

Conversations with Professor Sir Bob Hepple
First Interview: South Africa (1934-1963)

Date: 21 August 2007

Between August 2007 and June 2008, Sir Bob was interviewed three times at the Squire Law Library to record his reminiscences of over forty years of an eventful legal career, during the last thirty of which he has been involved with the Faculty of Law at Cambridge. The interviews were recorded, and the audio version is available on this website with this transcript of those recordings. The questions and topics are sequentially numbered in the three interviews for use in a database of citations made across the Eminent Scholars Archive to personalities mentioned therein.

Interviewer: Lesley Dingle, **her questions and topics are in bold type**

Sir Bob's answers are in normal type.

Comments added by LD, *in italics*.

All footnotes added by LD.

1. Professor Hepple, you have had a very illustrious and, if I may say, exciting career and that is why we would like to interview you for the Eminent Scholars Archive. The way that I have approached the previous interviews is to look at the scholar's achievements in a chronological order. Your life, probably more than anyone else's I suspect is a career in two parts. Consequently, I thought we could start the first interview dealing with your early life, which we might say is up to the time when you left South Africa at the age of 29 and then in subsequent interviews deal with your new career in the United Kingdom and the various scholarly works on labour law for which you were knighted in 2004.

You were born in 1934 into a country with a turbulent political history. It would seem to me that the trajectory of your later career may well have been strongly influenced by your grandparents and your parents' political views. So I wonder if we could start with your memories of your grandparents and how they may have influenced your life even by proxy?

Well, thank you very much for inviting me to take part in the interview. Yes, I was very much influenced by my grandparents and my parents. My grandparents were immigrants to South Africa and they were on different sides during the Boer War¹. My paternal grandfather, Tom Hepple had qualified as a skilled pattern maker in Sunderland and there was no work at the time at the end of the nineteenth century so he emigrated to South Africa and worked for a company called Stewarts & Lloyds² and it was just before the Boer War when the so-called *Uitlanders*, the foreign people in the Transvaal Republic, were trying to get the vote in the Transvaal and they organised, they were being organised as a little army and my grandfather every Saturday afternoon had to march up and down behind closed doors

¹ 1899-1902

² Established in South Africa in 1898.

<http://www.stewartsandlloyds.co.za/history.html>



in this British company. This was preparatory to the Jameson Raid³ which had been organised into the Transvaal at Cecil Rhodes'⁴ instigation, but it failed and all these people were arrested. I am not quite sure how my grandfather got out but he left the country and in fact he spent the war time years of the Boer war in England. My father was born soon after he came back. My 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 and she is the only grandparent I remember because the others died when I was quite young. She used to tell 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. But after they came back my paternal grandfather 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 with a suffragette who was locked up a few times, I believe, for demonstrating to get the vote for women in South Africa.

On my maternal side⁶, they were of Dutch origin and my maternal grandfather, Alexander Zwarenstein⁷ 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* [LMD: *despatch rider*]. He had to carry messages from Boer Headquarters in Pretoria to Mafeking which was then under siege by the Boers⁸, which is about a 200 mile journey on horseback and I have seen a photograph of him, unfortunately now lost, of him as a young man on horseback carrying these messages across.

Just before the war had started he 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 man, who was a British soldier, agreed and so the rest of his life he was a partner in this butchers business which my grandfather had started. So those were the two kind of links with the past of South Africa and the conflicts that they had.

2. So your primary school days, which I guess were from about 1939, would have lasted for the duration of the war?

Yes.

³ 1895

⁴ 1853-1902, b. Bishop Stortford. Entrepreneur and politician in southern Africa. Founder of Rhodesia (= present Zambia and Zimbabwe), and de Beers mining company.

⁵ 1879

⁶ Mother: Josephine neé Zwarenstein, grandmother Jacoba neé Schaap

⁷ b. 1877, Zuid-Beijerland, son of Samuel Zwarenstein and Sprientje Monasch

⁸ Siege of Mafeking, Oct 1899 - May 1900, 217 days.



