

**DISCUSSION PAPERS IN DIPLOMACY**

*Apology Diplomacy:  
Justice for All?*

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## **DISCUSSION PAPERS IN DIPLOMACY**

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## **ABSTRACT**

Reparative justice has been used increasingly in recent years as a mechanism of diplomacy and reconciliation. However, even in the context of the same atrocity, some victims receive apologies and material compensation and others do not. This casts doubt on whether reparative policies are sincere expressions of guilt and remorse. This paper investigates how states make decisions about whether or not to provide reparations for victims in an effort to compensate them for violations of their human rights. It examines the conditions that influence the type of reparative justice - material or symbolic - that a state is most likely to offer. A reexamination of two of the most frequently studied cases in the scholarship on political apology, those by Germany and Japan, reveals that the stratification of victims is a consequence of the fact that reparative policies, while cloaked in moral rhetoric, are the outcomes of political bargains. Reparative justice is most likely when a state believes it can enhance its security by restoring political and economic relationships with offended neighbors, or, or enhance its international prestige by demonstrating a commitment to its purported values.

## **ABOUT THE AUTHOR**

Shannon Jones is a Ph.D. student at Georgia State University, United States. She holds a M.A. in Political Science from Georgia State University and a B.A. in International Relations from Agnes Scott College. She has studied human rights and migration law at Radboud University and participated in the EU Studies exchange program at the Université de Strasbourg. Her research interests include political apologies and reparations, identity politics, and transitional justice.



# **APOLOGY DIPLOMACY: JUSTICE FOR ALL?**

*Shannon Jones*

## **Introduction**

The late 20<sup>th</sup> and early 21<sup>st</sup> century witnessed a dramatic increase in the number of political apologies, so much so that it has been said that international politics is in a state of ‘apology mania’.<sup>1</sup> This wave of contemporary political apologies began, in many ways, with German reparations to Israel and the subsequent apology to Jewish victims of the Holocaust. Since then political apologies for mass atrocities have become relatively commonplace: Canada and the United States have apologized for the internment of Japanese during World War II; Pope John Paul II issued an apology in 2000 for historic wrongs committed by the Catholic church over the last 2000 years; Australia, Canada, New Zealand and the United States have apologized to their indigenous populations; Prime Minister Blair expressed regret for the inaction of the British government during the Irish Potato Famine; and, during the Clinton administration alone, the United States apologized for its failure to respond quickly to genocide in Rwanda, the Tuskegee experiment and the overthrow of the Kingdom of Hawaii. In contrast to these examples, there have also been a number of instances in which states have refused to apologize or provide reparations despite frequent demands: Turkey has repeatedly refused to acknowledge or apologize for the Armenian genocide; Australia long refused to apologize to the thousands of Aboriginal children who were forcibly removed from their families between 1910 and 1969; and the United States has resisted providing African Americans reparations for slavery.

The goal of this paper is to illuminate how states make decisions about whether or not to apologize or provide financial compensation for violations of human rights. Reparative justice has been used increasingly as a mechanism of diplomacy and reconciliation. However, even in the context of the same act of cruelty, some victims receive apologies and material compensation and others do not. This ‘acknowledgement gap’ casts doubt on whether compensatory policies are sincere expressions of guilt and remorse. It

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1) Lee Taft, ‘Apology subverted: The commodification of apology’, *Yale Law Journal* Vol. 109, No. 5 (2000), p. 1135.

is only recently that scholars have begun to consider the motivations behind political apologies and reparation agreements. While these motivations are admittedly difficult to assess, a closer look at the recipients of apologies provides some insight. Even in the context of the same abuse, some victims receive apologies and material compensation and others do not. This article seeks to illuminate this 'acknowledgement gap' and explain how states make decisions about which categories of victims will receive reparative justice. In addition, it seeks to explain which type of restitution (material, symbolic, or both) will be offered by the perpetrator.

The efforts of Germany and Japan to acknowledge and atone for the atrocities they committed during World War II have been widely studied by scholars of political apologies. This article will revisit these cases, disaggregate the categories of victims and assess the extent to which different categories of victims received symbolic or material reparations. It is argued that the type and quality of recompense offered is determined by an interaction between two explanatory variables: the extent to which a state perceives that reparation is in accordance with its security interests and the state's evaluation of the potential domestic cost of atonement. Symbolic compensations - political apologies, memorials, and days of commemoration - are the least costly form of contrition. Therefore, they may be offered even when the benefits of contrition are low. Material compensations, however, which are most costly, will only be offered when reconciliation with the victimized party serves the state's security interests.

This paper first provides an overview of the existing literature on reparative justice and the motivations behind political apologies. It then provides a theoretical model, which is grounded in rational choice theory, as to how states make strategic decisions about restitution. However, the bargaining process can be influenced by changes in the normative environment which, over time, may lower the domestic cost of recognition. The paper proceeds to assess the extent to which different categories of victims during World War II have received material and symbolic reparations. It argues that Germany provided material and symbolic reparations to the Jewish people because these policies facilitated Germany's foreign policy interests. Because reparative justice for other victims of National Socialism - forced laborers, homosexuals, the disabled and the Roma - was not linked with Germany's security interests, it was repeatedly denied. Over time, normative changes lowered Germany's domestic cost of recognition and symbolic and material amends were provided.

To counter this example, the Roma in the Czech Republic have not received symbolic or material reparations, because the persistence of

xenophobic attitudes towards the Roma makes recognition politically costly, outweighing the potential benefits of recognition. Lastly, this paper will analyze the extent to which the ‘comfort women’ who were forced into sexual slavery by the Japanese during World War II have received reparations relative to other victims of Japanese war crimes. In this instance, it is argued that because the benefits of providing reparations to these women are low and the domestic cost is high, the Japanese have provided, at best, ambiguous symbolic reparations and no material reparations. The evidence will show that reparative justice is often selective. The conclusion strives to illuminate what the implications of these findings are for scholars and policymakers.

## **Reparative Justice**

### ***What is Reparative Justice?***

In her extensive study of reparative justice, Teitel asserts that ‘reparatory practices have become the leading response in the contemporary wave of political transformation.’<sup>2</sup> In accordance with The International Center for Transitional Justice, reparative justice is defined as mechanisms that ‘seek to acknowledge victims as right - holders entitled to direct redress’ and ‘to address the consequences as well as the causes of violations in material and symbolic ways.’<sup>3</sup> There are two primary types of reparative policies: material and symbolic. Material reparations are those that involve concrete forms of compensation and ‘result in a final settlement between offender and victim and typically consist of specific agreements about compensating the victim.’<sup>4</sup> According to international law there is a duty to provide redress for harm suffered in the form of restitution and compensation. Compensation ‘should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case resulting from gross violations of international human rights law.’<sup>5</sup> Material compensation can include both economic and material benefits including

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2) Ruti G. Teitel, *Transitional Justice* (Oxford, NY: Oxford University Press, 2000), p. 127.

3) ‘Reparations’ *International Center for Transitional Justice*, available at <http://ictj.org/en/tj/782.html>.

4) Charles Barton, ‘Theories of Restorative Justice’, *Australian Journal of Professional and Applied Ethics*, Vol. 2, No. 1 (2000), p. 8.

5) See General Assembly Resolution 60/147, annex parag. 19-23.

individual and collective cash payments, trust funds, and redistribution of land or property. Material compensation is particularly important when victims are

unable to work or maintain their livelihoods, either because their employment and property have been destroyed, or they were so badly affected psychologically that they can no longer meet the economic demands placed on them to survive.<sup>6</sup>

In recent years, as transitional justice is taking place in post - conflict developing countries like Uganda, Nepal, and Cambodia scholars have emphasized the necessity of material reparations in order to address ‘the predicament of victims whose poverty and marginalization is attributable to conflict or systematic repression...or who were already poor to begin with.’<sup>7</sup> Yet others have suggested that material reparations by themselves are not sufficient, and that victims are more concerned with receiving a sincere apology that addresses their emotional damage.<sup>8</sup> Material compensation does not address ‘the ways that symbolic denigration can reproduce the conditions that led to the violence in the first place’, and, in the absence of symbolic gestures, may be perceived by victims as little more than an effort to ‘buy them off without addressing the normative aspects of past wrongs.’<sup>9</sup>

Symbolic reparations refer to policies that attempt to restore to victims their sense of dignity and moral worth. They are measures through which the culprit takes responsibility for the suffering of the victims and offers gestures and expressions of remorse. There are numerous varieties of symbolic reparation including official apologies, setting aside a day for national

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6) Ernesto Verdeja, ‘A Critical Theory of Reparative Justice’, *Constellations*, Vol. 15, No. 2 (2008), p. 212.

7) Ruben Carbazza, ‘The Right to Reparations in Situations of Poverty’, *International Center for Transitional Justice Briefing*, September 2009.

