***Abstract***. We identify the ethics of reparations policies as its own distinct field of inquiry, and consider several neglected ethical issues that arise in the process of devising reparations programmes. The problem of political instrumentalisation has to do with the fact that reparations can be a way for the governments to bolster their legitimacy rather than achieve justice. The problem of exclusion refers to individuals with seemingly valid claims being turned away. Finally, the problem of inclusion has to do with including would-be claimants who are not mobilised in making a reparations demand, as well as with reconciling competing reparations demands.

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The ethics of reparations policies

Alasia Nuti and Jennifer M. Page

Introduction

The normative reasons to repair past injustices have been the subject of much debate. Some scholars offer backward-looking justifications that do not hinge on whether past injustices affect present conditions (e.g., [Miller 2007](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_935_FILE150312168PIII026" \o "(AutoLink):Miller, D., 2007. National Responsibility and Global Justice. Oxford: Oxford University Press. UserName - DateTime: vge-7/10/2018 11:18:52 PM); [Ridge 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_939_FILE150312168PIII026" \o "(AutoLink):Ridge, M., 2003. Giving the Dead Their Due. Ethics, 114 (1), 38–59. UserName - DateTime: vge-7/10/2018 11:19:00 PM)). Others instead point out that reparations are justified by forward-looking considerations of justice (e.g., [Hendrix 1995](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_928_FILE150312168PIII026" \o "(AutoLink):Hendrix, B.A., 1995. Memory in Native American Land Claims. Political Theory, 33 (6), 763–785. UserName - DateTime: vge-7/10/2018 11:18:32 PM); [McCarthy 2004](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_932_FILE150312168PIII026" \o "(AutoLink):McCarthy, T., 2004. Coming to Terms with Our Past, Part II: On the Morality and Politics of Reparations for Slavery. Political Theory, 32 (6), 750–772. UserName - DateTime: vge-7/10/2018 11:18:44 PM); [Tan 2007](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_944_FILE150312168PIII026" \o "(AutoLink):Tan, K.-C., 2007. Colonialism, Reparations, and Global Justice. In: J. Miller and R. Kumar, eds. Reparations: Interdisciplinary Inquiries. New York: Oxford University Press, 280–306. UserName - DateTime: vge-7/10/2018 11:19:10 PM); [Valls 2007](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_945_FILE150312168PIII026" \o "(AutoLink):Valls, A., 2007. Reconsidering the Case for Black Reparations. In: J. Miller and R. Kumar, eds. Reparations: Interdisciplinary Inquiries. New York: Oxford University Press, 114–129. UserName - DateTime: vge-7/10/2018 11:19:13 PM)). However, questions of justification do not exhaust the range of pressing normative challenges that reparations raise. Normative reflection on the process of devising reparations programmes is as important and challenging as thinking about why reparations are owed.

Consider, for instance, the recent negotiation process between Japan and South Korea over the ‘comfort system’ that infamously forced women – mostly from Korea – to provide sexual services to Japanese soldiers before and during World War II.[[1]](#endnote-1) Japan agreed to establish a 1 billion yen governmental fund for those few survivors who are still alive, officially recognised the involvement of the Japanese military in the sexual enslavement of the ‘comfort women’, and formally issued its ‘most sincere apologies’ for the abuses and trauma suffered by the women. South Korea, for its part, promised to consider the wrong as finally redressed and to not raise the ‘issue’ anymore in international forums. South Korea also agreed to negotiate the removal of a controversial statue representing the comfort women that was placed outside the Japanese embassy in Seoul. The agreement was welcomed and celebrated by both countries and their international partners as promoting the beginning of a new era in the relationship between Japan and South Korea, which has been strained by the unsettled imperial past ([McCurry 2015](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_933_FILE150312168PIII026" \o "(AutoLink):McCurry, J., 2015. Japan and South Korea agree to settle wartime sex slaves row. The Guardian, 28 Dec. UserName - DateTime: vge-7/10/2018 11:18:46 PM)). However, many South Koreans have opposed the agreement and, in particular, some survivors of the comfort system have vehemently criticised it as profoundly disrespectful because it was reached without their consultation ([McCurry 2016](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_934_FILE150312168PIII026" \o "(AutoLink):McCurry, J., 2016. Former sex slaves reject Japan and South Korea’s ‘comfort women’ accord. The Guardian, 26 Jan. UserName - DateTime: vge-7/10/2018 11:18:49 PM)). Moreover, non-Korean women from other territories occupied by Japan who were also sent to frontline brothels and forced to have sexual intercourse with Japanese soldiers have challenged the idea that the unjust past of the ‘comfort women system’ has been repaired through the bilateral agreement between Japan and South Korea. Without the inclusion of all those who were sexually enslaved by the Imperial Japanese Army, they argue, reparations will always remain incomplete.

It is not enough simply to pay reparations when they are owed. Further work must be done to grapple with the difficult ethical considerations that arise in devising reparations programmes. In this chapter, we identify three ethical challenges that seem to recur again and again at the implementation stage: (1) the problem of political instrumentalisation; (2) the problem of exclusion; and (3) the problem of inclusion. When the design of reparations programmes neglects ethical considerations such as these, their implementation is likely to leave the injustices in need of repair unscathed and – even worse – compound existing forms of exclusion, power imbalances, and marginalisation. Reasoning normatively about how to design reparations programmes should thus take centre stage in the ethics of reparations. As we argue, it is not possible to resolve the problems of political instrumentalisation, exclusion, and inclusion without bringing in reparations claimants as participants who play an active role in designing the reparations programmes that are to benefit them.

