

Land Question in Post-Apartheid South Africa: An Appraisal of Social Justice Theory

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Abstract

Following the end of apartheid regime in 1994, it became clear to the government that a new constitution was urgently needed in order to redistribute and retribute land. After two years of intense deliberations and consultations, a new constitution was finally adopted in 1996. The new constitution clearly spelt out the fundamental principles of land reform policy. As a result, three-legged land reform strategy was adopted. These are (i) land tenure; (ii) land restitution; and (iii) land redistribution. However, existing scholarship has shown that these land reform programmes have not really addressed the social injustices of the past. Although there has been interesting scholarship on land question in post-apartheid South Africa, most of the previous studies focus on 'economic compensation' rather than 'social justice'. In attempt to fill this gap in scholarship, this paper examines land question within the theoretical prism of social justice theory. The paper analyses the concept of social justice; then, proceeded to the discussions, applications and critiques of Kurt Lewin's three-model of social change, John Rawls' theory of social justice and Nancy Frazer's model of parity of participation to land question in post-apartheid South Africa.

Keywords: Land; Apartheid; Post-Apartheid; Post-Apartheid South Africa; Social Justice, Justice

Background and Rationale

In South Africa, land ownership is an emotionally charged issue for all South Africans (Mackenzie, 2015). During the colonial and apartheid eras, various land-related legislation and policies, at best restricted, and at worst, denied Africans access to landownership. For instance, the Natives Act of 1913 and other related legislations restricted and confined black South Africans to 7 percent of the country's total land, which was later increased to 13 percent. As argued by Adams, Cousins and Manona (1999), black South Africans were strategically denied access to 87 percent legally designated white areas, and were confined to 'a small enclave' where they were used as a reservoir of cheap labour by white commercial farmers and burgeoning mining activities at the time. This created wide socio-economic gaps between the white and black, which overlapped the colonial and apartheid epochs. Mackenzie (2015) argued that the colonial and apartheid's experience entrenched the widening poverty and inequality in South Africa. In 1994, about 16 million blacks were in the former homelands, which were created by the colonial and apartheid policies and legislation. These people had no legal landownership. Most of them engaged in subsistence farming on their small and less arable land legally designated to them, and also involved in other menial occupations to augment their incomes (Hall, 2004a). Majority of the agricultural land was owned by about 45,000 white commercial farmers (DAFF, 2012). According to Hall (2004a), close to 3 million blacks were working on the white commercial farms in 1994.

However, the election of the ANC government in 1994 heralded a new vista in the political history as well as landownership in South Africa (Mackenzie, 2015). Black South Africans were

so enthusiastic recalling the promise made by the Freedom Charter in 1955, which reads ‘the land shall be shared among those who work it ...’ (Congress of the People, 1955). Consequently, the ANC-led government instituted some political structures, and various pieces of legislation were enacted and policies were made with the hope of addressing the historical injustice and unfairness that brought about racially skewed landownership structure and access to land. But, since 1994, the legislation and policies have been considered relatively unsuccessful, as only relatively small amount of land have been restituted or redistributed. Even those who have been restituted still remain poor because of the absence of post-restitution support. Mackenzie (2015, iii) argued that “the land ownership regime created under apartheid continues unchallenged in the post-apartheid era, as successive governments have done so little in addressing the historical inequality in land ownership and mineral rights”.

Marais (2011) commented on the reasons while the post-1994 land reforms remain unsuccessful. He argued that the perceived failure of the land reform programmes is understandable within the prism of neoliberal economic ideology, which emphasizes economic liberalism. This largely informed the adoption of the willing-buyer-willing-seller approach in land redistribution programmes in South Africa. Marais argued further that successive government chose this path to engender economic development and food security through the protection of economic interests of the white commercial farmers, who occupied or owned more than half of the land that are meant for redistribution at the expense of the landless and poor black South Africans. Instead of addressing the plight of the black peasants, government opted for legislation and policies that would create a class of black bourgeoisie. Mackenzie (2015) contributed to this sentiment when he argued that ‘much as apartheid had been a project of the aspirant Afrikaner bourgeoisie, post-apartheid South Africa would be a project of the aspirant black bourgeoisie’. In order to prevent any uprisings that may result from such inequities, social grants, health and educational facilities are strategically improved. This represents ‘an opium’ or ‘soothing balm’ for those South Africans that would be excluded from a class of black bourgeoisie that the government is trying to create in the country.

Although there has been interesting scholarship on land question in post-apartheid South Africa (see Marais, 2011; Mackenzie, 2015), they have not been properly situated within the social justice discourse. In other words, social justice discourse is rarely used or adopted superficially in the discourses of post-apartheid land questions and reforms. In attempt to fill this gap in scholarship, this paper examines land question from the theoretical prism of social justice theory. The paper commenced with the analysis of social justice; then, proceeded to the applications and critiques of Kurt Lewin’s three-model of social change, John Rawls’ theory of social justice and Nancy Frazer’s model of parity of participation to land question in post-apartheid South Africa.

Social Justice: A Conceptual Analysis

Incontestably, the concept of social justice has a number of definitional problems. This is not unexpected considering the fact that it is a social science concept. Virtually all concepts in social sciences lack definitive consensus, and are intrinsically characterized by multiple definitions, which sometimes make their understanding difficult or more illuminating. Boucher and Kelly (1998), Campbell (2001) Miller (1999) and Solomon and Murphy (2000) argued that what constitutes social justice in society has been keenly contested among scholars and philosophers alike. The major points of disagreements are: (i) what constitute just and unjust or fair and unfair in society? (ii) What constitute fair and just mechanisms for sharing or allocating societal burdens and benefits? (iii) What constitute rights and liberties in a society? What constitute human dignity and respect? Classical and contemporary philosophers, such as Plato, Aristotle,

Thomas Hobbes, John Lock, Hume, Jean Jacques Rousseau, Immanuel Kant, Frederick Hegel, Karl Marx, John Stuart Mill, John Rawls, among others, have attempted to give answers to the above questions albeit criticisms. In this section, attempts will be made to examine the concept of justice.