3. Do you have any recollections of that period?

Yes. Well, I mean South Africa was a long way from the war front. All I knew was of some friends and family who were in the South African Army and they went to fight in North Africa and Italy and people being killed. As schoolchildren all I can remember is we had to have air raid practice but there was of course never any air attack on South Africa. I remember seeing Italian prisoners of war who were brought to the areas near us and many of them settled there subsequently. But the war years as such were not very significant for me except my father was in a kind of Dad's Army which was called the civilian protection services. They took over some of the functions like driving ambulances where other people had gone off to the war and my father was at the time working in the wholesale meat business and he was up at five every morning and then he would come home in the evening in order to do this work at night and on one occasion he was beaten up by members of an organisation called *Ossewabrandwag* which was an Afrikaner organisation which supported the Nazis; among its members was John Vorster who later became Prime Minister of South Africa⁹ and this group of course did anything to sabotage the war effort and one of them was to beat up these Dad's Army people including my father. I remember visiting him in hospital after this incident. So that showed me the dividing lines in South Africa and made me think of many of the members of the subsequent nationalist government in the light of having been Nazi supporters.

4. Very interesting. This was in Johannesburg?

Yes.

5. Yes. So, your years at secondary school...Roughly I think would be from about the end of the war to about 1952.

Yes.

6. Would have been quite formative years for you. Do you have any recollections of your secondary school?

Well, of course you have got to remember that at that time in South Africa all schools were racially segregated and we were also segregated by gender and I went to Jeppe Boys High School in Johannesburg¹⁰ which was modelled really on an English Grammar School. Everything... we had to do an 11 plus examination to get in and fortunately I was always quite good academically, near the top of the class but my memories there were not entirely happy ones because my father was active as a labour politician and he 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 ... None of the teachers, the only one I can remember who had a big impact on me and he was a man who fought in North Africa during the war, he was a wonderful history teacher who really inspired my interest in history. Most of the rest of the teachers I have to say were bigots and racists you know, so I never felt really comfortable at school although I had quite a lot of friends. I was never much of... I never felt one of them if you know what I mean.

⁹ 1915-1983, Prime Minister 1966-1978

¹⁰ <http://www.jeppeboys.co.za/>



7. Yes, I wondered about that. Were they still rationing?

I don't remember actually. We obviously had enough to eat.

8. The National Party came to power in 1948 when you were 14.

Yes.

9. Do you recall what, if anything, altered?

Well, I do very much. 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'¹¹ United Party¹² 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. There had always been white supremacy and a lot of *de facto* segregation but now it became the policy of the law. So yes, I think it made an enormous difference to my life and to the lives of many people.

10. Yes, according to the 2004 book, *The Future of Labour Law, Liber Amicorum, Bob Hepple QC*¹³ which is a tribute to you by Dr Catherine Barnard, you were arrested when you were 18 and you were put on trial. What were the circumstances of this?

Well, the background was that I had just become a student at Wits University¹⁴, in 1952 and it was at the time of the defiance campaign organised by the African National Congress¹⁵ where they broke the racial segregation laws - going to white post offices and white railway carriages and so on. 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 campaign and later became very famous black doctors, Motlana and Mji, and while they were talking the Police broke into the meeting and arrested them and 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 and so I then became involved with an organisation called The Student Liberal Association. I became chairman of it and we used to go out into the black townships – because of the racial segregation white people were not supposed to go into black townships and we organised a concert which was really a cover for a sort of political meeting and while

¹¹ 1870-1950

¹² South Africa's ruling party 1934-1948. Effectively ceased to exist in the mid-1970s.

¹³ Published by Har

¹⁴ University of the Witwatersrand, Johannesburg,
<http://web.wits.ac.za/WitsHome.htm>

¹⁵ South Africa's now ruling party, <http://www.anc.org.za/>. Founded as South African Native National Congress 1912, renamed ANC 1923.



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, you know, we were being treated as squatters although we were only there for the night for a concert. And 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 township¹⁶.

11. At the beginning of your time at Wits?

Early at my time at Wits, yes.

