

# **JUSTICE, PEACE, REPARATION AND RESTITUTION**

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## **Introduction**

I would like to thank the organisers of this Workshop for their choice and interest in seeking to discern the connection of justice, peace, reparation and restitution. Clearly, these are burning moral and political issues confronting this country. The political reality in this country is such that one cannot convincingly talk about peace and justice in abstraction. Justice through reparation and restitution constitute concrete acts by which the quality of peace could be measured and exhibited. That is to say, genuine justice and peace find concrete expression in reparation and restitution. Following this line of thought, we posit that justice, peace, reparation and restitution are integrally connected. Since these concepts are inextricably bound together, any attempt at separating them violates the inherent interconnectedness which is essential in the attainment of a genuine political community.

It should be noted, however, that the proponents of western type of democracy in Africa (for example, Namibia, Zimbabwe and other African countries) have addressed or focused on political participation at the expense of the issue of land restitution. This explains why the majority of the people in some of the African countries that have embraced democracy still experience landlessness. The problem of land hunger in Africa and Latin America serves as an instructive lesson to us, impressing on us to place reparation and land restitution at the center of the democratic process now rather than later. We argue for a conception of democracy that fosters political participation accompanied by reparational and restitutionary justice aimed at creating and sustaining human community. To treat one without the other is to miss completely the South African political reality. We now proceed to examine briefly the relation between justice and peace.

## **Justice and Peace**

The relation of justice and peace is of special significance for our discussion. Peace is a product of justice and not the other way around. Where there is no justice, peace does not flourish either. Therefore, any dichotomy or separation between them cannot be permitted because justice and peace are inextricably

\* This paper was read at the Workshop Conference sponsored by the interdenominational Committee for Industrial Mission held on 5 September 1991 at La Verna.

bound together. In support of this dynamic relation between them, Wolterstorff says that "shalom (peace) is intertwined in justice." He concludes, "there is no peace without justice" (Wolterstorff 1983:69). Wolterstorff makes justice indispensable to genuine shalom when he writes:

*"...shalom is an ethical community. If individuals are not granted what is due to them, if their claim on others is not acknowledged by those others, if others do not carry out their obligations to them, then shalom is wounded. That is so even if there is no feelings of hostility between them and others. Shalom cannot be secured in an unjust situation by managing to get all concerned to feel content with their lot in life. Shalom would not have been present even if all the blacks in the United States had been content in their stage of slavery; it would not be present in South Africa even if all the blacks there felt happy. It is because shalom is an ethical community that is wounded when justice is absent" (Ibid 71).*

Since justice is inextricably connected to shalom, the political wounds sustained by the black community, as a result of systemic apartheid practices, require reparational and restitutionary justice, as an essential condition for peace marked by social and political reconciliation. To be sure, reparation and restitution have humanising effect when put into practice. Further, this form of justice provides the necessary condition in which the restoration of Black self-worth that was eroded under the oppressive yoke of apartheid can be attained. That is to say, reparational and restitutional justice form the fundamental basis on which a genuine community of persons could be created a community shaped by democratic principles. In a society where the principle of justice is upheld, the issue of reparation and restitution would hardly arise, since justice is ostensibly the condition of and guarantee for social peace and the affirmation of the equality of persons before the law.

Often justice is understood in its distributive dimension. In this paper, we attempt to articulate the concept of justice that goes beyond the distributive focus to embrace the "procedural issues of participation in deliberation and decision-making" (Young 1990:34). While distributive aspect of justice is equally essential, the problem is that it "misses the way in which the powerful enact and reproduce their power" (Ibid 32). The call for affirmative action is one of the examples of distributive justice. The proponents of affirmative action demand the distribution of jobs, positions and modicum benefits to qualified blacks in banks, factories and institutions of learning. What the advocates of this idea fail to discern is that the admission of a few Blacks in key bureaucratic positions would not change the power dynamics. In fact, the presence of some black faces would clearly legitimise the power structures. In other words, it would make a few selected Blacks accomplice in the oppression of their own kind. Distributive justice is limited, in many respects, for it seeks to distribute goods rather than genuine political power expressed in land possession. For that reason, the center of political power remains untouched or unchallenged.

The scope of justice we propose is more encompassing and far-reaching in that it makes the poor and oppressed its measure. Here we encounter a radical shift from centering power on the few to the many: the poor. The Catholic Bishops of the United States of America support this understanding of justice when they write: "as a community of believers, we know that our faith is tested by the quality of justice among us, that we can best measure our life together by how the poor

and the vulnerable are treated" (Bishops 1986:vii-viii). In a word, "the justice of a society is tested by the treatment of the poor" (Ibid x). The Catholic Bishops make close connection between faith and justice. This understanding is rooted in the prophetic teaching that says, "to know God is to do justice, to have mercy and to do his will (Jeremiah 22:13-16; 9:23; Hosea 4 1-6; 6.6). Injustice in society points to the absence of God's knowledge. That is, injustice is antithetical to God's justice and peace. Therefore, genuine political transformation should be exhibited, for the most part, in the practice of reparational and restitutive forms of justice

