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1 'RESTORING WHAT WAS OURS': AN INTRODUCTION

Derick Fay and Deborah James

Land dispossession is seen by some as the central political-economic issue of colonialism and as central to the creation of modern capitalism. It has rested not only on force but also on new forms of property and discipline; it has instantiated and affirmed Lockean notions of property and civilization and constructions of racial and ethnic difference. If land bridges material and symbolic concerns, as both a factor of production and a site of belonging and identity (Shipton 1994), then the loss of land is likewise simultaneously material and symbolic. Land restitution promises the redress of such loss. It is aimed at enabling former landholders to reclaim spaces and territories which formed the basis of earlier identities and livelihoods. Drawing on memories and histories of past loss, individual claimants and informal movements—and governments or NGOs working on their behalf—have attempted to restore and reclaim their rights. Land restitution thus brings the past into the present.

They have aimed, in the process, to set right associated injustices and violations. Land restitution thus forces the moral principles of restoration and justice to confront the difficult practices of determining ownership, defining legitimate claimants and establishing evidence for claims. It is an arena for state formation and nation-building, but also one where alternative forms of governance and counter-national identities may emerge. Particularly, in practice, restitution may draw both on modernity's romantic aspect, a nostalgia for the lost rootedness of landed identity and *gemeinschaft*, and on its technicist aspect, as restitution is implemented through state bureaucracies and often tied to plans for 'development'.

Land restitution may also have unofficial purposes: establishing the legitimacy of a new regime, quelling popular discontent, or attracting donor funds. Likewise, it may produce unintended consequences. Notions of property and ownership may be transformed, local bureaucracies may be entrenched, spatial patterns of land use that replicate older patterns of racial and economic segregation may be reinstated or consolidated. Moral discourses about righting past injustice through restitution may obscure its exclusionary aspects or its tendency to reinforce existing forms of social differentiation.

Land restitution arises from and relies upon key social relationships. Community belonging, often framed in terms of ethnicity or autochthony, may enhance the claims of certain dispossessed people but can also exclude others. Restitution frequently involves brokerage, as NGO representatives and others mediate between land claimants, landowners and the state. It also creates new relationships between states and their subjects: land-claiming communities may make new demands on the state, but they may also find the state attempting unexpectedly to control their land and livelihoods. It may be a route to full citizenship, or lead to new or neo-traditional forms of subjection. Thus land restitution contradictorily invokes the two visions of nationhood and political order: ‘one based on a liberal ethos of universal human rights, of free, autonomous citizenship, of individual entitlement; the other assertive of group rights, of ethnic sovereignty, or primordial cultural connection’ (Comaroff 1998: 346; cf. Mamdani 1996). These take many forms, ranging from debates over the acceptability of sub-national sovereignties to those about whether restitution and neo-liberal notions of property are compatible

The paragraphs above, adapted from a call for papers for a panel of the 2005 conference of the American Anthropological Association, highlight some key issues relating to land restitution. The papers delivered at that panel (with two additions) and now published in this volume examine cases of land restitution worldwide. They aim, through ethnographic detail and with analytical precision, to illuminate theoretical questions and address some policy implications. In the process they intend to establish land restitution as a legitimate and fertile topic for investigation.

The Anthropology of Restitution

How can land restitution—in all of its national and local variations—be considered a coherent object of social or anthropological analysis *sui generis*? A study of restitution arises out of, and contributes to, a series of recent theoretical debates. But rather than simply elaborating upon established fields of enquiry, restitution brings these together in a unique and unexpected way. It requires us to think about property, social transition, injustice and redress, citizenship and community, the state and the market. In finding points of convergence between these diverse topics, the study of restitution prompts us to rethink each of them in turn.

A key topic of recent interest among anthropologists, and scholars of law and society, is that of property. Given recent bold attempts to take studies of property beyond their earlier limitations and, in particular, to question its 'thingness' or materiality (Verdery and Humphrey 2004; F and K von Benda Beckman and Wiber 2006; Strathern 2005), our focus on land might appear restrictive. Such studies show that it is not only land but many other things—water, wild game, ideas, intellectual contributions, cultural products and processes—that can be 'owned'. Indeed, in settings of late industrial capitalism with transnational labour flows, land might be considered of little material

importance. It can even be liability rather than a productive resource (Verdery 2004). But it is precisely land on which restitution, as conceptualized in the present volume, is centred. By emphasizing the restoring of *land*, we investigate how the return of territory at once promises the freedom of autonomy and self-governance, but may accompany this with the disadvantages of paternalism and even a second-class status in society, or may deny it by reinstating existing power inequalities and property relations. Landed property is the site where the promise of citizenship in the modern state is held out. In cases of restitution, such enjoyment is promised, but its realization may be fiercely contested and endlessly delayed. Citizenship in a specific territorial setting is thus both a poignant possibility and a frustratingly unachievable dream.

Looking at the restoration of landed property to its former owners thus allows us to look at the character of specific socio-legal and political contexts within which this is deemed possible, or desirable. Doing so allows us to make fruitful and instructive comparisons between such contexts, beyond merely showing how far they may have progressed in institutionalizing Western-style concepts of ownership, or mapping where the societies in question may be placed on the onward march towards the commodified relationships of global capitalism.

The political and legal contexts of restitution are those of disjuncture. Typically, restitution occurs to set right some earlier breaking apart of the social fabric. Equally, it may be at a present moment of social rupture that such redress is deemed possible. This may be the hiatus of a rapid transition between an old regime and a new, not-yet-established social order. Societies emerging after the end of the cold war and the fall of the iron curtain, such as those of post-apartheid and post-socialism, are the most obvious examples here (see Burawoy and Verdery 1999; Comaroff and Comaroff

2000): both are represented in this volume (Fay; Leynseele and Hebinck; Beyers; Dorondel).