8) Heather Strang et al. ‘Victim evaluations of face-to-face restorative justice conferences. A quasi-experimental analysis’, *Journal of Social Issues* Vol. 62, No. 2 (2006), pp. 281-306; Kathleen Daly, ‘Mind the Gap: Restorative Justice in A. Von Hirsch, J.V. Roberts et al (eds.), *Theory and Practice*’, in *Restorative and Criminal Justice: Competing or Reconcilable Paradigm* (Oxford: Hart Publishing, 2003).

9) Verdeja, (2008), pp. 212-213.

commemoration and the construction and consecration of memorial sites.<sup>10</sup>  
An apology is the

most minimal but unambiguous and foundational gesture of repair...not to apologize is to fail to accept, and refusal to apologize is to deny, the fact of the wrong, the seriousness of the wrong, responsibility for the wrong, repudiation of the wrong or all of these.<sup>11</sup>

Symbolic reparations, as minimal gestures of repair, are less costly to the perpetrator than their material counterparts and, as a consequence, will be offered more frequently. Symbolic reparations, like apologies, are often accompanied by (or precursors to) offers of financial compensation. For example, the apologies offered by the United States to Japanese internees, indigenous Hawaiians, Guatemalans, and victims of the Tuskegee Syphilis Experiments, were accompanied by material reparations. However, there is often a strong resistance to providing monetary repayments for acts of cruelty in the past. Incomplete justice typically involves the provision of symbolic reparations (i.e. an official apology or commemoration) but excludes the possibility for victims to pursue material or financial compensation for their losses. For example, when the Australian government offered an official apology to the 'stolen generation' of Aboriginal children that were removed from their families between 1915 and 1969, it was accompanied by a statement that the government would not provide individual or group compensation.<sup>12</sup> Similarly, since the end of the Civil War considerations of redress for centuries of slavery have been linked to material compensation. While it is deeply ingrained in the American psyche that slavery is a mistake, the majority of Americans are resistant to providing trillions of dollars in compensation.

### ***The Benefits of Symbolic Reparations***

Some transitional justice scholars are optimistic about the extent to which apologies can facilitate reconciliation. Teitel believes that apologies are instruments of reparative justice and that the expression of remorse about

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10) South African Truth and Reconciliation Commission, 'A Summary of Reparation and Rehabilitation Policy, Including Proposals to be Considered by the President', <http://www.doj.gov.za/trc/reparations/summary.htm>.

11) Margaret Urban Walker, 'Restorative Justice and Reparations', *Journal of Social Philosophy*, Vol. 37, No. 3 (2006), p. 388.

12) 'No Pay-Out for "Stolen" Generations', *BBC*, 7 January 2008.

what has happened in the past can help restore the social order.<sup>13</sup> Generally, political apologies are assumed to have a positive impact on both the actor making the apology and the recipient. For the recipients the public acknowledgment of their suffering is said to restore their humanity.<sup>14</sup> Research has shown that victims often demand apologies because they want a public admission of transgression and guarantee that the wrongdoing will not be repeated. In addition, victims have demanded material reparations - including the restitution of property or financial assistance as compensation for their losses or to ease their integration into society.<sup>15</sup> For the offenders, the opportunity to express remorse and guilt is also said to have a restorative effect, especially when the admission of the transgression leads to forgiveness.<sup>16</sup>

Others are more skeptical of the potential of apologies to lead to reconciliation due to the very nature of political apologies. One limitation is the fact that contemporary actors are apologizing for historical abuses.<sup>17</sup> Often individuals and institutions are offering apologies for atrocities that they were not directly responsible for or that occurred so far in the past that reconciliation is no longer possible. Apologies may lose some of their meaning or be dismissed as meaningless stunts when they are offered too late or indirectly. For example, what is the value of Prime Minister Blair apologizing in 1997 for Britain's failure to address the Irish Potato Famine in the mid - 19<sup>th</sup> century? Or of Pope John Paul II's apology in 2004 for the Church's role in carrying out the crusades? Yet, others argue that if there is an institution that has historical continuity, like the Catholic Church, it is appropriate and even necessary for these actors to apologize for past abuses.<sup>18</sup>

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- 13) Ruti G. Teitel (2000); Ruti G. Teitel, 'The Transitional Apology', in Elazar Barkan and Alexander Karn (eds.), *Taking Wrongs Seriously: Apologies and Reconciliation* (Stanford, CA: Stanford University Press, 2006), pp.101-114.
  - 14) Eleanor Bright Flemming, 'When Sorry is Enough: The Possibility of a National Apology for Slavery', in Mark Gibney et al (ed.), *The Age of Apology: Facing up to the Past* (Philadelphia: University of Pennsylvania Press, 2008), pp. 99-101.
  - 15) Jullyette Ukabiala, 'Slave trade "a crime against humanity"', *Africa Recovery*, Vol. 15, No. 3 (2001), p. 5.
  - 16) Lee Taft (2000), p. 1138.
  - 17) Melissa Nobles, *The Politics of Official Apologies* (Cambridge: Cambridge University Press, 2008).
  - 18) Max Clarke and Gary Allen Fine, "'A" for Apology: Slavery and the Discourse of Remonstrance in Two American Universities', *History and Memory*, Vol. 22, No. 1 (2010), pp. 82-83.

There are others who are skeptical of the sincerity of political apologies regardless of the amount of time that has passed. According to psychological arguments, an apology must be given voluntarily in order to be genuine.<sup>19</sup> Political apologies are typically given in response to a demand from a victimized group, and are thus involuntary. In addition, the argument has been made that because political apologies are given in the public sphere, they will always be mediated so that they are appropriate for a large audience.<sup>20</sup> This mediation can prevent the genuine expression of emotion that is the hallmark of the most effective apologies. Another factor that undermines the sincerity of apologies is the fact that the actor may benefit from its deliverance. Negash notes that apologies are ‘on strange grounds in a world driven by self - interest’ and that it is difficult to distinguish ‘image - saving rhetoric’ from sincere acts of atonement.<sup>21</sup> Negash insinuates that one of the most oft - cited examples of a genuine apology - when German Chancellor Brandt fell to his knees at the memorial for the Warsaw Ghetto - may have been politically motivated given Brandt’s commitment to Ostpolitik and diplomatic success in Eastern Europe.<sup>22</sup>

### ***Why do States Apologize?***

The study of institutional apologies has been heavily influenced by philosophical and sociological understandings of interpersonal apologies. While there is awareness that the two categories of apologies are distinct, there is still a tendency to conflate their characteristics and, as a consequence, the moral component of institutional apologies has been overemphasized. Scholars have repeatedly portrayed political apologies as emotive acts or sincere efforts to confront the wrongdoings of the past, motivated by the sense of guilt perpetrators feel following a transgression.<sup>23</sup> According to Govier and Verwoerd an apology is a ‘moral agreement’ between the perpetrator and the

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19) Nicholas Tavuchis, *‘Mea Culpa’: A Sociology of Apology and Reconciliation* (Stanford, CA: Stanford University Press, 1991); Aaron Lazare, *On Apology* (New York: Oxford University Press, 2004).

20) Sandra Harris, Karen Grainger, and Louise Mullany, ‘The Pragmatics of Political Apologies’, *Discourse and Society*, Vol. 17, No. 6 (2006), pp. 715-737.

21) Girma Negash, *Apologia Politica: States and Their Apologies by Proxy* (Lanham, M.D.: Lexington Books, 2006), pp.16-18.

22) *Ibid*, 39.

23) Lazare (2004); Roy L. Brooks, ‘The Age of Apology’, in Roy L. Brooks (ed.), *When Sorry Isn’t Enough* (New York and London: New York University Press, 1999), pp. 3-11.

ones who were wronged, through which the ‘wrongdoer joins the victim in condemning (the act) and others of its kind.’<sup>24</sup> Sociologist Tavuchis believes that apologies are motivated by a sincere desire to repair damaged social relationships.<sup>25</sup> While he acknowledges that apologies can be used in self-interested and exploitative ways, he maintains that an apology can ‘work its magic by a kind of speech that cannot be contained or understood merely in terms of expediency.’<sup>26</sup>

Nobles argues that states will apologize, even when they have refused to in the past, once members of the political elite are ‘ideologically supportive of minority rights.’<sup>27</sup> Alternatively, governments will not apologize when they do not support minority rights, do not agree with minority demands or think the demands are counterproductive. Her primary argument is that

apologies are desired, offered, and given in order to change the terms and meanings of membership in a political community.<sup>28</sup>

Nobles focuses primarily on apologies that governments have made to their indigenous populations, which she believes are rarely motivated by political incentives.<sup>29</sup> Yet if apologies are made to reshape national membership, this fails to explain why states apologize to groups of people outside their boundaries or to other states.

