Waging WAR, MAKING PEACE

REPARATIONS AND HUMAN RIGHTS

Barbara Rose Johnston &
Susan Slyomovics, EDITORS

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Reparations and Human Rights

Based on a Report from the American Anthropological Association, Committee for Human Rights, Reparations Task Force

Edited by

Barbara Rose Johnston
Susan Slyomovics

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Front Cover illustrations: Images from the January 14, 2004 ceremony to decommission the military base guarding the resettlement village of Pacux on the outskirts of Rabinal, Guatemala. The Pacux model village was built with hydroelectric dam development funds, and was the first of many militarized villages built to "control and re-educate" the Mayan civilian population. Pacux was the last of the militarized civilian encampments to be decommissioned in Guatemala, some seven years after the Peace Accords were signed. A number of Pacux residents survived massacres in the 1980s and are now key witnesses in Genocide and Crimes Against Humanity cases in the Guatemalan and Spanish Courts. Photos courtesy of Bert Janssens.

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Preface: Anthropology's Engagement

Susan Slyomovics

"Where there is a right, there is a remedy" (*ubi ius ibi remedium*).

Reparation is a general term for a variety of redress measures that include restitution and compensation as well as rehabilitation, satisfaction, and guarantees of nonrepetition. Although the goals of restitution are to return the victim to the conditions prior to violation, financial compensation attempts to assess harm as a consequence of the violation. In cases of reparation, geopolitical interests and international legal norms all too frequently dictate approaches to such key human rights issues. As an exemplary recent study of the state of redress and remedies, *The Handbook of Reparations*, edited by Pablo de Grieff (2006) of the New York–based International Center for Transitional Justice, provides important details, documents, and essays that focus on legal analyses and the design and implementation of reparations programs worldwide.

In contrast, anthropology more often than not focuses on individuals and groups rather than states. What insights do anthropology and anthropologists bring to the national, transnational, and international topics of waging war and making peace? With anthropology's long-standing claims of cultural and heritage preservation, and our solidarity with varied cultures and peoples on the ground, how do anthropologists engage with issues of national self-determination, peaceful coexistence, religious and cultural difference, human rights and the conduct of war, including the social and economic demands for redress by everyday actors? If lawyers see reparations as justice, do anthropologists imagine a more expansive, integrated form of reparations—what Barbara Rose Johnston's introduction to this volume terms our discipline's "holistic four-field approach"?

Chapters in this volume represent a variety of methodological, thematic, comparative, and theoretical approaches, yet all are informed by anthropology and what anthropologists offer to the study of reparations.

Permitting people to speak about what has happened to them and their communities, as these chapters do, is part of a process in which speakers are transformed from victims into rights-bearing humans and citizens. Thus, it is for us as anthropologists to listen both inside and outside the courts, considering reparations as a matter of law, as a social movement, and as an extension of a political project. How do social movements for reparation lead to legally enforceable rights? Inside the law, reparations may be part of a court procedure exemplifying retributive justice, but outside the law, what kind of justice is to be envisioned? The authors seek to explore the paradox and nuances of reparations, since outcomes achieved are not always satisfactory, whether they are historical truth-finding, the politics of recognition, making amends, or cash payments accompanied by the silence of perpetrators, amnesties, or white-washing the past.

Most of these works were first presented to an audience of anthropologists during a double session of panels at the 105th annual meeting of the American Anthropological Association in San Jose, California, in 2006. The idea for a panel on reparations began over dinner a year earlier at the November 2005 annual conference of the AAA in Washington, DC. Barbara Rose Johnston and I were seated together during the evening meal that introduced current members and alumni of the AAA's Committee for Human Rights, which the AAA established in 1995 following the actions and recommendations of a four-year Commission on Human Rights. It seemed to both of us that programs of the annual AAA conference indicated that anthropologists are engaged in human rights reparations work and reporting their work in every section and interest group of the association. Recognizing the cross-disciplinary involvement in social justice struggles, we initiated, through the Committee for Human Rights, the Reparations Task Force with an initial agenda of encouraging discipline-wide discussion of the conceptual, methodological, ethical, and political praxis issues associated with the "anthropology of making peace." To begin the discussion, a call for papers was published in the *Anthropology Newsletter* to organize panels under the auspices of the Committee for Human Rights around the topic of "Waging War and Making Peace: Reparations and Human Rights":

> For years anthropologists have been involved in efforts to document human rights abuse and secure, in one fashion or another, some notion of justice and remedy. While the nature and meaning of anthropology varies according to the cases and places, a number of problematic issues are commonly encountered: How to identify the injured parties: who are the "affected" people? How to determine whether allegations are legitimate? How to demonstrate the evidentiary basis that supports findings of abuse? How to go about developing culturally appropriate and locally defined plans for remedy? How to develop the political will and mechanisms to safely air complaints and investigate abuses in a rights-protective setting? How to determine consequential damages and meaningful remedy? How to encourage and shape policy and actions that insure "never again"? And, how to engage in this work

