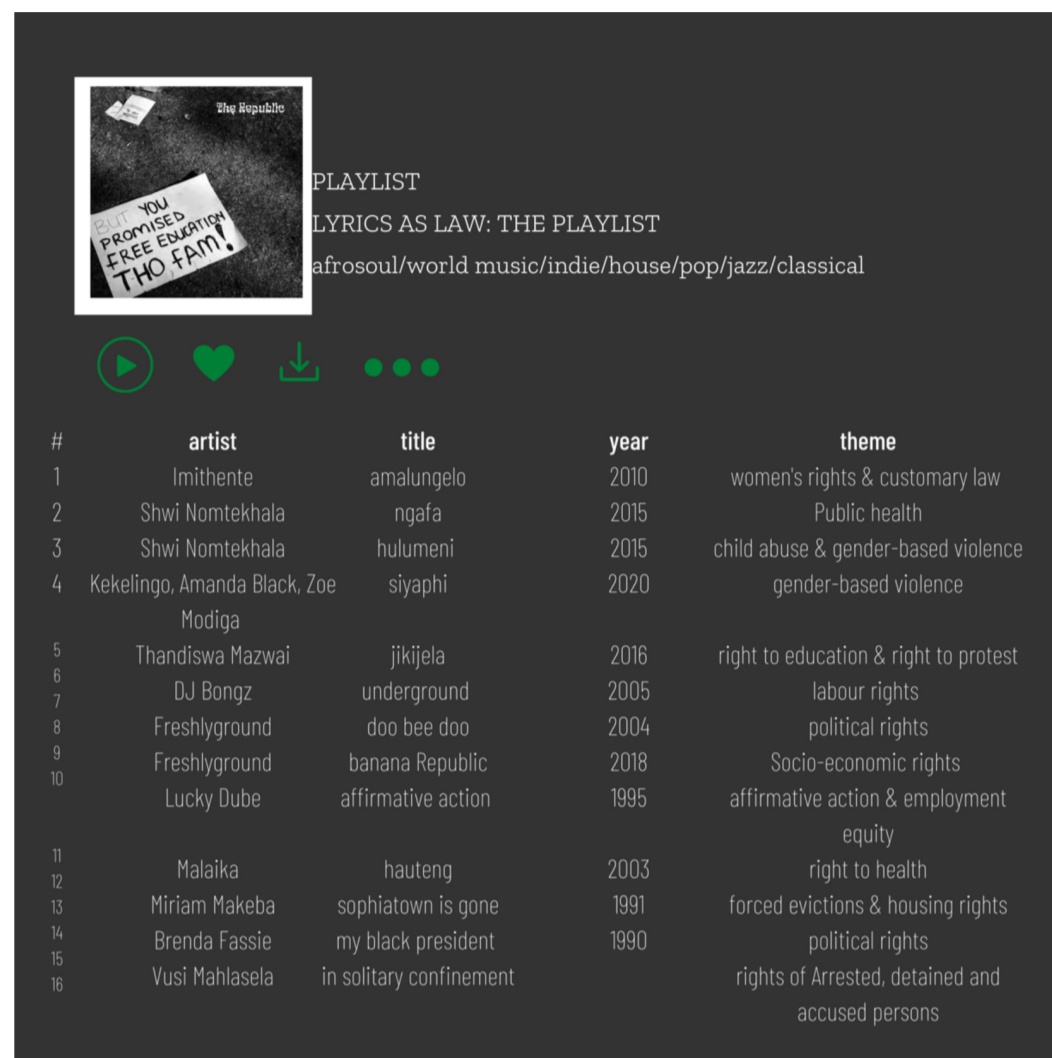
**“You blamed it on the government and everybody
Now is the time to prove yourself
If you think affirmative action
Is the way out... no way... no way”
Lucky Dube**

In light of the quotations above, write an essay on stigma and affirmative action policies. Refer to the case law and articles

Source: Elaborated by the authors.

The examples above demonstrate how music and lyrics can be incorporated into assessment methods. Music can be used in the design of both short-form and long-form questions. Like the use of scholarly articles for drafting essay questions, music can also be used as a textual reference for enhancing student’s cognitive ability. Similarly, students can be encouraged, individually and collectively, to create songs that they feel are relevant to addressing socio-political and economic issues in the country.

FIGURE 3 – AN EXAMPLE OF A PLAYLIST FOR TEACHING SOUTH AFRICAN CONSTITUTION THROUGH MUSIC



Source: Photograph © Musa Nxumalo (published in this article with Mr. Nxumalo's permission), "The Promise" (16 shots exhibition, 2017, Johannesburg), designed by the authors.

CONCLUSION

In this article, we have attempted to advance the importance of incorporating music into the study of law in South African universities. Indeed, South African songs provide an important opportunity for engaging in the critical analysis of constitutional norms and values. In addressing this point, this article has explored songs that speak to human rights issues. Furthermore, we have provided examples of how these songs can be incorporated into teaching assessments. In addition to the songs referenced above, there are several other songs (both local and international) that can be used in the critical teaching of the law. We hope educators in South Africa, and other parts of the continent, will begin to use music in law classrooms thus engaging students in new and interesting ways of grasping existential issues. Additionally, we hope that music composition as a form of literature will make its way into law classrooms and scholarship.

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