

Footnote

¹Many thanks to Michael Martin from CILIP for these figures, which stand as of March 2009.

Biography

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“A Sensible Radical”: Conversations with Professor Sir Bob Hepple Part I - South Africa

Abstract: As a further contribution to the Squire Law Library Eminent Scholars Archive, Lesley Dingle of the Squire Law Library has been fortunate to interview Emeritus Professor Sir Bob Hepple, an internationally-famous labour lawyer and champion of human rights. Sir Bob's career spans the historic struggle against apartheid, the introduction of anti-racist legislation in the UK, and recent observations on the relationship between labour law and globalisation.¹

Keywords: lawyers; biography; South Africa

Introduction

Professor Hepple gave his interviews at the Squire Law Library between August 2007 and June 2008 and, in his frank and expansive conversations, he described how the trajectory of his extraordinary career has been influenced by several crucial events

“I think I have been extraordinarily lucky. Whenever things seemed to be going badly then one door closes and another one always opens...”

At the risk of over-analysing the complex life of this crusader for human rights and equality, these were: 1948 (National Party victory); 1960 (Sharpeville); 1963 (exile to Cambridge) and 1993 (return to Clare College). Here, in Part 1, I present an account of his early years in South Africa, while in Part 2 I shall cover his later career while domiciled in the UK.

Bob Hepple is a man whose destiny was decided while Queen Victoria still ruled over the Empire and the potent recipe of social trends that determined South Africa's future was still being formulated. Division and conciliation were two such ingredients in the national

mix and, as our conversations unfolded, it became obvious that these traits epitomised Bob Hepple's personal background and affected his career. Even in his emeritus years in Cambridge, long after early traumas and confrontations in South Africa, principled stands and persuasive conciliation are legacies he still draws upon from his complex past. Without being aware of their influence, an observer of his career would overlook the source of such essential elements that underpin it: an intolerance of ingrained injustice, a strong sense of fairness and even-handedness, and a passionate championing of the underdog.

The legacy of history and the making of an activist (1934–1960)

Bob Alexander Hepple was born in Johannesburg on 11th August 1934, and was raised in a politically turbulent society. Although only a boy during the years of World War II (1939–45: 5–11 yrs), and despite South Africa being far from the front line, Professor Hepple recalled that there were serious practical consequences for the Hepple household, and that these were grounded in the family's past. They created a lasting impression upon him.

Because of its earlier history, white South African society was strongly divided, and the war only magnified these tensions. The result was that when the underground *Ossewabrandwag* Afrikaner resistance organisation (with Axis sympathies) attempted to sabotage Allied efforts, some of the local civilian volunteers who supported Prime Minister Smuts' government (what Bob Hepple called the "Dad's Army") were beaten up, and Bob's father Alex was amongst them. Ironically, Jan Smuts² himself was an Afrikaaner who had fought against the British in the Boer War, and the same white tribal fracture line ran directly through the Hepple family.

On his mother Josephine's side, his Dutch grandfather (Alexander Zwarenstein) had also served the Afrikaners at the siege of Mafeking in the Second Boer War (1899–1902).

"...they were of Dutch origin and my maternal grandfather, Alexander Zwarenstein³ was in fact a Dutch Jew. He wasn't a practising Jew, but a secular Jew and he really came to South Africa, I believe, for an adventure at a young age in order to fight for the Boers. He was what is called a rapportryer [despatch rider]. He had to carry messages from Boer Headquarters in Pretoria to Mafeking which was then under siege by the Boers⁴, which is about a 200 mile journey on horseback..."

On the opposing side of the white tribal divide, his English grandfather (Tom Hepple) was a trade unionist who had emigrated to South Africa from Sunderland to

find work, and had trained as an irregular for the British prior to the Jameson Raid (1895). Tom's wife Agnes (née Borland) was the only member of this generation to survive into Bob's childhood, and it was directly from her that he heard stories of these pioneering days.

"[M]y grandfather had married Agnes Borland whose own father had been a soldier in the British Army, first in India and then in the Province of Natal in South Africa, the Colony of Natal, and he had been given a small piece of land at a place called Weenen. Because of Zulu raids they emigrated into the town of Pietermaritzburg...[She told me] stories about the famous Battle of Ishlandwana⁵ when the Zulus defeated the British Army, and when in Pietermaritzburg they had to form a laager to protect the town as they were expecting a Zulu attack, which in fact never happened. So that was a living kind of link for me with the history of colonisation in South Africa."

