

**A CRITICAL ANALYSIS OF DISTRIBUTIVE JUSTICE IN ZIMBABWEAN LAND  
REDISTRIBUTION: MAKING USE OF THE CAPABILITY APPROACH AND  
ENTITLEMENT THEORY TO FORMULATE A LAND BASED COMPROMISE**

**By**

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## **Abstract**

The focus of this research is to explore and propose philosophical ideas for a just resolution to the Zimbabwean land redistribution debacle. The work will evaluate land redistribution and expropriations in terms of redistributive arguments such as the resources and entitlements' arguments, and social justice perspectives. By evaluating these different conceptions of justice the research attempts to respond to the complex demands of addressing the Zimbabwean land redistribution. Human life is made up of different facets that include social, political, and economic aspects: these have to work together in order to enhance human beings' well-being. Land redistribution should be multifaceted, thereby increasing holistic human justice, rather than focusing on one aspect of justice.

The study endeavours to establish that the land redistribution policy should be one of the instruments through which various forms of social injustices and inequalities emanating from social, economic, and political biases can be eliminated. In this regard, this research intends to propose a Land-Based Compromise (L.B.C) as a way of addressing anomalies emanating from land redistribution. The L.B.C is to be perceived as a platform where both reconciliation and just rectification can be achieved. Reconciliation is necessary for promoting good social relations and cooperation, while rectification of past injustices helps in establishing equality by encouraging better livelihoods of all. In this endeavour, the L.B.C will premise some of its arguments from Nozickian Entitlement Theory and the Capabilities Approach.

Also in addressing social ills, the L.B.C imports ideas from traditional African thought systems and practices of addressing past injustices through social therapy in order to repair relations and restore justice. This 'social therapy' encourages informed participatory and inclusive efforts in

the communal rebuilding process. In the end the research asserts that justice is a social process built around relations that allow people to live lives they can value.

## **Acronyms**

B.S.A.Co – British South African Company

C.A – Capability Approach

F.T.L.R – Fast Track Land Redistribution

GDP – Gross Domestic Product

L.B.C – Land-Based Compromise

MDC – Movement for Democratic Change

N.E.T - Nozick Entitlement Theory

N.P.G - Natural Primary Goods

P.S.G - Primary Social Goods

SADC – Southern African Development Community

S.R.O.C – Southern Rhodesia Order in Council

T.T.L – Tribal Trust Lands

ZANLA – Zimbabwe African National Liberation Army

ZIPRA – Zimbabwe People’s Revolutionary Army

ZANU-PF – Zimbabwe African National Union-Patriotic Front

ZCBC – Zimbabwe Catholic Bishops Conference

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## Chapter 1

### Introduction

#### 1.1. The Land Redistribution: The matter in Question<sup>1</sup>

The subject of ‘land redistributions’ in Zimbabwe is highly contentious: not surprisingly there has been no agreement on the rights and wrongs of this issue. The Zimbabwean land redistribution, characterised by land expropriations, both colonial and post-independent, raises questions on redistributive patterns, what is to be redistributed, for whom, and for whose benefit. The study observes that Zimbabwean land redistributions - and in particular the Fast Track Land Redistribution of 2000 - has caused divisions, breakdowns of relations, conflicts, violence, and bloodshed. The conflicting parties are varied: they include, for instance, black farmers (subsistence farmers located in arid, dry areas) versus white farmers; commercial farmers’ unions against the Zimbabwean government and rights groups versus the Zimbabwean government. Moreover there is also conflict between political parties such as ZANU PF and MDC, and there are also disagreements amongst scholars. In that regard, this thesis attempts to answer the following questions: how should fast track land redistribution in Zimbabwe enhance the lives of people or develop human well-being? Is justice being served in the arguments put forward? And what form of justice should emanate from land redistribution? To answer these questions, the thesis draws some ideas from philosophical arguments around the notion of distributive justice. The study is guided by the need to establish a community that respects and recognizes differences and that seeks to establish justice and equality among its members.

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<sup>1</sup> The land ‘redistribution’ in question is the Zimbabwean Fast Track Land Redistribution which began in the year 2000. It should be noted that the land redistribution in question occurred in the arable agrarian land which was mostly in farming areas controlled by white farmers.

Moreover such a community needs to enhance the capacities of its members to live lives they value and deem worthwhile.

In the light of this quest, this research seeks to propose a theoretical framework that may be used to address contentious issues around land redistribution; moreover, it also seeks to make possible inform policy recommendations. On the same note, the study proposes a system that promotes and protects justice and equality in land redistribution among Zimbabweans in terms of access and of land redistribution and ownership opportunities. In order to achieve these goals, the study will begin by presenting the ‘historical positions’ that presumably led to the Zimbabwean fast track land redistributions. In-depth discussion of some selected arguments for distribution that resonates with the Zimbabwean land redistribution scholars will follow. The arguments concerning distribution present different conceptions through which justice and equality may be achieved. These arguments include the resource and rights redistribution arguments. In discussing justice through resource and rights redistribution, the thesis will address issues that have to do with compensation and intergenerational injustices, including issues relating to ownership and entitlement and property rights in light of the multiple injustices that have occurred in Zimbabwe. With regards to proposing a sustainable land redistribution the research borrows some ideas from the Entitlement Theory, in particular that of Nozick (Nozickian Entitlement Theory, N.E.T) and the Capability Approach (C.A) to offer philosophical bases, and support a form of Land Based Compromise (L.B.C). The work will also consider the differences that exist between the two theories (N.E.T and C.A). The L.B.C would be an agreement or compromise that aims to resolve inequalities, and injustices that have occurred as a result of land redistributions in Zimbabwe. The L.B.C will also provide a platform through which a new dispensation with regard to land relations can be established.

## 1.2. Research Question

In which ways do the Capability Approach and Nozickian Entitlement Theory help to clarify the notion of distributive justice in ways relevant to the issue of Land Redistribution in Zimbabwe?

## 1.3. Objectives

The major objectives of this work are:

- To critically analyse the arguments for land expropriations in the pre- and post-Zimbabwe independence years;
- To expose the methods and moral implications of land expropriations;
- To make a critical assessment of the concepts, ‘capability approach’ and ‘Nozickian entitlement’ as integral to a necessary humanizing system in Zimbabwean land distribution;
- To present the fact that the two concepts, Capability Approach and Nozick’s Entitlement Theory are distinct yet they both enrich perspectives on Zimbabwean land redistribution and assist in analysing issues connected to the land redistribution.
- To proffer a holistic and situated Land-based Compromise (L.B.C) system. The L.B.C is a suggested framework for a sustainable land relations policy that respect justice and equality;
- To contribute and add to the existing corpus of literature in the area of social and political studies addressing land problem issues.

## 1.4. Area of Investigation

Owing to the fact that this study will deal with issues such as justice, equality, and social arrangements within the broader discourse of Zimbabwe land redistribution, it is prudent, then, to mention that the study falls within the area of Social and Political Philosophy. According to David Miller (2014), both social and political philosophy reflects upon the individual life,

collective life and institutional organization of people in a society. Furthermore both areas of philosophy attempt to analyse and interpret principles such as justice, freedom, equality, and multiculturalism among others, while applying them to existing social and political institutions.

## **1.5. Context of the Discussion: Redistribution and Phases of Zimbabwean Land**

### **Redistribution: The Background.**

Understanding the term redistribution is pertinent. The term will be used to refer to rearranging or changing land distribution and ownership in Zimbabwe. In the philosophical sense, the term refers to allocation of goods according to what people deserve (van Parijs: 2007, 683). The allocation of goods and in the Zimbabwean sense, allocation of land, is always a contentious one. How the allocation is to be designed, reallocation for whom and of what, are always issues that are difficult to solve. In Zimbabwe, the allocation of land (land expropriation) has been influenced largely by actions of the government of the day. For example, during the colonial period, the Rhodesian<sup>2</sup> agricultural land was divided along racial lines with the white farmers being awarded large tracks of land in arable, high rainfall areas; while on the other hand the blacks were allocated small plots or land in arid, low rainfall areas. The post-colonial period saw the land redistribution twisted in favour of blacks such that formerly white owned farms were divided into plots shared among blacks, and only a few white farmers permitted to retain farms. Following from the foregoing discussion, this study argues that land expropriation - or what Diana Auret (1990, 68) loosely refers to as land distribution - is not new in Zimbabwe. Land expropriations existed even before colonisation though then they depended on the military strength of either the Shona or Ndebele people. These expropriations continued from the colonial into the post-colonial period.

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<sup>2</sup> From 1896 – 1964 Southern Rhodesia, 1965 - 1979 Rhodesia, were the colonial names for Zimbabwe.

Attention now turns to the phases of land exchanges in Zimbabwe. The focus is on three phases that began with the colonisation of Zimbabwe. The first phase is the period between 1898 and 1979 or rather the colonial period. In this period land ownership was skewed towards the white settlers to the extent that by 1980 there were slightly over six thousand (6000) white farmers who owned 15.5 million hectares of Zimbabwean arable land (Auret: 1990, 72; Sachikonye: 2012, 227 – 228; Zimbabwe Land Policy: 2005, 1). According to Sachikonye (2012, 228) large scale commercial farmers occupied 40% of the total Zimbabwean land. During the same period blacks occupied 42% of the Zimbabwean land: this translated to 4.3 million people sharing 15.4 million hectares of land (Auret: 1990, 71; Sachikonye: 2012, 228). Thus land redistribution during this period was biased towards white land ownership and control of the land. Colonial land redistribution was preceded by land appropriation which were later legitimized through promulgation of acts or laws. For example, the Land Tenure Acts of 1930, 1951, and 1969, to mention a few, promoted the division of land along racial lines and the confining of blacks to Tribal Trust Lands (T.T.Ls) (Ndlovu-Gatsheni: 2009, 65). Herbst (1990, 16 - 18) observes that the redistribution of Rhodesian land involved the use of armed force and violence in removing the indigenes from the areas they occupied. The acts in other words supported the abrogation of blacks' rights to land. Anger and discontentment towards the colonial government administration and white land occupiers resulted in the Second Chimurenga or war of independence.

The second phase of land redistribution in Zimbabwe covers the years 1980 – 1999. At the time of independence the Zimbabwean government was committed to the policy of 'reconciliation' and 'economic growth with equity through planned change' (Chigora: 2006, 65; Sachikonye:

2012, 229). Land redistribution during this period was marked by slow progress, largely as a result of the constraints of the willing-buyer willing-seller condition set by the Lancaster house Agreement of 1979. The condition resulted in white farmers not readily selling their lands: furthermore many were only willing to sell lands in very remote areas (Sachikonye: 2012, 229). Also the attempt balance reconciliation and economic growth accounts for the slow redistribution of land. In that regard, the Zimbabwean government targeted resettling 162 000 households within the first ten years: however, by 1999 only 71 000 families were resettled on 3.4 million hectares of legally acquired former white owned farms (Auret: 1990, 76; Sachikonye: 2012, 230). During the same period only about 500 blacks had become fully fledged commercial farmers owning commercial farms. From the statistics provided it meant about 90 000 families still needed to be resettled. In addition to this expectation there was growing discontentment among the general black population who expected to be resettled, and were dissatisfied with the government approach (Sachikonye: 2012, 231). Sachikonye also notes that there was a creation of a black bourgeoisie which was a counterweight to white agrarian bourgeoisies in the form of ruling elite, senior government officials, parliamentarians and judges controlling farms. This was also an issue that angered the ordinary people as well. According to Muzondidya (2009, 174) there were sporadic white farm invasions between 1997 and 1999 by local blacks who were dissatisfied with the government's slow progress with land redistribution. These invasions were harbingers of the 2000 accelerated land invasions that were championed and led by the 1966 - 1979 war veterans.

The third phase of Zimbabwean land redistribution covers the period from the year 2000 onwards. It is this phase that witnessed the renunciation of the policy of reconciliation and



orderly reallocation of land. Rather, the land redistribution was no longer a government initiative but a people-driven programme where ordinary landless Zimbabweans initiated invasions of nearby white-owned farms (these invasions were later termed ‘Fast Track Land Re-distribution or F.T.L.R) (Muzondidya: 2009, 174). The programme was also led by war-veterans and then the ZANU PF led government supported the initiative. In turn the ZANU PF government hijacked the programme. Closely linked to this was the fact that the government took this as an opportunity to punish the white farmers who had been supporting the newly formed MDC party. The Zimbabwean government thus used armed force confiscate lands (violence and bloodshed ensued) from white farmers by targeting 5 – 10 million hectares by 2001 (Moyo: 2005, 1; Sachikonye: 2012, 227). This was to be achieved by supporting people’s initiatives and actions in expropriating farms: 1000 large commercial farms were occupied by invaders and by the end of year 2004 over 225 000 families were resettled on 10 million hectares of land of formerly white owned farms. This meant that over 6422 farms were invaded and ‘acquired’ under the ‘accelerated resettlement programme’ (Moyo: 2005, 2). It also means the affected farmers were displaced, together with their farm workers. After the invasions, Constitutional Amendment Act No16 of 2000 and Constitutional Amendment No 17 of 2005 were promulgated to legalise the takeover of these farms. The F.T.L.R therefore entitled new owners of land previously owned by white farmers who were thus were dispossessed of farming land, with fewer than 500 white farmers remaining (Moyo: 2005, 2; Sachikonye: 2012, 227). However the F.T.L.R was hijacked by ZANU PF after it lost the 2000 referendum aimed at changing the constitution<sup>3</sup> (Sachikonye:

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<sup>3</sup> In the year 2000 the ZANU PF led government called for a referendum on the changing of the constitution of Zimbabwe, previously based on the Lancaster House Constitution. Prior to the actual referendum the ZANU PF government campaigned for a ‘Yes’ vote, but the outcome was that the ‘No’ vote campaigned for by the MDC prevailed. This alarmed the government. The MDC had the backing of many white farmers and their workers. The defeat was a wakeup call for the governing party. From thence the ZANU PF led government turned its attention to the land question as a way of punishing the white farmers who had supported the MDC during the referendum (Slaughter and Nolan, 2000 and Sachikonye, 2012). Also it is important to note was that prior to the referendum, the

2012, 234): the aim was to annex the project, yet it was a people initiative. In other words the government failed to separate party business and government business. The programme faced stiff resistance and opposition from white farmers, commercial farmers' unions, human rights campaigners, opposition parties and other non-beneficiaries of the programme. Economic (destroying economic productivity, and disturbing work areas), political and social motives fuelled the opposition. Both Zimbabwean courts of law and regional (SADC) tribunals were approached in order to obtain redress and regain possession of re-distributed farms. The SADC tribunal (2007, Mike Campbell *et al* versus Republic of Zimbabwe) judgements were passed in favour of the farmers as it was found that the programme had violated the rule of law. However ~~but~~ the Zimbabwean government ignored the judgements. The Zimbabwean courts generally considered the resettlements above board since they were done within the parameters of Constitutional Amendments, Acts Number 16 and 17.

In the year 2000, the Zimbabwean government managed to attract sympathisers from the masses of people because of the economic meltdown. It persuaded people to continue invading farms through the statement/mantra, 'Our land is our prosperity'. The implication was that prosperity lies in land ownership and use (Muzondidya: 2009, 175). This was despite the fact that the government was the major cause of the country's economic difficulties which can be traced back to 1997 when the government embarked on an unbudgeted plan to pay 'war veterans' compensation for participating in the war of liberation. This led to the devaluation of the Zimbabwean dollar, accompanied by rampant corruption, low industrial production, and

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ZANU PF government showed reluctance in embarking on a disorderly resettlement programme. In 1998 the government actually removed some settlers who had invaded farms within the Marondera and Masvingo areas. These invasions were largely peaceful and initiated by the people in the vicinity (Sachikonye: 2012, 234).

deteriorating relations between Harare and the international community, including international financiers, over investment policies (Sachikonye: 2012, 228).

### **1.6. Organization of the Study**

This study is comprised of seven closely connected chapters. Chapter One introduces the main discussion points for the whole study. It defines the area of investigation, sets the context of discussion, and outlines the objectives and methodological approaches used for the study.

The thrust of chapter two is a critical discussion of the need for the current investigation into Zimbabwe's land expropriations. Most significantly, the chapter examines the root causes of injustice, and of inequality both in terms of the colonial and the post-colonial Zimbabwean land expropriations. The causes are presented in the form of arguments for land redistribution. The arguments are divided into two distinctive eras, first the colonial secondly the post-colonial. The colonial arguments (i.e. 'Eurocentric' Arguments) such as the civilisation, economic, and absence thesis arguments argue for the categorization and 'otherness' of races or natives. Further, these stances generally support colonisation of the indigenes and justify policies that led to different forms of injustices on the natives. The post-colonial land expropriation points-of-view on the other hand, include the historical, economic and separation arguments. These present arguments in support of the indigenes' repossessing land lost during colonialism. The second chapter reveals that both the colonial and post-colonial land expropriation arguments are based upon bias and prejudices that have led to skewed land redistributions based on 'race'.

Chapter three focuses on an understanding of notions of justice and equality. Three arguments concerning justice in resource redistribution are proposed. In this chapter the arguments concerning land distribution reflect the major relevant conceptions of justice proffered in

literature and philosophical discussions as ways of addressing injustices and inequalities, as for example, in the skewed Zimbabwean land redistributions. Consequently, the chapter attempts to reveal the deficits in the resource arguments. For instance the utilitarian resource argument while promoting the happiness of the sum or general or greatest number is shown to ignore the rights and freedoms of those in the minority who may not be part of the ‘general or greatest number’. On the other hand, the Difference Principle (c.f. Rawlsian Distributive Theory) argues that inequalities in social arrangements are acceptable only when these inequalities benefit the least advantaged persons in society (Rawls: 1971, 5 - 6). However its weaknesses are that it does not take individual needs and efforts seriously: hence it breeds a paternalistic approach to distribution of benefits and burdens in society (Nussbaum 2000, 74; Kleist: 2010). The third argument to be discussed is that of the Ubuntu Communitarian land distribution. Land, among indigenous African communities of Southern Africa is a communal property that is distributed for their own good and the good of the society at large. Thus every member of society was entitled to use but not exchange land for commercial reasons or otherwise without the consent of the community. Hence communal land ownership does not guarantee individual ownership and entitlement.

Chapter four will present part of the alternative approach (to those presented in chapter 3) to provide an understanding of justice as seen in an F.T.L.R. context. In this endeavour, the chapter will make a critical analysis of the N.E.T. Entitlements are defined as the rights that people have over something (in this case, resources): entitlements therefore provide tools for living. The chapter presents the three Nozickian principles for determining entitlement, i.e. the principles of acquisition, transfer and rectification. The first two principles advocate non-violation of others’

rights in the initial acquiring of property and even in exchanges thereafter. In cases where this has not been honoured, Nozick invokes the third principle, i.e. the principle of rectification to correct the injustices done.

Following the theoretical presentation of Nozick's theory, the chapter focuses on applying the N.E.T to the Zimbabwean land quagmire: this implies the need to assess the kinds of land distributions or exchanges that have occurred in Zimbabwe in the light of the N.E.T principles. The chapter establishes that land redistributions in Zimbabwe since colonial times - and during the F.T.L.R period - resulted in unjust and tainted entitlements. In order to correct these anomalies the chapter turns to the third Nozickian injunction of rectification, by examining how the injustices may be addressed. In short the chapter will make an in-depth discussion on N.E.T's principles and examine their relevance when applied to the Zimbabwean land question.

The chapter will also expose Nozick's notable contribution with reference to the roles of the state and of its citizens, especially through his notion of the 'minimal state'. The duties and obligations of the state will be discussed, while at the same time clarifying and guaranteeing the rights of the citizens. It is made clear in this chapter that N.E.T mostly addresses the economic lives (economic liberties and rights) of the people rather than political and social arrangements (which are also necessary). In a sense N.E.T is interested in economic justice: however this is a fragment of justice in general. Political and social justice are ignored, yet these are also necessary if wholesome justice is to be achieved in a state. In order therefore to address this shortcoming, the research focuses in the following chapter on the Capabilities Approach (C.A.).

In chapter five the C.A is defined as a conceptual and normative framework that aims to promote individuals' *functionings*. For the advocates of the Capability Approach, good social arrangements ought to enhance and promote individual potentialities and equal opportunities for all, so that individuals in society may realize their goals (Clark: 2005, 9; Robeyns: 2016, 1; Crocker: 2008, 3, 34; Ntibatirirwa: 2014, 271 - 272). Individuals or groups, referred to by C.A scholars as agents, are to be responsible for and active in bringing about change so that their values and objectives can be realized (Sen: 2000, 19). The agents are self-regarding and other-regarding in the realization of goals. Most importantly this approach evaluates the economic activities of the society against the economic environment by examining how the economic conditions enable or hinder people to live lives they value (Ntibatirirwa: 2014, 272). These are necessary components in framing a just and equal future for Zimbabwean land redistribution.

The chapter will also expose the weaknesses of the C.A, in that it does not consider historical injustices and inequalities. The approach also does not specify where to begin when it comes to claims of injustice (Robeyns: 2016, 16). Lastly, the approach does not make it clear as to who should bear the burdens and responsibilities for the expansion of people's capabilities (Robeyns: 2016, 16). According to Nussbaum (2006, 70) it should be the government. However, (Sen: 1999a) is not clear on who, how and where the burdens and responsibilities should fall. In that sense, the L.B.C is a platform for discussions or negotiations through which expectations in terms of land relations should be established. The L.B.C also has the role of being a watchdog and advocate for the implementation of societal expectations. This implies that the L.B.C will be advocating for a people-driven initiative which seeks to remedy the shortcomings of the government.

Chapter six proffers the Land-based Compromise (L.B.C) as a notion to be developed in this research. L.B.C is a suggested framework developed from ideas borrowed from the Capabilities Approach and the Nozickian Entitlement Theory in order to devise a social agreement or contract. The L.B.C would therefore provide a compromise on how to deal with contentious issues related to and emanating from land redistributions in Zimbabwe. The contentious issues referred to would include historical inequalities and injustices emanating from past land exclusions in Zimbabwe. The L.B.C is to be understood as a compromise that is a result of informed negotiations or deliberative bargaining aimed at establishing an environment conducive for co-existence and which will be advantageous to all stakeholders.

From the Nozickian Entitlement Theory (N.E.T), especially, the L. B. C's obtain ideas on how to analyse economic exchange from a historical perspective and to rectify injustices suffered as a result of Zimbabwean land redistributions and to establish acceptable and reputable property rights. Based on the C.A., the L.B.C will note how to deal with actual land redistribution realities from an historical to a future-oriented system. The L.B.C will argue that compensation, restitution, ownership, and political and economic arrangements are all a social processes. In a sense the argument advanced is that people determine their own lives. The L.B.C will posit that determining land ownership and rectifying the unjust transfers is best done through people-centred negotiations and compromises.

The chapter will also present objections that can be raised against the Land-based Compromise approach. These are as follows: the proposal radically departs from established legal forms;

coming up with the Land-based Compromise may open up old wounds, and there are no guarantees that such a solution will ensure that future atrocities are prevented or that social rifts will be adequately dealt with (Minow: 2007, 621). These objections can however be countered with the argument that negotiated settlements are always more satisfying than settlements that do not come from the people themselves. Furthermore, since this will be a compromise and a form of agreement it will be open for adjustments to satisfy future situations. Additionally, international laws could be seen as not fully relating to people's histories or experiences, especially when caused by colonialism. Hence the L.B.C strives to relate to the real experience of the people and address their issues through discussions.

Finally, Chapter seven will provide the conclusion to the study. This chapter aims to give an overview of the whole project and assess the importance of the study. The conclusion will briefly summarize the motivation for the study in terms of its institutional setting and policy formulation.

### **1.7. Theoretical Framework**

This research is based on a hypothetical proposition concerning an unjust life situation emanating from Zimbabwean land redistribution. The so-called land redistribution saga in Zimbabwe has been plagued by a series of injustices and strained land relations characterized by deprivations, discrimination, social exclusions violation of rights and racism. In order, therefore, to attain justice and equality in land redistributions, this research proposes the use of ideas, utopian in nature, that come from already established philosophical stances, that is the N.E.T. and the C.A. The framework proposed by the L.B.C. attempts to make use of some ideas from the two theories as the foundation for a system that establishes justice, equality and sustainable



land redistribution and human relations in Zimbabwe. However, it would be a mistake to argue that the two theories (C.A and N.E.T) are adequate bases for a successful L.B.C, as there are instances in which they also fail and ideas have to be imported from other approaches, either for the sake of comparisons or for elaborating on or adding to what is already there. For this reason the Rawlsian Difference Theory and Ubuntu system are also referred to where necessary. Apart from that, the major attempt of the study is to advocate a system that views all people as equal, moral and responsible, ultimately leading to choices that are human-centred for all. In other words land redistribution policies in Zimbabwe ought to produce justice and equality for all, rather than perpetuate and increase the injustices and inequalities of the past resulting from flawed colonial and post-colonial land redistributions.

Since the research will be informed by the perspectives of C.A. and N.E.T., it is essential to focus on some of the ideas that L.B.C will borrow from the two. From the C.A the idea of understanding human life from political, social and economic liberal dimensions as key to good human living and the promotion of human well-being is borrowed and utilized in this research. By promoting human freedom from different human existence dimensions, the C.A framework proposes the broad expansion of human lives. In order to achieve this, the framework allows for analysing the various challenges that people in society must face (Sen: 1999a). Assessing and evaluating individuals' well-being and social arrangements, while advocating the design of policies that result in social change is highly recommended by the L.B.C. The L.B.C advocates reforms for Zimbabwean society in order expand people's freedoms in political, social and economic so as to achieve desired states of living. The L.B.C - like the C.A. - will analyse and advocate 'activities' that make people's lives more valued, e.g.in spheres involving working,

resting, being part of a community, being healthy, among others (these are ideas propounded by C.A. advocates such as Crocker and Robeyns: 2010, 63). In short the being and doings (*functionings*) of people is to be prioritized (Crocker and Robeyns: 2010, 62 - 63). Furthermore, the well-being of people is to be considered as an important component including people's opportunities to construct their own conception of good (Crocker and Robeyns: 2010, 63 – 65; Kleist: 2010). Well-being then takes into consideration the goals, wellness, advantages to and personal welfare of people. The C.A, therefore, advocates the removal of hindrances that may limit people's opportunities to realize particular and personal goals. This is another idea which the L.B.C will borrow and make use in promoting people's responsibility in formulating the kind of live(s) they have reason to value. Moreover this includes the removal of political, social and political hindrances to this endeavour. Such a position is necessary in confirming the L.B.C proposal that land redistribution should be seen as a social process, just as much as the determining of ownership and entitlement is.

The C.A, however, does not tackle historical injustices (Daka: 2006, iii): its sole concern is with the present and the future, especially in terms of advocating a just society in the future. To deal with this anomaly, the L.B.C will import ideas from Nozick's Entitlement Theory. This is despite the Capabilities Approach having its own entitlement theory which however, is limited since it is descriptive and mostly concentrates on people's ability to command resources in society through legal means (Sen: 2010, 2, 45; Devereux: 2001, 2). On the other hand, Nozick's entitlement theory demands strict adherence to the economic libertarian position that respects property. In addition, the theory emphasises the importance of understanding property ownership and entitlement from an historical perspective. The tracing of historical exchanges is necessary in

determining just ownership or entitlement. In cases of unjust exchanges Nozick demands rectification. Nozick's theory also advocates economic arrangements that are driven by respect for economic rights (e.g. such as owning, using, and disposing of land).

From Nozick's Entitlement Theory, the L.B.C will borrow historical analyses of transactions. N.E.T's proposal of three important principles or rules for justifying holding and exchanges in society were deemed useful for L.B.C. applications. The rules are:

- a. principle of justice in acquisition;
- b. the principle of justice in transfer, from someone else entitled to the holding, and;
- c. principle of rectification in cases of violation of a, and b.

Nozick's proposal applies in historical contexts: it questions how holdings and exchanges occurred in the past. In brief, Nozick's thinking is that material distribution is by and large a free and autonomous activity which should be based on legitimate or fair transactions (Vargas: 2010). Furthermore, Nozick argues that the transactions ought to take into consideration the historical circumstances surrounding the exchanges. His intention is to ascertain the legitimacy of the transactions. In cases of illegitimate transactions, Nozick suggests that there should be rectification of past injustices (Nozick: 1974, 155). It is this crucial issue of historically legitimate transactions and the rectification principle that this research will partly focus on. It is important to note that Zimbabwean supporters of the Fast Track Land Redistribution (F.T.L.R) have arguments that are almost similar to the N.E.T. In most cases the F.T.L.R supporters argue that land was stolen from the indigenes and now there is a need to be compensated or there is a need to repossess the land from the settlers or their descendants. Arguments of this nature constitute the greater part of the land redistribution discourse and narratives in Zimbabwe. It is also for this reason that this research seeks to understand and weigh the importance of N.E.T in

advancing or advocating for justice and equality. The L.B.C - like the N.E.T - will argue that in order for the Zimbabwean society to have or experience political, social and economic stability there is a need to address the past unjust exchanges in a way that is acceptable to Zimbabwean society itself. Perhaps this complements Nozick's notion of restitution, although he did not fully develop the concept (Davis: 1976, 839). Nozick did not describe precisely how restitution is to be implemented: the principle is open-ended and deserves expansion and input. Davis interprets the open-endedness of Nozick's proposal as implying that people should search for a way forward that is most likely to do away with injustices (Davis: 1976, 841). Following from Davis' argument, this research would therefore suggest a Land-based Compromise (L.B.C).

Hence the L.B.C proposes a social agreement or contract theory. This is a way of moving away from the kind of chaos that unrestrained individualism or liberalism or exercise of uncontrolled 'economic rights' results in (according to the Nozick, 1974) and provides a way of fostering common good or social justice. As such, the L.B.C proposes that social arrangements ought to respect the opportunities that an individual has in society, i.e. the opportunity to create one's future and to make individual judgments (Bell: 2002, 62).

The point of departure is that people are responsible for their own lives and as such can order how they are to live: this idea is the major thesis of the social contract theory. Social arrangements, be they political, social or economic, are somehow a result of people or individuals' rational reflection and discussions upon how they want to co-exist (Habermas: 1992, 126 – 129; Bird: 2006, 108; Baynes: 2009, 544 – 545). This position does not in any way overlook the importance of lived experience. Lived experience provides enlightenment and ideas

of how people live, while at the same time providing necessary information for reflecting upon on how to live in society and how to co-exist in society. As such social and political arrangements are not a spontaneous event only - but also involve reflection and discussion on how to exist. Discursive social arrangements, as Habermas (1992, 126) suggests, are a way of creating an acceptable society for all, through creating and ensuring the well-being of the whole society via compromises. Such compromises are necessary as they will take care of the actions, including a post-chaotic way of dealing with unjust situations. Society, in other words, is a creation of individuals who constitute it.

The compromises are a result of rational discussions of various contractors, including, in particular, representatives from different race groups, government, and civil organization representatives, and other interested individuals or group. These will all be considered free, equal, independent and responsible: this being an idea of agency that C.A advocates (Sen: 1985, 169; Sen: 1999a, 18 - 19). This compromise is necessary to allow people to see themselves in a better-off position than they would otherwise have been in without agreement or compromise (Muldoon: 2009, 118; Nussbaum: 2004, 4). The same idea presented here is also very well expressed in the Ubuntu social thinking which advocates therapeutic or correcting mechanisms for healing past wrongs through reconciliation and agreements that necessitate social harmony and ultimately social development. In this regard, Mangena (2015, 6) and Moyo (2015, 73) view this system as a tool for removing biases and favouritism and as relevant for new beginnings for societies that have been divided as a result of contentious issues. It is in this spirit of Ubuntu as well that the research will seek to explore and apply via the L.B.C.

### **1.8. Chapter Conclusion**

The chapter has provided the background of the research. In addition it has highlighted and discussed ~~on~~ the broad methodological approach that will be employed in this study. Moreover the introduction has sought to clearly state the research problem or question and the major aims of this work. Lastly, the chapter has highlighted the major concepts and arguments to be presented in each of the subsequent chapters.

## Chapter 2

### **The Genesis of Inequalities and Injustices: Analysing the Colonial and Post-Independent Arguments for Land Redistribution in Zimbabwe.**

#### **2.1. Introduction**

The claim of this chapter is that land redistribution in the form of expropriations in Zimbabwe resulted in strained relations as a result of unequal and unjust land exchanges. These inequalities and injustices are a result of modes of thinking that are dominant in colonial and post-colonial land expropriations. In that regard, this chapter identifies and critically analyses arguments linked to these land redistributions. Noteworthy is the fact that some of the arguments are philosophical and others less so but cannot be glossed over as doing so is tantamount to creating unscholarly and unbalanced views. Based on these points, this chapter aims to show how the different arguments have resulted in injustices (which include deprivation, displacement, marginalization and discrimination) both in the colonial and in the post-independent Zimbabwean land exchanges.

The major arguments advanced in the colonial land expropriations centred on (i) civilizing the natives, in particular Africans, (ii) establishing property laws (Absence Thesis), and (iii) establishing capitalist economic systems. The post-independent arguments, and in particular F.T.L.R arguments are (i) the Economic Argument whereby land expropriation will help end poverty among blacks), (ii) the historical argument which is concerned with the indigenous peoples reconnecting with their lost heritage, and (iii) the separation argument that advocates an African centred philosophy and societies reflecting African values. These modes of thinking led to the objectification and subjugation of the ‘other’. Zimbabwean land redistribution has been an

area of protracted arguments during colonial occupation as well as the post-independence period. The resulting land exchanges caused skewed land distributions that favoured whites during the colonial period and blacks during the post-independent period. Since 2000 (the year when Fast Track Land Reform [F.T.L.R] began in Zimbabwe), land expropriations targeting mostly white owned farmlands have been on-going despite the independent Zimbabwean government's promises not to violate property rights, and not to compulsorily acquire properties (land included) established by the Lancaster House Agreement (Lancaster House Agreement Annex B, Section V, Paragraph 1; Moyo: 2016, 367). In this regard questions concerning the intentions and nature of redistributive justice inevitably came to the fore. Questions concerning ownership and property rights, the benefits for the community (social justice), justice and equality among others dominate discussions and narratives connected to Zimbabwean land exchanges. In justifying the F.T.L.R, indigenous Zimbabweans argued that the expropriations were a way of redressing colonial land imbalances; on the other hand, white farmers protested that the expropriations were unjustified as they violated established property rights as well as the agreement made at the 1979 Lancaster House Agreement according to which all Zimbabwean (black, white and or mixed) were now all declared equal and their rights secured (Lancaster House Agreement: 1979, Annex b, Section V and VI; Openshaw and Terry: 2015, 39, 49 – 50; Moyo: 2016, 367). The extent of these disagreements have spilt over into regional courts of justice such as the SADC Tribunal. In 2008, the tribunal adjudicated that the Zimbabwean government had failed to uphold the rule of law and had implemented discriminatory laws through the Constitutional Amendment # 17 that argued for compulsory acquisition of farms without compensating the owners (SADC Tribunal: 2008). Despite these judgements the Zimbabwean government did not honour the tribunal's ruling. That being the case, the aim of this chapter is to critically explore the moral arguments



connected to land expropriations through linking them to various philosophical opinions. The chapter proceeds by first examining the arguments that are associated with colonial land reform; and then by assessing post-independence arguments for land redistribution in Zimbabwe.

## **2.2. Colonial Justifications for Land Expropriation.**

This section focuses on three different arguments that have a link to land exchange(s) in colonial Zimbabwe and also asserts that land expropriation has resulted in skewed racial land distribution that has caused inequalities and injustices in land holding. These arguments are all Eurocentric justifications. The first argument, the Civilisation Argument asserts that Europeans are intellectually superior, burdened with the duty to civilise an inferior or primitive<sup>4</sup> society, a process to be achieved through colonisation. The second argument, the Absence Thesis Argument posits that there was a lack of recorded and recognisable operating systems among the colonized so Europeans (especially in this respect, the British) were justified in imposing their own ‘known’ forms of life. The third argument, the Economic Argument, advances the idea that there was need to fully exploit resources for the benefit of the colonisers and the colonised as well. This meant imposing a capitalist economic system on primitive societies. Noteworthy is the fact that the three forms of arguments draw inspiration, support and justification from some 18<sup>th</sup> and 19<sup>th</sup> century philosophers. In fact, the ideas of the philosophers helped in shaping colonial mentality. Inevitably, the same ideas of the philosophers also manifested themselves in colonial practices and policies.

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<sup>4</sup> Questions are raised as to the determination of whom, what, and whose categories determine advancement and or primitiveness.

### **2.2.1. Argument 1: Civilisation Argument**

The civilization argument is premised upon the idea that certain races or groups of people are more advanced than others and that it is their prerogative to introduce other races to this progress. Related to this, Mill (1977, 122) argues that civilisation is the self-realization and self-consciousness of a person or groups especially on how to organise and live as a society. Civilisation has two related components. The first is progressing through stages from child-like conditions to advanced ways of living while the second is the idea that civilisation is the culmination of human progress with a future orientation of improving society, the world and the individual. Yet questions arise as to which particular direction and whose progress. During the 18<sup>th</sup> century, western progress was the only considered option. Western understanding of religion, science, politics and law among others were considered the benchmarks of progress. These benchmarks were then used to categorise humankind into the superior–inferior categories with the western rated superior to the rest of the world (Boss: 2008, 586).

The superior-inferior category was supported and justified by different western intellectuals who included philosophers, scientists and sociologists among others (Duchesne: 2002, 25; Kohn: 2012, 2). The position of the intellectuals was that the European social, political and economic ‘progress’ was above all other ‘civilisations’, so therefore the uncivilised, the ‘inferior’ who included ‘Africans’ were to be advanced through colonialism (Boss: 2008, 586; Kohn: 2012, 4). Tempels (1959: 114, 119) had, earlier than Kohn, averred that the Africans (Bantu), referring to indigenous were uncivilised primitive peoples who needed to be civilised through education<sup>5</sup>. Actually, the indigenous were considered to be living lives of savages characterised by violence

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<sup>5</sup> Tempels though argue that the blacks had a form of philosophy but were not fully civilized, they still needed to refine their way of thinking.

(Ranger: 1967, 2; Gardiner and Davison: 1968, 12 – 13, 109). Thus the 18<sup>th</sup> Century European aim, outside the European continent was a mission to bring the ‘other’ up to the acceptable standards of the Europeans (Eze: 1998, 440; Serequeberhan: 1998, 67).

Based on the above, the colonial Europeans argued that it was their mission to civilise the uncivilised who were lacking in natural law (Kohn: 2012, 4). Natural law in this case refers to the belief that humans have innate knowledge of laws and what is good. Natural law concerns itself with rationality, rights, morality and moral reasoning (Eze: 1998, 435 – 436). Natural law advances the idea that humans are condemned through natural knowledge to use reason to arrive at a common good through respecting individual freedom. This was considered absent in the uncivilised races’ social and political organizations. For instance, Eze (1998, 439 - 440), Serequeberhan (1998, 69) note that some European philosophers such as Kant held the view that natives were incapable of rationality and moral reasoning. The absence of rationality among the indigenes accounts for why they also had no sophisticated political and social institutions that go beyond family organization (Eze: 1998, 437; Rousseau: 1986, 18 - 31). For Kant therefore, Europeans were a superior race since they were capable of rationality and had a better conception of rights and morality (Eze: 1998, 438 - 440). For this reason, it was necessary to universalise western social and political organisation to the lower races.

Kant’s and western (colonial) positions are questionable and actually contradict 18<sup>th</sup> century Enlightenment requirements and expectations of empirical verification as opposed to mere speculation. Colonial conclusions and positions were reached through speculation about the natives. In opposing these colonial positions, Idowu (2006, 40) aptly asserts that every society

has some form or way of living together. Social and political organisations are a result of autonomous individuals rationally making decisions concerning how they are to live together from a responsible and respectful point of view. Additionally Idowu (2006, 40) avers that there is not one society which could have survived without any form of social control. The locals therefore had some form of social control that also included rational discussion concerning how they were to live. The colonialists did not understand the natives' way of living.

