

The editorial committee has decided to devote several issues of the journal this year to the theme '20 years of democracy in South Africa and the impact of the Constitution since 1994' The series of articles will be continued in forthcoming issues.

Ah Dalibhunga!



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'[T]he barrister spends an evening or two studying his brief, pleads in court as though he had never had any other interest in life than the welfare of the litigants, and, over his luncheon, forgets their names, their faces and everything about them.'

— Evelyn Waugh¹

ROLIHLAHLA NELSON MANDELA—an advocate in all but name—could ill-afford the luxury of quick amnesia enjoyed by Evelyn Waugh's barrister. How could he forget his clients when, in one of the most important matters he argued, he was his own client? How could he forget when, upon the cases he argued in front of superficially polite but contemptuous magistrates and judges, hung his own professional dignity?²

Yet anyone writing about Mandela the lawyer must soon confront the fact that he was *au fond* a politician. Writing about his legal career, then, must be a little like writing about Jesus Christ the carpenter. A whiff of futility, of nibbling at the edges of things, hangs about the whole enterprise. Fortunately, Mandela's fight against apartheid—his life-long struggle to free his people, his abhorrence of the colour bar (as it was then charmingly called), his pride in his own people, his complete sense of himself, his lack of inferiority—all these were in part reflected in his legal work. Here we attempt a partial and a necessarily imperfect tribute to Mandela.

TO GO OVER the well-trodden terrain of Mandela's astonishing life would be an exercise in the lawyers' vice of 'illustrating the obvious, explaining the evident and expatiating the commonplace'.³ A brief sketch must therefore suffice. He was born in Mvezo, in the Transkei. He grew up in Qunu, in the same Transkei. He went to school at Healdtown, that African gentlemen's establishment; thence to Fort Hare University, that venerable institution on the Tyhume river about which so much has been written. He joined the ANC Youth League. He, alongside A.P. Mda, Robert Sobukwe, the much-lamented Anton Lembede and others, agitated for the adoption by the ANC of a radical programme of action. The then president of the ANC, Dr Xuma—that curious compound of Xhosa-English-American gentlemen with an American education and wife and a grand house in Sophiatown—is said to have reacted to the Youth League's importunities by thundering '*makwedini nifun'kundibambisa!*' 'What? You boys want to get me arrested!' Dr Xuma belonged to the old school of

petitions, deputations, polite and elegant statements of native disapproval of His Majesty's dominion government's conduct. But time for polite and gentlemanly conduct of native relations with the government was running out. The government simply did not care. Mandela, old school as ever, reluctantly adopted violence as a last resort; became a communist under circumstances too controversial to recall in a post-cold war world; and organised the Defiance Campaign, which landed him in the notorious Treason Trial from which, thanks to representation by Israel Maisels QC and others, he emerged triumphant. He was arrested at Howick after some time in the 'underground'. His comrades were rounded up at Lilliesliep Farm in Rivonia. He made a rousing speech from the dock during the Rivonia trial, recounting, in clear sociological tones, in a confident, educated African voice, the miseries of his people—concluding with the well-known declamation affirming his commitment to humanity, his opposition both to black and white domination, his commitment to his ideal of a free and democratic society, and his preparedness, if need be, to die for it. He came out of jail in 1990; guided his country through a difficult negotiated settlement; and, in 1994, was sworn as the first president of the democratic republic. His death in December 2013 saw a hitherto unprecedented outpouring of grief and gratitude, from friends and foes alike, from all over the world.

In such a crowded life, what, it is fair to wonder, could there possibly be to say about Mandela the lawyer? *Mirabile dictu*, there is something to say about Mandela the lawyer. But how did he become a lawyer?

THE ORIGINS of Mandela's decision to become a lawyer are quite humdrum.⁴ Whilst Mandela was a student at Fort Hare, his guardian, Jongintaba Dalindyebo, had arranged a marriage for Mandela to a local lass. The young man was horrified; but, rules being rules, he had to swallow his scruples and get married. But spare a thought for the young Nelson (as he had now become),⁵ the put-upon Fort Hare student, full of modern ideas, so suddenly compelled to share intimacies, for the rest of his life, with a distressed but equable stranger who might not have had the slightest feeling for him. It was a nightmare. Surely some plan could be devised? Options were weighed and the solution at length presented itself. There was nothing for it but to bolt.