Aristotle (Aristotle ca. 322 BCE), in his Book V of the *Nicomachean Ethics*, enunciated the principle of social justice. In his view: “the matter of distribution ‘according to merit’ also makes this clear, since everybody agrees that what is just in distributions must accord with some kind of merit, but everybody is not talking about the same kind of merit: for democrats merit lies in being born a free person, for oligarchists in wealth or, for some of them, in noble descent, for aristocrats in excellence” (Aristotle 2002, 162 line 1131a 24-29). For Aristotle, therefore, what constitutes social justice is redistributive. Social justice found expression in fair and appropriate distribution, allocation and redistribution of society’s resources. In other words, social justice is measured by the degree of fairness and appropriateness in the allocation of resources among members of the society. In his examination of Aristotle’s idea of social justice, Broadie (2002, 36) argued that social justice is “the hallmark of a just apportionment is equality. In distribution, this consists in maintaining the same ratio of quantified goods or burdens to quantified merit for all recipients. In rectification, it consists in restoring the parties to the relative position (schematized as ‘equality’) they were in before one harmed the other”. Mansbridge (2005) added that to Aristotle, social justice denotes impartiality and “treating equals as equals”. Deductively, the contribution of Aristotle to our understanding of social justice could be equated to equity, proportionality or merits (see Walster, Walster and Boerscheid, 1978). However, the major drawback of the Aristotelian conception of social justice, particularly to the policy-makers is its failure to address this critical philosophical question: what constitutes appropriateness, and what mechanisms can be employed to measure or determine proportionality, equality and merit in the allocation of society’s resources.

Another philosopher that contributed to our understanding of social justice was Karl Marx (1818–1883). The traces of Marx’s views on social justice are implicit in his “class theory” where he traced the evolution of society from communalism to communism. In this work, Marx showed the trajectory of social justice. In communalism, social justice was very high because there were no distinctions in access and ownership of society resources. Social injustice began to surface at the stage of slavery, where humans were turned into disposable property or goods. This could be said to have marked the genesis of social struggle for justice. In later stages of social evolution, such as feudal and capitalist stages, the level of social justice took another dimension; but in reduced proportion in comparison to the slavery stage. Marx, then, reasoned that, in socialism and communism, the level social injustice would have been reduced to its barest minimum. In his “Critique of the Gotha program”, Marx argued the just and fair principle that underlie social justice should be “from each according to their ability, to each according to their needs” (Miller, 1999). And this is the philosophical principle underpinning socialism. The major strength of Marxian contribution to social justice is that it spurred many social justice movements across the globe. See **Figure A** for the diagrammatical representation of the Marxian contribution to social justice discourse.

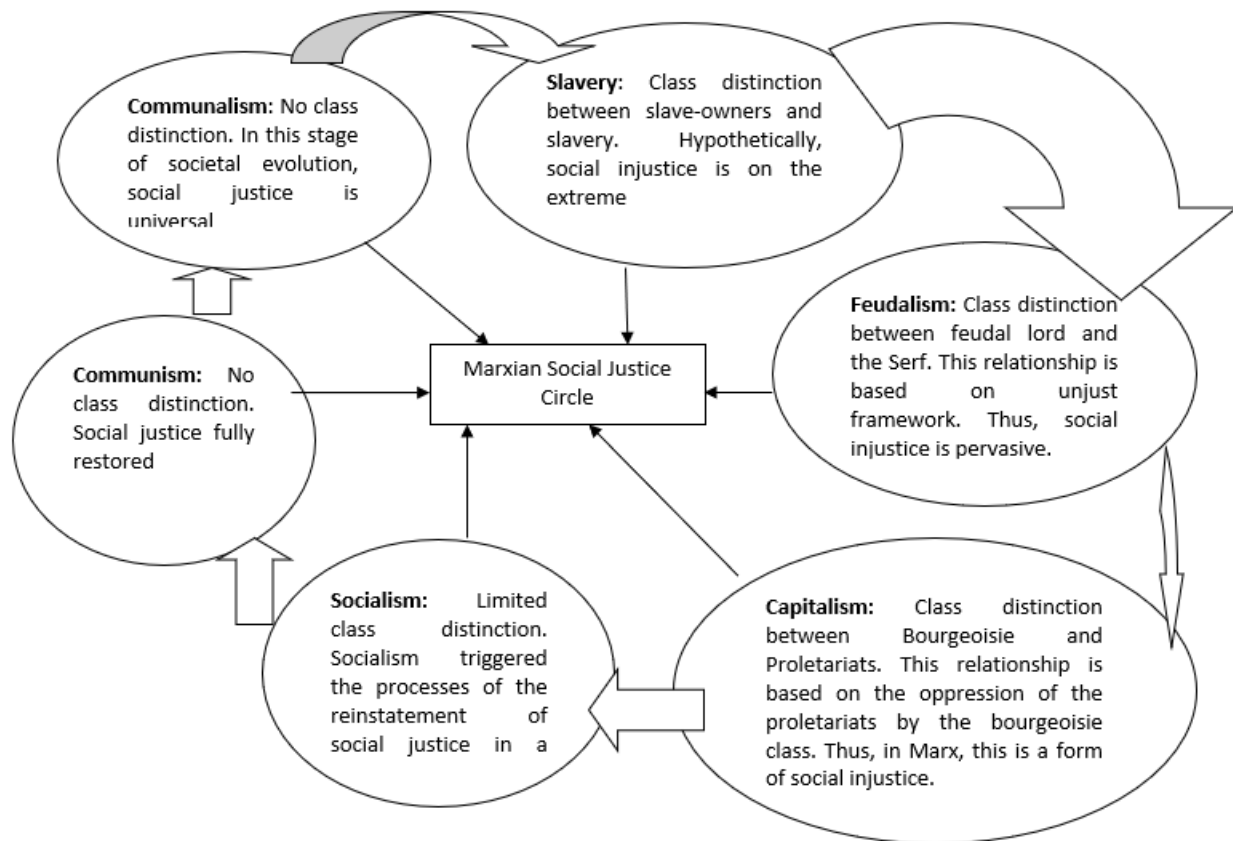


Figure A: Marxian Social Justice Circle. Source: Adapted from Marx (1973)

