

Restitution: A revised paradigm for the transformation of poverty and inequality in South Africa

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ABSTRACT

This paper fundamentally asks what is necessary to fast track social transformation and achieve peace, justice, and reconciliation in South Africa. It offers a new framework with which poverty and inequality might be addressed using a broadened understanding of the notion of ‘restitution’. It does so in order to more closely align reconciliation and transformation, concepts that have created tension in the national dialogue over the past two decades. We argue that ‘restitution’, when viewed beyond the narrow confines of legal remedies or land redistribution strategies, offers a productive way in which to address poverty and inequality. The paper provides an overview of the ways in which the term ‘restitution’ has historically been defined and used, and foregrounds the contribution of non-legal scholars such as philosophers, psychologists, political scientists and criminologists towards new applications of restitution that extends the concept to include interpersonal reconciliation, conflict resolution, a new international morality (Barkan), forward- and backward-looking restitution for individuals who benefit from injustices (Calder), the suggestion that restitution offers a means of rehabilitation for perpetrators (Eglash) and the ways in which restitution can be transformational (Lambourne). It proposes the usefulness of expanding the conventional definition to include the restitution of personhood and offers both a starker and broader definition of restitution that deals with how civil society can ‘pay back for wrongs previously committed’ and ‘make things right’ in multiple spheres of human experience, through addressing the restoration of dignity, memory, equality, opportunity, means and citizenship amongst those dishonoured by injustice. Finally, it provides an analysis of individual, civic and government-led actions of restitution, viewed through this revised paradigm, including the work of the Solms-Delta project, the Home for All campaign, the Worcester Hope and Reconciliation Initiative as examples of civic-led initiatives; and government plans for youth job and housing subsidies, commemorations of the 1913 Land Act, and acting as a guarantor for commercial loans to individuals not deemed creditworthy.

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Introduction

The idea of restitution appears most frequently in post-conflict literature as a strictly legal concept, often in relation to the restoration of private property. Yet work by philosophers, psychologists, political scientists and criminologists has theorised new applications of restitution that extends the concept to include interpersonal reconciliation. The drive for a more broad-based conception of the term includes international and domestic conflict resolution, including that between states, groups and individuals. This paper reviews the legal definitions of restitution, Barkan's theory of restitution as part of a new international morality, Calder's forward- and backward-looking restitution for individuals who benefit from injustices and the suggestion by Eglash that restitution offers a means of rehabilitation for perpetrators. Furthermore, it argues that a broader notion of restitution has the potential to promote the aims of justice and widen its interpersonal ambit, to include both social and structural dimensions.

By explicating these old and new concepts, the paper seeks to address challenges to restitution and to ensure future innovations are grounded in common understanding. Building on the existing scholarship surrounding restitution, it then offers a new conceptual model for understanding restitution as a process towards effecting justice in a context where harm has occurred. This conceptual model also addresses the complicated relationship between peace, transformation, reconciliation and justice, and takes special cognisance of socio-economic inequalities and psychological distress caused by injustice. At its heart is an effort to shift focus from only government-led, legal and political remedies, to highlight the possibilities that exist at the individual and social levels. While government and legal programmes such as penalty payments, land redistribution and affirmative action are important they are less likely to encourage the civil society, and community and individual actions necessary to bring about social transformation in spaces fragmented by injustice-fomented inequality. This revised conception of restitution is offered in response to a call by Archbishop Emeritus Desmond Tutu, at the conclusion of South Africa's Truth and Reconciliation Commission, for 'a social dynamic that includes redressing the suffering of victims' of Apartheid injustice. This social – as opposed to government-led – dynamic has never fully emerged in South Africa, and inequality along Apartheid lines continues to grow, with the beneficiaries and architects of Apartheid still enjoying one of the highest standards of living in the world.

We begin by outlining the legal and historical understanding of restitution before proceeding to discuss recent contributions from scholars across a range of disciplines.

Restitution in historical (and legal) perspective

The practice, understanding and theorising of post-conflict restitution measures has long resided in the legal domain.¹ Unsurprisingly, therefore, a review of the literature on restitution processes exemplifies this juridical approach to peace building. Case studies over the past 20 years of restitution following conflict and for historical injustices have predominantly featured the restoration of private property as part of the immediate or extended transformation of society. In South Africa, for example, a programme of land restitution followed the negotiated political transitions from authoritarian rule under

¹ For a discussion on the merits of a legal approach to transitional justice, see, Laplante (2008). Conversely, for a detailed and critical argument against the prominence of law in the practice and study of transitional justice, see, McEvoy, (2007).

Apartheid (Walker, 2005). In other contexts, Native Americans in the United States have sought restitution for land, sacred artefacts and the decent burial of ancestors; Maori in New Zealand have claimed restitution rights to land and fisheries; and Australian Aborigines have sought the restoration of land, including the accompanying rights to resources (Barkan, 2000; Bourassa & Strong, 2000). The success of these programmes has proven to be somewhat limited; in some contexts controversy has overshadowed the achievements that have been made. In Zimbabwe, for example, the issue of land restitution was bound up with the unrest in the country starting in 2000.

In contrast to the troubled history of property restitution in Zimbabwe and, increasingly, in South Africa, the case of Bosnia-Herzegovina has gained traction in post-conflict literature for its purported successes in initiating reconstruction (Williams, 2005, 2006). There, considerable efforts by the international community have aimed to return people displaced by violence to their homes. Indeed, the hostilities in the former Yugoslavia during the 1990s initiated a raft of international resolutions and policies on internally displaced persons (IDPs). Notably, the Dayton Peace Agreement of 1995 ended that conflict and laid the foundations for the return of those Serbs, Muslim Bosniaks and Croats forced from their homes during the violence (Ballard, 2010). A decade later the UN approved *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* (2005), arguably the most wide-reaching policy document in post-conflict property restitution.

Though this paper seeks to move beyond the legal definition of restitution, law remains the most prominent proponent of restitution in society and a natural point of departure for definitional comparisons. Birks (1985) describes legal restitution as an act of restoration that seeks specifically to rectify a case of unjust enrichment at the expense of another by giving up something, or its value in money, to the victim. In the legal context of resolving an injustice, compensatory and gain-stripping remedies are distinguished. According to Doyle and Wright (2001), the former recompenses the victim for the wrong committed by giving up the unjustly got object; the latter, often termed 'restitutionary damages', 'strip[s] the defendant of any profit or gain made through the commission of a wrong', as no person should benefit from their unlawful actions (n.p.). To a large degree, restitutionary damages can be understood as an underpinning aspect of the view that an individual can only rightly be said to have been fully recompensed for an illegal act against them 'when he or she is as well off as he or she would be if the act had not been carried out' (Meyer, 2006, p. 408).