The rupture may, though, be less total, less far-reaching. Restitution also appears in moments of generalized social turmoil, as in North America in the context of the civil rights movement and anti-Vietnam protest. The late 1960s and early 1970s saw the rise of the American Indian Movement in the USA, highlighted by the seizure of Alcatraz in 1971 and the protest at Wounded Knee in 1973. In Canada, around the same time, the Trudeau government's proposal to repeal the Indian Act was met with a range of critical counter-proposals by Native activist groups. In this context, by 1974, both the United States and Canadian governments had established land restitution policies for native peoples. Such policies walk a cautious line, promising to set right the past injustice of land loss without positing any major transformation to or reform of the social fabric as a whole (Plaice, Blancke, this vol.).

Other settings of more gradual transition may also provide the setting for restitution as states roll out new policies on land and its ownership and use, often as solutions to earlier failures which were themselves originally conceptualized as 'solutions' (see Crush 1995). In much of Latin America, especially in countries with long histories of land reform, new policies concerning indigenous rights and multiculturalism have emerged in the wake of the rise of human rights discourse, '[coinciding] with the 500-year anniversary of the European "discovery" of America, peace processes in several countries, the decline of the socialist alternative, and significant indigenous uprisings' (Speed and Sierra 2005: 3). In the Brazilian Northeast, new opportunities to self-identify as 'indigenous' or as 'African-descended' provided a means for groups to frame their desire to get land back (French, this vol.).

But these ‘solutions’, although concerned with changes to land tenure, have not necessarily favored its restitution. In the early twentieth century, Mexico had set in place restitution and redistribution policies in which land was allocated to communal groups, but in the 1990s, the state began bringing an ‘end to restitution’ by allocating land to individuals in an attempt to integrate its landholders into market-based relationships, despite considerable resistance (Tiedje, this vol.). In the Peruvian example, the language of ‘indigeneity’ had currency in the early twentieth century, but restitution came in the 1960s to be linked to a language of ‘peasants’ or ‘campesinos’.[1] From the late nineteenth century to the present, landholders have engaged with power-holders, whether the recognized government or the revolutionary Shining Path, in attempts to procure independent ownership of the lands they work (Nuijten and Lorenzo, this vol.).

In all these contexts, however varied, it is the experience of social disjuncture which gives restitution its promise of a liberatory, more equitable future. It is, in many cases, a keenly-felt past injustice which leads to claims for redress. Those who once suffered the loss of a material, territorial basis of identity and livelihood demand that past wrongs are set right. Deriving from the experience of being wronged and from the gravity of things long past, restitution claims acquire a moral weight. The right to have the land restored is claimed on the basis both of grievance and of a shared memory of that grievance (Rowlands 2004; Feuchtwang 2000, 2003). Injustice, grievance, shared memory and community are thus closely linked ingredients in the restitution package.

In addition to the matter of social disjuncture, a further definitive feature concerns the role of the state. Restitution contexts are often those in which the state is a key actor,

often ‘both playing the game and making the rules’ (Verdery 2003: 83). It intervenes, in part, to protect the beneficiaries of the process—at least temporarily—from the ravages of the market. But state sovereignty in the ‘transnational’ contexts of global capitalism is on the wane (Hansen and Stepputat 2001; Trouillot 2001). State-planned economies are dwindling, ‘state capitalism’ (Hart 2001) is a thing of the past, and the market has been deemed a more effective midwife for development than the state. Returning land to its former owners, however, is often deemed to be a matter which cannot be left to the market. The state is required to act as nursemaid, although it may be preparing eventually to set its charges loose in the world.

A further peculiarity of restitution contexts is that they bring the state into relation with its citizens in something rather different from the classic interaction between ‘people and the state’ (Robertson 1984). Here the study of restitution makes a definitive contribution to our understanding of citizenship. The state as part-protagonist of, and part-participant in, restitution does not so much attempt to turn an ‘unreliable citizenry’ with its multiple views ‘into a structured, readily accessible public’, by laying out a single path to progress and thus creating homogeneity (ibid.). Instead, restitution establishes the ground for a distinct *kind* of citizenship by constituting people as members of communities or groups, often in response to these groups’ own insistence that they be seen in this way. Such communities may be coterminous with those thought of as native, indigenous, or autochthonous (Blancke, French, Nuijten and Lorenzo, Morphy, Tiedje, this vol.).

Restitution thus promises to restore land to specific groups within the broader fabric of society which are understood as having earlier been unfairly dispossessed. It often represents a stage—but not necessarily the final stage—in a long-term set of struggles

waged by such groups. When we study restitution it becomes clear that property, rights, and underlying conceptualizations of law are understood in sharply different ways (Morphy, this vol.): not only cross-culturally or across different societies but also *within* particular social settings. The very fact that restitution is feasible in a specific setting reveals that a part of this intra-social struggle has already been 'won'. But this may be only the first step on a long road, with the nature of property relations—and indeed of the entire social fabric—being contested at every point along that road. By promising to make concrete the past, to make viable what had become mere 'history', by promising to reinstate whole social orders from a past era, restitution represents a poignant prospect: a new set of ownership rights might be installed, predicated upon those which are said to have existed at some point in the past. As one of our authors puts it elsewhere, restitution is a 'particular socio-legal context' within which unusually boundless possibilities for social and political agency may crystallize (Beyers 2005: 10). In making such promises it may also pose threats to those with a stake in the dominant order of property relations. Even if the particular pieces of land in question are not of great value in and of themselves, the symbolic weight attached to their return, and the extent to which sets of social linkages may be unraveled in the process, are such as to generate fear. Here, the materiality of land encompasses immaterial significance. But the implications of bringing the past into the present through land restitution are more than just symbolic or ethereal.

