Theories of Justice in the Constitution of the Republic of South Africa

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ABSTRACT

In this paper, the author analyzes the South African Constitution (1996), based upon and codifying major principles of justice in the Republic of South Africa. The purpose of the paper is to determine which theories of justice motivated it, are reflected in it, and are meant to be protected by it. The analysis reveals that at least four major ways of thinking about justice are illustrated, to one degree or another, in the document.

Key Words: theories of justice, South African Constitution, utilitarianism, libertarianism, egalitarianism, virtue

H1—INTRODUCTION

Shortly after the founding of the Union of South Africa in 1910, the South African Native National Congress (SANNC) was founded (1912). Having been denied a seat at the table of government, SANNC was formed to stand up and defend the rights of blacks in South Africa. The organization was renamed the African National Congress (ANC) in 1923, and ANC has been the ruling party in political power since the first national elections (where blacks could also vote) since 1994 (Dubow, 2014).

From 1910 until 1994, blacks were not considered citizens of South Africa and thus they did not enjoy the same rights and protections of the law. Further, they suffered various forms of discrimination (in education, employment, housing, property rights, political rights, and even basic human rights), and endured segregation throughout all of society for an even longer period of time (Robinson, 2022, 2024). Though Apartheid was not official policy of South Africa until 1948 with the win of the National Party in that election, segregation and discrimination were the rule of the land for hundreds of years, even since Europeans colonized the country. With the election of 1948, Apartheid became the law of the land (Gordon, 2017; South African History Online (2019).

Perhaps not surprisingly, it was in the 1950s that a national campaign of resistance to apartheid laws emerged and quickly spread. After many protests, arrests, and trials involving key opposition leaders, the ANC determined it was time to put in writing their hopes and demands for justice for the people of South Africa. The Congress of the People Campaign was initiated to reach out to thousands of people in the country to ask them to codify what they wanted to be the future of their own country (Davis, 2018; South African History Online, 2016).

The campaign achieved the consolidation of "an alliance of the anti-apartheid forces of the 1950s composed of the African National Congress, the South African Indian Congress, the South African Coloured People's Congress, the South African Congress of Democrats and the South African Congress of Trade Unions (SACTU) into a non-racial united front known as the Congress Alliance" (South African History Online, 2019). Likely its most significant achievement was the creation of the Freedom Charter, a document calling for a united country with equality for all people regardless of background or skin color.

Apartheid would not be defeated for several more decades, and during these years, opposition forces engaged in various forms of struggle (including armed resistance) with the goal of ultimately achieving social justice. It was not until the late 1980s and early 1990s that cracks started to emerge in the white government of South Africa, and party leaders met secretly with opposition leaders such as Nelson Mandela even while he was still incarcerated for sabotage and conspiracy to overthrow the government. In 1990, ANC was unbanned (after being banned in 1960), and Mandela was released from prison (Truth and Reconciliation Commission, 1998).

Subsequent work in the 1990s ultimately led to the crafting of a new Constitution, perhaps the most progressive in the history of the world. Not only would civil liberties be protected by law, but the document also would guarantee to all people basic human rights enshrined in international law.

It should be obvious that issues of justice and injustice inspired the movements to create the Constitution. Not surprisingly, those issues of justice and injustice also run throughout the document. The purpose of this paper is to examine the Constitution and analyze it with the goal of identifying the major theories of justice that form the basis for the instrument. By so doing, the meaning of justice to South Africa's people becomes quite apparent.

H1—MAJOR THEORIES OF JUSTICE

Although there are likely countless definitions of the term justice, there are at least four major approaches to or theories of justice; these theories of justice revolve around utility or happiness, freedom or liberty, equality of opportunity and/or outcome, and morality or virtue (Sandel, 2010)._Each is briefly defined and discussed below.

H2—Utilitarianism

What matters for justice in utilitarianism is the consequences of our actions. This reflects the idea of *consequentialism* in virtue ethics. Specifically, something is just if it produces more benefit than harm/cost, and if it leads to overall happiness of a majority of people. This idea lies at the heart of democracy and democratic republics. Consider these key words from the Declaration of Independence in the United States, authored by English colonists to announce their separation from England: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of *Happiness*" (National Archives, 2019). Notions of happiness are also found throughout international law. Democratic approaches to justice concern themselves, first and foremost, with what people think about justice; democratic governments must first attend to what people want from a social practice or government policy.

