

Arthur Chaskalson Interview 1

AC – Arthur Chaskalson

FW – Fiona White

FW: The first thing really to ask you is what your understanding is of the concept of non-racialism. I mean it's quite a complex question but..

AC: Yes, I'm not sure how one answers that without sounding very very superficial. Basically if one talks about non-racialism you are suggesting at one level, race is irrelevant, in the sense that the color of a person's skin, what one is really saying is that people should be able to relate to each other without regard to their appearances. But I think that is actually too easy a take on it. My own sense is that in a way, race and ethnicity go much deeper than the color of a person's skin. You grow up in particular communities, and particular attitudes to life have formed in you over years, and if we're looking at our own society, the whole history of apartheid, it's very difficult to simply say its gone and that non-racialism is easy, because it isn't. So I think on one level if one is going to talk about a non-racial society then one has to acknowledge the differences that come from the past, or the difference which exist which are aggravated by our history. At that level one has to understand that there will be tensions, and differences, and different attitudes to particular issues. I think when one is talking at a governmental level, we are saying that we need to acknowledge that but at the same time that we don't want those decisions in society and to work towards, I don't want to say eradicating them, but really of making them of no great importance. And I think that is a very hard task, I don't think it's easy. And I think part of the problem is that there are huge disparities between wealth and privilege in our society, and that creates its own tensions, both among those who are privileged and those who aren't. And so one shouldn't see the idea of saying a non-racial society as something which is easy and simple.

FW: If you look back, let's go back 17 years, how do you think the idea of non-racialism in different discourses, I mean obviously it's useful to get some historical perspective but it's not a historical study, but in your own experience over the last 20 years, how do you think the idea of non-racialism has travelled over the years?

AC: Well, if you're going back to apartheid, racism was very deeply entrenched. It was where you lived, where you went to school, where you could swim, where you could go for entertainment, every aspect of life was deeply affected. To try and move out of it required some sort of a mental, it didn't come easily in a sense, and there were at times self-consciousness in the attempts of people who were trying to breach those barriers because they were huge differences. And some of it was done at a political level where people realized they could make common calls on a political level, and work together on a political issue. My own sense of it was really that when you started working in an environment where people of different backgrounds and races were all together doing the same thing, after a while you actually didn't notice a persons race at all. But that would be a little island in a much bigger society. But even then, just looking at our social networks, it was essentially a white social network. When I say that, you would just move into that, if you went to a school function, there would be white people there, my professional functions were overwhelmingly white. If you didn't have very active attempts at bringing

people together, your neighbours would be white, because that was where you lived, and your children would go to school with people who were also white, or black. So non-racialism at that level was much more than an idea, it was intellectually something which one wanted, and certainly with regard to political attitudes and issues around that, non-racialism was a core. But in day to day life, I don't think day to day life was necessarily non-racial unless your life was a very politically active life, unless you were in one of the congress movements where the idea behind non-racialism was much stronger. But in day to day life, you had to be a really active political activist, working with people all the time, doing things together, but otherwise I think it was much more of something towards which you aspire to, but I don't think, it was a very fine thread in our society. And where it existed, it existed more at a level of policy and thought, if you're talking of our friends, they would all want a non-racial society, and it wasn't a leap for them to get there, but it was a very small section of South African society.

FW: And in terms of your own work in the judiciary, the idea of non-racialism as it came out of the Freedom Charter and around 1994, and how it has travelled in the last 20 years?

AC: Well I think there is a huge difference. I think a lot of people don't understand quite how profound the difference is, young people especially. I mean a lot of people say that nothing has changed, and that's nonsense. There has been huge change in this country. There is still an immense amount of poverty and there are all sorts of issues which have come from the past and are still with us, but the changes have been enormous. I mean I even remember little things, going back to the 1980s, when at one stage when you went into a bank, everybody would be white, all the tellers, all the people who had any authority in the bank. And then there was a place not far from me, and at one stage I noticed that there were a couple of colored women, white women, sitting next to each other working. And then I noticed that they were engaging in chatter with each other in a very easy, relaxed manner, and it was sufficient for me to say that's unusual. And if you look around South Africa today, that's totally different.

