

**‘We cannot just continue as if nothing
has happened between us’¹**

SOLA GRATIA AND RESTORATIVE JUSTICE²

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Abstract

This paper is a Biblical and Reformed theological perspective on the unfinished work of the Truth and Reconciliation Commission (TRC) in South Africa. It argues that we as South Africans should deal with our past through a theologically motivated restorative justice in order to resist both cheap reconciliation and a politically expedient selective and judgemental memory. This theological motivation is found in select Biblical traditions and the core conviction of the Reformed faith about the relation between grace and works. Practical suggestions about how to complete the unfinished task of the TRC are made in the end with reference to moral and material compensation.

“In April 1994 South Africans experienced the miracle of a peaceful election, marking our transition to democracy... Now, in order to nurture and to preserve our fledgling democracy, we have to deal with the legacies of the past. These legacies present an almost overwhelming agenda.”³

People the world over know that South Africa chose to deal with its past structurally via the now famous Truth and Reconciliation Commission (TRC), chaired by Desmond Tutu. Set up in terms of the significantly named “Promotion of National Unity and Reconciliation Act” (Act 34 of 1995), the Commission recently (2002) completed its task and submitted a final report published in several volumes since 1998, the fourth of which deals specifically with faith communities.⁴ Much theological reflection accompanied the work of the

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1. Revised form of a paper presented in a seminar on *Gerechtigkeit* at the Ecumenical Institute, University of Heidelberg, Germany, on 21 November 2002. The quotation is from Willie Jonker’s speech at the Rustenburg Church consultation in November 1990 and directly precedes his epoch-making confession (discussed below) in the text. See Willie Jonker “Understanding the church situation and obstacles to christian witness in South Africa” in *The road to Rustenburg* edited by Louw Alberts and Frank Chikane (Cape Town: Struik, 1991), 87-98.
 2. I choose this term to distinguish this type of justice from for example procedural or distributive justice. Depending on how one interprets these forms, restorative justice could be closely linked to “corrective” or “restitutive” justice, but I understand restorative justice as a more encompassing form of justice that would in most cases include the “correcting” of past injustices. I need to study Willa Boesak, *God’s wrathful children: Political oppression and Christian ethics* (Eerdmans: Grand Rapids, 1995) and his call for corrective justice as positive vengeance (226-228) more carefully to see if my theological suspicion against retributive forms of justice is justified.
 3. Denise Ackermann, “Take up a taunt song. Women, lament and healing in South Africa” In Leny Lagerwerf (ed.), *Reconstruction. The WCC assembly in Harare 1998 and the churches in Southern Africa* (Meinema: Zoetemeer, 1998), 135.
 4. *Truth and Reconciliation Commission of South Africa Report*, Vol 4 (Cape Town, The Commission, 1998), 59-92. This is imperative reading for any believer in South Africa as it *inter alia* reveals the deep ambiguity of religion as both oppressive and liberative.

commission as South African theologians,⁵ and later German theologians,⁶ attempted to think through the complex issues of truth, reconciliation, collective guilt, the narrative structure of healing processes and forgiveness. Much criticism⁷ was levelled against the Commission, described by Tutu himself as “a risky and delicate business, but still the only alternative to Nuremberg on the one hand and amnesia on the other”.⁸

There are still two outstanding issues to the work of the Commission: First is the question of amnesty or alternatively criminal prosecution of those who did not divulge serious human rights abuses to the Commission. If such prosecutions are not followed through, the unintended consequence will be general amnesty without justice or truth. Second is the issue of reparation to victims of human rights violations. If that is not forthcoming, the consequence would be cheap reconciliation⁹ in both the material and moral sense of the word.

Both are important issues on the “overwhelming agenda” of dealing with our past. I would like to make a few comments on the second issue of reparation, or – in theological language – restorative justice, linked to the questions of memory, truth and reconciliation:

True restorative justice can only grow from its theological roots in God’s inexplicable mercy. There is a strong tradition in the Old Testament¹⁰ that God restores the relation with Israel at God’s initiative and despite God’s and Israel’s knowledge that God could claim restoration for past injustices, but refrains from doing so. A good example is the exilic text in Jer 31:31-34. After prophecies on the restoration of Israel from chapter 30:1 onward, the announcement of a new covenant (*berit hadascha*) follows, despite Israel’s clear guilt in not keeping the old covenant (31:32). In the new covenant God’s law is written on their hearts. To make this new beginning possible, God does not claim restorative action from his people for their past, but in fact frees them from that past: “I will forgive their sins and I will no longer remember (*lo ezkar-yod*) their wrongs” (Jer 31:34).