A rigorous analysis of reparation and restitution reveals that they are not only distributive issues or simple handouts, but they are also forms of political and economic empowerment, enabling people full participation in determining their own future. Justice broadly construed is an ideal of equality and affirmation of life in a society where people have been liberated from all forms of alienation and material dependency

### **Terse historical Background**

It would be absurd or even incomprehensible to discuss the issues of justice, peace, reparation and restitution in abstraction. To deal with these issues concretely, we need to locate them within the historical reality of this country- a historical context of conquest, racial domination and land dispossession. In that context, the demand for reparation and restitution makes a lot of sense

In this country, the majority of the people in the black community have been excluded from 'full humanity and the corresponding justice' (Tillich 1960 58). Consequently, inequalities existed with respect to claims of justice. Their skin-colour determined their fourth class standing in the hierarchical ladder of the apartheid's economic, social and political system. As we know, apartheid system employed race-category as a criterion for determining the fourth class status of the black majority. In speaking about the impact of the skin-colour category in determining the destiny of the black people, Manas Buthelezi aptly states, "Blackness is an anthropological reality that embraces the totality of my existence. It daily determines where I live, with whom I can associate and share my daily experience of life. Life, as it were, unfolds itself to me daily within the limits and range of black situational possibilities. (Buthelezi 1978 74)

The idea of 'Blackness' to which Buthelezi refers, pervaded every significant facet of the black life. It determined where people should live and with whom to associate, what type of education to receive, where to work and what type of job to do and how much remuneration one was supposed to receive. Put differently, to be black meant exclusion from full citizenship, full humanity and indeed from every conceivable opportunity for human development. This kind of inhuman treatment of the Blacks was a consequence of well designed forms of political subjugation and economic exploitation. Since Blacks were considered non-human and therefore cogs in the apartheid's economic machine, the government considered their underdevelopment an investment for white economic wealth. Froneman, Deputy Minister for justice, underscores the idea of Blacks as appendages in White economy when he said, South Africa needs the labour of black majority- 'for the sake of white economy, without them it would be impossible to maintain the essential growth rate' (Rogers 10). Thus the

migratory labour system, one of the infamous labour laws which classified blacks, as cheap labourers to be exploited and disposed off at will, was specifically designed to serve white economic self-interest. For this reason, the white government employed the strategy of miseducation and underdevelopment, as important tools for justifying the exclusion of the black majority from any meaningful economic and political participation.

### **The Repeal of the Land Acts**

In our reflection on the issue of restitution and reparation, we are bound to raise the question whether or not the government's repeal of the Group Areas Act and Land Act could possibly restore land to the majority of the people. An analysis of the government "White Paper on Land Reform," after the repeal of the infamous Land Acts, rejects land restitution as unfair and impracticable. The government is adamant in its commitment to a political policy that places land on the system of private ownership to be bought and sold at an open market, thereby ensuring that land remains in the hands of a few rich Whites. Therefore, the repeal of the Land Acts does not provide a sense of hope to the poor and landless people of our country. Consequently, the so-called "new South Africa" has nothing materially in store for the majority of the black people.

Clearly, the government "White Paper on Land Reform" provides a sophisticated legal arrangements for continued spates of land disposessions, since the document guarantees the existing white title deeds. Aninka Classen exposes the fallacy of the government "Land Reform" proposal, particularly its defence of the existing white title deeds. She says, in part, "... *Existing white title deeds are the result of conquest, land grants to white settlers, and a market which was never free because the majority of the population was prohibited from either buying or leasing land. Private property has been and still is a 'whites only' system in South Africa. Those title deeds which black people managed to get were destroyed... The present-day title deeds are therefore based not on respect for property rights and freedom of contract*" (Classen 1991:69 Emphasis mine)

To introduce the idea of private ownership of land based on market forces when these forces were not responsible, in the first place, for white land ownership, is preposterous and untenable to say the least. The expropriation of the black land and forced removals of the African communities from their traditional areas were not necessitated by an economic principle, but by an ideology of separation. Why evoke an economic principle when the call for land return is made? Classen argues, "if someone knocks me down [as the Whites have done to Blacks] and takes my wallet [land], to say that I can buy my wallet back is hardly to promote respect for the law of possession" (Ibid).

Instead of promoting the moral principle of restitutionary justice which has a strong biblical and theological basis, the government unilaterally resolves to sell the land to the very victims from whom the land was illegally expropriated.

In the story of Zacchaeus, the tax collector, we find the principle of restitution. He chose to give the goods to the poor and to restore four-fold any goods he had cheated the people (Luke 19:1-9). The story of Zacchaeus teaches us about an important indissoluble link between reconciliation and restitution. It would have been preposterous of Zacchaeus to expect cordial reception from the people he cheated if he had not voluntarily chosen the way of restitution, as an essential component for a just social relations. From this story, we can fairly conclude that

any authentic reconciliation activity that is theologically justifiable and morally sound should be accompanied by corresponding acts of reparation and restitution. Without reparation and restitution, any attempt at achieving a political reconciliation in this country remains hollow and abstract.