Thus we find Mandela with his cousin, Justice Dalindyebo, hatching what was by the standards of that time and place a most audacious plan. They will flee to Johannesburg. But how were they, two impecunious country bumpkins, to reach Johannesburg? Here the plan assumed, by rural standards, a most alarming aspect. Mandela's guardian and Justice's father (the aforementioned Jongintaba Dalindyebo) like most Xhosa men had a herd of cattle, two of which the bolters decided to steal. Steal own father's cattle? Boys might do that; but men? Unheard of. But a plan, once conceived, is not easily abandoned, least of all by young men in flight. They would sell the cows, *longa* or *brevi manu*,⁶ and, with the proceeds, hire a car to the train station, and be off to the land of freedom, *e-Rhawutini*. The plan was however thwarted when, on arriving at the station, the stationmaster, on instructions from the wise old man Dalindyebo (who obviously knew of the plan), refused to let them board the train. Off they ran, leaving the uncooperative stationmaster for the next station. But how was that to

help them? For to go to Johannesburg, if you were black, you had to obtain a 'pass'. Here they encountered some trouble: a magistrate, to whom they had applied for passes, had to consider the matter carefully. Did they, he demanded, have permits from their chief allowing them to go to Johannesburg? No. Well, in that case, they could not lawfully proceed to Johannesburg. Unaccountably, however, the magistrate spared them the arrest to which they had so rashly exposed themselves. They might otherwise never have reached Johannesburg.

They finally reached Johannesburg in April 1941. Before fleeing to Johannesburg, Mandela had been a student at Fort Hare, from which he had been suspended for involvement in politics. Johannesburg now promised a new life. But what kind of life would it be for a black man without a pass and therefore incapable of employment? Here we may simply note that the young Mandela, by means as unavoidable and as they were crafty—there was no other way for a black man without a pass to obtain a job—obtained a job at Crown Mines as a watchman. Armed with a knobkerrie and a whistle, wearing a helmet, he bestrode the premises of the mines. An improbable sight, you might say, but *ex Africa* ... He did not last long in the job, for it soon was discovered that he had neither pass nor special permission to work at the mine.

It was at this stage that Mandela met Walter Sisulu, an estate agent who, upon hearing of Mandela's ambition to be a lawyer, introduced him to an attorney, Lazar Sidelsky of the firm Witkin, Sidelsky & Eidelman. The firm took Mandela on as an articled clerk (itself remarkable)⁷ whilst, at the same time, he continued his studies with Unisa, through which he was able, in 1943, to complete his BA. He was by now married to Evelyn Mase, a relation of Sisulu's, and ready to advance his career. He wished to study for an LLB and had, in 1943, started to study towards it on a part-time basis with Wits University, where he was the only black student. His ambition was to become an advocate. But how was he to fund his studies? He applied to the Bantu Welfare Trust for financial assistance:

'I may well mention sir that I have faced and am still facing considerable financial difficulties. For the last two years my studies at this university have been done under very strenuous circumstances. My only source of income is the income I receive from this firm. It is out of this salary that for the last two years I have been able to pay for my university fees and to support myself and my family and in view of the high cost of living in this city I have found it impossible to make ends meet.

I have no father and my mother whose financial situation is very humble indeed has done her utmost to assist me towards my education and has exhausted all her resources and can do nothing more for me.'

In this touching letter we have a glimpse, and for some a reminder, of how difficult it was for a black person to follow his or her ambition. Indeed, the very point of Bantu education, introduced by Hendrik Verwoerd in 1953, was to thwart just such ambitions. Did not Verwoerd, in his justification of this pernicious policy say, *apropos* of blacks, that 'Until now he has been subjected to a school system which drew him away from his community and misled him by showing him the greener pastures of European society where he is not allowed to graze?'

Mandela was quite willing to be 'misled' and to graze in the greener pastures. Would the pastures yield for Mandela; would he become an advocate? Alas not. It is an issue upon which Mandela himself was reluctant to dwell. In short, the story is this. The conditions of life in Johannesburg were for Mandela most un conducive to proper, focused study. Nor was this helped by his increasing political activism. The consequence for his Wits studies is not hard to imagine. He had, as we have noted, started his LLB (part-time) in 1943; but by 1949 he had not finished. In fact, he had failed his exam and was now asking the Wits law faculty to permit him to write supplementary exams. The next supplementary exams would be written in January 1950; and Mandela, pleading financial and other difficulties, wanted to take them:

