

## CHAPTER 15

### The Roma Case for Reparations

Margareta Matache and Jacqueline Bhabha

The call for reparations as a critical element in the quest for repair, healing, and accountability for state wrongs has mobilized many constituencies across the globe in the last few decades.<sup>1</sup> Scholars, advocates, and some governments have advanced widely contrasting arguments, coupled with a broad range of tactics, to press the case for reparations. Some have proposed *backward-looking* rights-based models of reparation, justified “as a compensatory right that cannot be outweighed by considerations of social utility.”<sup>2</sup> Others have focused more on *forward-looking* utilitarian approaches, arguing for material accountability for past harm and reversal of an ongoing legacy of economic injustice and social exclusion.<sup>3</sup> Across a diverse range of political, geographic, and ethnic constituencies, and for distinct reasons, many actors—often in identity-defined silos—have called for reparations for harms suffered by their communities.

The most extensive reparations initiative, and in many ways the most iconic, is the German government’s program establishing wide-ranging reparations payments to victims of the Holocaust. Yet, as Ian Hancock argues in Chapter 14 of this volume, Romani victims of the Holocaust have been purposely and severely neglected, a highly revealing omission and a testament to the ongoing lack of Roma political and social power.

Colonial domination and other forms of oppression have been the basis of a plethora of other reparations claims. In Morocco, brutal repression of dissidents and political adversaries by the postcolonial Moroccan regime following independence has been the subject of a program of symbolic and financial reparations.<sup>4</sup> In the United States, several egregious forms of racially targeted state violence have been subject to successful compensation claims: in 2014, compensation was paid to some of the victims of forced sterilization during the twentieth century by the state of North Carolina.<sup>5</sup> However, one of the most dramatic instances of U.S. state injustice, centuries of enslavement, has yet to be the subject of government reparations.

In fact, enslavement represents another crucial theme in the exploration of the legacy and ethical breaches of past state-sponsored, collective injustice. To date, no reparations—legal, psychological, symbolic, or material—have been granted to the descendants of enslaved people in any of the countries where enslavement existed. The discussion about the need for reparations for enslaved and previously colonized populations is not new, but it has witnessed a dramatic recent and renewed visibility. Sir Hilary Beckles argued in a 2015 talk at Harvard Law School that a turning point was occurring in global attitudes to reparations for historical injustice.<sup>6</sup> Marian Mandache, the leader of Romani CRISS, a Roma rights organization from Romania, echoed this regenerated pressure for reparations for past wrongs with a call for Roma reparations and government accountability for Roma enslavement during a 2016 Harvard conference: “It’s not about a crime committed in a dark alley and with the constraints of the law. It is about past

and prevailing moral injustice. There should be no statute of limitations on resolving human suffering,” he noted.<sup>7</sup>

The topic of reparations also remains intensely contested. Some authors have argued that “the rising of concern with the past overlaps so directly with the decline of more explicitly future-oriented politics.”<sup>8</sup> Others have brought up objections based on historical complexity, the supersession of historical injustice, or intergenerational justice.<sup>9</sup> Governments have also proved reluctant, with few exceptions, to engage seriously with demands for reparations. Some representatives of victims or survivors, for their part, have also rejected reparations as a valid social justice strategy. Wary of the potential moral hazards involved, they have criticized the acceptance of “blood money” or what they consider an opportunistic use of the past.<sup>10</sup>

This chapter examines the concept of reparations in cases of enduring racism, using the Romani people as a case study. Despite a history of enslavement, mass murder, extermination, and modern racism through school segregation, forced sterilization of women, hate crimes, and socioeconomic discrimination, reparations for injustice, past and enduring, have not been made to Romani communities. This chapter addresses this anomaly and explores strategies to repair the harm of anti-Roma collective injustice, past and present.

