

PUBLICATIONS:

Published Books

CONSTITUTIONAL OPTIONS FOR A DEMOCRATIC SOUTH AFRICA: A COMPARATIVE PERSPECTIVE (Howard University Press 1994).

THE PROTECTION OF HUMAN RIGHTS IN AFRICAN CRIMINAL PROCEEDINGS (1995 Z. Motala with M.C. Bassiouni eds., Martinus Nijhoff and Kluwer Publishers).

CONSTITUTIONAL LAW ANALYSIS AND CASES (with M. Cyril Ramaphosa) Oxford University Press, 2002)

CONSTITUTIONAL LAW CASES: The Structure of Government (LawCarta 2019)

CONSTITUTIONAL LAW CASES: FUNDAMENTAL RIGHTS (LaCarta 2020).

Published Articles:

Human Rights in Africa: A Cultural, Ideological and Legal Examination. (12) Hastings Int'l & Comp L. Rev. 373 (1989)

An Evaluation of the Constitutions and Influence of Soviet Constitutional Law on Afro-Marxist Countries: Has it Provided a Viable Model of Government for African Countries. (19) Cap. U.L. Rev. 187 (1990).

South Africa's Constitutional Options: A Critical Examination of the Plural Paradigm in KNOWLEDGE AND POWER IN SOUTH AFRICA: CRITICAL PERSPECTIVES ACROSS THE DISCIPLINES (J. Jansen editor, 1992).

The Jurisprudence of Constitutional Law, The Philosophical Origins and Differences Between The Western Liberal And Soviet Communist State Law. (8) Dickinson Journal of International Law 225 (1990).

The Record of Federal Constitutions in Africa: Some Lessons For A Post-Apartheid South Africa. (7) ARIZ. J. INT'L & COMP. L 225 (1990).

Independence of the Judiciary, Prospects and Limitations of Judicial

Review in Terms of The United States Model in a New South African Order: Towards an Alternative Judicial Structure Based on the Continental Models. 55 Albany Law Review 367 (1991).

Above article reprinted in 24 Comparative and International Law Journal of Southern Africa (1991).

South Africa's Constitutional Options in Comparative Perspective: Towards a Responsive and Democratic Constitution 2 Journal of International Law and Practice 253 (1993)

Socio-Economic Rights, Federalism And The Courts: Comparative Lessons For South Africa 112(1) South African Law Journal 61 (1995).

Self-Defense in International Law, The United Nations, And The Bosnian Conflict 57 Pittsburgh Law Review 1 (1995)

Towards an Appropriate Understanding of Separation of Powers, And Accountability of The Executive And Public Service Under The New South African Order 112(3) South African Law Journal 503 (1995)

The Promotion of National Unity and Reconciliation Act, The Constitution And International Law XXVIII Comparative and International Law Journal of Southern Africa 338 (1995)

Legal Education in South Africa, Moving Beyond the Couch Potato Model Towards a Lawyering Skills Approach 113 South African Law Journal, 695 (1996)

The Constitutional Court's Approach to International Law and its Method of Interpretation in the "Amnesty Decision": Intellectual Honesty or Political Expediency 21 South African Year Book of International Law, (1996).

The Right to Fair in South Africa Under the Interim Constitution (in The Right To A Fair Trial (Springer-Verlag Berlin. D. Weissbrodt and R. Wolfrum eds. 1997)

Under International Law, Does The New Order in South Africa Assume The Obligations And Responsibilities of The Apartheid Order: An Argument For Realism Over Formalism 30 Comparative and International Law Journal of Southern Africa 288 (1997)

The Constitution is Not Anything The Court Wants it to be: The Mhlungu Decision And The Need For Disciplining Rules 115 South African Law Journal, 141 (1998)

Africa Isolation or Marginalization, Proceedings of the American Society of International Law Annual Meeting, 2000

Judicial Accountability and Court Performance Standards: Managing Court Delay XXXIV Comparative and International Law Journal of Southern Africa 172 July 2001

The First Amendment and Hate Speech: An Illustration of Why the United States Supreme Court's Approach Represents an Anomaly, 46(3) Howard Law Journal 507 (2003)

The Draft Bill on the Recognition of Muslim Marriages: An Unwise, Improvident and Questionable Constitutional Exercise Comparative and International Law Journal of Southern Africa Vol 37. 327 (2004).