The root word of utilitarianism is *utility*, roughly understood to mean benefit. The idea is that benefits and costs of any practice or policy can be identified and then weighed against one another, as in on a scale. If benefits outweigh costs, one could say the practice or policy satisfies the notion of utilitarianism. Utilitarianism is often associated with not only happiness, but also with things necessary for happiness (e.g., housing, food, health care, safety); others associate happiness with property and/or property rights (Conklin, 2015). Thus, anything that promotes our happiness is consistent with utilitarianism, while anything that diminishes it is inconsistent with utilitarianism.

One major problem with utilitarianism is that it is not always possible to measure or even identify all the benefits and costs of a practice or policy. This is especially true in the long term, as it is often not even known until much later what effects a policy has in the real world. Another problem with utilitarianism is that people often disagree about how to prioritize different benefits and costs, given that we often disagree about what is really most important in our lives. Finally, another limitation to utilitarianism is that, if it is strictly followed, the rights of even sizeable minorities end up being violated. That is, the will of the majority becomes the tyranny of the majority. This is where the theory of libertarianism comes in handy.

H2—Libertarianism

What matters for justice in libertarianism is our freedoms or rights. The idea is that we have the duty as fellow humans to respect and protect these. It is our duty to protect these, and as such, it is a *deontological* approach to virtue ethics. Specifically, something is just if it respects and produces the rights enjoyed by humans, and the liberties granted to us by government. This idea also is fundamental to democracy and democratic republics and notions of liberty and rights are also found throughout international law.

The root word of libertarianism is *liberty*, roughly understood to mean freedom and/or rights. The idea is that humans are born free, endowed by their creator with certain rights. We also enjoy liberties that cannot be diminished by our governments; these liberties are declared in the Constitutions of our countries but are also found in instruments of international law. If a practice or policy protects our rights and liberties, one could say the practice or policy satisfies the notion of libertarianism; anything that diminishes our rights is not consistent with libertarianism. Note that the most fundamental human right is the right to life (United Nations Universal Declaration of Human Rights, 1948). Therefore, anything that protects life is consistent with libertarianism, while anything that threatens it is inconsistent with it.

John Rawls' famous theory of justice—"justice as fairness"—states, as its first principle: "Each person has the same indefensible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all" (Rawls, 1999: 2). To Rawls, this *equal liberties principle* must be met before any other consideration of social justice can even be considered. Similarly, David Miller asserts that "a central element in any theory of justice will be an account of the basic rights of citizens, which will include rights to various concrete liberties, such as freedom of movement and freedom of speech … an extensive sphere of basic liberty is built into the requirements of social justice itself" (Miller, 2001: 13).

One major problem with libertarianism is that people might disagree about which rights and liberties to protect, as well as how far governments should go in order to protect them. One example is property; some libertarian thinkers assert that property is a fundamental human right; others disagree. Another problem is that libertarianism has no respect for the common good, so that it does not allow for government action to protect any public good if it is seen as violating the rights of even a small group of people. Finally, another limitation to libertarianism is that, if it is strictly followed, it often creates, and in some cases, mandates vast inequalities in society. For example, in a capitalist economy, many jobs do not pay well or provide benefits so that people may meet even their basic necessities as human beings; these jobs *must* be filled by someone, thereby assuring vast inequities in society. This is where the theory of egalitarianism is useful.

H2—Egalitarianism

What matters for justice in egalitarianism is equality. Specifically, something is just if protects and/or provides equal treatment in society (i.e., upholding out equal rights as humans and our equal liberties as citizens of a country), and equal opportunities for success (e.g., education, work). Since in democratic governments, it is our duty to protect these, this is also a *deontological* approach to virtue ethics. Democratic governments and democratic republics are universally associated with egalitarianism, at least on paper. Notions of equal rights and liberties are also found throughout international law.

