

CURRICULUM VITAE:
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1. Personal

Prof Rassie Malherbe was born on 21 November 1952 (the same day as his wife, Marietjie), and grew up in the Western Cape. He is a family man and he and his wife, a former pre-primary school teacher, have been married for almost 35 years and have three

children and two grandchildren. He is keenly interested in religion, world affairs and history and reads widely on those and other topics. He and his wife are the co-authors of two books on dating and marriage from a biblical perspective.

2. Qualifications

Prof Malherbe finished high school in 1970 and obtained the BA, LLB degrees from the University of Stellenbosch in 1975. In 1992, he obtained his LLD degree from the Rand Afrikaans University in Johannesburg with a doctoral thesis on the legislative procedures of Parliament. He is an advocate of the Supreme Court of South Africa.

3. Career

Before entering the academic profession, Prof Malherbe was employed in public service. From 1980 to 1990 he served as a constitutional planner in which capacity he acquired extensive knowledge and experience of constitutional engineering and lectured widely at universities and other institutions on this topic. He also acquired considerable practical knowledge and skills in legislative drafting. He travelled abroad on a number of occasions for research on constitutional systems and in 1988 conducted an extensive tour of Britain, Belgium, Switzerland and the United States of America for the purposes of studying different constitutional systems. During the same year he was appointed Chief Director of Constitutional Planning in which capacity he was responsible for advice to government on alternative constitutional models for a changing South Africa.

In July 1990, Prof Malherbe left the public service to accept a post as Associate Professor at the Rand Afrikaans University, since 2003 renamed as the University of Johannesburg. In 1992 he was appointed Professor of Public Law. He has since been involved in under-graduate, post-graduate and extra-curricular courses in constitutional law, comparative human rights studies, education law, interpretation theory and legislative drafting. He has supervised several masters and doctorate students. He also lectures at other universities on the above topics and serves on the examining panels of various universities. He has served or is still serving on various committees of the University and the Faculty of Law, among others the Dean's Committee of the Faculty,

and he is the chair of the Students' Disciplinary Appeal Committee. He is also a member of the editorial committees of the *Journal for South African Law* published by the Faculty of Law, and *Discourse*, the prestige journal of the University. He undertook several study tours in Europe and the USA over the last decade, and lectured at various universities on constitutional and education law. During his overseas visits he served twice as visiting professor at the University of Salzburg, Austria, and at the Inter-University Centre for Education Law and Policy in Antwerp, Belgium. Since 2008, he visits Kenya regularly for the presentation of seminars to public servants and private lawyers on the topic of legislative drafting.

4. Conferences

Throughout his career, Prof Malherbe has attended and read papers at numerous international and national conferences, seminars and other occasions on diverse topics such as constitutional law, human rights and education law. Most often, these papers have been published in some form or another (see the attached list of publications). In 2005, Prof Malherbe was one of the organisers of a nationwide conference in Cape Town on legislative drafting.

5. Publications

Prof Malherbe is the co-author of various textbooks on constitutional law and of three popular publications on the South African Constitutions of 1993 and 1996. He is co-author of *Constitutional Law*, a text book on South African constitutional law already running into its fifth edition. He is the co-editor of four publications on education law, and contributed to several national and international textbooks on education law. He has published over a hundred articles on constitutional development and change, constitutional systems, intergovernmental relations, parliamentary procedures, and the protection of specific human rights, in particular religious (12 publications) and education (31 publications) rights, and the right to academic freedom (9 publications).

6. Involvement

Prof Malherbe was involved in different ways in the constitution making process of the nineties. In 1993, he served as an adviser on local government issues at the Kempton Park negotiations on the interim Constitution of 1993. During 1994 he drafted a new set of standing rules for the newly established Gauteng Provincial Legislature. He still advises the Provincial Legislature on constitutional and procedural matters, and has also advised the Legislature on language issues and during 1998 drafted a Language Policy Bill introduced in the Legislature. From 1995 to 1996 he was closely involved as an adviser in the constitution making process conducted by the Constitutional Assembly on the South African Constitution of 1996. He still advises governmental, educational and other bodies, including churches, on constitutional and other legal matters affecting them.

