Arthur Chaskalson Memorial

American University Washington College of Law

Washington DC, 4 March 2013

My contribution to this memorial will be quite personal, because it is hard for me to separate my knowledge of Arthur from my personal encounters with him and the effects he had on me overall.

So, let me begin—if you will permit me—with two supermarket bags. Or at least, that is how I remember them—two blue and white Tesco bags which, in or around 1982 or 1983, made their way across the landing of a house in Oxford where my wife Moira and I inhabited the upper floor. I was there completing my doctorate, and as for the bags, they were carried by Arthur Chaskalson and Joel Joffe, who were there on a task of temptation if not persuasion. Both Arthur and Joel had served as members of the defence team led by Bram Fischer during the Rivonia Trial of 1964, when Nelson Mandela and some of the other accused had faced the possibility of death sentences. It was in part through the courage, both professional and political, of the defence that those sentences were averted, making it possible for Mandela to return some thirty years later as the first President of a free and democratic South Africa. Later, Arthur had also been part of Bram Fischer's own defence team when he was on trial in 1965 and was ultimately sentenced to life imprisonment—a sentence he was released from only when it was clear he was dying of cancer. At that point, when Fischer was cremated, his family were not allowed to have his ashes, on the grounds that these were the property of the Prisons Department. Now, some seven or so years after Fischer's death, the task of persuasion Arthur and Joel were engaged in was to see if I would write Bram's biography. The temptation was what

was in the Tesco bags—letters between Bram and Molly Krige, the woman he came to marry, dating to Bram's period as a Rhodes Scholar in Oxford in the 1930s. They had me there: those letters were irresistible. Both the persuasion and the temptation worked, and I came to write the biography, something for which I will always be grateful.

But the significance of the day went further for me. It was not only the prospect of the biography that almost overwhelmed me, but the fact that such eminent figures as Arthur and Joel were there in my house. That they were prepared to talk to me, a doctoral student, as if I mattered, or could take on such a momentous project. That they could take me seriously, and do it in such a down-to-earth and convivial way. What did this mean? It meant the capacity, for someone such as Arthur, to cross distance without difficulty or condescension, but with encouragement. In his own life Arthur was a person who showed what a person could become.

And so I go back further in memory, to March 1980 when I was staying in Arthur and Lorraine's house, conducting research for my doctorate on what I called 'historical consciousness' in the novels of Nadine Gordimer. What sort of material was I interested in, Arthur asked one day. Well, apart from the obvious things, I responded, I was interested in major statements in which South Africans had addressed the burdens and obligations of history. 'Such as?' asked Arthur. 'Well,' I said, drawing things out of my hat, 'such as Bram Fischer's speech from the dock.' Now you have to realise that in a country in which many things were banned, Fischer's speech from the dock was one of the most banned of all, for he was regarded by the Afrikaner government as a traitor to his people. In Arthur and Lorraine's house one was careful of everything, for in all likelihood the telephones were bugged, and not only for telephone calls. Arthur looked at me, and all he said was, 'Hmmm, I think it might be arranged.' A couple of days later

when I came in for breakfast, there was a copy of Bram's speech waiting for me. I never asked Arthur where he got it, for one didn't ask such questions in those days. But again, Arthur was Arthur: he made things happen; quietly and without fuss, but they happened.

And so I go back still further, for how did I come to be in that house in the first place? That was because of Lorraine, who taught me English literature at the University of the Witwatersrand in Johannesburg. Nowadays, when I myself teach students, I say to them, if you find two or three truly brilliant teachers in your life, count yourself lucky. I did, and one of those teachers for me was Lorraine. It was not only because of what she taught, but because of what she represented and embodied in doing so. Certainly there was the pure commitment of mind, but Lorraine also manifested an essential compassion and understanding, things I would dearly love to live up to. And she invited us into her home—something unheard of! And that was how I first came to meet Arthur as well as Lorraine. And so I want to say this clearly: in thinking of Arthur I cannot separate it from thinking about Lorraine. They illuminated each other's lives; in their togetherness and the space they allowed each other, we learned from them by watching, hoping to absorb everything through some divine process of osmosis.

Once Moira and I were married, we visited there many times, and stayed with them; their house was always open. What did we learn? For one thing, a commitment to work. Many was the time when dinner would be followed by a retreat to that beautiful study overflowing with books and papers. From what I saw, if Arthur was on your side in court, you had not only one of the best legal minds on your case, but one of the most committed and unstinting. But along with that we saw also friendship; and openness; and clarity; and modesty; and humour. Twenty years later, when Arthur was President of the Constitutional Court of South Africa, Arthur and Lorraine still had—I hope they will

forgive me saying this—the same and by now fairly well-worn furniture in their living room that we saw when we first met them. That kind of appearance did not matter: what filled the living room did, and it was ideas, and humour, and involvement, a feeling that the world was significant, and that one might have a role to play.

So let me go forward in the story, for one particular day I witnessed came for me to exemplify everything Arthur Chaskalson was about. It would have been around March 1987, in a case known as the Delmas Trial, where a number of the leading figures in the United Democratic Front were charged with treason—the most serious of charges. The trial had been moved to the small town of Delmas to forestall any demonstrations or disruptions in the main centres. I was there to watch the proceedings, and what I saw was instructive. The Judge in the case was a man named van Dijkhorst, a political appointee, joined by two Assessors, and on this particular day Arthur was presenting an argument for the recusal of the Judge. On what grounds? Part of it concerned the fact that the Judge had dismissed one of the Assessors—a man named Professor Joubert—on the grounds that he had once signed a UDF Million Signature Campaign petition. In the view of the Defence, this was reason enough to stop the trial, for with the Judge and only one Assessor, the court was improperly constituted. Beyond that, however, in affidavits and disclosures Joubert revealed that van Dijkhorst had initiated a wager with him (the prize being a bottle of brandy) that the accused would not take the stand to testify. The strong inference was that the Judge believed they had something to hide, and were guilty.

