

## **Review Essay: Refugees and the Reparations Movement: Reflections on Some Recent Literature**

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I and the public know  
What all schoolchildren learn,  
Those to whom evil is done  
Do evil in return.  
W. H. Auden, 'September 1, 1939'

While a handful of scholars have probed the purported link between peace and justice, the notion that a sustainable peace is a just peace has become a mantra amongst many policymakers and civil society activists.<sup>1</sup> Whether through formal, ad hoc or traditional means, confronting historical injustices is seen as essential to restoring the rule of law, creating honest and inclusive historical narratives, and enabling the coexistence of hostile groups by taming the desire for vengeance. In particular, reparations programmes are attracting increased interest from researchers and policymakers alike. Under international law, reparation encompasses three main types of remedy: restitution, financial compensation and satisfaction. Restitution aims to restore the conditions that existed prior to a violation, and often involves the return of homes, artefacts or land, while satisfaction addresses non-material injuries and may involve activities such as official apologies, judicial proceedings or truth and reconciliation commissions. Politically, reparations may be understood as the 'entire spectrum of attempts to rectify historical injustices'; the legal tools of remedy 'are all different levels of acknowledgement that together create a mosaic of recognition by perpetrators for the need to amend past injustices' (Barkan 2001: xix, xviii).

At the same time as reparations programmes have become staples in reconciliation plans and democratization strategies, international support has emerged for the view that the return of refugees and internally displaced persons (IDPs) is also essential to achieving peace. As former United Nations Secretary-General Kofi Annan argued in his 2005 address to the UNHCR Executive Committee,

The return of refugees and internally displaced persons is a major part of any post-conflict scenario. And it is far more than just a logistical operation. Indeed, it is often a critical factor in sustaining a peace process and in revitalizing economic activity.

In regions such as the former Yugoslavia, return has even been portrayed as an opportunity to 'turn back the tide, of ethnic cleansing. Yet returnees are rarely welcomed with the ardour with which they are seen off from reluctant host countries. In many cases, returnees are perceived as threats to the political order, and are presumed to carry simmering grievances against those who forced

them from their land and moved into their empty homes. It is not surprising, therefore, that some form of reparations for refugees and IDPs have been built into many of the peace agreements signed since the mid-1990s. What is more surprising, from a scholarly perspective, is that these large-scale, high-budget, politically contentious programmes are largely overlooked in the academic literature on the contemporary reparations movement.

Reparations programmes for refugees and IDPs typically focus on real property restitution or compensation for lost land. These are major themes in the mainstream reparations literature, particularly as they relate to redress campaigns for indigenous peoples. As survivors of many of the human rights violations addressed by high-profile reparations programmes, displaced persons have major stakes in the reconciliation and justice initiatives designed to mend the political fabric of their countries of origin. However, the vast majority of displaced persons are sidelined from these efforts. Moreover, scholars concerned with the efficacy and significance of the reparations movement rarely engage with the specific challenges associated with providing reparations to refugees and IDPs, and redressing the crime of displacement itself. What can researchers, advocates and policymakers concerned with justice for refugees learn from the flourishing literature on reparations politics? And, how can forced migration researchers challenge and advance the scope of this important work?

Although their books contain at most passing reference to refugees and IDPs, Torpey, Miller, Kumar and de Greiff's wide-ranging, interdisciplinary discussions of reparations will be of significant interest to readers concerned with accountability for human rights violations, particularly forced migration. As the title implies, the contributors to Miller and Kumar's edited collection hail from a range of disciplines, including philosophy, law, history, politics and psychology. The collection shows that the study of reparations, like forced migration, is ripe for interdisciplinary collaboration, and the book is successful in its goal of taking seriously both the conceptual debates raised by reparations, and the actual politics of redress. *Reparations: Interdisciplinary Inquiries* probes key conceptual issues including the identity of legitimate claimants and those duty-bound to offer redress; appropriate forms of reparation; the relationship between redress programmes and the broader goals of social justice; and the proper aim of reparations initiatives. Is the goal compensatory or corrective justice? Is redress 'less about how to restore the status quo ante and more about how to repair broken relationships between people?' (Miller and Kumar 2007: vi).

