

New Laws against the Old State: Land Restitution as a Transition to Justice in Post-Apartheid South Africa?

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The concept of “transitional justice” has recently gained prominence as a crucial means to account for past human rights violations in order to enable a transition towards (more) justice in the future. While war crime tribunals and truth commissions have taken centre stage, institutions providing reparations to victims for past rights violations are also increasingly seen and deliberately established as instruments of “transitional justice”. The ongoing South African land restitution, in which the state compensates former victims of “racial” land dispossession, can be interpreted in this light. Scrutinising the current land restitution in terms of “transitional justice” thereby allows investigating it as a transitory phenomenon in which, based on a legal framework redressing the wrongs of the old state, “the justice” of this new beginning in South Africa is continuously contested and renegotiated. The paper first traces the emergence in the 1990s of the new constitutional provision for both the protection of private property and the obligation for land restitution and then sketches the concrete institutional set-up based on the Restitution of Land Rights Act (1994). Against this backdrop, the “justice” of the actual land restitution process is explored with regard to conflicting interpretations by various sets of actors involved in an exemplary land claim on the so-called “Kafferskraal” farm in Southern Limpopo. Here, a focus on divergent understandings of what historically constituted valid *rights in land* as well as corresponding forms of *compensation* reveals continuing discrepancies regarding the legitimacy of various property regimes. Subsequently investigating controversies and practices surrounding the contested category of “white claimants”, i.e. owners dispossessed in furtherance of homeland consolidation, now claiming to have been formerly undercompensated, it becomes equally clear that there is little consensus about the issue of who is/should be a legitimate beneficiary of the restitution programme. Given that the legal framework for land restitution does not encourage intensive engagements between opposed parties, possibly furthering mutual understanding and “common-sense”, profound disagreements regarding the “justice” of this new beginning in land ownership have persisted. The reductionist legalistic processing of this transition has thus contributed little towards “racial” reconciliation and a sense of working together towards a new state of justice, a fact that is possibly reflected by the telling absence of any significant discussion of South African land restitution in terms of “transitional justice”.