

Review

Kenneth Broun (2012) *Saving Nelson Mandela: the Rivonia trial and the fate of South Africa (Pivotal Moments in World History)*.
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The eighth century scholar of Charlemagne, Alcuin, spoke of man as the slave of death, a passing wayfarer, a lantern in the wind. It is poignant that this review is being written at a time when the life of ex-President and national icon Nelson Mandela hangs in the balance. This book deals with a trial in which Mandela was an accused and concentrates on the monumental efforts to save him from the gallows. However, that said, an important consideration is the context within which the trial took place.

The work of the German philosopher Friedrich Nietzsche dealt with issues of authority and the imposition thereof. In his last work *The Will to Power*, he postulated the sort of hegemony necessary to govern and suppress. He spoke of the maintenance of the military state as the last means of all of maintaining the great tradition with regard to the supreme type of man. In addition he spoke of policies that perpetuate enmity and difference in rank which may appear sanctioned in this light.

The rule by whites in South Africa until 1990 was achieved through a form of military state with the emphasis on a supreme type of man who claimed the monopoly on status and wealth. This claim was based on race and never brooked any opposition by those Blacks seeking to wrest it from them. That it caused enmity is evidenced by the decades of defiance in the country as the oppressed wrestled for a share in the economic resources of the land.

Claude Helvétius, a French philosopher who lived in the eighteenth century, said that men seek power so as to possess the enjoyments available to the powerful. The enjoyments sought after by the Whites were all those

material benefits that flow from ownership of all the best land, minerals and economic activity. The founder of modern economics, Adam Smith also pointed out the colonial greed that characterised the ‘the masters of mankind’. The white rulers of South Africa saw themselves as the masters of the fates of all citizens in the country and resisted with very real and institutional violence, any attempt to obtain the franchise. From the early twentieth century when an ANC delegation went to England to petition the government to consider giving political rights to the black majority in South Africa, attempts have been made in non-violent fashion to persuade the rulers to give up their power.

History shows that this was all to no avail. The Greeks reckoned that violence was justified to overthrow tyranny. Lenin said much the same in January 1918 when addressing the Third Congress of Soviets. He maintained that not a single question pertaining to the class struggle had ever been settled except by violence. He approved of violence when it was committed by the toiling and exploited masses.

When political activists in South Africa decided to take Lenin’s advice, they were dragged before an apartheid court and the judge was faced with the dilemma of what sort of sentence to impose. This compelling book, written by Kenneth Broun, the Henry Brandis Professor Law Emeritus at University of North Carolina School of Law, deals with the Rivonia Trial that took place in South Africa between 1963 and 1964. Ten leaders of the ANC were tried for 221 acts of sabotage designed to overthrow the apartheid state. The trial was named after Rivonia, just outside Johannesburg, where 19 ANC leaders were arrested at Liliesleaf Farm.

The trial was essentially a mechanism through which the apartheid government attempted to silence the ANC who were fighting for the political rights of all. At the time all prosecutions were carried on the instructions of the Minister of Justice. In other words there was no independent prosecuting authority as is firmly entrenched in the new Constitution. The control of prosecutions by politicians has been condemned from many sources. The authoritarian US President George W Bush said on the twentieth anniversary of the National Endowment for Democracy on November 6, 2003 that successful societies protect freedom with the consistent and impartial rule of law, instead of selectively applying the law to punish political opponents.

The abuse of the prosecuting authority has been prevalent over the ages. In the Third Reich in Germany the prosecution of political opponents was also rife. In his book on *Hitler’s Justice – the courts of the Third Reich*, Ingo

Muller asserts that the ruthless prosecution of the regime's political opponents had to a large degree become, for the judicial system of the Third Reich, a question of its own survival.

Academics commenting about South Africa have recognised the same strategy at work. Michael Lobban, in his book *White Man's Justice*, writes:

For the [apartheid] system to survive internal challenges... political dissidents who might pose any threat to the state had to be rooted out. When in the 1950s and early 1960s, there had been an upsurge of increasingly radical opposition in response to the development of apartheid, the state perceived that the only way to control it was by an intensive policy of prosecution and detention... (1996: 2)

The Rivonia Trial was perhaps the culmination of years of persecution of Black opponents to the government and previous cases included the famous Treason Trial where more than 400 accused persons were acquitted after a lengthy trial. The lessons learned from that trial resulted in the emergence of the Sabotage Act which radically changed the burden of proof and contained widely defined acts which were punishable with the harshest sentences including the death penalty. The greatest problem from the prosecution's point of view in the common offence of treason, was the requirement of two witnesses for each separate act of treason. Also the Nationalist government was faced with the dilemma that black people, fighting for universal franchise, were deemed to be enemies of a state that was run by a racist white oligarchy.

