

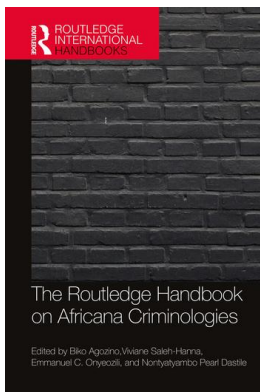
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Biko Agozino, Viviane Saleh-Hanna, Emmanuel C. Onyeozili,
Nontyatyambo Pearl Dastile

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Nontyatyambo Pearl Dastile, Sabelo J. Ndlovu-Gatsheni

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1

NELSON MANDELA'S CRIMINOLOGY

A decolonial intervention

Nontyatyambo Pearl Dastile and Sabelo J. Ndlovu-Gatsheni

Introduction

Nelson Mandela attained the status of global icon partly because of serving 27 years in prison and partly due to his unique approach towards the rebuilding of a post-apartheid South Africa predicated on principles of forgiveness, reconciliation, unity, nonracialism, and liberal democracy. Like many other African leaders who fought against colonialism, Mandela emerged from prison to lead South Africa into a post-apartheid era. What is of interest to us is how the apartheid colonial system criminalized African struggles for deracialization and decolonization and, indeed, for social justice – in the process, labelling such fighters for freedom as Mandela “terrorists.” Mandela was condemned as a terrorist and a communist, along with others who were threatening Christian civilization as represented by White settlers in the entire southern African region. We, therefore, use Mandela’s experience of incarceration to reveal the dynamics of criminalization of the very African struggles for liberation. Consequently, we elevate Mandela’s life of struggle to a “Mandela phenomenon”: that is, an embodiment of liberatory spirit that successfully turned the tables and led to apartheid colonialism being declared a crime against humanity. The chapter focuses on how Mandela used the Rivonia trial to put the apartheid colonial regime on the dock and how he exposed its crimes to the entire world. Building on Mandela’s speech at the Rivonia trial, the chapter opens the canvas to mount a decolonial perspective that identifies colonialism and coloniality crimes against humanity. We advance the idea of Mandela assuming the position of judge inside an apartheid colonial court so as to represent all the enslaved, colonized, and racialized peoples.

There is only one line, purpose, and reason for colonialism; it is to destroy, denigrate, and brutalize those who were deemed criminal, such as Nelson Mandela. This chapter seeks to answer the question of what it meant to be a criminal

in colonial times. What do criminology and decoloniality have to unravel as disciplines that fail to acknowledge and realize colonialism as a system that created Blacks as criminals during colonial times and continued to do so under apartheid South Africa? The chapter is divided into three parts. The first part sketches Mandela's "crimes" and offenses during the era of colonialism. The second part looks at Mandela's representation and storytelling or narrative in court as he successfully attempted to humanize himself and others. The last part of the chapter paves the path for criminology, a discipline bedeviled by disciplinary decadence, and thus attempts to answer the question of the belonging and identity of criminology. "What would a criminology of Nelson Mandela entail?" is what the last part seeks to answer.

Framing the contours of anticolonial/liberatory criminology

There is no doubt that criminology in South Africa has features of Orientalism and Occidentalism. This is clear in the way in which colonial criminology evolved in South Africa (Dixon, 2004). Criminology in South Africa unfolded as part of Euromodernity's claims of ushering in salvation, progress, civilization, modernization, development, and emancipation. Law and criminology were effectively used in what became known as "pacification of barbarous tribes." Consequently, all those people who resisted colonial encroachment were labelled criminals. This takes us to a very relevant question of who/what was a criminal or a crime under colonialism.

