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BRAM FISCHER MEMORIAL LECTURE



Thirteenth Bram Fischer Memorial Lecture – Justice Steven Majiedt (2025)

“Everything’s gonna be alright, you will see”: the resilience of Bram Fischer and the resilience required of constitutionalism and the rule of law

Presentation at the 13th Bram Fischer lecture, Thursday 18 September 2025

It sounds like a hollow cliché to say it, but I am truly honoured and privileged to stand here today at the invitation of a much admired and well respected organisation, the LRC, to deliver this 13th lecture in treasured memory of a giant patriot, Bram Fischer. Considering the eminence of the last three preceding speakers, which include two former Chief Justices, I am the least qualified and the least well-known speaker by a country mile. But, here I am. Much has been written and said by others far more eloquent than I could ever be.¹ But one thing which I can proudly claim here is that I am the first presenter of this prestigious lecture to share the same mother tongue language as Bram, Afrikaans. And that ladies and gentlemen is the closest I could ever come to be compared with the great Bram Fischer.

I acknowledge the presence here of some of my colleagues, retired and serving: many members of the legal profession, of both the Bar and sidebar; leaders and members of other civil society organisations which I greatly admire for the work that they do; members of the media, and all others present here today. I understand that one of Bram’s daughters, Ilse, is also here this evening. If so, I give special acknowledgment to her and would love to have the pleasure of meeting her afterwards.

Now you may have wondered where the title of this lecture comes from, and how the title of a Bob Marley classic found its way into a lecture of this stature. In preparing for this lecture, I read this striking message:

“Alles sal regkom, jy sal sien”. Loosely translated that means: *“Everything will be alright, you will see”*.²

¹ See, amongst others: G Budlender, “Bram Fischer – The man and the Lawyer” 1995 *Consultus* 161; S Ellmann “To live outside the law you must be honest: Bram Fischer and the meaning of integrity” (2001) 17 *SAJHR* 451; G J Marcus and J Kentridge, “The striking-off of Abram Fischer SC” Centenary publication of the Johannesburg Bar at 45; S Clingman, “Bram Fischer: Afrikaner Revolutionary 2 Ed, 2013.; F Viljoen, “Bram Fischer: ‘n Lewe in Waarheid,’n Les in Versoening” (2000) 117 *SALJ* 729.

² Clingman, above fn 1, 272.



This was a phrase which Bram's wife, Molly, wrote in a letter to Ilse, just two days before the start of the Rivonia Trial. It is a phrase borrowed from, of all people, President Paul Kruger. Bram's life had many complex facets, he was an enigmatic man, a lawyer who fought the pernicious apartheid system from within and outside of his profession. I will say a bit more about this complex enigma presently. That Afrikaans saying vividly illustrates Bram Fischer's remarkable resilience in the face of extraordinary adversity. And, as I shall endeavour to show, it is what we sorely need for our grand constitutional project, at this time of persistent overt and subliminal assault against constitutionalism and the rule of law, an assault from within our motherland that finds resonance in the global push back against democracy in general, and constitutionalism in particular.

Bram Fischer was known as an unfailing optimist, often much to his own detriment. For instance, even when he was still in prison, and when he heard of the freedom obtained by Zimbabwe, he prophesied that revolution in South Africa was just around the corner. He had little idea of just how many years of struggle lay ahead. But such was his unfailing faith and resilience in the nature of South Africans to overcome, that he never gave up hope, and although he was not there to see it, all of his hopes would come to pass.

In 1965, shortly after Bram's second arrest, and before the commencement of his trial, he met with his counsel, George Bizos. George embraced Bram affectionately, and then asked him whether "it had all been worth it?". Bram was hurt, and his response was, according to George, angry and clear cut. Had his nine and a half months underground, (and prior countless years of activism) sacrificing his family, his profession, and everything else, been worth it? He asked George whether he had asked their friend Nelson (Mandela) that question, who surely, had sacrificed all of that and more? No, said George, he hadn't. "Well then, don't ask me" was Bram's retort.³

According to those who knew him, it was painful for Bram that the essential character of his action and his protest still required justification after all those years, for, to him, it had been no more unnatural for a white man to make these sacrifices for a new and free South Africa than it was for a black man. So how dare one enquire of him whether it had been worth making all those sacrifices.