Although clandestinely proposing and supporting the civilisation arguments Kant also contradicted himself by failing to honour his own maxims that advocate respect for all people.

Kant (2008 [1785], 37, 38) wrote:

Act only according to that maxim by which you can, at the same time will that it should become a universal law;

And

Now, I say, man and, in general, every rational being exists as an end in himself and not merely as a means to be arbitrarily used by this or that will.

These Kantian maxims presuppose that all human beings are the same and capable of rationality. Yet this position was not respected by colonial thinking and its earlier position on the rational status of blacks. Furthermore, the maxims exhort the notion that human beings are capable of rationality and making moral judgements autonomously (Thomson: 1999, 131 - 134). Any human therefore, is an end in himself or herself and deserves respect from others and not to be treated as a means to other's ends (Boss: 2008, 28; Thomson: 1999, 132). In saying this, Kant implied that manipulation and exploitation hindered individual development and decision making, that is, they prevented people from becoming ends in themselves. The colonisers' ideas contradicted Kant's utterances which proposed that all humans are to be respected and be treated as ends in themselves. A conclusion that can easily be drawn then is that there was a deliberate

aim of stereotyping the non-western with the aim of establishing European or western superiority.

It is important to note that the civilisation argument or superior-inferior categories have a link with the creation of social hierarchies and differences. Apparently this hierarchical formulation of society is related to the social structure based on classes propounded by Karl Marx. For Marx, class determines power relations in society. Belonging to a class depends upon property ownership (land and industry among others), which also translates into political and economic power. As such the powerful class which owns the means of production automatically wields political power and subdues lower classes (McCall: 1992, 202). The same applies to the colonisers and the colonised. Through creating hierarchies colonisers set themselves up as the superior or the powerful class which, through colonialism, owns the means of production, while the lower classes, the inferior, become subservient to the superior. The crux of the matter is that these hierarchies together with colonisation and eventual expropriation of land in Zimbabwe are all interconnected. They were the deliberate means whereby the colonisers owned and controlled the means of production and social structures. In saying this, inequalities and injustices eventually emanated when racial laws and practices that favoured the colonisers at the expense of the indigenes were promulgated. There is no doubt then that the indigenes were considered as sub-human who could be deprived of their rights. To this Memmi (2013) summarizes the position the natives found themselves in:

Since the native is subhuman the declaration of human rights does not apply to him; inversely, since he has no rights, he is abandoned without protection to inhuman forces brought in with the colonialists praxis, engendered every moment by the colonialist apparatus and sustained by relations of production that define two sorts of individuals – one for whom privilege and humanity are one, who becomes a human being through

exercising his rights; and the other for whom a denial of rights sanctions misery, chronic hunger, or in general sub humanity.

### **2.2.2. Argument 2: Absence Thesis Argument**

The second argument that was used to justify European domination was the Absence Thesis. The Absence Thesis asserts that there is a lack of something, or the ‘expected’ does not exist among other races other than the Europeans. In presenting this idea, 18<sup>th</sup> and 19<sup>th</sup> century colonisers identified two important aspects as absent, namely the absence of written evidence and the absence of law enforcement systems<sup>6</sup> in the locals’ way of life. Idowu (2006, 36) observes that written records articulate, legitimise, present and preserve the social, political and legal organisation of a society. The same idea is shared by Kant who also says absence of written evidence is a sign that the uncivilised or lower races cannot have any meaningful contribution to scholarship (Eze: 1998, 439 – 440; Serequeberhan: 1998, 69). The colonisers presumed that the absence of ‘their expected’ written evidence and absence of ‘their expected’ law enforcement arrangements, meant that there was no way of ascertaining and substantiating the claim that locals were fully aware of the law and their rights or had advanced social and political organizations. The emphasis of the colonizers was on their own superiority in the creative art of writing. The non-existence of written material (work) in locals’ lives led to the 18<sup>th</sup> and 19<sup>th</sup> century Europeans to deny the existence and possibility of history, law, social organization and philosophy among the indigenes of other continents (Idowu: 2006, 37).

It is important at this juncture to explore why writing may have been considered important to the 18<sup>th</sup> and 19<sup>th</sup> century European world. One may argue that through writing down something one

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<sup>6</sup> Law enforcement systems include law courts, lawyers, magistrates, security services, conventional law making system.

presents, expresses, authenticates, confirms a position, certifies and articulates ideas, and preserves and in the long run disseminates ideas (Reisman: 1990, 5). In short, writing preserves and conveys a particular position such as entitlement, judgments, and operating procedures. Reisman further notes that, “writing is an indispensable means for the transmission of substantial knowledge, and for the accumulation of knowledge from generation to generation” (Reisman: 1990, 5). The preservation and transmission of information in a written form (that is in the standard expected by the British) was absent among the inhabitants of southern Africa and the 18<sup>th</sup> and 19<sup>th</sup> century colonisers concluded that locals lacked an important aspect of living. For the colonisers, the natives had failed to articulate and present their social, political, and legal systems in an ‘expected’ manner, and therefore were thought to be in need of a better system.

The importance and relevance of written evidence is reflected in the British, and other colonisers’ respecting and honouring whatever was in written form. For example, The Rudd Concession (1888) was evidence to the British that Lobengula had surrendered ‘his and that of his peoples’ rights over the land they inhabited. Thereafter, the British crown through the Southern Rhodesia’s Order in Council (S.R.O.C: 1898, Part II, Section 7- 47 page 2 - 7) judgement of 1898 bestowed upon the British South African Company (B.S.A.Co) the right and duty to ‘establish’ administrative powers, policing and laws, and even maintain peace within the colonial settlement and over and above all to resettle the locals (S.R.O.C.: 1898, Part IV, Section 82, 85, page 15). In addition, the judgement adjudicated that the land in Zimbabwe prior to British colonisation was to be considered vacant (S.R.O.C.: 1898, 16). The judgement implied that the land in Zimbabwe prior to British colonisation was vacant and belonged to no one since

there was no written evidence reflecting the contrary. The judgement disregarded the locals' land ownership, social and political organisation.

The importance of written evidence was complemented by the Privy Council 1918 judgment which reaffirmed and strengthened the 1898 position of the British settlers' annexation of Zimbabwe. The Privy Council of 1918, adjudicated on land disputes in Zimbabwe between on one hand, the locals who were challenging the British settlers' annexation of their lands, on the other, the settlers who argued that they were the rightful owners of the land due to the titles (title deeds) granted them by the colonial government (Chavunduka and Bromley: 2013, 17). The judgements confirmed the settlers' rights over land in Zimbabwe, and it denied the locals the right to own land in the new colonial set-up (Chavunduka: and Bromley: 2013, 18). The judgement confirms the idea that land in Zimbabwe prior to European occupation was unalienated or unclaimed or basically that it belonged to no-one, it was a *Terra Nullis*. This was questionable position and a point for future protracted arguments. However the British view of *Terra Nullis* was challenged by Archbold Colquhoun (the first company administrator in 1890) who argued that it was important for the occupying settlers to seek permission to possess land for occupation from Lobengula and other local Shona chiefs<sup>7</sup> (Chavunduka and Bromley: 2013, 15). Colquhoun was eventually dismissed for his views, and those who came after him actually thought that land should be taken away from the locals. All this reveals the prejudice and disregard of locals' rights and authority and ownership over land and administration issues.

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<sup>7</sup> Colquhoun's view reveals the fact that there was no one overall governor in pre-colonial Zimbabwe. Rather there were a number of chiefdoms scattered around the country.



The major point that emanates from the above discussion is that whatever is written or documented essentially reflects or confirms a position. In this case ownership rights for the settlers were guaranteed through the titles granted by the company. The locals who initially ‘owned’ the land had no written confirmation so it meant that there was no evidence that they were the actual possessors. Additionally the locals had legally signed off their right to the land through the Rudd Concession. Due to this, it was possible for the British Crown and government to claim that the land in Zimbabwe belonged to no-one and had been surrendered to them.

Besides these judgements and pronouncements, the activities of the British colonisers also confirm and conform to the thinking that there was absence of land ownership in pre-colonial Zimbabwe. From as early as 1894 to 1898, the settlers embarked on free grabbing, pegging and holding of land in Zimbabwe (Blake: 1978, 93; Chavunduka and Bromley: 2013, 17; Parsons: 1982, 181 - 183). The idea of free pegging and eventual granting of titles was premised upon on this absence thesis. It is therefore a clear sign of disregard of the locals who had been on the land and had their own system of land entitlement (Wills: 1985, 199). Wills (1985, 199) further observes that the locals’ settlements within newly pegged British farms were to be undisturbed but incorporated into the farms, largely because of the benefits that the new farm owners would reap in the form of labour. Land rights for the locals were therefore abrogated.

The absence thesis argument and the subsequent activities of the settlers in annexing land from the locals contradict what the 17<sup>th</sup> century philosopher Pufendorf (1991 [1673], 84) propounded. Pufendorf proposed the First Occupancy Theory which accords ownership or entitlement to the first person to use in whatever way a natural resource. The theory further states that there should be no displacement of others as doing so amounts to unfair and unjust property dispossession.

Contrary to this, the colonisers displaced ‘first users’ (the locals), through acquiring the land in an unjust way, violating property ownership rights according to Pufendorf. Though Pufendorf argued for ownership through non-violent and non-violation of others’ rights, John Locke, an 18<sup>th</sup> century philosopher, contradicts Pufendorf’s First Occupancy Theory. Locke (2013: Chapter II, Section 27), unlike Pufendorf, thought that acquiring property, especially natural resources should be done through the use of labour and not merely from being the first to occupy a place. In cases of land acquisition, he advocated cultivation or some other productive way of utilising the resources as a way of claiming a particular area. He therefore doubted the indigenous hunters or nomadic peoples’ claim as owners of the land over which they roamed as hunter-gatherers. Locke further thought that common ownership, which characterised the non-western way of land ownership was a primitive way of claiming property. Instead, individual and/or private property ownership was necessary. Locke thought that the lack of written evidence of land tenure meant that the local communities failed to attach value to land (Chapter IV, Section 38 and Section 40). In this sense, Locke and the pronouncement of the Privy Council of 1919 were in agreement that the natives had no conception of private property<sup>8</sup> through failure to divide or share land (privately) among themselves. It seems therefore that it was the Lockean acquisition procedure which the colonisers adapted despite its shortcomings of disregarding the property rights of others who owned and used natural property in different ways.

The Absence Thesis Argument is evidence of the colonialists’ denial and rejection of the fact that societies have different ways of social organization, preserving and transmitting knowledge (Solomon and Higgins: 1996, 6; Idowu: 2006, 38). The epistemology and metaphysical worldviews of the locals were denied. Furthermore, the colonisers did not want to understand the

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<sup>8</sup> Detailed discussion on property rights is on page 13.

natives on their own terms and categories but only through European colonial categories (Murungi: 2004, 525). In support of Solomon and Higgins, and Idowu's view, Will Durant (1954, 26), says that the actions and thoughts of a society (customs) are a product of a people's beliefs which cannot be ignored. In the same vein, Gwaravanda (2011: 148 - 150) argues that the natives' ways of life and thought, which were preserved and disseminated through oral traditions were communal activities which the colonialists ignored yet they were necessary for the colonialists to understand before disparaging the indigenes way of life. However, though this was the case, the absence thesis reveals the prejudices and ignorance that prevented the Europeans from realising that societies were different and have different ways of preserving, owning and exchanging property. It can be concluded that through appealing to the Absence Thesis the colonisers attempted to formalise land grabbing by issuing titles and disregarding the communal land ownership practised by the locals.

### **2.2.3. Argument 3: Economic Argument**

This section of the chapter focuses on the economic reasons that led to the colonisation and land expropriation in Zimbabwe. The major argument advanced here is that colonial European economic motives were the driving factors for seeking European expansion. The search for cheap raw materials, cheap labour and alternative markets for surplus European production was a stimulus for colonising other states. Expectations were that the colonising states and industrialists would realize maximum profits. To this effect, Khapoya (2013, 106) avers that: "vast resources and markets ... would accrue to European powers by opening up the African continent." The political dominance of Europeans would complement the economic dominance of the industrialists and European business people (Khapoya (2013, 103).

British interests in Zimbabwe were not far removed from the above observations; this is why they supported concession seekers' obsessions to obtain mining rights and even seize land from the locals (Ranger: 1967, 132; Wills: 1985, 196). The British readily supported colonisation because colonial influence would provide them with political dominance and a large reservoir of manpower for war, labour and resources which were cheap (Khapoya: 2013, 104; Lenin: 1999, 12). To achieve this, the colonial power enacted laws such as Master and Servant Ordinances, and the Native Regulation Ordinances among others aimed at exploiting the blacks (Clarke: 1974, 19). Under these laws natives were not free to move around but were to be confined to particular places allocated them by the colonial government and above all were to be under the control of the immediate white or settler farm or mine owner. As such natives were open to manipulation and exploitation.

Khapoya (2013, 125) summarises the economic effects of colonization as:

1. Expropriation of land
2. Exploitation of labour
3. The introduction of cash crops and the one-crop economy
4. Unfair taxation
5. The introduction of immigrant labour from India
6. Transfer of mineral wealth from Africa to Europe, and
7. The lack of industrialization.

This summary reveal colonial interest in ensuring that they fully exploit the land and all that it contains while realizing maximum profits (Wills: 1985, 197). The seizure of land, and other

related seizures, fully reveals the egoistic nature of the colonialists in making sure that they advance themselves economically at the expense of the colonies as a source of their goods. This is known as ethical egoism, which is defined as ‘seeking’ one’s own interests, or group interests only in terms of one’s own advantages while disregarding the interests of others (Kalin: 1981, 124; Rosenstand: 2009, 164). In some instances this practice implied exploiting others in order to achieve intended goals. Under ethical egoism, treating others as a means to an end is acceptable in as much as it promotes particular interests. While this was the ethic promoted by colonialism, the practice was contrary to what some philosophers of the time argued for concerning human relations. Kant (2008 [1785], 37, 38) in particular averred that humans were to be treated as ends in themselves and not mere means to an end; that is people were to be respected on their own terms and should not be exploited for the causes of others. The British and other colonialists actually exploited the natives and explored ‘their’ land for their own interests without due regard to the locals. In so doing the colonial system became a hindrance to the personal development of natives. As Kant says, individuals are to be self-regulating and self-determining through deciding on what to do and how to act on their own (as ends in themselves) in a free social and political environment. This was however overridden by colonial governance, the self-regulatory aspect was impeded by laws and practices that virtually forced the natives to become slaves to the colonialists. The idea of freedom was usurped while the locals were treated as a means to an end.

As a summary of the arguments presented in the last three parts of this section of the chapter, it follows that:

1. There are civilisations that are ‘considered’ better than others whereby western civilisation sought to propagate itself in all other parts of the world.

2. Written evidence necessarily authenticates ownership of property and the presence of other rights.
3. Natives had no knowledge of rights and laws so therefore could be introduced to these through colonisation. Though this was done through denying and denigrating the natives' own way of life, their property and other rights.
4. European economic interests justify expropriation of lands beyond Europe's natural boundaries.
5. Natives were a means to colonisers' ends.
6. The westerners violated most of their own (Enlightenment) standards such as political freedom, democracy, rights and liberty among others through promoting skewed views in favour of themselves. Colonial policies emanating thereafter were unjust to the inhabitants of the lands they colonised.

### **2.3. Zimbabwean Post-colonial Arguments for Land Exchanges.**

The post-colonial period under discussion here covers the period after the attainment of independence in Zimbabwe, that is, the period after 1980 to date. Upon attainment of independence, the new Zimbabwean government inherited a skewed land distribution pattern which proved to be difficult to correct as at 1980 and the future in general. The government was faced with the odious task of altering the unequal distribution of land or to ultimately reject the burden of doing so. The major concern was that the year 2000 land expropriation generated a crisis in the country which was accompanied by violence and bloodshed and led to a breakdown in relations both within and without the country. This breakdown had ethical and legal implications with ramifications for justice and equality.

### **2.3.1. A Brief History to Zimbabwean Redistribution Prior to Year 2000**

Black Zimbabweans<sup>9</sup> waged a liberation war between 1966 and 1979 with the aim of the emancipation of the native people (economically, socially and politically) and the recovery and compensation for lost lands and other properties that the colonisers exploited and continued to exploit (Naldi: 1993, 585; Mbaya: 2001, 2; Kringer: 2003, 4 – 5; Mtisi and Nyakudya: 2009; Wuriga: 2008, 7 Masaka: 2011, 332). These expectations were, however, not fulfilled after independence due to a number of reasons. First the 1979 Lancaster House Agreement (Annex C, Section V, paragraph 1 and Section V, paragraph 1) established the promotion and protection of all Zimbabweans' rights to property. The provisions established by the agreement have been interpreted as putting constraints on the new Zimbabwean government on embarking on the compulsory acquisition of farms except with the consent of the owners (the willing-buyer, willing seller condition). The agreement stated that there would be freedom from dispossession of property and protection of privacy. The leaders of Zimbabwean liberation movements accepted these conditions because they were a necessary condition for reconciliation and economic prosperity. The condition was also a necessary provision for resettlement funds from the British and American governments and other donors (Kriger: 2003, 41 – 42; Chung: 2006, 243; Muzondidya: 2009, 174; Openshaw and Terry: 2015, 77). The problem with the willing-buyer willing-seller agreement was that only a few whites were willing to sell their lands except for lands that were in remote areas. These were cumbersome areas for resettlement purposes (Muzondidya: 2009, 174). In 1997, the British and American governments and other donors reneged on their promise to fund the land reform in Zimbabwe citing corruption and other forms

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<sup>9</sup> The war for Zimbabwean independence was waged by two liberation groups, ZANLA and ZIPRA these groups on the front-line in turn the groups were supported by other Zimbabweans scattered around the country. Important as well is the issue of when the Zimbabwean war began. There are different views, some argue that it began in 1964 yet Chirongoma (2015) and Rettova (2016, 390) argue that the war of liberation began with the battle of Sinoa in 1966. The latter position is shared by this project.

of maladministration of funds (Openshaw and Terry: 2015, 79). So without international support it became difficult for the independent Zimbabwean government to pay for the acquisition of farms. Second, with the passage of time, the price of land rose and it became expensive to acquire it (Muzondidya: 2009, 174). Third, up to 1989, the 20 representatives of the white community in the Zimbabwean parliament resisted changing the willing buyer–willing seller system fearing that it would disadvantage fellow whites.

Out of frustration and the need to address the skewed colonial land distribution and also as a tool to garner political support, the ZANU PF led government implicitly and explicitly supported the locals who invaded white-owned farms. The Land invasions were later supported by pieces of legislation, the Constitutional Amendment Act (No 16) of 2000 and Constitutional Amendment Act (No 17) of 2005. Amendment 16 placed responsibility for compensation upon the British government and it stated that there was no obligation for fair and adequate compensation from the Zimbabwean government (Magaisa: 2010, 12). Amendment Act no 17, removed the rights of aggrieved parties (those who lost land or farms to land occupiers) to challenge the illegal settlements in any court of justice. The Constitutional Amendment Act No 17, Section 5 states:

Agricultural land acquired for resettlement and other purposes ... the relocation of person dispossessed in consequence of the utilization of land for a purpose referred ... is acquired by and vested in state ... no compensation shall be payable for and referred to... except for any improvements effected on such land before it was acquired ... (dispossessed individuals) shall not apply to a court to challenge the acquisition of the land by the state, and no court shall entertain any such challenge...

The land question in Zimbabwe had taken a legal and reclamation twist over and above social justice and maintaining good social relations (underlined by abrogation of property rights, and ownership rights on the part of white farmers).



With this in mind, this second section of the chapter analyses the post-colonial Zimbabwean arguments for land exchanges. The arguments seek to justify the Zimbabwe government and the landless indigenes' actions for embarking on F.T.L.R. The presentation proceeds by focusing on first, the economic argument that states that the major outcome of colonial land expropriations was poverty for Africans. The second argument, the historical argument, postulates that the transfer and acquisition of arable land in Zimbabwe was illegitimate; in effect, these arable lands were stolen from the locals who are the initial owners. The last argument, Separation argument, asserts that in order to be liberated, it is important for the indigenous Africans to unite and re-educate themselves to revive their own traditions and resist any form of imperialism.

### **2.3.2 Argument 1: Economic Argument**

The economic argument proceeds by noting that economic injustices among the indigenous Zimbabwean population was a result of the unequal, unjust and racially skewed land redistribution caused by colonialism (Thomas: 2003, 695; Wuriga: 2008, 5; Openshaw and Terry: 2005, 73). Proponents of the economic argument argue that the inequalities that emanate from the unequal and discriminatory colonial land expropriations led to economic disempowerment (poverty), deprivation, displacement and exploitation of locals (Weiner: 1989, 401; Thomas: 2003, 695). Based on these facts, the economic argument basically presents three important propositions, namely that: (i) poverty among local populations was a result of loss of control over arable land. (ii) The wage and money economy introduced by the colonial government disempowered locals and (iii) that land exchanges caused congested, soil exhaustion, and over-grazing of land owned by locals. Land expropriation was thus considered

as a way to decongest overpopulated areas while also maximizing the utilization of arable lands. Additionally, redistribution would also empower locals economically.

An understanding of the nature of poverty is pertinent at this juncture as it adds value to the economic argument presented. Poverty is understood as a lack of something and degraded living standards (Mbaya: 2001, 2; Moyo and Yeros: 2004, 22; Daka: 2006, i, vi; Scalet and Schmidt: 2010, 170 – 172). The broader understanding of poverty includes, but is not limited to, having no access and no control over resources such as land, income, healthcare, education, proper employment, adequate nutrition, opportunities, being vulnerable to abuses, and lacking participation in the life of society among others (Sen: 2000, 15; Pogge: 2002, 1 and 3; Robeyns: 2016; Held: 2012, 292 - 293; Alkire: 2014, 2 – 4). Robeyns (2016) and Held (2012, 304) observed and summarized that poverty is the political, social and economic deprivation that people face either as individuals or as a group and at institutional levels. In the case of post independent Zimbabwe, and particular to this argument, the understanding of poverty is limited and restricted to racial economic poverty. The Zimbabwean economic argument states that economic poverty among the indigenous groups was exacerbated by lack of access to, use and control of arable land that began during the colonial period and continued into the independence era. The lack of access and control of arable land inevitably led to low incomes that emanate from forced labour and from occupying overused, overgrazed and arid areas T.T.Ls; all these also account for inadequate food supply and poor nutrition among the locals (van Onselen: 1976, 91; Rodney: 1982, 208; Robilliard, Sukume, and Yanoma: 2002, 17; Moyo: 2008, 1; Ndlovu-Gatsheni: 2009, 63). The colonial system of buying and selling land further incapacitated the locals as they had no money to compete and buy land in the new colonial monetary economy.

The indigenes were used to common land free-holding under the guardianship of the chief so the colonial policy of buying land brought confusion and dispossession, exacerbating locals' poverty (Okoth: 2010, 363). Effectively the poverty of the locals resulted in economic exploitation, marginalization and wretched living standards among the locals (Rutherford: 2001, 3 – 4; Yoshikuni: 2007, 100).

The economic argument claims that land redistribution was necessary in bringing economic and social benefits to the locals (Thomas: 2003, 694; Shaw: 2003a, 78). Economic benefit would accrue from the fact that the poor and formerly landless would have access to and control of productive land. The locals would also have large areas for animal ranching. Also, the locals would gain control over their own output instead of being workers on farms or being unemployed in rural areas. Another important fact would be that land redistribution and eventual ownership would entitle the locals to governmental and cooperative financial support. The thinking is that the possession of land empowers, thus helping to secure adequate food supply and boost agricultural production (Lebert: 2006, 45 – 46; Naldi: 1993, 585). Most importantly, land redistribution would be a way of addressing colonial land imbalances and other colonial social injustices (Lebert: 2006, 45 -46). Following from the above, the supposition was that land redistribution would eradicate economic poverty.

However, doubts were raised about land redistribution addressing the question of poverty and economic injustice. In relation to F.T.L.R, land redistribution meant annexing white farmers' farms. The assumption that land redistribution would empower local communities raises other problems. Firstly, annexing land from the hands of white farmers and placing it in the hands of

black farmers only meant a reversal of the colonial setup favouring one race over another. In this sense, discrimination on white farmers was propelled. Discrimination as Boss (2008, 584) avers is the preferential treatment of people based on prejudice and as such inevitably causes strained race relations. In addition, as Boss (2008, 585, 593) also argues, discrimination is indirect racism and violates the principles of social justice and social equality. Discrimination emanating from F.T.L.R casts a blind eye on the fact that Zimbabwe is a multiracial and multicultural society. In short, the application of the argument on F.T.L.R caused discrimination and racial injustice. Secondly, the argument also assumes that only one group and/or race of people was economically neglected by the colonial economic system yet this was not the case. Indians, and also people of mixed race (coloureds) were also neglected by the colonial system.

Thirdly, the argument misleads the community about priority areas in the Zimbabwean economy. The argument fails to note that the Zimbabwean economy is no longer dependent on land holding and productivity alone, but is also dependent on other productive sectors. And fourthly, the argument also assumes that every indigenous Zimbabwean is interested in having a farm and or in farm production yet this is not always the case; in fact, some locals are more concerned and preoccupied with seeking other forms of employment as Shaw (2003a, 78) noted.

### **2.3.3. Argument 2: Historical Argument**

The historical argument presented in this part of the section is that Zimbabwean land was stolen from its original, legitimate holders, the locals, by the colonialists. The argument also contends that European colonisers used chicanery and fraudulent means to claim the locals' lands (Greenberg: 2007, 1406; Wuriga: 2008, 7). This was done by misrepresenting facts (treaties), non-fulfilment of promises, use of violence, and force to dispossess the lands from the locals.

The argument also notes that gross rights abuses of various forms followed the colonisation of Zimbabwe, such as forced labour on white farms, annexation of land and property, arbitrary arrests, and forced taxes (Ranger: 1967, 122 – 123; van Onselen: 1976, 91; Wuriga: 2008, 8; Openshaw and Terry: 2015, 74 - 75). Locals were even force marched into protected areas that became known as Tribal Trust Lands (T.T.Ls) (Douglas: 1984, 137; Thomas: 2003, 693; Cliffe: 2000, 36).

The occupation of Zimbabwe resulted in the massive forced removal of people from their former areas of influence and areas which were of sentimental value. It is important to understand that in the pre-colonial period, and for some members of contemporary Zimbabwean indigenous communities, land was communally owned and viewed as a symbol of power, wealth, and unity. Land, in other words, was a heritage of the people. All this came to an abrupt end through colonialism. In a sense, the heritage of a people was destroyed and the people were denied the chance to re-connect with it. The dispossessions resulted in illegitimate ownership of the land by the colonizers. As such it was and is justifiable for the indigenes to rightly reclaim what was rightly theirs since their land was forcibly taken from them.

The Historical Argument raises a lot of vexing and complex questions with regards to land ownership, compensation and land exchange. The first question is who should claim ownership of land in Zimbabwe? Historically, Zimbabwe has been a country characterised by dislodgement which probably began with the Khoisan being displaced by the Shona, who in turn were displaced by the Ndebele before they were dislodged by the colonisers (Shaw: 2003a, 82). The chain of dispossessions challenges the legitimacy of modern land claims advanced by present

day Zimbabweans since they also forcibly obtained land from its initial holders who probably displaced others before them. Based on Pufendorf's (1991 [1673], 84) thinking, the claims of ownership advanced by present day Zimbabweans are bogus claims. In this regard, white farmers also faced the same problem. Therefore this initial holder argument aggravates the Zimbabwean land impasse.

As if that was not enough, the second question, supposing that the Shona and Ndebele were the legitimate (initial) holders of Zimbabwean land prior to colonization, a difficulty then arises about claims to a particular area. In tracing back land ownership, Shaw (2003a, 82) notes that it "requires ... looking at each individual holding and asking whether it can be traced back from its present possessor through a chain of just transfers to a legitimate initial acquisition." This is a daunting task since generations have passed and different exchange methods have also occurred. Some of the exchanges have been legitimate yet for others illegitimate means exist; furthermore, because of the time frame and the various exchange methods involved it becomes difficult to disqualify the land entitlement, and it is also difficult to remove the burden of compensation upon land possessors<sup>10</sup>. The failure to establish, through historical means, land ownership translates into saying that most of the land in Zimbabwe belongs to no one which is an impossible position to take; such a position has its own difficulties.

The third difficulty of the historical argument concerns who would compensate whom and how. This is now the subject of debate on restitution and the search for a sustainable land distribution paradigm. Following from the other two questions, it is prudent to say that there is no conclusion

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<sup>10</sup> This also applies to those who obtained land through the F.T.L.R, the lease agreement that has been awarded to them by the government and does not excuse the fact that ill has been done in acquiring the lands.

as to who owns or does not own land in Zimbabwe. There is also the problem of identifying perpetrator and victim. Though this is the case, this research however proposes a solution to the violation of property rights. As a matter of fact, the scenario requires establishing an agreeable and acceptable land entitlement and compensation paradigm.

Apart from what has been stated, the Historical Arguments also calls for discussion about rights. First and foremost, several forms of rights violations occurred through the dislodgments. Chief among them was property rights violation. ‘Property rights’ as Jeremy Waldron (2004), McDonald (2009, 21 - 22) and Hugh Breakey (2014) noted is the term used for moral and legal rules that regulate access, control, use and management, of different forms of tangible and intangible resources and goods (property) (Reeve: 2007, 721). Another notion of property, though highly disputed, is understanding property in the form of a person’s own body also expressed in Locke’s thinking (Reeve: 1991, 100; Otsuka: 2003, 11 - 40). These (property) rights include holding, excluding others from and alienating property under a person’s control (Hohfeld: 1964, 27; Waldron: 2004; McDonald: 2009, 21 – 22; Breakey 2014). These rights are necessary for ensuring that individual freedom is protected and promoted by governments through the guarantee of choice to promote individual flourishing and living (Miller: 2003, 72; Waldron: 2007 ,745; Vrancken: 2009, 1). In other words rights are the freedoms that individuals are owed by society. In a sense, rights deal with the exercise of freedom and choice and ultimately the promotion of autonomy. It is the principles of individual autonomy and flourishing that permeate the concept of property rights. Contentions though arise concerning the role of governments and legal parameters concerning the freedom of property owners to use and exchange their properties having regard to the interests and freedoms of others, the environment

and the property itself (MacDonald: 2009, 21; Breakey: 2014). With this in mind, it is important to note that it is the rules guiding the acquisition private property that are disputed in Zimbabwe. Property acquisition and transfer through violation of rights, as reflected in the F.T.L.R is abhorred by philosophers such as Pufendorf and Nozick. Nozick (1974) argues that the legitimate acquisition of property entails non-violence and respect for a person's rights as well as consent to the transaction. Even Locke's ideas of acquiring property through one's labour are also violated as displacements have occurred to individuals who have had legitimate claims to property.

However, the above position on rights can be challenged when property violation is acceptable as a way of addressing distributive inequalities and iniquities. Legal scholars such as Openshaw and Terry (2015, 49 - 50) and Moyo (2016, 366)<sup>11</sup> contend that it is the obligation of a state to improve the living standards of its people to such an extent that property rights can be violated for the good of the whole society. To achieve this goal, the government has to change or amend the constitution to this effect. Based on this position then, the Zimbabwean government had no obligation to perpetuate the colonial arrangements but did have an obligation to ensure that the colonial land imbalances were corrected. As such the violations that occurred during the F.T.L.R were justified in as much as it was an attempt to correct colonial skewed arrangements. Be that as it may, questions can be raised as to the extent and limits of the term 'good of the community' in relation to the F.T.L.R. The 'good of the community' seems to be limited and applied only to the blacks with the exclusion of other races. The other question concerns timing. The violation of

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<sup>11</sup> Moyo K (2016) actually notes that land redistributions are a way of correcting skewed land distributions and at times are necessitated by the need to improve the living standards of people within its borders. As such, individual property rights can be overridden for the good of the whole society. For Moyo, this is enshrined within the convention of Human Rights were Land Reform is discussed as such.



property rights took place after over twenty years of independence and was also a contravention of what the Zimbabwe government had earlier pronounced that it would respect existing property rights.

#### **2.3.4. Argument 3: Separation Argument**

This argument closely follows those propounded by Afrocentric theorists; although it is difficult to classify it as being part and parcel of their thinking. However the argument provides a basis for contemporary African debates concerning the creation of an authentic African economic, political, and social system. The separation argument situates itself within the African realm by arguing that African people's thinking and phenomena should be at the centre of the creation and crafting of a purely African system (Asante: 2007, 29). According to the Separation Argument the creation of an African system ought to take cognizance of African historicity and reflect a non-European way of conceptualizing African experience (Asante: 2007, 29). Debate however always centres around how to create and craft an authentic African system. To this end two schools of thought emerge, the separation school of thought and the integrated school of thought.

The separation school of thought advocates the total emancipation of the black population from all forms of subordination imposed upon them by the colonial system (Asante: 1998, 174, 185) through “repositioning the African person and reality from the margins of European thought, attitude and doctrine to a centred, positively located place within the realm of science and culture” (Asante: 2007, 30). This means that political, social and economic ideologies that are linked to the colonialists deserve to be challenged while at the same time reviving, and repositioning African civilisation (Sundiata: 1996; Adeleke: 2009, 6). Civilisation, in this sense, involves recognising and making use of the traditional (pre-colonial) and the present (colonial

and post-colonial), ideas which were advanced by Nyerere, Senghor and Nkrumah among others). The separation school of thought is a direct challenge to Eurocentric thinking which resulted in the subordination and marginalisation of the natives (Adeleke: 2009, 14; Asante: 1989, 30; Ochieng-Odhiambo: 2010, 151; Masaka, Gwaravanda, and Mukusha: 2014, 4 – 5; Sundiata: 1996).

The separation school of thought advocates Africa becoming a distinct and unique political, economic and social entity through reclaiming and reconstructing Africa separately from foreign influence. This would involve the practical aspect of cleansing Africa of unwanted foreign influences that includes colonizers and their ideas. Nkrumah, in particular, argued that Africans should go back to the basics; that is, a way of living before it was corrupted by the colonialists (Nkrumah: 2001, 81). Africans, for Nkrumah, had to re-educate themselves in traditional communalism defined as a system of treating and seeing each other as ends and not mere means to an end (Nkrumah: 2001, 83). The position is the antithesis to Eurocentric individualistic practices. For Nkrumah, authentic African emancipation meant basically control of Africa by indigenous political, economic and social ideology (Ochieng'-Odhiambo: 2010, 162), meaning that occupiers and their thinking were to be rejected. The same arguments were enforced within Nyerere's advocacy for Ujamaa. For Nyerere European capitalist systems, to a certain extent, had to be replaced by the communal system which meant in particular that the idea of land as a marketable commodity ought to be abolished and replaced by holding land in common. (Nyerere: 1973, 169). Nyerere regarded such a mentality as truly African and to be upheld. Covertly, Nyerere argued that borrowing and making use of ideas, attitudes and ways of living from pre-colonial African civilisations was a necessity. Senghor (1996, 44) concurred with the

ideas of communalism and added that capitalism should end and be replaced by communal ownership of social goods. This would have the effect of reducing or abolishing wealth accumulation that characterised capitalism. Other notions of this school of thought included excluding individuals or groups that were considered to be part and parcel of the colonial regime. Some leaders, Mugabe in particular went on to exclude ‘foreigners,’ mostly whites, from owning land in Zimbabwe by supporting indigenes’ expropriation of lands owned by white farmers. The aim was to establish authentic African economic and political control that excluded ‘foreigners.’

The separation argument suffers from a number of problems though the argument itself is not devoid of discrimination based on race. Race discrimination is associated with land redistribution in Zimbabwe, especially in the context of ‘land grabbing’ from the former colonizers. Discrimination is to be understood as the unequal or unfair [different] treatment of other people based on group membership (Boss: 2008, 584) such as race, sex, political opinion, national extraction and social origins among others. Race discrimination can also be equated to racism. Racism is an attitude towards a different racial grouping characterized by the desire to dominate and exclude the ‘other’ (Bonetto: 2006, 4; Tommie: 2007, 141; Cohen: 1979, 47). In the Zimbabwean scenario, racial discrimination and racism are reflected in laws that discriminate against whites. For instance, the Zimbabwean Constitutional Amendment Number 16 and 17, among other things, prohibits landowners from legally challenging government directives and moves in independent courts (Shay: 2012, 137). The law applies to white farmers who were the most affected by the F.T.L.R. In this case, access to courts of law and a fair hearing were limited hence creating an unjust and unequal legal system.

Closely related to the above, and also a second criticism of the separation argument, is the fact that this argument fails to realise that contemporary Africa has become a synergy of cultures that is a multicultural, multiracial and cosmopolitan (Fletcher: 2013). Arguing for a separation of ideas and practices is tantamount to limiting them thus creating an unequal hierarchy of cultures, an arrangement that is incompatible with modern social, economic and political expectations. Multiculturalism is a concept that is concerned with the establishment of a society that acknowledges, respects, promotes and recognises cultural diversity or co-existence which is essential for integration (Waldron: 1996, 90; Kymlicka: 2002, 327, 330, 336; Benatar: 2008, 212; Song: 2010; Rodrigues: 2014). Multiculturalism is necessary as it helps to discourage intolerance, marginalisation, stigmatisation, dominance of particular cultures and even cement social unity through the appreciation of differences (Kymlicka: 2002, 329; Tommie: 2007, 136 - 139; Benatar: 2008, 221 – 223; Songs: 2010). Essentially this translates into asserting that cultural coexistence establishes self-determination and self-governing for different cultures and individuals as well (Waldron: 1996, 114; Song: 2010; Rodrigues: 2014). In a sense, individual and cultural freedom to choose and determine what is right and wrong is asserted while at the same time inequalities and injustices among groups are also eliminated through freedom and addressing the different demands of various cultural groupings. These ideas are denied by the separation school of thought which on the surface appears to reverse inequalities and injustices.

In summary the arguments presented in this section reveal that:

1. Colonisation resulted in economic and political injustices for the indigenous populations especially marginalisation.

2. Land expropriation especially of white-owned farms increased self-determination and self-regulation among formerly marginalized people
3. Historically dislodgement has characterized Zimbabwean society. As such there are difficulties in determining land entitlement and compensation. Therefore there is a need to establish an agreeable exchange paradigm.
4. F.T.L.R land expropriations resulted in the violation of property and other rights.
5. The Separation argument in one way advocates racism in reverse and violates multiculturalism and integration.
6. Generally the arguments result in contestations concerning land acquisition and exchange paradigms.

#### **2.4. Chapter Conclusion**

This chapter established that colonial land expropriations were justified according to different arguments summarised as civilization, absence thesis, and economic. Linked to these justifications were policies and practices that resulted in land expropriation and the dissemination of colonial social and political institutions and economic systems. Notably however, colonialism caused property and other human rights abuses. Other abuses such as land annexation and labour abuse have also been cited. As a result of this, the indigenous people's freedom and power of self-determination was repressed. Colonial arguments were self-seeking aimed at benefiting themselves rather than the colonised. As a way to redress colonial injustices, the indigenous populace also advocated land redistribution which in practice led to land expropriations. These expropriations resulted in property and other human rights abuses. The post-independent arguments also caused disputes about land ownership and exchange paradigms. However, some of the post-independent arguments challenge modern conceptions of social composition and

organization, especially multiculturalism. Disregarding multiculturalism is tantamount to discrimination and to certain extent cause racism as well. The chapter also observed that injustices and inequalities (concepts that will be dealt with in detail in Chapter 3) are apparent in present modes of thinking and may continue in future if no mechanism is put in place to end or resolve the land problem in Zimbabwe.

## Chapter 3

### Arguments for Justice and Equality in Zimbabwean Land Redistribution

#### 3.1. Introduction

Justice and equality are key terms around which debates concerning Zimbabwean land redistribution have centred. However, the terms are elastic. The crucial questions are: what is justice and what is equality, and how have different arguments and conceptions of these concepts been discussed in Zimbabwe? Beyond that, what are the implications of such discussions for the Zimbabwean land redistribution? In this context, then, the aims of this chapter are to critically examine selected arguments and conceptions of justice and equality by exploring the limitations of discourse on justice and equality on Zimbabwean land redistribution. In conclusion, the chapter advocates a broader, diverse and plural understanding of human relations that enhance the well-being of individuals as the ideal for achieving justice and equality in land redistribution in Zimbabwe.

