

**Derrick Fay and [Deborah James](#)**  
**Giving land back or righting wrongs?**  
**Comparative issues in the study of land  
restitution**

**Book section**

**Original citation:**

Fay, Derrick and James, Deborah (2010) Giving land back or righting wrongs? Comparative issues in the study of land restitution. In: Cheryl Walker, Anna Bohlin, Ruth Hall and Thembela Kepe (eds.) Land, memory, reconstruction, and justice: perspectives on land claims in South Africa. Ohio University Press, Athens, USA, pp. 41-61. ISBN 9780821419274

© 2010 [Ohio University Press](#)

This version available at: <http://eprints.lse.ac.uk/30980/>

Available in LSE Research Online: February 2010

For further information about this title, please see:

<http://ohioswallow.com/book/Land%2C+Memory%2C+Reconstruction%2C+and+Justice>

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's submitted version of the book section. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

## Chapter Two

### Giving land back or righting wrongs? Comparative issues in the study of land restitution

Derick Fay and Deborah James

In Anna Bohlin, Ruth Hall, Thembela Kepe, Cherryl Walker (eds) Land, Memory, Reconstruction and Justice: Perspectives on Land Claims in South Africa, Athens, Ohio University Press.

#### Introduction

Land dispossession is seen by some as the central political-economic issue of colonialism and central to the creation of modern capitalism. It has rested not only on force but on new forms of property and discipline; it has affirmed Lockean notions of property and civilisation, and constructions of racial and ethnic difference. Land restitution promises the redress of such loss – and in so doing it brings the past into the present. It enables former landholders to reclaim spaces and territories which formed the basis of earlier identities and livelihoods. The loss and its later return, like land itself, bridge material and symbolic concerns. Drawing on histories of past loss, individual claimants and informal movements – and governments or NGOs working on their behalf – have attempted not only to restore livelihoods but also to reclaim rights and rectify 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. Restitution may combine modernity's romantic aspect, nostalgia for the lost rootedness of landed identity, with its technicist aspect, as restitution is implemented through state bureaucracies and often tied to aspirations of "development."

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 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 claims on the state, but also find the state making unexpected claims on their land and livelihoods. It may be a route to full citizenship, or lead to new or neo-traditional forms of subjection, for it 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).

The study of restitution, then, ranges across a variety of intellectual and policy terrains. Where matters such as property, social transition, injustice and redress, citizenship and community, the state and the market are typically thought of as separate, the comparative study of land restitution requires us to think about points of convergence among them. It also prompts us to rethink each in turn. In this chapter we outline some central issues in the study of land restitution.<sup>1</sup>

#### Theorising restitution

While scholars have recently questioned the "thingness" or materiality of property (F & K von Benda Beckman & Wiber 2006; Verdery & Humphrey 2004; Strathern 2005), land remains a particularly vexing and contested form of property. It is both material *and* symbolic, a factor of production and a site of belonging and identity (Shipton 1994). The return of spatial territory 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. Landed property, in cases of restitution, offers the promise of citizenship in the modern state, but is also a site where citizenship is fiercely contested.

The contexts of land restitution policies have some typical features worldwide. First, restitution appears in contexts of disjuncture and social change which provide space for demands to redress past injustices, often themselves the product of moments of social rupture. Those who have suffered the loss of a material, territorial basis of identity and livelihood now demand that past wrongs be set right. Second, restitution claims acquire a moral weight from the experience of being wronged and the gravity of things long past. They are based on both grievance and a shared memory of that grievance (Feuchtwang 2003; Rowlands 2004).

Restitution contexts are further defined by the role of the state: it is often a key actor, “both playing the game and making the rules” (Verdery 2003, 81). It may be important in making restitution possible, but it also intervenes to protect the beneficiaries of the process – at least temporarily – from the ravages of the market. Here, the study of restitution intersects with questions of state sovereignty in the transnational contexts of global capitalism (Hansen & Stepputat 2001; Trouillot 2001). In most settings, market-led models of development have supplanted older statist approaches, but returning land to its former owners is seen as a process that cannot be left to the market. The state is required to act as nursemaid, though it may be preparing eventually to set its charges loose in the world.

A further peculiarity is that the state, as part-protagonist and part-participant, does not aim to create a unified, national citizenry by laying out a single and homogenizing path to progress. 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. The state may thus reinforce the idea of a community as native, indigenous, or autochthonous.

Restitution promises to restore land to specific groups who 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 by such groups. The very fact that restitution is feasible reveals that a part of this intra-social struggle has already been “won.” But this may be only the first step in a long road, with the nature of property relations – and indeed of the social fabric in general – being contested at every point.

By promising to make concrete the past, to make viable what had become mere “history”, restitution represents a poignant prospect: the installation of a new set of property relations, predicated upon those which are said to have existed at some point in the past. Restitution may appear to offer boundless possibilities for social and political agency (Beyers 2005a, 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 themselves, the symbolic weight attached to their return, and the extent to which property relationships and other sets of social linkages threaten to unravel in the process, are such as to generate fear. Perhaps because of the threats posed, restitution turns out in many cases to be either unachievable or so narrowly circumscribed that it fulfils only the most symbolic purposes.

