

# What Makes a Reparation Successful? A Discussion to Inform Design of Reparations to Black Americans



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*Reparations policies that seek to make amends for a harm incurred face exigent challenges. In this article we focus on what makes reparations successful and what policy components are necessary, if not sufficient, for success. To study the success of reparations policy design we employ a case study approach. Our analysis investigates the motivation, design, implementation, and impact of past policies to understand what has been successful or unsuccessful within each component of the policy in each historical case. Ultimately, our discussion identifies patterns in the creation and execution of reparations policy that offer important considerations for policies that would provide reparations to Black Americans.*

**Keywords:** racial equity, reparations for historical injustices, reparations to Black Americans, case study analysis, policy evaluation

A reparation is the act of repairing, making amends, or satisfying injury; a group receives some form of compensatory benefit for a harm incurred, paid by an institution with some relation to the injuring party. Because they are predicated on an irreversible harm, reparations are positioned to be emotionally charged and unsatisfactory; the preferable outcome is to not be harmed in the first place. In addition to these existential challenges are the exigent ones: to be enacted as a policy, reparations must be designed, funded, and administered.

In this article, we focus on an additional challenge: determining what makes a reparation successful.

As a principle, success of a policy hinges on the satisfactory execution of agreed upon aims. In this way, success influences most aspects of design as an organizing principle. Yet success is an odd, and possibly offensive, notion in the context of reparations, given that it centers on amending for a severe harm. If a victim cannot be made whole, then what is a reparation policy's achievable aims? That is the research ques-

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tion we approach in this article. Although our research is of interest to any reparation, our goal is to inform the design of reparations to Black Americans for slavery and its aftermath of continuing harms, and we draw direct lessons for that context.

Reparations to Black Americans have been discussed in both the existential and exigent context, questioning, respectively, if reparations are necessary or if reparations are feasible. Yet, the notion of success is integral to both and, indeed, is often cited in arguments that either assert that reparations are unnecessary or that reparations are infeasible. More than 150 years of reparations proposals to ameliorate the harms of slavery have focused on redressing its aftermath: building Black wealth, improving Black economic status, and supporting the political and social enfranchisement of Black Americans (Darity and Mullen 2020). The difficulty in designing reparations that could achieve these ends has often been used to advocate against enacting them at all. We dub this—that inequality and disenfranchisement is both a motivation for (as a part of the harm) and an argument against (as a barrier to success) reparations—the effectiveness paradox. From an economic lens, the effectiveness paradox is that economic inequality between Black and White Americans is one argument for reparations, but because that inequality is so great, reparations would be an ineffective policy and therefore should not be pursued. A similar effectiveness paradox could be made from a social lens: the entrenched animosity between the races is a reason to enact a policy of acknowledgment and redress, but reparations may stoke further resentment and therefore should not be pursued. Success, and what defines it, is integral to the design of any policy, including reparations, and we note, in particular to reparations to Black Americans.

We aim to be as clinical as possible in assessing past policies, but would like to acknowledge before proceeding that the harms that form the basis of the policies we study and policy we aim to inform are severe. Our study in no way intends to make light of those harms, or to rank them, though will we not have space throughout to enumerate them fully and are

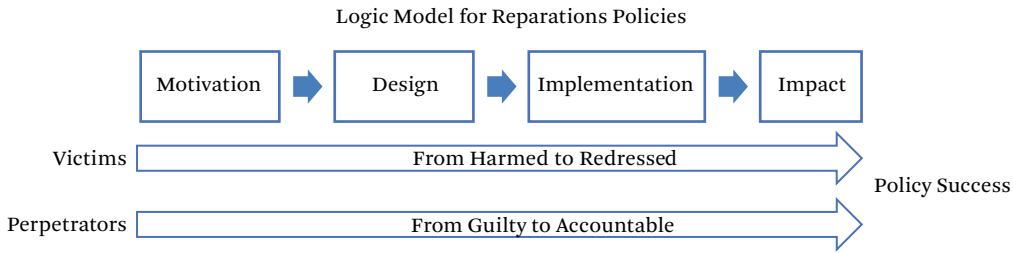
critical in comparing the policies in response to them.

## RESEARCH APPROACH

To study the success of reparations policy design, we use a case study approach. Case study analysis enables us to explore examples and experiences of reparations, glean lessons from what they have been able to achieve and where they have fallen short, and test the conditions that might be necessary or sufficient for policy efficacy. Our analytical method is to select a set of reparations to study through a logic model in order to systematically identify issues related to policy success, despite a small sample. Logic models allow us to articulate a theory of change: what components of a program or policy may lead to a desired outcome, and which activities, in which sequence, are necessary and sufficient to affect change.

Figure 1 presents a logic model, which describes, generally, how reparations policies might affect change. As a policy, reparations follow a typical path: motivation, design, implementation, impact. But this logistical progress of a policy's execution must achieve two transformations in terms of reparations: the victims must go from harmed to redressed, and the injurers from guilty to accountable for the harms perpetrated. In practice, the content of each stage—the specific motivation, the details of design and implementation, and so on—is informed by the harm, victim, and perpetrators. The model is not meant to detail how to design a reparation, but convey what it needs to achieve. Each component must contribute to the ultimate perceived success and legacy.

