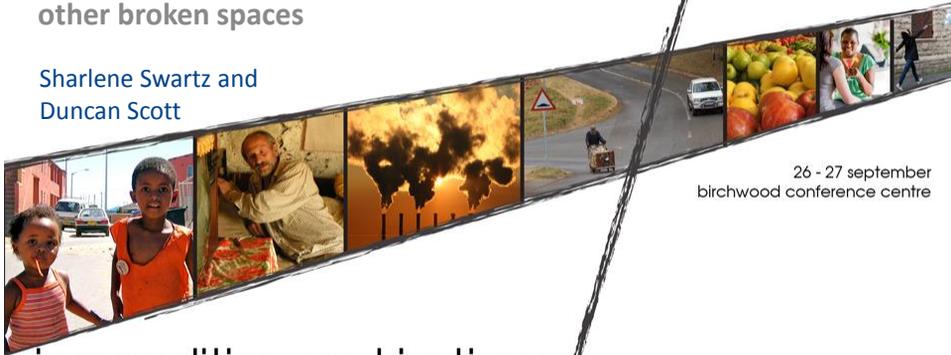


The restitution of personhood

An expanded paradigm for social justice
and reconciliation in South Africa and
other broken spaces

Sharlene Swartz and
Duncan Scott



26 - 27 september
birchwood conference centre

inequalities and justice:

influences, effects, intersections and evidence



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Introduction

- Social injustice occurs globally, and is also rife in the African context.
- A central consequence of injustice is inequality and the associated loss of humanity (or personhood) which urgently requires restitution or restoration.
- Restitution, or in some contexts, restorative justice has traditionally been addressed structurally and through institutions, but also requires individual and communal responses to achieve social solidarity, transformation and material justice.
- In order to move beyond government-led and legal programmes of penalty payments, land redistribution and affirmative action in order to address injustice-fomented inequality, this paper outlines the conceptual basis for a research project focussed on the *social and interpersonal aspects of restitution* – everyday acts of restitution by everyday people.
- While acknowledging the importance of structural programmes of change, it is widely held that these alone are less likely to encourage the civil society, and community and individual actions necessary to bring about social transformation and material injustice in spaces fragmented by structural and interpersonal violence, and psychological pain.

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Two central questions

1. What are the best ways of responding to injustice (social solidarity, transformation and material justice) in an African context, and how might concerned **individuals and communities** respond alongside structural and institutional responses?
2. How might a restitutionary framework ('the restitution of personhood') guide such responses, in African contexts, and with transferable insights for other contexts?

A step back – Ramphela and Tutu

The persistent “wound of racism”... “a wounded people” ...“in denial about [their] wounds” (Ramphela 2008). A “scarring of the black psyche” (Ramphela, 2009, 74). The effects of which are “a socially induced inferiority complex, self-hatred, low self-esteem, jealousy of those seen to be progressing (both black and white), suppressed aggression, anxiety” (Ramphela 2009, 16).

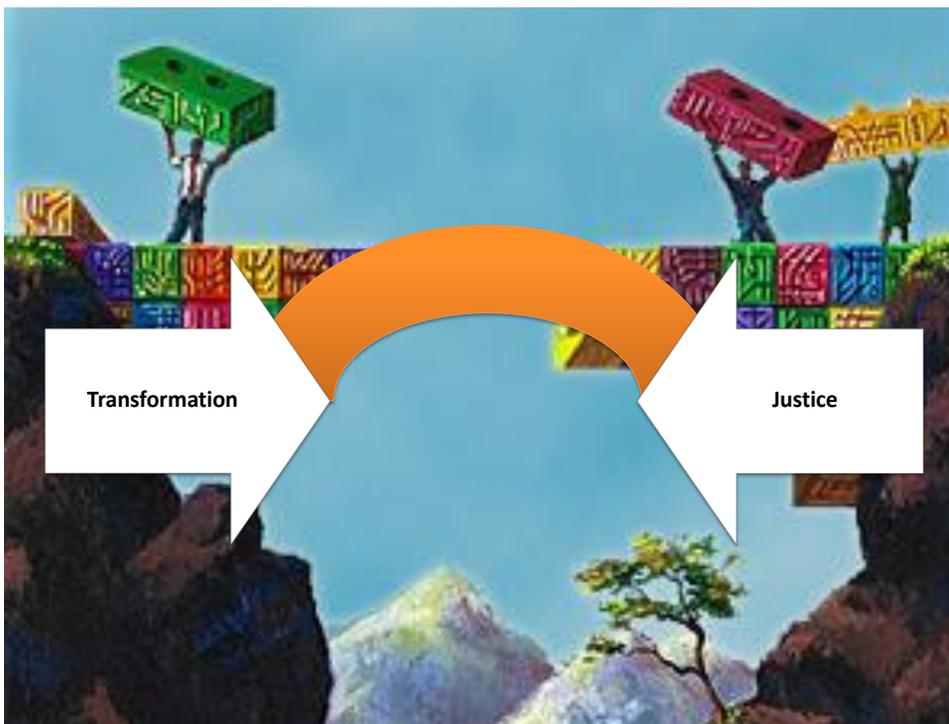
““[Only if the] emerging truth unleashes a social dynamic that includes redressing the suffering of victims... will it meet the ideal of restorative justice” (Tutu, TRC, 1998, Volume 1, p. 131).

