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Lawyers at the Front Line

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prohibitions upon land transfers between residents in Scheduled Areas (i.e. India's indigenous peoples) and outsiders; as well as the fact that, by making religious denominations the bearers of constitutional rights through provisions such as Article 26(2), the Indian Constitution appears to preclude the possibility of internal cultural dissent (recent litigation on this issue has led to ambiguous outcomes). It might be fascinating to ask, there-

fore, how these seemingly conflicting constitutional visions are to be reconciled.

India's Founding Moment is a deep and thoughtful account of the framing of India's Constitution. It locates the Constitution within a history of democracy, democratic ideas and democratic contestations. It is an invaluable contribution to the history of constitutionalism. ■

Alexandra Woods

Lawyers at the Front Line*

This is an impressive book that tells the stories of the legal figures involved in the events surrounding the 1895 Jameson Raid in the South African Republic (ZAR). It therefore deals with a well-known subject but from a new departure point, namely from character sketches of the lawyers involved. Some of these are already familiar to the South African legal profession, but Rogers crucially also includes a number of lesser-known figures. Divided into four parts, with the Raid occupying the central position, Rogers adopts a biographical approach to detail the legal-political dynamics of a marked moment in South Africa's long history of race politics.

Beginning with the historical setting in Part I, Rogers immediately provides a sense of context through the use of contemporary terminology, describing the polarisation between the Dutch and English populations, between the agrarian Boers (burghers of the ZAR) and the professional Uitlanders («outsiders», referring to the predominantly English-speaking newcomers attracted to the ZAR on the discovery of gold). Rogers discusses the reasons for the Jameson Raid, and finds that Uitlander discontent about the strict franchise laws – despite having been the main grievance propagated at the time – was probably only a minor part within a complex of British imperialist

agendas and capitalist interests. But the ground that Rogers really sets in these chapters is that of the racial tensions between the white populations of South Africa in the late 19th century.

Part II introduces us to the *dramatis personae*, the lawyers involved in the centre, at the peripheries, and behind the scenes of the Jameson Raid and the ensuing treason trial. Part III continues their stories leading up to and during the Raid and the subsequent trial. Finally, Part IV considers their divergent careers in the aftermath of the trial. The biographies are replete with factual detail, evidencing extensive historical work on known legal figures such as J. G. Kotzé, John Wessels, Jacob de Villiers as well as William Henry Somerset Bell, the first editor of *The Cape Law Journal* (later *The South African Law Journal*), with additional insight into the roles of James Rose Innes and W. P. Schreiner. What is novel is the regard given to characters less familiar, such as Henry Hull, Edward Hutchison, Willem Van Hulsteyn, and Charles and James Leonard. Rogers dedicates three chapters to the story of Charles, an attorney and one of the lead conspirators, and his ultimate escape to England. He brings these lawyers to life through a careful process of quoting source material illustrative of their personalities. Thus, we learn that self-assurance and outspokenness were significant character

* OWEN ROGERS, *Lawyers in Turmoil. The Johannesburg Conspiracy of 1895*, Cape Town: Stormberg Publishers 2020, ix + 517 p., ISBN 978-0-6399892-5-9

traits of William Bell, for example, not only because Rogers tells us so, but through selected excerpts from Bell's commentaries in the *Cape Law Journal*. With this type of detailed attention, Bell and the others are granted their own voice, instead of the author speaking for them.

Despite such comprehensiveness, Rogers nevertheless assumes his readers to have a basic knowledge of South African legal history and the significance of the names and the period in the country's political history. The book is written for lawyers or legal historians, the writing itself revealing a judge's (or historian's) ability to dissect the facts, a balancing of perspectives, interspersed with even-handed commentary. Rogers shows how Charles Leonard's »escape«, for example, was considered cowardly compared to the bravery of those who remained behind to face their trial. Here, he does not downplay Leonard's or the other conspirators' character flaws, but gives their actions justification too. This balanced analysis, based directly on primary sources, not only makes for a reliable account, but also provides a glimpse into the complexity of values and sentiments of the time. What is also fascinating, and goes beyond simply an account of the legal practitioners' roles in the conspiracy, is the insight Rogers gives into the extent to which these lawyers were involved in high politics.

Part III brings us to the climactic event of the Raid and reveals Rogers' excellent grasp on a breadth of sources, in particular when describing the treason trial. From a comparison of dock examinations, personal accounts, law journal publications and newspaper reports, Rogers is able to draw a vivid picture of the gathering crowds in Johannesburg anticipating the coup d'état, the arrest and trial, and prison life, including the fact that Mark Twain (Samuel Clemens) visited them while in gaol, jokingly undertaking to suggest to President Kruger that their sentences be lengthened since Twain considered prison the ideal place to write. This sentiment he also mentioned to a journalist who, on this basis, published an article in which he was infuriated at the »soft life« of the prisoners, leading to a reduction in their rations! Rogers stitches together various sources to relate these details. This is standard historical methodology, but particularly necessary for work on 19th-century law cases. Sources beyond the written case law reports have to be taken into account largely because reported judgments came relatively late to

South Africa. The first full publication was *Watermeyer's Reports*, published in the Cape of Good Hope in 1858, which covered cases of the Cape Supreme Court decided in 1857. While *Menzies' Reports* covered 30 years of court cases, beginning in 1828, they were published only posthumously in 1868. Transvaal law reporting began even later, with Kotzé's *Cases Decided in the High Court of the Transvaal Province, with table of cases and alphabetical index* in 1885. Due to this late, and then limited, coverage, judges often relied on handwritten notes, most of which have probably not survived. Moreover, the printed reports now available to legal historians likely contain many inaccuracies, as they were mainly related by news reporters or only written for publication years later. As a result, and as Rogers himself acknowledges, the accuracy of the published arguments and judgments during this time is not as reliable as the verbatim transcripts we have today. Indeed, Rogers shows this by comparing differing *ex tempore* reports of the Jameson trial. In doing so, he highlights the challenge of these sources, but at the same time meets this challenge by careful analysis and an acknowledgment of the biases on all sides. This is a humble approach, which has resulted in a work of integrity.