The root word of egalitarianism is *equality*, roughly understood to treating all people the same. The idea is that humans are also born equal, endowed by their creator with certain rights. We also enjoy liberties that cannot be diminished by our governments, no matter the various statuses we hold or our demographic diversities; these liberties are declared in the Constitutions of our countries but are also found in instruments of international law (McKean, 1983). If a practice or policy protects our equality, one could say the practice or policy satisfies the notion of egalitarianism; any practice or policy that erodes equality is of course inconsistent with egalitarianism.

John Rawls' second principle of justice is relevant after equal liberties have been assured. His *equal opportunity principle* states: "Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society" (Rawls, 2001: 44). This principle contains two parts, the first dealing with no discrimination in opportunities for success (e.g., school and work), and the second with assuring more equal outcomes, or what David Miller (2001) referred to as basic *needs*.

One major problem with egalitarianism is the argument for equal outcomes, calling for practices such as redistribution of wealth to assure a more equitable existence for all (*consequentialism*). Is it just to take from some to improve the welfare of others? This is a question that leads to vast disagreement depending on where

people fall on economic and political scales. Another problem is that egalitarianism may have too much respect for the common good, so that it does not respect for the property rights of individual people, particularly the wealthy who tend to have more property. What if those most fortunate people in society worked harder and/or had unique skills and education that permitted them to achieve greater successes? Is it just to take from them if they earned and thus deserve their wealth? *Dessert* is also a major principle of social justice, especially in matters where money is exchanged, such as work; that is, it is just to give people what they have earned and unjust to take from people what they have earned (Miller, 2001). Finally, another limitation to egalitarianism is that it does not consider other virtues of issues of morality. This is where virtue-based approaches to justice are important.

H2—Virtue-Based Approaches

What matters for justice in virtue-based approaches is who we are as a person, our moral character. Specifically, something is just if protects and respects doing the right thing. It deals with virtue, and as such, it is an approach to virtue ethics called *eudaimonism*. This idea lies at the heart of many of the world's great religions, and although governments often mention God (e.g., in the US Declaration of Independence: "… all men are created equal, that they are endowed by their creator with certain unalienable rights"…), most contemporary governments, especially those that represent diverse people, respect all religions rather than imposing one. Notions of virtue are also found throughout international law when discussing terms such as *human dignity*.

The root word is of course *virtue*, which generally refers to behavior with high moral standards. Under virtue-based approaches, any behavior or practice that is considered immoral or wrong would be considered unjust; actions and policies that are seen as morally right would be considered just. With regard to human dignity, the idea is that all humans deserve basic human rights, many of which are enshrined in international law (e.g., the United Nations' Declaration of Human Rights). Again, the most fundamental of these human rights is the right to life. The most progressive of governments aim to protect human dignity by first, not diminishing it, and second, taking measures to provide for people's basic needs.

One major problem with virtue-based approaches to justice is that we often disagree about matters of right and wrong. Further, we follow different religions, so which one (if any) should inform policy? Another limitation to virtue-based approaches is that many governments reject the idea that religions should be controlled by or ordained thought government policy at all, hence the idea of "separation of church and state." Finally, it has been argued that, at least in democracies and democratic republics, happiness, liberty, and equality are some of most prized principles or virtues. That is, virtue is related to utilitarianism, libertarianism, and egalitarianism so that respecting the will of the people, protecting their freedoms, and treating them equally, are considered morally right. This could be considered a weakness of the virtue based approach, because on what virtue could a practice or government policy be justified if it violates these fundamental principles held so dear by people in democratic republics?

H2—With Which Theories of Justice Do We Agree?

It is a safe bet to state that humans tend to value all of these approaches to justice, at least to some degree and in many contexts. Further, we likely prioritize each of them under different circumstances. This means that our approaches to justice are likely *contextual*, meaning the one(s) we prioritize at any time depend on the context or situation. In fact, major scholars of justice theory make this very claim. For example, David Miller posits the idea of *modes of human relationship*, or types of relationship we have in our lives. In matters of *citizenship*, the principle of equality is found to be most important; justice demands that all people be treated equally, reflecting the important of egalitarianism. In the context of *solidarisitic communities* such as families, the principle of need is prioritized; justice demands that we take care of the basic needs of humans we care about, consistent with virtue-based theories. Yet, in *instrumental associations* such as work, the principle of dessert is most important; justice demands that people receive what they have earned, consistent with both happiness (i.e., utilitarianism) as well as property rights (i.e., libertarianism).

