

- [Dennis] Oh, Hello?

- [Wendy] Hello. Hi, Dennis.

- [Dennis] I'm very well, thank you.

- [Dennis] Okay, good. Well, I think you know it's five, it's one minute.

- I can see you now.

- You can see me? Okay. It's one minute past nine, so thank you Dennis. I'm just going to give you a brief introduction. Dennis Davis is a Judge of the High court of South Africa, as well as Judge President of the Competition Appeal Court of South Africa. He has held professional appointments at both the University of Cape Town and University of Witwatersrand and has visiting appointments at Harvard and NYU law schools. He's also an author of 11 books. His latest is "Lawfare, Judging Politics in South Africa," Tonight, Dennis will talk about South Africa's present possession and post Covid reality. I'm going to ask Carly to host and moderate this meeting, so please post your questions on the chat feature and Dennis, thank you for agreeing to do this tonight and I'd also like to just say thank you for being patient, as you know, the Zoom platform went down today, so unfortunately our cultural programme had to be postponed, and I will let all our attendees know when that'll be, sooner rather than later. So thank you Dennis, and over to you.

- Thanks very much. Wendy.

- Dennis, before you start, we can't see you. Would you like me to turn your camera on?

- [Dennis] Yes, please.

- [Wendy] Yes.

- [Carly] Okay. So just-

- [Dennis] We're now going to, I share. I'm going to do that now Carly.

- [Wendy] Just accept the request.

- [Dennis] Oh here we go.

- There you go.

- Nah, I'm there. Can you see me now? I think you should be able to.

- [Carly] We can, yes.

- Can I start Carly? Is that all right?

- Yeah, you can start.

- Okay.

- Well, firstly, Wendy, thank you very much for the invite. I feel very honoured to be lecturing her because the talks to up to date, to be honest, have been absolutely fabulous and I've learned in a huge amount. It's like, as I indicated to you, it's like being at university all over again, although we're not going to get a degree for this, but that's pretty. So you've asked me to talk to you about South Africa and I headed the talk Quo vadis, Where are we going to go after Covid 19? And perhaps I'm going to bookend this talk with two references.

My first is a reference to a very interesting interview, which if you've not read it, is well worth reading. An interview that Yuval Harari, as you know, the author of "Sapiens" and 21 Challenges in the World and so Forth, has wrote in in March in the Financial Times of England, in which he spoke about the challenges of Covid 19 and he made two fundamental points, all which were essentially predicated on the following idea, which was that, what happens after Covid 19 is our choice. It's the choice of humanity, which way we go. and then he said, there were two aspects where we've got a choice.

We can either, as it were, become a society which is much more subjected to surveillance. What he meant by that was as for example, digital is being used to monitor populations who are ill, will this now continue thereafter so that we lose our privacy? And the second proposition that he advanced was, are we going to see more myopic tendencies in which countries turn inward and become more nationalistic? Or are we going to see a more cosmopolitan vision where everybody realises we're all in this together and we should be cooperating one with the other and the reason I introduce my talk this evening in this fashion is for the following reason, because I don't believe that South Africa's exceptional here, though that second proposition, what kind of governance structure are we going to have as we move out of Covid 19 into years, into the next couple of years?

Seems to me one that many countries in the world are asking themselves. I've just come from a fascinating discussion about the future of democracy, generally and it seems to me that these have applications for South Africa. Indeed, so much so that I'm trying to write a book about it right now and these two, this particular trace that we have can be framed both from an economic and political point of view. So with that in mind, let's get started. It seems to me that the two issues, if I start with economics, the problem that South Africa faced, maybe not necessarily unique, but certainly problematic from our point of view, is that as we moved into Covid 19, to put, not to find a point on it, the economy of the of South Africa was incredibly parlous state. Have a look at the budget of two, 20, which was only given a couple of months

ago, even if it seems years ago, in which the government's forecast for GDP growth over the next three years was going to be, this is pre Covid 19, in 2019, it was going to be this fiscal year to, sorry, two, 20, two 21, 0.9% going up the following year to 1.3 and the third year to 1.8%. That was what they said growth was going to be.

Now, if you consider that we went into this budget with a reported unemployment rate of 29%, which mostly economists would regard as extremely understating the situation which South Africa finds itself in, you'll appreciate that if you have to grow at four or 5% in order to address that problem. The idea that government could only promise growth rates of less than 2% was enormously disturbing and even that budget was predicated in a whole range of assumptions, including the ability of the government to hold down a public service wage increases, without which it's arithmetic calculations for the budget would've made no sense.

Now, fast forward a few months and what do we have economically? We have predictions that the GDP in South Africa will decline by at least 10%, which is astonishing figure. over this particular two, 20, two, 21 year. This in the wake as it were, of this precarious situation that we are in prior to Covid 19. The commission of Inland revenue calculated or announced just a few days ago, that the essentially the amount of money we were going to lose on the tax system, because of the depression of economic activity would be in the order of 285 billion rand, which I should tell you is around about 20% of our tax take.

Now, the what is significant about that, was that when the president with great fanfare announced the 500 billion stimulus package, and that's what it was going to cost, he did not mention the fact that this was in addition to, probably another two or 300 billion that we were going to have to find for the loss of tax. So we've got a basic collapse of our tax system, we've got a prospect of very little joy on the economic front, and our lockdown continues and if the lockdown continues on any fashion for a significant period of time, well then maybe these figures I'm giving to you are somewhat optimistic rather than pessimistic. In addition to which it seems to me that one of the issues of the debate, which is driving me crazy, is certain sectors of the economy are just not going to increase lockdown or no lockdown.

