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# BRAM FISCHER MEMORIAL LECTURE



## **Tenth Bram Fischer Lecture - Justice Mogoeng Mogoeng (2017)**

It's an honour and a privilege for me to have been invited to deliver this lecture at such a time as this. I believe very strongly that whenever an occasion arises for one to deliver a lecture relating to a giant, such a Bram Fischer, that ought to challenge the speaker and the audience to reflect on what that life says to them now, what that life requires of them to do, now. How interesting that it happens to be at the Apartheid Museum, that this lecture takes place not so long after commemorating or observing Heritage Day.

Perhaps it is proper that I quote what Madiba said when he delivered the inaugural lecture. This is what he had to say about this great patriot:

"Bram was a courageous man who followed the most difficult course any person could choose to follow. He challenged his own people because he felt that what they were doing was morally wrong. As an Afrikaner whose conscience forced him to reject his own heritage and be ostracised by his own people, he showed a level of courage and sacrifice that was in a class by itself. I fought only against injustice, not against my own people.

Shortly after his arrest that led to him being sentenced to life imprisonment, Bram Fischer was asked whether his sacrifice of family and legal practice, being hunted as an outlaw and the inevitable harsh punishment that was to follow, was worth the gains of leading the underground struggle for less than a year. He was offended by the question. He replied sharply, "Did you ask Nelson Mandela, Walter Sisulu, Govan Mbeki or Kathy Kathrada, or any others that have already suffered this punishment? If not, why do you ask me?"

Tata Madiba went on to say:

"Even his political opponents would agree with us, his comrades, that Bram Fischer could have become Prime Minister or the Chief Justice of South Africa if he had chosen to follow the narrow path of Afrikaner nationalism. He chose instead the long and hard road to freedom, not only for himself but for all of us. He chose the road that had to pass through the jail. He travelled it with courage and dignity. He served as an example to many who followed him.

Many have asked what in his early life led Bram to choose between the privileges offered to him by the system and the imprisonment and the harsh condemnation that he knew he would suffer."



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But let me act out the privileged background that he came from. His grandfather was the Prime Minister of the Orange River colony. His father was not only a Supreme Court judge but ended up being a Judge President of the division in that province.

Now the challenge to all of us at such a time as this: What choice have you made or what choices are you making? It is friendship with those who have the capacity to make you wealthy or give you positions, or is it a noble cause similar to that which was followed by Bram Fischer? This is a question that every black and white South African must answer and answer honestly. Why is it that so many years after Bram Fischer had discovered this truth, that there really isn't any fundamental difference between a black and white man, a man and a woman, but colour and gender, that we still find it possible to keep in our boots, or on the back seats of our vehicles, cricket bats, so that, if a person of a particular race drives in a manner that I disapprove of, I can bash his or her head. Whether death ensues or madness ensues, is none of my business.

How could we have forgotten the sacrifice of the likes of Bram Fischer so easily - particularly at a time when life imprisonment, death in the hands of the police, is too distant a possibility to fear?

Bram Fischer spoke time and time again about what his conscience could not allow him to do. Maybe I should go there. He had something to say about the choices that he was forced to make in the face of an unjust, or what he called, an organised system of oppression and the laws that it made.

During his trial, speaking from the dock, he said:

"The laws under which I am being persecuted were enacted by a wholly unrepresentative body, a body in which three-quarters of the people of this country have no voice whatever. These laws were enacted, not to prevent the spread of communism, but for the purpose of silencing the opposition of the large majority of our citizens to a Government intent upon depriving them, solely on account of their colour, of the most elementary human rights: of the right to freedom and happiness, the right to live together with their families wherever they might choose, to earn their livelihoods to the best of their abilities, to rear and educate their children in a civilized fashion, to take part in the administration of their country and obtain a fair share of the wealth they produce; in short, to live as human beings.

My conscience does not permit me to afford these laws such recognition as even a plea of guilty would involve. Hence, though I shall be convicted by this Court, I cannot plea guilty. I believe the future may well say that I acted correctly."



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Where does your conscience, if you still have any, point you to? Do you ever think about the multitudes that are homeless, the multitudes that still have bridges, street corners, and at best, cold shacks, for accommodation, or is it all about you and your family?

Have we fallen so much in love with money and power and position and fame and prestige, that human life and human suffering doesn't matter anymore?

What it is that we read about Bram Fischer for – is it just to engage in a good intellectual exercise, is it just to stimulate our thinking? Has that which Bram Fischer fought and died for lost relevance to South Africa and her people? What is it that I read from particularly the speech or the statement that he made from the dock: That his concern was not only racial discrimination that, by the way, seems to be rearing its ugly head with much gusto and confidence these days, but also the landlessness of the indigenous people of this country, as well as exclusivity in relation to meaningful participation in the economy of this country.

Here is the challenge: he was a man of peace. He wanted both black and white South Africans to come together and to find a solution that will ensure that we all, not some, benefit from the great wealth that our country has available for us to enjoy. He was one of those who lived to help us understand that the wealth of South Africa is almost immeasurable. None of us should think that if others are to share, we will be without. Black people don't have to muzzle white people out of what they have in order to survive or thrive. And white people don't have to act as if they are yearning for the "bad old days" or "good old days" when racial exclusivity explained privilege and dignity.

