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Introduction

The call for repairing the past pervades today's political thinking. In the domestic realm and on the international stage alike, the concept of reparations boasts an expansion of staggering global proportions. Reparations loom large both as justice claims and as an organizing principle of present societies' relationships with their past. Some of these developments seem to be quite recent, attesting to changing public sensitivities and the worldwide adoption of human rights language. The emphasis they place on rights, ownership, and individual agency, however, shows that claims to redress are deeply anchored in liberal tradition and bear distinctly Western traits. They draw on European responses to the atrocities committed under Nazi rule, which have radically changed our understanding of reparations. When we hear the term today, our spontaneous association is not that of the burden imposed on defeated aggressors to atone for the conflagration they caused – the meaning reparation carried until the mid-twentieth century. More likely, we connote reparations with massacres inflicted on defenseless civilians and place the call for redress in a lexical field demarcated by trauma, memory, and recognition – in a web that draws on the Holocaust as its foundational event.¹

This semantic shift points to profound political and legal transformations that date back to the final years of the Second World War, when individuals – survivors of Nazi atrocities and champions of victims' rights – for the first time raised claims to indemnification en masse. With the Allied victory around the corner, this demand began picking up steam in the circles of Jewish refugees and German emigrants. By the end of the war it was moral currency, although it lacked footing either in positive law, established practice, or binding commitments of the victorious powers. In its classical doctrine, international law exclusively regulated the relations between sovereign states and did not recognize individuals as legal subjects.² Only few exceptions existed, and on the whole they fell short of establishing international precedents because of their lack of enforcement, such as the obligation imposed on the Ottoman Empire by the Treaty of Sèvres in 1920 to “repair so far as possible the wrongs inflicted on individuals in the course of the massacres perpetrated in Turkey during

the war.”³ Moreover, declared recognition of a state obligation to remedy past abuse did not yet translate to individual entitlements.

As a result, survivors could rely on little else for the substantiation of their claims than spontaneous sympathy of those who were nauseated by the revelation of Nazi mass murder and alarmed by the devastating legacy it bequeathed to the postwar world. Moreover, the unparalleled nature of Nazi atrocities, which strained “not only the imagination of human beings, but also the framework and categories of our political thought and action,” as Hannah Arendt stated in 1945, troubled reparations advocates from the very beginning.⁴ In their desperate effort to make sense of victims’ experiences and grasp the wider meaning of the cataclysm of Nazism, they were confronted with a breakdown of traditional semantic frameworks.⁵ At the same time, they had to face up to the dilemma that any attempt at repairing the irreparable was in vain. “Life can never settle the bill that we had to pay [in the camps] even if it offered us all delightfulness imaginable in this world,” German-Jewish Auschwitz survivor Lucie Adelsberger remarked in her 1956 memoir.⁶ This conundrum would permeate reparations claims throughout the postwar period.

Nevertheless, simultaneous appearance and prevalence of claims to redress in such different places as New York, London, and Tel Aviv as well as in countries such as France, Germany, and Switzerland bespoke the birth of a new paradigm in political morality. New moral sentiments required that individuals who suffered severe harm receive compensation for their injuries. Surely, these expectations were not very clear, and they lacked sound theory to corroborate their justification. Similarly, the identity of the intended beneficiaries was rather opaque. Claims to redress stood in loose relation to the human rights boom of the early 1940s, which was stimulated by Allied war propaganda and optimistic visions of the postwar order.⁷ But as a matter of fact, this connection was quite weak and rather circumstantial. The international human rights project was basically future oriented, aimed at preventing gross human rights violations from becoming a risk to collective security. Thus it was of little direct use for the vindication of claims that pertained to past events and, in a strict legal sense, even bore the odium of retroactivity.

