Toward Robben Island: The Rivonia Trial

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The Rivonia raid of July 11, 1963, was followed by an anti-climax: a trial in which Nelson Mandela, who was brought out of prison to become one of the accused, Walter Sisulu, Govan Mbeki, and others admitted that they were guilty of sabotage and preparation for guerrilla war. They denied, however, that a decision had been made to begin guerrilla activity. For eleven months after the raid, the underlying question in the trial was whether or not they would be hanged, which would have transformed them, as heroes of the African opposition, into martyrs.

Mandela, Sisulu, and Mbeki, the most prominent leaders of the ANC (other than Lutuli) who were still inside the country, were members of the National High Command of Umkhonto. Hundreds of documents and other evidence of subversion were found at Rivonia and at two other sites, both used as hide-outs and one used as an arsenal. Many of the documents were in the handwriting of the accused, including a diary of Mandela. For him and the others, the trial was an opportunity to set the record straight and a platform from which to reach a worldwide audience as well as their own followers within South Africa. The trial was similarly an opportunity for the government to win support, especially (it thought) because white and Indian Communists were among the accused and alleged co-conspirators. Anti-apartheid groups succeeded in

focusing unprecedented international attention on the trial and in generating pressures to end it or at least to save the defendants from the death penalty. On June 11, 1964, Judge Quartus de Wet found Mandela, Sisulu, Mbeki, and others guilty, and on June 12, 1964, he sentenced them to prison for life.

For nearly ninety days, the men arrested in the Rivonia cottage had been interrogated and detained in solitary confinement. Among others detained under the 90-day law who became defendants the trial were Dennis Goldberg, a Cape Town engineer and leader of the Congress of Democrats who had been in the main Rivonia house at the time of the raid; Elias Motsoaledi and Andrew Mlangeni, minor figures in Umkhonto who had been arrested some weeks earlier; Arthur Goldreich, the tenant at Rivonia, an industrial designer who had learned guerrilla tactics in Israel; Harold Wolpe, a lawyer involved in handling the Communist Party's money for purchase of the Rivonia property; and James Kantor, who was not involved in Umkhonto or in politics but was a legal colleague and brother-in-law of Wolpe. Kantor was discharged at the end of the prosecution's case.

Meanwhile, Goldreich, Wolpe, and two Indian detainees, Moosa Moolla and A. Jassat, bribed a young guard and escaped from jail on August 11, eventually making their way to Swaziland and then to Tanzania. Probably the most dramatic escape in South African history, their exit from the country infuriated the prosecutors and police who considered Goldreich to be "the arch-conspirator."

The far-reaching effects of the 90-day law were only partly evident after the Rivonia raid. Both high officials and the press spoke vividly of the culpability of the men under detention. Because technically they were not yet charged with an offense, the tradition of no public comment on a pending case could be ignored. What could not be known fully with regard to this and other pending cases was the treatment of persons who were being held incommunicado. During the ten months after May 11, 1963, 682 persons were detained, 61 of them for more than 90 days. Some complained of assault, electric shock, and suffocation within plastic bags.

White prisoners were apparently not tortured, although some white members of ARM were beaten up; solitary confinement for long periods, however, was described by critics as a form of mental torture. Mandela himself was treated by his jailers with some respect and restraint, but Mlangeni, complaining that he had been tortured with electric shocks, displayed burns and scars after his detention. Motsoaledi complained of assault. More subtle were the psychological consequences of solitary confinement and relentless questioning. These practices posed a problem for the judge regarding the reliability of prosecution witnesses in the Rivonia trial, some of whom were Africans sympathetic to Umkhonto who had been persuaded to testify for the state.

Lawyers were unable to see the accused until two days before indictment on October 9. Leading the defense team was Bram Fischer, the distinguished lawyer, Afrikaner, and veteran Communist (at that time, secretly a member of the underground party). Two days later, after appeals abroad by

Oliver Tambo, the United Nations General Assembly voted 106 to 1, with only South Africa in opposition, in criticism of South African political trials; but the United States, Britain, France, and Australia abstained on the operative paragraph, which called for an end to "the arbitrary trial now in progress." At the end of October, Hepple was able to leave the dock because he had agreed to testify for the prosecution; later he managed to flee the country. After dismissal of the first indictment as inadequate, the trial finally got under way on December 3 with an expanded indictment. Each of the ten accused pleaded not guilty, all of them except Kantor in words similar to those of Mandela: "My lord, it is not I, but the Government that should be in the dock today. I plead not guilty."

