

Transition, Trust and Partial Legality:

On Colleen Murphy's *A Moral Theory of Political Reconciliation**

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Introduction

In *A Moral Theory of Political Reconciliation* Colleen Murphy develops a rich and potentially transformative account of political reconciliation, defined as the repair of damaged relationships.¹ The potential of this account is not fully realized because of limitations in how Murphy conceptualizes political relationships. Recognizing the significance of group-differentiated integration into states opens up important questions about partial legality and group-differentiated experiences of repression. Murphy's framework is well-suited to take up these questions, once they are acknowledged. But this requires a revised understanding of how states' relationships with individuals structure individuals' relationships with one another.

Murphy departs from an examination of what it is about the political relationships that emerge from widespread and systematic violence that makes it appropriate to characterize them as dysfunctional – as failing to meet the conditions necessary for them to serve their intended purposes. Murphy's conception of functionality is self-consciously normative, assuming that one of the conditions necessary for functionality is that political relationships be morally defensible. This relationship between functionality

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¹ Colleen Murphy, *A Moral Theory of Political Reconciliation* (New York: Cambridge University Press, 2010).

and moral defensibility means that understanding why political relationships in transitional contexts require repair requires an understanding of what makes relationships constructed under conditions of repression and civil conflict indefensible, and why this indefensibility can be expected to persist unless there is deliberate and public reconstruction.

Murphy's analysis of what makes political relationships dysfunctional focuses on three features that must be exhibited by the institutions that make relationships political: governance by law; conduciveness to political trust; and recognition and protection of capabilities. In her explanation of why these features are essential to political success Murphy draws attention to the importance of internal resonance and interpersonal attitudes for successful governance. Murphy's analysis of the relationship between the rule of law and default political trust establishes a clear connection between coherence, internal resonance, and social support in the practical success of political institutions' demands. This illumination of the relationship between the pragmatic and the moral in contexts of repression is a valuable contribution.

However, Murphy assumes an individualistic model of political relationships – a model in which individuals relate to state officials and to one another primarily as individuated persons rather than as constituents or tokens of groups – and this is a weakness of the work. Individuals' integration into state-based governance structures is paradigmatically group-differentiated, and so group membership is a key element of political relationships' functionality. Group-differentiated integration poses the possibility that the population of a state may not constitute a single political community, but may be more properly described as a constellation of political communities who

happen to be governed by the same state. It also poses the prospect of group-differentiated experience of repression and violence. For example, where there is group-based integration there is the prospect of failing to establish the conditions for defensible political relationships with and among some populations while succeeding in establishing these conditions for others. The prospect of a state that is dysfunctional for part but not all of those subject to it raises difficult questions about how and what must be repaired.

Because she does not fully take into consideration the implications of group-differentiated repression, Murphy does not take up the issue of partial functionality. However, her framework of analysis has enormous potential for thinking through the questions that partial functionality raises. Murphy's analysis of how failures in the rule of law in repressive regimes undermine the functionality of political relationships brings the problem of partiality clearly into focus; and her explanation of the role of political trust can help clarify the moral challenges posed by differentiated repression. In this, Murphy opens up new space for reflection on the application of transitional justice concepts to societies that are not typically described as transitional.

Political Reconciliation as Repairing Unworkable Relationships

Murphy defines political reconciliation as the repair of political relationships. People are in relationship with one another when there is an extended prior history of interaction. Their relationships are political when there is interaction *qua* occupant of a role (such as "citizen" or "official") that is "structured and regulated by the state".² Political relationships are institutional in that the relevant interactions are directed or governed by roles assigned by or through a political institution; paradigmatically, this

² *Ibid.*, p. 25.

institution is the state. However, political relationships are also interpersonal, because the relevant interactions have attitudinal dimensions and depend on mutual expectations. Murphy argues that to be adequate, an account of political reconciliation must speak to both these dimensions of political relationships: the institutional and the interpersonal.