Two disclaimers before proceeding. First, like many reparations scholars, we find the UN’s principles on reparations for human rights violations helpful in distinguishing between restitution (i.e., return to the status quo ante), compensation or redress (monetary or material transfer when restitution is not possible), and satisfaction (i.e., symbolic measures like apologies) (see [“Basic Principles and Guidelines” 2005](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_921_FILE150312168PIII026" \o "(ManLink):Basic Principles and Guidelines on the Right to a Remedy and Reparation [online], 2005. Available from: www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx [Accessed 24 Feb 2017]. UserName - DateTime: vge-7/11/2018 4:19:59 AM)). A consensus seems to have emerged that reparations should include both material and symbolic forms of repair, and though we agree with this by and large, this essay does not meaningfully engage with the question as to the form that reparations should take. Second, and relatedly, the issues discussed in this chapter should not be regarded as exhausting all possible ethical concerns that the design of reparations programmes raises. By focusing on the three problems we’ve identified, we simply hope to show they are particularly pressing and, in this respect, exemplify the urgency of a serious normative engagement with the ethics of devising reparations programmes for past injustices.

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

The problem of political instrumentalisation

We tend to regard reparations programmes as measures that are always welcomed by those who have suffered from a past injustice or from their descendants. This is, however, a simplification of how reparations programmes have been historically received by their potential beneficiaries. Consider the Reparations Agreement between Israel and West Germany, which was signed on September 10, 1952, with the official intent to financially help Holocaust survivors who lived in Israel. Such an agreement is often regarded as exemplary, an early case in which reparations were paid, showing that the latter need not be regarded as a quixotic enterprise. Yet it is noteworthy that even this agreement was not enthusiastically received by everyone in the Israeli public. Both right-wing and left-wing organisations and parties criticised the agreement by arguing that accepting reparations from West Germany amounted to forgiving Germans for the crimes committed during the Holocaust, and rallies and protests took place before and after the agreement was signed ([Segev 1993](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_941_FILE150312168PIII026" \o "(AutoLink):Segev, T., 1993. The Seventh Million. New York: Picador. UserName - DateTime: vge-7/10/2018 11:19:01 PM): 211–252). In other words, reparations programmes may meet with resistance not only from wrongdoers but also from potential beneficiaries.

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

The ‘Dirty War’ refers to the period between 1974 and 1983 in which the Argentinian military junta implemented a regime of state terrorism against citizens suspected of socialist allegiances. A still unclear yet shocking number of left-wing activists, guerrillas and militants, trade unionists, students, and journalists ‘disappeared’ after having been detained, tortured, and buried in unmarked graves or having had their corpses incinerated by the junta. Moreover, many of the children who were abducted with their parents or were born in detention centres did not come back to their families but were secretly adopted by military couples. The Madres’ activism addressed how subsequent governments handled the atrocities committed during the period of the military junta ([Moon 2012](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_936_FILE150312168PIII026" \o "(AutoLink):Moon, C., 2012. ‘Who’ll Pay Reparations on My Soul?’ Compensation, Social Control and Social Suffering. Social & Legal Studies, 21 (2), 187–199. UserName - DateTime: vge-7/10/2018 11:18:55 PM): 5). The two successive governments, led by Raul Alfonsín and Carlos Menem respectively, were equivocal when it came to holding the military junta accountable for their crimes. Although in 1985, Alfonsín’s government started a series of trials for the members of the junta – culminating with the imprisonment of Jorge Videla, the Dirty War’s architect – the government went on to introduce ‘amnesty laws’, stopping the very process of accountability that the government had put in place. During Menem’s ten years as president of Argentina, not only were Alfonsín’s amnesty laws were maintained but also pardons were granted to the members of the junta who were in jail, including Videla ([Moon 2012](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_936_FILE150312168PIII026" \o "(AutoLink):Moon, C., 2012. ‘Who’ll Pay Reparations on My Soul?’ Compensation, Social Control and Social Suffering. Social & Legal Studies, 21 (2), 187–199. UserName - DateTime: vge-7/10/2018 11:18:55 PM): 6). In 1977, the mothers of the victims of the junta began mobilising and founded the grassroots association Madres de Plaza de Mayo both to gain information about the disappearance and location of their children and to press governments to prosecute the perpetrators. When Alfonsín’s and later Menem’s governments offered reparations to the Madres for the disappearance of their children, they strenuously rejected the proposal ([Arditti 1999](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_920_FILE150312168PIII026" \o "(AutoLink):Arditti, R., 1999. Searching for Life: The Grandmothers of the Plaza De Mayo and the Disappeared Children of Argentina. Berkeley: University of California Press. UserName - DateTime: vge-7/10/2018 11:18:18 PM); [Bouvard 1994](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_923_FILE150312168PIII026" \o "(AutoLink):Bouvard, M.G., 1994. Revolutionizing Motherhood: The Mothers of the Plaza de Mayo. Oxford: Rowman & Littlefield. UserName - DateTime: vge-7/10/2018 11:18:20 PM)).[[2]](#endnote-2)