In addition to the ten defendants, the indictment listed twenty-four alleged co-conspirators, including Tambo, Nokwe, Resha, Kotane, Marks, Dr. Arthur Letele, and Tennyson Makiwane. Surprisingly, Lutuli's name was not listed. One defense attorney thought the exclusion was designed to drive a wedge between Lutuli and the accused. The prosecutor, however, repeatedly brought Lutuli into the case as an accomplice, and it was the accused who firmly refused to say anything that might incriminate him. Also listed as co-conspirators were the Communist Party, the ANC (which the prosecutor claimed was "completely dominated" by the Communist Party), and Umkhonto.

The offenses alleged were: (1) 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, (2) conspiring to commit the aforementioned acts and to aid foreign military units when they invaded the Republic, (3) acting in these ways to further the objects of communism, and (4) soliciting and receiving money for these purposes from sympathizers in Algeria, Ethiopia, Liberia, Nigeria, Tunisia, and elsewhere. "Production requirements" for munitions for a six-month period were sufficient, the prosecutor said in his opening address, to blow up a city the size of Johannesburg.

The chief prosecutor was Dr. Percy Yutar, deputy attorney-general of the Transvaal, a Jew whose intense emotional involvement in the case was said to be due, in part, to his animus toward Jews who were Communists. He also shared the prevailing assumption of other white South Africans that "the rank and file of the Bantu in this country were faithful and loyal." In his opening address, he said:

The planned purpose ... was to bring about in the Republic of South Africa chaos, disorder and turmoil, which would be aggravated, according to their plan, by the operation of thousands of trained guerrilla warfare units deployed throughout the country at various vantage points. These would be joined in the various areas by local inhabitants, as well as specially selected men posted to such areas. Their combined operations were planned to lead to confusion, violent insurrection and rebellion, followed at the appropriate juncture by an armed invasion of the country by military units of foreign powers. In the midst of the resulting chaos, turmoil and disorder it was planned by the accused to set up a Provisional Revolutionary Government to take over the administration and control of this country.

He concluded (perhaps confusing the ANC with the PAC) by alleging that the accused and their organizations "had so planned their campaign that the present year - 1963 - was to be the year of their liberation from the so-called yoke of the white man's domination." In his final speech, Yutar declared for the first time that "the day of the mass uprising in connection with the launching of guerrilla warfare was to have been the 26th May 1963." Choice of this date, six weeks before the Rivonia raid and a time when Umkhonto possessed only an air rifle with which Mandela had once tried target practice, mystified the accused and their lawyers.

Yutar's summary of " the planned purpose" was a summary of "Operation Mayibuye," the draft memorandum found at Rivonia, which was, for Yutar, "the corner-stone of the State case." Whether or not this plan for guerrilla war and foreign intervention had been accepted was, in the minds of the defense, the crucial question affecting sentences. Sisulu testified that the plan had been prepared by a group that included Arthur Goldreich. Some members of the National High Command favored it very strongly, he said; others (himself included) opposed it very strongly; and many were undecided and wanted further discussion. Preparations for the eventuality of guerrilla warfare were made, he said, but no decision to launch it was taken. The judge agreed. (Bram Fischer is reputed to have killed the plan. In his own trial later, he described Operation Mayibuye as "an entirely unrealistic brainchild of some youthful and adventurous imagination .... If ever there was a plan which a Marxist could not approve in the then prevailing circumstances, this was such a one .... if any

part of it at all could be put into operation, it could achieve nothing but disaster.")

