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Human dignity and economic globalisation¹

ABSTRACT

The question addressed here is whether the achievements in the human rights discourses are at stake in the current context of economic globalisation. The answer to this question hinges on the place and role ascribed to governments and states in the global economic context. The outcome of this query is in the social realm where the restoration of human dignity is tested. However, the context of this investigation is both political and economic. Since South Africa has set for itself the political and economic objective to restore the dignity of its humiliated black communities, it remains a pivotal test to the achievement of social gains in a world characterised by economic gains.

INTRODUCTION

In the year 2004 South Africans celebrate the tenth anniversary of democracy. Many black people such as myself will look back in order to imagine the future of the poor and most vulnerable people of this country. I will also remember the years of severe repression. Black people were forcefully removed from their land and taken to barren parts of the country. I will also remember the days we marched the street of South Africa calling for the people's liberation. South Africa will remember the day its people could, for the first time in their lives, participate in democratic elections on 27th April 1994. As a theologian, the word remembrance takes on special meaning as it embodies both an exercise of the mind (thinking) and an exercise of inclusion (bringing back into membership).

Celebration is always a time for reflections. One can look back at the past ten years to think about the dramatic revolution, to review the remaking of the political landscape and imagine the remaining challenges awaiting this country's new-found democracy. In the constitution, South Africans marked the notion of dignity as its core challenge. The constitution is based on a set of values determining the nature of the country's democracy. The first and foremost value on which South Africa's democracy is found is identified as "human dignity," and benchmarked by the words "the achievement of equality and the advancement of human rights and freedoms"².

However, South Africans had won their democracy at a time of rapid globalisation. In the context of globalisation authors from different fields started to perceive a certain conflict between the restoration of human dignity and the agency of economic globalisation³. The most recent

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2 *The Constitution of the Republic of South Africa*, 1996, Act 108 of 1996, page 3.

3 The broad argument that undergirds the main point of departure of this chapter is strongly represented by authors in the following publication: Berma Klein Golgewijk, Adalid Contreras Baspineiro and Paulo

developments in the human rights discourse, namely respect for economic, social and cultural rights, are at odds with the most recent developments of the world's financial markets, namely respect for the bottom-line, respect for the value of money and trade as well as the primacy of economic growth over social imperatives. The point of departure is that the restoration of human dignity after the advent of oppression requires of governments the responsibility to fulfil and protect the social rights of people, especially the most vulnerable. These responsibilities of governments would of necessity require intervention in markets and even regulation of such markets to protect the poor and marginalised. The restoration of human dignity must be seen to be more than a mere social goal. It ought to be more specifically an institutionalised practice. Governments and not markets signed the Universal Declaration of Human Rights (1948). Governments and not markets accepted the responsibility to fulfil and protect the economic, social and cultural rights of people.

The question addressed here is whether the achievements in the human rights discourses are at stake in the current context of economic globalisation. The answer to this question hinges on the place and role ascribed to governments and states in the global economic context. The outcome of this query is in the social realm where the restoration of human dignity is tested. However, the context of this investigation is both political and economic. Since South Africa has set for itself the political and economic objective to restore the dignity of its humiliated black communities, it remains a pivotal test to the achievement of social gains in a world characterised by economic gains. The word value is important in this debate. The term originated in the world of money and is applied to human dignity by the Constitution of South Africa. In a certain sense this paper tells the story of the world's economic globalisation as it impacts on a country's, South Africa's, social objectives. The quest for reconciliation in South Africa is crucial to the restoration of dignity. Reconciliation requires also reparations to humiliated human beings. Reparations, however, call for intervention by governments. It therefore brings one back to the first question regarding the attainability of social goals that impacts human dignity at a time when the world experience the hey-days of the financial market in the context of economic globalisation. One can now rightly ask whether a government, such as South Africa's, fulfils its constitutional obligations regarding the restoration of human dignity and fulfils its global contractual obligations to economic globalisation.