Challenges to parsing extant reparations into a tidy logic model are numerous. To start, disagreement about whether payments even constitute reparation is common. For example, in 1924, the city of Manhattan Beach, California, claimed eminent domain and seized beachfront property of the Bruce family, who were Black and operated a resort that was open and catered to other Black vacationers at a time when few similar establishments existed. Nearly a century later, Los Angeles County returned the land to the Bruce family (California

**Figure 1.** Logic Model for Reparations Policies

Source: Authors' rendering.

Office of Governor Gavin Newsom 2021). Some have lauded this as reparations for the racist, unjust seizure of land from the Bruces (Holloway 2021). Others argue this land repatriation does not rise to the level of reparation because it does little to address the existing and lasting structures that contribute to highly unequal real estate access and holdings (Kahr 2023). Thus what constitutes a reparations policy may be contested as much as whether the reparations policy is well designed, well implemented, and successful.

Furthermore, selecting policies for a study can quickly become problematic because of the nature of the selection criteria. Picking cases with the worst harm or the best response would involve categorizing the harms incurred by severity, which minimizes harms experienced, or positively selecting on policy. There is no model reparation because there is no model harm. We thus are unable to select exemplar or outlier policies. Harm being so vast and yet specific renders typification of reparations unwise. Instead, we select cases that can provide insight into what successful reparations entail. At a minimum, they had to have been subject of sufficient research and analysis; it is beyond the scope of this article to extend the research about any specific reparation. Beyond that, we sought examples based on having a variety of features, apart from the policy itself. We looked for institutional variation, or that the injuring and compensating party included multiple governments in multiple time periods. We also looked for differences in the victim group, again in multiple time periods and multiple contexts. We examine these cases relative to a theory of change about how reparations—pol-

icies that intend to ameliorate a harm—can be successful.

### CASE STUDIES

Case studies offer the advantage of inductive assessment. Rather than looking backward to find supporting evidence for a posited theory, hypothesis, or aim, case studies move forward, aggregating details into patterns, and patterns into lessons. Case study investigations are not a superior method so much as an alternative one, one appropriate in policy implementation analyses.

Our case study analysis investigates the motivation, design, implementation, and impact of past policies to understand what have been successful or unsuccessful within each component. This article takes each of the identified case studies in turn, providing a brief summary and a discussion about the lessons each case provides a better understanding effective reparations policy. The scope and length of this article does not allow us to give a full accounting of the depth of the experience that necessitates a reparation policy. Instead, we distill the events into a policy analysis, but recognize that we do not have space to properly account for the enormity of harm.

### The Emancipation of the Russian Serfs

In 1861, Tsar Alexander II ended the practice of serfdom in Russia and emancipated the serfs, which made up a third of the population at the time—twenty million people (Lynch 2003; Pereira 1980). Prior to emancipation, serfs were bound to the land they worked and the nobleman who owned that land. Serfdom was similar to chattel slavery in the United States, but serfs

were not bought, sold, and transported off of the land they were tied to. Emancipation changed the legal and political status of the former serfs, extending to them the right to hold property and enter into contracts (Zenkovsky 1961). It also brought a process to redistribute land to the newly freed serfs, but this redistribution of land was tempered by concessions to landowners (Zenkovsky 1961). Landowners were compensated monetarily for their loss, kept about two-thirds of the land, and had first pick of which land to retain (Markevich and Zhuravskaya 2018; Nafziger 2014). Land was then allocated to collectives of newly freed serfs. Together these communes of peasants were required to make what were called redemption payments to the state over a forty-nine-year period (Nafziger 2010).

Scholars have often tried to assess the value of the land transfer at emancipation; there has been heavy critique and debate about whether the land provided to the free serfs was too little at too high a cost (Hoch 2004; Zenkovsky 1961). Others have sought to understand the impacts of emancipation on the country's social and political structures (Pushkarev 1968; Mironov 1985).

We are most interested in how the remuneration provided to former serfs could be understood as a successful or unsuccessful reparation policy because it was not named or declared as such upon enactment. Outwardly, emancipation of the serfs in Russia appears to be a reparation similar to what was proposed just four years later during the U.S. Civil War for freed slaves—freedom from bondage and land transfer (Sherman 1889). That the emancipation of the Russian serfs was contemporaneous to the emancipation of the American slaves make this a particularly relevant case for understanding what success might have involved—and thus need to address—in the case of Black Americans. We find that the motivations for emancipation of the serfs were not rooted in an identified harm or an acknowledged one. Instead, emancipation and land redistribution were propelled by economic stagnation in the wake of the Crimean War, 1854 to 1856, and the recognition that the feudal social organization was obsolete, hindering Russia's growth (Zenkovsky 1961). A secondary motivation was to

suppress serf uprisings, though its success in tempering public outcry is limited (Finkel, Gehlbach, and Olsen 2015; Pushkarev 1968). The policy of emancipation thus did little to recognize the oppression and victimization of the serfs under Russian feudalism, or the role that either the state or the landed gentry played in exploiting labor from the serfs.

Even if we were to set aside motivation, the design and implementation of emancipation did little to address the class and economic disparities that resulted from the feudal system. Although some analyses show that emancipation improved the quality of life of former serfs, (Markevich and Zhuravskaya 2018), and that inequality in Russia was not remarkable relative to its contemporaries or to many advanced economies today (Lindert and Nafziger 2014), emancipation did little to fundamentally change the class system codified by the feudal system (Mironov and Eklof 2000 in Lindert and Nafziger 2014). Thus the policy of emancipation neither healed the former serfs of the harms suffered during serfdom, nor held individual or institutional perpetrators accountable. Impact, when considered from the logic model's aims of redress and accountability, was in this case negligible. Emancipation reified existing divisions between the nobility and peasantry. From this case study, we conclude that transactional aspects of policy are insufficient as a reparation if the substantive aspects of policy are lacking. Reparations require more than payment—even if redistributive—to be successful. Even though the value and extent of remuneration is debated in this case, what is untested is the reification of power within Russian political and economic elites. Dual transformation is critical to reparative policy.