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5. For an introduction of the TRC to a German readership, and substantial literature, see Dirkie Smit, “Keine Zukunft ohne Vergebung? Vom Umgang mit den 20. Jahrhundert in Südafrika” *Evangelische Theologie* 62, Heft 3 (2002), 172-187. The list of South African contributions would be too long to include here. I merely refer to the important reflections by Tinyiko Sam Maluleke, “Truth, national unity and reconciliation in Southern Africa” *Missionalia* 25,1 (April 1997), 59-86; “‘Dealing lightly with the wounds of my people?’ The TRC process in theological perspective” *Missionalia* 25,3 (November 1997), 324-343; and Annalet van Schalkwyk, “A gendered truth. Women’s testimonies at the TRC and reconciliation” *Missionalia* 27, 2 (1999), 165-188.
 6. I do not have a full list, but had access to the following: Geiko Muller-Fahrenholz, *The art of forgiveness. Theological reflections on healing and reconciliation* (Geneva: WCC, 1996); Theo Kneifel, *Zwischen Versöhnung und Gerechtigkeit. Südafrika: Der Spagat der Kirchen nach der Apartheid*. (Hamburg: Evangelisches Missionwerk in Deutschland, 1998); Ralf Carolus Wüstenberg (ed.), *Wahrheit, Recht und Versöhnung. Auseinandersetzung mit der Vergangenheit nach den Politischen Umbrüchen in Südafrika und Deutschland*. (Frankfurt am Main: Peter Lang, 1998) and his still to be published habilitation thesis as reflected in “Reconciliation with a new lustre: The South African example as a paradigm for dealing with the political past of the German Democratic Republic” *JTSA* 113 (2002), 19-40 (see this article for further German-related work).
 7. There were many points of concern raised about the Commission’s work, but the one relevant to my point here is that – in the absence of restoration – the TRC could amount to cheap reconciliation in the theological and material sense of the word. See Maluleke, *Dealing lightly*, 339-341.
 8. *Sunday Times* 8 Dec 1996, quoted by Ackermann, “Take up a taunt song”, 134.
 9. For an excellent discussion of cheap reconciliation in covenantal perspective, see Adrio König, “Is versoening (te goedkoop?” In PF Theron and J Kinghorn (eds.), *Koninkryk, kerk en kosmos* (Pro Christo: Bloemfontein), 130-143.
 10. The English translations of all references in this paper are from the Good News Bible. I have – where necessary – adapted the verses to conform to the original Hebrew as contained in *Das Alte Testament: Hebräisch – Deutsch* (Stuttgart: Württembergische Bibelanstalt, 1971, 16th edition), and took the liberty to make minor translation changes based on the original. The New Testament Greek is from the Nestle-Aland text.

In the NT this is taken up by the writer to the Hebrews, most probably a small Christian community of Jewish descent close to Rome in about 60AD(?), and under persecution by both members of their former faith and the Roman state. The writer goes to great lengths to explain the gospel of Christ in the priestly and covenantal terms known to the readers. To emphasise the continuity but also discontinuity between high priests in the old order and Jesus' introduction of a *diatheken kainen* (new, better covenant, Heb 8:6), the author twice recites the Jeremiac text of God's surprising justice: "I will forgive their injustices (*adikiais*) and will no longer remember (*ou mnesthoo*) their sins" (Heb 8:12,¹¹ see also 10:17).

The startling point is that one of the crucial differences between the old and new covenants is that the continual sacrifices of high priests had to serve exactly as memory of sin (which in turn demanded a continued offerings for sin), whereas the completeness of Christ's offering (i.e. Himself on the cross) led to an *ephapaks* that makes no sacrifices for sins necessary any more (Heb 9:12, 28; 10:10) as God will not remember their injustices and sins.

In this sense, God "re-members" them through "forgetfulness".