### **Reparational Empowerment**

The preceding discussion makes the demand for reparation absolutely essential in our reflection about the nature and character of the new community we set out to build in this country. The manner in which we address the past injustices would determine whether or not the talk of a "new South Africa" is a mockery, pipe dream or makes concrete material difference to the victims of oppression. The Webster's Ninth New Collegiate Dictionary defines reparation as "the act of making amends, offering expiation, or giving satisfaction (in money or material) for the wrong or injury." One may ask, from what injury or wrong is reparation demanded? The fact of dispossession and exploitation are sufficient grounds for demanding reparation, as the only basis for Black self-affirmation and empowerment.

The majority of the people in this country have been consigned to a ghettotised social existence, political marginalisation and economic servitude because of the vast wealth amassed by the white community much of it ill-gotten--built upon the bodies of the exploited indigenous people. The reparational empowerment of the black community should be addressed because of the injustices the community has suffered: psychological effects of apartheid, degradation, brutalising, maiming, killing and unjust persecution. The resolve and the unflinching demand of the people for reparation is fairly reasonable. Examples of reparation in history abounds. Wilmore cites some of them:

*"West Germany assumed the liability of 2 billion dollars for the victims of Nazi persecution. In 1953 the Federal Republic of Germany undertook the payment of 820 million dollars (used to resettle 500, 000 jews) to indemnify individuals inside and outside of Hitler's Germany from persecution. The United Nations laid upon Israel reparational obligations of 360 million dollars in land and movable property lost by the Arabs refugees during the war in 1948. Israel refused to acknowledge the exact sum but agreed to make compensation if it could receive a loan...."* (Wilmore 1979:97-98 Italics mine).

Evidently, this citation shows that the world community has supported the principle of reparation. Sadly enough, African peoples are exceptions to the rule. Seemingly, they do not qualify, like other nations, to receive reparations for the excruciating suffering under apartheid, colonialism and for losses suffered during enslavement. Those who oppressed and enslaved them expect of them to forgive and forget the dangerous memories of their exploitation and dehumanization. The victims are simply expected by those in power to accept a sorry with a smile. The thorny issue of squatting camps in and around the black townships is, at the core, the problem of land hunger. It could be asked: how much money and land has the South African government earmarked to develop the mushrooming squalid squatter camps and resettle the people. The Black people did not choose to live in the delapidated squatting conditions on their own volition; they are victims of land dispossession efficiently carried out by the systemic apparatus of

apartheid. They deserve a better treatment than they have thus far received, if any at all.

In support of the principle of reparation in America, Bjork writes: "...the deprivation of Negroes [African Americans] by slavery and discrimination calls for the payment of debts from our massive inheritance." He continues, "it is a payment of accrued liabilities because part of our inheritance [wealth] was accumulated by the systematic underpayment of the minority race that was suppressed by law and violence"(Bjork 24 June 1968 *Italics mine*). In line with this thinking, one can plausibly argue that deprivation, discrimination and underpayment of the oppressed is an unjust act, requiring reparational justice because the apartheid political conditions created a situation where "...a man [white person] who acts unjustly has more than his share of good, and a man [black person] who is treated unjustly has less" (Aristotle 1962:120, 1131b:15-20). In this situation, reparation should be understood as corrective justice in that it restores the equilibrium caused by unjust treatment.

Clearly, reparation has both legal and theological dimensions. Aristotle's approach to the problem exhibits the legal or moral dimension of the issue. He states, in part, that "when one has inflicted and another received a wound...the doing and suffering are unequally divided; by inflicting a loss on the offender, the judge tries to take away his gain and restore the equilibrium" (*Ibid*). This moral principle should also apply in this country, so that the legacy of land dispossession should not become a norm for the future.

Dismissing the demand for reparation, as the government has done, amounts to apportioning blame to the victims for the oppression they have suffered or merely rendering the historical and existential evidence of oppression itself null and void.

It is important to note that reparation is a consequence of confession or forgiveness. Similarly, Ernest Campbell makes a close connection between reparation and penitance. That is to say, reparation is rooted in the Christian doctrine of repentance. He argues, "you don't simply say, I am sorry to a man [person] you have robbed. You return what you stole or your apology takes on a hollow ring...." (Wilmore 1979:97). By grounding reparation on the Christian notion of repentance, Campbell attempts to show that reparation is at the heart of the Gospel of Jesus Christ. He further shows the inherent transformational power of penitance and its social implications when he says:

*"There is in repentance a certain quality of infinitude. With the penitent mood comes new insight, fresh illumination leading to an almost painful anxiety to make atonement to the person or persons wronged, to society, to the spiritual order which has been violated. The repentant man (sic) stands ready for any task, however great, for any service, however distasteful. Repentance is thus transformed into a moral dynamic"* (*Ibid*).

