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Swiss and American officials meet with leaders of the World Jewish Restitution Organization, Friday, Feb. 14, 1997, in New York to discuss a fund to compensate Holocaust survivors. Eizenstat is second from the left. | AP Photo/David Karp

PRIMARY SOURCE

What Holocaust Restitution Taught Me About Slavery Reparations

My experience negotiating restitution for Holocaust survivors has shown me how difficult and divisive a slavery reparations program would be to enact.

By STUART E. EIZENSTAT | October 27, 2019

Over the past few years, the idea of reparations for the effects of slavery in the United States has gone from a mostly academic discussion to a political possibility, discussed at presidential debates and in the halls of Congress. This summer, the House held a hearing on a bill, H.R. 40—first introduced in 1989 by Representative John Conyers and reintroduced after his retirement by Representative Sheila Jackson Lee in 2019—that would form a commission to study proposals for how reparations would work in practice. Several of the Democratic Party’s candidates for president have said they support the House bill. One of them, Senator Cory Booker, introduced a companion bill in the Senate.

Slavery is a profound historical wrong—one whose brutal legacy permeates American life today. People of color continue to suffer endemic discrimination in employment, housing and new forms of voter suppression. As a result, by every socioeconomic measure—health, education, income, wealth, homeownership and employment levels—they remain far behind white Americans. We must do more to acknowledge, confront and end institutional racial discrimination.

But reparations in the form of cash payments for descendants of slaves are not the way to right this grievous wrong. I write this having spent decades of my life negotiating more than \$17 billion in reparations for Holocaust survivors. What I learned as chief negotiator for both the U.S. government, across several presidential administrations, and for the Jewish Claims Conference, a group representing

Holocaust survivors in compensation negotiations with the postwar German government, is that reparations are complicated, contentious and messy, and work best when the crime was recent and the direct victims are still alive. Based on my experience, I believe that trying to repay descendants of slaves could end up causing more problems than reparations would seek to solve and that there are better ways to end racial disparities.

To be clear, I am not saying that the horrors of slavery are greater or less than the horrors of the Holocaust. But the fact that slavery is so much farther in the past makes the logistics of reparations next to impossible. Even though some supporters of slavery reparations point to Holocaust reparations as a model, they are actually quite different.

During Bill Clinton's presidency, I served in a newly created position as a special representative of the president and secretary of State on Holocaust-era issues. I led an interagency negotiating team that helped settle a series of class-action lawsuits brought by American lawyers in U.S. courts on behalf of Holocaust survivors or their immediate relatives all over the world against French and Swiss banks. The banks had held funds deposited by Jews seeking to hide them from the Nazis but failed to admit their existence after the war when survivors or direct heirs of victims claimed them; instead, the banks took the money into their own profits. We also settled class-action lawsuits against European insurance companies that refused to pay beneficiaries on the specious ground that premiums were not paid while policyholders were in concentration camps. We obtained payments from hundreds of German and Austrian companies that employed Jewish slave laborers, working them to death, and non-Jewish forced laborers from Poland and other countries overrun by the Nazis. All worked under brutal conditions but were viewed as wartime assets to substitute for German men conscripted to fight. We also arranged for the restitution of private property in Austria, compensation or recovery of thousands of Nazi-looted artworks, and the return of synagogues, community centers and even cemeteries confiscated by the Nazis and nationalized by postwar communist governments.

During the Obama administration, in 2014, when I continued this work as special adviser to Secretaries of State Hillary Clinton and John Kerry, we negotiated reparations for non-French citizens from the French government for deporting Jewish residents to death camps aboard the state-owned railway and for their spouses and children if they survived the war but died before our agreement. Since 2009, I have also led annual negotiations with Germany on behalf of the Conference on Jewish Material Claims Against Germany and obtained payments for pensions, home care, food and medical services for survivors in or near poverty. Overall, we have managed to obtain a degree of justice—even if it is imperfect. It took decades and is still a painstaking process.

