

- All right, so welcome. I'm sorry that you're having all the issues with power, but I will hand over to you.

- Thank you, Judi, and apologies to everybody. This has been a rather stressful last hour and a half because where I live, we have not had power for hours and hours, and eventually my inverter ran out. So that means that I have been struggling to try to see how I could best connect. Anyway, here we are. I wanted just to make a comment if I can, to start with, with regard to last night's wonderful session between Trudy and Norman Lebrecht, because, which has got nothing to do with my talk, but it just struck me that I wanted to share it with you. So of course the issue that came up was how was it, that people like Freud and Marx were able in their own way, somehow to have assimilated? I think Norman Lebrecht spoke about a sort of collective subconscious, which allowed all these great people to somehow know Talmud.

And I thought to myself, there's a wonderful passage in the Talmud at 30, where it says the following, "That in the womb, the child learns all of Torah and knows all of Torah, and as soon as the child is born, an angel puts a finger on the lips of the child who forgets everything that they have learned and has to learn it all over again". It seemed to me, in the sense about the subconscious, an interesting Talmudic addition to what was discussed last night. But let me now get on to my own talk. Now I come in a sense with some advantage and disadvantage because of the fact that I am speaking after both Judi and William Tyler. And I wanted if I may, to try as best I can, just to extract for your benefit, some of the main points made in those two wonderful presentations because they're relevant to mine. Now, and I apologise, I'm not taking the whole lecture, I've just written down some insights that struck me as relevant to my own presentation.

Trudy spoke about the fact that very much part of the Nazi project, my words rather than hers was but basically to make Germany great again. And the way that happened, was the recourse to a mythical past and the blaming of the Jews in particular for the defeat in the First World War. And what was illustrated in that lecture so well was of course that we had a very, very nuanced, social democratic constitution, the Weimar constitution, which on one level was really as progressive as, well, modern constitutions and maybe even more so. And yet it collapsed under the sheer weight of politics at the time, which meant that the conditions, the economic and political conditions that prevailed in the Weimar regime subverted the very constitutional idea. And I want to hold onto that insight. In William Tyler's presentation, towards the latter partner thereof, he made four points with regard to the weakness of democracy.

In other words, the argument that why is it that democracy seems to go through crises of the kind that we're experiencing at this present time? And he spoke about the inherent instability of democracy. Of course, the idea being that sometimes if you don't have a system, well, if you have a system where the party is on equipoise, it creates difficulty, and it creates difficulty because of the nature of the contest, and the nature of the contest almost inevitably creates some measure of instability inherent in the model. Linked to that is a question of short-termism,

that parties are elected generally in a democracy for a very short time, and it's very hard for them, even if you're president in the United States you have four years, perhaps you get another four, but it's very hard to develop a really serious, coherent measure of policy because of the short term nature of the democracy and regular elections. Thirdly, was the question of corruption, the way in which a whole range of forms of political corruption have eaten away at the democratic fabric of society. And finally, the issue of voter ignorance.

If you wish, the idea that very often voters are like turkeys voting for Christmas. And so these are issues that he spoke at some length about and about the crises of democracy with particular reference to Britain and America. I want to suggest to you, that there's a slight, well, there is a slight difference between the two presentations to this extent, and certainly to mine, because I want to argue that these four points that William made, not that they're wrong, not that in fact one should reject them, but that when we look at the situation in the world today, they don't provide for me the kind of comprehensive explanation for the crises we're in, far from it. And that all of these points, all four that I've mentioned, instability, short-termism and corruption and voter ignorance, all four of these have always and invariably been there.

My point tonight is what has created the crisis in the 21st century, which seems to me, to be a somewhat more virulent kind than anything we experienced from after 1933? But more important than that, is that there was, as political scientists have said, constitutional democracy after the Second World War grew exponentially by 19, sorry, by 2006, there were roughly 121 constitutional democracies around. Now you may say many of them were imperfect democracies, and indeed you're right. But the fact is that there's been a dramatic decline thereof, and for a variety of different reasons. For example, it's due to an increase in number of what some have called defective democracies, that is, regimes that retain the formal institutional trappings while flouting the norms and values in which constitutional democracies are based.

And we've seen that, dramatic failures of the Arab Spring movement of 2011, Egypt reverting to military rule, Libya, Yemen, and Syria, descending into armed conflicts and political repression, deepening in all of the Gulf states, are the high profile examples of this problematic. But then of perhaps even greater significance to our concerns, in the emergence of the illiberal democracies in Hungary and Poland. In Hungary in particular, after the collapse of the wall, the Hungarian constitution was impressive and particularly well thought through. The problem was, that it soon collapsed, as did the one in Poland. There's now been growing electoral success of nationalist parties such as the Front National in France, the Alternative for Deutschland in Germany, the Freiheitliche Partei in Austria. Constitutional values have been eroded by the increasing political influence of religious fundamentalism in countries like Turkey and India.