It was also from his grandmother Agnes that Bob heard of what we would now call "direct" political actions by his father Alex's parents,

"...my paternal grandfather [Tom] was one of the founders of the South African Labour Party which was formed by English-speaking artisans in South Africa and his wife, Agnes ...[was involved] with a suffragette who was locked up a few times, I believe, for demonstrating to get the vote for woman in South Africa."

As the Boer War progressed, the Empire eventually struck back, and the Boer republics of the Transvaal and Orange Free State lost their independence in a united Union. The result was that in some quarters within white society, divisions became even more deeply entrenched. However, the Zwarensteins were inadvertently drawn into the British camp by the following:

"Just before the [Boer] War had started he [Alexander Zwarenstein] had started a little butchers shop in Johannesburg. When he got back he found a British soldier guarding it because they had sort of confiscated all Boer property but he did a deal with this man. He said "if you let me into my shop I will make you a partner" and this...British soldier agreed, and so the rest of his life he was a partner in this butchers business which my grandfather had started."

The earliest pivotal political event on which Bob Hepple's future turned came in 1948, when he was fourteen years old. In a General Election, the Afrikaaner majority and their National Party removed from office the government of the United Party⁶, which was

a coalition of various “moderate” groups. Bob recalled the occasion.

“I remember the day they were elected and my mother wept and I couldn’t understand. I said “what’s wrong” because my father had just stood as a Labour candidate in the elections and he had won with a very handsome majority. At the time the Labour Party was in alliance with Jan Smuts’ United Party and he stood on a coalition ticket and he had five opponents and he beat them by a very large majority. So I said “why are you unhappy” and she said “this is going to be a disaster for South Africa”. She had foreseen that and she was right. And so it did make a big difference because after 1948, first of all South Africa became virtually a police state by stages, and secondly, you know, the apartheid laws were introduced...it made an enormous difference to my life and to the lives of many people.”

This event crystallised the political position of the Hepple household. Together with Bob’s parents’ commitment to what we today would call “human rights”, it ran headlong into the rapidly enveloping legalistic web of Nationalist Government, racially-directed social and labour legislation, and the political cross-fire and passions that this generated. Very soon Bob himself began to feel the effects of the enmity against his parents, and at school (Jeppe Boys High School in Johannesburg)

“my memories there were not entirely happy ones because my father.....was not in favour with most of the white parents and they passed this on to their children so I was always being harassed and ridiculed because of my father’s political affiliations. The only [teacher] ...I can remember who had a big impact on me was a man who fought in North Africa during the war. He was a wonderful history teacher who really inspired my interest in history...[but] most of the rest of the teachers, I have to say, were bigots and racists....so I never felt really comfortable at school although I had quite a lot of friends..... I never felt one of them, if you know what I mean?”

Bob Hepple’s determination not to stand aside from the unfolding situation in South Africa came to a head once he moved on to the University of Witwatersrand (Wits) in Johannesburg in 1952. Here two factors combined to dictate the road his career would follow: the opportunity to engage his social conscience in practical acts of defiance in concert with like-minded students, and his selection of courses that led him into law.

Because law was then a post-graduate course, he enrolled initially to do a general BA, majoring in economics, English and Afrikaans. He then followed a three year part-time LLB course, during which he also served his articles of clerkship to become an attorney. In many ways, Bob Hepple’s time at Wits was as much a political

education as it was legal. He described his initiation into the hectic world of South African politics during our first interview.

“Soon after I came into the University I went to a meeting which was addressed by two students who had taken part in the defiance campaign⁷ and later became very famous black doctors, Motlana and Mji, and while they were talking the police broke into the meeting and arrested them. Of course there was an uproar and we immediately had a demonstration... I followed them into the centre of Johannesburg to the Police Station to protest and that kind of marked my transition. I just thought it was so outrageous that these two students had been arrested in this way and I was sympathetic to the aims of the ANC.”

This experience prompted Bob to become chairman of the Student Liberal Association, whose members went into the black townships in defiance of the new laws. He soon experienced police action for himself:

“...because of the racial segregation, white people were not supposed to go into black townships. We organised a concert [in Orlando township, outside Johannesburg] which was really a cover for a sort of political meeting and while we were there we were arrested. Now they could have just fined us £10, but instead they decided to charge us under something called the Illegal Squatting Act which says that we were being treated as squatters although we were only there for the night for a concert. There was quite a prolonged trial and I was already a student at Wits University and I can remember one day every week virtually I had to go to the trial. I was called as a witness in the trial, but we were all acquitted because it was a ridiculous charge. So that was my first experience of arrest, spending a night in the cells because we were arrested in Orlando township.”

