



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

THE NATIONAL COALITION OF GAY AND LESBIAN ORGANISATIONS CASE – SEQUEL: INTERSECTIONALITY – VIDEO TRANSCRIPT

CHAPTER: DIGNITY? PRIVACY? EQUALITY? IT'S ALL OF THEM.

THANDI MATTHEWS

The Fourie Case was seven years later. What I appreciate about that case is that you distinguish between, again, privacy and dignity and how they both relate to equality, but you also apply...

JUSTICE ALBIE SACHS

Oh, let me interrupt you. Let me go back. I knew there was something I left out. Was it privacy? Was it dignity? Was it equality? And big arguments about that. I'm saying, no, no, no, no... it's all of them. It's not a choice. And the privacy aspect is all the more egregious, all the more ugly, because it's on an unequal basis. And the inequality aspect is all the more ugly and egregious because it's dealing with your most intimate life, your most personal life. And the dignity aspect infuses all three.

CHAPTER: THE INTERSECTIONALITY OF EXPERIENCES AND OF RIGHTS

So I'm writing that, and I have a law clerk from the US, Sharon McPherson from the African American community. She says, 'Albie...' - I got my clerks to call me Albie - '*...there's a writer in America, Kimberlè Crenshaw, she writes about critical race feminism, and she writes about the overlap, the intersectionality of experiences and of rights.*' I quote critical race feminism in the footnote.

So this would've been 1998, and I'd met Kimberlè Crenshaw. She'd come to Cape Town, the University of the Western Cape. Fairly quiet in those days, I believe she's less quiet, if I can put it that way, these days. Forceful, strong, black woman. The blackness mattered. The woman mattered. But that wasn't the end of her. Black woman, personality, legal scholar, critic, activist, [coughing in background] campaigner – a lovely combination with a terrific positive energy. Not just announcements but ways forward of developing things, achieving things. Any event, it became a footnote in my judgment in the Sodomy Case-- intersectionality.

CHAPTER: INTERSECTIONALITY IN A LATER CASE

And my colleagues kind of went along with that until the Home Affairs Case a couple of years later. Laurie Ackermann again asked to write on the rights of same-sex partners to South Africans who go abroad, enter into lifelong relationships with gay men and lesbian women, come back home, they can't marry, and they find their partners don't have the same rights that married spouses would have. Two important rights on immigration. One is you don't have to get a residential permit. The other is you can take work without a special permit, unfair discrimination. And again, Laurie writes a beautiful judgment. Well-constructed, forceful, step by step. And he has to deal with the argument on behalf of home affairs, *'...well they're not stopped from marrying. They can marry. They can't marry the partner of their choice, but they can marry. The law doesn't prevent them from getting married.'* He felt, how do we counteract that argument? He used the intersectionality. It's the combination of being gay and wishing to marry that creates the problem and the unconstitutionality for them. So he quotes intersectionality.

So now, it's not just Judge Albie, who's got this African American clerk who hangs out with critical race feminism people. The theme is picked up by the whole Court and by almost the doyenne of, if I could say, progressive, constitutional respectability that everybody can agree with.

CHAPTER: A RECENT THRILL AND A BIG KICK

I was very thrilled when, about two years ago, long off the Court, I see a decision by acting Justice Margie Victor.

THANDI MATTHEWS

Yes, we were at the conference together last year.

JUSTICE ALBIE SACHS

Right. And the judgment deals with the rights of domestic workers to be included in occupational insurance. So, there's a good law to protect workers for injuries they get at their places of work. But farm workers and domestic workers are excluded. Representatives of domestic workers say that this is unfair. Overwhelmingly, domestic workers are women, but not exclusively. Overwhelmingly, domestic workers are black, but not exclusively. Overwhelmingly, domestic workers are from the poorer sections of society, but not exclusively. But when you put all these three things together, it makes them a very vulnerable group as poor black women, specially deserving of protection from the court. Margie Victor quotes from Albie Sachs about intersectionality. So, she's not inventing it, she's picking it up.

It gives me a big kick when I'm speaking at... the last time I did was at the Columbia University in New York about how intersectionality came from the US. It's never been, as far as I know, used by top courts in the United States. It came to South Africa, incubated there, and now we're willing to export it to the US or Canada, or wherever it might be.

CHAPTER: IDEAS THAT GERMINATE AND TRAVEL THE WORLD

And when I was invited to send in a sort of amicus brief to women in Columbia who were petitioning their Constitutional Court to strike down the law that permitted abortion on restricted grounds, I felt, what can I add that's new? I added the theme of intersectionality. The impact on people who can't go to the doctors and easily get some indication that the mother or the child's health is at risk tend to be from overwhelmingly women, of course, from poor backgrounds and from marginalised communities. It's a right to health. It's not each one of these on its own. It's the combination of all of them.

The court did strike down the law. I don't know if that had an impact. But for me, it's an example of how certain ideas can germinate and travel around the world, not because they are textually required by particular constitutions, but they fit modern life and they help resolve problems in ways that couldn't be resolved otherwise.

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