Perhaps because of the threats posed to dominant property regimes, restitution turns out in many - even most -cases to be unachieveable. Or it is so narrowly circumscribed that it fulfils none but the most symbolic purposes, as many of our authors demonstrate here.

Restitution: a temporal process

Land issues are, of course, spatial: they are concerned with the creation of meaningful ties between people and places, and with the production of particular kinds of space (cf. Lefevbre 1991). Land restitution, however, focuses attention on the *temporal* aspects of land. As Berry has observed, property rights can be understood as a social *process* (Berry 1993). To elaborate further, we propose here a processual framework which will allow us to situate the accounts that follow in terms of where they fit in the restitution story.

The first moment is that of loss: of dispossession itself, whether through conquest, treaty, expropriation, eviction, sale, etc. (or transactions differently understood by the two sides involved; cf. Morphy, this vol., Bourassa and Strong 2002). Although this is arguably the most important phase of all, in that it sets up very the necessity of restoration, it is of significance for the communities discussed here primarily inasmuch as it is remembered through narratives, physical traces and memorabilia, and inasmuch as this memory inspires action in the present day. The means of dispossession matter in several ways. First, they affect the endurance of ties between dispossessed people and their land. In temperate regions of North America, or in South African cases of apartheid 'forced removal', dispossession often meant the relocation of people to remote reservations or racially-defined separate areas. In other parts of South and southern Africa, Australia, or South America, by contrast, Europeans often acquired title over land which cultivators continued to occupy as tenants or farm workers. Dispossession on paper might take decades to translate into actual evictions. Second, the way dispossession occurred will affect the kinds of evidence (titles, other archival records, physical traces of occupation, etc.) that will be available, and whether such evidence is deemed necessary at all.

After dispossession, time passes. This interim period may be counted as a second formative temporality in restitution, and another key point of variability: is the lost land the home of one's childhood or youth, imbued with nostalgia for a happier, better time (Beyers, this vol.)? Or did it belong to some distant ancestors, with a connection that may have been forgotten—or unimagined—prior to the land claim (French, this vol.)? In either case, with the passage of time, land is sold and bought in transactions where the cleansing magic of the market may be imagined as washing away the guilt of dispossession; new owners may claim they bought land in a morally-neutral transaction, arguing that restitution will simply create new injustices (Blancke, this vol.; cf. Bourassa and Strong 2002).

The third formative moment in restitution is the creation of a restitution policy. It is here that one must inquire into the political and economic conditions of possibility of restitution.[2]. There has been no restitution, for example, for the descendants of the English peasants dispossessed of their land during the process of enclosure. Likewise, there are many postcolonial states which have not undertaken a programme of restitution. As we argued above, regime changes are often the enabling conditions for the formation of restitution policy. Social movements, whether or not prompting such regime changes, may also form part of the enabling environment.

Where restitution programmes exist, they may make claims to be comprehensive, even transformative. But they are inevitably limited in their scope, in terms of who may claim and of where restitution fits in national policy priorities. Creating a restitution policy entails identifying categories of potential claimants, whether on the basis of history, ethnicity, indigeneity, treaty status, or other markers. As Verdery has shown, in Eastern Europe, this meant asking 'which precommunist property order should

restitution recreate?' (Verdery 2003: 83). Simultaneously, of course, this entails exclusions: by defining those who are not eligible for restitution, policy may also define those who may be *vulnerable* to it (Blancke, this vol.).

Typically, this also means that certain kinds of claims, judged to be 'in the broader national interest', may be seen to trump the claims of bounded groups who formerly lost their land. Which kinds of broader claims are deemed to be of superior moral, economic, political or environmental status to those of restitution will depend upon the larger policy context. This in turn will relate to political considerations, and be in part determined by the government's accountability to particular constituencies. In Canada, military, industrial, and tourism development may go ahead on land that is subject to claims. Claims may appear as a strategy to preempt further land loss (Plaice, this vol.), even when the 'claimants' are technically the 'owners', who are then conceived of as 'ceding' rights to the state (Nadasdy this vol.). In South Africa, by contrast, where restitution is enshrined in the post-apartheid constitution and is linked to a larger narrative of national liberation (du Toit 2000: 80-81), the presence of a land claim is thought to be in line with the 'political demand for land' which informed that country's new constitution (Dolny 2001). Restitution thus imposes a moratorium on any market transactions involving the land concerned (James 2007). In practice, however, the question of whether restitution claims form part of, or are trumped by, notions of the broader national interest, is more complex. There are gaps between the place of restitution in principle and in policy, on one hand, and in practice, on the other. In the case of New York State, the gap becomes evident in the lengthy negotiations between the federal government and the white settler citizens who are reluctant to allow an Indian reservation in their 'back yard' (Blancke, this vol.; Mackey 2005). As long as the negotiations continue unresolved, the principle of restitution is unrealized. In the

South African case, the gap is evident in the contrast between the 'constitutional priority' of land restitution in South Africa and the unrealistically small budgets available to put it into practice (Walker 2000). So long as there are insufficient funds to administer and settle the thousands of land claims, the 'promise of the constitution' will remain unfulfilled as high-minded principles of justice founder upon the rocks of hard-nosed practicality.

The fourth formative moment is that of making particular land claims. While restitution policies may define eligible categories, actual land claims typically entail another round of boundary-drawing, wherein concrete groups of people constitute themselves as claimants, or are constituted as claimants, through the brokerage of non-governmental organizations (NGOs), activists, and benevolent—if paternalistic—state agencies. In effect, restitution requires the establishment of new forms of 'imagined community' (Anderson 1983), backed up by the experience of shared loss and variously based upon grounds of geography, genealogy, language, ethnicity, culture, way of life or race. Some of these grounds may prove more effective than others in actually securing land rights and mobilizing communities (Plaice, this vol.); others may alienate potential claimants, who refuse to identify with previously stigmatized categories and hence refuse to 'join up' (French, this vol.).

