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I. Introduction

AB 3121 directed that the Task Force address how its recommendations “comport with international standards of remedy for wrongs and injuries caused by the state, that include full reparations and special measures, as understood by various relevant international protocols, laws, and findings.”¹ The preceding chapter provides an overview of the United Nations Principles on Reparations and the manner in which those principles have been interpreted. This chapter provides examples of reparatory efforts and special measures that preceded AB 3121 or that are ongoing. Examples of reparatory efforts by other countries are followed by such efforts in the United States at the federal, state, and local level.

The reparatory efforts detailed below are not exhaustive of those that have been completed or otherwise begun across the globe or elsewhere in the United States. For example, the Task Force heard testimony from representatives of numerous California localities that are in the process of endeavoring to craft measures for the harms and atrocities committed against African Americans who reside or previously resided in those jurisdictions, and the Task Force is aware of other similar efforts.² Also not included here are other reparatory efforts,³ instances of litigation seeking reparations,⁴ and reparatory efforts of private institutions such as universities that played an active role in or otherwise profited from enslavement.⁵ The decision not to include these efforts at atonement does not reflect any judgment regarding their value.

Many a well-intentioned effort to provide reparations has fallen short of meeting the standard set by the United Nations. In fact, it is difficult to point to an example as to which there is universal agreement that the outcome was a model of fully satisfying all five of the elements that the United Nations requires for true reparations—namely, restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition.⁶ Some point to the reparations made by Germany after World War II as the example that comes closest to doing so. Interestingly, those reparations were crafted more than 50 years before the United Nations issued its Principles on Reparations.



Japanese Americans walk among the incarceration sheds of the Manzanar War Relocation Center in Owens Valley (1942)

Many of the programs described in this chapter are thus more properly classified as racial equity measures rather than reparations. A not infrequent basis for this conclusion is where the monetary component of the reparatory effort has fallen short of being commensurate with the nature of the atrocity and the harm that was suffered. A program can also fall short if it only compensates a small number of beneficiaries, as compared to the number who suffered the harms. These are just two of the more common critiques that can arise. But

to build on their positive aspects and learn from their challenges and shortfalls. The lessons learned from these examples as well as witness testimony, public comment, research, analysis, and debate across the Task Force have been brought to bear on the full panoply of the Task Force's recommendations, as set forth in the chapters that follow—all for the purpose of ensuring that the reparations program contemplated by AB 3121 and enacted by California will fully meet the required elements of restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition and provide the justice demanded of the Task Force and the State.

The examples offered below are instructive in one additional regard that bears repeating. As the below cases and others illustrate, our federal government *has* undertaken reparatory efforts in several instances.⁷ Although the outcomes of these programs have been far from

perfect, they are an inescapable indictment of the federal government's failure to undertake reparations for the harms and atrocities of slavery and its ongoing legacy. The Task Force trusts that its work will help spur the federal government to begin to address America's crimes against humanity flowing from enslavement.

The Nuremberg Laws were two race-based measures that were approved by the Nazi Party at its convention in Nuremberg in 1935. American citizenship and anti-miscegenation laws, which oppressed African Americans in the United States, directly influenced the Nazi Party in formulating these two laws.

one may observe that given efforts have not met the bar set by the United Nations and still see where there has been value in those efforts.

The Task Force has considered the examples in this chapter, seeking through the recommendations in this report

II. International Reparatory Efforts

Germany-Israel

In September 1952, representatives of the newly established State of Israel and the newly formed Federal Republic of Germany (FRG) met at Luxembourg and signed an agreement that required the FRG to pay reparations to Israel for the material damage caused by the criminal acts perpetrated against the Jewish people during the Third Reich.⁸ Although the 1952 Luxembourg Agreement (Luxembourg Agreement) predates the United Nations General Assembly's Resolution,⁹ which identifies the five requirements for a full and effective reparations scheme, the Agreement comes close to fully embodying those principles. In particular, its provisions make significant attempts at providing effective compensation for the victims of war and genocide even though the moral debt for the harm the victims suffered was one that could never "be quantified and ... would remain eternal."¹⁰

The Luxembourg Agreement consisted of three parts, two of which were protocols. The first part of the

Luxembourg Agreement required the FRG to pay Israel 3,000 million Deutsche Mark (DM) or DM3 billion to help resettle Jewish refugees in the new State of Israel.¹¹ The DM3 billion sum would be paid in annual installments.¹² The second part, Protocol 1, required the FRG to enact laws to pay individual compensation to "former German citizens, refugees, and stateless persons" for harms suffered during the Third Reich.¹³ And the third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Conference on Jewish Material Claims against Germany (Claims Conference) DM450 million for the "relief, rehabilitation and resettlement of Jewish victims" of Nazi persecution living outside of Israel.¹⁴ In total, the FRG agreed to pay DM3,450 million, the equivalent of \$820 million U.S. dollars in 1952.¹⁵

The Luxembourg Agreement was intended to address the harms inflicted on Jewish people living in Germany or in territories controlled by Germany during the Third Reich, the regime that ruled Germany from 1933 to 1945.¹⁶ Beginning in 1933, the Third Reich implemented

several reforms that were intended to control and limit the citizenship and freedom of its Jewish citizens. The Nuremberg Laws were two race-based measures that were approved by the Nazi Party at its convention in Nuremberg in 1935.¹⁷ American citizenship and anti-miscegenation laws, which oppressed African Americans in the United States, directly influenced the Nazi Party in formulating these two laws.¹⁸ One of the laws, the Reichsbürgergesetz, or the “Law of the Reich Citizen,” deprived German Jews of citizenship, designating them as “subjects of the state.”¹⁹ The other law prohibited miscegenation between Jews and “citizens of German or kindred blood.”²⁰

Other laws were passed which excluded Jewish citizens from certain positions, schools, and professions.²¹ For example, Jews were barred from earning university degrees, owning businesses, and providing legal and medical services to non-Jews.²² Jews were also barred from participating in German social life. They were “denied entry to theatres, forced to travel in separate compartments on trains, and excluded from German schools.”²³

During the Third Reich, the Nazis also confiscated Jewish property in a program called “Aryanization.”²⁴ It is estimated that around \$6 billion in property was stolen from the Jewish people living in Germany and the territories controlled by Germany.²⁵

After the war began and Germany expanded its territories, more Jewish people came under German control.²⁶ The Nazi response was to create “ghettos” and force the Jewish population to live there until the German government decided what to do with them.²⁷ Eventually, these acts culminated in the “Final Solution,” which was the murder of Jewish citizens in concentration camps throughout Germany and territories controlled by Germany.²⁸ Although there is some debate about when the Nazis decided to kill Jewish people, it is undisputed that “in June of 1941, the Nazis began the systematic killing of Jews.”²⁹

In Germany and its controlled territories,

\$6 Billion was STOLEN
in property owned by Jewish people

Just two months after his election, Konrad Adenauer, the Chancellor of the newly formed FRG, expressed a willingness to address claims of reparations for the

harms inflicted on the Jewish people by Nazi Germany.³⁰ He acknowledged that “unspeakable crimes were committed in the name of the German people, which create a duty of moral and material reparations. . . .”³¹

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The Star of David attached to the top of this street car indicates it is in use for residents of Warsaw's ghetto, wherein lived Jews from every Nazi occupied country of Europe. (1939)

The idea of providing reparations to Holocaust survivors or the heirs of those who died, did not begin with Adenauer, however. Beginning in 1949, the Council of States in the American-occupied zone established a law of compensation.³² They implemented a reparations or restitution scheme that was designed to restore to Jewish citizens the property taken from them.³³ By including concepts like the right of displaced people to compensation and the categories of harm that constitute persecution, the law of compensation “established the foundations of the first nationwide law on reparations. . . .”³⁴

Discussions about reparations were being held in the Jewish community even earlier—at the beginning of the war.³⁵ The idea gained support and was discussed at the War Emergency Conference organized by the World Jewish Congress in 1944.³⁶ In the Jewish community, both in the diaspora and Israel, there was strong opposition to the idea of reparations, however. The opposition was so intense that the head of the Jewish World Congress had to have “clandestine discussions” with Chancellor Adenauer until they could produce an agreement that would be acceptable to both sides.³⁷

The Luxembourg Agreement was eventually signed in September 1952.³⁸ The first part of the Agreement required the FRG to pay DM3 billion in installments to Israel to help meet the costs of resettling Jewish refugees who fled Nazi Germany and other territories that were formerly under Nazi Germany control.³⁹ Specifically, those funds provided the means for Israel “to expand[] opportunities for the settlement and rehabilitation of Jewish refugees in Israel.”⁴⁰ Israel invested those funds into its industrial development by purchasing goods and services from the FRG to build and expand its infrastructure.⁴¹ In addition to providing Israel with funds to purchase goods and services, the Luxembourg Agreement required the FRG to ensure the delivery of goods and services to Israel.⁴² To ensure the participation of German suppliers, the Agreement provided incentives like tax refunds to suppliers “on deliveries of commodities in pursuance of the Agreement.”⁴³



The signing of the Luxembourg Agreement. (1952)

The payments would be paid according to the schedule in the Luxembourg Agreement.⁴⁴ The first installment was made in two payments in 1952. The first payment of DM60 million was due on the day the Agreement was entered into force.⁴⁵ The remaining DM140 million was due three months later.⁴⁶ For 1953, the FRG was required to pay DM200 million.⁴⁷ The remaining funds would be paid in nine annual installments of DM310 million plus a tenth installment of DM260 million.⁴⁸ After 1954, if the FRG determined that it could not comply with the obligation, it was required to give Israel notice in writing that there would be a reduction in the amount of the installments, but in no way could any of the installments be reduced below DM250 million.⁴⁹

Four agencies were established to ensure that the Agreement would be carried out.⁵⁰ The Israeli Mission

was the sole agency that could place orders with German suppliers on behalf of the Israeli Government.⁵¹ But jurisdiction was conferred on German courts to decide disputes arising out of the performance of *individual* transactions involving individual German suppliers.⁵² The second agency was the agency designated by the FRG to examine all orders placed by Israel to ensure that they conformed to the Agreement.⁵³

The third agency was the Mixed Commission, which was responsible for supervising the operation of the Agreement.⁵⁴ Its members were appointed by their respective governments.⁵⁵ It had no adjudicative power.⁵⁶

The fourth agency, the Arbitral Commission had adjudicative power over disputes between Israel and the FRG, except for those disputes that involved individual German suppliers.⁵⁷ Each country appointed one arbitrator, and the arbitrators, by mutual agreement, appointed an umpire who could not be a national of either contracting party.⁵⁸ If the parties could not agree on the appointment of an umpire, the President of the International Court of Justice would select one.⁵⁹ The arbitrators serve five years and were eligible to serve another term once their five-year term expired.⁶⁰

Individual Compensation

The second part of the Agreement, Protocol 1, required the FRG to enact laws for payment of individual compensation to former German citizens, refugees, and stateless persons.⁶¹ The FRG enacted the first supplementary law for the compensation of victims in compliance with Protocol 1 in 1953.⁶² The Federal Supplementary Law covered harms that occurred between January 30, 1933, the beginning of the Third Reich, and May 8, 1945.⁶³ Preceding the Federal Supplementary Law was a general acknowledgment of the wrongs committed by the Nazi regime:

In Recognition of the Fact that wrongs have been committed against persons who under the oppressive National Socialist regime, were persecuted because of their political opposition to National Socialism or because of the race, religion or ideology, that the resistance to the National socialist regime based on conviction, faith or conscience was a service to the welfare of the German people and state and, that democratic, religious and economic organizations, too, have suffered damages by the oppressive National Socialist regime in contravention of the law, the Bundestag with the consent of the Bundesrat has enacted the following Law[.]⁶⁴

The Federal Supplementary Law identified the following categories of harm that were eligible for compensation:

- **Compensation for Life:** Under this category, widows, children, and dependent relatives could apply for an annuity for wrongful death, based on the amount paid to families of civil servants.⁶⁵
- **Compensation for Health:** Under this category, claimants were entitled to medical care for “not insignificant” damage to health or spirit.” For damages beyond claims for medical care, claimants could apply for an annuity but had to prove that the persecution caused certain health damages that led to at least a 30 percent reduction in their earning capacity.⁶⁶
- **Compensation for Damages to Freedom:** This category included claimants subjected to political or military jail, interrogation custody, correctional custody, concentration camp, ghetto, or punishment entity. It also included forced labor “insofar as the persecuted lived under jail-like conditions.”⁶⁷
- **Compensation for Property, Assets, and Discriminatory Taxes:** Claimants could file claims for the loss of property that occurred because the claimant fled the country, emigrated, or was robbed of their freedom. They were also entitled to compensation for property damage and paying discriminatory taxes such as the Reich Flight tax.⁶⁸
- **Compensation for Damages to Career or Economic Advancement:** This category entitled self-employed and privately employed claimants from the time persecution began until January 1, 1947. The exact amount would be calculated at two-thirds of the relevant civil servant’s pay. If a claimant was unable to resume their career, they could elect to receive their pension early. The amount of the pension was two-thirds that of a civil servant’s pension. Those who wanted to reestablish their business were entitled to a loan of up to DM30,000. Claimants could also claim assistance to make up for their missed education.⁶⁹
- **Compensation for Loss of Life or Pension Insurance:** The claimant could claim up to DM10,000.⁷⁰

Claimants could pursue compensation for harm endured under each of the various categories simultaneously,

meaning they were not limited to one category when filing claims.⁷¹ If a claim was denied, the victim could file a case in court.⁷² For damage to body or health claims, the claimant would have to be interviewed and examined by court-nominated experts.⁷³

There were some deficiencies in the 1953 Federal Supplementary Law, which Parliament tried to fix in the 1956 Federal Compensation Law.⁷⁴ The 1956 law increased the maximum compensation for loss of life to

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DM25,000 and improved the claims process to make it easier for claimants.⁷⁵ The 1956 law still excluded those persecuted outside of Germany, forced laborers, victims of forced sterilization, the “antisocial,” Communists, Gypsies, and homosexuals.⁷⁶

In 1965, the FRG enacted the Federal Compensation Final Law.⁷⁷ The Final Law made the following changes:

- It created a hardship fund of DM1.2 billion (\$300 million U.S. dollars) to support refugees from Eastern Europe who were previously ineligible for compensation, primarily emigrants from 1953 to 1965.⁷⁸
- **Compensation for Health:** Eased burden on claimants to prove damages to their health were caused by their earlier persecution by including a presumption that if the claimant had been incarcerated for a year in a concentration camp, subsequent health problems could be causally linked to their persecution under the Nazi regime.⁷⁹
- The category for loss of life was expanded to include deaths that occurred either during persecution or within eight months after.⁸⁰
- The ceiling for education claims was increased to DM10,000.⁸¹
- Claims already adjudicated were to be revised based on the new law.⁸²
- The Final Law did not include a category for compensation for work performed by slave or forced labor.⁸³

Over the course of the reparations process, the German government received over 4.3 million claims for individual compensation, of which 2 million were approved.⁸⁴ It is estimated that by 2000, Germany had paid more than DM82 billion in individual reparations or \$38.6 billion U.S. dollars.⁸⁵

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(DM82 billion) in reparations

Protocol 2: Claims Conference

The third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Claims Conference DM450 million, the equivalent of \$107 million U.S. dollars,⁸⁶ for the “relief, rehabilitation and resettlement of Jewish victims” of Nazi persecution living outside of Israel.⁸⁷ The money would be paid to Israel and Israel would disburse the funds to the Claims Conference for it to disburse the money.⁸⁸

Post 1952 Luxembourg Agreement Measures

The 1953, 1956, and 1965 compensation laws excluded compensation for forced labor and slave labor. The process for compensating these harms began in the German parliament in 1998.⁸⁹ The World Jewish Congress and the Claims Conference began placing pressure on German companies that benefited from slave labor and forced labor during World War II to pay reparations.⁹⁰ These companies also faced foreign political pressure from governments like the United States.⁹¹ There was no political pressure from organizations like the United Nations, however.⁹² Lawsuits in the United States against German companies that operated in the United States also applied pressure to the German government and the German companies to provide compensation for the labor they benefited from during the war.⁹³

These efforts culminated in the enactment of the Forced and Slave Labor Compensation Law in July 2000.⁹⁴ Eight countries were involved: Germany, the United States, Russia, Israel, Poland, the Czech Republic, Belarus, and Ukraine.⁹⁵

The fund contained DM8.1 billion to compensate slave and forced laborers.⁹⁶ The compensation scheme

implemented “rough justice.”⁹⁷ Former slave laborers⁹⁸ received DM15,000 or the equivalent of \$7,500 U.S. dollars.⁹⁹ Former forced laborers received DM5,000 or \$2,500 U.S. dollars.¹⁰⁰ Payments were limited to claimants only and not extended to descendants.¹⁰¹ However, heirs of anyone who died on or after February 16, 1999, the date negotiations regarding compensation began, could file a claim.¹⁰²

The law also allowed for compensation for all non-Jewish survivors living outside the five Eastern European countries.¹⁰³ The International Organization for Migration processed those claims.¹⁰⁴ Claimants had to complete applications by December 31, 2001.¹⁰⁵ By the deadline, the International Organization of Migration had received 306,000 claims.¹⁰⁶

In filing their claims, claimants had to provide details of previous claims and a copy of their IDs.¹⁰⁷ They were also required to declare whether they received slave labor compensation directly from a German company.¹⁰⁸ They also had to identify a place where they were forced to perform slave or forced labor and waive their legal rights against the German government and in connection with Nazi-era activities against all German companies.¹⁰⁹

Every check that was issued under the Forced and Slave Labor compensation law had the following apology from the President of Germany included:

This compensation comes too late for all those who lost their lives back then, just as it is for all those who died in the intervening years. It is now therefore even more important that all survivors receive, as soon as possible, the humanitarian agreement agreed today. I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice.

The World Jewish Congress and the Claims Conference began placing pressure on German companies that benefited from slave labor and forced labor during World War II to pay reparations. These companies also faced foreign political pressure from governments like the United States.

I pay tribute to all those who were subjected to slave and forced labor under German rule and, in the name of the German people, beg forgiveness. We will not forget their suffering.¹¹⁰

Assessments of the FRG-Israel Reparations Scheme

Initially, there was significant opposition to the idea of reparations in Germany.¹¹¹ Chancellor Adenauer's reparations initiative did not have the full support of German citizens.¹¹² Germans considered themselves victims of the war.¹¹³ And the majority believed that German widows and orphans should receive support first, with Jewish citizens at the bottom of the list.¹¹⁴ Government officials were also against reparations. One concern was that a potentially large expenditure, as reparations would likely require, could be risky for Germany given its financial position after the war.¹¹⁵

There was also opposition in the Jewish community. This initial opposition was so intense that the initial negotiations were held in secret until they could reach an agreement that would be acceptable to both countries.¹¹⁶ Underlying the opposition was the idea that the Jewish people should not accept money to absolve the German people of the harm they caused.¹¹⁷ The debt the Germans had incurred was a moral one that could not be paid off.¹¹⁸ Pragmatism eventually won. Reparations could help develop Israel so that the country would be stronger and could save Jews from all over the world quickly in another crisis.¹¹⁹ But it was understood that the moral debt Germany had acquired because of its actions towards the Jewish people could not be "quantified and hence would remain eternal."¹²⁰

Scholars have noted that the Luxembourg Agreement was unique in many ways. It was the first reparations agreement that required a country to compensate another country that was not the victor in a war.¹²¹ Further, it was the first reparations program where the perpetrator paid reparations "on its own volition in order to facilitate self-rehabilitation."¹²² And the Agreement was formed by two states that were "'descendant' entities of the perpetrators and victims."¹²³ The program was the largest reparations program ever implemented.¹²⁴ And it had significant economic and political consequences for both Israel and the FRG.¹²⁵ The treaty enabled a substantial trade relationship between the two countries.¹²⁶ When reparations payments ceased in 1965, Israel and the FRG gradually initiated political relations.¹²⁷

Chile

Under the 1973 to 1990 dictatorship of General Augusto Pinochet, the people of Chile were subjected to a systematic campaign of torture and state violence: an estimated 2,600 to 3,400 Chilean citizens were executed or "disappeared," while another estimated 30,000 to 100,000 were tortured.¹²⁸

The dictatorship began with a coup the morning of September 11, 1973, under the guidance of U.S. Secretary of State Henry Kissinger to seize the democratic socialist government of Dr. Salvador Allende.¹²⁹ Pinochet's military junta seized power, ending Chile's long tradition of constitutional government.¹³⁰ Pinochet's military dictatorship defined segments of the Chilean population as ideological enemies – the "subversive" – and detained, tortured, and murdered suspected opponents of the

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Tanks are coming towards La Moneda at ten in the morning during the coup d'état led by Commander of the Army General Augusto Pinochet. (1973)

dictatorship.¹³¹ According to the 2004 Valech Report on Political Imprisonment and Torture, at least 27,255 people were tortured from 1973 to 1990, and approximately 2,296 people were killed or "disappeared," although an additional 1,000 still remain unaccounted for.¹³² The National Truth and Reconciliation Commission found 899 additional cases of individuals "disappeared" or killed by state agents in the same period.¹³³

In 1988, a national plebiscite, or referendum, was held to determine whether General Augusto Pinochet should remain president of the country.¹³⁴ The plebiscite voted against his continuation. In March 1990, Patricio Aylwin was sworn in as President of the Republic of Chile and one month later, he created the National Truth and Reconciliation Commission.¹³⁵ This eight-member commission was tasked with disclosing the human rights

violations that occurred under the previous dictatorship, gathering evidence to allow for victims to be identified, and recommending reparations in a legal, financial, medical, and administrative capacity.¹³⁶ In February 1991, the Commission delivered its first report, the Retting Report, to the President.¹³⁷ The report determined that between September 11, 1973 and March 11, 1990, 2,298 persons had died as a result of human rights violations or political violence.¹³⁸ The Chilean armed forces and Supreme Court officially rejected the report, arguing that it did not take into account the historical and political context in which these acts occurred.¹³⁹ Despite such criticism, however, the actual content of the Retting Report was not denied.¹⁴⁰ President Aylwin sent a draft bill on reparations for the victims to Congress using the recommended measures of reparations from the Retting Report. The bill was approved and signed into law (Law 19.123) on February 8, 1992.

Law 19.123 established the National Corporation for Reparation and Reconciliation with the purpose of coordinating, carrying out, and promoting actions needed to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission.¹⁴¹ As written in Law 19.123, the national corporation would, but not be limited to, do the following:

- Promote reparations for the moral injury caused to the victims and provide the social and legal assistance needed by their families so that they can access the benefits provided for in Law 19.123.¹⁴²
- Promote and assist in actions aimed at determining the whereabouts and circumstances surrounding the disappearance or death of the detained or disappeared persons and of those persons whose bodies have not been located, even though their death has been legally recognized. In pursuing this objective, the corporation should collect, analyze, and systematize all information useful for this purpose.¹⁴³
- Serve as a depository for the information collected by the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation, and all information on cases and matters similar to those treated by it that may be compiled in the future. It may also request, collect, and process existing information in the possession of public and private institutions in relation to human rights violations or political violence referred to in the Report of the National Truth and Reconciliation Commission.¹⁴⁴
- Compile background information and perform the inquiries necessary to rule on the cases that were brought before the National Truth and Reconciliation

Commission, in which it was not possible to reach a well-founded conclusion as to whether the person detrimentally impacted was a victim of human rights violations or political violence, or rule on cases that were not brought before the Commission in a timely fashion, or, if they were, in which the Commission did not reach a decision due to lack of sufficient information.¹⁴⁵

- Enter into agreements with nonprofit institutions or corporations so that they may provide the professional assistance needed to carry out the aims of the Corporation, including medical benefits.¹⁴⁶
- Make proposals for consolidating a culture of respect for human rights in the country.¹⁴⁷

Law 19.123 also established a monthly reparations pension for the families of the victims of human rights violations or political violence as identified in the report by the National Truth and Reconciliation Commission.¹⁴⁸ The Institute of Pension Normalization was placed in charge of paying the pensions throughout the country.¹⁴⁹ In 1996, the monthly pension amounted to \$226,667 Chilean pesos (US \$537).¹⁵⁰ This figure was used as a reference for estimating the different amounts provided to each type of beneficiary as defined in Law 19.123.

Family members received a portion of the monthly pension dependent upon the type of beneficiary as defined in Law 19.123:

- A surviving spouse received 40 percent of the total, or \$90,667 pesos (US \$215);¹⁵¹
- The mother of the petitioner or, in her absence, the father, received 30 percent of the total, or \$68,000 pesos (US \$161);¹⁵²
- A surviving mother or father of a victim's out-of-wedlock offspring received 15 percent of the total, or \$34,000 pesos (US \$80);¹⁵³
- Each of the children of a disappeared person received 15%, or \$34,000 pesos (US \$80), until the age of twenty-five. There was no age limit for children with disabilities.¹⁵⁴

A one-time compensatory bonus equivalent to twelve months of pension payments was also awarded.¹⁵⁵

A beneficiary would also receive the pension in the proportion determined by the law, even if there were no other beneficiaries in the family.¹⁵⁶ Also, if the amount required by the number of beneficiaries exceeded the reference amount, each of them still received the percentage established by law.¹⁵⁷

At the time of the passage of Law 19.123, other smaller programs were created to remedy specific issues, including a program within the Chilean Ministry of Health, financed by the United States Agency for International Development, to provide comprehensive physical and psychological health care for those who were most affected by human rights violations.¹⁵⁸

There have been public criticisms of the reparations measures implemented by the government. Critics have objected to the declaration of the presumed death of the victims, the creation of a public interest corporation with no juridical faculties to investigate the whereabouts of disappeared detainees, and an unfair single pension model that does not take into account the number of members in each family.¹⁵⁹

There were also notable issues with Law 19.123, which excluded certain beneficiaries (unmarried partners, victims without children, and mothers of children born outside of marriage) and lacked recognition or remedy for specific victims (those illegally detained and tortured).¹⁶⁰

On December 31, 1996, under new presidential leadership, the Corporation closed down and issued a final report, declaring that the work of the institution had contributed effectively to political reconciliation, but that the pending cases of more than 1,000 disappeared detainees undermined these efforts and that some of the obligations assigned to the Corporation had not been fulfilled.¹⁶¹ With these unfulfilled obligations, and with an obligation to continue searching for disappeared victims under Article 6 of Law 19.123, the state continued some of the work of the Corporation following its closure. On April 25, 1997, the state issued Supreme Decree Num. 1.005, which established that a new “follow-up program” be created to follow up on specific duties and responsibilities of Law 19.123.¹⁶² This included:

- Implementation of the recommendations by the Truth and Reconciliation Commission.¹⁶³
- Provision of legal and social assistance for the families of the victims upon request.¹⁶⁴

- Preservation and safekeeping of documents and archival records collected by the National Truth and Reconciliation Commission and the former National Corporation of Reparations.¹⁶⁵

The next president, Eduardo Frei Ruiz-Tagle, continued this work on reparations and initiated roundtables on human rights between 1999 and 2000.¹⁶⁶ These roundtables culminated in a supplementary report of 200 new cases of disappeared detainees.¹⁶⁷ In response, elements

In 2005, the Chilean government decided to provide 28,459 registered victims or their relatives with lifelong governmental compensation (approximately US \$200 per month) and free education, housing, and health care.

of the follow up program for Law 19.123 were integrated into the Human Rights Program of the Ministry of Interior. The new program continued to work with families, and a newly reorganized judicial program provided logistical support to special judges conducting investigations in regiments, clandestine cemeteries, and other places indicated in the report by the armed forces.¹⁶⁸

In August 2003, the next president, Ricardo Lagos, proposed and sent three bills to Congress to strengthen the work of the Follow-Up Program, increase pension amounts, and expand beneficiary access to pensions.¹⁶⁹ The President argued that the human rights violations of the dictatorship represented a social, political, and moral scar that required additional meaningful reparation measures and a responsible recognition of the magnitude of the problem.¹⁷⁰ In September 2003, President Lagos created the National Commission on Political Imprisonment and Torture Report (Valech Commission) to continue the work of reparations by identifying victims, proposing new measures of reparations, and producing a final report.¹⁷¹ On November 10, 2004, the Valech Commission delivered its first 1,200-page report to President Lagos, who then presented it to the nation in a televised speech later that month.¹⁷² The President asked the Valech Commission to produce a complementary report taking into account approximately 1,000 additional cases submitted by victims and their families.¹⁷³ That report was delivered in June 2005.¹⁷⁴

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20.405 creating the Institute for Human Rights.¹⁷⁶ Under this law, Chilean President Michelle Bachelet was tasked with creating a consultative commission, the Valech II Commission, for the qualification for reparations for disappeared detainees, persons killed by extrajudicial executions, prisoners of conscience, and victims of torture.¹⁷⁷ At this time, the Chilean government entered into international networks to help address the human rights abuses that occurred in Chile. In 2009, Chile joined the Rome Statue of the International Criminal Court in 2009.¹⁷⁸ In 2015, Chile became a signatory party to the Agreement on the Status and Functions of the International Commissions on Missing Persons.¹⁷⁹ Today, the Chilean government continues to work to address past human right abuses through new commissions and instruments, including the Chilean System of National DNA Databases to test and match DNA samples between relatives and missing persons.¹⁸⁰

“Apartheid was an institutional regime of racial segregation and systematic oppression, implemented in South Africa for the purpose of depriving the majority black population of basic rights and securing the white minority’s power over the country’s government, economy, and resources.”