The novelty of the call for redress raises the question why reparations appeared at the end of the Second World War and what problems they were meant to solve. In this book, I address these questions from a comparative perspective by demonstrating the almost simultaneous emergence of reparations claims in three states – France, Germany, and Switzerland. In all three states, governments felt compelled to respond to ensuing expectations. And despite their divergent histories during the Nazi era and the Second World War, all three countries created special mechanisms to compensate victims of Nazi persecution. This simultaneity points to the rise of reparations as a new paradigm in dealing with mass victimization that was not limited to one country or one specific concept of wrongs and whose complex genealogy can be reconstructed only from a comparative perspective. Therefore, I do not equate reparations with German *Wiedergutmachung*. Not only does this term carry

conflicting associations because of its origins in Germany's difficult coming to terms with its Nazi past,⁸ but taking German reparations for an ideal type or heuristic device would also distort historical realities and make alternative approaches appear purely derivative – a view that still dominates some of the literature. Moreover, the inclination to hold up the West German model as the “gold standard” of subsequent restitution movements has nurtured the myth that postwar reparations were primarily about the Holocaust and designed to address the “Jews and the State of Israel” before being “extended to other victim groups”⁹ – an assumption that is incorrect. None of the early reparations schemes were exclusively or explicitly geared to the Jews, nor was the Holocaust the main reason for the nascent reparations regime after the Second World War. By taking our cultural interpretation of the destruction of the European Jews for granted – in its meaning as the touchstone of evil – such statements ignore the malleability and historicity of current Holocaust awareness. They also omit the role played by reparations in the unfolding of such an interpretation.¹⁰ Instead, we have to question the significance of reparations in stimulating new sensitivity to the unprecedented and distinct nature of the Jewish catastrophe and ponder their becoming a formative element of today's Holocaust awareness.

What I demonstrate in this study is how reparations evolved in different national contexts since the late 1940s as specific responses of modern, democratic societies to the challenges embodied by unprecedented mass victimization. Their appearance was determined by the tensions between their national conception – linked to postwar societies' reckoning (or lack thereof) with their recent past – and a transnational discourse that opened a new horizon of normative expectations with regard to notions of just redress and, against this horizon, (re)interpreted the experience of undeserved suffering as a gross injustice.¹¹ This does not deny that the challenges faced by the Germans, as the bearers of the ultimate responsibility for Nazi atrocities, surpassed those of other European societies' infamous histories of collaboration and complicity in these crimes.

Transitional Justice – or Negotiated History?

In Europe, the Holocaust-era restitution campaign of the 1990s resurfaced the history of postwar reparations. Originating in the unraveling of Eastern Europe's ownership conflicts after the collapse of communism, this campaign first targeted Swiss banks and German corporations for their complicity in the spoliation of the Jews and exploitation of forced laborers. Given that the last survivors of Nazi abuse had reached an age where they were about to pass away, these claims attained a special moral urgency. At the same time, accelerated integration of financial markets equipped lawyers and victims' associations with unique leverage against transnational corporations and political authorities. In the countries that had come under attack for having flouted victims' rights and fabricated embellished versions of their national histories,

the harsh accusations raised by international Jewish organizations antagonized the public and sparked highly controversial debates about the past. In the wake of these campaigns, survivors' complaints compelled most European societies to reconsider their Nazi-era history. By the end of the twentieth century, most of the censured state and nonstate actors had signaled their readiness to settle with the claimants or had already made considerable funds available for compensation payments.¹²

Inspired by the success of the Holocaust-era restitution campaign, victims in other parts of the world rallied around the cry for redress to bring their demands to the fore. Reparations movements demonstrated an intriguing ability to mobilize people who had been numbed into silence – often for decades – by the pain and humiliation they had suffered in the past. In conjunction with the zeal of mass media to dramatize individual tragedies, reparations provided a vehicle to resuscitate past wrongs as events that mattered in the present. From the 1990s onward, claims to redress have become the language of the weak and voiceless, or as Elazar Barkan succinctly put it: “Victimization empowers.”¹³ At the same time, these developments are highly disturbing. Together with the thriving memory industry, they reveal a profound cultural change with regard to our understanding of temporality. Reparations bespeak a growing obsession with the past and encourage inflation of victimhood rhetoric – with past victimization becoming the most compelling validation of justice claims – and an eerie revival of nostalgia. It seems as if we were losing the critical approach to the past as Nietzsche conceived it, namely the ability to break with its legacy and condemn it, to forget in order to be able to live and contemplate the future.¹⁴