12. Yes, about 1952.

It was either 52 or 53, I can't remember.

13. It must have been quite traumatic.

Well, it was kind of an initiation in a way because it just made one angry and all the more determined to play a role of some kind. So I then became involved with... there was a white off-shoot of the ANC because even the African National Congress was racially segregated because of the effect of the laws and so on, it was difficult to have any kind of multi-racial political organisation. So I joined something called the South African Congress of Democrats¹⁷ which was the white off-shoot and became chairman of its youth section at that time so you know this arrest really, and all the other circumstances, just led me further down this line.

14. You chose to do law at Wits. What made you decide to do this?

Well, I had always had my eye on one of two careers. One was the law and I had a cousin who was an advocate at the Johannesburg bar and I was very interested in advocacy and in fact at school I participated in things like the debating society and I was keen on amateur dramatics and so on, so this was one route. The other was I was always interested in writing and I was interested in becoming a playwright or a journalist but everybody I spoke to said, no, no, you must get a qualification as a lawyer and then you can decide. Well, once of course I got into law, I was trapped and I was a lawyer for the rest of my life. But in those days you had to do a non-law degree before you could do law. Law was a post-graduate degree in South Africa so I did a general degree, a BA, a major in Economics, English and Afrikaans and then I then did a three-year law degree but I did it, if you like, part time because I served articles of clerkship to become an attorney and at 4.00 pm every afternoon I would go to Wits for two hours of lectures and then after a bite of supper you would spend the evening in the library until 11.00 pm. So my life was very full and I really took to law, I enjoyed it but, as I say, it was done as a part-time degree over three years.

¹⁶ Township in Soweto on outskirts of Johannesburg, founded 1931.

¹⁷ Founded 1952. <http://www.sahistory.org.za/pages/governance-projects/organisations/COD/congress-of-democrats.htm>



15. So, were there any teachers or lecturers who influenced you at the time?

Yes. Well, in the Wits Law Faculty there were two great men. One was Bobby Hahlo¹⁸ and the other one was Ellison Kahn¹⁹. Now, Hahlo had left Nazi Germany in about 1934, he was Jewish. In fact when he came to South Africa he converted to Anglicanism but he was a brilliant teacher, so clear, rather dogmatic but really inspired one and I admired him greatly as a teacher; however, he was a very domineering personality and also very dogmatic. He kind of ran that faculty with an iron fist and I later became a lecturer in law and I experienced that myself but he was a man of considerable scholarship and international recognition and he ended his days in fact running the International Comparative Law Centre at McGill University²⁰.

16. Interesting.

Ellison Kahn was probably the greatest legal scholar that South Africa has produced. A much more liberal man but very quiet, very scholarly and he gave me a wonderful training, again first of all as a student, he lectured on contract and constitutional law and conflict of laws and all of those three subjects I still kept to this day what I have learned from him. Particularly in constitutional law he adopted an interesting technique of taking Dicey's *Rule of Law* and examining how far South Africa at that time compared to Dicey's vision of the rule of law and on every count of course South Africa failed. It was his kind of way, very gently, of showing up the South African constitution at the time. And in contract law as well he was a very meticulous scholar and I learned really all my contract from him and in conflict of laws as well he was, really, not a brilliant lecturer but nevertheless a great scholar. So I had those two and the third person I should mention, that was Maurice Millner²¹ who taught me the law of tort or delict as it is called in South Africa. He was a quite different type of lecturer. He always related everything to legal history, to society and gripped one's imagination. He later emigrated to England and became Professor at University College London and he wrote what I still think is an outstanding book called *Negligence in Modern Law*²². So he was another formative influence on me.