'I should also add that during the whole of this period' [he wrote to Wits] 'I studied under very difficult and trying conditions. I was a part-time student and resided (as I still do) in Orlando Native Location in a noisy neighbourhood. In the absence of electric light I was compelled to study in the evenings with a paraffin lamp and sometimes with a candle light. I wasted a lot of time travelling between Orlando and city and returned home after 8pm feeling tired and hungry and unfit to concentrate on my studies. Even during the examinations I was compelled to work in order to maintain the only source of livelihood that I had. It is my candid opinion that if I had done my work under more suitable conditions I could have produced better results.'⁸

What was Wits to do? Granted, the conditions of Mandela's life were unusual. But had he not failed his exams three times? What was a fourth attempt going to change? Yet Wits must have been struck by how peculiarly pitiable his living conditions were. Wits law faculty men met at Walter Pollak QC's chambers to consider Mandela's application. They turned his request down. And that was the end of Mandela's career at Wits and of his ambition to become an advocate. But not, however, the end of his relationship with Pollak QC: when the Transvaal Law Society sought in 1954 to disbar Mandela from practice as an attorney for his part in the defiance campaign, it was Pollak QC, with Blen Franklin, who successfully defended him.⁹ Mandela was later to refer to this, in 1993, when he gave a speech to the Transvaal Law Society, which decades earlier had sought his disbarment.¹⁰

There is no point in dwelling on Wits' decision. Smith, the author of *Young Mandela*, quotes George Bizos SC's remark that the dean of Wits Law School at the time, Professor HR Hahlo, was a racist who had 'drunk deep into the cup of apartheid.' It is idle to quibble with this. Smith reports Mandela as telling Bizos that Hahlo once said to him (Mandela) that, to be an advocate, one must be part of the *mores* of the people—that is, white people. What, then, would be the point of becoming an advocate if you could not partake of those *mores*? We are back in Verwoerd's greener pastures—dignified by Latin. Mandela's own bitter view of Hahlo was this: 'You know what I wish for him, that one day he has to write by paraffin light in Soweto.'¹¹ At any rate, it must have appeared to Wits that there were good academic, if myopic, reasons for refusing Mandela the chance to sit supplementary exams. The result was, of course, the loss to our profession of a man who was eminently suitable for the career. According to Smith,

who in this regard quotes Mandela's first wife Evelyn, Mandela regarded Wits' decision with bitterness: 'He was particularly upset [she says] 'when he found people at Witwatersrand University were blocking him from becoming an attorney'.¹²

Nor was this the end of his humiliations. When in 1952 Mandela became an attorney, he joined Hymie Basner's practice, whose white secretary resigned rather than take dictation from Mandela. Mandela, a proud man, was plainly not going to last in such a place.¹³ His dream had in any case been to establish a black law practice. He approached Oliver Tambo, who at the time was working for the law firm Kowalsky and Tuch, to go into a partnership with him. Tambo agreed and, in August 1952, they set up offices as 'Mandela & Tambo' at Chancellor House on Fox Street, Johannesburg. First they struggled to obtain special ministerial permission to practise in town. Once it was granted, it was not renewed. Mandela and Tambo were forced to practise in town illegally. The two partners could not have been more different: Tambo was quite, thoughtful and religious; Mandela flamboyant, passionate, rhetorical. The practice was a busy if slightly unconventional one. It looked more like the home affairs office than law offices: there were queues of people in the waiting rooms and corridors. Ruth Mumpati, then a secretary at the law firm and later a prominent ANC leader, recalls that the firm was very busy, full of black clients, with some occasional white ones. Tambo himself recalls the atmosphere thus:

'Nelson and I ran the gauntlet of patient queues overflowing from the chairs in the waiting into the corridors ... Weekly we interviewed the delegations of grizzled, weather-worn peasants from the countryside who came to tell us how many generations their families had worked a little piece of land from which they were now being ejected...Every case in court, every visit to the prisons to interview clients, reminded us of the humiliation and suffering burning into our people.'¹⁴

The practice coincided with Mandela's increasing activism. It was inevitable that, in the atmosphere that was to ensue, the firm would struggle.

