

## Judge Dennis Davis - Reflections on the Truth and Reconciliation Commission in South Africa

- Welcome back, everybody. It's my pleasure now to hand over to Dennis Davis, who will be talking about the reflections on the Truth and Reconciliation Commission in South Africa. Welcome back, Dennis. Always great to have you with us, and I'm now going to be handing the floor over to you. Thanks a lot, bye!

- Fine, remind me, so great. It's always lovely to be here and to speak with this extraordinary group of people. I've prompted to do this talk this evening on the Truth and Reconciliation Commission of South Africa, partly because Trudy Gold in one of her lectures just a few days ago, you may recall, spoke about the question of forgiveness and basically then suggested that maybe one should look at South Africa with regard to this whole concept of forgiveness.

And that prompted me to suggest that perhaps one should have a look at the Truth and Reconciliation Commission and what happened in South Africa in the early '90s into the first decade of the century. I know that there will be people on this call who are not South African, and I will try to give context to it because I do believe that this is a story that transcends national boundaries and talks beyond.

And the segue into this talk, as always with me, is the fact that it is also appropriate, I think, to talk about the question of forgiveness for after all we are in the month of Elul, and within a short period of time for all us Jews, we will be celebrating the Yamim Noraim, the Days of Awe, Rosh Hashanah, and Yom Kippur. And central to the concept of Rosh Hashanah and Yom Kippur, of course, is the concept of teshuvah, incorrectly translated in English as repentance, but coming from the source word, from shuv, to return. And I say this because in a way, this is what this talk is all about, and hopefully those of you not South African and perhaps not that interested in South African history may look at this as a case study for just enriching your own insights into the liturgy over Rosh Hashanah and Yom Kippur.

My teacher, many, many years ago, on matters of the Jewish tradition and of Talmud with whom I studied, Rabbi Dushinsky once said to me when he was studying that there was this great, in a sense, conflict about the concept of teshuvah between the two great rabbis Rambam Maimonides and Rambam Nachmanides, and briefly put, whereas the Rambam emphasise the idea that on Yom Kippur we go through a process, which particularly on the Musaf service, we read from the Temple story, the Seder Avodah, and we go through meticulously the way in which the High Priest, the Kohen Gadol, actually through a series of rituals got to a position where the entire people were essentially forgiven, that that was, and that's why in fact, if you look at the service, on the Kol Nidrei service, you'll see that the word is used in the negative, in a sense, the past tense to show we are forgiven even though we did nothing because we were there and because the rituals were obeyed.

Whereas on the other side, the Ramban emphasised the idea that when we spoke about repentance, or teshuvah, it was an active process of actually reflecting on the sins that we had

committed so that we could almost existentially put ourselves in a position whereby by the end of it all, we would be placed that whereas previously we had committed a sin, now we were going to be able to actually perform a mitzvah. The question was an active one, and we see this particularly because of the two, Isaiah and Yonah. And I want to suggest to you, if I may, those of you just joined me and think I've gone completely potty and you've actually are listening to a Talmud show, but I want to suggest you that both the question of the ritual and the question of the act of atonement and return to some pristine quality so that when confronted with the same exigencies where you committed a sin in the past, you would behave in exactly the opposite way, is central to the understanding of what I'm about to talk about with the Truth and Reconciliation Commission.

Now, what happened is, South Africa was a wonderful case study for the dilemma of what do you do in a country where there's been atrocious crimes perpetrated against the population, and now a new order is about to be created? How do you deal with that? Traditionally, the idea would've been to have gone for a trial such as the Nuremberg trials or if we wish, the Eichmann trial, and we've discussed both of those over the last couple of weeks by way of judgement in Nuremberg and by way of analysis last week of the Eichmann trial. The other would've been to do nothing, to do absolutely nothing, to stay and to do nothing. But how would you able to do that in a society which was about to lift itself from a racist, authoritarian one to a non-racial democratic one?

Problematic, and if I could go back to Hannah Arendt, whom we spoke about last week, in two of her books, "The Human Condition" and "On Revolution," she deals extensively with this notion of how authority is created in a society that has come out of a revolution. Does one go the French way with all the violence that was attendant there, too, or is there some other rebirth which creates an authority for the society and therefore pilots it into a democratic era? And in a way, her concept which she develops of nativity, of this notion of birth of a society which recreates a new form of authority was central to the idea of that South Africa could not go to Nuremberg trial.