¹⁸ Herman Robert Hahlo, 1914??-

¹⁹ John Ellison Kahn, 1921-2007. "Professor Ellison Kahn died on 13 October 2007. He served in various capacities at Wits including as the Dean of the Faculty of Law, Dean of the Faculty of Commerce, Deputy Vice-Chancellor of the University and longstanding Chairperson of the Constitution Committee. His appointment as editor of the *South African Law Journal* saw him serve Wits over 30 years as well as editor of the *Annual Survey of South African Law*. He joined as a junior lecturer then as a part-time lecturer while a member of the Johannesburg Bar. From 1990, he served as a Professor Emeritus of Law and Honorary Professorial Research Fellow. Ellison was a member of the International Academy of Comparative Law and a founding member of the Academy of Science of South Africa." Quoted from *Wits Review*, vol. 3, Jan. 2008.

²⁰ Director 1968-75, retired 1984.

²¹ Emeritus Professor Maurice Alfred Millner

²² 1967, Butterworths



17. And in your early years in 1960 you published a piece in a book edited by Hahlo and Ellison Kahn and we will come to that, hopefully there will be time to come to that later. So, you were President of the Wits student representative council. Did this affect your position with the University and the faculty authorities?

Well, that was as a result of my activities on the kind of liberal left and I was put up as a candidate for the student representative council. I eventually became president and they were very turbulent times. At the time the government, the Nationalist government had announced it was going to introduce racial segregation to exclude black students. Wits University and Cape Town were the only two open Universities which admitted students of any race and that of course was contrary to all the apartheid policies and the government had decided on ethnic universities. They thought that the two open Universities were breeding grounds for dissidents and opponents of the regime and of course, as students, we were very concerned, we opposed it but at the same time we felt that the administrators of the universities were collaborating with the government and not resisting them properly. In particular they introduced racial segregation within the University so the Great Hall, which had always been open for concerts and other events for all races, they segregated. I was involved in protests against this which resulted in me, because the then Principal, a very conservative man called Sutton²³ had banned demonstrations, and I was then brought before a disciplinary tribunal but he let me off. I wasn't expelled or anything like that as a result. But there was a very bad atmosphere. Now Hahlo who was by no means a person of the liberal left, nevertheless respected what we were doing.

The only kind of feelings I got from my position in the University, were I was studying Afrikaans. There were two very famous South African authors called C. M. van den Heever²⁴ and Abel Coetzee²⁵ who were Professors, both strong Nationalists and another one called Professor Pienaar, Professor of Phonetics, and they really gave me a rather rough time. But I passed, I got through the exam but they would make me very uncomfortable even in oral examinations, throwing me off my bat. I always felt there were a lot of undercurrents there.

18. Gosh, it must have been quite disconcerting.

It was.

19. Yes. You represented NUSAS²⁶ at a conference in Moscow in 1954. Do you have any memories of this event?

Well, the background there was that I was on the executive committee of the National Union of South African Students and the Union had decided to have a neutral line, it was the middle of the Cold War and there were two rival international student organisations, one called The International Union of Students which was kind of communist led, based in

²³ Professor W G Sutton, Principal 1954-63.

²⁴ Christiaan Maurits v. d. Heever, 1902-57. Born in the Norvalspont concentration camp in the northern Cape. Most famous novels: *Somer* and *Laat Vrugte*

²⁵ Abel J Coetzee. Wrote *Waar die Volk Skep*

²⁶ National Union of South African Students. Founded 1924, absorbed by South African Students Congress (SASCO) 1991.



central and eastern Europe but a lot of people from the developing countries, and then there was another one based, I think, in Brussels called COSEC, I can't remember what that stands for now, but they were the other rival and NUSAS decided to have a neutral line to join both as affiliates so we could keep in touch and kind of bridge the gap between East and West. I was sent over to negotiate this agreement at a conference of the International Union of Students being held in Moscow and of course I had to keep it very secret from the South African Government, which at that time didn't have any diplomatic relationships with the Soviet Union, that I was going there but when I went it was just an amazing visit getting there, meeting all these students from all over the world and so on and I got my first baptism of fire as a chairman because I was asked to chair one of the sessions of the conference. Immediately there was an outbreak of almost violence between the Israeli and Palestinian students who were there and I had to try and control this and, secondly, I was rather duped because at the time there the symbol of the communist led peace movement was the dove of Picasso and at some point in the proceedings a Vietnamese student came up to present to me, to accept for the, you know, for the organisation, one of these peace doves. The Vietnamese had just defeated the French at Dien Bien Phu [LD: 1954] and so he was a great hero of the anti-colonial movement and I course accepted this but it then made me prone to accusations when I got back to South Africa that I had been really duped by this communist peace movement so it didn't rub off too well. After a while the South African National Union of Students just disaffiliated from the IUS because they thought we were being used by the IUS.