### Indian Claims Act

The Indian Claims Act of 1946 created a judicial process through which tribes and Indigenous communities could seek restitution from the U.S. government for loss of land and other harms that occurred during European expansion (Kuykendali et al. 1978). The act allocated federal monies to settle claims and created the Indian Claims Commission (ICC) to adjudicate them (Lieder and Page 1997). Until the commission was dissolved in 1978, it paid out more

than \$1 billion in claims to 176 tribes, which worked out to under \$1,000 in 1997 real dollars per tribe member (Lieder and Page 1997). After 1978, all unresolved cases were transferred to the U.S. Court of Federal Claims who closed the final case filed under the ICC in 2006 (U.S. Department of Justice 2020).

There were several motivations for establishing the Indian Claims Commission. First, it built on decades of arbitration that sought to address broken treaties and activism to fully recognize tribal sovereignty and rights (Kuykendali et al. 1978). Second, it was established in the immediate postwar era, when the U.S. government was under pressure to both recognize the contributions of native soldiers who had fought for the United States and to address the antidemocratic legacy of colonialism as the Cold War intensified (Kuykendali et al. 1978; Derocher 2021). Finally, the commission was established as a space to address a backlog of cases that dealt with land disputes between the American government, tribes, and individual tribal citizens (Kuykendali et al. 1978).

It is difficult to claim that the ICC was motivated by guilt, even if it was a mechanism for adjudicating a specific harm. The bill that established the ICC included language that it was designed to “right a continuing wrong to our Indian citizens,” but no widespread admission that the motivation for establishing the commission was to provide redress for broad and systematic grievances. A statement by President Truman averred that

The bill [to establish the Indian Claims Commission] makes perfectly clear . . . that in our transactions with the Indian tribes we have at least since the Northwest Ordinance of 1787 set for ourselves the standard of fair and honorable dealings, pledging respect for all Indian property rights. Instead of confiscating Indian lands, we have purchased from the tribes that once owned this continent more than 90 percent of our public domain, paying them approximately 800 million dollars in the process. It would be a miracle if in the course of these dealings—the largest real estate transaction in history—we had not made some mistakes and occasionally failed to live up to the precise terms of our treaties and

agreements with some 200 tribes. But we stand ready to submit all such controversies to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made. (Kuykendali et al. 1978, 5)

The motivation for the ICC was couched in the legal and mechanistic requirements to ensure pre-negotiated property rights.

The design and implementation of the ICC had significant criticism. For instance, tribes could make a claim to be compensated for land that was taken or previously compensated at “unconscionable consideration” below its fair market value, but it was difficult to prove ownership or determine what fair market value was (U.S. Department of Justice 2020). The ICC was only able to award compensatory redress in cases where tribes could prove that they had not been paid the fair market value by the government at the time of purchase, and no interest could be awarded (Tiro 2007). Disputed valuations of claims and governmental offsets led to the denial of many of the claims (Wilkins 2013). Awarded claims were placed in a trust, which was subject to numerous allegations of mismanagement (Newton 1975). Further, all awards were monetary, disregarding petitions for land rights, and often deducted “offsets” from the overall award in recognition of previous, albeit unrelated, disbursements that the U.S. government made to tribes (Tiro 2007; Lubben and Nelson 2002).

The ICC is of interest as a case study for reparations policy because the U.S. federal government set aside resources to specifically address harms against a particular group, and established a separate civil system to adjudicate claims. However, the ICC was not motivated, designed, or implemented to change the status quo, and the ICC “should be viewed more as a continuation of the past than a break from it” (Wishart 2004). Much like in the emancipation of the Russian serfs, the lack of motivation to redress or hold the nobility accountable guaranteed the policy was unsuccessful at achieving either. The ICC also offers a design lesson: of paramount importance is an agreed definition of the harm. For tribes, at issue was the loss of ancestral lands; for the U.S. government, at issue was property and contract rights. Although



notionally a mechanism to redress harm, the ICC deferred to the government's definition of harm, and not that of tribes. Even if the ICC's payment were flawless in implementing payment of successful claims, which as noted was not the case, the policy would be unsuccessful as a reparation for this reason.

### Syphilis Study at Tuskegee

The six hundred participants in the Public Health Service Study of Untreated Syphilis in the Male Negro in Macon County, Alabama, now called the USPHS Syphilis Study at Tuskegee (Centers for Disease Control and Prevention 2022) were recruited in 1932 by the U.S. Public Health Service to participate in a research study in exchange for medical exams and meals. The majority of the men had syphilis at recruitment, but the participants were manipulated about the nature of the study and their own condition. Participants were told that they had bad blood and were not given either full information about their diagnosis or the purpose of the study in relation to it (Warren, Hodge, and Gallagher 2019). Despite effective treatment of penicillin becoming widely available in the years following the study's start, none of the study participants were offered the medicine, nor were their wives and children.

