

IS IT TOO LATE NOW TO SAY SORRY: GERMAN REPARATIONS TO HOMOSEXUALS

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I. INTRODUCTION

Thousands of gay Germans were convicted—some even put to death—under a 1871 law that was on the books in Germany through the Holocaust until 1994.¹ Germany's Green Party representatives Katja Keul and Volker Beck have demanded reparations on behalf of the thousands of men whose lives were ruined after being convicted under the provision.² This year, German Justice Minister Heiko Maas has finally called for an expungement of convictions for those prosecuted after the war—22 years after the repeal of the law in 1994.³

The law being discussed is referred to as Paragraph 175. This law made it illegal in Germany to engage in sex with another member of the same sex.⁴ As set forth in more detail in the following sections, the law was enacted in 1871.⁵ Adolf Hitler modified it several times during his rule.⁶ After the war was over, the law remained on the books.⁷ It was only in 1969 that it was modified, and not until 1994—almost fifty years after the war—that it was fully abolished.⁸

In general, people who break the law suffer the consequences. Sometimes, like in this instance, penalize people for

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¹ MARTIN BURGI, ANTIDISKRIMINIERUNGSSTELLE DES BUNDES [Federal Anti-Discrimination Agency], REHABILITIERUNG DER NACH §175 STGB VERURTEILTEN HOMOSEXUELLEN MANNER: AUFTRAG, OPTIONEN UND VERFASSUNGSRECHTLICHER RAHMEN [Legal Opinion on Section 175 of the Penal Code and the question of Rehabilitation of Homosexual Males: Order, options and constitutional frame], 15 (2016).

² Samuel Clowes Huneke, *Why Gay German Men Are Seeking Reparations for a Homophobic Nazi Law*, VICE (August 19, 2016), <http://www.vice.com/read/gay-german-men-are-seeking-reparations-for-a-homophobic-nazi-law>.

³ Heiko Maas (@HeikoMaas), TWITTER (Oct. 8, 2016, 3:46 AM), https://twitter.com/HeikoMaas/status/784661341999013888?ref_src=twsrc%5Etfw

⁴ Burgi, *supra* note 1, at 16. (It was not enforced on females.)

⁵ *Id.*

⁶ *Id.* at 19.

⁷ *Id.* at 28.

⁸ *Id.* at 30, 37.

arbitrary reasons; dehumanizing individual victims unable to comprehend that they are jailed for being who they are.⁹ When courts are too small or ineffective to provide justice to systemic cases of abuse to the large number of victims of these terrible laws, new laws must be enacted to provide relief. These restorative laws typically create administrative agencies which may be separate from the criminal justice system. Essentially, reparations are a political effort to get victims compensation and recognition in a way courts could not accomplish. Reparations programs can offer a symbolic acceptance of a responsibility and an acknowledgement of a wrong done.

First, this article will discuss reparations in general and how they can be most effective in achieving justice for the victims. Germany has had successful reparations programs in the past, but what defines their success is not compensation. Then we will outline the effect of Paragraph 175 on homosexual males who were persecuted from 1871-1994, and describe how the new laws—one that will pardon the convictions of anyone under 175, and one that will provide reparations—will help mend the wounds and repair the material cost imposed on men because of Paragraph 175. Finally, we must answer: how do the new laws work, constitutionally speaking; how does this program help the victims; and what can Germany do to make it the most effective program in providing justice to the victims?

II. REPARATIONS: WHAT ARE THEY?

Courts and Reparation programs are similar in that they try to the achieve justice for those who have been wronged. The difference is that courts do this on a case-by-case basis, whereas reparations programs must respond to a wider and more complex universe of victims and claims. Governments may create an administrative agency to disperse reparations, which may have some juridical functions, such as hearings for those denied benefits.¹⁰

⁹ See, generally, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). (“[S]ame-sex couples have the same right as opposite-sex couples to enjoy intimate association. *Lawrence* invalidated laws that made same-sex intimacy a criminal act.”)