³ Clingman, above fn 1, 365.



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Bram's integrity and the rigorous standards of morality to which he held himself, was the enduring impression he left with all who knew him. It was intrinsic to his nature as a person, but also to his understanding and application of the law, in the way that he practised it, and the ways he chose to both obey, and disobey it.

Early in his career, Bram was part of the Joint Council of Europeans and Africans in the 1920s in Bloemfontein. The Joint Councils Bram attended brought together black and white men to discuss issues of mutual concern. After one meeting, Bram had to, for the first time in his life, shake hands with a black man. Bram, after years of indoctrination, found himself suddenly overwrought by a feeling of revulsion, which he had to force himself to suppress.⁴

That feeling, and the introspection it triggered, would leave a lasting impact on him. So lasting he would refer to the experience in his speech from the dock, many years later, where he was on trial and facing life imprisonment for opposing the racism he had, as a young man, embodied. For someone else, and indeed for many other white South Africans, a moment like that would have been brushed off, but for Bram, it triggered a moment of deep self-inspection.

At his trial, Bram recounted:⁵

"I arrived for my first meeting with other newcomers. I found myself being introduced to leading members of the African community. I found that I had to shake hands with them. This, I found, required an enormous effort of will on my part. Could I really, as a White adult touch the hand of a black in friendship?"

"That night I spent many hours in thought trying to account for my strange revulsion when I remembered I had never had any such feelings towards my boyhood friends. What became abundantly clear was that it was I and not the Black man who had changed; that despite my growing interest in him, I had developed an antagonism for which I could find no rational basis whatsoever."

Before Bram's first trial, the one in the middle of which he would disappear, going underground and leaving his counsel with a letter to read to the court, he had the

⁴ Id, pages 47-48.

⁵ Link to full statement: <https://oulitnet.co.za/fischer/statement.asp>.



opportunity, easily and without risk of much harm to those left behind, to remain in England and not return, absconding and violating the conditions of his bail.

Having been granted bail after being arrested under the Suppression of Communism Act, he was to act as counsel in an ongoing case before the Privy Council in London. It was the culmination of a long drawn out suit referred to as the “Bayer Copyright Case” which he would go on to win.⁶

He applied to the court to grant him bail, and submitted that he had:

*“no intention of avoiding a political prosecution. ... I am an Afrikaner. My home is South Africa. I will not leave my home because my political beliefs conflict with those of the government ruling the country...”*⁷

For Bram the responsibility lay with him, because, while the government had done its best to corrupt the Afrikaner identity, he believed it was his responsibility to remain true to an alternative definition. Later, when asked, “Why go back?”, he simply responded, “because I said I would”.⁸ He had made an undertaking in a court of law, of which he was an officer. Anthony Eastwood called it “*a quaint loyalty to the legal tradition from which he had come*”, an impression shared by Joe Slovo – the complex character of a committed revolutionary, balanced with personal honour to be true to a personal undertaking.⁹ And yet, once that same trial had commenced, he skipped bail and elected to go underground, defying the law and his convictions in terms of a piece of legislation which, in his view, undermined the very essence of the rule of law, and what he had dedicated his life to. In the letter read out in court in his absence, he affirmed that:

“Unless this whole system is changed radically and rapidly, disaster must follow. ... These are my reasons for absenting myself from this court. If by my fight, I can encourage even some people to think about, to understand and to abandon the policies they so blindly follow, I shall not regret any punishment I may incur. ... I can no longer

⁶ Id, 313.

⁷ Id, 309.

⁸ Id, 311.

⁹ Id, 316.



*serve justice in the way I have attempted to do during the last 30 years. I can only do it in the way I have now chosen.*¹⁰

The Johannesburg Bar Council, with astonishing alacrity, resolved within a mere two days of the estreatment of Bram's bail, to move an application for his striking off from the roll of advocates. Equally amazing and inexplicable was that the decision was taken in Cape Town, and that the Minister of Justice was confidentially informed of the decision. As Gilbert Marcus and Janet Kentridge rightly point out, it remains unclear why the Bar Council acted with such unseemly haste and why they deemed it necessary to inform the Minister of the striking off application.¹¹ And they correctly conclude, the application was unjust because it disregarded the moral and political considerations which removed Bram's conduct "from the realm of a dishonourable and self-serving deception and made it instead a supreme moral sacrifice".¹² The application was successful, with the Court rejecting the contentions that Bram's conduct did not relate to his profession as an advocate and that it cannot be categorised as unworthy conduct.¹³ It was just another ripple in a sea of injustice with the judiciary of the time one of the leading seamen (yes they were all men at that time).