THERE WAS about his manner a natural *hauteur*, ascribed by many to his chiefly status, which melted with his broad, infectious smile. This spoke to two sides of his character: for here was a man who, when making a political point, was no different from a finger-wagging preacher (he tended to preach and tended to wag his finger). All this, however, would disappear in an instant, as when he greets someone ('Ah! Peter!', he'd say). The finger disappears, and is replaced by a smile and a hug. There was yet a third side to him: the analyst. Although no intellectual himself—Govan Mbeki, Sobukwe and Lembede were—Mandela could conduct a probing analysis of any self-contained problem. In this he was betraying his legal training: lawyers are presented with a problem; they are required to analyse and provide legal solutions to it. Mandela was the master of this. What did he look like? What was his style? For style he had, unlike most politicians. We have adverted to his manner of speech; and to his well-formed, formal, almost always legalistic mode of argumentation, far removed

from the theoretical flights of Communists, his comrades. But what style, as a man, did he affect? Did he have any poses? Of course he did. We see him now in a double-breasted suit, hair parted in the middle, clean-shaven: an Englishman on his way to his club; now we see him in Xhosa garb, solid, dignified; now in a three-piece suit, looking grave and a trifle full in the face. There is in all of these poses a charm jostling to a standstill for attention with that natural and involuntary *hauteur*. This, quite apart from anything else, lent him the authority with which his utterances were always imbued.



It was clear to Mandela that he would be convicted. Why, then, not make political use of the trial? He could only do so effectively if he represented himself.

MANDELA'S INVOLVEMENT in the struggle took him to Africa. He slipped out of the country through Botswana. He travelled to Tanzania, Libya, Britain (where he met Oliver Tambo, already in exile), Algeria and Ethiopia, where he sought support for the ANC, and himself received military training. For this was the time when the ANC had resolved on the armed struggle. He came back to the country after six months, again through Botswana. The police were now in his trail. He was 'underground'. He was now the 'Black Pimpernel'. Amidst this surrounding danger, he decided to go to Natal, to visit Chief Albert Luthuli (then under house arrest) to discuss the relationship of the ANC to the congress alliance—African states whose support he had sought had insisted on blacks leading the struggle. In Natal he stayed; conversed; went to parties, dressed in military uniform, all the while carrying a gun, impressed by his new identity as a soldier. But, like Napoleon after Elba, he was now an outlaw. The lawyer was a guerrilla. He had left the country illegally; he had incited a strike and was planning treasonous activities. Cecil Williams was his fellow passenger in his Natal drives.

At Cedara, near Howick, as they were driving—Mandela explaining to the anxious Williams the need for the dissolution of the congress alliance—a Ford full of white men sped past them and stopped. Sitting behind, Mandela noticed another car full of white men. Alarmed, Williams asked, 'who are these men?'¹⁵ Who could seriously doubt who they were? There was no time to lose. Mandela hid the gun he was carrying as well as the notes he had been keeping. A big, unshaven white man emerged out of the Ford and asked Mandela to identify himself, upon which he said he was David Motsamai, his *nom de guerre*. The big man said: 'Ag man, you're Nelson Mandela and this is Cecil Williams. You are under arrest.'¹⁶ These droll South African words spelled the end of Mandela. He would not be seen again (except for glimpses of him during the Rivonia trial) until 1990.

How did he disappear, so suddenly, from view? By what legal means was he taken away? That is worth dwelling upon because, in the ensuing trial, as perhaps in no other, Mandela showed (futilely as it turned out) how law could be marshalled into the service of politics.

He was charged with inciting people to strike illegally and with leaving the country illegally. On his first court appearance, on 22 October 1962, Mandela, clad in Xhosa garb, wowed the crowds. Ever proud and self-conscious, he recalled the occasion later:

'The fact that I was walking into a white man's court in traditional dress symbolised that I carried into that court the past, the history, the culture and the proud heritage of my people.'¹⁷

Joe Slovo had been Mandela's counsel but was now replaced by a young advocate, Bob Hepple, later a Rivonia trialist himself who fled the country during that trial and was later to become a distinguished academic lawyer in England, ending up as Sir Bob Hepple QC and Master of Claire College, Cambridge. It was clear to Mandela that he would be convicted. Why, then, not make political use of the trial? He could only do so effectively if he represented himself. Indeed, as we shall see, it is impossible to imagine a member of the bar urging the arguments that Mandela was to advance in front of a bemused magistrate. He would represent himself, then.