## **The Canons of Anti-Roma Injustice**

### *Racist Ideas*

Patricia Hill Collins discusses what she calls the “matrix of domination” in the organization of power in a society, arguing that power arises historically and socially through intersecting systems of oppression. Collins argues that such systems of oppression include four connected domains of power: structural, disciplinary, hegemonic, and interpersonal.<sup>11</sup> This theoretical framework is generative for understanding the Roma oppression case.

In what follows, we argue that diverse, evolving, yet intersecting forms of oppression and axes of power across Europe have perpetuated anti-Roma racism and recurring collective wrongdoing for almost one thousand years. Although recently most European state policies and interventions targeted at the Romani people have rejected legal discrimination against them, some governments have adopted some assimilationist and condescending agendas that continue to signal the racist idea of Roma social and cultural inferiority.<sup>12</sup>

When the Roma people arrived in Europe, they found societies steeped in long histories of hierarchical ideology, something Benjamin Isaac has termed “proto-racism.”<sup>13</sup> As some authors discuss, while scientific racism only emerged more powerfully in the nineteenth century, seeds of racist ideas and proto-racist ideology and practice had long been features of European civilization.<sup>14</sup> Isaac shows that in the fifth century, “Airs, Waters, Places,” a treatise attributed to Hippocrates, influenced both Plato and Aristotle and advanced a form of racially inflected environmental determinism: “Those who inhabit low-lying regions, that are grassy, marshy, and have more hot than cool winds, and where there is hot water, those will be neither tall nor well-shaped, but tend to be stocky, fleshy, and dark-haired; they themselves are dark rather than

blonde, more susceptible to phlegm than to bile,” the Greek physician argued.<sup>15</sup> A forerunner of later bias, Aristotle advanced a theory of natural slavery and justified enslavement: “Humanity is divided into two: the masters and the slaves; or, if one prefers it, the Greeks and the Barbarians, those who have the right to command; and those who are born to obey.”<sup>16</sup> However, Julia Ward suggests that “there is no essential connection between being a barbarian and being a natural slave,” in Aristotle’s work. Still, Ward agrees that “the connection between Western racist policies and Aristotle’s theory of slavery in the modern period leads to the supposition that Aristotle himself forged a link between racial identity and slavery.”<sup>17</sup> Such intellectual edifices laid the foundations for a pervasive system of structural oppression that manifested itself in different forms of racism, including genocide, discrimination, the enactment of separatist policies, and violent acts of rejection and physical hostility toward Roma. This legacy endures.

Donald Kenrick and Grattan Puxon argue that, upon the Roma’s arrival onto European soil around 1100, their “blackness” positioned them straight-away as an inferior people. After Romani people settled in different regions of Europe, such as the Basque country, non-Romani residents refused them access to their churches; Romani people could only participate in services by looking in from the windows. Albanians assigned Roma only at the back of mosques.<sup>18</sup> Spanish people would refuse to work with most Roma individuals, except blacksmith and vintner Roma.<sup>19</sup> A 1560 decree from Archbishop Petri of Sweden stated that “the priest should not concern himself with the Gypsies. He shall neither bury their corpse nor christen their children.”<sup>20</sup>

Discriminatory conduct had its narrative counterpart. Gadjo/non-Roma writers and scholars routinely described Roma as a criminal, inferior, ugly people who had to be excluded from mainstream social and civic life. In the 1400s, narratives centered on Roma’s “blackness” and “inferiority,” describing their “most ugly faces, black like the Tartars,” and pointing out that “the same sun makes the linen and the Gypsy black.”<sup>21</sup> In the early 1600s, Spellman defined Romani people as “the worst kind of wanderers and impostors springing up on the continent, but yet rapidly spreading themselves through Britain and other parts of Europe, “disfigured by their swarthinness; sun-burnt; filthy in their clothing, and indecent in all their customs.”<sup>22</sup> In France, Romani people were described as “the poorest miserable creatures.” A Spanish author wrote about Roma that “the men are all thieves, and the women libertines.”<sup>23</sup>

