

# **RESTITUTION IN SOUTH AFRICA AND THE ACCOMMODATION OF AN AFRIKANER ETHNIC MINORITY**

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## **Political Styles and Cultures**

South Africa is a land of contrasts and polarization. For centuries, and particularly in recent decades, adversarial political traditions and systems cultivated political relations in a zero-sum mode, finding full expression in the policy of apartheid where the interests of whites were accommodated at the expense of the human rights and dignity of other population groups. The dramatic political reforms ushered in at the beginning of 1990, however, set South Africa on a path of negotiation politics motivated by the new ethic of compromise and win-win solutions.

Nelson Mandela and Frederik W. De Klerk knew that they risked their positions when they set out on a totally new political style in South Africa: negotiation politics instead of the customary confrontational, adversarial politics. They knew that their followers were still steeped in the political traditions of adversarial politics with a zero-sum frame of mind. The biggest risk that Mandela and De Klerk took was that of making compromises. Compromise is the essence of negotiation politics. But compromise in traditional South African politics, both white and black, carries with it connotations of selling out to the enemy, being a traitor to your own people. Yet, this new style resulted in a government of national unity which lasted from the first national democratic elections in April 1994 until the middle of 1996.

In May 1996 the Constitutional Assembly, dominated by the African National Congress, adopted a final constitution for South Africa under of which the government of national unity would come to an end in 1999. Having been defeated in its efforts to retain the government of national unity in the new system, the National Party of De Klerk decided to pull out of the government at the end of June 1996, three years ahead of time. They reverted back to the traditional role of opposition in the Westminster parliamentary system. The termination of the government of national unity certainly is a step backwards from a win-win to a winner-takes-all mode in national politics. There is no doubt, however, that the new style of negotiation politics introduced by Mandela and De Klerk in 1990 has become embedded in the South African political culture and continues to have a fundamental impact on the way political differences are negotiated and regulated in the new South Africa.

In this paper we explore the impact of this new political style and culture in two respects: First, the pursuit of justice and peace through the Commission on Truth and Reconciliation. The

tension between justice and peace, between retribution and forgiveness, is resolved in the synthesis of restitution, a comprehensive response to the injustices of the past. Second, the successful negotiations between the dominant black-led government and the small group of "ethnic" Afrikaners are discussed. Ethnicity, which used to be a major source of division in apartheid society, has become a binding factor in the new South Africa.

### Reconciling Justice and Peace

There is a complementary and contrasting relationship between justice and peace as desirable goals in South Africa, the problems that inhibit their attainment, and the means by which they are pursued. Three observations must be made about the goals of justice and peace (Van der Merwe, 1989: 1-8).

The first is that they are ideals for society and are, in fact, ultimately unattainable. We can never have full justice or peace in society. We can only strive towards them. The second point is that they are complementary: we cannot have one without the other. Therefore, the promotion of justice and peace in South Africa must involve the removal of fundamental disparities in the social, economic and political realms. At the same time, without reconciliation or the accommodation of differences, society will tear itself apart and neither peace nor justice will exist.

The third observation is that these goals stand in a relation of tension to one another. Sometimes justice seems to be unattainable by peaceful means, and at times the achievement of peace seems to run counter to the demand for justice. This tension is illustrated in the difficult role of the mediator. The mediator must have credibility on all sides of a conflict. Building and maintaining good relations and credibility with all parties is not compatible with attacks on injustice or public confrontations with the perceived perpetrators of injustice. The mediator who is trying to make peace at all costs, however, is likely to underplay injustice and overlook its manifestations. By doing so, some kind of apparent peace may be arranged, but this will leave patterns and relations of inequality and injustice unchanged. An uncompromising obsession with injustice, on the other hand, has led to the rejection and discrediting of peacemaking efforts.