It could not ignore everything. What it had to do, centrally, fundamentally, and absolutely was to find some other mechanism to reestablish authority for the society at large. And the way it did it was to find the Truth and Reconciliation Commission. Now, in 1993, when the country was now negotiating for a constitution for South Africa, that is, between the unshored regime of the National Party and the ANC, plus others, I have to concede, the question that therefore arose for analysis was, well, how were we going to do this? How were we going to find ourselves this course to reestablish authority? And in the constitution which emerged, which was going to, which was published and passed in order to get us through the period from apartheid into democracy, the following appeared, and Shawna, if you could put up the first, the table and the writing.

*Slides are displayed.*

This is what it said. "This Constitution provides a bridge between the past of a deeply divided," historic bridge, sorry, "divided society characterised by strife, conflict, untold suffering, and injustice, and a future founded on the recognition of human rights, democracy, and peaceful coexistence and development opportunities for all South Africans, irrespective colour, race, class, belief, or sex. The adoption of this Constitution lays a secure founding for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts," et cetera. "These can now be addressed on the basis that there is a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for ubuntu," I'll come to that in a moment, if I may, "but not victimisation. In order to advance such recognition and reconstruction, amnesty shall be granted in respect of acts, omissions, and offences associated with political objectives," et cetera.

So the constitution set up a framework by which amnesty would be granted for those who had committed acts, omissions, and offences associated with political objectives and committed during the apartheid era. The concept of ubuntu, if I can just give it to you, it's a wonderful idea. It is, "I am only myself through you." That is, I'm not only an individual. I am an individual only because I can be one through you and you through me. It's interesting, isn't it? When we talk about wearing a mask, it really captures that idea. I wear a mask to protect you, and you wear a mask to protect me, and that's how we build a new community.

And that is essentially what the constitution sought to do. Now, the difficulty was, so therefore it passed a law, which was the promotion of National Unity and Reconciliation Act in 1994, and that then established in 1995 a commission headed by Archbishop Desmond Tutu, of whom more in a moment, and a couple of other, many other dignitaries. The Deputy was Dr. Alex Boraine, a little bit about more him in a moment as well. And they then sat as the Truth and Reconciliation Commission divided into three separate groups, I will get there. But before they got to the groups and before they could work, they were faced with a very interesting legal challenge.

A group of people who really, whose families had suffered enormously because of apartheid, brought a challenge before the newly constituted Constitutional Court to say that the act which had established a Truth and Reconciliation Commission and therefore allowed amnesty for people applying who had committed terrible crimes under apartheid was not just unconstitutional but was in breach of international law, notwithstanding the provision of the constitution. The family who brought it, the main family, was the family of Stephen Biko. Many of you may not know who Stephen Biko was.

I'm sure not all South Africans do. He was a very charismatic young Black man who was obviously, well, in fact, I met him once, so I can attest to that, an extraordinary leader who would've probably played an incredibly important role in South Africa in the democratic era but was murdered by the security police in 1977 at the age of 31 in terrible circumstances. He was brutally beaten in the port, in the cells in Port Elizabeth. He was dumped into the back of a

police van and basically taken, transported 600 miles to Pretoria just on a blanket, and he died in the most awful circumstances. It had terrible consequences indeed for our own community, if you wish, because the two district surgeons who were responsible for his welfare in Port Elizabeth, Drs. Lang and Tucker, one was struck off the roll of doctors, and the other got a serious reprimand for the disgraceful conduct in actually not treating Steve Biko in the way a doctor was expected to do. It was a very, very terrible period in our history.

I mention it because here was this family coming to the newly constituted Constitutional Court and saying to this court, "We want justice for the fact that our son, our husband, our father was brutally murdered, and you can't give amnesty to people for that. They've got to go through an ordinary trial, a Nuremberg trial, an Eichmann trial. They need to go through a proper trial process." Consider the situation for the judges of the Constitutional Court, many of them very, very distinguished lawyers who themselves had very wonderful human rights records. I think, for example, of the president of the court, Arthur Chaskalson. I think of his deputy, Ismail Mahomed, Albie Sachs, Richard Goldstone, John Didcott, Pius Langa.

These were people who sat on that bench and would've known Biko or would've certainly known the Biko history. This was not an easy case. How do you look at a family and say, "You've got to go the amnesty route. You cannot go the route of a trial." And the judgement shows the acute tensions which the court was aware of, and it's relevant to understand, it is very relevant to understand that the model of a truth commission for a society deeply divided, trying to get itself out of its awful history into a democratic future, seems to me to be, confront precisely these problems. And Justice Mahomed said the following, and let me quote you what he said. He said, "Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty from constitutional attack, but the circumstances in support of this course require carefully to be appreciated."