Scholars have recently applied theories of International Relations to gain a better understanding of how apologies are used as tools of diplomacy in the international community. According to neorealist theory, although the international realm is anarchic, states can signal their benign or aggressive intentions and minimize uncertainty. Lind argues that political apologies are a means through which states can make their intentions public, thereby

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24) Trudy Grovier and Wilhelm Verwoerd, ‘The Promise and Pitfalls of Apology’, *Journal of Social Philosophy*, Vol. 33, No. 1 (2002), p. 70.

25) Tavuchis, (1991).

26) Ibid, p. 7.

27) Nobles (2008), p. x.

28) Ibid, p. x.

29) Nobles notes that, given the small size of the American indigenous population, they do not constitute a significant voter base. In addition, she provides examples of apologies that were offered in the absence of a demand. Thus, she argues, apologies are not always a response to political pressure.

influencing the extent to which they are perceived as threatening.<sup>30</sup> Lind argues that Germany's apology for the Holocaust was a signal to the international community that it no longer wanted to be perceived as a threat. She contrasts the German example with that of Japan: Japan has repeatedly apologized, but because of the nationalist backlash these apologies produced and the controversy over Japanese history textbooks that continue to glorify the country's war crimes, Japan's neighbors still perceive it to be threatening.

Other scholars have argued that apologies are motivated by ontological security, a state's desire to have a consistent sense of self and knowledge of its place in the world.<sup>31</sup> Weyeneth argues that apologies are made, in part, so that a state can repair its damaged reputation in the international community.<sup>32</sup> In contrast, a state may be unable to apologize when its identity is contested or it has a marginal status in the international community. Zarakol argues that Turkey has not apologized for the Armenian genocide, and despite the high political cost associated with this refusal, because Turkey's traumatic and incomplete incorporation into the European community undermined its ontological security.<sup>33</sup> In these instances, she argues, a 'state's own narrative sense of self is trumping the demands of the international community, ultimately undercutting the kind of respectful treatment the state desires to obtain from its partners.'<sup>34</sup> However, Zarakol does not explain why states with an insecure sense of self, such as Japan, will concede to some demands for reparative justice from the international community, but not others. Japan has provided symbolic and material reparations for wartime atrocities in its former colonies but has been more reluctant to apologize to the 'comfort women' that were forced to work in wartime brothels. Japan's national pride and

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30) Jennifer Lind, *Sorry States: Apologies in International Politics* (Ithaca: Cornell University Press, 2008).

31) On an individual level, ontological security is derived from continuity of events in one's life that creates a sense of order and stability. Constructivists have applied this concept to international relations and suggested that, like individuals, a state wants its actions to be consistent with its positive sense of identity in order to avoid chaos and anxiety. In addition, they have suggested that states want to feel positive and secure about their place in the world. For an introduction to the constructivist concept of ontological security, see Jennifer Mitzen, 'Ontological Security in World Politics: State Identity and the Security Dilemma', *European Journal of International Relations*, Vol.12, No. 3 (2006), pp. 341-370.

32) Robert R. Weyeneth, 'The Power of Apology and the Process of Reconciliation', *The Public Historian*, Vol. 23, No. 3 (2001), pp. 9-38.

33) Ayse Zarakol, 'Ontological (In) security and State Denial of Historical Crimes: Turkey and Japan', *International Relations*, Vol. 24, No. 1 (2010), pp. 3-23.

34) *Ibid*, p. 8.

narrative sense of self were at stake in all of these reparations decisions, yet the outcome of the negotiations varied considerably. In order to understand this variation it is important to recognize how Japanese reparations to its East Asian neighbors served its strategic interests and how norms of gender inequality perpetuated the invisibility of forced sexual laborers.

The fundamental weakness of the aforementioned scholarship is that it gives the majority of the emphasis and agency to the perpetrator. Whether the apology is motivated by the desire to restore damaged relationships, the opportunity for forgiveness, ontological security or diplomatic interests, there is an assumption that the state has an intrinsic awareness of the value of the apology and consequently takes the initiative in the reparative process. For scholars, like Tavuchis, who believe emotion is the engine of apology, the perpetrator makes the decision to apologize due to feelings of regret or remorse. While others have rightfully looked beyond the moral rhetoric to the security - seeking behavior (both material and ontological) that motivates decisions to apologize, they continue to ignore the role that victims and their representatives play in constraining and occasionally constituting states' interests. One goal of this paper is to try to shift the academic discussion from a perpetrator - centered understanding of offers of apology toward a victim - centered understanding of the struggle for acknowledgement. While the type of reparative justice offered is ultimately the prerogative of the state, variations in the extent to which victims have the capacity to request reparative justice and in the resources available to victim groups in their effort to exert pressure on perpetrator states can ultimately shape reparative outcomes. Thus apologies are appropriately described as transactions between victims and perpetrators, but these transactions are fundamentally political, and not moral, in nature.

## **The Cost - Benefit Analysis of Reparative Justice**

### ***The Stratification of Victims***

In the scholarship of reparative justice, victims have often been discussed as if they are monolithic. Acknowledging that selectivity seems inherent in circumstances of victor's justice, there is still a failure to appreciate the distinctions that are made between categories of victims. Not enough attention has been paid to the way in which reparative justice - both material and symbolic - is distributed selectively. Sometimes this selectivity involves a

'hierarchy of suffering', where priority is given to those victims who suffered the most.<sup>35</sup> Other times this selectivity is a reflection of the continuity of discrimination against the victimized group or the fact they are not sufficiently empowered to vocalize their demands.

Minority groups that have been subject to discrimination or persecution may be unwilling or unable to mobilize for two reasons. First, they may lack the financial or political resources that would facilitate putting their cause on the political agenda.<sup>36</sup> States that pressure for apologies on behalf of their citizens or a group of victims have access to diplomatic resources that stateless groups do not have. In addition, there may be greater incentives for states to reconcile with other states, for example the restoration of diplomatic relations or the establishment of trade or security agreements. Secondly, the persistent stigma attached to their group identity may prevent victims from coming forward to tell their story or demand reparations. Women who have been victims of rape or sexual slavery may be unwilling to publicly acknowledge their suffering due to the shame and social stigma that is associated with sexual violence.<sup>37</sup> Similarly, the stigma attached to homosexuality and physical and mental disability accompanied by ongoing persecution and discrimination prevented gay and disabled victims of the Nazi regime from voicing their experiences. Despite these limitations, groups of victims may become more mobilized with time. The diffusion and institutionalization of norms for minority rights can provide opportunities for previously disempowered groups of victims to mobilize.

The extent to which victim mobilization influences apologies and reparations has been understudied. While Nobles believes mobilized minority groups are relevant actors, she emphasizes that apologies are dependent on the extent to which political elites respect minority rights. This implies a top - down process of reparative justice in which reparative action is a consequence of ideological change amongst political elites. This paper argues that elite internalization of democratic values is neither a necessary nor sufficient

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35) For example, the Historical Clarification Program in Guatemala recommended that reparations programs give priority to widows of those who had been executed. See Claudia Paz y Paz Bailey, 'Guatemala: Gender and Reparations for Human Rights Violations', in Ruth Rabio-Marin (ed.), *What Happened to the Women?* (New York: Social Science Research Council, 2006).

36) Nobles (2008), p. 22.

37) Ruth Rabio-Marin's (2006) study of gender and reparations reveals that while women are frequently active in organizations that request reparations, they often focus on the victimization of others, rather than the ways in which they have been victimized.

condition for reparative justice and emphasizes the extent to which the process is initiated from the bottom - up. Acknowledgement is rarely given in the absence of victim mobilization. Rather, apologies and reparations are typically requested by victims' organizations or states that request them on the victims' behalf. In the case of German - Israeli reparations, for example, Jewish organizations and the Israeli government made specific claims for reparations and demands for apology from the German government. The extension of these demands for forced laborers was influenced by a number of states including the Czech Republic, Belarus, Poland, Russia and the Ukraine who pressured the German government on behalf of their victimized citizens.

Non - governmental organizations played a pivotal role in demanding recognition of the homosexual and Roma victims of National Socialism. Third - party states and non - governmental organizations can also play a role by exerting pressure on the perpetrator state to request to provide justice on the behalf of the victimized group. Third party actors can publicly shame perpetrator states, initiate legal action, issue recommendations and resolutions or threaten sanctions in an effort to encourage perpetrators to provide reparative justice, ultimately making it in the self - interest of the state to apologize.