Yutar described the Rivonia trial as "a classical case of high treason par excellence." The accused were not charged under the common law of high treason, however, but under the Sabotage Act, which also carried the death penalty. Prosecution for treason would have required a preparatory examination, useful to the defense, with two witnesses to every overt act, and proof beyond a reasonable doubt. Dr. Yutar, privately recalling the abortive Treason Trial of 1956-1961, chose to proceed under the Sabotage Act, which shifted much of the onus of proof from the prosecution to the defense.91 In his final judgment, the judge agreed that the case was essentially one of high treason; but, perhaps ironically, he found in the fact that treason had not been charged a basis for deciding not to impose the death penalty "the only leniency" he could show. Afterwards, Sir de Villiers Graaff, leader of the United Party, said that his "only regret- with the verdict was that Mandela and others had not been charged with high treason. because then "the world would have understood the outcome of this case very much better than it does at this moment."

In a manner similar to that adopted by the defense in the Treason Trial, which sought to dismiss all expressions of violent intent as outside ANC policy, the defense in the Rivonia trial argued that even acts by Umkhonto members could not be ascribed to the accused if the members had violated instructions against endangering human life. Although witnesses for the prosecution testified to such instructions, Yutar talked of murder and attempted murder. The defense reacted with

outrage because no specific allegations were made. The judge agreed that other organizations as well as Umkhonto were committing sabotage, sometimes on the same targets, and that only a small proportion of the 193 acts of sabotage (none of which had resulted in loss of life) had been proved to be the responsibility of Umkhonto.

Potentially more important was the judge's agreement that the ANC and Umkhonto were two separate though overlapping organizations, despite a governmental proclamation during the trial that the ANC was the same as Umkhonto. The distinction between the two organizations was important for every ANC member who might be charged in the future, because the maximum penalty for membership in an unlawful organization was ten years in prison, whereas the penalty for sabotage could be death.

These gratifying gains hardly compensated, however, for the shattering effect on all the accused (except Kantor) of the detailed testimony of "Mr. X," who was Bruno Mtolo, the most active saboteur in Natal. He was the leading witness among 173 witnesses for the prosecution. Mtolo, a member both of the ANC and of the Communist Party, had become disaffected with Umkhonto, claiming that its leaders pursued selfish interests and disregarded the welfare of their followers. The judge considered him a reliable witness, and the defense, an extraordinarily impressive witness of phenomenal memory and very quick mind. The defense also insisted, however, that his testimony was a distorted mixture of fact and fiction, and Mandela expressed to his lawyers anger at Mtolo's smearing of the ANC and Umkhonto as Communist.

Most distressing, however, was Mtolo's readiness to "go out of his way to implicate people who were not even suspected by the police ... [and his volunteering of] an enormous amount of information." After his release, an Afrikaans publisher brought out an autobiography in which Mtolo suggested that "there must be some higher reason" for the presence of whites and other races in South Africa and concluded with an appeal to Lutuli as the leader of "the Zulu nation" to draft a new ANC policy "acceptable to the people but also to the white Government."

Mandela in the Dock

To sympathizers with the African opposition, there was the sharpest contrast between Mtolo, the traitor, and Mandela, the hero. Mtolo had never been the victim of banning orders; his only experience of prison was for theft; politically he had proved to be an opportunist. On the other hand, Mandela's stature as a steadfast African nationalist who had suffered repeated restrictions had been growing. Although deliberate efforts had been made to exalt his reputation, it Is not surprising that a man of his ability, character, and flair for leadership should by 1964 have surpassed the rusticated Lutuli as the pre-eminent ANC leader. In his personal relations, the respect and affection of those who knew him was extraordinary. During the trial, his dignified bearing and unyielding attitude enhanced his reputation. He was also a physically impressive man, over six feet tall, at that time in his middle forties. Characteristically. on his first entrance into the courtroom, he faced the packed nonwhite gallery and raised his clenched fist, mouthing the word "*Amandla* [power]"; many Africans in the audience

replied "*Ngawethu!* [to the people!]." African attendance at the trial, initially high, soon dwindled. The Special Branch took the name and address of every spectator, and a police photographer took pictures as they left.