And he then went on to say there were two justifications for amnesty, notwithstanding the powerful arguments in favour of criminalization. The first was that "Amnesty is required for truth about the past, and a public airing of the truth is reconciliatory through its positive psychological consequences for victims, families of victims, and perpetrators." Let me stop there. That is precisely the argument that Gideon Hausner, Ben Gurion, and others put up in relation to the Eichmann trial, the idea being victims are entitled to a voice, and they're entitled to know what happened. They're entitled to get some idea of truth, and the commission can do that, said Judge Mohamed. The second he said was that "Without amnesty, the bridge to a liberal democratic society might not have been built. Indemnity for the state is justified by its service to remedial distributive justice."

This was a very interesting conception. What the deputy chief, deputy president of the court was saying was that we can't get to democracy through a Nuremberg trial. It's not possible, and it's not possible because the old regime still has the military might. It's still possible for them to subvert the democratic aspirations of the majority of the population. If we're going to start

charging left, right, and centre, a whole bunch of National Party politicians, generals, policemen, et cetera, we could find ourselves in a situation where we have a civil war. And therefore, we as the court, aware as we are of the agony and the angst which the victims of the society have suffered, we think this is the pragmatic course. And if we are going to, as it were, set aside this act and set aside the truth commission, we will actually subvert the very idea of a constitutional democracy, which we are enjoined to respect.

And I hope you can understand, and the reason I'm drawn to this is just how difficult a case this was, just how difficult it was for judges who knew Biko, who knew the family, who knew exactly what was going to be given up, but felt under the circumstances for the two fundamental reasons that I've suggested, particularly the second one, the second one being the pragmatic one, the idea was that if you don't go this route, then we can't construct a bridge to a democratic society, we'll blow it up, and that therefore meant that the Constitutional Court found that the truth act, Truth and Reconciliation Act, finding it was constitutional, and off they went.

And so in 1996, this body began its work, and it began its work, if I may just to, and of course I'm having to do an extraordinary amount of work in one hour because one could literally run a whole course on this, and indeed, people do. I wanted to suggest to you that the way it worked was they set themselves up in three separate committees. Again, going back to my segue of the debate between Nachmanides and Maimonides, it's interesting. The first was the Human Rights Violation Committee. And what this was was effectively where the institutional hearings took place, where victims could come along and tell their stories and confront the perpetrators and actually therefore provide a narrative which was then risen up in very significant reports about the history of apartheid and what had happened.

That was the first committee, and in a sense, if you wish, that was the ceremonial committee. That was the idea that in fact you'd have this almost ceremonial approach which would have certainly restorative and restitutive aspects to it, but which at the end of the day was not going to be able to do more than actually report. And what I wanted to do, I want to just preface this to show you just one illustration of how that committee worked. Now, to give you the background to this, the case that you're going to see, which perhaps contains maybe the most harrowing single experience of the entire process. It's the terrible scream of Mrs. Calata, whose husband was brutally murdered. So let me tell you about this.

here were four of them. They were called the Cradock Four. There were four community leaders who had actually democratically won control of the town of Cradock. This, of course, is not to the liking of P.W. Botha, and it was not to the liking of the National Party government. And instructions were issued, and we know that because there are records of this, instructions were issued to actually remove these four. Of course, there's debate by what remove meant, but everybody knew what it meant, and they were brutal. They were apprehended by the police, brutally assaulted, killed, and their bodies were burnt. One of the major perpetrators, whose name comes up in the clip I'm about to show you, was Colonel Gideon Nieuwoudt.

And I have a personal story about, well, I suppose I've had two personal stories. One is my Centre of Applied Legal Studies, which I ran in this period, we actually filed an amicus brief in the AZAPO case, basically arguing that we had to do something to assist families. My second autobiographical note is many years later, I was a judge in a case which dealt with the question of Colonel Nieuwoudt, who had asked for amnesty, had not been granted it, and then took the review, the Amnesty Committee on review to the high court. I was one of three judges who had to deal with that. I felt he should never be given amnesty and that they were right.

My two colleagues, much to my mortification, did not take that view. I ploughed through 7,000 pages of gruesome testimony about all of these awful atrocities that this dreadful man had perpetrated over a long period of time. Now, he was implicated in the murder of Mr. Calata and Mr. Goniwe and two others. And what I'm about to show you is a clip, is a clip from South African Broadcasting Corporation, which to its credit at that time broadcast very comprehensively all of the hearings and reports, and who you'll hear is the voice of a man called Max du Preez, a very distinguished journalist who was working for the SABC at the time. And I think that this particular clip will give you an understanding of what the hearings of the Violations Committee and the hearings were all about.