Much of the current academic interest in the global upsurge of reparations is associated with transitional justice studies. A thriving academic field that was spawned by the political transformations of the 1980s, this scholarship has produced a growing body of literature in recent years. Its main emphasis lies on the problems that arise in the context of political transition from authoritarian rule to democracy, and its baseline is application-oriented, pragmatic, or normative, as many of its authors are themselves implicated in making political transitions in the roles of actors or experts, observers or advocates.¹⁵ Only of late, however, have reparations become a major concern. Interest in victim-centered measures mainly sprang from the realization that initial preference given to the establishment of accountability in the aftermath of mass violence proved to be a sobering, if not entirely frustrating, experience. Peaceful transitions frequently involved far-reaching amnesty provisions and resulted in widespread immunity of the old establishment. Scholarship fathoming the tensions between the call for a thorough reckoning with the past and the necessity to prevent estrangement of compromised elites began exploring alternatives. Reparations subsequently came to the fore as one of the few instruments left to mete out justice, whereas trials and purges, by their design, failed to give an adequate account of the victims' suffering. Recent preoccupation with trauma as a collective category has additionally bolstered emphasis on victim-oriented remedies.¹⁶

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In the meantime, reparations have come to encompass a wide range of claims, including those to establish historical truth, official acknowledgment of wrongs, apologies, commemoration, memorials, and other cultural practices.¹⁷ However, no conclusive jurisprudence has yet emerged to spell out a legal concept of redress. As Richard Falk outlines in a 2006 article, there is a striking discrepancy between the positivist position that clearly denies the existence of such a right in international law and constructivist approaches that rely on customary law and “reparations ethos” to support claims to redress.¹⁸ Still, the bottom line of most theorizing that informs current debate “is heavily influenced by the ‘juridical’ understanding of the term,” Pablo de Greiff admits in a 2006 survey.¹⁹ Grappling with normative issues nonetheless has the refreshing effect of bringing terminological clarification to a field where a plethora of different expressions coexist – amends, compensation, indemnities, indemnification, redress, remedies, restitution, and so on – all referring to related phenomena. Thus *reparations* has prevailed as the generic term to include a wide range of activities directed at victims of human rights violations and designed to achieve their legal restoration and social rehabilitation. This term encompasses *restitution*, signifying the return of lost objects or rights, *compensation* as material benefits meant to make up for any kind of material and moral harm, and, according to some authors, *satisfaction* to denote such symbolic elements as the guarantees of nonrecurrence, the verification of facts, apologies, and in some cases also remembrance.²⁰ This terminology largely aligns with the vocabulary of the English-language discourse since the mid-1940s and is useful for the analytical purpose of this study. To differentiate between individual claims and those raised by states for the indemnification of war damage – although this distinction was not very clear in the immediate postwar era – I use the singular of reparation to denote the latter category of demands.

Apart from terminological clarification, however, the contribution of transitional justice literature to the history of reparations is marginal. Most authors’ historical interest is episodic at best. They might list exemplary cases in support of their arguments, with little consideration for historical transformations. It is indeed difficult to grasp the specificity of victim reparations as a modern phenomenon if the concept is traced back to the biblical exodus, where Israelites stripped the Egyptians of their clothes to literally re-dress themselves, as can be read in a theoretical work on transitional justice, even if the example serves as a parable.²¹ More fruitful impulses for the history of reparations have come from the cultural and social studies literature. Despite many factual inaccuracies, Elazar Barkan’s book, *The Guilt of Nations*, has exerted some influence on historical scholarship. Imbued with the optimistic outlook of human rights discourse in the 1990s and with an idealistic approach, Barkan conceptualizes reparations as the core of a moral economy that he considers a viable option for the resolution of conflicts stemming from past injustice. A wide range of examples from all over the world serve as his empirical material, including such diverse cases as the German-Israeli negotiations of 1952, reprivatization of property in Eastern Europe, postcolonial claims of indigenous peoples,

and the slavery reparations campaigns, to name just a few. As their common feature, Barkan identifies the readiness of “perpetrators” and “victims” to enter into negotiations over justice claims and conflicting representations of the past. In his reading, reparations provide the framework for engaging in such a conversation, the outcome of which ideally is a negotiated form of justice. Reparations, so Barkan’s conclusion, result in national self-reflexivity and a new “moral political theory.”²²