THE CONTEXT OF ECONOMIC GLOBALISATION

Zygmunt Bauman, the political sociologist and emeritus Professor of Sociology at the Universities of Leeds and Warsaw, has done extensive research about the human consequences of economic globalisation⁴. His political argument sees a deconstruction of politics in the realities of economic globalisation. His argument regarding the state of the human being is that economic globalisation is geared towards the tourists' dreams and desires rather than that of the poorest locals. Parallel to the latter, he also argues that the rich, the great and the famous people of a society no longer aspire to pastoral power, i.e. they no longer see themselves as shepherds of their flocks or their people. These three arguments impact on the way in which governments are positioned to act in the context of globalisation in achieving their social responsibilities.

César Carboni (eds) 2002. *Dignity and Human Rights: The implementation of economic, social and cultural rights*. Antwerp: Intersentia.

4 Zygmunt Bauman, 2001 *Community: Seeking Safety in An Insecure World*, Oxford: Blackwell Publishers; 1999 *In search of Politics*, California: Stanford University Press; 1998 *Globalization: The Human Consequences*, New York: Columbia University Press.

His political argument⁵ is that in the classical phase of modernity, legislation was the principle tool for setting the social agenda of a nation. Legislation provided a restriction to unbridled choice by allowing legislators to exercise the first and primary choice on behalf of the collective and in relation to the responsibilities established in the constitution. Only after legislation, individuals could exercise their choices. The law-makers could then, in the interest of the human being and the social needs, reduce the range of choices open to individuals by making laws that would provide incentives for the restoration of human dignity or disincentives for actions that could hamper such development. The legislators also had a second principle tool to set the code of choosing. The principle tool for setting the code for choosing was education. Education provided codes of conduct and also established values that would guide the exercise of choosing. Education was meant to teach us the distinction between the right reasons for according preference over against the wrong ones. Further, education would form in human beings the ethical inclination to follow good impulses and resist the wrong reasons for choosing.

However, says Bauman, political institutions everywhere are currently in a process of abandoning or trimming down their role in agenda- and code-setting. This means that these two principle functions of political institutions are now being ceded to structures and forces other than political. Within the framework of globalisation, the insistence on curbing the states' regulatory functions gives expression to this phenomenon. Those associated with financial and commodity markets then find themselves operative in a context of deregulation regarding the agenda-setting and the code-setting on social and thus human dignity related issues. This leaves political institutions stripped from any effective social agency to legitimate, promote, fulfil and service other sets of values. Values related to the restoration of human dignity are not exempt from this impact of the deconstruction of politics.

Given this background, Bauman then develops the idea that the events in the political arena, especially their effect on the human being, are compounded by the way in which economic globalisation impacts human life⁶. Economic globalisation, he claims, produces two human forms, the tourist and the vagabond. The tourists are those human beings with the means and ability to choose to travel because they want to do so. The vagabonds are involuntary tourists forced to travel because they have no other bearable choice. The real lifeblood of a voluntary tourist is the possibility of choice. Globalisation is, therefore, he claims, geared at the dreams and desires of the tourist, not that of the vagabond. The vagabonds are those who, in terms of the argument of this chapter, require the restoration of their dignity. They are the poor and side-lined members of the human community. They represent the people living in the squatter camps of South Africa and ghettos of the world. However, says Bauman, the reduction of the options, marginalises the vagabond from the central activity of economic globalisation, namely the unfettered right to choose. The vagabond is seen as a flawed consumer, and as such useless to the global economy. They are also unwanted. So they participate in crime as a negative expression of their desperate wish to become like the tourist. Eventually, the vagabond learns that the tourist is actually dreaming of a world without vagabonds. They, therefore, choose secluded tourist destinations rather than spaces where the vagabonds wander the streets of the world.

5 His political argument is espoused in Bauman's book of 1999, *In search of Politics*, California: Stanford University Press, pages 58-108.

6 This is especially argued in Bauman's 1998 book called *Globalization: The Human Consequences*, New York: Columbia University Press, pages 77-102.

The vagabond is now dependent on the philanthropists of the world. The pastoral role of the philanthropist has, however, also changed significantly. Where they would earlier stand as pastors or shepherds of the flock of vagabonds, they now simply display their life-styles as the examples to be followed.