> in ways that protect the life and health of scientists, victims, and advocates? (Johnston 2006:29)

Our edited volume emerged primarily from conference presenters responding to our call for conference papers, although additional chapters were solicited from Gretchen Schafft, Liza Grandia, and Kathleen Dill, with Alison Dundes Renteln providing a concluding discussion. Consequently, this volume offers theoretical coherence around the theme of reparation, but unfortunately at the expense of geographical and historical coverage. These are chapters without a requisite "balance": Absent are opposing sides presenting contrasting views of complex reparation issues (e.g., contrasting Palestinian and Israeli viewpoints). Instead, they demonstrate, in well-written and striking ways, the degree to which the specificity and details of anthropological case studies are dispersed throughout the world. Anthropologists discuss fieldwork with the Maya communities of Belize (Grandia), the Moroccan truth commission (Slyomovics), Palestinians and the right of return (Rabinowitz), Americans on the death penalty (Di Bella), damages to the exiled people of the Indian Ocean's Chagos Archipelago (Vine, Harvey, and Sokolowski), the respective claims of Greek versus Turkish Cypriots (Bryant), reparations to postwar Nicaraguans (Phillips), and Guatemalan struggles to secure reparations for state-sponsored violence and massacre of Mayan communities (Dill). We hope that the introductory chapters by Johnston and Schafft and the closing discussion by Renteln afford opportunities to generalize through cross-cultural comparisons that may offset the lack of representative sampling of a range of reparation case studies in which anthropologists are deeply engaged. We hope that our scholarly, comparative discussions and bibliographies will facilitate the reader's exploration of the expanding role of reparations in making peace.

Acknowledgments

We thank Richard A. Wilson, our 2006 AAA panel discussant, for his feedback and insights as well as the contributions of panel participants Sarah C. Soh and Nandini Sundar, whose papers are not included in this volume. We gratefully acknowledge our panel co-sponsors: the American Anthropological Association and its Committee for Human Rights, the Society for Urban, National and Transnational/Global Anthropology, and the Association for Political and Legal Anthropology.

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Making peace: decommissioning a military base guarding Pacux, Guatemala. January 14, 2004 ceremony to decommission the military base guarding Pacux on the outskirts of Rabinal, Guatemala. The Pacux model village, built with hydroelectric dam development funds, was the first of many militarized villages built to "control and reeducate" the Mayan civilian population and it was the last of the militarized civilian encampments to be decommissioned in Guatemala, some seven years after the Peace Accords were signed. Photo by Bert Janssens.

Chapter 1

Waging War, Making Peace: The Anthropology of Reparations

Barbara Rose Johnston

Anthropology, in its core essence and meaning, is the study of humanity. If the study of humanity tells us anything, it is that we humans have become very, very good at waging war. We truly excel in this realm. We are considerably less successful in making peace.

In a world of ever-increasing population and growing gaps between those who thrive and those who struggle to survive, war saturates our reality. Family violence. Community conflict. Gang wars and other turf battles. Our corporations and governments make war on the environment in their efforts to tame rivers and control floods, obtain strategic resources, and transform nature into the cultural landscape and engineered biota that we call progress. In policy and actions that prioritize profit and power over the fundamental needs of the citizenry to health, adequate food, housing, and the other essentials that sustain life, the state engages in structural violence against its poor in the name of colonialism, development, the cold war, border security, energy, and critical resource security. All too often, we see emerging out of the chaos of this violence more organized forms of abuse: genocide, torture, slavery, and other forms of violence that we now recognize as crimes against humanity. Such crimes are perpetrated and legitimized in the name of nationalism, militarism, and economic development. Such crimes, in their immense nature and devastating consequence, are all but impossible to repair. Nevertheless, the failure to attempt some sort of meaningful remedy generates deep, ulcerating tensions and conditions. Thus, we find that events that occurred years and even decades ago have enduring legacies with the power to influence actions that fuel further conflict, violence, and war.

War is a violation of the rules of behavior, the social norms that shape the fabric of human life. In a world where much of our energy and resources are directed toward making war—armies and weapons are the single largest expenditure in national budgets—remarkably little attention and economic support is directed toward the study and practice of peace. Case in point: The United Nations, an entity established for the purposes of preserving peace through international cooperation and collective security, has an annual budget that in 2008 represented about 2% of the world's military expenditures (Shah 2008).

Even the term "peace," the polar opposite of war, has been co-opted by the military-industrial enterprise. Peace-keeping, preemptive militarism to ensure a lasting peace, peace operations, peace and security—these phrases suggest that the primary mechanism for building and protecting peace is a mechanism that relies on violence or the threat of violence. Yet, as illustrated in the chapters of this book and the growing literature on reparations, the intensive study of individuals, communities and nations in the aftermath of war demonstrates that "peace" (meaning the sustained and secure ability of people to live in dignity, with full enjoyment of fundamental rights) is largely achieved through nonviolent actions, mechanisms, and processes. Making peace, whether it is between siblings, partners, families, communities, or nations, requires the will to make peace, a common understanding that rules have been violated and harm has been suffered, recognition that an obligation exists for parties to make amends to each other, and demonstrative action that attempts to repair wounds and alleviate pain, to restore health, and to ensure that the violence will not occur again. Despite horrific violence and the lingering legacies of war and other crimes against humanity, humans have found ways to rebuild their lives, communities, and societies as actors in the peace-making process of reparations.