20. Now, during this time, 1956, Nelson Mandela²⁷ was arrested under charges that ultimately led to the treason trial in 1961 that he describes in his book²⁸. Your father, Alex helped establish the treason trial defence fund. Did you personally know Nelson Mandela by this time?

Well, I had as I said become a member of the South African Congress of Democrats and in that capacity I attended ANC meetings and so on and I met him just casually, I didn't really get to know him until later, until after 1961 but I did of course meet other ANC leaders and got to know them like Walter Sisulu²⁹ who was later put on trial with Mandela. So yes, I was familiar with them and of course as a result of my father's activities, several of these people used to come to our home for meetings and so on so I got to know quite a lot of the ANC leaders and also, I have to say, leaders on the other side as my father was respected also even by the Nationalists so when he was in parliament I used to go there and on one occasion I even played for the South African Parliamentary cricket team against the Bar led by a Nationalist Cabinet Minister. So there was a kind of, you know, camaraderie among MPs outside the debating chamber so I got to know people on both sides of the spectrum then.

21. This brings us to the time when you were a lecture in law at Wits from 1959 to 1962. What subjects did you teach Professor Hepple?

I had qualified as an Attorney and then I decided after about a year of that I would rather get back to academic teaching and Hahlo invited me to a lectureship which was vacant without any advertisement or anything, he just said come, I have got this vacancy and I went.

²⁷ 1918- . President of South Africa 1994-99.

²⁸ *Long Walk to Freedom*, 1994, Little, Brown & Co, 784pp.

²⁹ 1912-2003.



But I think he was a little nervous, knowing my political background and he was, as I say, quite a strong personality and you did what you were told unlike the lecturers today who say “oh, I’d like to teach this or that” - you just did what you were given and I was given the South African law of property, negotiable instruments, I think I even taught some insolvency, some contract, all of which I was very interested in and it was at that time they also asked me to contribute to their volume that you mentioned *The Union of South Africa* and I wrote *Economic and Racial Legislation*, but that was written work. The teaching was in the field of property and negotiable instruments and so on.

22. Sharpeville³⁰ occurred in 1960. Did this impact on you personally? I mean it must have crystallised opinions and polarised people’s attitudes quite dramatically?

Yes, I think it did. I don’t remember it having an impact on my position in the University but it impacted hugely on my, if you like, 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, 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 and when the emergency came that came into effect and I was then devoting quite a bit of time to it. They were, most of them, were eventually released, some of them fled the country but it was partly as a result of that 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.

23. I see.

I mean I will say I thought at the time that University lecturers were very badly paid and I had just got married and was having children and I decided I should try and make a more lucrative career at the Bar.

24. So you were a member at this time of the South African Congress of Trade Unions and you effectively ran it after Sharpeville?

Yes, for a while and then the others came back, yes.

25. Well, this brings us up to the time when, as you said, you resigned from Wits to take up your legal work full time and this included your involvement with Nelson Mandela’s Incitement to Strike trial and then the Rivonia trial. In the Incitement Trial of 1962 Nelson Mandela had his initial hearing on Monday 15th August 1962 after it had been moved from Johannesburg to Pretoria and, because Joe Slovo³¹ was banned from travelling to Pretoria, he couldn’t help him and that is where you came in, Professor Hepple.

Yes.

³⁰ March 21st 1960. Police killed 69 Pan Africanist Congress demonstrators at Sharpeville, then a township in the Transvaal.

³¹ 1926-95. Born Yossel Mashel Slovo, in Obeliai, Lithuania. Emigrated to South Africa with parents 1935. Studied law at Wits 1946-50. Joined South African Communist Party 1942, General Secretary 1986-91. Minister of Housing in Government of National Unity 1994-95.