Recent accounts of reparations in the context of past injustices and violations of human rights have pointed out that there is an important link between reparations programmes and the legitimacy of state power. For instance, Steven [Winter (2014](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_947_FILE150312168PIII026" \o "(ManLink):Winter, S., 2014. Transitional Justice in Established Democracies. London: Palgrave Macmillan. UserName - DateTime: vge-7/11/2018 4:20:12 AM): 7) argues that when wrongdoing was authorised by the state through direct sanction, permission, or toleration, the state ceases to properly function and its legitimate power is undermined and in need of repair. Reparations, so interpreted, become the way in which states attempt to ‘repair the damage that authorized wrongdoing inflicts upon political legitimacy’ ([Winter 2014](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_947_FILE150312168PIII026" \o "(ManLink):Winter, S., 2014. Transitional Justice in Established Democracies. London: Palgrave Macmillan. UserName - DateTime: vge-7/11/2018 4:20:15 AM): 7). The Madres’ refusal to accept reparations for the crimes perpetuated by the military junta was precisely a protest against the Argentinian state’s intention to overcome its legitimacy deficit and strengthen its power simply by offering monetary and symbolic reparations for the ‘disappearance’ of their children. Their refusal expressed a normative stance on the very legitimacy of reparations programmes as a tool to restore the Argentinian state’s political legitimacy. Had the Madres accepted reparations, other citizens may have regarded the Argentinian government as fully legitimate. By refusing reparations, the Madres were able to show that the governments succeeding the military junta did not have moral standing to pay redress. Given their shortcomings in addressing the crimes of the Dirty War, the governments could not acquire legitimacy merely through monetary means.

Of course, there may be cases in which a government’s interest in improving perceptions of its legitimacy and the victims’ interest in receiving redress align neatly, and the problem of political instrumentalisation does not arise. Winter’s legitimacy-based theory of state redress is most definitely not an argument in favour of instrumentalist conduct by governments. The issue is rather when the potential beneficiaries feel they are being used as pawns in a government agenda over which they have no say. The case of the Madres in Argentina points to at least two warning signs to identify the problem of political instrumentalisation.

First, reparations programmes should not be advanced with the aim of imposing a ‘top-down’ and already-established interpretation of the unjust past, but as an opportunity to open a dialogue over it. As pointed out by [Moon (2012](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_936_FILE150312168PIII026" \o "(AutoLink):Moon, C., 2012. ‘Who’ll Pay Reparations on My Soul?’ Compensation, Social Control and Social Suffering. Social & Legal Studies, 21 (2), 187–199. UserName - DateTime: vge-7/10/2018 11:18:55 PM): 8), the Madres perceived that accepting reparations would also have meant subscribing to the ‘truth’ about state terror and their children’s disappearance that succeeding governments were trying to impose, such as Alfonsín’s ‘theory of the two evils’, which regarded military terrorism and guerrilla opposition as equally responsible for crimes and wrongdoings. Before even starting to devise reparations programmes, an inclusive conversation about the meaning of unjust past events and the distribution of responsibilities should take place ([Amighetti and Nuti 2015](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_919_FILE150312168PIII026" \o "(AutoLink):Amighetti, S. and Nuti, A., 2015. Towards a Shared Redress: Achieving Historical Justice Through Democratic Deliberation. Journal of Political Philosophy, 23 (4), 385–405. UserName - DateTime: vge-7/10/2018 11:18:17 PM): 392). When, instead, the state makes reparations conditional on acceptance of its interpretation of past injustices – as in the Argentinian case – reparations programmes are more likely to be an instrument to legitimise and strengthen state power, rather than giving survivors, their families, and their descendants their due.

Second, reparations programmes cannot be conceived of as substitute for criminal justice. The Argentinian governments’ attempts (especially during Menem’s administration) to set up a redress programme addressed to the parents and children of the disappeared were combined with a reluctance to bring the perpetrators to justice. As part of their fight for accountability and retributive justice, the Madres refused to declare their disappeared children as ‘dead’ and to accept the exhumation of their corpses. Instead they demanded that their children be regarded as still living, a way of demonstrating that ‘victims of injustice are not “dust and nothing” but retain a status and a presence as claimants on justice’ ([Booth 2011](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_922_FILE150312168PIII026" \o "(AutoLink):Booth, W.J., 2011. ‘From This Far Place’: On Justice and Absence. American Political Science Review, 105 (4), 750–764. UserName - DateTime: vge-7/10/2018 11:18:19 PM): 752). In Hebe de Bonafini’s words, this demand ‘question[ed] the system’ as the Madres did not want to ‘accept their [children’s] deaths until someone [was] made responsible’ (de Bonafini 1990: 42; quoted in [Moon 2012](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_936_FILE150312168PIII026" \o "(AutoLink):Moon, C., 2012. ‘Who’ll Pay Reparations on My Soul?’ Compensation, Social Control and Social Suffering. Social & Legal Studies, 21 (2), 187–199. UserName - DateTime: vge-7/10/2018 11:18:55 PM): 7). Indeed, the Madres held their last March of Resistance at Plaza de Mayo in 2005 when the Kirchner’s administration repealed and declared unconstitutional the amnesty laws and pardons of previous governments. Only at that point, for the Madres, the government proved not to be an enemy of its people anymore.