THE SOUTH AFRICAN DILEMMA

In such a world, South Africa has decided to make the restoration of dignity especially of the poorest and most marginalised sectors of society a crucial area for political performance. This has happened after 1994 when the country had its first democratic election. Already in 2000, warnings were sounded that the political agenda regarding the collective social responsibility has fallen behind. On 18 May 2000 Judge Arthur Chaskalson, then president of the Constitutional Court in South Africa, presented the third Bram Fischer Lecture in Johannesburg. He warned the country that it is in danger of not realising the future vision contained in the constitution. "We seem temporarily to have lost our way", he said, "Millions of people are still without houses, education and jobs and there can be little dignity in living under such conditions. Dignity, equality and freedom will be achieved only when the socio-economic conditions are transformed to make this possible".⁷ Nowhere, he says, was the importance of dignity more apparent than in the application of social and economic rights and the justice they entail.

Another way to state this kind of view is by saying: South Africa has been very successful with broad transformation. The country can be proud of the instruments of its constitutional democracy, of the advances in the educational system, of the broadening of access to health care in the country, of the restructuring in civil society, of partnerships with business, of the advances in environmental awareness, and the blossoming in arts and culture. However, broad transformation in itself is not a panacea. At some point the realisation emerge that it must be followed by deep transformation. The country must also seek a deepening of the transformation so that dignity is restored to those who struggle to make a living in the remotest village of our country. It points to the need for a deepening of equality so that the daughter of the farm worker would have the same opportunity to success as the son of the farmer.

This concern regarding the social agenda was also expressed by President Mandela after his own presidency. In his letter to the participants in the Rhodes Centenary Reunion in January 2003, former President Nelson R. Mandela makes a very important statement when he says: "While you are here (in South Africa) you will doubtless realize that although our great moral struggle – to cast off apartheid – is over, the challenge of bringing equality and dignity to our people remains".⁸

The year 2004 will usher in the tenth anniversary of South Africa's democracy. The two statements these two well placed intellectuals and opinion formers of South Africa outline quite starkly the reality of South Africa's people in the context of economic globalisation. Judge Chaskalson's concluding remark is a painful reminder of how far we are as a nation from the duties we would like to see fulfilled: "Generations of children born and yet to be born will suffer the consequences of poverty, of malnutrition, of homelessness, of illiteracy and disempowerment generated and sustained by the institutions of apartheid and its manifest effects on life and living

7 Arthur Chaskalson, 2000 Annual Bram Fischer Lecture, *The Sunday Independent*, 21 May 2000, page 1.

8 Nelson Mandela, Words of Welcome to the Rhodes Centenary, *The Brochure for the Rhodes Centenary*, January 2003, Cape Town: University of Cape Town, page 8.

for so many. The country has neither the resources nor the skills to reverse fully these massive wrongs”⁹.

Apart from resources and skill, the argument of Bauman must also be brought to bear on this judgement. South Africa does not have a global economic context that is conducive of the restoration of dignity as the political deconstruction and the human consequences of economic globalisation contradict the human goals set by the constitution.

THE HUMAN RIGHTS DISCOURSE

Human dignity is a notion that belongs to the human rights discourse. The arguments posed above bring us in the context of the place and role of human rights in economic globalisation. Internationally, the debate on globalisation and human rights¹⁰ takes its point of departure in an intellectual position that assumes the existence of rights. Africans are entering the reality of and fast-tracking developments in human rights. The rights debate in South Africa is a debate of entitlement given its dignity-enriched meaning. However, the achievement of this contextual challenge is seriously hampered by economic globalisation. It takes on the form of policy options in a global context in which the political deconstruction is in progress. The question is not so much whether globalisation will strip Africans of human rights. The question is whether it will allow the country to restore human rights.

South Africa’s constitution, hailed by many scholars, as the most democratic constitution currently in the world, is predicated on specific moral viewpoints and does nothing more but “operationalise” this morality. Its main objectives are to i) heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; ii) lay the foundations for a democratic and open society protected by law; iii) improve the quality of life of all citizens and free the potential of each person.

At heart the Constitution endeavours to restore the collective dignity of the South African society and state, on the one hand, and its people, on the other. This is confirmed in Section 1(a) of the Constitution:

“...human dignity, the achievement of equality and advancement of human rights and freedoms”.