The common thread running through these U.S.-led negotiations and those of the Claims Conference is that restitution has come from the direct perpetrators of the crimes and has gone largely to those who *directly* suffered and survived, and, in some cases, their direct heirs. And even this was extremely difficult. In the Austrian property cases, there were 18,000 claims filed—largely by heirs of victims—with the Austrian claims process having to sort out competing claims among families. Controversy arose in the French railway case because payments went only to living survivors of the deportations or their spouses or children if the deportee had died after World War II and before our agreement; distant relatives of deportees were excluded.

Imagine how these problems would be compounded in any program of individual reparations for descendants of slaves. Under such a program, a direct link would be necessary to prove which of today's 37 million African Americans would be eligible for reparations. But poor record-keeping during the slavery era, which predated America's founding, makes it extremely difficult to trace ancestry back to a specific slave family. With Holocaust-era slave laborers, we applied a sort of "rough justice" by using Red Cross and German concentration camp records to pay a flat sum of \$7,500 to each former inmate, regardless of how long they had been held captive (forced laborers received \$2,500). It is hard to see how such an approach would work in America, where slave records are flawed and far from complete. That system would also disadvantage those African Americans unable to establish such a linkage because they lacked the economic wherewithal to pursue the difficult genealogical task or because records did not exist.

Other U.S. government reparations programs have stuck to paying direct victims or their immediate family. More than 100,000 Americans of Japanese descent who were interned during World War II were each paid \$20,000 under a law signed in 1988 by President Ronald Reagan, but nothing was paid to the heirs of those who died before the 1988 law went into effect. The benefits from the settlement of the lawsuit dealing with the awful government experiment at Tuskegee University that withheld treatment for syphilis from hundreds of black patients went only to survivors, their wives and widows, or their children.

Then there is the question of costs. Germany has paid more than \$60 billion since 1952 for the horrors of the Holocaust and continues to this day to provide for those living survivors in special need, but not their descendants. Economic estimates of the potential cost of reparations for distant heirs of slaves range from about \$500 billion to as high as \$17 trillion, which is more than three times current annual federal spending. Who would pay for this? All American taxpayers would have to bear the burden of reparations, perversely including many of the intended beneficiaries.

There are a few problems with this. For one, such an expensive, taxpayer-funded program stands little to no chance of being enacted. A Gallup Poll shows a majority of Americans, 67 percent, say the government should not arrange cash payments for slavery. But also, rather than promote the reconciliation we so badly need, reparations could seriously inflame racial tensions, stoking the resentment of nonblack citizens who would feel their needs for government assistance were being ignored in a rapidly changing, dislocating economy. According to that same Gallup Poll, only 16 percent of white Americans support cash reparations, while 73 percent of African Americans do. A government program white citizens perceive to be helping African Americans at their expense, for a crime they did not commit, would only push them further from understanding racism in America.

Some have suggested that the best reparations policy would dole out payments to all African Americans in the United States, regardless of whether they could prove their descent from slaves. But the costs for this would be even greater, making it even more politically improbable. Not to mention that any such plan risks further worsening race relations.

Part of what makes slavery reparations impractical is also what makes slavery's legacy so insidious and difficult to combat. We're not talking about a single, horrific, recent event. Slavery began before the founding of the country and continued for centuries. It ended more than a century ago. But its trauma has persisted for generations, continuing to harm African Americans even as it has become less visible to other Americans.

With this in mind, there are better ways to promote the healing this country needs than a formal reparations program. More feasible and urgent would be committing the nation to reducing inequality in income and wealth by making targeted and thoughtful investments to lift up both low-income communities and communities of color—an approach already favored by many of the Democratic candidates. That should include strengthening our national safety net. The government should also set aside additional federal funding for historically black colleges and black entrepreneurs as well as commit to stricter enforcement of discriminatory lending practices and to strengthening the 1965 Voting Rights Act to empower the federal government to protect African Americans against a withering variety of voter suppression efforts.