The Use of the Truth Commission in South Africa as an Alternative Dispute Resolution Mechanism Versus the International Law Obligations (45) Santa Clara Law Review 913 (2005)

Constitution Making in Divided Societies and Legitimacy (15) Temple Political and Civil Rights Law Review 2005

Constitution Making in Divided Societies and Equality: Reflections on the Israeli-Palestinian and South African Experiences Howard Law Journal 50(3) 471 2007.

Separation of powers and the relationship between the prosecution service and the executive published in: Legalbrief Today, March 18, 2010

Judicial Independence and accountability published in: Legalbrief Today, June 19, 2012.

Free Trade, the Washington Consensus, and bilateral investment treaties the South African journey: A rethink on the rules on the rules on foreign investment by developing countries 6 (1) American University Business Law Review 31 (2016).

International Law and Human Empowerment: Moving Beyond a Paradigm of Subordination, 31(1) Temple International and Comparative Law Journal (2017).

Brexit, the election of Donald Trump and activism in South Africa, lessons for democracy: The

contribution of Justice Sandile Ngcobo Southern African Public Law Review Vol. 32 No 1 and 2 (2017). [To be also published in a revised form in a book chapter].

Recognition of Arbitration and Mediation as an Alternative Paradigm for the Recognition of Faith Based Personal Law (Book chapter in Muslim Personal Law in South Africa: Evolution and Future Status Edited by N. Moosa and S Dangor 2019).

Israel and apartheid: Lessons from the South African experience. An essay on TRT World. <https://www.trtworld.com/perspectives/israel-and-apartheid-lessons-from-the-south-african-experience-47316>.

Might makes right: US, Israel and the power-politics paradigm. <https://www.trtworld.com/perspectives/might-makes-right-us-israel-and-the-power-politics-paradigm-47547>.

Democracy and Governance in Islam: A Sunni Perspective <https://theislamicjournal.com/wp-content/uploads/2024/11/DemocracyAndGovernanceInIslam.pdf>

WORKS IN PROGRESS

Freedom of religion, a comparative perspective from the United States, the European Court of Human Rights and South Africa (article in progress).

Comparative Constitutional Law (survey of separation of powers, judicial review and fundamental rights under a select number of constitutions).

OP ED PUBLICATIONS

1. *Judgment in the Hlope matter and independence of the Judiciary***
Published as:

- i. *Judge selection is not state meddling The JSC and the president must be sensitive to issues of public trust and confidence*, Cape Argus (South Africa) p.13, July 1, 2009 Wednesday, E1 Edition
- ii. Daily News (South Africa) p.15, July 2, 2009 Thursday, E1 Edition

iii. The Star (South Africa) p.15, July 3, 2009 Friday, E1 Edition

iv. *Humpty Dumpty assertion amounts to colonial mindset*, Pretoria News (South Africa) p.13, July 3, 2009 Friday, E1 Edition

2. *"Judge Kriegler flying on wax wings"*

Published as:

Judge Kriegler is flying on wax wings; He and other liberals claim they know best what the constitution means, Cape Argus (South Africa) p.25, September 12, 2009 Saturday, E1 Edition

3. *Asmal's intellectual honesty on granting amnesty is the question*

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4. *The Relationship Between the NDPP and the Executive: Let's Move Beyond Hyperbole and Distortion***

Published as:

Many ways to separate powers; It is possible to disagree on policies and jurisprudence without racial animus, The Sunday Independent (South Africa) p.15, February 14, 2010, E1 Edition

5. *Someone needs to inform Fred Khumalo and the Sunday Times that Journalists are also bound by the Constitution*

