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Margaret Urban Walker on Restorative Justice

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

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According to Margaret Walker, in order to understand the depth and the breadth of the effects of white racism in the United States we have to look not only at the history of "enslavement, legal subjugation, and persisting exposure to violence, discrimination, and neglect" (387) of African Americans. We also have to explore the "profound distortion of relationship, socially and emotionally, between the still rigid and polarized race groups, 'black' and 'white,' that are constituted by this very distortion" (387). There is enormous reluctance on the part of whites to work toward such understanding, as shown for example in white contempt for or resentment of the very possibility that apology or

reparations might be in order. Moral relations between whites and blacks are constantly threatened by the presumption among most whites that they have no responsibility for what has happened to blacks, and by a sense of hopelessness among most blacks about the prospect of enjoying equal access to the resources and opportunities available to first-class citizens.

Walker proposes that given the depth and dimensions of the problem, a fully adequate response can't come from courts of law charged with wresting compensation for loss from mostly resentful citizens nor from other in-course corrections. We need to turn to restorative justice, which "seeks to return ownership of the resolution of wrong, crime, and harm to those primarily affected and those who can in turn effect meaningful repair: to those who have done wrong or are responsible for harm, to victims, to immediate communities of care of victims and offenders, and to larger affected or interested communities" (383). Restorative justice thus calls upon us all to find ways to affirm, "perhaps for the first time, a truly shared moral baseline of reciprocal responsibility and equal dignity" (389). It requires us to create, maintain and repair "morally adequate relations" - ones in which people have reason to hope that the confidence they have put in certain standards, and the trust they have put in others to live by and defend such standards, are not misplaced (384). Courts can sometimes and in some modes nourish such relations but that is not their central function. A variety of home-grown local initiatives give us an idea of contexts in which such relations can be kindled or re-kindled: state and local attempts to tell the story of their own history of racism; universities' close scrutiny of their ties to slavery; museums about and memorials to our common history. In short, racism is a problem for all of us, albeit in quite different ways. These restorative justice initiatives show us how we can explore the problem together, try to get thorough and fair descriptions of the wrongs committed, and jointly figure out ways to address

them, without having to be limited by statutes of limitation, anxious legislators, narrowly focused legal arguments, or highly contestable compensation formulae.

In short, then, according to Margaret Walker, restorative justice is our most promising tool for the job of repairing the damage done to individuals and communities, indeed to the nation, by US slavery and its toxic sequelae. Though there is a place for monetary reparations and other schemes of “corrective justice,” only restorative justice is both incisive and broad enough to identify the nature of the continuing injustice and to envision modes of repair that go beyond minor mending. Restorative justice offers a holistic approach where corrective justice would provide surgical intervention: wounds are not cabined off from the larger context in which they occur. Indeed according to Margaret Walker restorative justice has a four-fold advantage over corrective justice.

- (1) Though restorative justice includes “making good a victim’s loss” (384), it does so in the context of attending to “the moral quality of future relations between those who have done, allowed, or benefited from wrong and those harmed, deprived, or insulted by it” (385).
- (2) Restorative justice has an enriched notion of responsibility. Going beyond a narrow focus on direct and legally identifiable agents of harm, it “leverages” responsibility, moving people “from a minimal or peripheral sense of connection and responsibility to a richer and more demanding perception of what harms the wrong does and how they might be related to it” (385) even if there are no legal grounds for holding them responsible. Relevant communities aren’t necessarily “given in advance” (387, emphasis in the original).
- (3) Restorative justice recognizes the necessity of an adequate description of the harm in order to conceive and deliver

an adequate repair. It does not presume that there is a reliable “metric of loss” (384), that harm can easily be translated into terms for which compensation can then be offered. Victims and the larger community are central participants in developing a description of the harm.

- (4) Restorative justice does not depend upon “official actors in the legal system or government” as the only relevant actors (386). Relationships between and among victims, wrongdoers and larger community are not mediated exclusively by legal and quasi-legal bodies.

II

There is no doubt that the local initiatives Walker lists can at their best be part of the massive and still greatly unfinished business of unearthing (sometimes literally) our common history and jointly imagining a shared and not just a common future. Walker joins others in noting that because racism has bled for so long into the nation, we should not place too much hope in attempts to stanch it with compensatory schemes. But it is as if the workings of racism which she points to as motivating the move to restorative justice have been forgotten when she turns to describing restorative justice projects. As her own allusion to the tentacles of racism would seem to suggest, racism thrived and has been kept alive by powerful structures and institutions. Yet what Walker has to say about restorative justice doesn’t seem to address the significance of such structures and institutions.

