Jordan University College

THE REFLECTION MEDIUM

AFRICA TOMORROW

Inculturation is a difficult and delicate task, since it raises the question of the Church's fidelity to the Gospel and the Apostolic Tradition amidst the constant evolution of cultures.

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Editorial

Dear Readers,

Recent issues of Africa Tomorrow have brought to exposure critical moments in the human drama of everyday living that, while uncovering what is discouraging and wounding the soul of the human being and the family to which he or she belongs, can still be moments that bring within view the horizons to which hope may aspire. The person that hopes cultivates the courage, the patience, the wisdom, and the thoughtfulness necessary to give and not to count the cost, to struggle and not to heed the wounds, to labour and not to ask for any reward save that of knowing that the human family is opening her door to an influx of divine energy and grace. The horizon of hope opens forth to the gift God wishes to give the human family: unity of mind and heart and the consequent joy that lasts forever.

In this issue we present to the reader two distinguished theologians: the first, Fr. Bernard Witek, SDS, is a biblical scholar and serves as the Principal of Jordan University College. By focusing on what superficially looks like an inconsequential verse from the Book of Proverbs, he opens the door to a fount of wisdom that indeed is available to any human being of any religion, continent, age, sex, or socioeconomic class. This is the wisdom that permits the human being, whether she is a child or a grandmother, a new-born boy or an aging elder, to look to God, to his divine Providence, as the source of one's blessing and happiness. Hence the one who prays does not want to be too wealthy lest he or she fail to recognize the need for God, and at the same time does not want to suffer such an extreme of poverty that he or she may abandon all moral integrity in order to ensure physical survival.

Recognizing one's link to God as an eternal life-line is a theme given insightful articulation by our second theologian, Fr. George Tambala from Malawi, who at the moment bears the responsibility of spokesperson for all of Africa within the General Definitory of the Order of Discalced Carmelites. Writing for us from Rome, Italy, he touches a nerve that in many cultures of the world of today

is one that is quite diseased: I am referring to the nerve that connects the human person and the human family to God, the one who gives birth to this family, sustains it, promises it eternal togetherness as a communion of saints, and does everything necessary to bring the promise to eternal fruition.

The disease which Father Tambala analyses is that of secularism: the tendency to rupture the link that connects human thought, human expression and human conduct to God, the Creator and Sustainer of the universe. Secularism limits the horizon of happiness to our earthly, this-side-of-death existence as if whatever happens after death is entirely without consequence for the human family… and as if whatever happens before death depends on human craft, ingenuity and purpose rather than on a Supreme Lover, who is thereby a Supreme Giver.

Father Tambala provides us with the contours of the difficulties, among which have been the rejection of religious and civil authority in the name of rationalism. Father Tambala also does all of us a service by presenting the kind of mindset and code of conduct that can re-establish us in the dignity and freedom that God himself wishes to give to the human beings he has created. This is the attitude of the *anawim*, the truly meek and humble who live with hearts open in radical trust to the God who has assumed responsibility for the salvation of us all.

The poor in spirit are the ones who live by the grace of moral integrity. Moral integrity requires that the human community plant its roots in the fertile soil of the truth. Such integrity announces the injustice involved when a woman or man is brought to suffer by detention or imprisonment when accusations fail to meet the criteria of rigorous, unbiased verification. This is the issue at hand in Mnyasenga Thobias' article on the scope of the presumption of innocence.

What happens to the truth when accusations fly back and forth during and after armed conflicts that indeed may have accelerated into full-scale wars – the fate of truth in national and international tribunals, reconciliation commissions, amnesty policies and peace proposals – truth's requirements are what captures Sara Lawena's attention in the article that concludes this issue: peace without justice seems to be a vapid peace and can leave the door open for

the very unwanted guest of impunity. Sara emphasizes that, yes, amnesty and reconciliation have their place: but justice must be the anchoring point for all proceedings, wherever they may be, whomever they may involve.

Unmitigated openness to the truth is the dynamic that opens our minds to the timeliness of the article sent to us from Kwazulu-Natal Province of the Republic of South Africa about human relationships. The Benedictine novice brother, Br. Francis Xavier Sauti, writes about the need for healthy human relationships precisely in those zones of pain and suffering where African youth are living in an existential vacuum. Some eye-opening data about the current state of affairs form a context for Sauti's article:

In the closing days of 1996, President Nelson Mandela signed into law what many consider to be the most liberal abortion license in the world – the Choice on Termination of Pregnancy bill (CTOP), a law that allows anyone twelve years old or older to procure an abortion in the first trimester without even informing a parent. Ever since this law went into effect, South African teenagers, the vast majority of whom are black, have adopted very confused patterns of establishing human relationships. We look to the data bases housed in South Africa that seem to be giving us the most reliable information available: the 2nd South African National Youth Risk Behaviour Survey, for example, draws data from a population of youth, namely, the learners from Grade 8 through Grade 11 with a sample size so large – 1200 learners for each province – that it can be accepted as an adequate indicator of sexual behaviour among South African youth.

The results are, to say the least, disheartening. The group of youth that constituted the data base, labelled the "learners", ranged in age from 12 to 18 years. From this age group, the percentage of youth nationally who had already had some form of sexual intercourse was 37.5%. If one confined the data simply to the 15- to 16-year-old age group, 52% already had had intercourse. Nationally, 12.6% reported having experienced intercourse before the age of fourteen years.

Among the learners, 4% of the 15- and 16-year-olds who had had sex with someone, also had abortions: that means one out of every 25 of these teenagers. If you were a 12- or 13-year-old who

had had sex, however, there was the 11.9% possibility that you had an abortion. That means more than one out of every ten young teens who have had sex have also had an abortion.

One particularly sad statistic – but predictable nonetheless – actually touches upon the rationale that some governments propose when they liberalize abortion so radically: to cut down on "unsafe" abortions. So, what is the current statistic for maternal deaths during abortions?

The answer comes from a 2006 article, published by the National Coordinator for Africa Christian Action in the Republic of South Africa in the *Journal for Christian Scholarship.* The author's name is Jeanine McGill. She cites the data that reached a national audience in her country vis-à-vis the Pretoria News agency. In South Africa the most carefully ascertained estimates show that 500 women have died annually from legal abortions; this compares to the 32 maternal deaths annually from "backstreet abortions".

What is even more striking is the infant mortality rate in South Africa: during the last decade of apartheid, infant mortality had dropped to 55 babies per thousand, higher than Europe's but significantly lower than the rest of Africa. Now in the second decade of the 21st century, in the period following Mandela's endorsement of the liberalized abortion policy, the infant mortality rate is approximately 470 babies per 1000.

Coincident with these statistics is the existential vacuum that South African teenagers are experiencing: how can one stand by idly when he or she hears Mia Malan, the health editor of the *Mail and Guardian*, report on 10 September 2014 (before this *Africa Tomorrow* issue actually went to press) that one in four South African teens have attempted suicide and that one in three hospital admissions for suicide involve youth?[1] In South Africa alone there are 23 completed suicides per day, almost one per hour. These statistics are coming from the South African movement instituted

[1] The one acknowledged to be the international expert on PAS (Post-Abortion Syndrome), Dr. Theresa Burke, explains the connection between abortion and suicidal ideation in *Forbidden Grief* (Springfield, IL: Acorn, 2007), especially on pages 170-176.

to help victims of depression and anxiety, namely, the South African Depression and Anxiety Group (SADAG).

There are those who rebel: the midwives and university students. We applaud the efforts of Amazement Ndungane and her colleagues in the University of Cape Town Students for Life. We also listen thoughtfully – and with concern – to Dorothy as she speaks through the medium of the Alliance of African Midwives. On 13 May 2011, she informs us that midwives have had to leave their own country of South Africa: "Resultant from this particular law many midwives left the country; nurses found this law contrary to their training and belief… The law in question [CTOP] should definitely be revised since it is subject to abuse, being used as a contraceptive when it is in fact the ending of an innocent life."

This obviously is not the true soul of South Africa, nor of any other country on the continent. Br. F.X. Sauti demonstrates very thoughtfully and convincingly that the youth of his country, of the African continent, and of the world are capable of relationships that do not entrap adolescents in the existential vacuum. The conviction of the necessity of a justice that is founded upon solidarity, where all are responsible for all, a conviction engendered precisely by President Mandela's valiant and successful effort to dismantle the system of apartheid: this conviction may give back to South African youth their soul.

It goes without saying, however, that any law that would tempt a South African teenager to isolate herself at the moment of making a fatal decision that she will regret later is a law nobody needs. South Africa indeed is a zone most capable for teaching the rest of the world that the strength and vigour of a people flourish in the practice of the virtues of solidarity and fidelity: fidelity to one's family, fidelity to one's community, fidelity to one's peers, fidelity to one's children both born and unborn, fidelity to one's country, fidelity to oneself, and ultimately, fidelity to one's God.

The Editor

PHILOSOPHY & HUMAN SCIENCE

Relationships: Making Life Meaningful

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Preliminary Remarks

A human being is such a wonderful mystery. Unfortunately, in this 21st century, many of us, the so-called post-modern human beings, find ourselves trapped in an "existential vacuum"; life feels so empty and without any direction or goal. This vacuum is the emotional signal that meaning has evaporated from one's life; life has lost its sense and purpose. The impact or gravity of this emptiness causes an "existential frustration," the painful realization that one is not, psychosocially, where one ought to be, a realization that, according to Dr. Viktor Frankl, grounds the need for a cognitive reshuffling in the soul in order to resolve the seemingly insoluble dilemmas of contemporary psychosocial life. This form of cognitive therapy to restore the sense of purpose is what Frankl has termed logotherapy.

Sadly for some, this frustration and the vacuum that gives rise to it tragically contribute to the finality of their physical existence through suicide or to the finality of another's bodily existence through homicide. Why would a person kill himself or herself, or – for that matter – another person? It might be simply because of losing a job or an intimate partner. Maybe what occasioned it was the awareness of being infected with a terminal disease or virus. Maybe what happened is that one did not pass the exams or suffered the failure of achieving ideals or goals or professional ambitions – whether they were rightly or wrongly understanding what fulfilling professional ambitions requires – or maybe they felt forced to abandon vocational aspirations. Maybe they belonged to

institutions that suffered distress or outright collapse and so the institutional catastrophe left its imprint on their emotional fibre.

Of special note is the existential vacuum left by abortion.[1]

This frustration and vacuum weighs so heavily on the human being that those who survive death are left spiritually, morally, socially, and psychologically paralysed or limping. Life becomes unbearable and useless.[2]

Contemporary experience has proved to us that even if we remain free of the benumbing loneliness that penetrates the psyche crippled by existential frustration, we are not in a position to insulate ourselves with a protective covering against the pain that weighs heavily upon others, upon those who yearn for our compassion and thoughtfulness precisely because they are feeling trapped within this vacuum. We all feel the consequences of those who are suffering the meaninglessness of life. In the face of this crisis we cannot remain passive; we cannot shut our eyes to what our companions and colleagues are going through. Passivity back-fires; it boomerangs and harms us.

Even Nature suffers the side-effects of existential frustration. If the human being is not purposefully pro-active in his or her relationship with Nature formulating and executing plans so as to draw forth from Nature what is meaningful, precious, even indispensable for human existence without thereby contaminating, eroding, disintegrating and destroying the Nature that God has deemed good for the human being, the world of Nature can prove in its own way to be "vengeful". Fracking – introducing fissures within rock formations by mechanical or technological means so as to enlarge openings and draw forth such substances as oil and

[1] The editor notes that Blessed Mother of Teresa of Calcutta repeated in a number of public, political and religious forums that what destroys peace – and therefore the harmony that should govern human relationships – is not so much war as it is abortion. For a concise commentary on how abortion, depression and the existential vacuum are inextricably intertwined in the Africa of Today, see the Editorial that begins this issue of Africa Tomorrow.

[2] It is to be noted that our author is writing from South Africa: his article could hardly be more a propos to the existential crises that South African teenagers are facing. For a brief discussion of the emotional pain that currently beclouds the lives of South African teenagers, please see the Editorial that begins this issue of Africa Tomorrow (Ed.).

water – the degradation and contamination of air, water pollution, deforestation and other thoughtless interventions within the vital processes that sustain the well-being of everything created can wreak its own havoc by unsaddling Nature's ability to be harmonious, resourceful and beneficial to human existence.

Families, individuals, tribes, cultures, societies and nations cannot exist in isolation from each other. If the existential vacuum creates a vicious cycle in the life patterns of one locality, there will be a ripple effect: political philosophy and social sciences have demonstrated that certain familial, individual, tribal, regional, national, and continental problems leave tremors in the life fabric of other families, individuals, tribes, regions, nations and continents. The Kenyan problems with *al-Shabaab* have impact not only on the region but on the entire continent when it comes to matters of tourism and the economy. The Rwandan genocide not only had an impact on Rwanda and the same can be said of the South African apartheid and President Nelson Mandela's decision to liberalize abortion to such an extent that even young teenagers could demand the abortion of their children without notifying any adults within their families.

These tribal and national horrors have sent shocking waves to the neighbouring nations in terms of refugees and those seeking asylum. Other nations were part and parcel of the problems and solutions of Rwandan genocide and South African apartheid. For instance, in the fight against apartheid, members of the African National Congress (ANC) were aided by other nations, like Mozambique, Zambia, Tanzania and Ghana. When in 1996, President Mandela signed into law the Choice on Termination of Pregnancy Bill (CTOP), not only did he give the teenage child the liberty to get an abortion without any communication with an adult, but he also obviated the ordinarily included conscience clause. Like the refugees of Rwanda, the South African midwives seeking to protect the unborn children and the sanctity of their own consciences found refuge in neighbouring countries. The problems of Zimbabwe are not only problems for Zimbabwe and Zimbabweans; experience has shown that their problems have spilled into neighbouring nations. Others' problems are our

problems and others' success is our success. The sad tragedy of *ebola* now bears out this existential fact.[3]

If we choose to remain indifferent to the crisis of the existential vacuum, we are necessarily dragged into a vicious cycle. If we ourselves are suffering the vacuum, because we do not have specific purposes or goals that motivate our decisions – and these purposes or goals are lacking precisely because we are not drawing forth meaning from life – we may reach the decision "not to decide". The passivity inherent in the reluctance to make decisions, in turn, reinforces our conviction that it is futile to attempt to draw forth meaning from life. In a word, we have opened a flood-gate for a vicious cycle which empties our lives of any meaning or purpose that seemed to remain. We do not have a sense that life has meaning; so we conduct ourselves accordingly… and our conduct, in turn, proves to us that our life has no meaning.

Yet there is an alternative: rather than trapping ourselves within this vicious cycle of passivity we may immerse ourselves in the ever-fruitful cycle of Virtue. We may act with a view to happiness, a happiness that harmonizes with the purpose or purposes by which we inform our decisions. We are speaking of a happiness not only for ourselves but above all for those who are seeking meaning and purpose in the dark and confusing circumstances occasioned by the injustices such as those instanced above that are spilling over into other nations and continents. Hence we may harmonize our humanity with the dictum of the Greek Philosopher, Aristotle (384-322 BC), who put it succinctly in his *Nicomachean Ethics,* "all men act in order to be happy."

Virtuous and Vicious Cycles best demonstrate these situations. Something has to be done to overcome the vicious cycle and enter into the healthy dynamisms of the virtuous cycle. In the virtuous cycle, we are at peace, we have "life to the fullest" (John 10:10). Having "life to the fullest" is living a meaningful and purposeful life.

[3] See the Editorial of the previous issue of Africa Tomorrow to get a grasp of what Louisa Aminata Sankoh Hughes of Sierra Leone must go through in order to protect her 60 orphan children at this time of the *Ebola* crisis (Ed.).

One of the ways in which we can make our lives meaningful and purposeful is simply through genuine "relationships". The notion that cultivating relationships grounds an interpersonal pursuit of meaning is that of the Jewish Philosopher, Martin Buber (1878-1965). In his 1923 essay on existence, *Ich und Du* (translated into English in 1937 as *I and Thou*), Martin Buber asserted that human life finds its meaningfulness in relationships.

Human Beings Are Relational Beings

Human beings are by nature "relational beings". From the genesis to the culmination of our earthly existence, from the womb to the tomb, human life is characterized by relationships. The normal manner of conception and birth involves relationship. To be cloned or to be conceived in-vitro – in the test tube – is not the natural manner of conception, but even procedures undertaken perversely institute a relationship between the growing embryo and the woman within whom the embryo is maturing. To put it succinctly, we are a result of a relationship between a male (father) and a female (mother). In his/her mother's womb a human being is in relationship with his/her mother; before birth, our mothers are our worlds. The unborn child is not invulnerable to the pregnant mother's physical, emotional, mental or spiritual problems. The mother's day-to-day experiences all have an impact on the embryo.

At birth other human beings, nurses, midwives, and in some special cases, our very own fathers received us. This is the beginning of an earthly existence within which we depend on other human beings for food, clothes, shelter, security, planning, governance, health, education, entertainment and cultural pursuits, the cultivation of conviction and so forth. We depend on the natural environment for food, water, oxygen, energy and the other elements necessary for life and growth. Above all, we depend on the source of everything and everyone upon which we are relying: on God Himself, on his divine Providence.

I recall Thomas Merton's *No Man is an Island* (1955): there Merton puts forth his beautiful, well-anchored conviction that no one is "disconnected"; we are all, in one way or another, connected to each other, to creation and to the Creator. At the end of our earthly existence our bodies are put to rest in the womb of Mother

Earth by others whether it is by burial or by cremation or by some other form of funeral ritual. Our souls rest cradled within our relationship to our divine Creator. Relationships are essentially and fundamentally part and parcel of our human existence. Abusing them or going contrary to them greatly drains our lives of meaning.

Interpersonal Relationships

Some intellectuals, thinkers or academicians – for example, social philosophers, social scientists/ sociologists – rightly think that "what makes me to be me is you". The other person(s) shapes my existence. We, in one way or another, contribute to each other's existence. The opening pages of the Hebrew/Christian Scriptures do not fail to accentuate this communal nature of human existence. This view is not unlike that of our African cultures and traditions as evidenced by certain proverbs, idioms or sayings: for instance, in the Tswana culture, *motho ke motho ka batho* – "a person is a person because of people" – or Zulu culture – *umuntu ngumuntu ngabantu* – "A person is a person because of people". The *Ubuntu* concept is an able synthesis of the proverbs, idioms and expressions to be found in African cultural settings: *humanness, human kindness* is the milieu in which human beings thrive.

In the Garden of Eden, Adam was in relationship to Eve and her sons; all were in relationship to God: as Genesis 4:1 indicates, Eve was intelligently aware that her firstborn child lay cradled within the divine desire and power to create. The people of Israel were not only related to each other by blood: they were chosen to be in relationship with God and on the basis of that relationship to form appropriately human relationships with each other according to the parameters of the Ten Commandments (the Decalogue).

In the Gospel, our Lord Jesus Christ exhorts us to be in relationship with God and with others by means of love as especially expressed in the greatest commandment, "love the Lord your God with all your heart, with all your soul, with all your strength and with all your mind, and your neighbour as yourself" (Luke 10:27). In the Acts of the Apostles, the first community is of one mind and heart, an interpersonal bonding rendered especially balanced and harmonious by the "breaking of the bread." For Catholics, the "breaking of the bread", in other words, the august

sacrament of the Holy Eucharist speaks volumes: by a miraculous inner working of the Holy Spirit, Jesus' Body and Blood establish interpersonal unity between human beings and God, and between human beings and other human beings; it is a sacrament of love and communion – no wonder it is called "Holy Communion".

It is the Eucharist that grounds the very nature of religious and consecrated life. All Catholic religious and consecrated people are to live with a daily disposition of radical trust in Divine Providence and in interdependence with each other, united in mind and heart according to the charisms of the founders and foundresses.[4]

In her Vatican II documents, the Church weaves Scripture and the Apostolic Tradition into the fabric of contemporary life by stressing the need for genuine relationships. St. Paul had already stressed the fact that within the Church we are so united with each other and with the Head, Jesus, that we all form one Body of Christ. Indeed Jesus himself proclaimed that in truth we are all united – or we should all be united – to him as branches are to a vine. Two Apostolic Letters on and for Africa, *Ecclesia in Africa* and *Africae Munus*, remind Africans that such images as the Body of Christ and the Vine and the Branches make no sense if we, the Church, are not a family. A family forms entirely according to relationships: husband and wife with each other, parents with their sons and daughters, brothers and sisters with each other. Being in relationship is what our faith, our holy mother Church, our cultures and traditions, our rationality – indeed our very human nature – require. We are to be a family. Abusing human relationships or acting in a way that is contrary to the growth of interpersonal love and trust; relating with indifference, laziness, neglect, ingratitude, or in a deliberately exploitative manner with the rest of creation;

[4] Indeed even the members of the religious order that is most radically solitary where the members live in the charismatic solitude of the hermit – I am speaking of the Carthusians – come together to pray in almost total darkness every midnight (12:30 am or so) and remain together in prayer for two to four hours. By their rule, every Wednesday the Carthusians go on a five-hour walk; switching partners each hour, the brother devotes himself to the pleasant task of getting to know each of the five brothers that he meets during that walk (Ed. – based on his personal experience of the St. Hugh's Charterhouse in Parkminster, England).

failing to cultivate an intimate relationship with the Creator whose love is tender, meek and humble; and refusing to recognize oneself as a person capable of relationships that grow according to the parameters of thoughtfulness, accountability, patience, transparency, compassion and solidarity – all dispositions contrary to the cultivation and growth of relationships drain life of its meaning. The consequences are dire, even fatal.

Disingenuous vs. Genuine Relationships

Not all relationships give meaning to our lives. Some relationships are disingenuous: they actually do more harm than good to the erstwhile pursuit of meaning and purpose in one's life. Such relationships may bear the responsibility for the existential vacuum which overshadows our lives and the existential frustration which thereby impinges upon us. In order to better understand how genuine relationships make life meaningful and how disingenuous relationships make life meaningless, I humbly feel the need to anchor myself in the convictions of the Jewish philosopher, Martin Buber.

In his essay *I-Thou*, Buber made the heuristic assertion that relationships may align themselves according to two general categories: I-It Relationships and I-Thou Relationships.

In the "I-It Relationship" we relate to another as an "it", as a "thing" or as an "object to be used, abused, exploited and/or monopolized". This is not a genuine relationship simply because when the other person is reduced to an "it" then I am entirely alone and I have rendered the other person to something that he or she is not. In a word, I have ignored the dignity of the other person. I address but I am not addressed. I am confined within the parameters of a monologue because I have not recognized the other as a person with a voice. This is the conundrum of the person suffering from narcissistic personality disorder: relationships to him or her are of such little importance that life's milieu is totally self-absorbing. Dictatorship seems to be one of the best examples for this kind of relationship. Other examples that mushroom from this type of self-absorbing individualism is human trafficking; involuntary servitude; prostitution; unemployment and under-employment; all forms of the violation of women such as abortion

and rape; exploitation on all levels, economically, sexually, socially, emotionally, and politically; a lifestyle laced with lies in order to exonerate all those who have involved themselves with any or all of the above.

The one who adopts an I-It relationship with other people is also going to find himself or herself fragmented in his or her interior life. Even the self becomes an "It" for these people. One uses one's own sexuality, for example, to control or dominate another, to use another or oneself for self-gratification, to make money by presenting oneself as a sexual object or one who manipulates sexually. Obsessions, compulsions and addictions all manifest an I-It relationship with oneself.

Human beings may also form I-It relationships with God's creation: exploitative behaviours such as deforestation, fracking, needless torture and slaughter of animals, and all forms of waste, contamination and pollution manifest this disposition.