The tensions inherent in simultaneously pursuing the goals of justice and peace are nowhere better exemplified than in the two paradigmatic American political documents, the Declaration of Independence and the Constitution. The Declaration of Independence embodies and delimits the sacred, transcendent rights inherent to the individual, while the Constitution is concerned with protecting and promoting the greater good of society. As David Lyons notes (1979: 175), one can "conceive of the differences between these two documents as transcending their distinct functions and representing a fundamental conflict between commitment to the general welfare and the principles of rights." Ronald Dworkin (1977: 74) echoes the manner in which these two different approaches define what is right: "[Society] may be better off in a *utilitarian* sense, that is, because the average or collective level of welfare is improved even though the welfare of some individuals falls. Or it may be better off in an *ideal* sense, that is,

because it is more just, or in some other way closer to an ideal society, whether or not average welfare is improved." This expresses the distinct tension between the general utilitarian demands of society as a whole, which represent the "peace" side of the argument, and the discrete rights of the individual citizens who make up that society, which represents "justice."

How can society work toward the utilitarian goals of the general welfare—on both majoritarian principles as well as a more abstractly defined "general will" of society—yet still manage to respect individual political and property rights? A compromise between the two is necessary in order to progress toward these twin goals. As Dworkin notes (1979: 104), "[t]he course of government is to steer the middle, to balance the general good and personal rights, giving to each its due."

The important idea which forms the starting point for addressing this question in the South African context, therefore, is that *without a society organized in a just manner, the concepts of equal treatment under the laws and individual rights have no meaning*. It is pointless to argue that the rights of any particular individual or group of individuals are being violated when those rights are not currently enjoyed equally by all, either due to structural 'legal' restrictions or as the function of an historical legacy—such as that posed by the legacy of apartheid in South Africa.

With regard to the debate in South Africa, Hugh Corder (1996:6-7) points out that the great international, national and regional covenants of the post-war era "countenance ever-widening levels of rights-protection and increasing state authority to regulate conduct in the 'horizontal' sphere so as to combat extreme forms of human prejudice." The notion of 'rights' has also changed, become less one-dimensional and more nuanced, as it has been applied to a wider range of human interests. This process has, over the past fifty years, led to substantially more caring societies in much of the 'developed' world, and is beginning to have an influence in the developing world.

Where to draw the line between individual privacy on the one hand and the state's legitimate sphere of activity in the protection of human rights on the other, is a point of heated debate among academics and politicians in South Africa today. The South African Institute of Race Relations has taken the lead in pointing to abuse of power by the new government, and warning against inroads made into individual privacy by human rights protection agencies.

### **The Principle of Complementarity**

The principle of complementarity provides a useful insight for the understanding of conflict and restitution. For instance, instead of regarding negotiation and coercion as irreconcilable opposites, as they are traditionally viewed, a more realistic interpretation is that they are two modes of interaction along the same continuum of behavior that are, in fact, complementary. A measure of coercion is often required to induce parties to negotiate, while negotiation improves the quality of communication so that the pressure can be more rationally

targeted. This principle of complementarity has been acknowledged and applied in the deliberations of the new South Africa on many different levels.

The pursuit of justice and peace requires the reconciliation of the two seemingly opposing responses to injustice: retribution and forgiveness. While retribution and forgiveness are generally seen in popular terms as negative and positive, they can be looked upon as being part of a larger range of responses to prior injustices. The primary reason why we posit forgiveness as a requirement for a stable, just and peaceful society is that there is no possibility that the hurt of the past can be undone or that the injuries inflicted can be truly compensated. For that reason, no reconciliation and healing can take place without forgiveness.

The wrongs of apartheid can be measured in many dimensions: physical, political, economic, psychological, and socio-cultural. How can the hurts be healed, the losses be compensated, and how can healthy relations be restored? We use the term "restitution" to capture the complex processes that we are engaged in now. Restitution is a process that helps to build a new and better South Africa. In terms of the principle of complementarity, we argue that retribution and forgiveness need not be seen as irreconcilable opposites. A synthesis of the two can be found in the pragmatic response of restitution.

## Restitution

We introduce the concept of "restitution" to describe the pragmatic yet idealistic approach that is needed to pursue the goals of justice and peace. The popular connotation of "restitution" generally corresponds to our own use of "reparation" or "compensation" in this article. In this restricted sense, restitution is merely an act of recompense insofar as it calls for the returning of something which was unjustly taken from rightful owners. For our purposes, however, "restitution" is meant to connote something broader, yet at the same time less technical and instrumental. "Restitution" is a comprehensive process whereby society can heal itself and be able to face the future: it is an accounting and exposure of the injustices of the past, a unified process of repentance and forgiveness, and a plan to compensate for past evils as well as to create a blueprint for the future. How will this be accomplished?