The Concept of Reparation

Reparations are political agreements and remediative processes that attempt to heal the wounds of war, wounds that involve at the most fundamental level the abuse of human rights. They are typically negotiated in formal legal settings, shaped by political actors, and approved by government entities. The concept of reparation emerged as a way for states to make peace by acknowledging and "repairing" the injuries caused by war. In the early part of the last century, the term reflected the end result of peace treaty negotiations where the losing party was obligated to provide economic compensation to the victor to remedy the damages to property that occurred as a result of war.[1]

Today, as a legal construct, reparation has come to mean any action or process that seeks to repair, make amends, or compensate for gross violations of fundamental human rights. This expanded meaning reflects in large part the events of World War II and the subsequent adoption of the 1948 Universal Declaration on Human Rights, which declared that:

- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2).
- Everyone has the right to life, liberty and security of person (Article 3).
- Slavery and the slave trade shall be prohibited in all their forms (Article 4).
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5).
- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law (Article 8). (UN 1948)

With these declarations, the concept of reparation was effectively broadened from its prior focus on economic compensation by one state to another for loss or damage to property during times of war to a larger focus on the need to repair the human damages resulting from gross violations of fundamental rights during war. Victims of genocide, slave labor, human subject experimentation, and those who suffered from state seizure of lands and property without due process or compensation could now, in theory, seek remedy for violations of international law.

As a social construct, reparations refer to social movements and political actions that seek and secure meaningful remedy for gross violations of human rights. Thus, "reparations" has come to mean the struggle as well as the end result and refers to those efforts to voice social injustice, demand accountability, and seek remedy not only for violations of international human rights and humanitarian law that occur during times of war, but also for those violations that occur as a result of state-sponsored violence against its own citizens in the name of colonial expansion, economic development, and national security. Varied efforts to secure reparations have resulted in the expansion of international and national human rights and environment law and the increasing recognition that, with regard to gross violations of fundamental human rights, the common concerns of human kind supersede the sovereign rights of states.

In April 2005, the concept and mechanisms to achieve reparation were reconfirmed and strengthened by the United Nations in its adoption of *Basic Principles and Guidelines on the Right to a Remedy and Reparation*

for Victims of Violations of International Human Rights and Humanitarian Law (United Nations Commission on Human Rights E/CN.4/2005/L.48). This agreement was twenty years in the making and its adoption by the UN General Assembly signals broad consensus on the meaning of repartion and importance of remediative and restorative mechanisms in national and international law. The UN guidelines define reparation and describe remedial mechanisms in the following forms.

Restitution is defined as actions that seek to restore the victim to his or her original situation and includes restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment, and return of property. The repatriation of paintings and other properties seized during World War II to Jewish families, and the return of artifacts and skeletal remains by museums and anthropology departments to Native American tribes, are examples of restitution. The Palestinian struggle to secure the right to return to their properties and homes in Israel (see Rabinowitz, this volume) is an as yet unresolved example of restitution.

Compensation refers to economic payment for any assessable damage resulting from violations of human rights and humanitarian law including physical and mental harm, and related material and moral damages. This is perhaps the most common form of reparation. In its payment, compensation typically signifies an end to complaint and, thus, future liability. A product of negotiation and compromise, and an imperfect and singular reflection of the economic value of damage, injury, and loss, compensation is arguably the form of reparation with the greatest distance between reparation and justice: How can a monetary sum compensate for the loss of life, or a way of life, or the land and resources meant to support the generations to come?

Rehabilitation includes providing legal, medical, psychological, and social services and care. For example, the International Criminal Court prosecution of war crimes in Rwanda documented the use of rape as a weapon of war, recognized gender crime as a tool of genocide, and ruled that the resulting mutilation, infertility, and incidence of HIV demands rehabilitative reparation in the form of medical assistance and care (Balthazar 2008).

Satisfaction involves almost every other form of reparation that addresses nonmaterial damage. Satisfaction includes measures that halt continuing violations, such as the political transformations accompanying the end of apartheid in South Africa. It includes establishment of judicial mechanisms, such as national truth and reconciliation commissions that verify facts and attempt to provide full and public disclosure of the truth. Satisfaction also includes the search for the missing, identification of bodies, assistance in recovery, identification and forensic analysis of remains, and reburial in culturally appropriate ways—efforts that are a central element

of the struggle to secure and implement reparations in Guatemala (cf., Johnston 2005; Sanford 2003; Dill, this volume). And satisfaction includes official declarations or judicial decisions that restore the dignity, reputation, and legal rights of the victim and persons connected with the victim. Such actions include public apology and acceptance of responsibility, judicial sanctions against responsible parties, and commemorations and tributes to the victims.[2] The June 11, 2008 apology to First Nation communities by Canadian Prime Minister Stephen Harper for the forced assimilation, incarceration, and abusive treatment of children in the Indian residential schools is an example of action meant to generate satisfaction, though some argue that apology without a full and meaningful approach to reparation is merely an effort to evade responsibility (Annett 2008).