Apart from his interest and research in structural issues, such as parliamentary procedures and intergovernmental relations, Prof Malherbe is keenly interested in the protection of human rights and in education law. He is an executive member of the South African Education Law Association (SAELA), and the South African Inter-University Centre for Education Law and Policy (CELP). In these capacities, he is closely involved in the development of Education Law as a separate field of study in South Africa.

Currently, Prof Malherbe is a member of a small task team drafting a South African Charter of Religious Rights and Freedoms. During 2008 he also served on a task team that developed proposals for the future development of the provincial system in South Africa.

7. List of publications

[Note that the publications marked with * deal partly or completely with religious freedom issues.]

1. “Komitees van die driekamerparlement” 1986 *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 1.
2. “Die grondwetlike voorstelle van 1977” in Faure M *et al* (Eds) *SA en die Demokrasie* (1988) 303.
3. Rautenbach IM and Malherbe EFJ “Die grondwet 1984-1989” 1989 *Tydskrif vir Suid-Afrikaanse Reg/Journal for South African Law (TSAR)* 472.
4. “Parlementêre privilegie en menseregte” 1991 *TSAR* 330.
5. “Die grondslae van parlementêre prosedure” 1991 *TSAR* 426.

6. “Die beslegting van geskille in meerkamerparlemente” 1991 *SA Public Law* 207.
7. “Die regsraad van parlementêre prosedure: ’n hedendaagse perspektief” 1992 *TSAR* 56.
8. “Sessies van die parlement: ’n uitgediende fiksie” 1992 *SA Public Law* 175.
9. “Die regsbeskerming van akademiese vryheid en universiteitsoutonomie in ‘n nuwe Suid-Afrika” 1993 *TSAR* 359.
10. “’n Handves van regte en onderwys” 1993 *TSAR* 686.
11. Rautenbach IM and Malherbe EFJ *Wat staan in die Grondwet?/What does the Constitution say?* RAU: Johannesburg 1994.
12. Rautenbach IM and Malherbe EFJ *Staatsreg/Constitutional Law Lex Patria*: Johannesburg 1994.
13. “Die onderwysbepalings in die 1993 Grondwet” 1995 *TSAR* 1.
14. Rautenbach IM and Malherbe EFJ *Jou regte in die Grondwet/Your rights in the Constitution* RAU: Johannesburg 1995.
15. “The language provisions of the 1993 Constitution as applied in Gauteng” 1995 *TSAR* 353.
16. “Grondwetlike oppergesag in werking” 1996 *TSAR* 175.
17. “Publisiteit en openbare deelname aan die wetgewende proses: ’n nuwe benadering” 1996 *SA Public Law* 394.
18. Rautenbach IM and Malherbe EFJ *Staatsreg – Tweede Uitgawe* Butterworths: Durban 1996.
19. Rautenbach IM and Malherbe EFJ *Constitutional Law – Second Edition* Butterworths: Durban 1996.
20. “Reflections on the background and contents of the education clause in the South African bill of rights” 1997 *TSAR* 85.
21. “Die sertifisering van die 1996 Grondwet” 1997 *TSAR* 330.
22. De Groof J and Malherbe EFJ (Eds) *Human Rights in South African Education: From the Constitutional Drawing Board to the Chalkboard* Acco: Leuven 1997.
23. “The education clause in the South African bill of rights: background and contents” in De Groof J and Malherbe EFJ (Eds) *Human Rights in South African Education: From the Constitutional Drawing Board to the Chalkboard* Acco: Leuven 1997 53-67.
24. Rautenbach IM and Malherbe EFJ *Wat sê die Grondwet?/What does the Constitution say?* Van Schaik: Pretoria 1997.
25. “The South African National Council of Provinces: Trojan horse or white elephant?” 1998 *TSAR* 77.
26. “Die nommering van die Grondwet van die Republiek van Suid-Afrika, 1996: vergissing of onkunde?” 1998 *TSAR* 140.
27. “The legal system and the judiciary” in Venter AJ (Ed) *Government and Politics in the New South Africa* Van Schaik: Pretoria 1998 82-108.
28. “Provinsiale grondwette: ’n barometer van provinsiale outonomie?” 1998 *TSAR* 344.
29. “Is die Wet op die Openbare Befondsing van Verteenwoordigde Politieke Partye, 1997, grondwetlik?” 1998 *TSAR* 575.
- *30. “Die grondwetlike beskerming van godsdienstvryheid/The constitutional protection of religious freedom” 1998 *TSAR* 673.