The Bill of Rights picks up on the theme of human dignity and applies it specifically to the dialectic of freedom and equality.¹¹ The commitment to this understanding of dignity is imposed as a positive duty upon the state as it is required to “respect, protect, promote and fulfil the rights” in the Bill of Rights.¹²

9 Arthur Chaskalson, 2000 Annual Bram Fischer Lecture, *The Sunday Independent*, 21 May 2000, page 1.

10 See Berma Klein Golgewijk, Adalid Contreras Baspineiro and Paulo César Carboni (eds) 2002 *Dignity and Human Rights: The implementation of economic, social and cultural rights*. Antwerp: Intersentia. Of great importance is the chapter of Venetia Govender “Economic Social and Cultural Rights in South Africa: Entitlements, not mere Policy Options”, pages 75-90.

11 Lourens M. du Plessis calls these the “dignity enriched” concepts of freedom and equality. Human dignity thus becomes the interpretive framework for the Bill of Rights. [2000 “South Africa’s Bill of Rights: Reconciliation and a Just Society” in William E Van Vugt and G Daan Cloete (eds) 2000 *Race and Reconciliation in South Africa: A Multicultural Dialogue in Comparative Perspective*, Lanham, Maryland: Lexington Books, page 142.

12 All references here to the Constitution or the Bill of Rights refer to *The Constitution of the Republic of South Africa*, 1996, Act 108 of 1996.

The state is not merely required to “respect and protect” the dignity based rights, but is also obligated to “promote” and “fulfil” them. There will be purist libertarians who may suggest that the duty to “promote” these rights could lead to unacceptable state interference in the private sector and the economy at large. However, the Bill of Rights has chosen a strategy for equality and freedom that explicitly includes socio-economic (second generation) rights as point of departure. The objective of alleviating the poverty and suffering caused by 300 years of inhumane politics and economics requires modest state intervention. The right to “have access to”¹³ adequate housing, health care, food, water and social security must not only be respected and protected, but also fulfilled by the state. These rights of specifically marginalised and disadvantaged people are enshrined in the Bill of Rights as proper entitlements, which the state must be seen to “promote” and “fulfil”.

Rooting the second-generation rights in the principle of human dignity sends equality and freedom “towards concrete, human existentiality lest it absconds into the labyrinths of abstract rationality”.¹⁴

Lourens M du Plessis argues that the overarching notion of equality that derives from such a base in human dignity should rightly be called “empowering equality”.

“Empowering equality is accomplished through the judicious and thus congruous realization of the various manifestations of equality for which the constitution explicitly provides. The best that a constitution can do is to make sufficient provision for all the various manifestations of equality – which the South African Constitution does” (Du Plessis 2000:150).

The various manifestations of equality, explained Du Plessis (2000:147-149), (sub-articles) (i)-(iv) are the following: (i) *numerical equality*, i.e. the equality of things such as the equilibrium of injury and indemnification when damage is recompensed; (ii) *Geometrical equality* which provides for differential treatment postulated on personal merit, e.g. the right to vote qualified by the age of eighteen years (section 46(1)(c)); (iii) *Substantive equality* which requires that people are treated exactly the same irrespective of individual difference or merit. Substantive equality embodies the “blindfoldedness” of the goddess of justice; (iv) *Corrective or curative equality* seeking to address the deficiencies of other forms of equality. Corrective equality address historically entrenched distortions of equality by specific procedures such as affirmative action.

Empowering equality is the overarching mechanism of equality that integrates the four forms. Section 9(2) of South Africa’s Constitution can therefore legitimate measures “designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination”. This legitimacy is predicted on the assumption that “equality includes the full and equal enjoyment of rights and freedoms”. Corrective or curative equality, claims Du Plessis, is thus established as a “normal” form of equality and not an exception to the rule.

Taking as espoused by Lourens Du Plessis, the achievement of a dignity-enriched human rights situation, must be seen in terms of the fourfold action for equality. These actions require from governments the ability to set the social agenda and to set the codes whereby they will be achieved. However, taken, the arguments of Bauman, the process of the deconstruction of politics in the context of economic globalisation, reduces the capacity of governments to fulfil the rights claimed in the national constitution. The process of deregulation restricts rather than promotes the restoration of human dignity.