### **A temporal process**

Land issues are, of course, spatial. They are concerned with meaningful ties between people and places. Land restitution, however, focuses attention on the *temporal* aspects of land: the history of a piece of land over time is what defines it as suitable for restitution. Likewise, restitution itself is an extended social process through which property rights are contested and established (cf. Berry 1993).

Viewed comparatively, there are characteristic moments in the “restitution story”. The first is dispossession itself, whether through conquest, treaty, expropriation, eviction, sale, or contested and

misunderstood transactions. 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, dispossession often meant the removal of Native Americans to remote reservations. In southern Africa, in contrast, Europeans often acquired title over land which Africans continued to occupy; paper dispossession might take decades to translate into actual evictions. Second, they affect the kinds of evidence (titles, other archival records, physical traces of occupation, etc.) that will be available. Third, where treaties exist, these may provide a legal basis for future land claims, as in New Zealand and Canada (Bourassa & Strong 2002).

The interim period after dispossession is a second formative time. Again there are significant variations. Is the lost land the home of one's childhood or youth, imbued with nostalgia for a happier, better time? (Dhupelia-Mesthrie; Ellis; Walker, this volume.) Or did it belong to some distant ancestors, with a connection that may have been forgotten – unimagined – prior to the land claim? Moreover, as time passes, land may be sold and bought in transactions where the cleansing magic of the market appears to wash away the guilt of dispossession; new owners may claim they bought land in a morally-neutral transaction and argue that restitution will simply create new injustices (Blancke 2009).

The third formative moment is the creation of a restitution policy. Here one must inquire into the conditions of possibility of restitution: conditions which were clearly absent, for example, for the descendants of English peasants dispossessed of their land through enclosure. Where restitution programs are deemed possible, both the disjuncture experienced as a result of the original dispossession and the emergence of a new social order may facilitate their plausibility. Societies emerging after the end of the Cold War, such as those after apartheid and socialism, are the most obvious examples (see Comaroff & Comaroff 2000; Burawoy & Verdery 1999).

The programs themselves may claim to be comprehensive, even transformative. But in terms of who may claim and where restitution fits in national priorities, they are inevitably limited in scope. 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 (2003, 83) has shown, in Eastern Europe this meant asking “which precommunist property order should restitution recreate?” In South Africa, the 1913 cutoff date and the requirement of evident racial discrimination set limits. Creating criteria of legitimacy also creates significant exclusions: by defining those who are not eligible, policy may define those who could be vulnerable under restitution.

Regardless of the scope of policies, gaps may exist between restitution in principle and in practice. In the case of land claims in New York State, USA, and Western Ontario, Canada, the gap is evident in the lengthy negotiations between the federal government and white settler citizens who are reluctant to allow an Indian reservation in their “backyard” (Blancke 2009; Mackey 2005). In South Africa the gap appears in the contrast between the “constitutional priority” afforded land restitution and unrealistically small budgets (Westaway & Minkley 2006; Walker 2000). Without sufficient funds to 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. Restitution policies define eligible categories, but actual land claims typically entail another round of boundary-drawing: concrete groups of people constitute themselves or are constituted as claimants through the brokerage of non-governmental organisations (NGOs), activists, and benevolent – if paternalistic – state agencies. In effect, restitution requires the establishment of new forms of “imagined community” (Anderson 1983). As Ellis (this volume) describes, restitution may be a process through which an “authentic” identity is both required and acquired, whether based upon geography, genealogy, language, ethnicity, culture, way of life, or race. Some grounds may prove more effective than others in securing land rights and mobilizing communities,

while others may alienate potential claimants, who refuse to identify with previously stigmatized categories.

Claimant groups then enter into processes of negotiation and litigation. These may involve a range of “stakeholders,” but typically the state is predominant, in institutionally diverse and sometimes contradictory roles as adjudicator, advocate and opponent (Verdery 2003; cf. Sato, Walker this volume). As a result, land claims may provide political opportunities, but may also create new forms of dependency and opportunities for state control. In Mexico, land claims help constitute the state as a “hope-generating machine” (Nuijten 2003), while in Peru, restitution led to the transfer of land to a state-managed institution and resulted, decades later, in renewed demands for restitution (Nuijten & Lorenzo 2009). In South Africa the transfer of land to claimants triggered developmentalist state planning processes that had parallels to apartheid-era interventions (Van Leynseele & Hebinck 2009).