This statement shows that concrete acts of reparation are evidence of self-reproach (remorse) of a penitent and contrite heart. In a confession, the individual expresses his/her moral outrage to the past forms of injustice. In seeking forgiveness for past social and political wrongs, the individual commits himself/herself to attaining shared goals of social and political justice. In a word, repentance must be accompanied by corresponding acts of reparation. That is, the oppressed majority have to be compensated for the statutory and conventional restrictions to which they have been subjected over the years.

Clearly, no amount of high sounding political rhetoric and verbal assurances, short of reparation, will do. Ostensibly, it is like putting untrained and trained athlete at the same starting point of the race and expect the untrained athlete to compete favourably. Since the untrained athlete was denied comparable training facilities and the opportunities for development, equipping an individual for excellent performance in sports, the starting point should not be the same. In line with this thinking, President Johnson aptly asserted: "You do not take a person, who, for years, has been hobbled by chains and liberate him, and bring him up to the starting line of a race and then say, 'you are free to compete with all others,' and still justly believe that you have been completely fair."

For this reason, reparational empowerment is essential in that it addresses the inequalities of wealth, facilities and opportunities caused by the unequal starting lines of the economic and political apartheid race. Therefore, we should not be duped into assuming that the slogan "new South Africa" will, in itself, make substantial material difference to the lot of the deliberately disadvantaged members of the black community. Far from it! A case for reparation has been made. Now, let us examine the claims for restitution.

### **Land Restitution**

The words reparation and restitution are sometimes used interchangeably. As we have seen, reparation addresses the losses or injuries inflicted through deliberate forms of injustice such as dehumanization, underpayment and exploitation of the people beyond the people's capacity to be human. Reparation aims at restoring the balance, equalitas, of commutative justice. To be sure, land restitution completes the picture of a truly transformed community of persons. Reparation for past losses or injuries cannot be separated from land restitution in the South African situation. In some contexts, it would be difficult, though not impossible, to make both reparational and restitutorial claims at the same time. For instance, if one is a slave in a foreign land, one could justifiably demand reparation for subjugation, rather than land restitution. In this country both claims of reparation and restitution apply. Blacks have been treated unjustly in their own land by those who are not indigenous to it. Here, we encounter a problem of unjust treatment and land dispossession.

The claim for restitution arises from forms of land dispossession in which the indigenous people have been rendered landlessness. The fact of land dispossession makes the assertion "the land belongs to all" untrue, as a statement of fact. As a statement of hope, the expression "the land belongs to all," is outside the existential political experience of most of the people in the black community. The political reality of this country has taught Blacks that the land in South Africa does not belong to all. One can, therefore, conclude that the idea "the land belongs to all" is merely an abstraction aimed at duping the dispossessed people into uncritically accepting the extreme forms of land injustice under the cloak of common land ownership. May be the time shall come when indeed the land shall belong to all the people of South Africa, but the road to that end is fraught with innumerable problems. If the land truly belonged to all, why did the black community engage in liberation struggle? Surely, one does not engage in the struggle to liberate what has already been liberated or to reclaim what already belongs to them. Therefore, the people's participation in the

liberation struggle negates the view that the land belongs to all. Liberation struggles are always concretised in some form of space: land. The land embodies for the oppressed the space of freedom, human dignity--a space where people will be able to plant their vine trees and sit under the shades. The restoration of the land to the dispossessed community will usher in a new social and political dispensation in which people shall "live in a tranquil country, dwelling in shalom, in houses full of ease" (Isa. 32:18). We cannot affirm Isaiah's idea of tranquility and property ownership, since the oppressed people have neither land to cultivate nor houses in which to live, most of them dwell in shacks or squatter camps. No human being builds a house in the air but on a piece of land. So land restitution is a sine qua non for credible form of social and political change. Without land restitution, any talk of "new South Africa" remains an mental constipation and a diarrhoea of the mouth: a utopian talkshop. We now set out to consider Black understanding of land dispossession, as their views are significant in our discussion of restitution.

### **Black understanding of land dispossession**

Most African theologians and politicians agree that the Whites robbed the indigenous people of their land. The fact that Whites occupy 87% of the land while Blacks are forcibly confined to 13% of the barren land reinforces their contention of land robbery. Land robbery is a political reality that cannot be wished away. Evidently, land dispossession does not begin with the land Acts of 1913 and 1936, as many people wish to think. Most Blacks argue that an act of dispossession was constituted the day the white man entered the shores of this country. Similarly, Tatu Joyi, the Thembu sage, locates the process of land robbery in the 17th century. Speaking of the history of legal land dispossession, he says, in part: "...abantu were defeated by the white people's papers, which they took by law, their law, what they could not take by war" (Meer 1988:15 *Italics mine*). Further, he graphically recounted how the Whites committed land theft in these words.