¹⁰ Pablo De Grief, *Justice and Reparations*, in THE HANDBOOK OF REPARATIONS loc. 6934 (Pablo De Grief ed., Oxford University Press 2006) (ebook).

Reparations alleviate some of the difficulties and costs associated with litigation.¹¹ A reparations program will have faster results, lower costs, relaxed standards of evidence, and non-adversarial procedures.¹² Reparations programs, such as symbolic reparations, also provide public recognition in ways that Court cases may not.¹³

Reparations face several challenges in their attempt to make reconciliation with victims.¹⁴ While the government wants to address the entire group of beneficiaries, it must also focus on limiting individuals whose claims fall outside of this group.¹⁵ The program must establish evidentiary standards, which if too high, could exclude many people who otherwise deserve to get benefits.¹⁶ It must also be structurally sound in its outreach efforts to inform the public of the existence of the program, and the hurdles that victims must overcome in accessing it with regards to deadlines, applications, and other concerns.¹⁷

A reparations program is more complex if it distributes benefits of more than one type.¹⁸ This may include monetary compensation as well as some measure of truth-telling, and in other cases health-care services, educational support, and business loans.¹⁹ Complexity is important because there are some things that money cannot buy.²⁰ For instance, a plan including an apology with the reparation check would be seen as a more internally coherent plan than one that just distributes money with no acknowledgement of responsibility.²¹ This factor is important because it gives victims the chance to derive satisfaction from the punishment of perpetrators.²²

¹¹ *Id.* at loc. 7029.

¹² Pablo De Grief, *Introduction: Repairing the Past: Compensation for Victims of Human Rights Violations*, in *THE HANDBOOK OF REPARATIONS* loc. 362 (Pablo De Grief ed., Oxford University Press 2006) (ebook).

¹³ De Grief, *supra* note 10, at loc. 6992.

¹⁴ *Id.* at 417. (Reparations-historian Pablo De Grief providing a breakdown of reparations programs in terms of their scope, completeness, comprehensiveness, complexity, integrity or coherence, finality, and munificence).

¹⁵ *Id.* at loc. 416.

¹⁶ *Id.*

¹⁷ *Id.* at loc. 428.

¹⁸ *Id.* at loc. 492.

¹⁹ De Grief, *supra* note 10 at 492.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at loc. 512.

Reparations programs also have finality. This concept refers to whether the program stipulates that receiving benefits forecloses other avenues of civil redress or not.²³ In other words, whether the victim will be able to go back to court after receiving the benefits of reparation.²⁴ The award's significance to each victim is hard to calculate, since a larger sum of money may not be worth the same to two different individuals. For some victims, reparations are a tangible manifestation from the state to remedy the harms they've suffered—perhaps the sum does not matter as much as recognition and accountability.

Reparations programs should have three main goals: recognition, restoring civic trust, and social solidarity.²⁵ It is hard for an amount of money alone to provide justice; that is why these other goals are important. It is necessary to define and distinguish material from symbolic reparations. Material reparations are forms of compensation to individuals, usually in the form of cash payment, although they may include service packages for education, health, and housing.²⁶ Symbolic reparations aim to have reparative effects other than compensation for injuries and may include official apologies, the establishment of days of commemoration, and the creation of museums, parks or other statues as symbols dedicated to the memory of the victims.²⁷ Symbolic reparations may be done collectively, such as an official statement of apology from the government, or individually, such as a letter of apology to each victim along with the reparation payment.²⁸ Victims should be guaranteed that these crimes will not occur again; this means public disclosure of the truth and institutional reform are necessary.²⁹

Symbolic measures to the individuals themselves provide several advantages. They constitute a way to show respect for individuals, express recognition for the harm suffered, and are generally low cost.³⁰ Corrective measures such as public acts of atonement, commemorative days, establishment of museums, and changing of street names and other public places are very beneficial.³¹ They promote the development of collective memory,

²³ *Id.*

²⁴ *Id.*

²⁵ De Grief, *supra* note 10, at loc. 6899.