Negotiations may also reveal communities’ weaknesses and *de facto* vulnerability. There was uncomfortable joking among negotiators when the unequal power relations between Canadian and Kluane First Nation negotiators came to the fore (Nadasdy 2009). Communities at Dwesa-Cwebe, South Africa, were dependent upon state representatives to access archival evidence regarding their claim, leading to the mistaken perception that their claim might not succeed if pressed in court (Fay 2001). Ultimately, the need for fulfilling state-sanctioned definitions of community might exclude potentially valid claims. A land claim in Australia was rejected because the claimants failed to meet the legally-sanctioned definition of a “local descent group,” as defined – generations before – by anthropologists (Myers 1986, 147).

Claims processes also require establishing the basis on which *this* group of claimants have a right to *this* piece of land. Ways of proving entitlement can be of key importance where there is active opposition to a claim. In these contexts, social scientists’ views of identity and community as fluid and contingent may undermine the conclusive proof required by the legal process, as when anthropologists failed to convince a Massachusetts court of the validity of a native land claim (Clifford 1988), or when a lawyer in the Richtersveld land claim in South Africa argued that anthropologist Suzanne Berzborn’s description of the community as “constructed” destabilized its claim.<sup>2</sup>

In South Africa the expectation was that land claims would be “profoundly litigious and adversarial” but “the main problem ... turned out to be ... the practical problems that follow after that right has been assented to” (du Toit 2000, 80, 88). Here Du Toit identifies the fifth formative moment in restitution: after the land claim has been “won,” the hard work begins. Jacob Zuma told the audience at a handover ceremony in 2001, “prepare yourselves people of Dwesa and Cwebe – development is coming your way!” (Palmer, Timmermans & Fay 2002, 275). Such promises inevitably create the possibility of disappointment: a few years later, enmeshed in “post-settlement struggles”, some of these claimants questioned the decisions of their representatives in the negotiation process (Ntshona; Kraai & Nomatyindyo 2006).

After the ceremonial transfers, when the politicians have gone home, claimants are confronted with the question of what to do with the land. This may engender “the loss of the loss” (du Toit 2000, 82), as the 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. Unified “communities” may fracture, as in Cape Town’s District Six, where fault lines emerged between owners and tenants, and between “coloured” and African claimants, about how (and whether) the past “community” should be reconstituted (Beyers 2009).

Despite the nominal transfer of ownership, there are many examples of how the demands of the state weigh heavily upon the post-transfer process. In Peru (Nuijten & Lorenzo 2009), restitution transferred land to state-run institutions, effectively leaving demands for local ownership and control unanswered. In northeast Brazil, claimants were expected to use land communally as a condition for restitution, leading

(with some difficulty) to collectivized production on previously individually-farmed land (French 2009). In South Africa, a discourse of “tradition” and “custom” that was an asset in staking a claim became a liability when state planners demanded that claimants undertake “modern” activities on their newly-acquired land (Van Leynseele & Hebinck 2009). A key variable in the post-transfer studies in this volume is the degree to which claimants are able to deflect or control the state’s interventions (see Conway & Xipu; de Wet & Mgujulwa).

The post-transfer phase of land restitution often entails resettlement, with all of the pitfalls that entails. Whether resettlement is desirable may depend on the past and present position of the claimants. For the African former residents of District Six (Beyers 2009), the prospect of returning to their former homes held little of the appeal anticipated by the framers of restitution policy; in the contrasting case of Black River, a few miles away, former residents’ inability to return made their loss “even more real” (Dhupelia-Mesthrie this volume). The decision may not be made by claimants: elsewhere in South Africa, state planners’ concerns that resettlement will damage the environment or commercial viability of restituted land have led them to discourage resettlement in favor of lease agreements and joint ventures with commercial operators (Palmer et al. 2002; Derman, Lahiff & Sjaastad this volume).

The sixth and final temporality is the time “beyond restitution,” when programs are phased out and claimants no longer receive privileged treatment from the state. Mexico in the 1990s ended a land restitution policy that had existed for most of the twentieth century (Tiedje 2009). Even as the country saw a growing movement for indigenous rights, the neoliberal state pushed for the privatisation of *ejidos*: collective landholding structures that were created to allow communities to claim and receive land earlier in the century. With individual title comes the possibility that restitution itself may be “undone” and replaced by a new round of dispossession if newly-titled land is sold under adverse circumstances.<sup>3</sup> Granting title that does not allow sale, however, may be perceived as paternalistic and a denial of full property rights (cf. James 2007; Ntsebeza 2005). If claimants lose their restituted land because of market forces, this is not typically designated as part of the restitution process.

Recognizing these defining moments in restitution – dispossession, policy formation, community formation, claim-staking, transfer, post-transfer, and post-restitution – allows for comparison across space and time. Case studies from widely differing contexts can be positioned in relation to the process overall, as a basis for comparative reflection.

### **Property, community, government: citizen or subject?**

The final phases of restitution may never occur. Not only may the process drag on because of bureaucratic delays or extended negotiations between contesting parties; other factors may create a sense of incompleteness. If property entails relations between people and things, restitution juxtaposes the most concrete of objects – land – with abstractions about past social relationships and vague promises about restoration in the future. It also conjoins pragmatic action in the present with invocations of justice.