An account of reconciliation must also speak to the necessity of repair: it must speak to why political relationships are in need of reconstruction. For Murphy, the primary motivation for reconstructing political relationships in the wake of repression and civil conflict is that the political relationships produced by repression and civil conflict do not work for all of those engaged in them. Identifying what it is about such relationships that does not work and explaining how this may be repaired is the main project of the book.

Murphy argues that identifying features of political relationships as damaged and in need of reconstruction necessarily involves assumptions about what political relationships are supposed to do. In particular, it involves assumptions about what makes a political relationship good, or, at the very least, acceptable, from the perspectives of all those party to it.³ To offer any account of political reconciliation is thus to offer a normative account: it is to offer an account grounded in a view of what makes reconciliation good. Murphy's view of what makes reconciliation good focuses on reciprocity and respect for agency.⁴ In particular, she argues that political relationships do what they are supposed to when they instantiate and contribute to reciprocal agency.

Reciprocal agency is both an indicator and a necessary condition of individuals' having internal reasons to accept a governance structure's demands and do their parts in

³ *Ibid.*, p. 22.

⁴ *Ibid.*, p. 28.

ensuring the structure's maintenance and success. In the absence of internal reasons there are limited grounds on which to expect that individuals will in fact act as political institutions require, and no grounds on which to describe individuals who fail to so act as erring and rightly subject to criticism. These observations about the connection between internal reasons and adherence establish the moral acceptability of political relationships as a practical condition of institutional success in transitional contexts. Political relationships that instantiate and contribute to reciprocal agency are a practical necessity because without them there is no clear or compelling basis on which to expect the general population to adhere to the institutions being put in place.

This connection between agency, mutuality and adherence explains why forms of interaction that do not reflect equal respect for agency, reciprocal sharing of benefits and burdens, the rule of law, and general opportunity to participate in institutions are properly described as dysfunctional.⁵ Dysfunctionalities compromise political relationships' capacity to do what they should. How extensively relationships are compromised depends on the particular form the dysfunction takes and the impact on mutuality and agency. This suggests that institutions and relationships may be dysfunctional or functional in degrees. Murphy's explanation of the roles of law, trust and capabilities in making political relationships functional is based in claims about the conditions under which political institutions generally can be expected to generate internal reasons for adherence. And so the ways in which arbitrariness, untrustworthiness and failure to respect capabilities damages political relationships is not limited to transitional societies. However, transitional societies are set apart by the amount and extent of the damage that relationships have sustained, the fact the institutions that have inflicted this damage have

⁵ *Ibid.*, p. 34.

been explicitly repudiated, and the explicit social commitment to construct something better. Murphy argues that for such reconstruction to succeed, political relationships as well as political institutions must be transformed.

Transformation of political relationships is necessary because political institutions will not succeed unless the demands they make of individuals resonate with those individuals' personal reasoning, and positively contribute to those individuals' lives. Political institutions' demands are enacted and responded to through interpersonal engagements; and so they are enacted and responded to through the establishment and continuation of relationships. Where political relationships are characterized by reciprocal agency, they will be functional in the sense of contributing to the conditions under which individuals have internal reasons for doing their part to establish and maintain the associated political institutions. Where political relationships are not characterized by reciprocal agency they will not contribute to the conditions for internal reasons and may actively undermine individuals' capacities and inclinations to do their part in maintaining political institutions.

Murphy identifies three central indicators of the functionality of political relationships: those within the relationships are subject to the rule of law; those within the relationships are able to adopt a stance of default trust; and the relationships recognize and promote the basic capabilities of all involved in them. Political relationships that fail to exhibit these characteristics or that exhibit only low levels will fail to achieve what they must for political institutions to succeed. This is most strikingly exhibited in relationships in which the parties are not governed by law; but it can equally be observed in relationships in which individuals cannot adopt a stance of trust, and in which there is

a failure to recognize and promote basic capabilities. Transitional societies that do not establish political relationships that are law-based, foster attitudes of trust, and respect capabilities will not succeed in establishing morally defensible relationships between individuals and so, ultimately, will not succeed in establishing political relationships that work. The relationships will not work in part because they will not establish the conditions under which individuals can trust each other, their institutions, and the projects these institutions promote. Such trust is necessary for adherence to be based in internal reasons, which basis of adherence is necessary for a transitional society's institutions to represent a genuine change.