### ***The Benefits of Reparative Justice***

According to the rational choice approach to political analysis a state is more likely to respond positively to demands for reparative justice when it is in its best interest to do so.<sup>38</sup> Apologies can be beneficial to the state in two ways. First, apologies can enhance the material security of a state by restoring diplomatic relationships with offended neighbors and removing barriers to economic and political cooperation. If the restoration of relations with the offended party coincides with the state's foreign policy interests and/or enhances its material security, reparative justice will be provided more readily. For example, Serbia's recent apology for the Srebrenica massacre has been linked to its effort to become a member of the European Union. Belgrade submitted its application for EU membership in December 2009 and EU leaders made it clear that Serbia must take responsibility for its past atrocities

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38) Michael Freeman, 'Historical Injustice and Liberal Political Theory', in Michael Gibney et al. (eds.), *The Age of Apology: Facing up for the Past* (Philadelphia: University of Pennsylvania Press, 2008), pp. 45-60.

if talks on its potential membership are going to proceed.<sup>39</sup> Several months later, in March 2010, the resolution to apologize was passed in the hopes that it would facilitate regional reconciliation and demonstrate Serbia's readiness for European integration.<sup>40</sup>

The relationship between political expediency and reparations decisions is sometimes very apparent. However, there are also instances where states have apologized or provided reparations to groups even in the absence of material incentives. The second way in which reparations decisions can be beneficial for states involves their ideational interests. States have an interest in maintaining or improving their international prestige by demonstrating their commitment to purported values. For example, in February 2010 British Prime Minister Brown apologized to thousands of migrant children who were sent to Australia and Canada by the United Kingdom during the last century.<sup>41</sup> While organizations representing the children have been requesting an official apology for over 20 years, acquiescing to these requests did not further the United Kingdom's national security interests. In this instance, the eventual decision to apologize was motivated by the United Kingdom's desire to maintain or project a certain image in the international community. More specifically, Brown did not want the United Kingdom to seem like a moral laggard relative to Australia. In November 2009, Australian Prime Minister Rudd delivered a national apology to the 'Forgotten Australians' which included an apology to the migrant children from Britain who continue to live in Australia. The Child Migrants Trust took advantage of this opportunity to publically shame the British government, saying that 'the Australian government is delivering an apology when the British government has done nothing.'<sup>42</sup> Similarly, a representative of the International Child Migrants Association was quoted in the BBC saying that

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39) Dan Bilefsky, 'E.U. Finds Serbia Censure Lacking', *The New York Times*, 31 March 2010.

40) According to Democrat MP Konstantin Samofalov, the resolution was passed for the 'sake of future generations' who would benefit from EU membership. The full quotation, along with other justifications for the resolution, can be found in Mark Lowen, 'Serbs divided over Srebrenica apology', *BBC*, 31 March 2010.

41) For more information see Peter Walker, 'Brown to apologise to care home children sent to Australia and Canada', *The Guardian*, 16 November 2009.

42) Nick Bryant, 'Ordeal of Australia's child migrants', *BBC*, 15 November 2009.

Gordon Brown should hang his head in shame. He is allowing the country that we were deported to apologise before the country where we were born. It is an absolute disgrace.<sup>43</sup>

In response, the British government stated that it was considering the implications of the Australian apology, and, later that same week, Brown announced that he would offer an official apology to the former child migrants in the new year.

Both material and ideational security have the ability to influence reparations decisions. However, the former are more resistant to domestic opposition from groups of apology resisters. Reparative justice motivated by conventional security interests may be provided even in the presence of strong domestic opposition, whereas those motivated by ideational security alone are more likely when domestic opposition is low. In addition, states apologizing for purely ideational reasons will often provide justice in a form that is incomplete or ambiguous in an effort to minimize the domestic cost. Incomplete justice typically involves the provision of symbolic compensations (i.e. an official apology or commemoration), but excludes the possibility for victims to pursue material or financial compensation for their losses. Aboriginal leader Noel Pearson, for instance, summed the arrangement up saying ‘blackfellas will get the words, the whitefellas keep the money.’<sup>44</sup> An ambiguous apology is one in which the offender does not accept full responsibility for the wrongdoing and merely expresses sympathy for the victim’s injuries (i.e. ‘I am sorry that this happened to you’). For example, when President Bush commented on the prisoner abuse in Abu Ghraib he said he ‘was sorry for the humiliation suffered by Iraqi prisoners and the humiliation suffered by their families’- a statement which implies regret but fails to accept responsibility on behalf of the United States government for the abuse.<sup>45</sup>

### ***The Costs of Reparative Justice***

States must balance the potential benefits of assenting to demands for reparations with the inevitable domestic cost of reparative justice. Reparations

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43) Ibid.

44) Ibid.

45) Elisabeth Brumiller and Eric Schmitt, ‘Bush apologizes for Iraq abuse, but Backs Rumsfeld,’ *New York Times*, 7 May 2004.

can be costly for states in two ways: 1) the monetary cost of material reparations for offended states and/or individuals 2) the political cost incurred when apologies create a domestic backlash. Material reparations are not inexpensive and these costs are amplified in the context of mass atrocity. Germany has spent an estimated \$25 billion in reparations to Holocaust survivors and provided more than \$700 million in goods and services to the Israeli government. The United States government paid \$1.2 billion to Japanese Americans to compensate for their internment during World War II.<sup>46</sup> States are frequently concerned that public apologies will give the recipient legal entitlement to financial or material reparations. One of the primary concerns in the United States Congressional and public debate over the American apology for slavery was that there would be subsequent demands for restitution. Ultimately, the Senatorial resolution passed in June 2009 only with the disclaimer that

nothing in this joint resolution authorizes or supports any claim against the United States or serves as a settlement of any claim against the United States.<sup>47</sup>

Due to the expense of material reparations, it is most likely that they will only be provided when they are seen to produce tangible benefits for the state.

In addition to the material costs involved, states have to consider the potential for domestic backlash. Jennifer Lind has noted that public apologies or even proposals to apologize for past atrocities have often resulted in domestic outcry.<sup>48</sup> Generally, backlash against public apologies is initiated by nationalists groups, conservative intellectual elites or right - wing political parties. Lind argues that this backlash damages relationships, thereby undermining the potential for apologies to lead to reconciliation. It is true that domestic backlash may impact the quality of the apology. However this article is primarily concerned with how the potential for domestic backlash factors into a state's decision of whether or not to issue reparations, it argues that states will be less likely to provide reparative justice, or will provide ambiguous justice, when the domestic costs are high and the benefits of reparations are low. Alternately reparative justice is more likely in the absence

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46) Dan Goodman, 'Reparations', *BBC*, 14 September 2001.

47) Krissah Thompson, 'Senate Backs Apology for Slavery', *Washington Post*, 19 June 2009.

48) Jennifer Lind (2008); Jennifer Lind, 'The Perils of Apology: What Japan Shouldn't Learn from Germany', *Foreign Affairs* 88 (2009), pp. 132-46.

of significant domestic opposition and when the benefits of reparation are high (see Table 1).

*Table 1: Cost - Benefit Analysis of Reparations Decisions*

	<b>Domestic Costs Low</b>	<b>Domestic Costs High</b>
<b>Benefits of Reparations Low</b>	Symbolic reparations, but no material reparations  Cases: Germany (Roma) Germany (Homosexuals)	Neither symbolic nor material reparations  Cases: Czech Republic (Roma)
<b>Benefits of Reparations High</b>	Symbolic and material reparations  Cases: Germany (Jews) Germany (Forced Laborers) Japan (South Korea, China)	Ambiguous symbolic reparations  Cases: Japan ('comfort women')

### ***The Role of the Normative Environment in the Bargaining Process***

The cost - benefit analysis involved in a state's decision to provide or refuse reparations is not static. Perpetrator states that have refused to provide reparative justice to a group of victims in the past have sometimes changed their mind. For example, the Canadian government spent decades refusing to apologize to aboriginal Canadians who were forced to attend residential schools, however, in 2008 Prime Minister Harper offered an apology (accompanied by a \$1.9 billion compensation package) and requested the forgiveness from the aboriginal peoples on the behalf of the Canadian government for 'failing them so profoundly'.<sup>49</sup> National chief of the Assembly of First nations, Fontaine, believes that Prime Minister Harper changed his mind after the government of Australia formally apologized to its aboriginal

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49) 'Canada apology for native schools', *BBC*, 11 June 2008.

people.<sup>50</sup> In addition, it has been suggested that Harper's apology was an attempt to deflect widespread international criticism of Canada's 2007 vote against the United Nations Declaration on the Rights of Indigenous Peoples.<sup>51</sup> Dramatic changes in reparative policies can be driven by either shifts in foreign or domestic policy interests or a change in the normative environment. A change in the normative environment can influence the reparation bargaining process in two ways. First, it can open up political space for previously disempowered victims to vocalize their demands and exert pressure on states for justice. The diffusion of international norms can broaden the scope of which categories of victims matter and, in the process, give voice to those who were previously 'invisible'. For example, the institutionalization of the norm of gender equality and the proliferation of NGOs that advocate for women's rights helped create political space for previously ignored victims of rape, sexual violence and sexual slavery to demand justice.