Any talk of restorative justice must therefore begin in the proclamation of God's gracious non-retributive justice in Christ who carried South Africa's past injustices while we were still helpless and wicked (Rom 5:6).¹² In the letter to the Hebrews, I find no reference to confession as condition set by God for God's own restoration. The nature of God's work in Christ is such that it stands both before and outside our knowledge of sin and confession, because God reconciled us to Godself while we were still sinners and enemies of God. It is this proclamation of free grace that *results* in confession (see Acts 2:37-38), and not the other way round.

But – and this is crucial – the letter to the Hebrews witnesses to the *effect of forgiveness* on those who know that God will no longer remember their past injustices:

According to Jeremiah, Israel will reflect the orders of creation in their moral order by keeping the law of the Lord as guarantee of their future existence (Jer 31:35-36). And the Hebrews-church members, exactly because they have the freedom¹³ to now enter the holiest of holy in the temple (previously the right of the high priest only), are set free from a guilty conscience, and are thereby freed to love, do good works, and restore community (Heb 10:19-25). They are indeed free to bring sacrifices that are pleasing to God: Continued love for one another (*philadelphia*), doing good deeds, restoring of *koinonia*, and helping in a sacrificial way (13:1, 16). They are called to extend their sacrifices beyond the boundaries of the congregation to welcome strangers (*philoxenia*) in their homes, thereby welcoming angels¹⁴ without knowing it (13:2). *Then the act of remembering ('mimneskoma'i) returns; not to haunt or declare guilty or serve as basis*

11. This text is a parallel-construction where the second part (not remember) "balances" the first part (forgive) in the role of emphasising the point being made.

12. I know the text should be read as salvation-historical, and not as politico-historical, but in the light of the political significance of the first, as explained below, I think the reading is not totally inappropriate.

13. This freedom through justification relates directly with justice, writes Otto Pesch, in such a way "...dass sie (justification, PJN) dem Menschen die Sorge um seine Selbstbewahrung nimmt und ihm damit die Freiheit zum restlos sachbezogene Dienst am Mitmenschen gibt – von der liebenden Hilfe über Nachbars Zaun bis zum Ringen um weltweit gerechte Strukturen in Wirtschaft und Politik." See article „Rechtfertigung“ in *Neues Handbuch theologischer Grundbegriffe* (München: Kaiser, 1991), Band 4, 346.

14. Probably an allusion to Abraham's reception of three men as representatives of God (angels) as told in Gen 18:2-15.

for new oppression¹⁵, but to “remember forward” by serving, by bringing restoration : “Remember (‘*mimneskesth*’) those who are in prison, as though you were in prison with them. Remember¹⁶ those who are suffering as though you were suffering as they are” (Heb 13:2-3, my emphases).

From a Reformed theological perspective, we find the pattern clearly: *it is exactly if sola gratia and justification¹⁷ by faith alone is taken seriously, that forms of restorative justice flows “logically”*. This is what the Heidelberg Catechism says so eloquently in Question and Answer 64: Will free grace not breed people that treat good works lightly and consequently live without a conscious? (*ligvaardig en gewetenloos*). No, teaches the Catechism, *because it is impossible* for those who have received the grace in Christ not to bear the fruits of conversion (Mt 7:18). If Reformed theology indicates that the faithful *must* bear fruit, this “must” is not explained deontologically, but ontologically, just as the relation between tree and fruit is “kein Sollens-, sondern ein Seinzusammenhang”.¹⁸ The “logic of grace” lies in following Jesus and in obedience to the new law of love: “This is how we know what love is: Christ gave his life for us. We too then ought to give our lives for our brothers and sisters” (1 John 3:16).

The impossible possibility is to receive grace and God’s liberating justice – seeing God’s open heart in Christ – and then close your heart to structural injustice¹⁹ and to talk easily about love without deed (*ergos*) or truth (*aletheia*). *Here truth returns as well, but not as “narrative revelation about the past” like in the TRC, but accompanying our deeds of restoration as the criterion for Christ-like love.* (1 John 3:16-18). And in John’s letters, it is this love that is the mark of a truly reconciled community where people live in union with God and with one another, and where love has conquered fear (1 John 4:13-18).