In this regard it is significant that Murphy's account is intended for societies that are moving from repression and civil conflict to democracy. Murphy argues that reciprocal agency is partially constitutive of democratic governance. Democracy is a form of governance explicitly premised on the necessity of ensuring that the demands of political institutions be acceptable for all those subject to them. For a transitional society to aspire to democratic governance is for its leaders to repudiate indifference to whether political institutions' demands are acceptable to those to subject to them. To commit to democracy is to commit to institutional demands that can be defended to those subject to them; it is to commit to the premise that public officials must be prepared to give an account of the rules and decisions that they impose.

This commitment to defensibility and being able to give (and demand) an account is what makes relationships that instantiate reciprocal agency necessary for democratic institutions to work. Relationships between individuals and officials, and individuals and their fellow subjects must be morally defensible to give individuals' internal reasons to

adhere to political institutions. Relationships between individuals and officials, and individuals and fellow subjects must enable the giving and demanding of an account for those internal reasons to effectively connect with the larger social project of establishing democratic governance.

This explains why, for Murphy, both the moral indefensibility of political relationships under repression and civil conflict and the fact that there is transition to democracy are central to understanding what must change going forward. Political repair requires an understanding of what has gone wrong.⁶ Political transformation requires an understanding of what must go right. Attempts to transform must understand both or risk leaving dysfunctional relationships and institutions in place. Murphy's project is to explain how law, political trust and respect for capabilities have made political relationships in transitional societies dysfunctional, and how law, trust and capabilities can help remedy the dysfunction and promote successful transition.

Political Reconciliation and the Rule of Law

Murphy follows Lon Fuller in arguing that the rule of law under democracy presupposes that laws have a content and are applied in such a way that citizens have moral as well as strategic reasons for compliance.⁷ Fuller argues that legality requires a distinctive combination of self- and other-directedness. In general, the rule of law is a form of governance that relies on the capacities of those subject to it to incorporate directives into personal reasoning, to structure plans and priorities around these

⁶ *Ibid.*, p. 24.

⁷ *Ibid.*, p. 44

directives, and, ideally, to match the plans and priorities the directives assume.⁸ Legality, then, is a set of practical constraints on how law can be structured and what content it can have given that it accomplishes its objectives through being incorporated into personal reasoning. To be incorporated into personal reasoning law must fit not only the interests but also the self-understanding that makes interests worth acting on for those to whom directives are addressed. This need to engage individuals in both their rationality and their subjectivity establishes a basic limit on how arbitrary, specific, impractical and obscure a set of laws can be.

Fuller argues that the limits established by reliance on individuals' personal reasoning includes a limit on the moral unpalatability of the projects that a set of laws can advance and the content laws can exhibit and still count as a legal system. Murphy includes the extent to which a legal system can be used to pursue systematic injustice in this limit on moral unpalatability.⁹ This link between legality, subjectivity, and justice is the backbone of Murphy's argument that the absence of legality is an important indicator of systematic injustice, and of her explanation of how public commitment to legality in the wake of repression can be an important bulwark against the persistence or re-establishment of injustice.

The case for legality being a necessary condition for morally defensible political relationships is strong. However, the suggestion that the need to engage individuals' personal reasoning is in itself a bulwark against the pursuit of immoral projects and the inclusion of immoral content is less persuasive. Many have argued that the conditions necessary for legality can act as a bulwark against immoral ends and content only insofar

⁸ Lon L. Fuller, *The Morality of Law. Revised Edition* (New Haven: Yale University Press, 1964), pp. 42-45.