These claimant groups then enter into processes of negotiation and litigation. These may involve a range of 'stakeholders', but the state is typically central. As a result, land claims may provide political opportunities, but they may also create new forms of dependency and opportunities for state control. Leynseele and Hebinck (this vol.) tell how the transfer of land to claimants in South Africa triggered developmentalist state planning processes that had parallels to apartheid-era interventions in rural society. In

her earlier work, Nuijten has written of land claims in Mexico as part of the state's role as a 'hope-generating machine' (Nuijten 2002); in her co-authored article in this volume, she and Lorenzo show another possible outcome in Peru, where restitution led to the transfer of land to a state-managed institution hence resulting, decades later, in disappointment and in renewed demands for restitution.

Such negotiations may also reveal communities' weaknesses and *de facto* vulnerability. Nadasdy (this vol.) vividly recounts the uncomfortable joking among negotiators that appeared at moments when the unequal power relations between Canadian and Kluane First Nation negotiators came to the fore. Fay (2001) has shown how communities were primarily dependent upon state representatives for access to archival evidence regarding their claim, they mistakenly perceived that, without such evidence, the claim would be unlikely to succeed if pressed in court. Ultimately, the need for fulfilling state sanctioned definitions of community might exclude potentially valid claims. Myers retells Ian Keen's account of the Alligator River II land claim, in Arnhem Land, Australia:

> Much of the claim was rejected because the claimants did not appear to be a 'local descent group' as that term was being defined judicially by the Land Commissioner. The irony is that the claimants...were denied their claim because it did not conform to the anthropological model of Aboriginal land tenure incorporated into the Land Rights Act, which is essentially Radcliffe-Brown's 'orthodox' patrilineal, patrilocal horde model (Myers 1986: 147).

In similar vein, those petitioning the court to have their rights recognized in Australia's Blue Mud Bay claim gave performative accounts of aboriginal law which the court

refused to recognize as germane to its proceedings (Morphy this vol.).

Successful land claims, one would expect, require evidence: on what basis does *this* group of claimants actually have a right to *this* piece of land? Demonstrations of historical continuity and ways of proving entitlement tend to be of key importance where there is active opposition to a claim (Blancke, this vol.).[3] As du Toit has observed, there was in South Africa an early 'vision of the restitution process that was profoundly litigious and adversarial in its emphasis' (du Toit 2000: 80), a description that would be equally applicable to Blancke's account of a land claim in New York State, USA (this vol.). But concerns about evidence are not of great significance in the present group of papers, suggesting that in certain contexts the specifics of territory are less in dispute than the principle of restitution itself. Where there is contestation, it is not so much over particular spaces and areas as over whether restitution ought to be allowed at all.

In South Africa, however, du Toit continues, 'the main problem in the restitution process has turned out to be, not a state or current landowners who are intent on opportunistically challenging the claimants' right to claim, but the practical problems that follow after that right has been assented to' (du Toit 2000: 88). The post-transfer phase thus constitutes our fifth formative moment. After the land claim has been 'won', the hard work begins. Then-Vice-President of South Africa Jacob Zuma told an audience at the Dwesa-Cwebe handover ceremony in 2001, 'prepare yourselves people of Dwesa and Cwebe—development is coming your way!' (Palmer *et al*. 2002: 275), but four years later virtually none had arrived. Transfer ceremonies may be full of pomp and circumstance, but after the dust has cleared and the politicians have all gone home, claimants are confronted with the question of what to do with the land. This

may engender what Zizek calls ‘the loss of the loss’ (cited in du Toit 2000: 82), as the experience or memory of dispossession loses its salience as a rallying point for unity, and the imagined past is confronted with the practical realities of the present (Leynseele and Hebinck this vol.). Beyers (this vol.) depicts tensions in the land claim on Cape Town’s District Six between owners and tenants, and between coloured and African claimants, about how (and whether) the past ‘community’ should be reconstituted.

Despite the nominal transfer of ownership, the demands of the state often weigh heavily upon the post-transfer process. In the extreme cases described by Nuijten and Lorenzo in Peru and by Fay in South Africa (both this vol.), restitution transferred land to state-run institutions, effectively failing to address demands for local ownership and control. In Brazil’s Northeast, claimants collectivized production on previously individually-farmed land in order to meet the state’s expectations of ‘communal’ use as a condition of restitution (French, this vol.). In South Africa, a discourse of ‘tradition’ and ‘custom’ that was an asset in staking a land claim became a liability when state planners demanded that claimants undertake ‘modern’ and ‘progressive’ activities on their newly-acquired land (Leynseele and Hebinck this vol.).

The post-transfer phase of land restitution often entails resettlement, with all of the pitfalls that process entails (see Scudder and Colson 1982, de Wet 1994).[4] For some claimants, like many of the African former residents of District Six described by Beyers (this vol.), the prospect of returning to their former homes may hold little of the appeal anticipated by the framers of restitution policy. There may also be fierce opposition to resettlement and property transfer from those affected, as happened in New York state (Blancke, this vol.; Mackey 2005).