Several proposals have been suggested on how justice and equality can be achieved in the Zimbabwean land redistribution. Besides local scholarship, much has been theorized and debated by international scholars about this matter. International literature has engaged with local scholarship in attempts to discuss ‘appropriate’ ways of conceptualising justice and equality in land redistribution. In light of this, this chapter categorises and links different arguments (agrarian, economic, social and political) into paradigms that are dominant in the Zimbabwean land redistribution. The chapter will also utilise selected distributive arguments that are dominant in the discussion of justice and equality in the Zimbabwean Land Redistribution. In that regard,

the chapter will proceed firstly by presenting the understanding of justice, secondly by presenting the understanding of equality, and thirdly by examining different forms of arguments that relate to land or resource distribution.

The distributive arguments that will be deliberated on are: the Utilitarian Perspective, the African Conception of land and the Rawlsian Theory of Justice in its relation to land redistribution. It is necessary to realise that this chapter concerns only those aspects of the arguments relevant to land redistribution and resource allocation. That being the case, though, the crux of the matter still remains which is to give a critical analysis of the arguments as they are presented in the chapter.

### **3.2. Understanding justice**

Defining justice is a complex and daunting task. It is, however, necessary to expand on the concept because it is essentially a yardstick for judging human conduct and states of affairs as right or wrong (Pomerleau: 2013; Braswell: 2015; 6; Kanu: 2015, 78). However, justice is expected as a matter of course in all societies (Raphael: 2004, 4; Okimoto: 2014, 405; Moyo: 2015, 70). This implies that justice is one of the values and virtues that society expects (Kelsen: 2000, 2; Raphael: 2004, 1; Barry and Matravers: 2011; Pomerleau: 2013; Slote: 2014; Kanu: 2015, 78; Leontsini: 2015, 28). Justice defines the relationships between the individual, society and the world (Olusegun: 2014, 188 – 189; Braswell: 2015, 5 – 6; Gule: 2015, 134; Fuerstein: 2015, 1102). These relationships are considered ‘correct’ or ‘right’ or ‘expected to be proper’ in as much as they are within an expected framework that promotes peace, harmony, stability and social development at the same time. In the light of this, Kelsen (2000, 1) writes “justice is (a)... quality of a social order regulating the mutual relations of men,” similarly Scheffler (2007, 69)



argues that “... justice requires that each person be given the ... advantage that he or she deserves ....” Buchanan and Mathieu (1986, 11) view justice as “existing when a person receives that which he or she is entitled to, namely, exactly those benefits and burdens that are due to the individual because of his or her particular characteristics and circumstances<sup>12</sup>”. The positions expressed follow from the traditional definition of the word justice which has roots in the Latin phrase ‘*suum cuique.*’ The Latin phrase translates into ‘to each his own’ (Raphael: 2004, 5; Barry and Matravers: 2011). The idea behind ‘justice’ is that each person deserves what is proportional to what s/he deserves, such that a thief deserves punishment and a hard worker deserves commensurate remuneration. Implicitly, the argument is that the concept of justice is to be understood as the establishment of proper relations proportional to what is due to a person, such that those who transgress societal expectations receive retribution in return. Furthermore, the debate on justice also touches on institutional arrangement(s) and the execution of duties, obligations and responsibilities attached to the institutions. For institutions, doing the right thing involves executing its duties properly with impartiality and fairness (Seon-Mi and Sharraden: 2014, 203; Kanu: 2015, 79). Justice then is an ideal, an expected standard and a goal that has to be striven for by society in its attempts to establish and formulate acceptable and appropriate relations that enhance human living. This will be premised on interaction among individuals in society and on institutional arrangements and its ability to execute duties bestowed upon it.

Furthering the argument of understanding justice as founded on relationship(s), Campbell (2010, 6 - 9) argues that:

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<sup>12</sup> This position is sometime understood as a definition of justice, but in this research that understanding of justice is viewed as an extension of defining the term.

- i. Justice is “concerned with how people should not treat each other, for instance, that they ought not to harm other people”,
- ii. Justice as “blaming and punishing those who harm others”,
- iii. Justice as a reaction and action against wrong and searching for a response that does not perpetuate injustice and a search for different forms of just relationships.

In short, Campbell’s argument is that justice is a search for a way to enhance human living through promoting good and acceptable relations among people and setting out institutional arrangements that support the same cause. Campbell’s conceptualizations indicate the different ways in which justice can be understood. It is from these varied understandings of justice that philosophers, legal experts and political scientists have produced and concocted different forms or theories of justice. The theories are attempts to argue for the creation of appropriate relationships. Some of the theories include transitional, retributive, procedural, and (re)distributive justice, among others. It is through these theories that different philosophers attempt to reveal justice as really concerned with rights and the establishment of good relations in society<sup>13</sup>. Noteworthy is the fact that justice is not only limited to analysing and promoting proper relations among members of society, but it also refers to procedures of arriving at conclusions and the way in which institutions execute their duties (Pomerleau: 2013; Gule: 2015, 134). Procedural justice is to be understood as a way of arriving at a position or judgement by excluding prejudices and biases in the process. Justice, in institutional set-ups, refers to the

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<sup>13</sup> In attempting to do this, philosophers such as Rawls would advance the idea that justice is fairness and impartial in resource redistribution; Scanlon avers that justice is what we owe each other; Sen thinks justice is establishing a society whereby all have equal opportunities; Moyo (2015) extends the theory by holding that justice is correcting and revitalizing social relations such that peace is attained in society (transitional justice); Walker (2013, 133 - 134) thinks justice is concerned with the redress of fragile relations. These are just some confirmations on the idea of justice as concerned with relations in society. Pertinent themes that run across the theories are redressing and rearranging social relations and institutions so that they promote social harmony, social cooperation, and contribute significantly to prosperity.

execution of proper functions as expected by society including promoting laws that are not discriminatory and exclusive in nature.

Justice is therefore the ordering of interpersonal relations aiming at establishing and maintaining stable political societies (Pomerleau: 2013; Olusegun: 2014, 189; Slote: 2014, Leontsini: 2015, 28; Moyo: 2015, 71). In this sense, justice involves many aspects which include analysing the relations between people themselves in society and between people and social goods and social arrangements. This would include addressing and redressing social relations and rearranging social institutions as well. Hence, contemporary philosophers view justice as the appropriate way of settling contentious issues and forging a non-biased way forward. It is from this understanding that justice has been subdivided into different forms or theories as already stated, that is, procedural, retributive, restorative, and (re)distributive among others as a way of redressing and establishing acceptable interpersonal relations<sup>14</sup>. The idea of justice reflected here shows that justice is an action and reaction against wrong and a search for a response that avoids future inappropriate relations. In the same line of thinking, justice is a necessary component in Zimbabwean land redistribution in order for harmony, stability, and peace to occur.

### **3.3. Versions of Justice**

In this section, the research focuses on some selected versions or forms of justice such as distributive justice, social justice, restorative justice and transitional justice. Procedural and corrective justices have already been discussed above.

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<sup>14</sup> The ideas of equality, impartiality and fairness among others therefore are to be viewed as principles of understanding and attaining justice.

Distributive justice is a concept or framework concerned with the allocation of goods or resources in society. It largely deals with the economic distribution of benefits and burdens in society (Lamont: 2013) and includes three aspects, namely, the distributive procedure, pattern and goods to be allocated. These aspects are always a constant source of controversy.

While distributive justice is concerned with the economic distribution of benefits and burdens, social justice is a moral framework that concerns itself with advocating improved living standards for all people in society. Social justice in other words expresses disgust at all forms of exploitation. To this end, some scholars have averred that social justice is an all-encompassing concept of justice in that it advocates economic, social, and political equality for all people regardless of their physical, social and economic status (The International Forum for Social Development: 2006, 2, 6, 11 - 12). This basically means that concepts such as distributive justice, restorative, corrective and other forms of justice are all contained within this framework.

Restorative justice on the other hand is a problem solving system concerned with the rehabilitation of relations between offender(s) and victim(s). In some instances this involves the process of reconciliation while shunning retribution and revenge as the appropriate means of redress (Eisikovits: 2014).

Apart from addressing relations between individuals, transitional justice as a framework is interested in bringing about change in society or a way of peace-making (Villalba: 2011, 1 - 2). That is, it is a mechanism concerned with addressing or seeking redress after atrocities such as human rights abuses. The mechanism involves both judicial and non-judicial (through tribunal,

truth commissions among others) methods in addressing the abuses (Villalba: 2011, 1; Eisikovits: 2014). By and large transitional justice desires to establish peace and stability in society.

### **3.4. Main Roles of Justice**

Justice is viewed as having a crucial role in social organization. In this regard, justice has two main roles, conservative and reformatory (Raphael: 2004, 2 – 4; Leontsini: 2008, 28; Mangena: 2012, 63 – 66, 70 -73; Mangena: 2015, 11). The conservative and reformatory dimensions of justice have the objective of informing and guiding society as to the kinds of relationships that should prevail in society and the kinds of institutions so as to promote them (Shweiger: 2015, 37). Conservative justice aims at maintaining and upholding the *status quo* that is, preserving a social order that is considered necessary for the smooth running of society. This order is responsible for ensuring that harming each other is avoided and at the same time it aims at maintaining the established order of things.

On the other hand, the reformatory dimension aims at analysing and altering existing patterns of entitlement and social order if it so happens not to be in accord with existing social, political or economic expectations (Mbazira: 2009, 1 - 2). The idea behind this kind of thinking is that there is need to remove imperfections that may characterize societies, and ameliorate relations by re-orienting the ‘social order’ towards the establishment of acceptable norms (Ander and Zenker: 2014, 397 - 398). The reformatory role is all encompassing, dealing with all spheres of life such as the political, social, legal and economic. Justice in this sense is, therefore, interested in conserving and or reforming the social *status quo* so as to achieve social harmony and satisfaction. This idea has roots in ancient philosophers such as Aristotle who argued in the

Nicomachian Ethics (1134 a26 – 1134b2) that the main idea of justice is to promote the common advantage. Similarly, contemporary thinkers such as Olusegun (2014, 189 - 190) Gule (2015, 132), and Leontsini (2015, 28 -29) hold that social harmony, social stability and social cohesion ensue from just societies through promoting equality and fairness while addressing inequality at the same time.

With regard to land redistribution in Zimbabwe then, this chapter contends that reformative justice is the most appropriate. Since land redistribution falls within the areas of economic and social justice it is pertinent to discuss the relationship between these forms of justice. In the case of Zimbabwe, there has been much discussion about land redistribution, which includes entitlement, social good, and resource distribution<sup>15</sup>. This chapter attempts to link different discussions on social justice and redistributive justice to some dominant Zimbabwean perspectives on land redistribution. These perspectives pertain to social goods in the form of utilitarian thinking, resource distribution according to Rawls and entitlement found in Ubuntu thinking. The aim of the chapter is to expose the strength and weaknesses of these different perspectives. Discussion of the perspectives will be preceded by a discussion of equality.

### **3.5. Exposing the Injustice in Zimbabwean Land (Re)Distribution**

This section of the chapter aims at revealing the injustices that have occurred in Zimbabwe as a result of different land expropriations. The understanding of justice in this section follows the definition according to which justice is concerned with establishing good and acceptable relationships among people in society and their relation to goods. Etyang (2014, 71 -72) opines

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<sup>15</sup> Economic and social justice also focuses on issues of restitution and retribution. However these are largely addressed in the next chapter.

that injustice is the elevation of self-interest over public interest and the practice of not conforming to “that which is moral for the general good.” This implies that injustice is selective, privileging particular individuals or groups over and above all others. In real life, injustice manifests itself through legal, political, economic, and social means. During the Zimbabwean colonial period injustice was practiced through discriminatory laws such as the Land Apportionment Act 1930 and 1951 that prohibited indigenous people from acquiring and holding land in areas inhabited by whites and that confined them to Tribal Trust Lands (TTLs). Equally discriminatory laws were promulgated in the post-independent period, particularly Constitutional Amendment Act Number 16 of 2000 and 17 of 2005 that abrogated property rights and security on the part of the white farmers. In that sense then, injustice was perpetrated through the promulgation of laws that segregated and discriminated against particular races (the creation of unjust land relations). Apart from legal injustice, land distributive injustice was also rampant. The skewed racial land redistribution began during the colonial period and was reversed in the post-independent period (Pazvakavambwa and Hungwe: 2010, 138). Arable land distribution in the post F.T.L.R transformed ‘minority’ white land ownership into ‘majority’ black ownership. In the pre-F.T.L.R period land allocation was such that between 4500 – 6000 whites owned between 68 to 70% of the country’s arable lands; while over 6 million locals had to share the remaining (Moyo: 2010, 6; Pazvakavambwa and Hungwe: 2010, 138; Mutandwa and Chiumia: 2014). F.T.L.R resulted in less than 5% of white farmers returning to farms while the rest of the farms were distributed (Moyo: 2005, 5).

In addition, social and economic injustices (part of social injustice) were perpetrated through different forms of exploitation and manipulation of people. Farm workers both in the colonial

and post-independent periods were exploited through poor remunerations and social discrimination in the form of poorly equipped schools and inadequate medical facilities which exacerbated their plight (Bhatasara: 2011, 323). This also reflects the institutional injustices that were perpetrated by both colonial and post-colonial Zimbabwean governments. The governments generally failed to be impartial in dealing with the various differences (racial, social, and economic) among its citizens. The colonial government created areas for displaced black populations to a certain extent but the post-colonial government failed to do so for displaced whites. The fact still remains that there was failure to uphold expected relationships among the country's various races as was evident in the unfair distribution of goods in a society, the distribution was racially skewed.

### **3.6. Understanding Equality<sup>16</sup>**

Defining the term 'equality' is by no means an easy task. However, it is easy to present ideas in which equality is found as the best way to define the term. In presenting the ideas of equality, this research follows those of Weale (1998) and Gosepath (2007). Their argument is based on identifying three ideas about equality. Firstly, equality is an indicator (prescriptive) of what is supposed to be desired such as one man one vote. Secondly, equality is also a description of features of human society that include equality of opportunity among others. Thirdly, equality is also a principle of action (normative) to be aspired to and includes uniform consideration, respect and concern.

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<sup>16</sup> Equality is here considered a principle of Justice. This has been a conception that contemporary philosophers have inherited from antiquity (Gosepath: 2007)



Equality, implicitly and explicitly refers to the expected condition of living and survival which includes having the same consideration and access to goods necessary for existence. Therefore, equality is an expectation for a reasonable life (Miller: 2003, 79; Arneson: 2007, 594; Stivers: 2008, 4, 7). For this reason, Weale (2005, 238) and Hall, and Woermann (2014, 59 - 60) aver that equality is a principle of action that perceives people as equal (considered and regarded without disparities or differences). As an expectation, therefore, equality is a criterion for human societies which holds that humans should not be taken for granted but are to be treated with respect, concern and consideration (Dworkin: 1977, 272- 273; Weale: 2005, 239; Stivers: 2008, 13). This implies that individuals are moral beings who are ends in themselves and not to be treated as a means to an end. Individual humans deserve the same respect and considerations from all members of society.

Equality then indicates a desired social condition that is linked to the notion that ‘everyone should have the ‘*same*’ (Herrera: 2007, 323). The major issue is defining the ‘*same*’, considering that individuals are unique and endowed with different talents and qualities such as height, weight, intelligence, social, economic, and political positions, strength and work rate among others. In response, Dorling (1998, 41) states people are to be afforded and accorded the same rights, dignity and freedom without distinction. In other words, various conditions of human life deserve to be uniformised and equalised by the same degrees of concern, consideration, recognition, and respect (Long: 2016). This applies to equal access to political, welfare, social and economic resources as well as opportunities. Dorling (2012, 41) makes an effort in defining equality as meaning “being afforded the same rights, dignity and freedoms as other people.” Equality is interested in formulating conducive and enabling conditions for respect and

recognition of all despite social, political and economic standing (Hoffman and Graham: 2015, 67). Cheryl Walker (2014, 143 - 145), indirectly, adds a voice to the debate by maintaining that equality is connected with recognition that is framed within the understanding of considering all humans as belonging to the same species. In other words, where equality exists, favouritism in its different forms is disregarded and ignored.

In this regard, Walzer (1983: 19 – 20) had earlier averred that equality is to be understood as

[E]stablish[ing] a set of relationships such that domination is impossible. In formal terms ... equality means that no citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere with regard to some other good. Thus citizen X may be chosen over citizen Y for political office, and then the two of them will be unequal in the sphere of politics. But they will not be unequal generally so long as X's office gives him no advantages over Y in any other sphere – (*such as*<sup>17</sup>) superior medical care, access to better schools for his children, entrepreneurial opportunities, and so on

The argument advanced by Walzer is that equality occurs when spheres of influence do not cross over into each other. Domination in one area is acceptable but beyond that tyranny prevails. Equality then<sup>18</sup>, involves ensuring that influence in one area is limited and controlled such that all have a chance to excel in other areas of human life. Dominance is a leadership role. This kind of equality, Walzer (1983, 282 - 284) supposes, discourages tyrannical tendencies but in actual fact it is the rule of law which controls these tendencies. The main idea behind Walzer's thinking is that individuals will enjoy high rank or influence in some particular sphere of life because of their particular ability at some certain time in their lives. Following from the just stated, it means that a person's specific ability in a specific area does not privilege him or her over others as far as entitlement to human respect and dignity is concerned. Such views contribute to a sense of

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<sup>17</sup> Own addition.

<sup>18</sup> According to this researcher's interpretation of Walzer, ability in one sphere should not be used to domination in other areas. People dominate and influence areas because of what that area demands but the temptation to dominate in other areas should be resisted. This is the ideal but in reality this is not always the case.

participation among members of society, a sense of being and belonging as opposed to a situation where all spheres of life are dominated by a few individuals (Miller: 1995, 12; Walker 2014, 141 - 144). The position presented here is that individuals have different abilities but the resulting hierarchy should not lead to abuse or exploitation.

The foregoing discussion shows the need to establish respectful relations and duties between individuals themselves and the state towards its citizens and vice versa. There is a sense in which abilities and capacities among people are respected. Respectful relations between individuals involve viewing each other as having the capacity to make independent decisions and plans as well as keeping and maintaining distance from the business of others, avoiding harming or injuring others, as well as promoting and respecting personal liberties. In fact this means that exploitation, manipulation and other forms of abuse or any other discrepancies in treatments are done away with. Individual respect demands that the state respect differences among its citizens and ensure that all citizens enjoy the benefits of social cooperation by receiving benefits equally (Carter: 2013, 34 - 35). Implicitly, equality is an indicator which should result in changing society and facilitating social mobility (Akinci: 2008, 201- 202). As a principle, equality guarantees people choice and strength to negotiate their way in society while being protected by governments' promoting the ideals of uniform respect and consideration for all. For philosophers who advocate the Capability Approach, equality would be understood as offering opportunities to all according to ability. For this study, equality is to be understood as the equalisation of economic, political and social opportunities so that individuals would be able to act and achieve or realize the kind of lives they value. This is the position which the study attempts to establish in the following discussions.

However, Rustin (1995, 35) questions the possibility of establishing equality throughout the world. Rustin argues that Walzer's thinking is unrealistic and maintains there are spheres in which some people will always dominate others no matter how hard people try to achieve equality. Realistically, political power and wealth dominate and distort the distribution of other social goods. This is typical of capitalist societies where there are hierarchies of dominance and influence.

### **3.7. Inequality and Zimbabwean Land Redistributions**

For Walzer (1983, 282), complex inequality occurs when one sphere of influence pervades other areas thereby influencing and monopolizing them. (Dominance in one area is acceptable but not in all areas). For example, one may be dominant in the area of politics yet political control should not extend to other areas such as having access to superior medical care or property or to better schools for children. This kind of inequality Walzer terms tyrannical and is to be discouraged by rules and regulations, or, in Walzer's (1983, 282 - 284) words 'blocked exchanges'. Inequality is the unrestricted domination and preferential treatment of persons in different spheres of life. Inequality is the failure to end these tyrannical tendencies of controlling all spheres of life. Parallels can be drawn between the theoretical understanding of inequality and the events that occurred in the Zimbabwean land redistribution process.

In Zimbabwe political dominance has become a tool of domination and influence in all spheres of life. Zimbabwean politicians determined how land redistribution was to be carried out, and they received superior medical attention, and sent their children to up-market schools. Yet no reciprocal service was provided to the less fortunate in society. In relation to F.T.L.R, the political leadership acquired the best and biggest farms (Moyo and Yeros: 2005, 185 – 188;

Moyo 2010, 10; Elich: 2011). In addition, they also benefitted most of the time from government financial support for the farms at the expense of the most deserving farmers. In a sense, the ideal of equal consideration, concern, opportunity, and respect was violated. With this in mind, it should be noted that this research argues that equality should be established for all people in the country and there should be no privileging of particular individuals. This was carried out by affirmative action which is a form of preferential treatment, although this research recognizes that affirmative action is in some instances a principle of corrective justice. Yet in the Zimbabwean scenario affirmative action was not correctly applied since it resulted in unfair and unequal treatment of others (serious favouritism and discrimination exhibited).

In the above, definitions of justice and equality and connections between Zimbabwean land redistributions and these concepts have been made. It is now important to turn our attention to arguments for Zimbabwean land redistribution(s). In doing so, the research focuses on selected arguments in favour of justice and equality, not because they are very important, but because they are relevant to Zimbabwean land redistribution since there are narratives and propositions that can be linked to the selected arguments. In saying this, the research makes connections between arguments presented by different scholars of Zimbabwean land redistributions and some philosophical distributive patterns relevant to the matter in hand. The next section focuses on selected arguments for just and equal land redistributions in Zimbabwe.

## **3.8. Arguments for Just and Equal Land Redistribution**

### **3.8.1. Utilitarian Argument**

#### **3.8.1.1 Theoretical Understanding**

The Utilitarian principle is a consequence based principle that emphasises the importance of outcome or benefit of an activity (Wolff: 2006, 2; Prendergast: 2014). According to Bentham ([1789] 2006, 457), utilitarianism is the principle of utility that “approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or what is the same thing in other words, to promote or to oppose that happiness.” Sidgwick (1966, 411) also avers that “utilitarianism is ... the ethical theory, that the conduct which, under any given circumstances, is objectively right, is that which will produce the greatest amount of happiness on the whole, that is, taking into account all whose happiness is affected by the conduct”. In short, utilitarianism is a utility principle that promotes outcomes that guarantee the greatest good for the greatest number of people affected by the action.

According to the advocates of Utilitarianism, a moral society is, therefore, a society in which the happiness of the greatest number of individuals is advanced. Utilitarianism advocates the maximization of particular or general welfare for people (Lamont and Favor: 2013; Shaw: 1999, 4, 11- 12). Hence an action that enhances the happiness of the community rather than diminishes it conforms to the utilitarian principle. Utilitarianism is more interested in the consequence of an action as the basis of evaluation and it is the outcome (happiness) which determines the rightness or wrongness of the action. However, this is also one of the greatest weaknesses of utilitarian thinking since arguing for general or total interest or happiness as defining good or evil is not always sound and does not conform to critical scrutiny (Shaw: 1999, 5). As an argument,

utilitarianism is concerned with the end result and does not consider the means by which the end is arrived at. Prendergast (2014, 2, 14) rebuts utilitarianism as a theory on the grounds that it justifies grotesque and barbaric actions in order to achieve intended goals. The utilitarian theory, Prendergast (2014, 14) avers, morally justifies in some instances violent means, violation of rights, unequal land distribution, and sacrifices the happiness of some for the happiness of the many.

### **3.8.1.2 The Practical Application of Utilitarianism to Zimbabwe F.T.L.R.**

Different arguments in support of land redistribution that comply with the utilitarian theory have been posed from two different stand points. The first has to do with the occupation and sharing of the land among the people. Several scholars have suggested that the F.T.L.R resulted in general satisfaction of the formerly disadvantaged group, which was by far the largest<sup>19</sup> (Chigumira: 2010, 10; Elich: 2011; Scoones: 2010, 7; Masaka: 2011, 335; Moyo: 2013, 65 - 66). The basis of this argument is that prior to F.T.L.R most of the arable land in Zimbabwe was under the control of a few white farmers while the majority of the black farmers were confined to arid lands. In this regard, the F.T.L.R transformed the pattern of land holding by opening it up to all and especially the indigenes who had been disadvantaged. Scoones (2010, 117), and Masaka (2011, 334) aver that the satisfaction and happiness experienced by the indigenes was a result of the repossession of ancestral lands. This relationship with the land reflects both physical

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<sup>19</sup> Elich G actually avers that in the Masvingo province about 62% of the resettled farmers were landless and disadvantaged people.

possession and emotional satisfaction<sup>20</sup> whereby land repossession is prioritised at the expense of all other human expectations such as productivity.

The second position relates to the general improvement in family living standards through increased harvest yields among the population as a result of land redistribution. The argument advanced is that household yields (which could be turned into income) and country production have ultimately increased and improved the family fortunes of formerly impoverished communities and resulting in an increased contribution to the country's economic growth. This is to a large extent an argument for economic justice. Scoones (2010: 6, 66 – 67, 77, 103, 117), Chigumira (2010: 10), Elich (2011), and Mkodzongi (2013, 346 -349) found that that the livelihoods of the formerly landless individuals significantly changed as a result of land redistribution. Marongwe (2007, 29) further notes that there has been an increase in the national food production yields largely because of increased land utilisation and access to the land itself. Noteworthy though is the fact that the yields are, however, mostly dependent upon the natural rainfall pattern of a given season, that is to say, the resettled farmers do not farm commercially. On the other hand, other scholars have argued that the state economy has declined largely because agriculture has been the major contributor to the economy of the country (Masaka: 2011, 342). In light of this, Masaka (2011, 341 - 342) suggested that through the utilitarian argument, economic decline had been experienced causing greater numbers to suffer<sup>21</sup>. Masaka's argument is supported by the fact that from 2000 – 2008 the Zimbabwean economy was on the decline such that by the end of 2008 the inflation rate was pegged as 231 million%. The figure given

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<sup>20</sup> This argument about satisfaction is in line with John Stuart Mill ([1861] 2008, 40 - 45) who thought intellectual pleasures were more desirable than bodily or physical pleasures. Though this is the case, the argument still stands, that is utilitarianism upholds the greatest good for the greatest number, be it the quality or quantity.

<sup>21</sup> The number of people that do not own farms and who are in urban areas far surpass those who have benefited on the resettled lands. Unemployment has been a tragic by product of this process.



here is not official because the Zimbabwean government stopped issuing inflation rates at the end of 2007 as they had been changing almost hourly (Hanke and Kwok: 2009). The major cause was the decline in agricultural food output to the point where there was no surplus for export since the year 2001 (Glantz and Cullen: 2003, 10). Agricultural exports from Zimbabwe had been the largest source of foreign currency accounting for more than 60% (Glantz and Cullen: 2003, 11), so the decline impacted negatively on foreign currency reserves and economic growth in general. Apart from the decline in agricultural production, there was also endemic economic mismanagement characterised by excessive government borrowing from the central bank without limit causing a shortage of money in the economy (Hanke and Kwok: 2009). The government was not paying back credits received from the central bank. Masaka's argument can be substantiated by noting that the economic demise itself brings national shame<sup>22</sup> and ultimately harm in downgrading the country's world standing. In a sense the utilitarian argument has become an enemy unto itself, as it pushes greater national economic prosperity to the fringes while promoting physical repossession and concomitant happiness as desirable for one particular group.

In accord with the above thinking is the view that the utilitarian argument ignores the interests of those who are in the minority. The utilitarian theory only concerns itself with the satisfaction and interests of the majority; in this regard utilitarianism is indifferent to minority and individual interests (Boss: 2008, 26 – 27; Anderson: 2011). The freedoms and choices of minorities and individuals are sacrificed for the benefit of the majority. In the case of F.T.L.R, the interests of the minority, that is, the white farmers were abrogated in favour of the majority, that is, the

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<sup>22</sup>Seeking refuge in neighboring countries such as what occurred between 2001 to date is closely linked to the economic demise that has a link with F.T.L.R. Migration in search of greener pastures, and fleeing from the country in search of better livelihood in neighboring states is associated with shame and condemnation of the state of affairs.

landless. Furthermore, in its attempt to attain the greatest degree of happiness, utilitarianism upholds an ‘idealized view of justice<sup>23</sup>’ whereby a wrong is committed in order to justify several rights violations resulting from that wrong (Pojman: 2011, 120; Prendergast: 2014, 2, 14). The F.T.L.R’s heinous and callous forced removals of a few white farmers ignored the interests, concerns and freedoms of white farmers in favour of resettling landless blacks. The utilitarians, therefore, are not worried about the means through which land was redistributed but only with the result or ends (William: 2012, 254). Also it is important to note that applying the utilitarian theory to Zimbabwean land redistribution exposes the fact that the argument only limits itself to the overriding importance of reconnection with tribal heritage. It ignores the fact that human life is complex and has other aspects that need fulfilment and recognition. Understanding F.T.L.R from a utilitarian point of view reveals that F.T.L.R concerns itself with the satisfaction of land occupation yet at the same time ignoring the importance of political and social stability and economic progress as well. These factors were utterly disregarded during and after the F.T.L.R.

### **3.8.2 Argument from the Ubuntu<sup>24</sup> Conception of Just and Equal Land Distribution**

#### **3.8.2.1. Theoretical Understanding of the Ubuntu Conception of Resources**

Ubuntu is a philosophical term used to denote the axiological, epistemological, and ontological understanding of life by native members of the southern Africa region (Hapanyengwi-Chemhuru and Makuvaza: 2014, 2 – 3; Mangena: 2016). By saying this, it means that Ubuntu is a reflection of the authentic human experience of the people found in southern Africa. As a reflective part of

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<sup>23</sup> The Idealized view of justice was propounded by Louis Pojman who gave an example in which he says utilitarianism can authorize the killing of one healthy person in order to supply his body parts to five ailing patients who are in need of those parts. The utilitarian can argue that the murder is necessary because it saves the lives of the five patients.

<sup>24</sup> The chapter presents a limited understanding of the Zimbabwean conception of land redistribution because it is the most relevant and related to the area under consideration. However, references are also made to other African conceptions of land in as much as they are in line with Ubuntu.

human living, Ubuntu is the lived, and living tradition of the people (van Niekerk: 2013, vi; Chuwa: 2014, 48; Ramose: 2014, 121). The main concern of this tradition is to foster and cultivate positive human interactions so as to enhance the well-being of the community and that of the individual as well (Hapanyengwi-Chemhuru and Makuvaza: 2014, 6 - 7). Van Niekerk (2013, 1) furthers this thinking by saying that Ubuntu has expectations and requirements which have to be observed and followed by members of the community in order to promote social cohesion and social harmony. For Ubuntu, positive human interactions are expressed through communalism. Communalism refers to living together as a group. Mangena (2016) avers that in Ubuntu thinking communalism is expressed through emphasising communal existence as prior and important as opposed to western thinking of placing the individual at the centre of human existence. In Ubuntu thinking communal interests come first and are respected by all members of the community. The same thinking concedes that individual interests are subsumed within the communal or community interests, hence there is no variance between individual and community interests (Eze: 2008, 107). The emphasis upon communal existence is well expressed through the ideas and values of mutual recognition and respect for each other's needs, sharing, interdependence, interconnectedness, and common humanity (Matolino and Kwindingwi: 2013, 199; Mangena: 2015, 6).

Ubuntu's communal existence also refers to the collective orientation of the people of southern Africa which is reflected both in the way the people act and in their administration of resources (Kimmerle: 2011; Chuwa: 2014, 48 - 49). In Ubuntu thinking, members act together in solving and resolving conflict, for compassionate reasons, and to express their joys (Mangena: 2015, 6). Collectivism is also shown in the common administration of both tangible and intangible

resources that belong to the community (Kimmerle: 2011; Chuwa: 2014, 48 - 49). The administration is done through the chief's court, because the chief is the custodian of the community's resources. Under Ubuntu communal ownership, resources were not commercial commodities and commercialisation was prohibited (Thompson<sup>25</sup>: 2003, 188 - 189; Wiredu: 2003, 374)<sup>26</sup>. The main reason as to why land was considered a communal property lay in the fact that by so doing, access to land would be regulated by the community and made available to every community member according to need (Wiredu: 2003, 374). Just land distribution was also assured since everyone was entitled to land holding and use (Wiredu: 2003, 374). Impartial land distribution was assured through communal land distribution which was administered by the whole community led by the chief and his court of advisors (Pauw 1997, 375)<sup>27</sup>. The purpose of involving members of society was to encourage good social relations, reduce conflicts and confrontation among community members and minimise and avoid corruption and greed which are incompatible with the spirit of Ubuntu (Bennett: 2011, 43; Moyo: 2013, 73; Matolino & Kwindigwi: 2013, 199). Over and above all is the fact that communal ownership and sharing was aimed at establishing social harmony and social cohesion. The procedure of land distribution consistently followed the pattern as mentioned above. The idea and ideals of communal land ownership are still found in the post-independent era especially in communal areas where there are no legal land titles.

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<sup>25</sup> Thompson actually avers that pre-colonial land ownership in Zimbabwe was not a commercial commodity.

<sup>26</sup> There is a sense in which Ubuntu thinking on land ownership and use are linked to 'communalism' and 'socialism' (Mabovula: 2011, 38; Gade: 2013, 12; Matolino and Kwindigwi: 2013, 198).

<sup>27</sup> The concept of parceling out land as a community was perpetuated during the colonial periods through the communal laws that empowered Native Commissioners to give land to the people through the local Chiefs. This same system even continued into the post-independent period particularly in former TTL's.

### 3.8.2.2. The Practical Application of Ubuntu Land Ownership on F.T.L.R

Parallels can be drawn between the ideas and values of Ubuntu communal land ownership and the nationalisation of agricultural land<sup>28</sup> in Zimbabwe. Recent developments (2010 - 2014) in the Zimbabwean F.T.L.R context point to the fact that land has been nationalised. Nationalisation of the land implies that all land in the country is now state land or property and it is now the responsibility of the state to distribute land in the manner it deems fit particularly in relation to addressing colonial land inequalities and injustices (Constitution of Zimbabwe Amendment [No 20] Section 72: 2013). Communal land holding is equal to saying all agricultural land is now state land and is to be distributed by the state through state mechanisms such as chiefs, agricultural and land ministries. Instead of communal agreement, the state now offers state recognized lease agreements as proof of land ownership and this is far removed from colonial land titles. The state argues that having or continuing with colonial land titles encourages speculative land holding and acquisition. It is also assumed that by embarking on nationalisation and national redistribution, the government will address the needs of the people, especially access to and use of arable land. Ubuntu values of sharing, caring and respecting the needs of the people is reflected in the nationalisation of land in Zimbabwean.

The Ubuntu conception of land holding and exchange, however, has its drawbacks when questions of inclusion arise. That is to say, important choices of individual will and freedom to participate and be incorporated in society are ignored. Instead, indoctrination and manipulation tend to be resorted to at the expense of individual freedom and autonomy (Matolino and Kwindigwi: 2013 198 – 204). As a matter of fact, Ubuntu thinking runs the risk of creating a

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<sup>28</sup> The land in question refers to both land suitable for various forms of commercial farming and also to lands that were previously owned by white farmers. The land does not include Communal lands or urban lands under local authority (whose lands will continue to be valued at commercial rates prevalent at the time).

monolithic society that does not respect the multi-cultural and cosmopolitan values and societies that now characterize contemporary Zimbabwean society (Matolino and Kwindingwi: 2013, 203). It limits and fixes Zimbabwean land holding and exchange to pre-colonial thinking.

Moreover, Ubuntu ideas are applicable to small communities and this makes it difficult to apply them to states or nations. Ubuntu philosophy is limited because it has local but not universal applicability. Metz (2011, 532 - 533) and Curle (2015, 13 - 14) postulate that Ubuntu is based upon the collectivism of small local southern Africa communities. Furthermore, the thinking behind Ubuntu philosophy is based upon group thinking and acting, rendering it uncompromisingly majoritarian in outlook. For this reason, Ubuntu thinking is not compatible with the liberal traditions that defend individual freedom and liberties unfettered by communal control; that is, it prioritises humanism over the human per se (Douglas: 2015, 306 - 307). Moreover, based on this argument, Ubuntu thinking may have difficulties in adjusting to modern societies since such societies are now liberal in outlook though through encouragement and re-education people may learn to adopt Ubuntu thinking.

As for economists, communal land ownership does not guarantee the security necessary for financial and agricultural funding (De Soto: 2000; Obeng-Odoom: 2012, 162 – 163). Communal land ownership represents insecure land tenure that also threatens domestic and international investment. This is true for those new Zimbabwean farmers resettled during the F.T.L.R who have been granted government lease agreements but who lack financial support because their land tenures are not internationally recognized. Additionally, experience has revealed that communal land ownership and use generally cause inefficiency and negligence, as was the case

with Tanzanian Ujaamah farms and cooperative systems in the early post-independence period in Zimbabwe and even in the post F.T.L.R period (Marongwe: 2007, 29; Obeng-Odoom: 2012, 162 - 163). In addition, communal land ownership does not guarantee full ownership rights, the right to sell or any other exchange using the land as collateral or security. That being the case, the World Bank (2003, 4) and Coleman (1988, 95 -120) notes that communal ownership reduces conflicts over land and encourages participation in the regulation of resource exploitation. This position, however, has still to be realized.

Noteworthy also is the fact that Ubuntu thinking overburdens people with duties and responsibilities that are not necessarily theirs. Murungi (2004, 523) avers that such thinking widespread among Africans. In a sense, people are expected to carry out duties on behalf of society, meaning that they are thereby overburdened by community responsibilities which are not necessarily theirs. The idea, therefore, forces people to become what they would rather not be, thereby creating a false sense of belonging and an enslavement of personality. This is a danger that Wolmerans (2014, 223) warns against, especially when the term Ubuntu is uncritically invoked. In fact, Wolmerans avers that Ubuntu risks degenerating into an ideology or mere rhetoric when it is abused by politicians or used for selfish reasons. When Ubuntu is used in this way, it can lead to the enslavement of people's minds. Whenever this occurs, the autonomy of the individual is also limited, especially the freedom to choose and critically think and reflect upon one's life choices since one feels bound to defer to the thinking of the group. If these Ubuntu conceptions of communal land ownership were applied to F.T.L.R there would be a danger of limiting the autonomy of the people. On the positive side though, Ubuntu thinking and land sharing foster cohesion and unity, but still force people to adhere to ideas and ideals that

are not theirs. Ubuntu limits people's thinking thereby creating a false sense of unanimity whereby all are assumed to hold the same views (Leib: 2006, 146 - 147). In all honesty, the Zimbabwean F.T.L.R has been given an aura of agreement by the 'landless' Zimbabweans yet this is not the true picture. There are objections to land redistribution and the Ubuntu understanding of Zimbabwean F.T.L.R would distort the reality of what Zimbabweans think. Unanimity risks stifling debate and channelling people into uncritical modes of thinking informed by indoctrination. This is the danger which the F.T.L.R in Zimbabwe faces. Beyond this, the idea of unanimity leads to misconceptions about modern political, social and economic aspects. The idea of communal ownership, while reasonable and applicable, presumes that all Zimbabweans (landless or not) share the idea of communal ownership as the ideal land ownership model. But this unanimity also denies the existence of other, different forms of economic exchange that have existed in Zimbabwe since the colonial period. It also ignores the fact that it is the majority who are in charge who wittingly or unwittingly suppress the minority. As a matter of fact, when it comes to making decisions, it is the majority which dominates since, as Leib (2006, 146) postulates, the minority are likely to be intimidated by numbers, such that even if they vote they are certain of losing. In such a situation they would rather withdraw and keep quiet, allowing the majority to dominate. This gives the impression a decision has been reached unanimously. This has also been the case in the Zimbabwean F.T.L.R where the presumed majority voted for and vetoed decisions concerning F.T.L.R through the use of numbers and even taking advantage of abstentions by minority parties. Consequently unanimity can be construed, in this regard, as a way of limiting and denying plurality.