*"...White man brought a piece of paper and made Ngangelizwe put his mark on it. He then said that the paper gave him possession of the land and when Ngangelizwe disputed that, the white man took him to the white court and the court looked at the paper and said Ngangelizwe had given the white man 4,000 morgan of land. The court also said white people needed the land of the Tembus to protect themselves from the Tembus!" (Ibid).*

Similarly, Tutu states that "when the Whites came to South Africa, they were welcomed by the indigenous inhabitants, who provided them with fruit and vegetables and the land on which to grow them" (Tutu 1983:43). He continues "the Whites had grapped a lot of the land" (Ibid 45). Furthermore, Tutu attributes land dispossession to conquest by White "supperior fire power" and considered Whites "temporary sojourners." He argues that Whites have unjustly dispossessed the indigenous inhabitants of their land. He writes, in part. "They [whites] decided to settle and build castles and take over large tracks of land not so much as by your leave and they resented the indigenous people whom they had found in possession when they arrived and then displaced. When these first settlers found British rule irksome, they ventured into the interior capturing vast pieces of land through conquest because of their superior fire power" (Ibid 47).



The history of South Africa which has been written by White historians supports Tutu's argument that the Whites grabbed the indigenous land. This history indicates that Whites arrived in 1652 but nowhere does it say Africans arrived in Africa. Clearly, one cannot be a "temporary sojourner" in another's land and be the legitimate owner of that land at the same time. It is ludicrous, therefore, to say that the sojourner who arrives has equal legitimate claim to the land to which he/she arrived. The fact that Whites arrived in 1652 is not sufficient moral ground for them to occupy the land of another. In the same way, no person can be both my guest and the owner of my house at the same time. In addition, no nation has the sole prerogative to arbitrarily occupy the indigenous land without the consent of its owners. An acceptance of land occupation on the basis of the idea of sojourner is rationally implausible and it can merely serve to justify land theft. More importantly, it would render claims for land restitution unnecessary or morally groundless, since it would not make sense to advance arguments in support of restitutionary claims to a property from someone whom you consider to be its legitimate owner. The demand for land repossession is different from the idea of land sharing. You don't put a gun on the head of your host and then ask him to share his home with you. Sharing remains the sole responsibility of the host. For this reason, it would be unfair to ask 28 million blacks to share 13% of the land. Rather, it would be just to demand that the 6 million Whites return to the legitimate owners the ill-gotten 87% of the land. It must be noted, however, that blacks are not advocating that the land be shared between Blacks and Whites because blacks have no land to share, at least for now.

For blacks, land restitution means the return of the stolen and expropriated ancestral lands. For them, land restitution seems to be the only logical and acceptable solution to the problem of land dispossession. Like Tutu, Mgojo places the land question at the center of political discourse, stating "we cannot avoid it." He argues: "the land must be returned to the people. The land cannot be owned by the few and be worked by many. The land is the future of the people without it, the majority of the people will be lost" (The Star 6/11/90). Mgojo makes close connection between the political future of the people and land. For him, any political order that does not concretely address the issue of land restitution consigns the oppressed people to a utopian political future. This cannot be allowed to happen here. The struggle for land repossession continues in some of the independent African states. Ostensibly, in those States, the issue of land restitution was neglected at their own political peril. We have learned from their mistakes that political power without land power leads to a new cycle of poverty and political dependency. For Blacks, People, land and politics are inextricably connected. Any liberation movement that neglects land restitution advertently makes landlessness a virtue rather than a political evil to be fought by all means necessary. At this point, let us examine the role religion and culture play in the African understanding of land and how this understanding inspires the Africans in their demand for land restitution.

## **African Religion and Culture**

These terse reflections on Black understanding of land dispossession give rise to a crucial question: why after 360 years are black pastors and politicians uncompromisingly demanding that the land be returned to its indigenous owners? The persistent demand for land return is necessitated, in part, by the

black people's schizophrenic behaviour. This behaviour reflects a brokenness of black personality conditioned by years of apartheid's mental and spiritual occupation. Their alienation from land contributed immensely to the black people's low self-image. The Bible says, "...if any one is in Christ, he [she] is a new creation, the old has past away, behold, the new has come" (1 Cor. 5:17). Black people find it difficult to experience the new creaturely reality that the Gospel promises because of the political and social deformation and truncation of their humanity. Consequently, the split personality syndrome of the black humanity is the product of the apartheid's political uprooting and alienating praxis--alienation from land, religion and ancestral fellowship. In the African traditional religion there exists close connection between the living and the "living dead:" ancestors. Active communication takes place between them. The reverence of the ancestors is linked with "a degree of land reverence." Ali Mazrui writes: "the mystique of land reverence in Africa is partly a compact between the living, the dead and the unborn. Where the ancestors are buried, there the soul of the clan resides, and there the prospects of health of the next generations should be sought" (Mazrui 1986:271). He underscores the view that all life is marked by the relationship between the people and their land, but perhaps this striking relationship is most pronounced in the end of life, that is, death. The burial of the community's ancestors in the land is a sacred act that completes the bond between the people and the land. The lives of their ancestors continue to sustain life for those who dwell in the ancestral land.

