

1-3-2003

Reparation Politics in the 21st Century

John Torpey
University of British Columbia

Follow this and additional works at: <http://scholar.valpo.edu/twls>

Recommended Citation

Torpey, John (2003) "Reparation Politics in the 21st Century," *Third World Legal Studies*: Vol. 16, Article 3.
Available at: <http://scholar.valpo.edu/twls/vol16/iss1/3>

This Article is brought to you for free and open access by the Valparaíso University Law School at ValpoScholar. It has been accepted for inclusion in Third World Legal Studies by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.

REPARATIONS POLITICS IN THE 21ST CENTURY

John Torpey*

One of the more remarkable political developments in recent years has been the worldwide proliferation of efforts to compel states, churches, and private firms to take responsibility for past wrongdoing and to recompense those harmed in the process. The spread of "reparations" payments and other compensation for various historical injustices calls sharply into question the age-old idea from Thucydides that "the standard of justice depends on the . . . power to compel, and . . . the strong do what they have the power to do and the weak accept what they have to accept." Until after World War II, the notion of "reparations" referred to a fine among states that was levied on the loser of a conflict, who was then said by the winners to have caused the disruption and resulting damage and thus to be liable for compensating the victors for their losses. With the establishment of the Holocaust as the principal benchmark of contemporary historical consciousness, however, the response to the victims of the Nazi genocide – that is, the payment of reparations for various kinds of suffering – has come to play an increasingly central role in political thinking in many other areas as well.

In this essay, I address a number of aspects of the global spread of what I call "reparations politics" – that is, attempts to come to terms with past injustices by means of monetary and other kinds of material compensation. First, I outline a framework for understanding the three main sources and the two principal types of demands for reparations. Next, I discuss the consolidation of the Holocaust as a standard and its "globalization" as a model for such demands. In the third section, I discuss the ways in which the enshrinement of the Holocaust as a standard for all "actionable" historical injustices has provoked renewed attention to the misdeeds committed in the "Pacific theater" of World War II, which reflects in part the involvement of diasporas in reparations politics. Finally, I offer some observations on the politics of reparations politics and its connections with broader political developments in the post-Cold War world.

* Associate Professor in the Department of Anthropology and Sociology at the University of British Columbia.

Throughout this discussion, I argue that the concept of race is at the heart of the current worldwide proliferation of demands for "reparations," largely as a result of the delegitimation of racial discrimination since the Holocaust. In the aftermath of the Nazi genocide, invidious racial distinctions have come to be seen as an unacceptable violation of "human rights," and the proliferation of demands for reparations has so far involved more than anything else the righting of injustices based on racial hierarchies. The paradox is that attempts to get beyond race ineluctably involve the simultaneous rejection of that category as a basis for discriminatory treatment, and its re-assertion as the basis for claims to compensation. Paul Gilroy's pleas for the inauguration of a political culture "beyond the color line" will remain unrealized for the foreseeable future for a variety of reasons, not least the necessity of highlighting racial and other kinds of difference as the foundation of claims for reparations.¹ This rejection and re-assertion of racial difference is the enduring agony and perverse triumph of the race idea: poor people can become better-off, but people cannot change how they look, nor their ascription to particular groups by powerful others.

I. THE SOURCES AND TYPES OF REPARATIONS DEMANDS

The various claims for reparations for historical injustices now being raised constitute major challenges to numerous states around the world. The shift in the liability of states for past actions that is inherent in the spread of reparations claims may confront officials of government, churches, corporations and international financial institutions with demands for substantial monetary compensation, far-reaching and potentially costly rehabilitative policies, and even the cession of certain aspects of sovereignty over parts of national territories. My focus will be on reparations claims directed at states, however, because states have so far constituted the principal targets of such claims and because claims against churches and private firms typically result in responses worked out in close collaboration with, if not directly by, states.²

¹ See PAUL GILROY, *AGAINST RACE: IMAGINING POLITICAL CULTURE BEYOND THE COLOR LINE* (2000).

² As for example in the recent settlement of claims arising from the exploitation of forced and slave labor by German companies during the Nazi period. See Edmund L. Andrews, *Germans Sign Agreement to Pay Forced Laborers of Nazi Era*, *NEW YORK TIMES* (West Coast edition), July 18, 2000, at A3. See also the Canadian government's plan for dealing with the abuses arising from the forcible assimilation of native children through residential schools run by both the

Broadly stated, the various campaigns for reparations for past injustices bespeak the dawning of a new phase in relations between states and the groups that they have victimized historically, and the outcome of these campaigns may well influence the future willingness of state actors to oppress other groups. Demands for reparations are part of a broader challenge to state power and sovereignty that has been one of the major consequences of the post-Holocaust era. In short, the stakes involved in the proliferation of reparations claims are very significant indeed.

There are three basic sources of claims for reparations. First are those cases arising from acts of injustice perpetrated during World War II. These include claims arising from state-sponsored mass killing, forced labor, and sexual exploitation on the part of the Axis powers (Germany and Japan, but also Austria), as well as from the unjust wartime incarceration of those of Japanese descent in Allied countries (the United States and Canada) and from economic or other kinds of collaboration in Nazi crimes by putatively neutral countries (Switzerland, France, the Netherlands).

Next are those claims ensuing, in the aftermath of "transitions to democracy," from "state terrorism" and other authoritarian practices in Latin America, Eastern Europe, and South Africa in recent years. These contexts, however, have been more notable for generating quasi-legal inquiries into past complicity with the old regime ("truth commissions") and purges of collaborators than demands for monetary compensation as such. Reparations claims in these contexts tend to be concerned with the restoration to individuals of specific parcels of real estate or other assets, rather than with the return of broad domains to groups or with compensation for non-concrete harms that is typical of other reparations claims.³

Coming to terms with the past in these countries has primarily concerned clarifying the circumstances under which victims of the regime suffered and prosecuting at least some of the perpetrators. As Tina Rosenberg has pointed out, the appropriateness of prosecutions depends on whether the states in question were "regimes of criminals" (Latin America)

government and churches in *Gathering Strength: Canada's Aboriginal Action Plan*, January 7, 1998, available at http://www.inac.gc.ca/gs/index_e.html.