The ideology of an inferior Romani race was also starting to take shape: in 1783, German author H.M.G. Grellman characterized Roma people as “ idlers, cheats, and thieves.”<sup>24</sup> Another early scholar categorized Romani people in 1863 as “a distinct race, without religion and, perhaps, without morals also, who have for centuries lived among superior nations.”<sup>25</sup> Other scholars talked about the “civilized” and “superior” nations of Europe in opposition to the “gypsy” or the “peculiar” race.<sup>26</sup>

### *Legalized Anti-Roma Violence, Executions, and Rejection*

Institutional oppression, legalized violence, and genocide were pervasive, too. According to Kenrick and Puxon, between 1471 and 1637, anti-Roma laws existed in many places, including

Spain, Holland, and Scotland. For example, in the 1500s, England under King Henry VIII, the government of Venice, and the Portuguese rulers all enforced anti-Roma laws based on a bigoted notion of their collective criminality.<sup>27</sup> Angus Fraser notes that in the fifteenth and sixteenth centuries, Romani people were chased away from the kingdoms of Portugal and England, from the provinces of the Netherlands, and from the cities of Venice and Milan, among other places. In the same period, a series of laws mandated the death of all “Gypsies” or their leaders in England, Sweden, or Denmark. In the seventeenth century, France ordered the confinement of Romani women and children to “workhouses” and the shaving of hair on their heads. Romani women were targets of other rulers, too: in Moravia and Bavaria, they would cut off one of their ears. In the eighteenth century, the Dutch organized “Gypsy Hunts.”<sup>28</sup> In Mainz, a 1714 law authorized the killing of all Roma, due to their “lifestyle,” which is clear evidence of what would later be defined as genocide and genocidal intent.<sup>29</sup> In 1749, King Ferdinand VI ordered “the Great Gypsy Round-up,” a law aiming “to arrest, concentrate, imprison and exterminate ‘all the gypsies living within the kingdom of Spain.’” This hidden genocide culminated in many losses: 12,000 Gitanos (some authors mention 14,000) were imprisoned in various locations across the country, families were separated by gender and age, and their properties and goods were confiscated.

Separatist policies based on the alleged inherent inferiority of Roma intersected with assimilationist modes of thought that emerged in the late 1700s. This was a paradoxical but nonetheless deeply oppressive approach. One strategy was the forced removal of Romani children from their families (a practice considered genocide today), together with the provision of instruction in basic reading and writing skills to the children with the intent of freeing them from “the fetters of old customs and vices.”<sup>31</sup> “You must begin with children, and not meddle with the old stock, on whom no efforts will have effect,” Hoyland agreed, while reflecting on the assimilationist measures of Maria Theresa, the empress of the Hapsburg Empire.<sup>32</sup>

One of the most dramatic forms of institutionalized oppression of Roma was enslavement. From the 1300s, different axes of power coalesced to enforce repressive anti-Roma measures through the institution of slavery. A racist narrative of Roma criminality and otherness justified the economic self-interest of the church, nobles, and the Crown to promote a system where tyrannical power yielded huge economic gains to enslavers in Walachia and Moldova for approx. five hundred years.<sup>33</sup> It was not until the nineteenth century that the abolitionist movement, influenced in part by earlier Enlightenment reforms in Europe, created pressure for the abolition of Roma enslavement in 1855–56.<sup>34</sup> In an 1841 publication, the Swiss author Emile Kohly de Guggsberg described the Roma enslavement in the following terms: “Slavery is the country’s greatest shame, a black stain in front of foreigners. . . . Will you dare to count yourselves among the civilized peoples as long as it is possible to read in your newspapers ‘for sale: a young Gypsy woman’?”<sup>35</sup>

### *The Holocaust and Its Legacy*

Old anti-Roma policies and laws were disassembled, only to be replaced by others deeply rooted in ideology of white racial superiority. In the nineteenth century, criminologists strongly influenced by adherents of biological determinism, such as Richard Liebich and Cesare