And by the rise of the power of authoritarian presidential figures like Maduro in Venezuela, Duterte in the Philippines, Trump in the United States, and Bolsonaro in Brazil, all of which have taken place over the past decade. Similarly, in my own country, in South Africa, there's unquestionably been a failure after the extraordinary successes of the post Apartheid constitutional negotiations to establish a form of, as it were, democracy, which is free, or

relatively free of corruption and does adhere foundationally to principles of accountability and transparency. In 2017, Freedom House, the US human rights organisations found indicators of democratic degradation in 71 countries and concluded that constitutional democracy was facing a serious crisis. Not for nothing, and I'm going to cite a couple of books just to illustrate this, three very eminent constitutional scholars, Mark Graber, Sanford Levinson and Mark Tushnet, wrote a book about a year ago called "Constitutional Democracy in Crisis?" in which there are 38 chapters revealing exactly what I've been talking about.

So when we talk about what is going on at the moment, it seems to me, that there may be more than just the four fundamental characteristics which have been, as it were, inherent in the democratic model. And, in order therefore, to try to probe this somewhat more deeply, I'm going to again cite two references to you, both of which seem to me to be very, very important works, which hopefully some of you may want to read at your leisure. One people might have already looked at, which was a very extensive article in the New York Times on Sunday by the distinguished Yale historian, Timothy Snyder, and I want to come back to that. And then secondly, there is a book which I cannot recommend strongly enough to everybody called, "How Fascism Works, The Politics of Us and Them" by Jason Stanley, a philosopher at Yale. So what is it that they are talking about, which essentially goes beyond that which we've canvassed already? So let me give this to you. In Snyder's attitude, he says, we are now in a post-truth paradigm, which is in his educated opinion, a precursor to fascism.

He calls it pre-fascism. And this is what he says, and I quote, "When we give up on truth, we concede power to those with the wealth and charisma to create spectacle in its place. Post truth wears away the rule of law and invites the regime of myth." So if you take Donald Trump, for example, the insistence on fake news was equivalent to the Lügenpresse, the lying press, which Goebbels pressed so hard in the 1930s. And what Snyder is talking about, is that you can't have, for the long run, viable constitutional instruments and institutions, if you are in a position where there is no agreement at all about how the world operates. I'm not suggesting that we have to go so far as the famous Harvard philosopher John Raw spoke of an overlapping consensus in which we really agree about all sorts of things, but we've got to be in a world where there is some, you can't believe, where over half the population thinks it's a flat earth and the rest of them believe in science. You can't have a world where half the world the Holocaust deniers and the other half understandably adhere to the truth of the horrendous events of the Second World War. You simply cannot have institutions which will sustain the rule of law, that's a Snyder point, in a post-truth world.

And it does seem to me, that what has happened is that we have reached that point in an unprecedented fashion, to be sure, to be sure, there were problems in the period where Trudy was canvassing the Weimar and the rise of Nazism and also in Mussolini's Italy. And it is correct that the advent of radio allowed the Nazis to replace the old kind of pluralism, which was around, with a pernicious discourse, fake news if you wish, the creation of myth, which ultimately reconfigured the reality for millions of Germans. Same was true about Mussolini. What is interesting, and again I recommend another book to you, "The Recent Text", by Anne

Applebaum, who points out quite rightly, that when radio took hold in the way it did and was understood best by the demagogues, like Goebbels, there was an attempt to develop a countervailing force. And that's the advent of public broadcasting, BBC, Public Broadcasting United States. I want to suggest to you that we are nowhere near dealing with the responses to the media at present to the fake news, to the exploitation of social media, of television, and of the range of sources, which as it were, spew out the levels of hatred, which ultimately, essentially, are post truth and which undermine our institutions and which essentially concede power to those who are more charismatic and authoritarian.

And you know, this is, of course it's true that this has been around for some time. Hannah Arendt spoke about Stalin's explanation of starvation in Soviet Ukraine in '32, '33, and blamed the starvation on provocateurs, agents of Western powers. The same was true, and we've spoken about this over and over again in many of the lectures that have been presented at Lockdown University, the way Hitler used the Jews. And it's also true that, therefore this particular period was characteristic of that form of fake news, but we've reached the point, where it is far more pernicious, far more widespread, and far more problematic than at any other time. And I want to play a clip for you, which comes from a remarkable series, again, to which I can recommend wholeheartedly, called "The Loudest Voice", in South Africa we found it on Showmax, I think it's on HBO in other parts of the world, and it is a six part series about the rise of Roger Ailes and Fox News. And whilst I couldn't, find the clip...

- [Judi] Dennis, we seem to have lost you for a sec, we've lost the sound. Ah, apologies everyone. I know we're having some technical issues. Bear with us please. Hi Dennis, are you back?

- Okay, have you, sorry, did you not, can you hear me?