³ On restitution and privatization in Eastern Europe, see ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND AMENDING HISTORICAL INJUSTICES* (2000).

or "criminal regimes" (Eastern Europe).⁴ The victims in these countries are generally understood in political rather than racial terms, and they only constitute a group as a result of their shared experience of political repression.⁵ The South African case is actually a mixed one, combining aspects of this second source of reparations claims with the third - namely, demands for reparations stemming from colonialism.

Demands for reparations arising from colonialism can be broken down further, depending on whether the variant of colonialism referred to is the "classical" European version, one or another variant of "internal colonialism" (e.g., slavery, Jim Crow, apartheid),⁶ or more recent "neo-colonial" structures and institutions. With respect to claims emerging from the aftermath of classical European colonialism, we witness claims for reparations both by the formerly colonized, especially in Africa, and by a variety of "indigenous" groups against states dominated by the descendants of their European conquerors. More recently, demands for reparations have been raised against international lending agencies that are regarded by some as the causes of Third World poverty and environmental destruction, rather than as protagonists of their cure. During the protests against the activities of the World Bank and International Monetary Fund held in Washington, D.C. during April 2000, for example, activists insisted that the World Bank should pay reparations for its funding of dams that have allegedly displaced over 10 million people from their homes and land, caused severe environmental damage, and driven impoverished borrowers further into debt. These demands have overlapped to some extent, at least, with claims that indigenous peoples suffered particularly from these policies.

In contrast to these three sources of reparations demands, I argue that there are two basic types of reparations claims. First are those that seek to

⁴ The best work on coming to terms with the past in the former Communist countries is TINA ROSENBERG, *THE HAUNTED LAND: FACING EUROPE'S GHOSTS AFTER COMMUNISM* (1995). See also Tina Rosenberg, *In Chile, the Balance Tips Toward the Victims*, NEW YORK TIMES (West Coast edition) August 22, 2000, at A26.

⁵ Sharon McConnell, *Is Truth Enough? Reparations and Reconciliation in Latin America*, paper presented at the symposium *Politics and the Past: On Repairing Historical Injustices*, University of British Columbia, February 25-26, 2000. In order to bolster their claims for reparations for the victims of East European Communist regimes, the authors of *THE BLACK BOOK OF COMMUNISM* have sought to make a case for the quasi-racial nature of the victim groups. See STÉPHANE COURTOIS, et. al., *THE BLACK BOOK OF COMMUNISM: CRIMES, TERROR, REPRESSION* (1999), and John Torpey *What Future for the Future? Reflections on the Black Book of Communism*, 2 HUM. RTS. REV. 2 (2001).

⁶ On the concept of "internal colonialism," see ROBERT BLAUNER, *RACIAL OPPRESSION IN AMERICA* (1972).

compensate persons whose physical victimization took place in the past and who now suffer principally psychological scars. These claims can best be characterized as commemorative in nature. They call attention to the acute barbarity or humiliation associated with past mistreatment of individual members of the group. In these cases, reparations are largely symbolic attempts to give official recognition to the recipients' past victimization. The claims arising from World War II are typically of this first type, although of course Holocaust survivors and comfort women may also have physical ailments deriving from their victimization during the war.

Commemorative reparations projects tend to be backward-looking, not necessarily connected to current economic disadvantage, and dependent on the cultivation of a consciousness of victimhood among both so-called "survivors" and the broader public. It is true, as analysts of the nature of successful reparations claims have noted,⁷ that some harm to reparations claimants must persist into the present. Yet commemorative reparations projects are not generally motivated by attempts to repair ongoing economic damage, and the harm to be repaired by compensation is often strictly psychological. Indeed, those seeking reparations of a commemorative nature may be affronted by the appearance that they are after "welfare" rather than recognition of the wrongs done to them.⁸

In contrast to commemorative reparations projects, claims for reparations may be rooted in assertions that a past system of domination (colonialism, apartheid, slavery, segregation) was unjust and is the cause of continuing economic disadvantage suffered by those who lived under these systems or their descendants in the present day. Claims related to the various forms of colonialism are generally of this latter type. However, the reparations campaigns of groups whose oppression took or takes place on territories ruled by the descendants of Europeans (indigenous peoples, African-Americans) often involve a commemorative cultivation of ethnocultural victimization and loss that makes their efforts to claim reparations similar to the first type. Far from being purely commemorative, the reparations movements are transformative in nature.

⁷ See Roy Brooks, *The Age of Apology*, in *WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICES* 7 (Roy Brooks ed. 1999), citing Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

⁸ George Hicks, *The Comfort Women Redress Movement*, in *WHEN SORRY ISN'T ENOUGH*. *Id.* at 124.

Transformative reparations movements are more forward-looking in character; they view reparations as a means of improving the current conditions of deprivation suffered by the groups in question; and they are more frequently connected to broader projects of social transformation than are commemorative projects.⁹ In these cases, the demand for reparations is a tactical political move in a historical period that lacks the capacious, inclusive vision of progressive social change that was once supplied by socialism and the American civil rights movement. For these groups, who find other channels toward progress blocked, the road to the future runs through the prolonged disasters of the past.

Demands for reparations deriving from now-defunct authoritarian regimes tend to fall between these two stools, not least because political stigmatization is more easily left behind than the ethnoracial stigmata on the basis of which the other groups were principally mistreated or exploited. Political apostasy, however severely or unjustly punished, is not carried like a mark of Cain by future generations; only those who suffered it directly, or their immediate families, can plausibly demand compensation.