Secondly, if a norm has been institutionalized and internalized domestically, this can reduce the likelihood of strong domestic opposition, thereby minimizing the cost of apology.<sup>52</sup> For example, over time, German attitudes about homosexuality have changed. What was once considered deviant and/or abhorrent is now widely perceived as acceptable. It is unlikely that a memorial for homosexuals would have been built in the absence of this shift in public opinion. It is important to recognize that shifts in the normative environment are not uniform: there is a great deal of variation in the extent to which states have conformed to international norms. While the European Union has made a great effort to guarantee protection and respect for the Roma minority group in all of its member states, xenophobic attitudes are much stronger in some states than in others. In Germany, the public is relatively tolerant of the Roma minority and thus there was relatively little backlash when the German government announced its plans to build a memorial for Roma victims of the Holocaust. In the Czech Republic, where anti - Roma sentiment remains high, efforts by leaders to apologize to and/or

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50) Ian Austen, 'Canada apologizes to its Indians', *The New York Times*, 12 June 2008.

51) Matthew Dorrell, 'From Reconciliation to Reconciling: Reading What "We Now Recognize" in the Government of Canada's 2008 Residential Schools Apology', *English Studies in Canada*, Vol. 35, No. 1 (2009), p. 28.

52) For a definition and typology of the degrees of internalization see Jeffrey T. Checkel, (ed.), *International Institutions and Socialization in Europe* (New York: Cambridge University Press, 2007), pp. 3-7.

memorialize the Roma have the potential to undermine their political support.<sup>53</sup>

## **Post World War II Germany: The Model of Reparative Justice**

### ***Reparative Justice for the Jewish Victims of the Holocaust***

The case of German reparations for the atrocities it committed against Jewish people during World War II illustrates that the most extensive reparations programs, - those that include both symbolic *and* material components -, are driven primarily by national interests. German - Israeli relations have undeniably come a long way since the end of the World War. These countries are in many ways the epitome of a successful reconciliation. Germany has provided billions of dollars in aid to Israel, funded Jewish organizations, dramatically reformed its education system to reflect its responsibility for the Holocaust, made Holocaust denial illegal and officially banned any affiliation with the Nazi party. While Germany has and should be applauded for these efforts, it is important to remember that its decisions were not entirely morally motivated. Israeli and American Jewish leaders played a significant role by pressuring the German government to provide recognition and reparations. Beginning in 1940, The American Jewish Committee formally raised the issue of restitution and initiated research as to how to achieve it. In 1944, head of The World Jewish Congress Robinson, began insisting that Germany provide individual and collective compensation to the Jews for the damage they had suffered. In 1949, the Congress made specific claims for West Germany to provide material compensation, which led to the initiation of reparations negotiations in 1952 between Israeli and German representatives.<sup>54</sup> After much debate, Germany eventually agreed to pay \$821,100, 000 to the state of

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53) In fact, the use of anti-Roma rhetoric has been a means of achieving political success. In 1998, Jiri Cunek began campaigning to solve the Roma 'problem'. He later became chairperson of the Christian Democrat party and a January 2007 public opinion poll revealed that he was the most popular politician in the Czech Republic. Gabriela Hrabanova, 'Anti-Gypsyism in the Czech Republic', in Valeriu Nicolae and Hannah Slavik (ed.), *Roma Diplomacy* (New York: International Education Debate Association, 2007) p. 169.

54) Dean Silvers, 'The Future of International Law as Seen through the Jewish Material Claims Conference against Germany', *Jewish Social Studies*, Vol. 42, No. 3/4 (1980) pp. 215-216.

Israel over twelve years.<sup>55</sup> In 1956, Germany passed the Reparations Act for Those Persecuted Under National Socialism, which provided reparations on an individual basis to those who were persecuted for 'political opposition to National Socialism or for racial, religious, or philosophical reasons'. This act was not inclusive of forced laborers, the handicapped, homosexuals or the Roma.

The Israeli demand for reparations made a clear distinction between financial and moral liability. Demands for moral accountability were handled separately and initiated primarily by Israeli Prime Minister Ben - Gurion who publicly criticized Germany for its failure to denounce Hitler's war. German Chancellor Adenauer responded with an apology on September 27, 1951, stating that he was aware that 'immeasurable suffering was brought upon the Jews in Germany and the occupied territories during the time of National Socialism'.<sup>56</sup> While this was more of an acknowledgment than an apology, it was a significant symbolic gesture nonetheless. Subsequent apologies from German leaders have followed and in 2005, after a decades - long campaign for a highly visible national memorial, Germany inaugurated the Memorial to the Murdered Jews of Europe in Berlin.<sup>57</sup>

Overall, Germany's willingness to provide material and symbolic reparations for the Jewish people is largely a reflection of the strength of Jewish organizations and Germany's interest in improving its relations with Israel. Negash notes how there was evidence of political expediency on behalf of both parties.<sup>58</sup> After the devastating loss it suffered in World War II, Germany had an interest in improving its international image. According to the first Israeli ambassador to Germany, Ben - Natan, 'Germany had come to realize quite quickly that a reconciliation with the Jewish people carried great significance for reasons of foreign policy'.<sup>59</sup> As a result, Adenauer was willing to pay billions of dollars in reparations despite the fact that the German

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55) Pablo De Greiff (ed.), *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), p. 219.

56) Quoted in Rolf Vogel (ed.), *Deutschlands Weg Nach Israel: Eine Dokumentation mit einem Geleitwort von Konrad Adenauer* (Stuttgart, 1967) p. 36.

57) For a chronology of the memorial campaign and discussion of the many controversies that arose along the way, see 'Germany's National Memorial to the Murdered Jews of Europe', *Frontline*, <http://www.pbs.org/wgbh/pages/frontline/shows/germans/memorial/cron.html> (accessed 3 May 2010).

58) Negash (2006), p. 412.

59) *Ibid*, p. 28.

economy was in shambles and his financial experts advised against it.<sup>60</sup> If the German public was reluctant to provide reparations, many Israelis were outright resistant to accept them. There was concern that acceptance of reparations would imply forgiveness and that the Jews would, in essence, be benefiting from the suffering of their own people. On the day the reparations agreements were signed, protestors held public demonstrations and stoned the parliament. However, the Israeli Prime Minister was in favor of accepting reparations despite these strong moral objections, in part because they would help fund the newly created Israeli state.

At first glance, the extent of German reparations for the Jewish victims of the Holocaust appears inconsistent with the predictions of the theoretical model which suggests that, when both the costs and benefits of contrition are high, only ambiguous symbolic reparations will be provided. Yet an appreciation of the unique historical context in which Germany was situated can explain why high domestic costs were not as relevant as they would typically be in the calculation of contrition. It is important to note that while the Federal Republic of Germany came into existence in 1949, the occupation of Western Germany did not officially end until 1955 when the ‘*Generalvertrag*’ Treaty came into effect. The sovereignty and available policy options for the Federal Republic were constrained, making the country more beholden to the reparative preferences of the international community than to those of its domestic constituency.<sup>61</sup>

### ***The Acknowledgment Gap: Delayed Justice for Forced Laborers***

While Germany was relatively quick to provide reparations to Jewish victims of the Holocaust, it has taken much longer for the government to acknowledge other categories of victims including homosexuals, victims of forced sterilization, communists, the disabled, gypsies, and forced laborers.<sup>62</sup> This delay can be explained by the fact that reconciliation with the aforementioned groups did not serve Germany’s immediate security interests.

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60) Michael Z. Wise, ‘Reparations’, *The Atlantic Monthly*, Vol. 272, No. 4 (1993) p. 34.

61) The Generalvertrag Treaty was signed by the Western Allies and the Federal Republic of Germany in 1952, but it did not come into effect until 1955, when West Germany joined the European Defense Community. The Treaty ended Germany’s occupied status and recognized it as a sovereign state.

62) Many of these forced laborers were Jewish, but because they continued to reside in Eastern Europe, were beyond the scope of the reparations agreements Germany had made with Israel.

In addition, negative public perceptions of the Roma and homosexuals would have made any public form of penitence politically costly. These groups were not entitled to compensation under the Reparations Act of 1956 and were not mentioned in official apologies until decades after the apologies given to the Jews. The Memorial for the Murdered Jews of Europe 2005 was criticized by the President of the Central Council of Jews of Germany, Paul Spiegel, for its failure to include non - Jewish victims, saying that it suggested a 'hierarchy of suffering.'<sup>63</sup> Over time these groups have begun to pressure the German state for recognition, with some success. However, there continues to be variation in the extent to which the different categories of victims are recognized.