This reality can and does lead to disagreements in cases where these principles of justice are contradictory for some reason. For example, what do we do when wealthy people achieve more and more wealth through their legal means of work and investment, when these means are not available to all and when the outcome is growing inequality in society? On the one hand, if the wealth is earned, then it is *deserved* and thus just. On the other hand, if the opportunities to achieve that wealth are not available to all and they lead to more suffering by the least powerful members of society, they are *unequal* and thus unjust. Other disagreements over issues of justice emerge when one person or group relies on a justice theory such as libertarianism (holding that property rights should never be restricted by the government) and another who comes from the perspective of another theory of justice such as egalitarianism (holding that property rights sometimes must be limited for the common good or in order to assure greater equality).

It is important to remember that, when considering these disagreements, all advocates are coming from a place of justice; as long as their arguments are principled and not merely selfish—social justice scholars assert that decisions of justice must be made behind a *veil of ignorance* or *blind to personal preference* (Rawls, 1999). Reviews of government Constitutions, as well as of international laws, demonstrate our affirmation of all of these theories of justice.

It is also important to understand that the theories discussed above are not necessarily mutually exclusive, meaning there can be overlap between them depending on how each is defined and what is to be include within each theory of justice. Take the right to housing, for example, which is enshrined in the South African Constitution. That document states: “Everyone has the right to have access to adequate housing” (South African Government, Constitution of the Republic of South Africa). The term “everyone” suggests the right is meant to be equally enjoyed by all and implies that no housing discrimination will be tolerated (i.e., egalitarianism). Yet, housing is also necessary for happiness, along with food, health care, etc. (i.e., utilitarianism). The Constitution continues in this section, stating “The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right” (South African Government, 2019); the government protects this right enshrined in law (i.e., libertarianism). Finally, housing is listed in international law as a human right (i.e., virtue). Given this, evaluating practices and policies of governments will often lead to attributing certain principles to more than one theory of justice. The two schools of thought in justice theory that most commonly overlap are libertarianism and egalitarianism. For example, the justice theories by Rawls and Miller discussed earlier can be considered egalitarian-libertarianism theories of justice in that each posits the idea of *equal liberties*. This is the idea that all humans are entitled to the same rights (Caravelis & Robinson, 2016).

H1—METHODOLOGY

For the purposes of this analysis, the following procedures were utilized. First, the author thoroughly read the South African Constitution (1996). Second, the history of the document was examined, as laid out in various South African history websites. Third, each section of the document, and often each statement contained within, was categorized as being most consistent with one major school of thought in justice theory. That is, major principles of justice in each document were identified as being most consistent with either utilitarianism, libertarianism, egalitarianism, or virtue-based theories. Sections of the Constitution that explain what the government does and which parts of the legal infrastructure have what powers (e.g., the Parliament and President) are not reviewed here, nor are sections that discuss issues such as requirements to amend the Constitution. Only sections directly related to issues of justice are evaluated.

Table 1 illustrates which kinds of statements and principles from the Constitution were assigned to each theory of justice. In essence, codified ideas related to happiness (including conditions needed for happiness, such as peace and safety) were identified as being most consistent with utilitarianism. Rights related to property or land were also included in utilitarianism due to the long-held belief that happiness and property were, for a significant period of time, treated synonymously (Conklin, 2015). Written ideas related to liberties and rights were classified as being most consistent with libertarianism. Any principle related to life or protecting life was also associated with libertarianism, since life is the most basic human right (United Nations, 1948). Any ideas expressing phrases such as equality, equal liberties, and equal rights, were classified as being most consistent

with egalitarianism. Egalitarianism also includes principles standing against any form of discrimination. Finally, the category of virtue included ideas and codified statements related to morality, human dignity, as well as human rights. Because of the overlap in different theories of justice (e.g., liberties are meant to be equally enjoyed by all), some statements and sections of the documents were associated with more than one theory of justice.