South Africa

“Apartheid was an institutional regime of racial segregation and systematic oppression, implemented in South Africa for the purpose of depriving the majority black population of basic rights and securing the white minority’s power over the country’s government, economy, and resources.”¹⁸¹ Following the election of Nelson Mandela as the country’s first non-white president, the South African government passed the Promotion of National Unity and Reconciliation Act (the Act) to help transition South Africa out of the apartheid era and into an era of democracy in which Black South Africans would have full participation. To make that transition, the Act created the Truth and Reconciliation Commission (Commission), which operated through three committees. One committee was the Committee on Human Rights Violations (CHRV) which investigated the gross human rights violations committed during the apartheid regime. Another committee of the Commission was the Amnesty Committee, which was responsible for determining which perpetrators of gross human rights violations would receive amnesty, that is, immunity from civil and criminal liability for their crimes. And the final committee was the Committee on Reparations and Rehabilitation (CRR) which was responsible for

developing an urgent interim reparations program and submitting final reparations policy recommendations to the government.

Included in the final reparations policy recommendations were financial and symbolic reparations as well as community rehabilitation programs and institutional reforms. The financial reparations recommendation was that the government pay individual reparations grants to 22,000 confirmed victims each year, for six years. To ensure successful implementation, the CRR also recommended that the government appoint a national body to implement the reparations program and a secretariat within the office of the President or the Vice President to oversee implementation.

The government adopted some of the CRR’s symbolic reparations recommendations, its community rehabil-

itation program recommendations, and its institutional reforms. The government did not adopt the recommendation for a national implementing body. Nor did it adopt the CRR’s recommendation that it pay individual reparation grants for six years. Instead, in 2003, five years after the CRR submitted its final reparations policy recommendations, the South African government paid a one-time payment of R30,000, the

equivalent of \$4,000 U.S. dollars to some of the 22,000 victims.¹⁸² The payment was about one-fifth of the amount the CRR recommended to justly compensate victims for their suffering.¹⁸³ By 2004, only 10 percent of the confirmed victims had received their payment.

The History of the Apartheid and Gross Human Rights Violations

De jure racial segregation was widely practiced in South Africa since the first white settlers arrived in South Africa.¹⁸⁴ When the National Party gained control of the government in 1948, it expanded the policy of racial segregation, naming the system apartheid.¹⁸⁵ This system of “separate development” was furthered by the Population Registration Act of 1950, which classified all South Africans as either Bantu (all Black Africans), “Coloured” (those of mixed race), or white.¹⁸⁶ Another piece of legislation, the Group Areas Act of 1950, established residential and business sections in urban areas for each race, and barred members of other races from living, operating businesses, or owning land in areas designated for a different race.¹⁸⁷ The law was designed to remove thousands of “Coloureds,” Blacks, and Indians from areas classified for white occupation.¹⁸⁸ As a result of the confluence of laws, specifically, the Population Registration Act, the Group

Areas Act, and several “Land Acts” adopted between 1913 and 1955, more than 80 percent of South Africa’s land was set aside for the white minority.¹⁸⁹

The government also passed laws limiting education for Black South Africans. Specifically, the Bantu Education Act enacted in 1953, provided for the creation of state-run schools, which Black children were required to attend.¹⁹⁰ The goal of these state-run schools was to train Black children for “manual labour and menial jobs” the government “deemed suitable” for their race.¹⁹¹ Black South Africans were also barred from attending universities in South Africa.¹⁹²

To help enforce the segregation of the races and prevent Black South Africans from encroaching on white areas, the government strengthened existing “pass” laws, requiring “nonwhites to carry documents authorizing their presence in restricted areas.”¹⁹³ Many private companies, including ones based in the United States and Europe, enabled apartheid by manufacturing the military and police vehicles¹⁹⁴ used to enforce segregation and by creating the document system that stripped Black South Africans of their citizenship and their rights.¹⁹⁵

Responses to violations of apartheid laws were brutal. Under South African law, police officers could commit acts of violence, that is, torture or kill, in the pursuit of their official duties.¹⁹⁶ One confirmed victim of gross human rights abuses was tortured by police on four different occasions.¹⁹⁷ On one occasion he was electrocuted.¹⁹⁸ On another, “they put a tire around [his] neck, placed [his] hands behind [his] back and threw matches at [his] hair.”¹⁹⁹ On one occasion, he was tortured for five days.²⁰⁰ And on yet another occasion, he was detained for six months without charges and tortured.²⁰¹

There were also numerous large-scale shooting incidents that involved police officers roaming through Black townships in vehicles called Hippos and shooting Black people, including children.²⁰² In one incident in 1985, a thirteen-year-old was shot and killed by security forces while traveling from his grandmother’s house to his home to pick up his schoolbooks.²⁰³ Other children were shot and killed while playing outside with friends.²⁰⁴

The Commission’s Final Report documented the “extreme violence necessary to maintain the apartheid regime.”²⁰⁵ In essence, the system of apartheid was held in place by gross human rights violations, “including prolonged arbitrary detention, forced exile, forced relocation, revocation of citizenship, forced and exploited

labor, extrajudicial killings, and torture” committed by state and private actors.²⁰⁶

COURTESY OF HULTON ARCHIVE VIA GETTY IMAGES



South African police beating women with clubs after they raided and set a beer hall on fire in protest against apartheid, Durban, South Africa. (1959)

There was resistance to apartheid from the beginning. One of the first demonstrations against apartheid took place in Sharpeville on March 21, 1960.²⁰⁷ As a result of the demonstration, police officers opened fire on the crowd, “killing about 69 Black Africans and wounding many more.”²⁰⁸ The primary political group that spearheaded the fight to eliminate apartheid was the African National Congress (ANC).²⁰⁹ The government banned the ANC from 1960 to 1990.²¹⁰ Eventually, there was outside economic pressure on South Africa to abandon apartheid, including from the United States and Europe, which imposed selective economic sanctions on South Africa.²¹¹

Secret negotiations between the National Party, the ruling apartheid party, and the ANC, the resistance, to end apartheid began under President Botha and concluded under President F.W. de Klerk on February 2, 1990, when he announced that he would release all political prisoners and unban anti-apartheid organizations, like the ANC.²¹² De Klerk’s announcement began formal negotiations to end apartheid.²¹³ The bargain struck required the NP to give up power and allow free elections in exchange for amnesty.²¹⁴ Those negotiations culminated

Eventually, there was outside economic pressure on South Africa to abandon apartheid, including from the United States and Europe, which imposed selective economic sanctions on South Africa.

in the Interim Constitution, which enfranchised Black South Africans and provided for elections in 1994.²¹⁵

The Interim Constitution required the new Parliament to draft a final constitution and draft the framework for the new government of South Africa.²¹⁶

The Interim Constitution also included an unnumbered section called the coda, post-amble, or epilogue, which provided for amnesty for the outgoing government in exchange for it giving up power peacefully and having the votes of everyone respected.²¹⁷ The coda also included language calling for reparations: “[T]he violent effects of apartheid ‘can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparations but not for retaliation, a need for ubuntu but not for victimization’.”²¹⁸ Essentially the bargain struck during the negotiations to end apartheid called for the perpetrators of gross human rights violations to receive amnesty and the victims to receive reparations.²¹⁹

Reparations and the Creation of the Truth and Reconciliation Commission

In addition to creating the Commission and outlining the duties of its three committees, the Promotion of National Unity and Reconciliation Act (the Act) identified the need for reparations as a primary concern, requiring the Commission “to provide for . . . the taking of measures aimed at the granting of reparations to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights.”²²⁰ It also defined several key terms that would be used throughout the reparations process. First, it defined reparations using a very broad and open-ended definition: “‘any form of compensation, *ex gratia* payment,²²¹ restitution, rehabilitation or recognition’.”²²² The Act also distinguished between a longer-term reparations policy and an interim urgent reparations policy that would provide urgent reparations to “victims.”²²³ The urgent reparations would go to those “victims not expected to outlive the Commission” and “those who had ‘urgent medical, emotional, educational, material, and symbolic needs’.”²²⁴

A “victim” was defined as a person who “‘suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights, (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted’.”²²⁵ “A gross violation of human rights is defined as ‘(a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement,

instigation, command or procurement to commit [killing, abduction, torture or severe ill-treatment]’.”²²⁶

The Promotion of National Unity and Reconciliation Act identified the need for reparations as a primary concern, requiring the Commission “to provide for ... the taking of measures aimed at the granting of reparations to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights.”

The Act also provided for but did not require, the creation of a President’s Fund (Fund) that would hold and disburse funds as reparations.²²⁷ The Fund would hold and invest money appropriated to it by Parliament and money donated by nongovernmental sources.²²⁸

Even though it addressed reparations, the Act did not codify or otherwise guarantee the right to reparations.²²⁹ Nor did it grant the Commission power to implement any of the final reparations policy proposals.²³⁰ The Commission’s power ended with the submission of the final report.

The Committee on Human Rights Violations (CHRV)

The Commission’s CHRV was responsible for investigating human rights abuses. One significant limit set on the work of the CHRV was that it could only investigate *gross* violations of human rights defined as killing, abduction, torture, and severe ill-treatment that were politically motivated and which occurred between 1960 and 1994.²³¹ This definition of gross human rights violations meant that forced removals to unfertile land, wholesale appropriation of land that left the majority of the population living on 13 percent of the land, oppressive labor conditions in mines and on farms, educational deprivations, and legal restrictions from birth to death would not be investigated.²³² Nor would any of the racially-based abuses that occurred before 1960 be included.²³³ Also excluded from investigation were practices that excluded Black South Africans from educational institutions and professions or restricted access to resources based on race.²³⁴

The Act also required a victim’s claim of gross human rights violations to be corroborated before the victim could qualify for reparations.²³⁵ There was a documented massive document destruction campaign revealed during the reparations process, however, which likely affected the ability of many victims to obtain corroborating evidence of human rights abuses they suffered.²³⁶

Further, there were outside critiques that the requirement for corroboration “placed an insurmountable burden on many individuals who lacked supporting evidence of their experiences of being tortured, kidnapped, or losing loved ones.”²³⁷

With these limitations, the CHRV dispatched “special-ly trained statement-takers” to all parts of the nation to take statements of victims.²³⁸ From the thousands of statements they received, several “individuals whose stories would shed light on the broader patterns of abuses” were asked to tell their stories during televised hearings held throughout the country between 1996 and 1997.²³⁹ Of the three committees, the CHRV’s work is the most well-known because of the televised hearings showcasing the victims’ stories.

COURTESY OF PHILIP LITTLETON/AFP VIA GETTY IMAGES



People take part at the opening session of the Truth and Reconciliation Commission. (1996)

Once a claim was filed, an investigation was conducted to determine whether there was enough to corroborate that the individual was a victim of gross human rights violations.²⁴⁰ If the claim was corroborated, the victim received a letter confirming their status as a “victim” of human rights abuses.²⁴¹ If the claim could not be corroborated, the person was also informed by letter and notified of their right to appeal the decision.²⁴² Ultimately, 22,000 individuals were identified as victims of gross human rights violations.²⁴³

Amnesty Committee (AC)

Several clauses in the Act guaranteed amnesty, that is, immunity from criminal and civil liability, for perpetrators of gross human rights violations, which included individuals and the State itself.²⁴⁴ Perpetrators of human rights abuses and/or violations could apply for amnesty for acts associated with a political objective in the course of the conflicts of the past as long as they made full disclosure of all relevant facts.²⁴⁵ They did not have to express regret or remorse or offer an apology or request forgiveness to be granted amnesty.²⁴⁶ Ultimately,

the Commission granted amnesty to approximately 1,200 individuals, turning down 5,000.²⁴⁷ If amnesty was granted, that meant a victim of the gross human rights violation could not pursue civil or criminal remedies against the perpetrator for the harms suffered. Instead, victims had to rely on the new government for reparations.²⁴⁸

Six months after the Commission began its work, three widows of victims of the security forces and the Azanian People’s Organization (AZAPO) challenged the constitutionality of the Act based on the amnesty provisions, which absolved individuals and the state from civil and criminal liability for the human rights violations committed during apartheid.²⁴⁹ The Constitutional Court held that the Act was constitutional despite the amnesty provisions because the amnesty provisions made it possible for “the truth of human rights violations to be known and the cause of reconciliation and reconstruction to be furthered.”²⁵⁰ The State authorized “Parliament to balance the rights of victims against the broad reconstructive goals of the Constitution.”²⁵¹

The Committee on Reparations and Rehabilitation (CRR)

The Commission’s CRR was responsible for developing both the Urgent Interim Reparations policy program (UIR) and making final reparations policy recommendations to the President. The policy recommendations for the urgent interim reparations policy were to be implemented during the life of the CRR and the CRR would be responsible for implementing those recommendations.²⁵² The CRR was also responsible for determining which individuals qualified as victims under the Act’s definition.²⁵³ This obligation required it to review referrals from both the CHRV and the Amnesty Committee and “‘make recommendations . . . in an endeavor to restore the human and civil dignity of such victim’.”²⁵⁴ The work of the CRR ended once the final reparations policy recommendations were submitted to the president.

Development and Implementation of the UIR Program

The UIR was an interim financial reparations program. CRR sent UIR policy recommendations to the government in September 1996.²⁵⁵ The government did not pass regulations to implement the UIR until April 1998.²⁵⁶ The UIR regulations required information and referrals to services and financial assistance to access services that were necessary to meet urgent medical, emotional, educational, material, and symbolic needs be provided to applicants whose needs the CRR deemed urgent.²⁵⁷ Those applicants whose needs were deemed urgent included individuals who:

- Were terminally ill and would not survive beyond the term of the Commission
- Had no fixed home or shelter
- Were orphaned because of the violation
- Had physical impairments that markedly affected their social functioning
- Required special education because of mental or physical disability.²⁵⁸

The UIR payments were calculated based on need and the number of dependents the person supported, ranging from a maximum of R2000 (US \$250) for a victim with no dependents to a maximum of R5705 (US \$713) for beneficiaries with five or more dependents.²⁵⁹ The regulations prohibited UIR funds from being transferred or ceded by victims.²⁶⁰ Further, the proceeds could not be attached as part of a court judgment or pass to the victim's estate.²⁶¹

The first UIR payments were made in July 1998.²⁶² The UIR “process was mostly completed in April 2001.”²⁶³ The President's Fund paid out about R44,000,000 (US \$5.5 million) in cash payments to 14,000 victims for three years.²⁶⁴ Those payments ranged from R2000 (US \$250) to R5600 (US \$700).²⁶⁵

By 2001, South Africa had paid about

\$5.5 Million
(R 44 million) in reparations
to 14,000 victims for three years

The reactions of the beneficiaries who received reparations under the UIR program were mixed.²⁶⁶ None of the beneficiaries considered the reparations “blood money” that was used to buy their silence.²⁶⁷ Some of the victims interpreted the funds, not as compensation for the harm suffered, but as a symbolic gesture acknowledging their suffering.²⁶⁸ Others felt the compensation was inadequate to meet “the tangible challenges of daily suffering” they experienced because of apartheid.²⁶⁹ This group believed the UIR, even as a symbolic gesture, was inadequate.²⁷⁰ The recipients of UIR also

were sometimes threatened by those who did not receive UIR payments.²⁷¹

Some critics of the UIR program contend that one inadequacy of the program was the lack of information shared with victims about the Commission.²⁷² Specifically, victims were not given information about how the Commission was organized or how it functioned.²⁷³ Thus, they were not empowered to engage with the Commission, nor were they knowledgeable about the next steps in the reparations process.²⁷⁴ And they received little information regarding the perpetrators the Amnesty Committee was considering for amnesty.²⁷⁵

One evaluation of the UIR program concluded that it “has not made a meaningful and substantial impact on the lives of recipients and cannot, therefore, be considered a significant or even adequate attempt at reparations.”

One evaluation of the UIR program concluded that it “has not ‘made a meaningful and substantial impact on the lives of recipients and cannot, therefore, be considered a significant or even adequate attempt at reparations’.”²⁷⁶ Another critique was that the process for determining who would receive payments and providing payments to those individuals who qualified under the UIR took longer than expected.²⁷⁷ Although the CRR sent recommendations to the government in September 1996, the government did not pass regulations until April 1998, more than a year later.²⁷⁸ The government's delay in passing regulations caused the CRR to abandon the step in the process that called for the formation of a body that would coordinate and disburse the UIR reparations benefits.²⁷⁹ The CRR assumed those duties instead.²⁸⁰

Final Reparations Policy Recommendations

The CRR was also responsible for developing final reparations policy recommendations that were submitted to the President for review. Once the final recommendations were submitted to the President, the President would review them and submit a set of policy proposals, including some of his own to the Parliament for debate.²⁸¹ After a debate, the Parliament would pass a resolution approving the reparations policy recommendations.²⁸² Once the parliamentary resolution was passed, the President was required to “publish the appropriate regulations to enact the resolution.”²⁸³ The regulations determined the basis and conditions upon which reparations would be granted and the authority responsible for implementing them.²⁸⁴ The regulations

also provided for revision, discontinuance, or reduction of reparations where the President deemed fit to ensure the efficient application of the regulations.²⁸⁵

In creating its reparation policy recommendations, the CRR could consider all forms of reparations, including financial, symbolic, and community-wide benefits.²⁸⁶ The CRR could also make recommendations for the “creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.”²⁸⁷

In developing its proposals, the CRR turned to international sources and structured its policies around the five international reparations principles: redress, restitution, rehabilitation, restoration of dignity, and reassurance of non-recurrence.²⁸⁸ Once it defined the principles that would serve as the foundation for its reparations recommendations, the CRR began a consultative process with individuals, victim advocacy groups, NGOs, churches, civil society, and human rights organizations to develop a final reparations policy.²⁸⁹

The final reparations policy the CRR submitted to the President observed that “without adequate reparation and rehabilitation measures, there can be no healing or reconciliation.”²⁹⁰ More specifically, reparations were “necessary to counterbalance amnesty” given the perpetrators.²⁹¹ The CRR reminded the government that reparations were a moral requirement for the transition out of apartheid and that moral obligation required substantial reparation grants not token awards to victims.²⁹² Granting reparations to the victims added value to the truth-seeking process by enabling survivors to experience the state’s acknowledgment of the harm victims, their families, and South Africa as a whole experienced from apartheid.²⁹³ Reparations also restored the survivors’ dignity and affirmed the values, interests, aspirations, and rights of those who suffered.²⁹⁴ Just as important, granting reparations also raised consciousness about the public’s moral responsibility to participate in healing survivors and facilitating nation-building.²⁹⁵

The Commission through the work of its committees identified 22,000 victims.²⁹⁶ Although victim advocates urged the CRR to keep the list of victims open so that victims who came forward later could qualify for reparations, it declined to do so for two reasons.²⁹⁷

It concluded that the government was unlikely to accept an open-ended list.²⁹⁸ And the CRR was without power to expand the definition of a victim under the language of the Act to expand the list of people who qualified as victims beyond the 22,000 identified victims.²⁹⁹ The CRR made the following final reparations policy recommendations:

Individual Reparations Cash Grants

The CRR recommended that the government pay annual payments ranging between R23,023 (\$2,878 in U.S. dollars) and R17,029 (\$2,129 U.S. dollars), based on the size of the family for six years.³⁰⁰ The amount of the grants was based on the median annual household income for a family of five in South Africa, which was R21,700 or \$2,713 U.S. dollars in 1997.³⁰¹ People in rural communities or with large numbers of dependents would receive more.³⁰² Despite the CRR’s justification for its reparations grant recommendations, the government rejected its recommendation and decided to give victims a one-time payment of R30,000, the equivalent of \$4,000 U.S. dollars, each.³⁰³ The financial costs for the reparation grants of R30,000 amounted to .067% of the Gross Domestic Product (GDP) and .25% of the government’s total annual expenditure.³⁰⁴

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The CRR’s policy recommendations also included several alternative schemes for financing the reparations grants:

- Imposing a wealth tax;
- Imposing a one-off levy on corporate and private income;
- Requiring each company on the Johannesburg Stock Exchange to make a one-off donation of one percent of its market capitalization;
- Levying a retrospective surcharge on corporate profits;
- Imposing a surcharge on “golden handshakes” given to senior public servants since 1990; and
- Suspending taxes on land and other material donations to formerly disadvantaged communities.³⁰⁵

Recommendations for Broader Macroeconomic Reforms

As a broader restructuring of macroeconomic policies for the country, the CRR made the following recommendations:

- Reallocation of resources from the defense force budget;
- Donations from individuals, international aid organizations, and the business sector;
- Request that the EU divert unspent funds earmarked for development projects into the President's Fund;
- Exert pressure on Swiss and other governments and banks for contributions;
- Restructure social spending limits, the tax system, and the Government Pension Fund to release more money for social spending; and
- Cancellation of foreign debt.³⁰⁶

One organization recommended that multinational corporations, which extracted roughly R3 billion a year between 1985 and 1993 from South Africa be required to return 1.5 percent of those profits for six years, which would pay for the individual reparation grants.³⁰⁷

Recommendations for Symbolic Reparation and Community Rehabilitation

In addition to the individual reparation grants, the CRR recommended symbolic, community, and national reparation and rehabilitation policy proposals. The symbolic measures fell into three categories:

Individual interventions

- Issuing death certificates
- Exhumations, reburial, ceremonies
- Headstones and tombstones
- Declarations of death
- Expungement of criminal records,
- Acceleration of outstanding legal matters related to human rights violations

Community Interventions

- Renaming streets and facilities
- Memorials and monuments
- Culturally appropriate ceremonies

- National interventions
- Renaming of public facilities
- Monuments and memorials
- A National Day of Remembrance

The community rehabilitation recommendations focused on programs and remedies that would address the harm caused to communities by apartheid policies:³⁰⁸

- National demilitarization
- Resettlement of displaced persons and communities
- Construction of appropriate local treatment centers
- Rehabilitation of perpetrators and their families
- Support for mental health services and community-based victim support groups
- Skills training
- Specialized trauma counseling services
- Family-based therapy
- Educational reform at the national level
- Study bursaries (monetary education awards)
- Building and improvement of schools
- Provision of housing

The CRR also recommended several proposals aimed at transforming institutions and a wide range of sectors in South African society, including the judiciary, media, security forces, business, education, and correctional services, to prevent the recurrence of human rights violations that characterized apartheid.³⁰⁹

The CRR had no power to implement any of the recommendations in its final reparations policy proposal because its term ended with the submission of the Commission's final report.³¹⁰ Recognizing that implementation would need to be organized at the national and local levels, the CRR recommended that the President appoint a secretariat, with a fixed term to oversee the implementation of the reparations and rehabilitation proposals.³¹¹ The CRR also recommended the appointment of a national body, headed by a national director, to implement the reparations scheme.³¹² Among its

duties, the national body would be responsible for implementing and administering any financial reparations policy, monitoring and evaluating the implementation of the reparations policies, and establishing provincial reparations desks to implement reparations policies at the local level.³¹³ The provincial reparations desks would report directly to the National Director.³¹⁴

Government Implementation

After the CRR submitted its final reparations policy recommendations, a core group of NGOs and victim advocacy groups emerged as leaders in the fight to ensure that the government implemented the final reparations policy recommendations implemented.³¹⁵ The government resisted their efforts, however, on the grounds that not all of the Commission's work was completed, and until the Commission's final report was submitted, the government was not in a position to do anything with reparations.³¹⁶ The final report was submitted in 2003.³¹⁷

In late 2002, before the Commission's final report was submitted, several individual victims and victim advocacy groups filed lawsuits in a U.S. federal district court under the Alien Tort Statute³¹⁸ against several multinational corporations that conducted business with South Africa during apartheid and manufactured products that helped the South African government maintain apartheid.³¹⁹

Five years after the CRR submitted its reparations policy recommendations, the government began paying victims a one-time payment of R30,000, the equivalent of \$4,000 U.S. dollars.