⁹ Murphy, *op. cit.*, p. 62.

as and to the extent that the reasoning and relationships of those to whom the law applies are morally sound.¹⁰ Where the relationships, projects and priorities of those to whom the law applies are immoral or unjust, personal reasoning will offer no bulwark against immorality or injustice and may, on the contrary, encourage a system of law that entrenches injustice and imposes immoral demands on some segments of the population.¹¹ For example, where there is an unjust distribution of power or a majority of people endorse an immoral project, lawgivers may be able to establish and maintain the rule of law by engaging with the personal reasoning of only the powerful or only the majority. It is true that in Fuller's view, insofar as the legal system requires the less powerful or the minority to understand and conform to the law for their own reasons, it will have to engage these populations' personal reasoning to some degree. However, how much a disempowered or minority population must be engaged will depend on the extent to which they can be compelled to conform by other, non-legal, forms of governance. What limits the extent to which a legal system can promote unjust ends is thus a combination of the need to engage individuals' personal reasoning, and the limits of non-legal forms of governance.

Technically a Fullerian might say that a situation in which lawgivers can establish and maintain the rule of law by engaging the personal reasoning of only some segments of the population is one in which the rule of law fails to obtain for some segments of the population. This seems in some respects to be how Murphy (following Dyzenhaus) characterizes the majority of judges in apartheid South Africa as failing to act in their

¹⁰ See Joseph Raz, "The Rule of Law and Its Virtue" in *The Authority of Law* (Oxford: Clarendon Press, 1983), pp. 210-231; Leslie Green, "Positivism and the Inseparability of Law and Morals." *New York University Law Review* 83 (2008): pp. 1035-1058; David Luban, "The Rule of Law and Human Dignity: Re-examining Fuller's Canons", *Hague Journal on the Rule of Law* 2(2010): pp. 29-47, esp. pp. 42-44.

¹¹ Raz, *op. cit.*

capacity as judges when they failed to “expose explicitly the contradiction at the heart of the apartheid legal order.”¹² However, this criticism is difficult to make sense of if one characterizes South Africa under apartheid as having witnessed a general failure of the rule of law, such that there was, in effect, no judging to be done. For example, if there was in fact no legal system, then *no one* in South Africa was acting in the capacity of judge, and so the fact that “few judges used the resources at their disposal to reach verdicts of a maximally just sentence”¹³ does not show that most judges did not do their job (there was no job of interpreting and applying the law to be done), it shows that most people who adjudicated disputes acted immorally. Yet intuitively it appears that the rule of law did obtain in apartheid South Africa in some domains and with respect to some segments of the population; intuitively it seems that there were judges in apartheid South Africa, albeit judges who often failed to do what they were supposed to.

However, Murphy argues that what is actually obtaining in cases such as apartheid South Africa is not the rule of law but a mere façade of legality.¹⁴ On closer examination, the exemption of some populations and situations from the constraints of law can be seen to go hand in hand with legal irregularity and failure to treat the law as genuinely constraining in all areas of the law and in the projects pursued with respect to all populations.¹⁵ Yet although it is undoubtedly true that the systematic exemption of some populations and domains from the rule of law rebounded in other domains and on other populations in examples such as Argentina and South Africa, in both Argentina and South Africa large segments of the population experienced their political relationships as

¹² Murphy, *op. cit.*, p. 59.

¹³ *Ibid.*, p. 59.

¹⁴ *Ibid.*, p. 61.

¹⁵ *Ibid.*, p. 61-62.

subject to the rule of law and state officials treated the law as genuinely constraining with respect to some segments of the population even as they did not treat themselves as constrained with respect to others. This pattern of differentiated constraint seems better described as genuinely operating as a legal system in certain domains and with respect to certain segments of the population and failing to operate as a legal system or exhibiting only a façade of legality in other domains and with respect to other populations.