The Associated Press publicized the existence of the experiment in 1972 (Heller 2017). The Department of Health, Education, and Welfare established an ad hoc advisory panel to review the study because many in the department and Congress were unaware of its existence. The panel concluded that the study was unethical when it was created in 1932, that it was unethical when the participants were not given penicillin by 1953 at the latest, that it should be immediately ended, that the participants should receive specialized medical care, and that Congress should enact more protections for human subjects (U.S. Department of Health, Education, and Welfare 1973).

There are two parallel tracks of success in reparations, that of the victim's redress and the perpetrator's accountability. The ad hoc panel declared a clear motivation for both groups: the study was unethical from the start and both it, and the practices that allowed its creation, must be halted. First, we consider the victims

and the change from harmed to redressed. The policy response to the Syphilis Study at Tuskegee was not coordinated under a single institution or act, nor could it be termed a reparation (Tuskegee University, n.d.). The survivors received monetary compensation, health care, and an official apology, but in disparate fashion. In 1973, the survivors filed a class action lawsuit resulting in a \$9 million settlement. Congress mandated the creation of the Tuskegee Health Benefit Program to provide medical and burial care to survivors, and later their widows and children. In 1997, President Bill Clinton formally apologized for the study. The families of the victims still seek further restitution (Associated Press 2017a), including funding for a scholarship program established for descendants of the study's participants (Voices for Our Fathers Legacy Foundation, n.d.b.) and funding for the Tuskegee Human and Civil Rights Multicultural Center (Tuskegee History Center, n.d.). This response is piecemeal enough to not be considered intentionally designed and implemented.

Next, we consider the perpetrators. In this respect, that of transforming from guilty to accountable, the policy response to the Syphilis Study at Tuskegee could be argued to be a success, and it is a reason why this case study is of interest to our investigation. The panel's recommendations for research practices were incorporated into legislation in less than two years, forever changing human subjects research in the United States and making a repeat of the conditions around the study hard to repeat. The Syphilis Study at Tuskegee was formative in the adoption of the National Research Act of 1974, which codified certain ethical practices for research into law and created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. Later, the Belmont Report, created by that commission, outlined ethical principles for research, and cited the Syphilis Study at Tuskegee as a motivation to codify justice into research practices (National Commission 1979). The question is not how much research practices and the federal government have changed, but to the extent to which it was due to the revelations of the study and the panel responding to it. Senator Edward Ken-

nedy held hearings in 1973 on human experimentation that influenced the National Research Act, which he sponsored, but those hearings were not limited to the Syphilis Study at Tuskegee (U.S. Congress 1973).

Taken together, the ad hoc panel's report, the creation of the Tuskegee Health Benefit Program, the lawsuit, the portions of the National Research Act dedicated to ethical practices, and the presidential formal apology had all the trappings of a reparation without the cohesion of it. However, these offer lessons for understanding successful reparations policy. The initial acknowledgment of harm stemmed from an investigatory panel that considered the issue, weighed in on wrongdoing, and gave a plan for action. From our perspective, a key shortcoming of the ad hoc panel was that it was established to evaluate the study, not its victims, so that the perpetrators had a pathway to reform but the victims did not have a similar pathway to redress.

Since the Syphilis Study at Tuskegee ended, the victims and their families have, after considerable effort, successfully been awarded compensation for their harm and had at least one formal apology. They continue to advocate through the Voices for Our Fathers Legacy Foundation for memorialization and education about the study and its victims (Voices for Our Fathers Legacy Foundation, n.d.a). Both suggest that a victim-centered policy would consider legacy as a key component of success. The current legacy of the Syphilis Study at Tuskegee is largely considered to be negative. Any cultural changes that were embedded into research and government practices were insufficient to repair relationships. The use of Black men in medical experiments directly contributed to distrust in the Black community of the medical profession and medical services (Alsan and Wanamaker 2018). Lack of clear accountability and insufficient attention to victims' needs and wants defines the legacy.

### German Reparations for the Holocaust

The German government has provided restitution to victims of state violence suffered during the Holocaust under the National Socialist (Nazi) regime, most of which targeted the Jewish population in Germany and Poland, in a

complex reparations program. At the immediate close of the war, the British, French, and American governments oversaw the initial restitution, which included programs that returned stolen property, provided healthcare and other benefits, and granted pensions to victims and their surviving dependents. In 1952, the West German government negotiated a reparations program with Israel, and the Conference on Jewish Material Claims Against Germany, or the Claims Conference, a representative group of victims' groups, and signed the program into law in the Luxembourg Agreement (Heilig 2002). The Claims Conference became the primary body responsible for negotiating with the German government for any payments and policies afterwards.

Germany has paid out an estimated €78 billion in total reparations (Federal Ministry of Finance 2018), starting with an initial payment to the state of Israel to support Jews who resettled in the new country in 1953. There is no single reparation benefit, but instead a set of arrangements and commitments that have evolved over time in both who is being compensated, who is compensating, and what specifically they are addressing (for a summary of the details, see Federal Ministry of Finance 2018). Some of these arrangements were negotiated by the Claims Conference directly with the German government, both before and after reunification, some were moderated through the Hague, and some with companies that used Jewish slave labor (Claims Conference 2021). Over time, victim groups expanded to include the Righteous Gentiles who risked their lives to save Jews during the Holocaust (Claims Conference 2021) and victim payments expanded for specific victims of the Holocaust: those who were the subject of medical experiments, and children who were separated from their parents and sent out of the country (Kindertransport) after Kristallnacht (Claims Conference 2021). Recently, the Claims Conference negotiated payments for home care for elderly survivors, and one-time payments to help with the hardships created by the COVID-19 pandemic (Gross 2020).