*An audio clip is played.*

- [Max du Preez] Colonel Nieuwoudt's lawyer, Francois van der Merwe, faxed us his client's response to the allegation. He says, "My client denies that he had any part in any action which led or could have led to the disappearance of the so-called Pebco Three, or that he has any knowledge in this regard. It is significant that in three applications which were brought to the Supreme Court in this regard, my client's name was not mentioned once." The lawyer then quotes from Mr. Justice Van Rensburg's judgement in the last of these applications where the judge said, "If these facts are taken into consideration, it seems to me that the probabilities are in favour of some organisation other than the police being responsible for the disappearance of Godolozzi and his two companions."

But in the Truth Commission this week, Colonel Nieuwoudt's name was also linked to another well-known Eastern Cape murder mystery, the Cradock Four. Matthew Goniwe, Fort Calata, Sparrow Mkhonto, and Sicelo Mhlauli were the leaders of the Cradock Ratepayers' Association, like PEBCO, an affiliate of the UDF, and therefore targets of the state.

- On the 27th of June 1985, he left for Port Elizabeth in the company of his friends, Fort Calata, Sicelo Mhlauli, and Sparrow Mkhonto, and that was the last time we saw them. They were due back on the same night, and when they did not come back, we knew that something serious had happened. Early in the morning of the next day, I telephoned the UDF offices in Port Elizabeth. I also phoned Derrick Swartz and Molly Blackburn to establish their whereabouts. Derrick Swartz informed me that Matthew left with his friends for Cradock the previous night of the 27th, June 1985, at about 9:00 PM. You can imagine the shock, and I shivered to think what might've happened to these comrades.

I kept the news secret for a while from the family, all the family, except for one person, my brother-in-law, who was planning what to do next. On arrival at home, we were informed that the police had phoned. They left a message with a child, my brother-in-law's son, to inform the family that Matthew's burned car had been found near the Scribante racing course outside Port Elizabeth. Immediately we knew that something serious had happened. Of course, we had pointers because in May, as you know, the Pebco Three disappeared without a trace. Relatives and the community were informed, and some members of the family had to go to Port Elizabeth to establish what had happened. It was this group that also assisted the families to identify the bodies later on. On Saturday the 29th, June 1985, the bodies of Sparrow Mkhonto and Sicelo Mhlauli were found first, and that of Matthew and Fort were found on the 2nd of July 1985. All the bodies had multiple stab wounds and were badly burnt.

- [Reporter] On July the 4th, 1985, Mr. Louis Nel, the then minister of information, rejected allegations that the authorities were responsible and blamed the murders on an internecine power struggle between opposing radical organisations.

- [Max du Preez] The first inquest came up with nothing, and then the newspaper "New Nation" published a top secret message from military intelligence. It called for the permanent removal from society of Matthew Goniwe, Fort Calata, and others. The signal was sanctioned by the then head of military intelligence General Joffel van der Westhuizen. Mr. Justice Nevel Sietzman found that the Cradock Four had been killed by unidentified members of the security forces.

- [Interpreter] So I was taken to-

- [Max du Preez] The commission had to adjourn for a while when Mrs. Calata broke down during her testimony.

- [Interpreter] Terribly, and it affected me also.

- [Interpreter] The perpetrators of my husband's killing, they should not only be exposed, but they should appear in court so that everybody can see them.

- [Max du Preez] And this was when Colonel Nieuwoudt's name came up again.

- [Interpreter] They chopped off his right hand. We buried him without his right hand.

- His right arm, or the hand.

- [Interpreter] We don't know what they did with it.

- [Commissioner] Okay.

- [Interpreter] Want that hand.

- [Interpreter] Yes, we buried him.

- [Interpreter] We heard that it is at the Legransie police station.

- [Interpreter] At the Louis Legransie police station, I was shown a bottle with a watery substance which had a hand.

- [Interpreter] and I remember that Sicelo was buried without a hand.

- [Commissioner] Who showed you the hand?

- [Interpreter] It was Harding, and there was another one who was charged in Port Elizabeth recently in connection with a bomb blast, Nieuwoudt.

*Audio clip ends.*

- Thank you, Shawna. I just want to make a couple of comments, if I may. Mrs. Calata's scream, which you heard there, if you ask people who actually attended the Truth and Reconciliation Commission, if you ask, as I did, had long conversations with Archbishop Tutu and Dr. Boraine, they will tell you that that was the scream that, as it were, lived with them throughout the hearings. It sort of personified the pain, the grief, the incomprehensibility of what had happened, and in a sense, it also reflected on the controversy surrounding so much of the hearings. Archbishop Tutu, of course, took a particular view.