- I haven't started the, I can hear you Dennis, I haven't, there, I can see you're back now, I know you're having some technical issues. I can go ahead and play the clip if you like.

- I dunno when I broke up.

- [Judi] Oh, just before you were introducing the clip, so you can start that again, I suppose.

- Okay. Okay, I will. So what I'm trying to show here, sorry people, I really am, is a clip from the series, "The Loudest Voice", which in South Africa can get on Showmax, I think it's on HBO in the US, and is the six part series of the rise of Roger Ailes and Fox News. It's a magnificent performance by Russell Crowe acting as Roger, got more of it into the discussion. The best I could do was to just give you the clip of the trailer, which I think reflects exactly what I'm talking about. So let's have a look at that.

Video clip plays.

- Television is the most powerful force in the world. We're going to give them a vision of the world, the way it really is, and the way they want it to be. If we can do that, then they will never change the channel. People don't want to be informed, they want to feel informed.

- Is Rupert really as brilliant as they say?

- He hired me, didn't he?

- There's no time for politics.

- It's war.

- Anyone outside Fox is the enemy, and we do not talk about what we do.

- I spoke with the president, we'd like your help moving forward.

- Whatever you need, Colonel, Fox News will back it. Gretchen.

- Roger .

- I had two Miss Americas. Not that one.

- He berates me constantly. He's a bully.

- Give me a little twirl .

- You're out of line, Roger.

- I will do anything to protect my people.

- There is no Fox without you.

- I need absolute loyalty. This is our time. We will make history.

Video clip ends.

- Thanks Judi. Thanks. So what I wanted to get out of that particular clip, if I may, is the idea that Ailes presents as Fox News starts, that there's a whole cohort of the United States who don't want to be informed, they want to think they're being informed, so they're not interested in facts. And his construct for Fox News was ultimately to recreate a different form of reality for a whole cohort of people, millions, who essentially felt disenfranchised and effectively alienated by the conventional media. Now we can talk at length about the causes of that, and I do want to come back to one or two of those if I may in a moment, but what I'm trying to get at here, is that, it's all

very well telling me about the instabilities, the classic instabilities of constitutional democracy, which have always characterised this, but we live in a world in which this kind of construct of an alternative reality, one word totally eviscerates the foundation central to the rule of law to courts, to political institutions that have some credence that if you've got the power, the uncontrolled power of bright sparks, Fox, social media, Facebook, Twitter, you name it, then you have got a problem of a kind that goes to the root of the causes of what is going on at the moment in relation to constitutional democracy and its future.

Let me say, immediately, that there are of course, a number of causes, and some of them track back to what occurred in Weimar, the increasing levels of inequality, the increasing impoverishment of millions of people all over the world, the failure of political institutions to deliver on any form of promise, a level of intolerance for a range of views and those come from the extreme left and the extreme right, although I want to insist that I've always thought the extreme right were more dangerous, I accept that Stalin was as bad as Hitler, but that's a different argument. And that what we've got, is a level of widespread society of, sorry, societies spread right across the world in which people are desperately, not just make sense, but see a reality which they perceive would make sense for them and where they become captured by, as Timothy Snyder said, the alternative news. And it's for that reason primarily, it seems to me, that you've got right across the world very similar fundamentals.

Certainly, let me, always starts with Nazi Germany. So if you look for example, at the way that Germany sought to create a culture of memory, a reconstruction of their history of understanding the Nazi rise to power, give you a quote from, which was cited by Jason Stanley, in 1936, by Heinrich Himmler, who said, "A people lives happily in the present and the future, so long as it recognises its past and the bear to our men and to the German people, that we do not have a past of only roughly a thousand years, that we were not a barbaric others, we want to make up people, again of our history." Just think about that, because that's, if you look at India, Stanley points out that the Hindutva movement, which has taken power in India, has fabricated a version of, political Indian past, who live

- [Judi] Dennis, we're really struggling, we're really struggling with the sound, Dennis.

- Supplement, what is regarded by some dominant national party, Bharatiya Janata Party. Okay, let me try, I might be able to switch to, oh, okay, well Judi, can you hear me?

- Dennis, yes, I can hear you.

- Hello?

- It's popping up as

- Should I continue? I don't know.

- It's just saying that your bandwidth is really, really low, you're breaking out and it's cutting out in various points, it's not very clear.

- Ah, okay. Hold on, let me see whether I can get, I might be able to just rejoin by way of my computer now because the electricity's come-

- [Judi] So I think that you are actually on, so go onto your computer and just have a see how that goes. Apologies to everybody.

- Okay, give me a minute.

- [Judi] We are just having a few technical issues.

- I'm so sorry. Gimme a minute and I'll do that.

- Don't worry.

- I really am struggling, I'm sorry.

- Absolutely no problem at all.

- [Dennis] It's back on. Right, let me just get there.

- [Judi] Thanks for bearing with us everybody.