26. He relied upon you for legal advice. Do you recount the circumstances of this meeting?

Yes, well what happened was that when Slovo was prevented from going on to assist him I was asked by Mandela to come and assist him. Now, Mandela had decided that he had no legal defence to the charges. There were two charges, one was that he had incited a strike against the proclamation of a white apartheid republic. There was a kind of stay at home and at that time he was in hiding because the police were looking for him. He was known as the Black Pimpernel and in fact in that period I had got to know him quite well because I was one of those who was helping to hide him in various places and to take him to various meetings, some of which were held in my own house. So we had formed a bond then and I hadn't really known him but he was a very charismatic interesting person and so it was no surprise when he asked me to come and assist him. He was conducting his own defence and, as I mentioned, 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.

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-Cooper³², 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 is that he was so concerned about the feelings of this magistrate who eventually sent him to prison for five years. Secondly, during the trial, the Prosecutor, who had known Mandela as an Attorney in Johannesburg, came when I was in the court cell talking to Mandela and 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”. And if you read Mandela's autobiography he tells the story from his side of the door and I can confirm it. But 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. There - he had these qualities.

³² Sir 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.



27. So he was sentenced to five years and he ended up on Robben Island but only five months later he was brought back for what he calls in his book the most significant political trial in the history of South Africa and you were arrested in the original police raid at Lilliesleaf Farm³³ on July 11th 1963. Do you have any recollections of the events?

I have very vivid recollections. What had happened was that after Mandela was sentenced, I was asked to carry on helping some of the underground black leaders who were based at the Lilliesleaf Farm in Rivonia, their sort of secret headquarters and I did so and I went out there several times, quite regularly and I 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 and unfortunately on 11th July 1963 I was there for a meeting. Soon after arriving the police raided and we were all arrested and I was then kept in prison in solitary confinement and interrogated for three months about this. So, I certainly have very vivid memories of that event.

28. Your experience is something that most of us can hardly begin to conceive of, being in solitary confinement like that, it must have been very hard at the time.

It was and it was something for which I had not prepared myself adequately and in retrospect I feel I should have done this. I was never physically tortured as some of the African, many of the African prisoners were but the psychological pressure was great and they used to do things such as play Russian roulette with one. They would have a pistol on the table and say now, we will spin this around, do you want the bullet or do you want the noose and, you know, this was built up by the intensive interrogation which was done over days when one was just not allowed to sit, kept standing, couldn't go to the toilet and so on and kept under intensive interrogation for several days on end without sleep and so it certainly eventually wears you down.

29. Yes. So, do you have memories of these momentous years when you were in touch with other very famous people like perhaps Mbeki or Joe Slovo or any of those people?

Yes, I mean those people like Govan Mbeki³⁴, the father of the current President of South Africa [LD: *Thabo Mbeki was forced from office in late 2008*], he was one of those who were arrested so I had met him in that capacity. Joe Slovo and also Bram Fischer³⁵ were two lawyers at the Johannesburg Bar and they were in fact the people who asked me to help these underground leaders. They were much more closely involved than I was and so that's how I got to know both of them. Bram Fischer was a particularly great man, I think. Whatever you might have thought of his political views he was, for an Afrikaner, who could have become Chief Justice or even Prime Minister of South Africa, he came from this very

³³ An ANC safe-house just outside Johannesburg.
<http://www.sahistory.org.za/pages/chronology/thisday/1963-07-11.htm>

³⁴ 1910-2001, Govan Archibald Mvuyelwa Mbeki. Served 24 years on Robben Island (1963-87). Father of 11th President of South Africa, Thabo Mbeki.

³⁵ 1908-75. Abram Louis Fischer. Rhodes Scholar, married niece of Field Marshall Jan Smuts, Molly Krige. She was killed in a car crash in June 1964 two weeks after the end of the Rivonia Trial. Memories of Fischer by Mandela, 1995:
<http://www.anc.org.za/ancdocs/history/mandela/1995/sp0609.html>



distinguished Afrikaner family from the Orange Free State and a very able man who had been to Oxford and so on. He sacrificed everything, he was totally dedicated, you know, to this movement and he was a very persuasive advocate as well and it 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.

