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### The Object of Repair

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

**ALICE MACLACHLAN**

Department of Philosophy  
York University  
4700 Keele Street  
Toronto, Ontario M3J 1P3  
Canada  
amacla@yorku.ca

Margaret Urban Walker argues that we should re-conceive reparations claims under the rubric of restorative, rather than corrective, justice. In doing so, Walker advocates more than a series of policy changes; she asks that we re-think both the purpose and the target of reparation: that is, the object of *repair*. Articulating reparations claims in the framework of restorative justice reveals that human relationships, not material losses, are the proper focus of reparations and that the work of repair is broader than material compensation alone.

On a practical level, this is a move to which I am sympathetic, as many of the practices associated with restorative justice – apologies, acknowledgment, symbolic efforts to amend, and victim-offender dialogue, for example – have an extremely valuable role to play in the aftermath of recent and historical injustices. Walker is also correct to assert that material compensation is only one means among many available to repair the harms of injustice and that it cannot, in itself, “signal responsibility for injury, much less regret or atonement by those responsible” (Walker 2006, 385). But it is not immediately clear that the value of these depends on the relational approach of restorative justice.

In particular, I am not convinced by the conceptual argument that Walker makes: that restorative justice escapes unscathed from the conceptual deficit she describes as plaguing corrective justice: namely, “the problem of the baseline” (379). Furthermore, I think there is a danger in placing emphasis so squarely on the need to restore relationships. The number of cases of reparations in which perpetrator-victim relationships are, or ought to be, the *primary* object of repair, is more limited than Walker implies. Restorative justice is perhaps most helpful for framing domestic reparations claims, rather than international disputes. I explore both concerns in what follows, before reiterating my general support for Walker’s conclusion: that is, that there remain good reasons to adopt a framework for reparations that supplements material restitution with “gestures of recognition, acknowledgment, atonement, memorializing, social support and guarantees of prevention” (380). The more specifically relational approach Walker describes is most helpful in cases where the relationship between former victims and perpetrators plays a central role for both communities – that is, beyond the ongoing need for redress.

Over the course of her article, Walker describes a number of potential benefits to restorative justice practices, ranging from

community involvement and active accountability by perpetrators, to victim empowerment and participation. But the main reason for the conceptual shift she advocates is what she describes as the problem of the 'moral baseline'. Walker is concerned with collective reparations claims where the harms involved consist in the outright denial of moral status to a particular group of people or, if not outright denial, the systematic refusal and enforcement of a "degraded moral status" over a long period of time (378). Corrective justice cannot cope with these examples, she claims, because it depends upon the existence (and enforcement) of a pre-existing, shared moral standard. In cases where a social group has faced longstanding moral degradation, the real problem is the (lack of a) moral baseline itself, not particular infringements upon it. In racist, hierarchical and oppressive societies, that considered 'due' to subjugated members is itself morally problematic; it cannot possibly function as the measure of redress and moral repair. Walker puts it this way: the mechanisms of corrective justice can correct faulty performances under a particular standard, but they cannot correct for a faulty standard. "Corrective justice is only as morally legitimate as the baselines it treats as morally compelling" (381). The process of moral repair thus requires first that former victims and perpetrators build shared baselines and moral standards, before any notion of 'giving back' or 'owing what is due' can be initiated; these notions presuppose an already agreed-upon understanding of acceptable moral treatment.

Does restorative justice fare any better in answering the problem of the moral baseline? At first glance, it's not clear that it does. Walker asserts that the ultimate aim and guiding norm of restorative justice is "restoring relationships" - something to which most advocates of restorative justice would agree. Just as corrective justice 'corrects' moral and material imbalances according to a particular standard of what is due, or owed to others, restorative justice must also

'restore' (relationships) to some conception or standard of what morally acceptable (morally adequate, in Walker's terminology) human relationships should be. There is no reason to suppose that standards of moral relationships are any more universal, or necessarily tied to conceptions of moral equality, than standards of reciprocity and recognition are. Walker's point about corrective justice, that it can function in hierarchically organized society, holds equally well for restorative justice. Many of the stated aims and practices of restorative justice fit comfortably in a society with rigidly defined, hierarchical gender roles, for example: just as hierarchical societies may have notions of reciprocity tied to particular roles, so too can these societies advocate rich, harmonious relationships between those inhabiting them.