You walk into any business, and you will see black and white people together. Maybe you will still see that there is still a disproportionate number of white people in positions of authority, but that seems to me to be a process, I don't know how long it will take, but I think there are many complex reasons for that. Partly historical, because people come better equipped, with the advantages of a good education system, higher education and skills, had grown up with, knowing what a bank is, what a cheque is, all these sort of things come easily to people when they grow up in the middle class. Also at the same time there is also an element of inbuilt prejudice. Not necessarily overt prejudice, but this kind of feeling like you're not sure if they will be up to it. I think it's there. I remember sometimes, Desmond Tutu once said in a public speech, he was trying to bring this out, a long time ago, in the 80s, he was in an aeroplane and he had to fly somewhere, and he heard the pilot was Nigerian and he thought 'My God, am I safe?' So I think it's a mixture of that and also the reality of greater skills and the background and opportunities, and also at the same time playing into it a sense of well if you're coming into a particular background you can't... (tape stops)

Multiculturalism accepts there are differences in cultures and acknowledges diversity. This does not refer to a melting pot, but rather that there will be different cultures. This kind of multi-culturalism is contrary to non-racialism., but you can't have non-racialism that doesn't recognize difference. Non-racialism, at one level is about legislation. At a legal and institutionalized level, non-racialism means having laws not being geared to different people. Multiracialism is recognizing differences and not trying to obliterate them.

Afirmative action

FW: What the key challenges towards building a non-racial society are?

AC: Well, I think if you build a society where people actually live together and work together and do things together, naturally and not self-consciously, then I think you've got your society. Now how do you achieve that? Well I think your skills must be non-racial skills but I think that there has to also be an underlying belief that we are really all the same, as people. We have our differences and we are all diverse and we have many different identities, each one of us has a multiplicity of identities, but that we basically are all people.

FW: So to ask you, it's the flip side of the same question, but what are the key features of a non-racial society are, and within that question, what you think the role of different sectors of society would be to building a non-racial society?

AC: Well you know, it's the same thing – I don't think that I'll be able to add anything useful, I'm just trying to think, it's not something I've really thought about. At one level you have to have that as policy, I think policy is important, you have to do it. I know when I'm at a meeting and you're saying let's get a body of people together, to appoint a committee, you start worrying about gender and race, suddenly you see that all the names that come up are men or whatever. So there seems to be a kind of consciousness to it. So at one level you want there to be a consciousness of diversity, I mean you don't want your society to work or function in pockets, and therefore you know that because of the diversity and the different understandings that exist it's valuable to have different inputs. Certainly I found on the constitutional court where we have 11 judges from very diverse backgrounds, it was immensely valuable to talk to each other about our cases. Just because our views of things may be slightly different, and talking to each other, we may get slightly different insight into a matter. So I think that in a way, one needs to be conscious of diversity at important levels, so as a matter of policy you want to promote diversity. But I don't necessarily believe in quotas, unless it's a means to an end. I mean some people will say that a quota, without a quota you won't get there. But I think that, I don't think that that necessarily works. I mean even on a political level, the experience in India in an attempt to set quotas for people from certain marginalized groups hasn't worked very well. What they found is that people in power are now using that as a level of entry for their supporters. SO I think the goal of diversity is an important one and you would like to see diversity, and it is something that you should be conscious of

and that should strike you. I mean we were watching television the other night and an advertisement came up and Lorraine said they are only showing white children. You know, blonde hair and blue eyes and so on. I think that one should be conscious that if you are making a film that this is a diverse country, and it might be saying something about the audience that they are targeting, or that the person who was making the film didn't even think about it. It was actually a film for Checkers, and Checkers shouldn't do it. I don't know if it was their advertising agency, or if no one noticed it because there were just these pretty children running down.

FW: I thought it was interesting when you made the point that in a sense of black consciousness there is a sense of, well self-loathing is a bit too strong of a word, but it is like they aspire towards being like a white person. So maybe that is where that comes from.

AC: Maybe. But all I'm saying is that one should just, be aware.

FW: To ask you then about what different sectors of society, what role they can play, for example the judiciary itself.

AC: I think the judiciary has a very important role to play, because they have a large amount of power. And a lot of people have to day to day contact with courts, to get married, to get documents, because they are facing a criminal charge, for civil litigation. So I think in one way the way that the judiciary deals with people is very important. And also the law. I think that the law, because law has a big impact on society, and I think the way the law should be developed, there should be consciousness about the fact that we are living in a transformed society, so they should be developed in order to achieve the goals of the constitution, to have that in mind. So I think that is quite an important role, if you're looking at it at that level. I don't believe that things come about as individuals – I do believe that there are some people who make an enormous contribution, but change comes out because there is a myriad of actors. So if you can establish a culture within your society, then the actions of everyone will bring about a change in society. SO I think at the level of culture, in art and music and literature, in newspapers, which I think are quite appalling, basically I think culture is very important.

