

Should states and private parties be entitled to recover reparations from aggressor states, and if so, how? [990 Words]

The recent invasion of Ukraine by Putin's Russia has brought the controversial question of reparations to the forefront of many legal, moral and philosophical discussions. War indemnities have been a constant throughout human history, but as an imposition upon the vanquished by the victor, not as awarded by an independent body with nothing but justice as its agenda. For both moral and practical reasons, this essay, through the use of case studies and historical analysis, makes the case that no, neither states nor private parties should be entitled to reparations for aggression committed by states.

In order to effectively answer the question of entitlement to reparations in the present day, it is important to break it down to its component parts, these being the moral and the practical dimensions. Firstly, the assignment of collective guilt raises the question of exactly who and what a state is comprised of, as divisions within states can mean reparations are taken from opponents of aggressive war within that state. Secondly, it is impractical to pursue reparations from aggressor states, because doing so can create more problems than it solves, especially when the state in question lacks the ability or willingness to pay said reparations. By studying the case of Germany throughout the 20th century followed by the present conflict involving Russia and Ukraine, it can be concluded that reparations are rarely the answer in situations involving inter-state wars, but that instead, forgiveness and cooperation are a more effective solution.

Following its defeat in the First World War, Germany became obligated to make complete reparation to the victors for all such loss and damages arising due to the war in Articles 231 and 232 of the Treaty of Versailles¹. In the case of Wilhelmine Germany, it was an autocracy in which the public had no significant say in the affairs of state. Therefore, the rigid militarism and bellicose foreign policy of the time was not the result of a democratic mandate, but instead a product of the Kaiser's regime and the state apparatus that upheld it². The collective guilt assigned by the Versailles Treaty made Germany's entire population liable for reparations, even when segments of the population opposed the war or cooperated with it out of a fear of censorship, imprisonment or even death³. The concept of collective guilt is not consistent with the Nuremberg Principles⁴, nor is it

¹ The Peace Treaty of Versailles (28 June 1919)

<https://www.files.ethz.ch/isn/125327/1416_Treaty_Versailles.pdf> accessed 09 January 2023

² Brian Rathbun, Nina Srinivasan Rathbun and Caleb Pomeroy, 'No Fair!: Distinguishing the Pursuit of Status and Equity in the Foreign Policy of Wilhelmine Germany and the Public Opinion of Contemporary Russia' [2021] *International Studies Quarterly* 1, 13-14.

³ O Favier, 'A remembrance they'd rather forget: WWI's executed soldiers' (*Equal Times*, 11 November 2014)

<<https://www.equaltimes.org/a-remembrance-they-d-rather-forget?lang=en>> accessed 09 January 2023

⁴ Robert Shnayerson, 'Judgment at Nuremberg' [1996] *Smithsonian* 1.

moral, because individuals who bear no guilt may find themselves forced to pay for crimes they did not commit, perpetuating the cycle of aggression and increasing the number of innocents victimised. In addition to being morally wrong, the extraction of reparations from Germany following the First World War was a practical misstep because it engendered the resentment held by many citizens toward what they perceived to be an unjust peace, which directly contributed to the rise of Adolf Hitler and the Nazi party in Germany. Following WWII, a different approach was taken, Germany was assisted in rebuilding through the Marshall Plan, and in 1949 was given its independence and integrated into the international community, which has resulted in Germany becoming one of the world's most prosperous and peaceful nations despite having a centuries-long history of militarism and expansionism.

When superimposed onto a modern context, certain common themes emerge between Germany in the 20th century and Russia in the 21st. Much like Weimar Germany, the economic stagnation and corruption that took hold in Russia following the collapse of the USSR was a perfect environment for the emergence of nationalistic rhetoric and subsequently, a dictatorship. The rise of Vladimir Putin's regime, which is largely to blame for the present war in Ukraine, can be attributed to the stagnation and corruption that took hold in Russia in the 1990s, which could have been ameliorated through an increased effort by the West to bridge the gaps created by the Cold War and ensure Russia becomes a part of the economic family of democratic nations⁵. The devastation the war has brought the Ukrainian people has understandably raised the question of reparations, but the aforementioned moral and practical considerations arise. The invasion of Ukraine is a polarising issue in Russia, many civilians have been arrested for protesting against the war⁶, and soldiers have been imprisoned and beaten for refusing to fight⁷. The internal divisions within Russia mean it is not the entire population that is guilty, therefore any collective guilt placed on the Russian people for the current war is neither moral nor conducive to internal reform, which is increasingly likely to occur given the lowered standing of Putin's regime following its invasion of Ukraine. Furthermore, in practical terms, there is no way to extract reparations from Russia without further escalation of the present tensions. Despite its military setbacks in Ukraine, Russia is a nuclear state, powerful enough to prevent the extraction of reparations from its exchequer, its industries or its natural resources. The dubious moral aspects of attempting to extract reparations for the devastation caused in Ukraine from the broader Russian populace following any post-war settlement, combined with the

⁵ Masha Gessen, *The man without a face: The unlikely rise of Vladimir Putin* (Penguin 2012)

⁶ 'Hundreds of anti-war protesters arrested across Russia' (*Al Jazeera*, 13 March 2022)

<<https://www.aljazeera.com/news/2022/3/13/russia-ukraine-war-protesters-arrested>> accessed 12 January 2023

⁷ Steve Rosenberg, 'Ukraine war: The Russians locked up for refusing to fight.' (*BBC*, 12 December 2022)

<<https://www.bbc.com/news/world-europe-63916810>> accessed 12 January 2023

impracticability of encroachment onto Russian territory in any real way, mean that the only moral and feasible avenue through which reparations may be obtained is the seizure of assets held abroad by Russian oligarchs and politicians⁸, who are primarily responsible for this war. By seizing the assets of the Russian oligarchy, the victims of their war in Ukraine may be somewhat compensated, while also increasing the likelihood of them withdrawing their support for Putin.

In conclusion, reparations and justice can and should be imposed upon the individual perpetrators and organisers of aggressive war, but blaming an entire population for the actions of their government often creates more hate than it heals, and furthers a cycle of national grievances that is all too common in the world today. The victims of aggressive war cannot and should not be compensated through the creation of new victims.

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