13 Section 27.

14 Lourens M. du Plessis 2000:150.

THE ETHICAL DILEMMA

Since my main interest is that of social ethics, I should now return to the philosophical heart of the matter.

The abovementioned arguments leave us with a deep sense of need to enquire again about the ethical centres of our societies in the context of economic globalisation.

Dignity enriched human rights discourse takes as its base the set of moral principles that takes its point of departure in the necessary relationship existing among all individuals as members of the human community. The interests of a common humanity override the interests of investors, states, systems and the financial market.

Zygmunt Bauman, in comparing the status of investors in the global economy with absentee landlords, correctly argued that the high level of mobility required from both capital and investor in the global context means an unprecedented and unconditional disconnection of power from obligation such as duties towards employees, towards the young and frail, towards unborn generations and towards the common good. Indeed, economic globalisation creates a new form of freedom, which is a freedom from the duty to contribute to the better life of all and the perpetuation of humanity and the earth: “now unanchored power, able to move at short notice or without warning, is free to exploit and abandon to the consequences of that exploitation. Shedding the responsibility for the consequences is the most coveted and cherished gain which new mobility brings to free-floating, locally unbound capital”.¹⁵

This is a very important observation in the human rights debate since the main drive of the current discourse is seeking ways to move beyond the mere claiming of rights over against others, but rather to work towards rights as expressions of responsibility. One is not only free *from*, but indeed, free *for* responsibility.

Human dignity has always been vulnerable to encroachment. In different areas of human life and in the context of transformation the level of vulnerability may be higher than in others or at other times. The vulnerability arises when two distinct fundamental human orientations collide and the result is wrongly constructed at the cost of dignity.

In the context of globalisation the “ethic of dignity”, the orientation favoured by a strong social ethics, and the “ethic of interests”, the orientation favoured by the current global economic reality, come into conflict and such conflict requires a fundamental moral choice from individuals, communities and society at large.

The discussion of human dignity must avoid the Kantian grounding in rationality, which has been thoroughly criticised for its anthropocentric worldview on the one hand and an understanding of human dignity that is imprisoned by a notion of human rights that excludes future generation and the earth. Calling violence an assault on human dignity, Wolfgang Huber argues that we are now called to a “planetary ethic”.¹⁶

There is significant consensus that globalisation brings with it major risks to human beings, communities and societies. Our very humanity may be at stake in the current global context.

Martin Khor’s¹⁷ point is well taken:

15 Zygmunt Bauman, 1998 *Globalization: The Human Consequences*, New York: Columbia University Press, page 9.

16 Wolfgang Huber, 1996 *Violence: The unrelenting Assault on Human dignity*. Minneapolis: Fortress Press.

17 Martin Khor, 1996 “Global Economy and the Third World” in Jerry Mander and Edward Goldsmith (eds) 1996 *The case against the Global Economy and for a turn towards the local*, San Francisco: Sierra Club Books, page 46.

“The creation and establishment of a new economy and world order, based on environmentally sound principles, to fulfil human rights and human needs is not such an easy task, as we know too well. It may even be an impossible task, a challenge that cynics and even good-hearted folks in their quiet moments may feel will end in defeat. Nevertheless, it is the greatest challenge in the world today, for it is tackling the issue of the survival of the human species and of the Earth itself.”

The only credible way for South Africans to productively deal with a dignity enriched Human Rights discourse is in the area of reconciliation. The human rights discourse in itself will for the foreseeable future continue to suffer from the human and political consequences of economic globalisation.

Having examined the many disadvantages of economic globalisation, South African society has opted for the idea of reconciliation as a dignity enriched notion that could assist with the development of the poor and the marginalised in the face of globalisation. The act of reconciliation is the most creative response of the South African society to the expressed need for the restoration of dignity after the situation of oppression and dehumanisation in the time of Apartheid.