He was fond of quoting one of the testimonies which said the following. "I feel what has brought my sight back, my eyesight back is to come here to the Truth Commission and tell my story. I feel it would've been making me sick all the time if the fact that I couldn't tell my story. But now it feels like I've got my sight back by coming here and telling you the story." There were others who didn't feel quite that way. If I can find in my papers, I have a quote which I found really very interesting about someone who felt very differently and who felt that to a large degree it was all very well for Archbishop Tutu and others in the comfort of their home to be able to do this. Here's the one where Antjie Krog, who also wrote quite beautifully about the the Truth Commission, reports a story of Dirk Coetzee, who was one of the police people who then actually did spell the beans beforehand, asking Charity Kondile for forgiveness for the murder of her son.

Mrs. Kondile's legal representative responded on her behalf as follows. "You say that what you would like, you would like to meet Mrs. Kondile and look her in the eye. She asked me to tell you she feels it is an honour you do not deserve. If you are really sorry, you would stand trial for the deed you did." And then she said in her own voice, "It's easy for Mandela and Tutu to forgive. They live vindicated lives. In my life, nothing, not a single thing has changed since my



son was burnt by the barbarians, nothing. Therefore, I cannot forgive."

And I want to come back to that a little later, if I may. But there's no question that what you've just seen in the six or seven minutes encapsulated months and months of hearings, 19,000 hearings, 19,000 people coming forward and telling similar stories, maybe not as harrowing, but I did want to try to capture, if I could, just in a few minutes the flavour and the text, the context in which the particular Violations Committee sat. There has been a lot of criticism about that subsequently, before I get on to the two other committees. The feeling was that perhaps we didn't get as much truth as we should've. The reports weren't quite, didn't give us as much.

My friend Professor Hugh Corder who was the dean of the law school At University of Cape Town and a very distinguished academic, has written, saying, and if I can quote him, "during the transition years," the years he's talking about, "security forces destroyed much of the incriminating evidence against the apartheid-era aggressors. Because of this, it was very difficult to locate witnesses and gather evidence to press criminal charges against those that did not volunteer to testify at the TRC." So we had this real problem that there was a huge amount of evidence that had been destroyed.

In fact, the rumour mill was certainly many of the various diplomats told me during the interim period that you couldn't get a shredding machine for love or money during those early '90s as the officials just shredded all sorts of information. And the Goldstone Commission, which sat during that particular period, did come in for considerable criticism because it didn't seize as much of the documentation perhaps it should have. Whether it could've or not, I don't know." But the fact was that Professor Corder's observation that so much was destroyed that one could not pursue the truth to the extent that one would've wanted to certainly held true.

And Mrs. Kondile's kind of observation counterposing to Archbishop Tutu's is particularly interesting. The second of the three committees which sat was the Reparations Committee, and this had two principle tasks. The first of them was to select deponents to the Human Rights Violation Committee amongst volunteers who put themselves forward as candidates, but its second charge, which was much more important, was to recommend to the government reparations to be granted to victim deponents with the objective of symbolically breaking with the organisational principles of previous governments. The idea here was, in a sense, to ensure reparations for those victims. That I should tell you, friends, has not been a success at all.

And I want to return to that towards the end of this talk because one of the greatest criticisms of our entire process was that so many victims who were left high and dry without any money, without any kind of recompense, and without any acknowledgement of the loss that they suffered. The third was the Amnesty Committee, and that was the third body, and that was a body which was essentially the most judicial of all. After all, it was a body where there were three judges who were appointed by President Mandela. And what had to happen here was that they were appointed, and their mandate was effectively to grant amnesty to people who actually, one, acknowledged, here, come back to my segue, had to acknowledge their sins, had to

acknowledge what they had done, and then the committee had to evaluate whether they had done those for political purposes and whether, thirdly, the act was proportional, in a sense, to the political objectives which they claimed.

And so they had to, as it were, come forward, those who had committed these atrocities, and essentially fulfil these three requirements before they got amnesty from criminal prosecution. The idea was, no question about it, the idea was that if indeed you did not come forward for amnesty, then you could be liable for prosecution, and we'll come there in a moment. I mentioned to you the Nieuwoudt case. That was something I had to deal with as one of three judges, where one had to look to see whether Nieuwoudt was entitled to, in fact, even be considered for amnesty, given what he'd done.

It turned out I thought that in the particular case that he had come for amnesty, it was absolutely obvious that there were no, that it was totally disproportionate, was an absolutely awful set of murders of a kind that could never be justified on any basis, and it was questionable whether the motives were totally political or also were personal. But it was that sort of difficulty that the Amnesty Committee encountered time and time again. And so they were the three committees, and as I've said, quoting Hugh Corder, very, very difficult to have been able because of the absence of material to determine the truth and to some extent the accuracy of what had happened.