It is the great strength of Barkan’s endeavor to identify reparations as a new concept by insisting on the structural similarities of claims that have arisen in very different contexts. Barkan thus exposes their entangled history as an element of cultural globalization, sponsored by the transfer, traveling, and appropriation of ideas and moral categories resulting from the rapidly expanding possibilities of transnational communication. The emphasis he places on the negotiated character of justice as a pragmatic result of political constellations also offers an attractive interpretation of the space that reparations create for the articulation of new aspirations. However, as is the case for many studies with such a global reach, Barkan cannot avoid generalization, and this repeatedly compels him to bend the individual cases or leave out aspects that do not fit his model. From an analytical viewpoint, his overgeneralizing use of the terms “victims” and “perpetrators” as the main actors of the drama of reparations creates a sense of unease. Ostensible clarity becomes elusive when juxtaposed to the complex situations resulting from mass violence, and dichotomous categories tend to obfuscate ambivalences that are essential to grasping how reparations work. Even with regard to Barkan’s textbook example of negotiated justice, the German-Israeli agreement of 1952, it is difficult to subscribe to his classification. In any case, how should we categorize the German chief negotiators Franz Böhm and Otto Küster, both of whom were opponents of Hitler and suffered disadvantages under Nazi rule?²³ Equally problematic is the concept of negotiated justice when applied to compensation practice. Locked in the “iron cage” (Max Weber) of bureaucratic enforcement, the implementation and allocation of redress rarely created situations that allowed for negotiations – either of justice claims or historical representations – but were determined by the institutionalized asymmetry of power relations.

The interpretation offered by sociologist John Torpey, in contrast, subscribes to the diagnosis of a “surfeit of memory,” as stated by Charles S. Maier in the early 1990s.²⁴ Torpey attributes the appeal of reparations to the demise of transformative projects following the fall of communism and considers the current dwelling on past injustice symptomatic for the often paralyzing perplexity that rules political orientation since 1989.²⁵ According to this interpretation, reparations – as justice claims concerned with the past – bespeak the collapse of the future as a horizon of political imagination, a trend Torpey rightly associates with the delegitimization of social movements under neoliberal hegemony. However, his preoccupation with identity politics – according to his analysis the driving force of reparations movements – overrates and unduly generalizes prevailing tendencies in North America. It also downplays

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the significance of equality and redistribution as objectives in many of the more recent reparations movements, especially those concerned with the legacies of slavery and colonialism.²⁶

In short, neither of these theoretical approaches is suited to describe the emergence of reparations claims at the end of the Second World War. They do not give convincing answers as to why claims to redress suddenly became so compelling and enjoyed plausibility with most postwar societies. The roots of postwar reparations therefore have to be sought in the wider context of societies' dealing with the problems engendered by mass victimization after the Second World War and their efforts at reckoning with events of collective violence and collaboration in the Nazi-era past.

Comparison and an Analytical Concept of Reparations

Recent reparations movements have exposed the call for redress as a traveling concept that has taken hold in very different cultural contexts and relates to different historical events. Adequate comprehension of those transformations, which are indicative of global interdependency in the realm of dealing with the past, requires comparison and the study of cultural transfer. Focusing on synchronisms and cross-fertilization allows us to shed new light on the meaning of reparations and the problems they were meant to solve. From that perspective, some of the commonly held assumptions begin to falter, for instance the belief about the uniqueness of West German reparations or the specificity of East German exploitation of compensation payments as a reward for political conformity. Yet comparative and transnational research also faces methodological challenges. It has to consider semantic shifts that occur through the cross-cultural translation of ideas and their diffusion in the local context. As a result, the same terms and concepts do not necessarily mean the same things in different cultural settings. Conversely, comparison also has to take into account that phenomena classified under different categories in different national contexts might turn out to be very similar at closer look.²⁷ Although they tackled comparable problems and performed similar operations, *réparations* in France did not denote exactly the same thing as German *Wiedergutmachung* or *Vorauszahlungen an schweizerische Opfer der nationalsozialistischen Verfolgung* (advance payments for Swiss victims of Nazi persecution) in Switzerland.