One of the most burning questions in reconciliation processes is the nature and place of justice. Difficult debates ensue about the primacy of justice for the true resolution of past conflicts. However, the central question in reconciliation is not whether justice must be done, but how it is to be done. This crucial question leads to four main proposals: Justice as revenge, justice as retribution, justice as redistribution and justice as restoration.

First is the idea of justice as revenge. Individuals or organisations may feel that the legal and political system of a society has been eroded or are not adequately representative to deliver justice to the victims or those who were dependent on them. Then people take the course of justice into their own hands. Street courts and other ways of dealing with justice in society arise. Examples of such actions were reported in Rwanda and the former Yugoslavia. The revenge option can condemn a society to a deadly spiral of retaliation.

Second, there is the option to handle justice in the form of the predominantly Western legal system. Where the criminal justice system is regarded, historically and socially, as the most adequate instrument to deliver justice to society, the option of retribution is enacted. The Western criminal justice systems are regarded as fairly advanced forms of dealing with justice in democratic societies. It is seen as an instrument that strengthens human rights in society and promotes the rule of law. Germany’s Nuremberg option is an example of this form of justice. Perpetrators are charged for offences before a court of law in which psychologists, religious leaders and other social service professionals have a meagre role to play in the decision-making process. This option depends on the existing criminal justice system in country.

The criminal justice system focuses on guilt and blame and seeks criminal motive, incriminating evidence, an objective measure of truth, witnesses of broadly defined integrity and, preferably, a confession by the perpetrator. South Africans who argued strongly for retributive justice include the family of Steve Biko, the activist and leader killed by Apartheid agents while in police custody in the seventies. Willa Boesak argues for justice as retribution in his book *God’s Wrathful Children* (1995). He finds religious justification in the idea that the Christian scriptures claim that “Vengeance belong to God” (Rom 12:19) and that God appoints civil authorities as rightful administrator of punishment to the evildoer (Rom 13:14).¹⁸ The focus on crime in

18 Willa Boesak, 1995 *God’s Wrathful Children*, Grand Rapids: Eerdmans.

retributive justice tends to become an industry¹⁹ and depends on the very issue that sometimes leads to torture, namely, interrogations that extract a confession. It further separates justice from social healing in a way that tends to marginalise victims and their continued suffering. The offender and the crime take central stage, while the victim and the pain dissolves in the notion that the state takes the case as its own against the offender.

The third option, distributive justice, calls on government to take a primary legislative position not only in the criminal justice system, but also in the civil justice system. In the civil justice system victims or their representatives become part of the process after retribution has been achieved and compensation can be sought. Distributive justice seeks legislation to redistribute the wealth of a nation to include the victims of its ethno-religious conflict that goes beyond the ordinary social security responsibility of the state. The focus is placed on the material loss of the victims or their immediate descendants. Instead of the term “victims” people then prefer the designation “survivor”. The latter moves the debate beyond the need for aid to the claim for redistribution. The benefits that resulted from the conflict should be redistributed justly to include recognition of the resultant disadvantage suffered by the survivor. Two theologians, Tinyiko Maluleke and Molefe Tsele, argued strongly for distributive justice. Molefe Tsele points to a direct connection between reconciliation and the biblical notion of the jubilee (Lev 25:9 -10).²⁰ The process should not end with reconciliation, but should also return survivors to a better social and economic status and thus restore their human dignity. Maluleke criticises the reparations proposals of the TRC. The proposal calls largely for symbolic and community-based reparations. The symbols want to remember victims and the other reparations focus on rebuilding local communities after the atrocities. Maluleke accuses the TRC of “Dealing lightly with the wounds of My People”.²¹ The focal point of reconciliation is the survivor and not the nation or community structures.

Restorative justice is the most critical form of justice in the structuring of reconciliation processes. Restorative justice returns the voice of the victim, whether alive or dead, from the periphery to the centre. When the victim is alive the person’s own voice is heard. Where the victim is deceased, the voice is represented by family. The crime was not directed at the state, as legal procedure often argues. The crime was personal, familial and relational. It connects the perpetrator and the victim eternally. Lawyers do not replace the perpetrator or the survivor although they may have such representatives as advisors. The survivor receives every right to question the perpetrator, over and against normal legal procedures. The perpetrator, similarly, can confess to the truth without fearing the aggressive legalese of lawyers representing the survivor. Restorative justice is a meeting of human beings both hurt, degraded and angry but willing to reach out to an element of mercy and grace in the human spirit. Dialogue, memory and embrace form the rituals of restorative justice. It takes its point of departure in the assumption that healing of memory, restoration of human dignity and the reconstruction of devastated communities are achievable in post-conflict situations. It assumes that embrace is more beneficial to society than any form of exclusion of people based on grounds of racial, gender, ethnic, religious, class or cultural entities.