It is unlikely that travel will in fact perk up over the next 12 months, certainly next six, seven months, tourism will clearly be depressed. Restaurants, cinema houses, entertainment centres, sporting events are unlikely to come back, come what may, so the really big question that we have to address in South Africa, is what kind of economic policies can we put in place, one, to staunch this extraordinary depression, which many countries have admit, and secondly, to think laterally as to what kind of economic policy we can develop so as to support those kinds of sectors of the economy which are far more viable or have a viability prospects.

Now, you know, I've, I'm cognizant of the fact that, that these are problematic issues, but I wanted to just, as it will start by giving you that particular background, and it's an important background because it gives you the stark reality which we are facing and I should say I was somewhat depressed. Others might not have been that when the President said that the third

stage of their analysis, which was going to be what kind of economic plans are we going to have post Covid 19, that this is still being discussed.

I must say that I found rather disconcerting, since I would've thought that by now we should have already been way into development of that particular scenario. So that's the rude skeletal framework in which the, in which the economic reality of South Africa is faced at present. In addition to which, we then have to load up onto that the political sequence, political situation and if our economic health was poor before we began Covid 19, I'm not entirely sure that our constitutional health was particularly robust.

Let me try to explain. I think it is fair to say that 10 years of state capture under the Zuma presidency did terrible things for all of the constitutional guardrails, which are utterly important for the longer term continuation of constitutional democracy in South Africa. I am not, again, saying anything that I think is particularly controversial, but let us just list these. There's no question that the South African Revenue Service was degraded in domestic extraordinary fashion under the leadership of Tom Moyane.

All of this is documented in the Nugent Commission of Inquiry, which dealt with this particular problem. I would perhaps just add now that under Commissioner Kieswetter, this is the one institution which does give me hope. I do work very closely with the South African Revenue Services, as the Chair of the tax committee, which is looking at South Africa's tax affairs and I am, I'm heartened by the fact that there is a turnaround there and a deeply committed turnaround by the personnel of the South African Revenue Service and if I can make one other optimistic gloss, it is this, that if you really want to see what the new South Africa should look like, I would love all of you to be at a meeting that we have, where very often, I'm the only white person in the room and there is absolutely no sense in which identity plays any role at all as we are all deeply committed, every single person in that room to trying to do the best that possibly can to have a tax system that operates the best advantage for the country.

So I think SARS has done well, but it was degraded and there've been effects on that, and I'll come back to those. There are also the national prosecuting authority was totally and utterly degraded under a succession of directors, particularly Mr. Abrahams, who was the last one. It has taken an inordinately long time unlike SARS to turn that boat around. Yes, there are now some signs of life, but there is not yet one significant politician of any kind who is allegedly been involved in state capture and has been a beneficiary thereof who has been prosecuted and no cases yet in line.

There may well be, but I'm sure, but I have to tell you that shortly before Covid 19, I had to address a group of very, very influential and investors who were from America, who were looking at South Africa and at the end of the presentation, the chair of the group said to me, "Well, that was a very interesting presentation, Dennis, but I'll tell you what, when the first prominent politician is prosecuted and convicted, come and talk to me again." and I think that was indicative of the problem that we have on that front.

In addition to it, very sadly and regrettably, one of the few institutions that had really worked splendidly under the apart, oh sorry, under the Zuma administration was of course the Public protector, where Thuli Madonsela, who was then the Public protector, had done what I suspect can only be called heroic work in staunching the excesses of state capture and with her expiry of her term and her replacement by somebody who seems much more determined to perpetuate state capture or at least to do very little about holding the administration accountable, that is a very sad reflection and the fact that we still or in this strange space where there are lots of talk about moving for her removal, but much, much confidence that will happen, that is a reflection of the broader pathology to which I'm referring namely, but, that whilst it is true that the courts of South Africa have done a very fine job in vindicating constitutional promises and constitutional commitments, the truth about it is that the broader conception of South African constitutional democracy has been rendered extremely fragile due to this particular decade.

That is not to say, and let me make it perfectly clear, that constitutional democracy is dead in South Africa. It is not to say that there isn't a vibrant set of NGOs, which there are, and I'm sure many of you who are concerned about the levels of poverty and inequality in South Africa and who've been doing wonderful work in assisting various NGOs, testify, there are many, many non-governmental organisations in South Africa who just doing absolutely fabulous work, which kind of warms the cockles of one's heart, but the reality is that so much didn't work. The fact of the matter was that the constitutional design of South Africa, which meant to a large degree that the legislature controlled as it was by the executive.

Why? Because of the way our electoral system works in circumstances whereby the party bosses dictate who in fact goes to parliament, meant that the legislature to a large degree never holds Mr. Zuma or the executive accountable and the result of which was that we never had that kind of robust set of checks and balances that one could have hoped for. We didn't even have the kind of debates that one sees in the United States of America where I suppose if you're a Democrat in the Senate, you'd still feel that much of it may well be desperate stuff, but we never had that kind of attempt to hold the executive accountable and so to a large degree, there was a depressing lack of kind of constitutional vibrance in the institutions which hold the whole system together and we came into Covid 19 in a situation whereby one wasn't quite sure where this was all going to go.