Lombroso, used their “research” to claim criminality was inherent in the Roma character. Liebich, for example, argued that the Roma were “an unchangeable people of morally inferior thieves and frauds.”<sup>36</sup> Alfred Dillman founded the Gypsy Information Service in Munich to fight the “Gypsy nuisance.” Robert Ritter conducted extensive work identifying and classifying “Gypsies,” with a clearly expressed intent: “What is the way to cause this traveling people to disappear? There is no point in making primitive nomads settle and their children go to school,” Ritter would write in 1939 in the German state health journal.<sup>37</sup>

Deeply racist ideology, justified through scientific racism then, continued to inform the development of forms of structural oppression and violence across Europe, eventually culminating in the killings of between 250,000 and 500,000 (some scholars estimate that the number was more than a million) European Roma by Nazi regimes during the Holocaust.<sup>38</sup> Similar ideologies set the basis for state measures targeting Romani children, measures adopted and continued before and after the Holocaust. In line with eugenics ideology and starting in 1927, the government of Czechoslovakia adopted eugenics policies that resulted in the assignment of Romani children to special schools, allegedly because they exhibited mental disabilities.<sup>39</sup> This abusive placement practice, although not legal anymore, continues to this day in both the Czech Republic and Slovakia. These schools prevent children from advancing to higher education. On average, according to the EU Fundamental Rights Agency’s 2014 report, one Roma child out of every ten has “attended a special school or class that was mainly for Roma, even if only for a short period.”<sup>40</sup>

School segregation has been pervasive across Europe. Communist regimes, including those in Hungary and Bulgaria, despite their assimilationist ideology, continued to foster the separation of Romani children in the school environment well into the late twentieth century, an ideological paradox in itself.<sup>41</sup>

Roma and other related groups, such as Yenish, were also targeted for child separation. Yenish children have also been subject to forced transfer from their families. From 1926 to 1973, Switzerland implemented the “Children of the Road” national policy, asking the Swiss organization Pro- Juventute to move Yenish children away from their parents into orphanages.<sup>42</sup> Instances of child removal from their families have also been documented very recently in countries such as Slovakia and the UK.<sup>43</sup>

Today, in Europe (and beyond), the legacy of state-sponsored violence and the power of whiteness continue to fuel and justify dehumanization, prejudice, and racism against Roma in many domains. In 2013, 60 percent of Hungarians still believed that criminality is in “gypsy” blood.<sup>44</sup> A 2015 survey by the Pew Research Center shows that Europeans hold strong anti-Roma prejudice: 86 percent of Italians, 60 percent of the French, and almost half of the Spanish, British, and German populations have unfavorable opinions about Roma.<sup>45</sup>

Dehumanization and the language of hatred fueled the extermination of millions of people during the Holocaust, and these are still used at the highest levels against Romani people. Zoltan Bayer, a founding member of Hungary’s (now-governing) Fidesz Party, wrote in an op-ed that “a

significant part of the Roma are unfit for coexistence. They are not fit to live among people. These Roma are animals and they behave like animals.”<sup>46</sup> In the past few decades, hate crimes against Roma have proliferated across Europe. In 1992, Sima’s Chetniks, a Serbian paramilitary group, killed twenty-seven Roma civilians from the villages of Skocic, Malesic, and Setic in northeastern Bosnia.<sup>47</sup> Yet, in June 2018, the Appeals Court of Serbia acquitted six defendants charged with war crimes.<sup>48</sup> Between 2008 and 2012, the European Roma Rights Center (ERRC) documented sixty-one attacks against Roma in Hungary.<sup>49</sup> In 2018, NGOs reported on the rise of hate crimes in Ukraine, including the murder of several Romani individuals by Ukrainian extremists.<sup>50</sup> After an attack against a Roma camp, which they filmed and posted online, a fascist group based in Ukraine said that they “‘safely burned’ the camp of makeshift tents, saying they were ‘cleaning’ Kiev.”<sup>51</sup>

Romani communities across Europe are under threat, even more so now, when the enduring belief and the “racecraft” of Romani criminality are also exploited online as a weapon for anti-Romani violence.<sup>52</sup> Cultural and behavioral racism and the racist mythcrafting of Roma inferiority and criminality continue to serve non-Roma as a perverse and false “moral” narrative that informs, inflicts, justifies, and reinforces anti-Romani racism.