A response to this haunting question enables the laying down of a framework of anticolonial/liberatory criminology that legitimizes African resistance to colonialism, capitalism, and patriarchy. In this framework, colonialism and coloniality emerge as crimes against humanity. Resistance in the eyes of colonialists amounted to "offending against" the system. Institutions of incarceration emerged under colonialism as part of the consolidation of conquest and domination over those who were termed "natives." It is therefore not surprising that in former settler colonies like the United States of America and South Africa, most criminals are Black, from poor economic backgrounds, and can barely afford legal representation. Colonial criminology functioned along the lines of criminalization of Indigenous people's ways of living and resisting.

Hence, criminology has features of Occidentalism, in which courts barely take the distinct cultural and linguistic categories into consideration when making judgements. Colonial police were law unto themselves when confronting the "natives." Thus, colonial criminology amounted to legitimation of colonial lawlessness. The question that arises is "How does criminology, in its definition of crime and criminality, take into account the histories of colonialism and apartheid imposed on Black people in South Africa?" Colonial racism became an organizing principle of even the justice system. Justice had a color and, indeed, a gender. This is why anticolonial/liberatory criminology has to be predicated on decolonization and decoloniality for it to shift from imperialism, racism, and sexism.

Lessons from Mandela's life of struggle and imprisonment

Mandela's life of struggles and imprisonment are read as texts, which are revealing of how apartheid colonialism literally criminalized Black people. This is why Mandela indicated that

it was a crime to walk through a Whites Only door, a crime to ride a Whites Only bus, a crime to use a Whites Only drinking fountain, a crime to walk on Whites only beach, a crime to be on the streets after 11 p.m., a crime not to have a pass book and a crime to have the wrong signature in that book, a crime to be unemployed and a crime to be employed in the wrong place, a crime to live in certain places and a crime to have no place to live.

(Mandela, 1994:172)

According to Soudien (2015:335), "Mandela and his comrades worked through, often with great difficulty and even contradiction, the questions of their individual and collective pasts, and their subjectivities and begin to delineate alternative visions of what the new South Africa could look like." Mandela persisted through his criminalization and wrestled with difficult questions of his humanity, criminalization, and alleged offending behaviors. Thus, one cannot look at Mandela and fail to sketch the colonial offenses through which he was, on several occasions, wrongly incarcerated for demanding social equality and justice. Mandela's time in prison could be read as "in the beginning to construct a response to whether Mandela's history of incarceration" can be romanticized or not is to alert to "the fact of overcoming rather than succumbing to the apartheid regime's intent to destroy its opponents," and this is the description that depicts the way in which Mandela served his time in prison (Soudien, 2015:355).

Accused No 1: The "crime"

From a young age, from Mandela's involvement in student protests at the University of Fort Hare to his being suspended and expelled from the university, we see a sign and symbol of his beginning to contest the identity of being a deviant deserving criminalization. As Sitze (2014:139) argues, this was a time when Mandela

encountered the root of south African law, a specifically conceptual trouble. Mandela would have been left with the realization that the very same colonial administrative apparatus that spoke of itself, using the lexicon of the nineteenth century liberalism, as a guardian and trustee for native populations, could and did double as an occupying army – an apparatus whose normalized exceptions to law, pass laws, above all – resembled nothing so much as perpetual martial law.

Thus, for the first time, Mandela encountered a double identity: that of being Black and that of being a deviant. Indeed, one of his lecturers, Hlahlo, even believed that

Mandela and other Blacks did not belong to the classroom. In his words, “law as a social science was too rigorous for women and blacks to master” (Mandela, 1994:353). The subsequent arrests of Mandela, including several bans, are highlighted to somehow prove that Hlahlo’s words came true for Mandela to be regarded as an outcast and a criminal.

In the words of Mandela, from his name, Rolihlahla, one sees the birth of someone whose identity was associated with his name. Rolihlahla, loosely translated, means *troublemaker*. However, he says in his autobiography,

I do not believe that names are destiny or that my father somehow divined my future, but in later years friends and relatives would ascribe to my birth name the many storms I have both caused and weathered. The years of my birth marked the end of Great War; the outbreak of an influenza epidemic that killed millions throughout the world; the visit of a delegation of the African National Congress to the Versailles peace conference to raise the grievances of the African people of South Africa.