FW: Well I was actually going to ask you about the media, what role you think the media can play.

AC: Well my problem with the media is that I've got to the stage where quite frankly I don't buy newspapers anymore, because I pick up a paper and I'm usually finished with it in 2 or 3 minutes and I'm irritated, because there is nothing. I say there is nothing because I think the level of discourse in the newspapers is very poor. But I mean I'm not here to criticize newspapers, I know they have huge challenges with regard to cost, to hire good reporters, to get people to read the newspapers because people don't necessarily read newspapers anymore, analytical, or perhaps they are just interested in big headlines and articles on sex or crime or something like that. I do think the media is important, but I want to go beyond that, I mean I think culture is very important. Non-racialism is essentially a cultural question, it's both legal and cultural. Legal is easy, culture is more difficult. I don't think one must be too self-conscious about these things, it needs to be something in you, which you are conscious of, and therefore you would want that diversity, you would want it to be reflected.

FW: So it sort of develops organically?

AC: Yes,. I think so. I think when people are trained that way they become that way. But I think you just need to be sensitive to it. I mean if you are organizing a series of musical events, just to make sure that at some stage that there is a diversity of the music, what I mean is that I do think what comes on to our television, television is a very powerful media. And a lot of what happens there, there should be a sensitivity for a need for diversity. I must confess I don't watch soaps, I watch news, I tend to watch Sky or BBC, and I do watch some South African news, but I tend not to watch the soaps. But I think that television, messages which come through TV is important. I think the way political leaders talk, how they use language and what they talk about is important. But it's not only political leaders, it's people who occupy important positions in society need to be aware of the way in which they relate to each other. I think it is happening at one level, but sometimes the discourse becomes just formalistic. But I also think there are times when politicians say or do things which are not particularly helpful, which have a much bigger impact than them saying the right things, you know.

FW: And is there anything else you want to talk about, other sectors, sports, business, anything like that?

AC: I mean sport is obviously very important. In a way sport still has a very racial profile. I'm not sure why, I'm not involved in sport to know why, but even the professions have a racial profile, if you look at the legal profession, The judiciary no longer has such a strong racial profile. In 1994, when the interim constitution came into force, there were 2 women judges, one of whom was about to retire, and 2 black men in homeland courts and one Indian man, other than that, all other judges were white. Today 60% of the judiciary is black. But when you look at lawyers, I think only 15 -16% of them are black. What I mean is that at that level there has been quite a lot of change. But if you look at our sporting sides, rugby is predominantly white, cricket is predominantly white, soccer is predominantly black.

FW: I just want to go back to the judiciary. I think it's interesting how you say that there has been a lot of change at the level of the judiciary, but not a lot among lawyers. Why do you think that is?

AC: Well I think it's a matter of active policy. Conscious policy, that the judicial service commission has deliberately gone out of its way to address this. The constitution actually says that the judicial service commission which recommends the appointments to the higher judiciary should have respect for diversity. And I mean on one level it is as if you can't have a white judge judging a black man. The commission sought out people, encouraged black lawyers to put their names forward and it was a process, so as people retired new faces started coming in.

FW: And do you think, in your sense is the judiciary strong and effective still?

AC: Look, I don't think it's got to do with race, I think the quality of the judiciary depends.. I mean you can have a black judge who is highly conservative with attitudes in law, you can have a white judge who is highly radical and more in tune with the constitution. So I think that transformation has far more to do with than just the color of your skin. I think there's to a significant extent, the attitude to law has changed. It's much more concerned with the values of the constitution than was the case, people are

beginning to think about law, about justice being substantive rather than formal justice. But that of course has its own problems because what is just to one person is not just to another. But I don't think attitudes have changed in the legal positions, if you go and speak to white attorneys in the bar, they will say no it's going to hell, it's no good. But if you speak to black lawyers they will say that it is still white dominated, but they don't actually know what is going on at the level of the judiciary. But you know I think most of our courts are all right. I think that they have sort of reclaimed a lot of standing which was lost under apartheid, internationally the constitutional court has an extremely high reputation, but you can't tell what will happen. I think there is always a pressure on those in power, politicians don't like courts disagreeing with them, and I think there is always a temptation to look around to find people who are more likely to agree than disagree, but I don't think that has happened, but I think it could happen. I think one needs to be very sensitive to the need for the judiciary to be independent, and I think our judiciary is independent, but it's under a lot of pressure.

FW: I did interrupt you, you were speaking about sport.