Another criticism levelled against Ubuntu is that it is too vague (Metz: 2011, 532). On its own the word Ubuntu refers to the axiological, epistemological and ontological dimensions of humanness, but that is too vague, in that it involves too many meanings and explanations. It also holds when the word is applied to legal, political and even economic aspects. There is no precise meaning that can be accorded to the term, and this exposes the term to abuse or used to manipulate people. In relation to this point, Metz (2011, 533) avers that the ideas attached to this term make them imprecise and the fact that there is no agreed understanding make it difficult to be used in justifying public decisions and actions. It has also limited use when applied to other, more important areas of human life.

### **3.8.3 Argument from Rawls' Theory of Justice<sup>29</sup>**

#### **3.8.3.1 Theoretical Understanding of Rawls' Theory of Justice**

Rawls' theory of justice concerns how agreements between people can be reached on how to distribute benefits and burdens in society. It proposes that it is necessary to assist certain segments of society by creating disadvantages for the better off so as to improve the lives of the less privileged. Rawls concedes that economic inequalities exist in society but that they should not leave the least advantaged<sup>30</sup> worse off (Rawls: 1999, 5 - 7). The Rawlsian theory presents two principles which are as follows:

1. Each person is to have an equal right of access to the most extensive total scheme of equal basic liberties compatible with a similar system of liberty for all. And
2. Social and economic inequalities are to be arranged so that they are both:
  - (a) To the greatest benefit of the least advantaged, consistent with the just savings principle, and

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<sup>29</sup> This is sometimes referred to as the Difference Principle.

<sup>30</sup> The least advantaged person is a person with the lowest index of primary goods which include self-respect, income and wealth (Rawls: 1999, 54), rights, liberties and opportunities (Rawls: 1993, 188). The primary goods are distinguished from basic human needs and primary natural goods are to be understood as such.

(b) Attached to offices and positions open to all under conditions of fair equality of opportunity (Rawls: 1999, 5 - 6).

Rawls' suggestion is a hypothetical postulation which assumes that equality of all people is achieved through equal participation, recognition, and representation (ways through which basic liberties are secured, prior to wealth distribution) (Rawls: 1999, 6 – 7; Kanu: 2015, 79). In addition Rawls supposes that where equality exist then people can reach agreements that are impartial and have no biases or preferences (Kanu: 2015, 79). The agreements are further reached through what Rawls terms the Veil of Ignorance. The Veil of Ignorance is the initial situation in which individuals are not aware of their social, economic, and political positions (Rawls: 1971, 47; Richardson: 2014, 59). In this view, Rawls proposes a situation where no one knows his/her position beforehand. This he thinks is necessary for reaching a fair agreement that does not favour one group over another; additionally, such a situation will necessitate cooperation, reciprocity and mutuality among individuals in society (Richardson: 2014, 61 - 62). For Rawls people in society agree to a situation whereby equality and justice is achieved through improving or diminishing the economic prospects of the advantaged groups or individuals through favouring the least advantaged (Bird: 2006, 130). The diminishing and improving of the advantaged group's economic prospects is only necessary in as much as it results in improving the livelihood of the least advantaged which, for Rawls is the demand of justice (Bird: 2006, 130). This is supported by Richardson (2014, 58, 61) as true justice on how societies show care and concern for others, especially the seriously disadvantaged due to physical, natural and environmental causes. Implied in Rawls theory is the idea that the state should be heavily involved in distributive justice or day to day lives of its citizens in order to better their lives.

### 3.8.3.2. The Application of Rawls Theory of Justice to F.T.L.R

Connections can be made between the Rawlsian proposition and the Zimbabwean F.T.L.R. Shaw (2003), Sachikonye (2012), Hanlon *et al* (2013), and Mutopo *et al* (2014) have claimed that it was and is still necessary for the Zimbabwean government to be heavily involved in land redistribution. State involvement means that the state carry out its obligations and duties of bettering the lives of the landless through providing different forms of aid to bring justice to poor or the least advantaged landless Zimbabweans. Aid would come from deducting funds from the better off.

Shaw (2003a, 86), in particular, suggests heavy taxation of commercial farmers who own underutilized lands or multiple farms and compulsory acquisitions of such lands by the government for the purpose of redressing and resettling landless people. This for Shaw, though now an impossibility, was a way of justly addressing the land issue in Zimbabwe and bettering the lives of the disadvantaged. Shaw's idea was that accrued taxes from the farmers would then be channelled to resettle the landless and probably subsidizing their other necessities. This is consistent with Rawls' proposition of bettering the position of the least advantaged through disadvantaging the better off. The least advantaged in this case are the landless people while the rich or better off are the farmers.

Concerning the current F.T.L.R, Sachikonye (2012, 238) suggests that the government needed to provide support services to include infrastructure projects as well as to consider the "interests of the poor, women and farm workers." Implicitly, Sachikonye is supporting the Rawls' Difference Principle according to which the position of the least advantaged (be it socially, economically and certainly politically disadvantaged) should be improved. The only sensible thing for the state

to do would be to tax the better off, that is, the working class and commercial farm owners so as to better the position of disadvantaged members of society. Hanlon *et al* (2013) and Mutopo *et al* (2014, 48 -50, 51, and 56) buttressed the argument by saying that it was important to empower, prioritize and recognize the importance of gender, especially women who have been at the fringes of society yet play a crucial role in human survival. They advise that it would be prudent to channel more resources to support women's efforts. Though they are not clear on where the resources would come from, they suggest taxation or redirecting resources from other areas considered to be adequately funded.

Rawlsian thinking is condemned by libertarian philosophers who argue that the difference principle diminishes and/or destroys the inalienable rights of human freedom. The first part of Rawls' principle actually argues that this is of fundamental importance. But the liberty of individuals to utilize their innate abilities or enjoy the fruits of their labour is thereby denied by the second part of the principle. To this end, Blake (2013) posits that, "individuals are no longer entitled to obtain whatever share of resources their talents might obtain ...." In this regard, also, Nozick (1974) argues that Rawls Difference Principle, in so far as it involves taking away part of someone's earnings through labour, is equal to abuse and robbery. It is robbery (and forced labour) in the sense that individuals are forced to pay for what they have been able to do, that is, their being able to convert different forms of gifts, capabilities and opportunities for the benefit of those who could not. The liberty to use benefits accrued from abilities and converting opportunities is interfered with yet the argument is that equality, in whatever dimension, ought to be respected and maintained. In this sense the principle proposes a 'forced' compensation model so as to benefit the presumed least advantaged. In every sense, the difference principle

disqualifies and denies incentives for talented individuals (Hunt: 2010, 155). In the same manner, the principle places obligations and duties on individuals through forms of coercive legal institutions. The individuals' 'real' obligations and duties are sacrificed and replaced by obligations towards the community, individual talent being thereby converted into a community asset and property (Nozick: 1974). However, it is a surprise that the same libertarian thinkers expect to get services done for them from the government or state; one wonders how they expect such services to be financed.

In relation to the Zimbabwean F.T.L.R, the social and economic inequality principle, if implemented, would condone historical injustice. Noteworthy is the fact that in the Zimbabwean land redistribution, different forms of injustice have occurred and therefore, to demand exorbitant taxation is tantamount to endorsing its injustice. In effect the practice of assisting the least advantaged would in a sense be accepting that the arrangements cannot be changed in any other way except by punishing rich farmers through heavy taxes as Shaw (2003a) suggests. Not only that, the practice would also be a way of maintaining the *status quo*. As if that were not enough, there is also the view that the principle would support and augment laziness among aid recipients. This argument is supported by the empirical fact that in communities that have been receiving aid, there has been an apparent reluctance by the recipients to work towards bettering their own lives. They would effectively wait for what would be given to them. It is in this sense, therefore, that the status quo is maintained and laziness encouraged.

### **3.9. General Analysis**

The arguments presented in this chapter point to the fact that the state should have a major influence in affairs that affect its citizens. To a great extent, the thinking is that the state, through

some of its agencies ought to use coercive means to force people to comply with government policies. However, political power<sup>31</sup> is always coercive, and the government alone is sanctioned to use force to uphold its laws (Rawls: 1996, 137). In the same way, Anderson (2011) avers that the use of coercion can be both constructive and destructive. Constructive coercion refers to the state's ability to use force successfully both internally and externally, mostly against competitors. However, coercion and force, although necessary for governments, are condemned in contemporary political thought (Morris: 2012, 28) especially when they are directed towards citizens while protecting the interests of the ruling class. Coercion and force may be abused in order to manipulate citizens. On the positive side, coercion helps to restrain “bloody minded and recalcitrant individuals from harming others”, and can be a deterrent against systems that are abhorrent to human existence (Anderson: 2011). That being the case, the major concern of this research is to reveal the negative effects of coercion and its implications in the Zimbabwean F.T.L.R.

Putting the burden of organizing society into the hands of the state opens up the possibility of the use of coercion against its citizens. This is reflected in the Zimbabwean FTLR. Political power and dominance were used by politicians to influence the legal outcomes of the F.T.L.R. During the Zimbabwean F.T.L.R, the coercive power that could have been used to maintain order and restrain citizens from harming each other effectively became a tool for politicians and government to harm its citizens. Moyo (2001, 320), Human Rights Watch (2002, 18 – 19, 23), Hove and Gwiza (2012, 288), as well as Chiremba and Masters (2013) note that the Zimbabwean government used the security forces, violence, property annexation and specifically enacted laws

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<sup>31</sup> In this sense, coercion is being used in a limited sense. The broader sense is beyond political coercion as shown here, it refers to social, psychological, and physical coercion as well.

to protect and promote the gains of F.T.L.R<sup>32</sup>. The state's actions were against the interests of certain sectors of society.

Another aspect of the arguments is that they denied social diversity or variety by which is meant differences that are inherently part of contemporary life. These differences range from racial, economic, physical, social, to intellectual ones as reflected in people's social and economic standing. The ideas of social equality and assistance to the poor, as Rawls says, and also the idea of communal sharing that is enforced by Ubuntu also point to this fact. Such differences are facts of nature which, though sometimes incomprehensible, have to be respected. For instance, the fact that an individual fails to provide for his or her self is naturally a personal problem. The danger comes when individuals are forced to bear burdens on behalf of others. The arguments also deny the existence of different cultures among the Zimbabwean populace. Ubuntu and Utilitarian conceptions of F.T.L.R in Zimbabwe implicitly and explicitly reflect these ideas.

It is critical to note that in so far as these arguments presented here seem designed to end injustice and inequality, they actually perpetuate them through ignoring the interests of the less powerful, especially the minority. The arguments are utterly silent on how to address historical injustices but rather focus on the present and possible future while ignoring past injustices.

### **3.10. Suggestion**

In light of the above, this chapter outlines arguments for promoting voluntary exchanges in society. These exchanges are to be carried out in an environment characterized by minimum state interference in citizens' activities in this regard. Effectively this means that individuals will be

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<sup>32</sup> The same would have been done by the colonial government(s).

able to enjoy the fruits of their labours without undue interference or hindrance from the state. Individuals are allowed to acquire wealth as a result of their own abilities and hard work. The basic idea is that individual autonomy and free-choice is guaranteed while at the same time state interference and abuse is minimized.

There remains however a serious need to confront past injustices which have not been addressed in the theories discussed above. This refers in particular to rectifying unacceptable situations arising land redistribution. This task is critical and crucial in the search for just land distribution in Zimbabwe. It would be naive to ignore the importance of the past as a necessary and contributory factor for forging a just future. To this end, it is pertinent to mention that the Nozickian Entitlement Theory and the Capability Approach offer valuable ideas which will be explored in the next two chapters.

### **3.11. Chapter Conclusion**

This chapter grouped arguments that are dominant in the Zimbabwean F.T.L.R into recognized distributive ones. In addition, the chapter also analysed the strengths and weaknesses of these arguments. The distributive arguments presented are by and large positions which Zimbabweans and scholars perceive as suitable in achieving justice and equality in the Zimbabwean F.T.L.R. In that regard, the chapter began by explaining how justice and equality are to be understood. From that position(s), the chapter made connections between the practices and processes in F.T.L.R and the concepts of (in)justice and (in)equality. Noteworthy is the fact that these arguments led to unintended consequences at variance with what they were intended to achieve, hence furthering injustice and inequality among Zimbabweans. The chapter noted that the idea of justice refers to the promotion of tolerance, the encouragement of freedom of thinking among



citizens, and also correcting and addressing racial and social discriminations. Equality on the other hand is to be understood as encouraging respect, consideration and concern for all while preventing discrimination and the domination of one group over others. However, the arguments put forward in this chapter have had the effect of promoting injustice and inequality among Zimbabweans. The major shortcoming of the arguments though is the failure to address past injustices and the liberty of the citizens. To remedy this, the chapter proposed adopting ideas from the Nozickian Entitlement Theory and Capability Approach.

## Chapter 4

### Arguments for Applying Nozick's Theory to Zimbabwean Land Redistribution

#### 4.1. Introduction

In chapter 3 the project sought to understand the meanings of justice and equality. The chapter also attempted an analysis and evaluation of some theories pertaining to Zimbabwean land redistribution. This chapter will focus the on Nozick's Entitlement Theory (N.E.T) which is a particular theory of distribution that is concerned with justifying resource ownership through a chain of proper acquisition and voluntary transfer (i.e. the historical theory of justice). In addition, the theory is interested in the establishment of liberal markets that enhance free interaction of individuals' in terms of personal projects. Clearly the Nozickian Entitlement Theory is not an end-state theory: it is not concerned with what just distribution ought to look like, nor is it concerned with the outcome of distribution as long as the freedom and rights of individuals are respected.

Hence the chapter will make a critical evaluation of the N.E.T in terms of being applied to Zimbabwean land redistribution situation. First, most of the arguments for Zimbabwean F.T.L.R share similarities with the Nozickian Entitlement Theory (N.E.T). Second, they help to reveal the complexities and difficulties associated with appealing to N.E.T in attempting to address historical injustices in land redistribution. And third, they reveal the strengths and weaknesses of the theory when applied to Zimbabwean land redistribution. Fourth, the chapter establishes that unlike the other arguments relating to distribution that were discussed in chapter 3 (with a focus on addressing the immediate problem), the entitlement theory goes deeper by focusing on the

root causes of issues (e.g. historical patterning of transactions) rather than merely addressing symptoms or causes of injustices. The entitlement theory looks into the past and present and offers future solutions.

What will be apparent from the N.E.T is that the concern is on justifying and revealing the property rights of the people over and above the quality of life that the people lead. While it is sensible to argue for property and other rights it is implausible to ignore the pertinence of the kinds of lives that people live. An insistence on rights alone is a limited conception of human life as rights may be violated so as to promote the common good. Morally, it makes no sense to respect rights when the majority of society are forced into living deplorable lives. Hence it may be concluded that through respecting of rights other people may be directly or indirectly be forced into encounter poor livelihoods. To avoid such circumstances, the research proposes a holistic approach to understanding redistribution of resources that is an understanding of rights within the wider social realities. In other words, it proposes a system that considers the economic, social, and political dimensions in people's livelihoods.

The Nozickian Entitlement Theory thus opens up debate into controversial matters via arguments for distributive and corrective justice. In some instances, the arguments are spot-on or poignantly straight-forward, yet at other times, the arguments lay foundations for further discussions and speculations on the issues under consideration. However, it would be naïve to ignore or dismiss connections with Zimbabwean land redistributive justice provided by Nozick's permutations. In this regard, the chapter will make an analysis of issues related to ownership and entitlement (the Historical Theory), and also consider issues involving restitution and ownership, entitlement, and

the role of the state (the Minimal State). To this end these will be divided into two segments: the first will focus on the ‘Popular Arguments’ (which include Historical Arguments, Ownership and Restitution) and the second explore the ‘Un-Popular Argument’ (Minimal State).

#### **4.2. Defining N.E.T.**

The Nozick Entitlement Theory (N.E.T) is first and foremost an historical theory of justice interested in tracing the process property transactions have followed. Nozick avers that transactions have to follow a laid out sequence with adherence to the transaction proposal warranting the subsequent prioritisation of respect for individual rights. Nozick considers rights as the claim or demand that individuals have on certain interests, be they property or non-property items. In this sense the discussion on rights or interests oscillates between protecting, promoting and prohibitive measures (Nozick: 1974, 28 – 57; Waldron: 2007, 747). The Nozickian notion of justice is the respecting of individuals’ enforceable rights or claims (Bader and Meadowcroft: 2011, 7; Vallentyne: 2011, 146 - 148). Nozick’s arguments on rights centres on non-infringing and non-violating individual rights. Furthermore these rights include the capacity for individuals’ to make autonomous choices and acting. In this way Nozick’s rights and entitlement theory discuss the principles for voluntary and just holding of property which in turn is predicated upon just means of acquisition and transfer. The principles for entitlement are thus as follows:

- a. Principle of justice in acquisition,
- b. Principle of justice in transfer,
- c. Principle of rectification (Nozick: 1974, 150 - 152)

The principles follow an historical pattern that traces the original ‘acquiring’ from the state of nature via labour and without violating others’ freedom or rights (leaving enough for others) to

‘own’ the same property. In such a case, the principle of initial acquisition is respected. Other legal and morally acceptable forms of acquisition include gifts where these is receiving, inheriting or purchasing of a property, as long as the afore-mentioned guidelines or principles are respected. The other guideline is that there should be freewill in transferring one’s property: fraudulent and violent means of acquiring goods thus make self-ownership of guilty individuals disqualifiable. The idea of voluntary acquiring and exchange implies existence of a free market: this is important in determining the freedom and rights that individuals have. In fact, entitlement theory centres on “what we owe each other as free, property-owning individuals in the economic exchanges” (Bird: 2006, 108).

Though individuals are free and have rights to decide on what they want to do with their property, the principles of acquisition and transfer do have certain constraints. When injustice in acquisition and transfer exists, Nozick proposes rectification that involves correcting the injustice that has occurred. This involves compensating the victim in terms of what the situation would have been had the injustice not occurred (Nozick: 1974, 57 -58, 135 - 137). However this proviso begs questions with regards to compensation for intergenerational injustices: however this is an issue that will be discussed in detail later in the chapter.

Though Nozick painstakingly discusses his entitlement theory, he also emphasizes the importance of the state and its role. For him, the state’s involvement ought to be minimal: thus he avers that the state should act to protect and promote the rights of its citizens. A minimal state is not an extensive state which is one that is heavily involved in the day to day ordering of people’s lives. An example of an excessive state is that proposed by Rawls: here the state is

involved in patterning resource distribution. For Nozick, state involvement in redistribution is merely a way of forcing people to surrender part of themselves to the state. In other words the state in a way violates people's rights to self-ownership and ownership of goods by interfering with how they are to live. In the economic lives of people this means interfering in market relations by determining prices and who to trade with. It is important to note that Nozick advocates adherence to 'economic' rights and not political and social rights. Hence in this sense, Nozick's Entitlement Theory could be deemed highly inadequate in addressing the Zimbabwean Land Redistribution situation. But that will not lessen the importance of the argument in analysing other aspects that are related to the Zimbabwean Land Redistribution. With that in mind, the research now focuses on Popular Arguments that have been borrowed from Nozick and evaluates them, followed by a focus on a less appealed to Nozickian argument, the Minimal state.

### **4.3. Popular Arguments similar to Nozick's Point-of-view**

#### **4.3.1. Historical Arguments**

Historical Arguments here refer to analysing past events, especially the nature of transactions that have occurred, and in particular the ways of acquiring and gaining entitlement to land possessions. The presentation in this section is in two forms: first, the indigenous Zimbabwean historical argument for land redistribution and second, Nozick's own version.

The historical argument maintains that Zimbabwean land was owned by indigenous Zimbabweans prior to colonization. The argument asserts that the indigenes occupied the land before colonization and / or were the first occupiers of the Zimbabwean lands and as such are the rightful original owners. Furthermore, according to this line of reasoning, with colonization land

was forcibly taken away from them by the colonizers (Hove and Gwiza: 2012, 288; Chiremba and Masters: 2013; Moyo: 2013, 60; Moyo: 2015, 71 - 73) thus implying that the indigenes' property and other rights to land were abrogated. Thus it could be argued that in a sense the liberty of individuals to own and use land freely was hindered. The Zimbabwean historical argument highlights the violations of rights that occurred during the colonial period. It also argues that in order to regain lost lands, the war of independence (the Second Chimurenga) was waged with, among other major aims, the aim of retaining, reclaiming and repossessing the land. After independence the indigenes sought to reclaim and repossess land which was stolen from them through colonization. In short the argument is that land was unjustly and forcibly transferred from its initial owners who in this case are the indigenes by the colonizers (Shaw: 2003b, 216 – 217 Moyo: 2015, 77; Openshaw and Terry: 2015, 73). The argument further assumes and asserts a right of redress through repossession. However, Morrison (2014) and Alexander (2014) claim that, the restitution 'in kind' is the actual returning of lands and or property misappropriated, since the argument presupposes that justice in land redistribution is achieved through the indigenes' reclamation and repossession of the agricultural lands that the occupiers stole from them.

The argument however, presents difficult and complex suppositions that are not easy to resolve. The major complexity is that it disqualifies white farmers' ownership of agricultural land, and at the same time it does not consider the process through which some white farmers came to own agricultural land (e.g. via legal transfers)<sup>33</sup>. The supposition also assumes that all white farmers are guilty of unjustly dispossessing the indigenes of arable lands. Undoubtedly, the position also

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<sup>33</sup> Khanyiso Moyo (2015, 73) refers to the legal transfers as honouring existing owners' titles. These are titles that were created during the colonial period and have been upheld in the post-colonial periods. Moyo (2015, 76) also notes that, by so doing, there is a sense in which colonial mentalities and practices are perpetuated.

supposes that all indigenes are interested in owning (through reclaiming) and being entitled to arable agricultural land; further, the supposition assumes that the indigenes have been generally disadvantaged because of lack of access, ownership and entitlement to arable agricultural lands. These complications and counter-arguments are always overlooked in presenting the historical argument from the indigenes' points of view which could be seen to be or biased as they discriminate against a particular race (white farmers) who might have acquired land legitimately (Moyo: 2015, 72; Tshuma 2015, 314). As if that were not enough, restitution can be applied only after a crime has been committed. This is difficult in the case of Zimbabwe as it is well over a century since the 'alleged' land crimes were committed and as such it becomes difficult to talk of restitution beyond the generation which were victims of the crime. This 'historical' stance could be seen as an immoral argument as it provides no redress for actions and activities that lead to marginalization of others.

The argument in support of the indigenes' rights comes close to Nozick's historically-oriented entitlement theory. The similarities are that where there is a question of unjust land possessions, Nozick offers a theoretical perspective that can be used to critique such transactions. However the Zimbabwean historical argument only reveals the actual activities that occurred at a particular period.

Nozick enunciates principles that can be used to analyse real life cases. Some of the principles are not well spelt out in the Zimbabwean historical argument, hence the necessity of invoking N.E.T which presents the necessary pattern in determining justice in terms of possession<sup>34</sup> (Nozick: 1974, 151). This in effect legitimizes fair and acceptable transactions in Nozick's view

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<sup>34</sup> The principles were briefly discussed under the subtitle Defining N.E.T.



(Vergas: 2010). Nozick argues that the principles are part of a process required for transferring and acquiring property (Nozick: 1974, 151; Boaheng and Cooper: 2011, 258). In fact, Nozick's pattern justifies the acquisition and use of external goods, that is the non-human goods, while also determining and establishing a person's right to use, control, and transfer property (Vallentyne: 2006, 90 – 91; Hall and Woermann: 2014, 64). According to Hall and Woermann (2014, 64), for Nozick the individual is recognized as the most important factor and this is why the individual can become the victim of injustice<sup>35</sup>. Thus the argument is premised upon Nozick's placing of primacy on individual property rights. Nozick also argues that in the initial instance, the non-human agent (i.e. the goods) is unowned<sup>36</sup> and individuals are free to acquire them privately and utilize them when others interests are not involved. By privately owning the goods individuals put restraints on others' rights to acquire and use them without the owners' consent. The only limitation to owners' exclusive use is that while controlling and using the goods, one needs to respect others by leaving 'enough and good' for others<sup>37</sup> (Nozick: 1974, 175). Questions can be raised against this position. Suppose that there is a jar containing sweets and everyone is free to take sweets and 'leave enough and good for others' there would be a possibility that sweets would all be consumed after a number of takers since the number would be limited. In the same way land is a limited resource and the chances are high that continual taking will deplete the resource, hence challenging the 'enough and good' requirement. Schmidtz (2011, 210) in fact posits that this position, part of the Lockian Proviso, does not work for scarce

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<sup>35</sup> However, groups (in the form of race or ethnic groups or communities) can also become victims of injustice.

<sup>36</sup> Here Nozick follows Locke closely, especially with the idea of initial common ownership.

<sup>37</sup> At colonization arable agricultural lands in Zimbabwe fell into the hands of the colonizers while the locals were force marched into Tribal Trust Lands and reserved areas which have mostly dry and poor soils. Furthermore small farms were allocated and set aside for a few favoured black farmers through the 1951 Land Apportionment Act. Having what was enough and good for others was further violated by creating unequal competitive environs – lands were expensive yet sources of funds favoured white farmers – they got loans from banks, their salaries were generally higher than those of their black counterparts. Hence indigenes were further disempowered. Hence, this exaltation of Nozick was violated.

resources as these will become depleted. However, the violation of individual rights to private property is acceptable when benefiting society. This argument is supported by Openshaw and Terry (2015), and Moyo K (2016) who argue that rights to private property can be challenged for the common good and especially in countries where skewed land distributions exist as a result of colonialism or some other kind of oppression. What can be questionable, according to the scholars (Openshaw and Terry, and Moyo) is the method of redistribution. What follows below is an in-depth discussion of the principles involved and their relation to land (in)justice.

#### **4.3.2. Principle of Acquisition**

With regard to the theory proper, Nozick defines the principles as follows. The principle of justice in terms of acquisition, proposes the right to acquire unheld and held properties through proper process(es) that do not disadvantage others. Nozick's principle of acquisition is concerned with determining whether the appropriation of property in the first instance was done fairly or not. Acquisition is the attainment of possessions and for Nozick this has to be largely through labour. The process includes not stealing from others, or defrauding others, or enslaving them and seizing their products (Nozick: 1974, 150, 152). Nozick's proposition is against any form of disadvantaging others in the process of acquiring: any form of disadvantaging others signals injustice in acquisition. The principle of acquisition generally respects and honours people in different forms of transacting by leaving 'enough and good' for others. In addition, the principle argues that respect and honouring people is shown through means that do not humiliate, exploit and marginalize others. In short the principle advocates the establishment of individual rights over property only through fair and non-exploitative means. In other words, proper acquisition will constitute ownership which is accompanied by certain rights which include the right to possess, dispose of or determine what can be done to the property. The rights discourse here

places constraints on what an individual can do to others and what others can do to an individual. The principle of acquisition respects the idea of self-ownership whereby individuals' own themselves and extend s that to the products of their talents, abilities and labour with the proviso that they do not abuse the rights of others. In this way, according to the theory a fair, acceptable, and respectable form of acquisition is established.

On a practical level, applying N.E.T refers to using its principles to evaluate events that have occurred. Land exchanges in Zimbabwe have been characterised by displacements (Shaw: 2003a) hence the conclusion that there could be no proper legitimate land ownership. The first point that is always raised is that the colonial land redistribution presumed that land in Zimbabwe was unowned. This may be termed as the initial basis for the allocating of land titles according to the colonialists' capitalist system. The second point raised is that the Zimbabwean land redistributions<sup>38</sup> were a result of displacements: thus injustice in initial acquisitions and transfers can be noted<sup>39</sup>. Force, fraud and violent means abounded in the land possessions, stretching from the colonial period to the F.T.L.R (Shaw: 2003a, 76; Muzondidya: 2009, 169). The third point raised is that the locals' rights and the self- ownership principle were violated. Fourth, is the fact that the idea of not disadvantaging others was not respected, especially when the indigenes were forced into arid and low rainfall areas. This was further exacerbated by enslaving labour laws and racially skewed or restrictive land apportionments (Thomas: 2003, 695; Wuriga: 2008, 5; Tshuma: 2015, 314; Moyo: 2015, 71). The mentioned four points from the Zimbabwean experience resonates with N.E.T in that both the colonial and the F.T.L.R land allocations violated the Nozickian acquisition principle through omission and commission. In

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<sup>38</sup> Land reforms referred to here are both the colonial and the F.T.L.R.

<sup>39</sup> Reflections on whether it is unjust to go against ownership imposed by unjust means are addressed in the subsection on Compensation of this chapter.

particular the rights to self-ownership, rights over resources and even self-determination were violated: all this implies that there was no fair or proper initial acquisition of property. Hence others were disadvantaged through legal, political, and economic deprivations.

The criticism levelled against the principle is that it establishes difficult, complex and vexing positions, especially in determining who is actually entitled to the land; how did incumbents come to own 'their' land and which entitlement method is to be respected? In terms of entitlement, there exists the colonial title deeds' ownerships (allegedly with its dark side if land was forcibly appropriated from the natives) and then there also exists the types of ownership ushered in through the F.T.L.R, i.e. the Lease Agreements which apply only to lands that were seized during the F.T.L.R. Both types of title deeds are supposedly legitimate as they are legally binding and underwritten by the government. With this in mind, the chances are high that conflicts and possible wrangles will arise over ownership. With regards to who is (was) the owner of the land it is difficult to determine and ascertain ownership of land since Zimbabwe has a history of dislodging<sup>40</sup> of groups by other more powerful groups. The question of how anyone came to own land, partly touches on the second principle relating to the method of transferring which is discussed below.

#### **4.3.3. Principle of Transfer**

Nozick posits that the principle of transfer denotes the process(es) of transferring or exchanging goods from one person to the other (Nozick: 1974, 151). This, he asserts, involves voluntary exchanges of goods which ought to be without the use of immoral means such as dishonesty,

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<sup>40</sup> Zimbabwe has been a country characterized by dislodging which probably began with the Khoisan being displaced by the Shona, who in turn were displaced by the Ndebele before these were dislodged by the colonizers.

fraud and corruption, among others. Activities that are considered voluntary exchanges include buying, inheriting, and receiving gifts freely (Perez: 2011, 152 - 155) Through this principle, individuals are exhorted to use procedures of exchange that do not violate others' freedoms and rights, thereby also expressing the inviolability of the individuals (Nozick: 2004, 61; Hall and Woermann: 2014, 64; Werner: 2015, 67 - 68). Implicitly this means that exchanges have to be pinned down to voluntary activities and exchanges between people (Nozick: 1974, 32; Vargas: 2010; Barnes: 2012, 461; Olsaretti: 2013, 296; Werner: 2015, 70). This principle of transfer argues that self-ownership and exercise of ownership rights are expressed through proper exchanges. The process of exchanges does not allow for sacrificing of other people's freedoms, for doing so would be tantamount to using the individual as a means to an end (Nozick: 2004, 61). Thus as pointed out by Barnes (2012, 461) where individual freedoms are sacrificed, especially through non-voluntary activities or exchanges, justice is disrupted. The whole idea in this argument is that transactions ought to be voluntary and be free of any form of coercion, for only then can transactions or exchanges be considered as just (Barnes: 2012, 461; Olsaretti: 2013, 297). Voluntary transfer refers to individual volitions to dispose of a property, and on the other hand, individual willingness to acquire that property (Perez: 2011, 151; Olsaretti: 2013, 297). This is considered a necessity in human interactions and transactions.

This position is well supported by Weis (2015, 210) who argues that Nozick's thinking on property and any related transactions constitutes a consent-based principle. Using this to analyse the activities that occurred in Zimbabwe land redistribution scenarios would help explain certain positions. For example, Zimbabwean land exchanges since colonial times have been characterised by use of coercion. First, during colonial periods, unscrupulous means of exchange

were used by settlers (as stated above already). Force and fraudulent means were used to foster and establish colonial land ownership and entitlement. In simple words there was no consent given to these colonial exchanges. According to this principle, the colonial land ownerships are unacceptable since they relied on tainted 'exchanges'. This is a complicated position: while the transfers that occurred during the colonial period were tainted, the same can also be said of the F.T.L.R land invasions. These complications indicating that land exchanges in Zimbabwe are tainted, there are individuals who had farms transferred to them 'legitimately'. For example, certain individuals bought farms and were granted ownership titles by the colonial government or even beyond that by the post-independent Zimbabwean government. There are also individuals who had farms or land transferred to them through other legitimate means such as inheriting or and being granted property as a reward s for particular services rendered. Such transfers and also others that were illegitimate can all be generalized as being tainted. The underlying assumption to this position is that in the first instance, lands were improperly transferred to the colonial government, hence the conclusion that every transaction or exchange thereafter is tainted. Importantly, in both colonial and F.T.L.R land exchanges, the transactions violated individual rights to self-ownership (freedom to self-determination and autonomy) and to property rights (determining what to do with one's property). Against this backdrop of injustices that precede land transfers then, the subsequent transfers are rendered invalid and illegitimate. In short the F.T.L.R land ownership is also disqualified because of the unacceptable 'exchange' methods which involved invasion, and violating the rights of others. This position poses a major difficulty as it implies that agricultural lands in Zimbabwe are to be considered as belonging to no one in particular, since no one really is entitled to them according to this principle. It is also mind-boggling to think that all land holdings and entitlements are disqualified by the tainted

historical transfers that preceded them. This is a difficult position to support<sup>41</sup>. Moreover it raises an interesting discussion topic involving the question of just entitlement. This in turn apparently links with Nozick's third and last principle, i.e. the principle of rectification which plays a double role and duty: on the one hand it addresses the issue of entitlement and on the other hand that of compensation.

#### **4.3.4. Principle of Rectification**

“No one is entitled to a holding except by (repeated) applications of ... just acquisition and just transfer” (Nozick: 1974, 151), in cases involving the breach of any of the first two principles, Nozick suggests a principle of rectification (Nozick: 1974, 152). In addition, Nozick (1974, 152 - 153) also suggests that

This principle [of rectification] uses historical information about previous situations and injustices done in them . . . and information about the actual course of events that flowed from these injustices, until the present, and it . . . presumably will make use of its best estimate of subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized. (152–53)

Earlier in *Anarchy, State and Utopia* Nozick (1974, 135 - 142) had averred that agents (people) whether individually or acting jointly have some kind of rights to punish those who violate rights and that an agent who violates another's rights has to compensate for the loss of wellbeing that the violation caused (Nozick: 1974, 135 - 137). This constitutes what Nozick thinks is a way in which rectification works. Nozick does not say how the rectification is to be patterned, but only explains what rectification is. He describes it as a process of correcting injustices that have

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<sup>41</sup> In the case of such difficulties, there has to be a starting point whereby legitimate ownership and transfers have to be established: this is where L.B.C (to be discussed in Chapter 6) makes provision for the agreement.

occurred in the past. Nozick's definition is so open-ended that it begs a number of questions (Lamont and Favor: 2013). In an apparent search of ways of justifying its policies and actions, the Zimbabwean F.T.L.R seemingly appeals to and attempts to apply this principle, as will be reflected upon later in this section.

Scholars such as Shaw (2003b), Perez (2011), Alexander (2014), and Hill and Woermann (2014) among others, do not concern themselves with the actual definition: they focus more on the forms in which rectification is to be found. However in terms of first defining the term, rectification it appears that it is aimed at correcting or altering unjust conditions in order to make them right or acceptable for the parties involved. This implies addressing injustices in order to ensure justice and eventually that attainment of a perpetually just society. To this end, Shaw (2003b, 219); Mawondo (2008, 15); Perez (2011, 151 -152); Alexander (2014, 2), and Hall and Woermann (2015) aver that restitution, compensation, repossession, reparation, restoration and affirmative action are some of the best ways through which societies (or groups of people) can acknowledge that wrong was done, at least in the past: these forms of rectification can provide ways of forging and fostering a dignified sense of identity and foster coexistence (for a just society) in the present and in the future. According to Shaw (2003b, 219); Mawondo (2008, 15) *et al* rectification in its different forms implicitly and explicitly involves acceptance and acknowledgement of wrong-doing and a commitment to correcting that wrong, while aiming at ending (continued) injustice. Nozick's 1974 initial explication of the rectification principle as addressing injustices that have occurred is thus being expanded upon. Moreover they are also recognising that rectification should consider the history of injustice and be designed to address



injustices according to each case's requirements (Nozick: 1974, 152 - 153). That being the case, the scholars offer different ideas as to how the injustice is to be dealt with.

Shaw (2003a, 78, 82 and 2003b, 219)<sup>42</sup> suggests that the skewed Zimbabwean land problem, is best dealt with by limited restoration of lands, especially unused and underutilized lands, to landless indigenes. In addition to this, Shaw (2003a, 84, 87) also suggests that compensation should be paid: however the compensation should be in the form of taxes imposed on commercial white farmers. Shaw's view is however limited in that it fails to address adequately the whole Zimbabwean land problem: his suggestions support a *status quo* that upholds skewed land distribution and ignore other injustices that have occurred. Moyo (2015, 72) shares the just mentioned view when he says that compensation is a way of maintaining privileged positions of others because compensation does not fully address the issue of unjust enrichments that occurred because of unjust systems. To argue that taxation will ultimately help eradicate poverty among the landless is highly questionable, and it is highly probable that the funds paid will not in any way ameliorate the lives of the landless directly. Moreover the thinking fails to address unequal land distribution. In fact, the suggestions fail to realize that evidence of injustices exists through marginalization and poverty among the indigenous populations and this needs to be addressed (Mawondo: 2008, 9). Mawondo (2008), on the other hand proffer an almost holistic approach to the issue of rectification. Mawondo (2008, 10 - 11) suggests that first the supposed perpetrators and victims need to reconcile through mutual resolving of past bones of contentions and, second, agree and construct a shared present and future existence. Third is the implication that the shared

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<sup>42</sup> The scholars, Shaw and Mawondo, in this paragraph attempt to address the Zimbabwean land problem after F.T.L.R. Both agree that tainted acquisitions and transfers occurred in the Zimbabwean land redistributions, and that they ought to be corrected. They differ as to what they conceive as the best way to correct the past injustices. Shaw thinks that heavily taxing the white farmers is the best way through which injustices can be dealt through. Mawondo on the other hand, argues for restoration through mutual agreement or consent.

present and future life also depends on restoration and compensation that is relevant and particular to a situation (Mawondo: 2008, 15). The major weakness in Mawondo's thinking, though, is that he omits the time factor as to how far back in history the issue of compensation be limited to or extended to. Similarly Moyo (2015, 72) expresses scepticism on the possibility of achieving justice through restitution and compensation: he argues that restitution does not adequately address intergenerational land squabbles because (for him) restitution works immediately after the crime has been committed but beyond that it becomes problematic (Moyo: 2015, 76). The type of restitution called for in Zimbabwe also ignores the pertinent question of who actually is entitled to compensation and from whom is the compensation to come. In discussing rectification, Mawondo and Moyo do not directly discuss the issue of ownership as necessarily preceding the debate on rectification, whereas Shaw implies that land belongs to whoever occupies it and whoever holds land titles granted by the government<sup>43</sup>; Mawondo and Moyo seem to suggest that land belongs to the indigenes and that they are entitled to compensation. To this end, this section will now be committed to addressing the issue of compensation as a form of restitution.

#### **4.3.5. Question on Compensation**

Another debate sparked off by and connected to Nozick's rectification principle relates to compensation. Nozick (1974, 135 - 137) suggests that the violation of rights deserves compensation; it is for this reason that the research devotes attention to the concept of compensation which is to be understood as an attempt involving a process and providing a means to remedy, correct, and right an injustice that has occurred (Cuguero-Escofet, Fortin, Canela: 2014, 253 -254; Dagan: 2014, 1 – 2; Powers and Proctor: 2015, 2- 3). Compensation is therefore

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<sup>43</sup> This is another difficult position that needs attention.

a process implemented with the aim of achieving greater (social) justice by making efforts to adjust unjust circumstances (Dagan: 2014, 4). Ultimately, compensation is an attempt to restore and redress through correcting past injustices, which is in tune with Nozick' (1974, 152) thinking that restitution (which includes compensation) is to

“... to make use of its best estimate ... about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place ...”