(Mandela, 1994:3)

The first scene of the crime was his education. Having a Bantu education, Mandela soon learned how the English were assumed to be superior to any other beings. But in his interactions with Chief Joyi, he, in his own words,

railed against the white man, whom he believed had deliberately sundered the Xhosa tribe, dividing brother from brother. The white man had told the AbaThembu that their chief was a great white queen across the ocean and that they were her subjects. But the white queen brought nothing but misery and perfidy to the black people; if she was a chief, was an evil chief.

(Mandela, 1994:4)

These war stories signaled the event of colonialism through the usurpation of land, the taking over of land belonging to Blacks in order to engross its own empire. This was the beginning of Mandela’s political awareness through the narratives and storytelling of Chief Joyi. Storytelling has been part of Africa’s Black pride through generations. In colonial times, these stories served to speak the truth and disavow the education which Mandela had been taught in his schooling years which was the scene of the crime.

Another example of a storyteller was Chief Meligqili, who would further attest to the consequences of colonialism as follows:

[W]e have just circumcised them in a ritual that promises them manhood, but I am here to tell you that it is an empty, illusory promise, a promise that can never be fulfilled. For we Xhosas, and all black South Africans, are a conquered people. We are slaves in our own country. We are tenants on our own soil. We have no strength, no power, no control over our own destiny in the land of our birth. They will go to cities where they will live

in shacks and drink cheap alcohol, all because we have no land to give them where they could prosper and multiply. . . I well know that Qamata (God) is all-seeing and never sleeps, but I have a suspicion that Qamata may in fact be dozing. If this is the case, the sooner I die the better, because I can meet him and shake him awake and tell him that the children of Ngubengcuka, the flower of the Xhosa nation, are dying.

(Mandela, 1994:35)

We argue that these two instances of storytelling were the beginning of the formation of Mandela's political life as he says "I was beginning to realize that a black man did not have to accept the dozens of petty indignities directed at him each day" (Mandela, 1994:59). As he moved from Mqhekezweni to Alexander, he was confronted daily with police raids as well as the mass detention of scores of Black people. The mass incarceration of Black people would persist in South Africa during the apartheid years. These Black people were charged and incarcerated for, amongst other things, pass violations, possession of liquor, and failure to pay the poll tax.

His first encounter with the law was when his friend was arrested for gun possession. The gun was owned by Mandela, and he confessed this to the police. His second arrest would be when he boarded a train meant for Whites only, which was a crime in apartheid South Africa (Mandela (1994:78). This would signal his realization that "justice was not at all blind" (Mandela, 1994:105). Mandela's coming of age would result in him saying,

I was angry at the white man not racism. While I was not prepared to hurl the white man into the sea, I would have been perfectly happy if he had climbed aboard his steamships and left the continent of his own volition.

(Mandela, 1994:129)

The beginning of his active political movement

Certain laws were introduced, such as the Suppression of Communism Act, that rendered it an offense to belong to a political party (Mandela, 1994:134). A second law was the Group Areas Act, which was the basis of residential apartheid (Mandela, 1994:143). A further encounter with the law for Mandela was an incident in which he accidentally hit a White boy with a car. Recognizing that the accident was caused by a Black man, the local White policeman said "*Kaffer jy sal kak vandag*" (Kaffir you will shit today) (Mandela, 1994:144). Mandela's response was "in no uncertain terms that I would shit when I pleased, not when the policeman told me to" (Mandela, 1994:144). This resulted in a threat of his arrest, which was easily done at the time.