To demonstrate the importance of land as the shrine of the ancestors, a community that had been banished by the government for 15 years was temporarily allowed to visit its land at the beginning of this year. On arrival at their ancestral land, the people went to the graveyard. One would have expected them to go first to their old homes to salvage some of their belongings. They did not do that. Instead, they went to the graveyard to thank their ancestors for the support they (ancestors) have given community in their struggle for land repossession. The land is quite fundamental to the African people because it is the shrine of the ancestors and the very substance of life. Central to the indigenous people's conception of the land is that their spiritual ceremonies are intimately related to the land on which they live. Oglala Lakota medicine man upty puts this relationship into perspective, thus:

"The religion is rooted to the land. And you can't have the religion by itself, without the land....We can't practice without the sacred land or the sacred places because this is where we draw our religion from" (A Song 3).

It was for this reason that a grandmother whose shack was demolished and deported from Cape Town to a remote resettlement camp said, "They have taken our land; they have taken our God." Landlessness renders an African politically impotent and spiritually bankrupt, hence the problem of split personality. For Africans, history and identity are rooted in land. A statement drawn up by the workshop on "Race and Minority Issues" under the auspices of the World Council of Churches in 1978 makes the same point: "To the indigenous people...land is life. We affirm that land is integral part of individual, family and community life....The history and identity of our people are intimately bound up with the land, and therefore our history and self-understanding become meaningful only when they are related to our land. Land is the primary means of our continuity as a

people, and it connects our past with the present, and it is the hope of our future"(Document No 126 1978/79:7).

The question as to whether or not the land is a gift is non-negotiable for the indigenous people. The sacredness of life is related to its being a gift. As we have seen in the preceding discussion, land has a religious significance. This truth, the indigenous people's sense of relatedness to the land underlies the contention over land restitution in this country today. These disputes have both moral and theological dimensions which generally go unrecognised. Justice among the Africans is embodied in land repossession. Further, justice for the poor is measured in terms of how the land is valued, because for them land is life. That is, for them, land and justice are closely yoked together. The community meeting in which the Eastern Transvaal Black leaders spoke of the wounds of dispossession demonstrated the connection of people and land. Aninka Classen recorded the sentiments about land expressed by an old man in the community meeting thus:

*"The land, our purpose in the land, that is what we must achieve. The land is our whole lives, we plough it for food, we build our homes from the soil, we live on it and we are buried in it. When the Whites took our land away from us we lost the dignity of our lives, we could no longer feed our children. We were forced to be servants, we are treated like animals....But in everything we do we must remember that there is only one aim, one solution, and that is the land, the soil, our world"* (de Klerk 1991:50 Emphasis mine)

This citation makes direct connection between land and liberation. That is to say, the actualisation of liberation should be embodied in land repossession. Ostensibly, the Black community perceives land repossession as constituting the "only one aim and one solution" of the struggle against landlessness. For this reason, to abandon land restitution is, in some sense, to abandon the liberation struggle itself: land. When people are aliens and landless in the land of their birth, the shape of God's future for them and their land is uncertain. In the midst of uncertainty, they cannot easily discern what the future will bring. They yearn for a life of promise in the repossession of their indigenous land. It is the land held in trust, for the living, the dead and for the yet unborn. The continuity between the past and present, between life and death, depends on the primary category of space understood as land.

Further, the onto-genetic understanding of humanity, particularly its emphasis on human relations, is central to the African conception of justice and has significant implications for land restitution. The onto-genetic idea is based on the African cultural dictum that says: *motho ke motho ka ba bangwe batho*, meaning one's humanity is defined, complemented and enhanced by the humanity of others. That is to say, mutual aid is a moral obligation. Similarly, Mbiti supports the idea of the interdependence of human beings in his famous statement: "I am because we are, and since we are, therefore I am" (Mbiti 1970:141). The first part of Mbiti's statement reflects a Cartesian influence with its emphasis on the primacy of the "I" pronoun rather than the "we." In the African view, "it is the community which defines the person as person, not isolated static quality of rationality, will or memory" (Menkiti 1984:172).

The issue of reciprocal human life and interdependence of our common humanity provides a new basis for doing theology and politics. Africans knew

The idea of human interdependence and its corresponding view of justice gave rise to Mafisa\* cultural practice. This African cultural practice helped to safeguard the poor and strangers against perpetual poverty. That is to say, the poor and strangers were given material self-defence not only against poverty, but also against humiliation and degradation. The acquisition of and accessibility to land was one of the practical ways by which the community ensured that the poor were empowered against poverty. According to the African moral thought, depriving people access to land is morally untenable, as this would render them less human. For this reason, the African thought gives moral justification for land restitution because it can serve as the basis for a genuine reconciliation with justice, expressing inextricable connection of liberated humanity and land.

### **Moral justification for land restitution**

We now move from a strong African understanding of the land to deliberate on some moral grounds for land restitution. Clearly, the question of morality arises in a context of conflicting claims and competing interests. In this country moral conflicting claims exist regarding the issue of land. On one hand, black people occupy 13% of the land and yet they assert that the land belongs to them. On the other hand, white people occupy 87% of the land and also claim that the land is theirs. These claims cannot be both correct. One is closer to truth than another. Tutu and others have disputed the claim of indigeneity as the basis for Whites' occupation of the land. This then leaves us with one possible rationale for Whites' occupation of the indigenous land: political power.