Restitution to move forward

Why restitution?

1. To address 'woundedness' (Ramphela) with 'healing'
2. To answer the call for a 'social dynamic' (Tutu) of 'justice'
3. To showcase theorised models for just action and social solidarity
4. To address injustice, poverty and inequality – systematically, at multiple levels
5. To align transformation and material justice

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Addressing 'brokenness'

1. Legal and historical uses of restitution
2. Recent interdisciplinary alternatives
3. Proposing a model for transformation: "the restitution of personhood" as the 'missing piece' or bridge in the transformation puzzle

Restitution in historical and legal context

1. To rectify unjust enrichment; restore to prior state
2. Both compensation, and gain-stripping
3. Reparations and apologies \neq restitution
4. Incl. psychological harm e.g. child pornography
5. Punish offender, compensate victim
6. Restorative justice, rehabilitate offender
7. Individual and state-level
6. Focus on legislated restitution, esp. property

Contemporary scholarship on restitution

1. Voluntary not legislative, creative not punitive (Eglish)
2. “International morality... encompassing the spectrum of attempts to rectify historical injustices” (Barkan)
3. Emphasises continuum of community, responsibility across generations and rectifying structural injustice (Young, Calder, McIntyre, Mamdani)
6. Not just backward-looking (liability from the past) but also forward-looking (change in the future) (Calder)
7. Restoring victims, offenders, communities, nations (Braithwaite)
8. “We are our past as well as our future” (Booth)

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(Re)Defining restitution

FROM

“Restoring things to how they were before the injustice was perpetrated”

TO

The act of ‘paying back’ for wrongs previously committed

AND

The act of ‘making right’ symbolically or materially

INCLUDES

Philosophical, emotional, theological, psychological, physical and economic elements.

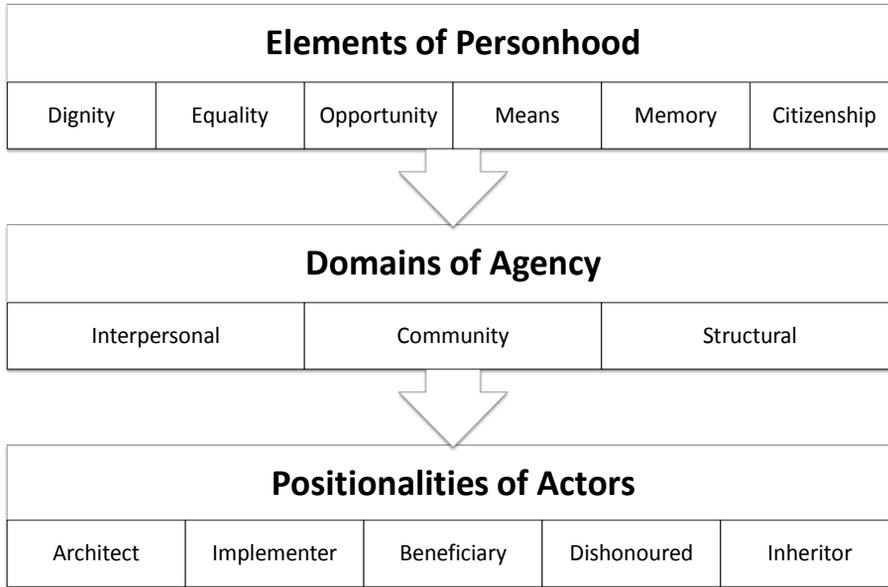
INTRODUCES

The notion of ‘personhood’