- Ya, I'm sorry about this. Oh god, I still don't think I've got, afraid I don't think I've got internet yet, so I'm afraid I can't, I don't seem to be able to change to the computer at this stage, Judi, can you not hear me?

- [Judi] We can, but it's very intermittent, you do break up and as you're going along it cuts out. So carry on, see how we get on, maybe it's just, carry on. All right, well, okay, otherwise I'm, you know, if I have to do this again, I'm happy to.

- All right, let's give it a few more minutes and see where we're at.

- Oh, why's that? Sorry, I might be able to move the other computer. Why is that? Oh. Let me just see, hold on.

- Okay. Thanks everybody, for bearing with us. This is technology for you.

- This is the problem of living in South Africa where electricity backs down all the time. Let me, look, I was talking, I dunno if you can hear, but I was talking about India. How's the sound now, Judi? Is it still so terrible?

- No, it's fine now. Someone suggest that I turn your video off and you just speak, so-
- Oh, why don't you do that? Ya, that might help.
- So let's try that.
- Okay.
- So I'm going turn your video off, let's see.
- I'll do that. Okay, there we are. Okay I'm now,
- Okay, let's give right, let's give that a go, Dennis.
- Okay.
- Okay, you continue
- All right.
- And see how that goes.
- [Dennis] So I was going to talk, I wanted to say that the Indian history is exactly the same. There the Hindutva movement fabricated a version of the mythical Indian past with a pure nation of Hindus to dramatically supplement what is regarded by scholars as the actual history of India. India's dominant national party, the BJP, adopted this ideology as it's official creed. It won power by using rhetoric, calling for return to a fictional, patriarchal, highly conservative, ethnic... ethnic and religious
- Oh Dennis, Dennis we lost you again
- Pure party
- For a second as- Dennis?
- Ya.
- Dennis, I'm so sorry
- Ya.
- We've lost you again.

- I can hear you.
- [Judi] So I think that we are...
- [Dennis] Oh dear, I dunno what to do, I don't-
- Having some super issues.
- I think it's probably better at some point if I repeat this lecture.
- [Dennis] Sure, that would be great. I've had a couple of people who asked that already, so.
- [Dennis] All right, I can do that.
- [Judi] Do you want to soldier on and see how we get on?
- [Dennis] Well if people can't hear it's very difficult then.
- Yeah.
- But I'm happy, I dunno what to do, I mean I'm in your hands.
- [Judi] Well, I'm okay for you to, I'm okay for you to continue until it gets to the point where we can't hear any, or, maybe we can just postpone, Dennis. I'm not-
- Okay, wait a minute, I think I might, gimme just one minute because my daughter tells me she may be able to set me up on her computer.
- Okay.
- [Dennis] Just if people would bear in mind.
- [Daughter] Yeah, I'm in on my side, I just need your login.
- [Dennis] You need my login? Okay. Well then which login? Okay.
- [Judi] Dennis, you're still logged in. I can see... Hi Dennis, I can see you.
- Judi.
- Yes, hi Dennis.

- I want to apologise to everybody and I see I've got a bit of time, so I'm just going to recap a bit if I may, if this is clearer. Can you hear me?

- This is much clearer. Yes, it's much clearer now.

- I'm so sorry. I mean it's been a very anxiety provoking half an hour for me, I assure you.

- No, these things happen we can always repeat

- All right, but I'm going to just say, go back a moment, what I was saying was that the Germans had used this idea of a mythical past and they used the false media as you wish, to recreate that. In modern times I was arguing that this has happened with the BJP party in India where they've also reconstructed a history of India, which is harshly conservative, patriarchal and is very much against much of the normative commitments of their constitution, which is why people are so concerned about it. And when you come to America, let us be honest about it, could it, let us ask the question, could it be that those who stormed the capitol and much more important than that, on a U Gov study which came out the day after the storming of the capitol, 68% of Republican voters saw nothing wrong with what had happened. I want to repeat that, 68%. Now when you ask me, well, why would they do that? It's precisely because unless you can reconstruct some consensus, you're running into significant trouble.

So could it be, that those who stormed the capitol did so as a refusal to accept that white Christian and mainly white Christian Americans, are losing domination, be it political, material, cultural? Is it basically a loss of power? Is it the possibility that a far more pluralistic American society in which, more non-racial, if you wish, more embracing, threatens millions of people, who then in a sense are subjected to precisely the point that Snyder made about post-truth? And the point that that this wears away at the rule of law at all of the institutions and invites a regime of myth, which is what I'm talking about. How else can you explain? For those of you who watched last night, Republican member after Republican member rationalising all manner of argument, to let the issue particularly of Donald Trump's role off the hook in this regard. There is something, and I'm not only talking about America, and I appreciate that there are people on this call who supported Donald Trump, that's not to the point 'cause of course we now know that 10 Republican representatives took a different route. So it's not about that, but it's about the broader question that I'm talking about, the extent to which, by calling up a mythical past, you divide between us and them.