Sixth, and finally, there is the time 'beyond restitution'. This may or may not entail the possibility of a formalized 'end of land restitution'. Tiedje's paper (this vol.) describes the termination in the 1990s of Mexico's longstanding land restitution program. Even as Mexico saw a growing movement for indigenous rights, the *ejidos* which had been created to allow communities to receive land earlier in the century were subject to a program of neo-liberal privatization. With individual title comes the possibility of a new 'time of disintegration' (Cotreono and Dozier 1974), as in the USA in the late nineteenth century: sales of newly individually titled land under the Dawes Act among the Coeur d'Alene Indians led to 'the irrevocable loss of approximately 84 percent of the tribal holdings, a total economic and political destruction of the tribal entity, and an almost complete loss of individual initiative' (1974: 405-406). Granting title that does not allow sale, however, may be perceived as paternalistic and a denial of full property rights (cf. Ntsebeza 2005; James 2007).[5] In cases where restituted land may be sold, dispossession through the market may continue even though (legal-political) restitution has taken place. If such dispossession is little documented, this may be because the ravages of the market have not yet been experienced to their fullest extent. It may also be because the formal process of restitution is one defined and undertaken by the state, whereas its aftermath may not be. Once it has been accomplished, the claimants tend to be lost from view. If they later lose their land because of market forces, this is not a matter typically designated as part of the restitution process.

By drawing attention to these defining moments in the restitution process—dispossession, policy formation, community formation, claim-staking, transfer, post-transfer, and 'post-restitution'—we have attempted to set out a framework to encompass the accounts that follow. Documenting the temporalities of restitution

allows the reader to position the present volume's case studies in relation to the process overall, and stimulates comparative reflection about that process. Some of these begin early in the story, with the formation of claimant communities in response to the promises of restitution, while others take a retrospective look at the process.

Property, community, government: citizen or subject?

But in following this step-by-step sequence, it should be borne in mind that the expectations placed upon restitution, together with the practical difficulties of fulfilling these, are such that its final phases may never occur. It is not simply that the process drags on because of bureaucratic delays or the need for extended negotiations between contesting parties. There are other factors, intrinsic to the exercise, which make for a sense of incompleteness. Here we return to the question of the materiality or 'thingness' of property, and to the way anthropologists have recently questioned the 'persons-things-relations nexus' through which property is commonly understood (Strathern 2005; Verdery and Humphrey 2004). Restitution juxtaposes the most concrete of objects—land—with abstractions about the past social relationships which it nurtured and with vague promises to restore these in the future. It also conjoins pragmatic action in the here and now with invocations of justice and principle, asserting that the latter can only be achieved through the former. But in the process of making the property promise come true, restitution often translates into a far narrower achievement. It may restore a hierarchical *status quo ante* rather than a liberatory alternative (Beyers, Dorondel, Nuijten and Lorenzo, this vol.). It may yield up an unwieldy and unusable asset which is more like a "liability" (Verdery 2004). Thus, even those to whom the state *has* delivered upon its promises may feel they have been cheated: they thus require a further, more complete form of restoration. How far-reachingly can restitution address the issues it claims to be able to resolve? It may have

been charged with too broad a range of tasks; too burdensome a symbolic and material load.

The restitution of land, our papers demonstrate, is typically associated with certain assumptions. Special types of people who have set themselves off from the broader social fabric by living on these lands are often presumed to require separate forms of governance. They appear to embody a particular – and separate—approach to community living and communal property ownership. But at the same time these same property relationships are assimilated to – or blended with – those which predominate round about (Morphy, this vol.). They are subjected to institutionalization, and/or yield to the market forces which permeate the rest of society. Thus, although the 'persons-things-relations nexus', for restitution claimants, is presented as a separate and distinct one, it is undergoing continual transformation. Claimants' ideas about property originate in a complex dialogue between themselves and the broader legal discourse used within the state. They assert, contest or modify these ideas (and, with them, their right to be recognized, hold property, be accommodated, be governed) in their interactions with the broader social world. In the process, restrictions on the extent of restitution become clear. At the same time, a certain resentfulness may appear among those outside of the process who are made to 'bear the burden' of whatever claims do materialize.

Community and governance:'No Nation within a Nation'

Restitution involves morally-laden expectations that it is as communities—especially 'indigenous' ones—rather than as individuals that people will lay claim to land. This is not necessarily a timeless feature of restitution. The Mexican *ejiditarios* of Tiedje's paper, for example, were earlier seen as being able to achieve citizenship of a

homogenized nation through their individual access to land (this vol; see also Lomnitz 1999). Rather, the emergence of such discourses appears to be a recent phenomenon: a manifestation of what Kuper calls the 'return of the native' (2003; see also Kuper 2004; Heinen 2004; Kenrick and Lewis 2004a and b). But not all those concerned are willing to frame their expectations in these terms. Dissenters may disparage discourses of indigeneity and the communal landholding which it implies, as occurred among some of the people of the Brazilian Northeast discussed by French (this vol.). In Labrador, although some groups self-identified in the homogenising and exclusivist 'native' idiom, others, although equally committed to gaining land and recognition, were less ready to be seen as native (Plaice, this vol.).

Restitution's communities may then be premised upon other kinds of groupings. Some of the earliest restitution cases in South Africa were in so-called 'black spots', areas where mission-educated 'progressive' Africans had bought land under individual freehold title (James *et al* 2005, Harley 1999). Their members, in some cases, had earlier separated themselves from the ranks of those deemed to be 'traditional', precisely in order to begin participating in market- or commodity-relationships, and often through the purchase of 'private property'. In such settings, private property and market relations may pull people towards more individualized identities and more direct relationships between citizens and the state. They are 'owners', seen as distinct from the 'tenants' who have no formal basis for the return of property (Beyers, this vol.; James *et al* 2005). But their experience of dispossession which led 'black spot' owners to seek restitution counteracted this: it pulled them together and consolidated them as communities in order to facilitate their participation in the claims process.