The I-It relationship with another involves only a part of myself: it does not involve my full self because parts of my inner/outer self are in no manner exposed to or in interaction with the other. This relationship cannot fulfil my life or human existence. It is grammatically, logically and experientially contradictory and hence impossible to be "fulfilled" while only a "part" of the "whole" is engaged. Actually the "I-It Relationship" is a catalyst for alienation and division:

- alienation within oneself that spews forth discouragement and despair;
- alienation with others that oozes forth racism, nationalism, tribalism, ageism, sexism, the inclination to be xenophobic and all other manners of prejudicial and discriminatory attitudes and behaviours;
- alienation with creation that disrobes me of a viable ecological mindset and leads me to entertain ideological perversions that contradict the human person's divine mandate to take care of creation, e.g., such perversions as deforestation, animal cruelty, fracking – creating fissures in rocks in order to extract oil and other valuable liquids from the enlarged openings – which has an environmental impact causing ground water to be contaminated, fresh water to be

depleted, air quality to be degraded, earthquakes to be generated, pollution to be exacerbated and health risks to be intensified;

- alienation from God – atheism and agnosticism, for example, are so woven into today's social fabric that the quest for unity of mind and heart according to the parameters of truth – a quest for unity of conviction that is anchored in the truth – suffers a belittlement that is quite unnecessary.

At this juncture I recall the Greek wisdom with its concept of *diabolos* ("the divider") as a reference to the slanderer, the accuser, the evil one. The logic of the devil is to calumniate, divide, and destroy; by adhering blatantly to what is false, the devil divides a human being from God, from other human beings, from creation (Mother Nature) and from himself/herself.

Christ's logic, on the other hand, is unity – he is the one eternally consecrated in the Truth; and by the power of the Spirit of the Truth, he unifies. Jesus unites us to God, to others, to creation and to ourselves – he is the source of our interior harmony, the harmony that rests on the bedrock of the truth. Jesus' love, the love that unifies and harmonises, is the love that motivates the genuine relationships that Buber called the I-Thou.

In the "I-Thou Relationship", I view the other as a person, as my other self. In the encounter with the other person, I am present as one who treats the other with respect and with dignity: my vantage point is always that of emotional, psychosocial and moral integrity. I not only address but I am addressed, there is "dialogue". There is no room for individualism or narcissism. The "I-Thou Relationship" is characterized by mutuality, reciprocity, respect, love, care, commitment, responsibility, patience, thoughtfulness, compassion and solidarity. Genuine relationship is an expression of love. In this relationship the whole of myself, of my being, is involved.

If one reduces one's personal horizon to that which reinforces feelings of security and self-gratification, and if one even further limits that horizon with the intention of casting a protective covering on one's psyche against the possibility of frustration, disappointment, or treachery in relationships, the I-It relationship – in other words, that which is Disingenuous – tends to hold sway as

that which is more appealing and less risky. Genuine Relationships, however, are infinitely more precious for the enterprise of living a truly human life. These are the relationships that give meaning to life.

The Bible presents Jesus Christ as the God who recommends the I-Thou relationship when he reminds the lawyers that the two great commandments (in Luke's Gospel, it is formulated as one commandment with two principal clauses) are the gateway to eternal life: "Love the Lord your God with all your heart, with all your soul, with all your strength and with all your mind, and your neighbour as yourself" (Luke 10:27). The commandments evoke the conviction of faith, that God is Himself relating to us in an I-Thou manner. His love for each of us is unconditional and complete. He loves each of us as if we were the only creature existing. We are all created in the image of God (*imago Dei*), no matter how disfigured this image may be in any one of us: God loves us wholly, unconditionally.

Conclusion

Each of us is unique; no one is a duplicate of another. No one replaces another nor is any replaced by the other. This is such a wonderful mystery. Each human being is a special gift to this world and to every human being that lives in the world. As Pope St. John Paul II used to say, "In this world no one is so poor that s/he cannot give and no one is so rich that s/he cannot receive". We all have something to give and something to receive. Again as one Christian thinker asserted, "God does not put everything in one basket, He shares His gifts and talents". We need each other; what I have the other might not have and what the other has I may not have it. This is the Body of Christ image noted above.

We need to come together and make our lives meaningful through genuine relationships. Our God is a communion, a Trinitarian relationship of the Father, Son and Holy Spirit. Our God, our Creator genuinely relates to us His creatures and to creation as a totality. The first Christian Community was united in mind and heart – the Genuine Relationship of the I-Thou; it was a unity realized in each Eucharistic celebration. The Bible, our

faith, our cultures and traditions, demand us to be in genuine relationship. This makes our lives meaningful and purposeful.

Some of us are morally, socially, psychologically, and/or spiritually paralysed due to lack of genuine relationships. Genuine relationships can do so much for our own lives and the lives of others. Genuine Relationship is a source of healing and courage. As one wise man once said, "If you want to be great make others great". Jesus Christ is great because He redeemed us and made us great. Saints are great because they made others great, by inspiring the spirit of greatness in the poor, the sick, the illiterate, the orphans, the widows, the forgotten, the abandoned, the marginalized and the humiliated. We do not become great by fabricating for ourselves a confusing maze of I-It relationships, by stepping on others, abusing them, or exploiting them as "stepping-stones". Paradoxically we become great by lifting them up, by making them great. This demands sacrifice: this is more than evident in Our Lord Jesus Christ.

By allowing grace to infuse our human efforts, we allow God to draw us into Genuine Relationships and in turn make our lives meaningful and purposeful. We are on this planet for a reason. Life is not meant to be meaningless. The meaning of our lives cannot be attained through individualism or narcissism – through I-It Relationships; but through Genuine Relationships, through the I-Thou Relationship with our Creator, with each other and with the rest of Creation. We pray that the divine assistance may always remain with us in our endeavours to make our human existence one that is replete with meaning.

THEOLOGY & CULTURE

Prayer of Agur (Prov 30:7-9): Composition as Solution of the Textual Problem

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Introduction

The Prayer of Agur (Prov 30:7-9) is attributed to an unknown person mentioned in v. 1[1]. Not all scholars agree with the attribution of this prayer to Agur. Sauer attributes to him the entirety of chapter 30[2], while others consider that only one of the following verse clusters can be attributed to him: vv. 1-3[3], or 1-4[4] or 1-6 presented in the form of a dialogue between the agnostic

[1] LXX translating אָגוּר as φοβήθητι does not take it as a personal name. The Vulgate renders it by *Congregantis*, a passive participle of the Hebrew verb אָגַר "to collect." If one takes into consideration extra-biblical sources, on the other hand, it can be considered as a proper name. Cf. D. K. BERRY, "Agur", *ABD* I, 100; P. FRANKLYN, "The Saying of Agur in Proverbs 30: Piety or Scepticism?", *ZAW* 95 (1983) 239-241.

[2] G. SAUER, *Die Sprüche Agurs. Untersungen zur Herkunft, Verbreitung un Bedeutung einer biblischen Stilform unter besonderer Berücksichtigung von Proverbia c. 30*, Stuttgart 1963, 92-112.

[3] W. MCKANE, *Proverbs. A New Approach*, London 1970, 643.

[4] C.H. TOY, *Critical and Exegetical Commentary on The Book of Proverbs*, Edinburgh 1904, 517; R.N. WHYBRAY, *Proverbs*, Grand Rapids 1994, 20, but he also is inclined to consider vv. 1-9 as a textual unity. Similarly O. PLÖGER, *Sprüche Salomos (Proverbia)*, Neukirchen-Vluyn 1984, 358-359, who considers vv. 5-6 as an interpolation.

Agur and a believer[5]. Franklyn offers an interesting proposal based on his observation that vv. 1-9 form a logical sequence:

I. A confession (1-3);
II. First rhetorical quotation (4);
III. Second rhetorical quotation (5-6); and
IV. The prayer (7-9).[6]

Textual Criticism

Our text presents a certain textual problem. Some like Sauer apply the literary genre of numerical proverbs "x, x+1" and suggest that there is missing the second numeral "three" (שְׁלֹשָׁה).[7] Whybray dissents from such an opinion showing that in Job 13:20-21 there is a numerical proverb that has only two elements instead of the proper formula "x, x+1."[8]

On the other hand, some suggest that there could be a missing line after v. 8a, because in v. 9 there are four lines and the supposed missing line would refer to the question in v. 9b, "saying 'Who are you the Lord?'"[9] Yet others suggest that v. 8c "give me a portion of my food" is a later interpolation.[10]

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[5] R.B.Y. SCOTT, *The Way of Wisdom in the Old Testament*, New York 1971, 165-166.

[6] P. FRANKLYN, "The Saying", 238; D. COX, *Proverbs with an Introduction to Sapiential Books*, Wilmington 1982, 237. R.N. WHYBRAY is not opposing Franklyn's proposal but he suggests that there is a difficulty in accepting vv. 1-9 as a single unit. Whybray considers vv. 1-9 as a Yahwistic elaboration of non-Jewish material (*The Composition of The Book of Proverbs*, Sheffield 1994, 149-150).

[7] G. SAUER, *Die Sprüche*, 101. A similar idea was already proposed by C.H. TOY, *Critical and Exegetical Commentary*, 524-525, who translated the first part of the verse as follows: "Two things I ask of thee"; or as he proposes it could also be translated in this way: "one thing I ask of thee, two things deny me not".

[8] R.N. WHYBRAY, *Proverbs*, 411.

[9] It is proposed by O. PLÖGER, *Sprüche*, 354; cf. critical apparatus in BHS.

[10] Suggested by C.H. TOY, *Critical and Exegetical Commentary*, 524. Cf. R.N. WHYBRAY, *Proverbs*, 411; W. MCKANE, *Proverbs*, 649.

Literary Genre

Our text is generally classified as a numerical proverb. Such a genre is not only to be found in the Bible. It is a genre common to ancient Near East literature and is also found in classical Greek literature.[11] A typical structure for this genre we find in Sir 25:1:

> With three things I am delighted, for they are pleasing to the Lord and to human beings:
> Harmony among relatives, friendship among neighbours, and a wife and a husband living happily together.

1. The title contains a reference to the elements listed including their number (v. 1a).
2. Items are arranged by way of a list (v. 1b): "Harmony among relatives, friendship among neighbours, and a wife and a husband living happily together."

Often a numerical saying has only one numerical value, but some sayings contain two numerical values with the formula "x, x+1" like in Prov 30:18:

> **Three** things are too wonderful for me;
> **four** I do not understand:
> the way of an eagle in the sky, the way of a snake on a rock, the way of a ship on the high seas, and the way of a man with a girl.

The numbers are in a parallel progressive relationship[12]: the value of the second number is higher than the first number by one (4 > 3). The focus in the gradual numerical sayings is generally on the second number (e.g., Prov 6:16-19; 30:15-17, 18-19, 21-23, 29-31; Job 5:19-22); but sometimes the first number is the centre of attention (e.g., Job 33:14; Ps 62:12)[13].

Our text has only one numerical indication ("two things" 7a); but, as it was mentioned in the textual criticism, the items listed in v. 8 are more than "two". We can try to solve this apparent contradiction by an analysis of the composition of the text.

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[11] M. HARAN, "The Graded Numerical Sequence and the Phenomenon of 'Automatism' in Biblical Poetry", *VTS* 22 (1972) 238.

[12] Cf. M. HARAN, "The Graded Numerical Sequence", 1-9.

[13] Cf. M. HARAN, "The Graded Numerical Sequence", 253-275.

Composition

The prayer consist of two parts: "Request" (7-8) and the "Reasons for the request" (9). The first part (7-8) can be subdivided into two segments: "Introduction to the request" (7) and the "Content of the request" (8). The structure of the prayer is as follows:

I. Request (7-8)
   A. Introduction to the request (7)
   B. Content of the request (8)
II. Reasons for the request (9)

The "Introduction to the request" (7) consists of two complementary phrases. The "Content of the request" (8) consists of three phrases of which the first two are in a parallel relationship with each other (8ab) listing two pairs of objects that Agur wants to avoid. The third phrase (8c) is in a progressive relationship to the first two (8ab) listing just one additional object that he wants to receive[14]. Therefore the structure of this segment is A A' B. While in the "Introduction to the request" (7) the person asks for "two things" (7a), the "Content of the request" (8) has two pairs of objects plus an additional one. We can conclude that the prayer follows the pattern of a "progressive numerical saying" (x, x+1).

The "Reasons for the request" (9) consist of two parallel segments (A B // A'B') with a similar syntactical structure in the first lines (9a & 9c): a conjunction "lest" (פֶּן) followed by two verbs. The reasons begin with mentioning antithetical conditions, "being full" (9a) and "being poor" (9c), while the verbs following them, "I deny you" (9a) and "I steal" (9c) are complementary terms. The second line of each segment lists negative actions against God: "…saying, 'Who is the Lord?'" (9b) and "…profane the name of my God" (9d). The two reasons for the request involve two pairs of relationships: one pair is antithetical insofar as it concerns the conditions (poverty/prosperity); the other pair is

[14] According to some the third request (8c) is just an extension and an explanation of the second request (8b), for example: C.H. TOY, *Critical and Exegetical Commentary*, 524; W. MCKANE, *Proverbs*, 649; P. FRANKLYN, "The Saying", 250.

complementary insofar as it concerns the negative actions that could result from these conditions that are contrary to each other.

[7a] Two things I ask of you,
[7b] do not deny them to me before I die.

A [8a] Put ***vanity*** and ***lying*** far from me,
A' [8b] give me neither **POVERTY** nor RICHES;

B [8c] *feed me with my portion of food*;

A [9a] Lest, BEING FULL, ***I deny you***,
B [9b] saying, "Who is the LORD?"

A [9c] Lest, **BEING POOR**, I steal,
B [9d] and ***profane*** the name of my GOD.

There is a double chiastic relationship between the two parts (7-8 & 9). The objects of each of the two pairs of the request (8ab) are distributed in a chiastic way in the "Reasons for the request" (9).

The primary meaning of the Hebrew word שָׁוְא is "emptiness, vanity" (8a). The same word is used in in the commandment: "You shall not take the name of the Lord your God in vain" (Exod 20:7; Deut 5:11), where it can imply swearing falsely in the name of the Lord. Thus in our text it can refer to the word תָּפַשׂ translated here as "profane" (Prov 30:9d)[15]. On other hand דָּבָר־כָּזָב "lying" (8a) and כָּחַשׁ "denying" (9a) are synonymous terms.

[8a] **vanity**	X	*lying*	Pair 1
[9a] *I deny you*		[9d] **profane**	Reasons 1 / 2

The chiastic relationship between the terms of the second pair of the request (8b) and the two reasons (9) can be easily noted. The noun רֵאשׁ which means "poverty" (8b) implies a social status of one who is deprived of what is necessary for life. The same idea is

[15] Basic meaning of the verb תָּפַשׂ is "seize, take hold." In Prov 30:9 it can mean "seize/profane" the name of God and thus it relates closely to the expression of taking the name of God "in vain". Interestingly the LXX renders the verb תָּפַשׂ in in our verse by ὀμόσω τὸ ὄνομα τοῦ θεοῦ "swearing in the name of God."

expressed by the verb יָרַשׁ "be deprived, be poor" (9a). Opposite terms are עֹשֶׁר "riches" (8b) and the verb שָׂבַע meaning "be full, satisfied by nourishment" (9a).[16]

8b **poverty**	X	*riches*	Pair 2
9a *being full*		9c **being poor**	Reasons 1 / 2

Remarkably, the third line of the request (8c) is not explicitly reflected in the "Reasons for the request" (9). However, the expression, *feed me with my portion of food* (8c)[17], implies a request for a middle way between both extreme conditions of prosperity (9a) and poverty (9b).

From the compositional point of view we can conclude that the Prayer of Agur (7-9) follows the pattern of a numerical progressive proverb. Consequently there is no need for adding some words or deleting the third line of the request (8c) as it was suggested by some scholars (see above *Textual Criticism*). The integrity of the prayer is proved by its elaborate composition.

The third petition has a pivotal character, because the one who prays first lists two pairs of negative objects, but then adds the only one positive object for which he is really praying.

Biblical Context

Being Rich / Being Poor

The Book of Proverbs does not manifest a consistent stand concerning riches or poverty. On the one hand, poverty can result from laziness, while wealth is a fruit of a hard work and diligence (10:4 – *The slack hand impoverishes, but the busy hand brings riches*; 14:23 – *In all labour there is profit, but mere talk tends only to loss*; 20:13 – *Do not love sleep lest you be reduced to poverty; keep your eyes open, have your fill of food*).

[16] Cf. R.N. WHYBRAY, *Wealth and Poverty in the Book of Proverbs*, JSOT 99 (1990), 11-61.

[17] Noun לֶחֶם "bread" in a wider sense means "food." The expression חָקִּי לַחְמִי can be translated as "my portion of bread/food," "portion of bread/food that is sufficient for me."

If one abuses wealth by an extravagant lifestyle and drunkenness, one can end up poor (21:17 – *The lover of pleasure will suffer want; the lover of wine and perfume will never be rich*). A wise way of living and acting leads to prosperity (14:24 – *The crown of the wise is wealth; the diadem of fools is folly*) while those who do not accept instruction and advice from others can become poor (13:18 – *Poverty and shame befall those who let go of discipline*).

On the other hand, poverty is preferable to wealth if one were to gain wealth in an unjust way (19:1 – *Better to be poor and walk in integrity than rich and crooked in one's ways*; 19:22 – *What is desired of a person is fidelity; rather be poor than a liar*). The rich are encouraged to take care of the poor (14:31 – *Those who oppress the poor revile their Maker, but those who are kind to the needy honour him*; 19:17 – *Whoever cares for the poor lends to the LORD, who will pay back the sum in full*).

"Saying 'Who is the Lord?'"

The expression "…I deny you, saying 'Who is the Lord?'" (Prov 30:9ab) echoes the text of Deut 8:11-19 where the biblical author speaks of the risk that the People of God take onto themselves once they assume possession of the Promised Land. They will rebel against God and deny the one who rescued them from slavery in Egypt; and they will do all this because of becoming rich and self-sufficient.

Rebelling against God is one of the grave sins committed by the people of Israel, a sin named and catalogued by the prophet Isaiah (59:13). The question *Who is the LORD, that I should obey him …?* was posed by the Pharaoh to Moses before he let the people of Israel go out of Egypt (Exod 5:2). Pharaoh's question is not a denial of God's existence, but expresses an unwillingness to follow his divine instruction. In Job 21:14-15 the wicked ones who live in riches are denying God by saying: *Depart from us, for we have no desire to know your ways! What is the Almighty that we should serve him? And what do we gain by praying to him?*

"Profane the name of my God"

As it was mentioned above in the discussion about the composition of the text, the expression *I steal and profane the name of my God* (Prov 30:9cd) could echo the commandment *You shall not take the name of the Lord your God in vain* (Exod 20:7; Deut 5:11). This commandment prohibits misuse of God's name in various circumstances including swearing falsely. Our text could refer to a situation when somebody is stealing while swearing falsely in God's name in order to cover up his sinful act (cf. Lev 6:3; 19:11-13; Deut 19:16).

"Feed me with my portion of food"

The third petition of the prayer (Prov 30:8c) calls to mind the manna in the desert (Exod 16). God was providing food for his people on a daily basis during the journey to the Promised Land. There are other biblical texts showing God's providence towards the righteous ones like in Prov 10:3: *The LORD does not let the righteous go hungry.* A similar affirmation we find in Ps 37:19 where God makes a promise to protect the righteous: *in the days of famine they have abundance*. The Psalmist adds the following observation: *I have not seen the righteous forsaken or his children begging bread* (v. 25).

The request for a portion of food (Prov 30:8c) as opposed to wealth (8b) can also be illustrated by the following twin proverb:

15:16 Better is a **little** with the fear of the LORD
than ***great treasure*** and trouble with it.
15:17 Better is a **dinner of herbs** where love is
than a ***fatted ox*** and hatred with it.

These two proverbs teach that instead of being prosperous (*great treasure* 16b, *fatted ox* 17b), it is preferable for a person to be in a good relationship with God by observing his commandments (implied in the expression *fear of God* 16a – the vertical dimension between the human being and his/her Creator), share and experience love (expressed by the word *love* 17a – this designates the horizontal dimension, human beings in solidarity with each other, which obviates the *hatred,* 17b, that one may find

among the rich), live a simple life by possessing *little* (16a) and eating his lacklustre *dinner of herbs* (17a).

From the New Testament perspective Agur's Prayer can be linked to the petition *give us this day our daily bread* from the Lord's Prayer (Matt 6:11; Luke 11:3). It is a request for nothing more than a sufficient amount of bread that God provides us on a daily basis during our earthly pilgrimage[18], like in the ancient times God provided manna for his people in the desert during their pilgrimage to the Promised Land.

Interpretation

The composition of our text (Prov 30:6-9) shows that the prayer focuses on the third request (8c). The one who prays is aware of the danger involved when one finds oneself in either an extreme of poverty or in an extreme of prosperity because by finding himself in either one of these polar opposites, he could give in to the temptation to act against God (9).

Economic prosperity (9a) could make him feel self-sufficient. He may not feel, in other words, a need for God because he is able to provide for his own needs according to his financial ability without any recourse to God.

The denial of God (9b) is not necessarily a theoretical one, like that of ideological materialism in modern times. It could simply be the kind of denial of God inherent in practical materialism or inherent within the habitual attitude of religious indifference as so often happens in our times mainly in the so-called developed countries where some people do not even want to hear about God, about any supreme being, because they anchor themselves in a disposition of self-sufficiency. They seem to have no interest at all with religious matters. Even if they were born and raised in a religion, by a relentless focusing on material things, they may have ceased to practice their faith.

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[18] A. CANNIZZO, *La preghiera del sapiente o della "dotta ignoranza" (Giobbe, Quohelet)*, in G. De Gennaro, ed., *La preghiera nella Bibbia*, Napoli 1983, 191. The reference to the Lord's Prayer is also suggested by G. SAUER, *Die Sprüche*, 102; and R.N. WHYBRAY, *Proverbs*, 411.

In a situation of poverty (9c) people generally have a strong sense of God's existence; however, unfavourable conditions could prompt people to act against the law, against what is moral. Overwhelmed by the hardship of their daily life they could be tempted to solve their problems by doing what is not right, for example, stealing (9c). Once identified as potential robbers, they would do anything within their power – including swearing in God's name (9d) – in order to be excuse themselves from any accusation.

Consequently, the author of the prayer is asking for a middle way (8c) of having neither too much nor too little. In fact he is requesting to have what is sufficient and necessary to lead a moderate life as God's child. He has strong trust in divine providence: other biblical texts show God's providence for his children in particular for the righteous ones. We can conclude with a reference to the New Testament when Jesus says that we should not worry too much about material things because our heavenly Father knows what we need (Matt 6:8):

> Therefore do not be anxious, saying, 'What shall we eat?' or 'What shall we drink?' or 'What shall we wear?' For the Gentiles seek all these things; and your heavenly Father knows that you need them all (Matt 6:31-32).

Will Africa Survive Secularism?

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1. The Challenge of Secularism for Africa

This is one of the questions that come to mind when we look at the history of religious life in the traditionally Christian nations of Europe, North America, Australia, New Zealand, Canada… in a word, all those regions dominated in their more recent cultural development by the kind of technological landscape that is indicative of materialism.

Just a short time ago in the 1940s and the 1950s, the houses of formation in Europe, the United States, and Canada were filled; and many congregations thought of expanding by building more houses. The children of the post-World War II generation were now giving the Church a renewed hope in the future of religious life. A few years later – in the 1960s and through the '70s up to our own day – the situation of religious life took an unexpected turn when secularism took hold of some European and North American institutions and their more influential personnel; and many of those who had filled the seminaries and novitiates began to desert religious life.