Now you may say, well that can't be true because you've got a constitutionalists as the President of the country and there's great truth and merit in that argument. One of my proud moments is the fact that when I co-authored a book in 2008, the person called "Precedent and possibility," the person who did the forward to the book was none other than Cyril Ramaphosa and when you look at the forward that he wrote, which I know he wrote himself, because he also launched the book, and I could see that this wasn't a speech written by somebody else. There were words that he spoke from the heart. There was a deep-seated commitment to the constitutional arrangements of which he had been a central figure when the negotiations for the

South African constitution taken place, but it would be naive to believe that Mr. Ramaphosa is working with a free hand. It is perfectly obvious that the ruling party is a deeply divided party and that there are many people still in positions of great power who themselves have been subjected to all sorts of reportage of questionable activities, in particular the Secretary General of the ANC of which there have been books written and much spoken about and many others of a similar kind, and it is not clear at all that all are speaking from the same constitutional page, if I could put it that way and what that effectively means is that, what you've got has been a sense of kind of constitutional incoherence, which is deeply disturbing.

Now, that has manifested itself increasingly as we have moved into Covid 19, a few illustrations should suffice. In the first place, we have been party to a declaration of the Disaster Management Act. Now, I don't want to get technically legal on a late Sunday night, but in effect what that means has been that, that is a declaration that can, is declared by the Minister, not by a parliament. It's not a State of emergency, where the President declares the State of emergency and are then forced as it were, to come back for a renewal within a very short specified time by the parliamentary, by Parliament.

In this particular case, a disaster management can be declared for three months, disaster, sorry, under the Management Act can be declared for three months and the minister can then extend it month by month and as you've noticed, this can often and seems to be the case as South Africa present preclude the kind of deliberations within parliament that even would take place with the state of emergency and so enormous powers have been given to this rather quaintly termed commands council.

One can really, I suppose, draw all sorts of inferences from the name itself, but the point is that these are drawn from the executive and what this therefore means is that our country at the moment is effectively governed by part of the executive of the country with very little by way of accountability mechanisms put in place and this has had serious effects. There seems to be no reason why there should be a ban on cigarettes, for example. I accept readily that cigarettes may be bad for health.

Indeed they are, but whether in fact this is something which is centrally fundamental to the pandemic that which you're talking about is a very questionable matter, I accept, that for alcohol it may be argued that because alcohol creates level of criminal activity, those criminal activities then give rise to violence and violence is rise to hospitals having been engulfed with all sorts of people and it is true that we get many medical reports saying thanks to the ban on alcohol, the emergency ward have not had the kind of traffic that they ordinarily would have, but that is not true for cigarettes.

It's not true for a lockdown, sorry, a curfew in the evenings for the rather strange situation that we all have to exercise within three hours and then perhaps the most bizarre of all, these clothing regulations where, I dunno if many of you read them, but if you want to have a good laugh, I recommend them to you because what is, what happens with these regulations is that

they're certain kinds of clothing that can be permitted to be sold and others can't. I mean, you can imagine sitting down with drafters of these regulations saying, "we'll Minister, we can have, we can have T-shirts, short sleeved T-shirts, but not long sleeved T-shirts or these kinds of shoes and not those kind shoes."

What on earth possesses people to pass regulations like this? I haven't the slightest idea. A friend of mine suggested this was much more congruent with a Monte Python script, than it would be in relation to some rational process of regulatory authority and so what has happened has been that there've been, the regulations therefore seem to be advanced on a simple proposition, which is that we as the citizens of the country should not be trusted and that others know better for it than we do and our lives should be regulated accordingly.

Now, I accept that in every society there are of course regulations which essentially say we've got to do X, Y, Z. We can't just simply all drive on the roads and decide when we are going to abide traffic lights or not, but it does seem to me that what this has shown is a tendency to intervene in the daily lives of people in circumstances where you've got a question, whether this is the most efficacious way of dealing with a disaster and whether this is the most limited way of limiting the rights that people have and which I might add were deeply fought for, for a very, very long time throughout the vicissitudes of South African history.

So the regulations seem to me to actually exhibit a very, very serious problem, which is again, going back to my constitutional question, is whether these are the regulations which will be drafted by people deeply committed to constitutional structure. In addition to it, we know, and certainly one can speak with some authority here that there have been very significant egregious acts by the police, particularly in the townships.

It is perhaps a sad reflection of South African life, that in the middle class areas, people do all sorts of things, drive from one part of the town to another, pretend that they're going to grocery stores when they're doing extra exercise for goodness know what else, even try to walk on mountains when they shouldn't be and all of that, all of that goes by without a flicker of concern from the police, but if you are a parent trying at least to play with your child in the road in the township, my goodness, the police come down on you in the way Saddam Hussein did on the Kurds and the levels of complaints and egregious violence in this case is again, a deeply disturbing manifestation of a mindset that concerns me greatly and should concern us all and so then of course I noticed over the weekend, quite curiously, that a very significant scientist had called into question the lockdown provisions and she was then hauled over the coals and told she's not allowed to do this and I thought, well, you know that Mr. Trump would do, but is that the sort of stuff that we would really want in a constitutional democracy of ours in which the values of transparency and accountability are expressly proclaimed as fundamental normative parts of our constitutional structure?