This counterfactual approach to paying restitution concentrates on rectifying what has not come to pass because of an injustice. Such reasoning may sustain scrutiny when assessing the unrealised interest on invested funds, for example. However, it is bound to attract the same criticism faced by utilitarian scholars who strive to identify moral actions that provide satisfaction for the most people. That is, that '[i]nterpersonal comparisons of happiness cannot ... be done very precisely, nor through standard scientific methods' (Sen, 1999, p. 58). Similarly, questions exist over how one could ever determine the outcomes of possible choices made by claimants in the period following an injustice. Even the restoration of land or housing to IDPs does not satisfy the strictly legal definition of restitution, as the dispossessed could conceivably have used their property in any number of ways for material gain in the period in which they were displaced.

Just as common law principles of restitution impact post-conflict measures of justice, so the application of restitution in international law influences these mechanisms. The International

Law Commission (ILC) lists restitution as the first legal remedy in its *Articles on Responsibility of States for Internationally Wrongful Acts* and describes it as restoring 'the situation which existed before the wrongful act was committed' (2001). Article 34 states:

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Notably, Articles 36 and 37 of the ILC Articles delineate material compensation and satisfaction for injustices respectively as alternative forms of reparation to be adopted if restitution cannot be enacted. Moreover, Article 37 states that satisfaction, which may involve 'an expression of regret, a formal apology or another appropriate modality' should only be resorted to in the case that restitution and compensation cannot be made. Apologies are thus distinguished from restitution, though they may form part of the reparation process.

Established by the United Nations in 1949, the ILC has an undeniably global bearing on public international law; the ILC Articles have comparable influence in settling disputes between nations.

Contemporary scholarship on restitution

Despite restitution having its bedrock in law, in recent years especially the focus on restitution and its applications in society has burgeoned as a moral response to particular historical injustices, as well as more diffuse domestic and international socioeconomic inequalities. Many of these inequities were entrenched during authoritarian rule and remain intractable even after negotiated transitions. The restitutive responses that we outline here demonstrate the interrelationships between legal, psychological, criminological and philosophical concepts of restitution.

From the standpoint of international relations, we pay special attention to *The Guilt of Nations*, a seminal work by the US-based Elazar Barkan. A historian by training, Barkan attempts to formulate a theory of restitution with a focus on international and public affairs. Considering Barkan's focus on restitution between nations and international morality, what he describes as the 'demand that nations act morally and acknowledge their own gross historical injustices' (Barkan, 2000, p. 1), it is salutary to reflect on his theory of restitution in conjunction with the ILC Articles. While Barkan (2000) states that in a legal context restitution is separate from and distinct to reparations, he also uses the term restitution 'more comprehensively to include the entire spectrum of attempts to rectify historical injustices' (Barkan, 2000, p. xix). This lack of articulation between Barkan's restitution and that of the ILC is important to note, as Barkan's theory of restitution is the most cogent attempt in the international arena of peace building to connect the moral debts of states and individuals with the performative acts of repentance and attempts at reconciliation. By clustering different concepts under one term, he is able to encapsulate an idea of a more morally conscious world. In doing so, however, he foregoes the legal distinction which accompanies restitution, reparations and apologies. The significance of this is illustrated by the ongoing conversation in post-conflict literature on what are the best measures to deal with the past whilst simultaneously attempting to reconcile groups to build a peaceful nation (cf. Sarkin, 2001).

Next, we examine the argument for what the American criminologist Albert Eglash (1957) terms 'creative restitution'. We draw links between Eglash's suggestions and the

contemporary notion of restorative justice before considering the relationship between restitution, the moral debts of nations, individual responsibility and structural injustice. Finally, the argument for a transformational mode of justice, posited by the Australian peace and conflict scholar Wendy Lambourne (2009), is analysed for the ways in which it poses the possibility for individual and group restitution following truth commissions.

Eglash and Barnett's most noticeable claim is that restitution focuses primarily on the rights of the victim, rather than the punishment of the person at fault. From a criminological aspect, Barnett, a lawyer and law professor in the United States, goes so far as to condemn retributive punishment as a paradigm that 'offers no incentive for the victim to involve himself in the criminal justice process other than to satisfy his feelings of duty or revenge' (Barnett, 1977, p. 285). Barnett's concern resonates with Eglash's suggestion that restitution should be 'a constructive effort' (Eglash, 1957, p. 619). From this perspective Eglash, an American psychologist, contends that restitution imposed in response to wrongful acts would be superior to retributive punishment alone. He refers to 'creative restitution' as a new model of justice and in keeping with Meyer states that creative restitution 'requires that a situation be left better than before an offense was committed' (Eglash, 1957, p. 620). 'Restitution,' he asserts, 'has no limit' (Ibid).

Within this broad understanding, Eglash argues for the opportunities that restitution offers a perpetrator to rehabilitate him- or herself: 'Because restitution is a voluntary, creative, life-long task, it is a growth process' (Eglash, 1957, p. 621). He suggests that restitution need not only occur between individuals, but that it can be a group practice too. Furthermore, he specifically notes that the group, consisting in part of the offenders and victims, should not prescribe any sort of restitutionary sentence, but should rather 'stimulate, support, suggest, and guide' the person guilty of performing the injustice to make good his debt to the victim (Ibid).

Eglash's comments on group involvement in helping to resolve a dispute bear strong resemblance to the tenets of restorative justice. According to John Braithwaite, an Australian criminologist and leading restorative justice scholar, 'For informal justice to be restorative justice, it has to be about restoring victims, restoring offenders, and restoring communities as a result of participation of a plurality of stakeholders' (Braithwaite, 1999, p. 1). Eglash's innovative understanding of restitution seems to anticipate the restorative justice agenda which has been widely proposed as a peace-making initiative. Considering restitution's irrevocably restorative nature, it is useful to state Braithwaite's 'dimensions of restoration' to highlight the continuities between the two modes: 'restoring property loss, restoring injury, restoring a sense of security, restoring dignity, restoring a sense of empowerment, restoring deliberative democracy, restoring harmony based on a feeling that justice has been done, and restoring social support' (Braithwaite, 1999, p. 6).

In that the ideas encompassed in the notion of restitution inform restorative justice, the community-led programmes successfully implemented in various forms in New Zealand, the United States and Canada should be of interest to scholars of restitution.² The restitutive-restorative agendas of these programmes, as proposed by Eglash and Braithwaite, are underpinned by willingness from all parties to negotiate the steps to be taken to remedy an injustice. In this sense they reflect a facet of Barkan's theory of restitution, namely that voluntarism is the lifeblood of international morality:

² For an extensive discussion of examples of restorative justice programmes, see, Braithwaite (1999).

Restitution as a new system is distinct from past practices in that both sides enter voluntarily into negotiations and agreements; they are not imposed by the winner upon the loser or by a third party (Barkan, 2000, p. 317).