This incident, early in his time at Wits, led Bob further into politics

“... and all the more determined to play a role of some kind. So I then became involved with... a white off-shoot of the ANC because even the African National Congress was racially segregated ... [and] I joined something called the South African Congress of Democrats⁸and became chairman of its youth section....so... this arrest and all the other circumstances just led me further down this line.”

Because of these extra-mural political activities, Bob’s relations with certain university staff and administration remained uneasy throughout his undergraduate years. Notwithstanding, his academic qualities and integrity were recognised by two of the Law Faculty: John Ellison Kahn (whom Bob described as “probably the greatest legal



Figure 1: Bob Hepple as President of the Student Representative Council (University of the Witwatersrand, Johannesburg) 1954–55 (Fifth from left front row). Second row, second right is Ismail Mahomed (later first Black Chief Justice of South Africa).

scholar that South Africa produced”, and whom he revered), and a refugee from Nazi Germany Herman Robert (Bobby) Hahlo. The latter, “*who was by no means a person of the liberal left*”, then offered Bob a lectureship and presented him with his first opportunity to publish by writing sections for their joint book.⁹

Meanwhile, it is important to understand that concurrent with Bob’s initial steps into legal politics, his father Alex was also continuing his own clandestine political contacts with the ANC, so that “*several of these people used to come to our home for meetings and ... I got to know quite a lot of the ANC leaders.*” This included Nelson Mandela.

By the end of the 1950s, the complex political and social elements that influenced Bob Hepple on his long journey through the constantly evolving landscape of human rights and equality legislation, were in place. We can now survey the next five decades of his career, and at the further risk of over-deconstructing it, I will, for convenience tease out his activities into two parallel strands, which of course in reality maintained a symbiotic and frequently fused existence: his role as a legal activist addressing wrongs and injustices, and a more conventional academic career of teaching and research. While the

former has been played out in three main spheres, South Africa, UK, and most recently, “things-globalised”, the latter has been primarily at universities in the UK.

Bob Hepple the legal activist

1960 and aftermath

The second crucial date to which I referred in the introduction was 1960: March 21st to be precise, when at Sharpeville the police shot dead sixty-nine Pan Africanist Congress demonstrators. This marked the second political event that shook Bob’s life, South African society and politicians around the world: another door of opportunity opened for Bob Hepple, and he went through it.

The immediate aftermath of Sharpeville was frantic government activity to dampen down potential unrest. For Bob

“... it impacted hugely on my.... personal and political life because everybody saw that something like this was coming. I had been helping the only multi-racial Trade Union Federation in South Africa at that time,



Figure 2: Bob Hepple front row, first on right. Chairman, Law Students Council and winner of Society of Advocates Prize as best law graduate, 1957. University of Witwatersrand Faculty of Law Teachers. Front row from left Mr M.H. Bayer; Mr M.A. Millner; Prof. E. Kahn; Prof.H.R. Hahlo (Dean); Prof. J.E. Scholtens; Mr A.V. Lansdown; B.A. Hepple.

The South African Congress of Trade Unions and, expecting that they would all be arrested or many of their leaders would be arrested, they resolved that in the event of that happening, I was given all the administrative authority to run the affairs, administer the affairs of the organisation. When the emergency came that came into effect....I was then devoting quite a bit of time to it."

Partly because of these new circumstances (and partly to support his wife and expected family) "...I decided to leave Wits at the end of 1961 and I went to practice at the Bar which gave me more freedom to carry on these other activities." Bob had now plunged directly into the legal quagmire of South African politics.

Clearly this was a realm where racial legislation was paramount, but the new legal boundaries were ill-defined, so that even legitimate activity carried a high degree of uncertainty with regard to personal safety and circumstances. Bob's close relationship with senior members of the ANC ensured that over the next two years he played

important roles in the two major court cases with which the now legendary Nelson Mandela was involved:¹⁰ the 1962 "Incitement to Strike" trial, and the 1963 "Rivonia" trial. All the details of these trials are recounted by Mandela himself in his famous autobiography,¹¹ but in his interviews Professor Hepple gave some moving accounts of his involvement with Mandela's defence. Here I present some of his observations of the famous man which seem to me relevant to appreciating Bob's own guiding sense of compassion and conciliation.