So when I sort of look at this, I say to myself, one, on the constitutional side, we were never in a situation where everybody was deeply committed to the same project. There were very

significant, significant problems with regard to a whole host of people, many of them probably compromised, thanks to state capture, others who seem to have far less of a commitment to accountability and transparency than would otherwise be the case and then on top of that, you start giving powers to all sorts of members of the executive of a kind, which they seem to relish and which really do seem to me to run counter to the very constitutional model which we adopted back in 1996 and when Harari, as I go back to him spoke about the choices we have, if I may say, yes, this is something which has worried many commentators, is will this be the permanence of the temporary?

By which I mean, as governments become more accustomed to exercising surveillance powers, control powers over their societies, will they give this up so easily when in fact Covid 19 starts to dissipate in terms of the danger that it poses to the population? And then on top of that, when you look at a society like South Africa, which had already gone into the Covid 19 pandemic in circumstances where it was not in rude constitutional health, the problem is all the greater.

Let me make one other set of comments on this and then try to, if I may provide some indication as to why maybe that nothing is inevitable and while the choice still remains us, to go back to Harare's article. There is, when I co-wrote a book Lawfare to which Wendy has made reference, one of the issues that we were particularly concerned about was the future of constitutional democracy going forward and we made a series of points, some of which I think I've already covered, but one or two which I haven't.

The levels of inequality in South Africa are utterly dire. The truth about it is that South African levels of inequality are almost unprecedented by which, I mean, if you look at the Gini coefficient, which measures income inequality, it is dire. The same is true with regard to wealth inequality. We may be amongst the, if not the most unequal society in the world. Poverty obviously is shocking and it is only increasing.

I noticed that Dr. Grey, who was the doctor who spoke out against the lockdown, made the very important and disturbing point that the hospitals were seeing many more children being brought in, with cases of malnutrition and it, that, what that is illustrating to me is the, greater levels of poverty increases in our country.

Now, if you combine poverty and inequality and the kind that we have and you can't promise hope to people through the kind of economic growth which will restore the balance and which will allow the country or the government to vindicate the constitutional promises of delivery of social goods such as housing, medical care, education, water, et cetera, then you play into the hands of populists and or authoritarians and or both and in South Africa we have no shortage of that.

I've spoken already about authoritarian tendencies within the government, but lurking in the background, of course are populist such as the EFF and although they've been relatively quiet until now, it is to my mind a disturbing phenomenon that in a country like ours, in which



constitutional democracy is always to be asserted, there's never lifted an aile into legality. Why I'm worried that, if the levels of poverty and inequality continue to increase, because of the dire economic circumstances in particular only one of two solutions is then, well, one of two solutions becomes more probable.

On the first case scenario, it would be significant popular uprisings or protests which could then be repressed by the authoritarian securocrat elements. On the other hand, it is also possibly true that when we have another election, the popular son of EFF could land up by getting a far larger percentage of the vote than otherwise would be the case and their game plan has always been, seems to me, realising that they can't possibly win an election on their own, is to join forces with a significant percentage of the ANC and to lead the country in a very different direction from the one which we had intended in 1996.

So that is essentially the problem that we face and how do we solve these problems? How, why do I think that it's not all useless and that in fact we may well get out of the difficulties that we encounter.

There are series of reasons why. It is possible, it seems to me that we can reconfigure our economic debate. Now in this particular connection a lot, there are all sorts of proposals on the table. Let me give you just a particularly interesting illustration and it's one with which I've been working for some, to some extent and therefore know a little bit about, it is possible that if we realise that Eskom, which has been a great deterrent in relation to any possible economic growth because of the lack of electricity supply, and I presume that we're only enjoying full electricity at the moment because of the depression of the economic activity which we encountering, if Eskom and de Ruyter the CEO of of Eskom has acknowledged this, if we lift our gaze and move in the direction of independent power producers and the greening of the South African economy, a number of things are possible.

In the first place, if we really went hell for leather, for alternative sources of energy, it is extremely possible that we could raise very significant funds from a range of international institutions that want to promote the greening of the world economy and would look at South Africa as one of the poster children because of the terrible levels of carbon that we deposit into the environment and therefore it is possible to raise significant sums of money at relatively reasonable rates to power that sector.

I am told reliably by many economists have done the model, that if we actually went this route, we could actually have the biggest industrialization project that South Africa has seen since democracy with more than 250,000 people, if not more employed in addition to which we would have some money to, from that where we could retrain some of the coal miners and essentially bring them into different activities. So not to leave them destitute. It's an extraordinarily interesting proposition.

What's the problem? The problem is that everybody knows about this and yet for a whole range

of reasons, the co-lobby, the minister have dragged their feet in this regard, as a result of which is here is one significant alternative available to us.

There are others, to have any coherent industrial policy. There seems to be no, the second thing which has, which is the word coherence, is to develop a coherent economic policy, which essentially by which investors will have the level of certainty to be able to invest in the country. It's not with up rounds of possibility. The problem has been that we have basically spoken a good game but never implemented one and so we running out of runway and it seems to me that these sorts of alternatives of like the greening of the economy and that sort of activity is where the possibility of changing the trajectory of economic activity can take place. Obviously on top of that is a radical rethinking of governance. It is unbelievable how much money has been taken out of South Africa over time.