When opening the defense case on April 20, 1964, however, Mandela spoke without apparent emotion. Slowly and quietly, he read a statement from the dock, as he had in 1962. The accused had agreed that instead of taking the witness stand, where his position could be expressed only in piecemeal fashion, Mandela should provide a framework for the testimony to follow and at the same time use the dock to present to the widest possible audience a coherent and enduring rationale for the actions of Umkhonto and the ANC. With assistance from colleagues and counsel, he prepared the speech, fully conscious of its historic importance.

Mandela concluded with the following words:

During my lifetime I have dedicated myself to this struggle of the African people. I have fought against White domination, and I have fought against Black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.

"... for perhaps thirty seconds," one of his lawyers has written, "there was silence. One could hear people on the public benches release their breath with a deep sigh as the moment of tension

passed. Some women in the gallery burst into tears. We sat like that for perhaps a minute before the tension ebbed."

Mandela had been in prison almost the entire period since passage of the Sabotage Act and Dr. Yutar might well have expected him to take the stand to seek exoneration on the ground that his culpability was minimal. But Mandela affirmed that he was a leader both of the ANC and of Umkhonto, and in effect (despite his plea), guilty on all counts. He fully expected the death sentence to be handed down, inasmuch as twenty-year sentences had already been meted out for relatively minor offenses. Along with others, he had planned what he would say on that occasion. Outside, clandestine flyers were circulated during the trial, warning in lurid terms about the consequences of imposing the death penalty. An ANC flyer at the beginning of the trial had said, with a new and, for the ANC, uncharacteristic, emphasis on the whiteness of the enemy, "If these leaders die in Vorster's hands - you, White man, and all your family, stand in mortal danger". Following Dr. Yutar's opening speech, another flyer warned that if the accused were made scapegoats, they would" only become imperishable symbols of our resistance".

In presenting a case that would appeal to the widest public, Mandela had to deal with the question of the role and influence of the Communist Party. Although the government's understanding of who was a Communist was notoriously sophisticated, the fact was that among the accused there were three Africans (Mbeki, Mhlaba, and Motsoaledi), one white (Bernstein), and an Indian (Kathrada) who were or had been members of the Communist Party. The government's misperceptions had been

on display earlier during the debate on the 90-day bill, April 24, 1963, when Vorster attempted to provide what he evidently thought was a sophisticated review of the "long history" of African politics. "any of the files I am working with today," he said, "date from the 'twenties." J.B. Marks (who had indeed been a member both of the Communist Party and of the ANC) had become secretary-general of the ANC in 1936, he declared (an assertion that was untrue); and "from that moment Communism took over the ANC hand over hand and made it its tool" (an assertion equally untrue).

In court, Mandela denied that the ANC had ever been a Communist organization; its "ideological creed," he said, was "African Nationalism." In setting forth distinctions between the policies of the two organizations, he referred to the Freedom Charter, for example, which Vorster saw as "nothing else but the communistic blueprint for Southern Africa." Yet the Freedom Charter, as Mandela accurately observed, was "by no means a blueprint for a socialist State."

Speaking more personally, Mandela explained "why experienced African politicians so readily accept Communists as their friends.... for many decades Communists were the only political group in South Africa who were prepared to treat Africans as human beings and their equals; who were prepared to eat with us; talk with us, live with us and work with us. -- He welcomed the Communist Party's assistance; nevertheless, he had never personally joined it. He was, he said, "an African patriot," a socialist who had been influenced by Marxist thought, but not a Marxist. Furthermore, unlike the Communists, he admired Western parliamentary systems and,

in particular, had "great respect" for British and American political and judicial institutions. Sisulu, who was under cross-examination for some six days, also denied that he was a Communist and presented a similar description of the relationship between the ANC and the Communist Party.

The intimacy of relations between non-Communist African nationalists and Communists, in South Africa and in exile, made it difficult for many anti-Communist observers to recognize that African nationalists could hold their own. This was especially true for white analysts who assumed that in any such collaboration Communists - particularly white Communists - would dominate. Sisulu would say to friends: cannot these people see that it we might be using the Communists? Communists did, nonetheless, have an importance that was vastly disproportionate to their numbers, which was not surprising, given their ability and dedication and the philosophical certitude that underpinned their sense of inevitable victory.