Thus the aim of compensating is two-fold: to act as a deterrent or to produce positive effects on others. Both these two effects are upheld by this research.

In this section of the chapter the focus is on who is to be compensated and what in particular is it that the person(s) is to be compensated for. The debate on who is to be doing the compensating is a long and winding one and one which cannot easily be settled, especially after a long period of repeated injustice. Who actually is to be compensated? Is it the individuals or ethnic groups who have experienced injustice first hand or descendants of the victims? With regards to the Zimbabwean land question, there is confusion as to who is the victim and who the perpetrator of injustice. This on its own sparks debate that will be difficult to settle. Perhaps the issue could have been settled had compensation been discussed during the colonial period, yet this was not the case, since the settlers were convinced that they had not committed any injustice in seizing agricultural lands<sup>44</sup>. On the other hand the natives of Zimbabwe are convinced that injustices had occurred and this conviction was evidenced by staging the First and Second Chimurenga in a bid to recover lost lands and attain justice through land redistribution. On the other hand as a result of the F.T.L.R, the former settlers, that is presuming they are still alive or their descendants (who

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<sup>44</sup> Moyo (2015, 76) agrees with this point. He says compensation and restitution makes sense immediately after the crime has been committed but beyond that there are bound to be problems and difficulties.

would have experienced the coercive transfers), and others (especially white farmers who legally acquired farming lands) claim that they were unduly and unjustly robbed off their lands. If the claim of compensation is limited to farmers who lost lands due to the F.T.L.R, then compensation may to some extent be easily dealt with. It would be clear as to who had lost which particular farm or area of agricultural influence. In addition memory of what happened and what losses suffered could still be ascertained as fewer than two decades have passed since F.T.L.R commenced and records of farm activities and experiences are extant. However, the difficulty with this scenario is that both whites and blacks can claim compensation since injustices especially of agricultural land deprivation were suffered by them. In other words both are victims and also perpetrators of unjust land distributions.

In terms of what to compensate settlers for the Zimbabwe government's argument reflects Nozick's (1974, 71 – 72, 81, 111 – 112, 135 - 137) thinking and is supported too by Hyams (2004, 363) who argues that only compensation for disadvantages suffered is to be paid for. The Zimbabwean government, however, only limits this to improvements white farmers have made on farms (Constitution of Zimbabwe Amendment [Number 20]: Chapter 16 Section 295). Though the Zimbabwean State thinks that compensation for improvements done on land will suffice, questions still linger as to an appropriate interpretation of 'Nozick's' notion of compensation for disadvantage suffered. This position relates to white farms losses, yet it ignores the disadvantages suffered by blacks through the colonial land redistributions. Perhaps Nozick meant more. The Nozickian position does not address questions of sentimental attachment to areas. This is a pertinent issue that has been disregarded. In fact a major weakness of Nozick's

rectification theory is that it fails to elaborate on what suffering disadvantage (injustice) encompasses.

As for the natives' claims based on injustices that occurred during the colonial period (spanning over a century and half), many difficulties come to the fore. The major difficult is who is to be compensated? In discussing this matter, Mack (2014), attempts to avoid difficulties by arguing that the Nozickian principle should limit rectification in this case to compensation, rightly due to the victims only. For Mack, bygones should also be treated as bygones and confusing and complex difficulties avoided. Hence Mack supposes Nozick purposely did not elaborate on the principle dealing with historical injustices that go beyond certain periods of time and that do not involve the actual victims. Mack thus avoids intellectual debate with regards to the issue of restitution. In relation to the Zimbabwean land question, Mack's thinking can be interpreted as limited in that he addresses only immediate histories, which seems an inadequate way of addressing the Zimbabwean land issue. Nahshon Perez (2011, 151 - 168) also thinks that compensation should only be limited to the original individuals who suffered injustice: moreover he thinks that the burden of compensation rests with the original perpetrators. Perez asserts that original wrong-doers and original victims need to compensate each other, thus removing burdens on others (Perez: 2011: 155; Perez 2012, 40 - 90). This removes the danger of transmission of sin or wrong-doing since offspring (others) are not causally connected to the wrong (Perez: 2011, 157; Perez: 2012, 47). In this way, the responsibility for compensation is not inherited (Perez: 2011, 160; Perez: 2012, 50 - 90). However, although persuasive, his arguments fail to recognise that in certain instances injustices suffered contributed to generational social inequalities (such as generational marginalization, vulnerability to exploitation and dispossessions) and that at the

same time that the injustices were a method of advantaging other groups. This, according to Mawondo (2008, 9), is really the issue that deserves attention. The mere fact that injustices and favouritism resulted in certain individuals being disadvantaged while others were advantaged is really an issue that compensation tries to address. Perez is concerned with correcting present wrongs, yet he ignores the effects that they have inflicted on descendants of the victim or the disadvantages that victims' descendants suffer. Furthermore the issue of compensation is limited in this way to only a material valuing of exploitative actions: this constitutes a limited view of the complex matter of compensation. So, for Mack and Perez the present generation cannot claim compensation for wrongs committed on past generations.

On the other hand, Posner and Vermeule (2003), Anaya (2004, 35), Mawondo (2008), Bolanos (2011), Alexander (2014), and Powers and Proctor (2015) all hold that intergenerational compensations constitute the most ideal form of rectification. Their argument is that certain injustices transcend generations and the effects cannot only be limited to particular individuals or a generation. The effects of injustices are sometimes present even in contemporary societies. For example the effects of past deprivations among black populations in Zimbabwe and even South Africa (through Apartheid) are evidenced by the lagging behind of such groups in the economic spheres, especially. Cohen (2009, 82 - 86) explicitly enunciates that intergenerational compensation is necessary as it addresses the welfare that the victim and his or her descendants were unjustly denied. Verdeja (2013, 57) avers that the burden of challenging and securing some form of justice normally falls on the descendants rather than the victims, since some would have died or simply could not argue their own case due to political or legal constraints at the time. Verdeja (2013, 60 - 62) also argues that the burden of that it is the moral responsibility of groups

who may not have actually committed the wrong but enjoy benefits (e.g. material, cultural or educational gifts) from the act committed by their forefathers. However due to deprivations such gifts may have been denied to particular generations, hence the existence of a moral responsibility of a later generation to ensure restoration of such gifts. In addition, Powers and Proctor (2015, 2 - 3) aver that compensation - be it intergenerational or direct to the victim - repairs, restores and rehabilitates the victims, while at the same time forcing the perpetrators to admit that they have offended others. For the Zimbabwean indigenes then, it can be argued that there is a moral justification for claiming compensation for injustices suffered by past generations.

The arguments presented above are plausible as they give credence to the idea that there are groups that have been neglected and disadvantaged because of generational injustices. Furthermore by embarking on group and intergenerational compensation, there is a sense in which wrong-doers (descendants and those associated with them) acknowledge that wrong was committed and are committed to addressing injustices that emanated thereafter<sup>45</sup>. These arguments contribute to the notion of historical (restitution) compensation as advocated for by Nozick (but without describing a means of implementation). It is pertinent to note however that Nozick has provided an invaluable framework to work from. The idea of historical rectification is important as it reveals that evil has been done in the past and then helps to ensure a better future: moreover it teaches people that at times past mistakes can be corrected and need to be avoided in the future. Thus, compensation acts both as a deterrent and a corrective measure.

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<sup>45</sup> However there can be an argument to counter this. The argument may argue that intergenerational compensation can at times inevitably and unjustly enrich those receiving compensation though they have not suffered any direct injustice at the expense of the 'perceived' wrongdoers who are not themselves guilty of any wrongdoing (Dukeminier et al: 2010, 141).

Beyond that rectification calls upon people to think seriously about the kinds of lives they want to live, especially in relation to the communities that surround them. This also ties in well with the philosophical cliché a life without reflection is not worth living. A point to note is that the positions reflected upon reveal intricate difficulties associated with blaming a single group (indigenes and / or settlers) for land injustices committed, but important in establishing that intergenerational compensation is necessary. There is also the difficulty of establishing who to compensate and what to compensate for. From here the chapter turns to the issue of entitlement: if this can be established it could make it easier who is to be compensated.

#### **4.3.6. The Question of Entitlement**

Entitlement is to be understood as the command, control or right that people have over something which includes the right to have and to use (Stelz: 2013, 325). Hence entitlements are instrumental for living (Scarlet and Schmitz: 2010, 171; Sen: 1990, 44). Entitlements pertain to the legitimacy that one has with regard to ownership and use of external goods, such as land, river and air space, among others. An entitlement, according to Nozick, is a result of aptitude to convert external goods into usefulness through one's own labour, talents and ability. In addition, entitlement should depend on non-exploitation (such as enslaving or denying others a chance to compete for the same resource) of other human beings: this means that human beings are to be respected as ends in themselves and not as means to one's own ends. For Nozick (1974, 155), legitimate entitlement has to fulfill the requirements of N.E.T principles.

Applying the principle of rectification in a Zimbabwean context will now be focused on. The long time lag following unjust appropriations of property in Zimbabwe brings with it a lot of complexities in terms of determining legitimate entitlement. Alexander (2014, 3), for example,



notes that the passage of time without healing past injustice invokes vexing moral and legal difficulties and complexities. In the Zimbabwean situation following colonial land dispossessions several exchanges occurred mostly through good faith: in other words just transfers occurred after initial tainted acquisitions. Just transfers, for argument's sake, occurred between 1980 and 1999 whereby people bought or inherited land in a free market. However, when Nozickian principles are applied to the Zimbabwe land exchanges two notable difficulties with legitimate entitlement are evident. The first difficulty is that the initial land transfers that occurred during the colonial period were unjust, thereby rendering all agricultural lands as belonging to no one, since no just exchanges occurred after the initial transfers.

The second difficulty follows from the above position: this is that the present owners of Zimbabwean agricultural lands are not entitled to these lands, yet the same individuals have legitimate legal document or title deeds. This is puzzling. Hence the question of entitlement to agricultural land in Zimbabwe has to be settled against the backdrop of a need to justify just transfers that occurred in good faith after the unjust transfers. Options that could have been followed to determine entitlement in Zimbabwe are as follows: first, entitlement could have followed the example of the German law that encourages the setting up of parameters in determining ownership. In connection to this issue, Alexander (2014, 2) notes that the German law<sup>46</sup> has an exception that provides benefit of doubt and good title to buyers of property who do so from markets that are based on voluntary exchanges. The market is considered a mixed bag from where stolen goods and/ or goods with good titles or ownership are sold, such that buying goods on the market establishes entitlement. Following from this it means that ownership and title is market-generated. In the case of Zimbabwe, this means that land entitlement for farmers

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<sup>46</sup> German Civil Code (BGB) §932 (1)

who bought agricultural lands on an open market is automatic. Secondly, an alternative option two which could have been followed follows from the Latin saying, *Nemo dat quod non habet*: You cannot give that which you do not have (Alexander: 2014, 3). This implies that ownership can only be bestowed on others by a person or state that is entitled to a resource. The argument presented by the statement is that it disqualifies any form of exchange that has tainted origins. In relation to Zimbabwe, this means disqualifying entitlements bestowed by colonial systems since the colonial government's authority was challenged by the locals, and hence ownership entitlement was questioned. There is also a third option which is closely connected to the second, which argues that the new 1980 Zimbabwean government had no moral or legal basis to honour colonial entitlements (Openshaw and Terry: 2015, 49 - 50). For them the new Zimbabwean government was inheriting an unjust system that had not adequately dealt with skewed racial land redistributions. In such a scenario the Zimbabwean government had no obligation to respect the titles since they were offered by a government that had no legitimacy over the land. In this case then, land exchanges after the colonial period and even after the F.T.L.R are to be considered illegitimate implying that the land in Zimbabwe is to be considered as belonging to no one. The above options therefore present competing and difficult choices with regard to establishing what are to be regarded as just entitlements.

In cases of unjust entitlements, Nozick's advocates rectification as the best way of addressing these anomalies. The crucial issue is how to attempt to resolve the entitlement wrangle. How is ownership and or entitlement to be determined? The suggestion made here is that entitlement is to be understood as socially determined and manifested through social arrangements and mutual recognition. To this end, Lindsay (2014, 2 - 8) postulates that ownership is a social creation

emanating from social processes involving collective recognition. According to Stelz (2013, 325) and Jones (2013, 274), ownership is more of a conventional right conferred by social practices and social laws as a way of establishing entitlement. Ander and Zenker (2014, 395 - 399) and Moyo (2015, 73 - 76) buttress this view by saying that land tenures and even policies guiding these can be arranged and rearranged by society so as to usher in a new regime of property ownership. In other words this will be a way of ushering in a new beginning necessary for settling contestations. The bottom line to this argument is that ownership is to be equated with entitlement or a claim to a property that is agreed upon and recognized by the society. Thus this argument assumes that society is an important determining factor in ownership. This position maintains that society as a whole can allot, accept, and approve ownership, thereby also approving titles. Therefore in terms of the Zimbabwean land question, ownership is supposed to be determined by social consent, i.e. social agreement. This means that society as a whole and or through its representatives<sup>47</sup> determines conditions for land ownership. At least this allays fears of favouritism and even bias based on ethnic grounds, but above all puts to rest, for some time, the wrangle over the ownership debate. This also ties in with Lindsay's (2014, 9) argument which says that ownership is a result of mutual recognition and is therefore a temporal concept interested in securing present and future conditions and relations. Weise (2015, 210) also shares the same view that ownership is based on consent of the community or society. The same point is well-expressed by Anders and Zanker (2014, 402) and Mangena (2015, 7 - 9) who discuss the importance of social processes that involve communal discussions being held through indigenous local court systems. Through these Indabas conflicts and feuds are resolved and fractured social relations are also repaired. In other words this means repairing social relations and resolving

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<sup>47</sup> Point to note here is that the representatives are people that represent all interested groups that have something to do with agricultural land, e.g. government representatives, political representatives, racial and ethnic groups' representatives, unanimously resolve the issue of ownership.

conflicts (ownership and entitlement included) through court systems aim at fostering social harmony, cohesion and peace. Most importantly, ownership as a social product will always be subject to constant reviewing in order to suit current conditions and maintain just and equal distributions and relations among society's members.

Noteworthy is that the above position of viewing ownership as a social process dismisses controversial positions that have over centuries been viewed as legitimate ways of acquiring ownership; for example, the labour theory. The argument presented here does not necessarily disqualify the labour theory in terms of ownership, but only side-lines it with regard to settling the protracted battle over agricultural land ownership in Zimbabwe. The labour theory may apply only after the entitlement debacle is settled. This labour theory of ownership is largely propounded by Locke (2013: Chapter II, Section 27) who argues that ownership is a result of mixing labour with property. This position can be refuted as for example a piece of land is said to belong to an individual because society or others recognize it as properly belonging to him or her and not because an individual has or is working on it. Working on a piece of lands may be a necessary accompaniment but it is not sufficient for establishing ownership, whereas social recognition and respect suffices to award ownership. One can work on a land as a hired labourer or a slave: however one cannot therefore claim to own the land, as one is only executing a duty. The danger of the labour theory cannot be overemphasized, especially when applied to the ownership debate in Zimbabwe. The labour theory disqualifies initial and original ownership on the part of the indigenes (see Chapter 2). The labour theory is controversial on its own<sup>48</sup>: for example, Erick Roark (2012, 691 - 693) postulates that the major danger of using labour as a necessary condition for determining ownership is that it justifies and legitimizes, destructive and

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<sup>48</sup> Contestations as to this Lockean view are discussed in detail in Chapter 2.

degrading methods of appropriating resources, as was the case with the Zimbabwean colonial land appropriations. In this case it will be difficult to come to an understanding on settling the land contestation as there will always be questions hanging on who should be considered the owner of the land. The assumption in this study is that land entitlement in Zimbabwe is to be acquired through recognition from society. When this is in place it can be established who owns which land and also who is to be compensated and by whom. This also brings back, the hypothetical situation which Nozick advocated.

#### **4.4. Unpopular Argument**

This part of the chapter presents arguments that are not appealed to by the Zimbabwean state yet the arguments are a necessary component in Nozick's Entitlement Theory, and essential in critiquing and arguing for Zimbabwe's F. T. L. R. This section will analyse the concept of minimal state and its relevance to the Zimbabwean land reform actions and policy.

##### **4.4.1. Minimal State: The Ideal<sup>49</sup>**

While a lot of energy and time is spent on issues that are related to ownership rights and related issues as reflected above, there is another aspect that is ignored. This has to do with the political environment in which the property rights and related rights are to be found. Since the discussions above identified similarities with the Nozickian Entitlement Theory, it is also proper to make reference to the other Nozickian thinking that involves the notion of the Minimal State. Through this minimal state, Nozick argues that these rights are to be realized. According to

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<sup>49</sup> This section of the research has been necessitated by the fact that the Zimbabwean government has failed and erred in its handling of the F.T.L.R as to the expected standards for reconciliation: hence the need to reflect on what would have been expected of the ideal state.

Nozick it comprises a protective association or organization<sup>50</sup> that operates to protect the rights of its clients and compensates those who are not part of its clients (Nozick: 1974, 108 - 112): these include individuals who are prevented from exercising certain rights as a result of infringements and encroachments from the association's activities (Nozick: 1974, 24 – 25; Hyams: 2004, 359). Also the argument advanced is that the minimal state functions as the authority that enforces its clients' resolutions among and on behalf of its members<sup>51</sup> (Hyams: 2004, 353), while at the same time guaranteeing the clients' own rights (Coleman: 1976, 439; Epstein: 2005, 287; Duignan: 2014; Mack: 2014). This implies that the minimal state itself is a result of voluntary agreement among its own members or clients (Nozick: 1974, 32; Duignan: 2014). Voluntary association in this sense also translates into collective contractual assigning of rights from the individual to the collective for the purposes of mutual protection<sup>52</sup>. The major thinking behind this statement is that in the state of nature individuals have inviolable rights involving protection and punishment (Nozick: 1974, 10 -11). Yet these rights if exercised without control may degenerate into anarchy as individuals seek to protect themselves and punish those who violate their rights. It is against this background that individuals seek to come together and assign to an agent (which will become the minimal state) the duties to protect and punish on their behalf (Nozick: 1974, 12 -15). In this sense the minimal state is limited to executing agreements regarding its operations. It will thus have an obligation to protect and punish on its clients' behalf, while ensuring and protecting the individuals' rights. According to

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<sup>50</sup> Minimal state is really not a state per-se (as will be reflected in the critique of minimal state): rather it is a contractual agreement between clients and a service provider (Wolff: 1977, 11; Epstein: 2005, 288). To add on to this argument, Nozick (1974, 26 - 27) himself posits that the minimal state and the dominant protective association perform the same function, since logically people buy or purchase the services of the two, though the payment is in different forms.

<sup>51</sup> Use of force will be among members and non-members. For non-members it will apply in the sense that they will be prevented from interfering with members' freedom and rights.

<sup>52</sup> The minimal state will protect, among other things, against violence, theft, fraud, and breach of contract (Nozick: 1974, 11, 24; Vallentyne: 2006, 86).

Nozick (1974, 13 - 22), the minimal state acquires physical protective powers *de facto*, through the agreement and other permissible acts granted it by the agreement. The individuals' rights referred to here, include rights, and freedom from interference of others. This constitutes self-rule, including the right to acquire property and the right to form other consensual arrangements such as partnerships with others (Epstein: 2005, 288; Weis: 2015, 210). Nozick's claims for the minimal state is a reflection of his libertarian commitment that argues for individual right to self-ownership and self-rule (Wolff: 2012[1998]; Weis: 2015, 210). Through the collective association, Nozick also advocates the non-violation of an individual's rights, that is for both the clients and the non-clients, with the latter being entitled to compensation.

It is in this sense then that Nozick argues that any other arrangement that is not minimal will violate the rights of the individual. The non-minimal state or the excessive state curtails individuals' freedom and rights. The right to self-rule or autonomy is sacrificed through forced and unnecessary state interventions. Duignan (2014) buttresses this the point by noting that exercises such as controlling prices, and setting out of minimum wages by governments violate individual determination and use of property, be it labour or material property. Wolff (2012[1998]) succinctly comments by saying that "If a government makes ... or forces me to act against my will, then it behaves as if it is part-owner of me, and so violates my right to self-ownership."

Moreover such interferences ignore the idea of voluntary association in its broader sense. This is because voluntary association in this sense involves individual commitments to group association, and personal commitments to exchanges of material and immaterial goods. The idea

is that individuals have a right to dispose of their property as they deem fit and necessary, yet this right is interfered with when there exists an excessive state.

Noteworthy then is the idea these Nozickian expectations of protection and promotion of individual rights can be used to analyse the Zimbabwean government role in promoting or hindering individual's rights under F.T.L.R. Ideally, and as propounded by Nozick, a state should be limited in its exercise of authority: this should stay within the confines and the interests of its clients who in this case turn out to be its citizens. The assumption being made here is that all the citizens are virtually clients of the protective force<sup>53</sup>. With this assumption then, it is prudent to argue that all states are to act and to be viewed as minimal states, Zimbabwe included. Nozick's hypothesized minimal state ought to protect and at the same time strengthen individual's freedom and rights: this means limiting the government activities. Suppose that all citizens have become the clients of the state by voluntary<sup>54</sup> choice, then by the same token, as enunciated by Nozick, the state has the duty and obligation to protect and enhance the clients' freedoms and rights. The freedom referred to in this case is the freedom, among others, is to transact (exchange and acquire goods) as one deems necessary, especially in a free market. Yet in the case of Zimbabwean F.T.L.R the freedoms of the people were not honoured. Land exchanges were done through coercion and there was no commensurate compensation. During the F.T.L.R, there was partial protection of citizens as blacks were granted state support.

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<sup>53</sup> Noteworthy though is the fact that Nozick (1974, 22) states that the dominant protective organization becomes a state only after it outdoes other competitors in seeking the authority and power to protect through acquiring the most number of clients. [This position is reached through interpreting Nozick's ideas on the connection between the minimal state and the ultraminimal state]. The minimal state at the same time commits itself to just and equal treatment of its members that is its clients and ultimately citizens. The minimal state assumes the duty to protect and at the same time enhance the freedom of the citizens and protect their rights. It is to this end that political philosophers argue that the minimal state becomes a *night-watchman* and does not violate individual rights.

<sup>54</sup> Voluntary refers to the free choice that individuals have in choosing to live or not to live in the country, and even to buy or not to buy a commodity on offer at a price established. The idea is that individuals can freely choose.



However white farmers did not receive state protection. The partiality also extends to political affiliation: for example, members associated with the ruling party received state protection and support. Closely associated to the denial of freedoms is also the failure to respect rights such as the rights to self-ownership and ultimately self-rule. Voluntarism, in a sense then deliberates and seeks to establish individual autonomy. Over and above all this is the idea that the state then should protect the autonomy of its citizens or clients from external aggression and even aggression among the citizens themselves.

#### **4.4.2. Critique of the Nozickian Minimal State and the Nozickian Entitlement Theory**

It is important to realize that the minimal state as proposed by Nozick is more of a business entity and a borderless state (Mack: 2014). Ideally the relationship in business is that the service provider ought to provide services to the client and that the client pays for the services for a fee. In most cases as well, the business entity aims to make profits, while also providing expected services. Yet this is not the same with political states. A political state ideally aims at providing welfare services to its citizens, and does not aim at making profits in any way, but rather aims to make the life of its citizens better always: in other words, aiming to avoid and prevent excessive suffering among its citizens (Hillman: 2009, 52, 656; Holcombe: 2012, 395). The relationship between government and citizens is not like that of a business enterprise. However Nozick argues that the minimal state should be borderless, because just like most businesses operations it is not to be confined to a particular place or location. But with states this is not the case. Governments are situated within geographical locations for practical reasons, such as enforcing laws, protecting citizens' integrity, and providing social services to all the citizens (Hollcombe: 2012, 395; Castiglione: 2015, 161, 166). In fact governments have political duties and responsibilities that include exercising power, strategizing among other things for reducing or

eliminating inequalities. However, Nozick proffered such a theory so as to argue for his minimal state, which will have no extra duties of burdening itself with providing services to none-clients. Also in advocating a borderless state, he avoids the danger of limiting his ideas' application to a particular location. However he blunders in arguing for a minimal state that only provides limited services (only protection) to its clients and neglecting others. According to Epstein (2005, 288), the Nozickian minimal state fails to offer and supply basic public goods which are a necessity for any society. In such a scenario then the minimal state leaves everyone worse-off rather than bettering people's positions (Epstein: 2005, 288 - 289). So like businesses interested in making profits only and caring little for their clients' welfare, the minimal state fails to provide what is expected of any state that is improving people's lives. This then is why Mack (2014) points out that that the minimal state is more of a business enterprise than a state.

According to Vallentyne (2006, 102) it is the obligation of a state to offer other services besides only protecting against abuse of people's rights through violence, fraud, theft and breach of contract(s). For Vallentyne a state should offer other aspects necessary for human existence, such as:

- (1) promoting impersonal goods (i.e., goods, such as perhaps great art or cultural artefacts, that are intrinsically valuable for their own sake and not merely good for any individuals);
- (2) providing paternalistic<sup>55</sup> protection (i.e., protecting individuals against themselves, e.g., by prohibiting drug use or requiring retirement savings);
- (3) aiding the disadvantaged (e.g., the poor); and

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<sup>55</sup> This refers to the protective nature of states (protective practices), that is having the aim of promoting human life (for all) rather than destroying it. This is a search for the greater good for all.

(4) promoting the wellbeing of all by overcoming market-failures (i.e., providing goods and services that the market cannot provide in a cost-effective manner).”

Provision for these is necessary for human existence. The underlying idea is that human existence is complicated as it involves different and varying aspects that contribute to successful living and the well-being of individuals. There is therefore the need to reduce, limit and possibly end instances that shame and humiliate humans, e.g. drug abuse and overpriced markets. Svoboda (2016, 75) supports this by arguing that people have a moral responsibility towards themselves and others in society to promote the greater good. Instances such as extreme poverty or activities that harm and degrade individuals such as substance abuse are among some of the shameful, humiliating and harmful states of living which should be combated and avoided. Nozick’s argument does not consider the just mentioned point. In order to complement Nozick’s thinking, there is a need to incorporate the idea of promoting and protecting people from harmful activities into his thinking. The State’s role in bettering people’s lives cannot be left to charity.

Kukathus (2013, 197) and Sen (1999a, 66 -67) argue that while it is sensible to prioritize libertarian rights (self-ownership, property rights) there is a danger of violating or ignoring important other forms of substantive freedoms. Freedoms that may be violated are the freedoms to avoid escapable death, to be healthy and nourished and not to be deprived of political and social freedom. The reflections on achieving justice in land redistribution need to have a wider understanding of human reality and not limit themselves merely to understanding the historical entitlement and promoting individuals’ property rights. Other political, social and economic aspects necessary in promoting human living have also to be considered: in other words people’s standard of life is also crucial.

It is also important to note that the minimal state is a foreign importation being imposed upon a people who already have their own system of living. The notion of the minimal state at best is suited for a capitalist society that emphasizes individualistic living. Such a society is foreign to some quarters of the Zimbabwean society which practices a communal living approach but in some instances also practices moderate capitalism and moderate communalism. In other words, the actual living circumstances of people are disregarded when the ideals of the minimal state are imposed upon the people. This means that the ideas of the minimal state and its expectations are not relevant to the lives of the Zimbabwean people.

However, despite the weaknesses noted, the minimal state provides a standard and a framework that set forth the limits and powers of governments. The minimal state argues for a state that abides by the expectations of the citizens and at most is in accordance with the constitution (Vallentyne: 2006, 87 - 88). In fact this involves governing on behalf of the citizens and not in accordance to the whims of officials (Vallentyne: 2006, 88). Additionally, the minimal state's expectations, if followed, reduce the dangers of biases, abuses, and favouritism, and to some extent promote concerted cooperation among members of society. There is a sense in which the state respects the interests of the citizens and is not turning against them. By abiding by the expectations of the people and the state constitution, it can be concluded that the state recognizes the intricate relations that exist within its borders. According to Nozick, this will be limited to the respecting and promoting of rights in as much as they satisfy the requirements of the liberal market or economy. There is no consideration of how the respecting and promotion of the entitlement rights may exacerbate poor living standards.

The ideas on bettering the living conditions and standards of people as part of a system of ensuring justice is well dealt with under the agency framework that will be explored in detail by the Capability Approach (C.A.) advocates. C.A. offers a critique of minimal state advocacy and also an expansion on the role of the state in terms of human living conditions. Furthermore, the agency framework complements the understanding of justice not only in terms of Nozickian entitlement rights but also includes a focus on political, economic, and social rights.

The Nozickian Entitlement Theory insists on respect for ownership and property rights, i.e. when the requirements of the model or its principles have been satisfied; N.E.T is not interested in promoting social benefits (Claeys: 2015, 211). Social benefits is most frequently realized through social reordering based on the basis of needs and or rewards for specific members of the community. In most cases the reordering requires that more prosperous members be taxed for the benefit of the less prosperous in society (Nnajofofor and Ifeakor: 2016, 175). Taxing is considered by Nozick as tantamount to forced labour that violates the rights of individuals (Lamont and Favor: 2013). The insistence on non-reordering of society is considered by Rentmeester (2014, 24 -25) as immoral in that it condones gaps between the rich and the poor that exist and that continue to widen. In fact, according to Nozick (1974), respecting rights regardless of an individual's social and economic standing is moral, hence the conclusion that it is immoral to force individuals to lose part of their efforts through tax. This Nozickian position creates tension with the idea of promoting public interest (a contemporary concept of politics and moral philosophy) that aims at bettering people's lives through reordering social benefits and burdens (Claeys: 2016, 203, 211).

The principle of acquisition raises a critical question with regards to what is to be considered as original acquisition. In most former colonies, property ownerships are a result of one form or other of expropriation or unfair trade relations (Nnajiolor and Ifeakor: 2016, 173). In that case the question is who has just entitlement to such property? The first principle of Nozick (1974, 150, 152) does not clearly specify the issue of initial ownership from colonial conquests. Nozick implies that the pre-colonial communities did not lay claim to land through working on it (labour) (this constitutes another questionable position as to what working on it refers to or what form of labour is being referred to?). This problematic position raises more questions than answers. The failure to respond to and clarify the issue of initial ownership has caused many divisions and conflicts in modern societies.

Another difficulty emanating from the above is on ascertaining past transfers as being just and fair. For example, when purchasing a property, individuals trust that the selling owners are not cheating or have not been involved in fraudulent activities prior to owning the property (Nnajiolor and Ifeakor: 2016, 175). Checking bona fides is difficult as some information is not revealed especially after a long period of time and after several previous transactions that are seemingly legitimate. This argument challenges Nozick's postulation on determining acceptable exchange positions.

However, it appears that there is a paucity of 'clean' acquisitions of properties hence there can be no legitimate ownerships and titles over existing properties. This is an impossible position as it does not consider that along the way some legitimate past transactions and acquisitions have

occurred. Again Nozick is not clear on this issue except for calling for rectification: however he also does not fully state what is involved, but leaves everything to guess work. In the same vein, Nozick does not set parameters as to how far back one can go in measuring what constitutes original acquisition (Nnajiolor and Ifeakor: 2016, 175). Setting such parameters would have helped Nozick's case but as it stands the theory is vulnerable to criticisms.

Nozick's second principle is not immune to criticism either. In this principle he upholds the notions of self-ownership and voluntary consent (which among other includes labour) in exchanging of goods. In that case suppose an individual sells him/herself into slavery voluntarily (an agreement between two consenting adults reached). Here Nozick would say that no injustice in terms of transfer has been committed. However, according to the same principle the dimension of treating individuals as ends-in themselves is violated since the same individuals who commit themselves to slavery are being treated as means to ends: in other words they have no freedom and self-ownership is also overridden or alternatively these individuals have dissociated themselves from it by becoming slaves (Nnajiolor and Ifeakor: 2016, 175). The principle therefore contradicts itself in the sense that when it comes to human lives individuals can do whatever they deem necessary for survival despite the provisos of Nozick's model, while in terms of the model itself its principles have been respected.

#### **4.5. Chapter Conclusion**

The chapter highlighted the relevance of Nozick's Entitlement Theory to the Zimbabwean F.T.L.R by noting its positives and negative applications, and also how best it can be improved to attain justice in the F.T.L.R. The chapter began by discussing the Nozickian historical theory and principles of acquisition, transfer and rectifying of unjust transfers. The historical theory was

juxtaposed to the Zimbabwean land reforms and especially the F.T.L.R. In the process of critically analysing the theory and its principles in the context of the Zimbabwean land reforms, it became apparent that unjust transfers had occurred and that compensation had become a necessity. Nozick's theory argues that acquisition of property ought not to disadvantage others and transferring procedures or exchanges ought to be a result of voluntary exchanges. Beyond this, Nozick argues that in the case of unjust transfers, rectification of the unjust transfers has to be done. As for the F.T.L.R, there is evidence of unjust acquisitions and transfers, thus tainting all Zimbabwean agricultural lands transfers. Consequently in accordance with Nozick's injunctions the unjust transfers need to be corrected. The chapter argued that in the case of the Zimbabwean F.T.L.R. rectification, determined and driven by the people should provide a solution to the ownership question: the question of who is entitled to own a particular agricultural land must be resolved so that compensation can be paid. To this end, the chapter argued that ownership and entitlement is a social process. Compensation on the other hand is supposed to be trans-generational, as it will correct past injustices. It is this idea of correcting past injustices in the present and attempting to establish just ownerships, entitlement and transfers that will cater for the future as well.

The Nozickian theory is important for ascertaining the role of the state and that of the citizens, while also emphasizing the importance of individual liberty. The theory also emphasizes the prioritization of individual property rights and the historical understanding of the process of entitlement. However, the theory has limitations in that it overlooks other necessary conditions of human existence such as elimination of poverty and other humiliating and shameful human conditions. This is an area that Nozick's theory requires improvements. All in all however the



theory cannot be taken for granted. However it provides a necessary platform for further exploration and expansion.

## Chapter 5

### Applying the Capabilities Approach to Zimbabwean Land Redistribution

#### 5.1. Introduction

In Chapter 4 the focus was on understanding the application of N.E.T to the Zimbabwean land redistribution. From that discussion it was clearly stated that N.E.T's advocacy of historical justice, entitlement and property rights alone is a limited conception of justice. It was also noted that N.E.T does not consider the well-being of society and the different values (political, social, cultural and economic) that Zimbabweans hold. Rather, N.E.T's emphasis is on establishing market liberty and associated rights. Implicitly, N.E.T does not consider the concrete social realities that are beyond historical justice, entitlement, and property rights yet the Zimbabwean situation requires this.

Understanding the social reality and arguing for human well-being, therefore, becomes the primary focus of this chapter. It evaluates the Zimbabwean F.T.L.R from the C.A point of view. It also attempts to respond to the question: In what ways does the C.A advance the cause of justice, or more explicitly, in what ways should land redistribution enhance human lives? To successfully respond to this question, the chapter will firstly define in detail the concept Capability Approach, then, secondly, analyse the Zimbabwean F.T.L.R's intentions and make a comparative analysis of resources and rights arguments so as to reveal their short-comings in contrast to the C.A's conception of justice which argues for inclusion and human well-being. Thirdly, the chapter shows that expanding human values and well-being is both an expectation

and a requirement in Zimbabwean F.T.L.R so as to end social exclusion and poverty. Fourthly and lastly, the chapter will examine ways in which social exclusion and poverty can be overcome by advocating human agency and democracy.

## **5.2. Defining the Capability Approach**

The definition of this approach is based on Amartya Sen's conception of the term capability. Sen considers the diversity of both individual humans and the many social and political variables or factors in which they operate. The diversity and the various factors raise complex normative questions concerning justice and equality. Sen uses the term 'capability perspective' which takes human functioning as its normative core. Human functioning entails focusing on expanding human capabilities in society (Sen: 1999, 1) to enable its members to lead lives they have reason to value and choose on their own (Chavez: 2015, 21). Or as Nussbaum (2011, 17) puts it, the framework is concerned with what opportunities and freedoms are available for people to be self-determining and self-defining. In order for humans to function or lead lives they have reason to value, the C.A argues that there is need for social, political, and economic activities to interact with each other in order for them to realize their capabilities (opportunities and choices to live lives the way they value). In fact the conditions in which individuals are able to convert different social, political and economic resources for their own benefit is the major concern of the C.A framework. The interaction of these different human facets is referred to as the 'beings' and 'doings'. The discussion about beings and doing is concerned with the states of living and the activities of individuals. That is, what kind of life do individuals lead and in what activities are they involved in order to pursue their own way of life. Both these may be briefly summarised as individual choice and expanded opportunities.

C.A is thus to be understood as both (i) a framework<sup>56</sup> that evaluates the quality of life that individuals lead in society and the opportunities they have there and (ii) a social theory of justice as well (Sen: 1979, 218 – 219; Sen: 1999, 55; Watene: 2010, 5; Nussbaum: 2011, 18; Kukathas: 2013, 198; Poli: 2015, 106). The kind or quality of life that individuals are expected to live is premised upon access to social, political, and economic opportunities and the freedom to make choices concerning the kind of life they have reason to value. It is from this perspective that different philosophers such as Robeyns (2016), Chavez (2015, 21), and Pedersen (2015, 1, 6 - 7) understand C.A as a theory of justice interested in understanding individuals' capabilities and how these capabilities can be promoted, enhanced and developed in society. The framework in this sense is more concerned about the social, political, and economic opportunities available to each person rather than about the welfare of people in society generally.

In order to promote and enhance human capabilities, there is need to understand the social reality in which humans find themselves with the intention of bringing about change in cases where the social circumstances inhibit human well-being. As an evaluative framework, the C.A attempts to understand the social, economic and the political environments that include the institutional arrangements and policies in which humans operate. These are important in as much as they have a bearing and contribute significantly to people's realization or non-realization of their capabilities (Sen: 1999a, 38). The idea behind this is that institutional arrangements either expand or restrict the freedoms and choices that individuals may have (Little: 2010, 41; Nussbaum: 2011(b), 21). In this sense then, the C.A is an appropriate framework for evaluating concrete social circumstances by enquiring how institutional arrangements, policies and practices

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<sup>56</sup> C.A according to Sen does not have a well-developed and even agreed upon theory of justice as is the case with Nussbaum. Despite this difference, advocates of the framework agree on some expectations that advance human capabilities.

in any given country promote or inhibit individual *functionings*. Besides evaluating, the C.A also proposes ideas and design policies with the aim of changing social systems towards the expected ‘good’. The main idea is that the human functioning is promoted.

The idea of human functioning and well-being is prioritized by the C.A over other human facets such as resources, needs, interest and entitlements. The main reason for placing human well-being and functioning at the centre of human activities is that humans are considered as ends-in-themselves whereas resources, needs and entitlements are means to achieving human ends. And most importantly, human activities are considered to include political, social, and economic aspects rather than one or other of them separately. In this sense, the C.A is more a reflection of the freedom humans have to choose one way of life among many other possibilities. Additionally, although this view questions what goods or resources do to humans, it is not a view shared by most theories of justice and equality (Sen: 1979, 218 -219). In the end, the conclusion reached is that resources, needs and entitlements are instruments for human well-being. Moreover, by arguing in this way, the C.A’s conception of justice focuses upon humans and the conditions in which they live rather than the establishment of just institutions (as is the case with an entitlement or resource-based approach). For Sen, understanding the individuals’ beings and doings is central to realizing how they are affected by their environment rather than focusing and speculating (hypothesizing) on actions and outcomes about social arrangements such as income levels and access to resources and commodities (Sen: 2009, 8 – 10; Kukathas: 2013, 198). Moreover, Sen thinks that the other conceptions of justice are too restricted since they are not universally applicable but are partial in application and provoke serious disagreements in society (Kukathas: 2013, 19). The other conceptions of justice concentrate on one or other aspect of

justice and not how the individual functions in society. For Sen (2009, 77) the concern should rather be on advancing human justice in society through mitigating injustice that impinges negatively on human functioning. Furthermore, the C.A starts from already known and existing positions that is the framework recognizes that people know what they want and are aware of their positions in society, their abilities and weaknesses and how to use this knowledge to better their living standards. This is unlike Rawls' theory of justice which argues for the betterment of people's lives from a hypothetical position of resource redistribution. However, the C.A does not ultimately reject the relevance of the ideas advanced by Rawls' and Nozick's theories. C.A theorists maintain that other theories of justice are necessary in as much as they reveal the importance of what resources, entitlements and property rights do to humans. The argument is that while resources or commodities are necessary in assisting humans to realize their ends, these resources are not ends-in-themselves.