And once you do that, you cannot then continue to have the kind of consensus upon which a democracy is predicated. Then if you add to that, if you add to that, the fundamental points that I have already been making, namely that you've got prevailing levels of inequality, that there is a level, it seems to me, of discourse which treats people, conservative people with very little respect and only drives them further into this camp. And if you can't find a countervailing way such as the BBC when it started, or public broadcasting, to change the trajectory, then it seems to me you can't have a United States or an Indian or a Hungarian or a South African identity,

which to a large degree holds the key to constitutional democracy. Let me explain that, by way of South Africa. One of the biggest problems we've got in this country now is there is no new South African identity. Covid 19 has to a large degree exacerbated the cleavages in our society, and very much what we look like is what we get in terms of distribution from the society.

And unless we can actually come together in some idea that there is a South African identity which is foreshadowed in the constitution, and which ultimately recognises both our past and our future, then the constitutional instruments of South Africa are always going to be under pressure. And I'm afraid to say, that as perhaps as a Jewish neurotic, the fact that I see this happening in the United States of America, fills me with the apprehension in so far as South Africa is concerned. Now that is not to say that all of the institutions of democracy collapsed. We saw in America, Republican officials who stood steadfast by their running of the election. We saw many judges, including judges who were appointed by Donald Trump, chuck out absurd challenges. So you could therefore argue, that, well, we accept everything you've said, but does that not show the counter to your argument, namely that with all its weaknesses, constitutional democracy in general is to a large degree, still alive and well?

And it is correct that Jason Stanley in the book, "How Fascism Works", does say at one point in the book, and let me give it to you 'cause I found it really quite interesting, he says, "If one looks on the international level, the situation may appear hopeless. This book suggests a different reaction. A moral of this book is that fascism is not a new threat, but rather a permanent temptation. United States has captured the attention of the world, not because of its fascist history, but because of the heroism of its residents who exhibited internal fights, courage against a whole range of struggles, from the Civil War, the Civil Rights movement, the United States has fought against white Christian nationalism, no less than Europe, has fought against its own ultra nationalist movements. Resolved through all its military dictatorships, India was founded on secular liberal principles with a clear-eyed view of the dangers of the very religious nationalism it now faces yet again."

It is indeed possible to conceive of a constitutional future, but it doesn't seem to me, possible to conceive of a constitutional future unless one actually looks the pathologies in the eye and says to oneself, how is it that if you're going to have a society in which people are denigrated and their views are regarded as those of the other, if you have a society which does so little to address grinding levels of poverty and serious levels of inequality, how is it that in the United States of America, the wealthiest country in the world, one sees shot after shot every night on television of people queuing up for food 'cause they don't have? It seems that if unless we actually reconceive of an economic structure, which effectively followed the Second World War, broadly social democratic in nature, in which societies regarded themselves as communities rather than atomistic individuals, one cannot see long-term futures for constitutional democracy.

At the same time, as somebody who spent a vast part of his life as a judge, I should also say that, and I documented this together with my co-author Michelle Le Roux, in a book we wrote about just over a year ago called "Law Fair, Judging Politics in South Africa", in which we tried to

actually show the limits of constitutional democracy when left to judges alone. We are actually working on another book which would deal with many of the questions that we're speaking about tonight. But I do want to emphasise that the threat is a more virulent strain than any that we've had, I think since the Second World War in a worldwide basis. To return to where I began, and in conclusion, it seems to me, that at one point, we thought we were going to be in a period in which constitutional democracy was going to be the norm.

You may recall the famous statement of Francis Fukuyama, "We spoke about the end of history, the idea that liberal democracy would ultimately prevail and had prevailed, with the collapse of the Soviet Empire and the rise of some broad conceptions of liberalism." That of course proved to be a very wrong prediction. And Fukuyama himself has written much since then, very much along the lines that I've argued tonight that questions of identity which are linked to the ability to participate meaningfully in a society, the ability to actually have a broad set of arguments within a framework that we can all accept, and the ability, as it were to countervail what is a far more pernicious level of social media and media narrative, which has constructed a myth. And that's why I played you the clip from Roger Ailes and Fox News.

If you want to know what happened in American society, watch that programme. It's a very illuminating experience. So where does this leave us, having canvassed three lectures on? I think it leaves us in a situation where we've got to be very wary. If I take various countries around the world, constitutional health is not at the highest. Even in Britain, Boris Johnson has not been reluctant to have a real right go at judges who go take different views to him, and certainly has not been a, as it were, a meticulous adherent to the constitutional democracy of England, not withstanding its unwritten concept. But I do think at the same time that notwithstanding all these threats, it is ultimately our only alternative. I think that's where Churchill was right, it is the best of the imperfect systems. So how then do we proceed to ensure that it continues to actually exist? Well, it seems to me that, and this goes back to a point that William Tyler made, and I want to end here. He spoke about the importance of constitutional education.