Expert students of Communist political behavior might suggest that Sisulu and Mandela were clandestine Communists whose denials both of party membership and of adherence to party doctrine were calculated to preserve for the ANC a respectable facade among non-Communist and anti-Communist sympathizers. Such a supposition was as difficult to prove as to disprove. Although they may have sought to appeal to the widest possible spectrum of opinion, the judgment of many who knew Mandela and Sisulu well was a simple one: they were pre-eminently independent minded African patriots. Among the exiles, the judgment was notably true for Tambo.

Despite the ANC's growing reliance on aid from Communist countries, the position of such men was strengthened by the fact that African Communists like Kotane and Marks were to an important extent also nationalists.

International Pressures

The day of Mandela's speech was also a notable occasion at the United Nations. A special group of experts on South Africa issued a report that was part utopian and part realistic. The appointment of this group had been one event in the series of international appeals and warnings made in reaction to the tightening of controls and police crackdowns within the Republic. Many of the appeals were directed at South Africa's major trading partners, especially Britain and the United States. A year after the two-thirds vote in the General Assembly calling for sanctions, Scandinavian initiative led to the unanimous passage by the Security Council on December 4, 1963, of a resolution to appoint a small group of experts "to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole...."

The secretary-general appointed Mrs. Gunnar Myrdal, a Swedish diplomat, to chair the group and other diplomats from Britain, Morocco, Ghana, and Yugoslavia as members. South Africa refused entry to the group, which proceeded nevertheless to hear recommendations from South African exiles, among others. On April 20, 1964, the group (except for the Yugoslav, who had resigned because of the others' relative moderation)

issued its report, ahead of schedule because it believed that South Africa was rapidly approaching the point of "explosion." It proposed a "course of reason and justice ... the only way and the last chance to avoid ... a vast tragedy."

The group resuscitated the idea of a national convention and suggested that w Ith UN help such a convention might lead to a constituent assembly, a detailed constitution, and the election of a representative parliament. Lutuli, Mandela, and Sobukwe were praised as non-racialists and men of -outstanding political responsibility." Not only they but also "all representative leaders" should be able to participate freely in planning the convention. Therefore, the report described as essential "an amnesty for all opponents to apartheid, whether they are under trial or in prison or under restriction or in exile."

This stunning unreality, which *Die Burger* felt confirmed "the cynical statement that there are no greater fools upon earth than a collection of experts," was balanced by the report's recognition of South Africa's "wave of economic prosperity," the sharp increase in white immigration, and the dramatic increase in British and American investment. Pending a final reply from the South African government, the group proposed an expert examination of the economic and strategic aspects of sanctions and emphasized the crucial importance of American and British cooperation. An ultimatum was then proposed: if South Africa did not reply satisfactorily by a date to be set by the Security Council, the Council should impose sanctions.

The ulterior motive of the proposal for more expert study may have been a realistic one: to involve the United States and Britain in movement toward mandatory sanctions. If so, the effort was partly successful; both governments participated in the expert committee that was subsequently established. But U.S. policy toward South Africa continued to be ambivalent. The United States was hardly disposed to embark on an uncertain course, unsupported by American public opinion, against a currently stable and profitable system. By the end of 1965, the drive for sanctions had evaporated.

The Trial Ends: June 12, 1964

As the Rivonia trial neared its end, the world-wide campaign of protests and appeals for clemency was stepped up. Its culmination came on June 9 with action by the United Nations Security Council two days before the judge rendered his decision. The Council, with four abstentions, urged the South African government to end the trial, to grant amnesty to the defendants and to all others who were imprisoned or restricted "for opposing apartheid," and to renounce the execution of persons already sentenced to death "for acts resulting from-such opposition. The U.S. representative, who abstained along with the representatives of Britain, France, and Brazil, emphasized that Washington shared the Council's concern (American diplomats had, indeed, expressed such feelings privately to South African officials), but was opposed to interference with a trial in progress.