Even where native or indigenous discourses are not readily embraced, expectations of

community tend to remain. This was the case in the Brazilian Northeast, where the Quilombo Clause awarding land to slave descendents laid down that such land could only be held collectively, by an association, and where this assumption of communal ownership led to many initial difficulties in organizing production (French, this vol.). It has also been the case in South Africa's highly development-oriented restitution process, where there have been many misunderstandings over the nature of community identity and community ownership. The state and its agents, basing their approach on a 'communalist discourse' (James 2000), imagined community to be egalitarian and inclusive. Claimants, in contrast, often thought of it as exclusive and definitively bounded. Or, as in the case of District Six, exclusivist and inclusivist versions of community co-existed and were in contention within the ranks of claimants themselves (Beyers, this vol.). In any event, the state's suppositions about the communal character of African landholding arrangements led to attempts to transfer ownership of farms to groups. The effect of this was to privatize responsibility for development, social services and the adjudication of disputes. The result has been lack of clarity on the nature of rights and responsibilities, on how disputes between communal owners are to be resolved, and on exactly who is entitled to make decisions about land use. Many rural land restitution cases were thus wrecked because of this failure to specify precise rights and obligations after properties were given back (James 2006; Pienaar 2000). In short, the exigencies of communal ownership meant that restituted property became 'fuzzy' in South Africa, as it had in Romania a few years beforehand (Verdery 1999; see Dorondel, this vol.).

In this case, and others in this volume, the 'special rights' in terms of which restitution claimants demand their entitlement to land (Morphy, Tiedje, this vol.) form the basis of a series of tensions around citizenship, sovereignty and nationhood. If claimants

contend that they are members of a distinct group (or if the state is construing them in this way) it seems likely that they will occupy—if successful—domains separate from the broader body politic: in effect, ‘little republics’ (Carstens 1999). If land is something exclusively owned by a group, this expression of autonomy and independence precludes integration with others, vis-à-vis matters of authority, law and order, and the provision of services. But alongside autonomy comes, perhaps, a second-class status: claimants are assigned the character of subjects rather than citizens (Mamdani 1996).

Even as they constitute themselves as groups, claimants may make claims to national citizenship. Claimants in the Brazilian Northeast flew the national flag even at the moment that they become Indian (French, this vol.). But claimants may also assert a degree of autonomy and separation from the nation. Mexican *ejidos* were established through restitution as a space of political and ritual autonomy (Tiedje this vol.). Such claims to autonomy become more controversial when they strike against deeply-held national values of political equality. As Blancke explains in respect of the Seneca County Liberation Organization, a group formed to oppose the Cayuga Nation's land claim, ‘On reservations, Indian nations exercise their inherent sovereignty as “domestic, dependent nations”. This struck many citizens and politicians as unfair. Why did Indians have “special rights” when other Americans did not?’ (this vol.; see also Mackey 2005). Those opposed to the claim expressed their protests with billboards proclaiming ‘no nation within a nation’. They made frequent reference to dimensions of their citizenship such as the ‘tax base’ to show that *their* land ownership was not tied to ‘special rights’ but reflected obligations incumbent upon all citizens.

In this case special pleading generated new forms of special pleading in response.

Restitution had a knock-on effect, causing the forming of new autonomies in protest against it. Restitution's opponents used equally localist and anti-governmental discourses. They organized on a local basis (as residents of Seneca County rather than as citizens of the US or of New York state), and their reference to the tax base asserted a local Lockean claim to state parks in opposition to the equally localist claims asserted by Indian nations. All-in-all, they claimed to have been politically disenfranchised by a *federal* legal process which marginalized the input of *local* residents.

In these and other cases, the citizenship of restitution is being claimed on the basis of being distinct from, rather than being part of, the nation as a whole. Interestingly, there are two cases depicted here in which people tried to frame their 'special rights' in a manner sufficiently broad as to include rather than exclude others. These are the District Six Beneficiary Trust and the Labrador Metis Association (Beyers, Plaice, this vol.). Given the state's tendency to privilege more 'nativist' claims, these groupings' discourse of adaptability, breadth and inclusivity did not necessarily enjoy great success. But, in the Canadian case, the more 'nativist' associations ultimately found it equally difficult to make headway.

The institutionalization of property.

Because the state acts as the arbiter and implementer of land claims, land restitution is a site where both the authority of the state and the language and notion of property gain currency. Nadasdy (2002) has illustrated this point clearly, showing how participation in the Canadian land claims process has forced Kluane First Nation representatives to stake their claims in the language of property, despite radically different conceptions of the relationship between people and things. As he explains,

the very act of defending against loss of land to outsiders has required an uncomfortable engagement with the notion of property:

> Just to engage in land claim negotiations, KFN people have had to learn a very different way of thinking about land and animals, a way of thinking that to this day many Kluane people continue to regard with disapproval. Despite this, many of them have put aside their discomfort with the idea of "owning" land and animals, electing to participate in the land claim process because they see it as the only realistic chance they have to preserve their way of life against increasing encroachment by Euro-Canadians (Nadasdy 2002: 258).

Likewise, Myers has noted in Australia that ‘certain features of Aboriginal land tenure became “fetishized” in the claims process....The problem is that land claims are not indigenous processes, although they attempt to somehow reproduce traditional rights and claims’ (Myers 1986: 148 see also Povinelli 2004). To claim land requires an acceptance or at least a strategic embrace of the notion that land is a ‘thing’ with definable boundaries that can be ‘owned’ with some degree of exclusion of others (cf. Bohannan 1963). In this respect, restitution may ‘make places into territories’ (Peluso 2005: 5). But some claimants continue vehemently to resist such a switch of legal register (Morphy, this vol.).

