

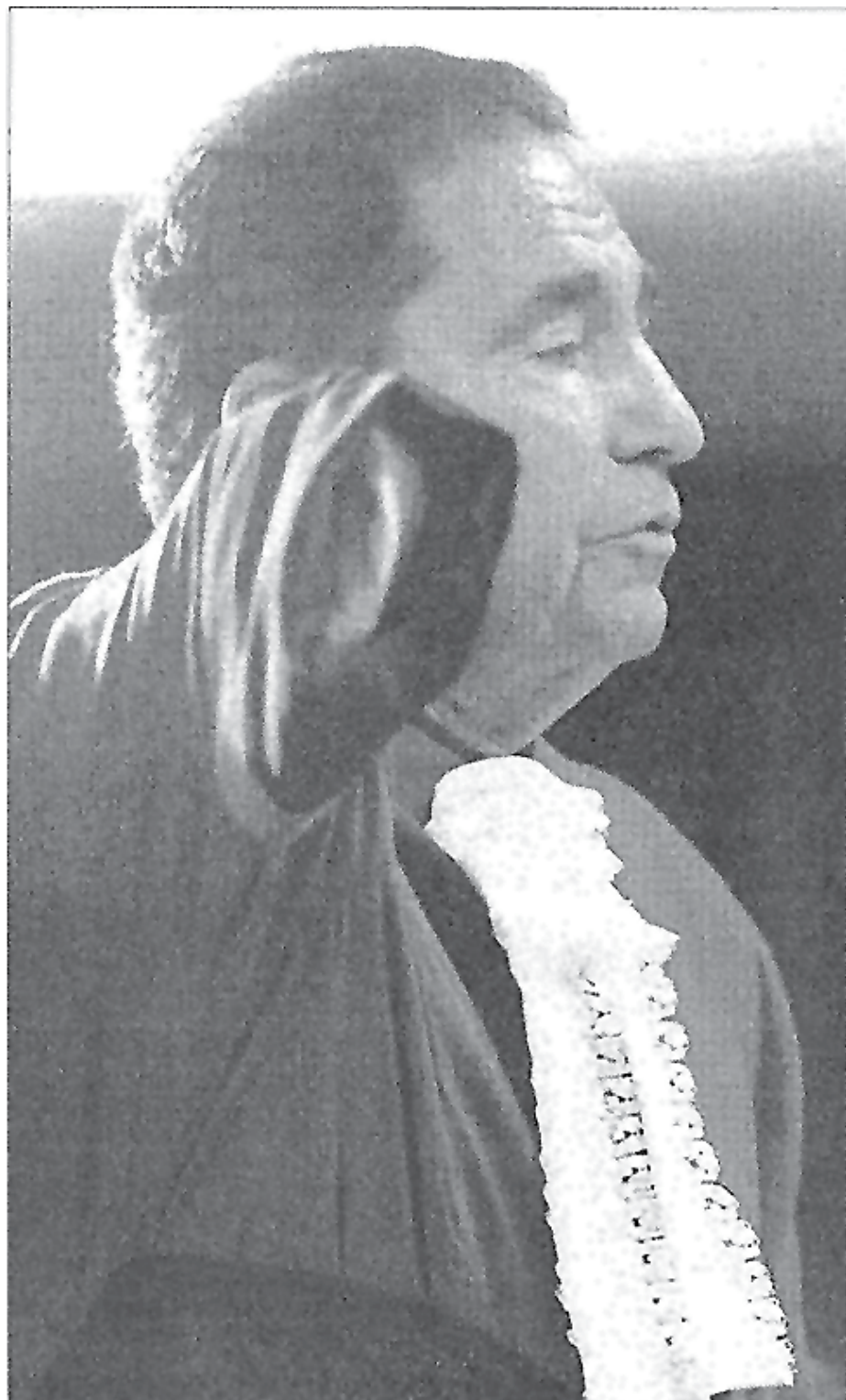
Commentary

A forum for opinions, reactions, dialogue and disagreement

Originally published

Sunday

OCTOBER 8, 2000



Albie Sachs was sworn in as a member of South Africa's Constitutional Court. He lost his right arm and eye in a car-bombing in 1988.