In such a context it becomes possible to talk of a system of governance that exhibits “partial” legality: legality as an aspiration and governing ideal for the political relationships of some populations but not others. In partial legality breakdown in the rule of law is differentially distributed, so that its failure to obtain is systematic but not necessarily system-wide. Murphy is sceptical as to whether such partial breakdowns can, in fact, be partial, because “[i]n practice there is a deep tension between ruling by law and systematically pursuing unjust ends”.¹⁶ The assumption is that even if selective breakdown in the rule of law is conceptually possible, the dynamics of repression are such that a system of partial legality will be practically unsustainable over the long run.

In fact, however, differentiated legality seems to be highly stable, especially when those liable to repression are a numerical minority and geographically, culturally or historically distinct.¹⁷ Indeed, differentiated legality may facilitate maintenance of repressive apparatuses by making repressive structures appear less systematic than they are and encouraging explanations that normalize or naturalize systematic differences in treatment. Differentiated repression may further facilitate exploitive or extractive

¹⁶ *Ibid.*, p. 62.

¹⁷ Hurst Hannum, *Autonomy, Sovereignty and Self-Determination, Revised Edition* (Philadelphia: University of Pennsylvania Press, 1996); Ted Gurr, *Peoples versus States: Minorities at Risk in the New Century* (Washington, D.C.: United States Institute of Peace, 2000).

economic structures that give segments of the population who do not experience a breakdown in the rule of law a practical and psychological stake in believing that legality is not partial but obtains in all domains and for all segments of the population.

If Murphy is right that the rule of law plays a key role in ensuring that political relationships are morally defensible, and about the mutual dependence of the rule of law, default political trust and respect for capabilities, then the prospect of partial legality has implications for debates about how the category of transitional justice should be understood.¹⁸ For example, many societies that would not ordinarily be categorized as transitional have legal and policy regimes governing some domains or some segments of the population which are framed so as to provide “maximal flexibility to government officials and minimal practical guidance for citizens”.¹⁹ Murphy herself defines transitional justice narrowly, limiting the category of transitional to societies where there has been regime change, violence has ceased, and political relationships generally must be rebuilt.²⁰ However Murphy’s analysis of how breakdowns in the rule of law undermine political relationships is relevant to societies that are not ordinarily described as transitional. This is especially true with respect to Murphy’s observations about the connection between breakdowns in the rule of law, the reasonability of political trust, and failure to respect capabilities.

¹⁸ For critical discussion of how transitional justice is defined see Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections”, *Third World Quarterly* 29(2) (2008): pp. 275 – 289; Eric Posner and Adrian Vermeule, “Transitional Justice as Ordinary Justice”, *Harvard Law Review* 117(3) (2004): pp. 761-825.

¹⁹ Murphy, *op. cit.*, p. 29. Legal regimes governing indigenous land claims and the political standing of indigenous communities in settler states such as Canada and Australia are obvious examples of this. See Gordon Christie, “*Delgamuukw* and the Protection of Aboriginal Land Interests”, *Ottawa Law Review* 32 (2000-2001): pp. 85-116; Kent McNeill, “Extinguishment of Aboriginal Title in Canada: Treaties, Legislation and Judicial Discretion”, *Ottawa Law Review* 33 (2001-2002): pp. 301-346; Ciaran O’Faircheallaigh, “Aborigines, Mining Companies and the State in Contemporary Australia: A New Political Economy or ‘Business as Usual’?” *Australian Journal of Political Science* 41(1) (2006): pp. 1–22.

²⁰ Murphy, *op. cit.*, pp. 2, 11, 25.

Partial Legality and Default Political Trust

Murphy points out that in the absence of the rule of law it is extremely difficult to maintain the conditions of reasonable political trust. Political trust requires individuals to anticipate competence and positive will (or at the minimum the absence of *ill* will) when they engage with one another through institutionally defined roles.²¹ Breakdowns or failures of legality undermine an individual's capacity to draw the conclusion that public officials or others acting in an institutionally defined role are likely to act as these roles require and direct, and make it difficult for individuals to assume that those with whom they are engaged lack ill will and can be relied up to act or reason in good faith.