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

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

The problem of exclusion

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

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

Take the example of a US government-run uranium mining programme which conscripted around 1,500 Navajo men during the atomic era. Though the federal government knew about the health risks associated with radiation, it made no attempt to communicate this information in its cheerful recruitment efforts, making patriotic appeals and offering the men higher wages than they made farming and herding ([Eichstaedt 1994](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_927_FILE150312168PIII026" \o "(AutoLink):Eichstaedt, P., 1994. If You Poison Us: Uranium and Native Americans. Santa Fe: Red Crane Books. UserName - DateTime: vge-7/10/2018 11:18:28 PM): [Ch. 5](#_S7_CN_chapter___5); [Brugge and Goble 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_924_FILE150312168PIII026" \o "(AutoLink):Brugge, D. and Goble, R., 2003. The Radiation Exposure Compensation Act: What is Fair? New Solutions, 13 (4), 385–397. UserName - DateTime: vge-7/10/2018 11:18:21 PM)). All this was revealed in lawsuits filed by Navajo plaintiffs who developed radiation-related cancers. Congress resolved the matter legislatively with the 1990 Radiation Exposure Compensation Act (RECA), which consisted of an apology and a redress programme for the uranium miners and other Americans who contracted one of several identified cancerous diseases as a result of atomic weapons building and testing.

However, aspects of the RECA programme created a situation where relatively few uranium miners and families received redress. The programme required marriage records for deceased miners’ widows. But in the 1930s and 1940s, Navajo marriages took place in traditional ceremonies and were undocumented. Moreover, a claimant needed to show employment records. However, for the uranium mining programme, the government’s recordkeeping had been substandard; uranium miners were often hired and paid without an official contract. On top of this, many of the uranium miners did not speak English ([Eichstaedt 1994](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_927_FILE150312168PIII026" \o "(AutoLink):Eichstaedt, P., 1994. If You Poison Us: Uranium and Native Americans. Santa Fe: Red Crane Books. UserName - DateTime: vge-7/10/2018 11:18:28 PM); [Brugge and Goble 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_924_FILE150312168PIII026" \o "(AutoLink):Brugge, D. and Goble, R., 2003. The Radiation Exposure Compensation Act: What is Fair? New Solutions, 13 (4), 385–397. UserName - DateTime: vge-7/10/2018 11:18:23 PM)).

If a miner or surviving spouse cleared these hurdles and submitted a complete RECA application, there was still the matter as to how the application would be assessed. If a miner’s medical records showed that he had one of the eligible cancers, his radiation exposure was then estimated based on how long he worked and what mine he worked in. Critics complained that Congress rejected the view, standard at the time, that radiation exposure at the level of 40 WLM would lead to increased risk; they instead went with the standard of 200 WLM for non-smokers and 500 WLM for smokers ([Brugge and Goble 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_924_FILE150312168PIII026" \o "(AutoLink):Brugge, D. and Goble, R., 2003. The Radiation Exposure Compensation Act: What is Fair? New Solutions, 13 (4), 385–397. UserName - DateTime: vge-7/10/2018 11:18:23 PM): 388–390). Critics also charged that the data on WLM values for individual mines was imperfect, and that the sharpness of the RECA eligibility criteria did not square with the need to account for measurement error and uncertainty ([Brugge and Goble 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_924_FILE150312168PIII026" \o "(AutoLink):Brugge, D. and Goble, R., 2003. The Radiation Exposure Compensation Act: What is Fair? New Solutions, 13 (4), 385–397. UserName - DateTime: vge-7/10/2018 11:18:23 PM): 391). Indeed, relative to estimates, few uranium miners actually met RECA’s eligibility criteria ([Eichstaedt 1994](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_927_FILE150312168PIII026" \o "(AutoLink):Eichstaedt, P., 1994. If You Poison Us: Uranium and Native Americans. Santa Fe: Red Crane Books. UserName - DateTime: vge-7/10/2018 11:18:30 PM): xi). As Stuart Udall, the former interior secretary and the uranium miners’ attorney, put it, ‘They’ve put these people in a bureaucratic legal maze designed to prevent compensation to Navajo miners. There’s no pity for what happened to these people. No understanding. You have a compassionate programme administered in an utterly uncompassionate manner’ ([Schneider 1993](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_940_FILE150312168PIII026" \o "(AutoLink):Schneider, K., 1993. A Valley of Death for the Navajo Uranium Miners. New York Times, 3 May. UserName - DateTime: vge-7/10/2018 11:19:01 PM)).

In running a reparations programme, the government does have a legitimate interest in erecting safeguards against fraud. As much as a government should be wary about the filing process being too onerous, it would also undermine the purpose of the reparations programme if no attempt was made to distinguish between authentic and inauthentic claimants, and the programme was widely regarded as a gravy train. However, if the criteria are too stringent, this may undermine a reparations programme’s aim. ‘We believe that it is not possible to simultaneously apologize, set highly stringent criteria, and place the burden of proof on the victims, as did the 1990 RECA’, wrote Doug Brugge and Rob Goble, who authored a critical evaluation of the RECA programme. ‘Compensation should be a positive act of redress, an act of contrition, not a miserly and bureaucratic programme that views the recipients of the apology with suspicion’ ([Brugge and Goble 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_924_FILE150312168PIII026" \o "(AutoLink):Brugge, D. and Goble, R., 2003. The Radiation Exposure Compensation Act: What is Fair? New Solutions, 13 (4), 385–397. UserName - DateTime: vge-7/10/2018 11:18:23 PM): 395). As an antidote, Brugge and Goble point to active collaboration with claimants:

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

(Ibid.)