Within the law, and without, Bram's life was given to the cause of justice. Looking back at sacrifices, and the difficult choices Bram made throughout his life, one is struck by how, had he so wished, he could have slid, easily and happily, into a life of prestige, wealth and comfort lined up for him by those who had come before. Observing one's privilege is a phrase now often used in contemporary discourse, but Bram Fischer was born into what one commentator called the closest thing in the then Orange Free State to a Royal Family.

Bram's grandfather, Abraham Fischer, after whom he was named, was the Prime Minister of the Orange River Colony, and a lawyer. Bram's father, Percy Fischer, also a lawyer, became Judge President of the Orange Free State. By marriage, to his beloved wife Molly, who throughout their lives was as committed as he to the transformation and liberation of South Africa, was related to both Jan Smuts, and President Steyn. It

¹⁰ Id, 325.

¹¹ G J Marcus and J Kentridge above fn 1.

¹² Id, 56.

¹³ *Society of Advocates of SA (Witwatersrand Division) v Fischer* 1966 (1) SA 133 (T). De Wet JP wrote the judgment, with Hill and Boshoff JJ concurring.



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was Granny Steyn who remarked on Bram's 21st birthday that "I know that Bram Fischer is going to play an honourable role in the history of South Africa." She would be correct, but not for the reasons any in that circle would have foreseen.¹⁴

Bram, like his grandfather and father before him, started life as a nationalist and anti-imperialist, two ideas that in the early 20th century were indistinguishable for Afrikaner South Africans. However, as much as his nationalism was a product of his birth, so too was his commitment to dissent and critical thinking. The Fischers were well known in Bloemfontein for hosting lectures from visiting intellectuals at their farm, would import the most recent and thought-provoking books, and would encourage all their children, boys and girls, to further their education in any way possible. Percy attended Cambridge, and Bram would go on to win the Rhodes scholarship and go to Oxford, where he would not only be exposed to communism, both in his intellectual pursuits and to his visit to the USSR, but also to the rise of fascism in Europe. And having seen its effects, both in what it did to the rule of law, and to the Jewish population, set him forever against nationalism. Thus, on returning, and seeing the Afrikaner Nationalist support for Hitler, Afrikaner nationalism was an ideology to which he would never return.

How easy it would have been for Bram to follow the path laid out for him, instead of resolutely choosing to oppose it. And yet, the life he was groomed for also fed inevitably to the life he would lead.

His father Percy, who had died before Bram's arrests, retired from the judiciary, and cut all ties to the National Party in 1951, when the government introduced the Separate Representation of Voters Act, designed to remove so-called coloureds in the Cape from the common voters' roll. We are all aware of the astonishingly cynical machinations the government orchestrated to force through this detestable legislation, so I need not delve into that.¹⁵ This despicable aberration of the law was too much for Percy Fischer.

¹⁴ Clingman above fn 1, 45.

¹⁵ When the legislation failed to achieve a two-thirds majority at a joint sitting of both houses, as required by the then constitution, the government decided to proceed in any case. When this was declared ultra vires by the Supreme Court, the government passed legislation declaring parliament to be the ultimate "High Court" of the country. When this too was declared ultra vires, the government enlarged the senate, packing it with its own party members (to obtain the needed majority), and then enlarging the bench, and filling that as well. The legislation was of course then passed.



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We often hear the phrase “lawless” when discussing the state of our imperfect, but persevering society. Many who use that phrase, I think, forget the events of the not so far off past, where the law became a tool in the hands of a cruel and inhumane government, changed and re-changed to fit its ends. Nonetheless, the fascinating aspect of our history, and resilience of the rule of law in South Africa is that it became one of the primary tools used both to enforce the oppression of the apartheid regime, and to fight it, and Bram Fischer was a central figure in that struggle.

Bram is of course best known for his role as the defence counsel of accused in the Treason Trial of the 1950s, and the Rivonia Trial of the 1960s, which would see Nelson Mandela, Oliver Tambo, Moses Kotane and other defining figures in our struggle be tried for treason, and ultimately spared the death penalty, though sentenced to lifetimes in prison.