Two presidents from the South, Lyndon B. Johnson and Jimmy Carter, supported a range of policies to help increase opportunities for African Americans. Carter enforced set-asides for minority contractors on federal projects and affirmative action in admission to colleges. Both presidents supported funds for race-neutral, income-based programs, too: Public-private partnerships for investment in low-income areas, Head Start classes for disadvantaged children, Title I of the Elementary and Secondary Education Act for schools with high percentages of low-income students, and Pell Grants for college aid to needy students. President Barack Obama's Affordable Care Act, with its broadened coverage for private health insurance and expanded Medicaid benefits, is another more recent example of a program that helps minorities but also targets Americans in need regardless of race. The Trump administration has opposed most of the special affirmative action programs and has sought to cut the budgets for many of these programs. Instead, these programs should be continued and enhanced.

Education about the injustice of slavery and continued discrimination is also crucial. Just as the U.S. Holocaust Memorial Museum in Washington has drawn more than 50 million visitors—three-quarters of them non-Jews—and teaches the causes and effects of the Holocaust, the magnificent new National Museum of African American History and Culture that stands on our National Mall educates overflow crowds about slavery and its impact and also the great contributions of African Americans to every field of American endeavor. The International Holocaust Remembrance Alliance, an organization I helped create with the leadership of then-Swedish Prime Minister Göran Persson, now has 33 countries promoting Holocaust education. In America, the Department of Education and state educators should develop model courses on the realities and legacies of slavery and discrimination.

A large part of the argument for reparations is the symbolic importance of an admission of wrongdoing. Public apologies can be powerful tools for reconciliation, too. The Japanese American reparations legislation signed by Reagan included a national apology, and Bill Clinton formally apologized on behalf of the U.S. government for the unethical experiments on black men with syphilis at the Tuskegee Institute. Nine states, including former Confederate states of Alabama, North Carolina and Virginia, have formally apologized for slavery. The U.S. House and Senate passed bipartisan resolutions of apology in 2008 and 2009 but failed to reconcile the two versions and send them to the president. No U.S. president has ever formally apologized for slavery. It is time for another effort.

The best model for helping overcome prejudice and hate is South Africa's Truth and Reconciliation Commission. Its mandate from Nelson Mandela included neither financial compensation for apartheid nor punitive measures against its white perpetrators. The commission took testimony from 20,000 victims and from those who did evil deeds, under a provision of amnesty. In accepting the commission's report, Mandela majestically declared its purpose was "to help reconcile and build our nation," to heal and not to divide. It gave black citizens of South Africa the feeling that they could air their grievances in a constructive way, to demonstrate the evils of apartheid on an individual and collective basis. At the same time, it avoided direct retribution against its white perpetrators, curbing

resentment and risk of making racism even worse and set a course for a degree of racial reconciliation during Mandela's tenure as president.

We need a similar commission in the United States to examine slavery and racial discrimination to expose hidden truths, past and present, not for divisive individual or group compensation.

I'm not saying this will all be easy or that it won't be politically divisive. Policies like expanding the social safety net and cracking down on voter suppression face significant political headwinds, a congressional and presidential apology for slavery and a reconciliation commission would face headwinds in today's polarized political environment. But I believe that politicians are much more likely to push for—and Americans are much more likely to accept—these efforts than cash payments for descendants of slaves.

The concept of reparations for what Abraham Lincoln called “the bondsman's unrequited toil” is at least as old as the immediate post-Civil War years, when in 1865, General William Tecumseh Sherman issued a field order offering the freed slaves 40 acres of land and army mules as a step toward self-sufficiency, economic inclusion and redress. But Lincoln's successor, President Andrew Johnson, annulled Sherman's order after Lincoln's assassination, and in 1872, the Freedmen's Bureau, created by Congress to help freed slaves enter the economic mainstream, was closed.

It's time for the country to get serious about making up for that mistake—and for the decades of mistakes and discrimination that followed. But we should pick a way forward that avoids sending the country into a divisive, complicated, contentious process that could bog down our politics for decades.