Dissatisfaction with the RECA programme led to the formation of a ‘Western States RECA Reform Coalition’. This grassroots movement successfully pushed for Congress to modify some of the requirements so that the administration of RECA would be a better fit with the original intent of the statute ([Brugge and Goble 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_924_FILE150312168PIII026" \o "(AutoLink):Brugge, D. and Goble, R., 2003. The Radiation Exposure Compensation Act: What is Fair? New Solutions, 13 (4), 385–397. UserName - DateTime: vge-7/10/2018 11:18:23 PM): 392). But no formal provisions were made around active collaboration going forward.

Presumably, government officials charged with the administration of the RECA programme simply did not know about traditional Navajo marriages, or realise that not all uranium miners were provided with formal contracts.[[3]](#endnote-3) Active collaboration during the period when eligibility criteria were being designed would have shored up some of these issues pre-emptively, creating a more smoothly running programme that would have benefited both the claimants and the government officials charged with its administration. However, it is not only the goal of efficiency that is served. A claimant who has to gear up for a second battle to prove his or her eligibility after initially fighting for reparations may have the sense of being re-victimised and feel moral outrage. If we follow the traditional definition of justice as giving each person his or her due, a reparations programme that systematically turns away individuals with meritorious claim is unjust. Justice thus demands active collaboration in determining criteria that serve the goal of paying reparations to those for whose purpose the programme is being instituted.

The problem of inclusion

Typically, reparations programmes are preceded by mobilisation on the part of claimants who demand that the government pay redress: initiating a lawsuit against the government, pressuring the legislature to pass a redress bill, and in some cases, doing both. In the transition from a reparations movement to a reparations programme, the *problem of inclusion* naturally arises. The set of all possible reparations claimants is larger – sometimes much larger – than the set of claimants who are mobilised. It would be an issue for the government to make right only with those who are actively taking part in the reparations movement, ignoring the others. Yet at the same time, it may be problematic to assume that individuals who are not mobilised want the exact same thing as those who are.

Consider the ambitious healing programme undertaken by the government of Canada in response to thousands of lawsuits from former First Nations, Inuit, and Métis students of assimilationist residential schools. In interviews conducted by researchers, it was evident that many of the former residential school students – ‘Survivors’, as they are known – actively distrusted the Canadian government as a result of the physical, sexual, and cultural abuse they endured in the schools. Some Survivors who received reparations reported being unable to look at the check or open the envelope it was mailed in; others described it as ‘blood money’ ([Reimer 2010](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_938_FILE150312168PIII026" \o "(AutoLink):Reimer, G., 2010. The Indian Residential Schools Settlement Agreement’s Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients. Ottawa: Aboriginal Healing Foundation. UserName - DateTime: vge-7/10/2018 11:18:57 PM): 52–53). One person sensed that the check meant, ‘you’ve got your money now be quiet’. Another said she ‘felt like a prostitute, like I sold my body’.

Unfortunately, some Survivors who saw the money as a reminder of childhood trauma and sexual abuse were anxious to get rid of it as fast as possible, spending it on alcohol and drugs (Dion [Stout and Harp 2007](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_943_FILE150312168PIII026" \o "(AutoLink):Stout, M.D. and Harp, R., 2007. Lump Sum Compensation Payments Research Project: The Circle Rechecks Itself. Ottawa: Aboriginal Healing Foundation. UserName - DateTime: vge-7/10/2018 11:19:07 PM): 31–33). As the authors of a 2007 report put out by the Aboriginal Healing Foundation assessed the matter, ‘to the extent healing is already underway when a payment arrives, LSPs [lump-sum payments] can play a role in enabling or deepening opportunities to build upon it’ whereas they ‘“accelerated and exacerbated the problems of individuals” who were not on a healing journey’ ([Reimer 2010](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\15031-2168 Lever\\From CE\\Jenny's review\\Lever\\15031-2168-FullBook.docx" \l "Ref_938_FILE150312168PIII026" \o "(AutoLink):Reimer, G., 2010. The Indian Residential Schools Settlement Agreement’s Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients. Ottawa: Aboriginal Healing Foundation. UserName - DateTime: vge-7/10/2018 11:18:57 PM): 776). It is possible to speculate that individuals already on a healing journey would be the ones mobilised in making a reparations claim, perceiving that the government’s concrete acknowledgement of wrongdoing and accountability would help bring closure to past events. How then to include the voices and the needs of individuals who are not mobilised in making a reparations demand? Moreover, what if a redress movement consists of multiple mobilised factions making different, even contradictory, demands for the same harm?