Murphy points out that “deep, pervasive distrust is a prominent feature” of transitional contexts, and establishing a political context in which it is reasonable for individuals to presuppose one another's trustworthiness is crucial to establishing functional political relationships.²² The presence or absence of default political trust is thus an important indicator of the state of political relationships within a governance system. Where there is an absence of mutual respect in interactions between ordinary political subjects, where the negative consequences of misplaced trust are severe, where the probability of public officials acting in accordance with their position is low, or where public officials are not responsive to the fact that they are in a position of trust, there will be a default attitude of political *distrust*. A default attitude of distrust makes individuals not only disinclined but unable to do their part to maintain political institutions. Political trust is crucial to political relationships doing the work they are supposed to.

²¹ *Ibid.*, p. 78.

²² *Ibid.*, pp. 71, 91.

Murphy notes that establishing the conditions under which it is reasonable for subjects to adopt a stance of political trust is a key challenge for transitional societies. The prospect of partial legality intensifies this challenge by adding another dimension: the conditions of reasonable trust (and distrust) of an individual's attitudes of political trust. This additional dimension arises from the possibility that some segments of the population may have experienced political relationships as already well-functioning, and so as already meeting the conditions of reasonable political trust. As Murphy notes in her discussion of truth commissions, reconstituting group identity and the narratives through which individuals and social groups make sense of who they are is central to establishing the conditions for mutual trust and mutual recognition of capabilities.²³ This reconstitution requires a reimagining of the range of relationships that have obtained among a state's subjects, and those subjects and state officials. Murphy emphasizes the relevance in this of an encompassing conception of where the boundaries of a political community lie and how much concern for fellow subjects is appropriate.²⁴

Reconstitution is also about reimagining the nature and scope of the repression and civil conflict that have made transition necessary in the first place. This includes recognizing how repression may have obscured individuals' understanding of their own and others' relationships, and impaired individuals' judgements about political trust. For example, Paulette Regan has argued that reconciliation in the aftermath of the residential schools regime in Canada requires a systematic deconstruction of how settler Canadians

²³ *Ibid.*, pp. 150-159.

²⁴ *Ibid.*, p. 155.

understand themselves and their relationship to violence against indigenous peoples.²⁵ In this context, two particularly challenging questions arise regarding populations who were shielded from repression. First, what kind of mistake do individuals who have been shielded from repression make if they adopt a stance of default political trust toward state officials? Insofar as these individuals experienced political relationships as law-governed and adequately recognizing capabilities, there seems no basis for them to withhold political trust. As a matter of fact this trust will be misplaced if the regime has been repressive. But will such trust be unwarranted?

Whether a stance of trust under conditions of partial legality is unwarranted matters because it speaks to the trustworthiness of those who trusted what has turned out to be a repressive regime. There are two issues. The first issue is how individuals who trusted the officials of a repressive regime ought to see themselves. For example, do such individuals have grounds to distrust their own judgements of trustworthiness, to, as Karen Jones might put it, “distrust their own trust”?²⁶ The second issue is how others, especially those who experienced the regime as repressive, ought to view trusting individuals. For example, is it reasonable for others to refuse to adopt an attitude of default political trust towards individuals who trusted under conditions of partial legality?

Group Differentiation and Political Repair

²⁵ Regan describes this process as “unsettling the settler within.” Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada*. (Vancouver, B.C.: UBC Press, 2010).

²⁶ Karen Jones, “The Politics of Credibility” in L. Anthony, C. Witt and M. Atherton (eds.), *A Mind of One’s Own: Feminist Essays on Reason and Objectivity*, 2nd edition, (Boulder, CO: Westview Press, 2002), pp. 154-176.