His first ban for political activities followed these two incidents. During a mass defiance campaign organized by the ANC, Mandela and others were arrested and imprisoned. This was not the first time he had been detained. In apartheid South Africa, arrests and detentions of this nature only served to strengthen the cause of fighting for freedom among Black people. As Mandela observed: "even on our way to prison, the vans swayed to the rich voices of Nkosi Sikelel'iAfrika, the hauntingly

beautiful national anthem. Until then I had spent bit and pieces of time in prison but this was my first concentrated experience” (Mandela, 1994:137). While this was the case, and they were met with police brutality, including the killing of 18 people who were involved in silent protests, Mandela was resolute in calling for nonviolent protests, which included non-cooperation and nonviolence. Forms of nonviolent protests included

entering proscribed areas without permits, use Whites Only facilities such as toilets, Whites Only railway compartments, waiting rooms and post office entrances. They would deliberately remain in town after curfew. Each batch of defiers would have a leader who would inform the police in advance of the act of disobedience so that the arrests could take place with a minimum disturbance.

(Mandela, 1994:138)

For these arrests, convicted defiers would receive a penalty of a few nights in prison and an imposition of fines that barely exceeded ten pounds.

Banning was another form of punishment imposed on Mandela. This meant that he had to resign from active involvement in the African National Congress, and he described the bans imposed on him as a form of “walking imprisonment.” This was more true because these bans were imposed randomly, without a burden of proof of whether a violation had taken place or not. Any violation of a ban would mean incarceration (Mandela, 1994:155). Mandela described one of his arrests thusly:

On 30 July 1952, at the height of the Defiance Campaign, I was at work at my then law firm H.M. Basner when the police arrived with a warrant for my arrest. The charge was violation of the Suppression of Communism Act.

(Mandela, 1994:156)

My arrest and that of others culminated in a trial in September in Johannesburg of twenty one accused. Our appearances in court became the occasion for exuberant political rallies. On 2 December we were all found guilty of what Judge Rumpff defined as “statutory communism” – as opposed to what he said is commonly known as communism. According to the statutes of the Suppression of Communism Act, virtually anyone who opposed the government in any way could be defined as – and therefore convicted of being – a statutory communist, even without ever having been a member of the party. The judge was fair minded and reasonable, said that although we had planned acts that ranged from open non-compliance of laws to something that equals high treason, he accepted that we had consistently advised our members to follow a peaceful course of action and to avoid violence in any shape or form. We were sentenced to nine months imprisonment with hard labor, but the sentence was suspended to two years.

(Mandela, 1994:159)

What is most interesting about all these arrests is how the stigmatizing experience of being incarcerated had been removed from most of the convicted fellows. This, indeed, was one of the turning points for criminology as, in most cases, offenders suffer not only the pains of incarceration but also the associated stigma. As Mandela described in his autobiography, the “fear of prison is a tremendous hindrance to the liberation struggle. From the defiance campaign onward, going to prison became a badge of honour among Africans” (Mandela, 1994:159).

Further to this, incarceration made Mandela aware of his subjectivity. He no longer felt inferior and had a sense of purpose. His voice in the struggle was restored by frequent involvement in and leadership of defiance campaigns and the constant bans imposed on him. Criminology should now ask what it was like to be a criminal in colonial times. Was there such a thing as a criminal in apartheid South Africa? Did the police brutality and persistent harassment of Black people not result in the resurrection of the subject and identity of a Black person in apartheid South Africa? How then did criminology, a discipline invested in defining and describing criminal behavior, respond to the criminalization of the Black body, particularly those involved in the fight for the freedom and liberation of Black Africans in South Africa? These questions will be responded to in the last section of this chapter.

Banning not only confines one physically, it imprisons one's spirit. It induces a kind of psychological claustrophobia that makes one yearn for not only freedom of movement but spiritual escape. Banning was a dangerous game, for one was not shackled or chained behind bars; the bars were laws and regulations that could easily be violated and often were.