Guarantees of nonrepetition include measures that ensure "never again" and the following:

- effective control over the military and security forces;
- establishment of a viable, rights-protective, independent judiciary where proceedings can occur with due process, fairness, and impartiality;
- establishment of political climate that protects human rights defenders;
- establishment of measures and mechanisms that ensure public servants promote and observe codes of conduct, ethical norms, and international human rights standards;
- mechanisms for preventing and monitoring social conflicts and their resolution; and
- the review and reform of laws that contributed to or allowed the gross violation of international human rights laws.

Adopting and implementing such guarantees require broad societal support, political will, and demand substantive transformation in the loci of power, hugely difficult things to achieve as illustrated in the protracted nature of our modern conflicts.

The point of spelling out these terms is that when most of us hear the term "reparation," we assume that it simply means monetary compensation. As both a legal and social construct, the term means so much more: Reparation as outlined in the UN guidelines refers to those social, political, and economic actions, mechanisms, and processes that allow for meaningful remedy in all its forms, and thus the restoration of human dignity. Reparation in the idealized form is both a plan for peace and the process that allows wounds to heal.

Seeking Remedy

The process to claim reparations is varied. Some states will make reparations to other states, their citizens, or other injured parties on their own, without outside intervention, especially when facing the political consequences

of their breach of international obligations (cf., Barkan 2000). For example, in 1954 the United States had to formally acknowledge its culpability in exposing Marshall Islanders and Japanese fishermen to high levels of radioactive fallout from the March 1, 1954 detonation of a hydrogen bomb. In its press releases and statements to the UN General Assembly, the United States promised "fair and just compensation for losses of all sorts" (Sears 1954, in Johnston and Barker 2008:19). Acknowledgment of this incident did not occur until a week later, after a stateside newspaper published news of the exposure and subsequent evacuation of the Marshallese, citing a letter sent by a serviceman home to his family.

This news, the first incidence of civilian exposure since the atomic bombs were dropped on Hiroshima and Nagasaki, prompted immediate and widespread international publicity, as did the news that a petition had been submitted to the UN General Assembly by the exposed Marshallese requesting an end to nuclear weapons tests. This publicity generated anti-nuclear sentiment and significantly strengthened efforts led by the Soviets to advance a proposal to ban the testing of nuclear weapons. In response, the United States volunteered its culpability with the hopes of placating concerns by demonstrating their ability to control and address any unanticipated damage from nuclear weapons tests. In January 1955, the United States paid some US$2 million in reparation to the government of Japan for injuries and one fatality suffered by twenty-three fishermen (Lapp 1958). And the United States established a classified medical research project to document the health effects from exposure and the recovery of Marshall Islanders from their radiation burns (Johnston 2007).

Sanitized versions of this classified human radiation effects research were released by the Atomic Energy Commission, and *The New York Times* faithfully published the intended message: The Marshallese had reportedly experienced a rapid and complete return to good health (Deepe Keever 2004). When the evacuated Marshallese were returned to their home islands in 1957, the repatriation was filmed, showing happy islanders moving into brand new homes. The U.S.'s strategy of quickly acknowledging culpability, controlling remedial efforts, and shaping the public reporting of conditions in the Marshall Islands to deflate the power of this incident in anti-nuclear politics worked. Despite repeated attempts in the UN General Assembly, as well as repeated petitions from the affected Marshallese, a ban on testing atmospheric, underwater, and outer-space nuclear weapons was not approved until 1963 (Deepe Keever 2004; Divine 1978; Johnston and Barker 2008; Lapp 1958).

A current example of noncoerced acknowledgment of culpability is the U.S. policy of providing compensation for noncombat related civilian property damage and "condolence" for loss of life during times of war. Such payments occur under the authorization of the 1942 Foreign

Claims Act (10 U.S.C. § 2734–2736), and in the past have been made in response to claims filed after the cessation of conflict. After the United States began its military operations in Afghanistan and Iraq, Congress revised the Foreign Claims Act to encourage reparation during armed conflict. By April 2007, thousands of damage and injury claims had been submitted, and the United States had reportedly distributed some $32 million in small increments. Many claims have not been approved for various reasons including lack of substantiating documentation by military witnesses, suspicion of fraud, and insufficient funds. As spelled out in the Foreign Claims Act, this approach to reparation in the midst of conflict is intended to foster goodwill among the civilian population.[3]

More typically, especially with regard to gross violation of human rights, culpable parties do not voluntarily step up to the plate, do not acknowledge their responsibility, and do not volunteer a commitment to provide remedy. Thus, in the effort to exercise their right to remedy, injured parties may seek recourse by filing a claim for reparations before national or interational tribunals. Which tribunal will hear a case depends on the law or treaty setting up the tribunal, any discretion that the tribunals may have in turning away cases, and whether the parties have agreed to adjudication before the tribunal. To make a claim, an injured party must have standing (whether the party making the claim was owed an obligation and whether they in fact suffered injury), and claims must be presented according to the rules of the court (including any relevant statute of limitations).