I couldn't agree more. We need, throughout the world, to actually educate the population into what it means to live in a constitutional democracy. What it means to protect the rights of others. What it means, if you wish bluntly put, to live in a society where I wear a mask to protect you and you wear a mask to protect me, because we live together. And what you do affects me, and what I do affects you. And William is entirely correct about that. Of course, let us again be honest with ourselves, the basis of education is not on its own a guarantee for anything. Joseph Goebbels had a doctorate from a very distinguished German university, highly educated man, as Trudy has said on many occasions, most of the people who at the Wannsee Conferences sat down to meticulously plot how to kill millions of Jews, had doctorates in law and other fields, and therefore were highly educated. Although this is not a fair comparison, nonetheless, I think it is a legitimate point to make that Ted Cruz went to Princeton and Harvard, clerked at the American Supreme Court. Josh Hawley went to Stanford and Yale, clerked for Chief Justice Roberts, these are highly intelligent men and they are smart.

And the real interesting question if you take Hawley, and there was a very good article about him, is that he is a very right wing Christian believer who believes that truth resides in those, in that level of fundamentalism, and that therefore democracy can only exist when it adheres to those truths. And anyone who doesn't in fact follow those truths, therefore is inverted commas, anti-democratic. It's an article written recently in the New York Times. It's frightening, because as much as I want to be optimistic, I can't get out of my head that Donald Trump was an utterly incompetent autocrat, but that Mr. Cruz or Mr. Hawley or people like that are going to be much more efficient. They will in a sense adhere to populist economics and do better on various forms of delivery, if they believe, as Hawley does, that in essence truth lies in a narrow minded, religious fundamentalist view and all other truth is totally and utterly to be eviscerated, you cannot, as Snyder suggested earlier, have constitutional democracy.

So in summary therefore, I'm entirely in agreement with William's point about the importance of constitutional education and the notion that we have to educate our people right across the world, whatever country we're in, not to agree about everything. But as William rightly said, and again I want to emphasise what he said about Hooker, the question we have to ask is how do we embrace everyone? How do we actually believe that all of us in a society are in this together? Did I wear my mask to protect you? Did you wear your mask to protect me? That very simple illustration is a dilemma of our times. And it's precisely because we have such powerful forms of inverted commas, information, which goes against that.

It's precisely because we've been so negligent with regard to our constitutional education, it's precisely because we've developed economic policies which promote atomistic societies, where everybody's in it for themselves rather than the community, that we are in the predicament we are. Make no mistake, what happened on Wednesday is a warning. It may not happen. I would like to think like Stanley, that countries have shrugged this off in the past and will do it in the future, but the thrust of my talk is that we are in far more perilous waters for all of the reasons that I've advanced. Thank you.

- [Judi] Thank you, Dennis. Do you have time to go through some of the Q&A?

- Oh, of course, absolutely. Can I, oh I can, I think I can even see them for once.

- [Judi] You can.

Q&A and Comments:

- Ya. I think there's Sharon, a suggestion the presenters of a list of, oh, okay, that's a, I'm happy to do that. Glen says Margaret Thatcher allowed Rupert Murdoch to trial media despite rules preventing, I agree, Glen, and you'll appreciate this I suppose, that insofar as I'm concerned, I'm, one of my areas is competition antitrust law. I was a judge president of the competition appeal court for 22 years, and I'm totally with you that media monopoly, and we're finding that now, it's a really interesting debate, if I could just add to this, it's a really interesting debate about

what do you do with regard to Twitter and Facebook that track people even Donald Trump now? I mean, is it the legitimate exercise of private organisations to do that, or is this a manifest failure of the state, which should have passed legislation in this regard a long time ago? But unquestionably we've allowed Murdoch and others to do exactly what you're suggesting, I couldn't agree more. Now I've got to see... Ya, I agree. I mean obviously Johnny, I agree, that-

- [Judi] Dennis, could you read out the question so that everybody can hear what you're responding to?

- Oh, sorry, ya. Sorry, I'm so sorry. Ya, let me just do that. Let me get this right. He says, "Let's not forget that in the UK Brexiteers promised a Great Britain powerful in its independence as in the days of empire." Yeah, they did. And of course, I mean there'll be people on this call who are Brexiteers. But let's be frank about it. It is true. I know that there were various reasons and some people say, I know William advanced, the reason that a lot of people did not like the fact that there were all sorts of autocratic countries in the EU. I accept that, but I also want to suggest that there's a huge amount of research which suggests that yet exactly as we were talking, that idea of renew our days as of old, this idea that there was some mythical past which we're going to go back to rather than a very much more complex future also lay at the heart of it. And then I, Bonnie...

Q: Are you suggesting that the treaties found in CNN, New York Times? Perhaps it is that the media has become extreme on both sides in coverage such as Black Lives Matter and Washington capitol. Sadly, media coverage seems biased and polarised. And news coverage is entertainment rather than impartial."