### *Anti-Roma Law and Policy Proposals*

Attempts and actions to institutionalize anti-Roma state measures continue across Europe, with no end in sight. In the past few decades, in spite of EU antidiscrimination legislation, policymakers in various parts of Europe have proposed, and on occasion implemented, overt anti-Roma laws and measures.<sup>53</sup> In 2010, France proposed a bill to fingerprint Romani EU citizens alongside non-EU migrant groups. “A biometric system will allow us to detect repeated requests for repatriation assistance and help us prevent the undue payment of return aid to people who come once, twice,” proposed Martine Rodier, the minister of immigration and integration. Fortunately, the European Commission blocked this attempt to violate Roma EU citizens’ entitlements because it breached the EU Freedom of Movement Directive, which protects the rights of all EU citizens to cross EU borders freely. France is not the only EU member whose representatives of state institutions have suggested anti-Roma measures. In 2011, Catalin Chereches, the mayor of Baia Mare, Romania, built a wall separating the Roma from the majority community.<sup>54</sup> In 2018, Italy’s minister of the interior, Matteo Salvini, announced his intentions to conduct a national census of Roma, “a prelude to expelling those without valid residence permits,” followed by a letter sent in July 2019 to provincial authorities requesting “a report on the presence of Roma, Sinti and Camminanti settlements” to “prepare a plan of clearances.”<sup>55</sup>

In sum, racist, segregationist, and coercively assimilationist policies and practices have shaped European approaches toward the Romani people across the centuries. Systems of racialized oppression and punishment, from enslavement to forced sterilization, child removal from families, police abuse, and school segregation, have generated “a series of catastrophes,” both cultural and political for the Roma, in the words of Cornel West.<sup>56</sup>

Addressing past injustices and their violent legacies is a necessary pre-condition of creating a fairer future. Understanding and tackling present-day anti-Roma racism, not only from the perspective of socioeconomic oppression but also in relation to the historical and intersecting axes of power, oppression, and domination just discussed, is critical as a basis for tackling and reversing enduring injustice.

### **Legal and Other Responses to Collective Injustices**

Long-standing and collective racist practices have endured despite test-case litigation and the antidiscrimination legislation upon which it depends, and remedies for historic racism have been nonexistent. In part, litigation could challenge this lacuna. A recent case illustrates a strategy that could be adopted much more broadly. In 2018, a German court in Cologne awarded compensation to Nenad M., a twenty-one-year-old Romani wrongly placed in a “special school” for children with disabilities for eleven years. According to Romea, “Judges based their ruling on the assumption that if he had been allowed to attend a mainstream school he would have completed all of the basic education requirements by the age of 16. By assigning him to ‘special school’ he was denied that opportunity, which has correspondingly had consequences detrimental to his professional prospects.”<sup>57</sup>

This ruling provides a precedent, but there is no legal mechanism in place for generalizing its impact automatically to the large cohort of Romani children subjected to the same violations. And although the European Court of Human Rights has acknowledged that school segregation affects more than half the Romani children in some countries or regions, none of its judgments have generated reparations for the large pool of affected Romani children in some European municipalities. Moreover, whereas the “pilot judgments” procedure of the European Court—also seen as a form of class action—has the capacity to identify and address systemic problems, not enough cases challenging the same human rights violations against Roma have been consistently brought before the court to date to justify application of this potentially helpful procedure.<sup>58</sup> As the European Roma Rights Center noted in 2010, to demand redress, “Roma rights advocates should seek to take advantage of this new approach by developing their argumentation under Articles 41 and 46 of the Convention and requesting that more specific wording is included in judgments.”<sup>59</sup>