I should just add that the Calata case has had a contemporary spin because some of you who may have read newspapers will have read that President de Klerk, he was president, de Klerk, was invited to the American Bar Association Conference to address them. And Calata's son, Lukhanyo Calata, and many others with him demanded that that invitation be withdrawn, because they claim that de Klerk was on the cabinet committee, in the cabinet committee which had ordered the removal of Calata et al. Whether that is correct or not, I don't know. I don't have information on it. I simply share the fact that the Truth Commission and everything around it remains very much a live issue.

Now, I said to you that the Amnesty Committee, had this job to grant amnesty to all sorts of people, and if it didn't do so, then, if you didn't come forward, you stood liable for prosecution. What is particularly interesting is that the Truth Commission ended in 2002, and from 2002 to 2017, 2003 to 2017, not one prosecution of anybody for any of these crimes took place in South Africa. And we know this now because in, what happened subsequently just a couple of years ago, and it culminated I think in a judgement about 18 months ago, one of the people who had suffered, one of the families that suffered was the Timol family.

What had happened in their case was that, and some of you who live in South Africa or lived in South Africa might remember this case, Ahmed Timol was murdered by being pushed out of John Vorster Square, of course, and fell to his death. One of the usual excuses was that he couldn't stand the interrogation, and he jumped out of the building, but that was not true. We know that now because the family, not that we didn't know it then, but the family finally managed

to get an inquest before the Johannesburg High Court shortly, not that long ago, and there the truth came out, and one of the people who was responsible for the murder of Ahmed Timol was a man called Rodrigues.

And he sought a stay, a permanent stay of prosecution against himself for being, as part of the murder of Ahmed Timol. And in that case, Judge Kollapen makes express mention of the fact that there'd been not one prosecution for 14 years, no explanation as to why the National Prosecuting Authority has not done so, no understanding at all as to what reasons were given. We could speculate, I think, on all sorts of levels, and I'm sure many of you will be doing that as I speak. Let me not take it any further. But there's something extraordinary about a system which ultimately was predicated on the idea that you either got amnesty, applied for amnesty, or alternatively you were prosecuted, and nobody was prosecuted.

And not only was nobody prosecuted, but the democratically elected executive, according to Judge Kollapen, "placed obstacles in the way of any prosecution taking place." I should tell you that the Timol inquest certainly exposed just the unbelievable brutality of the security forces at the time, and there is a case that currently is ongoing. But the point is, and there will be others like that. Suddenly 20 years later, the books are still being reopened.

So the amnesty did not necessarily work as well as it should've, but those were the three committees of the Truth Commission, which wound up in 2002. There have been significant criticisms of it. I've mentioned one fundamental one, and I'd like to return to that in a moment, which is the issue of reparations. But I'm perhaps running ahead of myself. So let me go back to some of what people have said about the Truth Commission. So from the Centre for the Study of Violence and Reconciliation in South Africa, Oupa Makhalemele has said the following. He has criticised the idea that this idea of ubuntu, this notion of "I am myself through you and you through me," and that it was a communitarian and compassionate idea. He said, he criticised, he said, "The assumption that people who lived through years of conflict would be able to reconcile was extremely optimistic.

The emphasis on reconciliation was excessive. This cannot happen instantaneously." And then he said, "The paradigm of reconciliation clashed with the principles of taking responsibility and justice as accountability. The notion of ubuntu that has to do with a certain myth about African culture taken as an indistinctive whole will be used in an undifferentiated way. The refusal to apply, to make application of the punitive principle would be the result of a romantic and undifferentiated view of African culture which valorizes expressions of social harmony instead of conflict." Similar sentiments were expressed by Richard Wilson in a 2001 book called "Politics of Truth and Reconciliation in South Africa."

And perhaps equally significant, or even more significant, this is the criticism of Madeleine Fullard, an ex-member of the Reparation Committee, to which I've already made mention, who wrote, "The TRC ignored the issue of race and discrimination which took an economic and social form. Race was an ugly word. Five million people were forcibly removed from their homes

because they were Black. These people had limited mobility, and we failed to address any of their grievances." But on the other hand, on the other hand, we have studies which show that the Truth Commission actually produced quite significantly important results.