In the field of transitional justice, the objectives of the community-based Rwandan *gacaca* courts most closely correspond to these restorative ideals. Notably, however, the contemporary function of the Rwandan traditional dispute resolution courts lacks the voluntarism promoted by Barkan and Eglash. As Brewer states of the *gacaca*, 'It was not preference for the principles of restorative justice that moved the Rwandan government; it was logistics that defeated the attempts to impose retributive punishment' (Brewer, 2010, p. 113). The Rwandan justice system, unable to cope with the burden placed on it in the post-genocide period, co-opted the *gacaca* courts into its legal structures. In dealing with offenders with links to the genocide, the *gacaca* have, firstly, deviated from their customary scope by addressing cases of murder. By gaining jurisdiction from the government to return individuals to prison, the *gacaca* courts have also diverged from the ways they would ordinarily resolve disputes. Following this role change for the *gacaca*, Rwandans have turned more frequently to the state justice system to resolve personal disputes (Sarkin, 2001). In this instance one cannot help but feel that Rwandan civil society has been annexed to state structures and that individuals are moving away from, rather than towards, a paradigm of creative restitution.

Shared responsibility and collective moral debt

Whilst the *gacaca* have been charged with trying individuals, one of the primary virtues of Barkan's work is that it highlights responses to corporate guilt, shame, responsibility and efforts at public reconciliation. Historical injustices perpetrated against a group (or groups) of people, acts of genocide and war are all instances in which shared accountability and responsibility following the atrocities can be invoked, especially where the effects of the perpetrations remain evident. Barkan (2000) identifies Germany's reparations to Israel for the Holocaust as 'the moment at which the modern notion of restitution for historical injustices was born' (p. xxiv). In considering political identity, national memory and collective debt, the American political scientist W. James Booth (1999) takes up Germany's response to the legacy of World War II to discuss the role of political traditions in determining how a nation understands its past and responds to it as a political collective. He states at one juncture that 'we are our past as well as our future' (Booth, 1999, p. 259) and concludes, amongst other things, that whilst one may wield a philosophy of liberalism and declare the supremacy of the individual, one's political identity, as a citizen of a nation or a member of a community, cannot be entirely freed of the past or the moral debts that accompany that history.

Booth's encompassing philosophy has clear implications for group-based restitutionary processes as it foregrounds the continuity of political identities and the enduring effects of wrongs committed by prior generations. It also adds to the debate regarding the effectiveness of transitional justice mechanisms, at the core of which is the argument that while trials and truth commissions are often necessary to address the legacies of conflict, on their own they are seldom sufficient to satisfy victims' sense that justice has been done (Lambourne, 2009). In short, specific events often assume prominence ahead of the *longue durée* of a conflict. Thus, Lambourne argues for 'transformation' of historical structures borne of the entirety of events ahead of 'a focus on "transition" as an interim process that links the past and the future' (Lambourne, 2009). She asserts that 'a model of transformative justice that supports

sustainable peacebuilding' would, more than transitional justice, attend to the psychological, economic and political needs of societies seeking long-term changes (Ibid, p. 30). One of Lambourne's key observations is that any social, political and economic transformation should not only attend to 'the multiple justice needs' of the society, but should also take into account the forms of justice the affected group perceives to be sufficient (Ibid, p. 29).

Pertinent to the issue of victims' expectations of justice is the anthropologist Mahmood Mamdani's by now well-known contention with respect to the South African Truth and Reconciliation Commission (TRC) that '[t]o address their [victims of Apartheid] grievances required reparations for communities, not for individuals' (Mamdani, 2002, p. 54). Yet the Commission's stance was to award amnesty to perpetrators and monetary grants to individual victims as a form of reparation. The perpetrators' acknowledgement of guilt and showing of contrition might be construed as an attempt to restore a sense of dignity in the victim (or the victim's family). If we are to return to the legal basis of restitution, however, it is evident that penitent exposition on the part of the perpetrators will neither restore the victims to their original state before the crimes were committed, nor will it place them in a position they would have been in were it not for the injustice they experienced. The same argument holds regardless of the victims' opportunity to tell their story and have it heard, though the importance of that process should not be underestimated. Seen through the lens of transformative justice and bearing in mind Mamdani's idea of corporate injury, perpetrators could conceivably make restitution to the aggrieved non-white community in any number of ways. The TRC would be 'a bridge from the past to the future' (Andrews, 2003, p. 50), but only in so far as each individual's formal confession is seen as the first step to a more practical, restitutionary process.

The structural injustice institutionalised by Apartheid invokes the Canadian philosopher Todd Calder's notion of shared responsibility for injustice (Calder, 2010). In this instance, any person who was involved in the subjugation of another during the Apartheid era, or benefitted from it indirectly, is surely liable to make restitution to eliminate the broader structural injustices that resulted. Since 2000, more than 20 states established their own truth commissions, many of them styled around the South African TRC (International, 2010). Several of these have had the authority to recommend amnesty for individuals according to certain criteria, leading one to question whether a perpetrator granted amnesty by a political authority is still indebted to her individual victims for the injustices committed. Strikingly, Jeffrie Murphy, a prominent philosopher and law professor in the United States, objects to judicial mercy on the grounds that mercy – other terms may be 'forgiveness' or 'grace' – is 'a private virtue' that an individual may exercise at their discretion (Murphy, quoted in Steiker, 2008, p. 46). As a 'public virtue', however, Murphy sees no place for mercy and sees it as an inconceivable injustice: 'If mercy requires a tempering of justice, then there is a sense in which mercy may require a departure from justice' (Murphy, quoted in Steiker, 2008, p. 46). The point of focusing on Murphy's concerns is not to dispute the TRC's granting of amnesty specifically but rather, firstly, to highlight the sense of discontent the state may inflict on victims who feel that their expectations of justice have been disregarded. Such an executive judgement recalls the criticism expressed by various restitution theorists that crimes, when viewed from a retributive perspective, are seen to have been committed against society and the state. Second, if one is to abide by Murphy's conviction, then the state's amnesty is only a partial pardon; the perpetrator still owes a moral, if not legal, debt to the aggrieved person. How the wrongdoer is to discharge their responsibility is not clear. Nevertheless, Eglash's creative restitution may play a part in determining some sort of response. So, too, might

Calder's argument for restitution based on collective responsibility, though this paradigm, discussed in the following section, is subject to its own set of criticisms.

Challenges to the notion of restitution for historical and continuing injustices

The efforts of disciplines outside of law to formulate alternative restitutions, though instructive, have nevertheless had detractors. In particular, the drive for a more broad-based conception of the term that extends its focus from rectifying past injustices to ongoing processes of social change has drawn criticism that it forgoes a distinct definition of restitutive justice (Vernon, 2003). At the heart of the most cogent challenges to who deserves restitution, an issue discussed at length at a later point, is the question, When does a theory of restitution become a cure-all for social grievances so that the concept is stretched beyond its limits?. Such debates suggest that a socially relevant and defensible theory of restitution needs to be interrogated for what benefit there is of intertwining old and new concepts often rooted in a variety of disciplines.