In the end, the government did not adopt the CRR's recommendations to appoint a secretariat to oversee reparations. Nor did it appoint a national implementing body. It also did not adopt the recommendation for the government to pay individual reparations grants to victims for six years. Instead, in November 2003, five years after the CRR submitted its reparations policy recommendations, the government began paying victims a one-time payment of R30,000, the equivalent of \$4,000 U.S. dollars.³²⁰ A year later about 10 percent of victims had not received payment because there was difficulty in locating them or confirming bank account information.³²¹ The total individual reparation grants paid to victims amounted to one-fifth of the CRR's original financial reparations recommendation.³²²

The government did enact some of the symbolic reforms and institutional reform recommendations. The

Only 20% of the CRR's original financial reparations recommendation was paid



to victims of apartheid.

government provided around R800,000 in reburial expenses to 47 families of disappeared persons whose remains were found and reburied.³²³ Public symbols of martyrs and those opposed to apartheid have replaced those public symbols of apartheid.³²⁴ The country's largest airport is no longer named after the first apartheid prime minister.³²⁵ And institutions have been integrated even if tensions remain.³²⁶ Much has been done for community rehabilitation in terms of housing, education, and access to healthcare.³²⁷ "[T]here is still much to do" to ensure equity for Black South Africans in these areas of basic human needs, however.³²⁸

As of 2013, the President's Fund stands at around 1 Billion rand.³²⁹ The government has proposed to use part of this

for medical and higher education assistance to the same registered victims who received compensation previously. It has also proposed to fund "community rehabilitation projects" in economically distressed communities.³³⁰ Victims and survivors have criticized both policies and have argued that medical and

higher education assistance should be given as well to an additional 30,000 more survivors who, for various reasons, were not able to register with the Commission during its tenure.³³¹ These organizations have asked that individual compensation get equal priority over community reparations and that the selection of communities for the latter program should be done in consultation with survivors' organizations.³³²

Throughout the life of the Commission and after, victims raised the objection that the Commission and the government have been much more interested in placating and protecting perpetrators than they have been in meeting the needs of victims.³³³ Another key critique of the South African reparations process was that there was no institutional support for victims after the final reparations policy recommendations were submitted to the government because the Commission formally

ended with the submission of its final report.³³⁴ “The failure to plan beyond the recommendations, however, resulted in many disappointed South Africans who assumed that meaningful reparations would begin at or before the close of the TRC process. Now that the TRC has formally shut down, the victims are left with their own meager resources and without any significant insti-

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tutional support.”³³⁵ The structure of the Commission, including the limitations placed on its power to implement its reparations policy recommendations or even be involved in the process after submitting its recommendations to the President, almost guaranteed that the victims would not receive reparations based on the final reparations policy recommendations.³³⁶

Some scholars believe the problem with the implementation of the reparations scheme began with the secret negotiations to end apartheid and carried through the Constitutional Court’s decision in the AZAPO case that the amnesty provisions were legitimate even if they stripped victims of remedies for actual harm suffered.³³⁷ From the inception of the negotiations to end apartheid, there was no guarantee that victims would receive an adequate remedy or compensation. Although reparations were discussed at points during the negotiation process, a reparations policy that entitled victims to reparations was not codified in any of the official documents of the new government.³³⁸ Indeed, the Act allowed the President to discontinue reparations if the President deemed it necessary to do so.³³⁹ A perpetrator’s entitlement to amnesty, however, was guaranteed by the Interim Constitution, the final Constitution, the Act, and the Constitutional Court.³⁴⁰

The 1948 Universal Declaration of Human Rights asserted that an effective remedy should be provided for violations of fundamental human rights.³⁴¹ “In this context reparations have come to mean much more than a means of support or a kind of recognition of suffering. They have become the unfulfilled answer to the question of whether or not justice has been done in the transition process.”³⁴²

Canada

The Canadian federal government entered into the Indian Residential Schools Settlement Agreement in September 2007. It acknowledged the damage Canada inflicted on its Indigenous peoples through the residential school system and established a multibillion-dollar fund to assist former students of residential schools in their recovery.³⁴³ It has

five main components: the Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services.³⁴⁴ The Settlement Agreement allocated \$1.9 billion to the Common Experience Payment for all former students of the residential schools.³⁴⁵ Every former

student was given \$10,000 for the first year at school and \$3,000 for each additional year.³⁴⁶

Indigenous children in Canada were sent to residential schools from the 17th century until the late 1990s.³⁴⁷ First established by Roman Catholic and Protestant

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Indian residential school.

churches, and based on racial, cultural, and spiritual superiority, residential schools were an attempt to separate Indigenous children from their traditional cultures and convert them to Christianity.³⁴⁸ The passage of the Indian Act in 1876 formally gave the federal government the power to educate and assimilate Indigenous people in Canada, and the Act’s further amendment in 1894 made attendance at residential schools mandatory.³⁴⁹ Starting in the 1880s, the Canadian government made a concerted effort to establish and expand the residential school system to assimilate Indigenous

peoples into settler society and to reduce Indigenous dependence on public assistance.³⁵⁰

There were 130 residential schools in Canada between 1831 and 1996.³⁵¹ During this time, more than 150,000 First Nations, Métis, and Inuit children were forced to attend these schools.³⁵² Thousands of Indigenous children died at school or as a result of their experiences in school, while many remain missing.³⁵³ Children were forced to leave their homes, parents, and some of their siblings, as the schools were segregated based on gender.³⁵⁴ Their culture was disparaged from the moment they arrived at school; children surrendered their traditional clothes and had to wear new uniforms, the boys had their hair cut, and many were given new names.³⁵⁵ At some schools, children were banned from speaking their first language, even in letters home to their parents.³⁵⁶ The Christian missionary staff at these schools emphasized Christian traditions while they also simultaneously denigrated Indigenous spiritual traditions.³⁵⁷ Physical and sexual

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abuse were common.³⁵⁸ Many children were underfed, and malnutrition and poor living conditions led to preventable diseases such as tuberculosis and influenza.³⁵⁹

Daniel Kennedy (Ochankuga'he), a former student at Qu'Appelle, recounted his experience:

In 1886, at the age of twelve years, I was lassoed, roped and taken to the Government School at Lebreton. Six months after I enrolled, I discovered to my chagrin that I had lost my name and an English name had been tagged on me in exchange . . . "When you were brought here [the school interpreter later told me], for purposes of enrolment, you were asked to give your name and when you did, the Principal remarked that

"In keeping with the promise to civilize the little pagan, they went to work and cut off my braids, which, incidentally, according to the Assiniboine traditional custom, was a token of mourning—the closer the relative, the closer the cut. After my haircut, I wondered in silence if my mother had died, as they had cut my hair close to the scalp."

there were no letters in the alphabet to spell this little heathen's name and no civilized tongue could pronounce it.

'We are going to civilize him, so we will give him a civilized name,' and that was how you acquired this brand new whiteman's name.'" . . . In keeping with the promise to civilize the little pagan, they went to work and cut off my braids, which, incidentally, according to the Assiniboine traditional custom, was a token of mourning—the closer the relative, the closer the cut. After my haircut, I wondered in silence if my mother had

died, as they had cut my hair close to the scalp. I looked in the mirror to see what I looked like. A Halloween pumpkin stared back at me and that did it. If this was civilization, I didn't want any part of it. I ran away from school, but I was captured and brought back. I made two more attempts, but with no better luck.

Realizing that there was no escape, I resigned myself to the task of learning the three Rs . . . visualize for yourselves the difficulties encountered by an Indian boy who had never seen the inside of a house; who had lived in buffalo skin teepees in winter and summer; who grew up with a bow and arrow.³⁶⁰

Indigenous communities struggled to heal from the harm done by these residential schools, and starting in 1980, former students campaigned for the government and churches to acknowledge the abuses of this system and provide some compensation.³⁶¹ A group of 27 former students filed a class action lawsuit, *Blackwater v. Plint*, against the Government of Canada and the United Church of Canada in 1996.³⁶² *Blackwater* specifically pertained to the abuses perpetrated at Alberni Residential

The federal government issued a Statement of Reconciliation in 1998 that recognized the abuses of the residential school system and established the Aboriginal Healing Foundation.³⁶⁷ In 2001, the federal government created the Office of Indian Residential Schools Resolution Canada to manage the abuse claims filed by former students through the alternative dispute resolution (“ADR”) process.³⁶⁸ In 2003, the ADR process began to provide psychological support and calculate compensation. The Indian Residential Schools Settlement Agreement was signed on May 8, 2006, and it went into effect in September 2007.³⁶⁹ It is the largest class action settlement agreement to date in Canadian history.³⁷⁰ On June 11, 2008, former prime minister Stephen Harper offered a public apology to those harmed by the residential schools; the leaders of the Liberal Party, the New Democratic Party, and the Bloc Québécois also made official apologies.³⁷¹

The Settlement Agreement allocated allocated \$60 million to the Truth and Reconciliation Commission for five years so that individuals, families, and communities could tell their stories, and the Commission held national events to bring public attention to this issue.³⁸⁰ The Commission issued a report in December 2015 entitled *Honouring the Truth, Reconciling for the Future* that documented the experiences of the 150,000 survivors.³⁸¹ In addition, the Settlement Agreement allocated \$20 million for commemorative projects and \$125 million for the Aboriginal Healing Foundation.³⁸² It also established the Indian Residential Schools Resolution Health Support Program, which offers former students mental health resources provided by elders, Indigenous community health workers, psychologists, and social workers.³⁸³

Additionally, despite the Settlement Agreement, litigation has not stopped.³⁸⁹ In October 2022, the Canadian Supreme Court dismissed an appeal from a group of

98% of the 80,000 eligible former students

received **payments** by the end of 2012.

544

survivors from St. Anne's residential school in northern Ontario, who have alleged the federal government breached the Settlement Agreement because "it withheld documentation of abuse when deciding upon their compensation."³⁹⁰ In 2014, the Ontario Superior Court ordered 12,300 pages of records (including transcripts of criminal trials, investigative reports from the Ontario Provincial Police, and civil proceedings about child abuse) be produced as a part of the compensation process.³⁹¹ The documents were heavily redacted and survivors claimed the redactions made it impossible to determine adequate compensation.³⁹² The minister for Crown-Indigenous Relations has stated the office will still discuss the case with St. Anne's survivors and has pointed to a 2021 report that noted 11 compensation cases that could be eligible for further payments.³⁹³

In January 2023, Canada stated it had agreed to pay \$2.8 billion "to settle the latest in a series of lawsuits seeking reparations" for the harm to Indigenous communities through the residential schools.³⁹⁴ This settlement is a resolution of a class action lawsuit initially filed by 325 First Nations in 2012 seeking compensation for the destruction of their languages and culture.³⁹⁵ Under the terms of the settlement, the federal government will establish a trust fund for Indigenous communities to use for educational, cultural, and language programs.³⁹⁶

A federal court judge approved the \$2.8 billion settlement on March 9, 2023, noting that it is "fair, reasonable, and in the best interests" of the plaintiffs.³⁹⁷ As a part of this agreement, the First Nations plaintiffs consent-

As a part of this agreement, the First Nations plaintiffs consented to "fully, finally and forever" release the federal government from claims related to the harms inflicted on the First Nations at the residential schools.

ed to "fully, finally and forever" release the federal government from claims related to the harms inflicted on the First Nations at the residential schools.³⁹⁸ The First Nations communities will decide what to do with these funds "based on the 'four pillars principles outlined in the agreement: the revival and protection of Indigenous language; the revival and protection of Indigenous culture; the protection and promotion of heritage; and the wellness of Indigenous communities and their members."³⁹⁹ The settlement will go to an appeal period after which the money will be managed by a board of Indigenous leaders through a not-for-profit fund.⁴⁰⁰ The settlement does not release the federal government from future lawsuits involving children who died or disappeared at the residential schools.⁴⁰¹

III. Domestic Reparatory Efforts

History of the Movement for Reparations for African Americans

The earliest calls for reparations for African Americans precede the Civil War, with enslaved people demanding compensation for their labor and bondage.⁴⁰² In 1783, Belinda Sutton, a formerly enslaved woman in Massachusetts, petitioned the Massachusetts General Court for a pension from the estate of her enslaver, Isaac Royall, Jr.⁴⁰³

Fifty years her faithful hands have been compelled to ignoble servitude for the benefit of an Isaac Royall . . . The face of your Petitioner, is now marked with the furrows of time, and her frame feebly bending under the oppression of years, while she, by the Laws of the Land, is denied the enjoyment of one morsel of that immense wealth, apart whereof hath been accumulated [sic] by her own industry, and the whole augmented by her servitude.⁴⁰⁴

Sutton's petition is one of the first narratives of African Americans demanding reparations. The court granted her petition, partially due to Royall's resistance to American independence and allegiance to the Tories.⁴⁰⁵

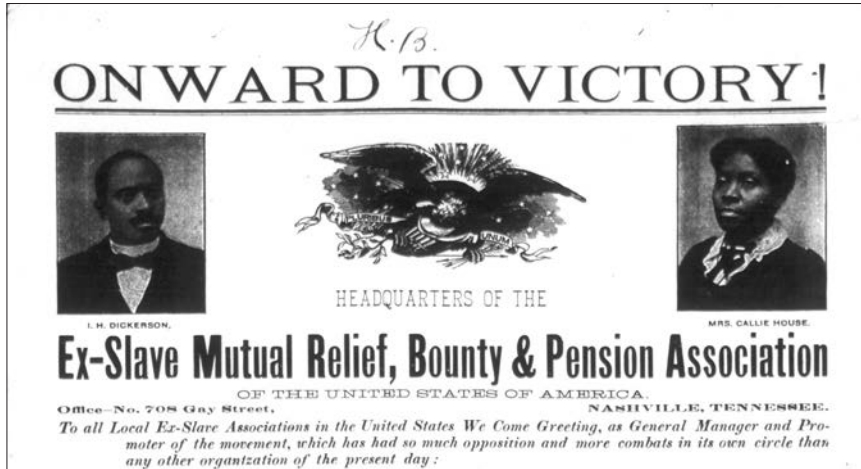
Calls for reparatory justice gained momentum at the end of the Civil War, after the federal government failed to fulfill General William T. Sherman's promise to give forty acres and a mule to those who were formerly enslaved.⁴⁰⁶ African American abolitionist Frederick Douglass demanded land distribution for the formerly enslaved, comparing their plight to the Russian serfs who received land grants following their emancipation.⁴⁰⁷

In the late 1800s, African American freedmen led the call for reparations. Callie House and Isaiah Dickerson chartered the first national reparations organization, the National Ex-Slave Mutual Relief, Bounty, and Pension Association (MRBPA), in Nashville, Tennessee, in 1898.⁴⁰⁸ The MRBPA grew to 300,000 members by 1916.⁴⁰⁹

Their mission included: (1) identifying the formerly enslaved and adding their names to the petition for a pension; (2) lobbying Congress to provide pensions for the nation's estimated 1.9 million formerly enslaved—21 percent of all African Americans by 1899; (3) starting local chapters and providing members with financial assistance when they became incapacitated by illness; and (4) providing a burial assistance payment when a member died.⁴¹⁰ MRBPA's founders were inspired by the federal

Around the same time as Moore's UN petitions and creation of the Republic of New Afrika, many civil rights and Black Nationalist groups also demanded reparatory justice in addition to legal equality. For example, in the Black Panther's Ten-Point Program, they called for the "end to the robbery by the [w]hite man of our Black community" and demanded the debt owed of forty acres and two mules.⁴²¹ In a speech to students at Michigan State University in 1963, Malcolm X called for reparations:

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An MRB&PA broadside features both Isaiah Dickerson, the general manager, and Callie House, a national promoter and assistant secretary of the association, with the emblem of the United States in the center. (c. 1898)

The greatest contribution to this country was that which was contributed by the Black man . . . Now, when you see this, and then you stop and consider the wages that were kept back from millions of Black people, not for one year but for 310 years, you'll see how this country got so rich so fast. And what made the economy as strong as it is today. And all that, and all of that slave labor that was amassed in unpaid wages, is due someone today.⁴²²

In 1969, activist James Forman proclaimed a Black Manifesto that

demanded \$500 million from white Americans, paid by churches and synagogues, for their role in perpetuating slavery.⁴²³ The Black Manifesto resulted in donations of \$500,000, which supported the establishment of several Black political and economic organizations such as a Black-owned bank, four television networks, and the Black Economic Research Center.⁴²⁴

pension program for disabled veterans of the Civil War.⁴¹¹ MRBPA filed a lawsuit against the federal government on behalf of African American freedmen for \$68 million—the value of the cotton that had been grown and harvested by enslaved persons and that had been confiscated by Confederates around the end of the Civil War.⁴¹² The claim was denied.⁴¹³

The MRBPA faced strong opposition from the U.S. government.⁴¹⁴ In 1916, the government indicted Callie House for fraud, claiming that the leaders of MRBPA obtained money from the formerly enslaved by fraudulent circulars advertising that reparations from the government were forthcoming.⁴¹⁵ House was convicted and served time in a penitentiary in Missouri.⁴¹⁶

The reparations movement surged in the 1980s.⁴²⁵ The National Coalition of Blacks for Reparations in America was founded in 1987,⁴²⁶ and, with its help, U.S. Rep. John Conyers in 1989 introduced H.R. 40, a bill to establish the Commission to Study and Develop Reparation Proposals for African Americans.⁴²⁷ Rep. Conyers introduced the bill 20 times without success.⁴²⁸

Another reparations trailblazer was "Queen Mother" Audley Moore, known as the "Mother" of the modern reparations movement.⁴¹⁷ Moore founded several organizations, including the Committee for Reparations for Descendants of U.S. Slaves, dedicated to fighting for land and other reparations for African Americans.⁴¹⁸ In 1957 and 1959, she formally petitioned the U.N. for reparations for African Americans.⁴¹⁹ In 1968, Moore helped found the Republic of New Afrika, an organization that advocated for the formation of a separate majority-Black nation in the southeastern United States.⁴²⁰

The publication of the 2014 essay "The Case for Reparations" by Ta-Nehisi Coates in *The Atlantic*⁴²⁹ catalyzed the federal government to hold committee hearings to consider H.R. 40.⁴³⁰ In the summer of 2020, the murder of George Floyd by police in Minneapolis sparked racial justice protests across the country that further pushed demands for reparations to the forefront of public conversation.⁴³¹ Reparations became a topic in the 2020 Democratic presidential primary.⁴³² In April 2021, with U.S. Rep. Sheila Jackson Lee as the bill's present sponsor, H.R. 40 was voted out of the House

Judiciary Committee for the first time, but failed to receive consideration by the full House of Representatives in the 117th Congress (2021-2022).⁴³³ H.R. 40 has been reintroduced in the 118th Congress, but as of May 2023, it was awaiting consideration by the House Judiciary Committee.⁴³⁴ In the absence of federal action, states, cities, and municipalities have taken calls for reparations into their own hands.

Federal Reparatory Efforts

U.S. Indian Claims Commission

The United States Indian Claims Commission (“Commission” or “ICC”) was established in 1946 through federal legislation.⁴³⁵ The Commission provided a forum for Native Americans to pursue legal claims against the United States based on the government’s appropriation of tribal land during the 18th and 19th centuries.⁴³⁶ Congress established the forum out of a recognition that the treaties underlying many land transfers were inequitable.⁴³⁷ However, the Commission was not empowered to transfer land back to tribes, and instead made financial awards to successful claimants.⁴³⁸ Over the course of approximately 30 years, the Commission resolved over 500 claims and awarded approximately \$800 million to tribal claimants.⁴³⁹

The ICC was ostensibly established to redress the harms inflicted on Native populations during the United States’ campaign of colonization and relocation that began in the late 18th century. Government transgressions during this period were as diverse as they were devastating.⁴⁴⁰ They included not only a staggering dispossession of land, but also the widespread killing of Native Americans that many, including California Governor Gavin Newsom, have called a genocide.⁴⁴¹ During this period, spurred by the doctrine of Manifest Destiny, the government acquired nearly two billion acres of land from Indigenous peoples, leaving just 140 million acres under Native control.⁴⁴² This dispossession was accomplished by various means, including outright conquest, treaty, executive order, and federal statute.⁴⁴³

Although the government’s misconduct during this period was far-reaching, the ICC’s focus was solely on land transactions, mostly notably in the treaty process. Many government leaders and historians have claimed that these transactions were fair and equitable,⁴⁴⁴ but others have recognized that they were a means “to dismantle Native land ownership and codify its expropriation.”⁴⁴⁵ The treaties were “[n]egotiated under duress or facilitated with bribes, [and] were often violated soon after ratification, despite the language of perpetuity.”⁴⁴⁶ Moreover, the Indian Removal Act of 1830⁴⁴⁷ codified the federal policy of relocating Native Americans to make way for settlers, which left tribal land owners

with a Hobson’s choice: either sell their land via treaty, or be forcibly removed without compensation.⁴⁴⁸ Those removals led to many atrocities, including the Trail of Tears, in which the forced migration of Cherokee and other native peoples led to the deaths of thousands of Native Americans from disease and starvation⁴⁴⁹

Against the backdrop of these takings, tribes began to file legal claims in the U.S. courts in the early 19th century. But a succession of legal rulings and legislation precluded Native Americans from even having their claims heard.⁴⁵⁰ Small progress was made in 1881 when Congress passed a jurisdictional act granting the Choctaw tribe access to the United States Court of Claims.⁴⁵¹ This theoretically made the legal process available to Native Americans, but any tribe seeking redress first needed individual Congressional approval.⁴⁵² By 1946, almost 200 tribal claims had been filed in the Court of Claims, but only 29 received awards, and most of the remaining claims had been dismissed for jurisdictional technicalities.⁴⁵³ “The Government, the Indians, and impartial researchers all deemed this process to be inadequate[,]” and the prevailing dissatisfaction led to the creation of the Indian Claims Commission.⁴⁵⁴

In the late 18th century, the United States government acquired nearly

2 Billion Acres
of land from Indigenous peoples

The Commission was established with the goal of efficiently and conclusively resolving tribal claims against the United States government. It had jurisdiction to hear claims from “any identifiable group of Indian claimants residing in the United States or Alaska.”⁴⁵⁵ Much of the debate leading up to the enacting legislation centered on whether the entity should be adversarial or investigatory, and also on what role, if any, Congress should play in resolving individual claims.⁴⁵⁶ It was ultimately decided that, though labeled a “commission” with investigatory powers, the ICC would also be a quasi-judicial and adversarial forum.⁴⁵⁷

The ICC was limited to awarding monetary relief and thus did not have jurisdiction to restore title to land.⁴⁵⁸ The authorizing legislation permitted various claims, including those premised on “fraud, duress, [and] unconscionable consideration” as well as those based on “fair and honorable dealings.”⁴⁵⁹ The Congressional Committee on Indian Affairs stated that the bill was

“primarily designed to right a continuing wrong to our Indian citizens for which no possible justification can be asserted.”⁴⁶⁰ Indeed, the majority of claims alleged that “the United States acquired valuable land for unconscionably low prices in bargains struck between unequals.”⁴⁶¹ Another large swath of claims alleged that the government had failed to abide by treaty provisions and called for an historical accounting, including in instances where the government was alleged to have mismanaged tribal funds.⁴⁶²

The Commission initially comprised three members, all appointed by President Harry Truman.⁴⁶³ It acted as a “quasi-judicial branch of the legislature” that considered voluminous documentary and testimonial evidence, rendered rulings on motions, and presided over trials.⁴⁶⁴ Claims could be filed only during the first five years of the Commission.⁴⁶⁵ Neither the statute of limitations nor doctrine of laches could be raised as a defense to tribal claims, but all other defenses were available to the government.⁴⁶⁶

In 1946, the Commission sent notice of the claims procedures to every recognized tribe within the United States.⁴⁶⁷ Native American tribes secured counsel of their choice and the government was represented by the Attorney General.⁴⁶⁸ All land claims were divided into three phases: title, value-liability, and offsets.⁴⁶⁹ In the title phase, the Commission sought to identify the territorial boundaries that the tribe exclusively occupied. This phase frequently relied on the testimony of historians and anthropologists.⁴⁷⁰ If the tribe successfully established title, the Commission proceeded to determine whether the government bore any liability, and, if so, for what amount. During this stage, expert appraisers valued the land as of the treaty date and historical records were reviewed to determine the compensation originally paid.⁴⁷¹ The award was calculated based on the difference between the fair market value and the original compensation.⁴⁷² Lastly, the Commission deducted “offsets” from any award based on “all money or property given to or funds expended gratuitously for the benefit of the claimant.”⁴⁷³ Adverse rulings could be appealed to the Court of Claims and, in certain instances, the United States Supreme Court.⁴⁷⁴

If a trial led to a financial award, the amount was certified and reported to Congress after all appeals were exhausted.⁴⁷⁵ The award was then automatically included in the next year’s appropriations bill.⁴⁷⁶ Final payment was deposited in the Treasury and Congress directed how it should be distributed.⁴⁷⁷

The ICC was initially set to terminate ten years after its first meeting,⁴⁷⁸ but it was repeatedly extended until its

termination in 1978.⁴⁷⁹ Individual cases often took several years to complete,⁴⁸⁰ and the appeal process alone typically took between eight months and three years.⁴⁸¹ During its tenure, the Commission adjudicated more than 500 claims and issued tribal awards in over 60 percent of matters.⁴⁸² It awarded approximately \$800 million in total compensation to tribal claimants.⁴⁸³ At its termination in 1978, the Commission had not fully cleared its docket and the remaining matters were transferred to the Court of Claims.⁴⁸⁴

The U.S. Indian Claims Commission awarded

\$800 Million

in total compensation to tribal claimants

the centuries-long displacement and oppression of Native Americans.⁴⁸⁵ The Commission was not empowered to convey land back to tribes,⁴⁸⁶ yet its rulings have barred all subsequent claims, including those to repossess land.⁴⁸⁷ Nor did the Commission address issues such as the suppression of native languages, religions, and forms of government.⁴⁸⁸ And even where a tribe was able to secure a financial award, the amounts were significantly reduced in various ways. For example, awards were whittled down by offsets for monies purportedly spent by the government on behalf of the tribes.⁴⁸⁹ Moreover, except in the rare claim premised on a Fifth Amendment “taking,” the Commission ruled that interest on amounts owed was not recoverable.⁴⁹⁰ The unpaid interest on successful claims likely amounted to several billion dollars.⁴⁹¹

Many historians have argued that a core defect in the ICC’s structure and practice was the adversarial rather than investigative nature of the proceedings.⁴⁹² One scholar has observed that “the Commission, submissive to the requests of the lawyers who practice before it, has provided for a bewildering series of hearings on title, value offset, attorneys [sic] fees and all the motions that any party chooses present.”⁴⁹³ Moreover, the government’s role as adversary against the claimants meant that government attorneys often aggressively fought *against* proper compensation for tribal claimants, and, as a matter of policy, the Attorney General did not pursue settlement.⁴⁹⁴ Finally, the tribe’s obligation to retain counsel at its own cost diminished any eventual financial award.⁴⁹⁵ In light of these and other inefficiencies, many have argued that the Commission should have

operated as an investigative rather than quasi-judicial body.⁴⁹⁶ Indeed, the Commission was statutorily authorized to conduct its own investigations,⁴⁹⁷ but it rarely employed those powers and instead consistently acted as a tribunal.⁴⁹⁸

Despite its shortcomings, many contemporaneous political leaders and early historians pointed to the ICC as proof that the United States had acted benevolently and had atoned for past transgressions.⁴⁹⁹ Some have called these claims mere sanctimony and have argued that the ICC was established out of the government's self-interest in cloaking itself with moral authority, especially in the context of the United States' efforts to establish the post-World War II Nuremberg Trials.⁵⁰⁰ Others have similarly argued that the Commission was simply a means of efficiently disposing of the "Indian problem."⁵⁰¹ For example, Professor Harvey Rosenthal, author of a comprehensive history of the ICC,⁵⁰² has observed that "the [C]ommission broke no new ground and was really a government measure to enhance its own efficiency by disposing of the old claims and terminating the Indian Tribes."⁵⁰³

Tuskegee Study of Untreated Syphilis in the Negro Male

From 1932-1972 in Macon County, Alabama a medical study observed the natural history of untreated syphilis in African American men. Following revelation of the study, a class-action lawsuit was filed against the federal government that resulted in a settlement of nearly \$10 million, which was divided amongst the study partici-

refrain from drug treatment.⁵⁰⁵ Professor Boeck documented the diagnosis and the clinical course in detail in all his patients, and the materials gathered from this clinical trial formed the basis for current knowledge about the course and prognosis of syphilis infections.⁵⁰⁶ The work of Professor Boeck and his successors eventually culminated in a 1955 dissertation referred to as the "Oslo study of untreated syphilis."⁵⁰⁷ The significance of these findings served as the precursor to the Tuskegee Study of Untreated Syphilis in the Negro Male conducted in Macon County, Alabama between 1932 and 1972 on the campus of the Tuskegee Institute.⁵⁰⁸ "In particular, it was the relative frequency of cardiovascular affections compared to neurological affections in patients with advanced syphilis that interested [the Americans.] In the eyes of the Americans, the weaknesses of the material justified a prospective study, while they were also interested in discovering whether the findings would be the same with 'the negro.'"⁵⁰⁹

The United States Public Health Service Syphilis Study, also called the Tuskegee Study of Untreated Syphilis in the Negro Male, was intended to observe the natural history of untreated syphilis in African American men.⁵¹⁰ A total of 600 African American men⁵¹¹ were enrolled in the study and told by researchers that they were being treated for "bad blood," which colloquially in the region referred to a number of diagnosable ailments including but not limited to anemia, fatigue, and syphilis.⁵¹² The African American men in the study were only told they were receiving free health care from the federal government of the United States.⁵¹³ Of the 600 enrolled men, most of whom were poor and illiterate sharecroppers, 399 of them who had syphilis became part of the experimental group and 201 became part of the control group.⁵¹⁴

The men were enticed and enrolled in the study with incentives including medical exams, rides to and from the clinics, meals on examination days, free treatment for minor ailments, and guarantees that provisions would be made after their deaths consisting of burial stipends paid to their survivors.⁵¹⁵

Although there were no proven treatments for syphilis when the study began, penicillin became the standard treatment for the disease in 1947—however the medicine was withheld from both groups enrolled in the study, resulting in blindness, deteriorating mental health, and in some cases, severe health issues and death.⁵¹⁶

African American men were enticed and enrolled in the study with incentives including medical exams, rides to and from the clinics, meals on examination days, free treatment for minor ailments, and guarantees that provisions would be made after their deaths consisting of burial stipends paid to their survivors.

pants and their families. In 1974, the federal government enacted legislation to require regulations to better protect human subjects in biomedical and behavioral research and issued a formal apology to the surviving syphilis study victims.