In addition to standing, most international agreements and court procedures require negotiation as a prerequisite to filing claims in an international tribunal. Customary international law also requires claimants to exhaust local remedies before bringing some types of claims. Before survivors can appeal for justice in regional human rights courts, such as the Inter-American Human Rights Court, they must first demonstrate they have pursued all local remedy and have failed to achieve justice.

Within the United Nations, appeals for justice in cases involving bilateral disputes (complaints between nations) are heard in the International Court of Justice (also called the World Court). Cases involving individuals and their role in war crimes and other gross violations of humanitarian law are heard in the International Criminal Court (ICC), a permanent tribunal established by the Rome Statute of the International Criminal Court that came into force on July 1, 2002. Based in the Netherlands, the ICC has the authority to prosecute individuals for war crimes, crimes against humanity and genocide associated with international and non-international armed conflict; enslavement; deportation or forcible transfer of populations; torture, sexual violence (such as rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization); and apartheid. It also has the authority to prosecute individuals for their actions and role in persecuting identifiable groups on the basis of political, racial, national, ethnic,

cultural, religious, or gender status. The ICC can only prosecute crimes against humanity committed by individuals in signatory countries on or after July 1, 2002.[4]

Culpability Gap

Although reparations can be achieved through people-to-state and state-to-state negotiations involving courts, tribunals, and political processes, there is little recourse when culpable parties lack standing in international law. Injustices that fall into this culpability gap include historical injustices when responsible parties are no longer viable (e.g., former governments, such as the USSR, as well as corporations that are no longer functional business entities) or when complaints are filed beyond the statute of limitation. The culpability gap also includes historical institutions and events (e.g., slavery, colonialism, the Armenian genocide) as well as the many injustices resulting from institutionalized and global processes (nuclear and cold war militarism, globalization, and large-infrastructure development). There is little recourse when culpable parties are not easily identifiable as individuals or state entities. And, the culpability gap includes injustices that occur within a weak or nonfunctioning state, where power equals impunity. Thus, at this writing, it appears that the ever-expanding list of abuses resulting from the U.S.'s "war on terror," thanks to the foresight of bilateral impunity agreements championed by the Bush administration, cannot be prosecuted as war crimes.[5]

One area where the culpability gap has literally disenfranchised tens of millions of people is the gross violation of human rights that accompanies large dam development. Since World War II, some 54,000 large dams have been built, generating an estimated 20% of the world's electricity and providing irrigation to fields that produce some 10% of the world's food. These dams have also flooded some of the most productive agricultural lands in the world. They have caused the endangerment or extinction of half the world's freshwater fish. Changes in downstream water quality have decimated the fisheries, waterfowl habitats, and mammals of the world's deltas. And, for the tens of millions of people whose lives and livelihood were rooted in the banks and valleys of wild rivers, upstream and down, and for the hundreds of millions who struggle with the degenerative impacts of dead or dying fisheries, dam development has literally destroyed the health, economy, and culture of communities and entire nations. Lacking fertile lands and the means to reproduce a way of life, many suffer from horrific poverty in "resettlement" compounds and camps or migrate as "development refugees" from rural to urban settings within their nation and abroad (Johnston 2008; Oliver-Smith Forthcoming; Scudder 2005; WCD 2000).

In these cases of development disaster, where economic development occurs at the cost of lives, lands, and ways of life and projects are subsidized in whole or part by non-state actors, effective, rights-protective mechanisms to receive complaints and generate enforceable remedies are largely nonexistent. Development-financing institutions such as the World Bank Group have created complaint mechanisms. These are, however, internalized processes that limit investigations to current investments and lack significant means to enforce any recommendations or findings. Reparation mechanisms established by states through international treaties such as, for example, the ICC or the Inter-American Human Rights Court, are largely geared toward resolving complaints between or involving states. Thus, despite various efforts, to date, no case has successfully been able to name the World Bank, an international financial institution created by UN charter, as a culpable party in human rights violation complaints filed in the various national, regional, and international courts. That said, although it is the state's responsibility to protect the rights of its citizens, including the right to just compensation, international organizations party to foreign investment agreements are also recognized as having obligations and responsibilities to the rights and duties specified in the UN Charter. In theory, the World Bank and other international agencies, have the same obligations and responsibilities as states when it comes to honoring international agreements (Clark 2002; Clark, Fox, and Treakle 2003; Johnston 2000; Scudder 2005; WCD 2000).