The C.A is a people-centred theory because it emphasises the moral importance of humans and their freedom to pursue their own goals and ambitions. The Capability Approach (C.A) or Human Development Theory (HDT) is a conception of justice that has inspired a new way of understanding the role of humans in the world and especially their role in institutions in which they live and operate.. More importantly, the C.A conceives human beings as ends rather than as means to a good life. According to Ntibagirirwa (2014) and Watene (2010, 1), before 1990 there was an emphasis on Gross Domestic Product (GDP) and developing human capital instead of a human-centred understanding. The C.A places human beings at the centre of all human activities, and it concedes that human beings are intrinsically responsible for shaping their lives around them for their own good.

### 5.3. Key Philosophers and Their Ideas

The C. A. approach was formulated by Amartya Sen, an economist and social theorist, in the 1970s and since then many other social theorists, economists and philosophers have further developed the conceptual understanding of the approach, among them Martha Nussbaum. Both Nussbaum and Sen have been instrumental in defending and developing the approach though the two of them have not always been in agreement. Sen links C.A to the theories of Adam Smith and Karl Marx (Sen: 2003, 4; Robeyns: 2016) from whom he borrows the idea that human activity and the ability to function in society are necessary determinants for human well-being. From Adam Smith, Sen borrows the view that individuals need to appear in the community without shame (Sen: 1999a, 89). ‘Without shame’ means living and functioning in non-exploitive and non-marginalizing environments. In other words, in order for human beings to realise or live the lives of their-choice, the social, political, and economic conditions must be free of humiliating, dehumanising and disadvantageous circumstances, which inhibit them in their endeavours to pursue the lives of their choice. From Marx, Sen borrows the idea that understanding the circumstances in which people find themselves is a priority and if these circumstances are not conducive to human existence or are detrimental to freedom and action it is necessary to alter such situations so as to realise human emancipation (Sen: 2003, 4). Emancipation is a process that involves social, political and economic change so as to strengthen individual operations and participation in achieving well-being<sup>57</sup>.

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<sup>57</sup> The idea of understanding human conditions and eventually offering alternative expectations to the dehumanising or shameful conditions that people live in has led to a number of scholars to conclude that C.A is a conceptual and normative framework that analyses, judges, and questions the state of affairs in society and advocates social change that expands the capabilities of people (Deneulin: 2006, 3; Baclay: 2014, 2; Nussbaum: 2011(a), 25; Nussbaum: 2011(b), 28).

Nussbaum on the other hand claims that this approach is founded on Aristotle's conditions for human flourishing. Sen also shares the same thinking (Sen: 1999a, 24). Human flourishing mostly relates to understanding the quality of lives that people are living, in particular the promotion of good and long lives in community(ies). Nussbaum argues that creating conditions that foster human well-being is the prerogative and duty of the state.

Both philosophers share the view that exploitative and marginalising environments are detrimental to the realisation of individual capabilities. They also argue that such environments have to be changed or altered for the better. They differ however on the ways in which these optimum human conditions are to be achieved. On one hand, Sen (1999a, 19) argues for reforming institutional arrangements to promote human functioning through human agency whereas Nussbaum on the other hand, advances a minimally expected social threshold which the state has to establish. By reforms to institutional arrangements alone, Nussbaum (2011, 19) considers this an admission of failure so she suggests the creation of minimally acceptable living standard or what she calls the basic social minimum<sup>58</sup> (by so doing Nussbaum advances an almost definite account of justice) ( Nussbaum: 2000, 3- 4; 2011(b), 19). This is Nussbaum's other additions to the approach:

- 1. Life.** Being able to live to the end of a human life of normal length ...
- 2. Bodily Health.** Being able to have good health, including reproductive Health, to be adequate nourishment and shelter.
- 3. Bodily Integrity.** Being able to move freely from place to place ...

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<sup>58</sup> The basic social minimum is an expectation for every state and expectation of every citizen. This accounts for why the C.A is considered internationally applicable. Every person will agree to the expectations that are not limited.



- 4. Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason...
- 5. Emotions.** Being able to have attachments to things and people outside ourselves...
- 6. Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection of the liberty of conscience.)
- 7. Affiliation. A.** Being able to live with and toward others,... to engage in various forms of social interaction ...
- B.** Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protection against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin.
- 8. Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.
- 9. Play.** Being able to laugh, play and enjoy recreational activities.
- 10. Control over One's Environment. A. Political.** Being able to participate effectively in political choices that govern one's life; having the right of political participation, protection of free speech and freedom of association.
- B. Material.** Being able to hold property (both land and movable goods), not just formally but in terms of real opportunity; have property rights on an equal basis with others; have the right to seek employment on an equal basis with others; have freedom from unwarranted search and seizure (Nussbaum: 2000: 78 -80).

The list is comprehensive, though, as she argues, it remains open-ended, as it categorically identifies the expectations that states should accord its members and what individuals should do in order to live the good life (Nussbaum: 2000, 81). The basic social minimum is a position according to which judgments and comparisons of how people live should be made. Nussbaum (2000, 85) says the obligation to change conditions that hinder individuals from realising their capabilities rests on the state. In other words, her central list of capabilities is a side-constraint for the state on what not do to its citizens. However, Nussbaum's list is considered to be formulated at an abstract level, since it does not come from the people concerned. Robeyns (2006, 355) critiques the list by saying that it should actually be drawn at a local level because it then takes into account local differences and local values. In this sense Nussbaum's list lacks local legitimacy. It also limits the chance of public participation and hinders the democratic process of reducing or ending predetermined lists of capabilities being made by states (Sen: 2004, 77 - 78).

Instead of drawing up a list of essential capabilities, Sen notes that human capabilities are achieved through an integrated connection of social, political and economic instrumental freedoms and opportunities<sup>59</sup> that are necessary for individuals to choose the kind of lives they have reason to value (Sen 1999a, xii). For Sen, social, political, and economic freedoms and opportunities complement each other and contribute to the general capability of a person (Sen: 1999a, 30). The freedoms and opportunities (these are material and non-material resources)

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<sup>59</sup> Some of the social, political and economic freedoms include but are not limited to the following: Social Freedoms and opportunities- access to education, healthcare, and welfare among others (these guarantee effective participation in political and economic freedoms and opportunities); Political freedoms – civil rights, opportunities people have to determine how they are to be governed and governing principles, scrutinise and criticise authorities, freedom of expression and opinion, choice of political association, participating in community political lives (Sen: 1999a, 38); Economic Freedoms – opportunities to utilise economic resources for consumption, production, and exchange (Sen: 1999a, 39).

attached to social, political, economic activities are always to be considered together. They (freedoms and opportunities) are further strengthened by guarantees of transparency and protective security (Sen: 1999a, 30 - 31). The transparency guarantees include trust, openness and lucid disclosure necessary to prevent corruption, financial irresponsibility and underhand dealings. As for protective security, Sen avers that this includes freedom from unemployment, abject misery such as starvation and avoidable death. They also include having fixed institutional arrangements for dealing with the above such as public employment and drought relief among others (Sen: 1999a, 40). Sen thinks that the failure in one of the freedoms and opportunities may result in impaired self-realisation.

In relation to changing society, Sen thinks that the process of change is a social goal and has to be done by individuals themselves. He advances the idea of agency which places the responsibility of formulating and changing society upon individuals. Through the concept of agency, he avers that there are certain states of living and doing which should be achieved. These states of living can be individually or group based on value to specific humans and support the point made by Robeyns (2006, 355) that the expected life is based upon the interests of the concerned humans. The thinking of Sen is that what should be available to individuals are social, political and economic opportunities and freedoms that promote human realisation of their capabilities without hindrance. Most importantly, the framework stipulates that the realisation of such valuable conditions is achieved in democratic and participatory governance. The pertinence of democracy and public participation is that it allows for individuals to formulate their own values and practise them in pursuit of individual freedom and self-realisation (Sen: 1999a, xi), Sen also thinks that public debate and exchange of views is central to the functioning of

democracy (Sen: 2004, 80). Democratic principles confer value on each individual as an equal member of society.

Though Nussbaum's list has moral claims to the good life, there is a sense in which her kind of C.A is too diverse. Nussbaum's theory of justice extends the C.A to discussions about non-human animals, justice beyond borders, gender and mentally impaired individuals among others (Nussbaum: 2012, 18). She claims that it's a way of dealing with the practical problems of diverse aspects of life (Watene: 2011, 20). Sen's framework is limited to evaluating individual state policies and practices in enhancing human capabilities.

On the one hand, Sen (1999a, 75) argues that functioning refers to both the act of choosing and the mental states of satisfaction, pleasure and happiness. In other words, for Sen both choosing (doing) and acting (being) are the same. Nussbaum on the other hand argues that beings and doings are separate though she concedes that (being and doing) both have some thread that links them together. For Nussbaum choosing and acting are separate, whereby choosing is really a component of functioning for she considers that choosing without functioning is something transcendental (Watene: 2011, 13). She draws her conclusions from Aristotle's Nichomachian Ethics Book X's argument which says "pleasure supervenes upon activity to which it attaches." This means that pleasure (being) is not identical with the activity (doing) that it follows but the 'pleasure' cannot be identified without reference to the activity.

Furthermore and closely connected to the foregoing argument, Nussbaum views capabilities and *functionings* as closely connected. In explaining Nussbaum's view Watene (2011, 14) notes that

“[f]or Nussbaum, capabilities derive their value of functioning, and *functionings* derive value from the way in which they enable us to realise capabilities.” Yet for Sen, capabilities and *functionings* are separate. For the benefit of this study, C.A will be understood from the perspectives that make sense in this context. This will be achieved by examining the differences between Sen and Nussbaum’s viewpoints on issues of interest and by appropriating ideas that are relevant to this research.

#### **5.4. Key Concepts in C.A and their Relevancy in Analysing F.T.L.R**

##### **5.4.1. *Functionings***

The accepted definition of functioning is that it refers to achieved ways of life (beings) and different activities (doings) that people engage in. *Functionings* are the ‘various things’ that a person may value to be and want to do (Sen: 1999, 75). They are realised achievements and fulfilled expectations. Being and doing are directly related to the state of living which what a person can do and be. The things that one values are both mental and physical. This means that *functionings* are the states of living people value and have reason to value such as pursuing certain activities (doing) and living (being) a kind of life; in fact functioning is being involved in actions that are self-expressive. The ability to function depends upon social conditions which either enhance or hinder people’s participation in the life of society. Conversely social conditions<sup>60</sup> have an effect upon the degree and extent of mental and physical participation of an individual in the life of society. According to Wells (2016, 22), *functionings* are equal to inputs that are necessary for individuals operating in society to achieve their well-being. The inputs or states or conditions of living or *functionings* are of value if and only if an individual has the ability to convert them to achieve one’s own ends.

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<sup>60</sup> These include the political, social and economic guarantees that promote individual freedoms to choose and live lives of their own choice.

Robeyns (2016) develops this argument by saying that *functionings* are the “available alternatives” that people have. These, the available alternatives, are present in the context of social norms, personal status, and the physical environment, that is, resources available for use. Examples of ‘being’ *functionings* include, but are not limited to, being safe, well nourished (health), literate, free from disease, involved in community life and respected (Alkire: 2010: 18 - 21; Robeyns: 2016; Hick: 2012, 2; Seon-Mi and Sharraden: 2014, 203); (doings) include, but are not limited to, travelling, taking care of someone, working, voting, taking part in different forms of social life such as helping others and debating. (Robeyns: 2016). It is necessary to mention that *functionings* are always interrelated; they work together to bring about human flourishing or well-being.

Relating *functionings* to the Zimbabwean F.T.L.R involves scrutinising the conditions in which activities were carried out during F.T.L.R and the living conditions of people under F.T.L.R. While the F.T.L.R may be credited for having changed the economic livelihood of some Zimbabweans, it also failed to increase the social and political freedoms of other segments of Zimbabwean society. Shaw (2003a, 79), and Mlambo and Chitando (2015, 14) noted the different missing elements in the F.T.L.R process which were identical to C.A’s social, political, and economic conditions (freedoms and guarantees) necessary for individual functioning or being involved in activities of choice but overlooked other necessary factors. These included for instance the freedom of association and assembly, access to educational facilities and healthcare, security, and participating in the social life of one’s community. In summary, the living conditions of the society in matters that have to do with being literate, free from disease and living without being harassed were not well supported or developed. No infrastructure was in

place to cater for new settlers and settlements (Sachikonye: 2012, 238; Mutopo, Manjengwa, and Chiweshe: 2014, 56). Health and education, such as being literate, are important in as much as they enable individuals to decide how they are to live and even to involve themselves in different activities for their own good. Individuals need to read and write in order to communicate their ideas and even to access and understand the information that they may use for their own good. But when there are no schools it means that this important life pillar is missing in people's lives and hence fails to enhance and promote human activities. With regards to doings, the Zimbabwean F.T.L.R limited individuals' freedom of association, and with regards to political choice. Mlambo and Chitando (2015, 15 - 16) argue that some areas of resettlements under F.T.L.R became zones of ZANU PF political influence. The same view was held by Chiremba and Masters (2013) who also noted that in most resettlement areas there was no political freedom. Individuals had to support ZANU PF to live in the area and have access to farms provided by the government. Such circumstances showed that political and even social freedoms were limited there was psychological oppression as well. Members of society living under such circumstances were not even free to debate political issues that may include criticizing and opposing the ideas of ZANU PF. There existed limited political choice which meant that political freedom and diversity were curtailed. These limited political, social and economic activities exposed the failure of F.T.L.R to increase and expand human functioning through unhindered individual activities and way of living.

#### **5.4.2. Capabilities**

Capability indicates the ability, opportunity and freedom individuals have to pursue valuable activities or *functionings*. To this end, Seon-Mi and Sharraden (2014, 203) aver that capabilities are the "alternative combination of *functionings* the person can achieve, and from which he or

she can choose on collection”. They refer to the combining of skills, abilities, opportunities and control of resources necessary for free choice. Nussbaum makes a detailed analysis of these capabilities, to clarify the relationship between the internal and external forces which advance or hinder human functioning. She divides capabilities into three categories. Firstly, the basic capability which reflects an individual’s innate ability. This ability enables an individual to develop advanced capability and moral judgement (Nussbaum: 2000, 84). The second category is the internal capability which provides the individual with the means of self-expression and freedom of choice (Nussbaum: 2000, 84). Examples of internal capabilities include the capacity to play with others, love others and express political views among others. Important though is the fact that the internal capability is dependent on a well-developed support environment. The third category is the combined capability. This category reflects the interaction between the internal capabilities and the external environment. In Nussbaum’s thinking, a proper interaction between the two produces a well-developed functioning. Through this category, Nussbaum reflects that while individuals may have internal capabilities to express themselves, these capabilities may be hindered from fully blossoming because of the external conditions, this failure result in combined capability failure. For instance, in a repressive government citizens have the internal but not the combined capability to exercise freedom of conscience (Nussbaum: 2000, 85). Due to this observation, Nussbaum avers that the state has to create a conducive environment to promote individual functions. Her position is informative as it emphasises the dynamics of individual and social relationships in strengthening human capability.

Nussbaum’s distinction is important in analysing the Zimbabwean land issue as it helps to show the contradiction between the internal and the external capabilities that exist in the state. Despite



people having their own ideas of how they want to live, the political conditions sometimes do not support the development of individual capacities. For instance, while there is freedom of choice, in practice, this freedom is curtailed by partial and partisan<sup>61</sup> distribution of resources and even through political patronage. This is the case in most resettlement areas. These ideas were also elaborated under *functionings*.

### 5.4.3. Agency

In Sen's understanding, there are two ways of understanding this concept. In the first, agency refers to someone acting on someone's behalf whose achievement will be assessed in the light of someone else (Sen: 1999a, 18 -19). In the second understanding, it refers to someone who acts to bring about change and whose achievements are judged on the basis of their own values and objectives (Sen: 1999a, 19). The second understanding of the term is more relevant to this study, since it exposes the role of individuals in the process of bringing about change.

Agency implies agent, and agent is a person in action (Sen: 1999a, 18). By agency is meant humans, either acting individually or collectively, to bring about change through human effort and human value (Sen: 1999a, 18 – 19; Crocker and Robeyns: 2010, 80; Alkire: 2010, 196). Agency is driven by goals that have to be achieved to attain well-being (Ntibagirirwa: 2014, 283). Implied in the understanding of agency is autonomy and action. The position stated here is that the concept of agency is central to assessing the states and actions of people. In relation to

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<sup>61</sup> While it is acceptable for a political party to distribute resources among its membership, the same is not acceptable in executing distribution of state resources on a partisan basis. The state through a governing party is expected to act impartially. Further, there is need to make it clear that, the ZANU PF government is the governing party in Zimbabwe and as such is expected to act according to obligations and duties befitting state governors who have to be impartial, showing no favouritism or discriminating against others. In other words, there should be a distinction between party business and government business. This is a distinction that the Zimbabwean government failed to show in the F.T.L.R hence the assertion that the distribution of resources in a state has to be impartial.

this, Sen avers that agency is a group or individual able to act upon what they value and have reason to value. More explicitly, Sen (1985, 235) says agency relates to “what a person is free to do and achieve in pursuit of whatever goals or values he or she regards as important”; again, Sen (1999a, 19), agency is “someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of some external criteria as well.” Additionally he considers that agency(ies) are agents of change or are deeply concerned with social transformation (Sen:1985, 169). As such agency(ies) are self-determining, they have the capacity for self-achieving and self-regarding yet in some instances they (agency) need to collaborate with others in order to achieve their goals (Alkire: 2010, 196; Crocker and Robeyns: 2010, 75 – 77, 81). The concept of agency denotes that individuals or groups are morally responsible for improving the quality of their lives, meaning that humans as agents of change either advance or hinder change through their activities. To this end, Alkire (2010, 196) suggests that individuals are both a means and an end in capability development. People as agents are instrumental in shaping the kind of world they expect to live in and ultimately they are valued to the extent that they realise their goals. It also sees people as means through which capability development occurs. In other words and following from the above, the C.A is a people centred framework that places humans at the centre of all activities. In this regard, institutions or organisations or even markets are considered as playing a subservient role or are at the service of human well-being. The latter refers to humans realising desired states of living and actions that they value and have reason to value.

Agency implies that the responsibility to change society is upon the shoulders of humans. This comes after the realisation that society in general constrains people’s freedoms and that it is the

people's responsibility to change it. Sen (1999a, xi - xii) writes that individual agency freedom is constrained by limited by the availability of social, political, and economic opportunities. Furthermore, there is a symbiotic relationship between human agency and social arrangements, so much so that social, economic and or political arrangements have a bearing on individual freedom to act and achieve. In most cases however, defective arrangements curtail individual freedom. In such circumstances, Sen (1999a, xvi – xvii, 191) and Alkire (2010, 207) agree in saying that humans are agents of their own freedom by being actively involved in removing iniquities and deprivation. This can be done by choosing to act in one way or the other (Sen: 1999a, 190). In addition, actions are better accomplished in groups as cooperating with others enables one to achieve a higher standard of living than when acting separately (Alkire: 2010, 207). To this end, the argument is supported by the fact that there is empirical evidence to this effect, for example gender activists have been able to achieve more by acting in cooperation and this is also the case with some affirmative action groups. The fact of cooperating with others brings to the fore the argument already advanced, namely that individual agency can equally well be expressed in a group. In line with this is the fact that group activities enable public action and participation which for Sen and other C.A advocates is one of the key pillars to achieving democracy. Public participation and action is a further proof of the fact that individuals are not only self-interested but are at the same time interested in others' well-being as well. It also shows that individuals are contributors to social choices and value judgments in general.

In relation to the Zimbabwean F.T.L.R, the concept of agency is important as it encourages individuals to be responsible for changing their living conditions. This research asserts that it is the individual who best understands his and her own living conditions from day-to-day

experience of them. Furthermore, it is the same individuals who have a better understanding of what they really want or are responsible for making their own values. This is exactly what Sen (1999a: 189 - 192) means when he talks about constructing one's own values. It is the individual(s) concerned who choose to act or not to act and this is critical in reflecting individual freedom and functioning as well. As such, people become more involved in what really matters in their lives and not remain mere passive recipients of other people's ideas and activities. In order then for the Zimbabwean F.T.L.R to fully enhance human capabilities, Zimbabweans have to act decisively so as to change the conditions that oppress them<sup>62</sup>. The people living in resettlements have to identify areas of need for the government to deal with. But on the other hand, in accordance with Nussbaum's (2000, 84) thinking, the government has to improve living conditions of the people by setting up institutions that promote human capabilities as defined in her list of ten central basic capabilities. For the concept of agency to fully make sense there should be both individual and political will to change society. This study still maintains that individuals have to play a major role in promoting and being actively involved in the process of social transformation, largely because in some cases governments put in place institutional arrangements unfavourable for the majority of the population. In that case, social transformation becomes a responsibility of the individual. This view is supported by the fact that historically, individuals and groups have always been responsible for altering their lives and their societies.

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<sup>62</sup> The living conditions in F.T.L.R resettlements are such that they militate against human development. Obeng-Odoom (2012), and Chiremba and Masters (2013) noted that in the resettled areas there was no proper infrastructure to support human living and develop communities; they noted that there were no proper roads, no schools, no medical facilities or shops. These are necessary facilities that enhance human growth and development.

### **5.5. Intentions of Zimbabwe F.T.L.R**

In this section the aim is to respond to the question: In what ways would F.T.L.R contribute to enhancing human freedoms? It is important to examine the reasons behind F.T.L.R as doing so helps to identify some missing elements necessary for human functioning and capability. By examining the aims of F.T.L.R against the expectations described in C.A, questions relating to what type of justice is achieved or not are answered. There are four clear intentions of embarking on land redistribution which centre around socio-economic dimensions. These intentions are:

- i. To Increase household productivity of poor rural Zimbabwean populations (Zimbabwe Institute Innovative Thinking for a Sustainable Future: 2005, 3). The aim was to ensure food security for members of marginalised communities who live below the poverty line. In this case, food security depends on access, availability and utilisation of land in order for individuals to attain an acceptable standard of living (Dabale, Jagero, and Chiringa: 2014, 38 - 39). At the same time increasing household productivity also means broadening economic participation of communities so that formerly disadvantaged members of society are economically empowered, thereby ultimately improving the economic well-being of society as a whole. (Tom, and Mutswanga: 2015, 51).
- ii. To exploit the maximum potential of productive arable Zimbabwean land (Zimbabwe Institute Innovative Thinking for a Sustainable Future: 2005, 4). The argument behind this thinking is that there were huge tracks of land on arable farms belonging to white farmers that were under-utilised. White farmers were only using small areas of their farms yet there were individuals who needed access to arable land so it was necessary to allocate this unused land to those individuals for cultivation.

- iii. To correct colonial skewed land redistributions (Zimbabwe Institute Innovative Thinking for a Sustainable Future: 2005, 3, 9). The land redistribution was necessary to correct skewed land distributions established by colonialism. Colonial land ownership favoured the colonials at the expense of the locals. Land redistribution was seen as a way to correct the social and economic injustices of the colonial system.
- iv. To further the process of decolonisation (Dabale, Jagero, Chiringa: 2014, 37). The aim here is to hasten the decolonisation process and eliminate colonial land systems and entitlements. This process would imply territorial decolonisation and reclaiming lands on behalf of ethnic groups that were dispossessed during the colonial period.

From these identified intentions, it is clear that the F.T.L.R wished to address the social and economic dimensions of the Zimbabwean people's lives in order to improve their economic lives. However, this intention alone was not enough. While individuals may have better social and economic lives, they may still experience political exclusion since this dimension of social life is not addressed. The political dimensions of life include civil rights such as the freedom to vote, to stand for and hold office, to freely associate and assemble as individuals, freedom of conscience and freedom from arbitrary arrest, to mention a few<sup>63</sup>. The intentions stated above do not make reference to these because it may have been assumed that the political dimension of people's lives was secure. The assumption is wrong in that the Zimbabwean F.T.L.R did not assure political freedom. Rather it resulted in the suppression of political freedoms as was confirmed by the observations made by Shaw (2003a, 76 – 78), Crocker and Robeyns (2010),

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<sup>63</sup> The F.T.L.R was meant to be a national program aimed at addressing skewed colonial land distributions and was supposed to benefit Zimbabweans at large. However, the program was hijacked by the ZANU PF government, politicising it to become a ZANU PF project and for political expedience resulting in ZANU PF forcing resettled farmers to conform to its demands, thus both denying and suppressing people's rights.

Bhatasara (2011, 323 – 325), and Mlambo and Chitando (2015, 15 - 16). They noted that the political practices in resettled areas only promoted the activities of one political party, ZANU PF. They observed that there was a lack of participation in defining and implementing policies with regard to resettled individuals. This thesis argues that the F.T.L.R had a limited focus that concentrated on job, and wealth creation and property ownership and access to it, while ignoring the many other disadvantages that people faced. Human functioning was hindered since the interaction of social, political, and economic activities were curtailed. Since the focus of F.T.L.R was more on resource redistribution, that is, redistribution of benefits and burdens and in increasing and widening land entitlement, ownership and rights over arable land, it is now necessary to examine the distributive theory. Attention now focuses on the Rawlsian resource distribution theory, Nozick's Entitlement Theory, and the Capability Approach's Entitlement Theory since these theories echo some ideas found in F.T.L.R. The question to be addressed is to what extent these theories either hinder or promote human freedoms.

### **5.6. Rawlsian Difference Theory**

This section of the research will pay close attention to Rawls' theory of justice because the theory has close similarities to the arguments that have been advanced in Zimbabwean F.T.L.R. Analysing the Rawlsian Difference Theory is necessary as doing so helps in giving a comparison of the similarities and difference between it and the C.A. Land is a resource that the state can use for its own benefit and that of its citizens. Hence the conclusion that land is a source of wealth yielding revenue both for the state and the people.

John Rawls' *A Theory of Justice* (1971) has influenced and helped reshape contemporary social and political theory. Rawls argues that justice is achieved through rearranging social

arrangements that benefit all members of society (Rawls: 1971, 54). Members of society have to benefit from the primary goods that each individual in society requires. Primary goods include income, wealth, rights, liberties and opportunities and also include natural goods such as health, mental imagination and vigour (Rawls: 1971, 54). Natural goods are influenced by society though absolute control of them lies outside society itself. According to Rawls, primary goods are a requirement for self-respect.

To realise these benefits, Rawls avers that two important principles of justice are useful. They are the principle of 'equal liberty' and the 'difference principle' (Rawls: 1971, 53). Rawls actually says:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

These two principles are considered relevant for achieving social and economic justice. The basic liberties referred to in the first principle are the right to hold office and vote, freedom of speech, freedom of conscience, freedom of association and assembly, freedom to hold property and freedom from arbitrary arrest and psychological and physical torture (Rawls: 1971, 53). These liberties are to be distributed and redistributed equally among members of the community. The distribution and redistribution of social goods is necessary to eliminate inequality in society and change the *status quo*. Rawls actually thinks that the redistribution of social and economic goods better the living conditions of disadvantaged people which can be achieved by disadvantaging the advantaged (Rawls: 1971, 13 - as presented in the second principle). Rawls' thinking in this second principle is that violation of people's liberties (economic and social) is



acceptable in as much as there are benefits to be accrued for the least advantaged in society. For Rawls then, unequal distribution of social and economic benefits is justifiable if it benefits the least advantaged. Not only does redistribution benefit the least advantaged, but it will be to the benefit of all:

All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all (Rawls: 1971, 54).

What is key to Rawls' (1971, 55) thinking is that it is important to improve the position of the least advantaged people. In Rawls' words, the least advantaged individuals are:

[p]ersons whose family and class origins are more disadvantaged than others, whose natural endowments (as realized) permit them to fare less well, and whose fortune and luck in the course of life turn out to be less happy, all within the normal range ... and with the relevant measures based on social primary goods (Rawls: 1971, 83).

In order to better the living conditions or improve lives of these individuals Rawls thinks that this can be achieved through a "veil of ignorance" through which agreement on the principles of justice concerning social benefits can be reached (Rawls: 1971, 10, 13). This takes place in conditions in which everyone evenly shares similar basic rights, liberties, income and wealth (Rawls: 1971, 54 -55). In such a state of affairs, individuals will be able to make judgments on how to share or distribute social goods to benefit all and even improve the livelihood of the least advantaged. Most importantly though is that in such a state of affairs no one really knows his actual position and so will not negotiate a position that favours one particular social group over another.

Rawls' theory of justice is hypothetical and is intended to improve the lives of the least advantaged through the redistribution of social and economic goods. Furthermore the theory aims at promoting equality of liberties for all.

### **5.6.1. Difficulties of Applying Rawls on F.T.L.R**

According to Nussbaum (2000, 74) and Kleist (2010), the Rawlsian theory of justice does not take well-being seriously. While Rawls may be credited for maintaining pluralism, his theory falls short of arguing for the promotion of individual well-being. The difference theory of Rawls does not recognise that individuals differ in their needs in order to achieve well-being. Variances among people exist though he is only concerned with resource distribution.

Rawls is to be credited for advancing a theory that recognises the importance of primary goods and the social bases for self-respect and natural primary social goods (P.S.G). The fact that these natural primary goods (N.P.G) are considered to be structurally influenced but not controlled by the basic structure of society has its own shortcomings. For instance, in the case of individuals who have physical and biological defects the theory does not recognise the possibilities of overcoming such handicaps through scientific methods (gene mutation) and technologies as Papaioannon (2013, 3 - 4) has observed. In this sense, Rawls' theory needs to be expanded to cater for such individuals. Further, the failure to recognise that society can mitigate some human defects goes to show that Rawls' theory of justice limits the extent to which social structures can work. A good example is the provision of health services where political intervention can effect real improvements. Adopting the Rawlsian conception of N.P.G means that individuals with poor natural endowments would be disadvantaged since health issues are considered a matter of chance rather than choice. Such individuals are considered as having a handicap and cannot be

helped. On land redistribution it would mean that individuals with such disadvantages are ignored because they are considered beyond help. The Rawlsian theory deserves to be expanded to meet the needs of such people.

Rawls' theory is plausible in as much as it advocates equality of opportunities and freedoms for people to improve their lives through accessing social and economic goods. The focus is more on social resources rather than how such resources enable people to lead the lives of their choice. Individuals are not respected but their access to social and economic goods is but this access is important in as much as it helps to achieve individual values. On F.T.L.R this means that the least advantaged individuals are forced to have access to social and economic goods that may be of little or no value in their lives. For Nozick, individuals are forced to sacrifice their freedoms and entitlements by being obliged to work for the benefit of others. It is thus important to examine the concept of entitlement according to the Nozick and the Capability Approach.

### **5.7. Capability Approach Entitlement Theory and Nozick' Entitlement Theory**

This section of the chapter examines two theories of entitlement that have similarities with the Zimbabwean arguments for F.T.L.R. Entitlements to resources for C.A. protagonists are a highly contested area. On the one hand Sen (1999a, 39, 163, 207 -208; 2010: 1 - 2) argues that entitlements are to be understood as limited to resources owned and available for use and exchange only. In other words an entitlement to commodities is merely for instrumental reasons. According to Sen (2010: 2) the C.A. Entitlement Theory is descriptive rather than prescriptive, as opposed to Nozick's view. The ownership of resources is only necessary as a means to an end, in this context, social well-being. In the same spirit, Anafo (2014, 1 – 3, 12, 16) thinks that resources such as land are necessary in as much as they are useful in poverty alleviation as well

as contributing to enabling individuals to fulfil personal goals. For Sen and followers, resources are not valuable in themselves, but only instrumental or tools or means to an end. The argument advanced by the C.A protagonists is that entitlements are of value in as much as they contribute to individuals living lives of their own choice.

On the other hand, Nussbaum, another C.A protagonist, argues that resource entitlement is not only of instrumental value but also that the resources are themselves valuable. Nussbaum (2002, 128) says that entitlements “are not just instrumental to further pursuits: they are held to have value in themselves, in making a life fully human.” This position is shared by Daka (2006, 243) who argues that resources, and in particular arable agricultural land, is to be understood as having more than just an instrumental function in people’s lives but they are valuable in themselves. Daka (2006, 243) in fact goes on to argue that land constitutes the very essence of life among some segments of Zimbabwean society (those whose livelihoods depend on it) and as such it is to be considered as the basis upon which other substantive capabilities (combination of *functionings*) are built. In Daka’s understanding, land ownership and the use of it is necessary for achieving justice and equality. This is particularly so for peoples that were formerly disadvantaged through skewed land distribution. For Nussbaum and Daka land is a crucial item for enhancing human freedom to choose the lives they value. For this reason, then, certain C.A. entitlements are considered both instrumental and valuable at the same time since without them human existence becomes meaningless. This research shares this view and considers that there are sections of Zimbabwean society that view land as inseparable from life itself such as individuals who depend on agricultural activities. These individuals cherish the intrinsic values and connection they have with land physically, psychologically, spiritually, socially, and

economically. In addition, land has personal and political connotations. It is pertinent to note that land as a substantive rather than a basic value emanates from the fact that land generates other substantive values. Arable land in this sense helps people to shape the kind of life they value that is, it gives people opportunities to manage their lives and contribute meaningfully to that of others. Viewing land as a substantive value respects the perceptions and views of the people and their conception of life. This thinking is in line with the language of agency-oriented approach of arguing for the protection, promotion and enhancement of situations that are conducive to the promotion of individual and general social well-being.

Noteworthy is the fact that entitlement failure is closely associated with poverty and alienation (Sen: 1999, 165, 170). According to this research, the argument advanced is that Zimbabwean land redistributions have significantly contributed to land injustices and inequalities which have led to functioning failure that is achieving personal goals. It is most important to note that entitlement is a result of the relationship between the individual, the market and the state. It therefore makes sense to consider the need to redress the skewed land distributions<sup>64</sup>. It is the position of this research that if justice is to be achieved under C.A, it has to address the inequalities and neglected capability values that have resulted from skewed land distributions. Land redistribution is not only to be understood as addressing land deprivation and inequalities but as re-establishing and reconnecting with values that have been neglected and also as a way of increasing the chances of augmenting individual choices. Such practice is equal to putting humans at the centre of social, political and economic transactions. By saying this, entitlement for the C.A, according to this research, is a broad framework which has to include understanding

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<sup>64</sup> This implies reforming the ownership of property system so that it is free of western norms. This also implies reform of political institutions concerned with land tenure.

entitlement as viewing resources such as land, both instrumental and a value. Entitlement also includes just ways of acquiring and exchanging this substantive resource. Over and above this, entitlement theory is concerned with correcting historical injustices so as to ensure acceptable transactional systems for the present and future. In this sense then, this research recommends that C.A entitlement needs to consider and adopt two aspects that it does not yet consider to be a very important in human living, namely just exchanges and addressing past injustice. The research borrows these dimensions from the Nozickian Entitlement Theory. N.E.T is concerned more with determining ownership, acquisition and exchange processes plus settling past injustices whereas C.A is more concerned with widening values and addressing present inequalities<sup>65</sup>. The major thinking behind this position is that without correcting past injustice, especially resource entitlement and ownership (property rights) it will be difficult to establish a new community whereby the ownership of goods or resources is to serve human needs. Therefore, by bringing the two theories together, the research supposes that not only will past injustices and inequalities be dealt with, but also the present and possible future cause of justice is pursued by widening choices and values for the people. Additionally the different values people attach to their lives are also respected and considered. The discussion on justice and equality from the C.A calls for a discussion on what effect ~~how~~ goods or resources have on people. To this end, the skewed land

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<sup>65</sup> In the analysis of the legitimate ways of Entitlement relations, Sen, as a C.A protagonist says the legitimate ways are: (1) Trade-based entitlement: whereby one is entitled to own what one obtains by trading something one owns with a willing party (or multilaterally, with a willing set of parties); (2) Production-based entitlement: whereby one is entitled to own what one gets by arranging production using one's owned resources, or resources hired from willing parties meeting agreed conditions of trade; (3) Own-labour entitlement: whereby one is entitled to one's labour power, and to the trade-based and production-based entitlement related to one's labour; (4) Inheritance and transfer entitlement: whereby one is entitled to own what is willingly given to one by another who legitimately owns it, possibly to take effect after the latter's death (if so specified by him).

The proposition of Sen and of course all other C.A advocates in relation to resource entitlement as exposed here is limited to production, trade opportunities and methods of acquiring command, resource utility only (Sen: 2010, 45). This only scratches the surface and is not a detailed analysis of the history of the legitimacy related to one's eventual owning that resource. Noteworthy is that in cases where individuals rely for their livelihoods on activities that depend on land, having no access and control over arable lands results in poor livelihoods.

entitlement and ownership promotes social exclusion and poverty and contributes significantly to functioning failure for some people who rely on the land for survival. With this in mind it is pertinent to focus on perceptions that relate to social exclusion and poverty and how land redistribution from the C.A perspective may be useful in eradicating them.

### **5.8. Land Redistribution and the Capability Approach contra Social Exclusion and Poverty**

In this section, attention and analysis are turned to conceptualizing land redistribution from the C.A with the aims of addressing social exclusion and poverty. Colonial land tenure policies and the F.T.L.R have resulted in social exclusion and poverty. Noteworthy is the fact that poverty and social exclusion always go hand in hand. This link has led Mawondo (2008) to conclude that poverty in Zimbabwe is a result of and related to social exclusion. The same view is shared by Benbow, Rudwick, Forchuk, Edward (2014, 1046) who state poverty and social exclusion always co-exist and always exacerbate each other. Above all, poverty and social exclusion are social inequalities that are deeply entrenched in institutional systems bent on disempowering particular social groups. Institutional systems that disempower people result in capability inequalities, meaning that human functioning freedoms are hindered and/or the states of being and doing of humans are negatively affected by poor governance and undemocratic systems. This is exactly what poverty and social exclusion results in. While there have been attempts to address injustices and inequalities through F.T.L.R, they have always resulted in further injustices and inequalities. This further strengthens the argument that F.T.L.R ought to result in expanding choices and opportunities for people/individuals to lead lives they have reason to value.

### **5.8.1. Understanding Poverty and Social Exclusion**

Poverty is to be understood as a deprivation or denial of access to economic, social, legal, and political needs. (Daka: 2006, i, vi; Hastie: 2010; Scalet and Schmitz: 2010, 170 – 172; Chavez: 2015, 21). Lötter (2008, 19) poignantly says that poverty “refers to a condition that results in people not being able to live lives in which they can participate in the range of activities expressive of their nature as human beings.” This he assumes is premised upon the lack of, among others, economic resources (Lötter: 2008, 19). In his definition of poverty, Chavez (2015, 21) notes that it goes beyond inadequate income to include poor health and nutrition, low education and skills, inadequate livelihood, bad housing and lack of participation in community life. Poverty is a lack of choice, a lack of freedom to choose from possible states of living and acting. Poverty in other words reduces one’s capability of functioning as one would value. For instance, having no control over resources contributes to failure to use them for one’s own purposes or act to achieve personal goals. In its multidimensional forms, poverty reflects the individual’s inability to acquire means which would enhance well-being, self-sufficiency, self-respect, self-satisfaction, self-worth and community connections. It cannot be doubted that poverty is a root cause of degraded living conditions characterised by lack of or insufficient income, housing, health, and community integration as is the case with those former white farmers and their farm workers after land repossession. In other words, poverty leads to individual marginalisation and at the same time feelings of unworthiness and failure to realise their potential. Lötter (2008, 19 - 21) further succinctly portrays the idea behind poverty by saying that it means living below an expected standard of living thought to be appropriate for humans in society.