Many have researched this and have asked why this happened. One reason identified for this turn of events is the effect of secularism on religious faith and practice, and consequently on vocations. Secularism's effect has been so penetrating that some have coined the word *secularization* to describe the process that has led to the extremes of secularism.

Now that Africa is making a jump from the agrarian world to the post-modern one, what can we expect of vocations in this coming 100 years? Is Africa as '*incurably religious*' as John Mbiti[1]

[1] J. MBITI, *African Religions and Philosophy,* Nairobi: Heinemann, 1969, 1.

has claimed it to be? Will this 'incurability' survive the onslaught of secularism?

1.1 Defining Secularization and Secularism

Many speakers and authors tend to use these terms confusedly when they address themselves to the topics of religion and religious life. For some these terms mean one and the same thing. Meanwhile if we look at their etymologies and social manifestations, they are at root not the same reality, though one can move from the tendency to secularize to a position of irrevocable secularism.

One links the word *secularization* to its etymological roots in the Latin term *saeculum* which means *a length of time roughly equal to the potential lifetime of a person or equivalent to the span of time necessary to completely renew a human population*[2]. Generally speaking, people understand that with the passing of a "saeculum", human history is turning a page: the human race is entering into another phase.

Historians agree that a new phase started in human history from around 1650-1700 AD. It was at this time that religions started losing their grip and authoritative power on the various philosophical systems in vogue, on the forces of social cohesion, and on the new arrangement of priorities to be found in the enterprises of science and economics. The lay world gradually started to assert its independence from religion and the Church. From the time of Constantine's Edict of Milan, issued in 313 AD, Christianity had been allowed the freedom and the right to operate freely within the empire. Then in 380 with the Edict of Thessalonica proclaimed by Theodosius I, Christianity, identifiable by the Nicene Creed that it publicly professed, was proclaimed as the official religion of the Empire.

This marks the onset of an age in history whereby Europe with her many conversions and growing ecclesial structures in all domains of life slowly and thoroughly came to be permeated with the Church ethos and her philosophy, theology and moral doctrine. Through the centuries that followed, through the manner in which her bishops and popes exercised their authority – even in the realm

[2] http://www.wikipedia.org/wiki/saeculum.

of politics – the Church determined how social life was to evolve. This is why, for example, by means of ecclesiastical decisions and policies, Europe underwent a wholescale transformation from a situation of unremitting constant warfare among the hordes who knew no religion except that of nature worship and no other law except that of outright barbarism to a culture where the codes of chivalry bridled the tendency to violence and inaugurated the possibility of international peace resolutions. To this day Christianity's influence still leaves its heavy imprint on European culture in the domains of language and law, in the choice of holidays and feasts and how they are to be celebrated, and in the determination of the rites for marriage and funerals. Even the notion of granting amnesty – blanket pardons – to enemies of the state and to political prisoners came to Europe through Christianity, specifically, through the ingenuity of Blessed Pius IX.

Indeed for centuries the symbol of the cross was synonymous with Europe.

While the Church saw herself as the guardian of society's morality there were also many abuses of this power as can be seen from many examples from history where scientists meddled with issues that, properly speaking, were theological and so touched nerves among ecclesiastics. Galileo Galilei's forays into biblical criticism are a case in point.[3] It must be faced that the current reaction of the society in Europe against the Church has a lot to do

[3] The editor notes that popular presentations of the so-called Galileo affair hardly ever correspond to the truth of what happened. One begins to get a glimpse of the truth when one hears an Anglican biologist from Victorian England, Thomas Henry Huxley, a scholar with no particular love for the Catholic Church. He looked at all the data available about the Church's dealings with Galileo and reached the conclusion that the Church was the one who had acted appropriately.

The Church was never an enemy of science: it is very clear that prominent Church authorities were sponsoring Kepler and protecting him from Calvinist persecution, and that ecclesiastical authorities supported Copernicus in his pursuit of valid scientific demonstrations of the heliocentric hypothesis. If Galileo had not pushed his issue into the area of theology, the Church would have always remained his ally. For a more complete explanation of the issues involved in the Galileo affair, *see the Appendix to this article*.

with their current perceptions of how certain Church figures figured too prominently in the politics of Europe's past.

From around 1650 many thinkers in Europe among whom were some scientists started to come out and proclaim a new way of social fabric based on pure reason without any – according to them – immature dependence on God or religion. They felt that humanity had 'come of age' 'had become an adult' and it had to shake off the shackles of religion. European philosophers Baruch Spinoza, John Locke, Pierre Bayle, Isaac Newton, Denis Diderot, Voltaire, Rousseau, Montesquieu, Immanuel Kant and many others led the way forging a new way of thinking for the Church[4]. In general the Enlightenment movement was based on evolving a new thinking man who was free and that all people irrespective of their economic conditions were equal. The second pillar of this thinking was that society had to evolve along the dimensions of common concern issues, and that the voice of the masses and not aristocrats had to be heard. Thirdly, reason was paramount and a most important base for constructing science and society. Some commentators maintain

[4] While all these figures certainly intended to position themselves within a reverence for the authority of one's own reason – a position that Hans Urs von Balthasar aptly labeled anthropological reductionism – one should also note, together with the editor, the differences that existed among them. Among the most enlightened of the scientists, for example, there is one who stands out for his humility; he was not afraid to call himself the servant of the living, intelligent, powerful, true God. His name is Sir Isaac Newton, hailed as the father of modern physics, and a man quite willing to subject the workings of his very insightful mind to the divine workings of creation's Designer. Newton: *This most elegant system of the sun, planets, and comets could not have arisen without the design and dominion of an intelligent and powerful being... He rules all things, not as the world soul but as the Lord of all... And from true Lordship it follows that the true God is living, intelligent, and powerful; from the other perfections, that he is supreme, or supremely perfect... We know him only by his properties and attributes and by the wisest and best construction of things and their final causes, and we admire him because of his perfections; but we venerate him because of his dominion, for we worship him as servants… All the diversity of created things, each in its place and time, could only have arisen from the ideas and the will of a necessarily existing Being.* Cited by D. RUTHERFORD in his essay, "Innovation and Orthodoxy", *The Cambridge Companion to Early Modern Philosophy*, Cambridge: CUP 2006, 32.

that before this, there was not a really civil society based on the interests and voice of the people. What we had in Europe before the Enlightenment, rather, were monarchs lording over very poor peasant masses and the Church seen as another arm of this system of monarchs.

1.2 The Enlightenment Reaction against the Church

Perhaps the most memorable reaction was the violent French Revolution of 1789 to 1799 which persecuted the monarchy and Church in France to such an extent that many priests and nuns and Catholic laity were killed by the infamous 'guillotine'. The images of nuns and priests being beheaded by this sharp knife have filled many history books. Prior to this we can say that after the persecutions of Diocletian, the Church never really faced a massive reaction and persecution from European society.

Those who proclaimed themselves the representatives of the masses, of the "common man," however, were capable of their own brands of violence. The proclamation of the French Republic, officially based on such humanitarian principles as **liberty**, **equality**, and **fraternity**, became a massive, anti-humanitarian blood-spilling of a host of innocent people who happened to lie outside the inner circle of the revolutionaries.[5] From these events we see Europe laying the foundations of what we now can call secularization. Secularization is based on the following principles:

a) Reason and science are the primary bases for all human knowing

[5] See J. RATZINGER, *The Meaning of Christian Brotherhood*, San Francisco: Ignatius Press 1993, 16. The editor notes that the Pope offers the thoughtful observation that one proclaims love's ideals for the masses without having due regard for the individual person hidden within those masses, the program so proclaimed is doomed to fail. In contrast, Jesus – especially as St. John presents him – comes into the world to give himself and his Messianic program to the individual – e.g., to his Mother at Cana, to the Samaritan woman, to the government official's son, to the man waiting at poolside for someone to lift him and place him in the water, to the man born blind, to Lazarus, to the Beloved Disciple, to St. Thomas the Apostle, to you, to me… Our brother/our sister is the one in need; and when we love that brother or sister in need, we love Jesus. Cf. Mt. 25: 31-46; Ratzinger, p. 29.

b) Religion should not be mixed with government and its laws. The public domain should be free of all religious conditioning and be for all, irrespective of their class and politics. The public domain, therefore, should be free from any constraints imposed by religion.
c) All people are free and equal.[6]

1.3 The Catholic Response to the Secularization Process in Europe

With time the Church had to come to terms with a society which was no more defined as Christian and within which not everyone could be presumed to be Christian. Ecclesiastical leaders now had to move away from political posts and retreat back into the Church.

Over time, however, the Church has come to engage in a process of appreciating the positive values of this movement by an active recall of Thomas' insistence on the legitimate use of reason in science, an insistence extended by Edith Stein (St. Theresa Benedicta of the Cross) to the social sciences; by a recognition of the autonomy of the secular domain and government in harmony with all due respect for the principle of subsidiarity; and with an active recall and renewed admiration for the hospital infrastructure left by St. Basil the Great, a structure copied and imitated in almost every corner of the globe. Secularized Europe still manages to maintain hospital systems that originated with the infrastructures designed according to St. Basil's inspirations and convictions.

There is a great historical irony in the fact that basic principles of both the French and the American revolutionaries were coming from the same St. Robert Bellarmine who was involved in the Galileo affair. Thomas Jefferson, the author of the American Declaration of Independence, a document that in turn became a model for other countries, including France, who wished to

[6] This last principle of the French revolutionaries certainly carried the weight of Thomas Jefferson's influence: the revolutionaries were undoubtedly using the American Declaration of Independence, composed and signed in 1776, as a major source for their own ideological platform. What is interesting is that a primary source for Jefferson was Cardinal Robert Bellarmine, a representative of the Church authority that the French revolutionaries found so irritating. See Appendix to this article for details.

uphold the freedom, equality and dignity of all people, borrowed extensively from the writings of St. Robert Bellarmine during his writing of the Declaration.[7] We refer the reader to the Appendix following this article to see some eye-opening examples of the way revolutionaries were formulating their principles according to the teachings of the same Catholic hierarchy that they claimed was offensive to human reason.

1.4 The Genesis Parable of Secularization: Genesis Interpreted by Bishop Raul Berzosa[8]

In his book *Towards the Year 2000: What Is Awaiting Us in the 21st Century*,[9] the Spanish theologian Bishop Raul Berzosa has given a most simple and most beautiful essay, inspired by Scripture, in order to understand the positive as well as the negative side of secularization. Within this context there is a notion of a legitimate space God gave to the human being at the beginning of creation so that the human being may serve Him, who is Lord and God. This space allotted to the human being, however, can also be abused as an excuse to deny Him. In denying Him, the human being goes against the very purpose of creation itself.

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[7] All of Jefferson's citations from St. Robert Bellarmine are to be found in a book entitled *Patriarcha,* personally possessed by Thomas Jefferson, and now to be found in the Congressional Library, Washington, D.C. Historians who have researched the issue of sources for the Declaration also point out that in his drafts, Jefferson was making noteworthy reference to his own draft of a preamble to the Virginia State Constitution and to a draft of Virginia's Declaration of Rights, penned by a group that included Jefferson's successor, the 4th President of the United States, James Madison. This is an important observation because Madison would have had access to thousands of pages penned by Bellarmine at Princeton University where he, Madison, received his degree; and the Virginia State Constitution with the Declaration of Rights, both in their thought patterns and in their terminology, show striking resemblance to the ideas and terminology of St. Robert Bellarmine.

[8] Bishop Raul Cecilio Raul Berzosa Martinez, Bishop of Ciudad Rodrigo, Spain is one of the theologians who are engaged in a dialogue and reflection on secularization, post-modernism and its relationship with faith.

[9] R. BERZOSA MARTÍNEZ, *Hacia el año 2000: que nos espera en el siglo XXI*, Bilbao: Desclee de Brouwer 1998, 12.

This version of creation is in many ways similar to, though not a replica of, the one made by God in Genesis chapters 1 and 2. Bishop Raul Berzosa asks the question, *Where is the church going? Where is humanity going?*[10] With these questions as a starting point, says Berzosa, we can go on to analyze the post-modernist world and how it has understood creation and secularization by engaging in what he calls a journey of *anti-genesis.* God in the beginning created everything and saw that it was all good and beautiful. He rested and left this beautiful masterpiece in the hands of the human being. The earth was a perfect harmony and the Spirit of God hovered over it. God trusted the human being to care for and cherish this earth. This trust in the human being turned out to the source of the *anti-genesis* within the intentionality of the human being.

1.5 The Story of Anti-Genesis

On his day of freedom, the human being said, "Let us stretch the time of light so that there may not be a difference between day and night." He/she went on to create nuclear centres and other sources of energy to light up the earth. With this extra light the human being went into a frenzy of work, creating industries that worked twenty four hours non-stop. In this way the human being turned the earth into one dark, smoky place, contaminating as well as the atmosphere with fumes from industries and vehicles. To this creation he gave the name *modern civilization*.

On the second day the human being said, "Let us conquer the new spaces between the skies and the ground." The space satellites were the first to conquer the skies followed by new ways of communication. Humanity then experimented with new arms that could be shot across these conquered spaces. Thus the skies became the centre of competition and spying between nations.

On the third day, the human being said, "Let us recover land from the seas and let us expose what is hidden in the interior of the seas and the oceans." Thus humanity constructed platforms and artificial islands in the seas. The multinationals ransacked the depths of the seas and plundered them of their oil and treasures.

[10] R. BERZOSA MARTÍNEZ, *Hacia el año 2000*, 12.

On the fourth day, the human being said, "Let us exploit fruits and crops and let us create new species in the form of genetically modified plants." The earth was then inundated with transgenic foods bottled in tins and maintained by preservatives. In this way the fumes from the plastics and aerosol cans destroyed the ozone layer.

On the fifth day, the human being said, "Let us dominate the animals and all the other forms of creatures so that they can serve, feed, be seen in zoos at the time we want and also entertain us." With his/her philosophy of exploitation, urban civilization, luxury, insecticides, herbicides and sophisticated arms, the human being in a short time managed to send into extinction hundreds of species of birds, sea creatures, land animals and plants.

On the sixth day, the human being said, "We know the secrets of the world and we can now attempt to be gods." He/she thus rendered the atom and subatomic elements capable of producing energy to destroy the planet five hundred times over.

On the seventh day, humanity said, "Let us make robots and humanoids capable of making a civilization of luxury; let them do our work as we live a life of pleasure." He/she thus created monstrous machines and laboratories with a capacity for super speed minute analyses of DNA and thus engendering the capability to manipulate genes and clone humans.

After listening to this narrative of a human anti-genesis, the impression that a reader can get is that human progress and the development of science is being painted as the source of all evil. One can say, on the other hand, that there is also the good news of modern science, for example, in the discovery of so many cures to diseases that were previously termed as incurable.

1.6 Positive Side of Secularization and Science

The fact that the Enlightenment asked for and gave the human being autonomy in order to use **reason** and to advance science has had also a positive impact on God's creation. We can call this a *Pro Genesis* story. After all, the Church itself has a Pontifical Academy of Sciences. There is, in other words, a version of secularization which is compatible with Christianity. A scientist or medical doctor who is highly specialized in his/her scientific field can also be

a very committed Catholic. We have plenty of these examples in the Church.

If it is rightly understood, the premise of secularization – that the public separation of religion from politics is beneficial to humanity – can engender a healthy social reality that the Church and Vatican II recognize. In *Africae Munus* 30[11], Pope Benedict XVI talks about the pro-genesis work of lay people in the secular field.

> I would like to dwell again on the distinctive feature of a Christian professional life. In a word it means bearing witness to Christ in the world, by showing through your example, that work can be a very positive setting for personal development and not primarily a means of making profit. Your work enables you to participate in the work of creation and to serve your brothers and sisters. Acting this way you will be ''the salt of the earth'' and ''the light of the world'', just as the Lord asks of us.

It is clear that these Christian professionals who bring their moral and religious convictions into their secular environment are acting as a leaven so that, hidden as it is within the contours of a milieu that seems to detach itself from God, they nevertheless participate decisively in the continuation of God's *Pro-Genesis*.

1.7 Secularism as an Extreme Form of Secularization

The following statement from Pope John Paul II in *Christifidelis Laici* 4 sums up well what is secularism as distinct from secularization:

> How can one not notice the ever growing existence of *indifference* and *atheism* in its more varied forms particularly in its more widespread form of *secularism*? Adversely affected by the triumphalism of continuing scientific and technological development and above all fascinated by a very old but yet new *temptation of wishing to become like God* (cf. Gen 3:5) through the use of liberty without bounds, individuals cut the religious roots that are in their hearts; they forget God, or simply retain him without meaning in their lives, or outrightly reject him, and begin to adore various 'idols' of the contemporary world.

[11] BENEDICT XVI, *Post-Synodal Apostolic Exhortation "Africae Munus"* (19 Nov 2011), Città del Vaticano: Libreria Editrice Vaticana 2011.

> The present day phenomenon of secularism is truly serious, not simply as regards the individual, but in some ways, as regards whole communities, as the Council has already indicated: "Growing numbers of people are abandoning religion in practice."[12]

In this description of secularism we find the key components of this phenomenon. At this point society goes further by stating that what exists are only reason and whatever can empirically be proved by science. Religion and its creedal professions of faith in God is just a hodgepodge of superstitious beliefs in something that does not exist and cannot be proved. One Christian author said that secularism "practically attempts to throw God out of life and live it as if he does not exist. This type of attitude in secularism becomes an ideology which is now shaping many countries of the technologically developed world. The doctrine of 'laicism', understood as public policy, deliberately obliterates from use all language that has any reference to God and religion."

In schools children are now to be taught materials that are exclusively secular; and Catholic schools are under immense pressure to remove crucifixes from their schools, to avoid praying, and to decline to teach the children any religious education. It is forbidden at public functions to use a prayer in the opening minutes; and the religious titles by which people customarily greet priests and nuns fall into public disuse.

Secularism presents a variety of faces that correspond to specific ideologies:

a) Secular Humanism
b) Free thinking
c) Anti-clericalism
d) Criticism of all religions as sources of violence, social backwardness and mental problems
e) Atheism as the negation of God.

1.8 Secularism and Moral Relativism

One of the most pronounced premises of secularism is that morality is basically what the majority legislate to be the good;

[12] JOHN PAUL II, *Post-Synodal Apostolic Exhortation "Christifidelis Laici"* (30 Dec 1988), Città del Vaticano: Libreria Editrice Vaticana 1988.

religions, therefore, should not intrude and attempt to define social ethics or morality with a reference to God. Each person decides what is moral and if the society agrees on it then it becomes law and morality.[13]

2. Restoring Backbone to Societies Assailed by Secularism

2.1 Living Prophetically in a 'Foreign Land'

2.1.1 'By the rivers of Babylon'

> We sat mourning and weeping,
> When we remembered Zion.
> On the poplars of that land
> We hung up our harps.
> There our captors asked us
> For the words of a song;
> Our tormentors, for a joyful song:
> 'Sing for us a song of Zion!'
> But how could we sing a song of the Lord
> In a foreign land?
> (Psalm 137:1-4)

Africa is a continent that is capable of rivalling anyone when it comes to interlacing all of life's joys and sorrows, hopes and fears, failures and dreams with the lively rhythms, upbeat melodies and graceful motions of her song, dance and celebratory moments. African celebrations become a beautifully surging lodestar for the other cultures of the world. A community that both contemplates and celebrates is that where life is lived in its fullness.

The question, therefore, that our people pose is the same one as that of the exiles in Babylon who felt it inappropriate and a mockery to sing a joyful song in the midst of deportation, exile, slavery and oppression: How could we sing a song of the Lord in a foreign land? One cannot fail to feel that in Africa, consecrated life is lived in the midst of untold misery and suffering: in the

[13] In his encyclical, *Evangelium Vitae,* JOHN PAUL II referred to this phenomenon as a "tyranny of the majority." For President George Washington's (USA) admonition on this matter, see the Appendix that follows this article. (Ed.)

worried, depressed sufferer of AIDS; in those overwhelmed by panic as they see their loved ones dying all around them from the insidious invasion of Ebola; in the struggles of small children in systems of education that are fragile indeed; in the sullenness of the orphanage where the child may be sorely missing his or her lifeblood, the family. One may be tempted to think that the secularized society, thrust upon Africa from outside the continent, is the only option left for the African: but who wants to sing secularism's song?

But if one does not sing forth a song that ascends to God, if one confines oneself to secularism's stark melody, there is no life. A song should be an expression of love, appreciation, gratitude and prayer. Is it possible, then, that the evangelical counsel of poverty can become precisely the link between the painful vicissitudes of life and the God who still deserves to be trusted so that the one consecrated in poverty engages in the painful emptying of self – *kenosis* – but at the very same time lifts up towards the Heart of God a proclamation that is grateful even joyful?

According to Fr. Engelbert Mveng, most of our people are poor persons. Our people can be situated within the quandary of

> not knowing what will happen tomorrow, or what the future has in store. Everything escapes them. They are not sure, neither of their independence, nor of their earthly riches. The bread for the next day is not assured. They have no control over their treasure or crops.[14]

Among our people, poverty as we know it carries a meaning other than the spiritual one. Material poverty in itself is a relative term. It has to be measured according to local standards and according to the local social context[15]. The real poor person is the one who lacks the basic/ minimum necessary conditions or means for a life of dignity.

We are speaking about people 'living below the poverty line'. These people form the highest percentage of our populations. In this, we are reminded that consecrated persons are not the only ones who follow the Poor Christ. Some live the condition of indigence by the mere fact of belonging to the bottom rung of the social

[14] *Op.cit.* Engelbert Mveng, p. 141.

[15] A. SHORTER, *Religious Poverty in Africa,* Nairobi: Paulines 1999, 9.

ladder. Poverty in this sense is something degrading, and a thing to be fought against and discarded at any cost; it is an evil.[16] Our people in Africa have not chosen to live this kind of indigence. In the Scriptures, material poverty is a scandalous situation and condition that runs contrary to human nature; and as a consequence of injustice, the poor person cries to God for justice. Here we have the groups so often cited in the worship and sacred writings of Israel, that of the widow, of the orphan and of the foreigner: they are among the protected ones of God.

In the Old Testament, the term used for the poor person is *ebyon* which means the *one who desires*, *the one who begs, and the one who lacks something and expects it from another*.[17] The term 'poverty' is also represented by the word *dal, which* signifies *the weak, the thin.* The poor person is the one who is called *the one bent double under the weight on his/her back* following the meaning of the Hebrew word *ani*.[18] Another term *anaw* stands for the person 'bent double' but has also the added meaning of *humble one in front of God.* In the New Testament, most of which was written in Greek, the poor person is represented by the term *ptojos,* which means *the one who does not have the necessary things for survival, the miserable one obliged to live by begging*.[19] The words 'needy', 'beggar', 'bent double under the weight' all reflect even today the situation of a person who is in a very difficult situation of life.

These are terminologies that automatically invoke in us a sense of protest about what the poor person seems forced unjustly to endure. Another sense that the Bible gives to poverty is that of 'spiritual childhood'. It is also to be noted that in the Bible, the poor is sometimes the one we can call the 'client' of God. Poverty here is understood as the attitude by which the human being disposes himself, opens him/herself to God in humility. Even though the terminologies that formerly referred to material poverty remain in vogue, they now seem to take on meanings that are more spiritual

[16] G. GUTIERREZ, *Teologia de la Liberacion,* Salamanca: Sigueme 1994, 323.

[17] *Ebyon* used 61 times in the Old Testament, above all, in the Psalms and prophets. Cf. G. GUTIERREZ, *Teologia*, 326.

[18] *Ibid*.

[19] *Ibid*.

in their sense. The typical word *anawim,* the plural form of *anaw* in some passages takes on a spiritual sense. The *anawim* are those poor, mentally uncomplicated, humble people who are open to the salvific power of God. Secularism for them can never be a viable option.