AC: No, I was just looking at teams. I mean there are certain sports that still have certain profiles. Partly because of skills, I think. The schools that played cricket, if you look at the black cricketers who have come along, they have mostly come from schools who were previously model C schools or private schools, because that is where they learn their cricket. And rugby is the same. Certainly in this part of the world, it may be different in the Cape, but I mean rugby is still played at schools which were formerly white schools. I mean that should change over time but how that gets reflected, I don't know. So although sport is formally non-racial, that nobody can be excluded on the grounds of color, there is still a racial profile. I think if our national teams were effectively more diverse than they are now, that would be a powerful message. But I think you have to get there naturally in some way. I for one don't like quotas, personally.

FW: yes, you know I'm not young enough to know but I have heard that there are even now quotas at school level, for provincial teams, but I mean you never know.

AC: You see, quotas create problems. I know it may be necessary, but the problem that comes with quotas is that the person who is chosen in order to fill the quota, they have to wonder whether they are there because they are good enough or just to fill the quota. I mean they want to believe they are good enough but there is always that doubt lingering. And other people will say you're there just because of that, and it's divisive and it's undermining of the person concerned. The idea of quotas may be a very temporary means of pushing capacity building, but if the capacity building is natural, if all schools had decent sports facilities, it wouldn't be long before you saw change. But even the old Model C schools, you know the old white schools, most of the private schools, even today they are predominantly white. But you see when kids go to those schools, they come out better equipped for sport than people coming out of township schools. Now if people really built up the skills and built up the opportunities, well that involves a whole process of grounds, equipment, and coaches. Coaches are very important. If you had that, then your sport would become non-racial.

FW: I've got two last questions. The one is just something we're asking, if people we've spoken to, is there anything on a personal level that you feel, that you do personally that fosters non-racialism. The reason we are asking this question is because it might be nice to have some anecdotes of things that work.

AC: I mean look if you're asking me what I'm doing now, I'm retired now, but look going back when I helped establish the legal resources centre in 1978, I found that that brought together people from different backgrounds, certainly brought together different client communities. I found working at the court, the deliberate policy of trying to promote transformation within the court was a very powerful thing. Today 8 of the 11 judges on the constitutional court are black. And you know at that time I found those years on the court very fulfilling. Since then, I've just, my work has largely been in either giving lectures and I speak a lot about poverty and development, or I sit on the boards of a lot of non-government organisations who are non-racial. But you know I wouldn't see myself as making any significant contribution. I mean now. I think the work in the court was very important.

FW: My last question is really if you've got any views on what you think the foundation should focus on on moving forward?

AC: No, no I can't, I don't know enough about the foundation. But even if it sounds like a parrot refrain, I really believe that poverty is absolutely at the heart of everything. Our society, until we can, as long as it's there, we've got that fault line. And look, there are also countervailing measures, things that come into it. There are people who are promoting, within the black community, who are promoting black racism. I don't think that should be ignored either. I think that there are people who are very angry, and are, feel that non-racism in some ways is a sellout to the black interests. Now I think there are people who promote that and I think there are also people who opportunistically advance their own interests and their own concerns, which does have a racial impact. If you corruptly get tenders for people, who are your colleagues, who happen to be because of your position, I think that does promote attitudes to race. I must say corruption knows no, it's got no color line. What I mean is, I don't think it's purely a white thing.

FW: Do you think it creates stereotypes?

AC: I think if you're talking about non-racism, I'm sure as far as whites are concerned, they have to internalize and get rid of old attitudes, but I think the same applies across the board, I don't think it's purely a white thing. Non-racialism. Corruption is often, corruption often takes a racial paradigm because you start favoring people because of race, but I think that makes it too complicated, I wouldn't get into that at all. But I do think that when you are talking about non-racialism you have to look at it not only from the point of view of the whites, you know making profound changes, I think that you also have to look at black attitudes.

FW: And minority groups, such as Indians and Coloreds, that's come out quite clearly, there's a lot of division between African people and Indians and Coloreds. It's interesting, particularly since the last elections, with the ANC losing quite a lot of support to the DA, within the Indian and colored communities.

AC: That is true, because people perceive, there are people within Indian and colored communities who feel that blacks are being advantaged over them.

FW: Yes, that's an interesting issue. Is there anything you want to add, I've taken up a lot more of your time than I meant to.

AC: No, it's not something I have really prepared myself for.

FW: No, nobody has, but that's been very helpful and you know I think your ideas are great, to add to our report and our feedback.