

Restitution/Reparation: A Commitment to Justice and Peace

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This paper attempts to show that socio-economic and political justice and peace in South Africa imply land restitution. That is to say, without it, the conditions necessary for the creation of a just, democratic social order marked by shalom cannot be realized. In accordance with this thesis, I shall endeavor to examine some elements which form the thread of this paper. The elements include: 1. Black reaction to land dispossession, 2. African Religion and Culture, 3. moral argument for restitution; and, 4. theological underpinnings for Restitution drawing from both the Jubilee corpus and Rustenburg Declaration.

Black reaction to land dispossession

In all fairness, one cannot seriously speak of justice without first speaking about injustice. Similarly, one cannot fruitfully talk about restitution without, at the same time, reflecting on the history of land dispossession. The problem of restitution arises, for the most part, out of the historical matrix of land dispossession by means of political power, naked military force and legal decree. This historical reality is embodied and expressed in the land Acts of 1913 and 1936. Blacks consider these Acts as the cornerstones of legal land dispossession. Evidently, the Acts promulgated had decreed and designated 87% of the land to Whites while Blacks were confined to 13% of the barren land. Population removals and resettlement programmes were a direct consequence of these infamous Acts. Although the Acts are in the process of being repealed, one cannot expect the government to address the historical land claims and redress of the effects of apartheid as the white Paper has already demonstrated. Blacks agree that they are the sole owners of the land and passionately articulate the issue of unjust legal land dispossession. Tatu Joyi, a Thembu sage, strikingly summarized the history of legal land dispossession when he said, "... abantu... were defeated by the white people's papers, which took by law, their law, what they could not take by war. That was their witchcraft and magic." In addition he said:

"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 Ngengelizwe disputed that, the white man took him to court and the court looked at the paper and said Ngenegelizwe had given the white man 4, 000 morgan of land. The court said white people needed the land of the Thembus to protect themselves from the Thembus!"

Joyi's account is not alien to the countless number of the indigenous people. The story of dispossession has been told constantly and it forms the basis of the struggle. That is to say, for blacks the struggle is not based on some abstract formal principles but it is firmly concretised in land. Letswalo gives an analytic testimony of how the peasants were forced from the indispensable land in order to give way for white settlement or farming. She speaks of the alienation of the lands previously owned by the indigenous populations. Davenport concurs with Letswalo in his assertion that "White settlers in South Africa stole or acquired land from Blacks.... that the original owners of the land were transformed into tenants; and that more and more people of these tenants became redundants in White capitalist agriculture."³ Desmond Tutu attributes land dispossession to conquest by white "superior fire power." Consequently, he regards whites as "temporary sojourners." In support of his assertions, he states, in part, that:

"They (whites) decided to settle and build castles and to 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 had now 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 firing power."⁴

The argument Tutu advances is that the claim whites make for land ownership is by any stretch of imaginable logic implausible because it is based on a falsified fact of history. The falsification of history has to do with both the denial of the fact that the settlers did not bring land with them, and that upon their arrival they settled in an unoccupied land. The claim that the land was not occupied then, is not sufficient justification for plausible white ownership of the indigenous land. Tutu also notes that the acquisition of land by conquest through "the burrel of the gun" was soon replaced by "more sophisticated way of legislation passed through democratic process,⁵ a process that has progressively eroded "land rights to Blacks" and effectively rendered them landless. That is to say, both the legislation passed through pseudo-democratic mechanism and conquest produced the same effect regarding land dispossession. Like Tutu, Mgojo places the land question at the center of political discourse stating that "we cannot avoid it. "Further, he argues:

"the land must be returned to the people. The land cannot be owned by the few and worked by the many. The land is the future of the people and without it, the majority of the people will be lost."⁶

Mgojo makes close connection between the political future of the people and land. For him, any political order that does not address

the issue of land reparation consigns people to some form of political utopia. Both ANC and PAC agree on the fact that the whites have robbed the indigenous people of their land. However, they disagree about the strategies for restoring the land to the people because of their differing social visions.⁷ For PAC the land historically and morally belongs to the people and to them alone. This position makes reparation a non-negotiable issue, since it is the only basis upon which a reconciled political transformation can be achieved. While for the ANC the “South Africa (land) belongs to all who live in it, Black and White.” — Freedom Charter. While this statement seeks to demonstrate that each person has legitimate access to land ownership, it, at the same time, nullifies any land restitutionary claims, since it is illogical to advance restitutional claim to a property from someone whom you consider to be its owner. Put differently, by stating that the “South Africa belongs to all,” one cannot at the same breadth demand restitution.

