The Ethics of Reparations Policies

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Introduction

The normative reasons for repairing past injustices has been the subject of much debate. Some scholars offer backward-looking justifications that do not hinge on whether past injustices affect present conditions (e.g., Miller 2007; Ridge 2003). Others instead point out that reparations are justified by forward-looking considerations of justice (e.g., Hendrix 1995; McCarthy 2004; Tan 2007; Valls 2007). However, questions of justification do not exhaust the range of pressing normative challenges that reparations raise. Normative reflection on the process of devising reparations programmes is as important and challenging as thinking about why reparations are owed.

Consider, for instance, the recent negotiation process between Japan and South Korea over the so-called ‘comfort system’ that infamously forced women – mostly from Korea – to provide sexual services to Japanese soldiers before and during World War II. Japan agreed to establish a 1bn yen governmental fund for those few survivors who are still alive, officially recognized the involvement of the Japanese military in the sexual enslavement of the ‘comfort women’, and formally issued its ‘most sincere apologies’ for the abuses and trauma suffered by the women. South Korea, for its part, promised to consider the wrong as finally redressed and to not raise the ‘issue’ anymore in international forums. South Korea also

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1 Written for the Routledge Handbook of Ethics and Public Policy, ed. Annabelle Lever and Andrei Poama.
2 For an excellent account of the ‘comfort women system’, see Soh (2008).
agreed to negotiate the removal of a controversial statue representing the comfort women that was placed outside the Japanese embassy in Seoul. The agreement was welcomed and celebrated by both the two countries and their international partners as promoting the beginning of a new era in the relationship between Japan and South Korea, which has been strained by the unsettled imperial past (McCurry 2015). However, many South Koreans have opposed the agreement and, in particular, some survivors of the comfort system have vehemently criticised it as profoundly disrespectful because it was reached without their consultation (McCurry 2016). Moreover, non-Korean women from other territories occupied by Japan who were also sent to frontline brothels and forced to have sexual intercourse with Japanese soldiers have challenged the idea that the unjust past of the ‘comfort women system’ has been repaired through the bilateral agreement between Japan and South Korea. Without the inclusion of all those who were sexually enslaved by the Imperial Japanese Army, they argue, reparations will always remain incomplete.

It is not enough simply to pay reparations when they are owed. Further work must be done to grapple with the difficult ethical considerations that arise in devising reparations programmes. In this chapter, we identify three ethical challenges that seem to recur again and again at the implementation stage: (i) the problem of political instrumentalization; (ii) the problem of exclusion; and (iii) the problem of inclusion. Addressing these issues is not only desirable but also constitutes a demand of justice. Indeed, when the design of reparations programmes neglects ethical considerations such as the ones we identify, their implementation is likely to leave the injustices in need of repair unscathed and – even worse – compound existing forms of exclusion, power imbalances, and marginalization. Reasoning normatively about how to design reparations programmes should thus take centre stage in the ethics of reparations. As we argue, resolving the problems of political instrumentalization, exclusion, and inclusion is not possible without bringing in reparations claimants as
participants who play an active role in designing the reparations programmes that are to benefit them.

Two disclaimers before proceeding. First, like many reparations scholars, we find the UN’s principles on reparations for human rights violations helpful in distinguishing between restitution (i.e., return to the status quo ante), compensation or redress (monetary or material transfer when restitution is not possible) and satisfaction (i.e., symbolic measures like apologies) (see “Basic Principles and Guidelines” 2005). A consensus seems to have emerged that reparations should include both material and symbolic forms of repair, and though we agree with this by and large, this essay does not meaningfully engage with the question as to the form that reparations should take. Second, and relatedly, the issues discussed in this chapter should not be regarded as exhausting all possible ethical concerns that the design of reparations programmes raises. By focusing on the three problems we’ve identified, we simply hope to show they are particularly pressing and, in this respect, exemplify the urgency of a serious normative engagement with the ethics of devising reparations programmes for past injustices.