Published as:

Dignity should be protected Sunday Times (South Africa) OPINION & EDITORIAL, November 7, 2010, Review Edition

6. *The Hajj and the Apartheid Train: Where Is the Muslim Outrage?*

Published as:

The Hajj and the Apartheid Train: Where Is the Muslim Outrage? Huffington Post, December 10, 2010, 11:09 pm EST. Updated: May 25, 2011, 6:20 pm EDT

7. *Religion and the State, the Case Against the Muslim Personal Law Bill***

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Beware state hand in issues of belief; Bill on Muslim personal law endangers the most sensitive of rights, Cape Argus (South Africa) p.17, February 05, 2011 Saturday, E1 Edition

8. *Is There a Right to Publish Destructive Messages?*

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Is there a right to publish regardless?
Sunday Tribune (South Africa) May 30, 2010, E1 Edition

9. *The Cape Bar Council Versus the Judicial Services Commission*

Published as:

- i. *Thin Line between law, politics*, Cape Argus, October, 2011
- ii. *Cape Bar seeking to cling to privilege*, Legalbrief Today, November 26, 2011, Category: General Issue No: 2934

10. *Glenister: A Low Water Mark in Our Constitution Jurisprudence*

Published as:

Divination through a strange lens Sunday Times (South Africa) OPINION & EDITORIAL, March 27, 2011 Sunday, Sport Edition

11. *Judge Mogoeng: The double standards of some of his detractors***

Published in:

- i. Weekend Argus, September 11, 2014
- ii. Legalbrief Today, Monday September 12, 2011

12. *The bifurcated legal profession, an archaic and elite based system not compatible with our new constitutional ethos*

Published in:

- i. Weekend Argus, 20 November, 2011
- ii. Legalbrief Today, November 22, 2011

13. *SCA: beware politics masquerading as law*

Published in:

- i. Sunday Times (South Africa), December 11, 2011 Sunday, Sport Edition

14. *When a court Makes Politics law*

Published as:

- i. *When a court turns politics into law* The Witness Blog, December 19, 2011
- ii. *When a court turns politics into law* Legalbrief Today, Sunday

15. Archbishop Rowland's Comments Why are Muslims not Worthy of Equal Protection
Published in: Muslim Views

16. Religion and the State, the Case Against the Muslim Personal Law Bill
Published in: Muslim Views

17. Criticism of court decisions is part of democracy
Published as:

- i. *Taking on judiciary doesn't mean separation of powers threatened*, Argus Weekend (South Africa), February 05, 2012, E1 Edition
- ii. *Criticism of court decisions is part of democracy*, Sunday Tribune (South Africa) p.35, February 05, 2012
- iii. *Of judges and inversion of truth*, The Sunday Independent (South Africa) p.18, February 05, 2012
- iv. No Headline, Pretoria News Weekend (South Africa), February 04, 2012, E1 Edition
- v. *Criticism of the judiciary doesn't undermine democracy...*, Legalbrief Today, Monday February 6, 2012, General Issue No: 2968

*18. Discussion document on the transformation of the judicial system***
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- i. *Discussion document on the transformation of the judicial system* Weekend Argus March 4, 2012
- ii. Legalbrief Today, Monday March 5, 2012, General Issue No: 2988

*19. The SCA's journey on another political field trip***
Published as:

- i. *Ruling involving Zuma ignores international democratic practice*, Sunday Tribune (South Africa) p.35, March 25, 2012, E1 Edition
- ii. *Ruling involving Zuma ignores international democratic practice*. Argus Weekend (South Africa) p.21, March 25, 2012, E1 Edition
- iii. *SCA ruling another political field trip* Legal Brief Today, March 26, 2012, General Issue No: 3002

20. *Questioning the Judges*

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- i. *Judgments are open to debate; Constitutional interpretation often involves intersection of law and politics:*
- i. Daily News (South Africa) p.16, April 19, 2012 Thursday, E1 Edition
- ii. Legalbrief 17 April, 2012