31. De Groof J, Bray E, Mothata S and Malherbe R (Eds) *Power Sharing in Education: Dilemmas and Implications for Schools* Acco: Leuven 1998.
32. “Parlementêre voorreg en grondwetlike oppergesag: ’n bastion buig” 1999 *TSAR* 145.
33. “Die wysiging van die Grondwet: die oorspoel-imperatief van artikel 1” 1999 *TSAR* 191.
34. De Groof J, Legotlo W, Potgieter J and Malherbe R (Eds) *Promoting a Human Rights Culture in Education: Responsibilities and Opportunities in a Transforming Society* Mijs en Breesch: Gent 1999.
35. “The impact of the Constitution on higher education in South Africa” in De Groof J, Legotlo W, Potgieter J and Malherbe R (Eds) *Promoting a Human Right Culture in Education: Responsibilities and Opportunities in a Transforming Society* Mijs en Breesch: Gent 1999 241.
- *36. Foster WF, Malherbe R and Smith WJ “Religion, language and education: contrasting constitutional approaches” 1999 *Education and Law Journal* 211.
37. “Le conseil national sud-africain des provinces: cheval de Troie ou organe superflu?” 1999 *Revue Internationale de Politique Comparée* 61-80.
38. “Constitutional perspectives on higher education in South Africa” 1999 *Stellenbosch Law Review* 328.
39. “The South African Constitution: I. Introducing the South African Constitution; II. The Constitutional Court of South Africa” 2000 *Zeitschrift für öffentliches Recht* 55 (1) 61-100.
40. “Human rights in South Africa: a preliminary assessment” 2000 *Publiekrechtelijke Kronieken* 150-168.
41. “A fresh start I: Education rights in South Africa” 2000 *European Journal for Education Law and Policy* 49-55.
42. “A fresh start II: Issues and challenges of education law in South Africa” 2000 *European Journal for Education Law and Policy* 57-68.
43. Rautenbach IM and Malherbe EFJ *Staatsreg – Derde Uitgawe* Butterworths: Durban 1999.
44. Rautenbach IM and Malherbe EFJ *Constitutional Law – Third Edition* Butterworths: Durban 1999.
45. “A new beginning: introducing the South African Constitution and Bill of Rights” 2000 *Netherlands Quarterly of Human Rights* 45-65.
46. “Die Drankwetsontwerp: vooraf kontrole en grondwetlike gesagsverdeling verder omlin” 2000 *THRHR* 321-334.
47. Rautenbach IM, Malherbe EFJ and Kubheka MT *Kungabe Uthini Umthethosisekelo?* Van Schaik: Pretoria 2000
48. Rautenbach IM, Malherbe EFJ and Mohapi TWD *Molao wa Motheo o Reng?* Van Schaik: Pretoria 2000
49. Rautenbach IM, Malherbe EFJ and Mtintsilana PN *Uthini Umgaqo-Siseko?* Van Schaik: Pretoria 2000
50. De Groof J, Heystek J, Malherbe R and Squelch J (Eds) *Governance of Educational Institutions in South Africa: Into the New Millenium* Mijs en Breesch: Gent 2000.