Rather than falling between the stools of the two types of reparations campaigns, the South African case straddles them in ways that point to the complexity of its post-apartheid challenges. Mahmood Mamdani makes a similar point when he notes that, in the discussions leading up to the creation of the Truth and Reconciliation Commission, "the Latin American analogy obscured the colonial nature of the South African context: the link between conquest and dispossession, between racialised power and racialised privilege, between perpetrator and beneficiary."¹⁰ In one of the more heavily criticized aspects of its operations, the TRC's reparations mandate concerned only the victims of gross violations of human rights by the forces of the apartheid state, not the much more numerous victims of the apartheid system per se.¹¹ The TRC's reparations payments – still barely paid out as of early 2001 – are thus to be understood, in terms of the distinctions outlined above, as strictly commemorative in nature. In part this

⁹ For a different conceptual framework for understanding the nature of reparations claims which stresses the difference between individual and group reparations, see Roy Brooks, *The Age of Apology*, *supra* note 7, at 3.

¹⁰ Mahmood Mamdani, *A Diminished Truth*, in *AFTER THE TRC: REFLECTIONS ON TRUTH AND RECONCILIATION IN SOUTH AFRICA* 59 (Wilmut James and Linda Van de Vijver, eds. 2000).

¹¹ See Heribert Adam and Kanya Adam, *The Politics of Memory in Divided Societies*, in *AFTER THE TRC. Id.*, at 51. For an examination of the difficulties associated with the implementation of the 1994 Restitution of Lands Act, see MARJ BROWN, et. al., *LAND RESTITUTION IN SOUTH AFRICA: A LONG WAY HOME* (1998).

reflects the relatively poor ability to pay on the part of the post-apartheid government, and points to the reality that reparations payments of any kind – but especially those of a transformative character – presuppose a source of compensation with relatively deep pockets.

In contrast to the TRC's purely commemorative reparations, demands for reparations of a transformative nature in the South African context have originated chiefly from elements in civil society. A number of activists recently promulgated a "Declaration of Commitment by White South Africans," which "acknowledge[s] that apartheid inflicted massive social, economic, cultural and psychological damage on black South Africans" and pledges to create a "Development and Reconciliation Fund" to help overcome the economic inequalities caused by past racial discrimination.¹² On December 16, 2000, a number of groups launched the South African Reparations Campaign, "which "will focus on recovery from the countless national and international banks, financial institutions, transnationals, corporations, businesses, mining companies, groups and individuals who perpetrated, assisted in, funded and benefited from our oppression."¹³ A movement for reparations that is intended to overcome the social dislocation caused by the apartheid system as such borrows the language and tactics of the efforts pioneered by those pursuing commemorative reparations for the crimes of the Nazis, and applies them in a campaign for reparations of the transformative variety. There can be no better example of the ways in which responses to the Holocaust have played a central role in contemporary thinking about politics in places far removed from the overwhelmingly European sites of the Nazis' crimes.

II. THE HOLOCAUST AS STANDARD AND MODEL

Despite their differences in character, the various types of reparations claims frequently share the common feature that the Holocaust is regarded as a standard for judging the seriousness of, and as a template for claiming compensation for, past injustices. Far from a merely "local" event of little relevance to those outside the Euro-Atlantic world, the recent spread of demands for reparations in other contexts follows from the fact that the

¹² See <http://www.homeforall.org.za/ENG/declarationENG.htm>. See also Henri E. Cauvin, *In Africa, a Mea Culpa For Apartheid Tests Whites*, NEW YORK TIMES (West Coast edition), December 17, 2000, at 25.

¹³ I quote here from a document titled *Announcement of a Reparations Conference*, made available to me by Art Serota, an activist in the movement.

Holocaust has come to comprise the "true emblem"¹⁴ of our age. The perfidy of the Nazi assault on European Jewry has emerged as a kind of "gold standard" against which to judge other cases of injustice and to which advocates seek to assimilate those instances of human cruelty and oppression for which they seek reparations. Contrary to those who regard the Holocaust as a sponge of historical memory that sucks the juices out of projects seeking compensation for other historical injustices, the very opposite is the case: the Holocaust has become the central metaphor for all reparations politics.

The Black Book of Communism, published in France in 1997 to intense controversy that was repeated when German and Italian editions appeared soon thereafter, made this point malgré lui in the very act of insisting that Communist crimes were more atrocious and hence more deserving of recompense than those of the Holocaust. In the provocative introduction to what otherwise were relatively sober (if macabre) country-by-country analyses of Communist misdeeds, editor Stéphane Courtois asserted, against much countervailing evidence, that "in contrast to the Jewish Holocaust, which the international Jewish community has actively commemorated, it has been impossible for victims of Communism and their legal advocates to keep the memory of the tragedy alive, and any requests for commemoration or demands for reparations are brushed aside A single-minded focus on the Jewish genocide in an attempt to characterize the Holocaust as a unique atrocity has also prevented an assessment of other episodes of comparable magnitude in the Communist world."¹⁵ It was this kind of extraordinary outburst that led some of the contributors to *The Black Book* to distance themselves publicly from Courtois' introduction and indeed from the book itself.

The controversies over the "uniqueness" of the Holocaust¹⁶ reprise the central arguments of the Historikerstreit of the mid-1980s, a major intellectual-political donnybrook from which the defenders of the

¹⁴ DAN DINER, DAS JAHRHUNDERT VERSTEHEN: EINE UNIVERSALHISTORISCHE DEUTUNG 66 (2000).

¹⁵ Stéphane Courtois, *Introduction: The Crimes of Communism*, in *THE BLACK BOOK OF COMMUNISM*, *supra* note 5, at 23.

¹⁶ See ALAIN BESANÇON, LA MALHEUR DU SIÈCLE: SUR LE COMMUNISME, LE NAZISME, ET LA UNICITÉ DE SHOAH (1998). For a critique of this view, see Henry Rousso, *La Légitimité d'une comparaison Empirique*, in Rousso, ed., *STALINISME ET NAZISME: HISTOIRE ET MÉMOIRE COMPARÉES* (1999).