A: Bonnie I accept that readily. That's why I was advancing the proposition that what happened in the 1930s as Anne Applebaum has documented is a really concentrated idea that you had to find a countervailing power to the radio which was dominated by these pernicious dictators and that was found in the idea of public broadcasting in which a more reliable set of presentations were available. I'm not suggesting for one moment that CNN or the New York Times are impartial. Of course they take a view, and they're entitled to, but I do want to say that I think there is a massive difference between the New York Times, CNN and others, and Fox News. If you, I only look at Fox News for sociological interest, for nothing else. And I'm sorry to say, that they do pervert any basis of truth at all. I'm not suggesting CNN is perfect, it isn't. I'm not suggesting that they don't have an ideological position, they do. So do the New York Times, but I also don't think there's a moral equivalence here between what Roger Ailes did in Fox News, which has had a very, very pernicious and disadvantageous effect for the constitutional health of America, but I also would like to say, as I think is implicit in your question, we need to think through alternative media sources which essentially go beyond the traditional ones, which do punt that line, I agree with you.

Ya, I mean you say Simon, "It's an interesting problem when public broadcast don't tell the truth, or at least not the whole truth. BBC, CBC, and NPR all tell a very biased anti-Israel story." Well,

again, I'm not suggesting that they're perfect and of course your question raises an interesting point as to what kind of opinions can public broadcasters have? I suspect what you're suggesting is that they're even handed about this and fair enough. That's a legitimate point. But I do want to say with great respect that, the public broadcaster in the main, was a very important institution of its time. I'm not suggesting at the moment, given the way money works that it could be better, but there we are. Then Leila, "Could this happen in Israel given that they're Arabs and Christians?" Well, I do think I, you know, let us be honest about it. Not suggesting for one moment that, you know, religious people, even fundamentalists don't have a role in society, that would be totally antithetical to everything I've said. But the problem that one faces, is that when you've got, whether it be Muslim fundamentalists or Jewish fundamentalists, to be perfectly honest with you, and you've got a situation that is the truth, there is no other.

I'll give an illustration of what I mean. Many years ago I attended a literary festival in Cape Town, and the idea was to have three Booker Prize winners at that festival, Salman Rushdie, and the two South African Booker Prize winners Nadine Gordimer and J.M. Coetzee. And of course the Muslim community of Cape Town caused such a fuss with regard to Rushdie attending in Cape Town, that they withdrew the invitation. And Gordimer in the debate then said to Coetzee, "Well you need to understand that Satanic verses upset people," et cetera, et cetera. And the response by J.M. Coetzee, which I can hear in my head today, was, "Nadine," he said, "If you go down that line, there will only be one book. There will be no literature, there'll only be the Koran." And that's exactly the danger. And you can't, and if we're going to be honest with ourselves, you cannot have a secular democracy, constitutional democracy, which respects all manner of views and all manner of religion if you have like Josh Hawley or as fundamentalists, where you believe that there is a truth which is sourced in some religious text to an extent that it totally denies any claim, to debate from any other source at all.

David, sorry Anne, "Here in the US we need a political leadership that speaks to each other, we need moderate conservatism, moderate liberalism, so we can build a moderate centre, otherwise our social fabric will continue to break down." Well, I'm not quite sure what you mean by moderate conservatism and moderate liberalism, I am perfectly prepared to accept, that we do need, as I've indicated some broad consensus, but if that moderate conservatism and moderate liberalism is not going to address poverty, inequality, infrastructural degradation, racism, because, you know, far be it from me as a South African to say, you know, to attack another country because of racism, but the fact is that there is much there. So I'm with you that we need to find a way to talk to each other, but how that is supposed to work, that is a debate we could have. And if we were living in more normal times and in a lecture theatre, I'd love to continue that. But I mean that's broadly my view.

Q: "Is the handling of the Covid crisis by governing parties," this is David, "An attempt by them to expand their control of societies?"

A: Absolutely David. Let me talk about my own country. South Africa, in my own country, we have been run by a command council, not by parliament, for over a year. In other words, we've

got a thing called the Disaster Management Act, which empowers the minister to make regulations as to whether I can have a drink, whether I can go to the beach, whether I can do anything else. Now let me be clear, I'm not against some of these prohibitions because I know, I know full well that this is an unprecedented pandemic and governments are battling to control it and therefore there may be evidential justifications, certainly in South Africa, the alcohol ban because of the way in which trauma and trauma units are overrun 'cause of abuse of alcohol, but the point that it's made by a minister and the point that it's actually has a thing called the Command Council, which kind of conjures up Stalinistic ideas of centralism, that to me is subversive. Absolutely subversive. And, so I'm totally with your question is a good one.