51. De Groof J, Malherbe R and Sachs A (Eds) *Constitutional Implementation in South Africa* Mijs en Breesch: Gent 2000
52. “New beginnings: introducing the South African Constitution and Bill of Rights” in De Groof J, Malherbe R and Sachs A (Eds) *Constitutional Implementation in South Africa* Mijs en Breesch: Gent 2000 10-27
53. “Human rights in South Africa: a preliminary assessment” in De Groof J, Malherbe R and Sachs A (Eds) *Constitutional Implementation in South Africa* Mijs en Breesch: Gent 2000 113-133
54. “Die Nasionale Kwalifikasieraamwerk en die beperking van akademiese vryheid” 2000 *Aambeeld* (28) 1, 55-60
55. Malherbe R and Berkhout SJ “The National Qualifications Framework and the unconstitutional limitation of academic freedom” 2001 *South African Journal of Higher Education* 62-73
56. “The administrative justice and access to information legislation: some implications for schools” 2001 *Perspectives in Education* 65-88.
57. “Privatisation and the constitution: some exploratory observations” 2001 *TSAR* 1-19.
58. Malherbe R and Brand D “Subnational Constitutional Law: South Africa” in Alen A (red) *Encyclopaedia of Constitutional Law: Subnational Constitutional Law* Kluwer: Dordrecht 2001 1-200.
59. Badenhorst P and Malherbe R “The constitutionality of the Mineral Development Draft Bill, 2000 (Part One)” 2001 *TSAR* 462-478.
60. Badenhorst P and Malherbe R “The constitutionality of the Mineral Development Draft Bill, 2000 (Part Two)” 2001 *TSAR* 765-785.
60. “The role of the Constitutional Court in the development of provincial autonomy” 2001 *SA Public Law* 255-285.
- *61. “The constitutionality of government policy relating to the conduct of religious observances in public schools” 2002 *TSAR* 391-418.
62. The unconstitutionality of unfunded mandates imposed by one sphere of government on another” 2002 *TSAR* 541-548.
63. “The systematic suffocation of academic freedom in South Africa” 2002 *Education Africa Forum*.
64. “Herstrukturering: herdefiniëring of erodering van die identiteit van hoër onderwys?” 2002 *Aambeeld* 41-45.
65. “The erosion of academic freedom in South Africa: reflections on a battle forfeited” 2003 *TSAR* 213-240.
66. “Advancing social change: recent human rights developments in South Africa” 2003 *TSAR* 432-464.
67. Rautenbach IM and Malherbe EFJ *Staatsreg – Vierde Uitgawe* Butterworths Durban 2004.
68. Rautenbach IM and Malherbe EFJ *Constitutional Law – Fourth Edition* Butterworths Durban 2004.
69. “Minderheidsdeelname aan die uitvoerende gesag: kan en moet dit?” 2004 *THRHR* 159-170.

- *70. "The right to freedom of religion in South African schools: recent disturbing developments" 2004 *International Journal for Education Law and Policy* 248-257.
71. "The constitutional framework for pursuing equal educational opportunities" 2004 *Perspectives in Education* Vol 22(3) 9-28
72. "Equal educational opportunities in South Africa: the constitutional framework" 2004 *TSAR* 427-447.
73. "The Constitution and equal educational opportunities" in Russo, Beckmann and Jansen (Eds) *Equal Educational Opportunities: Comparative Perspectives in Education Law* (2005) 89-109.
74. "The development of social and economic rights in South Africa" 2005 *Zeitschrift für Öffentliches Recht* 111-125.
75. "Die taalbeleid van 'n universiteit as 'n uitdrukking van grondwetlik-beskermd diversiteit" 2005 *TSAR* 708-727.
76. "Grondwetlike bevoegdheidsverdeling: 'n stap agteruit vir die provinsies?" 2005 *TSAR* 862-871.
77. "Centralisation of power in education: have the provinces become national agents?" 2006 *TSAR* 237-252.
78. "Language in Education: South Africa" in De Groof *et al* (Eds) *Education Law and Language Rights: Reflections on Language Policies and Legal Action to Overcome Language Barriers in Education* (2007).
79. "South Africa" in Russo, Stewart and De Groof (Eds) *The Educational Rights of Students: International Perspectives on Demystifying the Legal Issues* (2006) 195-222.
80. "Taalregte in Suid-Afrikaanse skole: (tydelike) verligting van onverpoosde druk" 2006 *TSAR* 190-197.
- *81. "Enkele kwelvrae oor die grondwetlike beskerming van die reg op godsdienstvryheid/A few troubling questions about the constitutional protection of the right to religious freedom" 2006 *TSAR* 629-650.
82. "'n Komedie van vergissings: die (nie-)wysiging van 'n nie-bestaande wetsbepaling" 2006 *TSAR* 356-359.
83. "Does the Intergovernmental Relations Framework Act, 2005, confirm or suppress national dominance?" 2006 *TSAR* 810-818.
84. "The administrative justice and access to information legislation: some implications for schools" in Beckmann J (Ed) *Engaging the Law and Education in a Transforming Society: A Critical Chronicle of the South African Education Law and Policy Association (SAELPA) 1996-2005 Part I* (2006) 451-476.
85. "A constitutional perspective on the rights and duties of learners and educators" in Beckmann J (Ed) *Engaging the Law and Education in a Transforming Society: A Critical Chronicle of the South African Education Law and Policy Association (SAELPA) 1996-2005 Part II* (2006) 875-908.
86. "Die staat se verontagsaming van die reg: 'n vorm van geweld?" Junie 2006 *Diskoers* 1-5.
- *87. "Enkele kwelvrae oor die grondwetlike beskerming van die reg op godsdienstvryheid/A few troubling questions about the constitutional protection of the right to religious freedom" 2006 *Ned Geref Teologiese Tydskrif* 180-199.