It wasn't a miracle. It didn't just come to pass. Our transition had been the most willed, thought-about, planned-for event of the late twentieth century. I had once written that all revolutions were impossible until they happened, then they became inevitable. In our case the movement from impossibility to inevitability seemed miraculous to many, particularly to those of little faith, who could only anticipate racial war and mutual ruin. That was the irony — the relationship between history and miracle had been reversed; for the total doubters, it had been a miracle, while for those of intense belief, it had been entirely rational.

— Albie Sachs, *Justice of South Africa's Constitution court, "The Soft Vengeance of a Freedom Fighter."* 1990.

High court speaks volumes

From different backgrounds, jurists make common ground

By Kate Stanley

JOHANNESBURG, SOUTH AFRICA — If you doubt that South Africa is truly a "rainbow nation," drop in on its Constitutional Court — the highest court in the land. The 11 justices sitting on the bench couldn't be more colorful.

There's Yvonne Mokgoro, for example — daughter of a black washerwoman and railroad laborer. Arthur Chaskalson, the white man who dared to defend Nelson Mandela and his seven codefendants back in 1964. Zac Yacoob, an Indian human-rights specialist — blind since infancy. Kate O'Regan, a labor-law expert from Capetown with a face straight out of County Cork. Pius Langa, a factory-worker-turned-court-interpreter who was once arrested for sleeping at his parents' house without the required pass.

And then, among the others, there's Albie Sachs. He's a rather easy fellow to spot. He's the one missing an arm.

It was blown off — and his right eye blown out — by a car bomb in 1988. The agents who planted it hoped to silence one of South Africa's most eloquent apartheid critics. They came close — gruesomely close — but not close enough. Having botched the job, they strengthened the man.

With the arm that was left, Sachs helped devise the Truth and Reconciliation Commission — South Africa's brilliant alternative to retaliatory justice. He helped to write South Africa's astonishing, groundbreaking Constitution.

Then he stood before the nation, raised his right stump and pledged to bring the Constitution to life.

Freedom, or cruelty?

He's doing it. On this day in May, for instance, Sachs and his high-court colleagues are hearing a challenge to South Africa's legislative ban on corporal punishment in schools. A group of Christian schools insists the ban flouts their religious freedom. It's a knotty question, and the justices yank at it from every angle.

Yacoob wonders how far the group's proclaimed belief goes. Is dispensing punishment totally discretionary? Is it OK for one teacher to give 25 lashes for untied shoes — and for another to do nothing?

The lawyer for the schools stammers. Inconsistency is inevitable, he admits. All his clients want, he says, is a chance to follow their belief.

But O'Regan wonders whether caning schoolchildren really qualifies as an exercise of religious belief. And if it does, she asks, do all such beliefs deserve special regard? Would the Constitution defer to a belief that widows should be thrown on their husbands' funeral pyres? Or that men should beat their wives?

The lawyer shudders. Cruel and inhuman treatment, he grants, lies beyond constitutional bounds.

Langa is thinking about cruelty, about which he knows more than a little. "We haven't heard anything so far about the other end of the stick, so to speak," he says. So he asks about the children: Do they have rights?

The lawyer shrugs. The children, he says, have no say.

Maybe they should, Sachs suggests. He mentions the International Convention on the Rights of the Child, which obliges governments to protect the dignity of children.



Imagining Africa

A continent's hope

If it's plain that corporal punishment hurts human dignity, he asks, shouldn't religious freedom give way a bit? Especially since democratic societies worldwide are tossing away the cane?

The lawyer quibbles. Many African countries, he argues, still rely on corporal punishment.

The warm-eyed Sachs smiles, rests his chin in his single hand. "Africa is evolving," the judge says. "We are moving toward a democratic standard."