He appeared before Regional Magistrate WA van Helsing. When asked to plead, Mandela asked for leave to address the court. That address has gone down in history as the 'Black man in a white man's court' speech. In fact, it was an argument. He raised the stakes. He asked for the magistrate's recusal on grounds hitherto unheard of. We are today accustomed to recusal applications, even if their trivial and opportunistic nature surprises us. But surely, even today, nothing of the nature of Mandela's application is to be encountered in any court. What, then, was the basis of his application? It was simple and repays ample reproduction:

'I want to apply for Your Worship's recusal from this case.

I challenge the right of this Court to hear my case on two grounds. I challenge it firstly because I fear that I will not be given a fair and proper trial. I challenge it in the second place because I consider myself neither legally nor morally bound to obey laws made by a Parliament in which I have no representation.'¹⁸

But why would he not get a fair and proper trial? Well, because:

'In a political trial such as this one, which involves a clash of the aspirations of the African people and those of the Whites, the country's courts as presently constituted cannot be impartial and fair. In such cases Whites are interested parties. To have a White judicial officer presiding, however high his esteem, and however strong his sense of justice and fairness, is to make Whites judges in their own case. It is improper and against the elementary principles of justice to entrust Whites with cases involving the denial by them of basic human rights to the African people.'¹⁹

The two grounds for recusal, whilst perfectly commonsensical in point of political morality, were legally unintelligible to any

South African lawyer. Take the first ground. In a sexist society (both in its laws and practice), is a woman entitled to a recusal of a male judge on grounds of apprehension of bias? You might or might not think she should be; but the law takes a more practical view of things. Or take the second ground. Thomas Hobbes had insisted that the sovereign governs by the implicit consent of his subjects: that was the fount of his authority and legitimacy. In the second ground, Mandela was advancing a Hobbesian claim: the laws to which I did not consent, he was saying, do not apply to me. The second ground was not so much a ground for recusal as calling into the question the moral basis of the government and its laws. Charles I had made the same jurisdictional point, from the other side, as it were. The laws of his kingdom were the laws of God and, as God's representative amongst Englishmen, he was the source of all law. By what right, then, he had demanded, did parliament seek to try him?²⁰ By what right, asked Mandela—following Hobbes and the obverse logic of Charles I—did the government for which he did not vote seek to try him?

Such high-minded argumentation, valid as it was on its own premises, was not going to prevent Regional Magistrate WA van Helsdingen from examining the evidence against Mandela. Indeed, the magistrate put to Mandela a very practical question:

'I am just wondering whether I shouldn't interfere with you at this stage, Mr. Mandela. Aren't we going beyond the scope of the proceedings? After all said and done, there is only one Court today and that is the White Man's Court. There is no other Court. What purpose does it serve you to make an application when there is only one Court, as you know yourself[?] What Court do you wish to be tried by?'²¹

Indeed, if accepted by a court, where would the Mandela doctrine lead? If accepted, it meant that no black person could ever be tried by a white court in political matters—indeed in all matters, since blacks had no part observing laws in the making of which they had no part. But surely that way lay chaos? So appalling a vista cannot have impressed van Helsdingen, who took safety in viewing the application in purely practical—one might say legal—terms. But this was completely to miss the argument: it was no use pointing out, as he did, that there was no other court to try Mandela. For that was Mandela's point: he could not be tried in South Africa. Warming up to his political peroration, Mandela went on:

'I feel oppressed by the atmosphere of White domination that is around me in this Courtroom. Somehow this atmosphere recalls to mind the inhuman injustice caused to my people outside this Courtroom by this same White domination. It reminds me that I am vote-less because there is a Parliament in this country that is White-controlled. I am without land because the White minority has taken the lion's share of my country, and I am forced to occupy poverty stricken reserves which are over populated and over stocked. We are ravished by starvation and disease because our country's worth ...'²²

But what was van Helsdingen supposed to make of this submission? He could not hide his justified puzzlement:

'What has that got to do with the case, Mr Mandela?'²³

Well, nothing and everything. It had nothing to do with the case, of course, if one viewed the thing as a legal trial. But if you appreciated that this was no longer a courtroom but a political platform, as indeed Mandela had intended, then the outburst had everything to do with the case. The truth is that the court had been outwitted. It was as if, thinking it was playing cricket, it suddenly found itself in a game of boxing. By now, there was no stopping Mandela from expressing his deepest political beliefs. But again, he does so in a way that weaves them into the recusal argument he was urging; for only thus could he maintain the fiction—of which the magistrate was being slowly disabused—that he was still advancing legal submissions. But this, as the passage below shows, required some subtle presentation:

'Your Worship, I hate racial discrimination most intensely and in all its manifestations. I have fought it all along my life. I fight it now, and I will do so until the end of my days. I detest most intensely the set-up that surrounds me here. It makes me feel that I am a Black man in a White man's Court. This should not be. I should feel perfectly free and at ease with the assurance that I am being tried by a fellow South African who does not regard me as inferior, entitled to a special type of justice. *This is not the type of atmosphere most conducive to feelings of security and confidence in the impartiality of the Court.*

Now the Court might reply to this part of my argument by assuring me that it will try my case fairly and without fear or favour, that in deciding whether or not I am guilty of the offence charged by the State, the Court will not be influenced by the colour of my skin or by any improper motive. That might well be so. But such a reply will completely miss the whole point of my argument. As already indicated, my objection is not directed to Your Worship in his personal capacity, nor is it intended to reflect upon the integrity of the Court. My objection is based upon the fact that our courts as presently constituted create grave doubts in the mind of an African accused whether he will receive a fair and a proper trial. This doubt springs from objective facts relating to the practice of unfair discrimination against the Black man in the constitution of the country's courts. Such doubts cannot be allayed by mere verbal assurances from a presiding officer, however sincere such assurances may be. There is only one way, and one way only of allaying such doubts: By removing discrimination, particularly in judicial appointments. This is my first difficulty.'²⁴ [Emphasis added.]

The apparently modest solution presented here—appoint black judges and magistrates—was one with which it was in principle impossible to disagree; and perhaps the reason why it was now being urged. But this line could only be maintained by abandoning the Hobbesian point about representation. For if the laws of the country did not bind those who had no part in enacting them, then it does not help to appoint blacks as judges and magistrates. The courts would on that view still be illegitimate. There was, then, a tension between the two grounds for recusal. Of course, the force of the Hobbesian objection was that it could not be met by the practical device of 'this is the only court there is.' And that is perhaps why Mandela clung to it. But none of these grounds really had any

persuasive legal force, valid though they may strike us—the law supervenes on the political system it must operate under: might is right, more or less.

The prosecutor, wisely realising that it would be futile to address Mandela on his terms—and therefore be trapped into a political argument—made a submission against recusal which, in the circumstances, was a model of concision and elegant escape. After being asked by the magistrate whether he had anything to say, the prosecutor simply said:

'Very briefly, Your Worship. I just wish to point out that there are certain legal grounds upon which an accused person is entitled to apply for the recusal of a judicial officer from the case in which he is to be tried. I submit that the Accused's application is not based on one of those principles, and I ask the Court to reject it.'²⁵

And he sat down. The recusal application was dismissed and Mandela was asked to plead; evidence was led, with Mandela conducting his own cross-examination. In his plea in mitigation, Mandela traversed his life, his decision to join the ANC, his travails as an attorney—that, as an attorney, he could not hold offices in town without ministerial approval which, once obtained, was never renewed upon its expiry; the treatment by magistrates before whom he appeared; the failed application for his removal from the roll of attorneys by the Transvaal Law Society. He recounted all these and more, and then said:

'But there comes a time, as it came in my life, when a man is denied the right to live a normal life, when he can only live the life of an outlaw because the Government has so decreed to use the law to impose a state of outlawry upon him. I was driven to this situation, and I do not regret having taken the decisions that I did take.'²⁶

Sounding a note of defiance (surely mingled with despair, as he knew his fate), he explained:

'If I had my time over I would do the same again, so would any man who calls himself a man.'²⁷

THIS PERFORMANCE—at once formally legal and defiantly political—made Mandela famous. Although the local press was virtually silent about his speech in court, the international community took note and its concern about his plight was suddenly excited.²⁸ *Samizdat* reproductions of his speech were suddenly thrust into circulation. People spoke in hushed tones of the "Black man in a white man's court" speech'. In short, Mandela's aim of converting the trial into a political platform had succeeded. And that could only be achieved by a man—a lawyer—who knew what he was doing. He was convicted (as he always knew he would be) and sentenced to five years' imprisonment. Then came the Rivonia trial, which saw him dispatched for life to Robben Island. Then followed the years in which the country was plunged into darkness of repression and violence. Then came 1990 when he was released from jail; followed by 1994 when he assumed office as President of a free and democratic republic—an unparalleled event in the history of the country. And the rest, as they say, is history.