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- *89. "The Mohammed cartoons, freedom of expression and the infringement of the right to religious dignity" 2007 *TSAR* 332-339.
90. "Openbare betrokkenheid by die wetgewende proses kry oplaas tande" 2007 *TSAR* 594-606.
91. "South Africa – the National Council of Provinces" in Van der Schyff G (Ed) *Constitutionalism in the Netherlands and South Africa: A Comparative Analysis* (2008) 103-119.
92. Marius Smit, JP Rossouw & Rassie Malherbe "South Africa" in Russo CJ and De Groof J (Eds) *The Employment Rights of Teachers: Exploring Education Rights Worldwide*, Rowman & Littlefield, New York, 2008, pp 189-211.
- *93. "Kulturele en religieuse diversiteit moet gevier en nie gevrees word/Cultural and religious diversity should be celebrated not feared: *MEC for Education, Kwazulu-Natal v Pillay* 2008 2 BCLR 99 (KH)" 2008 *TSAR* 367-375.
94. "Die teorie en praktyk van die 1996-grondwet: 'n versigtige waardering" 2008 *TSAR* 425-448.
- *95. "Oor kopdoeke, neusknopies en taal: die uitdagings van diversiteit in onderwys/On headscarfs, nose studs and language: the challenges of diversity in education" in Boezaart T and De Kock P (Eds) *Vite perit, labor non moritur: Liber memorialis PJ Visser* LexisNexis, Durban, 2008, pp 39-57.
- *96. "The constitutional dimension of the best interests of the child as applied in education" 2008 *TSAR* 267-285.
- *97. "Die impak van die Grondwet op godsdiens – 'n voorlopige waarneming/The impact of the Constitution on religion: a preliminary assessment" 2008 *Ned Geref Teologiese Tydskrif* 263-278.
98. "The constitutional distribution of powers" in De Villiers B (Ed) *Review of Provinces and Local Governments in South Africa: Constitutional Foundations and Practice* Konrad Adenauer Stiftung Occasional Papers Nov 2008, 19-28.
99. "The future of the provinces: constitutional and structural aspects" in De Villiers B (Ed) *Review of Provinces and Local Governments in South Africa: Constitutional Foundations and Practice* Konrad Adenauer Stiftung Occasional Papers Nov 2008, 45-57.
100. Alston K and Malherbe R "The constitutional right to academic freedom: an exploration into definition, scope and threats" 2009 *TSAR* 102-123.
101. Rautenbach IM and Malherbe EFJ *Staatsreg – Vyfde Uitgawe* LexisNexis Butterworths Durban 2009.
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103. Malherbe R and Van Eck M "The state's failure to comply with constitutional duties and its impact on democracy" 2009 *TSAR* 218-232.
104. "Presidente, waarnemers en opvolgers: grondwetlike reëlins vir woelige politiek" 2009 *TSAR* 340-343.
105. Malherbe R and Van Eck M "State non-compliance with legal duties: the Constitutional Court finally cracks the whip" 2009 *TSAR* 191-198.

106. “Openbare betrokkenheid by die wetgewende proses: met ’n ligte stampie terug aarde toe – of nie?” 2009 *TSAR* 589-600.
107. “Skeiding van magte: die bestek van geregtelike kontrole oor die wetgewende gesag” 2009 *TSAR* 785-792.
108. “Algemene stemreg dalk steeds nie algemeen genoeg nie” 2010 *TSAR* 152-161.
109. “Education rights” in Boezaart T (Ed) *Introduction to Child Law in South Africa* (2010) 399-419.
- *110. “The impact of constitutional rights on education” in Boezaart T (Ed) *Introduction to Child Law in South Africa* (2010) 420-455.
111. “The legal system and the judiciary” in Venter A and Landsberg C (Eds) *Government and Politics in the New South Africa* (2010) (to be published).
112. “Taal in skole veroorsaak weer eens hoofbrekens” 2010 *TSAR* (to be published).