One of these is a 2008 study, which I find particularly interesting, authored by Professor Dan Stein, the head of the Department of Psychiatry at UCT, who did a very large study with a whole bunch of co-authors, and they found that interviewing a relatively large sample of people and trying to test their reactions, they found that there were moderately positive views of the TRC, that in fact, whilst of course there was a lot of grievance one way or another, they did say, "Blacks and males are generally higher levels of participation and more positive perceptions of the TRC than whites and women." They also said, "It can be noted that race and gender account for a relatively small amount of the variance in distress, anger, and forgiveness.

Despite markedly different histories during colonial apartheid time, there were some similarities in subjective experiences of South Africans of all different racial and gender groups." And they then went on to say that "In summary, although the TRC may not have met the early expectation of South Africans, overall, many people who were exposed to the TRC and participants in the survey had a moderately positive view. It needs to be emphasised it was an imperfect process. In particular, perpetrators have not been brought to book, and victims have not been adequately compensated." But nonetheless, it's still, they say, a relatively successful venture.

If I can give you two other insights, Alex Boraine, the deputy chief of the TRC said, "The TRC was there to hold up a mirror, to reflect the complete picture of violence in South African society. From that, it would be possible to identify all victims in the conflict and to confront all perpetrators of gross human rights violations," and that's what he did. By contrast, Bishop Paul Verryn was much more critical when he said, "The primary cancer was and will always be the oppression of apartheid, but the secondary infection touched many of apartheid's opponents and eroded their knowledge of good and evil.

One of the tragedies of life is that it's possible to become like those who we hate the most, and I have a feeling that this drama is an example of that." And I'd like to use that as a segue for my concluding remarks, if I may, and that is that it's very hard to know how to evaluate the Truth and Reconciliation Commission. It's very hard to say to an audience such as this, "Well, this is a model that we should be adopting elsewhere." I think we can say the following. We can say that the Truth Commission did, in fact, get us through that worst of times. It was the bridge, and certainly in 1993 and '94, '95, '96, it would've been extraordinarily hard to actually negotiate a South African democratic settlement if you had gone for Nuremberg trials.

I do think that it therefore served an extraordinarily important purpose. But Verryn's point is really interesting, which is what extent, notwithstanding the TRC, did the violence of South Africa result not a in sense in reconciliation but in a sense, in not just division, but a reproduction of the patterns of the past, which in a sense have destroyed the possibility of reconciliation and in a sense a harmonic restructuring of South African society? Now, not everybody believes that,

and it is true that I think it is fair to say that for some, some of the forgiveness, some of the reconciliation, some of the process was very much typical of South African society and certainly very much believed by that remarkable man, Archbishop Desmond Tutu. And I felt particularly in answer to Trudy's point about forgiveness that this little clip from Desmond Tutu is something worth watching before we make our final summations.

*A video clip is played.*

- In the worst of situations, some people are able to find it in their hearts to forgive, while others can't understand how or why. Archbishop Desmond Tutu of South Africa, who knows a lot about the subject, says there's a lot of power in forgiveness. He discussed it with NBC's Ann Curry.

- [Ann] In South Africa, Archbishop Desmond Tutu is talking about forgiveness in one of Cape Town's poorest neighbourhoods.

- I'm sad more than angry.

- [Ann] Blacks here were forced to live in townships under the racial oppression of apartheid for decades. Some still do.

- Unfortunately, South Africa has become the country in which the gap between the rich and the poor is the widest in the world.

- It was Archbishop Tutu who chaired the nation's Truth and Reconciliation Commission, which saw 19,000 mostly Black men, women, and children testify about the brutal atrocities they had endured, murder, torture, and rape, and yet many forgave their white oppressors. In the face of that evil, how do you explain so many South Africans saying, "Okay, I forgive."

- See, it's one of those incredible things about human beings. No one is beyond redemption, no one.

- Now Tutu has written a book on the power of forgiveness with his daughter Mpho, which includes some extraordinary stories of forgiveness, not just in South Africa but all over the world. You write about a couple in California, the Wagners.

- Yes.

- Who not only forgave the drunk driver who killed their daughters.

- Their daughters, yeah.

- Their two daughters, yeah.