While Marx spurred social justice movement, social justice was “more readily embraced by” liberal and progressive thinkers (Miller, 1999, 3). In other words, social justice was taken to another dimension by utilitarian philosopher such as John Stuart Mill and Jeremy Bentham. More specifically, John Stuart Mill contributed significantly to the utilitarian discourse of social justice. To him, social justice is measured in terms of providing “greatest happiness to the greatest number”. The Utilitarianists argued for a welfare state, which emphasizes fair and just redistribution of wealth and other resources in society in order to reduce poverty and improve the welfare of citizens. Simultaneously, the redistribution of resources should be done in such a way that it would not affect those who are wealthy or better off (Konow, 2003). Also, libertarian and egalitarian philosophers, like Immanuel Kant, Jean Jacque Rousseau, John Rawls, among other added to the discourse of social justice (Muldoon, Lisciadra, Colyvan, Martini, Sillari and Sprenger, 2013). For instance, John Rawls (1971) once said no matter how efficient and well-arranged laws and institutions are, they must be either repudiated or condemned if they are inherently unjust. Justice is the first virtue of society.

From the above conceptual analysis of social justice, it is evident that there are divergent arguments on what constitute social justice and how it can be attained in human societies. Considering these diversities of conceptions, we limit our discussion of social justice to Kurt Lewin’s Three-Step Model of Social Change; John Rawls’ Theory of Social Justice and Nancy Frazer’s Theory of Parity of Participation. The theoretical adequacies and inadequacies of these theories will be examined in relation to land question in post-apartheid South Africa.

Land Question in Post-Apartheid South Africa: An Analysis of Social Justice

In this section, Lewinian three-step model of social change, Rawlsian theory of social justice and Frazerian parity of participation are analysed in relations to land question in post-apartheid South Africa.

Lewinian Three-Step Model of Change: An Analysis of Social Justice

Kurt Lewin (1890–1947), the father of modern Social Psychology, offered psychological analysis of social justice. Lewin was particularly concerned with the methods of preventing tyrannical tendencies in human societies. Towards this end, he advanced an argument within the framework of social justice for overcoming any form of prejudicial thoughts or actions against out-groups or racial groups. He analyzed inter-group relations in Germany under Adolf Hitler. According to him, "...Nazi culture...is deeply rooted, particularly in the youth on whom the future depends. It is a culture which is centred around power as the supreme value and which denounces justice and equality... (Lewin, 1943b, 43). In addition to this, Lewin, as cited in Marrow (1969, 175) stated that: "We Jews will have to fight for ourselves and will do so strongly and with good conscience. We also know that the fight of the Jews is part of the fight of all minorities for democratic equality of rights and opportunities". Essentially, the overall interest of Lewin is how social equality and social justice can be restored, re-entrenched and maintained in Nazi Germany. In his critique of Kurt Lewin's contribution to social justice discourse, Burnes (2004, 986–987) concluded that the factor "underpinning Lewin's work was a strong moral and ethical belief in the importance of democratic institutions and democratic values in society. Lewin believed that only by strengthening democratic participation in all aspects of life and being able to resolve social conflicts could the scourge of despotism, authoritarianism and racism be effectively countered". This conclusion excellently resonates in the struggles of black South Africans in dismantling the vestiges of apartheid institution, which makes the restitution and redistribution of land to the victims of land dispossession a necessity in South Africa.

Although Lewin did not explicitly formulate a model of social justice in the actual sense of it, his work on three-model of social change has relevance in the sociological analysis of social justice. We will now turn our attention to the analysis of three-model of change and its relevance to the social justice discourse viz-a-viz land question in post-apartheid South Africa. In three-model of social change, Lewin (1947a) argued that a successful reform programme involved three steps. These steps are: (i) Un-freezing; (ii) Change or transition or moving; and (iii) Re-freezing. In unfreezing stage, social system "was based on a quasi-stationary equilibrium supported by a complex field of driving and restraining forces" (Burnes, 2004, 985). The existing institutional equilibrium "needs to be destabilized (unfrozen) before old" norms and values in the social system "can be discarded (unlearned) and" new norms and values "successfully adopted. In his analysis of unfreezing, Kurt Lewin acknowledged the contribution of Gordon Allport. According to Lewin (1947a, 229), "the unfreezing of the present level may involve quite different problems in different cases. Allport...has described the 'catharsis' which seems necessary before prejudice can be removed. To break open the shell of complacency and self-righteousness it is sometimes necessary to bring about an emotional stir up". In stage two of the model, new policies, programmes, laws or pieces of legislation are made to replace the old one. In other words, new paradigms or institutional framework(s) is/are put in place. In the last stage (re-freeze), the new paradigms or institutional frameworks are entrenched and consolidated.