The same pattern emerges from Belhar (1986),²⁰ the first confessional cry from the African soil, and the first extension of Dutch Reformed confessions since the Canons of Dordt in 1618-1619. Belhar has five articles: Article 1 confesses that the church is the creation of the triune God (in the tradition of the Heidelberg Catechism). The three middle articles follow as a logical progression: Based on reconciliation in Christ, article 2

15. We all cite the well-known phrase of Georg Santayana that those who forget the past are doomed to repeat it. But John de Gruchy’s remarks about Afikaner memories of British atrocities at the turn of the 19th century serve to remind us that there are forms of memory that are indeed dangerous – not in the Metzian sense – but in the sense that memory of oppression can blind you to repeat history in new forms of oppression. He refers to so many memorials and monuments that serve not “as symbols of forgiving the enemy, but as constant reminder of how we were wronged”. See De Gruchy and his reference to Miroslav Volf in “Recovering ecumenical vision and commitment” (*JTSA* 102, 1998), 8. See also Smit, “Keine Zukunft”, 186. Needless to say politicians are extremely perceptible to this kind of memory – either to keep the opposition in a continued state of guilt and defence, or to justify their present acts, or omissions, of injustices.

16. The Good News version repeats the “remember” because, though absent in the Greek text, it is clearly implied.

17. I am quite aware that *sola gratia* must be read in conjunction with *simul iustus et peccator* to make room for the fragmentary nature in which grace is realised in a human person as *totus peccator in se*. In this paper I deliberately put the emphasis on the objectivity of grace to counter the legalistic way in which matters of restorative justice tend to be dealt with. For the differentiation between Luther (two regiments), Calvin (*tertius usus legis*) and Zwingli (inner and outer person), see Wolfgang Lienemann *Gerechtigkeit* (Bensheimer Hefte 75, Göttingen: Vandenhoeck und Ruprecht), 22-28.

18. Wilfried Härle *Dogmatik* (Berlin: Walter de Gruyter, 1995), 163.

19. In this case the Johannine reference is specifically about rich versus poor.

20. The confession was accepted in its draft form in 1982 by the Dutch Reformed Mission Church, and later taken up into the Uniting Reformed Church. For the text and theological discussion, see GD Cloete and DJ Smit (ed) *A moment of truth. The confession of the Dutch Reformed Mission Church* (Grand Rapids: Eerdmans, 1984).

confesses the *visible unity of the church* (rejecting separate churches based on human or social factors). Article 3 confesses that the church is called to realise this *reconciliation in the world* (rejecting the principle of irreconcilability in a doctrine of forced separation). Article 4 confesses God's revelation as One who wants to establish *justice and true peace*, so that in a world of injustice He is in a special way the God of the suffering, the poor and those who suffer injustice. The confessing church is called to follow God in standing against injustice and with those who were wronged. It therefore rejects any ideology that legitimises forms of injustices. In article 5 the church confirms its commitment to the preceding confession even against resistance from authorities and laws.

Reconciliation, the prerogative of free grace from the triune God, is established in the church. Where this reconciliation is accepted through faith, God's reconciliation is embodied in visible church unity (art 2) , peace amongst people (art 3) , and justice in the society (art 4). There is no doubt that art 4 includes restorative justice: it refers to specific "restorative" Scriptural passages from Luke and Amos, and it calls the church to stand "against all the powerful and privileged who selfishly seek their own interests and thus control and harm others". This is an ideology, says the article, that is to be resisted from the gospel.

The theological structure remains clear: *it is from an understanding of God's reconciliation in Christ and the Spirit, exemplified in the church, that calls for (restorative) justice flow*. If this logic is overturned by a purely political discourse, restorative justice becomes – theologically speaking – a law of the old covenant, no matter whether motivated by liberal human rights values, quotations from Scripture, or feelings of either vengeance or guilt. The same consequences as in the old order follow: *You know you can never satisfy the law*, and no matter how extensive your sacrificial actions, they do not liberate you, in fact, they keep reminding you of your guilt. So, you soon rather withdraw and try and forget.

When seen from Christ's priestly sacrifice, the opposite happens: Restorative justice flows as acts of obedience and thankfulness from the inner, irresistible logic of the gospel. Freed from a bad conscience (tellingly referred to in both Hebrews and 1 John), the more sacrifices you bring, the greater the joy in fulfilling the new law of love and the bringing of sacrifices that are pleasing to God (Heb 13:16).