The most widely debated challenges to restitutionary claims focus on the difficulties of determining precisely who is a victim of historical injustices and, therefore, who deserves restitution. The non-identity problem, expressed first by Derek Parfit (1984), a British philosopher, primarily argues that descendants of groups who have been unjustly treated would not exist were it not for the injustices perpetrated against their grandparents and parents which ultimately led to the circumstances which brought together their parents. The most compelling counter-argument to the limitations of this challenge points to injustices committed against a group such that individual descendants suffer indirectly from the lack of opportunities afforded their parents. In instances in which groups of people have historically been systematically and differentially deprived of fundamental rights and opportunities and thereby subjected to prolonged structural violence (often coupled with real violence) this argument is particularly convincing.

The potential pervasiveness of structural violence across generations is well illustrated in an ethnographic study of poor youth living in a South African township. From within the milieu of township life, including a lack of proper shelter and high unemployment amongst youth and adults, one young woman stated: 'Apartheid hasn't affected my life. I live in a freedom world now. I will have a house like yours if I work hard.' This was a common sentiment amongst interviewees: young people did not recognise or were unable to articulate the ways in which the Apartheid system impacted on their current socio-economic situation and the lack of life opportunities open to them (Swartz, Hamilton Harding, & De Lannoy, 2012). From this perspective, the non-identity problem appears to overlook situations in which individuals' opportunities to prosper have been curtailed because, as dependents, they were indirectly subject to the same injustices as were their parents.

Ironically, the sentiment expressed by the young people in the abovementioned study that they live in a 'new' South Africa with seemingly unprecedented possibilities to prosper appears initially to support the second major criticism of restitution for historical wrongs. The legal philosopher Jeremy Waldron (1992) proposes the supersession thesis, the crux of which is that injustices do not exist independently of dynamic social circumstances. Thus, a situation may conceivably arise in which circumstances overtake the initial significance of an injustice such that it nullifies its significance completely. However, sceptics of Waldron's assertion hold that the likelihood of this occurring is low with regard to historical grievances, let alone contemporary ones. Nevertheless, at the heart of Waldron's argument is that

responses to historical injustices should take into account the social, economic and political complexities of lived life so that moral outrage, though often warranted, does not become the sole determinant of the remedy.

Chandran Kukathas (2006), an Australian political theorist, similarly argues against a conflation between restitution and distributive justice, but is concerned with distinguishing who is liable for providing restitution, not who deserves it. He refers to this as ‘the problem of agency’ and asserts that individuals ‘can be held responsible for some of the wrongs of the past, but one generation cannot be asked to atone for the sins of earlier ones’ (Kukathas, 2006, p. 331). Kukathas maintains that restitution must implicate the perpetrators of ‘particular wrongs’ (Ibid, p. 332). Structural injustice that denies equality among groups is not, he asserts, a credible claim for restitution; it is merely the declaration of the indigent the world over.

Arguably, this contained notion of restitution does not correspond with the realities of post-conflict societies. As Nevins (2003) notes with reference to the South African Apartheid regime, ‘certain groups accrued great socio-economic benefits, and others were impoverished’ (p. 686). To be sure, Apartheid rule was conspicuous even among other authoritarian regimes for its deeply pervasive, systemic character. Single-group benefit at the expense of others is nonetheless common in conflict. How peace-time communities are to respond to this inequality recalls Calder’s statement that ‘whether or not we participate in, or contribute to, practices that result in injustices’ we are liable for some form of restitution because we gain something from them (Calder, 2010, p. 264). The strength of Calder’s argument is that it recognises that any sort of structural injustice has its foundations in the absorbance of that political or economic system into everyday events and common sense thinking. Calder uses the example of a Western, middle-class woman, Janis, who through lack of interest in global affairs and ignorance of her globally networked existence, persistently perpetrates acts of injustice. ‘In sum, Janis tacitly supports structural injustices suffered by sweatshop workers living in developing countries through her actions, omissions, and attitudes. For this reason she shares responsibility for these injustices’ (Ibid, p. 268). As Calder notes, Janis would be liable for moral, not legal, restitution; she has, after all, not done anything unlawful.

According to Calder’s argument, even those people who cannot avoid the benefits of structural injustice still have a moral responsibility to repay unjust gains. Calder places considerable emphasis on the moral repugnance of unjust enrichment, the unlawfulness of an individual benefiting at the expense of another. Those who commit injustices are responsible, he asserts, for ‘backward-looking’ restitution – they are liable for a particular past wrong. He also argues for ‘forward-looking’ restitution, which differs from his former notion in that it is an undertaking for the future, recognising and taking responsibility for a shared moral debt (Ibid, p. 269). In sum, Calder argues for the recognition of individuals’ roles in collective perpetrations of structural injustice. In so doing, he argues for shared responsibility in making good those debts due because of indirect benefit.

Calder is not alone in drawing on the terms forward- and backward-looking to describe the kinds of reparations groups and individuals can make. Leif Wenar, a philosopher based in the United Kingdom, distinguishes backward-looking reparations (he does not differentiate between restitution, compensation or apologies) to describe initiatives that ‘speak of the importance of restoring a moral balance, or of mending the torn fabric of the political order’ (Wenar, 2006, p. 397). Conversely, a forward-looking principle of reparations ‘may refer to

past events, but when it does so this is only to determine how to improve the future' (Ibid.). Wenar suggests that only forward-looking reparations are able to navigate the philosophical pitfalls of addressing historical wrongs, encapsulated by the challenges outlined above. To take the most common instance of restitution in transitional justice literature – land and housing restitution – it may be the case, as in the example of Bosnia-Herzegovina, that victims are still alive. Tracing their right to the restoration of property is unproblematic. However, the value for post-conflict scholars and practitioners of taking a forward-looking, or future-oriented, stance is clear. Foremost amongst these benefits would be that proponents of transitional justice might be able to refute sceptics' assertions that trials and truth commissions are primarily concerned with 'digging up the past' (Thoms, Ron and Paris, 2010).

This section has discussed several, mainly philosophical, arguments against the application of restitution in response to historical and contemporary injustices. The following section elaborates on the social and political complexities that arise once a programme of restitution has been implemented.

Complexities of restitutive processes

The advancement of land and property restitution as a means of addressing the legacy of conflict is most frequently couched in the language of human rights. Yet several studies illustrate, especially with regard to restitution made to First Nation or aboriginal peoples, the complexities involved in making property restitution to groups. Barkan (2000, p. 312) encapsulates the practical and intellectual stumbling blocks to successful restitution by stating:

The attempt to bridge individual and group rights is difficult especially when the two rights conflict and the rights of the citizen as individual are challenged by her membership in the group.