30. Professor Hepple, you had to escape from South Africa around this time. Was this something that was... can you describe this event?

I was released. First of all I would say that while in prison and under interrogation I made a statement to the police about what I was doing there and they promised me that I would be released if I made that statement, but of course they didn't release me. They said they would put me on trial with Mandela, but very soon after the trial started, again led by Bram Fischer, the indictment was quashed for lack of particularity and at that point I was released. But it was a conditional release because the prosecutor announced he was going to call me as a state witness. Now, there was no way that I was going to be a state witness against these people who I admired and respected and so I had to find a way of getting out straightaway and at the time I was married. My wife, Shirley had also been politically active, my then wife, and we decided that she could not remain. We had two very small children aged two and under one years and, because the practice of the police was to arrest the spouse of the person who tried to escape to put pressure on them, so she and I had to leave together and we arranged this escape route with the help of the underground ANC into what was then Bechuanaland Protectorate so we had to climb over a fence into Bechuanaland [LD: *what is now Botswana*] and we were hidden away for a few days. We then reported to the British authorities there who helped us and we chartered a plane with two other people who were escaping which flew us to Tanzania and in Tanzania we were granted political asylum. The ANC kind of welcomed us there, we got political asylum but of course we wanted to be reunited with our children and so we very soon arranged to fly to England. We had left the children in the care of their grandparents and the children were brought over to us about six weeks or so after we had left South Africa.

31. That is something, as I said that most people can't even begin to imagine.

I hope they don't have to experience it.

32. Professor Hepple, coming back then to memories of figures that you knew from those early years, did you ever meet Robert Sobukwe³⁶?

Yes, he started teaching me Zulu. He was a lecturer at the Wits University when I was a lecturer there from 1959 to 1961 and I decided I wanted to learn Zulu and he was a lecturer. That was in 1959 and so he was one of our course lecturers and then of course he took part in the..., he was the leader of the Pan-Africa Congress and they organised the demonstrations at Sharpeville which ultimately resulted in the massacre and then he was locked up. So I had met him, yes, as a teacher.

³⁶ Robert Mangaliso Sobukwe, 1924-78. Broke with the ANC in 1957 and founded the Pan Africanist Congress in 1959, President 1959-63. Interned in solitary confinement on Robben Island 1963-69, kept under house-arrest in Kimberley 1969-78.



33. As a teacher, yes, because I was reading in Mandela’s book that he was from Graaff Reinet which seemed to be an unlikely place, in a way. Did you ever meet Nelson Mandela again after you had...

I did meet him a few times after, when he came to England and in particular the story which has now gained a lot of currency was that there was a State Banquet for him at Buckingham Palace and my wife and I were invited. You have to queue up and the footman tells your name to the Queen who then introduces you to the guest who was the State President Mandela and he said “Professor and Mrs Hepple” and my wife went up to the Queen and as she was with the Queen, Mandela leant over the Queen who is very diminutive in stature and he is a tall man and he said “Bob, is that you?” and he stretched out with one of his great bear hugs and it was an emotional moment and I just said a few words to him and we had to move on and as we walked away my wife said “Do you know Her Majesty is still waiting for you with her hand outstretched?” I had totally ignored the Queen- lese-majesty - in my emotional state. So, no I did meet him and then I met him with another group of South Africans at the South African Embassy where we had a very interesting discussion.

34. Presumably you didn’t have any contact with his wife?

No, during the years he was in hiding I have to say that I did know Winnie, but I never met her again.

35. So, you arrived in England.

Yes.

36. And you were given a place at Clare.

Yes.

37. And that was through your friendship with Mr Colin Turpin³⁷ and Polack.

Ken Polack³⁸, yes. They are both South Africans who were lecturers in Cambridge University, yes.

38. And I hope to come to your time in England, your achievements after your arrival here in a later interview. Since 1994, Professor Hepple, have you played any sort of role in South African law or politics?