Making the Case

When human rights abuses fall into the culpability gap, justice is typically sought in the "court of public opinion" through confrontational politics, with the goal of generating public interest, moral outrage, and the political will to craft negotiated and legislative solutions. The relative lack of power and the burden of proof required from the victims, and the fact that in many cases, culpable parties involve a complex array of actors—individuals, national and transnational corporations, international financial institutions, states, and various international agencies—means that achieving reparations through confrontational politics is in no way an easy feat.

If remedy can be sought via people-to-state negotiations involving courts, legislative bodies, and the court of public opinion that influences political policy and action, for reparations to occur, someone or some entity must effectively "make the case." Reparations negotiations require the political formation and effective action of affected peoples, in partnership with advocates (legal, scientific, and political), with a heavy reliance on public campaigns and the public sympathies that such campaigns deliver

to place this grievance issue on the state or international agenda. It is in this realm that anthropological engagement has, historically, been the most aggressive and effective by, for example:

- documenting abuses and communicating social injustice in various forums and arenas;
- aiding the ability of victims to voice their complaints;
- interpreting and substantiating victim complaints via evidentiary analysis—conducting exhumation and forensic analysis, oral testimonies, participatory and ethnographic analysis, building the paper trail via archival forensics (review of classified, grey and other categories of documentary literature);
- substantiating not only the chain of events, but the consequential damages of those events as experienced by individuals, families, communities, and society. And documenting these consequential damages in holistic fashion to include the wide array of adverse impacts endured by people and their environment; and
- supporting efforts to build political capacity and create or strengthen rights-protective space to document, voice, receive and adjudicate complaints, determine meaningful remedy, and implement remedial actions.

The anthropological intersect with efforts to end war and bring about peace demands holistic, four-field ingenuity to document damage; to communicate, translate, and educate; and to help bring about the political conditions where responsibility is acknowledged and the political will is generated to implement meaningful remedy by restoring sustainable, healthy ways of life and ensuring "never again."

This is no simple intellectual exercise, with a bounded unit of analysis and a clear measure of success at the end of the day. Making the case for reparations raises numerous problematic issues involving power, evidence, and the multiple facets of reality. What is the social contract, the terms of engagement and power relationships between the researcher/analyst/advocate, the victim(s)? How can we document conditions and consequential damages in equitable, respectful, and ethical ways? Who are the "affected" people and "culpable" parties? How can we determine whether allegations are legitimate? How can we demonstrate the evidentiary basis that supports the complaints of abuse and demonstrates the consequential damages of that abuse? What must be done to bring forth culturally appropriate and locally defined plans for remedy? What strategies are needed to communicate the case and develop the political will to hear complaints and craft remedial mechanisms? And, how can we make the case in rights-protective ways: How can we confront power in ways that protect the life and health of scientists, victims, and advocates?

Addressing these questions requires participatory and collaborative strategies to move beyond descriptions of events toward the systematic documentation of the consequential damages of events. Such shifts in focus

transform remedial goals. Thus, compensatory schemes based on Western notions of property, value, and individual rights are increasingly dismissed as inadequate and replaced with restoration principles seeking a healthy way of life with respect for the needs, rights, and dignity of communities as well as individuals (see Johnston 2005; Johnston and Barker 2008; and Vine, this volume). An implicit consequence of these changes is the substantive restructuring in the loci of power, a dynamic illustrated in the increasing recognition of the sovereign rights of indigenous groups (cf., United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295) adopted in 2007).

As noted above, making the case for reparations requires exposing the truth, producing evidence of responsibility, producing evidence of injury, damage, and loss, a rights-protective space or forum to present claims and a viable judiciary to make a determination, and the political will and economic means to ensure that remedial agreements are actually implemented. Most importantly, and this cannot be understated, making the case for reparations requires the courage and actions of the affected people. Their efforts to seek justice colors the nature of their daily lives—with the constant dredging up of memories, the possible trauma of face-to-face confrontation with the perpetrators, the likelihood of lengthy and protracted struggles to secure the right to complain and, in the event that a reparation forum is achieved, the immense internal struggle to listen, suppress impulse, and accept the compromises that accompany negotiated settlement. To make the case, injured parties must educate themselves and their fellow survivors about their rights, their conditions, their problems, and the various political strategies available. They must organize in ways that allow meaningful participation and representation in efforts to document, publicize, or negotiate settlement. They must develop partnerships with advocates who can provide legal, technical, and funding assistance in documenting problems, rights, and strategies and effectively communicate their complaints in various public and legal forums. And they must find the strength and means to sustain the struggle in the face of huge and powerful inequities.

Making the case requires both money and political savvy: It requires the ability to engage and negotiate with powerful actors and understand, yet not be consumed by, complex power relationships. Making the case means dealing with people who may have blood on their hands, people with money and interests to protect, and people with agendas at risk.