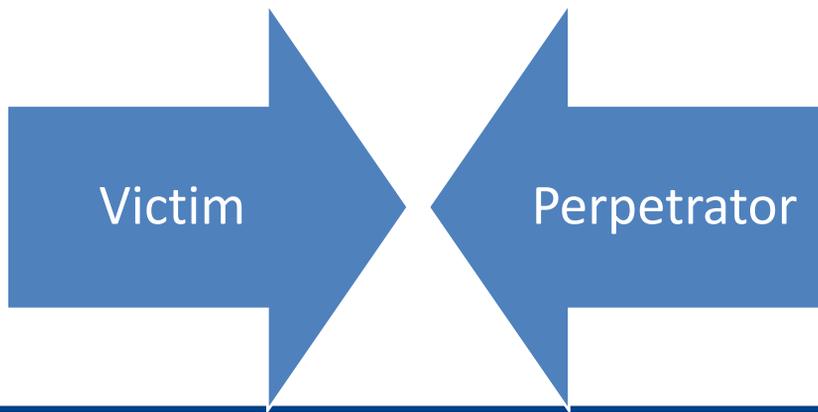
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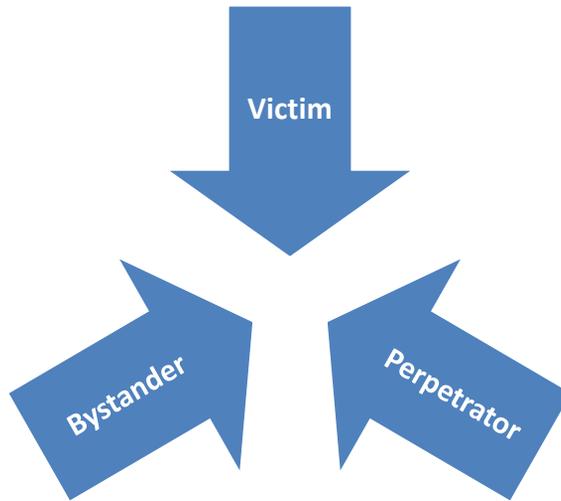
The Restitution of Personhood



Positionalities of actors



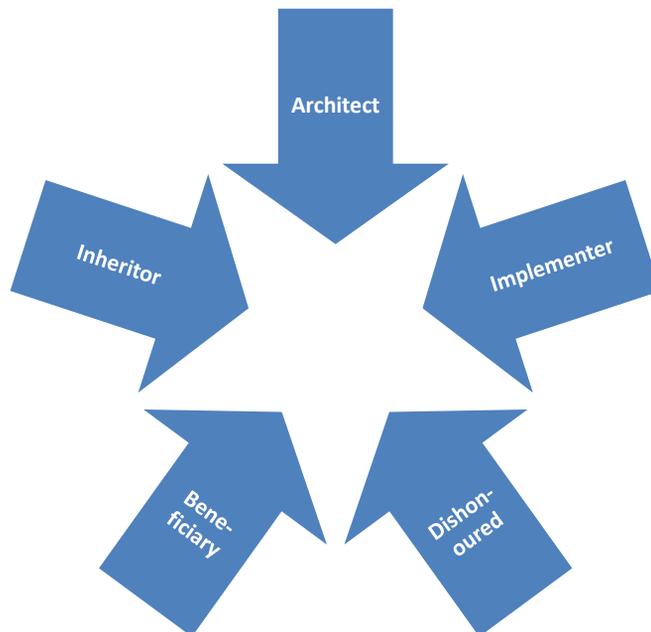
Positionalities of actors



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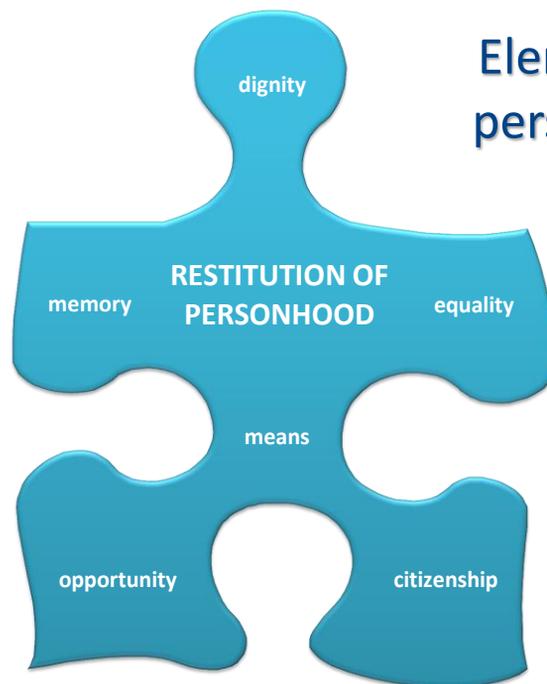