As the number of living direct victims and survivors decreases over time, the German government has expanded its broader activities

that acknowledge and communicate the lessons learned from Nazi-perpetrated atrocities and Germany's approach to atoning for those crimes. In official documentation, the government explains that reparation payments will eventually end, but that should not mark the end of the program. Instead, against a backdrop of increasing anti-Semitism and Holocaust denial, there is a focus on commemorating what happened before and after 1945, on how the young democracy of the Federal Republic of Germany dealt with its National Socialist past, what lessons were learned and are being learned from the crimes against humanity committed by the National Socialist regime, and how this can be communicated to future generations in a meaningful and lasting way (Federal Ministry of Finance 2018).

For our evaluation, this case study is of interest because it demonstrates how accountability can evolve over time, enwrapped as it is with the notion of legacy. West Germany's apology was part of the original agreement in Luxembourg in 1952; after ending Communist rule, East Germany's first freely elected parliament in 1990 apologized as well (Laub 1990). But as recently as 2022, Germany's payment for reparations includes funds earmarked for education about the Holocaust (Solomon 2022). In addition, the Ministry of Finance is in the process of digitizing all claims, testimonies, and payments made as part of the reparations program and making them publicly accessible. Some have argued that Germany's view of reconciliation is a permanent process, rather than a one-time act of apology, and this position has helped transform Germany in international relations, even today (Feldman 2012).

Also of interest for design and implementation is the governance of German reparations. The Claims Conference is a body that both advocates for reparations, negotiates directly with the government and private actors, and develops plans for implementation. The presence of an external, representative body helped ensure the reparations program evolved over time to address different and arising needs. It facilitated payment from multiple government institutions and private companies. Notably, German reparations are not a fixed amount that is then allocated, but instead a continual process

of claims. However, the Claims Conference is not without criticism, including several accusations of misuse of funds by Claims Conference managers and fraud (Reiermann, Schult, and Schulz 2010). In 2013, a former director was sentenced to eight years in prison after successful prosecution by the U.S. Attorney for the Southern District of New York (2013). In addition, some aspects of the Claims Conference are not replicable. The organization originally fostered payments out of country, from Germany to the newly established Israel, and had the precedent of payments and assistance from occupying military victors. The number of claimants is also small relative to the number of victims because the majority of victims were murdered.

Combined, the positive lessons from this policy—the revisitation of what accountability entails and the permanent representative body for claimants—suggest that reparations design and implementation is improved by some kind of continuing, recurring assessment of the policy. Reparations in the German context, as they have evolved over time, are a living policy rather than a finite one. Although the negotiations over German payments to victims of the Nazi regime started as delimited and one-time payouts, social and political pressure from both within and outside Germany catalyzed ongoing conversations and negotiations to repair and redress victims, and to hold institutions to account. There may be reasons why the financial aspect of policy should or should not be ongoing versus one-time transfers of resources. That depends heavily on the harm and the scope of compensation in response.

### Japanese Internment

Pursuant to Executive Order 9066 issued by President Franklin Roosevelt in 1942, more than one hundred thousand Japanese Americans were forcibly relocated from their homes in Washington, Oregon, California, and Arizona (National Archives 1942; Kim 1986). Many left property behind or liquidated their property and other assets at a fraction of their worth. Following World War II, President Truman authorized the payment of claims to freed Japanese Americans to be compensated for property through the Evacuation Claims Act, but few were paid and the amount paid was



small relative to property lost (Wei 1993). After continued pressure, Congress in 1980 created the Commission of Wartime Relocation and Internment of Civilians to study the decision to incarcerate Japanese Americans, including whether it was justified by military necessity. It released its report, *Personal Justice, Denied* in 1982 (Commission on Wartime Relocation of Internment and Civilians 1982). The next year, it followed with recommendations for an apology and monetary compensation.

The Civil Liberties Act of 1988 enacted reparations to Japanese Americans, both U.S. citizens and residents, whom the U.S. government had interned during World War II. The act also provided funds to repay Aleut communities who were relocated during the war, and whose property was damaged or destroyed by the United States.<sup>1</sup> The funds provided \$20,000 to each eligible Japanese American and \$12,000 to each eligible Aleut. Payments were accompanied with an apology; the federal government acknowledged the harm, admitted culpability, and offered reparations as redress.

Returning to the pathways of our logic model, we consider the victim track and perpetrator track. The pressure to enact reparations came from the Japanese American Citizens League (JACL), an Asian American civil rights association established in 1929. Rather than a multidecade campaign, the push for reparations was not officially adopted by the JACL until its 1978 convention, when a resolution passed to call on Congress for an apology and payment of \$25,000 (Japanese American Citizens League 2022b). Earlier, the JACL had worked to bring awareness to the issue, without demands for redress. This reflected a tension within the Japanese American community between older generations, who wanted to move on from their imprisonment, and younger generations, who wanted to bring attention to racial oppression (Tateishi 2020). This conflict was reconciled by the mutual agreement among the Japanese community that internment, aside from direct harm to victims, was a violation of the Constitution and American

principles that promise the right to liberty and property (Tateishi 2020). Thus an aim of the victims was the reconciliation of democratic principles.