Foreign reporters, photographers, and diplomats gathered in Pretoria on June 11, when the judge rendered his decision, and on June

12, when he announced sentences. There was no surprise in the fact that Mandela, Sisulu, Mbeki, Motsoaledi, Mlangeni, and Goldberg were found guilty on all four counts. The defense had hoped that Mhlaba, Kathrada, and Bernstein might escape conviction because of the skimpiness of evidence that they were parties to the conspiracy, although undoubtedly they could be prosecuted on other charges. But Mhlaba too was found guilty on all counts, and Kathrada, on one charge of conspiracy. Bernstein, however, was found not guilty. He was rearrested, released on bail, and placed under house arrest. Later he fled the country.

In pursuing their main aim, to save the accused from death, the defense called upon Harry Hanson, an eloquent lawyer who had not taken part in the trial, to argue in mitigation. He compared the African struggle for rights to the earlier and somewhat comparable Afrikaner struggle and cited South African precedents for temperate sentencing, even in cases of treason. One witness was called: Alan Paton, national president of the Liberal Party, who was a devout Christian and opponent of violence. Paton agreed that Communists held high positions in the ANC but denied that the ANC was dominated by the Communist Party. He praised the sincerity of Mandela, Sisulu, and Mbeki, their lack of desire for vengeance. and asked "for clemency because of the future of this country." Hanson and Paton were making political appeals in a trial of politically inspired offenses. Dr. Yutar also responded politically. He conceded that questioning a witness in mitigation was unusual,"but I do so in order to unmask this gentleman, he said of Paton. "His only purpose is to make political capital."

Justice de Wet sentenced all defendants found guilty to life imprisonment. "Most of the world," said the *New York Times*, "regards the convicted men as ... the George Washingtons and Benjamin Franklins of South Africa, not criminals deserving punishment." There was a great gap between this perception and the more cynical and limited perception of de Wet. "I am by no means convinced," he said, "that the motives of the accused were as altruistic as they wish the court to believe. People who organize a revolution usually take over the government, and personal ambition cannot be excluded as a motive."

The accused waved to the audience as they descended below the dock. Outside, as on the preceding day, large numbers of police, some with dogs, stood ready to control the crowds and avoid any embarrassing incidents or disorder. Among some 2,000 people present there were only a few hundred Africans who showed their emotions. They responded to news of the verdict with shouts of *Amandla Ngawethu!* and the clenched fist and upright thumb of the ANC. Some unfurled banners-"We Are Proud of Our Leaders"-which the police seized. Many sang the African anthem. On the preceding day, the singing of *Nkosi Sikelel' iAfrika* had been led by Mrs. Albertina Sisulu, resplendent in a Xhosa robe and headdress. When Mandela and the others were finally driven away, the crowd again shouted and saluted as the convicted men thrust their fists through the bars and shouted back: "*Amandla!*" On the same day, all except Goldberg, the one white, were flown to Robben Island, the maximum security prison some seven miles from the shores of Cape Town.

The ending of the Rivonia trial did not appear to stir white public opinion. The press praised the police, the prosecutor, and the judge, and evidence of effective security contributed to growing white complacency and support for the government. Within a week of the sentencing, four incidents of sabotage were reported, probably the work of the mainly white African Resistance Movement. Within a month or so, the police had smashed this idealistic and heroic but ineffectual group. Most devastating, however, was the political blow to Alan Paton and the Liberal Party when it was discovered that Liberals were among the members of ARM. On July 24 whites reacted with horror to the news that a bomb had exploded in the white section of the Johannesburg railroad station, killing one old woman and injuring some two dozen others. John Harris, a Liberal who had joined ARM but had broken its basic rule against injuring human beings, was found guilty of the bombing. He became the first white man among some 45 persons hanged for politically inspired acts of violence since 1960.

Such violence was a last flickering of protest. White South Africa, confident that it faced no dangerous challenge from the United States or other Western states, was facing a period in which white strength was to be consolidated rather than undermined and white initiatives to enlist black collaboration and compliance were to be accelerated. Meanwhile, Lutuli's bitter verdict on Rivonia stood: sentencing "brave just men ... to he shut away for long years in the brutal and degrading prisons of South Africa ... will leave a vacuum in leadership," he said. "With them will be interred this country's hopes for racial co-operation."