

Reparations and Peacebuilding: Issues and Controversies

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Published online: 23 July 2013
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Abstract This introduction to our special section of *Human Rights Review* on Reparations and Peacebuilding gives an overview of the challenges currently confronting both peacebuilding and reparations. The special section aims to explore the relationship between these two mechanisms and examines the role that reparations schemes can play in salving or exacerbating conflict.

Keywords Reparations · Peacebuilding · Transitional justice · Conflict

Introduction

The issue of reparations after, and sometimes during, violent conflict raises a series of ethical, practical, and legal dilemmas. No post-conflict society can say that its reparations schemes have been an unalloyed success, and in many cases, such schemes have sparked major controversies. Yet, there is international legal momentum behind claims for reparations and compensation. This special section of *Human Rights Review* aims to explore the relationship between reparations and peacebuilding and examines the role that reparations schemes can play in salving or exacerbating conflict.

Peacebuilding actors face significant challenges when assisting societies affected by conflict to reestablish the rule of law and confront large-scale human rights violations. This requires knowledge of and experience with transitional justice (TJ)¹ mechanisms to establish long-term and viable administrative and justice systems that work towards sustainable peace and development. There is a growing debate about

¹Transitional justice refers to judicial and non-judicial measures for dealing with the effects of massive human rights abuses.

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whether or not the TJ field should be more intentional about its involvement in promoting the important goals of sustainable peace and conflict resolution (Laplante 2008; Lambourne 2009; Lundy and McGovern 2008; Waldorf 2012). Despite the growing debate, it still remains the case that the transitional justice and the peacebuilding literatures are relatively compartmentalized and that there is little cross-over between the two. Therefore, there exists a clear need for a better understanding of whether and how TJ mechanisms could contribute to sustainable and solid foundations for long-term peace to prove that *nunca mas* really means never again. This is one of the main questions explored in this special section by looking more closely at the role of reparations in this relationship.

What Now for Peacebuilding?

Just as there is legal momentum behind reparations, peacebuilding is the recipient of renewed attention as international organizations and bilateral donors reassess the effectiveness of their peacebuilding initiatives over the past two decades. Despite much talk of “best practice” and “lessons learned,” internationally sponsored peacebuilding has evolved through a good deal of trial and error (Ryan 2013). In recent years, there has been a noticeable interest in transcending the top-down and remote elements of peacebuilding so as to include local voices and tackle legitimacy issues in fragile state contexts. The World Bank and United Nations Development Programme (UNDP) have shown an interest in “good enough” approaches that are prepared to countenance hybrid political orders and deviation from strict western norms. They have also released important documents that show an awareness of more locally nuanced forms of intervention (World Bank 2011; UNDP 2012). The 2011 G7+ *New Deal for Fragile States* initiative revealed that many of the recipients of peacebuilding support are frustrated at the technocratic and unresponsive aspects of orthodox peacebuilding policy (International Dialogue on Peacebuilding and Statebuilding 2011). These shifts in peacebuilding policy (which, in some cases, may be more rhetorical than real) raise a number of ethical and practical challenges: Is it permissible for international actors to deal with non-state armed actors? Can western ideas of inclusion and representation (for example in relation to gender) be sacrificed in the name of local accommodation? How can local voices be heard beyond the gatekeepers that often operate at national and local levels? Can international organizations afford tailored peacebuilding responses and all of the context-specific costs that might entail?

With peacebuilding in flux and experiencing a “local turn” (Mac Ginty and Richmond 2013), it is appropriate to assess if recent innovations in reparations can contribute to more effective peacebuilding. Reparations have a long history and indeed play a part in Carthaginian forms of peace. But ideas and practices of reparations have been updated, especially over the past two decades, to reflect more precisely the goals of transitional justice or broad justice reforms and initiatives that form part of state and societal movement away from violent conflict. We have seen reparations formalized and monetized and tied in with comprehensive approaches to peacemaking, peacebuilding, and statebuilding. In

some cases, it has been consciously linked with wider schemes of reconciliation and the need to address the relationships and identities at the root of conflict. There have also been attempts to draw on customary, indigenous, and traditional norms and practices (Wanis-St. John 2013). Despite this reparations activity, fundamental questions remain. Indeed, these questions are often overlooked by peace processes and statebuilding processes that often emphasize technocracy, timetables, and check-box delivery (Mac Ginty 2012).