But in the process of making the property promise true, restitution often translates into a far narrower achievement. It may restore a hierarchical prior state or a segregated, not liberatory, landscape (Dorondel 2009; Walker this volume), or give people an unwieldy asset which is more like a liability (Verdery 2004, Derman et al. this volume). Thus, even those to whom the state *has* delivered may feel they have been cheated and require a further, more complete form of restoration. Restitution charged with too burdensome a symbolic and material load may be unable to address the issues it aims to resolve.

The restitution of land is typically associated with certain assumptions. One is that those who have set themselves off from the broader social fabric by returning to this land require separate forms of governance. They are presumed to embody a particular – separate – approach to community living and

collective property ownership. But at the same time these property relationships are being institutionalised through or integrated with the market forces permeating the rest of society. Definitions of the relationships between people and things are thus undergoing a transformation, in which claimants' views of property take shape in a complex dialogue between themselves and the broader legal discourse within the state. They assert, contest or modify their ideas on their right to be recognised, hold property, and be governed, in interaction with the broader social world. In the process, limits to restitution become clear. At the same time, resentment may arise amongst those outside the process, who are made to "bear the burden" of whatever claims do materialise.

### **Community and governance: "No nation within a nation"**

Contemporary restitution typically imposes expectations that people should lay claim to land as communities rather than as individuals. This discourse appears to be a recent phenomenon, a manifestation of what Kuper (2003) calls the "return of the native," with an emphasis on separation and cultural distinction that, in South Africa, may not sit well with the commitment to abolish apartheid's legacy.

Even where notions of "indigeneity" appear less problematic, not all claimants are willing to frame their expectations in these terms. Dissenters may disparage such discourses and the communal landholding which they imply, or prefer to formulate claims based on a regionally distinct way of life rather than an indigenous one, as in the case of the Métis of Labrador (Plaice 2009). In South Africa, too, restitution communities have not necessarily been tied to collectivist, "traditional" claims. Some of the earliest cases involved so-called "black spots", where mission-educated Africans had bought land under individual freehold title (James, Ngonini & Nkadimeng 2005; Sato this volume). Their claims to a privileged status as owners, distinct from tenants with no formal basis for the return of property, have produced contestations between different categories of the dispossessed.

Even where native or indigenous discourses are not readily embraced, expectations of community tend to remain. In South Africa, many misunderstandings over the nature of community identity and ownership have resulted. The state and its agents, basing their approach on a "communalist discourse," have imagined community to be egalitarian and inclusive – perhaps even a proxy for "nation" itself. Claimants, in contrast, often think of it as exclusive (James 2000). In the case of District Six, exclusivist and inclusivist versions of community co-existed and were in contention among claimants (Beyers 2009). State suppositions favoured attempts to transfer ownership of farms to groups. One consequence was that communities were expected to take on the tasks of development, social services and dispute resolution. The rights and responsibilities for decisions about land use and dispute resolution among communal owners have remained unclear, causing many rural land restitution cases to founder (James 2006; Pienaar 2000).

Notions of community and separation come into tension with ideas about citizenship, sovereignty, nationhood and "public interest" (Walker this volume). If claimants, in partial collusion with the state, contend that they are members of a distinct group, their domains remain separate from the broader body politic. Exclusive ownership of land by a group may preclude its integration in matters of authority, law and order, and the provision of services. But autonomy may be accompanied by second-class status: claimants are assigned the character of subjects rather than citizens (Mamdani 1996).

Such claims to autonomy become more controversial when they strike against deeply-held national values of political equality. This is evident in the dispute over the Cayuga Nation's land claim in New York: "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?" (Blancke 2009; see also Mackey 2005). Those opposed to the claim protested 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. Opponents of restitution also used localist and anti-governmental discourses. They organised on a local basis (as residents of *Seneca County* rather than as citizens of the USA or of New York state), and their reference to the tax base asserted a local, Lockean claim to state parks – funded with *their* tax dollars – to oppose the equally parochial claims asserted by Indian nations. They claimed to have been politically disenfranchised by a *federal* legal process which marginalised the input of *local* residents.

In these and other cases, citizenship is claimed on the basis of being distinct from, rather than part of, the nation as a whole. One can find exceptions, where even as they constitute themselves as groups, claimants simultaneously assert national citizenship: claimants in the Brazilian Northeast flew the national flag while strategically “becoming Indian” (French 2009). But such a strategy of inclusivity may backfire: in Canada, the Labrador Métis claim conjoined regional and national identities, but lost out to more compelling “indigenous” claims (Plaice 2009).

### **The institutionalisation of property**

Because the state acts as arbiter and implementer of land claims, land restitution is a site where both the authority of the state and the notion of property gain currency (Westaway & Minkley 2006). Participation in Canada’s land claims process, for example, forced Kluane First Nation representatives to stake their claims in the language of property:

Just to engage in land claim negotiations, [they] 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).