21. *Free speech: our constitution is not rugged individualism*

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- i. *Free speech and rugged individualism; The concept of ubuntu has been ignored in the fevered debate,* Cape Argus (South Africa), May 26, 2012, E1 Edition
- ii. *Free speech and rugged individualism* Legalbrief Today, Monday 28 May 2012
- iii. *Legal tightrope of rights,* Sunday Tribune (South Africa) p.39, May 27, 2012, E1 Edition

22. *The Legal Practice Bill***

Published as:

- i. *No Headline in Original* The Sunday Independent (South Africa) p.16, July 15, 2012, E1 Edition
- ii. *Legal Practice Bill - too long in the making* Legalbrief Today, Sunday 15 July 2012, General Issue No: 3078

23. *SCA validates private discrimination*

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- i. Sunday Times (South Africa), October 7, 2012 Sunday, Sport Edition
Race-based bursary belongs in the past
- ii. Legalbrief Today, Monday October 8, 2012, General Issue No: 3136

24. *Lonmin and economic betrayal*

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- i. The Sunday Independent "The Absurdity of our Inequality" September 2, 2012
- ii. Legalbrief Today, Sunday September 2, 2012, General Issue No: 3112

iii. Sunday Tribune (South Africa), September 02, 2012, E1 Edition

*25. Judicial nominations and the JSC***

Published as:

- i. *Harms cannot be the arbiter of what is right for democracy* The Sunday Independent (South Africa) p.17, November 18, 2012, E1 Edition
- ii. No Headline In Original Argus Weekend (South Africa) p.25, November 18, 2012, E1 Edition
- iii. *Judicial nominations and the JSC* Legal Brief Today, Monday November 19, 2012

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- ii. *Minorities attempting to rule the JSC* Legalbrief Today, Monday November 26, 2012,

27. Gauntlett: Legal Formalism and Conservative Jurisprudence

Published as:

- i. Legalbrief Today, Monday December 3, 2012, General Issue No: 3176

28. The Gauntlett Saga Revisited

Published as:

- i. *“Perpetuating the privilege of a legal elite”* The Independent March 3 2013
- ii. Legalbrief Today, March 3, 2013

29. The legal profession and discontent separating fact from fiction

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- i. *Bar still untransformed 19 years on* The Sunday Independent (South Africa), April 21, 2013, E1 Edition
- ii. *The legal profession and discontent: separating fact from fiction* Legalbrief Today, Sunday April 21, 2013, Practice Issue No: 3258

30. *Criticize but don't dehumanize*

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- i. *Criticize but don't dehumanize*. Legalbrief Today, Monday June 10, 2013, Practice Issue No: 3292
- ii. *Old-world ideologies rule* Argus Weekend (South Africa) p.16, June 09, 2013, E1 Edition

31. *When conservative ideologues burn with anger***

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- i. *Criticism of chief justice is hysterical* Sunday Tribune (South Africa) p.22, July 21, 2013, E1 Edition
- ii. *Sunday Independent Our Chief Justice Speaks the Truth* July 21, 2013 p.16, July 21, 2013, E1 Edition
- iii. *The Chuckles and distortions of a pathological elite* Legalbrief Today, Monday 22, July 2013, General Issue No: 3321
- iv. *Chief Justice is target of those who once had it all; Criticism does not match facts of appointments, writes Ziyad Motala* Cape Argus (South Africa) p.15, July 23, 2013 Tuesday, E1 Edition

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33. *Anecdotal bits on certain media coverage of Chief Justice Mogoeng and Paul Hofmann:
A call for more critical analyses of media coverage*

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- i. Politicsweb on 20 November 2013. Cited as
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34. *When Judges judge on whims or misapplication of law***

Published as:

- i. *Zim human rights ruling goes too far* Mail and Guardian, December 6, 2013

- ii. *When judges judge on whims or misapplication of law* Legalbrief Today, Friday December 6, 2013.