Still, at first sight, France, Germany, and Switzerland might not be promising examples for a comparison of postwar redress. It appears quite obvious that Germany could not evade the legacies of its Nazi past and victims' demands represented a powerful moral claim on the new leaders of the two German states, but this seems less evident in the cases of France and Switzerland. The latter, after all, was never involved in the murder and expropriation of its own or foreign citizens, and therefore reparations claims seemed to lack political urgency, let alone legal justification. France, in contrast, could refer to a glorious narrative of national resistance in order to wipe out the embarrassing

record of Vichy collaboration and involvement in Nazi mass murder. Dominant memory constructions of the postwar era successfully disguised French enmeshment in Nazi crimes and the Vichy regime's own initiatives leading to violence against aliens and French citizens alike. However, even for the wider public, the Holocaust-era restitution campaign of the 1990s brutally uncovered transnational implications of Nazi mass murder and exposed many more similarities than previously admitted.

These events have raised the awareness of analogies that had been largely ignored before, frozen in images of the past that were artificially preserved by the cold war. Subsequent efforts to explore transnational factors – in the policies of persecution as well as the postwar responses to their legacies – have led to the acknowledgment that the economic, financial, and political repercussions of Nazi atrocities transcended territorial borders and implicated societies that were neither allied with nor occupied by Nazi Germany.²⁸ Recent scholarship on the political transitions after the Second World War also points to many similarities in the attempts of European countries to overcome political violence. It reveals that such reckoning through criminal trials and purges often followed similar cycles that were determined by international developments, the exigencies of reconstruction, and the remodeling of postwar societies.²⁹ As yet, however, few attempts have been made to consider postwar reparations from a comparative and cross-national perspective.³⁰ On the one hand, this reflects the rather narrow preoccupation with property issues and technical questions that framed the research programs of the officially commissioned investigations in response to the recent Holocaust-era restitution campaign.³¹ On the other hand, however, reparations politics in its wider understanding failed to attract scholars' attention. The classification of redress under different labels impeded the identification of structural similarities. This predicament was deepened by the tendency to regard the – by now well explored – German model as a standard. Finally, as compensation payments appear directly linked to state responsibility for Nazi crimes, it seemed counterintuitive to expect either France or Switzerland to introduce such mechanisms, especially against the backdrop of these countries' self-exculpating representations of their wartime past.

So, the question is how to conceptualize reparations in such a way that a comparison yields new insights. A useful analytical concept has to allow for the identification of structural similarities on the one hand and significant national distinctions on the other. At the same time, such a concept has to permit dissociation of reparations from other activities aimed at the mitigation of distress, war-related suffering, or material damages. There are mainly four typical elements that can be isolated in the postwar context to characterize reparations as a distinctive innovation: reparations are victim centered, they classify past events as wrongs, they involve procedures to identify deserving victims, and they tackle the problem of responsibility.

As a victim-based response to mass suffering, reparations create special entitlements and allocate material benefits and symbolic awards to eligible claimants. This does not yet distinguish reparations from any other compensation

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schemes – for instance, those for former combatants or work-related injuries. To qualify as reparations, such measures, secondly, have to include a mechanism to identify specific injuries as wrongs. Based on historical interpretation, this operation establishes a clear distinction between general disaster that can strike virtually anyone and an injustice that implies wrongdoing and is premised on the existence of an author of that harm. In stressing this aspect, I borrow from Judith Shklar's theory on negative morality. According to her analysis, conventional justice theories fall short of an adequate explanation of injustice. By ignoring the impact that injuries have on the victims, they fail to capture the essence of injustice. To overcome that deficit, Shklar focuses her attention on the distinction of misfortune and injustice as a set of cultural practices that involve complex processes of classification in each and every case. Following her reasoning, the determination of what constitutes an injustice – something that requires us to act on behalf of the victims – and what is to be considered simply a misfortune is a political act, governed by power relations and the authority to define, separate, or unite.³² In this understanding, reparations basically function as a divider by ruling what qualifies as past injustice; they demarcate the harm caused by acts of wrongdoing from other injuries.