²⁶ *Id.* at loc. 6915.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at loc. 7150-65.

³¹ De Grief, *supra* note 10.

social solidarity and confront the transgressions of the government openly and directly.³² They may be something that a victim holds onto that points at the perpetrators who caused their suffering.³³

The payment made to individuals should be only interpreted as the government contributing to the quality of life of survivors.³⁴ There should not be anything in the reparations program that attempts to put a price on the life of a victim or the experiences of horror that they went through.³⁵ Reparations programs must maintain a forward-looking drive for justice in order to promote civic trust and social solidarity—atonement cannot be bought.³⁶

To the victims, the establishment of these programs represents a societal or community willingness to help them deal with, and part from, the past.³⁷ Greater recognition by the state helps victims feel more recognized and accepted by society.³⁸ This increases levels of civic trust.³⁹ Reconnecting individuals with society is a crucial dimension of dealing with trauma.⁴⁰ Symbolic reparations can help make a traumatic event concrete and help individuals come to terms with it and label responsibility, which may help to relieve the guilt that survivors often feel.⁴¹

Victims should not be expected to forgive. Programs of reparations may only help the victims incorporate the loss into their everyday life. Some level of satisfaction is attainable, especially with things done on a macro scale.⁴² Memorials can help bridge gaps and assist victims in their intrapersonal struggle with the social world.⁴³ This shows victims that there is social space for their grief, anger, and feelings of injustice.⁴⁴ Memorials erected by members of a victim's own community may be even more effective as a mechanism for healing.⁴⁵

³² *Id.*

³³ *Id.*

³⁴ *Id.* at loc. 7127.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Brandon Hamber, *Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition*, in THE HANDBOOK OF REPARATIONS, loc. 8652 (Pablo De Grief ed., Oxford University Press 2006) (ebook).

³⁸ *Id.*

³⁹ *Id.* at loc. 8634.

⁴⁰ *Id.* at loc. 8660.

⁴¹ *Id.*

⁴² *Id.* at loc. 8634.

⁴³ Hamber *supra* note 37, at loc. 8677.

⁴⁴ *Id.*

⁴⁵ *Id.* at loc. 8764.

III. HOW HAS GERMANY DISTRIBUTED REPARATIONS IN THE PAST?

German reparations to Jewish persons after World War II was a turning point in the history of reparations.⁴⁶ Prior to the German program of reparations to the Jews, most reparations policies were paid from one country's government to another's. The reparations from Germany not only compensated the Jews for the effects of war, but compensation also extended to the victims who were persecuted during the rise of Nazism in the 1930s.⁴⁷ Previous to this, all reparations programs had only compensated victims for the damages caused by war exclusively.⁴⁸ Another important distinction is that the German government established the reparations program not because it was legally holding itself responsible for the Nazis, but because the leadership was convinced of its political necessity and of its just and moral character—simply put, it was the right thing to do.⁴⁹

On February 26, 1952, Germany and the Allies signed a treaty that established the sovereignty of the Federal Republic of Germany and ended its occupied status.⁵⁰ At this time the Allies requested that German authorities prepare a federal law of reparations, recommending that no discrimination should be made against groups and classes of those persecuted.⁵¹ Apparently victims of Paragraph 175 were not considered at this time to have been part of the persecuted, despite the fact that thousands had been sent to work in camps to their deaths during Hitler's regime.⁵²

The 1953 Federal supplementary law for the compensation of victims of National Socialist persecution was the Federal administration's plan to compensate former German citizens, refugees and stateless persons.⁵³ Victims filed their individual claims with provincial reparation agencies.⁵⁴ If the victims were

⁴⁶ Ariel Colonomos & Andrea Armstrong, *German Reparations to the Jews After World War II: A Turning Point in the History of Reparations*, in THE HANDBOOK OF REPARATIONS, loc. 6052 (Pablo De Grief ed., Oxford University Press 2006) (ebook).