Positionalities of actors



Positionalities of actors

Injustice, e.g. Verwoerd, Vorster, Vlok	Architect	Resistance to injustice, e.g. Mandela, Casrils, Sisulu, Zuma
Injustice, e.g. apartheid foot soldier, security police, 'madams'	Implementer	Resistance to injustice, e.g. MK foot soldier, Mass action participant, civic committees
Dishonoured by complicity, e.g. white worker, Apartheid informer	Dishonoured	Dishonoured by systems, structures and actions, e.g. most 'black', 'coloured', 'Indian' people
Injustice, e.g. white people, Bantustan leaders	Beneficiary	Resistance e.g. Black consciousness, children of activists, BBBEEE beneficiaries
Inheritor of benefit, e.g. white youth, financial, social and cultural capital	Inheritor	Inheritor of dishonour, e.g. impoverishment, poor quality education



Elements of personhood

Personhood

- **Dignity** → ‘Scarred psyche’, self determination, symbolic violence
- **Memory** → Chronic amnesia, no first hand experience
- **Equality** → In law and in lived experience
- **Means** → Decent life, wealth, property, NDP2030 focuses here (housing, nutrition, safety, health care, employment, recreation, environment, transport)
- **Opportunity** → skills, access, possibilities
- **Citizenship** → not the ‘wounded excluded’, realised rights

Domains of agency

EXAMPLES OF RESTITUTION	
	Structural
	<ul style="list-style-type: none"> • Housing subsidy for those earning under R13,000pa [means, dignity]
	<ul style="list-style-type: none"> • Youth employment subsidy [opportunity, means]
	<ul style="list-style-type: none"> • Broad-based black economic empowerment [opportunity, equality, means]
	<ul style="list-style-type: none"> • National Health Insurance - SA [means, dignity]
	<ul style="list-style-type: none"> • Solidarity tax at reunification - Germany, 1992 [means, opportunity]
<ul style="list-style-type: none"> • Law of Historical Memory – Spain, 1997 [memory] 	

Domains of agency

EXAMPLES OF RESTITUTION		
	Civic	Structural
	<ul style="list-style-type: none"> Commemorating the 1913 Land Act - SA [memory] 	<ul style="list-style-type: none"> Housing subsidy for those earning under R13,000pa [means, dignity]
	<ul style="list-style-type: none"> Community partnerships, e.g. Solms-Delta Project [dignity, means] 	<ul style="list-style-type: none"> Youth employment subsidy [opportunity, means]
	<ul style="list-style-type: none"> Physically reintegrating racially divided churches [equality, citizenship] 	<ul style="list-style-type: none"> Broad-based black economic empowerment [opportunity, equality, means]
	<ul style="list-style-type: none"> Teaching about Black Consciousness [equality, dignity] 	<ul style="list-style-type: none"> National Health Insurance - SA [means, dignity]
	<ul style="list-style-type: none"> Corporate social responsibility/investment [dignity, opportunity] 	<ul style="list-style-type: none"> Solidarity tax at reunification - Germany, 1992 [means, opportunity]
	<ul style="list-style-type: none"> National museums/centres of remembrance [memory] 	<ul style="list-style-type: none"> Law of Historical Memory – Spain, 1997 [memory]