As a third structural element, postwar reparations involve mechanisms to identify victims of Nazi persecution. At first glance, this might be identical with the determination of injustice. But in reality it is not. Reparations establish and assign victimhood as an officially recognized status through individualizing procedures. In legally constituted compensation regimes, the allocation of benefits relies on the examination of each individual case, with the effect that a claimant's circumstances and personal features largely determine the classification of the harm she or he suffered. This means that compensation procedures are linked to unfolding notions of victimhood and are involved in transforming ideas of the victim. At the same time, focusing attention on victimhood also entails considering claimants as actors of reparations, who did not always settle for the role of passive beneficiaries but instead participated in the definition of injustice and the identification of deserving victims.

Finally, as the fourth point: deliberately or not, reparations make statements about responsibility. A disaster that qualifies as an injustice has a moral dimension because it points to human agency and human-made institutions. This implies that there exists (or existed) somebody who is answerable for the wrongs – even if this person or agency has disappeared, is untraceable, or is disguised as a result of the assumption of responsibility by a collective or faceless institution, such as the state. Consequently, mechanisms to satisfy victims' claims, once these claims are considered as rooted in past injustice, automatically are troubled by the question of responsibility. Or to look at it from another angle: reparations are a means to tackle that problem, even if they are designed in such a way as to evade and reject allegations of guilt and responsibility. However they grapple with it, the problem of responsibility thrusts itself on institutions and actions from the very moment these mechanisms appear as reparations.

The preceding discussion shows that reparations can be conceived neither as purely legal institutions nor as politics, but must be conceptualized as a complex interplay of practice and discourse that determines, transforms, and reproduces the meaning of redress and the historically contingent ideas of the underlying wrongs. As a discourse – a set of rules and constraints that structure the making of referential statements about past injustice – reparations enable victims to articulate their suffering in a meaningful and communicable way. This implies that they offer a mode to link past events to the present and express that these events are not by-gones but have lasting repercussions; they provide an arena to actualize past injustice. At the same time, not all narratives, not all ways of talking about past victimization are representations that matter. The rules governing reparations discourse set clear limits that determine what relevant statements can be made about undeserved suffering at any given moment. The same rules silence those who do not meet the standards or comply with the code of that discourse.

Such a definition allows the identification of distinct institutions, practices, and discourses that qualify as reparations in different historical settings. France, Germany, and Switzerland each addressed the problem of forceful changes in property relations, and between the late 1940s and the late 1950s they introduced compensation mechanisms that identified Nazi victims, assigned them special titles, and allocated them benefits. In all three countries the mentioned mechanisms produced specific notions of victimhood and confronted the question of responsibility. Reparations claims were not only a national and transnational phenomenon; they also were shaped by international developments. In Chapter 2, I address events that were instrumental in shaping ideas of restorative measures by focusing attention on American and Jewish postwar planning and the emergence of a fledgling concept of redress in international debate immediately after German surrender. The subsequent Paris Reparations Agreement of January 1946 included a special clause regarding the rehabilitation of nonrepatriable victims that in principle validated victims' claims, although it did not establish international practice. Chapters 3, 4, and 5 discuss the inception of reparations in France, West Germany, and Switzerland, their embeddedness in each of these countries' wider dealing with the past, and the social interactions that shaped practice from the late 1940s until the early 1960s – the formative period of reparations as a new model for addressing past victimization. Giving precedence to France in the sequence of the chapters reflects the fact that the French were the first to introduce comprehensive restitution and reparations mechanisms in the late 1940s. In Germany, the failure of the occupation powers to come to an agreement and the reluctance of German lawmakers blocked the introduction of reparations until the end of the occupation period. In Switzerland, the third case study, the road leading to a compensation regime was rather twisted and involved the vexing question of accountability in the context of the country's intense economic and financial entanglement in Nazi policies. Hence, in addressing the legacies of mass violence and their cross-border