It must be observed that power has occupied an important place in the relation between Blacks and Whites in this country. If the only single ground on which Whites claim to land is based on political power, then the question is, does power or force create right? Rousseau writes, if power justifies right and "the strongest being always in right the only thing that would matter (so far as concerns "justification") would be to act so as to become strongest" (Bair 1974:11; Castel 1976:281). Following this premise, does it mean that the only way black people can truly regain their land is on the ground of being the strongest? Rousseau asserts, "I do not see what morality can be derived from physical force." Since right adds nothing to power and visa versa, he concludes, "might does not make right" (Ibid 11). It can be deduced that power that is not united with justice is inadequate. Justice rather than raw political power is the moral ground for land restitution.

Let us turn to some Western philosophical theologians and learn how they have treated the issue of restitution. The insights of Aquinas and Pedro may certainly help deepen our understanding of restitution. In this country, white persons predicate their argument for land occupation on political power separated from justice. Tillich states that if "power and justice are one in the divine ground, they shall be one in human existence" (Tillich 1954:108). That is to say, power which is rooted in the ground of being has humanising and transforming effects. The

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\*The Mafisa cultural practice mandated individuals and community to provide basic material means to the poor and strangers within the community to enable them to start a new life. Depending on the needs of the individual, the community provided either a cow for milk or a piece of land on which to cultivate. This was not a form of charity. The community aimed at creating the conditions in which the poor could attain material independence rather than always being objects of humiliating charity.

predicate their argument for land occupation on political power separated from justice. Tillich states that if "power and justice are one in the divine ground, they shall be one in human existence" (Tillich 1954:108). That is say, power which is rooted in the ground of being has humanising and transforming effects. The quest for restitution aims at correcting the past injustices pertaining to land dispossession. In a footnote, Aquinas defines restitution as "giving back something to its proper owner" (Aquinas 1975:104). He asserts, "the roots or titles of restitution, that is commutative justice to be restored, are either one or both of the following, holding another's property, *res aliena accepta*, and the unjust taking of it, *injuncta acceptio*" (Ibid 100). Aquinas argues for the importance of restitution for "what has been unjustly taken, for by giving it back the balance is re-established" (Ibid 107). If you look at the land inequalities of 87%-13%, one can appreciate Aquinas's argument for restitution as a work of justice. He believes that restitution is essential in that it "restores the balance when the taking of something has upset it" (Ibid 109). It can be argued that the unjust expropriation of someone's property, in this instance indigenous land, implies "a violation of the virtue of justice". For this reason, the moral claim for land restitution is based on the supposition that justice has been distorted, rendered ineffective. Thus, the restoration of the imbalance caused by such unjust taking is the only morally plausible thing to do.

In pursuance of this line of thought, Fray Pedro employs a simile to express the significance of restitutionary justice. He says: "As medicine is necessary to help repair the wounds which we suffer in our flesh and to put the body back in its pristine condition of health, so also is restitution necessary to close up the wounds caused by a violation of the virtue of justice, to put once again in their original condition of balance and equity" (Tack 1957:49 Emphasis mine). This simile aptly demonstrates the importance of restitutional justice in the attainment of an authentic political and social healing. More importantly, the simile reveals two things: First, it shows that unjust taking of another's property causes wounds, and Second, that such wounds cannot be simply wished away, but have to be concretely addressed or nursed. No doubt, in this country there are many people who have been wounded by population removals and resettlement programmes. Black people still have fresh memories of the land they once occupied and houses they once called their homes before they were plunged into marginal existence by the apartheid power. Thus, reconciliation without land repossession will not wipe out the memories and experiences of forced landlessness.

Further, Pedro reminds us that "...not every giving back of a taken object is to be called restitution, but only through which a thing is given back that was already due in justice. For this reason, he defines restitution as "the returning of a taken object which was due in justice" (Ibid 50 Italics mine). Like Aquinas, Pedro understands restitution as the "re-establishment of the equilibrium put out of balance by the violation of justice" (Ibid 51). There is no way in which one can dispossess the entire black community and not tip the political and economic scale of its equilibrium in favour of the powerful. The dispossession of the black communities of their land is a legalised violation of justice.

