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### Comments on Margaret Urban Walker

Comments on Margaret Urban Walker's "Restorative Justice and Reparations"

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The topic of restorative justice has not been a major theme in philosophical discussions of justice, as Margaret Walker notes in her carefully written and helpful paper. Philosophical interest in this topic has arisen from the work of the South African Truth and Reconciliation Commission.

Many criticized the approach of the South African TRC for its amnesty policy. Under that policy, individual perpetrators who fully disclosed their acts, and could show that they were political in nature, were eligible for immunity from criminal prosecution and civil suit and might receive such amnesty by

application to the Amnesty Committee of the TRC. This amnesty was individual, not blanket, and was granted only after application and review. Without some form of amnesty, the political settlement ending the apartheid state would almost certainly have been impossible. Nevertheless many attacked amnesty under the TRC, alleging lack of justice. Such critics identified the notion of justice with legal proceedings and, in particular, retributive penal justice. Defenders of the TRC mounted their argument by appealing to the notion of restorative justice, arguing that justice in this sense was a central value in the settlement and was not sacrificed to peace. The conception of restorative justice fit well with Desmond Tutu's emphasis on relationships and the need for former enemies to work together to build the post-apartheid South Africa.

But theorizing is one thing and success in practice quite another. Admirers of the South African TRC (and I suspect both Margaret Walker and myself are included in this group) should be careful not to assume that the processes and results of restorative justice were fully embraced in its work. As in many other political contexts, there is at best a limited sense in which the harms done by apartheid could ever be repaired. The harms resulting from centuries of colonialism and racism and a half-century of official apartheid are so profound that their full reparation is scarcely imaginable. The distribution of wealth and land in South Africa still leaves vast socio-economic differences between whites, blacks, and persons of color. Although some non-whites have joined the economic elite, in South Africa, as elsewhere, global capitalism is not serving well to alleviate socio-economic inequality. Even the reparations promised by the TRC to a specific group of victims (those harmed by severe ill-treatment who testified to the commission) were not awarded in full.

Walker suggests promisingly that instead of thinking of relationships as restored (or not), we think of moving in the

direction of moral adequacy. The shift from oppression and inequality to more equitable and reciprocal relationships will take time and will be achieved for many reasons in many contexts. This conceptualization will be far more helpful than thinking of reconciliation as having succeeded or failed. After serious oppression, people are unlikely to be able to establish fully equitable reciprocal relationships. But it will be realistic to think of moving in positive directions, toward relationships characterized by non-violence, some degree of confidence and social trust, and a tone of hopefulness.

Walker makes the important claim that processes of restorative justice (including, I would assume, those of truth and reconciliation commissions) provide some leverage to avoid denial, evasion, and the tendency to minimize responsibility. Restorative justice processes may, she says, be “dynamic with regard to responsibility” (385-6). This comment is extremely interesting. It amounts to a significant departure from standard accounts, which assume that there is an offender who acknowledges responsibility for wrongdoing and is engaging with victims and others to work out ways of restoring or improving relationships. It is important to note, however, that acknowledgement by white South Africans regarding their responsibility for the profound wrongs of racism and apartheid is quite incomplete.

I fear, in fact, that Walker may be too sanguine about acknowledgement, which is absolutely necessary for restorative justice. Even the most thorough truth commission report can only encourage acknowledgement and seek to lessen denial. It cannot block all routes to denial: there are too many pathways, too many contested values and incompatible narratives. For example, some white South Africans will still argue that there was in the 1980s a need to protect the state against communism (assumed to be associated with the ANC) or prevent the coming-to-power of corrupt black leaders. For many, having participated in a just struggle is

profound part of their identity. Even a torturer may rationalize his role, and see himself as engaging in a just struggle which was unfortunately lost. Considerations of identity provide powerful motives for denial of perpetration or any complicity with it. You can deny that events happened; you can grant that they happened but you played no role; you can allow that they happened and claim that you had a role, but insist that your actions were morally justified at the time they were committed; you can allow that they happened and were wrong and you had a role, but insist that what you did was excusable; or you can allow that there was some wrongdoing in your group, but insist that only a few ‘bad apples’ were responsible for it. Even beneficiary status – which would seem less contestable than perpetration and beyond question in the case of South African whites – is resisted by many.

As to the fascinating issue of black redress in the United States, as a Canadian I feel somewhat handicapped in commenting at this point. As one relatively unfamiliar with social life in the United States, I feel some need for empirical evidence and commentary when Walker claims that whites have a deep and unexamined contempt for blacks, and that blacks have insufficient grounds for trusting whites. More critically, I find the framing of the issue to be dichotomized and, as such, both inaccurate and dangerously polarizing. The black/white disjunction is obviously not exhaustive: millions of Americans (American Indians, Hispanics, and Asians) are *neither* black nor white. Nor is it exclusive: many Americans are *both* black and white, being of mixed ancestry. One can, of course, insist on classifying people according to this dichotomy, even while recognizing its inaccuracy. One can wonder whether Hispanics are black or white, and label mixed race people as ‘black.’ But these ways of thought are quite misleading and, for me, dangerously so. Barack Obama is a case in point. He is said to be black -- but he is by ancestry half white and by upbringing mostly ‘white.’

Walker's suggestion that the issue of reparations for slavery might usefully be examined from a restorative justice perspective is a plausible one. She herself favors such a policy on the grounds that the United States government accepted and protected slavery and later legitimated Jim Crow citizenship. Walker notes polarization between blacks and whites over the issue of whether there should be a national apology for slavery. Perhaps greater sensitivity to the problematic nature of the dichotomization between 'blacks' and 'whites' could lessen this polarization.

Walker's notion of processes at the community level is also promising, but caution is needed here. Recently, Aboriginal people in Canada have committed themselves to a truth commission process regarding the issue of severe mistreatment (coercive assimilation, cultural abuse, poor physical conditions and, for some, sexual abuse) in residential schools run by the churches and established and funded by the national government. Interestingly, this commission is planned to operate both on a national level and within local communities.

There are risks here, however. Truth commission processes could even be counter-productive and worsen relationships if the mainstream population - and media - resent, insult, attack, or ignore them. In Canada, Aboriginal people constitute only about 3% of the population, and many non-Aboriginal Canadians feel that they have been hearing for all too long about the after-effects of residential schools. In South Africa there was considerable black resentment over the fact that few whites attended TRC hearings. Yet in that context, blacks, who were the most harmed by apartheid, amounted to some 80% of the population. If U.S. 'blacks' constitute, say, 20% of the population and far more in some areas, they should be less vulnerable to public resistance than

are Canadian Aboriginal people. Nevertheless the risk of backlash is real and should be taken seriously.

Given the passage of time, the problematic dichotomization, and the difficulties of identifying which individuals affected by slavery would deserve compensation, forms of collective acknowledgement seem far more appropriate here than financial awards by the courts. And varied forms of acknowledgement at the local level could make important additions to national initiatives with regard to such matters as memorials, celebrations, history projects, museums, education, ancestry, and public art. As Walker constructively reminds us, many restorative and reparative initiatives do not depend on a formal apology by the national government.

## References

Walker, M. 2006. Restorative Justice and Reparations. *Journal of Social Philosophy* 37 (3): 377-395.