This "spiritual poverty" is understood as opposed to *pride,* an attitude of people who feel that they do not need anybody and have everything they need from within themselves. In contrast the *poor of heart* are those who abandon themselves to God in an attitude of trust and confidence. The Psalms help us to understand this aspect of spiritual poverty: when we search for God (9:11; 34:11); when we abandon ourselves to him and welcome him (10:14; 34:9; 37:40); when we fear him (25:12.14; 34:8.10); when we observe his commandments (25:10); when we are faithful, we become identifiably the poor, the ones counted among the just and the upright (34:16.20.22; 37:17.18; 37:28; 149:1). Spiritual poverty has its highest expression in the beatitudes of the New Testament.

Yahweh is the God who is in solidarity with the crippled and the lame (Ps 10:2; 18:28; 37:10; 86:14). The ones opposed to the poor in spirit are the proud ones who are clearly identified as the enemies of Yahweh.

In Matthew's version of the Beatitudes, the sense of poverty is that of spiritual poverty as it is understood in the book of Zephaniah: *Seek the Lord, all you humble of the earth, who have observed his law; seek justice, seek humility* (2:3); … *I will leave as a remnant in your midst a people humble and lowly, who shall take refuge in the name of the Lord* (3:12-13). This kind of poverty is above all this welcoming disposition with an open heart to the will of God. To receive the grace of God, our hearts are supposed to have this attitude grounded within.

2.2 Poverty and Culture

Culture can be said to be an inherited system of concepts, images and norms that orient a group of people cognitively, emotionally and behaviorally to the world in which they live. Culture is part of a human phenomenon. To deprive one of his/her culture is to deny him/her of his basic right to live meaningfully in

this world.[20] Aylward Shorter observes that in practice consecrated poverty has come to mean different things. For our purposes, we intend to ask, "What does consecrated poverty have to do with culture? What do we mean when we say that the vow of poverty must be lived in the African culture; or, in other words, that it must be *inculturated*?" In Africa, people are poor; and hence, according to Shorter, to say that African consecrated persons are 'special' because they are born in a 'culture of poverty' is to provoke confusion.[21]

People of a given culture, for example, of an African culture, maybe factually poor, but this is incidental to their culture. It is only a material deprivation. We cannot then say that poverty is cultural to Africa. When we look at what is happening currently in Africa within the milieu of Gospel values, which are both spiritual and material in scope, we find that from an African point of view, there seems to be a new culture that involves grabbing and getting rich at the price of others' misery. One establishes a valid link between secular culture and consecrated poverty when one focuses on the call to solidarity with those who are downtrodden by the system and by others' callous misuse of their riches. We may opt to be on the side of the ones causing the misery; by our way of life, of wealth-seeking, we may become a counter-witness. In a word, we may become *bad news* for the poor.

In the same measure that God is on the side of the downtrodden, religious poverty is to link the consecrated person to Christ the Poor as well as to Christ, son of the African Family in a cardinal sense of unity, solidarity and sharing. *I am because we are, and because we are, I am.* This is the conviction that restores psychological and spiritual equilibrium when the godlessness of secularism threatens. The following words said in the early 1970s now seem to be a reality throughout Africa:

> The traditional solidarity in which the individual says 'I am because we are, and since we are, therefore I am', is constantly being smashed, undermined and in some respects destroyed. Emphasis is shifting from the 'we' of traditional corporate religion to the 'I' of modern, [secularist] individualism. Schools, churches, economic

[20] Op. cit., 9.

[21] A. SHORTER, *Religious Poverty*, 9.

> competition and the future dimension of time with its real and imaginary promises, are the main factors which, jointly or singly are working to produce an orientation towards individualism and away from corporateness.
>
> So then, for example, amidst the many people who live in the cities, the individual discovers that he/she is alone. When he/she falls sick, perhaps only one or two other people know about it and come to see him; when he is hungry he finds that begging for food from his neighbor is either shameful or unrewarding or both; when he/she gets bad news from his relatives in the countryside, he/she cries alone even if hundreds of other people rub shoulders with him in the factory or bus. This individualism makes a person aware of him/herself, but his/her self-consciousness is not founded upon either traditional solidarity which by its nature and structure allowed little or no room for individualism, or another solidarity [that might leave room for individualism but still anchors itself in the conviction that all are responsible for all]. Since nothing concrete has yet replaced what history is obfuscating, the issue remains a dilemma and a challenge. The individual simply discovers the existence of his individualism but does not know of what it consists. He has no language with which to perceive its nature and destiny'[22]

Vita Consecrata has identified *materialism* as the reality destroying the fabric of African community life. Materialism is a craving for possessions at any cost: *another challenge today is that of a materialism which craves possessions, heedless of the needs and sufferings of the weakest, and lacking any concern for the balance of natural resources*.[23] The values proposed by consecrated life in the global community in confrontation with that of materialism are the same as those of Africa, namely *solidarity* and *charity*.[24] Solidarity means precisely, 'I am because we are; and because we are, I am'. In Africa the vow of poverty launches the consecrated person into the midst of the continent's underprivileged and downtrodden. This evangelical life is a defense of life in its fullness and maintains the bond of solidarity between God and Africa in a way that definitively vanquishes secularism.

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[22] J.S. MBITI, *African Religions and Philosophy,* London: Heinemann 1974, 224-225.

[23] *Vita Consecrata*, 89.

[24] *Vita Consecrata*, 89.

Life here is a fundamental reality. It is life in its pure state and one that is found only in God, who is the author and source of this life. In the African world view, poverty represents a diminishment of life; and there is a need for liberation from the wounds and scars that sickness, hunger, and all other forms of poverty leave in our people.

> Consecrated persons fight to overcome hunger and its causes; they inspire the activities of voluntary associations and humanitarian organizations; and they work with public and private bodies to promote a fair distribution of international aid.[25]

In Africa there is a need for what has been called the 'preferential option for the poor and for the young' on the part of consecrated persons.[26] This phrase borrowed from South America and made popular there from the 1970s has been well explained by Donal Dorr:[27]

> such an option, seen in a biblical perspective, would mean some special care or preference for [children and for] people or groups who are marginalized in human society. It is quite true that there is a sense in which everybody is 'poor before God'. But this idea can be invoked as a way of evading the central thrust of the biblical teaching about poverty. The meaning of the word 'poor' can be extended and redefined to a point where the challenge of the scriptural position gets lost.

Talk about evangelical poverty can become, most of the time, a mere accumulation of words: analysis of what is poverty, an analysis of its context, an analysis of this or that… this makes us lose track of the practical side of this option for the children and for the poor. The exhortation *Vita Consecrata* has indicated what this practical side can mean:

> the option for the poor [and for the young] is inherent in the very structure of love lived in Christ. All of Christ's disciples are therefore held to this option; but those who wish to follow the Lord more closely, imitating his attitudes, cannot but feel involved in a very special way. The sincerity of their response to Christ's love will lead

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[25] *Vita Consecrata*, 89.

[26] Congregation for the Doctrine of the Faith, *Instruction on Certain Aspects of the "Theology of Liberation"* (Vatican, 1984), VI, 5 (Ed.)

[27] D. DORR, *Option for the Poor: A Hundred Years of Vatican Social Teaching,* Dublin: Gill and MacMillan 1985, 6.

them to live a life of poverty and to embrace the cause of the **simple and austere way of life,** both as individuals and as a community.[28]

2.3 Common Ownership and Consecrated Poverty

The *simple and austere way of life* in Africa has been understood as part of what we call 'African common ownership of goods and property'. Some have called it not 'common ownership' but 'common non-ownership'[29]. We have a history of our people, which can be called a 'migratory history'. Here we are not talking about a nomadic existence. In Malawi, for example, like other countries in the southern regions of the continent, the peoples identifiable as strictly nomadic – such as the *Masaais* of East Africa – are not to be found.

However, the history of *kusamuka* is as ancient as the peoples themselves. This is to say that there is still a life that is quite mobile because of famine, non-productive land, witchcraft fears, family disputes, and so forth. One of the results of this kind of life among our people is that they have developed a philosophy of 'travelling light'.

Property was seen as bondage in some ways, for it prevented people from moving on when necessary. In our consecration, we can talk of consecrated poverty from the point of view of Africa as a 'traveling light' on our way to the Father. The Kingdom of the Father is the destination of all consecrated people and everything short of this goal loses its absolute value. This is our treasure to which we look forward to, without losing sight of our embodied existence in this world: *Where your treasure is, there will your heart be also* (Mt 6:21). *The unique treasure of the Kingdom gives rise to desire, anticipation, commitment and witness*.[30]

If we are heading toward the house of our Father, consecrated poverty is a sign to the materialistic culture of today that life is not only about accumulating wealth and power, but that there is indeed a greater value for which we live in this world. This is a very difficult message to the modern world entrenched as it is in the secularist mindset. Within an atmosphere of the real urgency

[28] *Vita Consecrata*, 82.
[29] A. SHORTER, *Religious Poverty*, 13.
[30] Cf. *Vita Consecrata*, 26.

invoked by the presence of the Kingdom, everything else is relative.

To travel to our destination, consecrated poverty reminds us that we need to 'travel lighter and faster':[31]

- The first important thing in our option for the poor and for the young is to be aware that the poor and the young need to have the sympathy and support of the consecrated person vowed to Christ through the evangelical counsel of poverty.
- Secondly the poor and the young need the professional expertise of consecrated persons, their spiritual and moral strength as well as their training in medicine, education and social work to help them in their struggle for life, in their fight to come out of degrading and inhuman poverty.
- The poor and the young need fraternal love, understanding and solidarity with the consecrated. This involves sharing our 'precious time' with them. The self-less giving of our time in Africa is very important. That is why we say that 'availability' is a sign of a genuine consecrated, poor person.
- One of the truths about consecrated poverty involves a process of *learning from the poor* and from the young. The poor evangelize us through their patient and faith-filled attitude of going through their own participation of Christ's passion.

Travelling light in the following of Christ through evangelical poverty involves the following fundamental presuppositions about the 'excess luggage' that impede an easy climb and walk through life towards Christ. This kind of poverty is what we can call 'spiritual poverty'.

2.4 Mysticism and Evangelical Poverty in Africa

2.4.1 Luggage 1: The temptation to identify consecrated life with external signs

A theologian of the Vatican II era, Karl Rahner, made the following statement about the future Christian: "The Christian of

[31] All the following points are taken from Aylward Shorter's book on consecrated poverty in Africa.

tomorrow will be mystic or will not be Christian at all." Many people tried to interpret this statement and apply it to the changing world of today, which we are experiencing even here in Africa. In some academic circles, the word 'mystic' as we know has had a very negative connotation connected with it. The word has come to mean 'a person who experiences extraordinary favours in prayer and life, like visions, stigmata, and so forth'.

But all these do not make a mystic. The consecrated person of the 21st century will have to be a mystic in a true sense: *a person with a radical openness towards the life of Christ, Son of the Father in the Spirit*. This openness necessarily entails the thoughtful recognition of Christ's immediate presence in the child and in the poor person.

Many people have associated consecrated life with habits (i.e., religious garb), apostolates, and constitutions. These are good in the sense that they promote the experience of God and are to link the religious to the Church and to the people he or she is serving. But if the consecrated person confines himself or herself to religious garments, apostolates and constitutions, this person succumbs to the plight of the one carrying an excess luggage of *emphasis on external signs*. Karl Rahner was speaking to a Church that was and still is in some ways caught up with emphasis on external signs.

The sacraments are a case in point. There are many who are not exposed to the fact that the sacraments are vehicles of God's experience, an influx of his love and grace to communities and to individuals so as to enable them to plant their roots within communities. The realization that we are all mystics at heart – by the grace of baptism – and that we have to recover the mystical sense at any cost is supported by this definition of grace: *The word 'grace' refers to the most basic and original Christian experience. It is an experience of God, [a participation in his divine life] whose sympathy and love for human beings runs so deep that he has given himself. It is an experience of human beings, who are capable of letting themselves be loved by God, of opening up to [Trinitarian life and] love and filial dialogue. The result of this encounter is the beauty, gracefulness, and goodness that is reflected in all of creation- but especially in human beings and their history….*

If grace is all that we have described above, then it is ever threatened by what we can call dis-grace, i.e., lack of encounter, refusal to dialogue, closing in upon oneself, [and a succumbing to spiritual death]. Grace and dis-grace are two alternatives available to freedom. This is the mystery of creation, an absolute mystery to which reason does not have access. In Africa God is calling on consecrated people to be first 'God-filled' persons – God-filled because grace-filled.

2.4.2 Luggage II: The temptation to avoid sharing in the life situations of our people

The document *Vita Consecrata* mentions the need for what in recent years has been called 'insertion'. One of the excess luggage carried by current forms of consecrated life in Africa, is their grave lack of participation in the life situations of the people. The accusation that they live in 'ivory towers' amidst misery and deprivation has in many ways some truth to it. However it is not all who are living like this, but some have taken a lot of effort to live with the Poor and with the Young themselves:

> This witness will of course be accompanied by a preferential option for the poor [and for children] and will be shown especially by sharing the conditions of life of the most neglected. There are many communities which live and work among the poor and the marginalized; they embrace their conditions of life and share in their sufferings, problems and perils.[32]

For the future of consecrated life in Africa to be prosperous, the ones embracing it will have to be bound and inserted in real life situations, in which their life will be conformed to the Gospels. This is what we call a real incarnation and reading of Christ from within the culture itself. Patrick Ryan has elaborated a few things that can be considered as fundamentals of any insertion by consecrated people:[33]

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[32] *Vita Consecrata*, 90.

[33] P. RYAN, *Pastoral Insertion as a Component of the Theological studies curriculum*, Tangaza Occasional Papers 6, Religious formation in international communities, Nairobi: Paulines 1998, 72-73.

a) Exposure to various pastoral-mission situations of the local church and society, and to be able to interpret them in the light of our charisms and spiritualities.
b) Deepening of our sensitivity to the marginalized and dispossessed among whom are children; more realistic awareness of the individuals and structures responsible for poverty and oppression.
c) Introduction of strategies of empowerment of the oppressed at parish, school and institutional level.
d) Becoming a balanced and self-reflective person, content in sharing one's personal story, including one's personal history, family and cultural background, faith journey, personal gifts in function of the up-building of the church.
e) Development of the basic values of listening, challenging, self-disclosure, confidence-keeping, conflict resolution, sensitivity and warmth towards people under stress.
f) Growth in appreciation of one's own culture and traditions, as well as a gradual opening to the emotional, social, intellectual, moral and spiritual riches of the different levels of society.
g) Identification of one's expectations and presuppositions in regard to one's congregation and to the charism that identifies it, and the way these expectations and presuppositions are integrated into the mission of the founders/foundresses and into one's personal life.

2.4.3 Luggage III: The temptation to ignore self-knowledge and insight into our human nature as vehicles for making oneself available to grace and self-transcendence

Many people in the years after Vatican II have accused religious life of creating 'dehumanized' consecrated people. These are those who have labelled religious as 'cold' 'unfeeling' and 'distant'. For consecrated life to be well-grounded in the vow of poverty as well as in the vows of chastity and obedience, much knowledge of the human within us is extremely important and can help us to live the vows, especially poverty, in a positive manner. An awareness of

our nature as redeemed by Christ moves us to appreciate it and strive for the conversion of its many dark sides.

This is the part which we have called 'dis-grace'. The qualities of communication and friendship will cement a genuine solidarity and commitment to the poor Christ who has become as a little child. It is impossible to be truly poor if consecrated poverty is not lived in solidarity with members of the community who are or should be friends. We cannot truly love the poor and the young if we have not experienced love at home and in the community in which we live. We may be hard-working and in the midst of the young and the poor, but we will eventually wither if we do not have a shared experience of the same poor with others who are friends.

2.5 Consecrated Poverty and Detachment in Africa

In our consecration we come across the dimension of poverty which we can classify as 'detachment' from possessiveness and materialism.

> Its primary meaning, in fact, is to attest that God is the true wealth of the human heart. Precisely for this reason evangelical poverty forcefully challenges the idolatry of money, making a prophetic appeal as it were to society, which in so many parts of the developed world risks losing the sense of proportion and the very meaning of things… Consecrated persons are therefore asked to bear a renewed and vigorous evangelical witness to self-denial and restraint, in a form of fraternal life inspired by principles of simplicity and hospitality, also as an example to those who are indifferent to the needs of their neighbour.[34]

In the words of John of the Cross, detachment does not mean that we do not use the things that we need,

> for we are not discussing the mere lack of things; this lack will not divest the soul, if it craves for all these objects. We are dealing with the denudation of the soul's appetites and gratifications; this is what leaves it free and empty of all things, even though it possesses them. Since the things of the world cannot enter the soul, they are not in themselves an encumbrance or harm to it, rather it is the will and appetite dwelling within it that causes damage.[35]

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[34] *Vita Consecrata*, 90.

[35] 1 Ascent of Mount Carmel 3, 4.

Appendix: Europe's Decision to Secularize – Is the Church Culpable?

From the editor

Part One: The Church and Politics

Father Tambala's article taps historical details that give background and context to the Enlightenment and the ebb and flow of secularization that accompanied the Enlightenment – these are details that are not often finding the place they deserve in discussions about the relationship between faith and reason in a secularized world.

Fundamental to this historical issue is the place of the Catholic hierarchy in the formulation of principles founded on the bedrock of human dignity, the respect owed to the potential inherent in human rationality, and the freedom of both the individual and the society in all its sectors to establish institutions of governance that preserve the people's right to structure their government, to choose their officials, to determine positions of authority, to establish systems of checks and balances and even to discard and/or transform all constitutional structures that with time and experience prove to be inadequate.

At the heart of the Enlightenment program was the issue of freedom and its definition. Immanuel Kant wanted to preserve freedom as a necessary condition for the moral operation of human rationality – the dimension of rationality that he called "practical reason." Yet he also insinuated time and time again that ecclesiastical authorities could not be relied upon to establish parameters, neither for freedom nor for the moral conscience. His individualist, subjectivist leaning deprived him of ascertaining the possibility that Jesus Christ and the Church he founded could be witnesses (Greek: martyrs) to the noumenon of Truth. In other words, Kant precluded from his considerations of human rationality and freedom, Jesus' conversation with Pilate before Pilate released him to the crowds (see John 18:37).

Thomas Jefferson and James Madison, on the other hand, two American revolutionaries whose writings set the pace for the overhaul of governments and institutions in a number of nations, did not hesitate to borrow from Catholic authority. The man upon

whom they relied was a Cardinal at the time of the Reformation, St. Robert Bellarmine.[36]

With regard to the equality of peoples

Declaration of Independence: "All men are created equal; they are endowed by their Creator with certain inalienable rights."

Bellarmine: "All men are equal, not in wisdom or grace, but in the essence and nature of mankind… There is no reason why among equals one should rule rather than another." (*De Laicis*, c.7). "Let rulers remember that they preside over men who are of the same nature as they themselves" *(De Officus Princ*. c.22). "Political right is immediately from God and necessarily inherent in the nature of man" (*De Laicis*, c. 6, note 1).

With regard to the function of government

Declaration of Independence: "To secure these rights governments are instituted among men."

Bellarmine: "It is impossible for men to live together without someone to care for the common good. Men must be governed by someone lest they be willing to perish" (*De Laicis,* c.6).

With regard to the source of power

Declaration of Independence: "Governments are instituted among men, deriving their just powers from the consent of the governed."

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[36] It is to be noted that there are significant differences in thought and expression between Cardinal Bellarmine and the British philosopher John Locke particularly when it comes to the issue of the foundation of human dignity. For Locke the freedom and right to own property is essential to human dignity: this principle is essential to the structure of the social polity. Locke becomes culpable, therefore, of giving slave owners a philosophical loophole for defending their ownership of slaves.

For Bellarmine, Jefferson and Madison, human freedom and dignity rest upon natural rights that God has given universally to all human beings; the freedom to own property as such would not be fundamental but rather a derived right. All people of whatever tribe, race, culture, religion, or socioeconomic standing enjoy the same rights. Slavery would be an abominable infringement of those rights. Please notice the reference below to the Supreme Court's Dredd Scott vs. Sanford decision, a decision that seems to have opted for Locke's ideas over and against the American Constitution.

To see the full-length article explaining Jefferson's reliance on Catholic sources, see J.C. RAGER, "Catholic Sources and the Declaration of Independence", *The Catholic Mind* 28/13 (July 8, 1930).

Bellarmine: "It depends upon the consent of the multitude to constitute over itself a king, consul, or other magistrate. This power is, indeed, from God, but vested in a particular ruler by the counsel and election of men" (*De Laicis*, c. 6, notes 4 and 5). "The people themselves immediately and directly hold the political power" (*De Clericis*, c. 7).

With regard to the right to change the government

Declaration of Independence: "Whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government... Prudence, indeed, will dictate that governments long established should not be changed for light and transient reasons."

Bellarmine: "For legitimate reasons the people can change the government to an aristocracy or a democracy or vice versa" (*De Laicis,* c. 6). "The people never transfers its power to a king so completely but that it reserves to itself the right of receiving back the power" (*Recognitio de Laicis,* c. 6).

Through the labors of such authoritative figures as St. Robert Bellarmine, the Church had arrived at a more explicit profession of the rights of all people a full two centuries before the American and French revolutions: at the heart of Church doctrine was the conviction that all people are equal and free because this is the way God has created them.[37] The founding fathers of at least one country, that of the United States intended to avoid the secularizing process by explicitly connecting God and his creative activity to the workings of government. One person that exemplifies the desire to keep God and religion within the political process was the leader of the Revolutionary Army that expelled the English colonials from American soul. I am referring to George Washington. He said:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports… The mere politician, equally with the pious man, ought to respect and cherish them… Let it simply be asked where is the security for property, for

[37] The editor notes that one can be tempted to conclude that the most influential among the leaders of the Enlightenment were all too ready to maintain a stony silence when they noticed that the very religious authorities they were pretentiously criticizing were speaking of human rights with perhaps more integrity than they were.

> reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in courts of justice?… Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.[38]

Later in the 20th century, the Church was to revisit Bellarmine's spirit and become a champion of human rights and the freedom of peoples. This does not mean that the inspiration for these freedoms was not there before – it always had its roots in the Christian Scriptures and the Apostolic Tradition – but Enlightenment rationalists tried to present intelligent explanations that would derive human rights from the nature of the human person and society without the theological language that would anchor these rights within the workings of Divine Providence.

Moderate enlighteners such as Washington, therefore, wished only to dispel what they considered to be the mistaken beliefs that contradicted rational understanding and principled judgment. Neither religion nor morality could lose their foothold in the socio-political arena without causing irreparable damage to the country's backbone.

Part Two: The Church and Galileo

Many suggest that the Galileo episode is an example of Church meddling in secular affairs, specifically, in the multidimensional field of scientific endeavour. But is it true that the Church retarded scientific and academic freedom by an overbearing exercise of authority in matters that are not inherently ecclesial?

When one considers how the Church was really reacting to Galileo's hypotheses, one notes that this was an era when ecclesiastical authorities readily accepted Galileo's discoveries that the lunar service was uneven as was the earth's, that Jupiter had four satellites, and that the planet Venus underwent phases, which meant that Venus was orbiting the sun and not the earth. The Jesuit astronomer Christopher Clavius assured Church authorities: "Galileo is correct on these points."

At the center of the Galileo affair, however, was one hypothesis for which he could not supply scientific verification: the

[38] *Washington's Farewell Address to the People of the United States,* 106th Congress, 2nd Session, Senate Document No. 106-21, Washington, 2000, 20.

heliocentric hypothesis. Galileo, not the Church, pushed the issue into the arena of biblical theology. Galileo made very public his insistence that Scriptural references to a sun that moves were indications of faulty science within the revealed word of God. When a Carmelite Provincial, Fr. Paolo Foscarini, defended Galileo's heliocentric hypothesis, St. Robert Bellarmine wrote the Provincial a letter – in 1615 – in order to explain that Galileo was publicizing as an already scientifically demonstrated fact a theory that was only a hypothesis. In this Bellarmine was correct: the stellar parallax necessary to scientifically verify the heliocentric hypothesis was not discovered until 1838 when Friedrich Bessel successfully determined the parallax of star 61 Cygni.