European antidiscrimination measures thus fall short of what Amartya Sen has called the “idea of justice.” Sen distinguishes between *Niti* and *Nyaya*—Sanskrit terms that identify different aspects of justice. Just procedures, rules, and institutions define *Niti*, whereas *Nyaya* indicates the realization of justice, the outcomes of existing laws and institutions. For Sen, justice depends both on the creation of certain types of laws and procedures but also on the outcomes they produce for particular constituencies.<sup>60</sup> In many ways, his framework speaks to the realities of Roma in Europe, where there exists a plethora of laws and policies (*Niti*) but nevertheless a failure to correct enduring forms of injustice and to secure just outcomes (*Nyaya*). Ongoing educational segregation illustrates this point.<sup>61</sup>

This is not to say that no cases of individual redress exist. Apart from the case of Nenad M. cited above, a few dozen other Romani children have benefited financially from damages received

after court judgments found they had been unjustly placed in special schools for children.<sup>62</sup> Of course, \$4,000, the amount received by each of the seventeen applicants in the landmark desegregation case *D. H. and Others v. the Czech Republic*,<sup>63</sup> does not undo the lifelong social, economic, and emotional impact of segregation in an educational system with an inferior curriculum. Moreover, it does not ensure justice and remedies to the large number of Romani children facing similar circumstances. Damages paid to a few Romani women coercively sterilized in Slovakia and the Czech Republic during and after communism constitute another example of individual redress but, similarly, highlight the absence of systematic reparations for all Czech and Slovakian Romani women affected by these eugenics practices.

Given these limitations in collective legal redress, what alternative paths to reparations exist? Howard Zehr, a prominent scholar on the topic of restorative justice, considers restorative justice an “alternative framework for thinking about wrongdoing,” especially in situations of very large-scale wrongdoing. “The framework focuses on those who have been hurt and on healing, through both material and symbolic remedies.”<sup>64</sup> Zehr also argues that both offenders and the direct victims of harm should be engaged in the process of redress. A third, broader constituency of affected community members, whom he calls “secondary victims”—akin to the “bystanders” whom Martha Minow, a celebrated author on the issue of reparations, considers key participants in processes of social repair—are also important stakeholders in the reparations process.<sup>65</sup> Restorative justice, Zehr notes, aims to heal, empower, and promote restitution or vindication through apology and recognition of the harm done. Of course, it is not, nor should it be viewed as, the only tool.<sup>66</sup> But restorative interventions need to address both the enduring experience of subjugation and hostility inflicted on generations of community members as well as the material structures of systemic and structural discrimination, inequality, rights denial, and other forms of oppression.

### **Toward Roma Reparations**

Minow suggests three forms of reparations with complementary impacts on communities harmed by state violence: (1) monetary compensation, (2) restitution of misappropriated properties, and (3) apology. Zehr identifies four related but additional victim-oriented strategies relevant to a comprehensive restorative justice project. They include (1) access to information, (2) systematic processes of truth telling, (3) sustainable tools for victim empowerment, and (4) restitution or vindication.<sup>67</sup> International human rights frameworks refer to compensation, rehabilitation, restitution, satisfaction, and guarantees of nonrepetition as forms of redress.<sup>68</sup> In what follows, we set out several reparations strategies that have been utilized by other constituencies targeted by state injustice, and discuss how they may be relevant to the Roma case. In addition to these models for reparations, and complementary to the arguments discussed in the previous sections, we include several additional approaches that we consider particularly relevant to the Roma case.