African Religion and Culture

These terse black reflections on landlessness give rise to a crucial question: why after 360 years are the black pastors and politicians uncompromisingly demand that the land be returned to its original owners? The persistent or constant demand for land return is necessitated, in part, by the black peoples’ schizophrenic behaviour — a behaviour that reflects brokenness of black personality conditioned by years of apartheid’s mental and spiritual occupation. Their alienation from the land contributed drastically to a low self-image of black personality. The Bible says if you are in Christ you are a new creature. Blacks find it difficult to experience the new creaturely reality because of what they consider to be the political and social truncation of their humanity. The split personality syndrome of the black humanity is a direct consequence of the effects of apartheid’s political uprooting and alienating praxis. In the African traditional religion there is close connection between the living and the “living dead:” ancestors. There is a constant communication between them. The reverence of the ancestors is inextricably bound with a high degree of land reverence. “Ali Marui, a political scientist, attests to this fact when he says:

“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 generation should be sought.”⁸

The land is quite fundamental to the African people because it is the shrine of the ancestors and the very substance life. Landlessness renders an African politically impotent and spiritually bankrupt, hence the problem of split identity. For Africans, history and

identity are intimately bound with the 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 same point: "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 our future."⁹

The question as to whether or not the land is a gift from the ancestors is non-negotiable for the indigenous people and it forms the basis of their self-understanding and bondedness to the soil from whence they came to which they shall return. The sacredness of the land, mountains valleys and trees is related to its being a gift. Indeed the land has religious significance. This truth, the indigenous people's sense of relatedness to the land, underlies the contention overland between South African blacks and the white society today. These disputes have a theological dimension which generally goes unrecognized. Land, for blacks, is sacred and central to their whole civilization. It cannot be bought or sold, for it belongs to the living, the dead and the yet unborn. It cannot be ravaged and exploited beyond its capacity for renewal, since it is the living link between the past memories and expectant future in which the new generation will actively participate. Let me hasten to say that the African understanding of the land displays some important similarities with the Judaeo-Christian tradition. 1 Kings 21 recounts Naboth's refusal to sell the vineyard because the land is sacred; land is a gift that cannot be sold. Naboth says in substance, (v.3). "I inherited this vineyard from my ancestors... The Lord forbid that I should let you have it! "The creation account in Genesis 2 links humanity with the earth; humanity is created out of the earth."¹⁰ The African understanding of land can serve as one of the sources of African view of justice. For instance, the onto-genetic conception of justice which expresses justice as relational is at the core of the African moral thought. This idea is based on the African idiom, derived from the African way of life, which says: "Motho ke motho ka ba bangwe batho," meaning one's humanity is depended on the humanity of others. Further, it means that one's humanity is defined, complemented and enhanced by the humanity of others. The reciprocal interdependence of our humanity provides new basis for doing theology and politics. Africans knew that the poverty of any of its members was an indictment to the community's well-being. How the community treated those in need became a criterion by which the community's practice of justice was measured. The idea of human interdependence and its corresponding view of justice gave rise to Mafisa practice¹¹ which practice helped to safeguard the poor and strangers against perpetual material poverty. That is to

say, the strangers were given material self-defense not only against poverty, but also against humiliation and degradation. For Africans, it would be morally untenable to deprive people access to the land as this would render them less human. For this reason, the African thought gives rational justification for land restitution in that it inextricably connects the wholeness of life with land. Having said this, it is essential to observe that the issue of land restitution is a crucial one today. Let us, therefore, examine the moral ground on which a case for restitution could be made.