Nor was that all. It never is. In the trial in which he sought the recusal of the magistrate, you might recall the concise prosecutor who opposed his application and, as was his duty,

sought his imprisonment. His name was Bosch. Of him Mandela said:

'The following day as I was chatting with Bob Hepple in an office set aside for our use the prosecutor Bosch entered and asked Bob to excuse himself. This was before the resumption of the proceedings. He said to me: "Today I did not want to come to court. For the first time in my career I hate my job. It hurts me that I should be asking the court to send you to prison." He warmly shook my hands and expressed the hope that everything would turn out well for me. I thanked him for his kind sentiments and assured him that the bonds of friendship would remain as strong as they had been and that I shall always remember what he said. I noted that he had expressed himself with feeling and sincerity.'²⁹

When in February 2014 Mandela's will was made public, he had left R100 000 to Wits University. 

Endnotes

- ¹ *Robbery Under Law: The Mexican Object Lesson* (Penguin Classics 1939) 3–4.
- ² One is reminded of a case before Magistrate Willem Dormehl, who refused to allow Mandela to proceed with his trial until he had produced his certificate of practice. The interaction between Mandela and Dormehl is reproduced at pages 97–100 of Martin Meredith's *Mandela: A Biography*: Mandela: 'I appear for the accused, Your Worship.' Magistrate: 'And who are you?' Mandela: 'My name is Nelson Mandela, Your Worship. I appear for the accused.' Magistrate: 'How can you appear for the accused? Are you an attorney?' Mandela: 'Yes, of course, your worship.' Magistrate: 'Where is your certificate?'
- ³ This is Benjamin Disraeli's justified view of lawyers: see Robert Blake's *Disraeli*: (Prion 1998) 61.
- ⁴ Mandela's own ambition at Fort Hare was modest enough: he wanted to be a court interpreter: David James Smith's *Young Mandela* at 34.
- ⁵ For 'Nelson' was not a name given him by his parents but by his schoolteacher. Was he named after the eponymous hero of Trafalgar?
- ⁶ Accounts vary between Smith's *Young Mandela* 37 and Meredith's *Mandela: A Biography* 20.
- ⁷ Of Sidelsky, Mandela has said that 'he was the first white man who treated me as a human being' (Anthony Sampson *Mandela: The Authorised Biography* 32).
- ⁸ *Young Mandela* 69.
- ⁹ *Incorporated Law Society, Transvaal v Mandela* 1954 (3) SA 102 (T). Ramsbottom J wrote the judgment in which Roper J concurred. PF O'Hagan QC and IL Grindley-Ferris appeared for the Transvaal Law Society.
- ¹⁰ Opening address to the Law Society of the Transvaal delivered by the President of the ANC, Nelson Mandela' <http://www.anc.org.za/show.php?id=4106>
- ¹¹ Anthony Sampson *Mandela: The Authorised Biography* 35.
- ¹² *Young Mandela* 70.
- ¹³ There were other firms for which he'd worked: Terblanche & Briggish, and Helman & Michel.
- ¹⁴ Sampson *Mandela: The Authorised Biography* 78.
- ¹⁵ LWTF (unpublished MS) 492.
- ¹⁶ LWTF (unpublished MS) 492; *Mandela: A Biography* Martin Meredith 216.
- ¹⁷ LWTF (unpublished) MS 504.
- ¹⁸ Nelson Mandela *No Easy Walk to Freedom: Speeches, Letters and Transcripts* (Kwela Books 1965) 171–172.
- ¹⁹ *Ibid* at 172.
- ²⁰ See CV Wedgewood's *A King Condemned: The Trial and Execution of Charles I*, (Taurus Park Paperbacks 2011; first published in 1964) 131: 'Remember I am your King ... Your lawful King, and what sins you bring upon your heads, and the judgment of God upon this land; think well upon it, I say, think well upon it, before you go from one sin to a greater ... I have a trust committed to me by God, by old lawful descent; I will not betray it to answer a new unlawful authority.'
- ²¹ *I Accuse: Speeches to Court* by Nelson Mandela (an undated pamphlet) 5.
- ²² *Ibid* 7.
- ²³ *Ibid* 7.
- ²⁴ *Ibid* 8–9.
- ²⁵ *Ibid* 10.
- ²⁶ *Ibid* 21.
- ²⁷ *Ibid* 17.
- ²⁸ Meredith *Mandela: A Biography* 226.
- ²⁹ LWTF (unpublished MS) p 508.