These principles were directly incorporated into policy design, which is the key reason we consider this case study. The Commission on Wartime Relocation and Internment of Civilians, in its report to Congress, articulated that the target of reparations policies is not solely the victims, but the perpetrators:

It is well within our power, however, to provide remedies for violations of our own laws and principles. This is one important reason for the several forms of redress recommended below. Another is that our nation's ability to honor democratic values even in times of stress depends largely upon our collective memory of lapses from our constitutional commitment to liberty and due process. Nations that forget or ignore injustices are more likely to repeat them.

One motivation for redress is the *violation* of principles, the other motivation is *preservation* of them. This enumerates a benefit from reparations for the perpetrator beyond accountability, which in our evaluative view, expands the notion of policy success.

As for design, the payment of a flat monetary amount was held by advocates of the reparations to be symbolic, a way to call attention to the issue for nonvictims, rather than fully make victims whole for what was lost (Tateishi 2020; Rosario 2020). Success in the case of Japanese reparations comes from the victim's aims being met. What Congress adopted in 1988 was similar to what the JACL resolved in 1978, with the difference of \$5,000. That awareness of the harm incurred is integral to legacy, another key motivator for reparations (Hatamiya 1993).

In regard to implementation, like the Syphilis Study at Tuskegee, an official, multiperson panel tasked with assessing the harm created a clear pathway for action in response. The commission's scope was broader and focused

1. Public Law 100-383. To implement recommendations of the Commission on Wartime Relocation and Internment of Civilians (1998), <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf> (accessed March 20, 2023).

on the victims in addition to the circumstances leading to transgression. It also took as part of the response the need to prevent something similar from occurring and included a mandate for creating a collection in the National Archives of all of the documents and testimony collected in the course of the investigation (Commission on Wartime Relocation of Internment and Civilians 1982, 1983).

Finally, of additional interest for our evaluation of success in reparations is that Congress was not inhibited by past redress attempts. The commission acknowledged that prior payments had been made, including the Evacuation Claims Act in 1948 and an adjustment made by the Social Security Administration in 1972 to replace internment years with wage contributions for the calculation of benefits (Commission on Wartime Relocation of Internment and Civilians 1982, 1983). However, the commission estimated that the loss to income and property, in 1983 at their writing, was up to \$2 billion, far below prior payments. Yet it declared that no cash amount would make victims whole because the stigma, trauma, suffering of their experience has no monetary equivalent. Neither of these facts—that victims had not been given enough, but that enough was an impossible concept relative to harm—were barriers to acting.

### South African Apartheid

The apartheid system of government in South Africa, which began in 1948 and continued until a new constitution took effect in 1994, was built on the oppression of the majority Black population. The severe curtailing of civil and economic rights, property and land appropriation, and loss of life were common for the Black population living under apartheid (Clark and Worger 2022). As newly elected president, Nelson Mandela oversaw the creation of a Truth and Reconciliation Commission (TRC) in 1995, a legislatively constituted group that investigated the human rights abuses that occurred under apartheid between 1960 and 1994.

The TRC created a subcommittee, the Committee on Rehabilitation and Reparations, to investigate human rights abuses committed in the specified time period and make policy recommendations in response. The TRC released

its findings in seven volumes, beginning in 1998 (Tutu et al. 1998).

The Committee on Rehabilitation and Reparations interviewed thousands of victims and explored the political, social, and psychological motivations and enablers for human rights abuse (Tutu et al. 1998). Its recommendations for reparations were an ambitious program of individual grants for victims; administrative assistance for important symbolic measures, such as procuring death certificates and headstones for those murdered; community and national benefits to rename buildings and streets, erect memorials, and a remembrance day; comprehensive community healing through investments in health care, housing, and others; and institutional reform (Truth and Reconciliation Commission, n.d.). Acting on these recommendations became the subject of deep political struggle and most were not realized (Colvin 2006). The government of Mandela's successor, Thabo Mbeki, authorized one-time payments to those who testified in front of the TRC, about eighteen thousand individuals, and pursued community economic development programs (Colvin 2006; Gready 2012; United States Institute of Peace 1995).

As a case study, the response to apartheid considers a harm enormous in scope and length; we do not have space to consider all aspects of it. Nor do we weigh in on how well the Truth and Reconciliation Commission executed its overall task, a subject of considerable academic and policy debate (Andrews 2004; Brooks 1999; Doxtader and Villa-Vicencio 2004; Naidu 2013; Daly 2003). We focus on two policy lessons, the first of which regards design. South African apartheid is a complex context for harm, which spanned harms of discrete, sometimes individual action as well as harms from pervasive economic, political, and social disenfranchisement and oppression. We take as a critical lesson for success that no harm context poses such a logistical burden that it cannot be redressed. The Committee on Rehabilitation and Reparations, as the name suggests, had aims beyond remuneration to victims and proposed a comprehensive suite of policy recommendations to transform both the victim and the perpetrator. South Africa did not fail to design reparations but they failed to adopt them

in full. That design may have flaws, but the committee was not stymied and unable to foster policy options. Policy is possible.

The second lesson concerns institutions and perpetrators. In most cases, the institution dictating the terms of the reparation that are ultimately executed upon is the institution of the perpetrator. That is in the nature of seeking redress from a guilty party. In South Africa's case, the apartheid government was dissolved and replaced by an elected government extremely sympathetic to the human rights abuses suffered under apartheid because the leaders themselves had directly suffered imprisonment and exile. But this sympathy and shared experience proved insufficient for action. The solution, not answered by this case study but posed by it, is finding the political and economic impetus for an institution to accept the change reparations require. That this failure to implement an encompassing reparations policy, even when it was clearly motivated and fully designed, occurred in South Africa under the post-apartheid government makes clear how important and challenging this is.