"uniqueness" thesis emerged triumphant.¹⁷ The post-Cold War renewal of competition over whether the Nazis or the Communists were responsible for greater evil, in which *The Black Book of Communism* has been perhaps the most inflammatory intervention, thus seems something of a rear-guard action, with relatively little prospect of transforming our perception of the larger meaning of the twentieth century. Dan Diner has suggested one important reason for this state of affairs: our understanding of Communist brutality ("sociocide") is a matter of "knowledge," not of the sort of "memory" that helps constitute an ethnic self-understanding that persists through historical time.¹⁸ Ethnic and racial conceptions of groups are more likely to have visible, ongoing referents than classes. That fact undermines the likelihood that class-related injustices will capture the imagination of the successors of those who suffered them and make them into the focus of a campaign for commemoration and reparations.

The strenuous efforts in *The Black Book* to demonstrate the extent to which Communist oppression had ethnoracial dimensions bear unintentional witness to the validity of this insight. Thus, in the book's chapter on Cambodia, Jean-Louis Margolin writes: "For the Khmer Rouge, as for the Chinese Communists, some social groups were criminal by nature, and this criminality was seen as transmittable from husband to wife, as well as an inherited trait We can speak of the racialization of social groups, and the crime of genocide therefore can be applied to their physical elimination."¹⁹ Margolin is pointing to a crucial feature of the interpretation of the crime of genocide as it has come to be understood since the Holocaust assumed its dominant role in contemporary historical consciousness: namely, that the notion of genocide has mainly come to be applied to groups defined in ethnoracial terms, despite the Genocide Convention's inclusion of "national" and "religious" groups as possible victims of that crime. Diner's observation about the difficulties of constructing "actionable" historical memory on the experiences of economically defined groups is thus very much to the point.

¹⁷ See CHARLES MAIER, *THE UNMASTERABLE PAST: HISTORY, HOLOCAUST, AND GERMAN NATIONAL IDENTITY* (1988).

¹⁸ DAN DINER, *DAS JAHRHUNDERT VERSTEHEN*, *supra* note 14, at 233.

¹⁹ See Margolin, *Cambodia in THE BLACK BOOK OF COMMUNISM*, *supra* note 5, at 634. For an extended discussion of the "racialization" of social groups and its relation to state-sponsored killing, see Eric Weitz, *Race, Nation, Class: Das 'Schwarzbuch des Kommunismus' und das Problem des Vergleichs zwischen nationalsozialistischen und sowjetischen Verbrechen*, 22 *WERKSTATT GESCHICHTE* 75 (1999).

Despite the contrasting political implications, the dyspeptic views of the centrality of the Holocaust in contemporary memory observable in recent French discussions overlap in one crucial respect with Peter Novick's recent critical assessment of the stature of the Holocaust in American historical memory.²⁰ Both those seeking greater recognition of Communist misdeeds and those such as Novick who observe with some skepticism the steady growth of the Holocaust in American public discourse argue that the Shoah has assumed a place of such overriding prominence in our mental landscape that it may be difficult to accord adequate attention to other human catastrophes. In contrast to those seeking to promote the commemoration of Communist crimes, Novick's critique comes from the future, so to speak; he wishes us to view the Holocaust as a cautionary tale leading us to re-double our efforts to forestall any repetition of its horrors, not as an episode redolent with "lessons" about the shadow side of human nature and certainly not as an event on which to fix our political fantasy to the exclusion of other, avoidable catastrophes yet unimagined. The convergence of views between the two camps regarding the predominant position of the Holocaust in current discussions of historical injustices is nonetheless striking, and bespeaks the towering significance of that episode in contemporary consciousness.

In a trenchant discussion of interpretations of twentieth-century history, Charles Maier has challenged this evaluation of the importance of the Holocaust in contemporary politics outside the Euro-Atlantic world. Maier argues that those in other parts of the world view the preoccupation with the moral narrative of the Holocaust as "parochial," a diversion from the outrages done to those in the once-colonial world in the name of progress and civilization.²¹ It is altogether appropriate for Maier to remind us that those outside the North Atlantic world are likely to think differently about the past than those from the colonial "metropolises." Those in the former colonies of European countries will understandably be more familiar with and attuned to the misfortunes that have befallen those closest to them in distance and time.

Yet there is every indication that intellectuals in (or at least from) the Third World are sharply aware of the extent to which the Holocaust and its

²⁰ PETER NOVICK, *THE HOLOCAUST IN AMERICAN LIFE* (1999). Novick's discussion is more persuasive than the outraged stance adopted in NORMAN FINKELSTEIN, *THE HOLOCAUST INDUSTRY: REFLECTIONS ON THE EXPLOITATION OF JEWISH SUFFERING* (2000).

²¹ Charles Maier, *Consigning the Twentieth Century to History: Alternative Narratives for the Modern Era*, 105 AMER. HIST. REV. 826 (2000).

legal and financial consequences may be relevant to their own situation. For example, in the early 1990s the Organization of African Unity appointed a so-called "Group of Eminent Persons" with the mandate "to explore the modalities and strategies of an African campaign of restitution similar to the compensation paid by Germany to Israel and the survivors of the Nazi Holocaust."²² Commenting on the proliferation of efforts to obtain reparations for various historical injustices in the context of a shrinking globe, the Nobel Prize-winning Nigerian novelist Wole Soyinka has written that "it is not possible to ignore the example of the Jews and the obsessed commitment of survivors of the Holocaust, and their descendants, to recover both their material patrimony and the humanity of which they were brutally deprived."²³

Similarly, in Namibia, representatives of the Herero people have pursued a campaign for reparations against the Germans for a pre-World War I massacre that reduced their numbers from approximately 80,000 to around 15,000 between 1904 and 1907. The Namibian claimants have asserted a parallel to the Holocaust in an extermination order issued by Lieutenant General Lothar von Trotha (although no such order has ever been found in the Nazi case).²⁴ In a further instance of this African appropriation of the Holocaust and its consequences, the recent report by the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events notes in its recommendations concerning reparations that "the case of Germany after World War Two is pertinent here."²⁵ Such references to the exemplary character of the response to the Shoah for those who have suffered violence and degradation elsewhere

²² Ali A. Mazrui, *Who Should Pay for Slavery?* 40 WORLD PRESS REV. (Aug. 1993), at 22.