Jenny, "Here in Israel, it's given," I'm assuming it's the vaccine, "To prevent the trial of our PM." Well yes, but let me put it to you, you know, I don't care why it was given, but frankly if we could all get it in South Africa, I would really be saying to whoever it was who did it. Anonymous, "In America, many of us do not like or agree with Trump. But what we don't like is the fact that from day one on, democracy was not given a chance. And we didn't like the fact that the media played such a big role. Democratic Party claim that they want to unite, but instead getting along with it seems intent on a personal vendetta, recently was stated that we have to be educated individuals. If too many just follow the crowd and the media, what can we do?" Well I think that's, well let me say this about Trump. He was an extremely controversial presidential candidate from day one. And you don't have to believe me, you can believe Ted Cruz, you can believe Lindsey Graham, all of whom said, it would be disaster if he came in. And that was day one. It was only when he started to control power that they became very, his toadies. And what often is true, that he was elected by democratic choice, you know, so much that was occurring so early on, was so dire to the democratic enterprise and it's not surprising where it ended up.

But I do agree entirely with you, and that was the point I made, that that does not mean that there's a legitimate conservative discourse which should be articulated. And in fact the Republican party, as I grew up, had that discourse. It required a smaller state, less tax and less state interference. That's a legitimate point. Totally legitimate, not mine, I'm a social democrat. But the fact of the matter is I respect that view. I think that's a distinction, between this idea that there was clearly a campaign against Trump from early on. Having said that, I have no doubt that there's going to be a campaign against Biden. A president who comes in on the basis of the false narrative that he was not elected legitimately, has a problem. Sorry, let me just, ooh, another one.

Sorry James, "I can't comment on the situation in other countries but the nation of the UK is somehow using Covid to seek to introduce oppressive controls as the population is bizarre conspiracy theories. Utter nonsense." James, I'm not an expert in the UK and let me say this about the UK, that you don't have to be a Boris Johnson fan to notice the distinction between the UK and South Africa, where he has press conferences and he takes questions from the press and what happens in this country where the president has never had a press conference, so we're never able to hear what in fact the answers to some of the policy choices are. I'm not for one moment suggesting, that the UK government had used Covid to introduce permanent

oppressive controls, I accept that readily, but there we are.

Q: Jonathan, "What is your view of government by tweet?"

A: Well, you know, how on earth are you supposed to provide anything of any sense in a miserable few characters? It's exactly why we have a hollowing out of the discourse. And it's exactly why, which reinforces the point, that I've made right through this whole lecture, namely that we cannot continue to have a system which doesn't address full on these particular problems, which are very, very different, I want to suggest to you very different from the ones that faced society 40, 50 years ago, hence my distinction to some extent with William's presentation, although as I've indicated, much of merit in it.

Then I've got, "As the views united for democracy suggestion", oh, sorry, I forgot, I've done that one. Freddy, "Does not the judiciary have an important part in protecting democracy, and the constitution happen when the Supreme Court overruled the Prime Minister's attempt to demobilise parliament?" Of course, Freddy, that's why Michelle Le Roux and I wrote a book on this. As I said, "Law Fair, The Judging of Politics", that book, it's amazing, I'm going senile I can't even remember the title of my own book even though it was done a year ago, but that book deals with exactly the point. However, let me put this to you, Freddie, what we were arguing in that book and what I've tried in much more truncated form today to argue is that the judiciary alone can't protect democracy. That yes, the Supreme Court overruled the prime Minister's attempt to demobilise parliament, and it's a very brave and interesting decision, which of course came in for a lot of criticism. I think they were right, but that's, I read it through the eyes of a South African constitutional lawyer.

But what I am suggesting is that the judiciary on its own, absent the kind of conditions I've been speaking about all night, can only have a holding operation, constitutional democracy and its health depends on a variety of institutions and policy instruments, which essentially allow that consensus of which we've been talking to grow. Steven, "Your anonymous correspondent should perhaps read "A Promised Land", to get a perspective of Republican obstructionism in the start of Obama", yes, very fine point, Steven. I mean, and since you've raised it, let me throw this out, I think for quite a number of Americans, the idea of having an educated, thoughtful black man as the president of the United States, was certainly not something that they liked. And we should never forget that it was Donald Trump who spewed the birther controversy. And it must never forget that literally Mitch McConnell from day one proclaimed, "We are here to ensure that this president can never, ever pass any legislation." So well done, I agree with you entirely. I think I've gone through them all, Judi.

- Right, Dennis

- Ya.

- Yes, I am, that's fine. I know we had some issues right at the beginning, so if you're happy to

repeat the session, we'll find, we'll have a chat offline and find a day that works for you.

- I'm happy to Judi, and again, I want to apologise to everybody, I still see they're a huge amount of people on, I just want to apologise to them, I'm so sorry, but this was not my doing. Okay, Judi, thank you.

- I'm sure we all understand

- Thank you for being so calm

- So Dennis, thank you so much

- Calm and keeping me, in one piece.

- Don't worry about it.

- Take care.

- Thank you to you and thank you to everybody who joined us, and we'll see everybody soon.
Bye-bye.