Alongside sections on reparations for indigenous peoples, colonialism, slavery and discriminatory laws against blacks in the United States ('Jim Crow laws'), Miller and Kumar's book includes three essays by Pablo de Greiff, Debra Satz and Catherine Lu on redress for conflict, which are of perhaps the most obvious interest to forced migration researchers. Satz's particularly strong contribution explores the view, espoused by welfare economists and American tort law, that cash is the best form of compensation for injury. Satz points out that this 'economic view of compensation' presupposes that the foremost concern of reparations policies must be 'overall preference satisfaction', as the goal of compensation under the economic model is to render a claimant as satisfied as they were before their injury (Miller and Kumar 2007: 179). Further, this perspective assumes that all injuries can be aggregated, and that compensation claims arise from losses to an individual's level of satisfaction, rather than from the need to remedy a particular harm. While economic compensation is an important form of redress that may be particularly useful for populations such as returnees, who may use the money to facilitate the transition 'home', Satz argues that the applicability of cash compensation 'is limited: by principle and by practice' (Miller and Kumar 2007: 190). Cash compensation may be inadequate when injured parties would

rather repossess goods wrongfully taken from them, such as land. However, repatriation processes often illustrate the difficulty of restoring land to its 'original' occupants, particularly after long displacements. Jeremy Waldron's chapter 'Why is Indigeneity Important?' provides valuable insight into this challenge, and is a timely contribution in light of the increasingly popular assertion that properly interpreted, the right to return means not only a refugee's right to repatriate to her country of origin, but also to reclaim her original land or home (Leckie 2003). Matching philosophical rigour with respect for the struggles of aboriginal and native communities, Waldron examines the 'difficulty and danger' of the question 'Who was here first?', asking why indigeneity should add weight to the reparations claims of communities long exiled from their traditional lands (Miller and Kumar 2007: 38).

Regrettably, the introductory essay to this otherwise excellent collection is conceptually murky, and is at best a poor preparation for readers seeking to understand the complex issues raised by efforts to redress the displaced and other survivors of historical injustices. Written by prominent reparations scholar Elazar Barkan, the introduction helpfully underscores the localized character of effective reparations negotiations; the problems associated with using redress as a proxy for basic public services and social justice; and the tendency of liberal societies to be the most receptive to calls to amend historical injustices. Yet Barkan's account of the relationship between redress and human rights discourse is not cogent. While he refers to redress as a perpetrator's obligation, he also stresses the voluntary nature of accepting responsibility for past wrongs through reparations, pointing out that large reparations programmes are rarely court-mandated. In this way, Barkan misconstrues the decisive role political pressure typically plays in compelling actors to repair historical wrongs. Barkan seems to assume that if a perpetrator (whether an individual or an institution) is compelled to accept and express responsibility for wrongdoing, this cannot be or become a meaningful, sincere act. Experience in various redress campaigns, such as Holocaust survivors' struggle to obtain redress from three major Swiss banks for their complicity in the Shoah, demonstrates that this is not the case. Yet Barkan simply disregards or reinterprets examples that do not fit his model. Particularly objectionable is Barkan's suggestion that efforts to ensure that displaced Tutsis and Kosovar Albanians could reclaim their lost property are better understood as revenge than reparation. To be sure, acts of revenge took place in both Kosovo and Rwanda, but the restitution of displaced persons' property was not a retributive policy. Barkan's chapter inadvertently accentuates how forced migration researchers could advance reparations scholarship by explicating the complex political circumstances in places such as Kosovo and Rwanda, and the role transitional governments and international administrations play in redressing injustices against the displaced.

Pablo de Greiff's edited volume contains eleven case studies, nine thematic studies and fundamental documents and legislation on reparations programmes from nine different countries, making *The Handbook of Reparations* one of the most useful and exhaustive sources of information available on massive reparations initiatives. In addition to conveying key information about past experiences, the book aims to provide normative guidance for future efforts, and is particularly astute in this respect.

Especially helpful is the 'taxonomy' of reparations efforts offered in the editor's introduction. De Greiff focuses on material compensation, distinguishing this form of redress from other aspects of transitional justice, such as criminal prosecutions, truth telling and institutional reform. However, de Greiff argues that reparations programmes should be 'complex' and 'coherent'. That is, well-constructed reparations programmes should distribute a range of inter-related material and 'symbolic' benefits (such as apologies), and should be clearly and closely

connected to the other facets of national transitional justice strategies, such as truth and reconciliation commissions. (Whether real property restitution commissions count as reparations initiatives or another type of transitional justice is unfortunately unclear in de Greiff's taxonomy.) Architects of reparations programmes must also determine the 'comprehensiveness' of reparatory efforts: in other words, which distinct crimes must be addressed through reparations. De Greiff (2006: 6–7) suggests that 'Whatever consensus there is in international law about reparations, it is only just emerging, and the boundaries of this obligation remain porous.' While there is growing consensus in international law on the duty to redress unlawful deaths, disappearances and torture, De Greiff (2006: 7) contends that 'there is much weaker or no consensus on whether the obligation extends to territorial displacement.' This is in sharp contrast to the views advanced by scholars such as Leckie (2003), and the recently adopted UN Principles on Housing and Property Restitution for Refugees and Displaced Persons. Irrespective of the status of international norms on restitution and compensation for the displaced, it is undeniable that the vast majority of refugees and IDPs have not received any form of redress for their displacement, or the violations that precipitated their flight. As De Greiff (2006: 7) recognizes,

decisions concerning the catalogue of rights whose violation triggers reparations benefits have been made in a way that excludes . . . those who have been traditionally marginalized, including women and some minority groups.