²³ See WOLE SOYINKA, *THE BURDEN OF MEMORY, THE MUSE OF FORGIVENESS* 83 (1999).

²⁴ Local descendants of the German colonists are less concerned about reparations payments coming from the German government; their fear is that the Herero could make inroads on the millions of acres of ranches they own in the country. Recent developments in Zimbabwe make such fears seem far from paranoid.

The Herero quest for reparations also appears to have been bolstered by comparable events elsewhere. Upon hearing of the Japanese recognition of crimes against some of those whom they sexually exploited during the Second World War, one of the Herero's leaders, who like many Herero has a German grandparent, said: "I thought, hey, that's my grandmother - a comfort woman. And I thought, if the Japanese could pay for that, the Germans could [too]." See Donald G. McNeil, Jr., *Its Past on its Sleeve, Tribe Seeks Bonn's Apology*, NEW YORK TIMES (West Coast edition), May 31, 1998, at A3. For details of the German atrocities against the Herero, see Jon Swan, *The Final Solution in Southwest Africa*, 3 MHQ: THE Q. J. OF MILITARY HIS. 36 (1991).

²⁵ The report, issued on July 7, 2000, can be found on the OAU's website at <<http://www.oau-oua.org/Document/ipep/ipep.htm>>; the quoted passage appears in Chapter 24, "Recommendations."

demonstrate that, far from obscuring their suffering from view, the emblematic status for our time of the Jewish Holocaust has helped others who have been subjected to state-sponsored mass atrocities to gain attention for those calamities – though hardly all of them, to be sure.

Our world is thus populated by “one, two, many Holocausts,” to paraphrase a slogan from the Vietnam era. The “victory” that went to those who defended the “uniqueness” of the Holocaust in the Historikerstreit of the mid-1980s has since been overtaken by the efforts of those seeking to gain attention to various historical injustices and who, in so doing, find “holocausts” of many kinds in the historical inheritance of our age. The proliferation of holocausts inflates the term and undermines the notion of the uniqueness of the Nazi genocide, but – given the exemplary role of the Holocaust in contemporary historical consciousness – it does encourage attention to other catastrophic experiences from the past.²⁶

The consolidation of the Holocaust as a standard for thinking about other historical injustices has stimulated a vigorous competition for recognition of various historical injustices as “Holocaust-like” or “worse than the Holocaust.” The charge of “genocide” having come to mean a set of acts comparable to the Holocaust, application of that label has become an important objective of those seeking to gain attention to and compensation for past atrocities. Commentators and activists concerned with the horrors of Communism, the legacies of the African slave trade, and the fate of non-white indigenous populations at the hands of European colonizers have been in the forefront of these efforts.²⁷ The recent efforts by Armenians in the United States and France to obtain an official declaration that the 1915 massacres at the hands of the Turks constituted a “genocide” are particularly relevant here. One unseemly result of the establishment of the Holocaust as the “gold standard” of persecution, however, is that it may provoke a contest for the status of worst-victimized. Pressing the issue of reparations to Africa for the ravages caused by the slave trade, the African scholar Ali Mazrui has written bluntly: “Twelve years of Jewish hell – against several centuries of black enslavement.”²⁸

²⁶ On this point, see Samantha Power, *To Suffer by Comparison?*, paper presented at the 1999 Annual Meeting of the Social Science History Association, Fort Worth, TX, November 1999.

²⁷ For representative examples, see RUSSELL THORNTON, *AMERICAN INDIAN HOLOCAUST AND SURVIVAL: A POPULATION HISTORY SINCE 1492* (1987) and DAVID E. STANNARD, *AMERICAN HOLOCAUST: COLUMBUS AND THE CONQUEST OF THE NEW WORLD* (1992).

²⁸ Mazrui, *Who Should Pay for Slavery?* *supra* note 22, at 22.

Despite the tendency to spark a competition for victim status, it is difficult to avoid the conclusion that the Holocaust has emerged as the model for other historical disasters in part precisely because it has been so politically fecund, facilitating demands for reparations by other groups that have suffered tragic histories. This has been especially true of the victims of Japanese aggression during World War II, whose stories have received a resurgence of attention in the years following the collapse of the Soviet Union.

III. THE RETURN OF THE "PACIFIC THEATER" OF WORLD WAR II AND THE ROLE OF DIASPORAS IN REPARATIONS POLITICS

The emergence of the Nazi Holocaust as a standard for other historical catastrophes has also promoted a healthy upsurge of attention to other "holocausts." One of the leading examples of this trend has been the case of Japanese atrocities in the Pacific theater of World War II. Notwithstanding the fact that that conflict came to be known in North America as "the Pacific war," it was not so much an ocean-spanning war between Japan and the United States as a Japanese war against other Asians that was transformed by the American occupation and American domination of the Tokyo War Crimes trials into a "Pacific War."²⁹ No whitewashing of European racial domination should be inferred from a reminder that the Japanese drive for domination of the Pacific was very much motivated by ideas of ethnoracial superiority vis-à-vis their Asian neighbors.

Public attention to the crimes of the Japanese has been strongly promoted by the appearance of Iris Chang's *The Rape of Nanking*, notably subtitled *The Forgotten Holocaust of World War II*. Chang's book is less a scholarly analysis of the tragic episode in the Chinese capital in 1937 than an extended plea for reparations for it. But the renewed attention to Japanese atrocities in general, and to the Nanjing massacre in particular, has also stimulated more serious treatment of the events themselves and of their role in popular consciousness in Japan, China, and elsewhere. The comparison between Japanese and German responses to the World War II past, in particular, has begun to be re-evaluated.

It has long been the conventional wisdom that the Germans have been disproportionately more forthcoming than the Japanese with regard to

²⁹ See JOHN DOWER, *EMBRACING DEFEAT: JAPAN IN THE WAKE OF WORLD WAR II* (1999).