The relevance of this model to land question in South Africa is self-evident. For instance, unfreezing involved abrogation of the pieces of legislation that brought about injustices. In this regards, the Glen Grey Act of 1894, the Natives Land Act of 1913, the Natives Trust Act of 1936,

Group Areas Act of 1950, and other racially based or discriminatory land policies and laws must be abolished or unfrozen. Towards the end of apartheid regime, series of legislation were enacted to abrogate the existing unjust pieces of legislation. One of these pieces of legislation was the Abolition of Racially Based Land Measures Act of 1991. The Act abrogated the Natives Land Act of 1913 and the Native Trust Act of 1936. This is a typical illustration of the unfreezing stage in the Lewinian model of change for social justice. In the post-1994 era, these unfrozen discriminatory laws were replaced by the Extension of Security of Tenure Act 62 of 1997, the Communal Property Association Act 28 of 1996, Traditional Leadership and Governance Act (TLGFA), the Settlement/Land Acquisition Grant (SLAG), Land Redistribution for Agricultural Development (LRAD), among others, were put in place to correct the past social injustices on the black South Africans. This is typical of “change stage” in Lewinian model of change for social justice. Lastly, the re-freezing stage involves the implementation, consolidation, entrenchment, assessment and re-assessment of the above highlighted post-apartheid policies and laws on land reform for social justice. **See Figure B** for the diagrammatical representation of the application of Lewinian model to post-apartheid land reform in South Africa.

Apparently, Lewinian model enormously reflects the political dynamics and policy initiatives of the democratic South Africa in the post-apartheid era. According to Burnes (2004, 986-987), underpinning Lewin's work was a strong moral and ethical belief in the importance of democratic institutions and democratic values in society. Lewin believed that it is only by strengthening democratic participation in all aspects of life and being able to resolve social conflicts could the scourge of despotism, authoritarianism and racism be effectively countered. Hayek (1976, 67-97) viewed that “society ought to hold itself responsible for the particular material position of all its members, and for assuring that each received what was due to him. He argued further that “there are, no doubt, instances where the first past development of law has introduced a bias in favour or to the disadvantage of particular groups; and such provisions ought clearly to be corrected”. This argument largely resonates with land reform programme in the post-apartheid South Africa. As argued by Hall (2003, 25), land reform was conceived as a positive measure to reverse the racially-skewed patterns of landownership, but also as an interaction to promote social justice and socio-economic equity”.

Unfortunately, in South Africa, the institution of apartheid still remains frozen with the inclusion of property clause in the 1996 Constitution. The inclusion of property clause in South Africa further entrenched the institution of the apartheid regime. This, Yanou (2009) stressed, may further worsen the socio-economic inequalities created by colonial and Apartheid legislations and policies on land. The argument that the inclusion of property clause was vital for attracting both domestic and foreign investors was condemned. According to Khasu (1996a, 376), “this argument about investment flying out of the country because of the property clause is arrogant, racist and erroneous. At best it is balderdash”. Evidently, the incorporation of property clause into constitution was a product of compromise reached by the National Party (NP) and the incoming African National Congress (ANC). This could be explained within the context of political ideology of socialist reform as put forth by Andre Gorz in his concept of “non-reformist reform”. Frazer (2007) cited in Boudreaux (2010:79) referred to this as “a via media between an affirmative strategy that is politically feasible, but substantially flawed and a transformative one that is programmatically sound but politically impracticable” (Frazer, 2007 cited in Boudreaux, 2010:79).