There is no doubt that when Galileo began interpreting Bible passages, he was not making a proper philosophical distinction between the descriptive point of view – the point of view of someone who is standing on earth and is observing what, from his/her perspective, is a true movement of the sun (yes, from this point of view, the sun rises and sets: the sun gazer is not hallucinating) – and the explanatory point of view, which focuses on the sun's relationship to the earth independently of the observer's point of view and thereby verifies the earth's more or less elliptical orbits around the sun.

What was putting Bellarmine on the alert was the fact that Galileo was publicizing his own interpretations of Scripture according to the parameters of his hypothesis without making this distinction. In his letter Bellarmine makes clear what the Church would do once a hypothesis such as the heliocentric theory was truly verified: Bellarmine says explicitly that relevant Scripture passages would then have to be interpreted anew, with prudence, according to the new scientific parameters that would correspond to the newly demonstrated thesis. The letter that Bellarmine wrote to Fr. Foscarini on April 12, 1615 is as follows:

> I have gladly read the letter in Italian and the treatise which Your Reverence sent me, and I thank you for both. And I confess that both are filled with ingenuity and learning, and since you ask for my opinion, I will give it to you very briefly, as you have little time for reading and I for writing:
>
> First. I say that it seems to me that Your Reverence and Galileo did prudently to content yourself with speaking hypothetically, and

not absolutely, as I have always believed that Copernicus spoke. For to say that, assuming the earth moves and the sun stands still, all the appearances are saved better than with eccentrics and epicycles, is to speak well; there is no danger in this, and it is sufficient for mathematicians.

But to want to affirm that the sun really is fixed in the center of the heavens and only revolves around itself (i.e., turns upon its axis) without traveling from east to west, and that the earth is situated in the third sphere and revolves with great speed around the sun, is a very dangerous thing, not only by irritating all the philosophers and scholastic theologians, but also by injuring our holy faith and rendering the Holy Scriptures false. For Your Reverence has demonstrated many ways of explaining Holy Scripture, but you have not applied them in particular, and without a doubt you would have found it most difficult if you had attempted to explain all the passages which you yourself have cited.

Second. I say that, as you know, the Council [of Trent] prohibits expounding the Scriptures contrary to the common agreement of the holy Fathers. And if Your Reverence would read not only the Fathers but also the commentaries of modern writers on Genesis, Psalms, Ecclesiastes and Josue, you would find that all agree in explaining literally (ad litteram) that the sun is in the heavens and moves swiftly around the earth, and that the earth is far from the heavens and stands immobile in the center of the universe. Now consider whether in all prudence the Church could encourage giving to Scripture a sense contrary to the holy Fathers and all the Latin and Greek commentators. Nor may it be answered that this is not a matter of faith, for if it is not a matter of faith from the point of view of the subject matter, it is on the part of the ones who have spoken. It would be just as heretical to deny that Abraham had two sons and Jacob twelve, as it would be to deny the virgin birth of Christ, for both are declared by the Holy Spirit through the mouths of the prophets and apostles.

Third. I say that if there were a true demonstration that the sun was in the centre of the universe and the earth in the third sphere, and that the sun did not travel around the earth but the earth circled the sun, then it would be necessary to proceed with great caution in explaining the passages of Scripture which seemed contrary, and we would rather have to say that we did not understand them than to say that something was false which has been demonstrated.

One notes here that when Bellarmine admitted the possibility that science could verify a hypothesis that is not geocentric, he was echoing St. Thomas Aquinas' remark in Book II, lecture 17 of his commentary on Aristotle's tractate *On the Heavens*.

There Thomas indicated that Ptolemaic astronomers, those who advocated geocentric hypotheses, were NOT necessarily correct. Thomas suggests that these hypotheses did account for the "appearances" of the solar system but were still on level of suppositions that might not be true. And then Thomas makes a remark that certainly shows he felt free to accept a new discovery that would discount the geocentric hypotheses: "For maybe the phenomena of the stars can be explained by some other schema not yet discovered by men" (as cited by Fr. Ed Oakes in his article "Robert Bellarmine vs. Thomas Aquinas", *First Things,* 17 September 2012).

For our purposes, we note that St. Robert Bellarmine's concern was with the way Galileo was interpreting the Scriptures. Bellarmine's intuition was that Galileo was not making the proper mental distinction between the descriptive point of view – the point of view of the observer, even the Scriptural observer, who is looking at the sun at various points during a 24-hour day and so is noting the sun as a moving object – and the explanatory point of view – the point of view of the scientist who is making calculations according to solar and planetary movements relative to each other independently of any particular observer. Hence Bellarmine felt the need to caution Galileo.

This he does in the next portion of his letter to the same Carmelite superior – it is to be noted that when Bellarmine denies the existence of concrete data that would confirm the heliocentric hypothesis, he was correct within the scientific context of his time: because the necessary instruments for confirming the hypothesis were simply not available, no one, including Galileo, could confirm it. So Bellarmine continues:

> But I do not believe that there is any such demonstration [that confirms the heliocentric hypotheses]; none has been shown to me. It is not the same thing to show that the appearances are saved by assuming that the sun really is in the center and the earth in the heavens. I believe that the first demonstration might exist, but I have grave doubts about the second, and in a case of doubt, one may not depart from the Scriptures as explained by the holy Fathers. I add that the words ' the sun also rises and the sun goes down, and hastens to the place where he arises, etc.' were those of Solomon, who not only spoke by divine inspiration but was a man wise above all others and

> most learned in human sciences and in the knowledge of all created things, and his wisdom was from God. Thus it is not too likely that he would affirm something which was contrary to a truth either already demonstrated, or likely to be demonstrated. And if you tell me that Solomon spoke only according to the appearances, and that it seems to us that the sun goes around when actually it is the earth which moves, as it seems to one on a ship that the beach moves away from the ship, I shall answer that one who departs from the beach, though it looks to him as though the beach moves away, he knows that he is in error and corrects it, seeing clearly that the ship moves and not the beach. But with regard to the sun and the earth, no wise man is needed to correct the error, since he clearly experiences that the earth stands still and that his eye is not deceived when it judges that the moon and stars move. And that is enough for the present. I salute Your Reverence and ask God to grant you every happiness.

Lastly, it should be noted that certain media in recent years have left the general public with the impression that the Church was responsible for Galileo's death. The historical fact is otherwise: Galileo died a very peaceful, natural death in the good graces of a very close personal friend, namely, Pope Urban VIII.

One wonders if one were to make appropriate revisions and corrections of history whether secularization as a systematic way of creating political, economic and social infrastructures would have been as easily accepted as it is.

In the final analysis, as our author Father George Tambala so aptly points out, the truly enlightened are not the ones who try to locate and establish a secularist heaven within the unstable vicissitudes of planet earth with a reckless disregard for religion and morality. The ones who are free of this world's secularist baggage are the ones who are going to entrust themselves to the God who wishes to shine forth through the simple countenance of the child and through the pristine soul of the poor person. When the world recognizes where true treasure lies – within the hearts of the young and the poor – it will come to realize with a bit more intelligence what kind of glorious heaven awaits each and every humble man, each and every humble woman and each and every humble child in the infinite stretch of the beyond on the other side of death (Editor).

The Scope and Application of the Right to Presumption of Innocence in Tanzania

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One of the most important constitutional rights enjoyed by the individual in contemporary liberal democratic and civilized states is the presumption of innocence. Tanzania is one of the democratic and civilized countries which render explicit the right to a presumption of innocence in her constitution. This article seeks to analyze the scope and application of the said right under the legal system of Tanzania with the intention of identifying the problems and obstacles that impede its effective enforcement. Consequent upon this analysis, the present article intends to suggest appropriate solutions.

The present article explores the essence, meaning and historical development of the said right. It further discusses the ideal scope and application of the right to a presumption of innocence as elaborated by other writers; and then the author merges his approach with theirs in examining the constitutional provisions and the judicial attitude to these provisions in the interpretation of the right to a presumption of innocence in Tanzania. The present article reveals that among the obstacles towards full realization of the right to a presumption of innocence are (a) restrictions imposed upon the constitutional provisions, (b) the presence of other laws which are inconsistent with the right to a presumption of innocence and (c) a judicial leaning towards giving a liberal and broad interpretation to the right of a presumption of innocence.

Introduction

One of the most important constitutional rights of the individual in the present liberal democratic and civilized states is the

presumption of innocence which, by definition, means that any accused or suspected person should not be considered guilty or treated as guilty unless proven guilty by a due process of law.[1] Essentially, the rationale for a presumption of innocence is to protect individual freedoms and rights against the intent to arrest arbitrarily, to punish without justifiable evidence, to imprison without a procedure that meets the rigors of true justice, to confine, detain and/ or deport without a due process that meets the requirements of legal justice, whether the acting authority in a particular person's case is the state or those authorized to give indictments. The presumption of evidence is to protect the suspect against all false accusations, whether they originate from the state or from other individuals or groups.

Originally, the presumption of innocence was considered as a rule of evidence in criminal justice which meant that during the segment of judicial proceedings that focused on presentation of evidence, the burden of proof rested with the prosecution, who was admonished to prove beyond reasonable doubt the guilt of the accused person.

As noted by *Ian Dennis,*[2] however, a presumption of innocence applies to any decision-maker; and it reflects moral and political values that are regarded as so fundamental to liberal states that governments and constitutions elevate the rule about the burden of proof to the status of a fundamental human right. This places the right of a presumption to innocence on the same level as the protection of an individual's liberty, dignity and privacy. It therefore requires the state to justify fully its invasion of the individual's interests by proof that an individual has committed an offence, whereby the individual has abused the freedom of action that the liberal state normally accords him or her.[3]

For a country, therefore, to justify its claim that she is in compliance with the right to a presumption of innocence,

[1] M. Clements (2005) "Virtually Free from Punishment Until Proven Guilty: The Internet, Web-Cameras and the Compelling Necessity Standard", *Richmond Journal of Law & Technology* 12/1, 4.

[2] I. Dennis (2007) *The Law of Evidence*, 3rd ed., London: Sweet & Maxwell, 443.

[3] *Ibid.*

examination has to be made not only of the procedures in vogue during criminal trials to determine whether the burden of proof does in fact rest on the accusers; but also of other governmental functions, including the making and execution of laws and law-related processes that may involve this right. What comes to mind, for example, are the institution of laws that elaborate the process for making accusations, conducting investigations, doing the actual arrest and ensuing detention, the preparation and tendering of evidence, prevention of crimes, reporting of crimes, and the law relating to hearing and decision-making.

Whatever the forum, a suspect or accused person should not suffer in any way as if he/she were to be considered guilty before actually being proven guilty by a due process of law. This implies, too, that the presumption of innocence goes beyond public decision makers, to the public at large. It requires the public not to take the law into their hands by attempting to punish suspects by defaming them, for example in the mass media; for by doing so, the public would be doing the same as treating them guilty while indeed they should be presumed not guilty unless proven otherwise by the courts of law or tribunals legally established by law. As such, the laws of the country that define the right to a presumption of innocence should be worded not only with evident clarity but in such an all-inclusive way that the laws ensure that the presumption of innocence is fully observed in every possible forum.

It has already been affirmed that Tanzania is one of the democratic and civilized countries which contain the right to the presumption of innocence in her constitution.[4] Despite having the said constitutional right, the scope that the nation is giving to it and the way the nation is applying it is not currently clear. This article, therefore, seeks to analyze the scope and application of the said right in Tanzania with the intention of identifying the problems and obstacles that impede its effective realization and suggest solutions that would resolve the ambiguities.

[4] Provided for under Art.13 (6) (b).

1. Meaning of the Presumption of Innocence

The term presumption means a premise, conclusion or inference as to the truth of some fact in question based upon the determination that no other facts contrary to the fact in question have been as yet proven or demonstrated to be true.[5]

The term innocence means free of guilt and culpability, absolute independence of any domain that involves evil or wrong.[6] Thus the phrase presumption of innocence means a premise, conclusion or inference as to the truth of a person's freedom from guilt and culpability, or absolute independence of the domain that involves evil or wrong until the contrary is adequately demonstrated.

The presumption of innocence is indeed a fundamental principle underpinning criminal law[7] and is enforceable under the Bill of Rights as enshrined in the Constitution of the United Republic of Tanzania. The basic proposition underlying this right is that a person is innocent until there is a judicial determination of guilt; therefore, a person held in confinement as a pre-trial detainee cannot "be subjected to any form of punishment for the crime which he is charged with."[8] The presumption of innocence only ends once a person is convicted of a crime or enters a plea of guilty that is accepted by the judicial authority and so may now be sentenced.[9]

2. The Origin and History of the Presumption of Innocence

The right to a presumption of innocence (*Ei incumbit probatio qui dicit, non qui negat*) originates from the common law domain of criminal jurisprudence. Even in England, however, there is nobody who can exactly tell as to when the idea of presumption of innocence had originated. Some scholars have claimed that the maxim had been firmly embedded in English jurisprudence since

[5] *Osborn's Concise Law Dictionary* (1993), 8th ed., London, 258.

[6] A.S. Hornsby (2010), *Oxford Advanced Learners Dictionary of Current English*, 8th ed., Oxford: OUP.

[7] *Oxford Dictionary of Law* (2002), 5th ed., Oxford: OUP, v378.

[8] M. Clements, "Virtually Free", 3.

[9] *Ibid.*

the earliest years of the Anglo-Saxon period.[10] One begins to doubt this claim when one takes into account the maxim's notable absence from the Magna Carta and the English Bill of Rights of 1689.[11] One can say, on the other hand, that the principle had been enshrined implicitly ten years before the 1689 Bill of Rights in the Habeas Corpus Act of 1679, which contained the principle that "*nobody may be arbitrarily detained without having his case heard in a court of law*."

The French, with their legal system based on Roman jurisprudence, included an article in the French Declaration of the Rights of Man and Citizen of 1789 stating that 'every man is presumed innocent until declared guilty'.[12]

In the case of *Coffin v. USA*,[13] the Supreme Court of the USA traced this concept from its past history in England, ancient Greece and ancient Rome; but the Court did not state explicitly enough when exactly the concept had started. Despite lacking an exact starting point, however, one can say by implication that the concept has been accepted even in religious books. For instance, the right to presumption of innocence is implicitly recognized in the story of Adam and Eve in Paradise.[14] The same also may be found in the book of Deuteronomy.[15] When Moses decreed that the truth could be found in the testimony of two or three witnesses, he pronounced

[10] K. Pennington (1999), "Innocent Until Proven Guilty: The Origins of a Legal Maxim", http://classes.maxwell.syr.edu/his381/InnocentuntilGuilty.htm.

[11] *Ibid.*

[12] *Ibid.*

[13] Coffin v. United States of America, 156 U.S. 432.

[14] Genesis 3:1-24: when Adam and Eve sinned, God afforded them an opportunity to be heard before punishing them. It is after having given them an opportunity to defend themselves that God punished them, and gave reasons for the punishment. In one sense it is questionable whether throughout the period of the commission of the wrong until the Lord God punished them and drove them out of the garden, the presumption of innocence existed since God knew that they had wronged him. Yet God still presumed them innocent and afforded them the right to be heard. In this way, God laid the groundwork for the notion that when the accused is given the opportunity to speak, facts hitherto unknown may be disclosed that affect a determination about the culpability of the accused. This principle is intrinsic to the presumption of innocence.

[15] Deuteronomy 19:15.

a basic rule of evidence and confirmed the antiquity of a system of procedure accepted by God himself. To put it succinctly, if God must summon litigants to defend themselves, mere human beings must also summon them and presume that every accused is innocent until proved guilty in court.[16]

The right to presumption of innocence became an absolute right and gained great momentum in the twentieth century when it found its way into various international and regional instruments. The United Nations incorporated the principle into its Declaration of Human Rights in 1948;[17] and Europe enacted it in the European Convention for the Protection of Human Rights in 1953.[18] It was further incorporated into the United Nations International Covenant on Civil and Political Rights, 1966,[19] and under Art.7 (1) of the African Charter on Human and Peoples' Rights, 1981.[20]

In Tanzania, the presumption of innocence was first received as a common law principle in criminal Jurisprudence vis-à-vis the Tanganyika Order in Council, 1920, under Art.17 (2) which introduced into Tanganyika the substance of the common law. But since there was no Bill of Rights, the presumption of innocence lacked constitutional protection; hence its recognition and utility for judicial purposes was so limited that it held no significant role in legal/ judicial processes. One would have to say that sometimes it was totally ignored.[21]

The absence of the Bill of Rights in the Constitution afforded the government an opportunity to enact a series of oppressive

[16] K. Pennington (1999), "Innocent Until Proven Guilty".

[17] Under Art.11(1).

[18] Under Art.6(2).

[19] Under Art.14(2).

[20] Adopted by the Organization of African Unity at the 18th Conference of Heads of State and Government on 27 June 1981, Nairobi, Kenya; it went into effect on 21 October,1986.

[21] A few cases decided during colonialism and even after Independence recognized the presumption of innocence on the law concerning bail. For instance, see: *Patel v. R* [1971] H.C.D. No.391 and Chumchua S/o Marwa v. Officer i/c of Musoma Prison and Another, High Court of Tanzania in Mwanza, Misc. Crim. Cause No.2 of 1988.

legislative acts[22] which unmistakably curtailed the individual's right to presumption of innocence even after Independence. The *Preventive Detention Act* of 1962,[23] for instance, which was enacted one year after Independence, gave the president the power to detain any person for an indefinite duration if he or she suspected that such a person might be conducting himself or herself in a manner dangerous to peace and good order or acting in a manner prejudicial to the defense or security of the state.

Alongside the Preventive Detention Act was *the Economic Sabotage (Special Provisions) Act,* 1983, which was enacted specifically to deal with economic offences. It has been said that in March, 1983, over one thousand persons on the mainland had been arrested and detained under the said Act on suspicion of being economic saboteurs.[24] Pursuant to this Act, from 25th March, 1983, onward, hundreds of people were arrested and detained for this hitherto unknown offence; and for several weeks their fate remained unknown, with no permission granted to anyone to visit them.[25]

The National Assembly passed the Economic Sabotage Act itself on the 22nd; the President signed it into law much later. The Act, however, was made to operate retroactively to include criminal action taken against those accused of economic sabotage before the Act was passed. On the 5th of April, 1983, the President announced publicly that the accused would not be sent to court because he distrusted the courts and their procedures. The arrested persons remained under detention, therefore, with no reasonable explanation of a motive for doing so.[26]

This same Act created special tribunals to deal with the offences against the Act, prohibited suspects that appeared before the tribunals from seeking bail, and denied the suspects the help of

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[22] C.M. Peter (1997) *Human Rights in Tanzania: Selected Cases and Materials*, Cologne, Germany: Rüdiger Köppe, 4.

[23] Cap 490 of the Revised Laws of Tanzania Mainland.

[24] I.G. Shivji (1990) "Preconditions for Popular Debate in Tanzania", (unpublished).

[25] J.T. Mwaikusa (1991) "Genesis of the Bill of Rights in Tanzania," *Journal of the African Society of International and Comparative Law* 3, 689.

[26] *Ibid.*

advocates when the tribunals considered their cases. What was worse was that all were denied the right to appeal decisions rendered against them. In a word, those in authority were blind and deaf to the right that one should be presumed innocent until proven guilty.[27]

This situation continued up to 1984 and 1987 when finally the Bill of Rights was enacted into the Constitution and hence became operational. Thus, it was from 1984 onward that the right to a presumption of innocence formally became a constitutional right for Tanzania under Art.13 (6) (b).[28]

3. Scope and Application of the Presumption of Innocence

As previously noted, the scope and application of the right to a presumption of innocence has not been very clear. In their article based on "Research Conducted for the Irish Law Reform Commission on Bail Law, *Una Ni Raifeartaigh*",[29] the Irish Commissioners argue that the lack of clarity on the scope and application of the right to presumption of innocence is occasioned by a divergence of opinion on two basic questions: First, when does the principle of a presumption of innocence come into play? Does it apply at the pre-trial stage or merely at the stage of trial? Second, what does a presumption of innocence prohibit? Does it prohibit punishment in any circumstance other than that which follows upon a criminal conviction; or, alternatively, does it prohibit any restriction on the liberty of the accused based on a premise that he is guilty of the offence charged, even if such restriction on liberty does not constitute punishment?

If the former view is to prevail, it raises the question of distinguishing between punitive and non-punitive liberty-depriving

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[27] *Ibid.*

[28] CAP 2R.E. 2002. The Article provides that, "*No person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of the offence.*"

[29] "Una Ni Raifeartaigh: Reconciling Bail Law with the Presumption of Innocence," *Oxford Journal of Legal Studies,* 17/1, Oxford University Press. Editor's Note: The law that is entitled Una Ni Raifeartaigh, as it is discussed in this article, is Gaelic in origin; this is the indigenous language of Ireland.

measures. The law entitled *Una Ni Raifeartaigh*[30] identifies three distinct approaches to the scope and application of the presumption of innocence: the narrowest approach, the intermittent approach and the broadest approach.

In the narrowest view, the presumption of innocence has no application at the pre-trial stage; rather it is a rule which merely applies at the criminal trial in order to ensure that no conviction is reached unless the guilt of the accused has been proved beyond reasonable doubt.[31] In this view, the presumption of innocence is of no relevance at the pre-trial stage. Thus there can be no objection to pre-trial arbitrary arrest, torture, preventive detention and denial of bail, basing on the presumption of innocence.

Unlike the narrowest approach, the intermediate view holds that the presumption of innocence applies at the pre-trial stage but merely prohibits punishment of the accused for alleged criminal conduct.[32] However, the difficulty posed by this approach is determining the criterion used to identify whether the action taken in regard to pre-trial suspects or detainees is a punitive one or not.

In the broadest view, the presumption of innocence applies at the pre-trial stage and prohibits all restrictions on the accused's liberty and freedoms which are based on a view that he is guilty of criminal conduct.[33] Thus the presumption of innocence from this perspective should inform the entire criminal process from the commencement of proceedings to sentencing. In all respects, the accused should be treated as innocent by the system until found otherwise by the court after a complete trial or upon his or her decision to enter a plea of guilty with all the evidence necessary to substantiate that his plea corresponds to the facts of the case.[34]

The present article undertakes to analyze the scope and application of the said right within the legal system of Tanzania according to the broadest view of the *Una Ni Raifeartaigh* law.

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[30] *Ibid*, 4.
[31] *Ibid.*
[32] *Ibid.*, 6.
[33] *Ibid.*, 5.
[34] *Ibid.*

3.1 Presumption of Innocence in Pre-trial Criminal Proceedings

The criminal pre-trial stage involves several processes: namely, arrest, investigation, release of the accused on bail, and pre-trial detention. Even though in some instances the public is involved, most of these processes involve the police. The narrowest view as seen above does not accept the presumption of innocence during the criminal pre-trial processes. The intermediate approach accepts its application but only with respect to punitive treatment or confinement. By way of contrast, the broadest view of the presumption of innocence maintains that the presumption of innocence applies during the pre-trial stage from the very beginning of the criminal process. This calls upon the need to analyze in detail its application to every aspect of the criminal pre-trial stage.