The Moral argument for Restitution

The question of restitution is new in South Africa, but it has been treated by some theologians (Aquinas) and political thinkers. In the 1960s the issue gained prominence in the African American Civil Rights struggle. The demands were made for reparation of the African American indignities suffered and alienation from their continent of birth. However, the demand for reparataion fell on a deaf ear and it was partially replaced instead by affirmative action. The issue, however, is on what ground could a demand for restitution in this country be based? A claim for reparation arises in a situation where one's property has been forcibly taken without the consent of the owner. Thomas Aquinas argues for the necessity of "restitution of what has been unjustly taken... Furthermore, he reasons, "... a man is bound to restore several times over the amount (property) he has taken unjustly."¹³ The unjust taking of someone's property implies violation of justice. For this reason, the demand for restitution is essential in the supposition that justice has been effectively violated. Consequently, the restoration of the imbalance caused by such an unjust appropriation is the only moral thing to do. In pursuance of this line of thought, Fray Pedro employs a simile to express the significance of restitution. 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 pristinecondition 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."¹⁴

This apt simile demonstrates a political healing that restitution effects as an act of restorative or commutative justice. More importantly, it reveals two things: 1. it acknowledges that the act of taking one's property causes or inflicts wounds, 2. that such wounds cannot be wished away, but have to be nursed. In a word, it calls for appropriate restitutionary measures. As Tutu once said, if you have my pen, it is ludicrous to say let us reconcile before you return my pen. For him genuine reconciliation can only take place if the object taken is returned. The same logic applies to land which is the

object taken by whites. Further, Pedro reminds us that "... not every giving back of a taken object is to be called restitution, but that 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." ¹⁵ It can be deduced from the above simile that the essence of restitution is the "re-establishment of the equilibrium put out of balance by the violation of justice."¹⁶ For Pedro, like Aquinas, restitution and justice are closely linked together. That is to say, restitution implies violation of justice. One can, therefore, conclude that the population removals, expropriation of tribal lands and other forms of landlessness constitute basic violation of the tenets of justice. The fact that justice has been violated serves as the moral basis for political resistance to reclaim the object taken: land. The question is whose justice? In South Africa there are two kinds of justice: 1. Justice for the powerful (whites) and justice for the many (blacks). When we speak about justice we mean different things. That is to say, the understanding of justice is racially determined. Given our distorted view of justice, the church is challenged to recapture a holistic image of justice that does not compromise and shrink from its confrontation with a world dominated by injustice.

Theological underpinnings for Restitution

The jubilee year tradition may serve a resource and a guide for our deliberation on the issue restitutionary justice. It is important to note, however, that the jubilee year event served as a protection for the Israelites against exploitation by another Israelite. To appropriate this tradition for our political circumstances may be stretching the tradition too much. The reason for this caution is: first, that our situation, unlike that of the Israelites, is marked by race. So that those to whom restitution is due are not of the same skin-colour, second, our situation is, in many respects, different from that of the Israelites, and third, "the jubilee provisions emerged as the Israelite's understanding of God's requirement for justice in the midst of injustice in a particular historical setting."¹⁷ Third, it must be noted that Jubilee is not a blue print for a perfect social political order, it does present a new reading of the text and its implications in our quest for social and political construction. However, the tradition provides significant insights, which cannot be ignored. Clearly, the Jubilee year was both a political and theological event. Political, in that it culminated in the emancipation of the slaves accompanied by social and economic structuring. The jubilee event conjures two images: liberation and economic restructuring. That is to say, the land and property expropriated and confiscated from the people due to economic difficulties were returned. It was an occasion for the people to return to their land and "property of his 'their' ancestor" (Lev.25:41). Clan and families were to make a fresh start again.