For the Treason Trial, there were 156 people charged under the Suppression of Communism Act, and in the preparatory examination alone there were more than 12 000 documents forming part of the record. Against the accused there were 498,015 charges (with the words *inter alia* added at the end which meant that the number of charges was infinite), and would run over a period of 5 years.¹⁶ The legal team, headed by Bram, Isie Maisels, and Sidney Kentridge, amongst others, decided to, although this was a political trial in a legal forum, focus on, and rely on the law. Commentators observed the brilliant “pestering” of the defence to the Crown on each legal point of the charges, rebuked, and later dismissed for their baselessness and embarrassing lack of specificity.

As we know, the Rivonia Trial occurred against the backdrop of the subversion of the rule of law by BJ Vorster, who interestingly was in attendance throughout that trial and who had taken a firm decision that if the enemies of the state could not be crippled by the law, then “the law would have to be changed”.¹⁷

It was under these circumstances that the Rivonia Trial would be heard, changing the lives of the accused, the men that would go on to lead the country, and the lawyers that represented them - Fischer, Chaskalson, Bizos, Joffe. It is part of the tragedy of Bram

¹⁶ Id, 220.

¹⁷ Id, 240.



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Fischer's life that those who came into contact with him were inspired and transformed, and would go on to see the justice they fought for play out in the struggle. It was Bram that would not live to see the realisation of the South Africa he envisaged and fought for.

Everyone knew after the Rivonia Trial that it was only a matter of time before Bram was arrested, which of course he was, three times before his final prison sentence. After his period underground, when he was finally caught, arrested and brought to trial, he too, opted to make a statement from the dock.¹⁸ The statement is too long to be repeated in full here, but strikingly, Bram referenced words of President Kruger again. This is what he said:

"In prophetic words, in February 1881, one of the great Afrikaner leaders, addressed the President and Volksraad of the Orange Free State.

His words are inscribed on the base of the statue of President Kruger in the square in front of this Court. After great agony and suffering after two wars they were eventually fulfilled without force or violence for (of) my people.

President's Kruger said this (translated):

'With confidence we lay our case before the whole world. Whether we conquer, or whether we die: Freedom shall rise in Africa like the sun from the morning clouds'.

In the meaning which those words bear today they are as truly prophetic as they were in 1881. My sole motive in all I have done has been to prevent a repetition of that unnecessary and futile anguish which has already been suffered in one struggle for freedom".¹⁹

Years later, Bram would be sitting in a prison cell in Pretoria, in so much pain he could not move, delirious and confused as to where he was, because he was deliberately denied medical care for the cancer eating away at him. He was tormented by the warden, who, it was said, took particular pleasure in humiliating him as a result of his status as an Afrikaner who had betrayed the *volk*. Bram was not allowed to attend his own son's funeral while in prison, and ultimately, Bram's ashes, after his death, were

¹⁸ Id, 372 -373, and 377 -378.

¹⁹ Id, 377-378, and Bram Fischer's 'Statement from the dock', retyped by Yvonne Malan, available <https://oulitnet.co.za/fischer/statement.asp> . .



lost forever in the prison system because the police refused to let his family have his body. Stephen Clingman, in his wonderful biography, movingly writes:

“So Bram’s ashes returned to the Prisons Department. But he was light and had gone into air, and they couldn’t touch him again”.²⁰

In concluding on the remarkable life of a much revered giant of our liberation struggle, I can do no better than to repeat the words of former President Nelson Mandela, quoted by Clingman, when asked what significance Bram’s life has for us, said in reply:

“Bram has become immortal. His name has become immortal”.²¹

And this striking observation: when told by Isie Maisels that Bram had passed away, Judge Rumpff, who had presided in the Treason Trial, said to Isie:

“You know, he’ll be remembered long after you and I are forgotten”.²²

And so then, friends, what are we to learn from this great South African, a man who swam upstream his entire life, who defied social, race and class conventions and who used the detestable apartheid laws as best he could to fight that pernicious crime against humanity? Surely it would have meant the world to him to see his country released from the weight of oppression which apartheid had brought including on those who imposed it. Bram Fischer neither surrendered nor transcended his Afrikaner identity in taking up his struggle. Rather, he took up the struggle because of that identity, and came to change its possibility.