Domains of agency

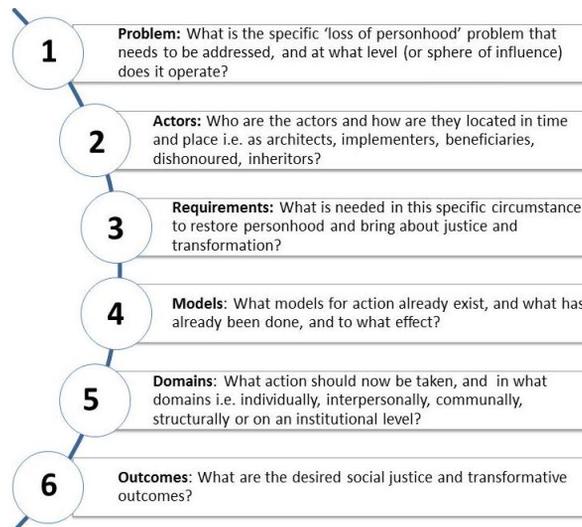
EXAMPLES OF RESTITUTION		
Individual	Civic	Structural
<ul style="list-style-type: none"> Commemorating public holidays [dignity, citizenship] 	<ul style="list-style-type: none"> Commemorating the 1913 Land Act - SA [memory] 	<ul style="list-style-type: none"> Housing subsidy for those earning under R13,000pa [means, dignity]
<ul style="list-style-type: none"> Apologies between individuals [dignity] 	<ul style="list-style-type: none"> Community partnerships, e.g. Solms-Delta Project [dignity, means] 	<ul style="list-style-type: none"> Youth employment subsidy [opportunity, means]
<ul style="list-style-type: none"> Voluntary limitation to children's inheritance [means] 	<ul style="list-style-type: none"> Physically reintegrating racially divided churches [equality, citizenship] 	<ul style="list-style-type: none"> Broad-based black economic empowerment [opportunity, equality, means]
<ul style="list-style-type: none"> Reading to children in impoverished communities [opportunity] 	<ul style="list-style-type: none"> Teaching about Black Consciousness [equality, dignity] 	<ul style="list-style-type: none"> National Health Insurance - SA [means, dignity]
<ul style="list-style-type: none"> Learn at least one indigenous language [citizenship] 	<ul style="list-style-type: none"> Corporate social responsibility/investment [dignity, opportunity] 	<ul style="list-style-type: none"> Solidarity tax at reunification - Germany, 1992 [means, opportunity]
<ul style="list-style-type: none"> Cross-racial adoption [opportunity] 	<ul style="list-style-type: none"> National museums/centres of remembrance [memory] 	<ul style="list-style-type: none"> Law of Historical Memory – Spain, 1997 [memory]

A multi-year programme of research

To investigate, in seven African countries, how the notion of restitution may be usefully employed as an organizing framework and programmatic principle for social justice and transformation through investigating:

- 1) Theories, polices and problems of restitution
- 2) Attitudes, narratives and theories of change for restitutionary action
- 3) Models and social movements of restitution
- 4) Developing/disseminating southern knowledge globally.

A model for the restitution of personhood



Research Projects

Aim 1 Theories, policies and problems

- 1 **Knowing, Seeing, Acting:** Youth digital media project on the costs of social injustice and inequality [R962,428]
- 2 **Never Enough:** An analysis of global legislated restitution and its effects and social attitudes towards social injustice and inequality [R430,000]

Aim 2 Attitudes, narratives and theories of change

- 3 **Restitutory Action for Social Change:** A mixed methods study investigating a practical framework for informed yet everyday social justice action [R11,878,200]

Aim 3 Models and social movements

- 4 **All In:** Evaluating community-based restitution processes over time [R1,678,000]
- 5 **Models for Everyday Action:** A digital archive of stories that teach [R543,641]
- 6 **Change Talk:** Resources for community discussions on restitution [R670,000]

Principled Activities

Aim 4 Developing and disseminating Southern knowledge

- 1 **Southern Capacity Building:** Masters and PhD internships ; Post doctoral fellowships [R8,000,000]
- 2 **Southern Knowledge Production:** Commencement Conference; Annual collaborative meetings [R748,200]
- 3 **Global Dissemination:** Rolling schedule of publications, newsletter and concluding international conference [R1,970,000]

Seminal readings in restitution

Author	Year	Title
Barkan, Elazar	2000	The guilt of nations: Restitution and historical injustices
Barnett, Randy E.	1977	Restitution: A new paradigm of criminal justice
Booth, W. James	1999	Communities of memory: On identity, memory, and debt
Butt, Daniel	2007	On benefiting from injustice
Calder, Todd	2010	Shared responsibility, structural injustice, and restitution
Eglash, Albert	1957	Creative restitution – A broader meaning for an old term
Hirsch, Alexander	2012	Theorizing reconciliation: Agonism, restitution and repair
Iyer, Aarti et al.	2003	White guilt and racial compensation: The benefits and limits
Kukathas, Chandran	2006	Who? Whom? Reparations and the problem of agency
Lambourne, Wendy	2009	Transitional justice and peacebuilding after mass violence
Mamdani, Mahmood	2002	Amnesty of impunity? A preliminary critique of the TRC
Meyer, Lukas	2006	Reparations and symbolic restitution
Wenar, Leif	2006	Reparations for the future
Young, Iris	2006	Responsibility and global justice: A social connection model