Staking claims in the language of property does not mean, however, that property-holders are conceived as unmarked rights-holding individuals. An abstract ‘owner’, devoid of any personal or collective history, would not be able to invoke the story of past dispossession that restitution requires. Such stories not only lay down a record of claims, they also strengthen the claimants' ‘resolve as to the legitimacy of their

claims', and may strategically position the claimants in a wider social discourse as Fortmann has shown (1995: 1060-1061). In the context of restitution, a successful claim requires being able to tell compelling stories of loss that can enlist the sympathy of powerful outsiders (du Toit 2000).

Such stories position claimants as particular kinds of persons or groups of people, able to fit into the categories of eligibility of a particular restitution policy. But stories of dispossession are, on their own, seldom enough. Restitution processes, typically modeled on or taking place through courts, often require 'evidence' beyond the stories of claimants, and are dependent on documents: title deeds, archival records, and the like. These documents are often produced and possessed by those potentially opposed to claims. Occasionally, claimants may be able to introduce non-textual forms of evidence. Gravesites are a common example, but evidence takes other forms. At Dwesa-Cwebe, South Africa, claimants led representatives of the Land Claims Commission to deep pits where their ancestors had stored maize. Braun (2003) tells how land claimants and their NGO allies identified 'culturally modified trees' in the forests of British Columbia; as he explains, to stake their claim, they then 'had to educate the court on how to properly read the forest' (Braun 2003: 99). But the Blue Mud Bay aboriginal claimants were unable to have their ritual performance admitted as evidence in court (Morphy, this vol.).

Stories and documentation may not be enough, for prior occupation and descent are not the only bases for ownership. Lockean claims to property based on labour and 'improvement' come into play in restitution. Such arguments were commonplace as justifications for European colonists' seizure of land from colonized peoples worldwide (Verdery and Humphrey 2004:4). They find echoes among the local residents opposed

to the land claim in Blancke's account of New York State: they opposed the transfer of a state park because they had contributed their tax dollars to the ‘improvement’ of the area, creating a locally-specific claim on a nominally state-owned public asset (Blancke, this vol.). Likewise, French describes an opponent to a land claim who ‘saw the land as representative of her father’s hard work and ambition’ (this vol.). At the same time, the promise of ‘improvement’ can contribute to the viability of a land claim. Willingness to participate in ‘development’ positioned the Northeast Brazil slave descendents of French’s account as suitable recipients (this vol.). Likewise, land reform beneficiaries and policy-makers in South Africa face pressure to show evidence that restitution is leading to ‘development’ and ‘economically-beneficial’ land use (Leynseele and Hebinck, this vol.), particularly in the light of declining productivity following the forcible takeover of commercial farms in neighbouring Zimbabwe.

Environmental discourse also enters into restitution, both for and against. One form this takes is the notion of the “environmentally noble savage” (Redford 1991) that has been deployed by movements for indigenous rights (along with romantic notions of community resource management; cf. Li 1996). But concerns about conservation have also been used to limit the land uses available to claimants where their claims involved protected areas (Blancke, Fay, this vol., Palmer, Timmermans and Fay 2002, Steenkamp 2001, Wynberg and Kepe 1999). They also provide a counter-argument for those opposed to claims. Writing of New Zealand, Dominy (1995) describes ‘white settler assertions of native status’: settlers made claims to a distinct culture and way of life grounded in knowledge of a particular landscape as a counter to a Maori land claim on their grazing land. But they also invoked an environmental discourse, arguing that they possessed ‘a form of cultural and ecological adaptation that...enables them to maintain the balance between agricultural production and environmental conservation

on a particular property for generations' (Dominy 1995: 365).

There are various kinds of justifications which, in the eyes of the state, can form a valid basis for restitution. Although these may take as much account of future potential as they do of past entitlement, it often seems to be taken for granted that some form of indigenous identity constitutes necessary grounds for eligibility. It may not be sufficient—urban Maori in New Zealand who are clearly 'indigenous' but do not have membership in a 'tribe' (*iwi*) have been excluded from claims (Bourassa and Strong 2002: 258). But it is typically compelling. Plaice's account of attempted restitution in Labrador shows the strength of indigeneity and the weakness of an alternative strategy. Three rival native organisations formed and employed markedly different moral and political strategies to press their respective claim to both land and an enduring local, land-base identity. Of these the Metis, a group of mixed race settler-native origins, was the group least fixed on notions of native ancestry. Instead its members saw their claim as validated by a way of life lived on the land. Their interest lay not in being 'different' from normal Labradorians but rather in being 'typically of Labrador'. Part of this involved a wish to continue participating in general market-based enterprise within the area overall, rather than in doing something specifically 'native'. In short, they were hybrid Canadians much like any other: 'independent, individualistic and adaptable' to new environments, and capable of using 'a range of traits and qualities', but with a strong sense of local connection. But their chosen method of identification, partly forced upon them by the more 'native' versions adopted by their two rival associations, appeared to carry less moral weight than these (Plaice, this vol.).

The rights and wrongs of restitution.

Restitution is often thought of as a 'right' to rectify earlier 'wrongs'. In South Africa,

for example, restitution was thought of by many as similar to the Truth and Reconciliation Commission, as a way of setting right the record and achieving justice for the victims of apartheid. But such an idea implies that there is or was a perpetrator of the acts of dispossession that are being righted. While it is not always made explicit, the question lurks in the background of who is to be blamed and who must be held responsible for whatever wrongs restitution is aiming to set right. Put in concrete terms: if land is to be reclaimed, who has to lose it as a result?