From 1891 to 1910, around 2000 white patients with syphilis were admitted to a Norwegian hospital under the care of Professor Caesar Boeck, the head of the hospital's skin department.⁵⁰⁴ Professor Boeck held the belief that one should wait for the natural course of the disease and

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Participants in the Tuskegee Syphilis Study.

Following a leak of the study and subsequent reporting by the Associated Press in July 1972, international public outcry led to a series of actions taken by U.S. federal agencies.⁵¹⁷ The Assistant Secretary for Health and Scientific Affairs appointed an Ad Hoc Advisory Panel, comprised of nine members from fields including health administration, medicine, law, religion, and education, to review the study.⁵¹⁸ The panel ultimately concluded that there was evidence that scientific research protocol routinely applied to human subjects was either ignored or deeply flawed and thus, failed to ensure the safety and well-being of the men involved.⁵¹⁹ Specifically, the men were never told about or offered the research procedure called informed consent.⁵²⁰ Researchers had not informed the men of the actual name of the study, its purpose, and the potential consequences of the treatment or non-treatment that they would receive during the study.⁵²¹ The men never knew of the debilitating and life threatening consequences of the lack of treatments they were to receive, the impact on their wives, girlfriends, and children they may have conceived once involved in the research; and there were no choices given to the participants to quit the study when penicillin became available as a treatment and cure for syphilis.⁵²² One month after the panel's October 1972 findings, the Assistant Secretary for Health and Scientific Affairs officially declared the end of the Tuskegee Study.⁵²³

Following the Ad Hoc Advisory Panel's findings in October 1972, attorney Fred Gray filed a class-action suit on behalf of the men in the study, their wives, children and families resulting in a nearly \$10 million out-of-court settlement in 1974.⁵²⁴ Under the 1974 settlement, 70 living syphilitic participants received \$37,500 each. The 46 living men in the control group received \$16,000 each. The 339 deceased syphilitic participants

received \$15,000 each. The deceased members of the control group received \$5,000 each.⁵²⁵ Attorney Gray also negotiated free healthcare for life for the participants who were still living, as well as healthcare for their infected wives, widows, and children.⁵²⁶ Attorney Gray was not able to locate 36 syphilitic participants and 8 members of the control group.⁵²⁷

In 1974, Congress passed the National Research Act and created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research to study and write regulations governing studies involving human participants.⁵²⁸ The Commission was directed to consider: (1) the boundaries between biomedical and behavioral research and the accepted and routine practice of medicine; (2) the role of assessment of risk-benefit criteria in the determination of the appropriateness of research involving human subjects; (3) appropriate guidelines for the selection of human subjects for participation in such research; and (4) the nature and definition of informed consent in various research settings.⁵²⁹ In 1976, the Commission published the Belmont Report, which identified basic ethical principles and guidelines that address ethical issues arising from the conduct of research with human subjects.⁵³⁰ The Belmont Report attempted to summarize the basic ethical principles identified by the Commission in the course of its deliberations.⁵³¹ In applying the general principles, the Belmont Report established new requirements for the conduct of research, including informed consent, risk/benefit assessment, and the selection of subjects of research.⁵³²

Researchers had not informed the men of the actual name of the study, its purpose, and the potential consequences of the treatment or non-treatment that they would receive during the study.

Following the Belmont Report, the Office for Human Research Protections (OHRP) was established in June 2000 within the United States Department of Health and Human Services to oversee clinical trials.⁵³³ OHRP replaced the Office for Protection from Research Risks (OPRR), which was created in 1972 and was part of the National Institutes of Health.⁵³⁴ OPRR had primary responsibility within the U.S. Department of Health and Human Services for developing and implementing policies, procedures, and regulations for the protection of human subjects involved in research.⁵³⁵ OPRR and its successor agency was created to lead the Department of Health and Human Services' efforts to protect human subjects in biomedical and behavioral research and to

provide leadership for all federal agencies that conduct or support human subject research under the Federal Policy for the Protection of Human Subjects.⁵³⁶ To further protect patient interests and to ensure that participants are fully informed, Section 474 of the National Research Act also established Institutional Review Boards.⁵³⁷ Institutional Review Boards were established

The Office for Protection from Research Risks and its successor agency was created to lead the Department of Health and Human Services's efforts to protect human subjects in biomedical and behavioral research and to provide leadership for all federal agencies that conduct or support human subject research under the Federal Policy for the Protection of Human Subjects.

at the local level consisting of at least five people, including at least one scientist, one non-scientist, and one person not otherwise affiliated with the institution.⁵³⁸ No human subjects research may be initiated, and no ongoing research may continue, in the absence of an Institutional Review Board's approval.⁵³⁹

In February of 1994 at the Claude Moore Health Sciences Library in Charlottesville, Virginia, a symposium was held entitled "Doing Bad in the Name of Good?: The Tuskegee Syphilis Study and Its Legacy."⁵⁴⁰ The one-day symposium featured seven humanities scholars discussing the Tuskegee Syphilis Experiments, their troubling historical reality, and their legacy.⁵⁴¹ Following this symposium, the Tuskegee Syphilis Study Legacy Committee was formed to develop ideas that had arisen at the symposium.⁵⁴² The Committee issued its final report in May 1996,⁵⁴³ presenting two goals:

1. To persuade President Bill Clinton to apologize to the surviving Study participants, their families, and to the Tuskegee community. This apology is necessary for four reasons: the moral and physical harm to the community of Macon County; the undeserved disgrace the Study has brought to the community and Tuskegee University, which is in fact a leading advocate for the health of African Americans; its contribution to fears of abuse and exploitation by government officials and the medical profession; and the fact that no public apology has ever been made for the Study by any government official.

2. To develop a strategy to redress the damages caused by the Study and to transform its damaging legacy. This is necessary because an apology without action is only a beginning of the necessary healing. The Committee recommends the development of a professionally staffed center at Tuskegee for public education about the Study, training programs for health care providers, and a clearinghouse for scholarship on ethics in scientific research.⁵⁴⁴

The Committee's report set forth an outline for the context of the apology, and provided possible functions for the proposed Tuskegee research center.⁵⁴⁵

On May 16, 1997, President Bill Clinton formally apologized and held a ceremony at the White House for surviving Tuskegee study participants. Along with the apology, President Clinton pledged a \$200,000 planning grant to allow Tuskegee University to pursue building a Center for Bioethics in Research and Health Care.⁵⁴⁶ The President also announced the creation of bioethics fellowships for minority students and extended the life of the National Bioethics Advisory Commission until 1999. Additionally, the President directed the Health and Human Services Secretary to draft a report outlining ways to better involve all communities—especially minority communities—in research and health care.⁵⁴⁷

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Herman Shaw speaks as US President Bill Clinton looks on during ceremonies at the White House in which Clinton apologized to the survivors and families of the victims of the Tuskegee Syphilis Study. (1997)

In June 2022, the Milbank Memorial Fund—the foundation that paid the funeral expenses of the deceased study participants as an incentive for their participation—publicly apologized to descendants of the study's

victims for its role in the study.⁵⁴⁸ The Milbank Memorial Fund conditioned the payment of these funeral expenses on consent by the deceased's descendants to conduct autopsies.⁵⁴⁹ These autopsies facilitated the study's ultimate purpose of observing untreated syphilis in African American men. The apology and an accompanying monetary donation to a descendants' group, the Voices for Our Fathers Legacy Foundation, were presented during a ceremony in Tuskegee at a gathering of children and other relatives of men who were part of the study.⁵⁵⁰

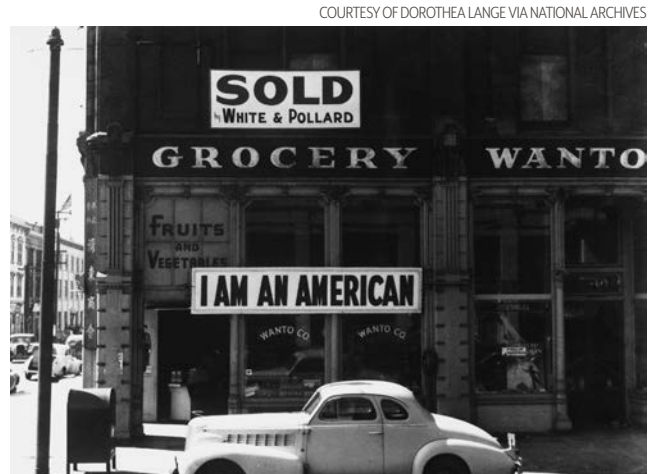
Japanese American Mass Incarceration

In 1988, the federal government enacted legislation to acknowledge and provide redress for the mass incarceration of Japanese Americans in the United States between 1942 and 1946. The federal government's plan included a cash payment of \$20,000.00 for each surviving incarcerated, a program to fund public education of the events, and an apology.

In early 1941, the United States House Committee on Un-American Activities (Committee) began investigating Japanese espionage in the United States.⁵⁵¹ The Committee, which existed since 1938, was authorized to investigate from time to time (1) the extent, character, and objects of un-American activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by the United States Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.⁵⁵² The Committee's focus on Japan reflected general European and American suspicion of Japanese espionage.⁵⁵³ A year before the Japanese attack on Pearl Harbor in Hawai'i, the United States Army's Signal Intelligence Service broke Japan's highest-level diplomatic code.⁵⁵⁴ The message appeared to reveal widespread Japanese espionage networks operating along the West Coast of the United States, which proved decisive for President Franklin D. Roosevelt's authorization of the mass incarceration of Japanese Americans.⁵⁵⁵

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066 incarcerating Japanese Americans and creating a zone "from which any or all persons may be excluded," at the discretion of the Secretary of War or appropriate military commander, from the whole of California, the western halves of Washington State and Oregon, and the southern third of Arizona.⁵⁵⁶ By the fall of 1942, all Japanese Americans were forcefully removed from California and sent to one of ten detention camps built to imprison them.⁵⁵⁷ Many

incarcerated Japanese Americans lost their property and assets as they were prohibited from taking more than what they could carry with them and what remained was either sold, confiscated, or destroyed in government storage.⁵⁵⁸ The Masuda family, for example, owned the Wanto Grocery in Oakland, California, and proclaimed that they were American even as they were forced to sell their business before they were imprisoned in August 1942.⁵⁵⁹ The Masudas and others were among the tens of thousands of Japanese Americans who were incarcerated in desolate detention camps for up to four years.⁵⁶⁰



Oakland, California. Following evacuation orders, this store was closed. The owner, a University of California graduate of Japanese descent, placed the "I AM AN AMERICAN" sign on the store front the day after Pearl Harbor. (1943)

Nearly 70 percent of those incarcerated were American citizens by birth, and the remaining 30 percent were Japanese nationals who were legally barred from naturalization because of the *de jure* racist policies of the time.⁵⁶¹ Many resisted government imposed curfews and challenged the constitutionality of the exclusion orders on U.S. citizens based on racial ancestry; however, resisters were convicted for curfew violations and the United States Supreme Court upheld convictions arguing the Court was not in a position to question claims of military necessity.⁵⁶² In the mid-1980s, these convictions were eventually vacated by federal court orders for *writ of error coram nobis*, which helped spur the passage of the 1988—the law that eventually provided a formal apology and redress from the United States to Japanese Americans.⁵⁶³

In 1948, President Harry S. Truman signed the Japanese American Evacuation Claims Act (1948 Act) to compensate Japanese Americans for losses incurred at the time of their official removal from the West Coast in 1942.⁵⁶⁴ The 1948 Act was the first civil rights-associated law enacted in the 20th century.⁵⁶⁵ However, the legislation proved largely ineffectual in compensating victims, because the claims process placed onerous burdens on them to prove their losses and included a lot

of bureaucratic red tape that slowed the claims process to a crawl.⁵⁶⁶ “In all, the government paid \$38 million to settle damage claims—a fraction of actual losses by Japanese Americans. Many families paid more in lawyer’s fees than they received in compensation.”⁵⁶⁷

In 1980, Congress and President Jimmy Carter approved the Commission on the Wartime Relocation and Internment of Civilians (Commission).⁵⁶⁸ The Commission was established to: (1) review the facts and circumstances surrounding the relocation and incarceration of thousands of American civilians during World War II under Executive Order Numbered 9066 and the impact of that Order on American citizens and resident aliens; (2) review directives of United States military forces requiring the relocation and incarceration of American citizens, including Aleut civilians and permanent resident aliens of the Aleutian and Pribilof Islands (The Aleutian Islands stretch westward for about 995 miles beyond the Alaska Peninsula in south-western Alaska, separating the Bering Sea from the North Pacific Ocean.⁵⁶⁹ The Aleuts occupied this island chain for at least 8,000 years.⁵⁷⁰ The Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were removed from their land during World War II to temporary detention camps in isolated regions of southeast Alaska where they remained, under United States control and care, until long after any potential danger to their home villages had passed⁵⁷¹),⁵⁷² and (3) recommend appropriate remedies.⁵⁷³ In December 1982, the Commission released a unanimous 467-page report titled *Personal Justice Denied* detailing the history and circumstances of the wartime treatment of people of Japanese ancestry and the people of the Aleutian Islands.⁵⁷⁴

Two years after the Commission was approved, California enacted legislation permitting the filing of claims with the state for salary losses for up to five years at \$1,000 per year for employees who were dismissed from state service because of their Japanese ancestry (Los Angeles and San Francisco later enacted similar provisions).⁵⁷⁵

The Civil Liberties Act of 1988 paid

\$20,000
to each surviving incarcerated

The Commission’s findings and recommendations along with state and local efforts to provide compensation to the victims helped bring about the passage of the Civil

Liberties Act of 1988 (1988 Act). The 1988 Act, which was signed by President Ronald Reagan, provided “redress” from the nation in the form of \$20,000.00 for each surviving incarcerated.⁵⁷⁶ Under the 1988 Act, the U.S. Attorney General was charged with identifying and locating eligible individuals within 12 months of the date the 1988 Act was signed.⁵⁷⁷ No application was required. The onus was on the Attorney General to complete the identification and notification process.⁵⁷⁸

Eligible individuals had the right to refuse payment.⁵⁷⁹ If they accepted payment, they had to waive all claims against the government.⁵⁸⁰ The 1988 Act allowed for payments to survivors of eligible individuals who were deceased, priority payments to the oldest eligible individuals, and tax treatment that excluded payments as income under the internal revenue laws.⁵⁸¹ By 1999, redress payments had been distributed to approximately 82,220 claimants.⁵⁸² About thirty lawsuits were filed against the United States by those who had been found ineligible for redress.⁵⁸³ A later settlement on a lawsuit filed by Japanese Latin Americans resulted in \$5,000 redress payments for those claimants.⁵⁸⁴

To operationalize the 1988 Act, the federal government established the Office of Redress Administration (ORA) located within the Civil Rights Division of the Department of Justice.⁵⁸⁵ The ORA had 10 years to complete its work from the date the Act was signed.⁵⁸⁶ At its peak, the ORA had around 100 employees.⁵⁸⁷ Because the 1988 Act only authorized redress payments and did not itself appropriate funds, separate appropriations had to be secured from Congress.⁵⁸⁸ By 1990 only \$20 million were available for redress payments, or about 1.6 percent of the amount authorized.⁵⁸⁹ Congress later resolved this issue by amending the 1988 Act, requiring the necessary funds to be appropriated.⁵⁹⁰

The ORA worked to build trust within the community, working with Japanese American organizations, including the Japanese American Citizen League and the National Coalition for Redress/Reparations.⁵⁹¹ It organized redress check ceremonies throughout the country and held workshops to meet community members and disseminate information on the redress program.⁵⁹²

As the life of the ORA drew to an end, the remaining focus turned to paying on claims that had initially been denied,⁵⁹³ or locating recipients who had not responded to outreach. The ORA prioritized the oldest living recipients.⁵⁹⁴ Cases that were initially denied and subsequently reviewed for reconsideration included Japanese Latin Americans, children of “voluntary evacuees,” minor children who had gone to Japan with

their families, and those Japanese Americans who lived in Hawai'i and were excluded from their homes, but were not necessarily incarcerated.⁵⁹⁵ In some cases,

The 1988 Act provided a formal letter of apology for each surviving incarcerated. President George H. W. Bush signed the first letters of apology in 1990.

where written documentation did not exist, the ORA was able to approve redress claims based on affidavits by contemporaneous witnesses.⁵⁹⁶

The 1988 Act also established the Civil Liberties Public Education Fund (Public Education Fund) within the U.S. Treasury, which was to be administered by the Secretary of the Treasury and used for disbursements by the Attorney General and the newly established Civil Liberties Public Education Fund Board of Directors.⁵⁹⁷ The Public Education Fund initially received appropriations totaling \$1,650,000,000, and the Public Education Fund's purpose was "to sponsor research and public educational activities, and to publish and distribute the hearings, findings, and recommendations of the Commission, so that the events surrounding the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered . . ."⁵⁹⁸ The Public Education Fund would terminate once the funds appropriated to it were exhausted or 10 years after the enactment of the 1988 Act.⁵⁹⁹ Additionally, all documents, personal testimony, and other records created or received by the Commission during its inquiry were kept and maintained by the Archivist of the United States who was directed to preserve such documents, testimony, and records in the National Archives of the United States and make them available to the public for research purposes.⁶⁰⁰ The Act also called upon each department and agency of the U.S. Government to review with "liberality," giving full consideration to the findings of the Commission, any application by an eligible individual for the restitution of any position, status, or entitlement lost because of any discriminatory act of the U.S. Government against those of Japanese ancestry during the period of internment.⁶⁰¹ Finally, the Act provided a formal letter of apology for each surviving incarcerated.⁶⁰² President George H. W. Bush signed the first letters of apology in 1990.⁶⁰³ One such letter from President Bush read:

A monetary sum and words alone cannot restore lost years or erase painful memories; neither can they fully convey our Nation's resolve to rectify injustice and to uphold the

rights of individuals. We can never fully right the wrongs of the past. But we can take a clear stand for justice and recognize that serious injustices were done to Japanese Americans during World War II.

In enacting a law calling for restitution and offering a sincere apology, your fellow Americans have, in a very real sense, renewed their traditional commitment to the ideals of freedom, equality, and justice. You and your family have our best wishes for the future.⁶⁰⁴

September 11, 2001

The federal government passed legislation in 2004, 2011, and 2019 to compensate victims of the September 11, 2001, terrorist attacks. Congress's plan includes a Victim Compensation Fund where victims who have a physical injury or condition caused by the terrorist attacks can file claims for pain and suffering and past and future lost earnings.

The militant Islamist network al-Qaeda carried out four coordinated suicide terrorist attacks against the United States on September 11, 2001, commonly known as 9/11.⁶⁰⁵ Terrorists hijacked four commercial airliners and crashed two planes into the Twin Towers of the World Trade Center in New York City, one plane into the Pentagon in Arlington, Virginia, and one plane in a field in Shanksville, Pennsylvania that was intended to hit a federal government building in Washington, D.C.⁶⁰⁶ Nearly 3,000 people died in the attacks.⁶⁰⁷

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New York firefighters amid the rubble of the World Trade Center. (2001)

The incineration of the Twin Towers and the crashed aircrafts on September 11, 2001, released clouds of noxious toxins at each of the crash sites.⁶⁰⁸ First responders, volunteers, and residents near Ground Zero inhaled harmful

dust, smoke, toxic chemicals, and particle remnants.⁶⁰⁹ This toxics exposure subsequently caused various illnesses including more than 60 types of cancer, respiratory conditions, and digestive disorders.⁶¹⁰ Thousands of survivors and first responders have been diagnosed with 9/11-related illnesses and thousands more have died.⁶¹¹ The compensation provided to 9/11 victims and their families or representatives addresses the damages from both the terrorist attacks and the clean-up efforts.⁶¹²

Almost immediately after the September 11, 2001 terrorist attacks, Congress passed the Air Transportation Safety and Stabilization Act, which enacted the September 11th Victim Compensation Fund (VCF).⁶¹³ This bill was enacted to bring financial relief to any individual, or relative of a deceased individual, who was physically injured or killed as a result of the terrorist attacks.⁶¹⁴ The claims window for this first round of funding under the VCF, or “VCF1,” closed in 2004.⁶¹⁵

The VCF was reopened on January 2, 2011, when President Barack Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act).⁶¹⁶ While VCF1 only covered the victims (or their representatives) who were either killed or injured as a direct result of the 9/11 terrorist attacks, the Zadroga Act expanded the VCF to compensate victims for injury or death related to the debris removal process conducted in the aftermath of the terrorist attacks and to exposure to the toxic air in lower Manhattan and the other crash sites during that time.⁶¹⁷ Eligible individuals must have been present at the World Trade Center, the surrounding New York City exposure zone, the Pentagon crash site, or the Shanksville, Pennsylvania crash site at some point between September 11, 2001, and May 30, 2002, and diagnosed with a 9/11-related illness.⁶¹⁸ Compensation was available to first responders; those who worked or volunteered in construction, clean-up, and debris removal; and people who lived, worked, or went to school in the exposure zone.⁶¹⁹ The claim filing deadline was in 2016.⁶²⁰

The 2011 Zadroga Act also established the World Trade Center (WTC) Health Program to provide medical monitoring and treatment for responders and survivors with chronic health conditions arising from the 9/11 attacks.⁶²¹ Unlike the VCF, the WTC Health Program covers mental health conditions.⁶²² The WTC Health Program is administered by the director of the National Institute for Occupational Safety and Health (NIOSH) and conducts scientific research to better identify, diagnose, and treat physical and mental health conditions related to 9/11-related exposures.⁶²³

In 2015, the Zadroga Act was reauthorized and extended until December 2020.⁶²⁴ Certain award calculations were changed.⁶²⁵ The original VCF paid an average death claim award of over \$2 million⁶²⁶ and awarded anywhere from \$500 to over \$8.6 million in personal injury claims.⁶²⁷ Due to budgetary concerns, the reauthorization of the Zadroga Act in 2015 restricted victim compensation.⁶²⁸ It capped awards for non-economic loss from cancer conditions at \$250,000, awards for non-economic loss from non-cancer conditions at \$90,000, and awards for economic loss of annual income at \$200,000.⁶²⁹

The Zadroga Act of 2015 paid

\$250,000

for loss from cancer

\$200,000

for economic loss of annual income

\$90,000

for loss from non-cancer conditions

In early 2019, the VCF announced reductions to claim awards by 50 to 75 percent because of insufficient funds.⁶³⁰ Outraged, the public demanded increased funding and Congress held hearings on fund and claim deadline extensions.⁶³¹ In July 2019, Congress passed the Never Forget the Heroes, James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act (VCF Permanent Authorization Act), fully funding the VCF as necessary to pay all eligible claims through the extended filing deadline of October 1, 2090.⁶³² It also compensated any victims who received reduced awards due to budgetary restrictions with the full value of their award.⁶³³

Now, to receive compensation, claimants must meet two deadlines: the registration deadline and the claim deadline.⁶³⁴ For both personal injury and deceased claims, a new or subsequent government determination that a condition or injury is 9/11-related triggers a two-year registration window.⁶³⁵ The two-year time frame applies when claimants know of both the physical injury and its causal connection to 9/11.⁶³⁶ Registration alerts VCF of a potential claim and preserves the right to file a claim in the future.⁶³⁷ Claimants can still register prior to having a diagnosis that their injury or condition is 9/11-related.⁶³⁸ If registration is timely for

any condition or injury, then all eligible conditions are considered for a claim.⁶³⁹

The VCF was designed to be a compensation scheme in lieu of tort litigation for the economic and noneconomic losses incurred by victims who were physically injured and families of victims whose lives were taken as a result of the terrorist attacks.⁶⁴⁰ Claimants who participate in this compensation scheme waive their right to sue for damages for injury or death as a result of the terrorist attacks.⁶⁴¹ A compensation fund was chosen as an alternative to potential class action toxic tort litigation, because it is a more efficient and effective solution for compensating victims.⁶⁴² The VCF was enacted to relieve victims and their families from navigating through the legal system and possibly having their claims rejected under government immunity or other potential bars.⁶⁴³

The VCF is administered by the U.S. Department of Justice.⁶⁴⁴ To be eligible for compensation from the VCF, claimants must have a physical injury or condition caused by the 9/11 terrorist attacks or by the rescue, recovery, and debris removal efforts during the immediate aftermath of the terrorist attacks.⁶⁴⁵ Claimants must have at least one of the pre-determined WTC-Related Physical Health Conditions in order to be eligible.⁶⁴⁶ Claimants must demonstrate a diagnosis through a private physician process and/or a WTC Health Program.⁶⁴⁷

After a diagnosis, claimants then fill out a claim form that includes eligibility and compensation information and attach certain supporting documents to demonstrate presence at a 9/11 crash site, at a debris-removal route, or within a exposure zone.⁶⁴⁸ Examples of acceptable documentation include sworn affidavits, medical records, lease or mortgage documents, and employer letters.⁶⁴⁹ The VCF first reviews the claim for eligibility and if approved, the VCF then reviews the losses claimed for compensation.⁶⁵⁰ At the claimed losses stage, the VCF reviews non-economic loss (pain and suffering) based on the severity of the physical harm and reviews economic loss based on past and future lost earnings.⁶⁵¹ Once the total amount of compensation is calculated, the claimant is informed of the outcome and has an opportunity to appeal within 30 days.⁶⁵² If no appeal is exercised, then the U.S. Treasury authorizes the payment and disburses it to the bank account designated in the claim application.⁶⁵³

The most significant issue with implementation has been the consistent capitalization of the fund. Over the past two decades, the Fund struggled to meet rising medical costs and cancer rates.⁶⁵⁴ Many exposure symptoms and 9/11-related diseases took years to manifest.⁶⁵⁵

Additionally, as described above, the fund went through various iterations of funding and scope throughout its lifetime.

Another issue has been claimants providing inadequate documentation for their claim or filing premature claims. According to the VCF's 2022 Annual Report, 54 percent of claims are deactivated for failure to provide the minimum required information, 41.9 percent of all claims are submitted with insufficient proof of presence documents, and 32.3 percent do not have a certified physical condition at the time the claim is filed.⁶⁵⁶

Sandy Hook Elementary School

In the years following the 2012 Sandy Hook Elementary school shooting, one of the deadliest in U.S. history, the federal Departments of Justice and Education issued several grants to establish a new Sandy Hook school at a vacant campus, to hire and train staff, including mental health professionals, and to help staff private charities that were handling donations intended for victims and victims' families.

