



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

THE LAWRENCE CASE – VIDEO TRANSCRIPT

CHAPTER: THE EQUALITY OF WORLD VIEWS

THANDI MATTHEWS

I think what makes South Africa very unique is exactly the distinction that you make that, in my view at least, there's no distinction between the sacred and the secular. They are so intertwined, and it is your right to be and to be all of who you are. I think, as much as we have a lot of divisiveness in our society, there's something unique about South Africans where we can all fight about our religion and our culture, and we embrace every single aspect of that. You can find a woman in hijab marching next to a woman who's in her secular attire and everyone is equal in our society. So how did we grapple with the role of religion within the law or the relationship between the two rather?

JUSTICE ALBIE SACHS

The very first case we got on the right to freedom of religion couldn't have been more banal. 7-Eleven, the retail outlet, was challenging a law that had been passed that restricted the sale of wine and beer; prohibited the sale on Sundays, Good Friday, and Christmas Day. So, 7-Eleven, come up as the great pioneers of freedom of religion: *'These are Christian holidays that are being privileged and it's a violation of our religious freedom.'*

One can be cynical about the motivation, but it raised the issue of, if you like, the Sabbath. It raised issues that divided the Court. We ended up with three completely different judgments, and four of the Judges, including Arthur Chaskalson, said, *'...this has got nothing to do with freedom of religion. People can pray, they can worship, they can go about their religious business quite unimpeded. End of matter.'*

Three other Judges - two were Kate O'Regan, Richard Goldstone and a third – said, *'...no, this is singling out Christian holidays. If it was just Sundays, you could say okay, Sunday's a day of rest, a day for the workers. That's okay. But you add Good Friday and Christmas-- it's privileging. If you included*

the Muslim Friday and the Jewish Saturday and other religions that spoke for the prohibition, then it would be okay.'

CHAPTER: FROM THE TRIVIAL TO THE SIGNIFICANT

So, I'm in the corner with Arthur and co. Come on, this has got nothing to do with freedom of religion. I said, *'... the intrusion on religion is so tiny, it's trivial. The law's not concerned with trivialities.'* My law clerk, Fatima Laher, raises her eyebrow. It's the only time I've changed a judgment because a law clerk raised her eyebrow.

I said, *'... what's the matter Fatima?'* She said, *'Albie, it seems like a little thing, but it's these little things that make some of us feel that we're not really fully South African.'* There are so many of these little things like that. That was like a shock for me, and it made me think back to the way that obedience to Christian precepts had been used to marginalise - particularly Muslims and Hindus, who'd come from Southern India. It had involved a combination of race, culture and religion, and it had obnoxious effects that went well beyond access to liquor on Christian holidays. Muslim and Hindu marriages were not recognised. That was to keep out spouses of Muslim and Hindu labourers - purely racist and a strongly class thing in foundation. I did some research. I remember reading Gandhi that this is one of the issues that he fought on in South Africa.

I discovered beautiful passages in one of his books, dealing with South Africa where he speaks about [how] our mothers and daughters and sisters, armed only with the patriotism of faith, went to prison. Very beautifully expressed. How much it must have meant to them because their marriages were not being recognised, they were treated as concubines; their children as illegitimate. So, it was something that burnt deeply into the skins of a community. It was based on a notion of marriage being a marriage between one man and one woman for life. The English High Court had upheld that in a case of a Mormon marriage where, I think a wife in a Mormon marriage, or a husband, tried to get a divorce in the English Court, and the judges said, *'...that's no marriage because Mormons allow multiple partners, multiple wives, and in Christendom, a marriage is the union of one man and one woman for life, so that's not a marriage.'*

Now, the judges in the Cape and then in Natal said, *'You women, going through these performances with your Hindu and Muslim husbands, you're not married because potentially your unions are polygamous,'* even though in practice they were monogamous. So, it burnt deeply into the soul of these communities.

CHAPTER: 'THESE LITTLE THINGS JAR'

Fatima, now years later... very successful, she's got her LLB, she's going on to big things afterwards in her legal life. She said, *'These little things jar.'* I mentioned that in the footnote, the research that I'd done.

Then, I discover in the United States, the question of the crèche in small towns had become a very big issue. *Can the municipality put up a creche dealing with the birth of Jesus?* Secular people object to that, it's the state endorsing religion. Very lovely judgment Sandra Day O'Connor, who I think is a religious person, saying that the state can't endorse a religion. It's not promoting religion, it's just endorsing it as almost like a state religion.

So, now I'm persuaded that there is a violation of the right to religious freedom in the sense that the state, through singling out Christian holidays, is endorsing the Sabbatarian quality, if you like, of the Christian faith. But at the same time I'm saying it's a relic of something that was much more severe in the past, it's an unfortunate relic, and there are secular justifications, that had nothing to do with religion. It's weekends, its double holidays, less spousal abuse, less drunken driving that provide a justification for these measures. So, the violation of the right to religious freedom is a vanishing one. It's very remote, and the legitimate public purpose is a real one. Preventing drinking and spousal abuse - that could be justified.

CHAPTER: MY SUNDAY STORY

So, I write. Yvonne Mokgoro joins me. So we go with the four to uphold the law. The amusing part was the next Sunday, I'm at my home here in Clifton, it's a hot day, I have a visitor who is an architect from Mozambique. He's dying for a beer, and I go out to get a beer and I [return and] say, *'I'm sorry, but they tell me the Constitutional Court has upheld the law forbidding the sale of beer on Sundays.'*

So starting off with that very trivial case, it had brought me into the theme of living in an open society and the importance of the state not laying down any orthodoxy, not Marxism-Leninism, or Capitalism, or Socialism, or Christianity, or Islam, or whatever it might be. That was the deeper principle involved in this.

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