3.2 The Presumption of Innocence at the Time of Arrest

When it is understood in its broadest sense, one of the most significant applications of the presumption of innocence becomes the protection of individual citizens against arbitrary or illegal arrest. A person should be arrested only when there are reasonable grounds to believe that s/he has committed a crime. While doing the arrest, the police or any other agent of the arrest should not use excessive force[35] and should not subject the suspect to torture such as beatings and other degrading or inhumane treatment since presumably the person under arrest is innocent until there is a judicial determination of guilt.

Before the actual arrest, the suspected person should be informed of the grounds for his arrest[36] and should be read her/his rights including the right to consult a lawyer of his/her own choice.[37] Furthermore, the right to privacy of the suspected person should be observed as much as possible.[38] If the arrest has been

[35] S.21 of the Criminal Procedure Act, 1985 [Cap 20 R.E.2002].
[36] *Ibid.*, S.23 (1).
[37] *Ibid.*, S.53.
[38] *Ibid.*, S.19.

made without a warrant, the arrested person should be brought before the court of law within 24 hours or – if that is not possible – as soon as is practicable. If this does not happen, the police officer should make it his or her responsibility to report all arrests to a nearby magistrate within 24hours.[39] If the one under arrest has not had recourse to any of these possibilities, he or she should be released on police bail.[40]

3.3 The Presumption of Innocence during Investigations

The presumption of innocence according to the broadest view has an impact on the criminal investigation process. During the process of investigation, no person should be forced to incriminate himself by being forced to confess or to answer questions. The accused person should not be subjected to physical or psychological torture or to any other form of pressure in order to confess.[41] In *Saunders v. United Kingdom,*[42] it was observed that the prosecution had to prove its case without the aid of evidence obtained through methods of coercion in defiance of the will of the accused.

The court took it upon itself to recognize that the privilege to exempt oneself from self-incrimination is part and parcel of the presumption of innocence. To safeguard the person's reputation as one that is presumably innocent, the time for investigation while the accused rests in police custody should not exceed four hours; or if the time is to be extended, permission to do this must be obtained from a magistrate. Even in this case, custody should not be more than eight hours.[43]

[39] *Ibid.*, S.33.
[40] *Ibid.*, S.32 (1).
[41] *Ibid.*, S.10 (4-5).
[42] [1997] 23 E.H.R.R. 313; [1996] E.C.H.R. 19187/91.
[43] Ss. 50 & 51 CAP 20, *op.cit.*

3.4 The Presumption of Innocence in the Law concerning Bail

It has been observed by Helen Kijo- Bisimba and Chris Maina Peter (2005)[44] that the right to bail and the presumption of innocence are complementary notions. The rationale for the right to bail is the presumption of innocence which forms one of the pillars of the rule of law.[45] Therefore since every person is presumed innocent until proved otherwise by the court, accused persons should not be held in custody unless there are some compelling reasons to do so.[46] Insofar as it is practicable the accused person should be released on bail; and no person should be denied bail because doing so is like treating the accused as one who is guilty while he is still being presumed innocent.[47]

The conditions for bail should be reasonable and affordable so as not to deter those arrested from seeking the possibility of bail and so as not to deter courts from granting bail. Helen kijo-Bisimba and Chris Maina Peter state that it is improper for the executive and/or legislative authority to set conditions under which the court cannot grant bail.[48] There is no offense for which bail should be statutorily denied because no matter what the nature of the offence for which a person is accused, the offense in question does not take away that right to be presumed innocent until proved

[44] *Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James L. Mwalusanya and Commentaries*, Legal and Human Rights Centre, 203.

[45] *Ibid.*

[46] In Patel v. R [1971] H.C.D No.391 the court stated that a man whilst awaiting trial is as of a right entitled to bail, as there is a presumption of innocence until the contrary is proved; also in R v. Masudi Mahugu [1978] TLR.56 where Samatta, J. (as he was known then) stated that a person should not be remanded in custody unless cogent and compelling reasons are disclosed.

[47] Tito Douglas Lyno v. R [1978] LRT.55 where Mwesiumo, J. (as he was known then) said, among others things, that the court should not refuse bail to an accused person as a form of punishment; since doing so would be to punish the accused before the pronouncement of its verdict.

[48] Justice and Rule of Law in Tanzania, *op.cit,*p.203

guilty.[49] In *State v. Coetzee,*[50] J. Sachs emphasized this imperative significance of the presumption of innocence when he said:

> There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing the conviction of the guilty, the more important do the constitutional protections of the accused become. The starting point of any balanced enquiry where constitutional rights are concerned must be that the public interest in ensuring innocent persons are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book…hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the given, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scale as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption…the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases.[51]

3.5 The Presumption of Innocence in Preventive Detentions

Pre-trial detainees are "individuals, not convicted, who are awaiting trial, held under police custody because they could not get bail."[52] Since the basic proposition of the presumption of innocence is that a person is innocent until there is a judicial determination of his guilt, a person held in confinement as a pre-trial detainee should not be subjected to any form of punishment for the crime for which

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[49] *Daudi Pete v. R, High Court of Tanzania* in Mwanza, Misc. Crim. Cause, No. 80 of 1989, in which s.148 (5) (e) was declared unconstitutional because it contravened the doctrine of the presumption of innocence of the accused person.

[50] [1997] 2L.R.C. 593, South African Constitutional Court as quoted in I. Dennis, *The Law of Evidence,* 444.

[51] *Ibid.*

[52] M. Clements, "Virtually Free", 3.

he is charged. While under police restraint or custody, a person should be treated with humaneness and with respect for human dignity. In no way should any person who is under restraint be subjected to cruel, inhuman or degrading treatment.[53] The police officer in whose custody a person is restrained should provide reasonable facilities to enable the restrained person to communicate with a lawyer, a relative or friends of his choice.[54]

3.6 The Presumption of Innocence and Mob Justice

The law of criminal procedure allows any member of the public to arrest any person who commits an offence in his presence, or any offence involving injury to a person or to property without a warrant. Such arrest may be effected by an eyewitness to the incident, or by the owner of the property or his servants or persons authorized by the owner of the property.[55] But the law allows only an arrest which is lawful and not the taking of the law into one's hands to punish the accused or suspected person. Since the presumption of innocence requires a person to be assumed innocent until there is a judicial determination of his guilt, subjecting a person to mob justice or violence is a violation of an individual's fundamental right to the presumption of innocence.

This has an impact on the media while reporting crimes or suspects. It is inconsistent with the presumption of innocence to report a person as a robber, murderer, thief or criminal, just because he has been arrested or suspected of committing a crime. Whether it is through the media or by some other means, the public should not try to exercise negative influence upon the court by editorial or personal judgments that the accused person is either guilty or not guilty of the alleged crime.

3.7 The Presumption of Innocence during Trial

The presumption of innocence casts the burden of proof upon the prosecution and ensures the accused person a fair hearing. The term "fair hearing" involves many dimensions including the fact

[53] S. 55 (1&2), *op.cit*.
[54] *Ibid.*, S.54 (1).
[55] *Ibid.*, S.16 (1and 2).

that the burden of proof rests with the prosecution save only in those cases when the accused person pleads the defense of insanity or where there is a statutory exception.[56] Lord Sankey refers to the duty of the prosecution with regard to the presumption of innocence as the 'golden thread' in *Wolmington v. DPP*[57] as he states:

> Throughout the web of the English criminal law one golden thread is always to be seen - that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defense of insanity and subject also to any statutory exception. If, at the end of and [throughout] the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, the prosecution has not made out the case and the prisoner is entitled to acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.[58]

Besides the burden of proof, fair hearing requires that, if accused, one be given adequate time and facilities for the preparation of one's defense as well as the right to defend oneself in person or through legal assistance of one's own choosing; or, if one has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. [59] The criteria for the phrase *interest of justice* were stated in *Quaranta v. Switzerland*[60] to include: seriousness of the offence and the severity of the sentence risked, complexity of the case, and the nature of the accused person. A more comprehensive meaning of 'interest of justice' comes to light in *Benham v. United*[61]in which the court observes that where immediate deprivation of liberty is at stake, in principle the interests of justice call for legal representation.

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[56] I. Dennis, *The Law of Evidence*, 146-147.

[57] [1935] AC 462.

[58] *Ibid.*

[59] P. Mahoney (2001) "The Right to Fair Criminal Trial under Art.6 of the European Court of Human Rights," a presentation made at the National Judicial Conference organized by the Judicial Studies Institute in Dublin on 10-11 November, *Judicial Studies Institute Journal,* 110.

[60] [1991] E.C.H.R. 12744/87.

[61] [1996] 22 E.H.R.R. 293.

There can be no fair hearing without legal representation because not every person can stand before the court and defend himself or herself against his or her accuser. As noted in *Lekasi Mesawarieki V Republic* (supra), an accused person cannot get a fair trial without legal assistance. Lord Denning M.R. emphasized the importance of legal assistance in *Pett v. Greyhound Racing Association Ltd*[62] when he stated:

> It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favor or the weakness in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it every day. A magistrate says to a man: "You can ask any question you like!" whereupon the man immediately starts to make a speech. If justice is to be done, he ought to have the help of someone to speak for him. And who better than a lawyer who has been trained for the task? I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth; he also has a right to speak through counsel.[63]

The Supreme Court of the USA again once observed the importance of legal representation during criminal proceedings in the case of *Powell v. Alabama*[64] where the Court held that –

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence; he lacks both the adequate skill and knowledge to prepare his defense, even though he has a perfect one. He requires the building hand of counsel at every step in the proceedings against him; without it, though he is not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Tanzania recognizes the right to legal assistance in the Constitution vis-à-vis Article 13 (6) (a). In criminal proceedings, it is provided for under s.310 of the Criminal Procedure Act, which states that every man accused before any criminal court other than a primary court, may as of a right be defended by an advocate of

[62] [1969]1Q.B.125.
[63] *Ibid.*
[64] [1932] 287 US 45.

the High Court. It is also provided for under s.3 of the Legal Aid (Criminal Proceedings) Act[65]which states:

> Where in any proceedings it appears to the certifying authority that it is desirable, in the interest of justice, that an accused should have legal aid in the preparation and conduct of his defense or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon the issue of such certificate, the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the preparation and conduct of his defense or appeal as the case may be.[66]

Besides the right to legal representation, the presumption of innocence requires that the accused person not be forced to incriminate himself. Thus the presumption of innocence allows the accused person to remain silent. An accused person cannot be forced to testify in court. This right is an inherent facet of the presumption of innocence.[67] That is not all: the right to the presumption of innocence requires that the accused be afforded the right to examine witnesses who are testifying against him or her and to procure the attendance and examination of witnesses who intend to testify on his behalf under the same conditions as witnesses who purport to testify against him/her and the right to counsel during these proceedings.

3.8 The Presumption of Innocence after Trial

The presumption of innocence ends upon conviction or sentence of the accused person. But in case the convicted person wishes to appeal against either the sentence or the conviction, the presumption of innocence should continue until the finalization of proceedings by the appellate court or tribunal. Henceforth, the right to appeal against the conviction or the sentence should not be denied except in cases of a personal plea of guilty in which the appeal against the conviction is not allowed but only the appeal

[65] CAP 21 R.E. 2002.

[66] S.3 CAP 21 R.E. 2002.

[67] In Saunders v. United Kingdom (supra) in which it was observed that the prosecution must prove its case without resort to evidence obtained through methods of coercion in defiance of the will of the accused.

against the sentence.[68] Once one wishes to appeal, he continues holding the right to bail pending appeal and the right to legal representation until the final determination of his appeal.

3.9 The Presumption of Innocence and Administrative Justice

In the modern jurisprudence of administrative law, it often happens that administrative authorities adjudicate upon matters which affect individuals' interests. These quasi-judicial bodies are not dealing with exclusively criminal matters but rather with administrative matters which otherwise would have been decided by courts of law. Since such cases involve individual interests, a substantial degree of fairness is required: this calls for the right to be heard under the maxim *audi alteram partem* – that is to say, that all parties to a conflict have a voice. Although the term 'presumption of innocence' is not used, it is applied, in principle at least, in the sense that no person should be convicted unheard.

The right to be heard essentially arises from the right to a presumption of innocence to the effect that no person should be punished or be made to suffer in any way unless proved to be guilty by a due process of law. Such proofs have to take into consideration the testimony of the accused. That is why Helen kijo- Bisimba and Chris Maina Peter[69]have correctly observed that the presumption of innocence enshrines principles of natural justice especially the principle that requires that no person be convicted who has not been heard. Therefore, the right to the presumption of innocence has a very broad scope of application and indeed forms a cornerstone for the protection of fundamental rights and freedoms.

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[68] The editor notes that it is understood that court authorities have conclusively undertaken all necessary precautions and proceedings to verify that the person really is guilty of the crime for which he or she is pleading guilty. This is to avoid the kind of situation one experienced in the People's Republic of China, for example, where innocent people were entering guilty pleas so as to avoid the severe torture – torture that could appear to a prisoner to be potentially lethal – that was threatened upon them if they were to testify to their innocence. See footnote 84.

[69] M. Peter (1997) *Human Rights in Tanzania,* 203.

The basic question is whether the constitutional provision of the constitution of the United Republic of Tanzania and its interpretation by the judiciary in its practical applications correspond to the broadest view of the scope and application of the right to a presumption of innocence. The discussion concerning this question forms part of the following section.

4. Judicial Interpretation of the Right to Presumption of Innocence under the Constitution of Tanzania

We have already noted that in Tanzania, the right to the presumption of innocence is provided under Art.13 (6) (b) which states: "*No person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of the offence."*

An ordinary or literal meaning of the words of Art.13 (6) (b) indicates that the right to the presumption of innocence in Tanzania would be applicable to accused persons who are charged with a criminal offence. As such, it does not apply to suspects who are not yet charged: hence this would include pretrial detainees together with suspected persons in the process of being placed under arrest. The constitution of Tanzania, therefore, does not provide a broader scope of application of the right to the presumption of innocence.

However, in so far as judicial interpretation of the constitution on matters of fundamental rights and freedoms are concerned, the High Court of Tanzania in *Julius Ishengoma Francis Ndyanabo v. the Attorney General*[70] observed: '*The provisions touching on fundamental rights have to be interpreted in a broad and liberal manner, thereby jealously protecting and developing the dimensions of those rights and ensuring that our people enjoy their rights'*.

Since the right to presumption of innocence goes to the root of individual liberty, it ought to be given a liberal and broad interpretation consequent to the above judicial decision which is in line with the implications of the *Una Ni Raifeartaigh* law, that is to

[70] Court of Appeal of Tanzania at Dar-es-salaam, Misc. Civil Cause of 2001, (unreported).

say, with the broadest interpretation of the application of the right to presumption of innocence.

One of the most delicate questions that has been extensively discussed by the judiciary in Tanzania is whether statutory denial of bail abrogates the constitutional right of the presumption of innocence. The High Court decision of Mwalusanya, J. in *Daudi Pete v. R*[71] marked the beginning of judicial activism in discussing this question since the Bill of Rights came into full force. Justice Mwalusanya found section 148(5) of the Criminal Procedure Act[72]unconstitutional since it conflicts with the right to a presumption of the innocence of an accused person guaranteed under Article 13(6) (b) of the constitution.

Surprisingly enough, the DPP was aggrieved by the decision of the High Court and appealed to the Court of Appeal. In *Director of Public Prosecutions v Daudi Pete,*[73] the Court of Appeal dismissed the case on technical and procedural grounds. The court reached a very narrow conclusion of no value in the protection of individual rights and freedoms in Tanzania. The Court of Appeal found that the trial judge was wrong to frame issues involving the whole of s.148 (4 and 5) of the Act; because the parties before the trial court had raised issues relating only to the provisions of paragraph (e) of sub-section (5) of s. 148 of the Act. The Appellate Court further held that, Section 148(5) (e) does not violate Article 13(6) (b) of the Constitution which prohibits treating an accused person like a convicted criminal because denying bail to an accused person does not necessarily amount to treating such a person like a convicted criminal.

Unfortunately, the Court of Appeal gave a very contradictory interpretation of the right to a presumption of innocence as it is worded in Article 15(2)(a) of the Constitution: that clause indicates that a person may be denied or deprived of personal liberty under certain circumstances; and that denial or deprivation is subject to a procedure prescribed by law. But since s. 148(5) (e) of the Act does not contain the requisite prescribed procedure for denying bail

[71] High Court of Tanzania at Mwanza, Misc. Criminal Cause No.80 of 1989 (unreported).

[72] Cap 20 R.E.2002.

[73] [1993] TLR 22 CA.

to an accused person, section 148(5) (e) of the Act violates Article 15(2) of the Constitution.

The liberal approach in the interpretation of the right to a presumption of innocence should obviously include the liberty of the individual. It is therefore contradictory to hold that a provision that is repugnant to liberty is, at the same time, in conformity with the right to a presumption of innocence.

Although the court concludes by saying that the provisions of s. 148(5)(e) of the Act are unconstitutional and are therefore null and void, the legislature subsumed the substance of its conclusion to sub-section 5(a) which placed the offence of armed robbery in the same category as murder and treason, hence without the possibility for bail.[74] In that sense, the Criminal Procedure Act still violates the presumption of innocence in setting out certain offences which render bail impossible for the accused.

Contradictions between the High Court and the Court of Appeal on the interpretation of the right to presumption of innocence in the case of the statutory denial of bail came to light in *DPP v. Angelina Ojare.*[75] This case involved a person accused of murder contrary to Ss. 196 and 197 of the penal code.[76] The trial magistrate granted bail to the accused person pending committal proceedings, without regard to s. 148(5) (a). The prosecution was aggrieved by this decision and appealed to the High Court but the High Court affirmed the decision of the trial magistrate. The DPP further appealed to the Court of Appeal. Upon hearing the appeal, the Appellate Court adopted the literal approach and thereby quashed the High Court's decision on procedural grounds; it declared that the decision of the High Court was based on a nullity because the trial magistrate had no competence to hear and determine the constitutionality of s.148 (5) (a).

The conservatism of the Appellate Court has not been without impact. For instance, in *Geofrey Eliawony and Three others v. R,*[77] the High Court took the same narrow view as the Court of Appeal

[74]Act No. 27 of 1991.

[75] Court of Appeal of Tanzania, at Dar es salaam, Criminal Appeal No.21 of 1997 (unreported).

[76] Cap.16 R.E.2002.

[77] [1998] TLR 191.

in determining the constitutionality of statutory provisions that prohibit the granting of bail to certain categories of accused persons. Nevertheless, the question as to whether the statutory denial of bail is repugnant to the right to a presumption of innocence surfaced again in the case of *Prof. Dr. Costa Ricky Maharu & Grace Alfred Martin V. AG.* [78] The High Court declared that S.36 (4)(e) of the Economic and Organized Crime Control Act[79] is not unconstitutional in the sense that it abrogates the constitutional right of an accused person to be presumed innocent until proved otherwise, as provided for by Art.13(6)(b) of the Constitution. In its explanation, the High Court made reference to various decisions, including the case of *Edward D. Kambuga v. R*[80] and *Silvester Hillu Dawi v. the Director of Public Prosecutions.*[81]

The Court found the impugned provision unconstitutional since it lays down harsh and unjust conditions because, once charged, a person who does not have the requisite amount will have no option but to accept the deprivation of his or her liberty, not because the offence does not afford the possibility of bail, but because he or she cannot meet the condition of depositing the requisite amount of money. Nevertheless the Court took into account the decision of the Court of Appeal in *DPP v. Daudi Pete*[82] and so concluded that the impugned provision does not offend the right to presumption of innocence as provided for under Article 13(6) (b) of the Constitution.

The broader interpretation of the presumption of innocence further requires that nobody should be forced to incriminate himself; and therefore any evidence extracted through force should not be used against the accused. The High Court and the Court of Appeal of Tanzania have had certain opportunities to examine the effect of such confessions made as a result of torture and force contrary to the right to the presumption of innocence. Among such cases include the case of *Imerimaleva and Others v Dima*

[78] In the High Court of Tanzania at Dar Es Salaam, Misc. Civil Cause No.35 of 2007 (unreported).

[79] [Cap. 200 RE.2002].

[80] (1990) TLR 84.

[81] Criminal Appeal No. 250 of 2006.

[82] *Loc. cit.*

Nhorongo[83] which involved *Sungusungu* extracting evidence from a suspected person by torture.

The plaintiff admitted making a confession that he had stolen cattle from the eight defendants, but claimed that he did so after experiencing extreme torture at the hands of *Sungusungu* and in order to save his life; and that the said confession was absolutely false.[84] He was harassed and tortured for two days consecutively. On the first day he was forced to take off his clothes in full view of the crowd. Next he was hustled away to a place called *Kiwanda* where he was physically tortured and forced to admit that he had stolen cattle. He gave in and made a false confession. On the following day he was first roughed up and later shot on the head with an arrow. The Court of Appeal also considered the scope of license given to *sungusungu* by the *Sungusungu* legislation and held that *Sungusungu* legislation do not give and have never given license to such groups to dehumanize people or procure confessions by torture. Although the Court of Appeal did not specifically mention the presumption of innocence, yet the decision had an impact on the process of procuring evidence.

In contrast, in *Josephat Somisha Maziku V Republic*[85] the High Court observed that while it is a commonplace of law that the condition precedent for the admissibility of a confession is its voluntariness, a confession is not automatically inadmissible simply because it resulted from threats or promises. It is inadmissible only if the inducement or threat was of such a nature as was likely to cause an untrue admission of guilt; and that where a confession is, by reason of threat, involuntarily made, and is therefore inadmissible, a subsequent voluntary confession by the same maker is admissible under designated conditions. Those conditions require that there must be a substantial dissipation of the effects of the original torture or threat, and that it is quite clear that the original torture or threat is no longer the motive force behind the subsequent confession.

[83] [1991] TLR 1.

[84] The editor indicates that the plaintiff's description matches precisely the situation referred to in footnote 68.

[85] [1992] TLR 227.

Examining this decision of the High Court critically, one can note that it has little impact on protecting individuals from unlawful torture and forced incrimination as long as such torture results in a true confession. This is typically contrary to the presumption of innocence and therefore the judiciary has not made progressive protection of individuals in criminal investigations a priority.

As far as the burden of proof is concerned, the presumption of innocence requires that it is the guilt of the person – not his or her innocence – that has to be proven in court: hence, the burden of proof rests on the prosecution. This principle was upheld by the High Court of Tanzania in *Jonas Nkize V Republic*.[86] It was further upheld by the position adopted in *Maruzuku Hamisi V R*[87] that it is not the credibility of the story presented by the accused that is at issue; rather if what the accused presents is enough to raise reasonable doubt about his or her guilt, this suffices for the presumption of innocence. In a word, it is the duty of the prosecution to prove beyond reasonable doubt that the accused person is guilty.

Consequently the burden of proof goes hand in hand with the right to remain silent when interrogated. Yet this position seems to fluctuate when one considers both the High Court's approach and that of the Appellate Court. In *Samuel Silanga V Republic*,[88] the appellant was convicted of murder and sentenced to the death penalty. He appealed against both the conviction and the sentence on the ground that the burden of proof improperly shifted to the defense. The facts as presented revealed that the appellant's palm was stained with blood at a time when a murder involving stab wounds had just been committed in the neighborhood. When he was asked how the blood got on his hands, he kept quiet. The Trial Court inferred guilt because the appellant kept quiet on how he got blood on his right palm.

In its treatment of the appeal, the Court of Appeal held that once it was shown that the appellant's palm was stained with blood at a time when murder involving stab wounds had just been

[86] [1992] TLR 213.
[87] [1997] TLR 1.
[88] [1993] TLR 149.

committed in the neighborhood, and hence at a moment when suspicion was intensifying all over the place, one would expect the appellant to explain how he got his palm stained with blood for the reason that it would be in his best interest to do so. The Appellate Court, therefore, ruled that the Trial Judge was perfectly entitled to draw the inference that the appellant's silence could not be consistent with his innocence.