In speaking about the importance of Jubilee event for social construction, Lebacqz says:

“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.”¹⁹

It was not simple call for emancipation without corresponding appropriate structural innovation. To be sure, political emancipation without corresponding economic well-being embodied in land is a fraud. For this reason, Ringe states that jubilee points to a radical “change in the power relationship between oppressor and oppressed.”²⁰ The jubilee makes political power and economic justice inextricably bound together. That is to say, any false dichotomy between the two realities is not acceptable. The land was the primary focus of genuine political transformation because “the land was the major source of income and hence the focus of oppression.”²¹ The purpose for land return was to be “a major form of redress of injustice. More importantly, “to ensure that “the former debtor could attain economic independence instead of merely beginning a new cycle of poverty and indebtedness.”²³ Ringe makes a close connection between liberation and land repossession. The one without the other does not create conditions conducive to justice and peace. Like Ringe, Labacqz assert that the release of slaves was immediately followed by “the release from indebtedness and the re-lease of the land so that people can begin again.” Further, she attests, “there is not only freedom from enslavement, but a genuine economic and political restructuring that provides the possibilities of new beginning.”²⁴ This event provides holistic political order based on equity and economic renovation. The jubilee tradition was a theological one because it was predicated upon the will of Jahweh. That is to say, the emancipatory justice of the oppressed was not antithetical to God’s justice. The healing that this liberation brought was to effect same healing between the oppressed and their alienated environment: land. This can only happen when communities and individuals are allowed to have an access to the land, which is a means of production and a source of life. The Biblical injunction which says, “.. proclaim liberty throughout the land. It shall be a jubilee year for you; each one of you is to return to his family property and each to his own clan” (Lev. 25: 10), contains, according to Lebacqz, two important elements: liberation and the idea of redress. The justice reflected in this passage favoured those who were on the receiving end of the society. The liberty referred to here involved both the oppressor and the oppressed, in that the oppressor would terminate his oppressive power, while the oppressed would also be released from the tentacles of oppression. For Lebacqz,

“the Jubilee year and its related sabbatical and release images depend on the fundamental image of; the interdependence of human beings and our dependence on God.” Further, she argues, if justice is “to each his/her own, “then the jubilee makes clear that his “own” can be judged only in the light of God’s interventions. Family land is returned and slaves are freed, not because they “deserve” it by some human calculation, but because it is the best approximation of God’s justice in an unjust world.”²⁵

Rustenburg Declaration

The treatment of the Jubilee year tradition leads to a reflection on the contemporary demand for restitutionary justice. The declaration places a high premium on what it calls the “the affirmative acts of restitution.”²⁶ The call for affirmative action reduces the struggle for liberation into a Civil Rights one. In the United States of American from which the idea of Affirmative action was first applied, the white majority opted for this practice, rather than offering comprehensive reparation.

In our country, however, it is ironical that the black majority place themselves under the mercy and whim of the white minority by uncritically advocating Affirmative acts of restitution. The document’s failure to address concretely the question of land restitution leaves much to be desired. The document seems to create an impression that it is preoccupied with promoting church relations, rather than giving substantive form and content to the theology of land restitution. It can be argued that the Church’s lack of enthusiasm in seriously treating the issue of land restitution demonstrates its complicity in land dispossession. The fact that the declaration calls for “state and church to restore and to the dispossessed people,” is to be welcomed but its failure to spell out the mechanism by which land restoration is to be accomplished makes the call somewhat suspect. As in the jubilee event, the Rustenburg declaration cites the issue of land restitution. Both the Jubilee and Rustenburg declaration connect justice and peace to land restitution. This predication makes restitution a necessary condition for the attainment of lasting peace and justice.

Conclusion

There are two approaches that the debate on land restitution should take into account: First, the conquest approach bases its land claims on conquest rather than on indigenous origin. Most whites in this country subscribe to this approach. However, the danger of the conquest approach is that it elicits revolutionary response from those whose legitimate land claims are based on the indigenous grounds. Second, the restitutionary approach acknowledges the indigenous

origin as an authentic ground for land ownership. For this reason, this approach yields positive results for those whose primary aim is the creation of a harmonious community of persons. Whites in this country should admit their role in black land dispossession. Such truth will undoubtedly free them and help them to realise and accept that land restitution is a form of justice that participates in the enhancement of the "wholes of life"²⁷ — justice that breaks the stronghold of economic and political dependency and provide a future characterised by jubilee and celebration of life. Admittedly, the exponents of land restitution do not rule out the need for a fair and equitable land distribution, but they argue that land distribution is the sole prerogative of the indigenous owners, rather than of the illegal occupants.