On the other hand, social exclusion is a “societal process that ... holds back certain groups ... from meeting their full potential in society” (Benbow, Rudwick, Forchuk, Edward: 2014, 1048). In other words, it is manifested in the disadvantaged position that certain groups find themselves in characterised by discrimination, marginalisation, and stigma (Benbow, Forchuk, Ray: 2011, 689-690). Failure to be incorporated into social processes is a result of being side-lined or disqualified on the grounds of, in some cases, physical or mental disability, economic, political and even social standing. Inevitably exclusion results in inequalities and disadvantages for some people in relation to resources among others and contribute to increased poverty for some individuals. Social exclusion can exacerbate poverty and cause it. Clearly, the idea is that poverty and social exclusion are always present at the same time; they co-exist and their effects are the same. As Lötter (2008, 11, 17) has noted, the implications of poverty and social exclusion on humans are marginalisation, poor health, curtailed life spans, poor mental and physical growth and deprivation of opportunities for personal growth and development. Above all, social exclusion and poverty result in inequalities and disparities among people. In the language of C.A, poverty and social exclusion result in reduced and hindered choices and opportunities for one to realise the kind of life they have reason to value.

In Zimbabwe, poverty and social exclusion are partly state induced in as much as the state enforces policies and practices that hinder individual agency to contribute meaningfully to one’s life and that of the community. This is mostly revealed in the way government intentionally interferes in the distribution of resources such as arable land and regulating ownership and exchange transactions that deprive and exclude others. The failure to exercise control over resources has resulted in destitution and much reduced participation in economic, social and

political life for former white farmers, and their former farm workers. Besides these, there is limited political freedom for individuals who have been resettled under F.T.L.R as Mlambo and Chitando (2015, 15 - 16) noted.

### **5.8.2. Ending Poverty and Social Exclusion through C.A: The Importance of Democracy.**

C.A theory strongly suggests that there is a strong connection between human flourishing and living conditions in evaluating the kind of life that individuals have reason to choose. The framework also recognises the importance of democratic values in establishing a well-functioning society as Glassman, and Patton (2014, 1353) have observed. Moreover, the C.A perspective that places importance on the interaction of liberal social, political, and economic activities finds fulfilment in the practice of democracy. C.A does not depart from the traditional understanding of democracy and democratic principles. In that sense, the C.A argues for the importance of participation of the citizens, recognition and respect for individual reasoning and argument, pluralism and accountability.

A single and universally agreed definition of democracy is elusive although recognising it in action is not. Democracy is a complex system of governance that has to reconcile competing claims; but it is noteworthy that it is not simply majority rule (Sen: 1999b, 10); but a system that holds government responsible, accountable and responsive to its citizens (Sen: 1999b, 11; Glassman and Patton: 2014, 1353). To limit democracy to majority rule is to simply appeal to the mechanical condition of ‘part’ of the expectations of democracy in practice. Appealing to majority rule is tantamount to creating partial policies and practices which are exclusive in nature especially of the minority. As a complex system of expectations, democracy involves participation, expression and supporting for citizens’ views so that they form values and

priorities both individually and as a group (Sen: 1999b, 10 – 11; Nussbaum: 2000, 103). Participation brings with it the idea of rational deliberation among members of society such that the concept of pluralism of ideas and values is safeguarded (Rawls: 1993, 384; Nussbaum: 2000, 103). Rational deliberation involves examination of individual principles and judgments as well as application of these for the good of all. In this sense the liberties and freedoms of people are promoted and safeguarded. Furthermore, the participation and expression of the citizens' will and government compliance conforms to the idea that government should be accountable, responsive and responsible to its citizens. Some of the liberties and freedoms which citizens expect to enjoy include, but are not limited to, freedom of assembly and association (political parties and trade unions among others), freedom of expression, freedom of conscience (criticising and scrutinising authority included), freedom to acquire and exchange property and the freedom to vote and stand for political office. (Sen: 1999a, 38). Additionally, there is need for guarantees of security and transparency that guard against abject poverty among citizens and prevent corruption, citizen abuse and financial irregularities on the part of administrators and governors. Hindrances to liberties and freedoms include censorship of press, arbitrary arrest, forced associations, political interference in economic relations and indoctrination among others, all of which are removed in democratic societies. In short democracy is an open system that aims at advancing people's freedoms, be they social, political and economic and is achievable through the promulgation of policies that are people-oriented (Sen: 1999b, 8). Democracy promotes social, economic and political security while enhancing the individuals' capacity to choose their own ways of life according to their own values.

In relation to capability development, democracy thus has a major role to play, especially in promoting people-oriented policies of value to them. To this end Sen (1999b, 8) avers that defective policies are linked to economic failure, mostly because of non-democratic institutions<sup>66</sup>. Democratic institutions, he maintains, have appropriate policies that aimed at the prevention of suffering, degradation, deprivation and inhuman conditions among the citizenry. An open system in this sense refers to a government that listens and actively responds to the needs of its community which is not the case in most non-democratic countries where the needs of the general populace are routinely ignored. In other words, democracy is a-people oriented system which promotes different facets of human existence and well-being which include, among others, economic, political and social liberties enabling people to lead lives of their choice. In other words democratic systems are interested in promoting the individual good which for C.A is functioning. The good and well-being of the individual leads in turn to the good and well-being of the whole community

The process of Zimbabwean land redistribution was the direct opposite of democratic principles in particular and a denial of free markets and related liberties. Policies related to land redistribution are mostly driven by political leadership because they have the political power and influence. In addition, the actual implementation of land redistribution was politically driven,

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<sup>66</sup> The debate about the claims of non-democratic systems and economic development vis-à-vis democratic systems and economic development are based on causal connections and not on statistics. General observation is that in democratic states, where friendlier economic policies exist such as openness to competition, investor friendly and free market systems, incentives for investment, economic growth is also noticeable. In addition to this, widened participation of people in government processes is also noticeable, as well as government accountability to its citizens. Whereas in non-democratic or authoritarian governments, economic growth may occur as was and is the case with states such as China, Singapore, South Korea (the same cannot be said of Somalia, Ethiopia, Sudan and North Korea) their citizens may not enjoy other freedoms and benefits that may accrue from economic growth. Benefits such as property security and participation in government processes are not experienced by these citizens (Sen: 1999b, 7; Gisselquist: 2012, 1 - 2). In saying this, then democracy and economic development among other developments are linked (Gerring, Kingstone, Lange, and Sinha (2011, 1735))

mostly for political expediency rather than for the benefit of the citizens. It was driven by the need for popular support from resettling black Zimbabweans on farms confiscated from white Zimbabweans. At the same time, the interests of a few powerful and influential individuals were also involved. (Moyo: 2001, 323; Hove and Gwiza: 2012, 288; Chiremba and Masters: 2013; Mlambo and Chitando: 2015, 15 - 16). As a result the policies have not really met the expectations of the wider Zimbabwean society. The freedom to debate and participate was suppressed. The policies contributed significantly to curtailing freedoms of choice for white farmers and non-supporters of ZANU PF to own, sell and exchange land and thus maintain their dignity. Explicitly, Zimbabwean land redistribution policies promoted a system that hindered people's participation in the life of their community and caused poverty and deprivation. Such a situation was well explained by Nussbaum (2000, 84) according to whom failure to combine internal and external capability is to be considered as capability(ies) failure. This was indeed the case since the external capability or outside conditions such as access to land and markets was determined by politics and as such was irreconcilable with the internal capability, that is the capacity or conception of what individuals want and can do. So white farmers were denied the use of their skills and knowledge to cultivate arable lands and lead their own lives because of the policies and actions of F.T.L.R. What is necessary then is a change of the social, economic, and political system in favour of those who advocate democracy. In conjunction to this, the C.A sees the concept of agency as key to achieving this change.

Just land redistribution should enable farmers to be in control of their lives. That is, individuals should be given a chance to determine their own lives by granting them the right to make their own decisions. Sen, Nussbaum and Bhattacharya among others, individual freedom is about

individual empowerment. Having choices is one of the ways through which self-confidence is built and bolstered, while at the same time having autonomous alternatives also enhances responsibility for their lives and those of their communities, a view that different writers have attempted to justify and advance. In the same light, land redistribution should be a way to promote individual freedom. Freedom in this sense, political, social and economic, need not be limited or granted to certain groups and denied to others but should be granted to all. C.A. is therefore the ideal candidate to achieve equality for all because it supports the removal of hindrances that inhibit individuals from realising their potential or exercising their freedoms and effectively tackles poverty and social exclusion. The removal of the hindrances is both an individual effort as is the case with the concept of agency (Sen: 1999a, 18 -19) and a government initiative as Nussbaum (2000, 104) would argue. The government has to account for realising human capabilities to both its citizens and the international community. Democracy is both a process that people bring about and support and governments implement for the benefit of its citizenry.

### **5.9. Critique of Capability Approach**

This section will begin by critiquing the C.A as presented above by analysing it according to the objections that have been raised, and then focussing on the general criticism and its relevance for Zimbabwean land redistribution. The C.A as presented above is a framework that is present and future oriented. This means that it is concerned with how people live and advocates change, where applicable, that promotes opportunities and choices for people to realise the kind of life they value both in the present and in the future. That is to say, C.A examined current living conditions and suggested ways of improving them. This is a positive action yet it has one major weakness which is that it neglects the social, political, and economic injustices and inequalities

of the past. History is an important aspect of human life because knowledge of it helps to shape the present and the future, particularly relationships among people. Daka (2006) and Mawondo (2008) agree with this proposition. They explain that historical events and in particular those that have occurred in Zimbabwe account for certain social predicaments that certain races encounter. History in other words determines what shaped or shapes the kind of relationships and social structures of any given society. Such historical knowledge is necessary in criticising and encouraging healthy relations among races and at times is necessary for promoting conditions for human development that are acceptable to and respected by all. The assumption here is that all individuals recognize the importance of promoting coexistence of cultures and races. It also helps people to see the faults of the past and seek ways of correcting and avoiding them in future.

The crux of the matter is that the C.A. does not consider historical injustice as a necessary component that deserves attention. Yet this cannot be a position to be sustained considering the various abuses and ensuing exploitation and marginalisation that have occurred and which cannot be ignored without redress. Ignoring past injustices is tantamount to creating a culture of impunity and this may continue *ad-infinitum*. In order to avoid this, there is need to improvise a way that will curtail such practices from being promoted in contemporary societies. The suggestion put forward in this research is that the C.A needs to adopt the ideas of N.E.T, especially the third principle of rectifying historical injustices. The thinking behind this suggestion is that correcting or addressing past injustices helps liberate people, be they the victims or the perpetrators or the beneficiaries of this injustice. There is need for psychological liberation that can be executed through material or non-material compensation. (More on this will be in the next chapter).

In addition, it is a fact that the C.A takes for granted the issue of establishing ownership and entitlement to property in transactions that occurred in pre-independent Zimbabwe. Philosophers such as Scarlet and Schimdtz (2010) attempt in part to get involved in the discussion of entitlement but they fall short of establishing who is to be considered as the rightful owner of the Zimbabwean land. They argue that the government was supposed to respect the rights of people who have been granted ownership by the colonial system and also the post-colonial government itself. On one hand the philosophers fall into the entitlement approach argument of thinking that entitlement rights are almost an absolute proxy for human well-being or human good or capability. On the other hand, they fail to realise the intricate nature of the land issue in Zimbabwe. The land titles offered to farmers be they whites or blacks, between the years 1889 – 1999 largely failed to recognise, as per the N.E.T, that there existed unfair and illegal (biased) exchanges which involved forced removals. These exchanges took place without the consent of the first occupiers of the land, at least at the time of colonisation (Shaw: 2003a; Shaw: 2003b). This position places the Zimbabwean agricultural land in a position where it is contested. On the one hand there are the locals who by virtue of being the first occupiers at the time of colonisation argue that the land was stolen from them and on the other hand there are the farm owners who argue that by virtue of title deeds, they have been granted ownership and entitlement. This contestation deserves serious attention, and this research suggests a new beginning that resolves historical injustices and inequalities and proposes an entitlement system acceptable to all interested parties and not one driven by political or economic factors.



Despite the above, the C.A is really a human centred development theory. That is to say it is a theory that takes the human person seriously by aiming to develop all aspects of human life, including the economic, social, and political ones. This is achieved through ‘agency’ whereby people are enabled to take control of and choose how they are to be governed (Sen: 1999a, 190; Alkire: 2010, 107). Effectively this means that people’s needs are presented and attended to by the government. The approach is effective in attempts to break down racial, political and economic barriers that disfigure societies. The C.A advocates a responsive government system that takes the needs of people seriously (Nussbaum: 2000, 103). From this perspective, Basta (2016, 190 – 191, 200 - 208) observes that while the C.A seemingly dismisses the Rawlsian Theory of Justice as concentrating on what institutions ought to be. Basta sees it as the basis on which the idea of capabilities is built. Thomas (2014), Frediani et al (2014, 2 - 4), and Basta (2016, 204) also conclude that Rawls’ Theory and C.A are complementary rather than contradictory. Rawls’ Theory sets out the conditions, a process of reaching institutional fairness, that are deemed necessary while the C.A on the other hand proposes realistic means to achieve justice in society. They represent two sides of the same coin which have to complement each other. The lack of either may result in failure to realise its goals. Rawls’ primary goods only reveal what is necessary for humans, yet according to C.A these primary goods are important in as much as they respond to the question: ‘what do the goods do to human beings’ (Sen: 1979, 215). The C.A theorists also note that the primary goods of Rawls are diverse; they encompass rights, liberties, opportunities, income, wealth, and the social basis for self- respect. All these are essential for assessing how access or denial to goods determines the success or failure of human well-being or flourishing. Human flourishing is achieved in an environment that respects and responds to people’s interests. This is achievable in an inclusive political system. Hence the view

according to which inclusive politics is intrinsically connected to human development and a necessary recipe for upholding and promoting justice and the principles of equality and fairness. Most significantly is the fact that where democracy prevails, favouritism (a form of social exclusion) and partiality are discouraged while co-existence and impartiality are promoted. This position is different from that of Nozick who does not explicate in detail the role of the people who transfer their rights to the state, whereas the C.A protagonists do. Nozick however manages to emphasise the fact that democracy ought to arise from the minimal state (Nozick: 1974, 24 - 25, 290); he also says “*demoktesis*, ownership of the people, by the people, and for the people, is the highest form of life, one that must not be allowed to perish from the earth” (Nozick: 1974, 290). This statement refers to democracy though the major limitation of Nozick is that his democratic libertarian theory celebrates free markets over and above other human capabilities and goods. It assumes that human happiness and liberty is linked to respect for property rights at the expense of how individuals actually live in society. For Nozick as long as people agree to market conditions everything else is permissible. Market competition is all that controls community activities. Such a position does not consider the differences that people have. These differences range from intelligence, access, opportunity and ability to compete in the market. Nozick seems to consider people as having equal social and physical endowments which are not the case in reality. Understanding and responding to these differences is key in considering how to build a democratic society, an insight reflected in the C.A.

The idea of inclusion becomes very important in land redistribution in Zimbabwe especially if justice is to be achieved in future. Inclusion means that people should be consulted and be made part of the decision making process. In fact this means that tolerance and respect for difference

should be encouraged. Policy makers and people should cooperate to achieve mutually acceptable solution (Landin: 2010, 2 -4). In fact inclusion is essential for it offers opportunities for social transformation and economic success (Kantor and Lowe: 2007, 370; Landin: 2010, 3). It also encourages and promotes interest in society's projects and ensures effective dissemination of information among members of society for their own good. In terms of promoting common good, inclusion is a necessity as it contributes significantly to the formulation of policies that are people centred and people driven. In concrete terms inclusion necessitates the blending and merging of abilities and ideas while at the same time promoting coexistence and cultural diversity. In saying this, the C.A argues for maintaining individual freedoms and liberties such as the freedom of the individual to choose, yet at the same time closely associates itself with Ubuntu, a southern African value system, that emphasises and values the importance of common goods and development as well as responsibility for self and social development. The idea of inclusion and promotion of the common good is necessary in Zimbabwean land redistribution, and is key to all other facets of human development there and is the most important aim of this thesis. The essence of democracy is inclusion in which individuals' views are recognized and respected. Inclusion also implies participation in community activities as do the concepts of democracy and agency.

According to Anderson (2010, 81), the C.A needs to take a position on distributive rules. Anderson postulates that there is no agreement among the C.A theorists on what to distribute. Some argue for equality and some for sufficiency and yet others argue for priority. In other words, the theory is unclear on what is to be distributed.

Another criticism levelled against the C.A is that it is excessively individualistic in that it places more emphasis on individual well-being and individual freedom over and above communal values (Wells: 2016). Furthermore, the C.A does not assess how individual freedoms might affect others. In this regard, Robeyns (2016) postulates that there is no definite line to be drawn between individual and community responsibilities. This is also neglected in the C.A literature, which offers little discussion on this. Perhaps the response to this criticism is that individuals have reason to value certain kinds of life and this includes ethical evaluations from which they can make reasonable decisions that do not impinge negatively on others. This line of thought is well expressed in the discussion on agency.

In some cases the C.A is considered as under-theorised since there is no one particular standard theory or framework attached to it but many and various ones. Nussbaum, Anderson, and Sen have their own. As a result, the C.A is considered unsuitable as a theory of justice (Wells: 2016). It does not state which capabilities are important and how these are to be distributed. According to the C.A theorists this is dependent upon particular communities. Robeyns (2016) notes that the lack of a standard increases the possibility of disputes and legal objections. As a result, there have been many different theories of justice emanating from the approach but still no one generally accepted C.A theory of justice (Robeyns: 2016). In response to these objections, it is important to note that C.A is an approach to justice and not a theory of justice. This does not mean that there have been no theories of justice developed from it because Nussbaum and Anderson have done so but in the case of Nussbaum, her theory has been criticised for lacking political justice since it prescribes what people ought to receive from governments (Robeyns: 2016). All in all, the C.A has no fully developed theory of justice.

An accusation levelled against the C.A is that it is eclectic (Robeyns: 2016). That is, it brings a number of theories together such as those concerning human rights and social choices. According to Robeyns (2016) the eclectic approach is essential as it reveals that all necessarily involved theories have a role to play in formulating a theory of justice. An eclectic approach aids in arguing and clarifying issues but its major disadvantage is that it draws arguments from different perspectives without considering due difficulties or incompatibilities that exist among them.

### **5.10. Conclusion**

This chapter has clearly presented the thinking that in order for people to be fully functional in societies, they have to take seriously responsibility for their own personal development. To be functional means that humans can freely decide the kinds of lives and activities they want to be involved in and have reason to value. For this to happen, the C.A states that the political, social and economic environment has the duty to promote people's opportunities and choices for self-determination. This implies that people as citizens are enabled to participate freely in deciding how their society is to be ordered and at the same time live their lives without fear and hindrances. The chapter argued that to achieve this, it is pertinent to analyse the social, economic and political conditions of people's lives in relation to Zimbabwean F.T.L.R. In the ensuing discussion it was apparent that political, economic and social injustices have occurred which may be remedied by social changes through individual and group agency. Agency promotes respect and equality of opportunity for all in society and respect for people's political and economic rights as well. The argument thus advanced is that F.T.L.R, if properly implemented should promote people's well-being through social inclusion and eradicate social exclusion that impinges negatively on people's functioning. The major arguments presented in this chapter is

that land redistribution has to promote human functioning, not limit it, the individual should not be excluded from the social, political, and economic activities of the community they live in and that these activities should enable the individual to create a life of his or her own from the choices available. The chapter also noted some difficulties associated with the C.A, the major handicap being its eclectic approach. The eclectic approach involves a combination of factors irrespective of their compatibilities or non-compatibilities. Apart from the eclectic approach, the C.A lacks a unified theoretical framework and thus is more accurately described as an assortment of different theories.

## Chapter 6

### Contemplating Agreements: The Land-Based Compromise

#### 6.1. Introduction

The thrust of this chapter is to present the Land-based Compromise (L.B.C), a proposed framework for reaching social compromises that has been developed from ideas borrowed from the C.A and the N.E.T. As a compromise, the L.B.C is meant to deal with contentious issues related to and emanating from Zimbabwean land redistributions. The contentious issues are connected to issues involving entitlement, restitutions and compensations, deprivations, and inequalities and injustices that emanate from Zimbabwean land redistributions. The L.B.C will be a result of informed and reasoned negotiations or deliberative bargaining that is informed by experience. The aim of the deliberative bargains is to establish an environment conducive for co-existence, while being advantageous to all.

Explicitly, this chapter supposes that deliberated resolutions are the most suitable responses to competing values and dilemmas emanating from Zimbabwean land conflicts. Furthermore there is a likelihood of still further future clashes if the present land conflicts are not resolved. These conflicts centre around the need to resolve injustices and inequalities related to land ownership (e.g. with regard to property rights, entitlement, and resource use). This chapter therefore focuses on setting out a new beginning for land relations through collective effort that is acceptable to all. Specifically, this relates to transcending the divide of ‘them’ and ‘us’ through building a new ‘us’. This means understanding that the land issue can provide a means of constructing a new identity and building multi-cultural and pluralistic societies that emphasize the pertinence of human relations and well-being in using resources rather than demanding exclusive property

rights. Through the L.B.C therefore, the chapter argues that inclusion, collective value(s) or interest(s), cooperation, justice, equality of opportunities and liberties, cohesion, and stability will be achieved. Furthermore, the L.B.C is to be considered as a possible way of resolving existing and real life problems. The major aim is to expand the options for people to live and act as they wish to. In that sense then, this chapter will make suggestions on the process of how the L.B.C deliberations will take.

## **6.2. Dilemmas over Values**

From previous chapters, it has been asserted, implicitly and explicitly, that there are vexing positions hinged upon either social, or economic or political values discernible in the Zimbabwean land redistribution situation. The different values constitute dilemmas (conflicts) on how to rectify land injustices that have occurred in Zimbabwe. These different values reflect the egoistic nature of human beings either as individuals or as a group. According to Aden Addis (2009, 59 - 61) the values are boundaries that people work with and within and which create environments for either cooperation or a lack thereof. Addis propounds that values emanate from boundaries that people find themselves in and in like manner that form their thinking: furthermore these boundaries inhibit or enhance chances of working together. Capraro (2013, 1) concurs with Addis's view by averring that "social dilemmas are situations in which collective interests are at odds with private interests." In this sense he confirms and strengthens the thinking already advanced for conflicts to be seen as a result of differing value positions. The proposition advanced in this study is that land relations should be seen as an instrument that promotes peace, harmony, social development and advancement, rather than merely promoting either social or economic or political values.



In relation to Zimbabwean F.T.L.R, the Zimbabwean value dilemmas are based upon social, political, and economic interests and conceptions of land. These interests and perceptions are driving forces behind land dispositions. The economic interests supposes that land is essential in as much as it is used to grow the country's economy and in the process better the lives of the people through increased household production (Scoones et al: 2010). Though the crux of the matter pertains to searching for the correction of injustices and inequalities suffered in land ownership (Shaw: 2003a; Mawondo: 2008). Noteworthy as well is the fact that there linked to the social land values are racial undertones which emanate from the skewed colonial land divisions and the land dispossessions that occurred from the year 2000 onwards. The dominant argument is that there is a need to redress these anomalies. The political interests are built around expanding a political party's influence or for political expedience. On one hand ZANU PF considers that redistributing land to the majority of the Zimbabwean society will increase its support base and its influence as well through both coercion and non-coercive means (Mlambo and Chitando: 2015, 15 – 16; Bhatasara: 2011, 323 - 325). On the other hand the M.D.C views land redistribution as a chance to harness political support by balancing economic growth and social stability built around maintaining balanced racial relations between blacks and whites (Zimbabwe Institute: Innovative Thinking for a Sustainable Future: 2005, 10). These are the competing values that have led to a breakdown in relations, violence, bloodshed, insecurity, and conflicts. As such none of these 'values' can be considered as more important than others: there is a need to search for a way that accommodates or balances all of them.

Prioritisation of one value over others is thus undesirable. However, prioritising of values leads to squabbles or conflicts whereas collective interests result in mutual advantage (Capraro: 2013,

1; Weale: 2013, 244; Castiglione: 2015, 161). This is based on the view that individual interests are limited: they display a myopic view of society. Nozick (1974, 10 -11) implies that individual or group interests if followed and implemented result in anarchy. Private interests are not holistic: they do not address all human interests fully (Capraro: 2013, 1). Moreover humans are notoriously social as Aristotle has observed. Humans tend to cooperate with each other for and with varying reasons so as to benefit fully from what society offers. Some of the reasons include pro-self-interest reasons and some very pro-social reasons as well (Capraro: 2013, 2; O’Flynn: 2015, 207). The latter include needs to reconcile competing interests, establish stability, secure common interests and ultimately endeavour to foster social cohesion and harmony in communities (Addis: 2009, 62 – 64; Weale: 2013, xii; O’Flynn: 2015, 207). According to Addis, Weale and O’Flynn sociality is more important than individuality as it assures communal continuity and peaceful existence which enhance or increase individual human well-being. These ideas of sociality are discussed and well explained in the Ubuntu theory and via the Social Contract traditions which describe the role and importance of sociality in detail. Furthermore, these approaches critically explore the relationships that exist between the individual and the community in terms of right and obligations.

In the same vein, there is the question of establishing justice and equality as well. This study argues that the best way of achieving justice in land redistribution is through creating acceptable and respectable relations among members of the state. These are important as they provide for the creation of shared values that can lead people to live lives they value. Sociality and addressing injustices and inequalities will be achieved through discussions and negotiations

whereby people can decide on ways to live together and how to rectify past iniquities and establish unbiased relations.

Even though competing interests exist, there are possibilities that the dilemmas can be addressed. According to Weale (2013, 244) “individuals can be for themselves; but they will never be only for themselves” meaning that individuals are motivated and interested in cooperating over and above self-interests<sup>67</sup>. The major motivation is that through cooperation there are many positives available. On the other hand refusing to cooperate brings with it many risks, some of which may be related to social or community disintegration.

### **6.3. Possible Solutions to Zimbabwean Land Reform**

There are four possible responses to the challenge of finding solutions to the Zimbabwean land conflicts or dilemmas. The first is separation or secession. Separation or secession is a process by which a country, or in this case society, is partitioned or divided along ethnic, language or interests of groups’ lines (Mill: 1947 [1859], 292; Chapman and Roeder: 2007). Separation of states that have been deeply divided has occurred in the past and will continue to occur. Some African examples are Eritrea separating from Ethiopia, and South Sudan from Sudan. The divorcing of states and even groups seems a feasible solution in cases of irreconcilable conflicts or interests (Addis: 2009, 65). However, this is sometimes impossible because the geographical areas occupied by the groups may not be clearly defined: in such cases it is possible that

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<sup>67</sup> However, due to arrogance of some individuals, and fear of losing status certain individuals tend not to cooperate with others. This is particularly the case with politicians and individuals who benefit from oppressive and biased systems. In Zimbabwe this is the case where the ZANU PF political system considers itself as the liberating political power and a power that knows everything. It sees itself as a political power that is answerable only to itself. Owing to this fact, the system does not take kindly to any challenges to its ideas and activities. However internal and external forces can sometimes help to change such perceptions. Internal pressure and external pressure include but are not limited to civil disobedience and international economic and political sanctions.

separations become more volatile thereby creating further disputes among the separating parties (Addis: 2009, 65 - 66). For example, different groups with competing interests in Zimbabwe are scattered all over the country. Moreover, the different groups also may be divided among themselves along ethnic lines. Separation exacerbates divisions and creates more conflicts in the future hence creating a vicious cycle of conflicts that may be difficult to heal.

The second possible solution is the consociation approach. Consociation is a mechanism for sharing power among the political elites (Addis: 2009, 66) which involves proportional representation of all political elites' parties with decisions being made by means of concessions. The decisions are a result of grant coalitions. To a large extent there is no domination of one party ideology but balance and check is strengthened through negotiations (Addis: 2009, 67). Nonetheless, consociational organizations are criticized because they encourage ethnic politics rather than discouraging ethnic values and interests (Bary: 1975, 477; Horowitz: 2000, 258 – 259; Addis: 2009, 67). However the consociation approach incentivizes ethnic divisions and most probably does not encourage long term stability and reconciliation. Therefore it would be difficult to adopt this approach as a way of addressing the divisions that emanate from Zimbabwean land redistributions. The consociation approach will cause further divisions as only represents interests of ethnic. The individuals who do not belong to the represented ethnic groups are not represented and their views and interests are not considered.

The third possible solution to the Zimbabwean land question is a democratic approach to the land distribution conundrum. This is a well-respected approach in contemporary political practices and debates which implies a complex system of institutional and social arrangements where

political institutions are expected to uphold and disseminate social practices related to promoting liberties and freedoms of the people.

Democracy is a difficult term to define. On the one hand there is the ‘mechanical’ aspect which involves referendums, elections and representation (Nzongola-Ntalaja: 1997, 16; Fareed: 2000, 194). On the other hand there are non-mechanical aspects which include the promulgating of laws and acting or responding positively to citizens. Ideally democracy implies a government that is responsive, accountable and responsible to its citizens (Glassman and Patton: 2014, 1353). However, in practice, most African governments have limited the practice of democracy to the mechanical aspect (Nzongola-Ntalaja: 1997, 16). The interests of the leaders are in gaining majority votes and then using this as justification for legitimizing their decisions in parliament. According to Adamova (2013, 184 - 194) relying merely on mechanical democracy leads to tyranny of the majority over the minority. The majority refers both to the number of representatives the party in power has in parliament, and also the number of individuals who voted their parliamentary representatives onto the legislative body. The decisions or laws are made according to numbers (the majority) with the minority’s interests ignored (Adamova: 2013, 185). Clearly, the tyranny of the majority is legitimized through elections and is used to circumvent the real expectations of democracy. Noticeable is the fact that such practices lead to two classes of citizens, i.e. the majority (a ruling party that has been voted into power) or those who belong to the minority, i.e. those who do not belong to the ruling class. The views held by the minority are construed as not belonging to the state’s best interests. What the ruling parties fail to realize is that the minority are also clamouring for their rights, and that the state has an obligation and accountability towards all citizens.

Some practical outcomes from the tyranny of the majority are noticeable with regard to the Zimbabwe F.T.L.R. Constitutional Amendment Act Number 16 (2000) and 17 (2005) which were enacted through the majority of Zimbabwean parliamentarians' votes. In voting for the laws the ZANU PF parliamentarians disregarded the views of the minorities in the forms of white commercial farmers and the minority opposition party (M.D.C). Hence the majority ZANU PF parliamentarians, who formed the government showed disregard for the principles of responsiveness, accountability and responsibility to the citizens of Zimbabwe. The elected government was only interested in implementing the interests of a few people (the ruling elite) disguised as the majority. Effectively, this meant that the F.T.L.R programme was carried out in the interests of the 'implementing' majority representing a political party. In this case the majority refers also to the ethnic groupings that are in support of the F.T.L.R invaded farming lands. The Zimbabwean population service estimates that the majority of the Zimbabwean population resides in the rural areas. These were the people who participated in the resettlements that began with the advent of F.T.L.R and resulted in side-lining and neglecting the minorities' land-based interests.

A fourth possible solution to the Zimbabwean land problem is to pursue an integrationist approach to land redistribution which involves serious consideration of citizens' interests, regardless of their race, gender, religion or political loyalties. The integrationist approach is the most appropriate in terms of land reform as it considers the differences that exist across societies. This approach has been referred to by scholars as deliberative democracy in that it involves lobbying, and discussions on competing opinions among society's stakeholders (Addis: 2009,

68). In deliberative democracy the major aim is to understand and respect each other, and to avoid the fragmentation of society by rejecting the idea that democratic processes (elections, referendums and representation) are the most important ends to ensure society's governance. Rather the emphasis is on considering everyone's concerns in the way through which society is to be administered (i.e. campaigning for justice). Therefore this study puts forward a Land Based Compromise via an integrationist approach. The focus of the chapter now turns to the substance of this Land-based Compromise.

#### **6.4. The Land-based Compromise**

The L.B.C is a theory aimed at addressing Zimbabwean land problems. The L.B.C has a dual objective that is to reconcile and to rectify relations as the best possible means to achieving justice. Additionally, the L.B.C as a suggested theory or framework has never been proposed for use in resolving Zimbabwe's land issues problems. Moreover it has never been used to solve injustices or inequalities emanating from land redistribution in Zimbabwe. The L.B.C is informed and inspired by the Social Contract (S.C.) approach and other relevant theories that promote justice and equality, such as the C.A. and the N.E.T. The S.Cs are hypothetical but applicable to practical issues: in most cases they hypothesize agreements and or associations that people enter into so as to foster a common force that protects and promotes their interests as individuals or as groups (Muldoon: 2009, 11). The S.C is also a reflection of the will of the people in society so as to promote a common interest reached through negotiations and the reconciling of competing interests that would otherwise lead to conflict (Apressyan: 2004, 2; Muldoon: 2009, 3 – 5). Ultimately, the intentions of the S.C are to preserve lives of people, and to move away from selfish interests towards a commitment for social order that establishes justice (Apressyan: 2004, 2; Cudd: 2007). In a sense, S.Cs can be used to evaluate and campaign

for changing social arrangements in society so that they guarantee justice, that leads to social benefits through advancing human well-being for all (Claeys: 2015, 203, 205). It is in this sense that this research intends to use S.C theory.

Examples of S.C (that focus on real life issues and problems) include Weale's Empirical Social Contract, Tshuma's search for a Zimbabwean Truth and Reconciliation Commission, and Truth and Reconciliation Commissions that have been carried out in South Africa (1995) and Rwanda (1997). In addition there are state or country constitutions that have come into being through consultative forums. In that spirit, the L.B.C is to be understood as a compromise involving reasoned negotiations that include deliberative bargaining informed by experience and aiming at establishing an advantageous environment conducive for individual existence and group co-existence (Rousseau: 1986 (1754), 256). It is pertinent to mention that the L.B.C can provide a platform for reformulating social arrangements and which will include policy reformulation on land relations, agreeing on issues of redress and ensuring reconciliation. Most important though is that the compromises to be reached upon are founded on communal therapy which is an attempt by a society to understand itself through events that have occurred. Furthermore, communal therapy is a process whereby people come together to correct wrongs that have occurred and at the same time ensure that no social dislocation and disharmony occurs in society (Murungi: 2004, 525; Idowu: 2006, 44; Gwaravanda: 2011, 148, 151; Tshuma: 2015, 317). The therapeutic process involves addressing the deep divisions that society has already encountered, in the repairing of relations. Beyond that, the therapy attempts to map the future by suggesting better ways for coexistence and in this sense formulates laws that will govern how to solve vexing and complex land issues and how to continue living justly together. Further, the L.B.C



attempts to understand the pluralist nature of modern societies through a free and equal participation of members. Beyond that, the L.B.C encourages a responsive government.

The L.B.C is a proposed framework on how best to proceed in the process of cooperating and working together from divergent positions. It will be a platform for discussion and for reaching agreements. In this process, compromise and negotiations are used. The L.B.C is at the same time a people-centred solution to social ills by searching for justice that promotes human relationships: it attempts, as a people-centred initiative to respond to the question of land ownership and how to remedy past injustices and inequalities. An important fact is that the L.B.C will advocate for land relations that are not dependent on race, political affiliation, or social standing: it aims to establish, as a necessary condition to the realisation of outcomes, a watchdog facility that always points out faults in the implementation of people's expectations or agreements and at the same time campaigns for the realization of the agreements. In that sense, the L.B.C will respond to the past (attempting to reconcile society as was the aim of Zimbabwean politics at the dawn of independence) and the future, through searching for a better livelihood (human-wellbeing) for all. The L.B.C will be a people-driven initiative aiming at guaranteeing impartiality, as opposed to a political party initiative which in some cases results in favouritism or bias towards individuals who support the party. The contracting parties referred to are different stakeholders who have an interest in land issues (see 6.5 and 6.5.3). The L.B.C realizes that controversy over land ownership in Zimbabwe has been a source of conflicts which are best addressed and dealt with by the people themselves, hence the idea of people-centeredness. Therefore, the L.B.C is considered the necessary tool and platform for moving society out of social traps and or dilemmas as it addresses the real causes and effects of the

conflicts. Weale (2013, Chapters 1 – 4) and Castiglione (2015, 161) argue that S.C's (including L.B.C) aim to eliminate society's social ills. More precisely, the L.B.C is to be considered as a form of social agreement which is concerned with how people are to act in society and (re)organize social relations and institutions for their mutual benefits<sup>68</sup> (Castiglione: 2015, 164). Such contracts are necessary in seeking redress and moving towards full reconciliation of societies<sup>69</sup> (Dyzenhaus: 2003, 472; Tshuma: 2015, 318). Similar ideas are shared by R. Nozick (1974) in his Entitlement Theory and the notion of the minimal state as expressed in the principle of Rectification where people have to agree as to how to rectify past injustices. For Nozick (1971, 57 -58, 135 - 137) rectification is one way through which individuals address past ills through discussing and mapping a way forward through rearranging their society via a bottom-up approach where ordinary individuals decide how their society is to be arranged instead of political leaders deciding unilaterally. The people's input will be presented through their representatives. Through the minimal state, Nozick advocates a limited role for the state or political authority. This is because settlements or positions that do not emanate from the people suffer rejection as people do not identify with top-down decisions made by elites. Effectively this means that social contracts in essence serve to suggest common rules and agreements that are binding for communal living (Gutman and Thompson: 2004, 3 - 7; Weale: 2013, 46). So L.B.C would be a settlement of the people on how they are to live and organise transactions.

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<sup>68</sup> These ideas are also shared by Capabilities Approach theorists.

<sup>69</sup> On the issue of reconciliation, the study advocates making use of Ubuntu or African thought system as a way of addressing social ills. This includes participation of all stakeholders, including the offender and the offended and the community. All stakeholders participate in the process of addressing anomalies and all agree on the form of punishment for the offender and the restitution to be received by the victim. All this is done with the idea of not further offending one party over the other, and not humiliating anyone but to help all.

## 6.5. Nature of L.B.C

The L.B.C will be a platform for forwarding propositions, for lobbying of ideas on how to conceptualise land, and for setting expectations (agreements). Though there will be discussions on land, it is important to note that the L.B.C will be reached through the rational activities of representatives drawn from various interested parties. These will include representatives from various stakeholders, e.g. political, ethnic and race, land pressure, farmers groups, and agricultural experts together with cultural and social representatives<sup>70</sup>. Implied here is that not every Zimbabwean is interested or concerned with the land issue. People view land entitlement from different positions: some of these are economic, others are political, and yet for others land is of social and cultural relevance. Zimbabwe finds itself plagued by conflicts over different conceptions, underlined by confusion over land entitlement and possession. As a result of these conflicts various forms of injustices and inequalities have been knowingly and unknowingly implemented. Not surprisingly deep-seated divisions have erupted which deserve urgent attention. Noteworthy is the fact that the L.B.C as proposed in this research is an internally motivated settlement inspired by individuals who are concerned with the stability and progress of their society. The L.B.C is a home-grown solution to address evils that are bedeviling a society. This position is based upon the supposition that if the land-based problems are not dealt with they will persist into the future and the chances are that a vicious cycle of unresolved divisions, insecurity and conflicts will continue. To this end Openshaw and Terry (2015, 73) have noted that

[a]lthough a significant problem in other postcolonial African societies, it is in Zimbabwe that the issue of land reform has reached crisis proportions, generating violence and bloodshed, and precipitating the complete breakdown of relations between Zimbabwe and its former colonial ruler, Britain.

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<sup>70</sup> Discussion related to this is elaborated under the section L.B.C an internal arrangement.

In short the Zimbabwe land question has generated breakdown in social relations both internally and externally. If this is not addressed then the chances are that social harmony will not be realized in Zimbabwe.