⁴⁷ *Id.* at loc. 6057.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at loc. 6077.

⁵¹ *Id.*

⁵² Maybe it was because there were still men being arrested and in jail because of 175.

⁵³ Colonomos & Armstrong, *supra* note 46, at loc. 6217.

⁵⁴ *Id.*

denied coverage, they could dispute the agency's decision in the Provincial Court, and could appeal to the Federal Supreme Court (Bundegerichtof).⁵⁵ The administration awarded priority to individuals who could prove they were over sixty, sick, needy, or whose working capacity was determined to have been reduced by at least fifty percent.⁵⁶

The agency in charge of administering the reparations assigned various categories of compensation for victims who suffered persecution during the Holocaust.⁵⁷ As of the early 2000s, the German government paid out \$3.5 billion in claims for compensations, with each recipient on average receiving \$697 per month.⁵⁸ Overall, the German reparation program was the biggest that had ever been implemented.⁵⁹

The government received over 4.3 million applicants, approximately two million of which were approved.⁶⁰ The complex task that the government faced was analyzing the connection between persecution and harms the victims claimed.⁶¹ It obligated victims to expose their intimate traumatic experiences and subject themselves to the judgement of German administrators.⁶² Cold bureaucracy and insensitivity to the victims were negative parts of the program.⁶³

The triumph of the German reparations program was overcoming the unprecedented notion of punishing the criminality of the political state.⁶⁴ When you consider State sovereignty, it is almost fundamentally opposed to the government ever accepting responsibility for its actions.⁶⁵ In this way reparations had been seen as a threat to the traditional vision of a state, and at the same time reparations strengthened collective accusations of responsibility against the state.⁶⁶ In a sense reparation laws have chipped away at the great power of the political structure, being outweighed by an obligation to fairness.⁶⁷

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at loc. 6217.

⁵⁸ *Id.*

⁵⁹ Colonomos & Armstrong, *supra* note 46, at loc. 6297.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at loc. 6338.

⁶⁴ *Id.* at loc. 6350.

⁶⁵ Colonomos & Armstrong, *supra* note 46, at loc. 6350.

⁶⁶ *Id.*

⁶⁷ *Id.*

In 2001, fifty-six years after the end of World War II, the Bundestag (German Federal Government) approved a new law that would compensate former laborers forced to work for the Third Reich, with approximately five billion dollars.⁶⁸ Germany believed that there were two million victims alive to be compensated under this new law.⁶⁹ The reparations were paid not only from the German government, but also from German companies that profited using slave labor during World War II, contributing fifty percent of the funds.⁷⁰ Among other concerns, the threat of victims prevailing in civil suits against German companies was a driving force that led to creating this program in order to avoid the loss of business that German companies would suffer if subjected to these lawsuits.⁷¹

As part of Hitler's Final Solution, the Nazis used "death through work" (Vernichtung durch Arbeit) programs, which consisted of working slaves to death.⁷² Not only was the program designed to kill, it was also designed to provide Germany and German companies who used slave labor with cheap, gainful work.⁷³ Companies, some still existing today like DaimlerChrysler, did not pay slave workers for any profits during the war.⁷⁴ As much as sixty billion dollars of damages for unjust enrichment of these companies was speculated by U.S. lawyers at the time.⁷⁵

Contrary to the first reparations effort, which was labeled by Germany as an attempt to "make good again" (a label which received much criticism from the Jewish counterparts who stressed that Germany could not gain moral atonement by paying material reparations), the slave laborers program was named "Remembrance, Responsibility, and the Future," stressing a different approach to reparations than before.⁷⁶ There now was a concentrated effort to come to terms with history and acknowledge responsibility rather than make good again after the atrocities of the Holocaust.⁷⁷ It was not only an emphasis to provide restitution

⁶⁸ John Authers, *Making Good Again: German Compensation for Forced and Slave Laborers*, in *THE HANDBOOK OF REPARATIONS* loc. 6466 (Pablo De Grief ed., Oxford University Press 2006) (ebook).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at loc. 6476.