I should tell you that, and I can't be reli, I can't, I'm not sure this is entirely correct, but there is at least some evidence to suggest that the Guptas, the Guptas alone took out over 200 billion rand at a time, by the way, when the Rand-Dollar wasn't quite what it is at the moment and then you lock onto that all these other organisations of the same kind and you realise that there's no question that each and every year we were hemorrhaging, we were hemorrhaging probably close to 20% of our tax take. In addition to which, which is just why I'm angry about the cigarette boycott, ban, is because there's been an incredible amount of contraband with cigarettes, booze, you name it, many of which, many of the beneficiaries of which are allegedly at least supporters of certain political movements.

It's a deeply disturbing problem, but what I can tell you is that thanks to the illicit customs breaches, South Africa loses at least between 50 to 75 billion rand in revenue each and every year and if you work that out in terms of our tax take, that's between five to 8% depending on what year are you talking about and so there's a absolute necessity for actually ensuring we can't afford this luxury as if we ever could do, but really at the end of the day, these are possibilities.

Now, a good part is, and we are working on this in the revenue department, there are a whole series of initiatives being taken now to shut this all down and to ensure that in fact proper auditing takes place and more than that, I can tell you right now that the Commission of Inland Revenue understands, 'cause we've had many conversations about this at the Al Capone strategy of actually going after the tax evaders, actually is the way you get people into jail who essentially were the beneficiaries of state capture and we, there's no time that can be lost any longer in that particular connection.

So on the economic front, what we need is a government that actually does work and to some extent policies that actually can be implemented, which are to the advantage of the economy, and not a certain segments thereof, which has been where the cases are present and there is a possibility thereof on the political front. On the constitutional front, here it seems to me that it all depends on what kind of leadership flows out of this and that all depends on the balance of

political forces and that all depends upon which segment within the ruling party actually takes ascendancy rather than seems to be the case at the moment when there's a level of equipoise, because central to any initiative has to be the redressing of poverty and a redress of inequality and I should tell you that if we don't do this sensibly, if we don't do this thoughtfully, then in fact populism does take root.

Let me give you an illustration which has been freaking me out for some while. There's been a lot of talk about various forms of taxes that we should require in South Africa. So wealth tax, I, you know, there's hardly a week that goes by with us, without one reading a story about the wealth taxes. Recently two people at the University of Witwatersrand said, "Well the other wealth tax, which goes up to 7%, 7% of people's wealth, well then we could get 143 billion Rand in, which would effectively be 10% of the tax take and would literally half the loss that we are expecting to have. The truth about it is, it's a nonsense.

There is no way in which that particular calculations stack up on reality. and secondly, the South African Revenue Service is not in a position to be able to implement this kind of tax. You can't simply press a button and expect a wealth tax to simply pop out on the other side. We don't have the information, not that we shouldn't have, and we certainly are trying to get it, but the truth is not for necessarily for the wealth tax, but to plug all tax gaps, but why I illustrate this example to you, it gives you the problem of that when you in a context of inequality, poverty and lack of economic growth and eroding tax base, populists take hold and all sorts of uninformed proposals get put into the public discourse which have very significant economic and political consequences and unless we actually are able to carve out some set of proposals, which actually address these, and again, I come back to my initial point, that means a government that actually works and which is not corrupt, which is decisive.

A government is not a command and control structure, but allows private enterprise to get on with the job of growing the economy with state support where necessary and with state provisioning for those segments of South African society, who not just historically disadvantaged but presently disadvantaged, we become very much more a basket case and so there's no inevitability here, but the political conditions are such that unless there's significant leadership by the constitutionist, unless there's some significant imaginative thinking about what kind of economic policies, I stressed, economic policies that actually take account of what Covid 19 is doing and then develop those sectors of the economy, which can be opened up and which hopefully can be expanded. That is what is required.

Now the world coming back to Harari, it's going to have this choice. Either we are going to actually become more myopic, more nationalistic, more xenophobic, or we're going to become more cosmopolitan in the knowledge that in fact, without lifting our gaze to the world at large, we're not going to come out of the problems that we're in. These are unprecedented problems, but when you come into them with a weakened situation that we are in, it requires a great deal of imagination and a great deal of courage to be able to do very much about it. Now, what I also think would be helpful is we probably will also need to think a little bit about constitutional

design. I, for one, have taken the view that the present electoral system in South Africa is pretty, is not fit for purpose.

I say that because as I've indicated to you, you cannot have a parliamentary system where the parliamentarians in particular are totally, are totally dependent on the party bosses for whether they're going to come into parliament and then essentially vote accordingly. That was why many years ago, then, well he was at one point the leader of the progressive party and many of you who were elderly like me will remember him, Professor Van zyl Slabbert.

When some years after democracy began, Slabbert took the view that we needed a new electoral system and a committee was, commissioned was informed under his leadership and it came up with some very imaginative proposals for the idea of a proportion representation but with some constituency basis, so that ordinary people would have ability to hold their representatives to account and which would in turn ensure that the kind of egregious sort of, yes minister approach by all, or yes president approach by the various members of the parliament would not necessarily hold weight, to the same extent 'cause people would know that they'd lose their seats if they just acted in this way and it was true that under the Zuma administration, the popularity of Zuma was far less than that of the ANC, which meant that support for Zuma will have rendered some people unelectable as time went on.