The chapter proceeds as follows. Section 1 explores the problem of political instrumentalization, which revolves around a worry expressed by reparation claimants and victims of injustice that reparations can seem to be a way for governments to legitimize their power, rather than achieve justice. We argue that a necessary, although not sufficient, requirement that reparations programmes must meet to minimize this problem is the active involvement of claimants in the designing process. However, actively involving claimants is not a straightforward task. Sections 2 and 3 identify and discuss two ethical issues that arise in spite of there being some attempt to engage with those who suffered from past injustices. While Section 2 focuses on the problem of exclusion, which has to do with establishing the criteria for determining who has a valid reparations claim, Section 3 tackles the problem of
inclusion, which arises because not all individuals with a potential claim to redress will be actively mobilized in making a reparations demand. In all three sections, our analysis is informed by real-world cases in liberal democratic societies. This approach allows our analysis to be guided by the problems that actual reparations claimants face, as well as to consider responses that are attentive to on-the-ground political circumstances.

1. The problem of political instrumentalization

We tend to regard reparations programmes as measures that are always welcomed by those who have suffered from a past injustice or from their descendants. This is, however, a simplification of how reparations programmes have been historically received by their potential beneficiaries. Consider the Reparations Agreement between Israel and West Germany, which was signed on September 10, 1952 with the official intent to financially help Holocaust survivors who lived in Israel. Such an agreement is often regarded as exemplary, an early case in which reparations were paid, showing that the latter need not be regarded as a quixotic enterprise. Yet it is noteworthy that even this agreement was not enthusiastically received by everyone in the Israeli public. Both right-wing and left-wing organizations and parties criticized the agreement by arguing that accepting reparations from West Germany amounted to forgiving Germans for the crimes committed during the Holocaust, and rallies and protests took place before and after the agreement was signed (Segev 1993: 211–52). In other words, reparations programmes may meet with resistance not only from wrongdoers but also from potential beneficiaries.

Although some may consider beneficiaries’ resistance to reparations an unfortunate yet inevitable feature of any attempt to repair past wrongdoing, often it signals a serious problem with the underlying and covert goals of specific reparations programmes. This occurs when governments use reparations not as a tool of justice but as a way to legitimize their authority and strengthen their power. Call this the problem of political
To appreciate the seriousness of this problem and how it can forestall historical justice, consider the case of the Mothers of Plaza de Mayo who have relentlessly refused reparations from the Argentinian government for the ‘disappearance’ of their children during the ‘Dirty War’.

The ‘Dirty War’ refers to the period between 1974 and 1983 in which the Argentinian military junta implemented a regime of state terrorism against citizens suspected of socialist allegiances. A still unclear yet shocking number of left-wing activists, guerrillas and militants, trade unionists, students, and journalists ‘disappeared’ after having been detained, tortured, buried in unmarked graves or having had their corpses incinerated by the junta. Moreover, many of the children who were abducted with their parents or were born in detention centres did not come back to their families but were secretly adopted by military couples. The Madres’ activism addressed how subsequent governments handled the atrocities committed during the period of the military junta (Moon 2012: 5). The two successive governments, led by Raul Alfonsín and Carlos Menem respectively, were equivocal when it came to holding the military junta accountable for their crimes. Although in 1985, Alfonsín’s government started a series of trials for the members of the junta – culminating with the imprisonment of Jorge Videla, the Dirty War’s architect – the government went on to introduce ‘amnesty laws’, stopping the very process of accountability that the government had put in place. During Menem’s ten years as president of Argentina, Alfonsín’s amnesty laws were not only maintained, but pardons were granted to the members of the junta who were in jail, including Videla (Moon 2012: 6). In 1977, the mothers of the victims of the junta began mobilizing and founded the grassroots association Madres de Plaza de Mayo both to gain information about the disappearance and location of their children, and to press governments to prosecute the perpetrators. When Alfonsín’s and later Menem’s governments
offered reparations to the Madres for the disappearance of their children, they strenuously rejected the proposal (Arditti 1999; Bouvard 1994).  