Group-differentiation is an important organizing feature of modern states.²⁷ Individuals are typically integrated into states as person-types, not as persons, and many of these types are defined on the basis of group membership. Group-differentiated integration is common between authoritarian and democratic states, and between systematically violent regimes and peaceful ones. However, group-differentiation assumes a special significance in the context of an authoritarian or systematically violent state. For example, even if repression and violence are applied to everyone subject to a state, how that repression and violence are experienced across person-types is likely to be systematically different, depending on their structural position and relationship with public officials.

Yet as noted above, repression and violence often are not applied to everyone subject to a state. Regimes often exempt some segments of the population from repression. When this is so, not only the experience of repression and violence, but whether governance has been experienced as repressive may be group-differentiated. Moreover, government officials may describe repression and violence as undertaken for the sake of or as necessitated by the interests of certain person-types, so that liability to repression and violence may come to be partially definitive of individuals' political relationships.

Murphy describes her view as applying to “society-wide” relationships: “relationships among individuals in their general interactions and relationships with ordinary citizens or officials”.²⁸ However, group-differentiated integration into state structures means that relationships may be both general, in that they are not defined by

²⁷ James Scott, *Seeing Like a State* (New Haven: Yale University Press, 1999); Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006).

²⁸ Murphy, *op cit.*, p. 25.

the specific interpersonal history or relations of the individuals concerned, and also particular, in that they are defined by features or characteristics of the individuals involved in them that differentiate these individuals' interactions with one another from the interactions either would have with others. For example the political relationship between two people in an urban centre in Guatemala will differ according to characteristics such as whether they are ladino, whether they are affluent, how they make a living, and whether they have ties to rural areas.²⁹ This is because how individuals are integrated into Guatemalan state structures varies according to whether they live in an urban centre, whether they are ladino, etc. So whether an individual is ladino will be one of the factors that structures her relationships with other people in their general interactions *qua* subjects of the Guatemalan state. Not all subjects of the state will be ladino, and so some interactions with others will be structured by the state but not in a way that is society-wide.

Murphy's analysis does not fully take into account the collective dimension of political relationships and so she does not appreciate the full range of ways in which the construction of group identity can contribute to and be driven by disregard for capabilities. For example, Murphy points out the ways in which hateful characterizations may play a psychological role in undermining capabilities, by establishing the psychological conditions under which government officials can excuse to themselves their otherwise indefensible disregard of capabilities for some of the state's subjects.³⁰

Recognizing the collective dimension of repression makes it possible to see how hateful

²⁹ On this see Diane Nelson, *A Finger in the Wound: Body Politics in Quincentennial Guatemala*. (Berkeley, CA: University of California Press, 1999), Chris Hale, "Does Multiculturalism Menace? Governance, Cultural Rights and the Politics of Identity in Guatemala", *Journal of Latin American Studies* 34(3) (2002): pp. 485-524.

³⁰ Murphy, *op.cit.*, 99, 104-105.

characterizations may also play a material and epistemological role by making systematic inequality in the distribution of resources appear unremarkable, and contributing to the illusion that public officials are trustworthy and lack ill-will.³¹

In this respect, Murphy's analysis is hampered by her acceptance of a model of how state-based activity impacts individual human beings that gives analytic primacy to relationship between individual and state. Within this model, group membership is of political interest insofar as and to the extent that it structures individuals' conceptions of themselves, and their relationships to the state.³² As a consequence, Murphy's understanding of what makes relationships political, and of how political relationships play themselves out emphasizes interactions between individual subjects and government officials and among subjects as individuated persons. For example, Murphy's discussion of the conditions necessary for reasonable political trust emphasizes vertical relationships, between subjects of the state and state officials.³³ Political relationships are treated as paradigmatically individuated. Group-based relationships, insofar as they have the potential to be political, are treated as secondary.