Sometimes it is the nation as a whole which takes responsibility, and then negotiates its way out of the dilemma. In Canada (Nadasdy, Plaice this vol.), the state has created claims processes that might appear to be privileging restitution while in practice it is finding a way to circumvent troublesome land claims in the interests of the broader nation and its 'development'. Land claims, however morally weighty, have not precluded military and industrial projects on claimed land. Thus although there was lip service paid to the importance of restitution, it was still judged secondary to matters of broader national interest, particularly when this concerned matters of 'the environment' (Plaice, Blancke this vol). Here, 'the environment' became a trope invoking the broader public good and outclassing the nationally less significant project of 'restitution'. Similar processes occurred when the Dwesa/Cwebe reserve was restored to its claimants in South Africa (Fay, this vol.).

The criteria of eligibility for restitution may also deliberately exclude certain categories of past dispossession, indirectly defining the nation and excluding others who might appear to have legitimate claims. As Verdery explains, restitution in Czechoslovakia and Hungary was defined in a way that set *de facto* limits on the categories of people who might claim land: the policies set the dates for eligible

restitution claims at points that postdated the expropriation of land from Jews and Germans. Throughout Eastern Europe, ‘politicians in all countries ... tried to select baseline dates that left out significant ethnonational others, who could be sacrificed because they had little electoral weight’ (Verdery 2003: 84).

In other cases, specific groups of landowners may perceive that they, rather than the ‘nation’, are being singled out to carry the costs of restitution (Blancke, this vol.). In response to the fears of the white majority, New Zealand eventually explicitly excluded private land from restitution claims, and resolved not to purchase private land for purposes of restitution (Bourassa and Strong 2002: 238-240); this had the unintended effect of making high country farmers, who *lease* state-owned pastoral land, particularly vulnerable to restitution claims (Dominy 1995). White Zimbabwean farmers have been singled out more violently; they have been ‘haunted by the specter of racialized dispossession’ (Moore 2005: ix) and see themselves as being forced to bear the brunt of it. White South African farmers have made similar complaints, but if they perceive the general political drift to be against them they may hide this. ‘I know how they feel, I too love the land’ said one man whose farm had been sold to the state so that it could be restored to its original owners. Such sentiments display a mixture of genuine feeling with opportunistic relief at having their land bought from them in conditions of neo-liberalism where making a living on the land has become precarious (James 2007).

In these cases moral equivalence is asserted: one group of ‘chosen people’ displaces another whose members may feel equally ‘chosen’ and hence experience themselves as discriminated against if it is they who are being made to bear the cost of what should be broader projects of social justice. These costs reflect the broader political and socio-

legal climate and context, which shapes how far restitution claims are allowed to occupy the moral high ground.

Conclusion

The work of restitution remains unfinished, a reminder of histories of colonial and socialist dispossession. To give a few examples, in Canada in 2003, 13 'comprehensive' land claims had been settled (encompassing about 40 percent of Canadian territory) while more than 70 remained under negotiation, while 251 'specific' claims had been settled of 1,185 submissions (Minister of Indian Affairs and Northern Development 2003: 8-11). New Zealand's Waitangi Tribunal had received 779 claims in 1999, and planned to entertain new claims through 2010 (Bourassa and Strong 2002: 243). In South Africa, some 63,455 claims were lodged before the December 1998 deadline for submission (Hall 2003: 1). Romania is perhaps the most extreme example: following Law 18 of 1991, providing for liquidation of collective farms and restitution to prior owners, there were about 6,200,000 claims, and "in a 1998 interview, the Romanian Minister of Justice stated that Law 18 had produced the largest number of court cases in the history of Romanian jurisprudence" (Verdery 2003: 97).

Diverse experiences have shown that restitution is no panacea for rural poverty or underdevelopment; claimants are all too likely to face disappointment without other kinds of support to make land rights *effective* for production and livelihoods (Dorondel, this vol.,Verdery 2003: 20). That restitution may disappoint seems almost inevitable, given the symbolic weight ascribed to it by claimants and activists alike. Nevertheless, as the figures above show, it is a persistent source of *hope*, a hope that may entrench a state bureaucracy's 'hope-generating machine' (Nuijten 2002), but

may also promise political and economic autonomy and self-determination (French, this vol.). Legacies of dispossession persist: loss of land is not a once-off event, but an *ongoing process* insofar as it continues to shape the life chances of those affected and their descendants (Hart 2002: 39). Likewise, demands for restitution seem unlikely to cease as states and citizens around the world confront legacies of colonialism and socialism. As claimants continue to organize, creating new forms of community and entering into new relations with the state in the process, restitution will continue to offer a fruitful terrain for scholars seeking to understand the reworking of property and citizenship in contexts of political transformation, the politics of injustice and redress, the state and the market, and the place of memory in the present.

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NOTES

[1] As Deborah Yashar has noted, Peru is unique among the countries in Latin America with the five largest indigenous populations in that it did not seen the emergence of a significant indigenous movement in the 1990s (Yashar 2005).

[2] This was pointed out by Jake Kosek in his comments as a panel discussant

[3] Anthropological notions of identity and community as fluid and constructed may stand in tension with the strict boundaries required by the legal process. James Clifford describes the failure of anthropological notions of identity to convince a Massachusetts court of the validity of their land claim (1988). More recently, a lawyer opposed to the Richtersveld land claim in South Africa argued that anthropologist Suzanne Berzborn's description of community as 'constructed' undermined the claim. Identity of Richtersvelders under scrutiny, *Sunday Times*, 4 May 2005. http://www.suntimes.co.za/zones/sundaytimesnew/newsst/newsst1115212706.aspx . See also Myers 1986: 146-152 for a related discussion of anthropological research on Australian Aboriginal land claims.

[4] Parker Shipton reminded the authors of this in his discussion at the conference.

[5] The state may also constrain sale where 'higher' national priorities would be threatened, as in the Dwesa-Cwebe and Makuleke claims on state-owned conservation areas in South Africa; the terms of these settlements give the state the 'right of first refusal' in the event that the land were ever put up for sale.