It is worth stepping back and asking fundamental questions about whether reparations can produce a more sustainable and better quality peace. How can reparations enhance peace, and are there circumstances in which they can be counterproductive? How can reparations act in concert with other aspects of peacebuilding and conflict transformation? What are the relative merits of informal versus formal approaches to reparations? Indeed, do reparations make anyone feel better? Questions like the last one enter the affective realm and are, of course, difficult to measure. Yet, much connected with peace rests in the perceptual dimension and depends on how individuals, communities, and political leaders interpret their own position relative to that of other groups (Korpi 1974; Gurr 2010). This is not to say that practical issues are unimportant. But the success or failure of reparations programs often depends on “optics” and “acoustics”: how are these schemes perceived and managed? Political leaders are well aware of this and often seek to exploit a sense of grievance. To complicate matters further, much of the conventional wisdom on peacebuilding derives from conflicts and peace initiatives in the 1990s. That decade saw immense peacebuilding innovative as governments, international organizations, and INGOs rushed to deal with the conflagrations in the former Yugoslavia, the Great Lakes, the Horn of Africa, and elsewhere. Many of the peacebuilding practices and protocols that still exist date from that era. There is no guarantee, however, that the operating procedures forged in that period will remain relevant for the future or should do so. The fallout of the Arab Revolts, for example, may demand responses that differ from what contemporary peacebuilding best practice today recommends.

Not only does peacebuilding usually take the form of a package of initiatives, it usually operates alongside a complex series of related practices such as TJ, statebuilding, or security initiatives. The result is often a flurry of activity, particularly in the early post-peace accord years, in which international and external actors cooperate and compete in implementation tasks. This raises issues of sequencing and the linkages between different parts of the peace process: When can reparations initiatives have the most positive impact and how can they be sequenced with other elements in a peacebuilding package? Although determining the timing and sequencing of reparations can be seen as fraught with difficulty (Sriram et al. 2012) and victim-centered programs cannot always be setup as quickly as others (such as disarmament, demobilization, and reintegration programs), we still must consider the implications of the timing of implementation of peacebuilding elements. Programs should not move forward without assessing best practices and the possible disadvantages of significant time lapse between different peacebuilding and TJ mechanisms. This may mean thinking outside of the usual 3- to 5-year programming cycles that donors and international organizations typically operate in.

What Now for Reparations?

Reparations are as old as conflict. They take multiple formats including financial and in-kind compensation, symbolic redress, and commitments for better relations. Although increasingly codified, and based on an emerging set of precedents and examples, it is often difficult to separate them from the victor-loser dynamic. In other words, there exists a set of power relations inherent in the reparations transaction that governs the rules of compliance and the format and scale of reparation. In cases where this is particularly inherent, the reconciliation element of reparations may be compromised. Yet, without some form of compliance, reparations may not be paid. In some cases, for example Germany's continuing reparations to Holocaust victims (Spiegel 2013), there may be an element of moral pressure. For the purposes of this special section, the key issue is the extent to which reparations can chime with other activities to help ameliorate the effects of conflict and the chances of conflict recidivism. Important here is the degree to which reparations are retributive (the withdrawal of goods and services as punishment) or restorative (part of a wider process aimed at reconciliation). The latter may be extremely difficult to achieve as it requires a mutual "buy-in," or a peace process that is based on an understanding that all parties need to grant concessions or alter their behavior. This might not always be possible given the prevalence of zero-sum mindsets and the need to represent the outcome of a peace process as "victory" to one's own supporters. However, as the contributions to this special section highlight, there are important ways that reparations can contribute to reconciliation through symbolic and transformative mechanisms for healing and reconstruction.

Also important is the extent to which reparations activity is mandated or overseen by international actors. Often international actors have the material power capable of providing the security guarantees, and logistical and technical assistance, required for post-civil war peace consolidation. Yet, as a voluminous literature attests, international peace assistance can be heavy-handed, overly securitized, top-down, donor driven, and remote from the aspirations of the people living in the post-peace accord area (Campbell et al. 2011). While it may have material power (e.g., an ability to put boots on the ground or fund good governance reforms), international peace support intervention may not be able to draw on, or sustain, local legitimacy. Legitimacy seems crucial to the contribution reparations can make to a reconciliation process. If reparations are seen as being imposed by an outside actor, or as being part of a punitive package, then they are unlikely to contribute to peace consolidation. But if reparations can be seen as part of a locally negotiated package that involves give and take between the victims and perpetrators as well as local oversight, then they may be more accepted.

Reparations programs fit squarely into the debate on the changing character of peacebuilding. The goals of effective reparations programs are to provide the necessary structural and restorative elements to facilitate the process of reconciliation and the consolidation of peace. In addition, reparations, along with truth commissions and trials, are of fundamental importance among TJ mechanisms when considering their direct impact on victims of conflict. However, reparations have been given significantly less attention than other TJ mechanisms in transitions to democracy and in post-conflict contexts, and their implementation is complex and highly contextual.