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

Non-mobilised beneficiaries

Let us first turn to the issue of including non-mobilised beneficiaries and the Canadian residential schools redress programme, which again was set up in response to lawsuits from Survivors. The shape of a reparations movement often looks different if it aims at winning a lawsuit versus passing reparations legislation.[[4]](#endnote-4) At least in theory, lawsuits are decided on their legal merits, detached from political considerations. Group members do not have to pour their energies into winning over public support for their cause – including the support of other group members who have not given much thought to the matter of redress. Rather, efforts are focused on building the strongest possible legal case: with lawyers, and usually not in full public view.[[5]](#endnote-5)

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

However, the onus is not only on group members to solve the problem of inclusion. Government officials can and should do more to include those unaware that redress is being fought for on their behalf. Here public hearings can play a positive role. Public hearings can take the form of a Truth and Reconciliation Commission, which is the route the Canadian government decided on. Alternatively, they might be held as part of a commission’s mandate to investigate the injustice. Public hearings were an important aspect of the Japanese American internment redress movement, and interestingly, it was precisely because many white Americans denied that WWII internment had been wrong that the ‘Commission on Wartime Relocation and Internment of Civilians’ (CWRIC) was established. But as the chair of the Japanese American Citizens League’s redress committee, John Tateishi, put it, his group supported the CWRIC because ‘Japanese Americans really didn’t know much about [the redress movement], and certainly members of the Congress didn’t know and weren’t convinced that the internment was wrong . . . before we could do anything we needed to educate the public’ ([Wolfe 2013](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_948_FILE150312168PIII026" \o "(AutoLink):Wolfe, S., 2013. The Politics of Reparations and Apologies. New York: Springer. UserName - DateTime: vge-7/10/2018 11:19:16 PM): 206). Ultimately, the CWRIC hearings were crucial in ‘organizing and energizing Japanese Americans to fight for redress’ and creating a situation where even ‘though Japanese American organisations advocated different paths and objectives, the Japanese American community agreed that redress was an appropriate goal’ ([Maki, Kitano, and Berthold 1999](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_931_FILE150312168PIII026" \o "(AutoLink):Maki, M.T., Kitano, H.H.L., and Berthold, S.M., 1999. Achieving the Impossible Dream: How Japanese Americans Obtained Redress. Urbana: University of Illinois Press. UserName - DateTime: vge-7/10/2018 11:18:41 PM): 233, 235).

By contrast, the Truth and Reconciliation Commission of Canada took place concurrently with the monetary redress programme, rather than preceding it. Criticisms of Canada’s Truth and Reconciliation Commission abound that have little to do with whether hearings came before or in conjunction with the disbursal of redress payments (see, e.g., [Niezen 2013](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_937_FILE150312168PIII026" \o "(AutoLink):Niezen, R., 2013. Truth and Indignation: Canada’s Truth and Reconciliation Commission on Indian Residential Schools. Toronto: University of Toronto Press. UserName - DateTime: vge-7/10/2018 11:18:56 PM)). Yet the latter nevertheless points to a missed opportunity. In holding public hearings before making a reparations determination, it becomes less likely that an eligibility letter is a would-be claimant’s first acquaintance with the idea of reparations. It provides her with the opportunity to play a role in the reparations movement. To the actively mobilised claimant, reparations are more likely to be seen as the government symbolically acknowledging the wrong, and less likely to be seen as blood money.[[6]](#endnote-6)

Holding public hearings is wise as the first stage in a government’s address of the problem of inclusion, but it is nevertheless only a first stage. As we shall see shortly with the Chinese Canadian ‘head tax’ redress movement, the problem of inclusion is also relevant to determining the mode of redress. The sense of some Survivors was that the Canadian residential school system was not an appropriate context for individual reparations payments: ‘the residential school experience is not an individual phenomenon’ ([Reimer 2010](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_938_FILE150312168PIII026" \o "(AutoLink):Reimer, G., 2010. The Indian Residential Schools Settlement Agreement’s Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients. Ottawa: Aboriginal Healing Foundation. UserName - DateTime: vge-7/10/2018 11:18:57 PM): xvi). Choosing between individual reparations payments and a group reparations programme should not be the task of the government alone, or by government officials in partnership with a small, self-selected number of group members. A deliberative democratic forum that brings together a diverse set of group members is the best way to assure that the mode of redress determined is viewed as legitimate by future reparations recipients (see [Amighetti and Nuti 2015](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_919_FILE150312168PIII026" \o "(AutoLink):Amighetti, S. and Nuti, A., 2015. Towards a Shared Redress: Achieving Historical Justice Through Democratic Deliberation. Journal of Political Philosophy, 23 (4), 385–405. UserName - DateTime: vge-7/10/2018 11:18:17 PM)).

Finally, the problem of inclusion may be related to the problem of exclusion: if the claim filing process is difficult and there is the impression that the government is trying to turn individuals away to save money, individuals not previously mobilised are more likely to view the reparations programme cynically. If a deliberative democratic forum is instituted, it may also be necessary to have it continue as the claims filing process is taking place as a way of providing ongoing feedback on the reasonableness of the eligibility and paperwork requirements.[[7]](#endnote-7)

Non-unified redress movements

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

Chinese Canadian head tax redress is a particularly salient illustration. Beginning in 1885, the Canadian government began charging Chinese immigrants $50 to enter the country – an amount that quickly increased to $100, and then $500 ([Winter 2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_946_FILE150312168PIII026" \o "(ManLink):Winter, S., 2008. The Stakes of Inclusion: Chinese Canadian Head Tax Redress. Canadian Journal of Political Science, 41 (1), 119–141. UserName - DateTime: vge-7/11/2018 4:20:45 AM): 122). Between 1923 and 1947, Canada forbade Chinese immigration altogether.[[8]](#endnote-8) The redress movement began in 1983, when one head taxpayer approached his MP asking for assistance in obtaining a refund ([Li 2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_930_FILE150312168PIII026" \o "(AutoLink):Li, P., 2008. Reconciling with History: The Chinese-Canadian Head Tax Redress. Journal of Chinese Overseas, 4 (1), 127–140. UserName - DateTime: vge-7/10/2018 11:18:38 PM): 131). From there, Chinese Canadians began registering head tax certificates with the Chinese Canadian National Council (CCNC), an anti-racism organisation that agreed to advocate on behalf of head tax payers and families. Before long, 4,000 Chinese Canadians registered head tax certificates with the CCNC.