Table 1. How Principles in the South African Constitution Were Classified Into Theories of Justice

Utilitarianism	Any principle related to **happiness** and the conditions needed for it
	(e.g., peace, housing, food, health care, safety)
	Any principle related to **property or land**
Libertarianism	Any principle related to **liberties or rights**
	Any principle related to **life**
Egalitarianism	Any principle related to **equal liberties or rights**
	Any principle related to **equality**
	Any principle standing against **discrimination**
Virtue Ethics	Any principle related to **morality**
	Any principle related to **dignity**
	Any principle related to **human rights**

H1—ANALYSIS: APPLYING THE THEORIES OF JUSTICE TO THE SOUTH AFRICAN CONSTITUTION

Elements of utilitarianism, libertarianism, egalitarianism, and virtue are found in the foundational documents of South Africa. This includes the South African Constitution, reviewed below.

H2—*Constitution*

The Constitution of the Republic of South Africa (1996) was written in the 1990s after Apartheid was ended and the nation held its first all-inclusive election, resulting in the election of former prisoner Nelson Mandela to the position of President. The Constitution is the supreme law of the land, and it pertains to everyone in the country, black, white, Indian, "coloured," or other. The Constitution states "founding principles" which are addressed below. The document states: "The Republic of South Africa is one, sovereign, democratic state founded on the following values:

1. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
2. Non-racialism and non-sexism.
3. Supremacy of the constitution and the rule of law.
4. Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness (South African Government, 2019).

In these words, principles of justice consistent with virtue (i.e., human dignity), egalitarianism (i.e., equality, non-discrimination), and libertarianism (i.e., freedom, universal voting) are clearly stated. These are the first signs that these major theories of justice form the basis for all of the South African Constitution. After a statement of the supremacy of the Constitution, the document next moves into rights and duties of citizenship. The section on citizenship states:

1. There is a common South African citizenship.
2. All citizens are—

a. equally entitled to the rights, privileges and benefits of citizenship; and
b. equally subject to the duties and responsibilities of citizenship

3. National legislation must provide for the acquisition, loss and restoration of citizenship (South African Government, 2019).

These words illustrate that the Constitution of the Republic of South Africa is organized around the notion of equal liberty, consistent with egalitarianism and libertarianism.

The next section of the Constitution of the Republic South Africa is the Bill of Rights. This part of the document is also rooted in equal liberties, but extends to issues of human dignity, as well (consistent with virtue-based approaches to justice). This Bill of Rights is one of the first signs of how progressive the document is meant to be, for it includes human dignity at the same level of importance as equal liberties.

7. Rights

1. This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights
3. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill (South African Government, 2019).

After a section on the application of the Bill of Rights throughout the country—a clear statement of universal application to all people consistent with egalitarianism—the Constitution has a section titled “Equality.” This part of the document states, once again, a dedication to equal liberties, consistent with libertarianism and egalitarianism. This section denounces discrimination based on everything from things found in many other countries such as race, gender, and sex, but also pregnancy, marital status, sexual orientation and more, another example of its progressive nature.

9. Equality

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair (South African Government, 2019).

Then, there is a section on human dignity. This part of the Constitution reflects egalitarian values but also virtue or morality.

10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected (South African Government, 2019).

After this, the Constitution states rights that all citizens will enjoy, including the right to life (consistent with libertarianism), freedom and security (also consistent with libertarianism but also utilitarianism), but also freedom from slavery (consistent with libertarianism).

11. Life

Everyone has the right to life.

12. Freedom and security of the person

1. Everyone has the right to freedom and security of the person, which includes the right—
a. not to be deprived of freedom 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; and
e. not to be treated or punished in a cruel, inhuman or degrading way.
2. Everyone has the right to bodily and psychological integrity, which includes the right—
a. to make decisions concerning reproduction;
b. to security in and control over their body; and
c. not to be subjected to medical or scientific experiments without their informed consent.

13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour (South African Government, 2019).

Next, the Constitution outlines a wide range of human rights, ranging from privacy to reproductive freedom, the right to employment, housing, health care, food and water, social security, education, and even to live in clear and safe environments (all of these are consistent with human dignity and thus virtue). The document also outlines the rights of children and discusses freedoms of religion, culture, language, and more (also consistent with virtue). These sections are further evidence of the progressive nature of the Constitution.