19 See Nils Christie, 1994 *Crime Control as Industry: Towards Gulags, Western Style*, New York: Routledge.

20 Molefe Tsele, 1996 “Kairos and Jubilee” in H Russel Botman and Robin M Petersen (eds) 1996 *To Remember and to Heal: Theological and Psychological Reflections on Truth and Reconciliation*, Cape Town: Human and Rousseau, pages 70-78.

21 Tinyiko S Maluleke 1997 “Dealing Lightly with the Wounds of My People?: The TRC process in Theological Perspective” *Missionalia*, 25:3, pages 324-343.

Whilst other forms of justice base themselves on evaluations of the past, restorative justice is orientated to the future. The question is not “how combatants *have* lived” but “how the next generation *is going to* live”. This future orientation calls on predecessors of future generations to accept the humiliation of dealing with the past in order to leave a conciliatory heritage to their children. Restorative justice is based on the dual meaning of the word *remember*. On the one hand, it means to remember cognitively, to call to mind or to recall events of the past. It is thus directly related to memory and to the symbolism of memorials. On the other hand, it means incorporating, remembering, returning to membership and restoring community. Both these meanings are captured and expressed in restorative justice. Restorative justice is thus community seeking.

Although the notion of restorative justice is not captured in Western legal systems, it has undisputed origins in the cultures of Africans, the Maori and the first peoples of North America²² where notions of community have always been more important than mere individualism.

Restorative justice relates directly to the biblical understanding of reconciliation. Christianity has always been concerned about memory, confession, guilt and forgiveness in the interest of reconciliation. These themes have been constituted through the Christian tradition as public events and rituals.²³ In the same way national processes of reconciliation expresses the public nature and political meaning of these Christian themes. Restorative justice focuses on the two meanings of freedom, namely *freedom from* and *freedom for*. It invites people into a certain memory of the past that also frees them from it. Simultaneously, it frees people *for* the future, for each other and for God. Restorative justice is, therefore, embedded in the Christian narrative, memory and identity. Restorative justice includes the need for confession but removes it, as in Christianity, from the realm of retributive justice placing it in the context of a common search for reconciliation.

Restorative justice does not call for cheap reconciliation. It does not fly in the face of a victim’s pain and continued suffering ignoring the dehumanisation caused by conflicts. In Christianity a distinction is drawn between *cheap* and *costly* grace. Therefore, concrete reparation and restitution are not excluded. The perpetrator has a responsibility in this regard and so does the state.

Restorative justice belongs to the ambit of negotiated settlements. It, therefore, takes on a political rather than a mere religious meaning. Parties in conflict may get to a point where their research and common sense show that the continuing destruction of infrastructure and life outweighs the opportunities and benefits of continuing the struggles. They then may decide on the adoption of “a sunset clause” whereby the parties accept the principle that none of them will leave the conflict as the only winner. In the “sunset clause” they simply agree to let the sun set on the conflict and engage each other in negotiation for a settlement. Reconciliation becomes thus a public political reality.

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22 Interesting studies have been conducted about these questions by people such as Howard Zehr, 1999 “Restoring Justice” in Lisa Barnes Lampman (ed) 1999 *God and the Victim: Theological reflections on evil, victimization, justice and forgiveness*, Grand Rapids: Eerdmans, pages 131-159.

23 See the article by Dirkie J Smit, 1996 “Confession-Guilt-Truth-and-Forgiveness in the Christian Tradition” in H Russel Botman and Robin M Petersen (eds) 1996 *To Remember and to Heal: Theological and Psychological Reflections on Truth and Reconciliation*, Cape Town: Human and Rousseau, pages 96-117.

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