In this vein, Bourassa and Strong (2000) have documented tensions between who represents Maori claims for land and fisheries. They note, for example, how urban Maori who do not belong to the central unit of traditional Maori society have been excluded from the restitution process. Similarly, Everingham and Jannecke (2006) conclude from their evaluation of land restitution in four areas in South Africa that 'individuals and factions may harbour particular interests and may be connected to competing groups in the contemporary community' (p. xxx). These findings resonate with the case of ongoing restitution of property in District Six in inner-city Cape Town, South Africa. Beyers (2007, p. 267) notes how a "rights community" has formed that includes some and excludes others according to the ways in which claimants articulate their belonging in a 'community' that has come to be defined by the bureaucratic procedures of the restitution process. At its most elementary level, his analysis of the District Six case illustrates clearly how restitution of any sort is more than merely a legal project. It is intrinsically a social and political process intimately tied in with individual and group belonging, either to a community or a nation. Just as a restitutionary process holds the prospect of restoring an individual to first-class citizenship, as is often proclaimed, so it is possible that it may exclude others from that goal.

Extending these anxieties surrounding the intra-group complexities of restitution to those between groups, Barkan (2000) recognises how the power dynamics that exist between the perpetrator and victim or oppressed and oppressor lie at the heart of extra-legal restitution. He

describes a voluntary process of restitution and negotiation, in which he includes monetary compensation and apologies, which ideally eliminates partisan scenarios of victors' justice. Furthermore, he raises the issue of continuing power differentials between former oppressors who have retained their position of power and their one-time victims who have yet to attain comparable economic or political influence. Thus, he pre-emptly the possible questions surrounding the validity of voluntary reparations made through monetary compensation:

Restitution could be seen as an inexpensive way for powerful nations and governments to regain the appearance of just societies while maintaining their position of hegemony and control. From this position, under the oratory of equal and democratic ideals, restitution may be viewed as lip service in a hegemonic ideology and as facilitating further exploitation of resources by the multi-nationals and the all-powerful West (Barkan, 2000, p. 343).

Though Barkan concedes that 'the discourse of restitution is often economic' (Ibid.), he nevertheless maintains that the cultural and political benefits of monetary compensation to victims outweigh the limitations of purely material reparations. It is possible that Barkan's deliberative process of restitution may help victims 'by enabling them to gain better standards of living and enhancing their political and cultural claims on public spaces' (Ibid.). Indeed, Eglash also emphasises the advantages of group discussion and consensus-making to help guide offenders to make creative restitution. In contrast, Calder does not propose any outline of what forms of dialogue might be involved in shared restitution. The striking discrepancies in the degrees to which these prominent scholars recognise and respond to the socioeconomic imbalances between parties are striking and draw attention to the need to focus on the varied and complex processes of restitution.

In the final section of this paper, we offer the beginnings of a new conceptualisation of restitution that defines restitution simply in terms of 'paying back for past wrongs committed' and 'making things right' for past injustices, and links together notions of restitution and personhood with justice, peace, transformation and reconciliation.

A reconceptualised understanding of restitution

A renewed conceptualisation of restitution requires a subtle shift in definition. In its simplest definition restitution may be seen as the act of paying back for wrongs previously committed; the act of making right symbolically or materially. Restitution could be said to include philosophical, emotional, theological, psychological, physical and economic elements. The more we speak about and understand the deep implications of restitution and what it means to 'make things right', the better equipped we may become to embark on the transformation project that tackling inequality and poverty require. 'Making things right' undergirds a reconceptualised understanding of restitution for two reasons. The first is that the more formal definition, that of 'restoring to the state it was before' is seldom an achievable aim – especially if much time has passed since the injustice was committed or if the relationship in which the parties found themselves were not desirable in the first place, e.g. Colonialism. The second is the inadequacy of legal restitution, namely financial reparations. In many cases what was lost cannot be remedied through financial compensation alone. For this reason 'making things right' and 'paying back' includes both financial and psychological redress. It allows for a more relational interaction between those dishonoured by injustice and those complicit with it.

The relationship between justice, peace, transformation and reconciliation

Ultimately this paper presents the thesis that the notion of restitution, more broadly applied, offers a new paradigm through which poverty and inequality may be addressed. Included in such a conceptualisation is an explication of the relationship between justice, transformation, reconciliation and peace building processes. Each of these terms are complex and variously defined across history and from multiple disciplinary perspectives. For the purposes of our discussion we offer the following understandings of each term.

Justice. There are many variations of justice, underpinned by different moral principles and played out in different institutional forms. Some of these variations are retributive justice, distributive justice, restorative justice, transitional justice and social justice, with its primary concern the inequality in society. Despite their philosophical differences, the forms of justice mentioned here nevertheless coincide and are linked in many ways.

Peace processes. Peace processes are currently the preferred term to use when speaking about ending conflict. It has replaced terminology such as conflict resolution or management, and includes cease-fires, peace accords, apologies, truth commissions, and developing governance systems to maintain and encourage peace (Brewer, 2010). These processes can occur at individual, social and structural levels.

Reconciliation. Aiken (2010) describes reconciliation as being instrumental (for example contract across conflict lines), socio-emotional, addressing guilt, mistrust and prejudice, and distributive in which process reparations are paid and formal compensation made. As complex as each of these levels are, they too are able to occur at individual, social and structural levels. Reconciliation, it may also be argued, includes the building, and rebuilding of relationships and friendship. As many critiques offer, reconciliation does not necessarily mean restoring to the way things were. Instead a new way of living together or relating may be necessary where previously no relationship (or an undesirable relationship) existed, for example in the case of invasion, or colonisation.

Transformation. Transformation is the change in indicators, in a number of spheres, with regards to the economy, the private sector, the judiciary and legal systems and in the realm, of, for example, education. Again, in this sphere there is action that can and must occur at individual, social and structural levels.

Metaphors are frequently helpful in understanding interrelationships between concepts. A series of steps, different levels of a building or pieces in a jigsaw puzzle, are all helpful analogies in thinking about how peace building processes, transformation, justice and reconciliation may be related. A series of steps would indicate some initiatives as being dependent on others. So for example, it might be argued that there can be no reconciliation without transformation, and that justice is the *sine qua non* for all other action. A high rise building, with transformation, reconciliation and peace building as various levels of the building might also suggest that the only stage of importance is a foundation; it is not important which element of , peace processes or reconciliation occupies as long as justice is the pinnacle and transformation the foundation. A puzzle (see Figure 1), on the other hand, shows no evident hierarchical relationship but makes the point that all are equally necessary in order for the picture to be complete.