In Australia, similarly, says Myers (1986, 148), “Certain features of Aboriginal land tenure became ‘fetishized’ in the claims process ... land claims are not indigenous processes, although they attempt to somehow reproduce traditional rights and claims.”

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 personal or collective history, could not invoke the story of dispossession that restitution requires. Such stories not only lay down a record of claims; they also strengthen claimant “resolve as to the legitimacy of their claims,” and may position the claimants strategically in a wider social discourse (Fortmann 1995, 1060-1). In the context of restitution, a successful claim requires compelling stories of loss that enlist the sympathy of powerful outsiders (du Toit 2000).

Such stories position claimants as eligible under a particular restitution policy. But stories of dispossession are not enough. Restitution processes, typically modelled on or taking place through courts, often require “evidence”: documents like title deeds, archival records, etc. These documents are often produced and stored by those potentially opposed to claims. Occasionally, claimants may be able to introduce non-textual forms of evidence, such as gravesites and other physical markers. At Dwesa-Cwebe, South Africa, claimants led representatives of the Land Claims Commission to deep pits where

their ancestors had stored maize. In British Columbia, Braun (2003, 99) tells how land claimants and their NGO allies identified “culturally modified trees” and then “had to educate the court on how to properly read the forest.”

Stories and documentation may not suffice where Lockean claims to property based on labour and “improvement” challenge claims based on prior occupation. Such arguments were commonplace justifications of European colonial land seizures worldwide (Verdery & Humphrey 2004, 4). In New York State opponents of a native land claim fought 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 2009). Likewise, an opponent of a land claim in the Brazilian Northeast “saw the land as representative of her father’s hard work and ambition” (French 2009).

At the same time, the promise of “improvement” can make land claims more viable. Willingness to participate in “development” contributed to the eligibility of descendants of African slaves for land restitution in Brazil (French 2009). In South Africa, “improvement” has become a near-requirement. Land beneficiaries and policy-makers face growing pressure to show that restitution is leading to “development” and “economically-beneficial” land use, particularly in the light of declining productivity following the forcible takeover of commercial farms in neighbouring Zimbabwe (Van Leynseele & Hebinck 2009; see also Aliber et al. and Derman et al., this volume).

### **The rights and wrongs of restitution**

Restitution is often thought of as a “right” to rectify earlier “wrongs.” In South Africa, many thought of restitution as similar to the Truth and Reconciliation Commission, a way of setting right the record and achieving justice for the victims of apartheid. But the need for justice means that land alone was insufficient redress. Victims require a public acknowledgement of indignities suffered. Something beyond the mere restoration of land – which was their due – “was needed by way of redress for the terrible indignity of having their houses destroyed” (James 2007, 246).

Even in less clear-cut cases, a question lurks in the background: who must be held responsible for whatever wrongs restitution is aiming to set right? If land is to be reclaimed, who will then lose it?

The state, again “both playing the game and making the rules” (Verdery 2003, 83), may take responsibility and negotiate its way out of the dilemma. In Canada the state appears to privilege restitution but in fact circumvents troublesome land claims in the broader national interest or in the interests of “development” (Nadasdy 2009, Plaice 2009, cf. Walker this volume). Land claims, however morally weighty, have not precluded military and industrial projects on claimed land. Thus although lip service was paid to the importance of restitution in Canada, it was still judged secondary to matters of broader national interest.

Environmental discourse also enters into restitution, both for and against. Claimants can appeal to the discourses of the “environmentally noble savage” (Redford 1991; cf. Ellis this volume) and to romantic notions of community resource management (Li 1996). But environmental arguments may benefit those opposed to claims. Writing of New Zealand, Dominy (1995, 365) describes “white settler assertions of native status” which included an environmental discourse and a claim to “a form of cultural and ecological adaptation that ... enable[d] them to maintain the balance between agricultural production and environmental conservation on a particular property for generations.” Even where land is restituted, concerns about conservation may severely restrict claimants’ options for the development of their land, as in land claims on protected areas in South Africa (Ntshona et al. 2006; Palmer et al. 2002; Kepe and Robins & van der Waal, this volume).

Even as it rights some wrongs, restitution may recreate others. A policy may deliberately deny eligibility to some who have lost land. As Verdery explains, restitution in Czechoslovakia and Hungary set *de facto* limits on the categories of people who might claim land by setting the dates for eligibility 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).

Specific groups of landowners may perceive that they, rather than the “nation”, are being singled out to carry the costs of restitution. In response to the fears of the white majority, New Zealand excluded private land from restitution claims, and resolved not to purchase private land for purposes of restitution (Bourassa & Strong 2002, 238-40).<sup>4</sup> In Zimbabwe white 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 may hide this behind expressions of sympathy: “if you grow up with the land you also love it, I can understand their feelings” said one man whose farm had been sold to the state for restoration to its original owners. Such sentiments may, however, mask relief at finding a buyer for their land in a declining agricultural economy (James 2007, 215).