The redress movement spearheaded by the CCNC was broad, inclusive, and very visible, building ‘media campaigns, public awareness initiatives, and community networks of support’ ([‘Chinese Head Tax and Exclusion Act Redress’ 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_925_FILE150312168PIII026" \o "(ManLink):Chinese Head Tax and Exclusion Act Redress Questions and Answers [online], 2003. Ccnc.ca. Available from: www.ccnc.ca/currentIssues/Redress-QA.doc [Accessed 19 Feb 2017]. UserName - DateTime: vge-7/11/2018 4:20:56 AM)). Its leaders came from ‘unions, churches, women’s groups, other minority groups, aboriginal groups, Chinese community and other community groups’; ‘thousands of ordinary people . . . signed petitions and sent in postcards’ supporting redress at the bidding of the CCNC; and it organised ‘Last Spike’ events across Canada to raise awareness about the role of Chinese Canadian immigrants in constructing the Canadian Pacific Railway. However, the CCNC was very firm on three demands: (1) a formal apology from the Canadian government, (2) individual reparations, not just funds to the group, and (3) reparations to head tax families – that is, paying the children of head tax payers if their parent is deceased. This last point was crucial because the head tax, followed by 24 years of exclusion, caused families to be separated ([Li 2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_930_FILE150312168PIII026" \o "(AutoLink):Li, P., 2008. Reconciling with History: The Chinese-Canadian Head Tax Redress. Journal of Chinese Overseas, 4 (1), 127–140. UserName - DateTime: vge-7/10/2018 11:18:38 PM): 129; [Winter 2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_946_FILE150312168PIII026" \o "(ManLink):Winter, S., 2008. The Stakes of Inclusion: Chinese Canadian Head Tax Redress. Canadian Journal of Political Science, 41 (1), 119–141. UserName - DateTime: vge-7/11/2018 4:20:59 AM): 133).

Two decades after the redress movement began, public pressure was such that the Conservative party, following up on an election campaign promise, backed a private member bill that apologised for the unjust treatment that Chinese Canadians received. However, it proposed that redress take the form of an education foundation – to be negotiated with the National Congress of Chinese Canadians. Described as ‘shadowy’ and having ‘no history of anti-racism activity’ ([James 2013](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_929_FILE150312168PIII026" \o "(AutoLink):James, M., 2013. Neoliberal Heritage Redress. In: J. Henderson and P. Wakeham, eds. Reconciling Canada: Critical Perspectives on the Culture of Redress. Toronto: University of Toronto Press, 31–46. UserName - DateTime: vge-7/10/2018 11:18:34 PM): 39–40), the National Congress seemed to have a seat at the table for one reason. It was a group willing to accept an apology without individual reparations, while claiming to represent Chinese Canadians.

It is true that not all Chinese Canadians supported the CCNC’s goal of individual reparations. ‘No group can claim to represent an entire community, especially one as large and diverse as the Chinese Canadian community’, as the CCNC itself acknowledged ([‘Chinese Head Tax and Exclusion Act Redress’ 2003](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_925_FILE150312168PIII026" \o "(ManLink):Chinese Head Tax and Exclusion Act Redress Questions and Answers [online], 2003. Ccnc.ca. Available from: www.ccnc.ca/currentIssues/Redress-QA.doc [Accessed 19 Feb 2017]. UserName - DateTime: vge-7/11/2018 4:21:04 AM)). In the early 1990s, there had been tension between the CCNC and another group called the Toronto Chinese Head Tax Action Committee, which criticised the CCNC for being too insistent on individual payments ([Li 2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_930_FILE150312168PIII026" \o "(AutoLink):Li, P., 2008. Reconciling with History: The Chinese-Canadian Head Tax Redress. Journal of Chinese Overseas, 4 (1), 127–140. UserName - DateTime: vge-7/10/2018 11:18:38 PM): 131–132). However, the CCNC did see itself as being the legitimate representative of the 4,000 Chinese Canadians who had registered their head tax certificates with the organisation, and expressed its outrage that the bill set out exclusive negotiations with the National Congress. Many other organisations and media outlets were highly vocal in their disapproval of the bill, and it expired without passage.

Canadian government officials acted wrongly, no doubt, in strategically selecting an organisation to negotiate with based on its predetermined idea about how far redress should go. However, responsibility also falls on members of the National Congress. Given the prominence of the CCNC’s redress campaign, and its formal claim to representing 4,000 head tax payers and families, it never should have agreed to exclusive negotiations with the Canadian government on the subject of redress. This does not mean, of course, that the CCNC should have agreed to exclusive negotiations had it been in the National Congress’s position. Any organisation advocating for redress as part of a broader movement in which there is significant disagreement owes it to the community at large not to monopolise representation.[[9]](#endnote-9)

Conclusion

It may seem that the most challenging ethical dilemmas about reparations arise when justifications for reparations programmes are discussed. In this chapter, we have shown that such an assumption is flawed because it neglects how the design of reparations programmes posits serious ethical issues. By looking at real-world cases, we have identified three problems that any reparations programmes for past wrongs should address: the problems of political instrumentalisation, exclusion, and inclusion. Reparations programmes should meet (at least) three *desiderata*: (1) they should be seen as legitimate by potential beneficiaries – that is, they should not be regarded as a mere political tool to legitimise the power of governments; (2) they should establish fair criteria to determine who can qualify as a proper claimant; (3) they should be as inclusive as possible. We have shown that reparations programmes are closer to incorporating such *desiderata* when they actively involve reparations claimants and deploy deliberative mechanisms to reach and engage with potential beneficiaries. Obviously, in this chapter we could focus on only three problems that the design of reparations programmes presents, and offer some preliminary indications as to which kinds of measures should be undertaken to minimise the problems we have identified. That being said, we hope to have shown that the process of designing reparations programmes should become more central to normative debates about reparations.