Reparations have been used in combination with trials, truth commissions, amnesties, and lustration. Victims wait an average of 5.5 years after a transition to democracy to receive reparations (Olsen et al. 2010). In fact, victims wait significantly longer to be included in TJ mechanisms than perpetrators, and transitional democracies typically adopt amnesties first, trials later, and restorative justice mechanisms many years after the transition (Olsen et al. 2010, p. 107). The findings by Olsen et al. also suggest that TJ mechanisms make conflicts less likely to recur and that amnesties may be fundamental in preventing repeat civil wars (Olsen et al. 2010, p. 128). However, they do not look at the effects of reparations on post-conflict contexts and do not appear to take into account the effect of reparations when looking at civil war occurrence or conflict termination. They do find that the use of TJ is as significant in civil war contexts as it is in the cases of democratization and conclude that the uptick in TJ in recent years is because of an increase in use of these mechanisms in or after civil wars. In addition, preliminary studies have found that understanding loss and risk factors, elements that form part of the reparations process, may be important to civil war settlement and reconciliation (Adhikari et al. 2012). These studies indicate that there exists a clear role for reparations in post-conflict contexts as a potential tool for peacebuilding actors and indicates that further exploration to determine the effectiveness and best practices of reparations after transitions from conflict is necessary—especially if they continue to be used in post-conflict contexts to aid peacebuilding efforts.

In the past decade, we have seen two major legal instruments put into place pertaining to reparations: The UN's Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) and Article 75 (1) of the Rome Statute (1998), which requires the International Criminal Court to “establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation” for victims of war crimes and crimes against humanity. Pablo de Greiff and the International Center for Transitional Justice's groundbreaking *Handbook on Reparations* (2006) and edited volumes on development and reparations (2009) and DDR and reparations (2010) have begun to discuss the impact of these legal frameworks on post-conflict communities and the challenges inherent in the process of reparation. Over the past decade, increased information on reparations has become publicly available, including translated legislation and documents from countries implementing reparations in de Greiff's volume.

Startlingly, evidence from the Peace Accords Matrix (PAM 2013), a study of 35 comprehensive peace accords reached between 1989 and 2007, reveals that “truth and reconciliation mechanisms” were included in only 35 % of peace accords.² Of course, truth recovery mechanisms form only part of TJ, but it is nonetheless interesting that this major plank of the conflict transformation agenda finds a place in only a minority of comprehensive peace accords. This might be more understandable if the focus of the PAM data was on minor or security-only accords. But given that these are *comprehensive* peace accords, it is surprising that truth recovery is not more

² Truth and reconciliation mechanisms are defined as: “A temporary body established and officially sanctioned to investigate and report on patterns of human rights abuses occurring over a period of time in a particular country or in relation to a particular conflict” (PAM 2013).

prominent. The reasons for the absence of truth recovery (and by extension reparations) will vary from case to case, but it is clear that this aspect of peacebuilding has not been mainstreamed into peacebuilding practice. There may be good reasons for this (perhaps linked to the counterproductive nature of reparations in some contexts), but it is time for a wider debate about the merits, or otherwise, of reparations as part of a suite of peacebuilding measures.

The task undertaken by this special section, through its case study and conceptual contributions, is to interrogate how reparations can contribute to broader TJ and peacebuilding goals. In particular, there is a tension between legalistic mechanisms that offer formal routes of redress and looser schemes that may be based on symbolism and soft power persuasion. The former are often minimalist and conform to the conflict resolution and conflict management paradigms: they are affordable, short-term, focused on conflict manifestations, and operate in the realm of the possible. The latter are often maximalist and conform to the conflict transformation paradigm (Lederach 1996). As such, they are interested in the relationships that underpin and sustain conflict and place faith in long-term measures to recalibrate identities at the intra and inter-group levels. The contributions to this special section seek to better understand how reparations can contribute to, or complicate, contemporary peacebuilding in a context of change.

Contributions

In recent years, there has been significant discussion about how reparations fit into the international development agenda (Waldorf 2012; Muvungi 2009; Roht-Arriaza and Orlovsky 2009; Carranza 2008; Mani 2008; Duthie 2008; Miller 2008); however, there has been little reference to peacebuilding and reparations and limited discussion on the role of TJ and peacebuilding (Lekha Sriram and García-Godos 2012). In part, this has been because TJ issues, beyond reforms of judicial institutions, are often left to the end of a peace process. The main focus is often on constitutional, security, and governance reform issues rather than issues that are somehow seen as “soft” such as reconciliation and identity. International interest, and peace support funding, may have moved onto a new crisis by the time reparations and TJ have moved up the issue agenda. Moreover, many authors have pointed to the distinction between the problem solving and the critical schools in relation to the study of peace and conflict (Cox 1981; Pugh 2013). The former are concerned with immediate problems and how to fix them, but are less curious about underlying power relations and structures that contribute to conflict. The critical school, on the other hand, sees the problem-solving approach as a mere band-aid that ignores the real causes and sustaining factors in conflict. The policy world, for obvious reasons, has more in common with the problem-solving paradigm and so peacebuilding has experienced a “technocratic turn” in which interventions have been compartmentalized into time-limited packages of programs and projects reminiscent of the private sector. This “tick-box” approach to peacebuilding has been, in some cases, suspicious of TJ initiatives that step beyond the formal legal world. Some initiatives draw on customary and indigenous practices and are deeply embedded in localized belief systems and expectations. The formal peacebuilding world, which is often donor-driven, finds such initiatives difficult to monitor and evaluate and so tends to stick to less imaginative approaches.