Restitution includes the entire range of responses of both aggressor and victim to the wrongs of the past, and the comprehensive processes concerned with the restoration of broken relationships. Loet Douwes Dekker (1989) suggests that the future should be jointly created by both groups, by acknowledging past mistakes, defining a common purpose, and by respecting different interests. It is a process requiring compensation for wrongs done in the form of services, or by a symbolic exchange, or by apology on the one side and forgiveness on the other. The two strands are brought together: aid to the victims and rehabilitation for offenders.

Within the process of restitution, to restore relationships, we distinguish three major categories which include the full continuum of responses: *punishment* of the offender which includes extreme personal revenge and retaliation, responsible social vengeance, retributive justice, and social censure and embarrassment through public exposure; *compensation* and

*reparation* by the offender in both material and psychological ways (confessions and apologies); and, finally, *forgiveness* by the victim, including amnesty. These categories constitute a philosophical framework for approaching the problems of reconstituting South African society rather than an instrumental plan of action (see Van der Merwe and Johnson, 1994/95).

## 1. Punishment

The natural reaction by victimized people is a punitive response. Such retribution is popularly seen as primitive, unenlightened and barbaric emotionalism, a form of pointless vengeance. Retribution, however, constitutes a firm principle in most legal systems as well as in certain strands of theological thought. It is a basic principle of justice that a wrong should be righted. The concept of retribution maintains that the offender deserves punishment.

War crimes and crimes against humanity by the Nazis were punished by the international community in what became known as the Nuremberg Trials. Though such trials would meet the societal demand that the perpetrators of injustice receive their 'just desserts' (and there have been calls for such trials from radical circles in South Africa), this is not the policy of the current government of national unity. Rather there is a dispute about the nature of prosecutions and how to distinguish between the mere implementation of oppressive laws, and personal excesses, violations of human rights, crimes against humanity, and criminal acts. Decisions have to be made about at what level of authority transgressors should be prosecuted.

In lieu of public prosecution and legal action against the perpetrators of misdeeds and atrocities by both government and liberation groups, there is a need for another form of public accounting. To completely ignore the misdeeds of the past would amount to a cover-up which would reinforce the sense of impunity and immunity of the culprits in both government and ANC circles. Such a situation would undermine the foundations for a new democratic society. As the South American experiences indicate, the compromise between the ideal of justice and the prudential requirements of consolidating legitimate civilian political authority must lie somewhere between the two extremes of prosecuting and forgetting, "a middle ground between vengeance and impunity" (see Boraine et al., 1994).

This middle ground is taken by the Commission of Truth and Reconciliation, established by the South African Minister of Justice, Mr. Dullah Omar. It was generally accepted that the establishment of such a Commission would not be without risk, and serious concerns have indeed been expressed, especially in the Afrikaans papers (see, for example *Business Day* editorial, 5 September 1994), about the advisability of digging up the past. It was to be expected that the strongest objections against public disclosure would come from those circles which would be the most embarrassed. This kind of embarrassment, however, will be the most lenient punishment the guilty parties should suffer.

Omar emphasized the importance of disclosure of the truth:

If the wounds of the past are to be healed, if a multiplicity of legal actions are to be avoided, if future human rights violations are to be avoided and, indeed, if we are to successfully initiate the building of a human rights culture, disclosure of the truth and its acknowledgment are essential. . . . Truth-telling responds to the demand for justice for the victims and facilitates national reconciliation. (Statement issued by Justice Minister Omar on 7 June 1994, cited in *Negotiation News*, No. 7, 21 July 1994.)

## 2. Compensation and Reparation

Reparation for past wrongs must be made in both psychological and material terms. In addition, future-oriented corrective action, also known as affirmative action, must be instituted. In a psychological sense, reparation comes in the form of repentance, penitence, confession of guilt, apology, and acceptance of responsibility for the deeds of the past. Confessions of guilt and apologies, both individual and collective, are necessary for the healing process.