The presiding judge in the Rivonia trial was De Wet, Judge President of the Transvaal bench. The trial began on November 26, 1963. After dismissal of the first indictment as inadequate, the trial finally got under way on 3 December with an expanded indictment. Each of the ten accused pleaded not guilty. The trial ended on June 12, 1964. Apart from Mandela, most of the accused were well known political figures and included Walter Sisulu, Govan Mbeki and others.

Attorney Joel Joffe initially secured the services of advocates Arthur Chaskalson and George Bizos, to act as counsel for the accused but later persuaded Bram Fischer to act as lead counsel. Formidable cross-examiner Vernon Berrangé was also recruited to join the team of advocates.

The charges against the various accused included firstly, recruiting persons for training in the preparation and use of explosives and in guerrilla warfare for the purpose of violent revolution and committing acts of sabotage. In the second place they were charged with conspiring to commit

these acts and to aid foreign military units when they invaded the Republic, and acting in these ways to further the objects of communism by soliciting and receiving money for these purposes from sympathisers in various countries.

Against most of the accused, the case for the prosecution was strong as many documents were seized which were seriously incriminating. Some of the plans for sabotage envisaged munitions, the prosecutor Percy Yutar, said in his opening address, which were sufficient to blow up a city the size of Johannesburg. *Saving Nelson Mandela* meticulously and fairly summarises the evidence and the author, as a teacher of trial advocacy, neatly points out the strategies employed by the lawyers.

Nelson Mandela addressed the court from the dock in mitigation of sentence in June 1964 and said:

This is the struggle of the African people, inspired by their own suffering and experience. It is a struggle for the right to live. I have cherished the ideal of a democratic and free society, in which all persons live together in harmony and with equal opportunity. It is an ideal which I hope to live for and achieve. But, if needs be, my Lord, it is an ideal for which I am prepared to die. (74)

The trial attracted widespread global interest. The Nationalist government viewed the presence of international jurists with severe suspicion and reluctantly permitted them to attend. While many would report that the trial was conducted according to standards of legality which emulated the best systems in the Western world, they also pointed out the wide nature of the statute under which they were charged. They also noted with disapproval the treatment of the State witnesses who had been ill-treated in many instances and subjected to lengthy detention before they testified. An example of the evidence produced by the State was that of Bruno Mtolo. He was an accomplice and had been privy to many of the plans of the accused to seize power. He testified and the judge believed that the accused were under the sway of the communists.

It takes little imagination to guess what pressure Mtolo was under to change from revolutionary agitator to compliant witness. He was obviously cautioned against admitting any ill-treatment but there is no doubt that his solitary confinement alone was a form of torture. Why did this torture take place? Were these policemen doing their duty for their country and saving the country from the clutches of the communists or were they cruel men who enjoyed the power of the process?

One of the main pillars of the prosecution case was the fact that the accused were professed communists. This was manna from heaven for the government as they could convince the Western powers that South Africa deserved support on the issue as a bastion of capitalism. My impression is that some of the interrogators were fanatically anti-black and anti-communist but there were also the sadists, who enjoyed the power they exercised as ill-educated policemen, over dedicated intelligent black activists and politicians. In the end, the case was too strong and the cards too heavily stacked against the accused to give the lawyers much room for manoeuvre.

Originally the death penalty had been requested, but was changed because of world-wide protests and skilled legal manoeuvres on the part of the defence team. One of the most fascinating features of this thoroughly admirable book is the depiction of the campaign orchestrated from bodies as widely disparate as the United Nations to the British and US governments to persuade the judge not to impose the death penalty. There is no evidence that revealed that any politician spoke to the judge to twist his arm but the efforts of embassy and other diplomatic staff to save Mandela and others is eloquently told. Harold Hanson was called upon to argue in mitigation. He compared the African struggle for rights to the earlier Afrikaner struggle, citing precedents for temperate sentencing, even in cases of treason.

The author deals very sympathetically with the evidence given in mitigation by renowned author Alan Paton. The shameful cross-examination of a witness, who merely pointed out the moral poverty of apartheid and his sympathy for the accused, who had tried every non-violent method before resorting to violence, is poignantly recounted. Eight of the accused were sentenced to life imprisonment. Nelson Mandela would spend 25 years and eight months in prison as a result the Rivonia trial and was released on February 11, 1990 by President FW de Klerk.

Most right-thinking South Africans regret the long incarceration of Mandela and others and the tragic losses that apartheid wrought in perpetuating its miserable existence. We learn that more than twenty thousand died in the decade preceding the democratic elections in 1994. The successors of Mandela have been much less successful; prompting us to regret his relinquishing of power so much more. This book shows what giants took up cudgels to win us our precious democracy.

Perhaps the final words should be those of Nietzsche. Nearly a hundred years ago he expressed the tributes the country and, indeed, the world will pay to Mandela when that glorious light is finally extinguished: 'In your

dying, your spirit and your virtue shall blaze on like the after-glow of sunset round the world: else hath your dying ill succeeded’.

References

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