14. Privacy

Everyone has the right to privacy, which includes the right not to have—
a. their person or home searched;
b. their property searched;
c. their possessions seized; or
d. the privacy of their communications infringed.

15. Freedom of religion, belief and opinion

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that—
a. those observances follow rules made by the appropriate public authorities;
b. they are conducted on an equitable basis; and
c. attendance at them is free and voluntary.
3. a. This section does not prevent legislation recognizing—
i. marriages concluded under any tradition, or a system of religious, personal or family law; or
ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

16. Freedom of expression

1. Everyone has the right to freedom of expression, which includes—
a. freedom of the press and other media;
b. freedom to receive or impart information or ideas;
c. freedom of artistic creativity; and

d. academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to—
a. propaganda for war;
b. incitement of imminent violence; or
c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17. Assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

18. Freedom of association

Everyone has the right to freedom of association.

21. Freedom of movement and residence

1. Everyone has the right to freedom of movement.
2. Everyone has the right to leave the Republic.
3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
4. Every citizen has the right to a passport.

22. Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

23. Labour relations

1. Everyone has the right to fair labour practices.
2. Every worker has the right—
a. to form and join a trade union;
b. to participate in the activities and programmes of a trade union; and
c. to strike.
3. Every employer has the right—
a. to form and join an employers' organisation; and
b. to participate in the activities and programmes of an employers' organisation.
4. Every trade union and every employers' organisation has the right—
a. to determine its own administration, programmes and activities;
b. to organise; and
c. to form and join a federation.
5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1)

24. Environment

Everyone has the right—
a. to an environment that is not harmful to their health or well-being; and
b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
i. prevent pollution and ecological degradation;

ii. promote conservation; and
iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

26. Housing

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security

1. Everyone has the right to have access to—
a. health care services, including reproductive health care;
b. sufficient food and water; and
c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

28. Children

1. Every child has the right—
a. to a name and a nationality from birth;
b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
c. to basic nutrition, shelter, basic health care services and social services;
d. to be protected from maltreatment, neglect, abuse or degradation;
e. to be protected from exploitative labour practices;
f. not to be required or permitted to perform work or provide services that—
i. are inappropriate for a person of that child's age; or
ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be—
i. kept separately from detained persons over the age of 18 years; and
ii. treated in a manner, and kept in conditions, that take account of the child's age;
h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
2. A child's best interests are of paramount importance in every matter concerning the child.
3. In this section "child" means a person under the age of 18 years.

29. Education

1. Everyone has the right—
a. to a basic education, including adult basic education; and
b. to further education, which the state, through reasonable measures, must make progressively available and accessible.
2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the

effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account—
a. equity;
b. practicability; and
c. the need to redress the results of past racially discriminatory laws and practices.
3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that—
a. do not discriminate on the basis of race;
b. are registered with the state; and
c. maintain standards that are not inferior to standards at comparable public educational institutions.
4. Subsection (3) does not preclude state subsidies for independent educational institutions.

30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

31. Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community—
a. to enjoy their culture, practise their religion and use their language; and
b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

32. Access to information

1. Everyone has the right of access to—
a. any information held by the state; and
b. any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state (South African Government, 2019).

The Constitution also outlines many political rights related to citizenship, something that was long denied to people based merely on their skin color. These political liberties reflect the commitment of South Africans to equal liberties (consistent with egalitarianism and libertarianism). So, too, do the rights of just administrative action outlined in the document. Importantly, all rights related to criminal justice processing by the courts and police, are stated here, reflecting commitments to *due process* and the equal liberties meant to be protected it.

19. Political rights

1. Every citizen is free to make political choices, which includes the right
a. to form a political party;
b. to participate in the activities of, or recruit members for, a political party; and
c. to campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right—
a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
b. to stand for public office and, if elected, to hold office .

20. Citizenship

No citizen may be deprived of citizenship.

33. Just administrative action

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must—
a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
c. promote an efficient administration.