In these cases moral equivalence is asserted. One group of “chosen people” displaces another whose members may feel equally “chosen” and experience themselves as wronged if made to bear the cost of a broader project of social justice. These costs reflect the wider political and socio-legal context, which shapes how far restitution claims are allowed to occupy the moral high ground.

## Conclusion

How then does the South African experience with restitution differ, if at all, from those others discussed here? In advanced capitalist economies where “first nation” descendants are now a tiny minority, successful restitution claims – for all their symbolic and political significance for those making them – are likely to have only minimal effects on prevailing systems of property rights and the economy. By contrast, in some European countries in the former Soviet bloc, the process of restitution concerns the transfer of landed property relatively recently seized by the state. South Africa is distinct from both in that, firstly, restitution affects not only state land but also threatens *private* property rights established through its long history of racialised dispossession; and secondly, restitution is associated with the redistribution of an asset that – perhaps too optimistically – is seen as making a potentially significant difference to the livelihood prospects of those (re)gaining the land, depending on its size, quality and location.<sup>5</sup>

Everywhere the work of restitution remains unfinished, a reminder of histories of colonial and socialist dispossession. 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, alongside the settlement of 251 “specific” claims out of 1 185 submissions (Minister of Indian Affairs and Northern Development 2003, 8-11). New Zealand’s Waitangi Tribunal had received 779 claims by 1999, and planned to entertain new claims through 2010 (Bourassa & Strong 2002, 243). 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; “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 show 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 (Verdery 2003, 20). That restitution may disappoint seems almost inevitable,

given the symbolic weight ascribed to it by claimants and activists alike. Nevertheless, it is also a persistent source of *hope*. This hope may entrench the state bureaucracy's "hope-generating machine" (Nuijten 2002), but it may also promise political and economic autonomy.

Legacies of dispossession persist: loss of land is not a once-off event, but an *ongoing process* that continues to shape the life chances of those affected and their descendants (Hart 2002, 39; Murray 1992). 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 organise, creating new forms of community and relationships with the state, restitution continues 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.

## References

- Anderson, Benedict. 1983. *Imagined Communities: Reflections on the Origins and Spread of Nationalism*. London: Verso.
- Berry, Sara. 1993. *No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa*. Madison: University of Wisconsin Press.
- Beyers, Christiaan. 2005. *Land Restitution in District Six, Cape Town: Community, citizenship and social exclusion*. Ph D diss., Sussex University.
- Beyers, Christiaan. 2009. "The Will-to-Community: Between Loss and Reclamation in Cape Town." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 141-162. London: Routledge-Cavendish.
- Blancke, Brian. 2009. "'We'll Never Give In To The Indians:' Opposition to Restitution in New York State." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 235-260. London: Routledge-Cavendish.
- Bourassa, Steven and Ann Louise Strong. 2002. "Restitution of Land to New Zealand Maori: The Role of Social Structure." *Pacific Affairs* 75(2): 227-260.
- Braun, Bruce. 2002. *The Intemperate Rainforest: Nature, Culture, and Power on Canada's West Coast*. Minneapolis: University of Minnesota Press.
- Burawoy, Michael and Verdery, Katherine. 1999. "Introduction." In *Uncertain Transition: Ethnographies of Change in the Post-Socialist World*, ed. M. Burawoy and K. Verdery, 1-18. Oxford: Rowman and Littlefield.
- Comaroff, John L., 1998. "Reflections on the Colonial State, in South Africa and Elsewhere: Fragments, Factions, Facts and Fictions." *Social Identities* 4(3): 321-361.
- Comaroff, Jean and John L. 2000 "Millennial Capitalism: First thoughts on a Second Coming." *Public culture* 12(2): 291-343.
- Cotroneo, R. and J. Dozier. 1974. "A Time of Disintegration: The Coeur D'Alene and the Dawes Act." In *The Western Historical Quarterly* 5(4): 405-419.
- Crush, Jonathan. 1995. *Power of Development*. London: Routledge.

Dominy, Michelle. 1995. "White Settler Assertions of Native Status." *American Ethnologist* 22(2): 358-374.

Dorondel, Stefan. 2009. "'They Should Be Killed': Forest Restitution, Ethnic Groups, and Patronage in Postsocialist Romania." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 43-66. London: Routledge-Cavendish.

du Toit, Andries. 2000. The End of Restitution: Getting Real about Land Claims. In *At the Crossroads: Land and Agrarian Reform in South Africa into the 21<sup>st</sup> Century*, ed. B. Cousins, 75-91. Cape Town and Johannesburg: University of the Western Cape and National Land Committee.

Fay, Derick and Palmer, Robin. 2000. "Prospects for Redistribution of Wealth through Land Reform at Dwesa-Cwebe." In *At the Crossroads: Land and Agrarian Reform in South Africa into the 21<sup>st</sup> Century*, ed. B. Cousins, 195-210. Cape Town and Johannesburg: University of the Western Cape and National Land Committee.