Although development programs can also encompass post-conflict reconstruction programs, peacebuilding programs have specific normative and ethical concerns in the post-conflict and pre-/post-conflict contexts. Therefore, the discussion of reparations and TJ in the context of peacebuilding is fundamental to understanding policies implemented in post-conflict contexts, particularly in the aftermath of gross human rights violations. Questions emerge about the most effective strategies for implementing reparations programs to contribute to sustainable peacebuilding, as well as the role that reparations play in peacebuilding contexts. Should and how can reparations contribute to sustainable peacebuilding? And how do reparations fit into post-conflict reconstruction? These are some of the key questions we need to ask when looking at reparations in a peacebuilding context. The contributors to this special section of *Human Rights Review* look at these questions as well as the significance of what constitutes reparations in post-conflict situations to provide a panoptic view of the role of reparations in these contexts.

The first two contributions offer an overview of the discussion surrounding whether or not reparations—and broader TJ initiatives—should contribute to peacebuilding or if these should be seen as more short-term, legalistic mechanisms used during transition from conflict or authoritarian rule. García-Godos argues that we must recognize the political character of victim's groups in order to push for TJ to become part of the political process of transition and peacebuilding. She does this by exploring the relationship between victim's groups and their role in endorsing a distributive justice agenda, which she sees as inherent to reparations in a peacebuilding context. An analysis of case studies in Colombia and Peru is presented and García-Godos concludes that victim's organizations should be integral in pushing forward an agenda that includes socioeconomic rights and distributive justice complementing the existing TJ agendas of civil and political rights. It is at these crossroads that TJ, reparations, peacebuilding, and development meet.

Brett and Malagón argue for a greater integration of reparations in peacebuilding and for a more transformative approach on the part of TJ agendas, which seek to transform relationships, infrastructures, structural conditions, and communities in order to prevent future conflicts and new violations from taking place. They advocate what they call “emancipatory peacebuilding,” which encompasses a more inclusive and local participation that moves away from traditional top-down, elite-led processes. This proposal is discussed within the context of proposed collective reparations by trade unions in Colombia, which illustrate the importance of using reparations to promote the deepening of democratic engagement and the transformation of social relations, as well as addressing the structural causes of conflict.

Turning to the symbolic and commemorative aspects of reparations, Brown discusses the importance of these factors in the study of TJ. He departs from the argument that symbolic reparations are an important element in peacebuilding initiatives in deeply divided societies because of their transformative potential. The ability of symbolic reparations to alter relationships, he argues, can have a constitutive effect on improving community relationships and on broader human rights values. He stresses, however, that the transformative potential of symbols and commemoration is dependent on the context, presentation, and introduction of these elements into the conflict-ridden society and is not infallible. Brown proposes that museums may provide a forum for a more organic display of symbols and commemoration, which help to restore and alter

relationships in an authentic and appropriate environment and can avoid the common pitfalls of using commemoration and symbolism as political pawns.

Future Research

Although the extent to which reparations and broader TJ mechanisms should be integrated into peacebuilding strategies may be contested, the fact that they form part of an effective transition to positive peace after violent conflict is so far uncontested. This means that we need to understand how transitional justice efforts can work in tandem with other peacebuilding strategies to achieve the necessary elements for effective peacebuilding. Therefore, more research is necessary about the role of peacebuilding actors (international, national, and local) in reparations and TJ programs, as well as what role the interests of victims and communities play in peacebuilding institutions. Furthermore, the sequencing of reparations is an important and understudied area. When should reparations be implemented to be most effective for the peace process and for victims? In addition, areas of research must be addressed on reparations for victims of grievances caused by the private sector and their consequences for peacebuilding, as well as the unintentional effects of international intervention (such as the recent case of alleged cholera contamination in Haiti by Nepalese peacekeepers). These areas of study should be complemented by a reevaluation of the TJ-peacebuilding nexus and a more discerning reflection by development and peacebuilding agencies actively integrating TJ mechanisms and advocating for reparations as part of their policy agendas.

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