It was on these grounds that Arthur had applied for the Judge to recuse himself. An open and shut case, one might think. But far from acceding, an enraged van Dijkhorst threatened Arthur with contempt of court. But contempt of court was never Arthur’s style, and this was what was so amazing to witness. For there was Arthur, arguing before

a Judge who in every meaningful sense was his legal junior, on the basic principles and elements at stake. He was educating the Judge, in effect. And far from answering rage with rage, he did so with a disciplined reserve, and even a quiet respect. Arthur's respect may not have been for the Judge—I suspect it wasn't—but it was for the position the Judge occupied, and Arthur respected that absolutely. To me it was an extraordinary demonstration of his integrity, doing honour to the institution of justice which at that moment was being demonstrably compromised. Did the application succeed? No, not then, for the Judge, true to form, turned it down, though two years later, on appeal, this was the reason the state case collapsed. But I knew that had apartheid lasted a thousand years, and had there been a thousand van Dijkhorsts to fill its judicial benches, Arthur would have continued to represent the oppressed and downtrodden in exactly the same way, with the same brilliance and persistence, the same magnificent authority and dignity.

How tremendous then that just sometimes the right things happen. Apartheid did not last a thousand years, and suddenly—though not so suddenly, because much had prepared the way—after 1994 there was Arthur, President of the Constitutional Court of South Africa. There, I like to think, he presided not so much over the highest court of law in the land but over the highest court of justice, because for Arthur the law was nothing if it was not about justice. From that perspective, it is good to record that although he and Bram Fischer were different in key respects, not least on questions of ideology, there was a little of Bram Fischer that accompanied Arthur in this new phase. Fischer's law library came to be housed at the Legal Resources Centre, which Arthur co-founded in 1987. When Arthur took silk in 1971, Bram, then in prison, presented his advocate's gown to Arthur (though he wrote to his daughter Ilse that Arthur should reconsider accepting it:

'look where it landed previous wearer'). Bram had also given Arthur his desk, which Arthur took with him to the LRC and then to the Constitutional Court. And so, as I say in the biography, there was something of Bram Fischer's own commitment to justice that came to preside over the South African Constitution in the highest court in the land.

In 2005, when Arthur took us on a tour of the Court, from which he was then just in the process of retiring, we could see his unadorned joy and pride in it. There it was, on one of the highest hills in Johannesburg next to the Fort, the prison where so many had been held, now become in every sense a place of transformation. He told us how the building had been designed to accentuate accessibility and equality, so that the Judges would not be elevated above those whom they served. He spoke to my children, and my brother's children, as an equal, as a friend, as one who could be enthralled, just as they were, by what the court represented. He let the children sit in the Judges' seats. For Arthur the court was not a palace of justice; rather it was a place of justice, a place where justice could be done.

Perhaps Arthur could be intimidating at times, for there was such eminence in his presence, in the quality of his mind, that one was simply in awe. Sometimes it was his silence that made you wonder about what extraordinarily silly thing you must have just said. But underneath it all, there was a kindness, a kindness that was unmistakeable, and an interest in you, in what you were saying. Paradoxically for a judge, Arthur never judged in a personal way. There was no final Judgement, no eternal damnation; Arthur always left at least some space for redemption. His logic was crystalline, his morality on something of a higher plane. Many was the time when, in the midst of a heated discussion, Arthur would be quiet, only to speak up the end with the telling observation or question that laid everything out as if dissected by a surgeon. But his modesty and

humanity spoke through it all. And, as I say, his kindness: one cannot say enough about that.

I learned from Arthur by watching him and listening. What I learned was not so much about law or South African politics, or indeed about anything in particular, but it was a certain approach, a model of how to be, almost impossible to emulate. In ways both subtle and overt I feel I learned as much from him as I have learned from any human being. Among the multitude of books in the Chaskalson household which always took my attention, I would notice some by Camus. I may have asked Lorraine about them at some point, and perhaps she told me that Camus had been very important to Arthur. And then it all opened up and made sense for me: the existential commitment that Arthur exemplified, choosing because it is right and for no other reason, having the courage and commitment to choose regardless and irrespective of the outcome. When we heard the sad news of Arthur's death, I wrote about some of this to Lorraine, and this is, in part, what I said:

> When I saw, on your bookshelves, Arthur's copies of Camus, then I felt I understood everything. How, in whatever circumstances you face, you just keep pushing that rock up the hill, no matter how many times it rolls down. And then sometimes, even unexpectedly, it stays up there, even if just for a while. And if it begins to roll back down again, well Arthur taught us how to set about rolling it back up again. I always felt about Arthur that had apartheid lasted forever, he would have kept on doing what he was doing, not for any promise of glory, but simply because he believed in it, believed in justice. But sometimes miracles do happen, and how good it was that Arthur was able not only to live that moment along with millions of others but to help shape it, and then to occupy the position

> of South Africa's first President of the Constitutional Court. These things are indelible; they will never go away. And through it all—an achievement almost equal, in my view—Arthur stayed Arthur: himself, equally indelibly, so preciously.

When Bram Fischer's son Paul died of cystic fibrosis in 1971 at the age of twenty-three, Bram was in prison, and was not permitted to go to the funeral. Arthur, however, spoke there, and his words for Paul seem to me to apply so much to him. This is what Arthur said:

> He would not have wanted us to mourn him, and that we will not do. He would not have wanted us to gather here today to pay tribute to him; but that is our right and he cannot prevent it, not to prevent our saying that we are glad that he lived and that we knew him.

- Stephen Clingman
Amherst, 1 March 2013