Fay, Derick. 2001. "Oral and Written Evidence in South Africa's Land Claims Process: The Case of Dwesa-Cwebe Nature Reserve." Unpublished paper presented at Oral History Association Annual Meeting, St Louis, October 2001.

Feuchtwang, Stephan. 2003. Loss, Transmissions, Recognitions, Authorisations. In *Regimes of memory*, ed. K. Hodgkin and S. Radstone, 76-90. London: Routledge.

Fortmann, Louise. 1995. "Talking Claims: Discursive Strategies in Contesting Property." *World Development* 23(6): 1053-1063.

French, Jan Hoffman. 2009. "Ethnoracial Land Restitution: Finding Indians and Fugitive Slave Descendants in The Brazilian Northeast." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 123-140. London: Routledge-Cavendish.

Hansen, Thomas Blom and Stepputat, Finn. 2001. "Introduction." In *States of Imagination: Ethnographic Explorations of the Postcolonial State*, ed. Thomas Blom Hansen and Finn Stepputat, 1-40. Durham: Duke University Press.

Hart, Gillian. 2002. *Disabling Globalization: Places of Power in Post-Apartheid South Africa*. Berkeley: University of California Press.

James, Deborah. 2000. "'After Years in the Wilderness: Development and the Discourse of Land Claims in the New South Africa.'" *Journal of Peasant Studies* 27(3): 142-61.

James, Deborah. 2006. The Tragedy of the Private: Owners, Communities and the State in South Africa. In *Changing Properties of Property*, ed. F. and K. von Benda-Beckmann and M. Wiber, 243-268. Oxford: Berghahn.

James, Deborah. 2007. *Gaining Ground? 'Rights' and 'Property' in South African land reform*. London: Glasshouse Press.

James, Deborah, Alex Xola Ngonini and Geoffrey Mphahle Nkadimeng. 2005. "(Re)constituting Class?: Owners, Tenants and the Politics of Land Reform in Mpumalanga." *Journal of Southern African Studies* 31(4): 825-844.

- Li, Tania Murray, 1996. "Images of community: Discourse and Strategy in Property Relations." *Development and Change* 27(3): 501-27.
- Lomnitz, Claudio. 1999. "Modes of citizenship in Mexico." *Public culture* 11(1): 269-93.
- Kuper, Adam. 2003. "The Return of the Native." *Current Anthropology* 44(3): 389-395.
- Mackey, Eva 2005. "Universal Rights in Conflict: 'Backlash' and 'Benevolent Resistance' to Indigenous Land Rights." *Anthropology Today* 21(2):14-20.
- Mamdani, Mahmood. 1996. *Citizen and Subject: Contemporary Africa and the Legacy of late Colonialism*. Princeton N.J: Princeton University Press.
- Minister of Indian Affairs and Northern Development. 2003. "Resolving Aboriginal Claims: A Practical Guide to Canadian Experiences." Ottawa: Minister of Public Works and Government Services Canada.
- Moore, Donald. 2005. *Suffering for Territory: Race, Place, and Power in Zimbabwe*. Durham, NC: Duke University Press.
- Murray, Colin. 1992. *Black Mountain: Land, Class and Power in the Eastern Orange Free State 1880s-1980s*. Johannesburg: Witwatersrand University Press.
- Myers, Fred. 1986. "The Politics of Representation: Anthropological Discourse and Australian Aborigines." *American Ethnologist* 13(1): 138-153.
- Nuijten, Monique. 2003. *Power, Community and the State: The Political Anthropology of Organisation in Mexico*. London: Pluto Press.
- Nadasdy, Paul. 2009. "The Antithesis of Restitution? A Note on the Dynamics of Land Negotiations in The Yukon, Canada." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 85-98. London: Routledge-Cavendish.
- Nadasdy, Paul. 2002. Property and aboriginal land claims in the Canadian Subarctic: some theoretical considerations. *American Anthropologist* 104(1): 247-61.
- Ntsebeza, Lungisile. 2005. *Democracy Compromised: Chiefs and the Politics of the Land in South Africa*. Leiden: Brill.
- Ntshona, Zolile; Kraai, Mcebisi; Nomatyindyo, Nandipa. 2006. "Rights Enshrined but Rights Denied? Post-Settlement Struggles in Dwesa-Cwebe in the Eastern Cape." Paper presented at the conference Land, Memory, Reconstruction and Justice: Perspectives on Land Restitution in South Africa, Houw Hoek, September 2006.
- Nuijten, Monique. 2003. *Power, Community and The State: The Political Anthropology of Organisation in Mexico*. London: Pluto Press.
- Nuijten, Monique and David Lorenzo. 2009. "Dueños De Todo Y De Nada! (Owners Of All And Nothing): Restitution Of Indian Territories In The Central Andes Of Peru." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 185-209. London: Routledge-Cavendish.