(Mandela, 1994:166)

One of the most critical issues that these forms of incarceration and bans would unravel was the way in which Blacks were oppressed in South Africa, not only as a race but also as an economic class. One of the apartheid laws, for instance, prohibited Black people from residing in White neighborhoods. People were relocated from their areas of residence when such areas were declared White areas. As a result, Black people were desperate for legal help, which led to Mandela and Tambo opening up their law firm. Their practice not only allowed legal reprieve to the indigent of South Africa but also provided a voice and subjectivity to those who lacked them and were silenced by the brutal apartheid system.

Every week we interviewed old men from the countryside who told us that generation after generation of their family had worked a bleak piece of land from which they were now being evicted. Every week we interviewed old women who brewed African beer as a way to supplement their tiny incomes, who now faced jail terms and fines they could not afford to pay. Every week we interviewed people who had lived in the same house for decades only to find that it was now in what was declared a white area and they had to leave without any recompense. Every day we heard and

saw thousands of humiliations of ordinary Africans confronted every day of their lives.

(Mandela, 1994:173)

Despite all his work as an attorney, he still received bans. He was banned from political party involvement, banned from leaving the province, and had to resign himself to being on the sidelines of the political party he was working for and devoted to. Such bans resulted in a realization that forms of nonviolence failed to serve the political cause as “the oppressed people and the oppressors are at loggerheads” (Mandela, 1994:189). Indeed, in his words,

[A] freedom fighter learns the hard way that it is the oppressor who defines the nature of the struggle, the oppressed is often left no recourse but to use methods that mirror those of the oppressor. At a certain point one can only fight fire with fire.

(Mandela, 1994:194)

Another realization for Mandela was that in “South Africa to be poor and black was normal, to be poor and white was a tragedy” (Mandela, 1994:219). With this realization came the third ban, which was shortly followed by an arrest for high treason. This was to be a test for Mandela and others. Still, despite the arrests, the waves of protests continued throughout the country, spreading to even Black rural areas and around the world. Owing to these protests, scores of Black people were arrested and charged. However, the trial was to be the beginning of the narrative accounts of Mandela and others in court.

We began a long and detailed argument contesting the indictment itself. We claimed, among other things, that the indictment was vague and lacked particularity. We also argued that the planning of violence was necessary to prove high treason, and the prosecution needed to provide examples of its claim that we intended to act violently. It became apparent by the end of our argument that the three judges agreed. In August, the court quashed one of the two charges under Suppression of Communism Act. This was extraordinary, but we were too well versed in the devious ways of the state to celebrate.

(Mandela, 1994:263)

Under apartheid a black man lived a shadowy life between legality and illegality, between openness and concealment. To be a black man in South Africa meant not to trust anything, which was not unlike living underground for one’s entire life.

(Mandela, 1994:315)

I realised the role I could play in court and the possibilities before me as a defendant. I was the symbol of justice in the court of the oppressor, the

representative of the great ideals of freedom, fairness and democracy in a society that dishonoured those virtues. . . . [B]y representing myself I would enhance the symbolism of my role. I would use my trial as a showcase for the ANC's moral opposition to racism. I would not attempt to defend myself so much as put the state itself on trial.

(Mandela, 1994:375–376)

That day, I felt myself to be the embodiment of African nationalism, the inheritor of Africa's difficult but noble past and her uncertain future.

Mandela's indictment of the apartheid colonial system

Mandela, during his Rivonia trial, began to test the court's procedures by conducting his own defense. His requests to make a statement were loud. Indeed, at the time, Blacks who appeared before the courts were laid in a shroud of silence. They were unheard for they had no voice. As Lawrence (1995:341) states, "the blackness of invisibility is the blackness of this silence . . . without a voice, and African is absent or defaced, from history." Mandela meant to defy the court processes when he first wore the *kaross*, a traditional African garment, to end the formalities of the White man's court. The use of the phrase "White man's court" is deliberate as all the judges were White males. A second form of defiance occurred when Mandela requested to conduct his own defense.