At a time when our country appears to have made powerful enemies, essentially as a result of its brave stance in the ICJ and unwavering commitment to universal principles of human rights and freedom for all, and at a time when we see dangerously rising populism, nationalism and self-absorption, there is a growing, severe push back against constitutionalism. Even within our own borders we see mushrooming constitutional scepticism, disillusionment and, at the extreme, constitutional abolitionism. Our much admired Constitution is being decried, at worst, as a sell-out

²⁰ Id, 401.

²¹ Id, Preface ix.

²² Id, 401.



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document and, at best, as a failure to transform our seriously unequal society and to uplift the poor.

Every system of governance inevitably faces criticism, and our system, and our Constitution are no exception. Some criticisms are of course, more valid than others. A notable critic of our Constitution has argued that South Africa's culture of constitutionalism borders on fetishism and theology, with excessive faith in the Constitution, which they argue is ultimately a modernist, Eurocentric doctrine, conflating formal inclusion with liberation, ignoring structural oppression, and leaving economic and cultural powers undisturbed.²³

Another broader criticism is that of constitutional fundamentalism, the idea that it is up to courts alone to vindicate the rights of the Constitution. Much of this has, of course, emanated from the fact that in recent years, courts have had to step in where political solutions fail. When this occurs, (and it worth pointing out that the applications are often instigated by the very people most likely to criticise the courts for interference), it puts our constitutional system itself in danger.

To these challenges, I won't be the first or the last to point out that judicial institutions have inherent limits, as they rightly should, and rights listed in any legal text alone will never be sufficient to tackle the problems we as a society face. The Constitution, much like the character of the country that created it, is aspirational. It could never have been enough to sustain our political democracy. We must not forget the mandate of state institutions to promote accountable and transparent governance.

The criticisms of the origins of the Constitution miss important aspects of the argument advanced. The Constitution is indeed a product of everything that has come before. To take you back to the Treason and Rivonia Trials, it was the very Freedom Charter, painstakingly drafted, and those who faced the death penalty for living by its values, which was put on trial. Yet, the words of the Freedom Charter would have meant little, without those who found themselves in the dock, prepared to die, to bring it into effect.

It is now up to us, to step into the dock. Those who accuse the Constitution of being an obstacle to transformation, which arose from a fraught compromise, forget the role of

²³Joel M Modiri “*Conquest and constitutionalism: first thoughts on an alternative Jurisprudence*” available at: <https://repository.up.ac.za/server/api/core/bitstreams/3699f7a3-77fd-432a-9fed-789c8cee9ff2/content> .



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active citizenship, and participation of civil society, which underpins everything. Bram Fischer was the embodiment of active citizenship. Though he used the law as his primary tool to fight apartheid, he knew it was not enough. It is up to the state, its actors, and every one of us to put the aspirations of the Constitution into effect. All of us who believe in the constitutional project need to arrest the dangerous misconception that it is the Constitution itself, and not those who are responsible for implementing it, which is to blame for the malaise in our country.

There is disillusionment and constitutional pessimism beyond our shores too. Recently the front cover of the Guardian weekly's headline read "*Are we witnessing the death of international law?*" The article explains how a growing number of scholars and lawyers are losing faith in the current system. Some say the law is to blame, others the states that are supposed to uphold it. It goes on to explain that over the past decade, key institutions upholding the international order have been diminished, crippled and compromised. They point to the US withdrawal from international organisations and agreements, including the UN Human Rights Council. They opine that the lamentable US sanctions on ICC Judges have no doubt undermined the court's credibility and created serious financial obstacles to its investigations of possible war crimes in Ukraine and Gaza, where there are unspeakable crimes against humanity playing out on the world stage.²⁴ These developments are concerning indeed, and we will no doubt continue to watch as the authority of institutions, decades in the making, are eroded by those for whom their judgments are inconvenient and restrictive.

In considering Bram Fischer's legacy, we must keep asking hard questions of ourselves as South Africans, and human rights advocates in particular. All those years ago, Bram had to fight not only against injustice but also against his people. In fact, at issue for Bram, was exactly who his people were. Healing the division in South Africa was for him personal and political.