We need to think through these particular structures. We probably need to think through whether in fact we need a better system for the appointment of judges, the judicial service commission, which appoints judges still seems to me in my view, to be too dominated by politicians, which creates problems for the appointment and disciplinary processes. So there's a huge amount of work to be done in the future. Is it possible? Which is I suppose what you're all thinking. Or are we doomed?

Well, I don't think we're all do, I don't think the country's doomed at all. I think it's in trouble and that is an obvious statement, but it's, this is now a crisis which puts us in a position where if you are a constitutionalists leading the government, if you ask somebody who believes that the constitution is worth fighting for, then it seems to me that as they say in the classics, money is cheap, sorry, "Talk is cheap, money buys the whiskey," it's now time to actually put those plans into place. Will Mr. Ramaphosa do that? Will there be a sense in which some decisive action takes place? I don't know the answer to that. All I can say is that there is a certainty, there is an awareness among some that, that is the only alternative left to us and I think that coming back to the broader concept, South Africa passed Covid 19 is not going to look very different to many other countries.

There are many countries, it seems to me that probably will grasp the Harari point and see the world in more cosmopolitan eyes. We on the, and there will be some who won't. We are a country driven by racial tensions, by levels of inequality, which overlay with race and we are a country which has wasted many of the last 25 years. Let me give you one final example of where I feel ashamed, personally by living here and the consequences of which have worried

me particularly as a result of Covid 19. Take our urban geography, our cities and our towns look almost the same as what they did under the Apartheid period. As a result of which, we've got relatively affluent people, it is true somewhat more extended on non-racial lines, but still affluent living in the leafy suburbs and millions of people living cheek by jowl in the township. We've not changed that trajectory.

We haven't thought about the imaginative ways to ensure the reconfiguration of our urban areas, as a result of which we can't lockdown people even if we wanted to because the lockdown doesn't work, because these people are living in the particular way they are and why I wanted to end with this, if I may, Wendy, is because it seems to me that this crisis is highlighted in the sharpest possible way that which we all knew about, 25 years ago and have done far too little to deal with, which is you can have as great a constitution as you want. You can have the majestic commitments of our constitution, freedom, dignity, and equality for all, something which we should all be proud of as a text.

You can even have a constitutional court, which most certainly for most of its history, but certainly in the early days, developed the jurisprudence of which the world looked at with some measure of admiration to put it mildly. You could have all of that, but if you don't address the spatial geography, if you don't build an education system and I haven't even got there, which actually doesn't behave in a criminal fashion, isn't it not, is it extraordinary that in South Africa when they tested children on their reading skills after six or seven years of school, like half the children, if not more could not read for meaning?

Well then you realise just what wasted years we've had. No, we have no more time and I can only say that this crisis now has reached a point where it will only go, the muddling I think will end and I think we've got to have to go one way or the other, 'cause if we continue to muddle, then I do think the populist and the autocrats are in the ascendancy. So let me finish by saying that perhaps my real theme of this talk in very much along the lines of what kind of leadership can we expect and what kind of leadership should we demand and what kind of leadership should we pressure for?

That doesn't mean I look for an authoritarian leader. What it means is I look for a situation where we have a more vibrant society and to some extent we do have that in part, whilst it is true that many of our newspapers are pretty useless, including the rather strangely termed independent newspaper group, but we do have the Daily Maverick and we do have News24 and we do have a whole plethora of other independent sources.

So we in a sense do have the ability to understand what is going on and we are all, all 55, 60 million of us seem to me to have some role in being able to fashion a discourse which pushes us in the direction that I'm indicating and perhaps let me end about the importance of leadership. Since I'm talking to a predominantly Jewish audience. Perhaps can I refer you to the Parashat haShavua, the last portion of the Torah that we read, would've read if we'd all been able to get a Shul yesterday on Shabbos. The portion of the Torah, which is very interesting is

last week we ended a Parsha which dealt with the question amongst other things of the counting of the Omer, the period between Pesach and Shavuot and the whole point being they're the words that you shall all count.

This week's Parsha deals with the counting of the Jubilee year and the sabbatical year. The sabbatical year, I mean every seventh year and the Jubilee year, every 50th year institutional framework which was designed and which I can't help but end with this, with the notion that social justice was at the root of the Jewish vision for society. That you had to let go of the slaves, that you had to have restitution, that you had to ensure that debts were forgiven, that you had to ensure that you could not continue with unbending inequality over period and the words used there to mount these was the that you shall count in the singular.

The counting of the Omer was in the plural, the counting of the Jubilee and the Sabbatical year was in the singular. Why and the rabbis in the talk about what is the reason for this and the reason for this is that individuals, we can't count days, but the counting of the Jubilee year and the Sabbatical year were for the counting by the Sanhedrin, the courts, by the leaders. Individuals, in short the rabbi say count days, but it is leaders who have to count the years. It is leaders who have to count that process of years of the trajectory which we take over time to develop policy.

That's the role of leadership, not the role of individuals and it struck me that the really interesting question here for all of us was what kind of leadership is going to count these years or make a definitive move in the direction of the kind of society foreshadowed in the constitution? My own view for what it's worth is that, as I've said and I indicate we came into this in a terrible shape, we can no longer muddle along.

