

Book Review

Derick, F. and D. James 2009. *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*. New York: Routledge-Cavendish.

Reviewed by Jon D. Unruh, Department of Geography, McGill University.

Land restitution is currently a widely important topic among a variety of sectors—academic, governance, international development, human rights, indigenous movements, and almost every peace process. While commons land can be seen as politically and legally ‘safe’ for restitution purposes because of the apparent lack of government and private property attachments, as this volume points out, it can be considerably more complicated.

The current upsurge in attention to land restitution has produced significant works, most notably the Pinheiro Principles (2006), and Scott Leckie’s work (2003, 2007, 2009) on land and property restitution for refugees and displaced persons. Lacking however has been a set of more fine grained case studies that tackle the confluence of law (statutory and customary), anthropology, history, and land tenure, together with issues of identity, race, and the often profound (and confrontational) differences in perspective held by groups involved in or affected by restitution claims. This book attends to this gap, and the experiences and lessons in the chapters are significantly instructive.

One of the more valuable contributions of the book is just how highly variable and nuanced restitution issues can be, and how these comprise both pitfalls but also opportunities for casting restitution in different ways. Both Derick Fay’s chapter on restitution in South Africa, and Stefan Dorondel’s chapter on Romania provide an excellent feel for the multiplicity of property rights arrangements that can be pursued in restitution processes.

Equally important are the ways that different groups cast themselves as deserving restitution and the different narratives and discourses that are pursued in this regard. Christiaan Beyers chapter on community in Cape Town addresses directly the ways that ‘community’ is constructed, depending on the interaction of aspiration and the socio-legal context. Evie Plaiçe’s chapter on land claims in

Labrador, Jan French's chapter on ethnoracial restitution in Brazil, and Stefan Dorondel's chapter on the role of ethnicity in Romania, all examine the roles of identity and race in placing people within groups to whom restitution is arguable due.

Also instructive are the articulations of the variety of ways that restitution can occur, sometimes leaving the groups concerned worse off. Kristina Tiedje's chapter on rural Mexico, and Monique Muijten and David Lorenzo's chapter on the Peruvian Andes, underscore that restitution does not always equal improvement in well being—given that there is a very wide variety of ways to deliver, define, and operate restitution programs.

While the cases presented are instructive with regard to some hard-to-get-at aspects of land restitution, the volume is lacking a few key pieces. Not treated is the very problematic issue of the difference between land restitution as a human right on one hand, and how this is to be treated as a property right with a property rights system, on the other. Given that property rights are transferable but human rights are not, how is land which is restituted in the context of human rights provision, able to enter into a property rights system where lands are bought, sold, lent, and given away? This is a significant problem for the international community who seek to pursue restitution from an international law perspective, usually in countries with less capacity for mounting their own restitution programs. This highlights the second weakness in the volume, which is that all the cases are in countries with fairly well functioning statutory legal systems. Not covered are the large number of countries who have been at war, or affected by natural disasters or evictions, or have a number of customary tenure systems, and who usually have significantly large populations in need of land restitution, but legal systems that are extensively crippled, corrupt, or underdeveloped. On the whole a quite valuable book however, and one that will no doubt draw considerable attention from the international community most concerned about how to make restitution actually work.

Literature cited

- Leckie, S. 2003. *Returning home: housing and property restitution rights of refugees and displaced persons*. Ardsley, NY: Transnational Publishers.
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- UN System and Norwegian Refugee Council 2006. *Housing and property restitution for refugees and displaced persons: implementing the Pinheiro Principles*. Turin: International Labor Organization.