The demand for acknowledgment and compensation for forced laborers was initiated by the World Jewish Restitution Organization, an organization created in 1993 to serve as a voice for victims of the Holocaust in Eastern Europe. In 1998, the organization helped former laborers file class action law suits in the United States against the German government and various private companies seeking damages for their use of slave labor. In addition, the United States and five states that were home to former laborers - Belarus, Poland, the Czech Republic, Russia, and Ukraine - put diplomatic pressure on Germany. Authers notes how, as a result of these pressures, it was in the foreign policy interests of Germany to resolve the issue.<sup>64</sup> The outcome of this effort was a reparations agreement in 2001 that provided financial compensation for slave and forced laborers. German Chancellor Schroeder explicitly stated that the fund was being established to

counter lawsuits, particularly class action law suits, and to remove the basis of the campaign being led against German industry and our country.<sup>65</sup>

The fund was accompanied by an acknowledgment from the German government that it 'accepted moral and historical responsibility arising from the use of slave and forced labor'. Each check provided for a former laborer was accompanied by a formal apology from the President of Germany which said:

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63) Negash (2006), p. 46.

64) John Authers, 'Making Good Again: Compensation for Nazi Concentration Camp Inmates', in Pablo De Greiff (ed.), *The Handbook of Reparations* (New York: Oxford University Press, 2006) pp. 420-449.

65) Michael J. Bazylar, 'Litigating the Holocaust', *University of Richmond Law Review* 33 (1999), p. 615.

This compensation comes too late...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.<sup>66</sup>

While this may seem like an instance of justice coming too little, too late, 1,660,000 survivors of slave and forced labor were able to receive compensation through this program. This example supports the argument that reparative justice is typically not given until it is demanded and that states are more likely to acquiesce to these demands when they are linked to foreign policy interests.

### ***Norms of Sexuality and Reparative (In)justice for Homosexual Victims***

The case of reparations for homosexual victims of the Holocaust illustrates how changes in the normative environment can transform the bargaining context, and increase the likelihood that the state will offer reparative policies. Because of the stigma attached to homosexuality, these victims did not begin vocalizing their demands until the 1990s. By this time a significant majority of the German public had internalized the norm of equal rights for homosexuals, which lowered the domestic cost of symbolic recognition.

In 1933 Section 175 of the German Criminal Code made homosexual acts between men illegal. From that year until 1945, an estimated 100,000 men were arrested as homosexuals and of these an estimated 5,000 to 15,000 were placed in concentration camps.<sup>67</sup> It is uncertain how many of these men died during their incarceration. Scholars have been careful to denote that while gay men were persecuted by the Nazi regime, this persecution did not amount to genocide. First, the goal was not to efface all homosexuals (homosexual women were not targeted); rather the intention was to correct the men's 'deviant' sexual behavior and eventually reintegrate them into German society.<sup>68</sup> While the applicability of the term 'Holocaust' to

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66) Authers (2006), p. 427.

67) 'Homosexuals: Victims of the Nazi Era', United States Holocaust Museum, <http://www.holocaust-trc.org/homosx.htm> (accessed 27 February 2010).

68) Rudiger Lautmann, 'The Pink Triangle: Homosexuals as "Enemies of the State"', in Michael Berenbaum and Abraham J. Peck (eds.), *The Holocaust and History: The*

homosexuals is thus debated, the suffering they endured is undeniable. Homosexual men endured significant persecution on account of their sexual orientation including forced castration, incarceration, subjection to inhumane medical experimentation, and death. After the war, homosexuals did not receive acknowledgement as victims of the Nazi era, largely because homosexual acts remained illegal.<sup>69</sup> Lautmann notes that

just as the stigmatization of homosexuals by no means came to an end, rehabilitation of injuries suffered, even for concentration camp sentences, never took place.<sup>70</sup>

The Reparation Agreement of 1956 did not apply to homosexuals and remained exclusive of this group even as it was broadened over the years. Those who did try to apply were denied on the basis that, because Section 175 remained in effect until 1969, their criminal sentences were legal.

Because the stigma and illegality attached to homosexuality persisted, the normative political environment was not conducive for homosexual victims to demand justice. Mosse describes how, during the nineteenth century, nations were concerned with sexual control and tried to 'reinforce what society considered to be normal sexual behavior'.<sup>71</sup> Homosexuality, due to its non-procreative nature, was considered to be particularly threatening for the health of the German nation. However, German attitudes towards homosexuality have changed substantially over the decades. Between 1949 and 1976, the number of survey respondents who reported that they believed homosexuality to be a vice decreased from 53 percent to 25 percent.<sup>72</sup> Today, while support for gay marriage is more limited, only 28 percent of Germans

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*Known, the Unknown, the Disputed and the Reexamined* (Bloomington: Indiana University Press, 2002), pp. 345-357.

69) See supra note 50.

70) Lautmann (2002), p. 357.

71) George L. Mosse, 'Nationalism and Respectability: Normal and Abnormal Sexuality in the Nineteenth Century', *Journal of Contemporary History*, Vol. 17, No. 2 (1982), p. 222.

72) Connie DeBoer, 'The Polls: Attitudes Towards Homosexuality', *Public Opinion Quarterly*, Vol. 42, No. 2 (1978), p. 267.

feel that homosexuality in the country is taboo; this is one of the lowest percentages in the European Union.<sup>73</sup>

This change in the normative environment has enabled gay victims of Nazism to come forward and tell their stories.<sup>74</sup> Beginning in the 1990s organizations on behalf of homosexual victims began demanding that the suffering of these men be publicly acknowledged. The campaign for a memorial for homosexual victims was initiated by the Lesbian and Gay Federation of Germany (LSVD) and the organization to Remember the Homosexual Victims of National Socialism.<sup>75</sup> In response, German legislators introduced a resolution to establish a memorial and, while there was some resistance from Christian Democrats, the resolution ultimately passed. On May 10<sup>th</sup> 2008, the memorial for homosexual victims was inaugurated. It is situated across from the Memorial to the Murdered Jews of Europe and consists of a concrete slab with a video screen set inside which displays a short film of two men kissing. The memorial incorporates elements of the Jewish memorial into its design in order to 'make the connection between (the homosexual's) monument and other victim's groups'.<sup>76</sup> Green Party MP Volker remarked 'homosexual victims of the Nazi regime were mostly shut

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73) 52 percent of Germans agree that gay marriage should be legal in Europe. The source of this data is Eurobarometer 66: Public Opinion in the European Union, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_highlights\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf) (accessed 13 November 2009).

74) Pierre Seel published an account of his experience in 1995. Seel was a homosexual man living in France, who was deported to Schimeck concentration camp. His book describes in great detail how he was forced to watch his lover, Jo, be attacked and killed by German shepherds. While Seel was released at the end of war, he never received recognition or reparation. For a detailed account of Seel's experience, see Pierre Seel, *I Pierre Seel, Deported Homosexual: A Memoir of Nazi Terror* (New York: Basic Books, 1995); Friedrich-Paul von Groszheim also came forward in the 1980s to describe how he was arrested, tortured, and forced to choose between castration and incarceration in a concentration camp. Like Seel, Groszheim never received acknowledgment. For more information on von Groszheim see United States Holocaust Memorial Museum, 'Friedrich-Paul von Groszheim.' *Holocaust Encyclopedia*. <http://www.ushmm.org/wlc/en/idcard.php?ModuleId=10006629> (accessed 10 June 2011).

75) 'Memorial to the Homosexuals Persecuted under the National Socialist Regime', Stiftung Denkmal für die ermordeten Juden Europas, <http://www.holocaust-mahnmal.de/en/homosexualemorial> (accessed 6 June 2011).

76) 'Monument to Homosexual Holocaust Victims Opens in Berlin', *Der Spiegel*, 27 May 2008.

out of Germany's culture of Remembrance in the past. This is now over'.<sup>77</sup> However, while the government has included homosexual victims in the form of an official apology and a public memorial, it has resisted providing material compensation, creating a gap in the extent to which homosexuals have been acknowledged relative to other victims.<sup>78</sup>

### **Invisible Victims: The Roma And The Sinti**

The international community has been slow to acknowledge and provide justice for the extermination of the Roma and Sinti (Gypsies, also called Romani) during World War II. It has been argued that the situation of the Romani people is not comparable to the Jews because they were not targeted for complete annihilation. Wiesel, during his time as chairman of the United States Holocaust Memorial Council, wrote that

While Gypsies were killed throughout Europe, Nazi plans for their extermination were never completed nor fully implemented. However, Nazi plans for the annihilation of European Jews were not only completed but thoroughly implemented.<sup>79</sup>

However, demographic studies reveal that the proportional loss of the Roma and Sinti population is at least as great, if not greater than that of the Jews.<sup>80</sup> Like homosexuals, Roma were not included in the 1956 Reparations Agreement. The justification was that

their [the Roma and Sinti] deportation to concentration camps had not been a persecution out of racial reasons, but a pre - emptive criminal measure.<sup>81</sup>

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77) 'Berlin to Mark Nazis' Gay Victims', *BBC*, 12 December 2003.