At the Incitement trial, Mandela's attorney, the Lithuanian émigré Joe Slovo, was prevented from representing him at the eleventh hour when the trial was transferred to Pretoria, a place to which Slovo was banned from travelling. Mandela turned for legal guidance to Bob Hepple.

"He was a very charismatic, interesting person and it was no surprise when he asked me to "come and assist me" He was conducting his own defence¹² the first charge was incitement, the second one was

that he had left the country without a passport, which was a criminal offence. There he had no defence, so he decided to conduct a political defence, but he wanted me with him to advise him on legal points.”

Bob cites two incidents from the “Incitement” trial that display Mandela’s compassion and consideration for others, even in times of such personal stress.

“If I may, I will just say a few words about some features of Mandela’s personality which became clear to me then. The first was that he, at the beginning of the trial, asked the magistrate to recuse himself – he was a senior regional magistrate – on the grounds that Mandela as a black person had no vote and therefore had no say directly or indirectly in the appointment of the judiciary and why should he be tried by a white court in his own country. Of course the magistrate refused and Mandela made a point of this by dressing up in tribal dress and leopard skin, and so on, just to make his point. And of course in the trial, one of the international observers, who happened to be Sir Louis Blom-Cooper,¹³ noticed the white magistrate going out for lunch with the prosecuting detectives. So I went to Mandela and I said “look, you have got proper grounds for recusal now because he shouldn’t be associating with the prosecution during the trial”. Mandela said “Okay, I will ask him to recuse himself” but he said, “would you mind just telling him I am going to do it, I don’t want to hurt his feelings”. So I was deputed to go and tell the magistrate, who went red in the face and blustered some kind of excuse for this. Of course Mandela did ask for his recusal and was turned down, but the fact [was] that he was so concerned about the feelings of this magistrate, who eventually sent him to prison for five years.”

The second incident involved the Prosecutor “...who had known Mandela as an Attorney in Johannesburg....When I was in the court cell talking to Mandela... [the Prosecutor] said “Please can I talk to Mandela alone.” I said “you know you can’t - that’s not proper” and Mandela said “Okay if he wants to.” Right, so I went outside for about ten minutes and after ten minutes the prosecutor came out, tears streaming down his face. I went in and I said to Mandela, “what’s going on here, what happened and he said “well, you won’t believe this but he asked for my forgiveness.” I said “I hope you told him where to get off” and he said “No, no, I told him I knew he was just doing his job.” He said then “he kissed me.””

Bob’s admiration for Nelson Mandela’s personal qualities was very clear during our interviews and, following Bob’s involvement in the Incitement and subsequent Rivonia trials, this relationship developed into a friendship that has endured over the subsequent four decades.

“It was just remarkable, you know, the things that we heard about that he did in prison later on - winning the confidence of the warders and so on. I think this just illustrated that he was always like that, although at the time, of course, he was regarded as a terrorist by the white population. He had these qualities.”

When Mandela started the five year prison sentence he received at the Incitement trial, the ANC leadership came under increased surveillance and the situation had serious implications for Bob.

“I was asked to carry on helping some of the underground black leaders who were based at the Lilliesleaf Farm in Rivonia,¹⁴ their sort of secret headquarters. I did so, and I went out there several times quite regularly and ...was kind of a lifeline for them because they relied on me to bring them messages, translate them back to other people and so and so forth. Unfortunately on 11th July 1963 I was there for a meeting. Soon after arriving, the police raided and we were all arrested”.

This was the raid vividly described by Mandela in his book (he was of course absent - being in Pretoria jail), when the police approached in a disguised dry-cleaner’s van and many of the ANC hierarchy were arrested,¹⁵ and it eventually resulted in the Rivonia trial - what Mandela called the “the most significant political trial in the history of South Africa”.

After his arrest Bob “was....kept in prison in solitary confinement and interrogated for three months” and was placed under great physical and psychological pressure by his interrogators, “when one was just not allowed to sit - kept standing, couldn’t go to the toilet and so on. Kept under intensive interrogation for several days on end without sleep, and so it certainly eventually wears you down.”

One of his fellow activists, for whom Bob had a particular admiration, was Bram Fischer¹⁶ who

“...was a particularly great man, I think. Whatever you might have thought of his political views he....could have become Chief Justice or even Prime Minister of South Africa. He came from this very distinguished Afrikaner family from the Orange Free State and [was] a very able man who had been to Oxford and so on. He sacrificed everything, he was totally dedicated to this movement and he was a very persuasive advocate as well. [I]t was really his advocacy, I think, which persuaded the Judge in the Rivonia trial not to sentence Mandela and the others to death, which was an option. I think it was his tactics and the way he worked that saved Mandela and the others from what the prosecutor confidently predicted would be a death penalty.”