Let me make a remark about the Dutch Reformed Church of which I am a member:

I have not seen a single white DRC-congregation that has closed their ears or their hearts to this liberating gospel.²¹ The consequences in acts of material justice, is a miracle from God, mostly unpublicised, as true acts of mercy should be. That said, I agree that the white churches' and their members' participation in and "living with" the TRC-process were generally disappointing, and the DRC specifically took far too long to confess its own theological heresy. Because we in the DRC, a middle class church, still lack church unity in our family, the exposure to and confrontation with suffering – past and present – are not playing the de-centering role that it should. This is a tragedy in itself.

The question naturally arises: What happens in cases of confrontation with *suffering caused by your own wrongdoing or complicity*? Even here one must be very careful not to lose sight of the distinct theo-logical dimension that underlies the acts of restoration that are in turn significantly linked to justice. Psalm 51, a personal lamentation, reveals this structure:

21. Yes, there are individuals and institutions who make cheap politics of theology for their own purposes. Look at how *Die Burger* for a whole week belaboured the "political" sermon I held at the annual *Klein Karoo Nasionale Kunstefees* in Oudtshoorn (Easter Sunday, 31 March 2002) on the historical significance of Christ's resurrection (available on audiotape from SABC and in writing from the author).

When David²² was confronted by Nathan about his premeditated sins against Uria and his family, the depth of the lament²³ rises up from the confession: “I have sinned against you – *only against you* – and done what you consider evil” (Ps 51:6). (In the language of Hebrews: If you see that you defiled the sacrifice of Christ in your dehumanisation of others, it is *before God* that you stand. It is, according to the text, terrible to fall in God’s hands if you keep sinning whilst knowing the truth. Heb 10:31). But once before God in guilt and confession, pleading for restoration of joy (Ps 51:10, 14) and a cleansing of heart (51:12), the psalmist turns away in *rededication to God*: he will teach other sinners to convert (turn back: *suf*) to God (v 15) and – most significantly – take *tsidqatecha* (your justice; i.e. God’s justice) on his lips (v 16b). The sacrifice of a broken heart (guilt and confession) is more important than any other sacrifice (vv 18-19) that makes up the normal cultic duties. These sacrifices (extended in verse 21)²⁴ and including justice, only gain significance from the prior sacrifice of contrition.

Willie Jonker’s confession at Rustenburg,²⁵ follows the same pattern:

“I confess before you and before the Lord, not only my own sin and guilt, and my personal responsibility for the political, social, economical and structural wrongs that have been done to many of you, and as a result of which you and our whole country are still suffering from, but vicariously I dare also to do that in the name of the DRC of which I am a member, and for the Afrikaans people as a whole. I have the liberty to do just that because the DRC at its last synod declared apartheid a sin and confessed its own guilt of negligence in not warning against it and distancing itself from it long ago.”

Before you and before God... *Confrontation with your (premeditated) sin against others, is confrontation with God Godself, because anthropological matters are indeed theological matters. And exactly because this is so, the opposite is also true: the theological reality always leads you back to human reality – specifically to talk (Ps 51:16) and do (Ps 51:21) justice. Only then is costly reconciliation²⁶ possible.*

Let us now turn to the weight of evidence before the TRC about past injustices and sufferings, of perpetrators and victims. I chose a passage from Hebrews in which acts of mercy and restoration of community were not linked to antecedent historical evidence of intra-community violations (as if those were the actual grounds for restoration). The opposite is the case: the congregation suffers under persecution from outside and is nevertheless, based on Christ’s priestly sacrifice, called to bring sacrifices to one another, and specifically to strangers. If this priestly logic is calling and demanding for such acts, how much more in cases of demonstrable dehumanising and structural injustices (like in