Does this day not present a golden opportunity, to all of us as South Africans, black and white, to really engage or indulge in a brutal self-introspection? Where are we taking this country to? These debates that have the effect only of driving a huge wedge between black and white people, what are we hoping to achieve through it? Do we ever think about the future of our children and our grandchildren - that we are inadvertently burdening them with future battles, tensions, divisions, and maybe even bloodshed, that we, with the benefit of a fresh memory of the painful and shameful history that we have lived through, can help to arrest now?

South Africans, please, let us pause and reflect on the selflessness of the likes of Bram Fischer. He had, strictly speaking, nothing to gain from joining the Communist Party, associating himself with black people that many saw as radicals. He could, as Madiba said, had he chosen racial supremacy as a way of life, he could easily have taken over from his grandfather as Prime Minister, become Judge President or Chief Justice, he could have been one of the multi-millionaires or multi-billionaires of South Africa. Just imagine the wisdom and his legal skills for him to have led George Bizos and Arthur Chaskalson as his



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juniors during the Rivonia Trial. Who is fit to lead Arthur Chaskalson and George Bizos in a trial – must be an extraordinarily competent lawyer.

To those of us who are lawyers, do we ever think about the inexplicable inequality in our country when we mark fees or when we determine fees? I almost fell off my chair some five years ago, when an advocate was appearing before us in the Constitutional Court and a colleague said, “Do you know how much this man is charging for one day?” I said, “No.” He said, “Two-hundred-and-fifty-thousand.” I said, “One day!” I was shocked to subsequently learn that one is charged R450 000. Is it not true that it is not an exception, but a rule, that people in pursuit of wealth charge in a manner, that makes the concept of access to justice a mockery? Do we ever think about the poor?

I came from a meeting today and I learnt that some of the people that do the Road Accident Fund matters, when say, twenty million, or a hundred million is paid by the Road Accident Fund, a huge chunk of the money goes to the experts and the legal representatives as if they themselves were the injured people.

Do we ever reflect on the Bram Fischers who paid the ultimate price? Imprisoned for so many years just to make sure, not that white people benefit, not that black people benefit, but that humanity benefits from what South Africa has to offer.

I beg of you, leaving this place wherever we might be coming from, reflect on the possibility of forming think-tanks, let us have as many as we can, whose responsibility is to reflect on where we come from, why we are spending the Constitutional dispensation that is our heritage, the Constitutional democracy is a heritage to be proud of, sacrificed for by among others, Bram Fischer. Why is it that we are where we are right now - as divided as we are along racial lines - using the opportunities that we have to pursue other interests or agenda rather than what is in the best interests of every South Africa, regardless of race or gender.

Why is it that we seem to be spending so much time on sectarian agendas and **cleavialities** when there are so many fundamental issues that cry out for our attention? Instead of allowing issues around racism to divide us, instead of allowing issues around land restitution to divide us with all sorts of narratives, the one says, “Yes, these whites do not want to release this land”, the others say, “These black people don’t want to distribute that land that is already available and belongs to the state!” Can’t we use our intellectual prowess and our energies to work out strategies, just as we did with our Constitution, around the land question that can be acceptable to everybody, black and white, that is not oppressive to anybody so that we can make more progress than we have made so far, 23 years down the line?



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Why can't we reflect on why is it that the corporate sector seems to find it difficult to implement employment equity? I was shocked, and I shared this during the launch of the King IV report, that you can get a black person and a white person, same qualifications, or a black person might have even higher qualifications, and the salary disparity could be as much as R20 000. A man and a woman, regardless of colour, the salaries are never the same.

Should we not use the privilege we have, in whatever profession you might find yourself in, to form these think-tanks? How do we calmly, with no emotions, address these problems? How do we open up the corporate sector so that those who were prevented from participating meaningfully to begin to do so? I don't think anyone is encouraging some entitlement syndrome.

We, the people of South Africa, have undertaken to heal the divisions of the past. That is what Bram Fischer died in pursuit of, was sentenced to life in pursuit of. The land belongs to all of us, united in our diversity.

We even pray! In our preamble, we pray. There is a pray that says, "May God bless our people." How sad that when some of us say, "Our people", they mean people of their race. "Our people" in our Constitution is everybody who is a South African. May God bless South Africa.

South Africa is in a fascinating phase. It has entered an age that forces each and every one of us to pause and reflect on what it is that matters most. We have a brilliant opportunity to unite as we did before, find a solution and implement it. It is only when we unite that we will get to the point where we identify leaders that will lead us as the Constitution requires of them to lead us; leaders who will take us to that prosperity that we agreed on the current Constitutional dispensation to arrive at.

So I can only but beg, in memory of Bram Fischer, who chose not to pursue money, position, power, fame, prestige or any other thing that we are in the habit of being captured by, please allow yourself to be captured by the desperate need to find ways of giving practical expression to our collective aspirations as the people of South Africa.

The Constitutional dispensation that we have crafted for ourselves, against all odds, bears testimony to the reality, to the truth, that if only we can focus on what unites us, if only we can focus on our common interest, if only we can accept that we belong together, regardless of our race, then our country will begin to yield what it has not been able to yield to us all this time.



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When we are divided, we say things, even abroad, that chase away potential investors. When we are divided, out of anger and frustration we say things that chase away investors that are already in this country. Let us reflect on the damage that racial divisions and racially inspired statements, sometimes made out of anger, have the effect of doing, the damage that it does, or has done, to our country, our children and our grandchildren.

Thank you for listening, please establish those think-tanks.