



A Curated Conspectus of the Life, Love, Law,
Literature and Laughter of Albie Sachs

THE COETZEE 1995 CASE – PART 2 – VIDEO TRANSCRIPT

CHAPTER: THE SOCIAL SECURITY SCANDAL

THANDI MATTHEWS

Well, you know about the scandal that we had - the Social Security scandal that we had in South Africa, which was largely about micro-credit deductions from social grant income. Again, marginalised beneficiaries who have not only been excluded during apartheid, black women beneficiaries excluded from the economy, dependent on the various grants as a lifeline, but also now indebted for things that they need, like electricity, like airtime. And for me, it's still an interesting question in the law. It hasn't been fully resolved because on the one hand, if you are a privileged default debtor, but the courts find in favour of those who are marginalised, and given the fact that liberal law applies equally to everybody, how do we ensure that these systems don't get abused by the wealthy?

In that series of judgments, at some point, the state was trying to ensure that the grant could be protected, even if it was being administered through financial institutions. But at the same, as an individual, you have a right to go and pursue credit. So, is it the role of the state and the judiciary to be paternalistic, or what would be perceived to be paternalistic, in protecting beneficiaries, but not only protecting beneficiaries, also protecting the state from its very limited resources from exploitation by private actors? And for me, it is your balancing. It's on the one hand and on the other hand, and I haven't quite come to a conclusion for myself yet, but I think the issues that you were grappling with, just to say, I don't think would be any easier if you were on the bench today, all these years later. And I think what was also telling in your story is the fact that you were receptive to your colleagues in providing their inputs. And I hope we can continue with that sort of deliberation, because at least in my reading of some contemporary judgments, there doesn't seem to be that kind of deliberation about how do we resolve these complex issues?

CHAPTER: SHIFTING THE JUDICIAL GAZE FROM THE POWERFUL TO THE MARGINALISED

JUSTICE ALBIE SACHS

Well something I noticed in the work of the Court generally: One of our biggest accomplishments on the Constitutional Court was to shift the judicial gaze from the high-class actors, the powerful political figures, the campaigners, the prominent people, to the marginalised. The way the law was being used to grind down the marginalised and to at least soften that, and to bring their dignity into play and acknowledge the situations in which they were. And there are scroungers, and there are liars and loafers and all the rest, who take advantage of different systems. But it wasn't to protect people like that. It was ordinary people whose lives are so hard and so harsh. And the law comes in as a machine, implacable and disrespecting context and particular situations, simply following the money and the people in strong positions to collect – a 'pay your dues' kind of a thing.

So, the Mrs Grootboom case was a good example of shifting the gaze. Now, the central figure is not the government minister making policy, the central figure is the person sleeping out in the open, and the millions of people in the situation. In the case of the civil debtors, one of my Judges, one of my colleagues, said two sisters of hers had been imprisoned for civil debt, and we never had Judges before who had sisters in prison for civil debt. But now we have a new class of Judges, and we are responding to a whole range of people for whom the law is a vicious instrument that they are terrified of, not something that could support them.

CHAPTER: A CASE WHERE POOR PEOPLE WERE DEPRIVED OF THEIR HOME FOR SMALL DEBTS

We had a case further on along this line. I didn't give the judgment, Yvonne Mokgoro gave the judgment, where people who'd been in default in paying their debts were now not threatened with imprisonment, but their houses were being sold at knock down prices and sold to whom? Friends of the attorneys. They were buying up these houses. They had a thing going. And how could we strike that down? They owed the money, they didn't pay, property is being attached, there's not enough moveable property to pay, their house goes. It's all within the law. It's very important to keep capitalism going and the market functioning and people paying their dues and all the rest. But this was abominable. Poor people deprived of their life's home for small debts, you know, R2000, or something like that, losing a house, not a magnificent house, but worth maybe R75 000 or R100 000

being sold off for almost nothing. And there we found procedural faults that no one's home should be sold without the person being invited to court to make an alternative provision and so on. And only if it's fair and just to sell off the home in cases like that. Yvonne Mokgoro wrote that judgment. I give it as an example of the law now, not enabling poor people to do things they couldn't do before, but to protect them from completely disproportionate penalties for being poor and unable to pay their obligations.

CHAPTER: INTRODUCING REAL CONSTITUTIONAL EMPATHY

And it introduced an element of real, I call it, constitutional empathy. When we deal with the eviction cases, you know, these themes became very important afterwards. So, it was something of, if you like, that spirit, that reach, that exploration in the civil imprisonment case, that was rising to the surface, I was very stunned when one of my colleagues said, *'I don't see anything wrong with sending someone to jail if they don't pay their debts.'* Now, for me, paying your debts, it's kind of... you pay your debts. When I left South Africa to go into exile in 1966, I went to Inland Revenue to pay; I owed R75 or something. I'm paying my income tax, even if the income tax is used for building prisons and paying police to torture me, I pay. I pay my tax, I pay my tax, you know, I believe in that. I hate being indebted. I pay off as quickly as I can, whenever I can. But I can see I'm in a position to do that. And so many people find themselves so trapped and so caught up. And then there's an illness and loss of work and things happen. The law must have a form of... I call it organised, principled compassion. Sometimes it's built into free water, free electricity and so on. Sometimes it's built into processes to give more time. There's been a lot of work done in South Africa on credit, through legislation, to hold the people who offer credit accountable for proper advertising and making people aware of what's involved; to give debtors opportunities they didn't have before. It's not an area that I'm familiar with either as an individual, neither a creditor nor a lender.

CHAPTER: DIGNITY, FAIRNESS AND JUSTICE IN THE REALM OF CREDIT

So, it's not my field but I do understand that it's... I wouldn't say life and death, but it's close to life and death for millions of people who are living with this burden all the time and getting by through credit, juggling, juggling, non-stop. It's so hard. And the law can't simply waive rules and obligations to stump up. It could have very bad knock-on effects and could actually mean no credit, which is so of value to so many people. So, as you pointed out, Thandi, it's a question of getting the balance

right, learning from experience, allowing for discretion in appropriate cases. And I think we've done a lot in South Africa, to provide for less indignity, less unfairness, less injustice in the realm of credit.

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