Recent accounts of reparations in the context of past injustices and violations of human rights have pointed out that there is an important link between reparations programmes and the legitimacy of state power. For instance, Steven Winter (2014: 7) argues that when wrongdoing was authorized by the state through direct sanction, permission or toleration, the state ceases to properly function and its legitimate power is undermined and in need of repair. Reparations, so interpreted, become the way in which states attempt to ‘repair the damage that authorized wrongdoing inflicts upon political legitimacy’ (Winter 2014: 7). The Madres’ refusal to accept reparations for the crimes perpetuated by the military junta was precisely a protest against the Argentinian state’s intention to overcome its legitimacy deficit and strengthen its power simply by offering monetary and symbolic reparations for the ‘disappearance’ of their children. Their refusal expressed a normative stance on the very legitimacy of reparations programmes as a tool to restore the Argentinian state’s political legitimacy. Had the Madres accepted reparations, other citizens may have regarded the Argentinian government as fully legitimate. By refusing reparations, the Madres were able to show that the governments succeeding the military junta did not have moral standing to pay redress. Given their shortcomings in addressing the crimes of the Dirty War, the governments could not acquire legitimacy merely through monetary means.

Of course, there may be cases in which a government’s interest in improving perceptions of its legitimacy and the victims’ interest in receiving redress align neatly, and

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3 N.B. The Madres split in two factions in 1986. The Mothers of the Plaza de Mayo- Linea Fundadora started to cooperate with the state for the search of the missing corpses and eventually accepted forms of redress, including memorials for their children. Conversely, the Asociacion Madres de Plaza de Mayo relentlessly rejected any type of collaboration with the state and refused any form of reparation. When referring to the Madres’ refusal of reparations after 1986, our focus is mainly on the latter association. Note that the split among the Madres is an example of internal divisions within a group and the unwillingness of some to receive any form of reparations, issues we discuss in Section 3.
the problem of political instrumentalization does not arise. Winter’s legitimacy-based theory of state redress is most definitely not an argument in favour of instrumentalist conduct by governments. The issue is rather when the potential beneficiaries feel they are being used as pawns in a government agenda over which they have no say. The case of the Madres in Argentina points to at least two warning signs to identify the problem of political instrumentalization.

First, reparations programmes should not be advanced with the aim of imposing a ‘top-down’ and already-established interpretation of the unjust past, but as an opportunity to open a dialogue over it. As pointed out by Moon (2012: 8), the Madres perceived that accepting reparations would also have meant subscribing to the ‘truth’ about state terror and their children’s disappearance that succeeding governments were trying to impose, such as Alfonsín’s ‘theory of the two evils’, which regarded military terrorism and guerrilla opposition as equally responsible for crimes and wrongdoings. Before even starting to devise reparations programmes, an inclusive conversation about the meaning of unjust past events and the distribution of responsibilities should take place (Amighetti and Nuti 2015: 392). When, instead, the state makes reparations conditional on acceptance of its interpretation of past injustices – as in the Argentinian case – reparations programmes are more likely to be an instrument to legitimize and strengthen state power, rather than giving survivors, their families, and their descendants their due.

Second, reparations programmes cannot be conceived of as substitute for criminal justice. The Argentinian governments’ attempts (especially during Menem’s administration) to set up a redress programme addressed to the parents and children of the disappeared were combined with a reluctance to bring the perpetrators to justice. As part of their fight for accountability and retributive justice, the Madres refused to declare their disappeared children as ‘dead’ and to accept the exhumation of their corpses. Instead they demanded that
their children be regarded as still living, a way of demonstrating that ‘victims of injustice are not “dust and nothing” but retain a status and a presence as claimants on justice’ (Booth 2011: 752). In Hebe de Bonafini’s words, this demand ‘question[ed] the system’ as the Madres did not want to ‘accept their [children’s] deaths until someone [was] made responsible’ (de Bonafini 1990: 42; quoted in Moon 2012: 7). Indeed, the Madres held their last March of Resistance at Plaza de Mayo in 2005 when the Kirchner’s administration repealed and declared unconstitutional the amnesty laws and pardons of previous governments. Only at that point, for the Madres, the government proved not to be an enemy of its people anymore.