This decision, therefore, seems to impose a duty on the accused person to speak in certain circumstances in order to prove his innocence.

5. Major Impediments to the Full Realization of the Right to a Presumption of Innocence in Tanzania

Many factors provoke the violation of the right of a presumption of innocence in Tanzania. One of the more evident factors is the narrow scope of the right to the presumption of innocence under Art.13 (6)(b) and the general derogation clause of Article 30 (2) which can easily be invoked to legalize government actions that are inconsistent with the right to a presumption of innocence. Furthermore, the continued existence of certain statutory provisions like s.148 (5) (a) of the criminal Procedure Act and s.36 (4) (e) of the Economic and Organized Crime Control Act is among the barriers towards effective enforcement of the right to a presumption of innocence. Other challenges besides the legal ones are corruption in the judiciary or among police officers; cruelty; abuse of power by state instruments that are coercive in nature; public ignorance of the law; belief in witchcraft; and judicial conservatism in constitutional interpretation particularly in the Court of Appeal.

Conclusion

The constitution of the United Republic of Tanzania provides for a narrow scope of application of the right to a presumption of innocence. The High Court, on the one hand, has shown a positive trend in ensuring that the said right be given a liberal and broad framework of interpretation. However, the Court of Appeal, on the

other hand, has been reluctant to take the view of the High Court; hence, the Appellate Court has narrowed the scope of the right to a presumption of innocence. The stand of the Court of Appeal seem to have discouraged the High Court's capability of an activist approach as was initiated by Justice Mwalusanya in the case *Daudi Pete v. DPP*.

It is worthwhile to stress here that the right to a presumption of innocence is a constitutional right whose scope of application is supposed to range through the entire criminal process at all of its stages, from the initial process of accusation, to all activities related to search and investigation; the pre- trial detentions; the actual court hearing, the conviction, the sentencing and the appeals that may follow. Furthermore, every decision maker should accept the responsibility to protect the right; and the right must preclude mob justice of any kind.

In order to make the right to a presumption of innocence a reality, the author recommends the possibility of bail for all offences, regardless of their severity; and the amount of bond to be posted and the conditions for bail should be reasonable. The conditions for bail should not be spelled out by statute; rather they should be determined by the courts according to the circumstances of each case.

It is further recommended that the prosecution should not interfere with the court's discretionary judgments about the granting or refusing of bail. Constitutional limitations on the right to a presumption of innocence and on other fundamental rights and freedoms should be abrogated. All the laws which are inconsistent with the right to a presumption of innocence should be amended so as to protect the right in all of its facets or – if that is not possible – should be summarily repealed. Lastly, since the judiciary is the guardian of individual liberties and freedoms, it should adopt a liberal and broad approach in interpreting the constitutional provisions for the right to a presumption of innocence as well as all other formulations of the fundamental rights and freedoms necessary to preserve the dignity of the human person.

Transitional Justice Mechanisms in Africa: Peace vs. Justice

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Introduction

> In scores of societies throughout the world that are struggling to come to terms with a legacy of human rights abuse, leaders and citizens have come to realize that adopting a proactive process to deal with the past strengthens the prospects of building a sustainable peace. Those who argue that it is too divisive to confront the past fail to realize that they have little choice in the matter. Historical experience demonstrates that victims and the communities in which they live cannot simply forgive and forget. Ignoring the past often intensifies animosities and anger that cannot be forgotten. All too often, this anger resurfaces through the politics of revenge or aggressive nationalism. Unscrupulous leaders can manipulate past grievances to sow divisions and justify conflict. It may be risky to confront the past, but is it far riskier to ignore it and increase the chance that it will come back to haunt nations that have already endured untold suffering and hardship.[1]

Africa is a continent where conflict is rife. When violent conflicts come to a halt or harsh totalitarian governments collapse, the perpetrators and victims of violence must resettle together in the communities that they both call home.[2] This resettlement is crucial to diminish the likelihood of a recurrence of conflict and finally to ensure that no conflict of any sort will ever happen again. For a state that has emerged from a violent conflict or from the painful strictures occasioned by totalitarian leadership or from a vast array of grievous human rights violations, there ought to be

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[1] P. VAN ZYL, "Transitional Justice: Conflict Closure and Sustainable Peace," *Dispute Resolution Magazine* 9/4 (2003) 8.

[2] J.W. FORJE, Review of *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experience*, ed. by L. Huyse – M. Salter, eds., Institute of Democracy and Electoral Assistance, 2008, 145.

a concrete means of ensuring that the violence, the oppression and war itself have permanently ceased.[3]

It is normal at the end of a violent conflict for the parties to remain with a question of who was in the right and who was in the wrong. In this situation the pursuit of justice and reconciliation is crucial.

Once the conflict has ended, what usually happens is that either one party emerges as a victor ready to determine conditions for what is going to happen next politically, socially, legally, and economically, or both parties perceive and subscribe to the need for the international community to intervene, perhaps by means of identifiable and agreeable mechanisms of conflict resolution in order to settle whatever remains uncertain or controverted.

The United Nations has adopted the Pacific Settlement of Disputes resolution under Article 33[4], a resolution that identifies several means whereby the parties to a conflict can seek to establish terms of peace and then ratify those terms by means of peace agreements. Various African states have attempted to seek viable terms of peace through this kind of resolution, but eventually the measures proposed and adopted have either failed to stop the conflict or from the very first have been ignored by both parties.[5]

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[3] *Ibid*., 146.

[4] The United Nations Charter, 1945, Chapter VI, article 33(1); the charter establishes mechanisms such as, negotiations, mediations, conciliations, judicial settlement, resort to regional agencies or arrangements, negotiations or other peaceful means of their own choice.

[5] L. JUMA, "The Role of Human Rights in Post-Conflict Situations in Africa", *Malawi Law Journal* 2/2 (2008); see also P.C. AKA, "Human Rights as Conflict Resolution in Africa in the New Century", *Tulsa Journal of Comparative and International Law* 11/1 (2003) 182. *Peace agreements* is a term that is used in reference to documented agreements between parties to a violent conflict that establishes a ceasefire and some form of political and legal framework for post-conflict governance. One agreement recognized as a peace agreement was an accord contracted between the apartheid regime in South Africa and the African Liberation group. This agreement was prepared by the Organisation of Africa Union, in Harare. It was called the Harare Declaration of 1994 which facilitated the meeting of Nelson Mandela and FW De Klerk. Other kinds of peace agreements are Sierra Leone's Lome Agreement of 1990 and Angola's Lusaka Protocol of 1994: these peace agreements provide a detailed term of mandate, roles of the parties and

Therefore, it should be noted that peace agreements do not always guarantee the implementation of the peace deal and neither do they necessarily signify a complete cessation of hostilities. Nevertheless these are the normal means for seeking peace resolutions during war time, that is, they aim at insuring that the parties are reconciled or that they reach a consensus and abandon their weapons so that peace talks can take place.

The United Nations Charter has given power to the Security Council to take all the measures necessary to insure that world peace and security are maintained. Under Chapter VII if the UN Security Council sees that all peaceful measures to restore peace and order among the countries at conflict have failed, the Security Council is empowered to take such measures by means of air or sea or land forces to ensure that the parties bring their conflicts to a halt.[6] Despite this provision these military means of peace keeping have proved woefully inadequate due to the fact that the responsible persons in power in some countries have crassly contributed to gross violations of human rights and have spearheaded more conflicts.[7]

1. Colonial Legacy and Armed Conflicts in Africa

Many of the conflicts that took place in the globe in the second part of the last century occurred on the African continent. As studies point out, ever since most of the region became independent

verification procedures for settlement of the dispute. Many scholars, however, have been arguing that many of the peace agreements collapse even before the ink has dried. Nevertheless, peace agreements have become an accepted feature of peace processes; and they contain characteristics that harmonize easily with the plans and measures that correspond to the processes. The signing of a peace agreement is accepted as a common legal practice and the outcome is recognized as the law of peace makers/ *lex pacificatario*.

[6] E. GUILD, "Inside Out or Outside In? Examining Human Rights in Situations of Armed Conflict", *International Community Law Review* 9 (2007) 35; when the military are deployed the perception of serious risk to the society is raised. The duty of the military is to protect the faithful citizen against attack whether within the border, or outside. Therefore, the focus is on the protection of the legitimate group against attack by an enemy.

[7] *Idem:* see the situation in Libya, Nigeria, and Mali, to mention some.

in the 1960's there has been no point in time that a major war is not going on somewhere in Africa. No single country in the continent has collapsed entirely from violence but then not one country has totally escaped periods of militant or subversive strife.[8]

Colonial domination in Africa has had a great influence on these conflicts. The history of many African states shows that due to the nature of the societal arrangements that colonialists were responsible for devising, various sectors, regions and tribes lived as enemies after independence. A good example can be seen in what has happened historically and culturally in Southern Sudan. Southern Sudan became an inevitable candidate for continuing conflicts and troubled transitions by her exposure to hostility-provoking policies that date back to the Middle Ages when Northern Muslim kingdoms conducted slave raids into southern regions. Violence and exploitation became ever more firmly entrenched in the political and social life of the South as a result of ill-advised colonial policies so that in the early 20th century the treatment of South Sudan remained highly discriminatory and so caused even further under-development to be the painful plight of that region.

Post-colonial independence in the Sudan was essentially conceived in terms of post-colonial dependence in matters economic and cultural: terms of agreement proved conducive to continuing economic exploitation through the appropriation of oil and water resources and cultural subjugation through government policies of forced Islamisation and Arabisation. This situation led to a sharp segregation of the people of the south from the people of the north. Consequently southerners suffered much in poverty and unemployment. They were also denied crucial social services for their life necessities. These deplorable conditions, therefore, provoked conflict between the North and Southern Sudan. One important consequence: Southern Sudan has now became an independent country apart from the North. [9]

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[8] P.C. AKAT, "Human Rights as Conflict Resolution in Africa in the New Century", *Tulsa Journal Comparative & International Law* 11/1 (2003) 179.

[9] A.P. DANNE, "Customary and Indigenous Law in Transitional Post-Conflict States: A South Sudanese Case Study", *Monash University Law Review* 30/2 (2004) 201.

Despite the fact that Southern Sudan has gained independence, she has never been in peace and still internal conflicts persist.

The crux of the matter is that Africa is a divided continent; colonial influence is largely responsible for that division.

2. Independence and Human Rights Violations

After independence many among the powerful citizens of various countries who came into leadership became dictators who proceeded to rule their countries without regard for democracy. Totalitarian styles of governing simply eroded into incompetence and inadequacy in governing. In many of these states there was no rule of law. Inevitably, ethnicity and concomitant discrimination of all kinds and the economic problems that such divisive situations foster have come to magnify the tenacious, relentless hatred that has not looked like it is going to dissipate in the near future.[10]

In these contexts of dictatorship regimes and divisive ideologies of ethnic chauvinism, there have occurred massive violations of human rights. Many African countries have manifested an unwillingness to incorporate human rights provisions into their Constitutions and to guarantee these same rights within their state laws. Because Constitutions have been becoming more and more the recognized sources of government's prerogatives, the absence of such human rights clauses has left local and national institutions very vulnerable to abuses of the worst kind.[11]

Due to great violations of human rights and the subjection of peoples who are minorities to the caprice of the majority, the minorities have been rendered powerless and voiceless. They have not been able to hold positions in their very own country. The struggle for democracy in many African states has presaged armed, violent uprisings.[12] The African version of warfare is all too often

[10] *Idem*.

[11] "Priority, Challenges and Agenda for Conflict Prevention and Peace Building in Africa", a report prepared by All-African Civil Society Action Recommendations in Partnership with The African Centre for the Constructive Resolution of Disputes (ACCORD), 2005-2007.

[12] J. ERICKSON, "International Response to Conflict and Genocide: Lessons from the Rwanda Experience", Steering Committee of the Joint

within the boundaries of the same country: civil war or other varieties of general internal conflict have gathered momentum due to human rights violations, totalitarian government policies, and other ways and means devised by leaders to oppress people to whom they should be accountable as their own compatriots.

The uprisings in different sectors of the African continent – uprisings which continue even now – have borne consequences that too many are unthinkable. An estimated nine million Africans have died from the numerous ethnic and religious conflicts that have shaken the continent to its roots. This does not include the countless hours that have ticked by while persons in authority have overseen or directly perpetrated denials of human liberties. Millions of people have suffered dislocation or have been reduced to the plight of refugees; rape, torture, amputation of body parts, forced abortions, persecutions, children displacement, and the collapse of local economies have all served to escalate pain, suffering and poverty in Africa.[13]

These atrocities that have poisoned the atmosphere of the continent at large have evoked concern and compassion within the international community, which in turn has opted to seek interventions by the United Nations and other International Organizations.[14]

3. Dealing with Past Atrocities in Africa

Dealing with the past has become a theme song for many countries emerging from a series of violent conflicts, including genocide, ethnic cleansing, civil war and abuses associated with military dictatorships, one-party states and other forms of dictatorial rule. It is widely believed that leaving past human rights violations unattended will encourage a culture of impunity and fuel the risk for renewed violence. There is a growing academic concern and an increasingly more thoughtful attempt at policy formation

Evaluation of Emergence assistance in Rwanda Publishers, A synthesis report, 1996, 40.

[13] *Ibid.,* 41.

[14] S.N. ANDERLINI – C.P. CONAWAY – L. KAYS, "Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action", *Transitional Justice and Reconciliation Report*, 2005.

that hold as their primary agendum the proper methodology for creating and maintaining a stable peace after a time of conflict.[15]

In conflicts there are those who fully and directly participate in gross violations of Human Rights. These persons ought to be held accountable for the acts they have committed; that is, the international community ought to bring the perpetrators to justice. Nevertheless there is also a great need to ensure that the victims of grave violations of human rights and the perpetrators responsible for those violations come into a state of existence that is more or less peaceful for present and future generations.[16]

4. Transitional Justice Mechanisms

There have been established different mechanisms by both the international community at large and the nations concerned that aim at ensuring that both the perpetrators of gross violations of human rights and the victims come into a peaceful equilibrium with each other, leaving no possibilities for conflict or revenge. These mechanisms have been generally named Transitional Justice Mechanisms.[17] These include both retributive and restorative justice remedies.

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[15] E. SKAAR, "Understanding the Impact of Transitional Justice on Peace and Democracy", paper presented for ECPR, Reykjavik, Iceland, 25th-27th August 2011, 2.

[16] L.K. BOSIRE, "Overpromised, Underdelivered: Transitional Justice in Sub-Saharan Africa", *SUR- International Journal in Human Rights* 5 (2006) 71. Bosire calls for prosecutions, truth-seeking commissions, reparations and institutional reform: all are increasingly common in countries seeking to confront past human rights abuses. These approaches, it is argued, are necessary to combat impunity and enhance reconciliation.

[17] Skaar, *supra* note 15, "The author was of the view that transitional justice mechanisms were normally employed after the fall of an authoritarian regime and the installation of a more democratic regime to deal with past human rights violations or war crimes. However, the practice of addressing human rights violations also now includes measures implemented while a country is still in conflict or in situations of peace-making while the peace is yet not concluded. Recent practice of transitional justice also includes measures taken to address gross violations of human rights committed in the distant past by democratic governments."

The term transitional justice itself connotes the possibility that the justice is not permanent. Not only do these brief examples raise questions with respect to what transitional justice mechanisms are; they also raise questions with respect to the timing for instituting measures of transitional justice.[18] Nevertheless, when speaking of transitional justice mechanisms we ought to ask ourselves is it possible to achieve 'peace and justice' and 'truth and justice' in African states emerging from violent conflicts?

4.1 Retributive Justice Systems

Transitional justice mechanisms incorporate a judicial means of dealing with the actual perpetrators of the war (retributive justice), which entails prosecutions and punishment of the perpetrators of gross violations of human rights and is often based on the need to fulfil the state's international obligation of upholding human rights principles, furthering national healing and reconciliation, providing justice to victims and acting as a deterrent to future violators.[19]

[18] *Idem*; see also T. RUTI, Editorial Note- "Transitional Justice Globalised", *International Journal of Transitional Justice* 2 (2008) 1-4; transitional justice mechanisms have been named by most scholars to include: judicial means, by both the international tribunals like the ICC, established in 2002 and other *ad hoc* tribunals like the International Criminal Tribunal for Rwandese (ICTR), and the International Criminal Court for Yugoslavia (ICTY). Moreover the trend now is to establish national courts which are culturally oriented, for example the GACACA system in Rwanda that was aimed at prosecuting perpetrators of genocide and other human rights violations. Another possibility is to adopt a policy of Amnesty for the accused, with the condition attached that one confesses and seeks apology for the acts committed. There are other measures, too, that have been tried: there have been adopted several non-judicial means of resolving and coming into settlements between the perpetrators and those who are victims of gross violations of human rights: the Truth Commissions are such means. The famous South African Truth commission, for example, set up to deal with apartheid; and the traditional cleansing procedures like those adopted in Sierra Leone by women who were conducting healing and cleansing rituals for their children who participated in the Blood Diamond war.

[19] R. ALDAMA-PINDELL, "In Vindication of Justifiable Victims' Rights to Truth and Justice from State Sponsored Crimes", *Vanderbilt Journal of Transitional Law* 35 (2002) 1399.

The prosecutions of past crimes have been undertaken both by such international courts as the International Criminal Tribunal for Rwandese,[20] the Special Court for Sierra Leone[21] and the Permanent International Criminal Court (the ICC)[22] and by courts that are domestic in nature.

The International Criminal Tribunal for Rwandese

Dealing with cases of extreme Human Rights violations that occur during violent conflict – and perhaps are even the initial triggers of the conflict – has been very challenging as the bitterness and rivalry especially from ethnic differences always survive the war. In Rwanda, for example, where the majority of the perpetrators of the genocide were Hutu and the incoming government was dominated by the Tutsi, the question of maintaining ethnic balance became indeed crucial.

There were a myriad of structural problems that the society had to confront. Since the genocide was widespread, the number of suspects was just too high for a judicial system that was small and

[20] The Statute for the International Tribunal for Rwanda, 1994, Article 1, states that the court shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute. This court was established in 1994 and is situated in Arusha, Tanzania. It has jurisdiction to prosecute perpetrators of genocide crime, crimes against humanity, and those who went against the common Article 3 of the Geneva Conventions and the subsequent protocol II, and also to prosecute other gross violations of Human Rights. also see the case of *Prosecutor vs. Jean Kabanda*, ICTR 97-23-S of 4th September 1998.

[21] The Statute of the Special Court for Sierra Leone, 2004.

[22] The International Criminal Court has been established by the Rome Statute of 2002 and is mandated to prosecute all forms of gross violations of human rights. It is situated in The Hague in the Netherlands, and it has jurisdiction over all states that are party to the Rome statute. Nevertheless it can also be given mandate by the Security Council to investigate and prosecute the perpetrators of human rights violations in countries which are not member states to the Rome statute. Take the example of the resolution 1973 of the Security Council and the Prosecutor of the ICC to open up investigations against the Libya Arab Jamahiriya.

devastated by the conflict. There was the additional quandary, difficult to resolve, that if the majority of those governing tribunals were biased towards the tribe of the initial victims, how were the tribunals going to be able to proceed with those on the side of the victims who committed great atrocities against the perpetrators – who was going to judge them?

This then spearheaded the establishment of the International Criminal Tribunal for Rwandese (ICTR) which was an *ad hoc* Tribunal aimed at bringing to justice and prosecuting the perpetrators of gross human rights violations. The International Criminal Tribunal for Rwanda which was established following the 1994 Genocide in Rwanda after the new government sought assistance from the United Nations to establish a system of retributive justice and so the United Nations Security Council Resolution 1995, established the said court to prosecute those responsible for the Genocide and other serious offences of Human Rights and Humanitarian law, committed in Rwanda and the neighbouring states from January to December 1994.[23]

The Special Court for Sierra Leone

The establishment of the Special Court for Sierra Leone is another kind of a step forward towards ensuring justice for the

[23] Despite the establishment of the Tribunal, the government opposed the establishment of the ICTR for several reasons: the most severe punishment that the tribunal could impose was life imprisonment and not the death penalty. The Rwandan government wanted the accused to be sentenced to death for the reason that they committed gross atrocities. In this regard, the editor – who has had personal experience with the issue in Rwanda – points out that it has been consistently unclear whether the government has favoured the same standards of justice for Tutsis that committed grave human rights violations against the Hutus. Moreover, they also argued that it was improper for the seat of the tribunal to be in Arusha; rather it should be in Rwanda as the proximity of the Tribunal could send a true message of ownership and retribution to the victims of the atrocities. Also they argued that it would be likely that the judges from the countries which were in one way or another biased toward the situations in Rwanda would be the ones serving in the tribunal. Nevertheless, the doubts were not coming from the Rwandan government only but also from other African states who criticized the efficiency of the United Nations which have even failed to control minor conflicts like that of Somalia and the Congo.

victims and punishment for the perpetrators of untold human rights violations in that country. Despite the fact that the Lome Accord by the Sierra Leone Truth and Reconciliation Commission offered amnesty to all those involved in gross violations of human rights, Article 10 of the Statute of the Special Court for Sierra Leone clearly stipulates that the said amnesty cannot act as a bar to prosecution to the perpetrators of human rights violations.[24]This is a step forward towards discouraging acts of impunity after a violent conflict. Now the perpetrators could stand charged in a court despite being granted amnesty.

The International Criminal Court

The establishment of the International Criminal Court (the ICC) has for its aim the mass media presentation of the perpetrators of Human Rights abuses. Exposing them and accusing them in the international public forum within earshot of the entire International Community brings an international dimension to the social justice issue – not only in favour of the victims but also with a vigilance to maintain due process for the accused – that a more limited procedure involving just their neighbours with whom they may have fought a bitter war may not be able to balance. Thus, the Court serves a legitimate purpose for the international criminal process, and for the relevant processes taking place in states.

This procedure carries with it the intention of discouraging the sense of impunity. Besides it relieves local and national governments of the burdens involved when there are too many perpetrators of Human Rights abuses to prosecute.[25]

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[24] See the UN Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, UN Doc. S/2004/616, 23rd August 2004 at paragraph 64, sub paragraph (c). see also W.A. SCHICHABA, "The Sierra Leone Truth and Reconciliation Commission", in N. Roth-Arriaza – J. Marie Zcurrena, *Transitional Justice in 21st Century: Beyond Truth vs. Justice*, Cambridge: CUP 2006, 21- 43

[25] L.K. BOSIRE, "Overpromised", 75. Prosecutions are considered the mainstay of justice. By their punitive nature, prosecutions can help restore the primacy of rule of law and make it clear that its breach carries consequences. The punishment of criminals is one way of providing effective remedies for victims: primarily that obligation falls on domestic courts while the international courts are only complementing the local ones.