### LESSONS FOR SUCCESSFUL REPARATIONS POLICY

Each of the case studies offer myriad lessons about reparations policy; our evaluation focused on the notion of success, a potentially elusive concept in any policy but particularly difficult in instances when severe harm has occurred. Our discussions aimed to link areas or patterns in satisfaction, dissatisfaction, and transformation in the wake of harm. We draw several lessons, organized through the stages of policy development.

First is motivation: redress and accountability are necessary for a reparation to be successful but cannot be achieved incidentally. To transform the victim and perpetrator in the wake of harm, the motivation of the policy must be clear. Both the emancipation of the serfs and the Indian Claims Commission facilitated payments to an injured party, but those payments were not motivated by a desire to claim culpability, and they affected little permanent change in the status of the victim or the attitude of the perpetrator. One interpreta-

tion of this is that a reparation must include an apology, either definitionally (as in, a payment without an apology is not a reparation) or in principle. But even official apologies, like President Clinton's after the Syphilis Study at Tuskegee, are insufficient to success if they are not part of a cohesive agenda of transformation.

Our conclusion is that a successful reparation must include an intention, well-stated and apparent, that the victim needs to and ought to be redressed and the perpetrator needs to and ought to be held accountable in some fashion. These are not symmetric, or equally important, but parallel aspects of the overall aim. Our assertion is that design and implementation cannot achieve this aim by accident but instead must be orchestrated around a guiding motivation. Redress and accountability are not the sole aims of a reparations policy, but they cannot be achieved without being aims of a policy. Further, without acknowledgment of harm, there is little hope of shifting the power and relational dynamics between perpetrator and victim that led to the harm in the first place, a reason why remuneration alone cannot repair harms.

Second is design: defining what constitutes a reparation is important but far less meaningful than how a reparation is conceptualized. The actual form of remuneration does not necessarily have an ordinal ranking of what is best, nor is remuneration the sole consideration. Indeed, although we see that payment is part of reparations policy, well designed it is not the whole of reparations policy. The cases we explore in this article that relied heavily on discrete remuneration as the premise of reparation—namely, the emancipation of the serfs, the ICC, and, in practice if not in design, South Africa—are arguably the least successful in generating meaningful redress for victims or holding perpetrators to account.

Instead, a victim-led approach in defining the harm, the victims, and the scope of the policy in response—inclusive of but not limited to remuneration—is key to reparations success. German reparations achieve this through working with a representative agent that is continually negotiating on behalf of the needs of victims. Japanese internment reparations, also

advocated for by self-identified victims of the harm, were instead a one-time, symbolic payment. Although the payment was far short of the wealth and income lost, it was driven by the JACL in pushing for congressional action. South African reparations included the testimony of thousands of individuals in consideration of its recommendations. This was a function of being part of a broader truth and reconciliation effort, but it still informed the policy design process.

Victim-led definition of scope can enable an inclusive approach to the preferences of those harmed, especially those reluctant or even hostile to the idea of remuneration. Not all victims want to receive money or personal attention for what happened, but may be more vested in legacy, in preventing another wrong, or in having their experience contribute to some change. The details of what that entails have to come from victims rather than the perpetrator. There are many flaws in the emancipation of the serfs and the Indian Claims Commission, but many of them can be traced back to the unidirectional flow of policy, where all terms, harms, and actions are dictated by perpetrators without any input from or even consideration of the victims.

A combination of the need for clear motivation and the role of victims in articulating the harm and solution is an argument for an investigative panel, commission, or committee that presents findings detailing the nature and extent of the harm and offers pathways for both victims and perpetrators. In the aftermath of the Syphilis Study at Tuskegee, the perpetrators were more transformed than the victims, in part because the ad hoc panel stood up to evaluate the study had a mandate to focus on the study and how it came to be, not the harms experienced or how to address them. Panels do not guarantee success, as South Africa's case makes clear, but they can facilitate policy development and direct action, even if they cannot assure that action will occur.

Third is implementation: most of case studies offered lessons of what to avoid, rather than hallmarks of success, in reparations policy. The emancipation of the serfs was implemented in a way to keep the newly freed serfs poor. The Indian Claims Commission favored small set-

tlements, with a high burden of proof and a deference to put the awarded funds in trust rather than to victims. The victims of the Syphilis Study at Tuskegee had to sue for compensatory payment, and an apology came only twenty-five years later. Appetite waned, and what reparations were ultimately enacted in South Africa were a fraction of the scope the committee had envisioned.

However, our view is that the implementation mirrors the motivation; a reparations policy committed to transformation can have a difficult implementation, but it is not an insuperable barrier. Implementation bends to the will of motivation, not the other way around.

One positive lesson for reparations, though, is that they can benefit from a living policy of revisited assessment of needs, aims, and execution. This can reflect that needs and aims shift. German reparations have evolved from their initial support for the Israeli state to the recent investments in Holocaust education. Were there a reparation for the Syphilis Study at Tuskegee, a successful policy would span the initial and immediate need for medical care to the ongoing desire for memorialization and education from families. Or a recurring commission for Japanese reparations may have enacted policy around the increase in hostility and hate crimes toward Asian Americans, as JACL documents (Japanese American Citizens League 2022a).