These points are sharply illustrated in the effort to secure reparations for injustices accompanying the development of the Chixoy Dam in Guatemala. Built during a time of civil war, construction was begun in 1976 without notifying residents or establishing a resettlement plan. When the

dam was completed in 1982, villages were emptied at gunpoint, homes and fields burned, and massacres ensued. Survivors were rounded up and placed in a "model village" built with a single access road, and guarded by a military outpost. Years later, exhumation and forensic analysis led a UN-sponsored truth commission to conclude that the massacres were examples of state-sponsored violence against a civilian population and evidence of genocide. The military continued to openly control the lives of the dam-displaced community until December 2003, when the base was finally decommissioned, many years after other "model villages" had been decommissioned and several months after residents of this and other dam-affected communities began working with national and international advocates to document their experiences. In 2004, after a year and half of participatory and collaborative research documenting events, socioeconomic conditions, and the failures to secure legal title for seized lands, affected communities protested at the hydroelectric complex. After twenty-nine hours of peaceful protest involving some 1,000 Mayan people displaced by the Chixoy Dam, an agreement that a reparations negotiation process would be established was achieved. As of this writing, with the facilitating involvement of the Organization of American States, the Inter-American Development Bank, and the World Bank, the government of Guatemala is hosting a series of meetings with communities displaced by the Chixoy Dam to shape a plan for socioeconomic remedy (Johnston 2005).

Reparations agreements are one thing, and on the ground remedy is another. In Guatemala, after three years of negotiating, material conditions in the dam affected communities have yet to change. Displaced families continue to struggle with no electricity, no potable water, crumbling homes, inadequate farmland, and extreme food shortages. The threat of violent reprisal continues: Several community representatives to the reparations negotiation are also massacre survivors and witnesses in genocide and crimes against humanity cases in Guatemala and Spain. Meanwhile, the government of Guatemala is soliciting financing in support of a new hydroelectric development upstream on the Chixoy, the Xalala Dam, projected to forcibly displace some thirty-six Mayan villages. Energy from the first Chixoy Dam sustains the capital city and is exported to foreign markets, yet many displaced communities still lack electricity. Similarly, the new dam is expected to generate energy to feed a grid that flows up to the United States and to power the extractive industry in rural Guatemala (gold, silver, uranium, nickel mines, and natural gas development). When communities have been consulted, they voted to reject expansion of extractive industry. Community preferences, however, have been ignored and public protests have been met with violence (Aguirre 2008; Johnston Forthcoming; Saunders 2008).

The Ideal versus the Real

Reparation is a product of political negotiations that range from the most intimate, individual context where, for example, massacre survivors reconcile their histories with those who wielded the machetes and pulled triggers, to the political negotiations in societal, national, and transnational realms where states, corporations, and other culpable parties seek through imposed or self-generated processes the means to restore peace. Given the intense political nature of negotiation and implementation of reparation, the realized form can be a far cry from the ideal. In those instances in which reparations cases are successfully developed—meaning people are able to bring their complaints to a rights-protective space, do not get killed, have their experiences validated, receive findings that reflect meaningful remedy, and actually live to see the implementation of remedial actions—the process succeeds because of (or in spite of) the compromises and tradeoffs that bring culpable parties to the reparations negotiation table. By one means or another, conditions are created to encourage the participation of culpable parties; and by one means or another, the political will and economic ability has been generated to accept obligations and make amends. This dance with the devil can produce an infinite array of foul bargains.

In the Congo, where the reparations agreement established in 2004 produced the Congolese Truth Commission, critics note that the lack of transparency in setting up the commission and the politicized approach to selecting commissioners resulted in the formation of a commission whose faction affiliation and involvement in the conflict opens questions of bias, suggesting that "the purpose of such a commission, is to become a Truth Omission instead of a Truth Commission" (Joseph 2006).

Similarly, monitors of the peace process in Guatemala established via the 1996 Oslo Accords caution that, although truth was achieved in Guatemala via the Historical Clarification Commission (CEH), measures to implement full and meaningful remedy have yet to be realized in any meaningful fashion. The CEH called for measures to preserve the memory of victims, compensate victims and their survivors, foster a culture of mutual respect and observance of human rights, strengthen the democratic process, bring about peace and national harmony, and create a body that is responsible for promoting, monitoring, and fulfilling these recommendations. The difficulties of rebuilding communities, let alone a nation, traumatized by decades of violence cannot be understated. Modest evidence of remedy can be identified in some areas, but each and every significant action has occurred as a result of intense activism on the part of victims, and the social struggle for reparations has been accompanied by the constant threat and reality of violence. Truth commission findings loudly proclaim the

horror, yet repression with impunity apparently continues. Exposing historical truths without providing the political protections and will to ensure effective remedy has created a backlash of violence (Amnesty International 2005; CEH 1999; Crandall 2004).

Complicating the problem of a weak state and the many reasons why remedial action cannot or will not be implemented is the fact that the politicized process producing reparation agreements often reflects highly compromised views of injury and of meaningful remedy. In those instances where significant awards are stipulated, culpable parties continue to challenge the terms of compensatory awards. This especially seems to be the case with reparations for corporate violations of environmental and human rights law. The Exxon Valdez case, for example, with its US$5 billion award for oil-spill damages to fisheries and fishing communities languished in the courts for close to two decades, with several rounds of appeal sent to the Supreme Court. A final judgment in the case was issued by the Supreme Court in June 2008 awarding punitive damages to a class of some 37,000 claimants and their survivors. However, despite new scientific information on the extent of damage and inadequacy of earlier remedial action, the court significantly reduced the award: the original $5 billion award now stands at $500 million after contingency fees are subtracted (Button, personal communication, 2008).