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22. I do not enter the debate about authorship or ascribed authorship, nor the question whether the link with the David events are indeed part of the original text.
 23. Denise Ackermann’s plea (see “Take up a taunt song” note 3) to restore lament as theology and liturgy, needs to be taken very seriously. Not only does it provide a constructive way to grief, but it restores the dignity of the “unknown” sufferers, whilst giving women the initiative in the process.
 24. Two interesting notes about verse 21: First the play of words on *tsedek* related to *sifhe* which allows for two translations: a *sacrifice of justice* or the *right sacrifice*. In the context of this paper I would obviously prefer the first, although the second is probably linguistically the stronger option. Second: The reference to a full-sacrifice (*Ganzopfer*) stems from Deut 33:10 where Moses blesses the twelve tribes before his death. It refers to a sacrifice only permissible after ritual cleansing.
 25. See Jonker, “Understanding the church situation”, 92. The confession is an extract from his speech, and is much richer than discussed here, as issues like vicariousness and collective responsibility are raised.
 26. “For many – especially white – South Africans, it was and still is extremely difficult to face the past, to acknowledge their responsibility, and to confess their guilt. But without that, there is still little chance of reconciliation.” Piet Meiring, “Reconciliation: Dream or reality?” *Missionalia* 27, 3 (Nov 1999), 243-244.

David's case)? After seeking the face of God, David strives for justice in confession (word) as well as sacrificial deeds of justice, as he himself is faced with the agonising loss of his beloved son, borne of illicit love, murder and deceit. (Is it too dangerous to pursue the meaning of this today?)

We as Reformed theologians can and must therefore insist on restorative justice in a moral and material sense: In the ritual²⁷ of the TRC-hearings that assumed “a definite socially representative function”,²⁸ the public recognition of victims' suffering in the form of narrative, dialogical and healing truth²⁹ served as *moral compensation* with immense symbolic value (under-estimated by those who insist on factual-juristic truth).³⁰

But the biblical tradition we investigated, makes clear that knowledge of suffering (truth and memory turned backwards) must lead to sacrificial acts in all its materiality (truth and memory turned forward) of opening homes to strangers (an ethic of *gasvryheid*), and taking the suffering of others as you own to signify that the love of God is in you.³¹ And let us not beat about the bush here: The government, now acting on behalf of all the people of SA, must indeed pay financial compensation in terms of the TRC's recommendation, and do this as soon as administratively possible. In the light of our history, they could do that by a “restoration tax” similar to the “transition tax” we paid in around 1994, so that symbolic compensation turns into *material compensation*.³² This is the minimum the churches must call for, whilst at the same time redefine themselves as priestly communities, reaching out to strangers and bringing sacrifices of restorative justice toward the healing of our land.³³ Where clearly exposed legal abuses brought land, wealth and prosperity, sacrificial, restorative justice – enacted in the framework of our constitution – is the biblical injunction. Against those who resist on political or economic grounds, we must insist: This is a deeply theological issue.

If theological reflection does not enable restorative justice, such reflection is – in the South African context – interesting, but worthless. If there were ever a test case for *sola gratia*, this is it.

27. Antjie Krog, Afrikaans poet and journalist, whose *Country of my skull* (1998), a moving literary account of the TRC, won her international acclaim, makes the incisive point that the TRC could be interpreted ritually. This opens the perspective of a social representativity that releases the TRC of unrealistic expectations to deal with every detail in each case. See Antjie Krog, “The Truth and Reconciliation Commission. A national ritual?”, *Missionalia* 26, no 1 (1998), 5-16.

28. See Wustenberg, “Reconciliation”, 34.

29. See Smit, “Keine Zukunft”, 179.

30. See the valuable work of Anthea Jeffery from the South African Institute for Race Relations on the fact that the TRC did not heed basic legal principles of “proof”. See Smit, “Keine Zukunft”, 179 for sources and exposition. This is important, but tends to reduce the TRC to a “court” and misses the symbolic significance.

31. Is it not James that relentlessly emphasised a material faith?: “Suppose there are brothers and sisters who need clothes and don't have enough to eat. What good is there in your saying to them: God bless you! Keep warm and eat well! – if you do not give them the necessities of life” (James 2:15-16). It is these “necessities of life” that is the ultimate mark of reconciliation; wholesome shalom; a sign of pure and genuine religion (James 1:27).

32. See Maluleke, “Dealing lightly”, 340 who quotes estimates of R3 bn or 0.25% of our annual budget as the financial aspect of reparation proposals by the TRC's Reparation and Rehabilitations Committee.

33. The issue of land as such is of growing importance as dramatically highlighted by recent events in Zimbabwe. Restorative action by churches of symbolic land restitution – even small tracts – will have great symbolic value.

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