



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

THE DEMOCRATIC ALLIANCE CASE – VIDEO TRANSCRIPT

CHAPTER: CONTEMPLATING A PLURALISTIC DEMOCRACY

THANDI MATTHEWS

The next case that I'd like to talk to you about has to do with the laws governing structures of local government. I think it was called the Structures Act. In this judgment, you wrote, *The requirement of fair representation emphasises that the Constitution does not envisage a mathematical form of democracy where the winner takes all until the next vote counting exercise occurs. Rather, it contemplates a pluralistic democracy. Where continuous respect is given to the rights of all to be heard and have their views considered. The dialogical nature of deliberative democracy has its roots both in international democratic practice and indigenous African tradition. It was through dialogue and sensible accommodation of an inclusive and principled basis that the Constitution itself emerged. It would accordingly be perverse to construe its terms in a way that belied or minimised the importance of the very inclusive process that led to its adoption and sustains its legitimacy.*

I know that's a very long quote, but the point is largely to highlight that we have a lot of disputes within our local governance structures post democracy. It seems to be becoming more tense as the stakes get higher. I wanted to find out from you what your reasoning was in the Democratic Alliance decision.

CHAPTER: THE STRUCTURES ACT AT MUNICIPAL LEVEL

JUSTICE ALBIE SACHS

As I recall, Thandi, the Structures Act allowed for two kinds of administrative organisational order at the municipal level. And you could have a sort of a multi-party system where the mayor really presided over a sort of loose coalition, and they found a consensus and moved ahead; or you could have an executive mayor and the executive mayor would appoint people to the different positions and they would take decisions.

CHAPTER: MULTI-PARTY MAYOR OR EXECUTIVE MAYOR?

And the question was, if you have the executive mayor, does that cut out the accountability of the people holding the different portfolios to the council as a whole? Were they simply answerable - like the cabinet is answerable to the president - were they simply answerable to the mayor?

And this was a response to that idea of the mayor being, as it were, a president of a cabinet. It's not that. And it's moving away from this very simplified, monolithic view of democracy. Vote people in power; they can more or less do what they damn well like until the next elections. Now, it's provided in the framework of a Bill of Rights. It's more than just substantive limits on the powers they can exercise. It affects the way they function; the way institutions function as well.

CHAPTER: MULTIPLE VOICES IN THE DELIBERATIVE PROCESS

And this is emphasising the importance of debate and dialogue; the importance of giving a voice to minorities. And it's anticipating by some years the decision in the Doctors for Life Case afterwards about the importance of the subaltern voices, the silent voices, the voices that otherwise wouldn't be heard, being part and parcel of the deliberative process. And I was certainly - and this is where life experience comes in so strongly - very much affected in my thinking; not from what I read in textbooks about the best forms of government and least good forms of government. Inside the struggle, inside our own ranks, as we call it, the importance of multiple voices being heard at all stages. But also the importance of listening to alternative voices and not squashing them out simply because they are alternative.

CHAPTER: THE IMPORTANCE OF PARTICIPATORY DEMOCRACY AND DELIBERATION

If you start categorising the alternative political parties and groupings as the enemy, then they've got to be shut out; you've got to defeat the enemy. If you see them as the opposition, they are countering your views, maybe you'll be in the opposition one day, maybe they've got a point. Even if they haven't got a point, they have a right to be heard and to feel that they've represented their interests and their clients and so on. This was now anticipating, to some extent, the position that the Court adopted, and I strongly supported, in the Doctors for Life Case many years later, on the importance of participatory democracy and the importance of deliberation. And it wasn't something

I'd read about in books. When I was younger, participatory democracy wasn't emphasised all that much, so it wasn't even in the textbooks.

But my experience in the struggle of fighting for the new Constitution, fighting for change, debates, listening, talking, listening, debating. And then when it came to actually engineering and managing to reach the Constitution itself, huge amount of debate, argument, listening, trying to find points of consensus, trying to find a formulation, a way that makes everybody feel represented and understood and involved. And that strengthens the outcome. And it's more likely to be effective because more people have made the inputs. And it strengthens the connection between people generally out there and the institutions of democracy.

CHAPTER: PARTICIPATORY DEMOCRACY STRENGTHENS FORMAL DEMOCRACY

So, participatory democracy in that sense strengthens formal democracy. It gives it more legitimacy and more credit. I'm not using that language at that stage, but it's a kind of vision, approach, a set of intuitions, call it what you like, that had been created in the struggle to get the Constitution, now become meaningful for me sitting on the bench interpreting and upholding the Constitution.

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