35. *Here we go again: a narrative with more smoke and mirrors on judicial appointments***

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- i. *Enlarge JSC to give more people a voice* Sunday Tribune (South Africa) p.33, February 16, 2014, E1 Edition
- ii. *Selecting judges is not a technical exercise* The Sunday Independent (South Africa) p.16, February 23, 2014, E1 Edition
- iii. *More smoke and mirrors on judicial appointments* Legalbrief Today, Monday February 17, 2014, General Issue No: 3454

36. *Response to Sergeant***

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- i. *When anonymous, it's easy to stand for everything and nothing* Mail & Guardian, February 21, 2014

37. *When our Judiciary becomes obtuse, irreverent and misinformed***

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- i. *A fair call that the judiciary be accountable for performance* Argus Weekend (South Africa), February 23, 2014, E1 Edition
- ii. *When our judiciary becomes obtuse, irreverent and misinformed* Legalbrief Today, Monday 24 February 2014, General Issue No: 3459

38. *A Cynical View of Democracy: Moseneke Gets it wrong*

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- i. Mail and Guardian Friday 28 November 2014 as “Out of tune with worlds democracies”
- ii. Legalbrief 1 December 2014. Issue No: 3651

39. *UCT's Revised Admission Policy*

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- i. Cape Times, Thursday 26 March, 2015
- ii. Weekend Argus Sunday March 29, 2015 “UCT protects white privilege”
- iii. Sunday Tribune March 29, 2015 “UCT's policy does not fit with international practice”
- iv. Legalbrief 30 March 2015 “UCT admissions policy a lesson in deceit”

40. *A Tale of Two Leaders: The Contrasting Messages of Pope Francis and King Salman*. Patheos October 1, 2015. <http://www.patheos.com/blogs/altmuslim/2015/10/a-tale-of-two-leaders-the-contrasting-messages-of-pope-francis-and-king-salman/>
41. *Brexit, the election of Donald Trump and state capture in South Africa: An opportunity for reflection*
Published in:
- i. The Sunday Independent November 20, 2016 “State of capture nothing new to South Africa”
 - ii. Weekend Argus November 20, 2016 “Trade Policies Failed the Poor”
 - iii. Legalbrief 21 November 2016
 - iv. i. *Judiciary can rescue an impaired democracy* Sunday Times April 30, 2017
 - ii. *Let’s make democracy whole: The challenge before the Constitutional Court*. Legalbrief 1 May 2017
42. . *The blame for the trauma of state capture doesn’t lie only with the Zuma presidency*
- i. Sunday Times May 6 2018.
 - ii. *Reproduced in Legalbrief May 7 2018.*
43. *SCA Judgment needs revisiting: Serengiti outcome let Frankenstein monster of illegal development out of its cage*
- i. Sunday Tribune January 20 2019
 - ii. *Reproduced in Legalbrief January 21 2019*
44. *The Covid-19 complexity: courts should be circumspect in wading into scientific, medico-social and economic choices*
- i. <https://www.voices360.com/economy/the-covid-19-complexity-courts-should-be-circumspect-in-wading-into-scientific-medico-social-and-economic-choices-49279190>
 - ii. *Reproduced in Legalbrief June 17 2020*
45. *Chief justice, the first lesson Israel can learn from SA is moral clarity*.
<https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2020-06-28-chief-justice-the-first-lesson-israel-can-learn-from-sa-is-moral-clarity/>
46. *Might might have a case to answer* - <https://www.iol.co.za/news/opinion/judicial-misconduct-judge-in-the-isipingo-madrasah-case-might-have-a-case-to-answer-209f9eab-fa67-4c67-a59c-f06fce98d421>
47. *Tobacco judgement is troubling, says law professor*

<https://www.iol.co.za/weekend-argus/opinion/tobacco-judgement-is-troubling-says-law-professor-9798536b-2980-4a27-a21c-852b2cf7ddc5>