⁷³ *Id.*

⁷⁴ Authers, *supra* note 68, at loc. 6476.

⁷⁵ *Id.* at loc. 6544.

⁷⁶ *Id.* at loc. 6530.

⁷⁷ *Id.*

to victims, but also to apologize.⁷⁸ With symbolic intent in mind, the German government made clear that it was taking responsibility; each check was accompanied by a note of apology.⁷⁹

Because of the amount of time that passed from this law and the crimes that it sought to address, the mechanics were structured to allow for swift and easy payments. Former slave laborers received approximately \$7,500, and forced laborers received approximately \$2,500.⁸⁰ These two rough justice levels were deemed the fairest way to treat the problem in the shortest amount of time due to the circumstances.⁸¹ To go along with this, the burden of proof was also set very low.⁸² Applicants had to fill out a form to prove they've been through the experiences of the Holocaust, slavery or slave labor camps.⁸³ In order to speed the process, a cutoff date was agreed to: about two years after the announced program, which was not a strict cut off point because it allowed victims who had begun the process of seeking reparations to formally submit after the deadline.⁸⁴ Only living survivors were compensated; the only heirs who could have a claim would be those who had a relative that was eligible, but died before they received the payout.⁸⁵ All claims with respect to forced and slave labor were dismissed and the matter was considered to have been closed.⁸⁶ This was an improvement from the cold psychological evaluations of the past program.

While there were parties on each side that were unsatisfied by these efforts, some parts of the program were considered to be great successes.⁸⁷ Because justice for the crimes being compensated was impossible, the decision to accompany the payout with a formal apology gave the gesture a moral and symbolic value.⁸⁸ Money was just a modicum, a small token to the victims, but acceptance of responsibility was worth much more.⁸⁹

⁷⁸ *Id.*
⁷⁹ *Id.*
⁸⁰ Authers, *supra* note 68, at loc. 6647.
⁸¹ *Id.*
⁸² *Id.* at loc. 6671.
⁸³ *Id.*
⁸⁴ *Id.*
⁸⁵ *Id.*
⁸⁶ Authers, *supra* note 68, at loc. 6635.
⁸⁷ *Id.* at loc. 6731.
⁸⁸ *Id.*
⁸⁹ *Id.*

IV. HOW DO THE VICTIMS OF PARAGRAPH 175 QUALIFY FOR REPARATIONS?

The Bundestag has relied on a report from Munich law professor Dr. Martin Burgi in the consideration of this reparations program.⁹⁰ Beginning his argument outlining the struggle of the gays in Germany, he speculates that back in 1871 the German government probably enacted Paragraph 175 with a nod to both the legislation of a traditional canonical belief and an Enlightenment concept based on misled rationality, empiricism, and scientific knowledge at the time—but no one can say for certain.⁹¹ It was at this point in history where sexuality was no longer seen as a sinful act, but rather as a symptom of a disease.⁹² Previous to this law homosexuals were likely subject to Draconian biblical punishments.⁹³ Instead after 175 was enacted homosexuals were subject to penitentiary work, though it was not heavily enforced.⁹⁴ On May 15, 1871 the law against homosexuality was consolidated into Paragraph 175, which could be roughly translated to read, “the unnatural fornication, [taking] place between . . . males, . . . or of people with animals, is [punishable] with prison . . . and [also] the loss of civil rights.”⁹⁵ This law was in place and was not changed until 1933, when Hitler came to power.

Hitler’s regime tightened Paragraph 175.⁹⁶ Many were persecuted under this law, which was modified in a fight against the moral decay of German people, and from a eugenics standpoint to eliminate homosexual men from the gene pool of the German race.⁹⁷ The law was sharpened from its 1871 version.⁹⁸

With the new law in place police targeted the main public institutions of homosexual subculture, particularly bars and “love hotels”.⁹⁹ A central office for combating homosexuality was

⁹⁰ Heribert Prantl, *SpäteGerechtigkeit für homosexuelle Männer in Deutschland* [Late Justice for gay men in Germany], SUDDEUTSCHE ZEITUNG (Oct. 7, 2016), <http://www.sueddeutsche.de/politik/strafrecht-spaete-gerechtigkeit-fuer-homosexuelle-maenner-in-deutschland-1.3195548>.