Refugees and IDPs also count amongst those typically sidelined during reparations negotiations, and it is not surprising, therefore, that their concerns are often overlooked. However, De Greiff suggests that comprehensiveness in reparations programmes is both morally and pragmatically desirable. Forced migration researchers could be well-placed to bolster this argument by proffering analyses of how exclusion from reparations programmes affects displaced persons, and by extension the stability of post-conflict communities.

The *Handbook*'s case studies are distinguished by the authors' laudable attempts to reflect not only the perspectives of academics, lawyers and bureaucrats, but also the views of victims, beneficiaries and civil society actors. Amongst the thematic studies, Alexander Segovia's chapter 'Financing Reparations Programmes: Reflections from International Experience' stands out as a timely analysis of one of the most important but under-examined aspects of contemporary reparations efforts. Segovia recognizes that mobilizing domestic and foreign financing for reparations programmes is a serious challenge and a political minefield. His chapter examines reparations financing from the standpoint of political economy, taking into account both economic and non-economic variables. Segovia bolsters his arguments with reference to formative international experiences in reparations financing, resulting in an analysis with important insights for the architects of broad reparations programmes, as well as specifically targeted efforts such as real property restitution schemes for refugees and IDPs. Many of the other essays and documents in the *Handbook* focus on redress for specific human rights violations, such as disappearances, internment and forced labour. In 'Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice', Duggan and Abusharaf argue that sexual violence against women should be counted as a special category under national reparations programmes. These discussions of 'crime-specific' redress programmes are especially salient for researchers and advocates interested in integrating specialized efforts to remedy forced migration into broader state-sponsored reparations schemes.

In *Making Whole What Has Been Smashed: On Reparations Politics*, John Torpey takes a step back from the detailed, ‘nuts and bolts’ approach of *The Handbook of Reparations* to question the nature and value of the reparations movement itself. Torpey (2006: 5, 7) chronicles the ‘routinization of reparations as a political pursuit’, and underscores that ‘reparations politics is precisely that—a form of *politics*, of people mobilizing to frame facts in an effort to achieve or get things in the world.’ This reality, Torpey (2006: 159) maintains, is often distorted by the ‘juridification of politics’, reflected by the definitive role lawyers play in the pursuit of redress. In contrast to theorists such as Barkan who suggest that reparations politics represents the victory of Enlightenment thought, Torpey (2006: 5) argues that

the phenomenon is a kind of transitional *substitute* for the progressive politics associated with the Enlightenment, cut out for an age of diminished political expectations. The concern with the past, which is often connected with ‘roots’-oriented politics of various kinds, bears as much affinity to Romantic notions of group belonging as it does to the ethnical universalism of the Enlightenment.

Torpey (2006: 5) is sceptical of reparations advocates’ claim that their concern with the past is rooted in their commitment to creating a better future, and their ‘assumption that *the road to the future runs through the disasters of the past*.’ Although accessible and refreshing in its critical perspective, Torpey’s book occasionally overextends his argument and misinterprets the motives of the proponents of reparations, many of whom are not trying to repair immutable past injustices so much as relationships between the members of political communities who must make their future together. Nonetheless, as forced migration researchers and refugee advocates increasingly engage with questions of redress and transitional justice, Torpey’s monograph is a timely reminder of the limitations inherent in trying to build a better future by focusing on the violence of the past.

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<sup>1</sup> For example, in his 2005 Tanner Lectures on Human Values entitled ‘Indecent Compromise’ and ‘Decent Peace’, Israeli philosopher Avishai Margalit challenged the indivisibility of peace and justice. See [http://www.tannerlectures.utah.edu/lectures/Margalit\\_2006.pdf](http://www.tannerlectures.utah.edu/lectures/Margalit_2006.pdf). Accessed 12 February 2007.

**BARKAN, E.** (2001) *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, Baltimore: John Hopkins University Press.

**LECKIE, S.** (ed.) (2003) *Returning Home: Housing and Property Restitution Rights of Refugees And Displaced Persons*. New York: Transnational Publishers.