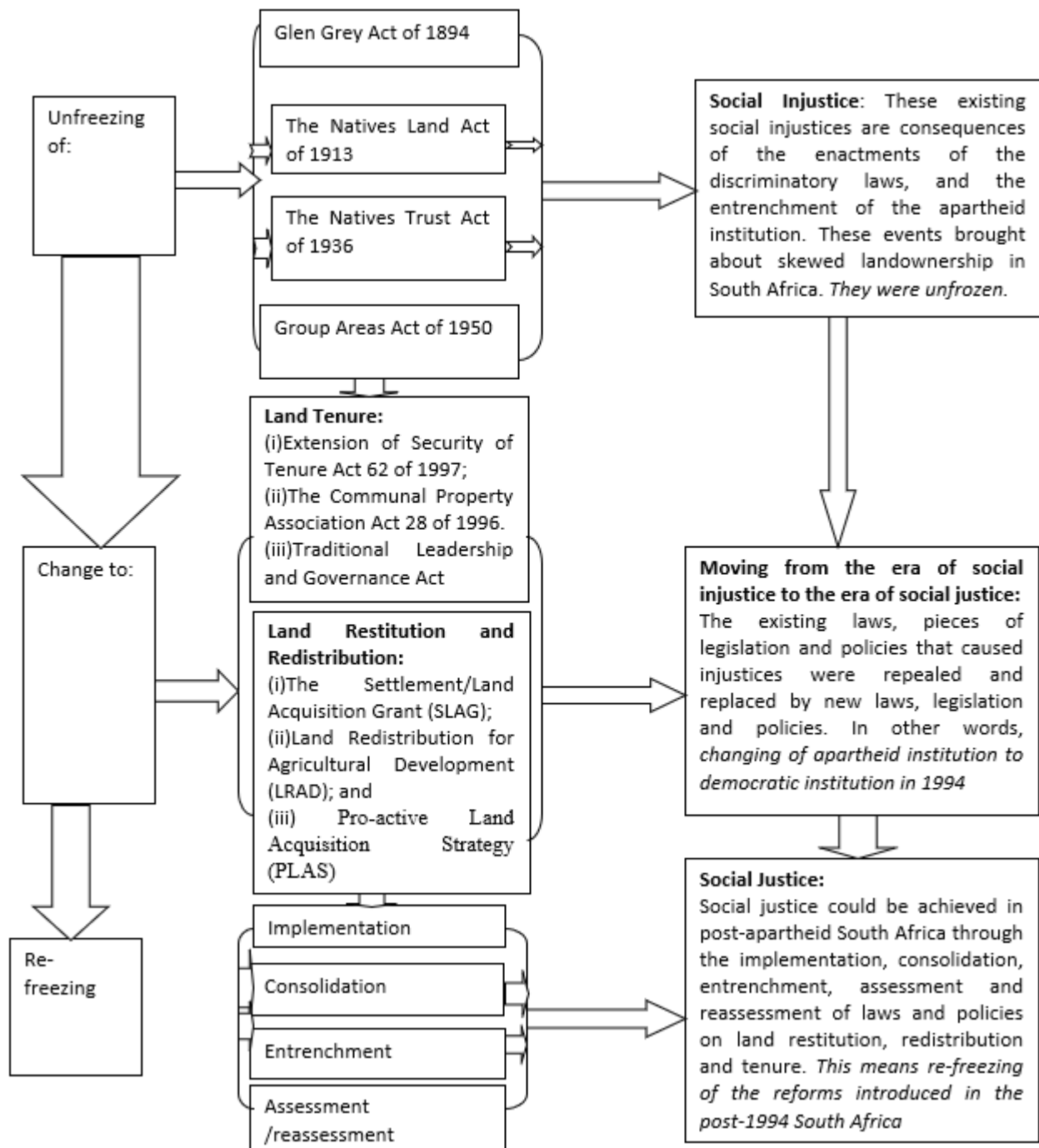


Figure B: Applying Three-Step Model of Kurt Lewin to Land Reform Programme for Social Justice in South Africa. Source: Adapted from Kurt Lewin (1943; 1947)

According to Terreblanche (2002), the deal made by the ANC and the apartheid government made the attainment of equality and economic justice an illusion, non-feasible and progressively unachievable. He added that the notions of equality and economic justice are an illusion for the landless majority: “South Africa’s PUI (Poverty, Unemployment and Inequality) problem is mainly a remnant of segregation and apartheid but has been further intensified by the ANC (African National Congress) government’s myopic policy measures to integrate South Africa is too great a hurry into neoliberal global capitalism...” (Terreblanche, 2002: 101). According to Mayenbe (2013:19):

the property clause effectively perpetuates the system of holding of land originally acquired as the spoils of colonial conquest and held for generations yet to be born, by securing them as 'private property rights'. This then also gives the constitutional provision a distinctly neo-colonial character. It is this kind of situation that has produced the presently racially skewed structure of land ownership which is characterized by average plots of 1 300 hectares among the 38 000-odd white commercial farmers. This high level of concentration of land ownership in the hands of a small minority stands in stark juxtaposition to the fact that average plots in the former Bantustans, which is home to over six million households, are currently estimated at a mere 1.5 hectares. It is a well-known fact that most of this land is generally of poor agronomic quality, and is situated largely in poorly watered areas. The property clause also makes some provisions that appear tantalisingly to be cast in a positive light.

While the theoretical relevance of this model to South Africa land question is clearly highlighted and expressed, its shortcomings have been noted by scholars in the field of social justice. In his critique of this model, Kanter, Stein and Jick (1992, 10) argued that the model was too simplistic. Its linear conception of change is enormously inappropriate in explaining the complex processes and dynamics that produced social injustices in the first place. They maintained that the forces of social injustices and justices are multifarious and multidimensional, and they are cannot be reduced to simple, static linear equation as Lewin did. Similarly, Buchanan and Storey's (1997, 127) said "...attempts to impose an order and a linear sequence to processes that are in reality messy and untidy, and which unfold in an iterative fashion with much backtracking and omission".

Huczynski and Buchanan (2001) added that the three stage-processes provided by Lewin may not be static in their own rights; they are likely to overlap. The process of attaining social justice goes far beyond that. For instance, it involves long processes such as political struggles and coalition-building (Huczynski and Buchanan, 2001). South African experiences of social injustices spanned three centuries; and it was punctuated by series of politicking and consensus buildings. Presenting South African political experiences in simple, static linear equation amounted to reductionism, taking complex historical processes that produced social injustices as trivial. To Dawson (1994), the three-model can only explain a specific or one side reform and change. It lacks theoretical relevance to explain radical and transformational change that will bring social justice. In addition to this, Lewinian model of change downplayed the role of power and politics in human society and conflictual nature of social elements in social system (Pfeffer, 1992). More importantly the approach emphasized in Lewinian model of change was top-down rather than bottom-up (Wilson, 1992).

Rawlsian Model of Social Justice

John Rawls (1921-2002) was deeply influenced by Thomas Hobbes, John Locke and Jean Jacques Rousseau's social contract theory. However, the major point of departure is that while these classical philosophers were emphasizing the development and *raison-d'être* of social contract, Rawls was interrogating the kind of arrangement that those who entered into contract agree to. Rawls found that the classical analysis of society was superficial for its failure to question the basis of social justice, or how fairness could be attained and maintained in a society. Rawls began his contemporary analysis of social justice discourse by raising some fundamental questions: (i) what makes a social institution, social system or society just? (ii) What justifies or rationalizes political or social policies? Rawls asserted that justice means fairness, and justice is the fundamental virtue of the social system. Based on these assertions, Rawls came up with two basic principles of social justice. These are: (i) Each member of a given society should have equal right; and there must not be any forms of differentials in access to society's resources or wealth; and (ii) Socio-economic inequalities in the social system should be such that it would be advantageous to

every member of a society. A cursory look at these principles would reveal that they underscore the underpinning assumptions of the principle and theory of egalitarianism. Viewing from this theoretical lens, the landless and the poor people in South Africa should be treated fairly, such as empowerment through land redistribution programme. In other words, efforts should be directed at bridging the widening gap in landownership between the white commercial farmers and black South Africans. However, inequality is tolerable if the benefits accrue from white commercial farmers are shared equally or extended to the landless poor South Africans. Is this feasible?