- They embraced her.
- Yes, yes.
- Does it take an extraordinary person, though, to do something like that?
- You know, yes, it takes an extraordinary person to do something like that, and yet we all have the capacity to be extraordinary.
- Almost all of us will say, "I wouldn't be able to do that" when we hear of the circumstances. But you don't know, you know? You don't know how you really would react.
- [Ann] In fact, they say, the capacity to forgive is in each one of us, and it is something you actually do for yourself.
- It's your peace of mind, your peace of spirit that you serve by forgiving. The person who has done the evil deed will have consequences. But until you are able to forgive them, you're still tied to them. You continue to be punished by what they have done.
- So forgiving someone does not mean absolving them for justice.
- [Mpho] No.
- [Ann] Forgiving does not mean forgetting.
- No!
- [Anne] The archbishop says forgiveness has given his nation and so its future new freedom to hope.
- We all get to the point where we realise human life would be totally impossible, yes, without that forgiveness.
- [Child] A pilot.
- You want to be a pilot! That's wonderful. That's really aiming high.
- [Ann] A gift he helped give South Africa he's now offering to the world. Ann Curry, "NBC News," Cape Town.
- Even in the worst of-

*Video clip ends.*

- I think that gives you a sense of the personality of the man, extraordinary man who chaired the Truth Commission. So let's just summarise this, if we may. I do appreciate that I've gone through a lot of material in a rather quick time, and I'd like to summarise it if I can. I think that the question which perhaps is best to segue my summary is to pose it as a question. If I was to be asked by any of you now, for a country emerging out of darkness, out of oppression, out of violence, out of crimes against the population, would I recommend a truth commission? And the answer is, it seems to me that if you were in the circumstances that we were, and many countries are in that situation, it's a pretty reasonable idea to have a truth commission.

And with all the criticisms that I've tried to give you, the balance that I've tried to give you in terms of people, pros and cons, it seemed to me that it was an essential mechanism for getting us through a very difficult time. I can't really imagine what would've happened in South Africa had there been straight demand for Nuremberg trials, what that would've done for a very powerful police and security force at the time.

But I do think that the Truth Commission on its own was not enough and that the architecture of the Truth Commission was in a sense that if you came forward, and again, coming back to my, when Desmond Tutu talks about forgiveness being an inextricable quality which makes us human, it's so central, again, if I may just say, it is an elemental concept which is so central to the Yamim Noraim that I could not but feel that this was the appropriate time to talk to you about it, because it does seem to me that it's the acknowledgement of what you've done wrong, fundamentally of what you've done wrong, and then the commitment to put it right.

And in the South African context, that meant the commitment of White and Black people to put it right, and that is why there's such disappointment in the Reparations Committee. Some of you who are not from South Africa, some of you who are, may have read the "New York Times" article about the rampant levels of corruption in South Africa at present. It is precisely that rather than the Truth Commission that seems to me to be at the root of our problem and the failed experiment which we launched in '94, or at least a potentially failed one. We may still succeed, but we are in trouble, and we should not fool ourselves.

The reality is, however, that where we went wrong was once we'd gone through that Truth Commission to say, as Judge Kollapen has, that inexplicably for 14 years, 2003 to 2017, not one prosecution and obstacles placed in the way of prosecutions, meant that the principle of accountability, the principle that if you did something wrong and you weren't prepared to confess, then in fact there had to be consequences, that seems to be eroded entirely. But I do think that the Truth Commission with all its trauma, if one reads the record, if one goes through some of the material, it did show a level of forgiveness, of which Archbishop Tutu refers, which is utterly remarkable and shows just the potential of the South African people at large.

The pity is that it gave us the opportunity to do the restorative work, to do what the Nachmanides had said, if I can come back to that, that it's not just good enough to simply

acknowledge the faults. You've got to do much more than that. And I have to say, when I hear people say, you know, that, "Well, apartheid wasn't so bad, it wasn't a crime against humanity of that kind," it's extremely distressing because it actually just shows what journey we still have to journey in, or to complete, sorry, in order to get us to the point whereby we can actually acknowledge that which we've done and try to put it right.

So in a way, the weaknesses and the strength of the Truth Commission are all the weaknesses and the strengths which I suppose are attendant in any society trying to reconfigure itself. And I do think that partly because of the weaknesses of the amnesty, the weaknesses of the reparations, the concept of authority to which Arendt made reference and to which I spoke at the beginning, an authority which would essentially reconstitute South Africa and have a new sense of authority, of justification, of accountability, of transparency, replacing the racism, the myopia, and all of the closure, an archipelago of security forces that we had prior to democracy, that is, I'm afraid, still wanting, and that is the journey that still has to be completed.

But I do hope that when perhaps you open up your Machzor on Yom Kippur, maybe you'll look at it with a slightly different insight and to realise just what our tradition can offer us, both its weaknesses and its strengths, because it seems to me that is the best way that I have found to analyse that which is the Truth and Reconciliation Commission. Thank you.

- Dennis, thank you on a most brilliant presentation. It was absolutely outstanding.

- Thank you, thank you.

- Thank you very, very much, very thought provoking, very insightful, and truly wonderful. To all of you who have joined us this evening, this morning, this afternoon, say thank you and goodnight.