Within this framework, the population of a state constitutes a single political community, identity in relation to which organizes and sets the terms of political relationships of the state's subjects. Yet although the population undoubtedly constitutes a collectivity, all of the constituents of which stand in relationships to the others that are set in part by their common membership in the state's population, this does not in itself

³¹ For discussion of this phenomenon in theories of distributive justice see Charles W. Mills, *From Class to Race: Essays in White Marxism and Black Radicalism* (New York: Rowman & Littlefield, 2003).

³² For a critical discussion of the limitations of this way of thinking about group membership see Cindy Holder, "Culture as an Activity and Human Right: An Important Advance for Indigenous Peoples and International Law", *Alternatives* 33 (2008): pp. 7-28 and "Devolving Power to Sub-State Groups: Some Worries", *The Monist* 95:1 (2012): pp. 87-103.

³³ Murphy, *op cit.*, pp. 77-79, 83-84.

imply that membership of the state, or the relationships with other of the state's constituents are shared. Shared membership and shared political relations imply commonality in the terms on which membership plays itself out, or the relations with one another that are established. Such commonality in terms of membership or relations across subjects does not necessarily obtain simply in virtue of the state itself being shared; and it is not obviously desirable, from a moral point of view, that it should.³⁴ What is shared by a population subject to the same state is the state itself, not membership in it. Moreover, the sharing of a state can itself take different forms depending on the specific constellation of relationships a state has to the populations subject to its jurisdiction. For example, populations may share a state in the way that a set of workers in a factory share a supervisor, or the patrons of a restaurant share a server: the same state performs a similar set of functions with respect to each, but that functioning is discharged severally. Alternately, populations may share a state in the way that a set of students share a teacher or a sports team shares a rival team: the state performs a similar set of functions for each and that functioning is discharged commonly.

Murphy assumes that political relationships are paradigmatically well-functioning when individuals share a state in the way students share a teacher and this shared state establishes shared terms of membership and shared political relations. This assumption structures her understanding of what inequitable construction of group identity consists in, and of how inequitable construction undermines the functionality of political relationships. However, there is reason to question whether structuring citizenship around an ideal of shared membership in a single, encompassing political community is

³⁴ See Cindy Holder, "Democratic Authority from the Outside Looking In: States, Common Worlds and Wrongful Connections", *Journal of Ethics and Social Philosophy* 5(3) (2011), www.jesp.org

necessary or even conducive to conscionable political relationships. For example, Jeff Corntassel and I, among others, have argued that conceiving of citizenship in this way may, in at least some cases, contribute to repression and civil conflict by justifying the subordination of non-state communities.³⁵

Conclusion

A Moral Theory of Political Reconciliation offers a rich, multifaceted analysis of how repression and civil conflict damages political relationships and why it is imperative for a democracy's future success that these relationships be rebuilt. Group-differentiated repression and the collective dimensions of political relationships are not adequately incorporated into the analysis, and this is a limitation of the work. However, the framework Murphy develops is well-suited to grappling with the difficult and important questions that group-differentiated repression raises. For example, the prospect of partial legality and the questions this raises for the moral defensibility of political relationships come into clearer focus and are more easily articulable in light of Murphy's discussion of how the rule of law relates to political trust and respect for capabilities. The book's emphasis of functionality and the ways in which repression and political violence undermine the practical sustainability of political relationships lays the groundwork for reflection on dysfunctionality in societies that are not usually described as transitional, and how the concepts and tools of transitional justice may apply. In this the book has the

³⁵. Jeff Corntassel and Cindy Holder, "Who's Sorry Now? Government Apologies, Truth Commissions and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru" *Human Rights Review* 9(4) (2008): pp. 465-489; Nancy Fraser, "Rethinking Recognition", *New Left Review* 3 (2000): pp. 107-120; Chris Hale, *op cit.*; Finn Stepputat, "Marching for Progress: Rituals of Citizenship, State and Belonging in a High Andes District," *Bulletin of Latin American Research* 23(2) (2004): pp. 244-259.

potential to transform thinking about the scope of transitional justice concepts and the boundary between transitional and non-transitional societies.