On December 14, 2012, Adam Lanza shot and murdered twenty children and six adult staff members, including the school principal and school psychologist, at Sandy Hook Elementary School in Newton, Connecticut, after killing his mother.⁶⁵⁷ Lanza had gathered an AR-15, two semi-automatic pistols, as well as several hundred rounds of ammunition stored in high-capacity magazines; his mother had purchased several of the guns.⁶⁵⁸ When he arrived at the school, he shot and killed the school's principal and school psychologist.⁶⁵⁹ Teachers, who heard the gunshots, entered lockdown procedures, but Lanza was able to enter a classroom where he killed the teacher and fourteen children.⁶⁶⁰ He entered a second classroom and killed the teacher and six students; he also killed a special education aide and a behavioral therapist.⁶⁶¹ When police arrived at the school, they discovered that Lanza had killed himself.⁶⁶² It is the deadliest mass shooting at an elementary school in U.S. history and the second deadliest school shooting overall.⁶⁶³ The school was demolished in 2014 and replaced by a new building in 2016.⁶⁶⁴

On January 3, 2013, Connecticut Governor Dannel P. Malloy established the Sandy Hook Advisory Commission, to investigate the facilities, recommend public policy implementation, and recommend law enforcement reforms.⁶⁶⁵ The Commission found that Lanza acted alone, but did not identify a motive.⁶⁶⁶ The Commission made several recommendations, including investment in mental health professionals and funding for short-term and long-term recovery plans and behavioral health and education responses to crisis events.⁶⁶⁷

At least \$28 million was raised by more than 77 charities in the years after the shooting, with about a quarter of that amount distributed to families by the end of 2014.⁶⁶⁸ Families settled a lawsuit with Remington, the manufacturer of the gun used by Lanza, for \$73 million⁶⁶⁹ and won judgements of \$965 million and \$473 million against Alex Jones, the founder of Infowars, for defamation, infliction of emotional distress, and violations of Connecticut's Unfair Trade Practices Act.⁶⁷⁰

The federal Departments of Justice and Education have awarded several grants to supplement these funds. A *Hartford Courant* review found that the federal government had given the town of Newton and several agencies related to Sandy Hook over \$17 million in aid, used primarily to enhance mental health services and school security, in the two years following the shooting.⁶⁷¹ Much of the money from the grants went directly to opening the new Sandy Hook Elementary.⁶⁷²

On December 17, 2013, the U.S. Department of Justice Office for Victims of Crime granted \$1.5 million to the Connecticut Judicial Branch to reimburse organizations and agencies that provided direct support to victims, first responders and the Newton community.⁶⁷³ The grant provided reimbursements for costs incurred by organizations that provided crisis intervention services, trauma-informed care, victim-related law enforcement support, and costs incurred in moving students from Sandy Hook to a new school location.⁶⁷⁴ The grant was distributed through the Antiterrorism and Emergency Assistance Program, which grants awards for crisis response, and is funded by the Crime Victims Fund for the Antiterrorism Emergency Reserve Fund.⁶⁷⁵ The Department of Justice also provided \$2.5 million in funding for Connecticut and Newtown law enforcement agencies through the Bureau of Justice Assistance.⁶⁷⁶

In June 2014, the Department of Justice issued another grant for \$7.1 million through its Office for Victims of Crime.⁶⁷⁷ This grant was for victim services, school safety efforts, and new mental health services.⁶⁷⁸ Additionally, the town of Newton and the state received \$2.5 million from the Department of Justice for police overtime costs.⁶⁷⁹

The federal funding was split between several groups. Newton Recovery & Resiliency Plan received \$826,443; \$618,000 went to hiring four fulltime staffers.⁶⁸⁰ The second group, Resiliency Center of Newton, received \$501,000, with \$408,000 used for hiring therapists.⁶⁸¹ The United Way of Western Connecticut received around \$131,355 from the Department of Justice, of which half was spent to hire a lobbying firm for public relations.⁶⁸²

The Sandy Hook Foundation used \$122,000 of the funds to hire an Executive Director.⁶⁸³

School Emergency Response to Violence (SERV) Grants from the Department of Education totaled \$6.4 million; \$1.3 million was earmarked for mental-health providers working with student survivors.⁶⁸⁴ The rest was used to hire teachers, security guards, and other personnel. In total, the federal government has given \$17 million in additional aid for mental health services and school security.⁶⁸⁵

The Federal Government has given

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The grants were designed to strengthen the aid infrastructure and create programs that will aid in the recovery process for many years.⁶⁸⁶ Immediately after the shooting, there was an increase in crisis referrals for mental health assistance, an increase in chronic absenteeism, and an increase in school nurse visits.⁶⁸⁷

Parents and community members criticized the fund disbursement process, since most of the grants were for support services, and none of the federal money was designated for survivors or their families.⁶⁸⁸ Parents have said in public meetings that “trying to get help has been at best confusing, and at worst impossible, for many families” and that the advertised supports were inaccessible and difficult to identify.⁶⁸⁹ Some have also argued that the funds have gone towards hiring public relations and lobbying firms rather than going to direct aid.⁶⁹⁰ The Sandy Hook Foundation, for example, raised \$12 million for victims’ families through private donations and distributed only \$7.7 million, without accounting for the rest.⁶⁹¹ The Department of Justice still granted the Foundation \$173,830, most of which was used to pay the salary of the director.⁶⁹²

Iranian Hostages

In 2015, Congress created the United States Victims of State Sponsored Terrorism Fund to compensate American diplomats and staff who had been abducted and held hostage by Iranians at the U.S. Embassy in Tehran for 444 days between 1979 and 1981.⁶⁹³ Each former hostage is entitled to receive \$10,000 for each day they were held in captivity; spouses and children of the former hostages are entitled to a lump sum of \$600,000

each.⁶⁹⁴ However, due to issues with funding, the former hostages and their families have yet to receive the entire amount each are due.⁶⁹⁵

On November 4, 1979, a group of 3,000 Iranians stormed the U.S. embassy in Tehran and took 63 American men and women hostage.⁶⁹⁶ The seizure took place shortly after the Iranian Revolution. Mohammed Reza Shah Pahlavi, the previous ruler of Iran who was deposed in January of 1979, had been a close ally to the U.S.; after he was deposed, the revolutionary government treated the U.S. cautiously and suspiciously.⁶⁹⁷ The U.S. embassy had been the scene of frequent demonstrations by Iranians who opposed the American presence in Iran and, on February 14, 1979, the embassy was attacked and briefly occupied by guerillas, trapping the U.S. Ambassador William H. Sullivan and 100 members of his staff inside.⁶⁹⁸ The Ambassador called on Ayatollah Khomeini, the revolutionary leader of Iran for help; Khomeini's forces freed the hostages, but several personnel were wounded or killed.⁶⁹⁹ No compensation program has been proposed for the February 14 hostages.

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This photo taken on the first day of occupation of the U.S. Embassy in Tehran shows American hostages being paraded by their militant Iranian captors. (1979)

In October 1979, the Shah Pahlavi travelled to New York City to obtain medical treatment. U.S. authorities informed the Iranian prime minister, Mehdi Bazargan, of the trip and Bazargan guaranteed the safety of the U.S. embassy and its staff from potential retaliation for Americans welcoming the deposed ruler.⁷⁰⁰ The leaders of the storming of the embassy, a group of about sixty Iranian university students, who called themselves the Students Following the Imam's Line, demanded that the Shah be returned immediately to face the revolution.⁷⁰¹ In the following days, the Carter Administration and diplomats from other countries attempted but failed to negotiate the release of the hostages.⁷⁰² On November 12, acting foreign minister Abolhasan Bani-Sadr proposed a release of the hostages if: (1) the United States

ceased interfering in Iranian affairs, (2) the Shah was returned to Iran for trial, and (3) assets in the Shah's possession were declared stolen property.⁷⁰³ The U.S. responded by stating that it would support establishing an international commission to investigate human rights abuses under the Shah's regime and by refusing to purchase Iranian oil, instituting an international economic embargo against Iran, and freezing billions of dollars in Iranian assets in the United States.⁷⁰⁴ On November 17, 13 hostages, all women or African Americans, were released on orders of Khomeini on the grounds that they were unlikely to be spies.⁷⁰⁵

On April 24, 1980, a small group of special operations soldiers attempted to free the hostages by force.⁷⁰⁶ Their mission failed, however, when three of eight helicopters malfunctioned; U.S. forces withdrew, and one helicopter crashed.⁷⁰⁷ Eight U.S. service members were killed.⁷⁰⁸ No diplomatic progress was made until later in the year. In Mid-August, Iran implemented a permanent government; in September, Iraq invaded Iran.⁷⁰⁹ The economic embargo and Iran-Iraq War led to Iran re-engaging in hostage negotiations.⁷¹⁰ Algerian diplomats eventually brokered an agreement, the Algiers Accords, and the hostages were released on January 20, minutes after the inauguration of Ronald Reagan.⁷¹¹ The hostage crisis is widely believed to have contributed to Reagan's victory over Carter.⁷¹² The Algiers Accords included, among other items, a provision preventing the freed hostages from seeking compensation from Iran in U.S. courts.⁷¹³ As a result, former hostages and their families have never successfully won judgments or collected damages from the harms of the hostage crisis.

The Hostage Relief Act of 1980, passed during the crisis, did not provide a cash payment to former hostages or their families, but did provide other benefits, including: the creation of an interest-bearing salary savings fund including retroactive interest; reimbursement of medical expenses; extension of various forms of service members' relief to hostages; tax relief, including deferred assessment of taxes for the period of captivity and refunding of tax collected prior to enactment of the Act; and educational expenses for family members and hostages.⁷¹⁴ A proposal to provide each hostage with \$1,000 per day of captivity, to be funded by frozen Iranian assets, was rejected by the State Department on the grounds that it would complicate negotiations.⁷¹⁵

On the same day that the Algiers Accords were signed, President Carter created the President's Commission on Hostage Compensation, with the goal of providing recommendations on financial compensation to former hostages.⁷¹⁶ The commission issued a report that the United States, as the employer of the former hostages,

should not be held liable in a “tort sense” but that the former hostages should receive a payment of tax-exempt detention benefits in the amount of \$12.50 per day of captivity, similar to benefits paid to Vietnam War prisoners of war.⁷¹⁷ These recommendations were debated in Congress, but ultimately not adopted.⁷¹⁸

In 2015, Congress passed the United States Victims of State Sponsored Terrorism Act, establishing a fund through the Consolidated Appropriations Act of 2015.⁷¹⁹ The Fund initially included an appropriation for \$1.025 billion for Fiscal Year 2017.⁷²⁰ Further funding has been provided by proceeds of federal enforcement actions.⁷²¹ At the time of passage, 37 former hostages were still alive.⁷²² Each hostage is entitled to receive \$10,000 per day of captivity, and spouses and children are each entitled to a lump sum of \$600,000.⁷²³ Some of the appropriated money came from a \$9 billion penalty assessed on Paris-based bank BNP Paribas, for violating sanctions against Iran, Sudan, and Cuba.⁷²⁴

In November 2019, Congress enacted the United States Victims of State Sponsored Terrorism Fund Clarification Act, amending the original legislation by extending the life of the Fund and expanding eligibility to receive payments from the Fund.⁷²⁵ The Consolidated Appropriations Act of 2021 again amended the legislation.⁷²⁶

An eligible claimant was originally statutorily limited to:

- a U.S. person⁷²⁷ with a final judgment issued by a U.S. district court under state or federal law against a state sponsor of terrorism and arising from an act of international terrorism;
- a U.S. person who was taken and held hostage from the United States embassy in Tehran, Iran, from the period beginning November 4, 1979, and ending January 20, 1981, or the spouse and child of that person, and who is also identified as a member of the proposed class in case number 1:00-CV-03110 (EGS) of the U.S. District Court for the District of Columbia (*Roeder I*);⁷²⁸ or
- the personal representative of a deceased individual in either of the two categories.⁷²⁹

On May 17, 2016, the Attorney General appointed Kenneth R. Feinberg as the Special Master to administer the Fund.⁷³⁰ The Clarification Act removed the requirement that the former hostage be identified as a class member of *Roeder I*, but the requirement remains for the hostages’ spouses and children.⁷³¹

Former hostage applicants for the fund were required to apply by October 12, 2016.⁷³² Each applicant needed to establish eligibility. Former hostages were required to verify their identities and the date that they were released; spouses were required to verify that they were married to the former hostage during the hostage period, and children were required to produce birth records showing that they were born before January 20, 1981.⁷³³

The United States Victims of State Sponsored Terrorism Act of 2015 gave

\$10,000 Per Day

of captivity to the Americans held hostage at the United States Embassy in Iran

The Special Master has ultimate authority over compensation of the fund, and their decisions are not subject to administrative or judicial review.⁷³⁴ A claimant whose claim is denied may request a hearing before the Special Master within 30 days of receipt of the denial.⁷³⁵ The Special Master hosted two telephonic town hall meetings to provide potential claimants, their lawyers, and the public with the opportunity to ask questions concerning the Act, and the Special Master also met personally with victims’ advocates.⁷³⁶

The Special Master extended the application deadline to December 2, 2016 and received a total of 2,883 applications for both the former Iran hostages and their families and those who had received eligible judgements.⁷³⁷ By August 2017, \$1 billion had been disbursed.⁷³⁸

The Fund distributed another \$1 billion between 2017 and 2019, and another \$1.2 billion between 2019 and 2022. As of the 2023 report, \$107.8 billion in compensatory and statutory damages remained unpaid for the former hostages other individuals eligible for compensation from the fund.⁷³⁹ The Fund is scheduled to terminate in 2039, and the Special Master will authorize annual payments if sufficient funds are available.⁷⁴⁰

The Act was amended in 2019 to include 9/11 victims who had won judgements against Iran and the Fund was converted to be disbursed on a pro rata basis.⁷⁴¹ Following the amendment, the Fund was to be divided in half: half to be provided for 9/11-related victims of state sponsored terrorism and half to non-9/11 victims.⁷⁴² The half allocated to non-9/11 related victims is further divided on a pro

rata basis, based on the amounts outstanding and unpaid on eligible claims, until such amounts are paid in full.⁷⁴³

As a result of the inclusion of 9/11-related claimants to the fund, only a fraction of the amount designated for former hostages and their families has been distributed.⁷⁴⁴ The former hostages have received occasional payments; Fund administrators estimate that the non-9/11 beneficiaries, including the former hostages, have received about 24% of what they are eligible for.⁷⁴⁵ As of September 26, 2021, only 35 hostages remained alive.⁷⁴⁶ As long as the Fund is maintained and there are outstanding payments, the Special Master will authorize payments on an annual basis.⁷⁴⁷ The Fund sunsets on January 2, 2039.⁷⁴⁸

State and Local Reparatory Efforts

Rosewood, Florida

The Florida Legislature passed a claim bill in May 1994 to acknowledge and provide redress for the destruction and massacre of Rosewood, Florida, a small, predominantly African American community with approximately 120 residents that had wealth in the form of homes and businesses.⁷⁴⁹ Florida's restitution to victims included approximately \$2.1 million in compensation and a state scholarship fund for direct descendants.⁷⁵⁰

the report from Taylor, a white vigilante mob led by Levy County Sheriff Robert Elias Walker descended upon Rosewood.⁷⁵³ The mob tortured and killed an African American man named Sam Carter.⁷⁵⁴ For the next week, hundreds of white vigilantes arrived in Rosewood.⁷⁵⁵ They burned every home and building structure, such as churches and schools, murdered six African American residents, and wounded dozens more.⁷⁵⁶ Two white men also died in a shootout.⁷⁵⁷ News of the “race war” traveled quickly throughout the state and country,⁷⁵⁸ but the Florida Governor never sent in the National Guard to protect African American residents and end the violence.⁷⁵⁹ Many of Rosewood's African American residents fled to the nearby swamps and hid during the riots.⁷⁶⁰ A rescue train evacuated fleeing residents to Gainesville.⁷⁶¹ At the end of the violence, only the house of John and Mary Jane Hall Wright, the white residents of Rosewood, remained standing.⁷⁶² On February 12, 1923, a grand jury convened in Bronson, Florida, to investigate the Rosewood massacre.⁷⁶³ Four days later, the grand jury found insufficient evidence to prosecute.⁷⁶⁴ African American residents never returned to Rosewood.⁷⁶⁵

In 1994, restitution to Rosewood victims passed the Florida House of Representatives as a claim bill, sponsored by Representative Miguel DeGrady.⁷⁶⁶ A claim bill provides compensation to those injured by an act or omission of the state, its subdivisions, agencies, officers, or employees.⁷⁶⁷ The bill “recognize[d] an equitable obligation to redress the injuries as a result of the destruction of Rosewood” and consisted of: (1) a finding of facts; (2) a direction to the Florida Department of Law Enforcement to conduct a criminal investigation in and around the Rosewood incident; (3) \$500,000 to be distributed from the General Revenue Fund to African American families from Rosewood to compensate for demonstrated property loss; (4) compensation of \$150,000 from the General Revenue Fund for each of the nine living survivors; (5) the establishment of a state scholarship



COURTESY OF BETTMANN VIA GETTY IMAGES

Ruins of a two-story shanty near Rosewood, Florida, where twenty Black people barricaded themselves and fought off a white vigilante mob. The race riots followed an alleged brutal attack on a white woman. (1923)

The decimation of Rosewood started on January 1, 1923, when a white woman named Fannie Taylor reported an attack by an unidentified African American man in the town next to Rosewood.⁷⁵¹ Many African American descendants of Rosewood contend that the “attack” was a cover-up for a visit from her white lover.⁷⁵² Hearing

fund for direct descendants of Rosewood families; (6) a direction to the state university system to continue researching the Rosewood incident and the history of race relations in Florida and develop educational materials about the destruction of Rosewood.⁷⁶⁸

After weeks of sensation in the news following the violence in January 1923, the story of the Rosewood massacre disappeared from public media, as survivors largely never spoke of the event.⁷⁶⁹ In 1982, investigative reporter Gary Moore from the *St. Petersburg Times* unraveled the history of Rosewood in a comprehensive

Coupled with public pressure, the failed bills paved the way for the commission of an academic report that substantiated the claims of Rosewood descendants.

article that later became a story on CBS's *60 Minutes*.⁷⁷⁰ The media attention galvanized Arnett Doctor, a descendant of Rosewood residents, who had been gathering the history of Rosewood for years.⁷⁷¹ Doctor was the driving force behind Rosewood becoming a public issue.⁷⁷² He secured the counsel of Holland & Knight to help descendants and victims seek compensation from the state for the violence and destruction of Rosewood.⁷⁷³ With the firm's help, former Rosewood residents and their descendants were named in a claim bill, alleging physical and emotional suffering that resulted from acts or omissions of law enforcement and other county and state officials.⁷⁷⁴ However, they missed the filing deadline for the 1993 session, so the bill was not introduced.

That year, however, two other bills addressing Rosewood's history were introduced and failed to pass.⁷⁷⁵ Nonetheless, coupled with public pressure, the failed bills paved the way for the commission of an academic report that substantiated the claims of Rosewood descendants.⁷⁷⁶

Chaired by Dr. Maxine Jones of the Florida State University Department of History, the team issued its December 1993 report, *A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923*.⁷⁷⁷ Opponents attacked the report as hearsay.⁷⁷⁸ One of the authors of the report admitted that "perhaps the most damaging charge against the historical report was that it failed to include statements or interviews by accused whites or their friends or relatives."⁷⁷⁹ But white people in the area refused to be interviewed for the report and were even hostile to the historians in some instances.⁷⁸⁰ The historical report was enough evidence to support an equitable cause of action, even if it might not have survived scrutiny in a court proceeding.⁷⁸¹

The claim bill for compensation was reintroduced in the legislative 1994 session and hearings were held to elicit testimony from Rosewood survivors.⁷⁸² At the hearings, survivors and expert witnesses testified about post-traumatic stress disorder symptoms and other suffering from the violence of the Rosewood massacre.⁷⁸³ When the bill was on the state House floor, opponents attacked the bill with similar arguments—the violence was over 70 years ago, there was a lack of definite evidence of who committed the harms, and there was a fear that passing this bill would set a precedent for other groups injured in Florida's past to make claims.⁷⁸⁴

The equitable nature of the claim bill served as a retort to these arguments since claim bills were not precedential. The bill passed on May 4, 1994; the House vote was 71-40 and the Senate vote was 26-14.⁷⁸⁵

The flexibility of a claim bill was critical to the descendants' success in securing compensation. If the descendants had asked for compensation in a claims proceeding in a court of law, their case would have been barred by hearsay or statutes of limitations, but since the claim bill hearing was an equitable proceeding, the legislature was not bound by those rules of law.⁷⁸⁶ Restitution for the Rosewood massacre became a moral issue for Florida, thus securing its passage even if it could not have been adjudicated in a

At the hearings, survivors and expert witnesses testified about post-traumatic stress disorder symptoms and other suffering from the violence of the Rosewood massacre.

court of law. Additionally, advocates of the bill were careful not to use the word "reparations" during discussions seeking compensation, and the word cannot be found in the bill.⁷⁸⁷ This was done in order to achieve passage of the bill.⁷⁸⁸ Attorneys at Holland & Knight focused the bill on private property rights and the moral obligation Florida had to Rosewood victims and descendants.⁷⁸⁹

The Rosewood Family Scholarship Program is codified in the state's Education Code⁷⁹⁰ and the Florida Department of Education promulgated the criteria to receive an award.⁷⁹¹ The Rosewood Family Scholarship provides student financial assistance to a maximum of 50 students annually and currently provides up to \$6,100 per student per academic year.⁷⁹² To be eligible, applicants must: be direct descendants who complete

a Florida financial aid application; provide documentation of ancestry such as a birth certificate, marriage license, death certificate, church record, or obituary; and enroll in a state university, Florida College System institution, or career center authorized by law.⁷⁹³ Applicants are selected based on need.⁷⁹⁴

The General Appropriations Act provides funding for the Scholarship program.⁷⁹⁵ The scholarship award is distributed before each semester's registration period on behalf of the student to the president of the university or Florida College System institution, his or her representative, or to the director of the career center where the recipient is attending.⁷⁹⁶ Since the bill's enactment, there have been no notable issues with implementation. Some recent scholarship recipients have noted the pressure of Rosewood's history looming over them on campus, resulting in a sense of purpose and worry about upholding the legacy of their ancestors.⁷⁹⁷

In 2004, a Florida Historical Marker co-sponsored by the state and the Real Rosewood Foundation, a non-profit dedicated to preserving the history of Rosewood, was placed on State Road 24 to note where the community once was.⁷⁹⁸ It states: "Those who survived were forever scarred."⁷⁹⁹

North Carolina Sterilization

In 2002, Governor Mike Easley apologized for forced sterilizations performed under the purview of the State of North Carolina's Eugenics Board.⁸⁰⁰ In 2013, North Carolina was the first state to pass legislation to compensate victims of state-sponsored eugenic sterilizations. The law set aside a \$10 million pool for compensation payments, and at least 215 victims received \$20,000 in 2014, \$15,000 in 2015, and a final payment of around \$5,000 in 2018.⁸⁰¹

In 1919, North Carolina passed its first forced-sterilization law, which was amended in 1929 to allow the head of any penal or charitable institution that received even some state funding to "have the necessary operation for asexualization or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof."⁸⁰² The North Carolina Supreme Court invali-

Eugenics Board to implement the new forced-sterilization law that had very limited appeal rights.⁸⁰⁴

The five members of the Board heard petitions brought by heads of state institutions, county superintendents of welfare, next of kin, or legal guardians arguing that individuals should be sterilized due to being either epileptic, "feeble-minded," or mentally diseased.⁸⁰⁵ There was a very limited appeal process, but the Board approved about 90 percent of the petitions.⁸⁰⁶ The state ultimately sterilized around 7,600 persons, the third-largest number in the country.⁸⁰⁷ The program was somewhat unique in that it also sterilized non-institutionalized individuals, not just those residing in penal or mental facilities.⁸⁰⁸ Moreover, the vast majority of sterilizations took place after World War II.⁸⁰⁹

North Carolina ultimately sterilized

~7,600 Persons
the third-largest number in the country

Governor Bev Perdue established the North Carolina Justice for Sterilization Victims Foundation as part of the North Carolina Department of Administration in 2010 to function as a clearinghouse to help victims of the former North Carolina Eugenics Board.⁸¹⁰ During 2011 and 2012, the Foundation also supported the separate Gubernatorial Task Force on Eugenics Compensation established under Executive Order 83.⁸¹¹ This effort culminated in the State Legislature creating the Eugenics Asexualization and Sterilization Compensation Program in 2013.⁸¹²

The statute set out a program to compensate individuals who were asexualized or sterilized involuntarily under the authority of the Board under either the 1933 or 1937 version of the law.⁸¹³ This requirement that the state Board have been involved and/or have a record of the sterilization caused implementation issues, as it

turned out that many individuals were sterilized at the county level without the involvement of the state Board.⁸¹⁴ A sterilization was "involuntary" under the statute if done in the case of: (1) a minor child with the consent of the child's parent or guardian, (2) an incompetent adult, with or without the consent of the

adult's guardian or with a court order, or (3) a competent adult without the adult's informed consent but with the presumption that the adult gave informed consent.⁸¹⁵

The law set aside a \$10 million pool for compensation payments, and at least 215 victims received \$20,000 in 2014, \$15,000 in 2015, and a final payment of around \$5,000 in 2018.

dated the law in 1933, because it failed to provide any notice or opportunity for appeal.⁸⁰³ In response, the North Carolina Legislature created the North Carolina

A claimant must also have been alive on June 30, 2013 in order to receive compensation.⁸¹⁶

The State Legislature allocated \$10 million to pay compensation claims.⁸¹⁷ The first payment was to be made to those claimants deemed qualified by October 31, 2014.⁸¹⁸ Any claimants determined to be qualified recipients after that date were to receive their initial payment within 60 days, and final payment checks splitting the remaining funds among qualified recipients were to be sent out within 90 days of the exhaustion of the last appeal.⁸¹⁹ Applications needed to be received by September 23, 2014 in order to be considered for the program.⁸²⁰

Now-Senator Thom Tillis was a co-sponsor of the legislation while he was North Carolina Speaker of the House. Discussing the need for financial payments, Tillis stated:

“We decided that we were going to take the hits and do the right thing for the victims. It was not easy. We had opposition from both sides, some saying we shouldn’t do it at all, others saying we weren’t doing enough. But those had been the arguments that had prevented it from happening in the past, and we decided that we were going to push through and do the right thing for the victims.”⁸²¹

The bill specifically stated that financial compensation would not be subject to tax and other limitations:

(1) Any payment should not be considered income or assets for purposes of determining the eligibility for, or the amount of, any benefits or assistance under any State or local program financed in whole or in part with State funds; and (2) the N.C. Department of Health and Human Services should disregard compensation money in the determination of public assistance or recovery of Medicaid-paid services.⁸²² Once he became a United States Senator, Tillis authored a bill to protect compensation payments from any determination for federal benefits.⁸²³

North Carolina only repealed its sterilization law in 2003. As part of the repeal, then-Governor Easley issued a public apology.⁸²⁴ He stated, “To the victims and families of this regrettable episode in North Carolina’s past, I extend my sincere apologies and want to assure them that we will not forget what they have endured.”⁸²⁵

The statute creating the compensation program formed the Office of Justice for Sterilization Victims in the North Carolina Department of Administration to administer claims. Applicants were able to submit claims to the Office between until June 30, 2014.⁸²⁶ Claims needed to be dropped off in person or mailed, and be received by the above date to be considered. Claims were assessed by the North Carolina Industrial Commission (“Commission”).⁸²⁷

A deputy commissioner first assessed the claims to determine eligibility, and if the claim was not approved, the deputy commissioner had to set forth in writing the reasons for the denial and notify the claimant.⁸²⁸ If not approved, a claimant could submit additional documentation and request a redetermination by the deputy commissioner.⁸²⁹ A claimant whose claim was not approved at either previous stage had the right to request a hearing before the deputy commissioner, where the claimant could be represented by counsel, present evidence, and call witnesses.⁸³⁰ The deputy commissioner who heard the claim had to issue a written decision of eligibility.⁸³¹

A claimant could then file a notice of appeal with the Commission within 30 days; such appeal was to be heard by the full Commission, and the Commission had to notify all parties concerned in writing of its decision.⁸³² A claimant could appeal the decision of the full Commission to the state Court of Appeals within 30 days

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of the date notice of the decision is given.⁸³³ Decisions favorable to the claimant were final and not subject to appeal by the State.⁸³⁴

If a claimant was determined to be a qualified recipient, the Commission gave notice to the Office of Justice for Sterilization Victims and the Office of State Controller. The Office of State Controller then made a payment of compensation to the qualified recipient.⁸³⁵ Compensation was intended to be in the form of two payments, with the first by October 31, 2014 (or 60 days after a claim was approved if approval happened after

October 31, 2014), and the second payment after the exhaustion of all appeals arising from denial of eligibility.⁸³⁶ Several court cases appealing denials of claims took several years to progress through the courts, so the state ultimately sent three payments to victims between 2014 and 2018.