⁹¹ Burgi, *supra* note 1, at 15–16.

⁹² *Id.*

⁹³ *Id.* at 15.

⁹⁴ *Id.* at 16.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 21.

opened.¹⁰⁰ Their mission was to target homosexual males and raid their venues.¹⁰¹ Homosexual men would be arrested and sent to work in prison camps¹⁰² where they were forced to wear “the pink triangle” identifying them as homosexuals.¹⁰³ As many as 15,000 men were sent to work slave labor, and many of them never saw freedom again.¹⁰⁴

After the war, the law remained on the books.¹⁰⁵ The prosecution of homosexual males remained at a very high level and was carried out in a systematic manner.¹⁰⁶ Between 1945 and 1969, about 100,000 accusations were reported, and of those about 50,000 led to convictions.¹⁰⁷ Approximately 3,000 homosexual males per year were put into jail.¹⁰⁸

In 1969 the German government decided to try and scale back persecution of homosexuality.¹⁰⁹ The new law made it illegal only for someone aged 18-21 to engage in homosexual behavior.¹¹⁰ A justification for the age limit was that the German government was trying to protect male sexual development between the ages of 18-21.¹¹¹ Despite this so-called decriminalization, nearly 3,500 men were forced to go to jail until the law was finally repealed in 1994, after German reunification.¹¹²

IV. What Has the German Government Proposed thus Far, and What Should They Include to Ensure a More Complete and Comprehensive Program?

It has been established that for 123 years, the German government persecuted homosexual males under Paragraph 175. German Green party advocates have been trying since 1995 to make Parliament rehabilitate victims of 175.¹¹³ In 2000, they requested that Parliament adopt a law of reparations for victims of Paragraph 175.¹¹⁴ The focus of the draft bill was not to compensate these

100 *Id.*
 101 Burgi, *supra* note 1, at 21.
 102 *Id.* at 22.
 103 *Id.*
 104 *Id.*
 105 *Id.* at 27-28.
 106 *Id.*
 107 Burgi, *supra* note 1, at 27-28.
 108 *Id.*
 109 *Id.* at 30.
 110 *Id.*
 111 *Id.*
 112 *Id.* at 35.
 113 Burgi, *supra* note 1, at 45.
 114 *Id.*

individuals for the harm suffered, but to apologize formally on behalf of the German government.¹¹⁵ The Green party understood that no money could compensate for life lost, but it would be a symbolic gesture that their suffering was recognized.¹¹⁶ They sought reparations not to compensate the victims, but to make a positive contribution on behalf of Germany to their lives going forward.¹¹⁷

The German government half-heartedly acquiesced to this request, issuing a formal apology.¹¹⁸ However, no reparations were granted.¹¹⁹ Germany, in an attempt to maintain its legal system's sovereignty, claimed that they would not compensate, nor remove the convictions on, the victims of 175.¹²⁰

In 2008 and 2009, again the Greens proposed legislation for victims of 175.¹²¹ This time Parliament rejected it on a "separation of powers" argument.¹²² The opposition's main contention was that it could not reach into the court's territory and change decisions that it had made.¹²³ The Green party's argument was that the government could acknowledge the material change in circumstances from the 1950s and 1960s when the courts made their decision, and on a moral and legitimate ground pardon the convictions in this one instance only.¹²⁴ Public argument was held with legal scholars on both sides of the argument.¹²⁵ No decision was rendered before the government changed due to elections in 2013.¹²⁶

Thankfully, the Green party did not give up. In June 2015, Ministers of Justice and the Attorney General of Germany agreed to convene on this issue.¹²⁷ They reported that (1) post-1945 convictions deprived the victims of their human dignity, and (2) a reparations program should be enacted by the Federal Government. They advised further that the Federal Central Register should delete the convictions of the victims of Paragraph 175, and in conclusion the Federal Government decided that the violations of

¹¹⁵ *Id.* at 45-46.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Burgi, *supra* note 1, at 45-46.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 47. (Reasoning that the law at the time was still the widely existing conviction of the people).

