

Book Notes: The Rights and Wrongs of Land Restitution: Restoring What Was Ours, by Derick Fay and Deborah James (eds)

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Book Note

**THE RIGHTS AND WRONGS OF LAND
RESTITUTION: RESTORING WHAT WAS OURS,
edited by Derick Fay & Deborah James¹**

RISHI HARGOVAN

THIS COLLECTION OF WORKS unpacks an idea that has captured the imagination of many global social justice advocates. The redistribution of land to correct for past injustices has long been seen as a viable path to a materially and symbolically equitable future for historically displaced and dislocated communities. However, despite its broad moral appeal, the practicalities and realities of land restitution often lead to consequences not envisioned by advocates.

The book is a critical, comparative, and ethnographic examination of land restitution programs. The chapters treat cases from a wide variety of regions, including the Americas, Eastern Europe, Australia, and South Africa, and examine cases of post-colonialism, post-socialism, and continued settlement.

Editors Derick Fay and Deborah James present a six-stage framework to contextualize the array of works and uncover a web of key relationships between different stages in the land restitution process.

The analysis begins with the actual act or acts of dispossession. The animating element that creates the need for restitution, dispossession is discussed in terms of the long shadow it casts over subsequent stages of the process. It is most relevant in how it is later interpreted by communities, how it affects the form of evidence required for land claims, and the relationship between land and those physically displaced or merely displaced from title.

Second, Fay and James turn their attention to the interim that passes between dispossession and restitution claims. This affects the relationship between the claimants and the land as well as others' view of the practicality and legitimacy

1. (New York: Routledge-Cavendish, 2009) 288 pages.

of the claim to land. The formulation of a policy of land restitution marks the third stage. Who is capable of making a claim and the boundaries of the permissible scope of claims is often defined with regard to the interests of dominant groups. These political realities limit the reach of the process and the resources devoted to it, and shape the state's choice between competing claims. Nevertheless, the rhetoric of transformation and universality continues unabated.

The fourth element is the manner in which communities transform themselves into potential claimants to pursue, negotiate, and litigate restitution. This process may entail a redefinition of the boundaries of the community, and the articulation of new bases of community. Negotiations may also reveal the relative power imbalance between actors and afford the state or dominant groups an opportunity to perpetuate or create new forms of claimant dependency.

The fifth stage is the post-transfer phase. Practical obstacles coupled with the removal of the historic grievance at the centre of the land-claiming community's identity can raise questions about how to proceed. The state can impose an onerous burden on "successful claimants." This may include re-settlement and property transfer. The sixth stage is the time beyond restitution. The program may be ended or reversed in order to make way for individual title or markets.

Each chapter is a case study of different restitution programs and speaks to different aspects of the analytical model. Fay's chapter discusses the South African Dwesa-Cwebe Nature Reserve land claims and incorporates multiple stages. Fay connects the first stage of physical and titular displacement under Apartheid to the fourth stage of community formation where distinct stakeholders unite to press their claim. He disparages the fifth stage where the government saddled successful claimants with a "bundle of duties" and "a handful of rights."

Another chapter deals with the restitution of Indian territories in the Central Andes of Peru, drawing links between program formulation and post-transfer practicalities. Monique Nuijten and David Lorenzo describe that the reform efforts were constructed as state endowments and not restitution. Though this made claims more successful, state management of the endowments ensured that the claimants' dependency continued.

This collection of works raises a number of conceptual themes. Land claims are often associated with claimants who hold a distinct identity from the wider polity, raising questions about governance and the relationship with the rest of the state. Further, a land restitution process may require claimants to describe their claim according to state-sanctioned property justifications.