'A place for everybody'

When Albie Sachs has you to his chambers for lunch, it's only polite to cut his pizza and serve the salad. It frees him up to tell his story. He won't speak about the case he's hearing, the books he's written, the law courses he's taught, the struggles he's seen, the years he spent in jail or the months he spent teaching himself to walk again. There's too much to say about the present. Here is a man who revels in the present. He is overjoyed — quite amazed, really — to be here, now.

For starters, there's this bench he's sitting on: "It's wonderful to belong to this court," he says. "When we swore our oaths, five languages were used. At least three religions are represented. All colors. Both genders. Before we open our mouths, something about our society has been expressed. I like to think we are all deeply committed to human rights."

There's the society he's helping to shape: "South Africa belongs to all who live in it," he says. "There's a place for everybody. It's not sentimental to say that. There's a huge generosity in African culture eager to express itself."

There's the healing process he helped envision — the Truth and Reconciliation Commission: "It acknowledged in a very intense and dramatic form the crimes and violations of the past," he says, "in a way that freed us to move forward, rather than trap ourselves in the past." Sachs won't agree that it gives justice short shrift. "The perpetrators don't get off scot-free," he says. "There's a shame through publicity that is very powerful — more astringent in its way than going to prison."

Promises, promises

And then there's the Constitution this man helped write. It's a document brimming with dreams and promises, and Sachs rejoices in it. "It's very much home-grown," he says. Four years in the making, it borrowed the best from constitutions around the world — and soaked up advice from millions of South Africans as well.

The result is hailed as the world's most inspiring civil document — and only occasionally mocked for its extravagant

promises. But its guarantees are purposely dramatic. Sachs offers a comparison: "The starting-off point of constitutional reasoning in the United States," he explains, "is that society is basically OK and the disturbance of the status quo has to be justified."

South Africa's Constitution, Sachs says, assumes the opposite — "that society is unjust and it's unequal and it's unfair — and measures have to be taken to remedy that."

The idea that equality must be attained — not merely sustained — is the Constitution's founding premise. Thus, unlike the U.S. Bill of Rights, the South African document doesn't just say what government *can't* do to people. It spells out what government *must* do for them. And it goes one step further — declaring that individuals must respect each other. It's a genuine social contract — of which every South African is a tacit signer.

It sounds dreamy. It's really quite concrete. "South Africans have a right not only to speak, to complain and to vote," Sachs says, "but also to education and shelter and health care."

This makes government the guarantor of human fulfillment, and the Constitutional Court a monitor of social progress. It means the court sometimes hears pleas for constitutional entitlements the government can't possibly afford to grant. But this doesn't bother Sachs much. He sees South African society as a work in progress. "You can't deny that the rights exist simply because they're hard to enforce," he says. The state's duty, he says, is to strive toward fulfillment.

These rights will never be realized in full, Sachs knows. They can't be, because rights often compete with each other. South Africa's Constitution makes room for this reality. In American law, Sachs explains, "you either have a right or you don't. But our Constitution says rights can be limited when it's reasonable to do so. We see balancing as our task."

And how might Sachs balance today's case — the contest between freedom of religion and freedom from violence? In May, Sachs won't say. Judges can be that way.

But a few months down the road — say, late August — you'll run across 41 lucid pages on the Web. Albie Sachs, writing for a unanimous court, will perform a balancing act he's practiced all his life. He'll weigh the convictions of the strong against the dignity of the weak. He'll use words like "democratic society" and "equality" and "freedom" — words he lost an arm for — and make them sound brand-new.

He'll quote Section 12 of the Constitution of South Africa, which insists that "everyone" has the right "to be free from all forms of violence." He'll insist that "everyone" really means everyone — even small everyones.

You can't be sure of all this in May, as you listen to this wounded, entirely whole man speak of his country's Constitution and of his dreams. But somehow you know.

— Kate Stanley is a *Star Tribune* editorial writer. Albie Sachs' full opinion in *Christian Education South Africa vs. Minister of Education* can be found [here](#). Read the original version of South Africa's Constitution [here](#).