"coming to terms" with that past.³⁰ The continued resistance of the Japanese government to a full-scale official apology for their wartime crimes and the openness with which Japanese nationalists can and still do dispute the atrocities at Nanjing suggests that this interpretation contains a significant element of truth.³¹ By way of comparison, Holocaust denial is illegal in Germany, and any public statement that Shoah had never occurred would be met with considerable public outcry. Yet this "good cop-bad cop" assessment of the differences between the two countries also glosses over a number of difficulties.

First of all, the Germans hardly leapt with alacrity to confront the Nazi past in the immediate postwar years; this self-reflection was at first largely imposed upon them by the Allies, and only became widespread as an "indigenous" phenomenon in the late 1960s. Germans tended to be much more preoccupied with co-ethnic "victims" of the war, particularly those driven out of the Eastern territories who had long been settled there or who went there at the behest of the Third Reich to populate newly acquired Lebensraum. Next, the extent of the concern with coming to terms with the Nazi past differed dramatically in the two halves of the divided country. The Communist leadership in East Germany was for the most part quite hostile to any reparations payments to the state of Israel, which they quickly came to regard as an outpost of "Western imperialism" rather than as the repository of Jews' hopes for a state of their own that would protect them from future Holocausts. Still, the Soviets dismantled a significant percentage of the fledgling GDR's industrial capacity and transported it back to the USSR as "reparations." Once the West Germans did agree to pay reparations to individual Jews and to the state of Israel in the early 1950s, they put substantial bureaucratic hurdles in the way of potential claimants. Finally, there were efforts on the part of leftist forces in early postwar Japan to assume responsibility for the crimes perpetrated against other Asian peoples and to pay reparations, but these were soon thwarted by the return to power

³⁰ See IAN BURUMA, *THE WAGES OF GUILT: MEMORIES OF WAR IN GERMANY AND JAPAN* (1994).

³¹ For a report of one of the more recent examples, see Howard W. French, *Japanese Call '37 Massacre a War Myth, Stirring Storm*, NEW YORK TIMES (West Coast edition), January 23, 2000, at A5. At the same time, there are certainly outspoken opponents of this view; see Howard W. French, *Internet Raiders in Japan Denounce Rape of Nanjing*, NEW YORK TIMES (West Coast edition), January 31, 2000, at A8. For a valuable discussion of the state of the scholarly and public debates on the Nanjing massacre in both China and Japan, see Daqing Yang, *Convergence or Divergence? Recent Historical Writings on the Rape of Nanjing*, 104 AMER. HIST. REV. 842 (1999).

of a conservative elite under the aegis of MacArthur's occupation administration.³²

In short, "coming to terms with the past" in Germany and Japan bears much greater similarity than a superficial view would suggest. A more nuanced view of the treatment of the past in the two former Axis powers confirms the dictum that "political divisions and interests . . . are important for rendering some historical views more or less acceptable," while giving less of a hearing to others.³³

The increased public and scholarly attention now being paid in North America to the Pacific War returns us in certain respects to the ways in which that aspect of the war was perceived in North America at the time. During World War II itself, and not least because of the outrage caused by the Japanese "sneak attack" on Pearl Harbor, "for most Americans, the Pacific conflict was a matter of much greater concern than the war in Europe."³⁴ Moreover, both because it took some years for "the Holocaust" to congeal in the popular mind as a single-minded, coherent policy of genocide against the Jews and because the mostly non-Christian Japanese were viewed through dark racial lenses, "great numbers of Americans, British, and Australians continued to believe that the enemy in Asia had been even more heinous than the German one" for years after the war.³⁵ Yet the charges of genocide and Holocaust have been the catalyst for recovering the memory of the Asian war in the eyes of North Americans. The renewed attention to the Asian theater in World War II restores a more balanced and globally inclusive view of that war, even as events in the Pacific are refracted through the prism of the quintessentially European experience of the Holocaust.

The return of the Asian war to popular notoriety in North America is also the result of demographic changes set in motion by World War II. The

³² See JEFFREY HERF, *DIVIDED MEMORY: THE NAZI PAST IN THE TWO GERMANYS* (1997); CHRISTIAN PROSS, *PAYING FOR THE PAST: THE STRUGGLE OVER REPARATIONS FOR SURVIVING VICTIMS OF THE NAZI TERROR* (Belinda Cooper trans.) (1998 [1988]), NORBERT FREI, *VERGANGENHEITSPOLITIK: DIE ANFÄNGE DER BUNDESREPUBLIK UND DIE NS-VERGANGENHEIT* (1996; an English translation is being prepared for publication by Columbia University Press); Bob Moeller, *War Stories: The Search for a Usable Past in the Federal Republic of Germany*, 101 *Amer. Hist. Rev.* 1008 (1996).

³³ Charles Maier, *Foreword*, in *THE NANJING MASSACRE IN HISTORY AND HISTORIOGRAPHY* xii (Joshua A. Fogel ed., 2000).

³⁴ NOVICK, *supra* note 20, at 26.

³⁵ DOWER, *EMBRACING DEFEAT*, *supra* note 29, at 446.

Chinese Exclusion Acts, first instituted in the 1880s, were repealed during the war as an unnecessary affront to a country with which the United States was allied in the fighting. Subsequent changes in immigration laws, themselves associated with the delegitimation of racial discrimination spurred on by the Holocaust and the civil rights movement, have fuelled the growth of Chinese immigrant communities in North America that have vigorously promoted commemoration of the outrages carried out by the Japanese during World War II. It is thus no coincidence that Iris Chang is the daughter of Chinese immigrants to the United States, and that she became involved in publicizing the atrocities committed by the Japanese in Nanjing as a result of her involvement with Chinese-American activists devoted to cultivating the memory of those events.³⁶ The incendiary language in Chang's treatment of the Nanjing massacre would hardly have been conceivable had she been in China, where the government is not especially tolerant of grassroots participation in foreign policy, and where the matter of atrocities during the Japanese attempt to create a "Greater East Asia Co-Prosperity Sphere" remains a delicate diplomatic matter.³⁷

The involvement of Chinese-American and similar recent immigrant groups in calling attention to Japanese misdeeds during World War II points to the importance of racial and ethnic diasporas in stimulating discussion of past injustices. The Chinese diaspora in North America and the Jewish diasporas have been central to pressing reparations agendas concerning the misdeeds perpetrated against their respective peoples. Also important has been the African diaspora, which is, of course, of long standing in the Americas. Those who call attention to the connections between colonialism, the slave trade, slavery itself, and the continuing discrimination against those of African descent in the United States and elsewhere have done so in part by insisting on the community of identity and interests among the inhabitants of Africa and African-descended peoples elsewhere.