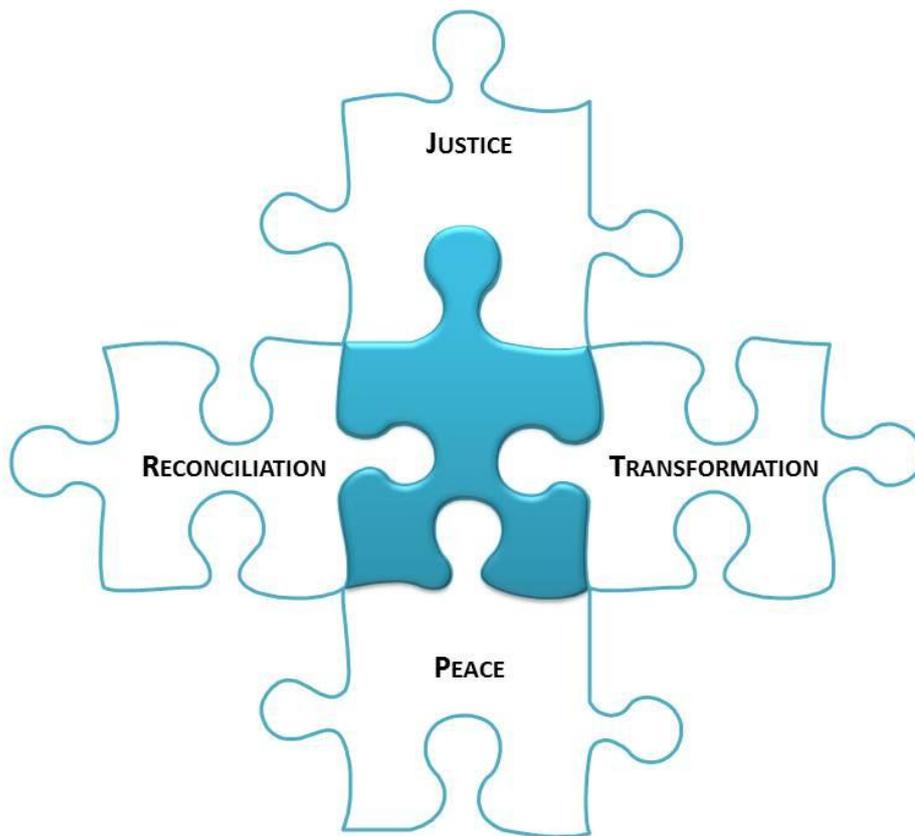


Figure 1 The relationship between peace, justice, transformation and reconciliation

However, relating these four elements of justice, peace building, transformation and reconciliation is not sufficient to address the deeper, multi-faceted elements of what needs to occur to address poverty and inequality – in a sustainable way – one that will itself promote justice, transformation, reconciliation and peace. A puzzle metaphor offers the opportunity to refer to restitution as the ‘missing piece’ in such a relationship. In this missing piece further elements of the restitutionary process become evident, can be articulated and then woven into national dialogues and action programmes of transformation. Restitution can be seen as the process through which justice, reconciliation, transformation and peace are achieved.

The six elements of the restitution of personhood

Restitution more broadly defined may be said to encompass or have as its aim the restoration or restitution of personhood. Personhood relates to individual and collective politics of belonging. Though the notion of personhood is contested in philosophy and law, it arguably comprises of “judgements about personal identity, moral responsibility, and the proper relationship both among individuals and between individuals and community” (Wingo, 2006, n.p.). The notion of personhood also has uniquely African conceptions. In speaking of the African philosophy of *ubuntu*, personhood is described and defined in terms of social connectedness and harmony. In a national project of restitution and justice, such a definition is particularly appropriate since it places emphasis not only on the individual, but also on social and structural levels. How can we restore each other’s humanity (or personhood) alone? Such restoration is only possible at all three levels. Individuals need healing in order

to relate as whole human beings socially. Furthermore no social or individual healing is possible if an environment is not conducive to such restoration.

Looking at the extent of human experience, and viewing personhood from a rights perspective, personhood could be defined as both natural and non-natural rights. Included in the former are the notions of dignity, equality, and opportunity, while non-natural rights might include memory, means and citizenship. In each, individuals, civil society and institutions (including government) contribute concrete and strategic action towards the ends of social and economic justice. Of course restitution might also be required in areas other than socio-economic justice, such as environmental degradation and the restitution of innocence in cases of for example, child abuse and child pornography. While personhood might never be fully restored by another, making restitution for the loss of personhood seems to be a worthwhile aim, one able to be pursued by all parties. In the remainder of this paper, we describe, through the use of examples, what was lost and therefore requiring restitution; what restitution might address or restore, in other words what gains are to be had; and how each contributes towards the ultimate aim of justice, transformation, reconciliation and peace. Table 1 summarises examples of restitution at each level – individual, social and structural, and flags which dimension (see Figure 2) of the restitution of personhood each action might address.



Figure 2 The elements of restitution

Dignity. People have a right to honour and dignity. Both the first sentence of the preamble to, and the first article of, the Universal Declaration of Human Rights speak of the dignity of human beings: “All human beings are born free and equal in dignity and rights” and “the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. The remainder of the declaration speaks to all the possible ways in which this dignity can be assaulted.

Table 1 Examples of restitution divided by individual, social or structural action, and with an indication of the element of restitution it incorporates

EXAMPLES OF RESTITUTION		
Individual	Social	Structural
<ul style="list-style-type: none"> Refusing privilege based on whiteness [equality] 	<ul style="list-style-type: none"> Banks loans for the non-creditable with government as guarantor [means, dignity] 	<ul style="list-style-type: none"> Legislation for Maori fishing rights [opportunity]
<ul style="list-style-type: none"> Commemorating public holidays with respect [dignity, citizenship] 	<ul style="list-style-type: none"> Commemorating the 1913 Land Act [memory] 	<ul style="list-style-type: none"> Housing subsidy for those earning under R13,000pa [means, dignity]
<ul style="list-style-type: none"> Apologies between individuals [dignity] 	<ul style="list-style-type: none"> Community development partnerships, e.g. Solms-Delta Project [dignity, means] 	<ul style="list-style-type: none"> Youth employment subsidy [opportunity, means]
<ul style="list-style-type: none"> Voluntary limitation to children's inheritance [means] 	<ul style="list-style-type: none"> Physically reintegrating racially divided churches [equality, citizenship] 	<ul style="list-style-type: none"> Broad based black economic empowerment [opportunity, equality, means]
<ul style="list-style-type: none"> Company share (re)distribution [means] 	<ul style="list-style-type: none"> Community processes e.g. Worcester Hope and Reconciliation Initiative [dignity, memory] 	<ul style="list-style-type: none"> Affirmative action [opportunity, equality, means]
<ul style="list-style-type: none"> Reading and knowing in detail South Africa's history [citizenship, memory] 	<ul style="list-style-type: none"> Gacaca courts – Rwanda [dignity, citizenship, equality] 	<ul style="list-style-type: none"> National Health Insurance [means, dignity]
<ul style="list-style-type: none"> Building friendships across lines of former enmity [dignity, equality] 	<ul style="list-style-type: none"> Corporate social responsibility/investment [dignity, opportunity] 	<ul style="list-style-type: none"> 'Wealth tax' [means]
<ul style="list-style-type: none"> Reading to children in impoverished communities [opportunity] 	<ul style="list-style-type: none"> National museums/centres of remembrance [memory] 	<ul style="list-style-type: none"> New constitution [citizenship, equality, dignity]
<ul style="list-style-type: none"> Redistribution of personal wealth [means] 	<ul style="list-style-type: none"> Ardoyne Commemoration Project, Northern Ireland³ [memory] 	<ul style="list-style-type: none"> Punitive action against BBBEE 'fronters' [opportunity, means]
<ul style="list-style-type: none"> Learn at least one African language [citizenship] 	<ul style="list-style-type: none"> Teaching about black consciousness [equality, dignity] 	<ul style="list-style-type: none"> Universal franchise [citizenship]
<ul style="list-style-type: none"> Restitution of land/property [means] 	<ul style="list-style-type: none"> Healing of Memories workshop [memory, dignity] 	<ul style="list-style-type: none"> Law of Historical Memory (Spain, 1997) [memory]
<ul style="list-style-type: none"> Cross-racial adoption [opportunity] 	<ul style="list-style-type: none"> Community Relations Unit, Northern Ireland⁴ [citizenship] 	<ul style="list-style-type: none"> Solidarity tax - reunification (Germany, 1992) [means, opportunity]
<ul style="list-style-type: none"> Asking for forgiveness [dignity, equality] 	<ul style="list-style-type: none"> Community surety for loans [opportunity, means] 	<ul style="list-style-type: none"> New law dealing with San and Khoi heritage [dignity, memory]