Importantly, Rawlsian analysis is somewhat related to Jeremy Bentham's assertion that what constitute 'social justice' is pursuance of greatest good for the greatest number of people. Situating land reform programme within this philosophical thought mean that the success of land reform within the theoretical prism of social justice could be measured by the extent at which land are redistributed to the greatest number of people in South Africa. This implies that majority of black South Africa who are dispossessed or who are landless or poor should be given a greater priority in land reform. However, this has not been achieved in post-apartheid South Africa. For instance, in the 1990s, there were about 45,000 large-scale commercial farms, owned by the white commercial farmers in the country (DAFF, 2012). The architects of Land Redistribution for Agricultural Development (LRAD) boasted and promised that the policy framework would ensure that large proportion of these farms would be owned and operated efficiently by the black South Africans (Mackenzie, 2015). What could be drawn from this assertion is that LRAD only aimed at benefitting some 45, 000 individual African entrepreneurs out of the total estimated target of 19 million. "At 0.23 per cent of the estimated 19 million rural landless poor at the time, this is a tiny minority of potential beneficiaries. If 45 000 black commercial farmers were successfully absorbed into the existing large-scale agricultural sector in South Africa, the LRAD policy was largely silent on how the remaining 99.77 per cent of rural landless black South Africans were to benefit" (Mackenzie, 2015, 259-260). The pertinently fundamental question raised here is that what would be the fate of other landless people in South Africa.

The highlighted problem is noted by John Rawls. He said policy-makers or social reformers may be unconsciously carried away by their personal motive or self-interest. Consequently, this may inhibit the attaining of justness and fairness in the allocation, distribution and redistribution of resources. Bicchieri and Mercier (2013) maintained that individuals have in-built inclinations to choose policies that suit their self-interest. According to Muldoon et.al (2013, 378-379), "politicians, judges and private citizens frequently adopt positions that either advance their larger ideological goals, or their material self-interest, even if they are not consciously doing so. So, whether it is from clouded judgment or intentional sophistry, our competing interests can inhibit our ability to arrive at moral agreement in a reasoned manner". It is competing interest to impede fair policy or just social action. If policy-makers can eliminate the 'competing interests', policy or reform that would facilitate the attainment of social justice is achievable (Muldoon, et.al 2013, 379). Rawls provided a device for achieving this. This device is called 'veil of ignorance' (Rawls, 1971, 11-17). According to him, "agents under the thick veil of ignorance do not know who they are in society, whether they are a past, present or future generation, whether they are male or female, rich or poor, in the majority or in minority, or any other relevant demographics of the societies in which they live, or any other morally arbitrary facts. In fact, the agents in the Original Position could be thought as" those (policy-makers) who do not know whom their recipients are; "they want to make sure that everyone gets as good of a deal as they can". He added that "in the Original Position, the parties must not know the contingencies that set them in opposition. They must choose principles and their accompanying consequences of which they are prepared to live with, whatever generation they turn out to belong to" (Rawls, 1971, 119). In their reviews of 'veil of ignorance', Muldoon et.al (2013, 379) noted that:

the veil of ignorance thus blocks the possibility of agents having knowledge of a particular interests that might sway them when deliberating about the basic structure of society. This is an extremely powerful idea—a framework that removes morally irrelevant considerations from our moral decision-making. It removes the possibility of our self-interest getting in the way of our reasoning. However, it is implicitly assumed in Rawls's work and elsewhere that the individuals in the Original Position, thus unburdened from self-interested bias, will then be able to agree

It is clear that since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same argument. Therefore, we can view the agreement in the Original Position from the standpoint of one person selected at random. If anyone, after due reflection, prefers a conception of justice to another, then they all do, and a unanimous agreement can be reached (Rawls, 1971, 120). Veil of ignorance is an imaginative mechanism for deciding or determining what should be considered as just and fair in a state of society. At the formative period of human society, no member of society have knowledge about each other's position or background such as race, gender, ethnic. In the light of this ignorance, they would be forced to agree on rules, laws, policies, regulations that are realistically just and fair. Sentiments and biases would be absolutely minimal or non-existent since they are acting on the veil of ignorance. Rawls argued that decision on the allocation of resources and formulation of policy or reform should be made and executed on the principle of "veil of ignorance". Using this device, there will be fairness in decision making or reforms since the policy-makers do not know where they will fall in the social system. Policy-makers do not have clear clues on where they are likely to belong in society because the veil has blurred their vision of their likely placement in social system. As a result of this, policy-makers may choose a programme or reform that would be beneficial to the members of the lower cadre of society, thinking that they may end up there or fall into that social category.

This model of social justice has been heavily criticized by scholars on many grounds. Scholars argued that this is a utopian assumption; it is grossly impracticable. The implication of the Rawlsian hypothesis on the conception of veil of ignorance is that moral virtue is orthogonal to societal position. This means that all members of the society should start from the same point and at the lower level. The idea is that members of the lower class are more likely to be virtuous than members of the middle and higher class. This assertion may be untrue. Sen (2009, 11-12; 56-58) criticized "veil of ignorance" on the grounds that the choice of social action or policy is indeterminate in the "Original Position". The reason he adduced to this is that social actors are incapable of making any policy choice without information or access to information about the social structure and its human elements upon which decision is to be made. In similar manner, MacIntyre (1981) and Sandel (1982) raised fundamental question: How can social actors make decisions or formulate policy without accurate and clear understanding of the situations or phenomena?

Also, Rawls did not make mention of any particular political arrangement or system that would fit his theoretical position. Thus, his analysis of social justice appeared incomplete for its lack of political framework within which social justice could be realized. He only focused on ends of social justice; not means to social justice. According to Robert Nozick, in his "Anarchy, State and Utopia" (1974), Rawlsian theory was philosophically redistributive in the sense that equal distribution of resource is not only desirable but also essential in society. Nozick also mentioned that Rawls argued that socio-economic inequalities can only be justified and rationalized if it benefits the least advantaged members in the society. Nozick pointed that society's benefits/goods are produced by some members of a society, and this people have inalienable rights to the goods or benefits they produce. In this way, extending goods or benefits produced by some

members of the society through redistribution to the disadvantaged members is grossly unjust. It is unjust because it forces some people to work for the majority of the least advantaged members. This is emblematic of the common saying: “Robbing Peter to pay Paul”. It amounts to the deprivation of the “goods-producing” or “benefit-producing” members of the society. Similarly, it is detrimental to development in that it may create disincentives to hard-work and end up creating more social injustices than social justice. However, despite the above criticisms, Rawls contributed significantly to the debate on fundamentally underpinning principles of social policy and reform, which can be tapped by the South African policy-makers in designing, formulating and implementing sound land reform programmes that are capable of correcting the wrongs of the past, and facilitating the attainment of social justice. **See Figure C** for the theoretical modelling of Rawlsian veil of ignorance in land reform in South Africa.