#### *Truth Telling*

Truth-telling and a systematic collection of accurate historical information are important reparations strategies for establishing a comprehensive record of the past and generating a deep and enduring account of the *longue durée* of anti-Roma violence. As Zehr points out, victims

need to comprehend “why it happened and what has happened since” the offense, and to tell “the stories in significant settings, . . . where they can receive public acknowledgment.”<sup>69</sup> Consider the case of Romani women. Between 1935 and 1976, the Swedish government forcibly sterilized Romani women because of their “inferior racial types.”<sup>70</sup> During the Holocaust, the Nazis targeted Romani women for sterilization experiments for similar eugenic reasons. Female sterilization was state policy in Czechoslovakia until the Sterilizations Directive was abolished in 1993. In 2003, a fact-finding report shed light on the stories of 230 Romani female victims of coercive sterilization from forty settlements in Slovakia, a large number of them forcibly sterilized even after Slovakia moved from state communism to a democratic regime.<sup>71</sup> A European Roma Rights Center report documents how the practice of sterilizing Romani women (and women with disabilities) against their will continued throughout the 1990s and 2000s.<sup>72</sup>

The European Court of Human Rights has found these measures to be human rights violations under international law, although it did not recognize the racist intent. But beyond individual awards in favor of the small number of Romani women complainants, no other reparations or formal healing processes have been instituted. Public discussion and access to fora that facilitate healing are critical tools for those still coming to terms with past trauma as well as for the society that enabled it.

Truth-telling and information diffusion are equally critical for other past atrocities. Descendants of the victims and perpetrators of Roma enslavement, genocide, child removal, and other anti-Roma atrocities and state injustices need those subjects to be aired and captured as public knowledge. To date, despite Roma advocates’ repeated attempts, state institutions have failed to establish robust structures, including archives, to enable comprehensive truth telling about the past.

Very little has been achieved in these domains. Romania has taken some initial steps to reverse centuries of institutional silence. In 2007, the Romanian government established a national commission to study Roma enslavement and its consequences; unfortunately, the commission was dismantled before it produced any record of its proceedings. In 2011, the Romanian Parliament declared February 20 a Romanian national day for commemorating the Roma enslavement. Some state institutions have issued public statements on this anniversary date to recall this long denied and ignominious chapter of national history. But these fledgling administrative moves, including a few public declarations on commemorative dates, have had social impact to date on state institutions and non-Roma entities at the local or national level.

Memory can serve as “a political tool” for victim constituencies.<sup>73</sup> Its corollary, “forgetting,” is a powerful tool for oppressors. So far, not enough progress has been achieved to create “historical consciousness” of past atrocities, including enslavement, among Roma and non-Roma alike.<sup>74</sup> The communities need to jointly participate in creating a shared sense of social responsibility and solidarity for past and present injustice. Open and easy access to archival information, relevant memorials, and public acknowledgment are all of vital importance for victims, perpetrators, descendants, and others. Incomplete past efforts to address the past, such as the Romanian commission on enslavement, need to be re-established. The revision of history textbooks and archives, the publication of complete historical records, the symbolic renaming of

some city landmarks (parks, squares, streets) after Romani resisters and victims, and the mounting of exhibitions and other educational activities are urgently needed to maintain memory and generate broader public awareness of, and engagement with, these issues.

### *Memorializing Resistance*

John Torpey argues that “reparations politics tends to invoke a conception of people as weak and as permanently damaged by adversity.”<sup>75</sup> It is certainly the case that much reparations advocacy has an unduly privileged concern with victims over scrutiny of oppressor inhumanity and culpability. But the documentation of harm gives the power to advance healing, to generate an understanding of the past, and to develop a strategy for future harm prevention. In the Roma case, isolated counternarratives to official representations of Roma have begun to emerge as alternative histories, artistic works, and youth initiatives.<sup>76</sup> The story of Netoci, a semi-nomadic Roma who escaped from enslavement in what is today Romania and created their own self-contained and isolated communities in the Carpathian Mountains, is one example of an episode of resistance to slavery.<sup>77</sup> Another example shows up in records dating back to 1722, indicating that about a thousand Roma in Germany formed their own combat groups to oppose oppressive military forces.<sup>78</sup> During the Holocaust, Roma resisted German forces, including on May 16, 1944, now known as Roma Resistance Day.<sup>79</sup> Roma resistance also occurred in Czechoslovakia. As noted by *Romea*, the *After the Jews, the Gypsies* [Po-Židoch Cigáni], mentioned Ján Tumi, nicknamed “Koro,” and Ladislav Petík as part of this resistance. Ladislav Tancoš also participated in the resistance with his military unit during an uprising, shooting dead a German guard at a military warehouse, taking grenades and rifles, and then escaping.<sup>80</sup> And so, a systematic history of Roma resistance has yet to be written.

