
Symposia on Gender, Race and Philosophy

Volume 3, number 2. May 2007

<http://web.mit.edu/sgrp>

Reply to Govier, MacLachlan, and Spelman

MARGARET URBAN WALKER

Department of Philosophy
Arizona State University
Coor Hall, 3rd Floor
P.O. Box 874102
Tempe, AZ 85287-4102
Margaret.Walker@asu.edu

The topic of reparations has only lately revived within academic philosophy, and has attracted surprisingly little theoretical development until recently. It is not surprising that many writers in recent decades who have taken up the problem have looked to well-developed legal ideas derived from tort and contract law as a way to think about reparative (or corrective, or rectificatory) justice. There has recently, however, been a swell of literature that is squarely aimed at dealing with reparation in contexts of mass violence and systemic oppression, rather than as a department of civil litigation dealing with individual losses. This literature looks for a moral and political framework in which to embed arguments for compensation and a variety of other reparative actions when the injuries are varied, inter-related, extensive, group-based, and in some cases historically layered, thus

affecting generations of individuals. My essay on “Restorative Justice and Reparations” attempts to sketch the merits of an account based on restorative justice. My respondents press a number of reservations about my account, and I thank them for their perceptive and challenging readings. One concern shared by all is that my account is in some way overly optimistic or simply naive, so I shall return to that claim as my main concluding point. I begin by responding to some more specific concerns the respondents have addressed.

Alice MacLachlan notices that any institutionalization of a principle of justice must assume a “right rule” for adjudicating claims, and restorative justice no less so than corrective justice. This means that restorative justice is not inherently immune from the problem of a “faulty moral baseline,” where the normative desert-basis itself, and not the exclusion from it, is unjustified or unjust. So practices of restorative justice need not embody egalitarian and uniformly respectful ideals. But MacLachlan also correctly notes that restorative justice demands kinds of *process* that allow and require parties to engage each other’s perception and positions in a direct and dynamic way, opening up consideration of whether standards are good and are shared, and whether parties to the process endorse actual practice, when directly accountable to each other. Of course, this is the *ideal* at work in the conception of restorative justice. Restorative justice in action no more guarantees a critical and reciprocal reconsideration of relationships and norms than retributive justice in action guarantees that the guilty are convicted and the innocent go free, or corrective justice applied guarantees that a plaintiff with a successful claim in civil court will actually be made whole. It is the kinds of process that restorative justice requires that, however imperfect, build in some forms of direct engagement and reciprocity that already violate some of the most reliable protections of hierarchy: asymmetrical accountability and authority, and silencing, discrediting or excluding those with

less power. So contemporary restorative justice practices attempt, in concrete contexts, to model and enact some forms of reciprocity. Trudy Govier reminds us that the aim is not necessarily the result. Elizabeth Spelman thinks it is fanciful to imagine that this can happen in a society poisoned by racism or other deeply embedded and emotionally charged power differences. I neither propose that restorative justice aims at one large scale meeting around one big table, nor that any particular rectificatory attempt rooted in restorative justice can do more than open an opportunity.

MacLachlan also suggests that restorative justice need not be, and in many cases cannot be “cashed out relationally,” and that it can strive to restore relationships only when the corrupted relationships play a central role in the daily lives and identities of perpetrators and victims. I completely agree that the usefulness and the possible modes of application of restorative justice is highly context-dependent, although I’m not inclined to draw a single line between domestic and interstate contexts, as MacLachlan suggests. The American Indian nations of the United States, for instance, seems to fit neither category quite comfortably, nor do complex negotiations surrounding rituals, memorials, and the opening of archives between Germany and Jewish communities around the world, continuing long after the largest monetary compensation program ever conducted and simultaneously with legal actions that have recovered billions of dollars for Jewish victims of the Nazi regime. Perhaps restorative justice as an incremental and piecemeal process makes better sense of multi-faceted projects that aim, at different points in time and with impact on different groups of people through different mechanisms, to transform the reality and perception of relationships between communities, in some instances across generations. MacLachlan is correct that restorative justice and corrective justice might also be seen as different justice projects with different but compatible aims. In political cases, with so little available in the way of justice and so

many individual victims and groups affected down generations, perhaps we need every exercise of justice available, and the practical possibility and impact of different approaches changes over time. I do believe that only restorative justice makes the future moral standing and relations of the parties its central objective.

The relationships restorative justice addresses, however, are not only or necessarily those between injured individuals and the perpetrators of their violation, nor between persecuted or oppressed groups and the individuals or groups who wielded power over them. Restorative justice aims to restore or affirm the dignity of those wronged by giving them voice, validation and an experience of justice, but wrongdoers may or may not be willing or able to play a role in this process. In cases of political violence or oppression, in fact, it is the repetitive lesson of experience that the most flagrant wrongdoers are rarely willing to take responsibility, much less actively to undertake repair. This is not to say that wrongdoers have no responsibilities for repair, but that victims and their communities cannot be held hostage to wrongdoers’ willingness to fulfill their obligations. Repair is a communal obligation in every case, whether those most responsible accept and fulfill their obligations or not, and the communities that can and might undertake repair measures in political cases might encompass those who are most responsible or not.