When the case resumed a week later I was given permission to address the court before I was asked to plead. I hope to be able to indicate, I explained, that this case is a trial of the aspirations of the African people and because of that I thought I prefer to conduct my own defence.

(Mandela, 1994: 195)

In his address, he detailed the horrific ways in which the apartheid system dealt with Black Africans. He mentioned how the system of apartheid made people objects and how his fight against the apartheid regime was to render African people subjects. This was a form of self-identification wherein the speaker, Mandela, posited himself as the subject. Mandela's speech did not just serve to exonerate himself and his comrades from the pending subjection to sentencing by the court. He spoke about the oppression and discrimination against all people. To him, liberation could only be achieved if all Black people were free from oppression and not only a select few. While his narration may not have served to see them exonerated from imprisonment, Mandela nevertheless reified the importance of oral representation in court, thus giving primacy to the words. This way, he inspired feelings of commonality and connectedness among people of African descent. This is no truer for the courts, who often ignore the narrative accounts of the incidents from the offender. Mandela gave a context and cultural meaning, feelings, and understanding to the court. Indeed, courts are well known for being ahistorical and non-contextual. Mandela proved through this that "human problems considered resolved in the absence of context are often misperceived, misinterpreted and mishandled" (Lawrence, 1995:345). When he gave the

narrative form to the judges, he provided a rich evidentiary record for the courts to consider during sentencing. While the courts failed to interpret his speech as a form of evidence, Mandela made his voice and the voices of African people heard so they could be assimilated in discourses.

I listened to the elders of the tribe telling stories about the good old days before the arrival of the white man. Then our people lived peacefully, under democratic rule of their kings and their amapakati and moved freely and confidently up and down the country without let or hindrance. The country was our own, in name and right. We occupied the land, the forests the rivers; we extracted mineral wealth beneath the soil and all the riches of this beautiful country. We set up and operated our own government, we controlled our own arms and we organized our trade and commerce. The elders would tell tales of wars fought by our own ancestors in defence of the Fatherland, as well as the acts of valour by generals and soldiers during these epic days.

(Mandela, 1994:391)

I was made, by the law, a criminal, not because of what I had done, but because of what I stood for, because of what I thought, because of my conscience. Can it be any wonder to anybody that such conditions make a man an outlaw of society? Can it be wondered that such a man, having been outlawed by government, should be prepared to lead the life of an outlaw, and I have led some for months, according to the evidence before this court? . . . This has been a life infinitely more difficult than serving a prison sentence.

(Mandela, 1994:392–393)

Conclusion

This chapter proposes a framework for anticolonial/liberatory criminology founded on African resistance to colonialism, capitalism, and patriarchy. Mandela's life of struggle and imprisonment embodies the spirit of resistance and indictment of colonial apartheid as a crime against humanity. To achieve these objectives, we allow Mandela to speak against apartheid colonialism and to stand out as a judge rather than a criminal, terrorist, and communist. By elevating Mandela's life of struggle and imprisonment to the level of a phenomenon and avoiding the reductionist approaches of a persona, we successfully delve into the formation, crystallization, and maturation of Mandela into an unwavering soldier for justice, equality, freedom, and liberation. We achieve this through allowing Mandela to speak truth to colonial apartheid power.

When President Mandela chose to use the Truth and Reconciliation Commission to address the crimes of the apartheid era instead of seeking punitive justice, he was signaling that the imperialist reason for criminology, with emphasis on the punishment of offenders, could be decolonized by focusing on the forgiveness of the unforgivable. Under Mandela, the death penalty was abolished, and since Mandela, the ANC government has legalized same-sex marriage and decriminalized marijuana

while proposals for the redistribution of land remain a policy priority. We advocate penal abolitionism in the spirit of Mandela's criminology, and we call for reparative justice to be introduced to do something for the victims of apartheid instead of seeking revenge against apartheid criminals.

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