There were two groups of court cases regarding who qualified as a claimant under the program. First, a group of plaintiffs argued they should be eligible for compensation payments as heirs to victims of sterilization. The state court ruled it was not an Equal Protection Violation for the statute to provide compensation only to those victims alive on the date the statute was passed.⁸³⁷ Second, a group of plaintiffs challenged the limitation

Several court cases appealing denials of claims took several years to progress through the courts, so the State ultimately sent three payments to victims between 2014 and 2018.

of compensation to only those whose sterilization was directly under the auspices of the State Eugenics Board, rather than a county official or state judge. The state court eventually ruled that the plaintiffs' equal protection claim lacked merit.⁸³⁸

Virginia (Eugenics)

On May 2, 2002, 75 years after the *Buck v. Bell* Supreme Court decision that upheld Virginia's eugenics statute, Virginia Governor Mark R. Warner issued an apology for the state's embrace of eugenics and denounced the state's practice that involuntarily sterilized persons confined to state institutions from 1927 to 1979.⁸³⁹

In 1924, Virginia passed its Eugenic Sterilization Act, which authorized the sexual sterilization of inmates at state institutions. The Act provided that the superintendent of the Western, Eastern, Southwestern, or Central State Hospital or the State Colony for Epileptics and Feeble-Minded could impose sterilization when he had the opinion that it was for the best interest of the patients and of society that any inmate of the institution under his care should be sexually sterilized and the requirements of the Act were met.⁸⁴⁰ The Act responded to fifty years of scholarly debate over whether certain social problems, including shiftlessness, poverty, and prostitution, were inherited and ultimately could be eliminated through selective sterilization.⁸⁴¹ The Act was passed alongside the Racial Integrity Act, which banned interracial marriage by requiring marriage applicants to identify their race as "white," "colored," or "mixed"

with "white" being defined as a person "who has no trace whatsoever of any blood other than Caucasian."⁸⁴² The Racial Integrity Act was bolstered by the eugenics efforts like the Eugenic Sterilization Act, which saw non-White people as having inferior genes.⁸⁴³ One inmate, Carrie Buck, appealed her order of sterilization, but U.S. Supreme Court upheld the Virginia state law in *Buck v. Bell* (1927) by a vote of 8 to 1.⁸⁴⁴ The controversial ruling was never overturned, but the law was repealed in 1974.⁸⁴⁵ Between 1927 and 1972, about 8,300 Virginians were sterilized.⁸⁴⁶

In 1980, the American Civil Liberties Union sued the Lynchburg Training School and Hospital (previously the Virginia State Colony for Epileptics and Feeble-minded)

on behalf of the men and women who had been sterilized there. In *Poe v. Lynchburg Training School and Hospital* (1981), the U.S. District Court for the Western District of Virginia ruled that while the sterilizations had been legal, there was cause to believe that correct procedure had not always been fol-

lowed.⁸⁴⁷ The plaintiffs later settled with the state out of court, with the state agreeing to inform women what had been done to them and to provide them with counseling and medical treatment.⁸⁴⁸

In 2013, Virginia House Member Robert G. Marshall introduced House Bill 1529, the Justice for Victims of Sterilization Act.⁸⁴⁹ The bill as introduced would have provided compensation in the amount of \$50,000 to persons involuntarily sterilized between 1924 and 1979.⁸⁵⁰ Funds would be administered by the Department of Social Services.⁸⁵¹ The provisions of the bill would expire July 1, 2018.⁸⁵² The bill, however, never left the House and died in Appropriations by February 2013.⁸⁵³

Virginia ultimately sterilized

~8,300 Persons
between 1927 and 1972

In 2014, Virginia House Member Robert G. Marshall reintroduced the Justice for Victims of Sterilization Act as House Bill 74.⁸⁵⁴ The bill included an updated sunset of July 1, 2019.⁸⁵⁵ House Bill 74 was referred to the Committee on Appropriations but was voted on to be continued in 2015.⁸⁵⁶

In 2015, Virginia House Member Patrick Hope reintroduced the Justice for Victims of Sterilization Act as House Bill 1504.⁸⁵⁷ The bill remained the same and included a sunset provision. The House assigned House Bill 1504 to the General Government and Capital Outlay Subcommittee, but by February 2015, the bill was left in Appropriations.⁸⁵⁸ The same year, Virginia House Member Benjamin Cline introduced an identical bill, House Bill 2377.⁸⁵⁹ However, House Bill 2377 was left in Appropriations in February 2015.⁸⁶⁰

Despite both bills not making it out of Appropriations, an amendment was added to the 2015 House Budget Bill, HB 1500, to allocate \$400,000 from the state general fund for compensation to individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who were living as of February 1, 2015.⁸⁶¹ As written in the budget, the funds were to be managed by the Department of Behavioral Health and Developmental Services and limited to \$25,000 per person instead of the proposed \$50,000.⁸⁶² Furthermore, should the funding provided for compensation be exhausted prior to the end of fiscal year 2016, the department was ordered to continue to collect applications.⁸⁶³ The department was required provide a report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees on a quarterly basis on the number of additional individuals who had applied. The Virginia House and Senate approved House Bill 1500, and the bill was signed by the Governor on March 26, 2015, establishing the Virginia Victims of Eugenics Sterilization Compensation Program (VESC). As of the enactment, there were only 11 surviving victims.

To apply for compensation through the Victims of Eugenics Sterilization Compensation Fund, authorized through the 2015 Appropriation Act, claimants must complete and mail an application form and provide supporting documentation to the Virginia Department of Behavioral Health and Developmental Services.⁸⁶⁴

An individual or lawfully authorized representative is eligible to request compensation under this program if the individual was:

- Involuntarily sterilized pursuant to the 1924 Virginia Eugenical Sterilization Act;
- Living as of February 1, 2015; and
- Sterilized while a patient at Eastern State Hospital; Western State Hospital; Central State Hospital; Southwestern State Hospital; or the Central Virginia Training Center (formerly known as the State Colony for Epileptics and Feeble-Minded; now closed).

On October 7, 2016, the Treatment of Certain Payments in Eugenics Compensation Act was signed by the President and became law as Public Law 114-241. This federal law provides that payments made under a state eugenics compensation program shall not be considered as income or resources for purposes of determining the eligibility of a recipient of such compensation for, or the amount of, any federal public benefit.⁸⁶⁵

California Sterilization Compensation Program

In 2003, the State of California formally apologized for its eugenic sterilization program that took place until 1979.⁸⁶⁶ This included apologies from Governor Gray Davis, Attorney General Bill Lockyer, and a resolution passed by the State Senate expressing profound regret over the program.⁸⁶⁷ In 2021, the California State Legislature passed Assembly Bill (AB) 137 creating the California Forced or Involuntary Sterilization Compensation Program, apologizing for sterilizations at state prisons, ordering the creation of memorial plaques and allocating \$4.5 million for financial compensation to those sterilized by the State.⁸⁶⁸

In 2021, California allocated

\$4.5 Million
for financial compensation to
those sterilized by the State

California's eugenic sterilization program began in 1909, with the passage of Chapter 720 of the Statutes of 1909 (revised in 1913 [Chapter 363 of the Statutes of 1913] and 1917 [Chapters 489 and 776 of the Statutes of 1917]), which authorized medical superintendents in state homes and state hospitals to perform "asexualization" on patients.⁸⁶⁹ This allowed medical personnel to perform vasectomies for men and salpingectomies for women who were identified as "afflicted with mental disease which may have been inherited and is likely to be transmitted to descendants, the various grades of feeble-mindedness, those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature."⁸⁷⁰

The law passed unanimously in the State Assembly, and drew only one dissenting vote in the State Senate in 1909.⁸⁷¹ The subsequent amendments shifted the focus of the program from the castration of those imprisoned in state prisons and towards the sterilization of those held in state mental hospitals.⁸⁷²

California maintained 12 state homes and state hospitals that housed thousands of patients who were committed by the courts, family members, and medical authorities.⁸⁷³ While many sterilizations included the use of consent forms, such consent was often a condition of release from commitment.⁸⁷⁴ This, along with other conditions such as lack of full information, prevented true consent. Moreover, AB 137 notes that even though the law did not target specific racial or ethnic groups, in practice, “labels of ‘mental deficiency’ and ‘feeble-mindedness’ were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women.”⁸⁷⁵ For example, between 1919 and 1952, “women and girls were 14 percent more likely to be sterilized than men and boys,” “male Latino patients were 23 percent more likely to be sterilized than non-Latino male patients, and female Latina patients were 59 percent more likely to be sterilized than non-Latina female patients.”⁸⁷⁶

California’s eugenic sterilization law was repealed in 1979⁸⁷⁷, but sterilization without proper consent continued in state institutions. In 2014, the California State Auditor released an audit of female inmate sterilizations that occurred in the state prison system’s medical facilities between fiscal years 2005-06 and 2012-13.⁸⁷⁸ The auditor discovered 144 women imprisoned by the State were sterilized through bilateral tubal ligation, which is not medically necessary and is solely used for female sterilization.⁸⁷⁹ The auditor found that officials failed to receive informed consent in at least 39 of these cases, but more broadly, expressed serious reservations about all of the procedures as they were “unable to conclude whether inmates received educational materials, whether prison medical staff answered inmates’ questions, or whether these staff provided the inmates with all of the necessary information to make such a sensitive and life-changing decision as sterilization.”⁸⁸⁰ Following this report, the Legislature prohibited the sterilization for the purpose of birth control for any individual under the control of the California Department of Corrections and Rehabilitation (CDCR).⁸⁸¹ There are an estimated 244 survivors of illegal prison sterilization.⁸⁸²

The California Legislature passed, and the Governor signed, AB 137 in the 2021-2022 legislative session.⁸⁸³ AB 137 created the California Forced or Involuntary Sterilization Compensation Program, which financially compensates survivors of state-sponsored sterilization.

The California Victim Compensation Board (CalVCB) administers the Program.⁸⁸⁴

AB 137 sets out specific criteria for those who can apply for compensation from the Program: “(1) Any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979. (2) Any survivor of coercive sterilization performed on an individual under the custody and control of the Department of Corrections and Rehabilitation after 1979.”⁸⁸⁵

To be eligible under the first category, a person must have been: (1) sterilized pursuant to the eugenics laws in place between 1909-1979; (2) sterilized while the individual was at a facility under the control of the State Department of State Hospitals or the State Department of Developmental Services; (3) and alive at the start date of the Program, July 1, 2021.⁸⁸⁶

To be eligible under the second category, the following conditions must be met: (1) sterilization procedure occurred after 1979; (2) claimant was sterilized while in the custody of CDCR; (3) sterilization was not required in an emergency life-saving medical situation or due to a chemical sterilization program for convicted sex offenders; (4) sterilization was for birth control purposes;

AB 137 notes that even though the law did not target specific racial or ethnic groups, in practice, “labels of ‘mental deficiency’ and ‘feeble-mindedness’ were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women.”

and (5) the claimant was sterilized under one of the following conditions: without consent, with consent given less than 30 days before sterilization, with consent given without counseling or consultation, or with no record or documentation of providing consent.⁸⁸⁷ The law also requires CalVCB to affirmatively identify and disclose coercive sterilizations that occurred in California prisons after 1979 so that individuals may then apply for compensation.⁸⁸⁸

AB 137 allocated \$4.5 million for direct financial compensation to applicants who met the above eligibility criteria.⁸⁸⁹ Each approved applicant receives an initial payment of \$15,000 within 60 days of notice of confirmed eligibility.⁸⁹⁰ After all applications are processed and all initial payments

are made, any remaining program funds will be disbursed evenly to the qualified recipients by March 31, 2024.⁸⁹¹ Applications to the program are accepted from January 1, 2022, through December 31, 2023.⁸⁹²

Each approved applicant receives an initial payment of \$15,000 within 60 days of notice of confirmed eligibility.

Sponsor of the bill, California Latinas for Reproductive Justice, summarized the rationale for the apology and financial compensation:

California will become the third state to compensate survivors of forced sterilizations under eugenics laws, following North Carolina (2013) and Virginia (2015). It will also become the first state to compensate survivors of involuntary sterilizations performed outside of formal eugenic laws. Enactment of this bill would send a powerful message around the country that forced sterilizations will not be tolerated in carceral settings, including prisons, detention centers, and institutions.⁸⁹³

The bill specifically stated that financial compensation would not be subject to tax and other limitations:

Notwithstanding any other law, the payment made to a qualified recipient pursuant to this program shall not be considered any of the following: (1) Taxable income for state tax purposes; (2) Income or resources for purposes of determining the eligibility for, or amount of, any benefits or assistance under any state or local means-tested program; (3) Income or resources in determining the eligibility for, or the amount of, any federal public benefits as provided by the Treatment of Certain Payments in Eugenics Compensation Act (42 U.S.C. Sec. 18501); (4) Community property for the purpose of determining property rights under the Family Code and Probate Code.⁸⁹⁴

Moreover, the financial compensation shall not be subject to an enforcement of a money judgment under state law, a money judgment in favor of the Department of Health Care Services, the collection of owed child support, or the collection of court-ordered restitution, fees, or fines.⁸⁹⁵

In 2003, the State Legislature, Governor, and Attorney General all issued formal apologies for the 1909-1979 eugenic sterilization program.⁸⁹⁶ Specifically, the State Senate passed a resolution expressing “profound regret over the state’s past role in the eugenics movement and the injustice done to thousands of California men and women,” addressing “past bigotry and intolerance against the persons with disabilities and others who were viewed as ‘genetically unfit’ by the eugenics movement,”

recognizing that “all individuals must honor human rights and treat others with respect regardless of race, ethnicity, religious belief, economic status, disability, or illness,” and urging “every citizen of the state to become familiar with the history of the eugenics movement, in the hope that a more educated and tolerant populace will reject any similar abhorrent pseudoscientific movement should it arise in the future.”⁸⁹⁷

In 2021, as part of the passage of AB 137, the State Legislature formally expressed regret for the sterilizations that took place after 1979.⁸⁹⁸ Specifically, the Legislature stated, “The Legislature also hereby expresses its profound regret over the state’s past role in coercive sterilizations of people in women’s prisons and the injustice done to the people in those prisons and their families and communities.”⁸⁹⁹

AB 137 also requires the State Department of State Hospitals, the State Department of Developmental Services, and CDCR, in consultation with stakeholders to establish markers or plaques at designated sites.⁹⁰⁰ Stakeholders must include at least one member and one advocate of those who were sterilized under California’s eugenics laws between 1909 to 1979, and of those who were sterilized without proper authorization while imprisoned in California state prisons after 1979.⁹⁰¹ These memorials should “acknowledge the wrongful sterilization of thousands of vulnerable people under eugenics policies and the subsequent sterilization of people in California’s women’s prisons caused, in part, by the forgotten lessons of the harms of the eugenics movement.”⁹⁰²

The compensation program is administered by CalVCB.⁹⁰³ The law gives CalVCB six months from passage to have applications ready for the public, and applications are accepted from January 1, 2022, through December 31, 2023.⁹⁰⁴ Applications are available through CalVCB’s website, over the phone, through the mail, or by visiting in person, and they can be returned by mail, email, or fax.

The individual submitting the application will receive a letter from CalVCB either confirming a complete application or requesting additional information. Once the application is screened and deemed complete, the application will be considered for eligibility. The statute sets out eligibility criteria (discussed above) and the specific documents and document types CalVCB may use to determine eligibility.⁹⁰⁵ Upon completion of the eligibility review, a letter will be sent out with the determination.⁹⁰⁶

If eligibility is verified, the claimant will receive a confirmation letter, and they shall receive an initial payment of \$15,000 within 60 days of the CalVCB's determination.⁹⁰⁷

If eligibility is not verified, the application will be denied. Notification will be sent with the necessary appeal information. An individual may file an appeal to CalVCB within 30 days of the receipt of the notice of decision, and after receiving the appeal, CalVCB shall again attempt to verify the claimant's identity pursuant to statutory requirements.⁹⁰⁸ If the claimant's identity cannot be verified, the claimant can provide additional evidence including, but not limited to, documentation of the individual's sterilization, sterilization recommendation, surgical consent forms, relevant court or

Between 1972 and 1991, Jon Burge, a high-ranking officer in the Chicago Police Department, led a group of detectives and officers in an organized operation to torture and abuse over 120 African American criminal suspects, with some cases resulting in coerced confessions.

institutional records, or a sworn statement by the survivor or another individual with personal knowledge of the sterilization.⁹⁰⁹ CalVCB has 30 days to rule on an appeal, and any successful appeals will receive compensation as above.

After exhaustion of all appeals arising from the denial of an individual's application, but by no later than two years and nine months after the start date of the program, CalVCB shall send a final payment to all qualified recipients. This final payment shall be calculated by dividing the remaining unencumbered balance of funds for victim compensation payments by the total number of qualified recipients.⁹¹⁰

According to CalVCB, as of December 20, 2022, the program has received 309 applications. Of those, 45 have been approved, 102 have been denied, three have been

closed as incomplete, and 159 are being processed.⁹¹¹ Experts estimate there may be about 600 people alive today that qualify for compensation, and the CalVCB is undertaking several actions to try to spread the word about the program.⁹¹² This includes sending posters and fact sheets to 1,000 skilled nursing homes and 500 libraries, and distributing more than 900 posters to the state's 35 correctional institutions to post in common areas and housing units, in hopes of reaching more people.⁹¹³ The State also signed a \$280,000 contract in May with JP Marketing to launch a social media campaign that will run through the end of 2023. The biggest push began in December 2022, when the State will pay for TV and radio ads in Los Angeles, San Francisco, and Sacramento that will run through October 2023.⁹¹⁴

Chicago Police Department

Between 1972 and 1991, Jon Burge, a high-ranking officer in the Chicago Police Department, led a group of detectives and officers in an organized operation to torture and abuse over 120 African American criminal suspects, with some cases resulting in coerced confessions.⁹¹⁵ Investigations revealed that Burge led operations of abuse that included physical torture and psychological abuse such as "trickery, deception, threats, intimidation, physical beatings, sexual humiliation, mock execution, and electroshock torture."⁹¹⁶ Evidence also suggests that judges and some city officials facilitated the abuse and its cover-up.⁹¹⁷ Many of Burge's African American victims ended up in prison due to coerced confessions and some were sentenced to death.⁹¹⁸ Efforts to hold Burge accountable for his actions were unsuccessful because the statute of limitations had expired for

many of the cases of torture.⁹¹⁹ Community members sought alternative methods to obtain justice, and those efforts eventually led to the passage of the Ordinance for Reparations for the Chicago Police Torture Survivors (Reparations Ordinance).⁹²⁰

Years before the Reparations Ordinance was passed, community activist organizations in Chicago, including the Chicago Torture Justice Memorial (CTJM) and attorney Joey Mogul of Peoples Law Office, fought to have the harms inflicted by Burge and his officers acknowledged and the survivors compensated.⁹²¹

They litigated torture cases in court seeking justice for the survivors.⁹²² One of those survivors was Andrew Wilson who had been sentenced to death because of the false confession Burge and other officers coerced from him using torture.⁹²³ Wilson filed suit under 42 U.S.C. §

1983 seeking damages from Burge.⁹²⁴ An all-white jury found in favor of Burge, but the United States Court of Appeal for the Seventh Circuit reversed the verdict and ordered a new trial.⁹²⁵

Another survivor who sought relief through the courts was Aaron Patterson who was sentenced to death.⁹²⁶ His claim against Burge was raised in a post-conviction petition, which asked the court to determine whether Patterson was a victim of torture.⁹²⁷ After denials in the lower court, the Illinois Supreme Court heard the case, specifically to address whether evidence of physical injury was necessary to prove that a confession was coerced using torture.⁹²⁸ The Illinois Supreme Court held that proof of physical injury was not required to establish that a confession was physically coerced.⁹²⁹

These were two examples of the many cases where survivors pursued remedies through the courts with mixed results. Some claims were raised in post-conviction proceedings, seeking damages; others were filed to address limited issues/questions, and other actions were filed seeking new trials based on the coerced confessions. The results varied, and the overall frustration of the survivors, their attorneys, and activists led them to seek support from international human rights organizations like the Inter-American Commission for Human Rights (Inter-American Commission) and the United Nations Committee Against Torture (Committee Against Torture) to hold Burge and the City of Chicago accountable. They filed petitions with the Inter-American Commission and the Committee Against Torture seeking redress.⁹³⁰ The Inter-American Commission did not take official action.⁹³¹ But the Committee Against Torture issued a report affirming the survivors' position and urging the United States to provide redress "by supporting the passage of the Ordinance entitled Reparations for the Chicago Police Torture Survivors."⁹³² In its report, the Committee Against Torture expressed concern that no police officer had been convicted for their crimes and that the majority of victims still had not receive "compensation for the extensive injuries suffered."⁹³³ Although Burge was convicted for perjury and obstruction of justice, there was not sufficient evidence to prosecute him for violating the constitutional rights of the survivors.⁹³⁴

In May 2015, the efforts of the survivors, their attorneys, and the activists culminated in the Chicago City Council "approv[ing] a municipal ordinance giving reparations to Burge torture survivors."⁹³⁵ The Reparations Ordinance approved a \$5.5 million fund that would be used to award

each survivor \$100,000 in financial compensation along with non-financial reparations such as psychological counseling, healthcare, and an official memorial.⁹³⁶ The Ordinance was drafted by attorney Joey Mogul who worked with survivors, their families, and other activists.⁹³⁷ There was no temporal limit for filing claims.

The intended recipients of the Reparations Ordinance included all torture survivors that have credible claim

The Reparations Ordinance approved a \$5.5 million fund that would be used to award each survivor \$100,000 in financial compensation along with non-financial reparations such as psychological counseling, healthcare, and an official memorial.

of torture or physical abuse at the hands of Job Burge or his subordinates, their immediate family members, and in some cases, to their grandchildren. The ordinance requires the individual must have a credible claim of torture or physical abuse by Jon Burge or one of the officers under his command between May 1, 1972, and November 30, 1991.⁹³⁸

The Reparations Ordinance intended to fully address the harm Burge and his subordinates caused by providing for a formal apology, financial compensation, services and support for survivors, funding for public education, and a memorial. First, the formal apology acknowledged the extent of the police abuse and admitted that the City of Chicago and other public officials were complicit in the abuse of over 100 African Americans.⁹³⁹ Second, each survivor with a credible claim of torture or abuse by Burge or one of the officers under his command would receive financial reparations of \$100,000.⁹⁴⁰ The Ordinance created the Chicago Police Torture Reparations Commission, which was responsible for disbursing financial reparations to the survivors.⁹⁴¹ Third, the Ordinance provided survivors and their families free tuition at the City Colleges of Chicago and free access to job training.⁹⁴² Fourth, in addition to financial and educational reparations, the Ordinance also provided psychological services to survivors and family members at a dedicated community center.⁹⁴³ Finally, the City of Chicago promised to work with the activist group CTJM to "construct a permanent memorial to the Burge victims; and beginning in the 2015-2016 school year, the Chicago Public Schools [would] incorporate into its existing U.S. history curriculum for eighth-grade and tenth-grade students a lesson about the Burge case and its legacy."⁹⁴⁴

The claims process for obtaining reparations under the Ordinance began with CTJM providing the City of Chicago with a list of individuals CTJM determined were eligible for reparations. Both the City and CTJM would investigate the claim, and if both parties agreed the survivor had a credible claim, the survivor would be entitled to the financial reparations from the fund.⁹⁴⁵ If CTJM and the City disagreed about an individual's credibility, that individual would have the opportunity to present information and evidence to an independent arbitrator who would make a final and binding decision.⁹⁴⁶

The only remaining unfulfilled reparation is the memorial.⁹⁴⁷ This is, in part, because the Reparations Ordinance did not specify the timeline for the memorial and specific funding was not provided. As of 2021, the memorial still had not been built, but individuals at CTJM have been meeting with the Mayor and remain hopeful the process for building the memorial will start soon.⁹⁴⁸

Evanston, Illinois

The City of Evanston passed a racial equity scheme, the Restorative Housing Program (37-R-27), in March 2021 to redress the city's discriminatory practices in housing, zoning, and lending that created a wealth and opportunity gap between white and African American Evanstonians.⁹⁴⁹ Under this scheme, African American Evanstonians, their descendants, or other residents who experienced housing discrimination by the City of Evanston are provided up to \$25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage.⁹⁵⁰ On March 27, 2023, the City Council unanimously added direct cash payments as a fourth option.⁹⁵¹ The Restorative Housing Program was the first reparatory program enacted by the City, but Evanston has also studied its discriminatory past and produced a report, created a City Reparations Fund, honored local historical African American sites, and issued an apology.