48. *Leon's defence of Israel a spurious claim of victimhood.*

<https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2021-04-04-leons-defence-of-israel-a-spurious-claim-of-victimhood/>

49. *Casac wrong to think political values can be removed from judicial appointments.*

<https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2021-06-20-casac-wrong-to-think-political-values-can-be-removed-from-judicial-appointments/>

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51. <https://www.trtworld.com/opinion/justice-for-whom-hypocrisy-of-the-international-criminal-court-13066035>

52. <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/insight/2023-05-07-icc-ideals-vs-reality-justice-for-thee-but-not-for-me/>

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54. <https://muslimmatters.org/author/ziyad-motala/> Freedom Of Speech And Protest In Islam: The Distorted Saudi View May 13 2022

55. <https://muslimviews.co.za/2022/05/25/6035/> The Saudi distortion of dissent in Islam May 25 2022

56. <https://www.trtworld.com/opinion/justice-for-whom-hypocrisy-of-the-international-criminal-court-13066035>
57. <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/insight/2023-05-07-icc-ideals-vs-reality-justice-for-thee-but-not-for-me/>
58. <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/opinion/2023-12-10-lawman-erred-in-exonerating-cricketer-over-his-israel-stand/>
59. <https://muslimviews.co.za/2023/12/11/cricket-sa-must-reject-players-who-glorify-hate/>
60. <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/opinion/2024-02-04-gaza-genocide-case-will-lead-to-israels-increasing-isolation-on-the-world-stage/>
61. <https://muslimviews.co.za/2024/02/06/ethical-muslim-leadership-must-confront-the-zionist-project/>
62. <https://alqalam.co.za/sas-urgent-plea-for-icj-to-intervene-a-desperate-cry-to-prevent-the-unfolding-humanitarian-catastrophe-in-rafah/>
63. <https://muslimviews.co.za/voting-allows-muslims-to-take-part-in-the-governance-process/> 14 June 2024
64. <https://www.aljazeera.com/opinions/2024/9/12/cheneys-policies-as-vp-caused-immense-human-suffering-on-a-global-scale>
65. <https://www.middleeasteye.net/opinion/gaza-icj-us-must-allow-court-judgement-israel-genocide-case>

66. <https://www.middleeastmonitor.com/20240921-big-techs-complicity-in-genocide-the-unforgivable-silence-of-online-platforms/>
67. <https://intpolicydigest.org/the-pharaohs-of-sportswashing-gulf-despots-money-game/>
68. <https://muslimviews.co.za/the-pharaohs-of-sportswashing-gulf-despots-money-game/>
69. <https://mondoweiss.net/2024/11/the-u-s-at-a-crossroads-after-trumps-return/>
70. <https://www.news24.com/news24/opinions/columnists/guestcolumn/opinion-beyond-the-romance-the-harsh-realities-of-digital-nomads-disrupting-local-economies-20250107>
71. <https://www.middleeastmonitor.com/20250210-the-white-mans-burden-redux-trump-musk-and-the-fabricated-persecution-of-afrikaners/>
72. <https://www.dailymaverick.co.za/opinionista/2025-02-11-trump-musk-and-the-fabricated-persecution-of-afrikaners/>
73. <https://intpolicydigest.org/trump-the-constitution-and-america-s-march-toward-authoritarianism/>
74. <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/opinion/2025-03-09-trump-not-the-first-in-the-us-march-to-autocracy/>
75. <https://www.aljazeera.com/opinions/2025/2/26/the-us-constitution-was-not-made-to-protect-against-trump>
76. <https://mondoweiss.net/2025/03/marco-rubios-diplomatic-attack-on-south-africa-is-punishment-for-standing-up-to-israel/>
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80. <https://www.dailymaverick.co.za/opinionista/2025-04-15-americas-internal-crisis-the-dangers-of-denial-and-the-illusion-of-tariffs/>
81. <https://iol.co.za/news/opinion/2025-04-29-the-sunday-times-allowed-william-gumede-to-peddle-islamophobia-and-amnesia/>