In order to minimize the risk of the political instrumentalization of reparations programmes, the direct involvement of their potential beneficiaries is necessary. It is only when potential beneficiaries are treated not as passive recipients of reparations but as invaluable actors in thinking about (i) what reparations programmes should aim for, and (ii) how they should be devised, that a fuller understanding of past wrongs can be gained. Moreover, engaging with potential beneficiaries helps put pressure on the state not to tender redress in an exchange for the punishment of those who are liable. Of course, the desideratum of the direct involvement of potential beneficiaries does not on its own guarantee that reparations programmes will not be tools of political legitimacy. There are many scenarios in which the bargaining power of beneficiaries is too insufficient to exercise influence on the state or not to be co-opted by it. However, if a reparations programme aims at being meaningfully legitimate, and not just as an instrument of a legitimacy project of the state, involving beneficiaries in deliberation from the beginning is invaluable. Carving out space for participation cannot itself eviscerate the problem of political instrumentalization, but it can at least show respect for the would-be beneficiaries as persons with voices worthy of being heard. As such, their involvement is a necessary, although not sufficient, requirement
that reparations programmes have to meet in order to defend against challenges to their legitimacy.

Nevertheless, the process of involving beneficiaries in the design of reparations programmes raises pressing ethical issues having to do both with the identification of who counts as a legitimate claimant and with potential disagreements within the community of beneficiaries. To such issues, we now turn.

2. The Problem of Exclusion

If government officials take the time to listen to reparations claimants in designing reparations programmes, one thing that is apparent is that claimants are not content if they themselves receive monetary redress, yet perceive that there are others who are unfairly denied it. The problem of exclusion arises when a reparations programme is designed in a way that turns individuals away who are perceived as having valid claims. Even claimants with modest financial situations will often say that a payment is ‘not about the money’; it is about justice being done. The problem of exclusion may cast suspicion on the government’s motives and create the sense that the reparations programme’s purpose is hush money, buying off select claimants as cheaply as possible. Indeed, a reparations programme accused of strategically excluding applicants may be seen as a political tool, thus the problem of exclusion and the problem of political instrumentalization go hand in hand.

Why would a government implement a reparations programme with too narrow a net, opening itself up to the problem of exclusion? Almost always, there are reasonable concerns on the part of the government about fraudulent claims. A filing process has to be devised whereby claimants demonstrate that they meet a predetermined set of criteria to be eligible for a payment. However, sometimes eligibility rules are determined before government officials have a good sense of how individuals were victimized, or before they are well-acquainted with the specific characteristics of the reparations claimant class. If officials
refuse to vary from the original eligibility criteria once more information emerges, this
bureaucratic mentality may undermine the very purpose of a reparations programme.

Take the example of a U.S. government-run uranium mining programme which
conscripted around 1,500 Navajo men during the atomic era. Though the federal government
knew about the health risks associated with radiation, it made no attempt to communicate this
information in its cheerful recruitment efforts, making patriotic appeals and offering the men
higher wages than they made farming and herding (Eichstaedt 1994: Ch. 5; Brugge and
Goble 2003). All this was revealed in lawsuit filed by Navajo plaintiffs who developed
radiation-related cancers. Congress resolved the matter legislatively with the 1990 Radiation
Exposure Compensation Act (RECA), which consisted of an apology and a redress
programme for the uranium miners and other Americans who contracted one of several
identified cancerous diseases as a result of atomic weapons building and testing.

However, aspects of the RECA programme created a situation where relatively few
uranium miners and families received redress. The programme required marriage records for
deceased miners’ widows. But in the 1930s and 1940s, Navajo marriages took place in
traditional ceremonies and were undocumented. Moreover, a claimant needed to show
employment records. However, for the uranium mining programme, the government’s
recordkeeping had been substandard; uranium miners were often hired and paid without an
official contract. On top of this, many of the uranium miners did not speak English
(Eichstaedt 1994; Brugge and Goble 2003).

If a miner or surviving spouse cleared these hurdles and submitted a complete RECA
application, there was still the matter as to how the application would be assessed. If a
miner’s medical records showed that he had one of the eligible cancers, his radiation
exposure was then estimated based on how long he worked and what mine he worked in.
Critics complained that Congress rejected the view, standard at the time, that radiation
exposure at the level of 40 WLM would lead to increased risk; they instead went with the
standard of 200 WLM for non-smokers and 500 WLM for smokers (Brugge and Goble 2003:
388-390). Critics also charged that the data on WLM values for individual mines was
imperfect, and that the sharpness of the RECA eligibility criteria did not square with the need
to account for measurement error and uncertainty (Brugge and Goble 2003: 391). Indeed,
relative to estimates, few uranium miners actually met RECA’s eligibility criteria (Eichstaedt
1994: xi). As Stuart Udall, the former Interior secretary and the uranium miners’ attorney, put
it, ‘They’ve put these people in a bureaucratic legal maze designed to prevent compensation
to Navajo miners. There’s no pity for what happened to these people. No understanding. You
have a compassionate programme administered in an utterly uncompassionate manner’
(Schneider 1993).