34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

35. Arrested, detained and accused persons

1. Everyone who is arrested for allegedly committing an offence has the right—
a. to remain silent;
b. to be informed promptly—
i. of the right to remain silent; and
ii. of the consequences of not remaining silent;
c. not to be compelled to make any confession or admission that could be used in evidence against that person;
d. to be brought before a court as soon as reasonably possible, but not later than—
i. 48 hours after the arrest; or
ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
f. to be released from detention if the interests of justice permit, subject to reasonable conditions.
2. Everyone who is detained, including every sentenced prisoner, has the right—
a. to be informed promptly of the reason for being detained;
b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
f. to communicate with, and be visited by, that person's—
i. spouse or partner;
i. next of kin;
iii. chosen religious counsellor; and
iv. chosen medical practitioner.
3. Every accused person has a right to a fair trial, which includes the right—
a. to be informed of the charge with sufficient detail to answer it;
b. to have adequate time and facilities to prepare a defence;
c. to a public trial before an ordinary court;

d. to have their trial begin and conclude without unreasonable delay;
e. to be present when being tried;
f. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
g. to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
h. to be presumed innocent, to remain silent, and not to testify during the proceedings;
i. to adduce and challenge evidence;
j. not to be compelled to give self-incriminating evidence;
k. to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
l. not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
m. not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
o. of appeal to, or review by, a higher court.
4. Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice (South African Government, 2019).

The Constitution also explicitly addresses property rights (consistent with utilitarianism, as noted earlier). Note that the section on property specifically authorizes redistribution of land based on past discrimination, something that, at the time of this writing, is being debated in public, the Parliament, the courts, and the media.

25. Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application—
a. for a public purpose or in the public interest; and
b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—
a. the current use of the property;
b. the history of the acquisition and use of the property;
c. the market value of the property;
d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
e. the purpose of the expropriation.
4. For the purposes of this section—
a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
b. property is not limited to land.
5. The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
6. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
8. No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
9. Parliament must enact the legislation referred to in subsection (6) (South African Government, 2019).

The Constitution also includes sections on the limitations of the Bill of Rights, mechanisms for individuals to seek proper redress for violations of their rights, and requirements for states of emergency. These sections are not reviewed here, but each is clearly consistent with equal liberties (i.e., egalitarianism, libertarianism).

Table 2 summarizes the above findings to illustrate which theories of justice are represented by each section of the Constitution.

Table 2. Theories of Justice in Sections of the South African Constitution

Section	Theories of Justice
Founding Principles	Virtue (i.e., human dignity); Egalitarianism (i.e., equality, non-discrimination); Libertarianism (i.e., freedom, universal voting)
Citizenship	Equal liberty (egalitarianism and libertarianism)
Bill of Rights	Equal liberty (egalitarianism and libertarianism); Virtue (i.e., human dignity)
Equality	Equal liberty (egalitarianism and libertarianism)
Human dignity	Virtue (i.e., human dignity)
Right to life	Libertarianism
Freedom and security	Libertarianism, utilitarianism
Freedom from slavery	Libertarianism
Privacy	Libertarianism
Freedom of religion, belief and opinion	Libertarianism, utilitarianism
Freedom of expression	Libertarianism
Assembly, demonstration, picket and petition	Libertarianism
Freedom of association	Libertarianism
Freedom of movement and residence	Libertarianism, utilitarianism
Freedom of trade, occupation and profession	Libertarianism, utilitarianism
Labour relations	Libertarianism, utilitarianism
Environment	Utilitarianism
Housing	Utilitarianism
Health care, food, water and social security	Utilitarianism
Children	Utilitarianism
Education	Utilitarianism
Language and culture	Utilitarianism
Cultural, religious and	Utilitarianism

linguistic communities	
Access to information	Libertarianism, utilitarianism
Political rights	Libertarianism, utilitarianism
Citizenship	Libertarianism, utilitarianism
Just administrative action	Libertarianism
Access to courts	Libertarianism
Arrested, detained and accused persons	Libertarianism
Property	Utilitarianism

H1—CONCLUSION

A thorough analysis of the Constitution of the Republic of South Africa, which is the supreme law of the land, illustrates a reverence for and devotion to multiple principles of justice consistent with utilitarianism, libertarianism, egalitarianism, and virtue-based approaches to justice. Most apparent in the document is principles of equal liberties, a basic requirement for any scheme of social justice; the Constitution lays out in great detail the rights that all people of the country will enjoy.