³ A civil society/community-level truth recovery project in Ardoyne, Belfast, that collected oral testimonies to those killed in that community during the Troubles, and published as *Ardoyne: The Untold Truth* (Aiken, 2010).

⁴ A 2005 government initiative funded through district councils, to address division in communities by building 'cross-community contact and mutual understanding' (Aiken, 2010, p. 183), via community-led projects.

Without exception injustice, denies people each of the rights found in the declaration. Simply put injustice dishonour individuals and groups of people. In addition, besides stripping people of rights to health, education, life, shelter, education, enjoyment of culture, love and marriage, ownership, and work amongst others, it frequently adds insult to injury. Many who have been oppressed come to believe themselves to be of lesser value than others, to have in some way caused or been complicit in their oppression. There have been efforts to counter these perceptions. At a social level the Black Consciousness Movement, Black theology in Latin America, the Civil Rights movement have all been historical movements to address the restitution of dignity. In contemporary society structural efforts include constitutional democracies that place human dignity as central to citizenship. At the individual level, the restitution of dignity might include sincere apologies, asking for forgiveness and building friendships across lines of previous enmity – on the terms of those dishonoured rather than on the presumption of those who were complicit in the dishonour.

Memory. Truth recovery or memory projects are a critical element in restitution. Exposing atrocities, human rights violations and untruths crafted by injustice are key to change. The telling of stories forcibly silenced, the acknowledgment of pain and suffering, and the interrogation of features of civil life normalised by architects and perpetrators of injustice form part of these memory projects. At a structural level, in 2008 the Spanish parliament passed the ‘Law of Historical Memory’ that aimed to end ‘amnesia’ about Spain’s civil war. It condemned the francoist regime, made it illegal to hold political events at Franco’s burial place or display francoist symbols, , recognised victims of violence, rejected laws passed and declared findings of military tribunals under Franco null and void, offered state help to trace remains of those killed, and allowed those forcibly exiled under Franco’s rule to return. It aimed to end Spain’s legacy of a history rewritten during the course of the 36 year long dictatorship. At a civic level – Northern Ireland’s Ardoyne memory recovery project or South Africa’s healing of memories workshop by the Anglican Church are examples of memory recovery projects. At an individual level, a commitment to reading and understanding a country’s history of dispossession and injustice would be an attempt at restitution for the obscuring of memory.

Equality. Equality encompasses political, legal and social elements. It is especially pursued with regards to race, gender, class, sexual orientation and geographical origin. Perhaps the most profound example of the restitution of equality happened in South Africa in 1994. A number of statutes were rewritten overturning centuries of legislation that enforced inequality. Key among these were the repeal of laws such as The Prohibition of Mixed Marriages Act, No. 55 of 1949; the Immorality Act, No. 21 of 1950 that prohibited sexual intercourse and marriage between people of different races; The Bantu Education Act, No. 47 of 1953 that had allowed for different qualities of education to be given to children dependent on race; The Extension of University Education Act, No. 34 of 1959 that excluded black people from white universities and created separate universities for various race groups; the Group Areas Act, No. 41 of 1950 that limited various race groups to particular areas, and forced black people into ‘homelands’ or self-governing Bantustans; the Suppression of Communism Act, No. 44 of 1950 that denied black people the right to mobilize politically; the Native Labour Act, No. 49 of 1953 that reserved certain jobs for whites only; the Reservation of Separate Amenities Act, No. 19 of 1954 that declared parks, busses, beaches, benches, toilets, and so on to be for whites only; and the Separate Representation of Voters Act, No. 46 of 1951 (amended 1956) that struck black voters, who had never been given the vote in the interior provinces, off the Cape voters’ roll. At an individual level restitution for the loss of equality might be addressed through refusing privilege when offered on the basis

of skin colour or educational level. At a social level, projects such as Equal Education, physically reintegrating churches segregated by Apartheid, and in Rwanda, the establishment of Gacaca courts address equality.

Opportunity. The restitution of personhood must include restoring people's ability to access opportunity. The Job Reservation Act, for example, is a pertinent example. Detractors of restitution frequently argue against entitlement or hand-outs, and that people "should work for what they have", usually followed by "as I did". Few proponents of these views stop to recognise the insidious way in which Apartheid, and the Job Reservation Act, stripped people of the access to opportunity – that would allow them to work for what they now want. A similar, and more contemporary argument, concerns the current state of education in South Africa. Poor quality, low retention and inferior outcomes deprive people of access to opportunity. Children from township schools invariably fair poorer at University than those from privileged education system (suburban or private). The restitution of personhood must include returning access to opportunity to all who desire it. Broad based black economic empowerment is an example of the restitution of opportunity at a structural level; corporate social investment in education an example at a social or civic level, and reading to disadvantaged children on a regular basis an act of the restitution of opportunity at the individual level.

Means. The restitution of means is one perhaps most spoken of in restitution discourses. Financial compensation, reparations, punitive payment and land redistribution and return are all familiar concepts. We term it 'means' rather than 'land' or 'wealth' partly to place emphasis on its instrumental rather than absolute value; and to reframe it as a non-punitive measure. Seeking the restitution of means has as its aim facilitating access to a decent standard of living for those dishonoured by injustice, and to opportunities dependent on means. Strong examples of structural restitution of means exist in land restitution (in South Africa with through the formal land claims court, in Canada with First Nations land compensation, internationally with the return of for example Hong Kong to the Chinese). On a civic level the so called Zimbabwe 'land grabs' is a social initiative, and commercial banks providing loans to those deemed 'non-creditworthy' due to being undocumented or lacking credit history as a result of Apartheid impoverishment are further example of the restitution of means. On an individual level there are numerous examples of how personal wealth, gained ostensibly by legitimate means, yet only possibly through repressive laws (job reservation, land act, affirmative education for whites etc), might be redistributed. One might make a personal choice for biological children not to be sole inheritors of personal property but instead to divide property between biological children and others who were dispossessed by injustice. Another might be the intentional investment in education for children of domestic employees at the same level as those of one's own family members.