In running a reparations programme, the government does have a legitimate interest in
erecting safeguards against fraud. As much as a government should be wary about the filing
process being too onerous, it would also undermine the purpose of the reparations
programme if no attempt was made to distinguish between authentic and inauthentic
claimants, and the programme was widely regarded as a gravy train. However, if the criteria
are too stringent, this may undermine a reparations programme’s aim. ‘We believe that it is
not possible to simultaneously apologize, set highly stringent criteria, and place the burden of
proof on the victims, as did the 1990 RECA’, wrote Doug Brugge and Rob Goble, who
authored a critical evaluation of the RECA programme. ‘Compensation should be a positive
act of redress, an act of contrition, not a miserly and bureaucratic programme that views the
recipients of the apology with suspicion’ (Brugge and Goble 2003: 395). As an antidote,
Brugge and Goble point to active collaboration with claimants:

It is not reasonable to expect that the initial design of any compensation
scheme will be perfect. But justice requires active collaboration with the
persons who are seeking compensation to assure that the program is
appropriate. Just as important is ongoing monitoring to assess whether or not
the program is functioning as intended, and prompt adaptation of the program when problems are identified (Ibid.).

Dissatisfaction with the RECA programme led to the formation of a ‘Western States RECA Reform Coalition’. This grassroots movement successfully pushed for Congress to modify some of the requirements so that the administration of RECA would be a better fit with the original intent of the statute (Brugge and Goble 2003: 392). But no formal provisions were made around active collaboration going forward.

Presumably, government officials charged with the administration of the RECA program simply did not know about traditional Navajo marriages, or realize that not all uranium miners were provided with formal contracts.\(^4\) Active collaboration during the period when eligibility criteria were being designed would have shored up some of these issues preemptively, creating a more smoothly-running programme that would have benefited both the claimants and the government officials charged with its administration. However, it is not only the goal of efficiency that is served. A claimant who has to gear up for a second battle to prove his or her eligibility after initially fighting for reparations may have the sense of being re-victimized and feel moral outrage. If we follow the traditional definition of justice as giving each person their due, a reparations programme that systematically turns away individuals with meritorious claim is unjust. Justice thus demands active collaboration in determining criteria that serve the goal of paying reparations to those for whose purpose the programme is being instituted.

3. The Problem of Inclusion

Typically, reparations programmes are preceded by mobilization on the part of claimants who demand that the government pay redress: initiating a lawsuit against the government,

\(^4\) Eichstaedt (1994) points to evidence of more deliberate obstructionism on the part of Justice Department officials.
pressuring the legislature to pass a redress bill, and in some cases, doing both. In the
transition from a reparations movement to a reparations programme, the problem of inclusion
naturally arises. The set of all possible reparations claimants is larger – sometimes much
larger – than the set of claimants who are mobilized. It would be an issue for the government
to only make right with those who are actively taking part in the reparations movement,
ignoring the others. Yet at the same time, it may be problematic to assume that individuals
who are not mobilized want the exact same thing as those who are.

Consider the ambitious healing programme undertaken by the government of Canada
in response to thousands of lawsuits from former First Nations, Inuit, and Métis students of
assimilationist residential schools. In interviews conducted by researchers, it was evident that
many of the former residential school students – ‘Survivors’, as they are known – actively
distrusted the Canadian government as a result of the physical, sexual, and cultural abuse
they endured in the schools. Some Survivors who received reparations reported being unable
to look at the check or open the envelope it was mailed in; others described it as ‘blood
money’ (Reimer 2010: 52-53). One person sensed that the check meant, ‘you’ve got your
money now be quiet’. Another said she ‘felt like a prostitute, like I sold my body’.