The perspectives noted here sound Nozickian and are actually implied and derived from his N.E.T: that is, a recognition that disgruntlement, insecurity and conflicts are the major causes of disharmony in society. The conflict and divisions reduce the chances of social cohesion and social harmony thus reducing the possibilities of development as well. L.B.C anticipates that different social expectations will be taken care of while reconciling the different interests of people in society. In this way social justice will be respected and achieved. Importantly L.B.C searches for peace and justice as seen from the people's point of view with peace seen not merely as the absence of war, but also as the elimination and minimising of discontent, conflicts and avoidable divisions in society (ZCBC: 2015, 181 - 184). Furthermore peace is established when divisions, and conflicts are resolved, when biases and favouritism are shunned in preference for equality of all members of society. Importantly economic and political stability account for peace. The equality advocated pertains to equal access and guarantee of rights such as right to life and property. This applies to protection of these rights, regardless of political, racial or religious affiliation. In a sense, the L.B.C targets to end discriminatory laws: this will be achieved through revising social norms, practices and laws that promote racial biases, restricted access to resources, or race-based violence. In this way selective justice that causes divisions and conflicts is dealt with thereby ensuring social justice for all.

Social justice is a condition that is necessary for achieving social equality, cohesion, harmony and thus society's good. Social justice also underscores the need to correct the wrongs that have occurred in the past so as to establish right social relations that range across personal, public and or institutional levels (Weale: 2013, 2 – 3; Castiglione: 2015, 166). Social justice at the same time implies that deliberation is necessary in order to come to an agreement as to what are to be the right or expected social relations. According to Castiglione (2015, 166) social justice goes going beyond all disagreements, establishing an acceptable agreement for all involved through rational deliberations. According to C.A protagonists, among other things, social justice implies that individuals in society became agents for their personal interests, which include goals and values that individuals have reason to respect (Crocker and Robeyns 2010, 62 – 63, 81 - 83). Moreover, the protagonists argue that when people are agencies of their own values their freedoms and opportunities are at the same time established. Social justice in this sense pertains to relationships that should be established in society. These include respecting people's values, establishing equal opportunities for all people so that they engage in activities they value and are enabled to live lives of their own choice. This is what the L.B.C attempts to achieve through deliberations aimed at an acceptable and workable position. On the other hand, and in complementing the C.A thinking, N.E.T also avers that the state or government influence upon the discussion should be limited to implementing people's decisions. The thinking behind this argument is that people will freely advance their views on society and become responsible for their lives and society as well.

The assumption behind the above conclusion is that interested individuals are motivated to be part of the L.B.C so as to consolidate their position. Compromises are meant to strengthen

mutually agreeable positions. In order for individuals to be motivated to participate, local and international pressure and lobbying is important in awakening people's conscience. In this process, there will be social and political guarantees that decisions made will be binding and be respected. The guarantees will include amnesty for those at fault: in addition acknowledgement of faults will not necessitate harsh penalties.

### **6.5.1. Rational deliberation**

For the L.B.C to succeed different perspectives are to be recognized and respected and their views to be acted upon. Individuals or agents that are to be involved in the deliberations are to represent particular interests of their own or of their groups' (Sen: 1985, 197; Crocker and Robeyns: 2010, 79 - 82)<sup>71</sup>. According to Weale (2013, 102 - 103) presenting self-interests necessarily reflects an enlightened prudent personal position, a necessity in deliberations and this presents a minimally moralised position which however presupposes a predetermined position which minimises the chances of reaching a holistic negotiated position. Castiglione (2015, 166 - 167) in agreement with Weale (2013, 11) elaborates on the argument by stating that communally moralised negotiation reduces the chances of open and honest debate as the outcome (contract) and results of the negotiations will already be predetermined. In addition, a predetermined contract eliminates members' chances of ironing out real differences that emanate from conflicting interests (Castiglione: 2015, 166 - 167).

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<sup>71</sup> The C.A position is that individuals or people's freedoms should be respected so that their endeavoured values are realised. In negotiations the values of the people are to be respected and honoured. This will help to establish a society for all and ensure that all realise their values.

It is imperative to realise that interests of people and groups are different and as stated before have to be recognised, respected and acted upon (positions are not to be dictated: this is a notion derived from the ideas of the Nozickian minimal state). The interests represent the different realities that people encounter and which become their points of conviction in their lives (Manda: 2009). Additionally, the justification of an agreement or settlement depends on how well it serves individual needs and desires (Hampton: 2007, 482). Individual interests differ and may become a source of conflicting interests and values. All differences have to be taken into account and ultimately dealt with which increases chances of being understood and of understanding others as well (Manda: 2009). According to Hampton (2007, 482 - 483) in order to come to the best agreement it is important to begin with what people really desire and or prefer rather than what may be anticipated as the desired outcome. For a successful settlement then the different interests have to be presented and recognised. The L.B.C in this regard has to be open to all members, such that they bring forth and present their interests and those of their constituencies. Differences in interests and values should be noted, recognised, and respected. The ultimate vision is that from differences people will understand each other's standpoints and eventually negotiate through debates for a way of settling their differences, while not ignoring the different interests. Differences and disagreements are best dealt with by the individuals or groups that have conflicting interests. As Castiglione (2015, 166 - 167) says, individuals with differences best iron out their differences through discussions.

Informed negotiations are therefore necessary as they help bring out people's values, needs and interests. In this sense people's plights and or claims are exposed, becoming subjects for discussion. In the words of Alex Honneth (2014, 255), debating does not only assure social,

political and legal freedom but also provides space for public discussion of different opinions while upholding people's freedoms as well. According to Dreze and Sen (2002, 19, 258) and Crocker and Robeyns (2010, 81 - 82) deliberation provides participants with a chance to question, reassess norms and values and ultimately proffer new values and norms that are good for collectivism. The idea forwarded is that communication among people is necessary in public places or spheres for movement towards mutual dependence and understanding. The same ideas are advanced by philosophers of note such as J. Rawls (1971, 195 - 201), J. Cohen (2010, 181 - 230) who emphasise the pertinence of discussion as a principle necessary for formulating a society and as a necessity in forging a way forward for coexistence. In fact, Honneth (2014, 258) avers that debating offers the possibility of enlightening each other from different viewpoints through exchange of opinions, and offers that platform for collective action that comes about as a result of inter-subjective deliberations leading to a possibility of social cooperation that really aims at improving the society itself. The last point is shared by Hampton (2007, 479), who argues that by discussing differences citizens aim to improve their lots. Moreover according to Schweiger (2015, 35) deliberations ensure the balancing and linking of the individuals' interests to those of the community. This is elaborated on by C.A. thinking that advocates the view that discussions open up chances of enlightening, analysing, criticising and collating views. In a sense through discussion there are high chances that mutual dependence and co-existence can be built. Note that the intention of the debates is to come up with resolutions that are agreeable to the parties involved. Since a resolution(s) is agreeable to all parties involved, the different parties will be obliged to respect and honour it since it will be of their own making. These perspectives are also shared by Ronald Dworkin (1976, 17 - 18) and (Hampton: 2007, 479) who think that the agreeing parties to the contract tacitly and explicitly consent to the outcome. It follows therefore



that contracts are man-made and human-driven. In precise words C.A protagonists posit that societies are made by people and so are the laws that guide and bind people's conducts. In this sense people become agencies for their own values (Wells: 2013, 4 - 5). It is the people's values that will then be used for the formulation of guidelines or laws that will guide society in its different conducts. When people are agencies of their lives and when their values are respected and acted upon or used to formulate policies, then the chances of enhancing their freedom and well-being and opening up of opportunities are widened and promoted (Deneulin: 2006, ix, Robeyns: 2016).

The deliberations leading to the L.B.C will offer people a platform to analyse, criticise and reassess their values and practices in order to forge a new way of coexisting. Through the L.B.C the consenting parties become enlightened and together search for a way that will promote and respect everyone's interests. Freedoms for all people will be promoted through participation in the debates and through opening up opportunities for all, as will be guaranteed by the compromises reached<sup>72</sup>. The opportunities referred to here refer to both the freedom to value a particular perspective, the freedom to change a value, and the freedom to pursue without hindrances that particular value. Besides values formed around material possessions (such as land among others), agreements will also touch on the kinds of entitlement the possessions will ensure. This will definitely have a bearing on issues such as compensation and restitution. The L.B.C as a platform for discussion sets forth a stage where ideas on compensation and restitution arrangements, if any, will be discussed. Beyond that the question of who would be compensated or who would provide compensation will also be considered. Beyond that, the participants will

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<sup>72</sup> For Amartya Sen (1999, xii - xiii) people become active participants of their societies' lives and by being in control of the society itself and not being mere recipients who are at the same time vulnerable to manipulation from the powers of governments.

also settle or find and formulate a formula necessary for establishing an acceptable land entitlement which will become known as the land compromise. The major idea is that the compromise will be acceptable to all and will not disadvantage anyone<sup>73</sup>. In this sense, the L.B.C aims at not leaving anyone worse-off but improve and strengthen everyone's standing in pursuit of their values. In this way, the L.B.C will reduce conflicts and fights over land and improve social relations as people will come to appreciate, respect, and tolerate each other's views.

Free and liberal deliberation that takes place as suggested above will guarantee s—and invite s truth-telling, free expression and participation, via equality and impartiality among participants;. Through this process the respecting of pluralism and promotion of mutual recognition and cooperation will also emanate. Through realising that divisions exist and there is a need for mechanism(s) that unite all people. For unity and cooperation to occur, Hayner (2002), Gibson (2004, 134), Graybill and Lanegram (2004, 310), Tshuma (2015, 315) postulate that knowledge of what actually happened, what motivated people, and who commanded people to do whatever they did, is crucial. Revealing and reliving the occurrences help build memory of the past abuses and this is critical as it helps in resolving past crimes. It also offers bases of redress that engender cooperation of all, be it for the perpetrators and / or the victims. Abuses and violations of human rights are known to have negative effects such as inflicting physical, material and psychological harm. It is therefore important to have social means to address such harms (Catholic Commission for Justice and Peace [CCJP], 1999, 30). Villa-Vicencio (2009, 106) corroborates and further suggests that correcting the wrongs also involves payment of compensation, restoration,

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<sup>73</sup> This is a radical departure from situations whereby governments determine the forms that entitlements will follow. In this case, entitlement will be determined by the whole community or society. This approach strengthens people's influence in the way through which societies are run, thereby reducing and balancing power between governing powers and their subjects.

reparation, apology and at times punishment for extreme criminal cases. This study therefore emphasises the importance of coming together to forge agreements that are built on trust and aimed at eliminating divisions in society in order ultimately to build acceptable institutions or societies. Truth-telling and free expression are intrinsically connected as they all imply the need for honesty and the avoiding of lying, deceiving and deception. There can be no misleading each other when truth-telling is in force (Swaminath: 2008). Social and political guarantees for amnesty and forgiveness can ensure that individuals are bound to truth-telling. Beyond that opening up will help bring out the truth, build trust and most of all instil tolerance among people. Without doubt, the healing process begins through truth-telling (Graybill and Lanegram 2004, 310; Tshuma: 2015, 317).

The crux of the matter here is that through discussions people or individuals are granted and guaranteed different forms of freedoms which include expressing themselves, and revealing their disgust with abuse of social, economic, political and legal systems. Freedom and participation are ensured, particular when individuals are recognised, respected and honoured through formulation of policies that reflect their interests (Weale: 2013, 9 – 10; Castiglione: 2015, 166). The deliberations offer people spheres whereby individuals are not coerced and all participate freely without fear (Honneth: 2014, 305). People’s worries, values and interests are thereby recognised, their different positions will be recognised and respected, and used to work out a position that will be acceptable to all becomes what Weale (2013, xiii, 102 - 103) sees as an enlightened, rational and prudent collective contract. The process of deliberation is thus a self-correcting initiative which people enter from a self-interest position but end-up making a common commitment (Castiglione: 2015, 169). This will be the L.B.C outcome as well as a

people-centred process that intends to promote the building of collectivism. The L.B.C., unlike politically driven agreements such as the Lancaster House Agreement, will not be politically motivated and is not interested in maintaining the *status quo* when it comes to land redistribution as would be the case with agreements that are politically driven. On the contrary it is committed to changing society so that every member of the community enjoys the benefits that accrue from land redistribution where land-based relations are just, and where there is equal access to land ownership whatever the social, racial or political status of individuals might be. In other words the commitment of L.B.C is to end injustices and inequalities through equal access and opportunities to live lives according to people's wills. Furthermore, the L.B.C aims at reconciling all members of society so that lasting peace (putting an end to a vicious circle of land appropriations) and harmony is achieved. It is this commitment that will motivate members of society to consider working for the greater benefit of the society rather than in isolation as individuals or in racial or political groups.

### **6.5.2. Legitimacy of the Contract**

Contracts are legitimised by free participation, and equal consideration of consenting members. Members who come to the negotiating table are considered equals in terms of participation and of standing. This stems from the fact that the contracting individuals' social standing differ, the differences range from political and economic positions (Weale: 2013, 19 – 20, 30 - 32). However, these (different) positions make it difficult to truly consider all contracting members as equal in standing and negotiations. Moreover, social standings may be used by some negotiating parties to their advantage. This is a social reality which contracting members will have to guard against: if they fail, the advantaged will end-up manipulating the whole process. Rough equality is achieved when all contracting members have equal negotiating powers and all have a chance

to contribute meaningfully from their own points of view. In other words coercion in any form be it psychological, political, economic or physical will not be part of the proceedings. Rough equality considers all individuals as having equal standing and negotiating powers and as contributors to the contract. Hence it is a necessary precondition for aggregate agreements and cannot simply be ignored as a non-essential entity. Moreover, it assures the negotiating parties that their concerns will be taken seriously and that no domination and favours (in negotiating) will occur. All parties will receive equal recognition and consideration, despite their different social and political standings. Inevitably when contracting parties are assured of equality of consideration - and impartiality - voluntary and free agreements are bound to emanate from the discussions.

Entering into agreements voluntarily entails contracts become binding for all members (Hampton: 2007, 479). The agreements oblige all contracting parties to observe and respect these outcomes of their own voluntary association reached through their input, participation, and most of all their considered reasonable way to coexist. The L.B.C will be a contract that by and large is a compromise for how land is to be viewed and used in Zimbabwe via an agreement that reflects a mutual an agreement that is advantageous to the people who have different interests in it. In that way the L.B.C attempts to understand people's views and incorporate them when formulating a position. Consideration of other views shows sensitivity and tolerance of others.

### **6.5.3. L.B.C an Internal Arrangement.**

Explicitly and implicitly, the L.B.C. will be an internal arrangement for addressing contentious issues that have to do with land redistribution. The L.B.C. thus comes about as a means and

measure to minimise injustices and maximise justices for all members of society. Its mandate will be to establish acceptable relationships among society members. Also noteworthy is the fact that the project has been motivated by an awareness of the need to settle complex and vexing differences. To that end it is sensible to argue that the contracting members of the L.B.C are members who hail from Zimbabwe. Consequently the L.B.C will be an internally motivated arrangement that is driven by members of society who have an interest in establishing settlements that are mutually advantageous for all. The importance of the L.B.C as an internal arrangement is that members will own and honour the settlement themselves. They will wholeheartedly put into practice what is theirs. On the other hand, if the settlement is to be generated externally, individuals who will be forced to practice it will consider the settlement as foreign and certainly not reflecting their will.

Though the L.B.C will be an internal arrangement, it does not mean that every member of Zimbabwean society will have an individual input and will be present at the discussions. This is absolutely impossible because of practical, economic and financial reasons. It is impossible to have everyone in one place at the same time. Moreover not everyone is interested in the land issue as already noted in Chapter 2 of this study. Economically, it is impossible to finance everyone to be part and parcel of the contracting group. In that regard, it is essential therefore that there be representatives of all interested groups that is stakeholder groups that have an interest in land use. It is important to note that the land referred to here is productive agricultural land and not lands in urban areas as these are not under contestation.

Members expected to be the contracting members will be representatives of the following groupings: ethnic and race; agricultural experts; land pressure interests such as farmers' representatives; and cultural and social organisations. These representatives will be responsible for making the concerns and interests of their constituencies known: beyond that they will be expected to be reasonable individuals who respect and recognize others' interests and values, and prepared to shape a compromise that is advantageous to all. The expectation is that they be individuals who are able to analyse and assess (reassess) and remodel their positions, yet at the same time not neglecting their own constituency's values and interests. Remodelling of perceptions is necessary in modern societies in order to accommodate differences that characterise present societies. Commitment to coexistence is therefore to be anticipated by all contracting members who should not simply be individualistic in their approach. They will need to consider land use as a supporting instrument to achieving justice, equality and fairness, thereby opening up opportunities for all in society.

#### **6.5.4. Motivation to participate in L.B.C**

As already stated, the L.B.C aims at resolving the contentious issues surrounding the Zimbabwean land crisis, and as such this intention becomes the central reason for why individuals will be motivated to participate in deliberations. Individuals are by nature selfish yet at the same time social as pointed out by Hobbes, Locke and Nozick; however the pursuance of selfish ends leads to uncontrolled competition and unrestricted acts that result in anarchy. The need to prevent anarchy drives individuals to communicate with each other and restrict conflicts so that they all realise their individual interests, thereby promoting self-interest and social harmony. The argument presented here is that individuals realise that in order to successfully pursue their interests they need the community: moreover they need a peaceful, harmonious

community that regulates and promotes individual desires and activities<sup>74</sup>. The regulations come about as a result of individuals' agreements on how they are to live together in the community which involves regulating activities of individuals on property holding and exchanging among other things.

In the case of the Zimbabwean land redistribution, individuals are motivated by the desire to solve the contentious issues around the land redistribution<sup>75</sup>. This includes resolving impasses on attempts at countering injustices that have occurred as a result of land redistributions in Zimbabwe. Resolving the injustices that emanated from the land redistribution include settling forms of entitlement; matters of rectification and compensation (who to compensate and how, if any); addressing social exclusion and alleviating poverty. Several suggestions and attempts at resolving Zimbabwean land injustices have resulted in a vicious cycle of injustices, largely because the attempts to deal with the injustices did not include the people most affected. In most cases the suggestion and attempts were one-dimensional (politically motivated and led): these attempts did not take into account the Zimbabwean society in its totality. The racial and cultural differences were not considered. It is the ignoring of these differences that have significantly contributed to anarchy, in the form of competing cultural and racial interests. The racial and cultural interests include values and practices that contribute to self (group) preservation and advancement of a person and group. If these values and practices are not reconciled or recognised the chances are that social exclusion and anarchy may occur. Experience has taught humans that violence and fighting are not the ideal way to attain recognition and respect but negotiations and deliberations can lead to social harmony and development. This is achieved through reconciling differences and mutual tolerance. In the same spirit, the Ubuntu notion of

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<sup>74</sup> This position is shared by Castiglione (2015, 166).

<sup>75</sup> Arrogance, fear of severe punishment for unruly activities, and lack of formidable pressure from both the local and international groups has resulted in lack of commitment to resolving the land questions.



morality teaches that deliberations aimed at reconciling and promoting peace among people in society is a requirement in settling contentious issues and for attainment of social harmony and development. Ubuntu holds that for society to develop, it has to involve, tolerate, recognise, and respect values and practices of all people. The belief that reconciling competing values and practices is a possibility drives people to come together and share ideas on how to live together despite differences. The idea expressed is that by so doing there is a new beginning brewing with regard to land redistribution.

The new beginning is not a predetermined outcome but rather a process that comes about as a result of deliberations which are based on people's rationality, and in particular on people's interests and views. Such deliberations minimise the possibility of predetermined settlements that are not based on people's interests (Weale: 2013, 102 – 103). Rational deliberation "... is consistent with agents' concern for own prudent self-interests" (Weale: 2013, 102 – 103). Basta (2016, 196) furthers the argument by saying that rational deliberations are necessary in removing biases as they posit a shared understanding of justice; Rational deliberation implies a commitment to diagnosing justice and injustice with the purpose of advancing justice (Sen: 2009, 9; Basta: 2016, 197) This is a motivating factor for different groups to come together, and work towards avoiding future conflicts and divisions. Such a position helps in the search for alternatives for living lives that people can value. That is to say people will be responsible for the decisions that they make and they will own the decisions: ultimately they will respect and recognise the outcomes. Noteworthy as well is the fact that the people's positions will be recognised and considered before reaching a compromise. The freedom of people in the discussions is upheld, while at the same time prejudices will also be dealt with. In this sense the

compromise or agreement starts from a non-moralistic position but results in a moral position which is the compromise that people come up with. Having deliberated on L.B.C in detail it is now necessary to turn attention to the philosophical bases of the L.B.C.

### **6.6. Philosophical Bases for L.B.C: Linking C.A and N.E.T**

In this section of the chapter, the focus is on establishing the moral bases for claims made in the preceding paragraphs. In this endeavour, the project analyses, connects and mixes two theories so as to have an enriched conceptual understanding of human relations. To this end, the project utilizes the C.A and N.E.T.

Young (2006, 114) and Kissiah (2014, 16) define structural injustice as occurring when large categories of people are placed under systematic threat of domination and or deprivations so as to curtail the development of such individuals' capacities. Structural injustices are evidenced in both colonial skewed land distributions and in post-independent land appropriations. The structural injustices were furthered by legal and political policies and practices that accompanied the distributions and appropriations. In order therefore to correct the injustice Nozick's deontic expectations are relevant. Nozick's Entitlement Theory is to a large extent a side-constraint theory that places restraints on government curtailments of the activities of the citizens (Nozick: 1974, 10 - 12). With this in mind, adhering to the deontic duties is morally required so as to protect the life, rights to property and contracts of the people (Nozick: 1974, 12). These expectations put restraints on the interference of the state on individual activities: the implication is a need to place limitations on abuses that may occur as a result of coercive states. This is a way of rectifying endemic structural injustices.

Similarly Nussbaum (2000, 13) argues that the state has the duty to ensure that it upholds the political principles that she generates in her ‘Basic Central Capabilities’ also sometimes referred to as ‘Ten Central Basic Capabilities’. However, she replaces rights with a list of ‘capabilities’ (Nussbaum: 2000, 14). Further, Nussbaum (2000, 98 - 101) considers capabilities as an all-encompassing term that subsumes the different conceptions of rights: this is the main reason why she prefers the use of the concept of capability over and above rights. Furthermore, instead of limiting rights to political or economic rights as Nozick would do, Nussbaum’s conception of capability covers political, economic, and social capabilities (i.e. rights) so as to facilitate human functioning (Nussbaum: 2000, 101). The idea of capabilities putting restraints on state interference in human activities is important in that it upholds human freedom and autonomy to be self-expressive and to function according to free choice. In this way the roles and duties of the state are well-defined through the deontological expectations. It is from this position then that the L.B.C is not state-driven but rather an expression of the people formulating their own expectations.

While the deontological aspect is well expressed by Nussbaum and arguably a moral requisite, the maximisation (through expanding opportunities and freedoms) of the overall capabilities for all is also necessary. The consequentialist dimension of the C.A also adds value to the moral import of the L.B.C. According to Sen (2009, 77, 105), Arneson (2013), Kukathas (2013) among others, the C.A should yield tangible results. Hence its approach is referred to as a comparative theory, i.e. a theory that is concerned with feasible choices or results based on how people are living in society (Arneson: 2013, 180; Kukathas: 2013, 197). The idea is that the choices people make affect their lives and the best way to combat any injustice is by appealing to public reason

which in this case includes the people evaluating choices and ranking them in terms of importance (Arneson: 2013, 180). These kinds of assessments are located within the discourse of rational deliberation. In fact this means that values and options in society can find their place somewhere in between the abstract universalism and concrete localism. So the abstract is brought down to earth and finds meaning among the local contexts. In this way the capabilities of the people are expanded.

Nozick also places emphasis on economic rights (property rights included). While these are important dimensions for human living, ignoring other dimensions overlooks the interactive nature of different dimensions of human living. For the C.A the social, political and economic dimensions of human life have to work together: Human freedoms have to be attained in all facets of human living since these are complementary (Sen: 1999a, 38; Nussbaum: 2000, 84 - 85). The thinking is that failure to realise freedom in one facet, negatively affects other forms of freedom. The C.A includes the economic freedoms that Nozick honours yet he goes beyond them to include political and social freedoms. In this regard, Nozick (1974, 161 -164) thinks that individuals are fully entitled to the benefits of their economic abilities. According to C.A., while individuals are entitled to the same freedoms, they need social guarantees (e.g. services such as welfare, education, healthcare) to complement their economic liberties which are guaranteed by their community and towards which they contribute. For Nozick contribution to these is a matter of charity, yet in reality individuals will at one time or other desire the functioning of such services for themselves. The integrated interaction of human relations is important and necessary for L.B.C in that it helps to give a wider understanding of human interests and conceptions of land ownership and use. Instead of having a limited conception of land from political, social, or

economic perspectives, the C.A's stance brings in a connected understanding of these and hence forges an appreciation of differences in interests.

Following from the above, it is clear that C.A expresses an interest in citizens' roles, yet it does not articulate who bears the responsibility for the expansion of people's capabilities or people's expectations (Nussbaum: 2006, 70). In fact the C.A is not explicit as to where or who must bear the burden and responsibilities of advancing people's expectations. Protracted debate among the C.A advocates persists with some arguing that it is the individuals themselves who are responsible for their expectations (Scalet and Schmidtz: 2010, 84) - and yet others speculate that it is the responsibility of both the individual and the government (Nussbaum: 2006, 70). To that end, the N.E.T is quite clear that the responsibility to carry out expectations falls upon the government (Vargas: 2010). The government is responsible for enforcing the agreements of the people according to the N.E.T. However, the N.E.T is specific on who bears the burden to advance the capabilities of people, i.e. that it is essential that individuals themselves have a part to play. In other words individuals should clamour for their expectations to be realised so that the state becomes aware of this and then effectively acts upon their expectations (Sen 1985, 235; Sen: 1999a, 18 -19). The individuals have to advance their cause so that it becomes known: if not, there will be no action from the government. In order then to resolve the Zimbabwe land question, it is important for people to advance their desires and thereby expect the state to act upon their expectations. Mixing the approaches brings to the fore the importance of a responsible and responsive society.

Besides all that has been noted, N.E.T stands for rectification of past injustices (Nozick: 1974, 150 - 152). While C.A posits the importance of social justice through prioritization according to social realities, it is almost silent on the addressing of past injustices. The historical circumstances and abuses are blatantly ignored in C.A. The pertinence of N.E.T in this regard is immense as it provides a platform for further probing and settling of past injustices. This is a necessary step in settling the Zimbabwean land redistribution puzzle. Nozick's Entitlement Theory (Nozick: 1974, 150 - 152) though not well-expanded provides for important legitimising of future ownership exchanges, and most importantly addresses past injustices (Davis: 1976, 836). Nozick's preoccupation with the entitlement theory is relevant to the issue of Zimbabwean land redistribution. However, on its own the theory is not adequate as it does not discuss in detail but only opens up chances for further discussion which Nozick does not concern himself with. Hence this research proposes C.A to supplement the theory. Particularly and of relevant is the issue of involving people or citizens in discussions that pertain to their lives. The role of ordinary citizens as authors of their lives and as architects of how they are to live needs to be realised, over and above the advocacy for a responsive government (Sen: 1999a, 18, 138 ). Social well-being is best designed by people themselves and enforced by the government. The concept of agency is one way through which citizens become responsible for their own lives. N.E.T. implies this but C.A puts the point across nicely, and in this way the two complement each other well. However, C.A does not say anything on rectification nor on ownership of land.

In fact, the C.A is a forward-looking approach that is interested in justice for the two periods at issue. However it fails to recognise that the past is also important, especially if justice is to be holistically achieved. This is why C.A needs to adopt the ideas of N.E.T, especially the third

principle of rectifying historical injustices. The thinking behind this suggestion is that correcting or addressing past injustices helps liberate people, be they the victims or the perpetrators or beneficiaries of the injustices. There is a need for psychological liberation that can be executed through material or non-material compensation. Justice has to be achieved by correcting past injustices and building a platform for a just future as well.

From a Nozickian point of understanding, exchanges should occur in a free environment that also involves voluntary exchanges (Nozick: 1974, 150 - 152). This is a liberal capitalist conception of exchange. This model of exchange is partly respected and honoured in the Zimbabwean economy as the capitalist model is part and parcel of economic exchanges in Zimbabwe. However, to limit Zimbabwean exchanges to the capitalist model is to limit the modes of exchanges that are found in the country. Apart from the liberal capitalist exchanges, the communal exchange model also exists. This is a model premised upon free exchanges of commodities, especially commodities that cannot be priced because of their worth in society. Among such commodities is land. Land among the indigenous inhabitants of Zimbabwe is considered as a priceless gift that cannot have a price tag to it. In fact land belongs to the community and is administered as such. All use and exchange of the land is normally dependent on agreements of the whole community. This conception of land has to be understood and be appropriated into the L.B.C. as already alluded to. The C.A through its major proponent, Sen (1999a, 18), argues for this position. It advocates that the setting out of social contracts should take into consideration different live conceptions. In this case, land exchanges - and even use thereof - has to in some cases been a private matter following the capitalist model and yet at the same time and in other cases has followed the communalist model of exchange. The argument

advanced then is that the two models of exchanges have to coexist. Such a position already exists on portions of land that are referred to as reserves (T.T.L) which are not productive lands. The chapter therefore holds that having the dual modes of exchange necessitates and results in fair, equal and maximum utilisation of land. Moreover, the adoption of the dual mode of exchange will also cater for different social and economic groupings of people through utilising arable and productive lands. However, the demarcations of lands as belonging to one mode of exchange or the other will demand informed discussions. The models will be guided by clearly stipulated uses of the land. Among other feasible guidelines is the maximum utilisation of the land for the benefit of the community and the country at large. In addition, the guidelines may also include an insistence on adhering to just methods of exchanges which will include voluntary cessation of land and in other cases justified communal and state acquisition of land or relinquishing of ownership. Most important is the fact that through this kind of setup, individuals retain the right to choose which model they want to follow and all will benefit without any kind of favouritism (thereby maintaining Nozick's liberty and constrained rights). Furthermore, the same people can follow the kind of life they have reason to value (found within the C.A thinking thereby being satisfied).

## **6.6. Challenges**

While there is a possibility of having effective negotiations and deliberations there are challenges regarding some individuals who gather to conduct negotiations. The danger is that people known to have privileges and influences mostly make it difficult to concede personal perspectives largely because they are aware of what their positions are likely to yield. Such actions and dispositions are underlined by arrogance, intolerance, self-interest and pride, and above all power



abuse. These are expected human dispositions but at the same time are unnecessary and can be overcome through continuous discussions and negotiations.

In some respects engagement in open discussions and truth-telling as ways to come to a compromise have been criticised by Minow (2007, 621) as a move that opens up old wounds and makes reconciliation difficult. Yet, it is also difficult to simply move forward because this information is necessary to enhance human relations. Through truth-telling individuals have a chance to attain forgiveness and reconciliation. Over and above all this, discussion is necessary as it brings out the fact that society is diverse, and as such values, interests and needs are also diverse (Meslin 2010). It would therefore be important to balance the needs and interests of people so as to encourage togetherness and social harmony. Above all, Meslin (2010) avers that such an approach (i.e. consulting the affected) encourages and develops consensus.

It is difficult to accommodate everyone's position with regards to resolving the land question, as some voices are just ignored or others do not contribute at all largely because of their social positions or those of their groupings. Some voices or views are never known because through the principle of representation only particular views are expressed. Moreover a particular individual's views are not always expressed in the way that the particular individual expects. However, through the participatory process such as voting and consultation, the particular individual perceptions may well be expressed and considered as well. What is important is that there is an effort to involve and include everyone in the decision-making process. Lafont (2015, 40) argues that while representative deliberations increase the quality of face-face deliberations at the same time they decrease and weaken the possibility of mass participation. Representative

democracy to some extent also encourages elitism as discussions are limited and controlled by the representatives (Lafont: 2015, 44). The voice of the weak and the general citizenry is not heard.

Over and above all, it is necessary to note that there are no guarantees that consultations and arrangements will prevent future atrocities or that social rifts will be fully dealt with (Minow: 2007, 621). However negotiated settlements have in some cases succeeded: yet negotiations are not cast in stone, but rather provide open avenues for further negotiations. This means that compromises or negotiations are always open to future adjustments (as long as agreeing members share the same view) and this is exactly what the L.B.C will endeavour to do. Another important fact to remember is that during the negotiations, the ways in which people present their positions differ and this also determines the way in which the negotiations will end. Sanders (1997, 1 -2) notes that the articulation of issues differs and other delegates may fail to present their arguments in a way that is acceptable in rational deliberations. This also implies that some individuals are more persuasive in their articulations than others, and in the end their positions prevail over those of poorer presenters (Sanders: 1997, 2).

The L.B.C radically departs from established legal forms that are based on local and international legal systems. However, this position can easily be countered by the argument that negotiated settlements are always better and always more satisfying than settlements that do not come from the people themselves. Furthermore, since this will be a compromise and a form of agreement it will be open for future alterations so as to suit new situations. Additionally, some considered international laws, if religiously followed, perpetuate partial conditions and do not fully relate to

people's histories or experiences, especially unjust experiences that were caused by colonialism. Hence the L.B.C intends to relate to the real experience of the people and address their issues through discussions. Hence the L.B.C will not be a hypothetical settlement or some imagined situation but will be addressing people's real concerns.

### **6.7. Chapter Conclusion**

The L.B.C will be a result of informed and reasoned deliberations that are drawn from experience. The L.B.C's aim will be to offer contracting members a chance to have a say in how their lives are to be organized, especially in the light of addressing deprivations, inequalities, injustices and compensations. According to the research findings the appropriate means to addressing the land issue is through having the interested parties deliberating and coming to an agreement on contentious issues. At the same time the chapter argued that reasoned deliberations can help to establish collective value(s) and interests that are necessary for the good of society as a whole.

The chapter also asserted that the formulation of collective values, the forging of cooperation, and establishing of stability and justice can all be arrived at through using and linking ideas from N.E.T and C.A. Among these ideas are the issues of rights and liberties and the role of the state. The discussion on rights centred around linking the rights of individuals to participate meaningfully in their society's lives and the limiting of certain individuals' rights for the good of society in general so as to achieve the advancing of social harmony. Furthermore the research has established that social arrangements have to be people-driven and people-centred. This means that individuals must be responsible for setting out regulations on how they are to live and that they can lay claim to what they consider as necessary for their lives. People-centred refers to

the state respecting and responding to the expectations of the people. By so doing, the state honours and enhances people's lives by advancing and upholding justice and equality.

## Chapter 7

### Contributions and Conclusions

#### 7.1. Contributions of the Research

This research contributes significantly to the debate on land redistribution through philosophical discussions. This research has relevance to the fields of Social and Political Philosophy and African Philosophy. In this sense then the research has significance to the two areas of philosophy and in particular to debates that seek to resolve social difficulties. Lacuna

The research also suggests a framework through which the Zimbabwean land redistribution can be resolved: this constitutes an original contribution of this research to these areas of philosophy. Furthermore, through the proposed L.B.C (discussed in Chapter 6) the research advances a framework through which land debates may be resolved. In that regard, the research avers that land debacles are best resolved through social processes that apply to the communities in which the difficulties are situated.

This research proposes a philosophical solution to the Zimbabwean the land problem. In proposing a philosophical approach to a social reality, the research attempts to bring in philosophical anthropology (the foundation of C.A) into the social reality of the people, that is their beliefs, and values. The idea behind this thinking is that it is necessary to move beyond theories which at times are abstract to the practical reality of living. In this sense the study can be conceived as being both theoretical and having practical implications at the same time. The practical aspect includes understanding and knowing the social reality in which people find

themselves (reflected upon in detail in Chapter 2), and ways through which they can move out of social quagmires. This is complemented by ideas borrowed from theories (mostly N.E.T and C.A). This research recognizes that Daka (2006), Scalet and Schimdtz (2010), and Shaw (2003 and 2004) make inputs in this regard: however, their inputs have shortcomings. For example, for Daka (a C.A advocate) the land debacle could be resolved through land restitution to the black communities. His study does not consider the historically-based, legal and legitimate land entitlements that some white farmers had. As for Shaw, and Scalet and Schimdtz (rights advocates linked to N.E.T) their studies are limited in terms of respecting and honouring land entitlements that had been enforced through colonial administrations. In a sense, Shaw and Schimdtz seemingly support the colonial *status quo*. These studies' suggestions, if implemented, will set in motion and perpetuate land conflicts. The research establishes that the studies are not conscious of the different land dynamics that deserve to be reconciled. This is the issue that this research attempted to bring out clearly through arguing for social inclusion and participation in addressing the land debacle. The research argues for solutions that are driven by the people and applicable to the people themselves.

Moreover this research makes contributions to the area of African Philosophy on issues involving resolving of social conflicts. However, in as much as there is a realisation that local problems require local solutions, this research argues that in order to have meaningful resolutions it is essential to expand problem-solving horizons to adopting other views beyond the African continent. This is an area that has not been explored as such this is a contribution that the research adds to the area of philosophy.

With regards to conceptualizing land redistribution, the research advances a new understanding that is not limited to either economic development or establishing entitlement alone. Rather, the research argues that land redistribution should facilitate the expansion of human lives. In this sense, the instrumental dimension of land (and land redistribution) should be visible in the political, social and economic dimensions of people's lives. The uniqueness of this position is in that it does not limit human freedom to one form of freedom or the other but demands that land redistribution ought to be an all-inclusive expression of individual freedom. Most notable is the fact that in many countries including Zimbabwe land redistribution has been used as a necessity in bringing about economic progress and or advancement of formerly disadvantaged communities. Yet the political advancement is at the same time not considered. In this research the integrative interaction of the different human dimensions that is the political, economic and the social are all for to be promoted simultaneously.

## **7.2. For Further Research**

Though the research proposed the L.B.C as a platform for discussion, the possibilities of realizing these proposals on a practical level remains. There is therefore need for future research to ascertain the viability of such a proposal. Perhaps this void will be dealt with by social scientists who would give descriptive dimensions to social interactions. This research as a work of philosophy tends to be prescriptive.

## **7.3. Conclusion**

The research shows that by arguing for benefits accrued from resources' redistribution (as presented in the Rawls difference theory), and entitlement (as presented in the Nozickian Entitlement Theory), or freedoms or opportunities to live lives according to one's choice (as

presented in the Capability Approach) separately from each other is limiting the conception of justice in the Zimbabwean F.T.L.R. The research reveals that limiting the conception of justice to one of these dimensions without inclusion of the others will always lead to social exclusion and poverty (see Chapters 2, 4, and 5). This conclusion was reached after realizing that the Zimbabwean land Reform is multifaceted to such an extent that it requires a unique approach which takes into consideration the historical dimensions of justice, including resource redistribution, human rights, and expansion of opportunities and choices of members of society.

In this endeavour the research arrives at a conclusion that the L.B.C is a platform through which the different values can be arrived at. Through the L.B.C the research averred that social inclusion, which includes participation and rational deliberation in agreeing on how individuals under land redistributions are to realize the lives they value, is realized. These ideas are borrowed from the Capability Approach which received significant attention in Chapter 5. From the C.A the ideas of agency and democracy provide the philosophical premise for which L.B.C makes use of individual autonomy and deliberation. Furthermore the idea of representatives who will be involved in the deliberation has a basis in the C.A. The L.B.C is to be a platform through which society, via its representatives, seeks to establish conditions that expand social, economic, and political freedoms. In this sense the L.B.C argues that in order to correct practices that hinder individuals from living lives they have reason to value. In this sense, the L.B.C will be a way through which historical injustices are deliberated upon and resolved through negotiations, i.e. it is a platform through which political participation of individuals is expanded by establishing democratic systems, and it provides a stage through which economic freedoms (rights over property, command over products) are established as well. In a sense social harmony and



cohesion are to be forged through engaging in discussions and in searching for a common existence.

Thus clearly the resolving of historical injustices is important. Chapter 4 of this research devoted its attention to that endeavour. The research reached a conclusion that addressing the historical injustices is a social process and not a political or economic process alone. In that regard, the social process will involve the social deliberations and agreements on how to continue living together and enhancing each other's lives.

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