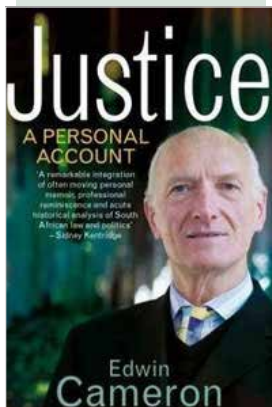


BOOK REVIEW

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JUSTICE : A PERSONAL ACCOUNT by Edwin Cameron

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Justice: A Personal Account by Edwin Cameron

This gripping and well-written book is about the rule of law in South Africa and the Constitution in particular. It is especially appealing for its overtly personal lens. By situating himself in the story, Edwin Cameron has produced a page-turning account of how progressive lawyers used the law to challenge key aspects of apartheid. He reveals the ways in which our democratic Constitution structures the often tricky relationship between law and politics.

The book has enjoyed deservedly positive reviews with most focusing on Cameron's extraordinary life, and how the challenges he has faced (notably poverty and AIDS) mirror the broader South African experience. For John Carlin, the personal story is so compelling he wants more detail, declaring that Cameron owes South Africa 'a proper, full-blown autobiography'.¹ But as Jonny Steinberg observes, Cameron's biographical cameos are carefully selected and assembled to provide the 'guts he gives to his defense of the rule of law'.² Pointing out that it is through the stories of the lives of others that humans think about their world, Steinberg pens the following hope for Cameron's book, referring to young readers in particular:

'Alongside their image of Mandela in his cell, I want them to picture a white orphanage boy. I want them to know he was rescued by a racist order that cared for its own and that he wishes all poor South Africans to receive the welfare he did. I want them to know that he is a judge now who believes that only a constitutional order is up to the task. I want those teenagers also to read of the gay man who was saved from death by newly invented drugs. I want them to read him argue that more than 2 million South Africans, most of them heterosexual and black are now on the same drugs because we live in a constitutional order'

Steinberg, as ever, hits the nail on the head. But in addition to this powerful headline narrative, Cameron also brings South African legal history alive by inserting himself in the narrative in more mundane ways, and in ways that are generous to the role of others. For example, he describes how as a young man he watched Sydney Kentridge defend the Dean of Johannesburg from terrorism charges. A key aspect of the case was whether a woman, who had channeled funds to the Dean to assist families of detainees, had tried to recruit a security policeman to her cause over drinks:

'Kentridge's cross-examination was intensely detailed, but mesmerizing. Trudge, trudge, trudge. Question by question... But something else also became clear as I followed Kentridge's questions from upstairs, staring down at the inscrutable features of the Dean. If convicted, he faced a minimum of five years in jail. Kentridge's commitment to avoiding that result, and his mastery of the minutiae of whether Ms. Norman had or had not drunk brandy with Major Zwart, was propelled by an underlying, smouldering, incensed rage at the injustice of the

system that was trying to imprison the clergyman'... My 18-year old self, gazing down through the upstairs railings, began to understand that effective lawyering lies in a combination of heart and mind and very hard work³.

His description reminded me of the few afternoons I spent watching Arthur Chaskalson defend the accused in the Delmas treason trial in 1987. I too was impressed by the mastery of detail and calm dedication to rational argument. But I was struck by how difficult this must be, given the frequent aggressive interruptions he endured from the presiding judge, Van Dijkhorst. Chaskalson maintained a mild and reasonable manner throughout. His attention focused on the argument, which fortunately won the day in the Appeal Court. Unlike Cameron's, my experience as a legal spectator taught me that I was not cut out for a legal career. In Chaskalson's shoes I would have lost my temper and the case.

Cameron touches on important legal judgments under apartheid that helped undermine the legal basis for it. Notably the laws pertaining to influx control. He celebrates the human rights lawyers and the judges who were able to find, and pry open spaces to promote individual and social justice.