Unfortunately, some Survivors who saw the money as a reminder of childhood trauma
and sexual abuse were anxious to get rid of it as fast as possible, spending it on alcohol and
drugs (Dion Stout and Harp 2007: 31-33). As the authors of a 2007 report put out by the
Aboriginal Healing Foundation assessed the matter, ‘to the extent healing is already
underway when a payment arrives, LSPs [lump sum payments] can play a role in enabling or
deepeening opportunities to build upon it’ whereas they “‘accelerated and exacerbated the
problems of individuals” who were not on a healing journey’ (Reimer 2010: 776). It is
possible to speculate that individuals already on a healing journey would be the ones
mobilized in making a reparations claim, perceiving that the government’s concrete
acknowledgment of wrongdoing and accountability would help bring closure to past events. How then to include the voices and the needs of individuals who are not mobilized in making a reparations demand? Moreover, what if a redress movement consists of multiple mobilized factions making different, even contradictory, demands for the same harm?

The problem of inclusion refers to the set of issues that arise when governments pay reparations to a large group of claimants when (1) some did not play an active role in demanding redress, and (2) different subgroups are mobilized around different sets of redress-related aims. In examining the problem of exclusion, we saw that much of the burden rests on the reparations payee – in most cases the government – to be responsive to claimants as difficulties with the claim filing process and eligibility criteria emerge. With the problem of inclusion, it is still incumbent on government officials to take the issue seriously and design a reparations payment process in a way that is responsive to it. However, part of the burden nevertheless rests on the mobilized reparations claimants to legitimate their demand for redress to non-mobilized group members, as well as to think through the complicated issues of representation within groups of reparations claimants, i.e., ‘who can and should speak for whom?’.

3.1 Non-Mobilized Beneficiaries

Let us first turn to the issue of including non-mobilized beneficiaries and the Canadian residential schools redress programme, which again was set up in response to lawsuits from Survivors. The shape of a reparations movement often looks different if it aims at winning a lawsuit versus passing reparations legislation. At least in theory, lawsuits are decided on their legal merits, detached from political considerations. Group members do not have to pour their energies into winning over public support for their cause – including the

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\[5\] That being said, published research on the RECA programme, which also responded to lawsuits, does not suggest that the problem of exclusion was an issue.
support of other group members who have not given much thought to the matter of redress. Rather, efforts are focused on building the strongest possible legal case: with lawyers, and usually not in full public view.  

However, imagine being a member of a victimized group who receives a letter in the mail informing you that you are potentially eligible for a government payment in recompense for trauma you endured decades earlier. Imagine that this is the first time you ever heard about the redress programme. You probably would not automatically assume that there are others with similar backgrounds to yours who had been fighting for redress for years or decades. It would make sense, being in such a position, to be sceptical of the government’s aims, never having considered your experience as a compensable one. This perspective points to the importance of a highly visible redress movement that serves to educate previously non-mobilized group members about why redress is being sought, and encourage them to begin their ‘healing journeys’ by being a part of the redress movement itself. Mobilizing group members is, of course, not the only reason for having a highly visible reparations movement: a movement can also educate the broader public about the original wrong and its structural effects, garner support for redress from non-group members, encourage (in the context of colonial injustices) settler-citizens to take responsibility for their individual and collective contributions to injustice, and pressure the government to enter into settlement talks and issue a formal apology. But ensuring that the redress movement is known to, and has broad legitimacy with, as many group members as possible is an underappreciated reason for building a reparations movement, regardless of whether a judicial or legislative strategy is decided on.