The “repair of relationships” that is at issue for restorative justice is never only that between wrongdoers and those wronged, and this is sound psychologically, politically, and morally. Individuals who are violated and insulted need to have their suffering and outrage acknowledged, their full membership in political communities demonstrated, and their dignity affirmed, and this is something that individual wrongdoers might fail to do, and can in any case never do adequately or completely on their own. When a state or

institutional apparatus itself is the instrument of oppression or violence, communities can make commitments to the reform of those institutions and can demand that the state undertake projects of repair in the interests of a just community. Political reparations after violent conflicts and repression now are routinely expected from and taken up by successor governments that may have only some or no continuity with previous ones guilty of violating their citizens or particular groups. The principle is sound: for many political cases, the relevant community for purposes of restorative justice is “society” or “the nation,” and there are direct roles for national and other public institutions in addressing the needs, status, and dignity of those wronged. These roles include investigations and assigning responsibility to individuals and institutions; providing opportunities and in some cases inducements for wrongdoers to participate in moral reconstruction; and committing resources to the measures of compensation, rehabilitation, truth-preservation, education and memorializing that victims deserve. These roles also include space for public discussion of the complexities of responsibility, including many cases in which victim and perpetrator groups are not exclusive, and in which many have been complicit in tolerating and benefiting from injustice. I believe that these principles can apply not only to domestic communities, but within the international one as well. While I did not discuss institutional acts and institutional reform in my article, as Spelman notes, my views about the communal role of responsibility include, indeed demand, a central role for institutions that embody the will and represent the commitments of a community to justice.

Grover notes correctly, however, that there are very real problems of communal backlash and resentment, especially when those victimized or persecuted remain vulnerable minorities, and Spelman worries with good reason that in societies pervaded by racism “the community” and its structures and institutions may be the problem rather than

the solution. Here I return to the sense in all the comments that I am overly optimistic or naive. I want to say that perhaps, ironically, I am more pessimistic than my respondents about what reparations – not healing, not reconciliation, not harmony – might be expected to attempt and accomplish.

As I continue to think about reparations, I have come to accept how little, in a sense, reparations ever do or could do. This does not make them less important; on the contrary, it means that in the face of grave harms that are literally irreparable, there is a way back or forward that offers hope. On my view, moral repair aims at creating or restoring three things: confidence in shared standards, trust in ourselves and others to be responsive to the standards and accountable to others under their terms, and hopefulness that this confidence and trust may be rewarded. The direction of repair is set by these tasks, as they apply not only to victims of wrong but also to wrongdoers and to communities affected by serious wrongs. But moral repair is an arduous and intricate process that is not guaranteed to achieve its aims in cases of extreme evil, violence, and violation, even with genuine effort; often in reality the efforts are something less than whole-hearted. Reparations are a particular and focused mechanism of moral repair: they are particular acts and gestures at specific moments that attempt to show the way out of a situation of injury, violation and disrespect in the direction of new or renewed confidence, trust, and hopefulness. Some recent accounts of reparations emphasize the creation of civic trust within polities ravaged by violence or oppression, but I have come to believe that what reparations can realistically achieve and should aim at achieving is hope. Hopefulness requires a motivating belief in the possibility that defensible standards are shared and that individuals are disposed to respond to what the standards require, a belief that orients feeling and action, ideally for all parties, toward making that possibility real.

All reparations measures are doubly *symbolic*: something is offered with the intention of expressing acknowledgment of offense, responsibility and obligation to repair; and each carries this message by a kind of exemplification. An act of reparation is a transaction that purports to show the correct attitude toward the injured party by embodying that attitude in the transaction. All reparations measures are thus vulnerable to being defeated by their failure to achieve convincing exemplification or by the failure of the exemplified attitude to be consistently adopted and displayed in other and future interactions. Yet any reparations measure fitting to carry the relevant message is, literally, a token of the kind of responsive and reciprocal relationship that might be possible. When dealing with terrible violence or intergenerational oppression still deeply embedded in institutions, any meaningful gesture of reparations is a kind of promise, and not all promises are kept. This is to say: reparations always aim to initiate repair, but rarely if ever achieve it alone. In cases of extensive, profound, and enduring historical injustice, especially, there is no one meeting, or commission, or report, or payment, or memorial that repairs, and support for reparations is unlikely to be wide and deep across a nation. Many local and piecemeal efforts, however, are beginnings, and illustrate that there are many ways and places to begin.