During October last year, my then current and past law clerks and I held a reunion dinner at which we discussed, at my prompting, how we can get involved in a meaningful community outreach programme. One of them suggested that we revive the wonderful initiative, first started by my dear friend and retired colleague, Edwin

²⁴ Available at <https://www.theguardian.com/law/2025/jun/26/are-we-witnessing-the-death-of-international-law>.



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Cameron, on constitutional literacy for underprivileged schools. Edwin used to go out with his law clerks to township schools once a month to talk about constitutionalism and the Constitution. The proposal met with full and enthusiastic agreement. So now, in collaboration with the We The People South Africa (formerly the Constitution Hill Trust), the Constitution Hill Development Company and the ALT Advisory Foundation, we select a few grades of underprivileged learners from schools around Gauteng, and bring them to the Constitution Hill precinct. We give them breakfast, whereafter they are taken on a short tour of the precinct and then the Court. There, one of the Judges present a short talk on constitutionalism, the Constitution and about the Court and the Judge him or herself, followed by a workshop in the auditorium where the law clerks and other stakeholders discuss aspects of the Constitution with them. At around lunchtime the learners depart, after having received a packed lunch. A number of my colleagues have joined that initiative by giving presentations in Court and many law clerks have also joined in the presentations in the auditorium. For that I am most grateful.

In this small, but I think impactful way, we are trying to counter the growing scepticism and disillusionment by inculcating in our youth a sense of constitutionalism and the importance of the rule of law and the role of the Constitution. During the talk given by the Judge, the learners get an opportunity to ask questions of any scope and nature that they choose. It is here, from the mouths of those children, that we hear questions asked, again, of who we are as a people. The children's questions reflect what they are hearing at home, at school, and what they are experiencing in the South Africa of today. They often tell stories of unaccountability, violence, and anger: "why don't we bring the death penalty back"; "why are prisons so nice to people, if they are allowed to keep coming back and stealing, and raping people"; "why is it that illegal people are allowed to come here, and are protected?"; and so on. And yes, the other day they asked me whether it is true that judges are corrupt!

The questions of these children are the questions of this country, and much like in Bram Fischer's day, it is not up to the law, alone, to answer them. After the questions and answers in court, the learners start their workshop, and then it is their turn to answer questions. "What do you think the law is? What is a right? Can you name rights you have?", and "What does it mean to do the right thing?". The answers are always more revealing than you expect. In discussing the contentious operation Dudula, and access



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to hospitals, one student said “I suppose, doing the right thing means that we should try our best to make sure that no one gets hurt, even when we think they are doing the wrong thing”. These too are the answers of who our people are. Much like the Constitution, it is an endeavour that is the result of everything which came before it, and most certainly worth hearing their answers.

We are regrettably not able to continue these workshops for the learners beyond November due to a shortage of funding. Our long term aim is to continue with the workshops and to eventually roll it out to other areas with the help of High Court Judges and legal professionals in those areas. Forgive me for using this lecture to appeal to all of you who plainly are likeminded constitutionalists to help us with this challenge. On the We The People South Africa website you will find details of the GivenGain funding platform set up for this purpose. Ms Mbali Baduza, the CEO of the Trust is also present here in the audience should you need further information about this.

In conclusion: we South Africans are a resilient lot. We grunt and bear and resolutely strain forward, no matter the odds. We overcame apartheid and continue to resist efforts to undermine and even undo our constitutional vision. Bram Fischer has taught us what dogged and durable persistence and tenacity look like. His legacy should provide renewed vigour to all of us who hold this grand constitutional project dear.

There is a glimmer of hope. Last week I saw a news report about the Stockholm-based International Institute for Democracy and Electoral Assistance’s findings of its 2025 Global State of Democracy. The report generally makes for grim reading inasmuch as democracy globally appears to be sliding backwards, and alarmingly so. The good news though, is that our country was one of the few which received commendations for its improved political representation (including credible elections, effective legislatures, elected governments, free political parties, inclusive suffrage and local democracy), rights, rule of law and democratic participation. It will come as no surprise at all that we scored poorly under the rule of law as far as the absence of corruption is concerned. Still, hope springs eternal.

I would add only one further commonality, apart from mother tongue language, that I have with the great Bram Fischer, that of eternal optimism. So like him, I say:

Alles sal regkom, julle sal sien; everything’s gonna be alright, you will see.



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Thank you for listening to me.