The City Council enacted the Restorative Housing Program to redress the injustices found in the report commissioned for the City Council's Reparations Subcommittee, *Evanston Policies and Practices Directly Affecting the African American Community, 1900-1960 (and Present)*.⁹⁵² According to the report, "the City of Evanston officially supported and enabled the practice of segregation"⁹⁵³ by passing a zoning ordinance in 1921 that condoned implicit race-based housing segregation; demolishing homes owned by African American families

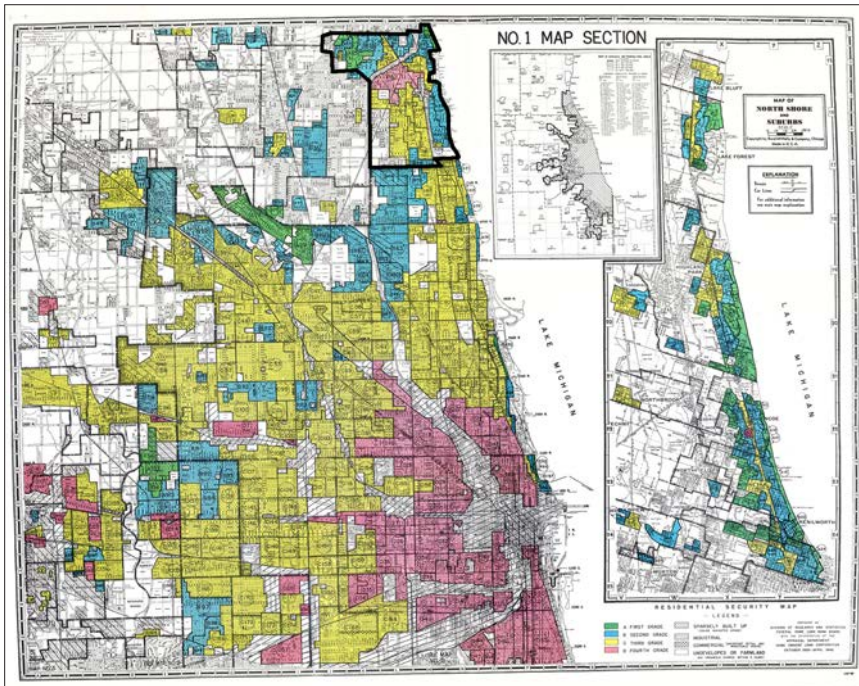
for economic development on the grounds that they were "unsanitary" or "overcrowded"; providing permits to Northwestern University to develop temporary, segregated housing for veterans after World War II; segregating post-World War II temporary housing for veterans; and failing to enact a fair housing ordinance to outlaw housing discrimination until the late 1960s.⁹⁵⁴

The Restorative Housing Program was created in March 2021⁹⁵⁵ with the aim of increasing African American homeownership in order to revitalize and preserve African American owner-occupied homes in Evanston.⁹⁵⁶ To be eligible, the home must be located in Evanston and be the applicant's primary residence.⁹⁵⁷ The program has three categories of intended recipients—Evanston residents over the age of 18 years, of Black/African American ancestry, and, in order of priority, either: (1) an Ancestor, a resident who lived in Evanston between 1919 and 1969, was at least 18 years old during that time, and experienced housing discrimination due to the City's policies/practices; (2) a Direct Descendant of an Ancestor (e.g., child, grandchild, great-grandchild, and so on); or (3) a resident that does not qualify as an Ancestor or Direct Descendant, but experienced housing discrimination due to City ordinance, policy, or practice after 1969.⁹⁵⁸ The City Manager's Office is primarily responsible for administering this program.⁹⁵⁹ The City Manager's Office takes in applications and verifies eligibility based on the guidelines established by the Reparations Committee, discussed below.⁹⁶⁰ At the close of the first round of applications, 122 Ancestor-applicants were verified by the city and 16 were randomly selected on January 13, 2022, via the City's lottery to receive the first round of payments.⁹⁶¹ In March 9, 2023, Evanston planned its second round of disbursements for 35 to 80 Ancestors.⁹⁶²

Through the Restorative Housing Program, African American Evanstonians, their descendants, or other residents who experienced housing discrimination by the City of Evanston are provided \$25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage. On March 27, 2023, the City Council unanimously added direct cash payments as a fourth option.

Upon approval by the City Council, funds are sent electronically or via check to the closing agent for disbursement when the applicant closes on a home purchase, to the contractor upon receipt of invoice, or to the lender for

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A Homeowner's Loan Corporation map of Chicago detailing A, B, C and D grade areas of the city. An "A" rating, shaded in green, was for the best neighborhoods that were new and all white. A "D" rating, shaded in red, was the worst category, and reserved for all-Black neighborhoods, even if it was middle class. The City of Evanston is outlined. (1940)

mortgage payment.⁹⁶³ City Council selected this method of fund disbursement due to Internal Revenue Service (IRS) reporting requirements; the City lacks the requisite authority to exempt direct payments from either state or federal income taxes. Consequently, a recipient would be liable for the tax burden associated with the award.⁹⁶⁴ A recipient could end up being required to pay between 24 to 28 percent to the IRS and Illinois.⁹⁶⁵ By distributing payments to the financial institution or vendor, instead of the Evanston resident, the financial institution or vendor becomes responsible for the tax liability.⁹⁶⁶ For the direct cash payment option that was added to the Restorative Housing Program in March 2023, the Law Department of the City of Evanston determined that payments made under the "General Welfare Exclusion" will not qualify as taxable income.⁹⁶⁷ Accordingly, applicants who wish to utilize the cash payment option must be income qualified in order to avoid tax liability and must receive a grant from the general welfare fund.⁹⁶⁸ For the other three grant options in the Restorative Housing Program, contracts are paid in installments, with half of the money arriving upfront, a quarter halfway through the job, and the final quarter upon completion.⁹⁶⁹ Approved funds must be utilized within the year of approval.⁹⁷⁰ Funding can be layered with other housing assistance programs by the city, state, or federal government.⁹⁷¹

Evanston's recent movement for reparatory justice began in 2019.⁹⁷² Former Evanston Alderperson Robin

Rue Simmons led the charge for reparatory justice with the support of the City's Equity and Empowerment Commission.⁹⁷³ First, the Commission studied the discriminatory past of the City by enlisting the help of two Evanston-based historical organizations, the Shorefront Legacy Center and the Evanston History Center, to identify past harms inflicted against African American Evanstonians. These organizations produced a draft report that provided justification for the enactment of a racial equity scheme by listing historical and contemporary instances where the City of Evanston might have facilitated, participated in, enacted, or stood neutral in the wake of acts of segregated and discriminatory practices.⁹⁷⁴ The report described Evanston's historic segregated practices in transportation, public spaces, and employment, delayed desegregation efforts, and housing and zoning policies that led to overcrowding, higher rents, and segregated inferior housing for African American residents.⁹⁷⁵ The Commission also held community meetings to gather public input and recommend actions to the City Council.⁹⁷⁶ Both the National Coalition of Blacks for Reparations in America (NCOBRA) and the National African American Reparations Commission (NAARC) provided advice regarding Evanston's reparatory process.⁹⁷⁷ Additional town halls and meetings were hosted by the City to further engage residents in program specifics.⁹⁷⁸

In November 2019, Evanston adopted Resolution 126-R-19 to study community recommendations for "repair and reparations" and create the City Reparations Fund to collect tax revenues.⁹⁷⁹ Resolution 126-R-19 committed the first \$10 million of the City's Municipal Cannabis Retailers' Occupation Tax (three percent on gross sales of cannabis) to fund local reparations for housing and economic development programs for African American Evanston residents over the course of 10 years.⁹⁸⁰ Individual residents, churches, and local businesses can also donate to the City Reparations Fund.⁹⁸¹ Following the establishment of the funding source, Evanston formed a permanent Reparations Subcommittee and hosted several town hall and Subcommittee meetings to solicit feedback on the structure of local reparations.⁹⁸² In June 2020, the Evanston Preservation Commission of City Council passed Resolution 54-R-20 to preserve and

honor historical African American sites in Evanston's Fifth Ward.⁹⁸³ In November 2022, the City Council passed a resolution to delegate \$1 million annually from the graduated real estate transfer tax (collected from all property purchased above \$1.5 million) to the City Reparations Fund for a period of 10 years.⁹⁸⁴ An additional funding recommendation came in late November 2022 when the City Council proposed to pass Resolution 125-R-22 to transfer \$2 million from the City's General Fund to the Reparations Fund.⁹⁸⁵

Prior to creating a racial equity scheme, the City Council of Evanston created the Equity and Empowerment

Only Ancestors who currently reside in Evanston are eligible, leaving out many African American homeowners who were victims of Evanston's discriminatory policies but moved away.

Commission in 2018 to address systemic inequalities and adopted Resolution 58-R-19, "Commitment to End Structural Racism and Achieve Racial Equity." In Resolution 58-R-19, Evanston's City Council: (1) apologized for the damage caused by its history of racially-motivated policies and practices such as zoning laws that supported neighborhood redlining, municipal disinvestment in the African American community, and a history of bias in government services; (2) declared itself an anti-racist city; and (3) denounced white supremacy.⁹⁸⁶ The Resolution begins with findings laying out the foundation for an apology and then proceeds with a series of pronouncements against anti-Black racism:

Now, therefore, be it resolved by the city council of the City of Evanston, Cook County, Illinois, that in accordance with the fundamental principles set forth in the declaration of independence, which asserts as a fundamental basis that all people are created equal and are endowed with the unalienable rights of life, liberty and the pursuit of happiness:

Section 1: The City Council of Evanston hereby acknowledges its own history of racially-motivated policies and practices, apologizes for the damage this history has caused the City, and declares that it stands against White Supremacy...⁹⁸⁷

To receive funds from the Restorative Housing Program, interested applicants must provide proof of eligibility based on the sample list of documents cited in the program guidelines.⁹⁸⁸ To prove Ancestor eligibility, applicants must provide documentation of their age,

race, and residency.⁹⁸⁹ To prove Direct Descendent eligibility, applicants must provide documentation of age, race, and relationship to an Ancestor via birth certificate, marriage record, hospital record of birth or death, yearbook, or other means.⁹⁹⁰ To prove eligibility based on discrimination as a resident, applicants must show proof of age, residency, and the City ordinance, policy, or procedure that served to discriminate against the applicant in the area of housing.⁹⁹¹

Issues of funding, restrictive eligibility and spending, distribution, and other criticisms arose during the implementation of Evanston's Restorative Housing

Program. First, the cannabis tax has not generated enough revenue to provide payments to all eligible applicants.⁹⁹² When the City Council drafted the resolution, it expected three cannabis stores to open in Evanston; however, so far only one has opened.⁹⁹³ In late 2022, the City secured alternative sources of fund-

ing to supplement the cannabis tax—the graduated real estate transfer tax and the general fund. Additionally, community members and business contribute private donations to the Reparations Community Fund.⁹⁹⁴

Funding restrictions have also been a critique of the Evanston racial equity scheme. Only Ancestors who currently reside in Evanston are eligible, leaving out many African American homeowners who were victims of Evanston's discriminatory policies but moved away.⁹⁹⁵ Alderman Peter Braithwaite (2nd Ward), chair of the Reparations Committee, said that restricting reparations to current residents was necessary because of the city's limited staff and resources.⁹⁹⁶ Other residents complained that funding was too narrowly constrained to housing-based projects, ignoring other potential needs for reparatory justice.⁹⁹⁷ In response, leaders stated that the housing program was only the first of many reparatory justice programs to come and housing was identified as the most urgent need among those who attended the public subcommittee and town council meetings.⁹⁹⁸ As an example of the funding's restraints, two of the 16 selected in the first round of applications for funding did not own property and almost lost the funds.⁹⁹⁹ On March 2, 2023, the Reparations Committee approved a direct cash payment for those two Ancestors.¹⁰⁰⁰ Less than one month later, the City Council approved an option to provide direct payment to all reparations recipients.¹⁰⁰¹

Another issue in the disbursement process is that many residents believed the money should have gone directly into the hands of the eligible and not to the banks who

facilitated racial discrimination in the first place. To address this concern, the City hopes to provide a resource guide for grant recipients with a list of Black banks, banks with a history of fair lending, and a directory of Black contractors, realtors, real estate attorneys, appraisers, and surveyors that fund recipients can hire.¹⁰⁰² Many residents have complained that the pace of the racial equity scheme is too slow.¹⁰⁰³ Seven Ancestors died before they were selected for a restorative housing grants.¹⁰⁰⁴ The Reparations Committee added a requirement for Ancestors to name a beneficiary to pass down the rights of the grant once they have been awarded.¹⁰⁰⁵

Finally, some experts critiqued the Evanston reparatory program as being piecemeal and potentially distracting from the priority of a comprehensive national reparations program.¹⁰⁰⁶ Economic and public policy experts William A. Darity Jr. and A. Kirsten Mullen objected to the Evanston program's restrictions on funding, preferring unrestricted direct payments, and said that the program did not go far enough to address the huge racial equity gap between Black and white Evanston residents.¹⁰⁰⁷ They also said that Evanston's municipal government lacks the budget necessary to adopt an adequate reparations proposal, which would require \$3.85 billion to close the \$350,000 per capita racial wealth gap.¹⁰⁰⁸

Asheville, North Carolina

The City of Asheville, North Carolina, unanimously passed Resolution 20-128 on July 14, 2020, to consider reparations for the city's participation in and sanctioning of the enslavement of Black people, its enforcement of segregation and accompanying discriminatory practices, and carrying out an urban renewal program that destroyed multiple successful Black communities.¹⁰⁰⁹ Asheville has formed a Reparations Commission, which anticipates presenting final policy recommendations to be voted upon by August 30, 2023 and submitting a written report by October 31, 2023.¹⁰¹⁰ Only two recommendations have been made as of May 2023— one, to provide funding in perpetuity and two, to request a third-party audit of the City of Asheville and Buncombe County to ensure harms done to Black residents are stopped.¹⁰¹¹

According to Resolution 20-128, the Reparations Commission intends to address the following harms to Black people: unjust enslavement, segregation, and incarceration; the denial of housing through racist practices in the private realty market, including redlining, steering, blockbusting, denial of mortgages, and

gentrification; discriminatory wages paid in every sector of the local economy regardless of credentials and experience; the disproportionate unemployment rates and reduced opportunities to fully participate in the local job market; systematic exclusion from historic and present private economic development and community investments; segregation from mainstream education and within present day school programs; denial of education through admission, retention, and graduation rates of every level of education in Western North Carolina and through discriminatory disciplinary practices; historic and present inadequate and detrimental health care; unjust targeting by law enforcement and criminal justice procedures, incarceration at disproportionate rates, and subsequent exclusion from full participation in the benefits of citizenship that include voting, employment, housing, and health care; disproportionately forced to reside in, adjacent to, or near Brown zones and other toxic sites; disproportionately limited to confined

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routes of travel provided by public transportation; and disproportionately suffering from isolation of food and childcare deserts.¹⁰¹² Asheville did not provide any specific timeline of the harms the Reparations Commission is intended to address.

Resolution 20-128 states that the Reparations Commission will make short-, medium-, and long-term recommendations to “make significant progress toward repairing the damage caused by public and private systemic racism.”¹⁰¹³ The resolution tasks the commission to issue a report so the City of Asheville and local community groups may incorporate it into their short- and long-term priorities and plans.¹⁰¹⁴ The resolution states the “report and the resulting budgetary and programmatic priorities may include but not be limited to increasing minority homeownership and access to other affordable housing, increasing minority business ownership and career opportunities, strategies to grow equity and generational wealth, closing the gaps in health care, education, employment and pay, neighborhood safety and fairness within criminal justice.”¹⁰¹⁵

The city manager and city staff have recommended a three-phase process that includes: information sharing and truth-telling; formation of the reparations commission; and finalization and presentation of the report.¹⁰¹⁶ Phase One occurred from May 2021 to June 2021, and was intended to:

- Provide a better understanding of policy impacts and where those impacts occurred;
- Identify and understand current disparities and areas that need focus;
- Identify barriers to addressing generational wealth; and
- Inspire our community to identify collaborative opportunities to create a more equitable Asheville.¹⁰¹⁷

During Phase One, three events were held in June 2021 — namely, three information sharing and truth-telling speaker series regarding past policies and practices, present trends and disparities, and future initiatives.¹⁰¹⁸ Information from this speaker series was used to inform the development of the Reparations Commission and its scope of work.¹⁰¹⁹

Phase Two was the formation of the Reparations Commission, which will address disparities in housing, economic development, public health, education, public safety and justice.¹⁰²⁰ The City announced on March 8, 2022, the approval of five members for the Reparations Commission appointed by the Asheville City Council, as well as 15 members and two alternates appointed by the historically impacted Black neighborhoods.¹⁰²¹ The Commission members are serving on five Impact Focus Area (“IFA”) workgroups — criminal justice, economic development, education, health and wellness, and housing — which are responsible for analyzing information on these areas and reporting key findings to the full Commission.¹⁰²²

As of the publication of this report, the Commission is in Phase Three, but according to documents from the January 9, 2023 Commission meeting, the priorities are no longer short-, medium-, and long-term recommendations but rather feasibility and community impact.¹⁰²³ The documents also reflect an updated timeline with ten different activities, the last six of which are slated to occur in 2023 — reaffirm resolution and

commission role, develop IFA recommendations (by May 31), community engagement and input (by May 31), recommendation vetting and refinement (by July 31), present recommendations for commission voting (by August 30), and submit written report and close project (by October 31).¹⁰²⁴ The documents reflect a few draft recommendations, but no final recommendations have yet been presented.¹⁰²⁵

On June 8, 2021, the Asheville City Council voted to allocate \$2.1 million of the city’s proceeds from the sale of city-owned land (a portion of which includes land the city purchased in the 1970s through urban renewal, a policy that “resulted in the displacement of vibrant Black communities and the removal of Black residents and homeowners, many into substandard public housing”).¹⁰²⁶ The city anticipates that of the \$2.1 million, \$200,000 will fund the Reparation Commission’s planning and engagement process, leaving approximately \$1.9 million in initial funding for reparations.¹⁰²⁷

Asheville’s reparations scheme has not gone without any criticism. Economic expert William A. Darity stated that he was “deeply skeptical about local or piecemeal actions to address various forms of racial inequality being labeled ‘reparations.’”¹⁰²⁸ Darity has written that reparations would “have to close the pretax racial wealth disparity in the United States, which would cost about \$10 to \$12 trillion,” in order to be effective.¹⁰²⁹ Darity further notes that “piecemeal reparations taken singly or collectively at [the state and municipal level] cannot meet the debt for American racial injustice.”¹⁰³⁰ With respect to the local community, reactions have been

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mixed. During the virtual meeting at which the reparations resolution was passed, a resident of Montford, North Carolina, “argued that the city’s Black police chief, city manager and council members are ‘an indication that Blacks can succeed in Asheville. So, to dump this all on us [w]hite folk — I think is offensive.’”¹⁰³¹ Conversely, a resident who identifies as white, stated “White people: We have to realize that we are complicit, and our souls are in jeopardy.”¹⁰³²

A number of news articles have been written about Asheville's reparations scheme.¹⁰³³ Bloomberg noted:

Asheville's reparations are not focused on slavery or redlining — though it was not innocent of either — but rather on its participation in what was considered one of the largest urban renewal projects in the South, if not the country. Throughout the 1960s and 1970s, Asheville's

Providence has issued a formal apology and enacted a 2023 city budget which includes \$10 million earmarked for reparatory programs, but does not include direct cash payments solely to African Americans or Descendants.

clearance of areas considered blighted ended up displacing thousands of Black Ashevilleans, stripping them of their land, businesses and properties without recompense. According to local historian Wesley Grant, one Black neighborhood alone, East Riverside, lost “more than 1,100 homes, six beauty parlors, five barber shops, five filling stations, 14 grocery stores, three laundromats, eight apartment houses, seven churches, three shoe shops, two cabinet shops, two auto body shops, one hotel, five funeral homes, one hospital, and three doctor's offices.” Most of the Black families and workers displaced ended up living in housing projects, mostly cut off from the rest of Asheville society and its growing economy.¹⁰³⁴

Bloomberg further noted that Asheville's reparations scheme will be a “community reparations model,” which means that instead of making direct payments to individuals, Asheville will look for areas within the city's budget to add resources to address the racial disparities that persist today.¹⁰³⁵ The city manager will also work with surrounding Buncombe County and other community stakeholders to define what reparations will be.¹⁰³⁶ Accordingly, the exact form of reparations will remain unknown until the issuance of the final report in 2023 and eventual adoption of specific reparations measures.

Providence, Rhode Island

After the murder of George Floyd in the summer of 2020, the mayor of Providence, Rhode Island signed an executive order to launch a “Truth, Reconciliation and Municipal Reparations” process to “eradicate bias and racism” against its Black and Indigenous residents

and other people of color.¹⁰³⁷ Following that three-part process, the city has issued a formal apology and enacted a 2023 city budget which includes \$10 million earmarked for reparatory programs, but does not include direct cash payments solely to African Americans or Descendants.¹⁰³⁸

Beginning with a truth-telling phase, the Rhode Island Black Heritage Society collaborated with city and state historical institutions to publish a 200-page report, titled, *A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020)*.¹⁰³⁹ The report documents the history of harm that Providence sought to remedy, including the lasting wounds caused by slavery, the genocide of Indigenous People, and the ongoing racial discrimination from 1620 to 2020 throughout the City of Providence and the State of Rhode Island.¹⁰⁴⁰

In the reconciliation phase, the Providence Cultural Equity Initiative and Roger Williams University published a report detailing their efforts to survey Providence community members, develop guiding principles for reparations, and develop a model and proof of concept to continue reconciliation in perpetuity, including through a multimedia initiative.¹⁰⁴¹ For its guiding principles on reconciliation, the Reconciliation Report noted the need for ongoing, communal learning, a focus on particular people, places, and the importance of efforts to cross barriers of identity and empathy.¹⁰⁴² The city's reconciliation principles also rejected depictions of participants that reduce them to racialized categories or tropes, while celebrating resilience both past and present.¹⁰⁴³ Finally, Providence's reconciliation principles underscored action, emphasizing a community-owned but institutionally supported process, and the principle that reconciliation cannot be accomplished without reparations.¹⁰⁴⁴

In the third and final phase, labeled reparations, the mayor of Providence signed an executive order creating the Municipal Reparations Commission (Commission), consisting of 13 members from the local community.¹⁰⁴⁵ The Commission held over a dozen public meetings, discussing the justifications for reparations and the form they might take.¹⁰⁴⁶ Among other things, presenters at the public meetings discussed the international framework for reparations and its five elements, as well as international treaties and reports, including the Universal Declaration for Human Rights, the International Convention on the Elimination of

All Forms of Racial Discrimination (which the United States ratified in 1994), the Civil Rights Congress's petition to the United Nations for Relief from Crimes Against Humanity by the United States Government, and a UNESCO publication titled, *Healing the Wounds of Slave Trade and Slavery*.¹⁰⁴⁷

Following its public hearings, the Commission published a report listing its final recommendations for an 11-point reparatory program.¹⁰⁴⁸ In its recommendations, the Commission defined “reparations” as “closing the racial wealth and equity gap between Providence residents and neighborhoods[.]”¹⁰⁴⁹ When defining the communities eligible for its reparatory programs, the Commission identified Indigenous People, African Heritage People, Providence residents facing poverty, and Providence residents living in qualifying census tracts and neighborhoods.¹⁰⁵⁰ While the latter two categories—residents facing poverty and those in qualified census tracts—include Providence residents of any race, the Commission included those categories of eligibility to comply with limitations imposed by federal funding, as the city was relying upon federal COVID-19 relief as a source of initial funding for its reparatory program.¹⁰⁵¹

In November 2022, the mayor of Providence signed a city budget allocating \$10 million—provided to the city from the American Rescue Plan Act—to fund programs across seven of the Commission’s recommendations:¹⁰⁵²

While some Commission and community members expressed concern that \$10 million would be insufficient to redress the harms identified in the Truth Report,¹⁰⁵³ others observed that the \$10 million represented a start to the reparatory programs, not the end, and that once the programs were enacted, future funding could be drawn from other public and private sources.¹⁰⁵⁴

The mayor of Providence also issued an executive order recognizing and apologizing for the city’s role in discriminating against African Heritage and Indigenous People.¹⁰⁵⁵ The order apologizes for the city’s role in “discriminatory practices, including lack of equal access to public education, voting rights and general civil rights that led to the subjugation, enslavement, de-tribalization, death, and control of African Heritage and Indigenous People in past and present day.”¹⁰⁵⁶ The order also apologizes for Providence’s actions after the King Philip’s War, where city leaders transferred captured and surviving Indigenous People into slavery in the West Indies.¹⁰⁵⁷ The Order further apologizes for the systemic harm enacted upon African Heritage and Indigenous communities through school segregation, unjust incarceration, police use of force, family destabilization, employment discrimination, warning out laws, deliberate denials of public assistance, including red-lining policies and the city’s failure to intervene in the destruction of African Heritage and Indigenous neighborhoods and communities, including during riots in the 1800s.¹⁰⁵⁸

2022 PROVIDENCE, RHODE ISLAND REPARATIONS BUDGET	
RECOGNITION OF HARM	
Reimagining Building & Sites	\$400,000
EQUITY BUILDING	
Homeownership & Financial Literacy	\$1,000,000
Home Repair Fund	\$1,000,000
Capacity Investments in Community Organizations	\$500,000
Earn & Learn Workforce Training	\$1,000,000
Small Business Acceleration	\$1,500,000
Expansion of Guaranteed Income Program	\$500,000
Expansion of Youth Internship Program	\$250,000

2022 PROVIDENCE, RHODE ISLAND REPARATIONS BUDGET	
Establish a Legal Defense Fund Facing Rental Evictions	\$250,000
CREATION & DEVELOPMENT OF MEDIA	
Invest in Media Firms	\$250,000
Expand Operational Capacity	\$1,000,000
Preserve, Safeguard & Promote Cultural Programs	\$200,000
CREATION OF SURVIVORS & DESCENDANTS OF URBAN RENEWAL FUND	
Establish a Fund Dedicated to Urban Renewal Impacts	\$200,000
Develop Grant Program to Assist Urban Renewal Impacted Neighborhoods	\$200,000
EXPANSION OF CULTURAL ENGAGEMENT & EDUCATIONAL OPPORTUNITIES	
Creation of K-12 “A Matter of Truth” Curriculum	\$50,000
Advancing Public Education Campaigns	\$50,000
Funding To Establish History School	\$50,000
Creation Of Artist In Residence Fund	\$100,000
K-12 Curriculum Grounded In Rhode Island & New England History	\$100,000
Creation Of Resident Scholarship Fund	\$500,000
Creation of Fund For Home-Based Day Care Providers	\$250,000
Invest In District Wide Coordinator For Educational Enrichment	\$100,000
MOVEMENT TOWARDS A MORE EQUITABLE HEALTHCARE SYSTEM	
Expansion of Mental & Behavioral Support Programs	\$150,000
Collaborate With Neighborhood Providers Including Barbershops	\$250,000
ACCELERATE THE EVOLUTION OF AAAG INTO POLICY INSTITUTE MODEL	
Creation of Policy & Research Center	\$150,000
TOTAL	\$10,000,000

Endnotes

¹ Gov. Code, § 8301.1, subd. (b)(3)(A).

² See California Task Force to Study and Develop Reparation Proposals for African Americans (Jan. 27–28, 2023) [Testimony of City of Richmond](#) (as of May 22, 2023); Chang et al., [Santa Monica, Calif., aims to welcome back historically displaced Black families](#), NPR (Jan. 21, 2022) (as of May 22, 2023); Schrank, [Santa Monica tries to repay historically displaced families](#), KCRW (Jan. 31, 2022) (as of May 22, 2023).

³ See, e.g., Internat. Ct. of Justice, [Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v. Uganda\)](#) (as of May 22, 2023); Ruvugiro, [Rwandan Reparations Fund Breaks Ground But Is Still Not Enough, Say Victims](#), JusticeInfo (March 17, 2019) (as of May 22, 2023).

⁴ See, e.g., *Benningfield Randle et al. v. City of Tulsa et al.* (Okla. Dist. Ct. Tulsa County, 2020, No. 1179); Booker, [Oklahoma Lawsuit Seeks Reparations In Connection To 1921 Tulsa Massacre](#), NPR (Sept. 3, 2020) (as of May 22, 2023).

⁵ See, e.g., Georgetown Univ., [Georgetown Reflects on Slavery, Memory, and Reconciliation](#) (as of May 22, 2023); Swarms, [Catholic Order Struggles to Raise \\$100 Million to Atone for Slave Labor](#), The New York Times (Aug. 16, 2022) (as of May 22, 2023); Moscufo, [Harvard sets up \\$100 million endowment fund for slavery reparations](#), Reuters (April 26, 2022) (as of May 22, 2023); The Presidential Com. on Harvard & the Legacy of Slavery, [Harvard & The Legacy of Slavery](#) (2022) (as of May 22, 2023).