NOTES

1. Fatima Meer, *Higher than Hope: The Authorized Biography of Nelson*, (New York: Harper and Row, 1988), p. 15. One can deduce two things from this statement: (a) the first introduction of the title deed, and (b) private ownership of land.
2. Essay M. Letswalo, *Land Reform in South Africa: A Black Perspective*, (Johannesburg: Skotaville, 1987), p. 29.
3. T.R.H. Davenport, and K.S. Hurt (eds), *The Right to the Land: Documents on South African History*, (Claremont: David Philip, 1974).
4. Desmond Mpilo Tutu, *Hope and Suffering: Sermons and Speeches*, (Johannesburg: Skotaville, 1983, p. 47. Italics mine.
5. Ibid.
6. *Star* 6/11/90 and *Sowetan* 6/11/90.
7. The ANC prescribes to Non-Racialist democratic vision, while PAC supports africanist Socialist democratic vision.
8. Ali A. Mazrui, *The Africans: A Triple Heritage*, (Boston: Little, Brown and Company, 1986), p. 271.
9. Quoted in "Land Rights and Racially Oppressed Indigenous People," document number 126 of the World Council of Churches, Programme Unit on Justice and Service, Committee meeting in (Kingston, Jamaica, 1-11 January 1978/79), p. 7.
10. Barbara Rogers, *Race: No Peace without Justice*, Geneva, Switzerland: World Council of Churches, 1980), p. 53.
11. *Mafisa Practice*: The Practice mandated Individuals and community to provide basic material means to the poor and strangers to enable them to start new life. Depending on the individual needs, the community provided either a cow for milk or a piece of land and seeds. This was not a form of charity. The aim was to facilitate the poor's material independence (break the circle of material or economic dependency) rather than always depending on the benevolent handouts offered to them.

12. St. Thomas Aquinas, *Summa Theologica*, Vol. 2a 2ae, 57-62, (new York: McGraw-Hill Book Company, 1975), p. 107.
13. Ibid., p. 108.
14. Quoted in *Theodore V. Tack, O.S.A., Fray Pedro De Aragon, O.S.A.: His Life, Works, and Doctrine on Restitution* (Chicago: The Augustinian Press, 1957), p. 49.
15. Ibid., p. 50.
16. Ibid., p. 51.
17. Karen Lebacqz, *Justice in an Unjust World: Foundations for a Christian Approach to Justice*, (Minneapolis: Augsburg Publishing House, 1987), p. 126.
18. Many tribes which have been forcibly removed from their ancestral land demand that they should be allowed to return to their former lands. For example the residents of mogopa, Bakubung and other tribes, will not rest until the government has conceded to their demands. See Saturday Star, March 16, 1991, p. 11.
19. Karen lebacqz, p. 127.
20. Ringe, *Jesus, Liberation, and the Biblical Justice*, p. 95.
21. Karen Lebacqz, *Justice in an Unjust World: Foundation for a Christian Approach to Justice*, (Minneapolis: Augsburg Publishing House, 1987), p. 124.
22. Ibid.
23. Sharon Ringe, *Jesus, Liberation and biblical Jubilee*, (Philadelphia: Fortress Press, 1985), pp. 16-25.
24. Karen Labacqz, p. 124.
26. Ibid. p. 128.
27. Rustenburg Declaration, (National Conference of Churches in South Africa, November 1990), Section 4. 1.2.
28. Manas Buthelezi, "Salvation as Wholeness "in John Parratt, ed., *A Reader in African Christian Theology*, (London: SPCK, 1987), p. 95.