If we stay where we are, I have little doubt that we will see an increasing authoritarianism and repression and probably a populous backlash, which is certainly under anti-constitutional. On the other hand, if we realise that, that we've got one final chance at this and that there are serious possibilities I've indicated, it may well be that Covid 19 brings South Africa into alliance with the actual constitutional vision that it had.

I'm not one for predicting the future, but I do think that that we're in a position, that unless there are significant voices from the non-governmental organisation, in the business sector, from all in terms of the avenues that I'm talking about and the exploration of imaginative economic policies which can actually start to address the disaster that this year has called on us, then I'm afraid to say the default position looks pretty bleak and I will leave it there.

Q&A and Comments:

- [Carly] Thank you very much Dennis. We have a couple of questions, two of which I'm going to combine, 'cause they're on a similar theme, which is about Ramaphosa and his leadership and his kind of ability to make some of the changes you've discussed, specifically

Q: Do you see a tension between Ramaphosa who believes in capitalism and essentially a socialist government, albeit rife with corruption? How does he navigate this ship?

A: That's a great question, Carly. I don't believe that these people are socialists. Let's get clear what I think we've talking about. I think Mr. Ramaphosa, because of course he did go into business and he under, you know, and he made a lot of money. I think Mr. Ramaphosa understands, I suppose one would classify him as a social Democrat, somebody who believes that you've got to allow the private sector to do a hell of a lot of the heavy lifting, but that the state has significant residual responsibilities and may I say, I think that is increasingly becoming true in many countries in the world, which have realised just how important the state is to coordinate health activities and reconstruction activities in this desire state.

I mean, you know, we've seen all over the world incredible complete issuing of austerity programmes and massive government interventions. I think on the other side, people use the socialist rhetoric. It is true many of whom were educated in the old communist regimes, et cetera, but it's a fig leaf because that kind of socialism of which they've talking about has really been nothing more at substance than to a very large extent.

Rand capture, people are in a sense have seen the idea that if you aren't going to grow your economy and if you are not going to be able to participate in the economic fruits of the economy, the way in which you then become rich is by capturing Rands and how do you capture them? By politically positioning yourself that you can benefit from tenders and from similar activities.

Anybody who doesn't believe me should read the book by Trippy Oliver, "How to capture a city" which is about Port Elizabeth and how in fact that was captured by the apparatchiks precisely for that purpose. So the answer is do we actually adhere broadly to the social democratic fundamentals of our constitutional state to which I really do believe Mr. Ramaphosa believes in or do we actually exceed to what would be a socialist rhetoric, but we're striped to as essentials is nothing more than an increased levels of Rand capture of a kind that was rampant for the last decade and that's the fissure of the debate and you know, when I'm asked, when I ask who's in charge, you know which side is winning here, I'm told by a small margin, the constitutionalists are in charge at this particular point in time, but I think the fact that we have seen such level of policy equivocation and uncertainty that, that answer is still uncertain, but I mean to suggest that these people are socialists in the situation, that they're really concerned about workers, that they're really concerned about the poor.

If they were so concerned about the poor, why were they supporting Mr. Moyane who made sure that, we under collected on tax and wealthy people got off Scott free and that huge sums of money that could have been used to the reconstruction of our society and to benefit poor people, just went by the board. I mean there's nothing more outrageous it seems to me then the way in which all these crooks have been defended by people purporting to be socialists. It's nothing of the kind.

Q: Could you talk about retired Judge Rex van Schalkwyk's view that the lockdown is both illegal and unconstitutional?

A: Ah, well I'm not sure that, look, let me, it's a very interesting question, Carly, for the following reason, and a lot of people have asked me this and since it's unlikely since I'm sitting in the labour appeal court that we're going, I'm going to have to deal with this. I can give you a broad answer, and a best I can and it's this.

The lockdown was done in terms of Disaster management act, that act certainly was never conceived of for the purposes of a pandemic of this kind, but I do want to say that, you know, that at the end of the day, the powers that were granted in terms of the Disaster management act were limited and probably could be used for this particular purpose, all of which powers had to be necessary for the curbing of the pandemic.

So the idea that the first point would be, it would be illegal to have an unlawful, to have a lockdown as such, even if the was designed for other purposes, seems to me to be a bridge too far and it'd be very hard for judges to make that call. Let me explain what I mean, but you come along and you say it's illegal, question, why is it illegal? Well, because the act doesn't allow you to do so. Well, I'm not sure that's entirely true.

Certainly I think by a purpose of interpretation of the act, you probably can say those paths were available. Then you've got to ask a second question and that question is, government would say we justified in calling it and here are the following epidemiologists, virologists and other science upon which we relied and they would produce a whole lot. Now it's true, the other side will come along and say, "well we've also got our Epidemiologists and our virologists" and I accept that today, every single person, I'm sure including many in listening to our talk this evening are probably expert epidemiologists.

We all pontificate about this, but in reality, if you could get others who say no, the Dr. Hano, we've seen that, it's not something that is justified, but a judge is not an expert in this and if in fact the government was able to make a decent showing that there was sufficient evidence to rationally justify, I doubt that a court would strike down the entire process. However, there are two further aspects.

There's no question that judges should be looking very carefully at the regulations which were promulgated and I've already indicated to you I can't understand other cigarettes, the lock, the exercise one. There are a whole lot of them that seem to me way beyond the point of constitutional muster, but would a court actually strike the whole thing down?