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6 This is not to say that the Survivors acted wrongly in choosing a judicial rather than legislative redress strategy. Mobilized reparations claimants have to consider their chances of success in each venue, and proceed accordingly. Also, note that some reparations movements pursue legislative and judicial redress simultaneously, or one after the other strategy proves unfruitful.
However, the onus is not only on group members to solve the problem of inclusion. Government officials can and should do more to include those unaware that redress is being fought for on their behalf. Here public hearings can play a positive role. Public hearings can take the form of a Truth and Reconciliation Commission, which is the route the Canadian government decided on. Alternatively, they might be held as part of a commission’s mandate to investigate the injustice. Public hearings were an important aspect of the Japanese American internment redress movement, and interestingly, it was precisely because many white Americans denied that WWII internment had been wrong that the ‘Commission on Wartime Relocation and Internment of Civilians’ (CWRIC) was established. But as the chair of the Japanese American Citizens League’s redress committee, John Tateishi, put it, his group supported the CWRIC because ‘Japanese Americans really didn’t know much about [the redress movement], and certainly members of the Congress didn’t know and weren’t convinced that the internment was wrong… before we could do anything we needed to educate the public’ (Wolfe 2013: 206). Ultimately, the CWRIC hearings were crucial in ‘organizing and energizing Japanese Americans to fight for redress’ and creating a situation where even ‘though Japanese American organizations advocated different paths and objectives, the Japanese American community agreed that redress was an appropriate goal’ (Maki, Kitano, and Berthold 1999: 233, 235).

By contrast, the Truth and Reconciliation Commission of Canada took place concurrently with the monetary redress programme, rather than preceding it. Criticisms of Canada’s Truth and Reconciliation Commission abound that have little to do with whether hearings came before or in conjunction with the disbursal of redress payments (see, e.g., (Niezen 2013). Yet the latter nevertheless points to a missed opportunity. In holding public hearings before making a reparations determination, it becomes less likely that an eligibility letter is a would-be claimant’s first acquaintance with the idea of reparations. It provides her
with the opportunity to play a role in the reparations movement. To the actively mobilized claimant, reparations are more likely to be seen as the government’s symbolically acknowledging the wrong, and less likely to be seen as blood money.  

Holding public hearings is wise as the first stage in a government’s addressing the problem of inclusion, but it is nevertheless only a first stage. As we shall see shortly with the Chinese Canadian ‘head tax’ redress movement, the problem of inclusion is also relevant to determining the mode of redress. The sense of some Survivors was that the Canadian residential school system was not an appropriate context for individual reparations payments: ‘the residential school experience is not an individual phenomenon’ (Reimer 2010: xvi). Choosing between individual reparations payments and a group reparations programme should not be the task of the government alone, or by government officials in partnership with a small, self-selected number of group members. A deliberative democratic forum that brings together a diverse set of group members is the best way to assure that the mode of redress determined is viewed as legitimate by future reparations recipients (see Amighetti and Nuti 2015).

Finally, the problem of inclusion may be related to the problem of exclusion: if the claim filing process is difficult and there is the impression that the government is trying to turn individuals away to save money, individuals not previously mobilized are more likely to view the reparations programme cynically. If a deliberative democratic forum is instituted, it may also be necessary to have it continue as the claims filing process is taking place as a way of providing ongoing feedback on the reasonableness of the eligibility and paperwork requirements.  

If carefully designed, public hearings can work as the ‘inclusion’ stage of a deliberative democratic forum on what reparations should amount to (see Amighetti and Nuti 2015). Amighetti and Nuti (2015) suggest that a deliberative democratic forum should also discuss issues of implementation.
3.2 Non-Unified Redress Movements

The final version of the problem of inclusion is this: when redress movements are not cohesive, and there are different groups who favour different tactics and have different goals, what responsibilities fall on government officials? What responsibilities fall on group members who find themselves in this situation?

Chinese Canadian head tax redress is a particularly salient illustration. Beginning in 1885, the Canadian government began charging Chinese immigrants $50 to enter the country – an amount that quickly increased to $100, and then $500 (Winter 2008: 122). Between 1923 and 1947, Canada forbade Chinese immigration altogether. The redress movement began in 1983, when one head tax payer approached his MP asking for assistance in obtaining a refund (Li 2008: 131). From there, Chinese Canadians began registering head tax certificates with the Chinese Canadian National Council (CCNC), an anti-racism organization that agreed to advocate on behalf of head tax payers and families. Before long, 4,000 Chinese Canadians registered head tax certificates with the CCNC.