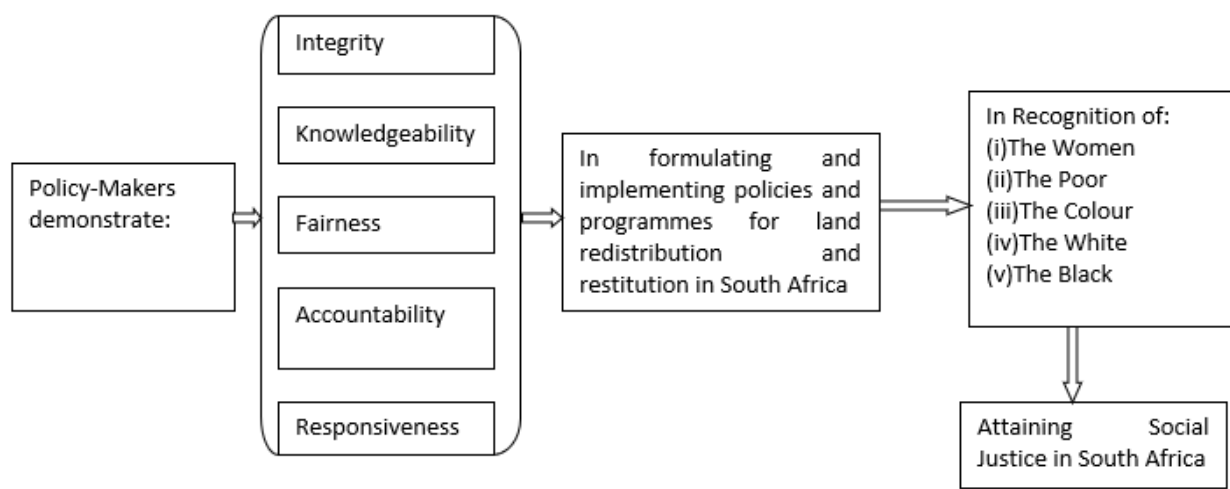


Figure C: Modelling Rawlsian Veil of Ignorance. Source: Authors' Conception

Frazerian Parity of Participation

Nancy Frazer developed parity of participation to explain social justice. She evolved three concepts, redistribution, recognition and representation, which are fundamental to the attainment of social justice in human society. According to Frazer (2007, 27), social justice is attainable when there are “...social arrangements that permit all to participate as peers in social life. On the view of justice as participatory parity, overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interactions”. To Frazer (2007), the ingredients of participatory parity are (i) assurance of independence; and (ii) availability of fair institutional context that foster equality and opportunity for all in respect of socio-economic position. McInerney (2003, 252) added that “...the historically constituted nature of social inequalities means that there can never be any real sense of closure...shifts in the political, economic and cultural landscape disturb existing social patterns, produce new sets of demands for recognition among dissatisfied groups and generate new questions...for social justice...” It could be deduced from the above view that social justice requires both redistribution of resources (land) and the recognition of the existence or agency of the disadvantaged groups. In the context of South Africa, redistribution of land to the landless rural poor may not bring about the sense of justice if their agency and existence are not given priority by the policy-makers. Thus, redistribution resource and recognition of their existence deserve attention and utmost consideration in policy formulation and implementation.

As Frazer noted (2007, 35), “recognition cures the pains of injustice”. Walker, Lind and Thibaut (1979, 1402) argued that “the belief that the techniques used to resolve a dispute are fair and satisfying in themselves”. Also, Brockner and Wiesenfeld (1996, 189) said “(a) process control, referring to how much people are allowed to present evidence on their behalf before the decision is made, and (b) decision control; that is, whether individuals have any say in the actual rendering of the decision”. Thibaut and Walker (1975) maintained that people are more likely to have confidence in the process when they are adequately or ably represented or when their inputs are incorporated into the decision-making processes. This is what they referred to as “voice-effect”. This term denotes giving opportunities to the people to voice out their views or to contribute to decision making. Giving them freedom of expression in the decision may make them to have belief in the procedural justness and fairness of the overall outcomes of the decisions (van den Bos, 2005). The foremost significance of voice effect is that it promotes trust in policy-makers and policy processes (Jost & Kay, 2010).

These important ingredients, as portrayed by Wegerif (2004:36-37), remained disappointingly elusive in land reform programme in South Africa. In his review of Land Redistribution for Agricultural Development (LRAD) programme in Limpopo Province, the beneficiaries of LRAD were “either business people or civil servants...many benefitted because they had the wherewithal information and contacts to obtain state land on a lease basis some year ago...they then became the lucky beneficiaries of a government decision to dispose of that through LRAD”. He added that LRAD is far from endeavouring to bring poorer people into the programme, Department of Land Affairs (DLA) and the Department of Agriculture (DOA) have gone out of their way to benefit those already better off and already benefiting from state land; while making access to the programme...and almost inaccessible for the very poor”. Similarly, Boudreaux (2010, 17) argued that “rather than create an open process that screened claimants on the basis of past harms, beneficiaries were selected based on political and social connections”. Also, women are excluded in landownership. Mackenzie (2015, 224) maintained that women should be given more recognition to own and use land for developmental purpose because they share the largest burden of poverty in communal areas as a result of the unfavourable customs which gave more power to the male. In other words, most communal areas are patriarchal and only male has legitimate rights to own and use land (Letsoalo, 2013, 6).