Yes. First of all, during the 1980s when I was teaching at University College of London, I found a number of South African students were coming to do the post-graduate Masters LLM course and attending my courses on international comparative labour law. I realised there was a totally new generation of lawyers coming out of South Africa who were very engaged in subjects like Labour law, Human Rights and Administrative law and really through them immediately I had...

The South African government had placed me under banning orders for 27 years which were lifted the day after Mandela was released from prison in 1990 and I immediately received an invitation to come and address a big Labour law conference in Durban. That was

³⁷ Fellow of Clare College, Emeritus Reader in Public Law

³⁸ 1933-95, b. London, BA Rhodes University, Fellow of King’s College, Tutor/Lecturer 1961-69, Bursar 1969-81



my first visit back and from then on, I have kept quite close contact and I have been back to South Africa at least once a year. The project on which I was very much concerned, first of all in 1990 was the International Labour Organisation. The ILO asked me to help draft a Labour code for the newly independent Namibia and I spent some time working on that with some South African lawyers. Then, in 1994, the South African government invited me to be on what was called a ministerial taskforce which was drafting new labour laws for South Africa and we did that through the ILO again. That was a very interesting experience. Then I have had various visiting Professorships, first at Wits University, I was an Honorary Professor at Cape Town for many years, so I have kept up links in that way.

39. Do you have any opinions of the new Constitution for the long-term?

Well, it is probably a wonderful, it is a wonderful Constitution. It is kind of a model which is being looked at in various places and I think the South African Constitutional Court is a very significant institution, people are citing its judgments and so on, and generally I think it has helped the stability of the new South Africa because it is open to all South Africans and suddenly even those who oppose the regime have found that they have freedoms they didn't have before, like freedom of speech, so I think the new Constitution on the whole, I can't comment in detail, but on the whole, has been a good thing for South Africa.

40. We come then finally to the last part of this interview which is your piece that you wrote in 1960. I am dealing with this now rather than your scholarly work because of the timeframe. *Economic and Racial Legislation* written in your early years and according to Barnard *et al*, the Hahlo and Ellison chapter was heavily censored. In what way?

I can't remember the details now, but they didn't want anything controversial, in other words, and I haven't re-read it I have to say for a long time, but my recollection is that it was, had to be written in very neutral way, just factual, what the laws were and all my feelings were that I wanted to express horror, disgust, criticism of them and so on but I wasn't able to do that and I can remember not so much Kahn, who was more interested in the fine print, but Hahlo sitting with me with a blue pencil crossing out anything that expressed an opinion, and of course this one was of my very first publications and I wasn't going to argue with him. Subsequently, people have said why weren't you more critical, but my defence is, well, as long as it's factually correct I did what I was asked to do.

41. There were three sections, Mining Law, and Regulation of Monopolies, those were the first two. How were these areas affected by the nationalist legislation or were they relatively neutral?

I think there were some racial restrictions on who could get mining licences and so on. I wasn't an expert on mining law and in fact I was sent by Hahlo to see Bram Fischer who strangely, was the country's leading expert on mining law. His practice was very much based on dealing with mining cases and so he vetted the chapter. I wrote it on the basis of the books and he vetted it for me. On monopolies, again I think I wasn't an expert and I had to write that so the racial legislation was the bit I knew the best which is very much my own.

42. So the third part of your piece was on Industrial Law and obviously there had been plenty of racial legislation. Do you think that much has altered since 1994?

I mean the whole industrial law has changed completely, partly as a result of the work we did in 1994, but it had been changing for some time. I mean, for example one of the changes in South Africa in the 1970s was when the Nationalist government allowed black



trade unions to be recognised, they still had to be racially segregated but eventually the racial segregation just broke down so there had been a development over about 20 years, then so it has changed completely.

43. Well, that takes us up to the end of your time in South Africa and hopefully we can look at the next bit at your next interview so I wish to thank you very much again for kindly agreeing to come and be interviewed. I am very grateful to you.

Thank you very much.