A recurring, transparent process of assessment may also help avoid or reduce the possibility of a frequent source of implementation failure: dispute in the allocation of funds. Accusations were brought against the trusts that held awards from the Indian Claims Commission, and criminal charges and convictions in the Claims Commission of German reparations. As recently as 2017, families of the Syphilis Study at Tuskegee were seeking to use unclaimed funds from their 1975 settlement to fund a museum only to be countered by the claim that such use would violate the original terms of the settlement (Associated Press 2017a, 2017b). Any large payment process or large source of funds can be the target of those with malicious intent, and any benefit can have challenges in receipt. Given that reparations of-

ten include both, accountability at the outset is warranted.

A central challenge to implementation, and successful implementation in particular, is that the perpetrator of the harm, the primary dictator of terms, and the administrative institution are typically one and the same. The transformation from guilty to accountable may be a policy aim, but not a sufficiently compelling one, particularly for those with a vested interest in maintaining their power. In the case of Japanese reparations, the commission articulated the benefit of preservation of principles, which expanded the notion of success. The Indian Claims Commission was adopted in part to streamline the numerous claims filed in separate courts. The emancipation of the serfs was intended to invigorate the flagging Russian economy. A selfish reward for the perpetrator is often a component of implementation.

Last is impact: a key barometer of success is legacy. For victims, this includes promotion and awareness of what occurred. For perpetrators, this entails actions to ensure that the harm does not happen again. Legacy is central to the families of the Syphilis Study at Tuskegee in their advocacy for financial support for education and memorialization of the victims. Despite the enormous change in federal practices and standards around research since 1972, many consider the study's largest legacy to be that of distrust. Legacy was also a key motivator in the divided Japanese American community in the push for reparations for internment, to bring attention to a clear violation of the Constitution, or as the Commission noted, to make clear that "it can happen here" (Commission on Wartime Relocation of Internment and Civilians 1983). And though the Committee on Rehabilitation and Reparations did not see its policy vision fully realized in South Africa, some argued that the testimony of thousands of victims was integral to moving past apartheid (Naidu-Silverman 2019).

Hence, we conclude that a successful reparation is one that alters the legacy of the harm; beyond transforming the parties involved, it catalyzes that transformation into awareness, learning, and understanding that arguably could not be achieved without it. Harm is not random and neither are victims. The legacy of

policies is the change to the attitude or power imbalance or situation that enabled the harm to occur in the first place.

## IMPLICATIONS FOR REPARATIONS TO BLACK AMERICANS

Although it is beyond our scope to enumerate the ways in which Black Americans have been victims to state, economic, and social violence during and in the aftermath of slavery that motivate a reparations policy, others have taken up and continue to take up that mantle effectively (Bittker 1973; Darity and Mullen 2020). We apply the lessons from our case study analysis to reparations to Black Americans, acknowledging here that the harm redressed could be specific actions, sets of policies, or entire systems of oppression. Yet we can offer broad considerations.

First, reparations to Black Americans ought to have clear articulation of the harm to be redressed and held accountable for. The complexity and diffusion of harm perpetrated against the Black community for centuries serves as a motivator for reparations, but reparations policies benefit from defined aims. Defined does not mean limited or reduced but expressed in a way that both parties are in understanding of what needs to be achieved.

Related to discernible aims, reparations ought to have clearly articulated benchmarks for both successful redress and sufficient accountability. These benchmarks could be economic, social, political, cultural, educational, or anything of relevance to the aims. Policy should then be designed with those specific benchmarks and broader aims defined. In addition, that design and development is best when victims' desires and preferences are central, including those victims who oppose remuneration or apology. A big tent ensures that reparations are responsive to community preferences and has broad support in its agenda. A central planning committee with recurring convenings to cull those victim preferences, design the policy, and monitor implementation can help ensure accountability and respond to shifts in need.

The biggest obstacle perhaps facing reparations for Black Americans is in compelling implementation—identifying the selfish payoff to



the federal government in enacting such a policy beyond its accountability. Yet there are lessons to be drawn from motivations past, such as the reestablishment of democratic principle, and present, like institutional distrust, to drive policy creation. Design, though difficult, is not impossible and implementation, though challenging, is not an insuperable barrier.

It is our view that paramount to reparations to Black Americans is the mutually agreed upon aim of what the legacy of reparations ought to be. One way to think about this is to consider what cannot change in America without reparations to Black Americans, or alternatively, to consider what is most in need of changing that reparations to Black Americans can address. Like reparations, legacy is more than payment.

These lessons drawn from our case study analysis are not meant to be interpreted as a proposal for reparations to Black Americans. Nor are they meant to be seen as support for, or criticism of, any existing policy proposals for reparations to Black Americans. Case studies offer a way of interpreting policy experience through a framework for assessment, in this instance, success.

We noted earlier that reparations to Black Americans are subject to the effectiveness paradox: the economic, political, or social gap between Black and White Americans motivates reparations, but the gap is so large that reparations could not be effective, and therefore they should not be pursued. Our review of case studies makes apparent that this argument imposes a notion of effectiveness that would be moot in a comprehensively designed policy. Efficacy and success are defined by the victims: their motivations in seeking redress, their preferences in what policy should include, and their hopes for legacy. In this light, an implication for reparations to Black Americans is how feasible they are.

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