Walker appears to answer this criticism, at least in part, when she insists restoration should be understood as *normative* (384). The criteria for what qualifies as an acceptable or adequate moral relationship are, at least in Walker's conception, 'written in' to the notion of restorative justice, and are thus not indexed to a particular pre-existing moral baseline in the same way that she suggests 'due' regard and treatment are, in corrective justice. This appears to be a somewhat arbitrary distinction; it is not clear why we can import norms governing adequate human relationships into restorative justice, but cannot do the same for norms governing reciprocity and recognition into corrective justice. Both correction and restoration appear to be indexical to some pre-existing conception of what is best. To suggest that corrective justice must remain indexical to particular societal standards, while restorative justice can generate its own normative standards is perhaps to beg the question.

More promising, however, is Walker's insistence that the criteria for acceptable human relationships depend upon a *shared* conception of what is appropriate, so that all parties to the relationship are capable of trusting, hoping and

maintaining confidence in the treatment they will receive (384). In other words, the norms of restorative justice depend upon some degree of moral convergence between the expectations of former victims and perpetrators. Restorative justice, at least as Walker has described it, is thus more directly oriented toward creating shared moral expectations than corrective, compensatory measures are. On the other hand, the norms of corrective justice also play a role in developing and stabilizing moral expectations of one another. Former victims may take particular vindication in receiving their 'due' according to a moral framework from which they had been unreasonably excluded, insofar as this demonstrates 'winning on the other's own terms.' Material restitution, as a mechanism of *corrective* justice, can establish continuity across moral baselines, and represents its own kind of acknowledgment and recognition. In general, I suspect that the problem of faulty or even incommensurable moral baselines is - at least conceptually - not as damning as Walker suggests. While she is correct that moral repair is a more comprehensive process than simply 'giving back,' I am not convinced that corrective measures, *understood as such*, do not have an independent role to play in many, if not most, cases of repair.<sup>1</sup>

I see a second potential concern in whole-heartedly embracing the language of restorative justice, and that is the notion of restoration as return or even reconciliation. In many cases of historical injustice, there is no pre-existing relationship, or at least no morally adequate pre-existing relationship, to which the parties can return. Walker acknowledges this, and attempts to avoid the need for a *status quo ante* as a standard for morally adequate relations, by defining 'restorative' normatively. But Walker acknowledges that the core values she lists all serve the ultimate aim of restoring 'relationships;' even her normative definition retains the assumption that human relationships are the primary good in need of repair following wrong.

There is no question that human relationships are, in general, a good, and that they are among the first casualties of injustice and systemic oppression. But advocates of restorative justice sometimes slip from this to the conclusion that each and every human relationship is a worthy object of repair. While Walker insists that restorative justice is very different from Rawlsian ideal theory, in that it begins from the "reality of violation, alienation and disregard among human beings," (382) there lurks in the language of restorative justice the fantasy of a perfect, initial state of harmony. Indeed, Claire Moon suggests that the metaphorical power of restorative justice language is such that it actually *performs* the effect of return (Moon 2004). There is a danger in this fantasy, that we will begin to equate all connection, closeness and harmony with better states of affairs, and all disconnection, separation and dissent with worse ones. Some critics note rather dryly that the sudden resurgence of interest in restoring relationships and reconciling has followed rather closely on the emergence of new rights, include the right to exit abusive relationships altogether (Haaken 2002).

I do not wish to suggest that Walker herself advocates reconciliation at all costs. Indeed, she acknowledges that the restoration of relationships is not always advisable, and may mean little more than a wary co-existence (Walker 2006, 383). But Walker herself must stretch the meaning of 'restoring relationships' as a result, describing instead the need to restore "morally habitable conditions" for former victims. The latter is an admirable goal, but I am not convinced it need be cashed out relationally. I would argue that couching talk of reparations in terms of restoring relationships is most helpful when the relations involved already, necessarily, play a central role in the present daily lives of victims. At the very least, this is likely to limit relevant cases to communities who share citizenship and resources, and who live among one another. It will be most helpful in those cases where the self-

identity of both groups is bound up in the history of their relations with one another – Walker’s example of redress for African Americans and the legacy of white racism in America is a good example of this. Certainly, restorative justice is more helpful for framing *domestic* reparations claims – that is, claims made against a particular state (perhaps in conjunction with religious and financial institutions) by a group of citizens – than for framing claims made between states, or groups belonging to different states. In other words, restorative justice presumes that the appropriate object of repair is a particular human relationship, however loosely ‘relationship’ is conceived. Rather than see corrective justice as a “limit case of restorative justice,” as Walker suggests that we do (391), the two may function better as shifting complements and supplements to one another, providing overlapping rationales for the need to restore, return and repair.

## References

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<sup>1</sup> The practical issue – the need for *some* kind of justice in situations of indifference, resentment and denial by culpable authorities – is a different matter. But this argument in favor of restorative justice describes it as a necessary ‘second-best,’ an approach that Walker resists.