Material compensation will be required on both individual and institutional levels. Aggressors are required to make good for past injustices and oppression not only by apologizing but through real compensation, first toward individuals, but more importantly by institutional action that will be future-oriented as well as compensating for the past. Affirmative, corrective action, especially in education, training and employment, is required to lay the foundations for a more equal society.

## 3. Forgiveness

Forgiveness is a fundamental requirement for healing South African society because there is no way in which the whites can truly compensate blacks for the harm they have done them, or undo the psychological damage. Archbishop Tutu pointed out to former President De Klerk that "In a sense, obviously there is no restitution that you can make, except symbolic actions, in the cases of people who were wrongfully imprisoned, tortured and killed." How do you make restitution in such cases?

At the very least, there must be a full accounting and exposure of the past, as explored above in regard to the Commission on Truth and Reconciliation. Exposure, however, does not go far enough; along with an exposure of the past, there must be an apology on the part of the aggressors, and forgiveness on the part of the victims. This is a cultural *terra incognita* for both aggressors and victims, and must be explored with great care and sensitivity.

### The Denial of Ethnicity

The new styles of negotiation politics and conciliatory spirit of restitution, the acknowledgment of the principle of complementarity, and the acknowledgment of the legitimate

place of ethnicity in society, have facilitated the more peaceful accommodation of minority groups.

Disagreement about the accommodation of minority groups, especially of the white minority, has been a major cause of the breakdown of political negotiations in mid-1992. While whites insisted on stringent safeguards for minority rights, blacks feared that these safeguards would weaken majority decisions. This is on the win-lose assumption that minority protection implies majority loss. Lawrence Schlemmer (1991: 16) argues, however, that "provided that mechanisms are created for a creative resolution of conflict between majority and minority interests, and provided that race distinctions are eliminated from the constitution, minority safeguards can benefit the majority as well."

In view of the emotional and symbolic intensity with which racially-based apartheid has now been rejected, the accommodation of racial minorities is extremely sensitive and controversial. The growing recognition of the difference between race (as a biological concept) and ethnicity (as a cultural phenomenon), and of the validity of the latter, however, opened up new possibilities.

Ethnicity has been a major source of conflict in South Africa for centuries. With the arrival of white settlers, racial divisions in many ways intensified ethnic divisions. In its efforts to consolidate its power, the white apartheid government promoted divisions among black ethnic groups, not only among colored people, Indians, and Africans, but also among the African tribes and so-called "homelands." Ethnicity, as a divisive tool of the oppressors, was hated by the victims of apartheid.

Any discussion of the role of ethnicity in South Africa must be seen in the context of the way that the National Party (NP) government exploited ethnicity for over forty years to divide and oppress the African, colored and Indian populations. Because of the international stigma attached to the apartheid ideology, progressive academics and politicians distanced themselves from any thinking which accorded significance to ethnicity. For decades, left-wing analysts of the South African conflict preferred a Marxist model of class struggle to one emphasizing cleavages along ethnic lines. This outlook has been indelibly stamped on anti-apartheid thinking, with the result that ethnicity was consistently swept under the carpet in South African academic circles. The "ethnic taboo" effectively silenced South African academics (see especially Bekker, 1993). This bias was, of course, not a uniquely South African phenomenon (see, for example, Connor, 1994).

The emphasis among liberal politicians and blacks was on assimilation. The entire cultural politics of the ANC seems to have rested on the assumption that ethnic identities would soon disappear in a homogeneous nation. The Charter of the United Nations asserted that "in a world where individual rights are fully protected, minority groups will disappear with time" (Giliomee, 1996: 29).

### Afrikaners under Siege in the New South Africa

It is therefore no surprise that the only white political grouping which used to focus on ethnicity as a key issue in South Africa was the right wing, chiefly represented by the Conservative Party (CP) but including a number of smaller far-right parties and less conservative groupings as well. The collapse of the Soviet Union and the emergence of ethnic nationalism in Eastern Europe boosted the morale of the Conservative Party and its allies, who pointed to the failure of a superpower to contain ethnic fragmentation and to suppress the struggle of different groups for self-determination. In light of the recent Eastern European experience, they argued cogently in favor of political independence and autonomy for their ethnic group.