Citizenship. Swartz, Hamilton Harding and DeLannoy (2012, p. 27) ask a series of critical questions about what it 'means to belong in a society that has suffered debilitating and dehumanising racial subjugation, actively excluding people from citizenship, and how poverty serves to perpetuate this exclusion'. To be a citizen and belong to a nation requires that each person access and experience a conglomeration of rights and responsibilities. Indisputably Apartheid (and injustice in general) removes these rights from individuals and groups. Black people, were dehumanised, subjugated, deprived of participation in governance, deprived of the means to earn a living, own land, move freely or marry as they chose. These rights have, been legally (and therefore structurally) restored. However at both social and individual levels, dehumanising practices of racism, sexism, heterosexism (or

homophobia), and the marginalisation of youth (see Swartz et al, 2012 for a comprehensive discussion) still exist along with dehumanising personal and social labour practices. These need to be addressed if the full restitution of citizenship is to be achieved. Besides, the examples already cited in this section, the restitution of citizenship at an individual level might include frank discussion with those previously dishonoured by injustice of the physical and psychological effects of conflict and poverty on succeeding generations so that self-hatred and self-blame is avoided.

Complex intersections and further questions

In this reconceptualization of restitution there are a number of ways in which the practice of restitution is complex. First, it is clear that the six elements described above intersect with each other, frequently. Without memory, there can be little will to make restitution for the loss of dignity, or little will to find ways of restoring means and opportunity. Without dignity citizenship remains precarious. Without equality, opportunity is in jeopardy and so on. We thus therefore do not choose to make restitution in only one area, without addressing all equally. Furthermore it may be argued, as many do, that restitution has occurred on the structural level – governments past and present have negotiated and resolved, lawyers and judges have litigated and ruled, and our constitution levels the playing fields for once and for all. What needs to be addressed is the question of when have we sufficiently ‘paid back’ or ‘made right’?

Second, there are numerous ways in which individual and civic action overlap and intersect, as do civic and structural action. Also intersecting is the way in which multiple elements of restitution may be addressed by a single action. So for example, corporate social responsibility might address means, opportunity and dignity if done well, and commemorating public holidays by individuals, both dignity and citizenship. Of course, it is also possible that a single action might exclude elements and principles of restitution, and jeopardize its efficacy by doing so, if not carefully implemented. So for example, redistributing wealth can become devoid of any aim of restoring personhood if done in an off-hand *noblesse oblige* manner or simply as a charitable gesture.

Third, it is clear that the legal undergirding of the notion of restitution is almost always present, in acts of restitution and intersects with contemporary notions of restitution. So for example, as Lambourne describes, restitution as described in this conceptualisation has the potential to be transformational rather than static. Taken together these elements or domains of restitution may be considered to look both backwards and forwards as Calder describes. It looks back to right the wrongs of the past – through action at multiple levels – individual, social and structural. Then it looks forward towards the gains to be made from a programme – or national project – of restitution. Furthermore, it is a project predicated on a moral (as Barkan describes) rather than legal or coercive basis. The restitution of personhood, cannot be legislated or punished if left unattended.

Finally, and possibly most complex, is the way in which personal situated-ness must be taken into account when addressing (or seeking to implement) restitution along the lines described in this paper. Whether one was an architect of injustice, complicit in its implementation, dishonoured by it, or a beneficiary of its outcomes must matter. In the South African context, these may shift especially, if one was a member of ‘coloured’ or ‘Indian’ groups, if one was a ‘white’ activist rather than a foot soldier. Similarly, those born after the beginning of democracy also find it difficult to easily categorise themselves since they want a fresh start

but are saddled with the consequences of parent's actions, benefits or dishonour. These locations are complex and must be discussed as action is taken or received.

Conclusion

This paper has examined legal literature to distinguish between restitution and compensation. We noted how 'in restitution the ideal is to restore things to the state they were prior to the justice being committed – a wider and more complex aim [than material compensation]' (Swartz, 2011, p. 412). In order to investigate how these wider aims might be addressed, we explored the international affairs, psychological, philosophical and criminological literature on restitution. Barkan, who proposes a theory of restitution founded on what he perceives as a rise in international morality and the recognition of corporate injuries perpetrated by groups of people or states, includes some of the most notable elements of justice in his broad-based theory of restitution.

Furthermore, the specific notions of backward- and forward-looking restitution proposed by Calder are useful for the ways in which they suggest opportunities for individuals to recognise and respond to their role – direct or indirect – in perpetuating injustices. We also noted how Calder's assertion of shared responsibility for unjust practices provides a counter-argument to Kukathas's claim that restitution must involve perpetrators of *specific* injustices. Though Calder does not go so far as to outline how restitution is to be made, his emphasis on the interpersonal aspects of restitution resonates with the deliberative models proposed by Barkan and Eglash, both of whom recognise the need for interaction and discussion between victims and perpetrators (or as described in this paper - architects, beneficiaries, foot soldiers of injustice implementation, those dishonoured by injustice, and those who inherit its sequelae).

Finally, this paper has offered a reconceptualised view of restitution that takes as its starting point the acknowledgment that restitution – restoring things to how they were prior to the injustice being committed – is for the most part not an achievable aim. Rather it has advocated that the fundamental aim of restitution is to 'pay abck' and 'make right' – and that all parties are required to contribute to this aim, if it is to be achieved. By describing six elements of restitution, this paper has sought to elucidate the opportunities that exist for practitioners to recognise and draw on the idea of restitution, beyond the restoration of private property, to incorporate it into transformational processes. It proposes that the goal of restitution is not merely legal or financial, but psychological and philosophical, and can be enacted individually, socially and structurally. That its ultimate aim is the restoration of personhood, or restitution for the loss of personhood, without which no transformation, reconciliation, peace or justice is possible. These six elements, in the restitution of personhood, include the restitution of dignity, of opportunity, of means, of memory, of equality and of citizenship, and provide a framework for action.

Such a framework, based on an extensive reading of current literature, and populated with examples need to be researched, expanded, and the roles of actors explicated. What actions might neighbours, politicians, lawyers, workers, children and CEOs take – to pay back and make things right in our country, and globally. Such a project, restitution defined broadly and from the perspective of multiple actors, it would seem has potential as a comprehensive basis for social transformation, and ultimately, as a mechanism to end to poverty and inequality.

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