Contesting the terms of remedy is not uncommon in reparation cases involving toxic or radiogenic damage. In these cases, consequential damages are poorly understood and potentially affect many generations. Huge sums of money are required to adequately restore people and their environment. And the motivation on the part of culpable parties to fund remedial action is severely constrained by the fear that paying up represents a costly precedent that will encourage other, similar victims, to file and win similar claims.

This is certainly the case in the Marshall Islands where, as previously mentioned, near-lethal fallout from nuclear weapons tests in 1954 blanketed occupied islands and produced a statement of culpability by the United States to the UN General Assembly with the promise to provide full and complete remedy. Lingering damages and new scientific information inhibit the ability of the United States to demonstrate that it has met all of its obligations with regard to the intergenerational health effects experienced by the Marshallese. Some thirty-four years later, in 1988, in exchange for dropping suits pending in the U.S. courts and limited independence for the U.S. territory, the United States established the Nuclear Claims Tribunal (NCT) as a reparation mechanism to receive and adjudicate personal injury and property damage claims. The NCT functioned with a limited pool of $150 million and the right to return to Congress to expand that pool should conditions change or new information come to light.

Over the years, in an effort to develop and hear claims, the NCT brought new independent experts in to evaluate the extent of damage and develop remedial recommendations. After a decade of investigation and claims hearings, more than 2,000 Marshallese were found eligible for medical compensation from some seventy-five different forms of cancer and other radiogenic disease, and damage awards to them and the cost to restore four atolls (Bikini, Enewetak, Utrik, and Rongelap) total some $4 billion. With less than $1 million left in the fund, the NCT lacks the funding to fully implement reparation. And under the denial of liability policies of the Bush administration, the United States has yet to demonstrate the political will to meet their obligations (Barker 2007). One possible factor influencing the lack of political will on the part of the United States to provide full reparation is that actions taken in this case—honoring the personal injury and property damage awards made by the NCT on the basis of evidence that long-term exposures to low-level contaminants contributed to the injury—may produce a precedent that potentially increases U.S. liability elsewhere, especially the many places around the world where the United States uses depleted uranium and other toxins as part of military operations on foreign soil.

Conclusion

This is reparations: It is the years and decades and lifetimes of struggle to ensure that historical injustice is not pushed aside, dismissed, and denied. It is the ceaseless effort to secure your day in court. It is the opportunity to stand face to face with responsible parties and have experience accepted, the consequences of injustice assessed, and the pain, suffering, and hardships understood. It is the pleasure and pain of hearing culpable parties acknowledge their wrong. It is the issuance of judgments that assign guilt and penalty. It is the experience of being asked "How can we make amends?" and the knowledge that your voice has been heard. Reparation is about the process as much as it is about the outcome. And most of all, more than all the money in the world, reparation is about ensuring never again.

Years ago, Eric Wolf reminded us that when society fails to address or reflect the needs of its citizens a window is opened—the window for substantive transformations—where old orders of society are discarded and new centers of power, action, and lines of cleavage emerge (Wolf 1992). The fear of this fact is what drives the backlash and repression when fundamental human rights violations are exposed. The social tensions generated by this fact certainly contribute to the violence and chaos that is life in those countries undergoing the throes of transitional justice. And the reality of this fact is what drives political energies and democratic dreams of transformative change in the United States and around the world.

Notes

1. See Article 3 of the Hague Conference of 1907, Laws of War: Laws and Customs of War on Land (Hague IV): "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces" (UN 1907). For a review of current compensatory actions by the United States during times of war, see von Zielbauer (2007). The American Civilian Liberties Union (ACLU) filed a Freedom of Information Act request for civilian casualty documents and posted claims and compensation actions on their website (see ACLU 2007).
2. For a critical look at transitional justice mechanisms and the difficulties in measuring whether reparation has indeed been achieved, see Roht-Ariaza and Javier Mariecurrena (2006) and de Greiff (2006).
3. This summary is drawn from reporting by von Zielbauer (2007) and from ACLU (2007).
4. For additional information on the mandate and effort to establish the ICC, see http://untreaty.un.org/cod/icc/index.html. For information on ICC cases and actions, see http://www.icc-cpi.int/
5. See, for example, the June 2008 efforts of U.S. Congressman Dennis Kucinich to file 35 Articles of Impeachment against President George Bush. It took more than four hours to read the Articles of Impeachment and formally enter it into the Congressional Record. The articles were sent to the Judiciary Committee, curtailing any debate on the house floor, and, because of lack of Democratic support, no further action is expected. The articles and supporting documents are available online at http://kucinich.house.gov/spotlightissues/documents.htm (accessed July 4, 2008).

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