The Permanent International Criminal Court (ICC) can only investigate cases of human rights violations of the most severe kind (genocide, crimes against humanity, and war crimes) when the state where the violations have taken place is unable and/or unwilling to prosecute.[26]

The court nevertheless gives a level of impartiality to criminal processes that arises from conflict situations. Also the infrastructure of international prosecution now weighs heavily upon elements that may have wished to wreak havoc on the peace agreements and so return society to war.[27]

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[26] Article 7, The Rome Statute for the Establishment of the International Criminal Court, 2002

[27] Despite this fact the ICC has acquired unpleasant status in Africa. The African countries have stayed reluctant to cooperate with the International Criminal Court. This reluctance of African states to cooperate with the International Criminal Court has led to a situation that retards the proper functioning of the Court. Notably prosecutions lag behind. For a brief history of African support for international criminal justice, see C.C. JALLOH – D. AKANDE – M. DU PLESSIS, 'Assessing the African Union Concerns about Article 16 of the Rome Statute of the International Criminal Court', *Africa Journal for Legal Studies* 4/1 (2011) 13-15; see also The North African AU member state Tunisia decision; International Criminal Court, *ICC – State Parties: African States*, http://tinyurl.com/cpxofco (last visited on February 3rd 2012). This includes North African AU member states Egypt and Algeria, as well as Sudan, which has declared that it no longer intends to become a state party and therefore has no legal obligation to uphold the treaty. See Fact Sheet, *The Rome Statute in the World: 119 States Parties, 32 Signatories, 44 Non Signatories (195)*, Coalition for the International Criminal Court, November 10th 2011, 2–3, at http://tinyurl.com/c6wts23. See also African Union [AU], Decision on the Report of the Commission on the Meeting of African States Parties to the Rome Statute of the International Criminal Tribunal (ICC), ¶ 10, O.A.U. DocAssembly/AU/13(XIII) (July 1–3, 2009); AU, Decision on the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.270(XIV) on the Second Ministerial Meeting on the Rome Statute of the International Criminal Court (ICC), ¶ 5, O.A.U. Doc. Assembly/AU/10(XV) (July 25–27, 2010) [hereinafter Progress Report of the Commission]; AU, Decision on the Implementation of the Assembly Decisions on the International Criminal Court, ¶ 6, O.A.U. Doc. EX.CL/670(XIX) (June 30–July 1, 2011) [hereinafter Assembly Decisions on the International Criminal Court].

The International Criminal Court has now come as a rescuer; this is because many criticisms were directed to the ad hoc International Tribunals over their effectiveness on prosecutions.

The Local Courts

Despite several successful prosecutions that have been taking place within the International arena. States sought it better to adopt domestic judicial system to deal with the perpetrators of human rights violations. This is because many of the international tribunals have had selective justice and that they have been very slow in prosecutions due to too many procedures laid down within the statutes that establish them.[28] Moreover, such International Tribunals suffers from a disadvantage that they operate at a great distance from the state where the crimes were committed, thus the victims lose the feeling of ownership and expenses on taking witnesses to such other country.

The GACACA

Towards these efforts the government of Rwanda established a national court which deals with the huge number of detainees. There was established a traditional court system known as the GACACA[29] with prospects of prosecuting the perpetrators of the crimes of genocide or crimes against humanity.[30]

Despite the great work that the court have contributed related to the prosecution of the perpetrators of human rights violations in Rwanda, the courts have faced great discrimination from within and outside Rwanda. It has been criticized for not meeting the due

[28] The ICTR, for example, has prosecuted very few perpetrators of the genocide in Rwanda leaving a plethora of perpetrators and thereby a need to have a national judicial system to fill the said gap. This was crucial in the establishment of the GACACA.

[29] Established by the Organic Law No. 08/96 of 30th August 1996

[30] The court operates on the basis of local culture and has been justified on the grounds of greater sense of familiarity, respect, truth and commitment to the process than the outside imposed process. *Gacaca* is a traditional mechanism of conflict resolution amongst the Abanyarwanda of Rwanda. This method is used to resolve conflict at the grassroots level through dialogue and community justice system. It is an intricate system of custom, tradition, norm and usage.

process requirements, insensitivity to the rights of the accused, and being too informal.[31] Despite the criticisms the GACACA has demonstrated that the enforcement of Human Rights could also benefit from local customs and cultural systems alongside international law.[32]

Sometimes it may seem that damages done by the trials far outweigh any possible benefits and that the process obviates the immediate need of facilitating national healing after the conflict.[33]

This is why some societies opt for other methods and seek to create mechanisms for healing that are not penal in nature. However, **it has proved pertinent that upholding justice and fostering some kind of recognition of and taking action on past violations, however painful, may ultimately help a nation heal the wounds of atrocities and political conflict** (emphasis added).[34]

4.2 Restorative Justice Mechanisms

The Truth and Reconciliation Commission

Most of the African countries have adopted other non-judicial mechanisms (restorative justice mechanisms) which aim at bringing peace within the country after gross violations of human

[31] The editor notes that there are cases where a Rwandan citizen can be imprisoned for simply voicing a critical comment about the GACACA. With the permission of the local government, he interviewed one prisoner who was semi-literate and imprisoned for three months for making a simple one-minute comment about the GACACA when she was with her neighbours at the street market. Her tragedy continued when she and her four children found out that they lost their home during the time of imprisonment. The editor remarks that this hypersensitivity seems to colour the behaviour of local authorities: it is not necessarily originating with those who hold power in the federal government.

[32] E. DALY, "Transformative Justice: Charting a Path to Reconciliation", *International Legal Perspectives* 12 (2002) 183

[33] *Idem*.

[34] It is submitted that in the context of widespread abuses of human rights prosecutions can be insufficient in achieving the accountability partly because they approach human rights abuses on an adversarial, case-to-case basis and can be costly and lengthy. At best, trials paint an incomplete picture of the past and offers equally incomplete justice.

rights. Some have established, for example, Truth Commissions, which are non-judicial and temporary investigative bodies that are often established to clarify the truth about atrocities that violate human rights during conflict. These commissions are intended to clarify the events that took place during the conflict. They normally produce reports based on their findings and offer recommendations for what can be done to address future threats or make reforms that would obviate the threats.[35]

The main goal of these commissions is to explore and highlight the root causes of the conflicts and the roles played by institutions involved in the conflicts. At an optimal level of functioning, they provide accurate documentation of Human Rights violations that have taken place during the conflict; and they normally allow the victims to share their stories, according to what they can recall, of what exactly happened.[36]

Sometimes truth commissions have not ended there but have gone further by naming the perpetrators of gross violations of human rights, providing amnesty[37] and ordering the payment of reparations to the victims.[38]

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[35] M. KAMALI, "Accountability for Human Rights Violations: A Comparison of Transitional Justice in East Germany and South Africa", *Colombia Journal of Transitional Law* 40 (2001) 125.

[36] J. TORPEY, "Introduction: Politics and the Past", in J. Torpey, ed., *Politics and the Past: on Repairing Historical Justice*, 2003, 9-10; critics of the most visible truth commission, the South Africa Truth and Reconciliation Commission have urged that by granting limited amnesties in exchange for testimony, the South African Truth and Reconciliation Commission famously traded justice for the truth which may have provoked deep resentment on the part of many who had been victimized by the state security forces or on the part of the families of those victims.

[37] Amnesty as given by a truth commission or other traditional commissions has been quite controversial. This is because Amnesty is a pardon/freedom from punishment granted to the perpetrators with the aim of promoting social reconciliation. This ought to be given openly and expressly granted by the commission. Usually the body that has power to grant amnesty is either the president or the parliament of the state but also a body that has been established by the government can be given such powers; for example, the South African Truth and Reconciliation Commission.

[38] *Idem*.

In its report the South African Truth and Reconciliation Commission was of the view that, in giving amnesty in exchange for truth, it grounded the justification for the amnesty process in the desire to compile the most complete history possible. The amnesty process, in other words, was the key to eliciting as much truth as possible about past atrocities. The primary sources of information were the perpetrators themselves who without the option of applying for amnesty, would probably not have told their side of the story.[39]

For many victims, however, the granting of amnesty was a high price to pay for the public exposure of perpetrators.[40] Yet, as many commentators noted, trials would probably have contributed far less than did the amnesty process towards revealing the truth about what had happened to many victims and their beloved ones.

Other African countries have gone further in adopting a variety of customary methods of reconciliation, healing and peace-building. These mechanisms have proved to work very well, despite the criticisms by the international community that the said mechanisms by themselves violate the human rights of the accused.

Traditional Methods: Alternative to Prosecutions

Traditional methods are an alternative to prosecutions. They are made up normally of community-based groups like those which are faith-based, or are made up of respected leaders of the society. They have been considered as worthwhile initiatives as they reduce the burden of prosecution. They are also more familiar and more acceptable to the population, and therefore they have had more of a chance to be successful in the reconciliation process.[41] Such is

[39] S. DE VILLIERS, ed., "The Report by the Truth and Reconciliation Commission of South Africa", chapter 5, paragraph 64-66, volume 1.

[40] It is a perennial observation on the part of those who serve the families of victims of atrocities that the line of distinction between the desire for justice for one's beloved deceased and the desire for retaliation/revenge can become very thin. Psychologically the desire for retaliation does much more damage to the heart of the one targeting the perpetrator for revenge than it does to the perpetrator so targeted (Ed.).

[41] T. KARBO – M. MUTISI – the UNDP/BCPR, "Psychological Aspects of Post-Conflict Reconstruction: Transforming Mindsets: The Case of the *Gacaca* in Rwanda," a paper prepared for the Ad Hoc Expert Group Meeting on Lessons Learned in Post-Conflict State Capacity: Reconstructing

the case, for example, with the *mato oput* of Northern Uganda. One can also cite the *Gadaa* system among the Oromo of Ethiopia, a system of age-grade classes that succeed each other in assuming political and social responsibilities. A complete *Gadaa* cycle consists of five age-grades. The authority held by the elders is derived from their position in the *Gadaa* system.[42]

A third example of a traditional group that can wrestle with these sorts of cases is that of the *guuirt* of Somaliland. The *guuirt* is the highest-level council of elders in Somaliland and the highest traditional authority. The council is headed by clan leaders or Sultans, and each council consists of a body of elders which represent the lineages in the clan.[43]

4.3 Why Transitional Justice Mechanisms?

All transitional justice mechanisms fulfil the same purpose more or less. They all are established to assist countries which are emerging from conflicts that have involved gross human rights violations to reconcile and put an end to such conflicts.

They all attempt to heal the wounds that the victims have suffered and hence aim at the reconciliation and healing that are rendered possible by bringing closer together members of the concerned societies through truth-telling.

Moreover, they aim at providing justice to victims and accountability to perpetrators of human rights violations, and sometimes aim at creating accurate historical records of what really happened and what were both the proximate and the remote causes of the conflicts.

They aim, therefore, at promoting a sustainable peace among the members of the society while maintaining in force an authentic

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Governance and Public Administration Capacities in Post-Conflict Societies, Accra, Ghana, October 2-4, 2008.

[42] Post-conflict *Mato oput,* the drinking of a bitter herb from the *Oput* tree is a detailed ceremony that is conducted during reconciliation among the Acholi of Northern Uganda. The resolution of the conflict is symbolized by conflicting parties drinking a bitter herb from the same pot.

[43] *Ibid*. For details, read Gumii Bilisummaa Oromiyaa, *Understanding the Gadaa System*, 2000, http://www.gumii.org/gada/understd.html.

deterrence to perpetrators of human rights violations who may be tempted to repeat such atrocities in the future.[44]

Despite the efforts made by the African countries to address past human rights violations and to adopt mechanisms that are aimed at deterring people and bringing peace through reconciliation among the members of the society, there have arisen conflicting and challenging stands among the scholars of what are the best mechanisms to be adopted in countries that are just emerging from internal conflicts.[45] The controversy that arises hinges on the relationship between mechanisms of accountability and those of peace-building in Africa. Here the questions are: can retributive justice and restorative justice co-exist as realistic ways of resolving the harm caused by past atrocities? If so, will the mechanisms of justice enjoy permanence and will they bring lasting peace?

Two criticisms are often levelled at a transitional justice approach. First, it is often argued that transitional justice draws morally arbitrary distinctions in deciding which groups to benefit or what types of harm to compensate. For example, the South African Truth and Reconciliation Commission (SATRC) came under a great deal of criticism in its decision to limit its investigation to gross violations of human rights defined as the killing, abduction, torture or severe ill-treatment, thereby excluding millions of black Africans who suffered socially and economically under the system of apartheid.[46]

A second criticism is that transitional justice judgments cannot be fairly implemented because the past actions of former officials were often motivated by a plethora of reasons that are difficult to distinguish from rationalizations – not least of which is the

[44] M. DAVID, "Truth-Seeking, Truth-Telling, and Post conflict Peace building: Curb the Enthusiasm?" *International Studies Review* 6/3 (2004) 355-380; see also S.N. ANDERLINI – C.P. CONAWAY – L. KAYS, "Inclusive Security", 1.

[45] P. VAN ZYL, "Transitional Justice", 6.

[46] M. KAMALI, "Accountability", 126

argument that many collaborators participated in a dirty regime because they were forced.[47]

Despite these criticisms, there is no denying that the movement from repressive regimes to democratic societies has become a worldwide phenomenon and transitional justice approaches provide the greatest hope for shepherding broken states toward a stable and just peace.[48]

5. The Co-Existence of Transitional Justice Mechanisms

There are two underlying values involved in Transitional Justice Mechanisms: *justice and reconciliation*. Although they appear to be at opposite ends of the spectrum, the goal in both cases is an end to the cycles that perpetuate war, violence and human rights abuses.

In the aftermath of conflict or authoritarian rule, people who have been victimised often demand justice.[49] The notion that there cannot be peace without justice emerges forcefully in many communities. But justice can be based on *retribution* that is, punishment and corrective action for wrongdoings or on *restoration* which emphasises in the construction of relationships between the individuals and communities.[50]

Historically, criminal law was based upon a retributive system, the system that focuses on the fact that the perpetrator has committed a crime and thus should be punished. Central to a retributive justice system is the concept of just deserts. The system's primary goal is to make sure that offenders get what they deserve. Until fairly recently a retributive justice system was also

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[47] N. VALJI, *Trials and Truth Commissions: Seeking Accountability in the Aftermath of Violence*, 2004; http://www.justiceinperspective.org.za/

[48] *Idem*.

[49] As noted in a previous footnote, what constitutes a demand for justice and what constitutes a desire for revenge can become a matter of confusion. Hence the need to carefully frame the notions of retributive and restorative justice. (Ed.)

[50] J. HERMAN, *et al*., "Beyond Justice Versus Peace: Transitional Justice and Peace Building Strategies", A working paper by the UNDP and the Justice and Security Sector Reform, 2010, 3.

the primary paradigm in international criminal law and some believed that such a system served to support the rules of international law.[51]

But recently it has been argued that a retributive system has limited utility in resolving protracted ethnic and sectarian conflicts. To resolve a conflict is to leave the conflicted parties with institutions and attitudes that favour peaceful interactions. This sort of resolution requires the establishment of *working trust.* Such trust is undermined in a retributive system, which makes the conflict resolution process less stable and reconciliation less likely. Similarly, as victim's rights are often subordinated in a retributive justice system, Howard Zehr, the "grandfather of restorative justice", has identified four victims' needs that a retributive justice system neglects: information, truth-telling, empowerment, and restitution.[52]

It is a fact that even where a recovering state pursues prosecutions in the most widespread manner possible, which is rarely an option given such limitations as (a) the lack of evidence and the lack of capable resources and personnel in the judicial systems with their procedures; (b) competing priorities, and (c) the potential threat to the peace process, in the context of states who are undergoing transitions there will likely remain a large impunity gap.[53] As a result, comprehensive redress requires the establishment of the numerous and complementary initiatives.

States faced with a legacy of past human rights violations are employing a variety of responses over the long term. In the past, however, these varying options were generally pursued in isolation from each other. The gaps in time between tribunal hearings and the lack of ability to bring trials to a lawful termination could add to the ineffectiveness of these options. It was generally assumed that the pursuit of retribution characterized by prosecutions or the

[51] W.A. SCHABAS – S. DARCY, eds., Truth Commissions and Courts: the Tensions between Criminal Justice and the Search for Truth, Kluwer Academics Publishers, 2004, 2.

[52] *Ibid.*, 5 and 6.

[53] "Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies", a report of the Secretary-General to the Security Council, 3rd August 2004, UN Doc. SC/2004/616.

pursuit of reconciliation characterized by truth commissions, and the non-judicial accountability mechanisms that were either noticeably in high gear or lamentably non-existent – all of these variables were not only difficult to assess with exactness but also could be mutually exclusive or even at odds with each other.[54]

In Rwanda, for example, the 1994 genocide was a vituperative form of conflict that scarred ethnic relations, broke trust, exacerbated hatreds and promoted the intergenerational transmission of trauma.[55] Deep fear, distrust, depression, and sense of hopelessness could last long after the conflict was supposedly resolved. Therefore the concentration on only one form of transitional justice mechanism, notably, the retributive system, which focuses on the principle of just desert may not serve as a clear means to insure non-recurrence of violence especially in a country with diverse cultural differences and ethnic hatred like Rwanda.[56]

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[54] M. PARLEVLIET, *Rethinking Conflict Transformation for a Human Rights Perspective*, Research Centre for Constructive Conflict Management, Rwanda, 2009, 12; the author stresses that, there are however, growing examples today of both objectives/mechanisms being pursued simultaneously through distinct mechanisms. Example in Sierra Leone has established both Hybrid Tribunal as well as truth commissions; the two operates side by side, the 1st time that two such mechanisms have operated simultaneously. This has been a current trend as currently there are plans in place or both mechanisms to be established in Burundi. See also Schabas *supra* note 42, 2

[55] The author of course recognizes the healing effect on inter-tribal relationships of such post-genocide events as the voluntary sacrifice made by the forty teenagers of Bururi in Burundi – a thoroughly integrated group of Hutus and Tutsis – who chose to suffer death by execution rather than give information about each other's tribal identity that would have endangered their classmates. Receiving the honorific title of "Martyrs of Christian Brotherhood," their unassailable fidelity to the social norms of peace, reconciliation and solidarity provide ample proof that not all in the Rwanda/Burundi region are bent on continuing the disrespect that creates spirals of hatred and hostility. (Ed.)

[56] T. KARBO – M. MUTISI, "Psychological Aspects of Post-conflict Reconstruction: Transforming Mindsets: the case of the Gacaca in Rwanda", Paper Prepared for Ad hoc Expert group Meeting on Lessons Learned in Post-conflict State Capacity: Reconstructing Governance and Public

Having more than one mechanism to deal with the past allows for complementarity.[57] That is, creating a system of multiple strategies as part of a comprehensive response where accountability and retributive justice are sought for those who bear the most responsibility no matter which side of the conflict they were on, alongside alternative mechanisms for lower levels of transgression or for those who cannot be held judicially accountable. Proceeding with the appropriate distinctions in mind can surely serve to effect a reconciliation and a reintegration in society that is more all-embracing.[58]

Conclusion

When a violent conflict reaches a point of cessation of hostilities, the need to make a clear selection of an effective mechanism for restoring justice and peace is crucial. The question of what really happened and finding who did what and to whom is not a simple one to answer. The choice of the best transitional justice mechanism to apply in a specific post-conflict situation ought to be considered critical.

Every post-conflict situation leaves wounds of one type or another depending on the geographical spread of hostilities, the number of the victims, the relationship of the victims to the perpetrators and the causes, remote and proximate, for the conflicts.

When violent conflict is the issue at hand, how hostilities originated and developed, how they came to cease, the aftermath of hostilities in terms of human anguish, injury and death – all that

Administration Capacities in Post-Conflict Societies, Accra, October 2-4 24th 2008.

[57] D.L. HAFNER – E.B.L. KING, "Beyond Traditional notions of Transitional Justice: How Trials, Truth Commissions and Other Tools for Accountability Can and Should Work Together", *Boston College of International and Comparative Law Review* 30 (2007) 91, 93; in the aftermath of civil conflict marked by widespread human rights violations, the international criminal tribunal alone cannot bear the full burden of doing justice and stitching polities back together. They must be augmented by other mechanisms.

[58] *Idem*.

happens and the consequences of all that happens – are specific to the country or countries involved in the conflict. What happened in Rwanda is not what happened in the Sudan; the atrocities committed in Sierra Leone are not the same as those suffered in the South African Apartheid regime. Which transitional justice mechanisms a country needs to adopt will depend on that country's experience of hostility and atrocity. A country does not have to imitate thoughtlessly the decisions that another country is making: indeed each country should accept accountability for its own transitional justice mechanisms.

The need for the co-existence of different kinds of transitional justice mechanisms, typically, those that are retributive in nature with those that are restorative, depends entirely upon the specific situational variables. The focus is to ensure that the community comes to a consensus and a lasting peace.

The adoption of the Truth and Reconciliation Commission was crucial in South Africa to ensure lasting peace by embracing the notion of "UBUNTU" the traditional sense of brotherhood. This is one of a restorative justice whereby the commission aimed at compiling an extensive history of what really happened and offered amnesty to the perpetrators in exchange for their confession. To the victims it was a high price to pay, though it ensured them of clear details of what really happened to their beloved ones… not to mention the fact that for the perpetrators confessing in public was in itself perhaps an exceedingly severe punishment that they had to endure.

In South Africa the co-existence of restorative justice and retributive justice mechanisms required taking into account how widespread the violations were and the relationships that existed between the victims and the perpetrators. The convictions of those who held a higher rank and were guilty of giving grossly unjust orders brought a satisfaction to the victims that could not only carry the knowledge that justice was done but could also publicly witness the exercise of justice. .

On the other hand the situation that took place in Sierra Leone is different all together. The atrocities were caused by the civil war most politically motivated. The need to establish a strong court to deal with the high level leaders/the perpetrators was crucial the

establishment of the Special Court for Sierra Leone was a step forward to ensure the sense of justice to the victims. Nevertheless, the said court could not heal the wounds of the child soldiers who were psychologically affected with the war. The role of a traditional means of healing was formulated. The role which the Sierra Leonean women played was crucial to ensure lasting peace.

As far as Sierra Leone has been concerned, the blanket amnesty may not have matched the actual scope of the atrocities. Those in authority believed that to adhere to the requirements of prudence, it was necessary to wave the Lome Accord and give the court the right to prosecute the perpetrators of war even if the amnesty applied to them. To do otherwise – in other words, to effect a blanket amnesty unconditional in its scope – could have brought chaos to the country.

As far as Rwanda was concerned, things were a bit shaky due to the nature of the conflict. The atrocities were very wide-ranging. There seem to have been atrocities on both sides even though retaliatory acts of aggression on the part of the initial victims towards the perpetrators have not yet become a public issue. What makes the situation fraught with tension is the fact that the victims and the perpetrators are closely related, because the conflict has involved two big ethnic groups in the same country.

The need for a clear and strong judicial system has spearheaded the formation of the *ad hoc* Tribunal (ICTR) which has aimed at prosecuting those people of Rwanda responsible for serious violations of international law.

Despite this effort the Abanyarwanda have not been satisfied and the feeling of injustice has persisted among the victims and perpetrators. The formation of the GACACA was the solution proposed in Rwanda to bring a sense of justice and insure lasting peace for the country.

What is disturbing in all these African countries that have suffered conflict is the tension – the tension that mushroomed into a host of atrocities – that separates **Victims and Perpetrators.** Pertinent to transitional justice is the question of how to address individual culpability within a context of collective victimisation.

Most advocates of formal trials would argue that perpetrators need to have their day in court, contending that this kind of decisive

intervention by the courts will contribute to sustainable peace, help establish the rule of law in the wake of lawless rule, and counter the desire for revenge by victims. Above all, prosecution is seen to be a deterrent to future gross violations of human rights – although there is no evidence to date that the ICC indictments have deterred either government or rebel forces in Uganda, the DRC or elsewhere to stop committing atrocities. In other words, the correlation between what advocates contend and actual facts seems at present to barely exist.

The question is whether the threat of prosecution in polarised communities – where killers are often driven by deep beliefs based on clan, ethnicity and other ideologies – is ever enough to deter killing. When prosecutions are seen as a form of victor's justice imposed by outside agencies, which is often the case in international tribunals and the ICC, prosecutions may indeed do little more than intensify the spiral of violence.[59]

Therefore there can never be a single answer as to what are the best mechanisms of Transitional Justice for ensuring Peace and Justice in a particular context. It depends on common sense, the actual situation of the said post-conflict community, and the aspirations of all concerned to a culture where the prevailing atmosphere is that of genuine moral integrity at all times, in all places, with all people, and by all means.

[59] Justice and Reconciliation Project (2008).

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