- Palmer, Robin; Timmermans, Hermann, and Fay, Derick, ed. 2002. *From Confrontation to Negotiation on South Africa's Wild Coast: Conservation, Land Reform and Tourism Development at Dwesa-Cwebe Nature Reserve*. Pretoria: Human Sciences Research Council.
- Palmer, Robin; Fay, Derick, and Timmermans, Hermann and Christo Fabricius. 2002. "A Development Vision for Dwesa-Cwebe." In *From Confrontation to Negotiation on South Africa's Wild Coast: Conservation, Land Reform and Tourism Development at Dwesa-Cwebe Nature Reserve*, ed. R. Palmer, H. Timmermans, and D. Fay, 272-305. Pretoria: Human Sciences Research Council.
- Pienaar, Kobus. 2000. "'Communal' Property Institutional Arrangements: A Second Bite." In *At the crossroads. Land and agrarian reform in South Africa into the 21<sup>st</sup> century*, ed. B. Cousins, 322-339. Cape Town and Johannesburg: University of the Western Cape and National Land Committee.
- Plaice, Evelyn. 2009. "The Lie of the Land: Identity Politics and the Canadian Land Claims Process in Labrador." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 67-84. London: Routledge-Cavendish.
- Povinelli, Elizabeth. 2004. "Cultural Recognition - At Home in the Violence of Recognition." In *Property in Question: Value Transformation in the Global Economy*, ed. K. Verdery and C. Humphrey, 185-206. Oxford: Berg.
- Redford, Kent. 1991. "The Ecologically Noble Savage." *Cultural Survival Quarterly* 15 (1): 46-48.
- Rowlands, Michael. 2004. "Cultural Rights and Wrongs: Uses of the Concept of Property". In *Property in Question: Value Transformation in the Global Economy*, ed. K. Verdery and C. Humphrey, 207-226. Oxford: Berg.
- Shipton, Parker. 1994. "Land and Culture in Tropical Africa: Soils, Symbols and the Metaphysics of the Mundane." *Annual Review of Anthropology* 23: 347-77.
- Strathern, Marilyn. 2005. "Land: Tangible or Intangible Property." Amnesty International lecture, Oxford.
- Tiedje, Kristina. 2009. "Que Sucede Con *Procede?* The End Of Land Restitution in Rural Mexico." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 209-234. London: Routledge-Cavendish.
- Trouillot, Michel-Rolph. 2001. "The Anthropology of the State in the Age of Globalization." *Current Anthropology* 42(1): 125-138.
- Van Leynseele, Yves and Paul Hebinck. 2009. "Through The Prism: 'Shifting Articulations' and Local Reworking of Land Restitution Settlements in South Africa" In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, ed. D. Fay and D. James, 163-184. London: Routledge-Cavendish.
- Verdery, Katherine. 1996. *What Was Socialism, and What Comes Next?* Princeton: Princeton University Press.

Verdery, Katherine. 1999. "Fuzzy Property: Rights, Power and Identity in Transylvania's Decollectivization." In *Uncertain Transition: Ethnographies of Change in the Post-Socialist World*, ed. M. Burawoy and K. Verdery, 53-82. Oxford: Rowman and Littlefield.

Verdery, Katherine. 2003. *The Vanishing Hectare: Property and Value in Post-Socialist Romania*. Ithaca NY: Cornell University Press.

Verdery, Katherine. 2004. "The Obligations of Ownership: Restoring Rights to Land in Postsocialist Transylvania." In *Property in Question: Value Transformation in the Global Economy*, ed. K. Verdery and C. Humphrey, 139-160. Oxford: Berg.

Verdery, Katherine and Caroline Humphrey. 2004. "Introduction: Raising Questions about Property." In *Property in Question: Value Transformation in the Global Economy*, ed. K. Verdery and C. Humphrey, 1-28. Oxford: Berg.

Walker, Cheryl. 2000. "Relocating Restitution." *Transformation* 44: 1-16.

Westaway, Ahsley and Minkley, Gary. 2006. "Rights versus Might: Betterment-related Restitution and the 'Constitutive Outside' of South Africa's new Capitalist Modernity." Paper presented at the conference Land, Memory, Reconstruction and Justice: Perspectives on Land Restitution in South Africa, How Hoek, September 2006.

Yashar, Deborah. 2005. *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge*. Cambridge: Cambridge University Press.

<sup>1</sup> This chapter draws upon a panel at the 2005 Annual Meeting of the American Anthropological Association and the introduction to Fay & James 2009.

<sup>2</sup> "Identity of Richtersvelders under scrutiny," *Sunday Times*, 4 May 2005.

<http://www.suntimes.co.za/zones/sundaytimesnew/newsst/newsst1115212706.aspx>.

<sup>3</sup> In the USA in the late nineteenth century, sales of newly individually titled land 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" (Cotroneo & Dozier 1974, 405-6).

<sup>4</sup> This had the unintended effect of making farmers who *lease* state-owned land particularly vulnerable to restitution claims (Dominy 1995).

<sup>5</sup> We are grateful to Henry Bernstein for pointing out these key differences.