78) Jason Bennetto, 'Holocaust: Gay activists press for German apology', *The Independent*, 1 November 1997.

79) Elie Wiesel, 'Report to the President', *President's Commission on the Holocaust*, 27 September 1979, <http://www.ushmm.org/research/library/faq/languages/en/06/01/commission/>.

80) Hancock Ian F., *Remembering for the Future: Jews and Christians During and After the Holocaust* (Oxford: The Pergamon Press, 1988), pp. 2017-2025; Hancock Ian F., "Uniqueness" of the victims: Gypsies, Jews and the Holocaust', *Without Prejudice: International Review of Racial Discrimination*, Vol. 2 (1988), pp. 45-67.

81) 'World Directory of Minorities and Indigenous People - Germany: Roma/Gypsies/Sinti', *UNHCR*,

The ability of the Roma and Sinti to demand compensation for their suffering was limited by high poverty rates among the population, persistent discrimination, and the absence of an organized body to negotiate on their behalf. Nearly half a century later, the reparative process was initiated when the Romani victims and their corresponding organizations began to pressure the government for acknowledgment. In 2000, the World Congress of International Romani Union (IRU) issued a call for Germany to issue apology for treatment of Roma during the Holocaust, stating that they were the only nation that had not received an apology thus far.<sup>82</sup> In 2005, in his speech to mark the 60<sup>th</sup> anniversary of the end of World War II, German President Koehler did include an acknowledgment of Sinti and Roma.<sup>83</sup> The Central Council of German Sinti and Roma have also pressured the German government for a memorial for over a decade. At the time of writing, there are plans to build a Memorial to the Murdered Sinti and Roma of Europe, however it is not yet under construction.

Germany's symbolic recognition of Roma and Sinti victims is due, in large part, to the relatively low cost of recognition domestically. While anti - Roma prejudice is evident throughout Europe, according to a survey by the Pew Research Center, only 33 percent of Germans hold an unfavorable view of the Roma and recent Eurobarometer data reveals that only one - fourth of Germans stated that they would be uncomfortable having a Roma as a neighbor. This is in stark contrast to the Czech Republic, where 84 percent of people hold an unfavorable view of the Roma and nearly half would be uncomfortable living next door to a Roma person.<sup>84</sup> As a consequence, it has

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<http://www.unhcr.org/refworld/topic,4565c22529,458aa8ef2,49749d1b2d,0.html>

(accessed on 1 May 2010).

82) Nick Carey, 'Roma Congress chooses New President', *Radio Praha*, 28 July 2000.

83) BBC, 'In quotes: Auschwitz anniversary', 27 January 2005.

84) 'End of Communism Cheered, but Now with More Reservations', *Pew Research Center*, 2 November 2009, <http://pewglobal.org/2009/11/02/end-of-communism-cheered-but-now-with-more-reservations/>; According to a Eurobarometer survey in 2008, people in the Czech Republic were much more uncomfortable with the idea of having a Roma neighbor than the European average. On average, their comfort level was 3.7 on a scale of 1-10 compared with EU 27 average of 6. See Eurobarometer, 'Discrimination in the European Union: Perceptions, Experiences, and Attitudes', 2008, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_296\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf).

been considerably more difficult for the Roma to gain recognition in the Czech Republic. This persistent discrimination has raised the domestic political cost of recognition and, as a result, efforts to memorialize the Roma have been marked by controversy. Czech officials have been unwilling to build a memorial at the site of the Lety concentration camp despite pressure from Roma rights groups and the European Union because it has proved to be too costly, in both financial and political terms.

The Lety camp was established in the Czech Republic during Nazi occupation and housed an estimated 1,000 Roma, some of which were later transported to concentration camps. Today, a pig farm is located on the former site of the camp, a fact that many Roma activists believe is symbolic of contemporary Czech attitudes towards the Roma. A representative for the Committee for the Redress of the Roma Holocaust (VPORH) has said that

the fact that the pig farm remains on this site is an encapsulation of the position that the Roma have today in Czech society. If our position were stronger, this would not be tolerated.<sup>85</sup>

The Committee has repeatedly pressured the government to close the farm and build a memorial. However four successive Czech governments have refused to take action. In 2005, the European Parliament intervened and passed a non-binding resolution encouraging the Czech Republic to close down the camp. Half of the 25 MPs who voted against the resolution were Czech.<sup>86</sup> The text of the resolution is as follows

whereas the Romani Holocaust deserves full recognition, commensurate with the gravity of Nazi crimes designed to physically eliminate the Roma of Europe, and calling in this connection on the Commission and the authorities to take all necessary steps to remove the pig farm from the site of the former concentration camp at Lety u Pisku and to create a suitable memorial.<sup>87</sup>

Czech officials have been outspoken in their opposition to the resolution to

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85) Brian Kenety, 'Lety u Pisku: The politics behind the "concentration camp" pig farm', *Radio Praha*, 19 May 2006.

86) Ibid.

87) European Parliament, 'European Parliament Resolution on the Situation of the Roma in the European Union'.  
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0151&language=EN>.

close down the camp. President Klaus has stated that Lety ‘was not a “concentration camp” in any proper sense of the word’ and Member of European Parliament Ransdorf has asserted that ‘outrageous lies have been spread about Lety’.<sup>88</sup> While the Czech human rights commissioner has recently expressed a desire to build a memorial at Lety, he says the effort has been complicated by a lack of resources. The removal of the pig farm along with the establishment of a memorial will cost an estimated 25 million, a sum that many Czechs believe could be put to better use in the local community.<sup>89</sup> The Czech Minister for Minorities and Human Rights, Džamila Stehliková, stated that the ‘government cannot spend tax - payers money on the farm since its price is exorbitant’.<sup>90</sup> The VPORH has since taken it upon itself to arrange for a memorial at the site and holds annual commemorative ceremonies to honor those who were incarcerated.<sup>91</sup> Commemoration of the Roma at Lety would be beneficial for the Czech Republic in that it would silence criticism and potentially improve its image in the European Union, however, these benefits do not outweigh the domestic costs, and thus no symbolic reparations have been provided.

## **The Politics of Remorse and Domestic Backlash**

### ***Japanese Reparations for Wartime Atrocities***

While Germany has been praised for setting the standard in regards to reparative policies, there is a consensus amongst many scholars and politicians that Japan has not sufficiently atoned for its wartime atrocities.<sup>92</sup> Japan, like the other cases in this study, has provided reparative justice selectively. It has provided the most extensive forms of justice when it has helped maintain the status quo of bilateral relations with its neighbors.

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88) Kenety (2006).

89) Ibid.

90) Hrabánová, (2007), p. 171.

91) Gwendolyn Albert, ‘Committee for the Redress of the Roma Holocaust holds 12th annual celebration’, *Radio Praha*, 21 May 2009.

92) Negash (2006); Yoshiaki Yoshimi, *Comfort Women: Sexual Slavery in the Japanese Military During World War II* (New York: Columbia University Press, 2000); Alexis Dudden, *Troubles Apologies Among Japan, Korea, and the United States* (New York: Columbia University Press, 2008).

In the years following World War II, Korea pressured the Japanese government to acknowledge its crimes and provide compensation for damages. In 1965, the two countries signed a treaty in which Japan agreed to give Korea 108 billion yen. During the 1950s and 60s similar reparations agreements were signed with Laos, Cambodia, Indonesia, Mongolia, the Philippines, Burma, and Thailand.<sup>93</sup> These treaties provided compensation from Japan directly to the formerly victimized government and did not include compensation for individual victims. Ultimately, these compensation agreements benefited Japan by allowing it to rebuild relations with its former colonies and create new markets for Japanese goods.<sup>94</sup> Thus, like the German reparations to Israel, Japan provided financial reparations for wartime atrocities because they helped facilitate national security interests.

The case of 'comfort women', however, illustrates how strong domestic opposition merely leads to symbolic excuses. The Japanese have been much more reluctant to atone for its crimes against the 'comfort women' because this reconciliation would not serve its security interests and because of the potential for domestic backlash.

#### *The 'Comfort Women' Find Their Voice*

The Japanese government has been slow to acknowledge its abuse of the estimated 200,000 'comfort women' who were forced into sexual slavery. These women were not beneficiaries of the 1965 reparations agreement and were not publicly acknowledged by the Japanese government until 1992. This delayed justice is explained, in part, by the fact that the women did not come forward to vocalize their demands for justice until the 1990s. The stigma attached to sexual violence and the patriarchal structure of Japanese and Korean societies prevented many of the women from coming forward. Changes in the normative environment facilitated the demand for justice by helping the survivors identify sexual slavery as criminal. While the wartime brothels were public knowledge in Japan and Korea for decades, they were not understood as criminal by the public or the victims themselves until the 1980s. Japanese feminist scholar Ueno Chuziko argues that democratization in South Korea and the global women's movement helped the women shift

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93) Won Soon Park, 'Japanese Reparations Policies and the "Comfort Women" Question', *Positions*, Vol. 5, No. 1 (1997), p. 110.