The book is structured by chapters that are dedicated either to one or to a number of the lawyers involved in the Johannesburg conspiracy. In following the practitioners in their diverging routes after the trial, Part IV inevitably lacks the same level of personal, professional and political interconnections that were traced in the previous chapters. The absence of a centralising theme leads to a slightly staccato effect. However, while one could read the chapters of *Lawyers in Turmoil* in a piecemeal fashion to follow a particular individual's trajectory, say, the book is not comparable to an encyclopedia that can be opened on any page. Rogers' narrative weaves the biographies and events together. And although the strands may become looser towards the end, the dominant themes that run throughout the book are the vibrant political lives of these lawyers, the collegiality of the members of the profession towards each other despite very different political views, and Rogers' general esteem for their characters and professional careers. The issue of race is likewise an overarching theme, the tension seeming as visceral at times as in the later years of South Africa's history. Of course, adding the perspective of other

races would not have been feasible in a book already voluminous, although Rogers does occasionally mention the black, Chinese and Indian positions. However, while the scene remains white and thus partial, Rogers, in bringing lawyers to the front line of his analysis of the Jameson Raid, has

contributed a careful and in-depth study in legal history to the history of identity and race politics in South Africa, a far from modest achievement.

Pamela Alejandra Cacciavillani

Partenze senza destinazione: storie ed eredità di un esilio intellettuale*

Questo libro è un invito di Eva Elizabeth Martínez Chávez ad analizzare, e ripensare, la vita dei giuristi europei che hanno lasciato le loro terre per motivi politici, razziali e ideologici nel corso della seconda parte del XIX secolo. L'attenzione è fissata soprattutto sulla storia dei giuristi spagnoli giunti in Messico a causa della guerra civile spagnola (1936–1939). Martínez Chávez spiega che la guerra perduta e la violenza del regime di Franco sono punti cardinali dell'esilio più grande della storia di Spagna: l'esilio repubblicano del 1939.

Il testo è suddiviso in tre parti intitolate *«El éxodo europeo de entreguerras»*, *«En búsqueda de un nuevo destino»* e *«Tierra de encuentro y construcción»*. La prima parte permette al lettore di ripercorrere diversi territori europei come l'Italia, la Germania, la Francia e la Spagna, tutti paesi dove l'autoritarismo, e l'intolleranza, distrussero e cambiarono le vite di migliaia di persone. Da sottolineare qui è la riflessione sulle vite dei giuristi fondamentali nella formazione del pensiero giuridico contemporaneo occidentale. Tra di loro spiccano nomi come: Tullio Ascarelli, Norberto Bobbio, Marcello Finzi, Werner Goldschmidt, André Gros, Hermann Heller, Hans Kelsen, Roger Picard, Silvio Trentin.

La molteplicità delle esperienze analizzate non solo mostra l'esilio spagnolo come un fenomeno più ampio, ma mette anche in chiaro le relazioni che già esistevano fra i giuristi europei. Si può dire

che queste relazioni formavano una infrastruttura internazionale che, ad oggi, ha fornito la circolazione del pensiero giuridico. Il continente americano occupava uno spazio centrale in questa rete intellettuale. L'autrice fa un bilancio approfondito, dato che c'erano tante Americhe. In questo spazio geografico c'erano paesi privi di libertà come la Repubblica Dominicana, altri dove l'esistenza di una comunità di connazionali svolgeva un ruolo chiave nella scelta della destinazione, come l'Argentina. Inoltre, nel concetto di America c'erano anche gli Stati Uniti, spazio chiave per l'accoglienza della comunità giuridica tedesca. Così, mentre l'Europa attraversava un periodo difficile, l'America era pensata come uno spazio ricco di opportunità. Nessuno di questi esiliati conosceva il destino finale del viaggio e nemmeno la durata, l'unica certezza era la partenza.

In questo contesto, la seconda parte del testo presenta il Messico come uno spazio cruciale per i repubblicani spagnoli per diversi motivi; ad esempio, la politica sviluppata dal presidente Lázaro Cárdenas, la posizione della delegazione messicana nella Società delle Nazioni e il corpo diplomatico messicano specialmente in Spagna e in Francia. Per quanto concerne l'accordo tra la Francia e il Messico (*Acuerdo Franco-Mexicano*) si può dire che questo quadro giuridico non solo garantiva protezione ai rifugiati spagnoli che arrivavano in

* EVA ELIZABETH MARTÍNEZ CHÁVEZ, *España en el recuerdo, México en la esperanza. Juristas republicanos del exilio*, Madrid: Dykinson 2020, 343 p., ISBN 978-84-1324-773-1