Indeed, in his recent plea for the United States government to pay reparations to black Americans for the crimes of slavery and the subsequent

³⁶ Chang notes that her involvement in the cause of commemorating and seeking reparations for the Rape of Nanking was galvanized by her attendance at a 1994 conference of the Global Alliance for Preserving the History of World War II in Asia in Cupertino, CA. The website of the Alliance for Preserving the Truth of Sino-Japanese War, a member of the Global Alliance, can be found at <<http://www.sjwar.org>>.

³⁷ See *China: Warning to Japan*, NEW YORK TIMES (West Coast edition), Aug. 12, 2000, at A4, for the ongoing trouble caused in Sino-Japanese relations when Japanese officials visit Yasukuni Shrine, which is dedicated to those who died in battle for the imperial cause.

discrimination and disadvantage they have suffered, Randall Robinson begins by insisting that blacks must become more familiar with their roots in a forgotten heroic Africa if they are successfully to assert themselves as equals in American society.³⁸ Elsewhere Robinson has argued that "all memory of Africa's greatness in antiquity... [was] stripped from the consciousness of slavery's direct and derivative contemporary victims."³⁹ Robinson's views reflect the effort to assert a consciousness of connections between Africa and its diaspora that, it is assumed, will help to undergird reparations claims on both sides of the Atlantic.

Yet the position of black Americans is awkward in regard to attempts to cultivate awareness of the loss of African roots as a foundation for reparations claims or, more broadly, for the enhancement of black self-image in general. Even if the Middle Passage could not entirely eradicate the cultural inheritance of African slaves, that trail of tears radically cut their ties with their origins and led to the creation of a largely novel ethnoracial group. Perhaps the most similar trajectory has been that traveled by the "Cape Colored" people of South Africa, who developed out of the intermixing of slave populations drawn from the islands of south and southeast Asia with their masters and with indigenous Africans. Afro-Americans are more closely descended of their African forebears than are the Cape Coloreds, but neither group has more than weak ties to their cultures of origin. Because neither American blacks nor Coloreds were enslaved on their home ground, their fate has been to become by and large the products of their new environment. As a result, unlike "indigenous" groups, they cannot lay claim to having been deprived of their lands and of having had their culture repressed by alien invaders. Indeed, their cultures are largely the product of interaction with Europeans and their descendants, rather than any unadulterated holdover from their regions of origin⁴⁰

As a result of this genealogy, American blacks who seriously explore their connections with Africa often find that their putative African roots are rather shallower than they had believed. The rise of the designation "African-American" has tended to promote the notion that blacks are just another immigrant group in the American melting pot, but this is precisely what they are not. Appeals to a lost African heritage in the service of claims

³⁸ See RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (1999).

³⁹ Transcript of a forum on *The Case for Black Reparations*, held in the offices of the TransAfrica Forum, Washington, D. C., January 11, 2000.

⁴⁰ On these points, see GEORGE FREDRICKSON, *WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN & SOUTH AFRICAN HISTORY* 255-257 (1981).

to reparations designed to transform blacks' status in American society are thus likely to seem quixotic at best outside of intellectual circles. By suggesting parallels with the history of European and other immigrants, indeed, such appeals may undermine the distinctiveness of the black experience which is the only plausible ground for reparations demands.

Against this background, recent campaigns to obtain reparations for slavery and segregation in the United States⁴¹ may be usefully analyzed in terms of the commemorative/transformative distinction developed earlier. In 1994, the survivors and descendants of a racially motivated rampage in Rosewood, Florida in 1923 were compensated in various ways for their suffering, though notably without any official statement of apology. Similarly, in 1997 the surviving victims of the Tuskegee syphilis experiments received compensation payments and a presidential apology for their mistreatment.⁴² It is notable that each of these cases is an instance of commemorative reparations, addressed to specific and acute experiences of mistreatment. Other such cases are waiting in the wings. The Tulsa Race Riot Commission recently proposed reparations of at least \$33 million in compensation for the damage and losses suffered by the victims and their heirs.⁴³

If the uproar provoked by Congressman Tony Hall's proposed 1997 resolution apologizing to blacks for slavery, however, the prospects of transformative reparations to American blacks for slavery and the long saga of racial injustices seem dim indeed. Partially, this is a function of the fact that the amounts of money that would be necessary to make any significant dent in white-black inequality would be vast and likely to provoke substantial political opposition. More to the point, however, with a conservative Republican government newly installed in the U. S. capital, such reparations would seem to be politically simply a non-starter, at least for the foreseeable future. Still, in what Wole Soyinka has called the current "fin de millénaire fever of atonement"⁴⁴, commemorative reparations for more limited and specific instances of injustice should not be ruled out.

⁴¹ See *Forum: Making the Case for Racial Reparations*, HARPER'S 37 (Nov. 2000).

⁴² See Eric Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 19 B. C. THIRD WORLD L. J. 480 (1998).

⁴³ See Brent Staples, *Unearthing Tulsa*, NEW YORK TIMES MAGAZINE, Dec. 19, 1999, at 65.

⁴⁴ WOLE SOYINKA, *supra* note 23, at 90.