Cameron pays tribute to Arthur Chaskalson for his personal concern and counselling (notably about when to disclose his HIV status) and for his transformative role in South African legal history. Chaskalson defended Nelson Mandela, founded the Centre for Applied Legal Studies (where Cameron worked for some time) and became the first Chief Justice in the democratic South Africa. Cameron argues that Chaskalson revolutionized legal practice by making 'it possible, even fashionable, to practice beyond the traditional enclaves of commercial law, family law and criminal defense work'. For Cameron, Chaskalson thereby created 'a new terrain where it was possible, through the law, to dig at the very foundations of social injustice in our country' (page 102). Chaskalson's work on the Constitutional Court was equally foundational, this time in shaping the emerging jurisprudence of the new democratic South Africa.

Cameron touches on important legal judgments under apartheid that helped undermine the legal basis for it. Notably the laws pertaining to influx control. He celebrates the human rights lawyers and the judges who were able to find, and pry open spaces to promote individual and social justice. Some of these judges were liberal. Others were not, but nevertheless were able at times to deliver judgments that transcended political interests. Cameron argues that this history underpinned the shared respect for the law and demand for a constitutional order free of political interference amongst those who negotiated the transition to democracy.

Having read Cameron's earlier book, *Witness to AIDS*, I was worried that this book would drag in the places where he covers old ground, (notably his own health problems and engagement with Mbeki's AIDS denialism). But Cameron keeps the narrative taught in this regard, touching on key issues whilst focusing his reflections more specifically on the role of the courts in challenging AIDS policy. He provides a compelling account of the case brought by the Treatment Action Campaign (TAC) to allow public sector doctors to prescribe Nevirapine to HIV-positive pregnant women. But he situates this discussion carefully within the context of other rights-based challenges, notably the Grootboom case which challenged government's housing policies and the Soobramoney case which tested the definition of emergency medical care and the state's obligations in ensuring the right to life. In contrast to

these earlier cases, the TAC ruling broke new ground by ordering government to change its policy, thereby saving thousands, perhaps millions, of lives.

Cameron defends the Constitutional Court's generally cautious approach to pronouncing on government policy by emphasizing the importance of the separation of powers. He quotes Chaskalson's ruling on the Soobramoney case, in which Soobramoney's request that he be provided dialysis in the public sector was denied: 'These choices involve difficult decisions to be taken at the political level in fixing the health budget, and at the functional level in deciding upon the priorities to be met. A court will be slow to interfere with rational decisions taken in good faith by the political organs and medial authorities whose responsibility it is to deal with such matters'⁴. The constitutional court accordingly preferred rulings which outlined the various rights of the parties (a declaratory order as in the Grootboom case) or which encouraged parties to continue dialogue (as in the Mazibuko case about the allocation of free water).

Cameron argues that the Constitutional Court judgments have been true to the Constitution. They have created a forum for holding government to account without trampling on the prerogative of the democratically elected legislature to make policy. This Court has endorsed government policy where it was seen to be reasonable, and created space to rule against it when it was not – as in the Nevirapine case. Cameron reports that when the ruling was announced, the Health Minister indicated she would not abide by it. But she was quickly overruled by the Minister of Justice, under instructions to do so by President Mbeki himself. I couldn't help but wonder that if the courts had come to similarly interventionist rulings in the Grootboom and other cases, Mbeki might have sided with his Health Minister to the detriment of public health and our constitutional democracy.

As a parting comment, I can only say that his wonderful book taught me a lot about constitutional democracy, making me think afresh on matters about which I thought I knew a lot.

NOTES

- 1 <http://www.bdlive.co.za/opinion/2014/03/28/judge-shows-why-constitution-is-about-morals-not-ceremony>
- 2 <http://www.bdlive.co.za/opinion/columnists/2014/05/02/cameron-a-new-type-of-public-intellectual-in-sa>
- 3 pp.14-15.
- 4 Chaskalson on pages 255-6