James (2007) maintained that land reform is tantamount to the extension of the institution of the Apartheid in South Africa (Mackenzie, 2015). They added that the rural landless were not included in the consultation processes. They argued that their only contribution to LRAD was their organization of protest outside the venue of one of the consultation meetings in December 2000 (Hall, 2010c; Wegerif, 2004), and definitely we cannot call this consultation. In response to this, DLA opined that since land-based NGOs were consulted, it implies that the landless people were ably represented. According to Mackenzie (2015, 261-262), the rural landless poor were, thus, largely excluded from the creation of the LRAD policy, reflecting a deep silence. There was a small provision made for beneficiaries who might want to use the grant to buy land for subsistence purposes, or for production within the communal areas, but this was seen as symbolic and rhetorical... However, a number of other facets of LRAD combined to exclude the vast majority of the rural landless poor from access to the new grant. **See Figure D** for the diagrammatical representation of the application of the Frazerian model of parity of participation to land reform in post-apartheid South Africa.

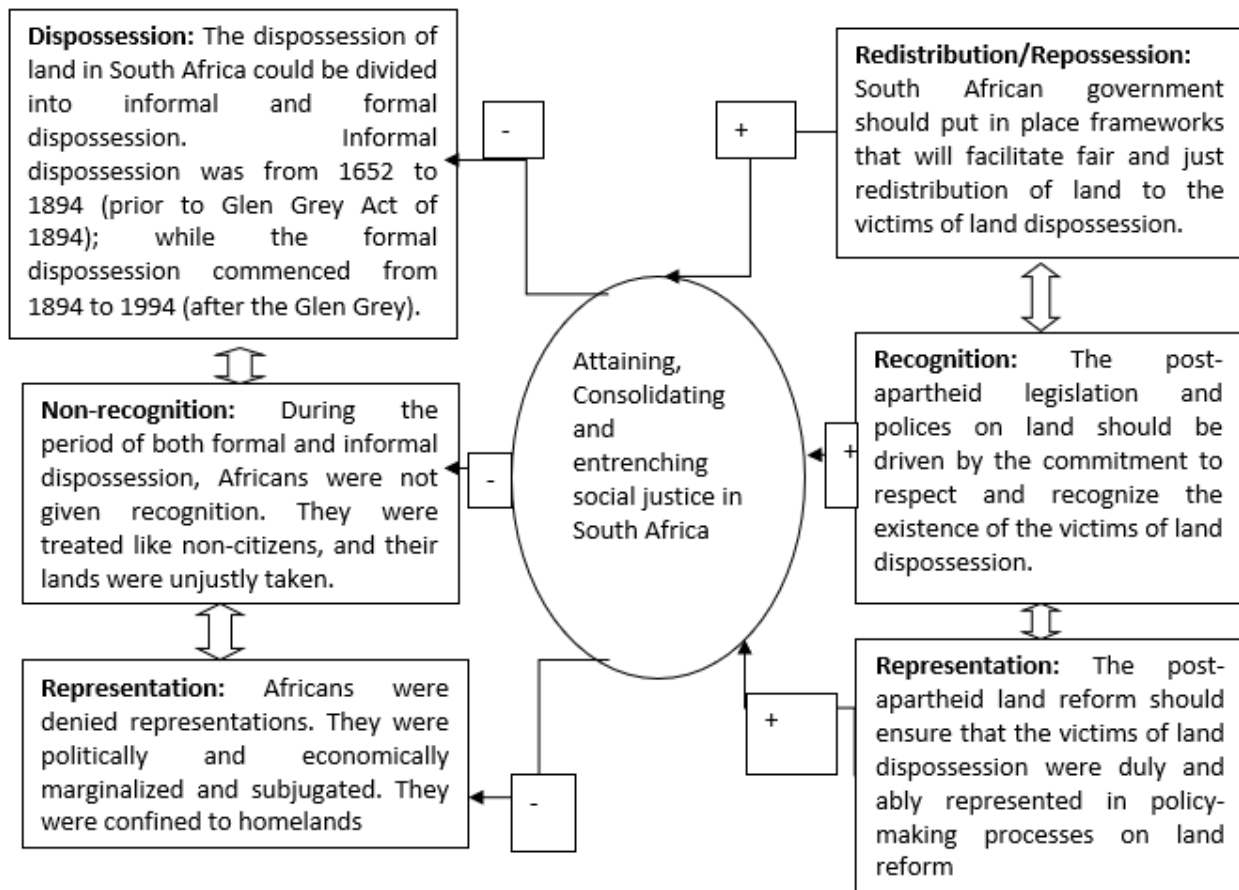


Figure D: Applying Frazerian Model of Parity of Participation in Land Reform in Post-Apartheid South Africa. Source: Adapted from Frazer (2007)¹

Conclusion and Recommendations

This paper has shown the relevance of the ‘social justice discourse’ in land question in South Africa. Essentially, the contributions of Kurt Lewin, John Rawls and Nancy Frazer to social justice discourse are critically analyzed in relation to land question and land reform in South Africa. Lessons learnt from each of the authors such as Kurt Lewin, John Rawls and Nancy Frazer were noted. From the Kurt Lewin’s three-model of social change for social justice, the lesson drawn is that South African land policymakers should have showed more commitments in the dismantling of the vestiges of apartheid institutions and entrenched democratic structures in the interest of social justice. The policy implication of John Rawls’ model of veil of ignorance is that the land policy-makers should demonstrate high level of integrity, knowledgeability, fairness, accountability, responsiveness and equity in decision-making processes on land. Lastly, Nancy Frazer’s model of parity of participation suggested that social justice is measured in terms of extent of redistribution, recognition and representation. Thus, South African policy-makers on land reform should ensure that these elements are present.

¹ The arrows directing towards the circle in the middle indicate forces for social justice; while the arrows away from the attaining social justice indicate forces against social justice. Thus, in Frazerian perspective, social justice is the movement from dispossession to repossession; non-recognition to recognition; and lack or minimal representation to fair and adequate representation in the conceptions and execution of land reform program in South Africa. So, social justice is a function of redistribution, representation and recognition.

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