94) *Ibid*, p.112.

the blame from themselves to the wrongdoer.<sup>95</sup> In addition, non-governmental organizations that were part of a transnational network of women's rights provided political and material support for the 'comfort women' and helped the issue become internationally salient.

By the 1990s, organizations for comfort women were mobilized and began pressuring the Japanese government for justice. In 1991, the Korean Council for the Women Drafted for Military Sexual Slavery filed a law suit against Japan and demanded an official apology.<sup>96</sup> This, combined with the publication of documents in a major local newspaper that provided evidence of the Japanese government's involvement in the establishment of the brothels, prompted the Japanese to publicly admit their involvement. In 1994, Prime Minister Tomichii Murayama issued a formal statement offering a 'profound apology to all those who, as wartime comfort women, suffered emotional and physical wounds that can never be closed.'<sup>97</sup> However, the women's efforts to receive financial compensation for their suffering have been less successful. While the Japanese government asserts that it has provided financial support to comfort women through the establishment of the Asian Women's Fund, others argue that this is a means of avoiding direct responsibility.<sup>98</sup> In 2001, a bill was introduced in the Japanese Parliament to 'promote the settlement of the issue of the victims being forced into wartime slavery,' however it never passed.<sup>99</sup> Similarly the Japanese Parliament has failed to approve the majority of the women's compensation claims.<sup>100</sup>

#### *Domestic Opposition and the Ambiguity of Japanese Reparations*

There has been significant resistance to providing reparative justice to comfort women amongst large sectors of Japanese society and the political elite. Nationalist apology - resisters have asserted that these women became prostitutes voluntarily and there was no evidence of coercion by the Japanese government. In 1996, former cabinet member Okuno Seisuke expressed his belief that comfort women's claims of coercion were fabricated and that the

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95) Ueno Chizuko, 'The Politics of Memory: Nation, Individual, Self', *History and Memory*, Vol. 11, No. 2 (1999), p. 136.

96) Yoshimi (2000), p. 3.

97) 'The Comfort Women Issue', Embassy of Japan in the United States of America, 11 March, 2007, <http://www.emb-japan.go.jp/english/html/cw1.htm>.

98) Negash (2006), p. 59.

99) Ibid.

100) 'U.S. urges "comfort women" apology', *BBC*, 31 July 2007.

women engaged in these practices for commercial purposes.<sup>101</sup> Similarly, the Textbook Reform Group has questioned the reliability of victim testimony and insisted that there is no documentary evidence that proves that the government authorized forced abduction.<sup>102</sup> Recently, Japanese officials have reneged upon their former acceptance of responsibility for these crimes. In 2007, Japanese Prime Minister Abe caused a stir when he stated that there was no evidence that the Japanese military forced women into sexual slavery.<sup>103</sup> In addition, 44 Japanese MPs signed a statement that was published in *The Washington Post* denying that the Imperial Army was involved in the enslavement of the 'comfort women'.<sup>104</sup> These denials were made despite evidence in official government documents and witness testimonies that the Japanese government was directly involved.<sup>105</sup>

In June, the United States became involved when the House Committee on Foreign Affairs passed a resolution demanding that Japan provide an 'unambiguous apology'.<sup>106</sup> However, Abe refused, saying that the resolution was nonbinding and not based on objective facts. He also argued that Japan already provided 'unambiguous' apologies in the past. This refusal confirms the thesis that reparations are given on the basis of political calculations. In this instance, the Japanese government decided that the benefits of genuine recognition of the comfort women were not worth the domestic backlash. In contrast, apologies and reparations to Korea were necessary in order to normalize diplomatic relations. United States - Japanese relations, while temporarily tense, were not significantly threatened by Japan's refusal to issue a sincere apology to the 'comfort women'.

## Conclusion

In recent years there has been a widespread use of political apologies and material reparations as a way to atone for historical injustices, wartime abuses, and discrimination. While the phenomenon has received extensive attention,

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101) Jordan Sand, 'Historians and Public Memory: The "Comfort Women" Controversy', *History and Memory*, Vol. 11, No. 2 (1999), p. 119.

102) Chizuko (1999), p. 134.

103) Leo Lewis, 'Japan dismisses "comfort women" apology', *The Times*, 28 June 2007.

104) Ibid.

105) Norimitsu Onishi, 'Denial Reopens Wounds of Japans Ex-Sex Slaves', *New York Times*, 8 March 2007.

106) Ibid.

insufficient attention has been paid to why governments apologize and who they choose to apologize to. The evidence in this article demonstrates that, even in the context of the same abuse, apologies and compensations programs have not treated all victims equally. Some have received public apologies and reparations while others have not. This categorization of victims should cause scholars to question the extent to which government apologies are sincere expressions of guilt and remorse.

This paper suggests the selectivity of justice demonstrates reparative policies, while veiled in moral rhetoric, are the consequence of political bargains. Decisions regarding the extent and type of reparations that will be offered to the offended party involve a balancing act, in which the state weighs the benefits of reconciliation against the potential for a domestic backlash. The benefits of reparative justice include the potential restoration of relationships with offended parties and the removal of barriers to political and economic cooperating with other states. If the restoration of relations with the offended party coincides with the state's foreign policy interests and/or enhances its material security, reparative justice will be provided more readily.

The case of German reparations to Jewish victims of the Holocaust illustrates that the most extensive reparation programs, with both symbolic and material components, will be pursued when reconciliation serves the state's security interests. In contrast, when reconciliation does not serve the security interests of the perpetrator state, or in instances when reparations will be met with significant domestic backlash, they will be less extensive (only symbolic, but not material) or not offered at all. The case of Japanese government's effort to make amends for the crimes committed against the 'comfort women' during World War II illustrates this point. While Japan has been under substantial pressure from rights organizations and the international community to provide justice to these women, the failure to do so does not substantially threaten Japan's security interests. In addition, the potential for domestic backlash in Japan is high. As a consequence, Japan has offered the bare minimum: ambiguous symbolic reparations in the form of halfhearted apologies with no financial compensation.

The cases in this paper have touched upon the role that reparative justice can play in diplomacy and the resolution of international disputes. There is a scarcity of empirical data about the consequences of apology in diplomatic practice. While the success or failure of governmental efforts to provide redress was not directly addressed in this paper, the cases suggest that

apologies may be a 'useful tool in a diplomat's or international lawyer's toolbox.'<sup>107</sup> However, when grievous offenses have significantly jeopardized diplomatic relations, apologies alone are unlikely to resolve the dispute. In these instances symbolic forms of restitution will likely need to be accompanied by more concrete forms, like monetary compensation. The restoration of the relationship between Germany and Israel as well as that of Japan and Korea required substantial financial compensation for damages. However, this paper reveals that while reparative policies may be morally desirable and valuable for the restoration of damaged relationships, these policies involve significant trade-offs that complicate their use in international relations. In the words of diplomat Sir Watts,

in international life as in private life, saying 'sorry' does much to neutralize the diplomatic fallout from an unfortunate incident; but saying 'sorry' may also imply an admission of legal liability.<sup>108</sup>

Thus, while reparative justice may be diplomatically useful, if the domestic audience is highly opposed to providing financial compensation for the abuse, policymakers and diplomats may be constrained in their ability to properly compensate for the incident.

The findings of this article suggests that third party actors, including representatives of national governments, international institutions, and NGOs can successfully pressure countries to do penance for violations of human rights and to adopt more inclusive reparations policies. However, these actors need to take into consideration the extent to which the domestic audience may resist efforts to provide justice, particularly when there is an entrenched social stigma against the category of victims at hand. In addition, the cases in this article suggest that reparations policies will be more extensive when they are plausibly linked to a state's security interests. One avenue for future research would be to explore the extent to which strategic issue linkage facilitates international reparations negotiations.<sup>109</sup>

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107) Richard Bilder, 'The Role of Apology in International Law', *Virginia Journal of International Law*, Vol. 46, No. 3 (2006), p. 473.

108) Sir Arthur Watts, 'The Art of Apology' in Maurizio Rogazzi (ed.) *International Responsibility Today* (Leiden, Boston: Martinus Nijhoff Publishers, 2005), pp. 107-108.

109) For a discussion of the role issue-linkage plays in international negotiations see Ernst B. Haas, 'Why Collaborate? Issue-Linkage and International Regimes', *World Politics*, Vol. 32, No. 3 (1980).



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  - 4 D'Hooghe (2005), p. 90.
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