Notes

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1. For an excellent account of the ‘comfort women system’, see [Soh (2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_942_FILE150312168PIII026" \o "(AutoLink):Soh, C.S., 2008. The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan. Chicago: University of Chicago Press. UserName - DateTime: vge-7/10/2018 11:19:04 PM)). [↑](#endnote-ref-1)
2. N.B. The Madres split in two factions in 1986. The Mothers of the Plaza de Mayo-Linea Fundadora started to cooperate with the state for the search of the missing corpses and eventually accepted forms of redress, including memorials for their children. Conversely, the Asociacion Madres de Plaza de Mayo relentlessly rejected any type of collaboration with the state and refused any form of reparation. When referring to the Madres’ refusal of reparations after 1986, our focus is mainly on the latter association. Note that the split among the Madres is an example of internal divisions within a group and the unwillingness of some to receive any form of reparations, issues we discuss in the third section. [↑](#endnote-ref-2)
3. [Eichstaedt (1994](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_927_FILE150312168PIII026" \o "(AutoLink):Eichstaedt, P., 1994. If You Poison Us: Uranium and Native Americans. Santa Fe: Red Crane Books. UserName - DateTime: vge-7/10/2018 11:18:30 PM)) points to evidence of more deliberate obstructionism on the part of Justice Department officials. [↑](#endnote-ref-3)
4. That being said, published research on the RECA programme, which also responded to lawsuits, does not suggest that the problem of exclusion was an issue. [↑](#endnote-ref-4)
5. This is not to say that the Survivors acted wrongly in choosing a judicial rather than legislative redress strategy. Mobilised reparations claimants have to consider their chances of success in each venue, and proceed accordingly. Also, note that some reparations movements pursue legislative and judicial redress simultaneously, or one after the other strategy proves unfruitful. [↑](#endnote-ref-5)
6. If carefully designed, public hearings can work as the ‘inclusion’ stage of a deliberative democratic forum on what reparations should amount to (see [Amighetti and Nuti 2015](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_919_FILE150312168PIII026" \o "(AutoLink):Amighetti, S. and Nuti, A., 2015. Towards a Shared Redress: Achieving Historical Justice Through Democratic Deliberation. Journal of Political Philosophy, 23 (4), 385–405. UserName - DateTime: vge-7/10/2018 11:18:17 PM)). [↑](#endnote-ref-6)
7. [Amighetti and Nuti (2015](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_919_FILE150312168PIII026" \o "(AutoLink):Amighetti, S. and Nuti, A., 2015. Towards a Shared Redress: Achieving Historical Justice Through Democratic Deliberation. Journal of Political Philosophy, 23 (4), 385–405. UserName - DateTime: vge-7/10/2018 11:18:17 PM)) suggest that a deliberative democratic forum should also discuss issues of implementation. [↑](#endnote-ref-7)
8. The Chinese head tax and immigration ban were implemented in response to a belief expressed by white Canadians at the time that Chinese workers were taking jobs and driving down wages ([James 2013](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_929_FILE150312168PIII026" \o "(AutoLink):James, M., 2013. Neoliberal Heritage Redress. In: J. Henderson and P. Wakeham, eds. Reconciling Canada: Critical Perspectives on the Culture of Redress. Toronto: University of Toronto Press, 31–46. UserName - DateTime: vge-7/10/2018 11:18:36 PM)). Chinese immigration was reinstated in the postwar period, but it was not until 1967 that Chinese immigrants were given the same treatment as immigrants of other nationalities ([Li 2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_930_FILE150312168PIII026" \o "(AutoLink):Li, P., 2008. Reconciling with History: The Chinese-Canadian Head Tax Redress. Journal of Chinese Overseas, 4 (1), 127–140. UserName - DateTime: vge-7/10/2018 11:18:37 PM): 129). [↑](#endnote-ref-8)
9. In the end, the Canadian government paid individual reparations to living head tax payers and surviving spouses, as well as funding educative and commemorative programmes, a programme it initiated in 2006 ([Li 2008](\\\\apl-dc1\\APL User Drop\\01_Editorial\\amy_drop\\New Books\\15031-2168 Lever\\15031-2168b-txt&cip-r03\\For Copyediting\\15031-2168-FullBook.docx" \l "Ref_930_FILE150312168PIII026" \o "(AutoLink):Li, P., 2008. Reconciling with History: The Chinese-Canadian Head Tax Redress. Journal of Chinese Overseas, 4 (1), 127–140. UserName - DateTime: vge-7/10/2018 11:18:38 PM): 135). The redress programme notably did not include head tax payers’ children. [↑](#endnote-ref-9)