It may be that when we get to the end of the three month period, that any extension would be a lot more vulnerable to a lockdown than the initial lockdown or the process now, but you know, I appreciate that people feel, you know, confident in the courts dealing with this, but you know, we



aren't experts in these areas and if there is plausible, rational evidence to the effect that it is a route that can be taken rationally, even if we disagree with it, it'll be unlikely to set it aside.

Q: So I'm going to combine a few more questions here so that the age old idiom that "Turkeys don't vote for Christmas." Do you believe that South Africa can really succeed? I know you touched on the fact you don't like to kind of, you know, look in your crystal ball, but people are asking, given everything you've laid out, you know, do you, how optimistic are you about the future?

A: I'm not optimistic about the future, as I've indicated, I really am not, I'm extremely anxious about the future. I know I'm well aware that lurking over me is the famous statement by Jan Smuts, that in South Africa, never the best nor the worst happens, but I feel that we are coming to a precipice here where we've got to do something.

Now, generally what we've done in our history is to have done something, we've pulled back from the worst, we've pulled back from the Zuma administration, we've pulled back from the disasters of apartheid when finally De Klerk, threw in the towel and started the whole process towards constitutional democracy. The real question is, are we going to pull back from a corrupt government and reestablish a constitutional government and are we going to do the sort of things that are obviously indicated from the economic point of view?

If I was going to really take a deep breath, I still residually feel, even though Mr. Ramaphosa seems to be taking the long game, et cetera, I still feel there's a serious possibility that we may get there, but I have to tell you, it's going to be a very closely run race.

Q: Thank you and the final question is specifically on South African Airways. Given you've touched on Ramaphosa's leadership, how would you contrast that with the actions he's allowed from Pravin Gordon, you know, given that there's not much runway left.

A: Yeah, I tell you, that's a really interesting question and I think that has shifted, the debate on South African airways have shifted quite dramatically. My own view, and I used to say this every year when I was giving budget speeches that I could not understand why we were chucking billions of rands down the gullet of South African airways when as I've indicated they were in, they were much more to be used for reconstruction purposes, but it is curious after Covid 19 that what are we going to do about domestic air travel in particular, in regional air travel perhaps more generally because it's not just South African airways that's in trouble now, Comair are also in business rescue and since it is unlikely that we'll have viable domestic travel for months on end, the whole of the local travel industry is in serious trouble.

So the real challenge is can we now reconstitute perhaps a one or maybe even two airlines, but perhaps one airline out of this mess which can service us domestically. I was talking to people, who are involved in one of the business rescues who told me that if, for example, they started flying now, given the costs that they've already incurred and given the fact that there is so little

air travel that would take place in any event, a flight return flight between Joburg to Cape town would be anything between nine to 19,000 rands.

Now that is absolutely beyond any kind of realistic possibility. So if the government is going to behave intelligently and make some contribution to the reconstruction of our domestic airline, in which perhaps some of the South African airways, such as Mango, can be a part together with Comair and so that, and the state then exits quietly allowing this airline to continue under private leadership, I would be particularly happy, and there is now some significant movement in this direction, can't say more, but I'm hopeful that that sanity is finally prevailed in this particular regard and of course, governments all over the world are having to ponder the same particular problem, but if this is going to be a case of trying to save South African airways as some vanity project and that itself, Carly would be an indicator that my more pessimistic form of analysis would be the one that would take hold here, because that would be an utter disaster.

- [Carly] Thank you, Dennis. I'm going to unmute Wendy now to ask a question and wrap us up.

- [Wendy] Thank you, Dennis. That was very, very informative. I would just like to ask you one, one last question.

Q: Is there any possibility that your vision of Eskom could materialise?

A: Sorry, Wendy. The answer to that is I'm actually quite hopeful there. I mean, I know because I've been involved in some of the discussions. It really now depends on the President putting his foot down in relation to his Minister of energy, because if he does so, then it can actually take place and it's an indicator to me, if I may say, it's an indicator to me that the more positive moves in place of a more efficient, honest, and decisive government. If we learnt in the next month, if he announces seriously that we are going hell for leather for this particular project, that's part of our new economic strategy, I would then have to revive my assessment instead of saying it's going to be a closely run thing, 52/48.

I would say this indicates to me that he's taken the kind of decisive action, which is going to get us on the right path. All of the, it is a no-brainer. There is not anybody that I've spoken to who doesn't think this is the right way to go. It's an utterly political Rand capture problem and if it's solved by a decisive political action, it's absolutely viable and there are people within the various ministries who just, not only do they know it, but they accept that and what, as I indicated in my talk, De Ruyter, the CEO of Eskom has now also bought into this, broadly speaking, 'cause he knows that without that Eskom is just completely, you know, at sea. It's not going to go anywhere. Yeah.

- [Wendy] Well, Dennis, I just want to thank you very much on behalf of Lockdown University and all of us. Most informative, really, and outstanding.

- [Dennis] Thank you.

- Pleasure. Anytime.
- Lecture.
- [Wendy] Thank you very, very much. Thanks.
- Pleasure.
- Have a good night.
- Stay safe everybody.
- [Dennis] Yeah, yeah and good luck. Good luck with all with, you know, all I can say is onwards and upwards and we are totally behind you, all over South Africa.
- You're right. Take care.
- Outstanding. Thank you.
- Bye-bye.
- Pleasure.
- [Dennis] Bye.
- [Wendy] Goodnight.