¹²¹ *Id.* at 47-48.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Burgi, *supra* note 1, at 49-50.

¹²⁵ *Id.* at 49.

¹²⁶ *Id.* at 51.

¹²⁷ *Id.* at 51-52

justice and human dignity could take priority over constitutional concerns of separation of powers.¹²⁸

Finally, German Justice minister Heiko Maas informally announced the German government would begin to make amends for this terrible law.¹²⁹ A total of about 30 million Euros will be allocated to the victims.¹³⁰ The German justice department estimates that about 5,000 victims are still alive.¹³¹

It is at this crucial time that the German government must carefully draft its law, using examples from its past along with addressing concerns of the present and future. Reparations to individuals are an impossible attempt to make someone whole, but the government must symbolically recognize the victims in order to create social solidarity and restore civic trust. “It has never been about the money, it was always about recognition,” said Julius Berman, Chairman of the Claims Conference to the New York Times in the early 2000s.¹³² The material reparation to individuals and symbolic gestures to victims who suffered signifies the German government taking responsibility in recognizing its forgotten sons; rather than compensating a victim for time spent in jail, freedom lost, and public humiliation, which would certainly be impossible to calculate.

The benefits of symbolic reparations are twofold. First, to the victim it signifies restoration of a deprivation suffered at the hands of the government. Second, it is an admission from the government not only of guilt but of a willingness to make amends. Germany should work with the LGBT community and survivors in order to achieve the greatest amount of symbolic value from memorials, if they decide to create any. It is important here to acknowledge that reparations are as much about the future as they are about the past, so labeling responsibility in the form of symbolic reparation is only a factor in the grieving process for many. Still, this reparations program will face the same problem as all reparations programs—material assistance does not answer calls to Lazarus asking to raise the dead.

¹²⁸ *Id.* at 52-53.

¹²⁹ Maas, *supra* note 3. Maas maintains the relevant bill is as good as done, and all political parties seem to be agreeable to the program.

¹³⁰ *Id.*

¹³¹ Prantl, *supra* note 90.

¹³² Melissa Eddy, *For 60th Year, Germany Honors Duty to Pay Holocaust Victims*, N.Y. TIMES (Nov. 17, 2012), <http://www.nytimes.com/2012/11/18/world/europe/for-60th-year-germany-honors-duty-to-pay-holocaust-victims.html>.

Money cannot buy life. Of the 50,000 men persecuted, only 5,000 are estimated to collect--less than 10 percent. This obviates the need for swift action. The process for the administration of benefits must be streamlined, and the evidentiary standards should be low. As it was in the 2001 program, the program must be aware that monetary contribution is not to make up for the harm, but to contribute to the lives of the victims going forward. It must acknowledge the symbolic gestures on both micro (individual) and macro (collective) levels, or it would suffer being less complete. It would make sense for the government not only to remove the convictions off the records and pay for their suffering, but also to consider working with the gay community to build a monument or some kind of symbol to commensurate this program so that victims, as well as younger generations, could have a concrete symbol that the government is taking full responsibility, and is sorry for its past transgressions. This will help members of the community feel like they can fully be a part of society—a society that once persecuted and then abandoned them. It will also prove that the days of discrimination on this level are, or at least should be, behind us. The reparations program must ultimately strive to give the community something they have been deprived of their whole lives—justice¹³³.

¹³³ “Justice too long delayed, is justice denied.” Martin Luther King, Jr., “Letter from a Birmingham Jail” *available at* https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.