IV. THE POLITICS OF "REPARATIONS POLITICS"

Race and ethnicity have an intuitive appeal as criteria for determining membership in a victim group - just as they were so used by many of the oppressors of the groups raising demands for reparations today. The history and consequences of the race idea, and the possibility of assimilating the experience of racial groups to that suffered by the Jews, have thrust the category of race into the forefront of debates over reparations. We have already seen that it has been difficult for victims of Communism to gain recognition for their claims due to the lack of an ongoing historical reference group, and the corresponding efforts on the part of advocates for those claims to draw analogies between assorted Communist horrors and the Holocaust trope.

Similar difficulties have confronted those who have suffered injustices and atrocities on account of their gender. Despite the fact that women are often subjected to mass rape as a strategy of intimidation and defilement in wartime, "the case of the [primarily Korean] comfort women is the only instance in which gender has been used as the basis for victimization and in which it has become the banner for demands of restitution and apology." Yet the race of the victims - Asians regarded as inferiors by their Japanese exploiters - has been important in making their case for reparations plausible.

Despite the apparent neatness of racial boundaries in everyday life, the often complicated boundary-drawing processes that could be necessary to determine who might be the proper beneficiaries, and who the targets, of reparations campaigns raises serious difficulties for transformative reparations projects. The problem of determining the proper addressee of an African reparations campaign, for example, caused considerable embarrassment in the OAU Summit on the issue that was convened in 1993. Should reparations be sought from those countries that benefited from slavery or, as the Tunisian delegate to the conference proposed, for the damage caused by European colonialism? The role of North Africans and Middle Easterners, not to mention sub-Saharan Africans themselves, in the slave trade threatened to muddy the historical waters. As one commentator put it, a campaign directed against colonialism rather than slavery "would require a totally different orientation and strategy; it would expand to embrace the indigenes of both North and South America, Australia, and

New Zealand."⁴⁵ Needless to say, such a transformation of the campaign would deflect attention away from the experiences and demands of Africans and their descendants in the diaspora. Who among those groups would constitute legitimate beneficiaries of reparations raises further, seemingly intractable problems.

Beyond these difficulties, reparations politics also has a curiously apolitical quality about it. The notion of gaining compensation for those who have suffered injustice in the past seems at first glance inherently uncontroversial – of course, why not? The decline of the nation-state as a legitimate force promoting social and political integration and the more or less simultaneous decline of the socialist project have weakened the appeal of a transformative politics that speaks to the vast majority, as socialism once attempted to do. Reparations politics presents itself in this climate as an appealing alternative to the tribulations of coalition-building. Whatever the potential benefits of reparations campaigns, they should not be mistaken for a broadly based politics capable of challenging the fundamental distribution of wealth and power in society.⁴⁶

The recent flowering of "rights talk" and the pursuit of damages for historical injustices both reflect and promote the "juridification" of politics. In the absence of a progressive political project with broad cross-racial appeal, a politics of legal disputation rather than of mass mobilization comes to the fore. Reparations politics is typically a politics of courtrooms and legal briefs, not street demonstrations. It is consistent with an era of "individualization," in which the expansive solidarities of the Fordist age increasingly seem a thing of the past, and even mildly ameliorative responses to racial inequality encounter strong political headwinds. Thus legal scholar Robert Westley begins his recent analysis of reparations for black Americans by noting that affirmative action is "almost dead," and that therefore "mapping a legal path to enforcement of Black reparations . . . remains a challenge for legal theorists and policymakers attempting to pursue alternative routes to social justice."⁴⁷ It remains to be seen whether reparations politics will gain much traction beyond the ranks of lawyers and

⁴⁵ The scene is described in WOLE SOYINKA, *THE BURDEN OF MEMORY*, *supra* note 23, at 45-47; see also Bethwell Ogot, *The Muslim Trade*, *WORLD PRESS REV.* Aug. 1993, at 23.

⁴⁶ For a critique of reparations for slavery from a socialist perspective, see Adolph L. Reed, Jr., *The Case Against Reparations*, 64 *THE PROGRESSIVE*, Dec. 2000, at 15.

⁴⁷ Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?* 40 *BOS. C. L. REV.* 429, 433 (1998).

intellectuals, who so far clearly dominate the discussion of reparations for black Americans.

Finally, in many contexts reparations politics seem destined to generate their own backlash, as with any politics that promises benefits for specific groups rather than for "everyone" (though admittedly the latter is a rare bird). The likelihood of a backlash is not necessarily a reason to forgo this avenue. Much politics provokes backlash of one sort or another, and in the reigning absence of a convincing universalist project, the forward-looking aspects of reparations politics may have much to offer in contemporary struggles to enhance equality both within countries and on a global scale. The fact that there are many who have suffered unjustly by no means insures, however, that everyone will regard compensation to specific groups as appropriate, no matter how demonstrable the injustices done to them. Indeed, some fear that the heightened attention to reparations payments for former slave laborers may be adding fuel to a resurgence of anti-Semitism in contemporary Germany, despite the fact that many of them were not Jews at all but Slavic groups slated by the Nazis for a perpetual subaltern status.⁴⁸ It makes sense to take seriously the possible backlash against those pursuing reparations.

V. CONCLUSION

In an age that has become deeply preoccupied by the injustices of the past, the desire to gain reparations for a variety of historical injustices has come to be experienced as urgent in many quarters around the world. I have tried to show that such reparations are commemorative or transformative in orientation, and that misdeeds and inequities rooted in the idea of race have been at the center of both kinds of reparations politics. The emergence of the Holocaust as central to our historical consciousness has helped to promote attention to other injustices in quite different contexts, not least those perpetrated in the Pacific theater of World War II, and to give greater legitimacy to reparations claims deriving from those experiences. I have also raised some doubts about reparations politics as a transformative politics. Notwithstanding these objections, however, reparations politics will occupy a prominent place in the global political landscape of the 21st century.

⁴⁸ See Edmund L. Andrews, *Germans Sign Agreement to Pay Forced Laborers of Nazi Era*, & Roger Cohen, *Former Soviet Jews Find Uneasy Peace in Germany*, NEW YORK TIMES (West Coast edition), Aug. 6, 2000, at 1, 6.