Pedro and Aquinas make close connection between restitution and justice. What is at stake is the violation of justice which calls for restitution rather than a violation of the law. In the legal circles, the emphasis is on violation of the law, we

hardly hear legal practitioners speak of the violation of justice. The aim of the law, positively construed, is to serve and promote justice. But, when the law fails in its task to serve and promote justice, justice itself is violated, rather than the law. Consequently, restitution is essential in the context where the law has become an instrument of legal dispossession, thereby effectively defeating the ends of justice. Therefore, black people would not appeal to the South African law in their struggle for land restitution, for the law was made to serve unjust land dispossession. As we have seen, Joyi attested to the use of the law in land dispossession when he said, "...they (white people) took by law, their law, what they could not take by war" (Meer 1988:15). Invariably, violation of justice is sufficient ground for political resistance to claim and repossess the object taken land

### **Theological argument for land repossession**

In my view, the appropriation of the idea of restitutionary justice is significant, as it challenges the church and the liberation movements to recapture a holistic image of justice that does not compromise from its confrontation with political and social systems dominated by inequality and injustice. After all, restitutionary justice finds expression in the Jubilee tradition--a biblical tradition that allows close connection of liberation or emancipation and land repossession. Liberation without a corresponding land acquisition makes the conditions necessary for lasting peace inconceivable. Like Aquinas and Pedro Labacqz articulates the importance of land restitution expressed in Jubilee event in these words

'It is an image of reclamation. Reclamation means both the returning of something taken away and the action of calling or bringing back from wrongdoing. What is reclaimed is set right, renewed. It [Jubilee] shows clearly the centrality of economic injustice and its relation to loss of political power' (Labacqz 1987:127)

Jubilee makes political transformation rooted on land justice the source of economic power. To be sure, the land should be the focus of political transformation, as Labacqz put it, "the land was the major source of income and hence the focus of oppression" (Ibid:124). The purpose of land return was to be "a major form of redress of injustice." More importantly, to ensure that "the former debtors could attain economic independence instead of merely beginning a new cycle of poverty and indebtedness" (Ibid:128). In her Jubilee discussion, Labacqz does not allow false disjunction of economic justice expressed in land restitution and political power. She writes, "the Jubilee shows clearly that no rearrangement of structures will constitute "justice" unless it truly provides for new beginnings." She continues, "it is not enough to remove shackles. Unless land, equipment, the meaning of making a living are provided the cycle of poverty will begin again" (Ibid). Like Labacqz, Walker, jr makes connection between emancipation and land acquisition. He states, "We may be emancipated from shackles of slavery, and from the bondage of apartheid and Jim Crow discrimination, but without access to land and various kinds of wealth and resources, we are not free." Further, he argues that the God of our ancient African mothers and fathers made the promise of land and access to its wealth an essential part of the ancient Hebrew Liberation agenda. It is now an essential part of our liberation agenda" (Harding 1981:255, 264-65, Walker Jr 1991:21)

Jubilee tradition demonstrates in essence that emancipation without empowerment is inadequate to the liberation struggle. That is to say, without land freedom is incomplete. For this reason, Jubilee theological thought advocates the primacy of land right as an inalienable human right. Access to land concretises liberation. The denial of the people's divine right to land as evidenced in Leviticus is tantamount to rejection of "comprehensive social and empowerment of all the people--and this means land to the people, and food to the people, and wealth to the people, and health care to the people, and housing to the people...." (Ibid 22).

In this discussion the theological concept of inheritance deserve some consideration in that it offers another dimension regarding land empowerment. This concept embodies a theological tradition, which according Mays, saw "the land as constitutive of the integrity of a citizen's existence" (Mays 1987:150). The notion of inheritance is essential as a theological interpretation of the individual and community's relation to and understanding of land. Clearly, one does not inherits property from oneself but from another as undeserved gift. Similarly, the idea of inheritance implied the people's recognition that "the land was not their as people but came to them as the gift from their God....It was their inheritance from God." For this reason, "to lose their inheritance was tantamount to losing their identity as a member of the people and privilege that went with that identity" (Ibid). The case of Naboth's vineyard demonstrates the significance of the issue of inheritance. Naboth's refusal to sell his land to King Ahab was motivated by his understanding that the land was sacred; land was a gift that could not be sold.

In our modern time, the land has become a commercial object; the poor and the oppressed hardly have access to it. Only the sons and daughters of the rich inherit the land which their parents looted and grabbed from the indigenous people. The rich and powerful also employ the language of inheritance as a ploy aimed at covering cover up the sophisticated tactics of land theft. We discern here the manner in which the rich and powerful have deliberately co-opted the religious and theological language for their own egocentric political ends. Inheritance is a theological idea rather than a political one. It makes people indebted to God for their land rather than to a raw political power. The indigenous claim to land is not motivated by political considerations, but by a theological or indigenous cultural understanding which makes God or gods the sole owner of land in which people are privileged to be stewards of and co-workers with God in its care. Theologically, land restitution is not a consequence of a political vote, but a consequence of God's liberational activity exhibited in the change of power equation between the oppressor and the oppressed, rich and poor. For this reason, any authentic political transformation should be predicated upon land repossession, as sine qua non for justice and peace.

In conclusion, let me hasten to say that for every Black South African, the issue of restitution is not just a peripheral political item, it constitutes the very heart and substance of the political and economic liberation. Consequently, for black people, the struggle is not based on some formal abstract principles. It is essentially expressed and concretised in land. So genuine peace and abounding justice in South Africa is ostensibly predicated on land restitution which is an

approximation of God's justice in an unjust country. To be sure, without land restitution, the conditions necessary for the actualisation of a just democratic social and political order cannot be attained.

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