Beyond that, what makes the Constitution stand out is a commitment to the establishment and protection of human rights organized around the concept of human dignity or virtue. In the document, this principle is treated on par with liberty and equality. In South Africa, people are to enjoy their human rights—things necessary for survival and happiness—including education, work, housing, food and water, clean environments in which to live, medical care, government support through social security, but also safe and secure communities. So the Constitution of the Republic of South Africa is much broader than say, that of the United States, which guarantees citizens protection of their civil liberties when it comes to interactions with the government and criminal justice agencies. The more expansive nature to the South African Constitution is likely due to the influence of international law (e.g., the United Nations' Universal Declaration of Human Rights) on the thinkers behind and drafters of the document.

Of course, putting ideas on paper is significantly different than carrying those ideas forward into the real world through policy. Decades after the fall of Apartheid, South Africa remains a country mired in poverty, unemployment, income inequality, corruption, high rates of violent crime, and a very high rate of HIV infection. Each of these is a sign that the reality of life in South Africa does not match the lofty ideals, as laid out in the Constitution. Further, each is a serious threat to the realization of social justice in the country.

Each of these realities is inconsistent with social justice. By law, blacks in South Africa have the same rights and freedoms as anyone else, consistent with libertarianism. But, the outcomes identified above interfere with happiness (i.e., utilitarianism) and living a good, healthy life (i.e., virtue). Structures remain in place to deny people of basic human dignity. Further, these outcomes are unevenly distributed across society. Specifically, it is blacks in South Africa who continue to suffer the worst of poverty, lower incomes, higher unemployment rates, as well as murder victimization and HIV infection, meaning nothing even close to equality has not been achieved, inconsistent with egalitarianism.

The South African government has a National Development Plan aimed at addressing these issues, including eliminating poverty and reducing inequality significantly by 2030. Yet, the National Planning Commission announced in 2011 the following realities of life in South Africa:

1. Too few people work.
2. The quality of school education for black people is poor.
3. Infrastructure is poorly located, inadequate and under-maintained.
4. Spatial divides hobble inclusive development.
5. The economy is unsustainably resource intensive.

6. The public health system cannot meet demand or sustain quality.
7. Public services are uneven and often of poor quality.
8. Corruption levels are high.
9. South Africa remains a divided society (National Planning Commission, 2012).

To address these problems, the Comprehensive Plan aims to improve education and employment opportunities, and to specifically reduce poverty through employment growth and investments in public infrastructure. All of this is consistent with increasing happiness (i.e., utilitarianism). Similarly, the Plan aims to make available to young people "life-skills training, entrepreneurship training and opportunities to participate in community development programmes," as well as community-based plans to prevent crime (National Planning Commission, 2012). It also lays out strategies for raising salaries and the percentage of wealth held by people at the bottom of the socioeconomic structure, and for providing greater access to health care, reliable electricity, clean water, internet access, and security of food in the home, consistent with utilitarianism but also egalitarianism. The plan will, by 2030, "realise a developmental, capable and ethical state that treats citizens with dignity," consistent with virtue-based approaches to justice. And it will "ensure that all people live safely, with an independent and fair criminal justice system," consistent with both libertarianism and egalitarianism (National Planning Commission, 2012).

The National Development Plan is, of course, far broader and detailed than what is presented above, but the point is that the government of South Africa continues to be dedicated to achieving social justice from the perspectives of utilitarianism, libertarianism, egalitarianism, and virtue. That is, leaders in the nation continue to work toward the social justice values put forth in the Constitution of the Republic of South Africa (1996). Interestingly, the government makes it clear that one significant way to achieve social justice is to raise the standard of living of all in the country through economic development. Thus, many of its goals for 2030 involve outcomes such as increases in Gross Domestic Product (GDP) through investments in business as well as their employees (i.e., the people). The Plan thus illustrates that, not only is social justice *not* inconsistent with economic development or capitalism, but that one way it can be achieved is through that very mechanism.