Bob was eventually released when his indictment was “quashed for lack of particularity”, but because he was

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unwilling to become a state witness against his friends in a trial that attracted world-wide coverage - “people who I admired and respected” - he knew he would have to go into exile. At the very end of 1963, Bob Hepple and his then wife Shirley, who had also been politically active, were dramatically smuggled out of South Africa. Their two small children joined them six months later.

Bob was unable to return for the next twenty-seven years until the political regimes had changed, and by then he had carved out a new career in industrial relations and academic law in the UK. When he did set foot again in South Africa in 1990

“it was a very emotional experience... I was immediately met by my old friend, John Dugard¹⁷ who had been a student with me when I did the LLB. He took me straight back to Johannesburg, which I hadn't seen for 27 years and which had been changed - a lot of new roads and buildings and so on. I revisited the house in which I was born and another one in which I had lived and went to the university. Then I flew down to Durban and gave a lecture to the labour law conference.”

Although South Africa was denied his talents for nearly three decades, the principles he had embraced in the hectic 50s and early 60s went with him and were transplanted into a legal culture that, although new to him, he almost immediately set about transforming.

In Part 2 of this narrative I shall distil from this time, his own account of how Bob Hepple and his family set about re-establishing themselves in the United Kingdom.

Career Highlights: South Africa

- University of Witwatersrand BA 1954, LLB cum laude 1957
- Society of Advocates Prize (best law graduate) 1957
- Attorney, South Africa 1958
- Lecturer in Law, University of Witwatersrand 1959–61
- Advocate, South Africa 1962–63

Footnotes

¹http://www.squire.law.cam.ac.uk/eminent_scholars/professor_sir_bob_hepple.php

²1870–1950

³born 1877 in Zuid-Beijerland, Holland.

⁴Siege of Mafeking, Oct 1899 - May 1900, 217 days.

⁵1879

⁶South Africa's ruling party from 1934–1948. It effectively ceased to exist in the mid-1970s.

⁷Organised by the African National Congress, where they broke the racial segregation laws.

⁸Founded 1952. <http://www.sahistory.org.za/pages/governance-projects/organisations/COD/congress-of-democrats.htm>

⁹Hahlo H.R. & Kahn E. 1960. *The British Commonwealth: The Development of its Law and Constitutions. Vol.5 The Union of South Africa.* Stevens, London. Bob wrote the chapter “Economic and Racial Legislation” (p. 760–813).

¹⁰The earlier “Treason” trial in 1961, for which Mandela had been originally arrested in 1956, ended in his acquittal. Alex Hepple had been instrumental in organising a campaign to raise funds for the defence.

¹¹*Long Walk to Freedom*, 1994, Little - Brown, London.

¹²Mandela was himself a lawyer.

¹³Sir Louis Jacques Blom-Cooper QC. In 1962 he was a columnist on the *Observer*, and later that year became an academic in the University of London (1962–84). Judge of Court of Appeal of Jersey & Guernsey 1989–96.

¹⁴An ANC safe-house just outside Johannesburg. <http://www.sahistory.org.za/pages/chronology/thisday/1963-07-11.htm>

¹⁵Walter Sisulu, Govan Mbeki, Ahmed Kathrada, Andrew Mlangeni, Elias Motsoaledi, Dennis Goldberg, Rusty Bernstein and Jimmy Kantor. See p. 335 of Mandela's autobiography.

¹⁶1908–75. Abram Louis Fischer. Rhodes Scholar, married the niece of Prime Minister Jan Smuts, Molly Krige. See *Memories of Fischer* by Nelson Mandela, 1995 at: <http://www.anc.org.za/ancdocs/history/mandela/1995/sp0609.html>

¹⁷b. 1936, Fort Beaufort, South Africa. Dean of Law, Wits, 1975–77; Director, Centre for Applied Legal Studies, Wits, 1978–90; Director of Lauterpacht Centre, Cambridge, 1997, Professor of Public International Law, Leiden, 1998–; Judge *ad hoc*, International Court of Justice, 2000.

Main publication

Hepple B. 1960. Economic and racial legislation. In: Hahlo, H.R. & Kahn, E. *The British Commonwealth: the Development of its Law and Constitutions. Vol.5 The Union of South Africa.* Stevens, London, p. 760–813.