The redress movement spearheaded by the CCNC was broad, inclusive, and very visible, building ‘media campaigns, public awareness initiatives, and community networks of support’ (‘Chinese Head Tax and Exclusion Act Redress’ 2003). Its leaders came from ‘unions, churches, women’s groups, other minority groups, aboriginal groups, Chinese community and other community groups’; ‘thousands of ordinary people… signed petitions and sent in postcards’ supporting redress at the bidding of the CCNC; and it organized ‘Last Spike’ events across Canada to raise awareness about the role of Chinese Canadian immigrants in constructing the Canadian Pacific Railway. However, the CCNC was very firm on three demands: (1) a formal apology from the Canadian government, (2) individual

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9 The Chinese head tax and immigration ban were implemented in response to a belief expressed by white Canadians at the time that Chinese workers were taking jobs and driving down wages (James 2013). Chinese immigration was reinstated in the postwar period, but it was not until 1967 that Chinese immigrants were given the same treatment as immigrants of other nationalities (Li 2008: 129).
reparations, not just funds to the group, and (3) reparations to head tax families, i.e., paying the children of head tax payers if their parent is deceased. This last point was crucial because the head tax, followed by twenty-four years of exclusion, caused families to be separated (Li 2008: 129; Winter 2008: 133).

Two decades after the redress movement began, public pressure was such that the Conservative party, following up on an election campaign promise, backed a private member bill that apologized for the unjust treatment that Chinese Canadians received. However, it proposed that redress take the form of an education foundation – to be negotiated with the National Congress of Chinese Canadians. Described as ‘shadowy’ and having ‘no history of anti-racism activity’ (James 2013: 39-40), the National Congress seemed to have a seat at the table for one reason. It was a group willing to accept an apology without individual reparations, while claiming to represent Chinese Canadians.

It is true that not all Chinese Canadians supported the CCNC’s goal of individual reparations. ‘No group can claim to represent an entire community, especially one as large and diverse as the Chinese Canadian community’, as the CCNC itself acknowledged (‘Chinese Head Tax and Exclusion Act Redress’ 2003). In the early 1990s, there had been tension between the CCNC and another group called the Toronto Chinese Head Tax Action Committee, which criticized the CCNC for being too insistent on individual payments (Li 2008: 131-132). However, the CCNC did see itself as being the legitimate representative of the 4,000 Chinese Canadians who had registered their head tax certificates with the organization, and expressed its outrage that the bill set out exclusive negotiations with the National Congress. Many other organizations and media outlets were highly vocal in their disapproval of the bill, and it expired without passage.

Canadian government officials acted wrongly, no doubt, in strategically selecting an organization to negotiate with based on its predetermined idea about how far redress should
go. However, responsibility also falls on members of the National Congress. Given the prominence of the CCNC’s redress campaign, and its formal claim to representing 4,000 head tax payers and families, it never should have agreed to exclusive negotiations with the Canadian government on the subject of redress. This does not mean, of course, that the CCNC should have agreed to exclusive negotiations had it been in the National Congress’s position. Any organization advocating for redress as part of a broader movement in which there is significant disagreement owes it to the community at large not to monopolize representation.  

Conclusion

It may seem that the most challenging ethical dilemmas about reparations arise when justifications for reparations programmes are discussed. In this chapter, we have shown that such an assumption is flawed because it neglects how the design of reparations programmes posits serious ethical issues. By looking at real-world cases, we have identified three problems that any reparations programmes for past wrongs should address: the problems of political instrumentalization, exclusion, and inclusion. Reparations programmes should meet (at least) three desiderata: (i) they should be seen as legitimate by potential beneficiaries, i.e., they should not be regarded as a mere political tool to legitimize the power of governments; (ii) they should establish fair criteria to determine who can qualify as a proper claimant; (iii) they should be as inclusive as possible. We have shown that reparations programmes are closer to incorporating such desiderata when they actively involve reparations claimants and deploy deliberative mechanisms to reach and engage with potential beneficiaries. Obviously, in this chapter we could only focus on three problems that the design of reparations programmes

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10 In the end, the Canadian government paid individual reparations to living head tax payers and surviving spouses, as well as funding educative and commemorative programmes, a programme it initiated in 2006 (Li 2008: 135). The redress programme notably did not include head tax payers’ children.
programmes presents, and offer some preliminary indications as to which kind of measures should be undertaken to minimize the problems we have identified. That being said, we hope to have shown that the process of designing reparations programmes should become more central to normative debates about reparations.

Works Cited