Self-determination of the "volk," nationalism and group identity have been key concepts in traditional Afrikaner thought. In the transition process towards a new democratic South Africa, such concepts have been repudiated in many Afrikaner circles. However, in others the isolationist mentality of old has been reinforced by the real threat of being swamped and reduced to an insignificant minority. A search for secure foundations has led a number of Afrikaners to believe that only an Afrikaner homeland (volkstaat) will ensure their survival as a distinct group, preserving their language, culture and religion.

These homelander or volkstaaters viewed themselves as Boere or "ethnic" Afrikaners, unlike those "renegade" Afrikaners who were willing to be absorbed into the new multiracial South Africa. The latter, were somewhat derogatorily termed "Alternative Afrikaners" who no longer constituted an exclusive "volk," but merely one group among many others. Comparison has been made with "bitterreinders" who fought until the end of the Anglo-Boer War (1899-1902), as opposed to the "ehnsoppers" who gave up and joined the British. There was an intense feeling in right-wing circles that the National Party had betrayed the Afrikaner by aligning itself with the Afrikaner's traditional enemies: black liberation movements, communism, English and Jewish capitalism, and the international community. These enemies of the Afrikaner were seen as attacking his church, his religion, his beliefs, his sense of history, his culture, traditions and customs. The perception was that these enemies plan to destroy the unity of the Afrikaner people so that Afrikaners become individuals who can be swallowed up by the so-called New South Africa, becoming subordinates and facing extinction. Right-wingers believed that the only alternative was for Afrikaners to unite and become a free nation in an independent Afrikaner homeland.

### Afrikaner Homeland as Evolving Symbol

The best known and most detailed proposal was that of the Afrikaner-Vryheidstigting (Afrikaner Freedom Foundation, Avstig), headed by Professor Carel Boshoff (son-in-law of the late Dr. H. F. Verwoerd), which grew out of the cultural movement, the Afrikaner-Volkswag. Until mid-1991, Avstig, like the Conservative Party, believed that there was little room for

compromise. They insisted on complete political independence as a *precondition* for negotiations and refused to participate in the Convention for a Democratic South Africa (CODESA) where the new dispensation for South Africa was being negotiated.

In due course, a group of Avstig leaders realized that they were becoming isolated and would have no impact on the formation of the new South Africa. Because of their "racist" reputation, no leading black politicians were willing to talk to them. At this stage, these leaders asked the principal author of this paper to act as mediator between them and the ANC. During a series of meetings over a period of more than one year, an ever-widening number of regional and national leaders from both sides established close contact and developed relationships of respect and trust. During this period Avstig announced several major policy shifts.

Instead of propagating a *white* homeland, a racist concept, they now advocated an *Afrikaner* homeland (in Orania in the Northern Cape Province), a cultural concept: a homeland for Afrikaans speakers regardless of race or color. They also decided to participate in the negotiation process without rigid preconditions (Van der Merwe, 1993: 4; Lombard, 1993: 5).

In discussions between Avstig and ANC leaders, the latter emphasizes that ethnicity could never be acceptable as long as there was any trace of "baasskap" (domination) associated with it. Ethnicity could be acknowledged once there was a guarantee that "baasskap" had been finally done away with (Sachs, 1993: 5,16) On 2 March 1993, two delegations led by Nelson Mandela and Professor Carel Boshoff met in Johannesburg. Following his meeting with Boshoff, Mandela made a public statement in which he expressed his sympathy with the wish of the Afrikaners to retain their language and culture and invited them to participate in the multi-party negotiations and to submit their case for a homeland for Afrikaans-speakers.

In contrast to numerous cases elsewhere (especially Yugoslavia, see for instance, Denitch, 1994), ethnicity in this particular case—thanks to wise cultural and political leadership—shows itself amenable to depoliticization in the sense that this culture does not claim sovereignty "but relativizes itself on behalf of constitutionalism" (Bekker, 1993: 106). South Africa has fared better than most other countries on most propositions listed by David Welsh in a global review (1993: 79).