⁶ See Chapter 14.

⁷ For further examples, see Chapter 33.

⁸ *Luxembourg Agreement [Excerpts] (Luxembourg Agreement)* in The Handbook of Reparations (De Greiff edit., 2006) p. 886; Colonomos and Armstrong, *German Reparations to the Jews After World War II: A Turning Point in the History of Reparations (German Reparations)* in The Handbook of Reparations (De Greiff edit., 2006) p. 391.

⁹ U.N. Gen. Assem., [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), Res. No. 60/147 (March 21, 2006).

¹⁰ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 397.

¹¹ *Luxembourg Agreement*, *supra*, at pp. 887, 897. The Luxembourg Agreement sets out the FRG's financial obligations in Deutschemark or Deutsche Marks, which is abbreviated as DM. When the Agreement was executed, one dollar equaled 4.2 Deutschemark or Deutsche Marks. (Honig, *The Reparations Agreement Between Israel and The Federal Republic of Germany (Reparations Agreement)* (1954) 48 Am. J. Internat. L. 564, 566, 566, fn. 11.)

¹² *Luxembourg Agreement*, *supra*, at p. 887.

¹³ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 399; De Greiff, *Luxembourg Agreement*, *supra*, at pp. 889–895.

¹⁴ *Luxembourg Agreement*, *supra*, at p. 897. The Claims Conference is an umbrella organization comprised of 23 Jewish organizations. It was founded in 1951 after a meeting in New York. (Colonomos and Armstrong, *German Reparations*, *supra*, at pp. 393–394).

¹⁵ Honig, *Reparations Agreement*, *supra*, at p. 566.

¹⁶ Third Reich was the official Nazi designation for the regime in Germany from January 1933 to May 1945. (Britannica, [Third Reich](#) (as of May 16, 2023)).

¹⁷ Britannica, [Nürnberg Laws](#) (April 4, 2023) (as of May 16, 2023).

¹⁸ Wilkerson, *Caste* (2020) pp. 78–83, citing Whitman, *Hitler's American Model* (2017) pp. 113, 120–123, 128.

¹⁹ Britannica, [Nürnberg Laws](#), *supra*.

²⁰ *Ibid.*

²¹ Holocaust Encyclopedia, [Antisemitic Legislation 1933–1939](#), U.S. Holocaust Memorial Museum (as of May 16, 2023).

²² *Ibid.*

²³ Britannica, [From Kristallnacht to the “final solution”](#) (as of May 16, 2023).

²⁴ *Ibid.*

²⁵ Honig, *Reparations Agreement*, *supra*, at p. 565.

²⁶ Britannica, [From Kristallnacht to the “final solution”](#), *supra*.

²⁷ *Ibid.*

²⁸ Authers, *Making Good Again: German Compensation for Forced and Slave Laborers (German Compensation)* in The Handbook of Reparations (2006) pp. 421–422.

²⁹ Britannica, [From Kristallnacht to the “final solution”](#), *supra*.

³⁰ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 394.

³¹ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 393.

³² *Id.* at p. 392.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Id.* at p. 393.

³⁶ *Ibid.*

³⁷ *Id.* at p. 394.

³⁸ *Luxembourg Agreement*, *supra*, at p. 886; Colonomos and Armstrong, *supra*, at p. 391.

³⁹ *Luxembourg Agreement*, *supra*, at p. 887;

⁴⁰ *Luxembourg Agreement*, *supra*, at p. 887; Honig, *Reparations Agreement*, *supra*, at p. 566.

⁴¹ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 400; Heilig, *From the Luxembourg Agreement to Today: Representing a People* (2002) 20 Berkeley J. Internat. L., 176, 179–180; Honig, *Reparations Agreement*, *supra*, at p. 567.

⁴² Honig, *Reparations Agreement*, *supra*, at p. 569.

⁴³ *Ibid.*

⁴⁴ *Luxembourg Agreement*, *supra*, at pp. 887–888.

⁴⁵ *Id.* at p. 888.

⁴⁶ *Ibid.*

⁴⁷ *Id.* at p. 887.

⁴⁸ *Ibid.*

⁴⁹ *Id.* at pp. 887-888.

⁵⁰ Honig, *Reparations Agreement*, *supra*, at p. 573.

⁵¹ *Ibid.*

⁵² *Id.* at p. 574.

⁵³ *Id.* at p. 575.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Id.* at pp. 575-576.

⁵⁸ *Id.* at p. 575, fn. 40.

⁵⁹ *Ibid.*

⁶⁰ *Id.* at p. 575.

⁶¹ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 402; *Luxembourg Agreement*, *supra*, at p. 889.

⁶² Colonomos and Armstrong, *German Reparations*, *supra*, at p. 402.

⁶³ *Id.* at p. 403.

⁶⁴ *Luxembourg Agreement*, *supra*, at p. 901. Bundestag and Bundesrat are the two legislative chambers of the Federal Republic of Germany. (Britannica, [Bundestag](#) (as of May 16, 2023); Britannica, [Bundesrat](#) (as of May 16, 2023).)

⁶⁵ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 403.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Id.* at p. 404.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 403.

⁷² *Id.* at p. 410.

⁷³ *Ibid.*

⁷⁴ *Id.* at pp. 404-405.

⁷⁵ *Id.* at p. 405.

⁷⁶ *Id.* at p. 406.

⁷⁷ *Id.* at p. 407.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Id.* at p. 408.

⁸⁵ *Ibid.*

⁸⁶ *Id.* at p. 399; Honig, *Reparations Agreement*, *supra*, at p. 567.

⁸⁷ *Luxembourg Agreement*, *supra*, at p. 897.

⁸⁸ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 399.

⁸⁹ Authers, *German Compensation*, *supra*, at p. 429.

⁹⁰ *Id.* at pp. 429-430.

⁹¹ *Id.* at p. 431.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Id.* at p. 433.

⁹⁵ *Id.* at p. 432.

⁹⁶ *Id.* at p. 434. In 1999, \$1 equaled 2.08 Deutschmarks. (Marcuse, [Historical Dollar-to-Marks Currency Conversion Page](#) (updated Oct. 7, 2018) (as of May 18, 2023).) Based on the conversion rates, the DM8.1 billion fund to compensate laborers was the equivalent of approximately \$3.9 billion U.S. dollars.

⁹⁷ Authers, *German Compensation*, *supra*, p. 434.

⁹⁸ Slave labor was work performed by force in a concentration camp or ghetto or other places of confinement under conditions of hardship. Forced labor was work performed by force other than slave labor in the Third Reich or its territories under conditions resembling imprisonment. (*Id.* at p. 435.)

⁹⁹ *Id.* at p. 434.

¹⁰⁰ *Ibid.*

¹⁰¹ *Id.* at p. 435.

¹⁰² *Ibid.*

¹⁰³ *Id.* at p. 437.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Id.* at p. 435.

¹⁰⁶ *Id.* at p. 437.

¹⁰⁷ *Id.* at p. 436.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Id.* at p. 427.

¹¹¹ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 394.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Id.* at pp. 394-395.

¹¹⁵ *Id.* at p. 395.

¹¹⁶ *Id.* at p. 394.

¹¹⁷ *Id.* at pp. 396-397.

¹¹⁸ *Id.* at p. 397.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Barkan, [Between Restitution and International Morality](#) (2001) 25 Fordham Internat. L.J. 46, 49.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ Colonomos and Armstrong, *German Reparations*, *supra*, at p. 408.

¹²⁵ *Ibid.*

¹²⁶ *Id.* at p. 409.

¹²⁷ *Ibid.*

¹²⁸ The Center for Justice & Accountability, [Chile](#) (as of December 27, 2022).

¹²⁹ *Ibid.*; The National Security Archive, [Kissinger and Chile: The Declassified Record](#) (as of December 27, 2022).

¹³⁰ The Center for Justice & Accountability, [Chile](#) (as of December 27, 2022).

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ Lira, *The Reparations Policy for Human Rights Violations in Chile (Reparations Policy)* in *The Handbook of Reparations* (De Greiff edit., 2010) p. 56.

¹³⁵ Lira, *Reparations Policy*, *supra*, at p. 57.

¹³⁶ *Ibid*; United States Institute of Peace, [Truth Commission: Chile 90](#) (as of May 18, 2023).

¹³⁷ *Ibid*.

¹³⁸ Lira, *Reparations Policy*, *supra*, at p. 57.

¹³⁹ *Id.* at p. 58.

¹⁴⁰ *Ibid*.

¹⁴¹ De Greiff, Law 19.123 Establishes the National Corporation for Reparation and Reconciliation and Grants Other Benefits to Persons as Indicated in The Handbook of Reparations (De Greiff edit., 2010) pp. 748-749.

¹⁴² *Id.* at p. 749.

¹⁴³ *Ibid*.

¹⁴⁴ *Ibid*.

¹⁴⁵ *Ibid*.

¹⁴⁶ *Id.* at p. 750.

¹⁴⁷ *Ibid*.

¹⁴⁸ Lira, *Reparations Policy*, *supra*, at p. 59.

¹⁴⁹ *Ibid*.

¹⁵⁰ *Ibid*.

¹⁵¹ *Ibid*.

¹⁵² *Ibid*.

¹⁵³ *Ibid*.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Ibid*.

¹⁵⁶ *Ibid*.

¹⁵⁷ *Ibid*.

¹⁵⁸ *Id.* at pp. 67-86.

¹⁵⁹ *Id.* at p. 58.

¹⁶⁰ *Id.* at p. 63.

¹⁶¹ *Id.* at p. 63.

¹⁶² *Id.* at p. 64.

¹⁶³ *Ibid*.

¹⁶⁴ *Ibid*.

¹⁶⁵ *Ibid*.

¹⁶⁶ *Ibid*.

¹⁶⁷ *Id.* at 65.

¹⁶⁸ *Ibid*.

¹⁶⁹ *Id.* at p. 66-67.

¹⁷⁰ *Id.* at p. 67.

¹⁷¹ U.S. Institute of Peace, [Commission of Inquiry: Chile 03](#) (as of Dec. 27, 2022).

¹⁷² *Ibid*.

¹⁷³ *Ibid*.

¹⁷⁴ *Ibid*.

¹⁷⁵ *Ibid*.

¹⁷⁶ *Ibid*.

¹⁷⁷ *Ibid*.

¹⁷⁸ Internat. Com. on Missing Persons, [Where are the Missing: Chile](#) (as of Dec. 27, 2022).

¹⁷⁹ *Ibid*.

¹⁸⁰ *Ibid*.

¹⁸¹ Farbstain, [Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation](#) (Lessons Learned from the Apartheid Litigation) (2020) 61 Harv. Internat. L.J. 451, 454-455.

¹⁸² Colvin, *Overview of the Reparations Program in South Africa* (Reparations Program in South Africa) in The Handbook of Reparations (De Greiff edit., 2006) at p. 209. The rand is the official currency of South Africa. (Britannica Money, [rand](#) (as of May 19, 2023).) The rand's value has fluctuated against the value of the American dollar over the years. (PoundSterling Live, [U.S. Dollar / South African Rand Historical Reference Rates from Bank of England for 1975 to 2023](#) (as of May 19, 2023).)

¹⁸³ Colvin, *Reparations Program in South Africa*, *supra*, at p. 210.

¹⁸⁴ See Britannica, [apartheid](#) (as of May 19, 2023).

¹⁸⁵ *Ibid*.

¹⁸⁶ *Ibid*. A fourth category for Asian, that is Indian and Pakistani, was added later.

¹⁸⁷ *Ibid*.

¹⁸⁸ *Ibid*.

¹⁸⁹ *Ibid*.

¹⁹⁰ *Ibid*.

¹⁹¹ *Ibid*.

¹⁹² The 1959 Extension of University Education Act prohibited established universities from admitting non-white students. (*Ibid*.)

¹⁹³ See *ibid*.

¹⁹⁴ A Ford plant in Port Saint Elizabeth manufactured vehicles that were used by the military and police. (Farbstain, *Lessons Learned from the Apartheid Litigation*, *supra*, at pp. 462-463.)

¹⁹⁵ Farbstain, *Lessons Learned from the Apartheid Litigation*, *supra*, at p. 455.

¹⁹⁶ The 1961 Indemnity Act gave police officers authority to commit acts of violence to uphold apartheid. (See Britannica, [apartheid](#), *supra*.)

¹⁹⁷ Daly, [Reparations in South Africa: A Cautionary Tale](#) (*Reparations in South Africa*) (2003) 33 U. Mem. L. Rev. 367, 368-369.

¹⁹⁸ *Id.* at p. 368.

¹⁹⁹ *Ibid*.

²⁰⁰ *Ibid*.

²⁰¹ *Id.* at p. 369.

²⁰² See Farbstain, *Lessons Learned from the Apartheid Litigation*, *supra*, at pp. 473-476.

²⁰³ *Id.* at p. 474.

²⁰⁴ See *id.* at pp. 473-476.

²⁰⁵ Daly, *Reparations in South Africa*, *supra*, at p. 379.

²⁰⁶ Farbstain, *Lessons Learned from the Apartheid Litigation*, *supra*, at p. 455.

²⁰⁷ Britannica, [apartheid](#), *supra*.

²⁰⁸ *Ibid*.

²⁰⁹ *Ibid*.

²¹⁰ *Ibid*.

²¹¹ *Ibid*.

²¹² Colvin, *Reparations Program in South Africa*, *supra*, at p. 177.

²¹³ *Ibid*.

²¹⁴ Daly, *Reparations in South Africa*, *supra*, at p. 370.

²¹⁵ *Id.* at p. 371.

²¹⁶ *Ibid*.

²¹⁷ *Ibid*.

²¹⁸ Colvin, *Reparations Program in South Africa*, *supra*, at p. 179.

²¹⁹ Daly, *Reparations in South Africa*, *supra*, at p. 372.

²²⁰ Colvin, *Reparations Program in South Africa, supra*, at p. 181 [internal quotes omitted].

²²¹ *Ex gratia* payment means any payment given out of a sense of moral obligation instead of as a legal obligation.

²²² Colvin, *Reparations Program in South Africa, supra*, at p. 182.

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Id.* at p. 183.

²²⁸ *Id.* at pp. 183-184.

²²⁹ See De Greiff, *The Handbook of Reparations* (2006) at p. 777 (granting the President authority to revise and, in appropriate cases, discontinue or reduce “any reparation”). The final Constitution did not guarantee the right to reparations either. But it adopted all the amnesty provisions in the Interim Constitution. (Colvin, *Reparations Program in South Africa, supra*, at p. 179.)

²³⁰ Colvin, *Reparations Program in South Africa, supra*, at p. 181.

²³¹ Daly, *Reparations in South Africa, supra*, at p. 373.

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ See Farbstain, *Lessons Learned from the Apartheid Litigation, supra*, at p. 456.

²³⁵ Daly, *Reparations in South Africa, supra*, at p. 375.

²³⁶ See *ibid.*

²³⁷ *Ibid.*

²³⁸ *Id.* at pp. 373-374 (internal quotes omitted).

²³⁹ *Id.* at p. 374.

²⁴⁰ *Ibid.*

²⁴¹ *Id.* at p. 374, fn. 15.

²⁴² *Ibid.*

²⁴³ *Id.* at p. 374.

²⁴⁴ Colvin, *Reparations Program in South Africa, supra*, at p. 184.

²⁴⁵ Daly, *Reparations in South Africa, supra*, at p. 372.

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ Colvin, *Reparations Program in South Africa, supra*, at p. 184.

²⁴⁹ *Id.* at pp. 184-185.

²⁵⁰ *Id.* at p. 185.

²⁵¹ *Ibid.*

²⁵² *Id.* at p. 183.

²⁵³ *Ibid.*

²⁵⁴ *Id.* at p. 182.

²⁵⁵ *Id.* at pp. 187-188.

²⁵⁶ *Id.* at p. 188.

²⁵⁷ *Id.* at p. 188.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Id.* at p. 189.

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Id.* at p. 189.

²⁶⁷ *Ibid.* This was a significant issue with other reparations programs, including the FRG-Israel Reparations scheme following World War II. (See Colonomos & Armstrong, *German Reparations, supra*, at p. 396.) Here, by contrast, the beneficiaries did not consider the money paid under the UIR “blood money.”

²⁶⁸ Colvin, *Reparations Program in South Africa, supra*, at p. 189.

²⁶⁹ *Id.* at p. 190.

²⁷⁰ *Id.* at p. 189.

²⁷¹ *Ibid.*

²⁷² *Id.* at p. 190.

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*

²⁷⁷ *Id.* at pp. 188-189.

²⁷⁸ *Id.* at pp. 187-188.

²⁷⁹ *Id.* at p. 189.

²⁸⁰ *Ibid.*

²⁸¹ *Id.* at p. 183.

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Id.* at p. 191.

²⁸⁹ *Ibid.*

²⁹⁰ *Id.* at p. 193.

²⁹¹ *Ibid.*

²⁹² *Id.* at p. 194.

²⁹³ *Id.* at p. 193.

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ Daly, *Reparations in South Africa, supra*, p. 374; Colvin, *South Africa Reparations, supra*, at p. 192.

²⁹⁷ See Colvin, *South Africa Reparations, supra*, at p. 191.

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ *Id.* at p. 194.

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ *Id.* at pp. 197, 209.

³⁰⁴ *Id.* at p. 198.

³⁰⁵ *Id.* at p. 199.

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*

³⁰⁸ *Id.* at pp. 195-196.

³⁰⁹ *Id.* at p. 196.

³¹⁰ *Id.* at p. 200.

³¹¹ *Id.* at p. 196.

³¹² *Ibid.*

³¹³ *Id.* at pp. 196-197.

³¹⁴ *Id.* at p. 197.

³¹⁵ *Id.* at p. 200.

³¹⁶ *Id.* at p. 201.

³¹⁷ *Ibid.*

³¹⁸ The Alien Tort Statute allows non-U.S. citizens to sue in U.S. courts for violations of international law done in concert with state officials. (Farbstein, *Lessons Learned From the Apartheid Litigation*, *supra*, at fn. 25, citing 25 U.S.C. § 1350.)

³¹⁹ Farbstein, *Lessons Learned From the Apartheid Litigation*, *supra*, at p. 458. The district court dismissed the lawsuit in 2014, the Second Circuit affirmed the dismissal, and the U.S. Supreme Court denied certiorari in 2016. (*Id.* at pp. 461-462.)

³²⁰ Colvin, *South Africa Reparations*, *supra*, at p. 209.

³²¹ *Id.* at pp. 209-210.

³²² *Id.* at p. 210.

³²³ [International Center for Transitional Justice: South Africa](#) (as of May 18, 2023) (hereafter “Transitional Justice South Africa”).

³²⁴ Daly, *Reparations in South Africa*, *supra*, at p. 383.

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ *Ibid.*

³²⁹ Transitional Justice South Africa, *supra*.

³³⁰ *Ibid.*

³³¹ *Ibid.*

³³² *Ibid.*

³³³ Colvin, *South Africa Reparations*, *supra*, at p. 208.

³³⁴ Daly, *Reparations in South Africa*, *supra*, at pp. 385-386.

³³⁵ *Ibid.*

³³⁶ See *ibid.*

³³⁷ Colvin, *South Africa Reparations*, *supra*, at pp. 184-187.

³³⁸ *Id.* at p. 178.

³³⁹ See De Greiff, *Luxembourg Agreement*, *supra*, at p. 777 (Chapter 5, ¶ 27, granting

the President authority to revise and, in appropriate cases, discontinue or reduce “any reparation.”)

³⁴⁰ Colvin, *South Africa Reparations*, *supra*, at pp. 178-179.

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³⁴³ de Bruin, [Indian Residential Schools Settlement Agreement](#) (Jul. 11, 2013) The Canadian Encyclopedia (as of Jan. 24, 2023) (hereinafter “de Bruin”).

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³⁴⁵ *Ibid.*

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³⁴⁸ *Ibid.*; de Bruin, *supra*.

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³⁵⁰ *Ibid.*; Miller, [Residential Schools in Canada](#) (Oct. 10, 2012) The Canadian Encyclopedia (as of Jan. 24, 2023) (hereinafter “Miller”).

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³⁵⁴ Miller, *supra*.

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

³⁵⁸ Glover, *supra*.

³⁵⁹ *Ibid.*

³⁶⁰ Miller, *supra*.

³⁶¹ de Bruin, *supra*.

³⁶² [Litigation and Courts](#), Canadian Geographic Indigenous Peoples Atlas of Canada (as of Oct. 20, 2022) (hereinafter “Indigenous Peoples Atlas”).

³⁶³ *Ibid.*

³⁶⁴ *Ibid.*

³⁶⁵ Llewellyn, [Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice](#) (2002) 52 U. Toronto L.J. 253, 262.

³⁶⁶ *Id.* at pp. 262-265.

³⁶⁷ de Bruin, *supra*.

³⁶⁸ [The Indian Residential School Settlement Agreement](#), The University of British Columbia (as of Oct. 20, 2022).

³⁶⁹ [Indian Residential Schools Settlement Agreement](#) (May 8, 2006); de Bruin, *supra*.

³⁷⁰ de Bruin, *supra*.

³⁷¹ Indigenous Peoples Atlas, *supra*.

³⁷² de Bruin, *supra*.

³⁷³ *Ibid.*

³⁷⁴ *Ibid.*

³⁷⁵ *Ibid.*

³⁷⁶ Indigenous Peoples Atlas, *supra*.

³⁷⁷ *Ibid.*

³⁷⁸ de Bruin, *supra*.

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid.*

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ *Ibid.*

³⁸⁴ Austen, [With Discovery of Unmarked Graves, Canada's Indigenous Seek Reckoning](#), N.Y. Times (June 26, 2021) (as of Jan. 24, 2023).

³⁸⁵ Austen, [How Thousands of Indigenous Children Vanished in Canada](#), N.Y. Times (Jun. 7, 2021, updated Mar. 28, 2022) (as of Apr. 11, 2023).

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ Hauser and Paz, [U.S. to Search Former Native American Schools for Children's Remains](#), N.Y. Times (June 23, 2021) (as of Jan. 24, 2023).

³⁸⁹ See, e.g., Deer, [Less than Half of the Over \\$200M Requested for Burial Searches at Residential Schools Funded](#), CBC News (Sep. 29, 2022) (as of Jan. 24, 2023); Alhmidy, [Canadians reflect about residential schools on Truth and Reconciliation Day](#), The Canadian Press (Sep. 30, 2022) (as of Jan.

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³⁹⁶ *Ibid.*

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⁴⁰² Sinha, [The Long History of American Slavery Reparations](#), Wall Street Journal (Sept. 20, 2019) (as of Apr. 12, 2023).

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⁴⁰⁴ Sutton, [Belinda Sutton's 1783 Petition](#), Royall House & Slave Quarters (as of Apr. 12, 2023).

⁴⁰⁵ Sinha, *supra*.

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⁴⁰⁸ *Id.* at p. 11.

⁴⁰⁹ *Id.* at p. 12.

⁴¹⁰ *Id.* at p. 11.

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⁴³⁴ [H.R. No. 40, 118th Cong. \(2023\) - Commission to Study and Develop Reparation Proposals for African Americans Act](#), Congress.gov (as of May 22, 2023).

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[Report](#) (Sept. 30, 1978) at p. 5 (hereafter "Final Report").

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⁴³⁹ Final Report, *supra*, at p. 21.

⁴⁴⁰ See, e.g., Cohen, Cohen's Handbook of Federal Indian Law (2005) at § 1.03[4][a] (hereafter "Cohen") (discussing the Trail of Tears and several other forcible relocations associated with Indian Removal).

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⁴⁵⁰ Final Report, *supra*, at p. 2.

⁴⁵¹ *Ibid.*

⁴⁵² *Ibid.*

⁴⁵³ *Id.* at p. 3.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ ICCA, *supra*, at p. 1050. The question of what constituted an “identifiable group” was heavily litigated in the early years of the Commission. (See Final Report, *supra*, at p. 9.)

⁴⁵⁶ *Id.* at pp. 4-6.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ Derocher, *supra*, at p. 523.

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⁴⁶⁴ *Id.* at p. 7.

⁴⁶⁵ ICCA, *supra*, at p. 1052.

⁴⁶⁶ ICCA, *supra*, at p. 1050.

⁴⁶⁷ Final Report, *supra*, at pp. 6-9.

⁴⁶⁸ *Ibid.*

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⁴⁷⁰ *Id.* at p. 9.

⁴⁷¹ *Ibid.*

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⁴⁷⁷ *Ibid.*

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⁴⁸⁴ Final Report, *supra*, at p. iii.

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⁴⁸⁷ Cohen, *supra*, § 5.06[3].

⁴⁸⁸ Churchill, *supra*, at p. 57.

⁴⁸⁹ Churchill, *supra*, at pp. 48, 53.

⁴⁹⁰ Final Report, *supra*, at p. 11.

⁴⁹¹ *Ibid.*

⁴⁹² Danforth, *supra*, at pp. 376-77.

⁴⁹³ Vance, *supra*, at p. 334.

⁴⁹⁴ Churchill, *supra*, at p. 48; Vance, *supra*, at p. 334 (noting that although settlement at the ICC was authorized by statute, the prevailing Department of Justice policy at the time was to not make settlement offers).

⁴⁹⁵ Final Report, *supra*, at p. 9.

⁴⁹⁶ Vance, *supra*, at p. 334; Danforth, *supra*, at p. 376-77.

⁴⁹⁷ ICCA, *supra*, at p. 1052.

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⁵⁸³ Niiya, [Office of Redress Administration](#) (Jan. 28, 2022) Densho Encyclopedia (as of June 1, 2023).

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⁵⁹⁸ 50 U.S.C. §§ 4214, 4216.

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¹⁰⁴⁸ Providence Municipal Reparations Commission, [Report of the Providence Municipal Reparations](#)

[Commission](#) (August 2020) City of Providence (as of Oct. 7, 2020).

¹⁰⁴⁹ *Id.* at § 5.

¹⁰⁵⁰ *Ibid.*

¹⁰⁵¹ See [Testimony of Diana Perdomo](#) (May 2, 2022) [Providence Municipal Reparations Commission](#), (as of Oct. 7, 2022).

¹⁰⁵² Providence City Council, [Ordinance 38099 COVID-19 Equities Program Budget](#) (Nov. 9, 2022) City of Providence, (as of Oct. 7, 2022); Russo, [Elorza Signs Providence’s \\$10M Reparations Budget. Here’s What’s in It](#) (Nov. 18, 2022) The Providence Journal, (as of Mar. 13, 2023); Abdul-Hakim et al., [Providence Establishes Reparations Program to Praise and Criticism](#) (Jan. 31, 2023) ABC News, (as of Mar. 13, 2023).

¹⁰⁵³ See, e.g., Marcelo, [Mayor Proposes \\$10M Reparations Spending Plan](#) (Aug. 25, 2022) Associated Press, (as of Oct. 3, 2022) (chair of Commission noting that \$10 million “is nice, but [...] definitely not enough for true reparations”).

¹⁰⁵⁴ See, e.g., [Testimony of Keith Stokes](#) (May 31, 2022) [Providence Municipal Reparations Commission](#), (as of Oct. 7, 2022).

¹⁰⁵⁵ Elorza, [Mayor of Providence Exec. Order No. 2022-6](#) (Aug. 25, 2022) City of Providence, (as of Mar. 13, 2023).

¹⁰⁵⁶ *Ibid.*

¹⁰⁵⁷ *Ibid.*

¹⁰⁵⁸ *Ibid.*