For example, one of the doubts she raises about corrective justice as we have known it is that it can “function as a principle in societies with differentiated and even hierarchically organized statuses with reciprocal but not symmetrical obligations and responsibilities” (381). Corrections to morally and politically misaligned “baselines,” she reminds us, shore up the misalignment: they treat

deviations from the baseline misalignment as the object of repair, not the misalignment itself. But what is there about restorative justice as Walker has described it in virtue of which such misalignment no longer exists or somehow is bracketed or rendered ineffective? For example, do Brown University's explorations of its complicity with slavery mean that the University's security force, unlike most such forces, does not put black students under special scrutiny, especially at night (even if under instructions by the administration not to do so)? Does it mean that black students, or other blacks in the community, are not harassed by the Providence police, that they would never be stopped for DWB on Interstate 95? The point is not that in the absence of careful investigation we know with certainty the answer to such questions. But surely we need to learn what distinctive path restorative justice offers away from the racism that notoriously continues to plague so many of our police forces. As Walker rightly points out, you can't do a good repair job unless you've got a good description of the problem. But what she sketches as the kind of repair jobs offered by restorative justice doesn't seem to recognize the history of racist police brutality - so central to the lack of confidence, trust and hope of African Americans in the standards professed by their communities and their nation - as part of the problem to be fixed.

Similarly, there is no mention of what Mike Davis, Angela Davis, Julia Sudbury and others have described as the prison/industrial complex and what is in effect an affirmative action program guaranteeing black men and women slots in US jails and prisons in proportions way beyond the 10-12% of blacks in the US population. Indeed the criminal justice system long has served as a major refractor of the kind of "profound distortion of relationship" to which Walker refers. And yet its complex role in both reflecting and sustaining the racism to which restorative justice is proposed as a response doesn't seem to be on the radar of restorative justice as Walker describes it. The point is not that Walker should have

listed every institution that serves and is served by racism but rather more generally that restorative justice à la Walker doesn't seem even to imagine the place of major institutions such as the police and prisons in the racism to which it is proposed as a response.

Now in one sense the very fact that the legal system, the police and the prisons are such sustainers of racist violence is an argument in favor of restorative justice, since victim-offender conferences, for example, would appear to keep African American alleged offenders away from a process that seems likely to gobble them up and spit them out into prison. But some of the fiercest critics of the restorative justice movement have been concerned about a worrisome vagueness in what Walker describes as one of the "six central restorative justice values": "Restorative justice aims at offering those responsible for wrong and harm the opportunity through accountability and repair to earn self-respect and to be reintegrated without stigma into their communities" (383). The legal scholar Richard Delgado, for example, has found evidence that in some extra-legal mediation contexts, the kind of repair offered victims is quite different from the kind of repair required of offenders: "Mediation treats the *victim* respectfully, according him the status of an end-in-himself, while the offender is treated as a thing to be managed, shamed, and conditioned" (Delgado 2000, 757). The criterion for the repair of the victim may be how much better he or she feels, while the criterion for the repair of the offender may be how much he or she has managed to change. The one is supposed to feel better, the other is supposed to have become or be on the road to becoming better. Perhaps that often is how it should be, but surely we would have to investigate how much such a scenario can play upon and reinforce racist stereotypes in cases in which the victim is white and the offender is black. Walker claims that "paradigmatic restorative justice practices, such as victim-offender dialogue, group conferences, truth

commissions, or apologies (personal or public), not only aim at adequate forms of relationship as an outcome but require participants to *act out* the morally adequate relationships at which they aim" (384, emphasis in the original). But the kind of concern voiced by Delgado ought to make us ask once again about the extent to which Walker imagines that the poison of racism somehow disappears in restorative justice contexts. If such performance is something of which we are capable, why is it only in restorative justice settings that we so conduct ourselves? And if there is nothing to underwrite a requirement for such performance, why place one's hopes in restorative justice? As Walker points out, "offenders and other responsible or concerned parties" have to be "willing to engage in restorative justice practice" (385) – and yet she herself has described rigid white resistance to even talking about slavery (except as an already fully purged part of our history) as a significant part of the profoundly distorted relationship between whites and blacks.

Racism surely has been kept in place by the indifference of white-run communities and institutions (local legislatures, museums, universities, civic leaders, houses of worship, etc.) to racial violence, and by their resentment of attempts to explore its history and kudzu-like vitality. Projects that chip away at such indifference, ignorance and contempt, and that by their very nature seem to require blacks and whites to engage in joint inquiry, to inhabit a shared historical and cultural space, perhaps can help to establish the kind of confidence, trust and hope that Walker argues (here and at greater length in *Moral Repair*) are central to living in moral relationship. But it's hard to know quite what to make of the startling juxtaposition of images Walker offers us: in one frame, whites and blacks, in their familiar places on a heavily tilted boxing ring, keep their gloves on and wait for the next punch. In the adjoining frame they are sitting around a big level table, respectfully engaged as equals in jointly undertaken repair projects. Meanwhile, as far as one can tell,

these images are part of a larger picture in which the institutions by which racism (and other forms of vicious ethnocentrism involving broader populations in the US) is fed and in which it gets played out remain unchanged. Restorative justice so portrayed seems nothing so much as a miracle accomplished in the midst of and without any change to the criminal justice system, to the state of health care and education, to the patterns of access to wage and wealth creation, to voter fraud and the many other sturdy and reliable supports for "the history of cruel and profound injustice punctuated by opportunities and failures to repair" (387).

References

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