With the establishment of the new government in 1994, provision was made for formal consideration of an Afrikaner homeland by a clause in the new constitution in terms of which a Volkstaat Council was established. The task of this Council is to advise the government about the advisability and practical implementation of an Afrikaner homeland. Even though this Council produced no meaningful results by the beginning of 1996, it was included as part of the final constitution which was adopted in May 1996.

Avstig (the Afrikaner Freedom Foundation,) advocating an Afrikaner homeland in the Northern Cape, became an important partner in the Freedom Front, the major political party representing "right-wing" or "ethnic" Afrikaners in Parliament. The Volkstaat Council, unfortunately, was dominated by ultra-conservative members who still cling to views of a white homeland in the northern part of the country. The Council therefore failed to reach agreement on the geographic location of the proposed homeland.

The retention of the Volkstaat Council in the new constitution is evidence of the prevailing spirit of conciliation and a commitment to negotiation especially between the ANC and

the Freedom Front. It is to be expected that this Council will gradually acquire primarily a symbolic role. The idea of an independent state is unacceptable to black leadership. The prospects of an Afrikaner homeland as a geographic and economically viable unit is questionable, but the symbolic importance of an Afrikaner "heartland" is obvious. A symbolic ethnic Afrikaner heartland could be accommodated in the new South Africa. Symbols, often everyday familiar names and images, possess connotations that extend beyond their conventional meaning. As Carl Jung argued (1964:20-21): "Thus a word or an image is symbolic when it implies something more than its obvious and immediate meaning. It has a wider unconscious aspect that is never precisely defined or fully explained. Nor can one hope to define or explain it. As the mind explores the symbol, it is led to ideas that lie beyond the grasp of reason."

Because symbols provide a link between the visible world and the supra-sensible world, where the most deeply-felt aspirations of humanity reside, they are powerful forces for either unity or division. In the transitional process towards a new South Africa, symbols are undergoing substantial reevaluation. Sectarian symbols that are associated with historical and often violent and destructive divisions in the past are no longer acceptable.

The increasing concern about the future of Afrikaans in the new South Africa reflects the importance of sacred symbols in a time of change and conflict. Afrikaans and English are both official languages, but differ greatly in many respects. Because Afrikaans was the language of the government, it is also seen as the symbol of the National Party and apartheid. This symbolism has political repercussions. The extent to which the new South African flag, however, was widely and enthusiastically accepted by all population groups, speaks well for the spirit of conciliation prevailing at present.

### **The Accommodation of Ethnic Minorities in the New South Africa**

Of much greater importance than the Volkstaat Council is the new Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, which is being set up in 1996 in terms of the new constitution. The establishment of this Commission, acknowledging two fundamental rights, that of ethnic identities and of minority groups, came as an important breakthrough for the ANC. It was prompted in large part by the persistent input of Afrikaners in the negotiation process.

Only after vigorous discussion in the ANC was it officially acknowledged that ethnic identities were part of current South African reality. Leading ANC politicians publicly admitted past mistakes of simply ignoring ethnicity or claiming it did not exist. In his seminal speech in Parliament, Deputy President Thabo Mbeki lauded this new vision of binding 15 South African identities into a single African identity.

Whereas ethnicity was a major source of division in the policy of apartheid, it has now become a binding factor in the rainbow nation. Three opposing political parties now claim credit for the official recognition of ethnicity and the establishment of this Commission: the Freedom Front, which sees ethnicity as a fundamental political principle and hopes that its homeland will

get a boost from it; the National Party, which sees it as an endorsement of its policy of cultural pluralism; and the ANC, which sees the Commission as an instrument to allow ethnic expression as part of the nation-building process (Marion Edmunds in the *Mail and Guardian*, May 24-30, 1996).

While South Africa seems to have been more successful than most other countries in regulating ethnic tensions in the transition process, this new recognition of minority rights is consistent with global developments. Giliomee (1996: 29) points out that the protection of minority rights are now seen as essential to stability in multi-ethnic states. In 1990 all members of the Conference on Security and Cooperation in Europe signed the Charter of Paris which declared that "the rights of persons belonging to national minorities must be fully respected as part of universal human rights."

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