In memorializing resistance, the participation of allies is as meaningful as the active engagement of the affected community itself. Several non-Romani intellectuals have allied themselves with Romani people as opponents of anti-Roma policies in Europe. Hancock makes reference to several key nineteenth-century figures, including Mihail Kogalniceanu, an intellectual abolitionist in Romania. In addition, there were scholars, such as Alexander Paspatis and Jean Alexandre Vaillant, or princes, such as ruler Alexandru Ghica, who, under pressure from his daughter Natalia Balsch and his adviser, Edward Grenier, publicly declared: “Slavery has been abolished in all the civilized states of the Old World; only the principalities of Moldavia and Wallachia retain this humiliating vestige of a barbaric society. It is a social disgrace.”<sup>81</sup> More than a century later, in 1993, President Vaclav Havel would also speak out: “The Gypsy problem is a litmus test not of democracy but of a civil society.”<sup>82</sup> These people and others deserve a place in the history of national resistance to oppression and injustice as well as in the transnational history of Roma people’s resistance to domination. Their legacy of courage and leadership calls for memorialization on a par with that of more established icons of liberation and independence struggles.

### *Strengthening the Voices of the Victims*

According to Zehr, survivors of enduring attacks on “their properties, their bodies, their emotions, their dreams” should actively engage in justice processes.<sup>83</sup> Instead, in the current case of the Roma, the opposite situation prevails. The Romani children unjustly assigned to special schools in Europe continue to miss out on educational opportunities and the employment trajectories that depend on the benefit of an education.<sup>84</sup> The stain of European racism and the complacency of government structures indifferent to their reparatory obligations continue to tar these children’s lives and those of future generations. Even where school segregation is actively countered, its legacy on previously affected generations remains painfully intact. The voices of the Romani children and youth as well as their families’ need to be heard and included in justice and healing processes, not only from a justice perspective but also to strengthen a sense of agency and the self-worth that is fostered by substantive engagement.

### *Offender Accountability*

Minow argues that the rule of law should apply to cases of state-sponsored violations: “Those massive horrors should be treated as punishable criminal offenses perpetrated by identifiable individuals.”<sup>85</sup> Many historical and juridical challenges arise in identifying responsible perpetrators capable of participating in reparations adjudications today, decades or centuries after the historical acts.<sup>86</sup> Several other chapters in this volume address this issue. But in the case of the Roma, recent harms with enduring consequences, such as forced sterilization or abusive placement of Romani in special schools, are also yet to be collectively addressed. To date, survivors and their descendants have lacked “direct or indirect access to offenders,” such as teachers, school-masters, doctors, nurses, and so forth. Nor have they had access to any formal measures to apportion responsibility for harm. Moreover, perpetrators have yet to be involved in public proceedings that address the motivations and drivers of acts for which they bear responsibility, together with procedures for moving forward toward a sense of reconciliation and healing.

### *Restitution*

Restitution, both material and nonmaterial, is widely considered an important element in the process of reparatory justice. As Zehr notes, “Restitution by offenders is often important to victims, sometimes because of the actual losses, but just as importantly, because of the symbolic recognition restitution implies.”<sup>87</sup> Over the centuries, Romani people have been deprived of their homes, land, possessions, and other historical and social entitlements. However, little rigorous research documents the extent of the losses or the processes by which such takings were executed. As Hancock notes in Chapter 14 in this volume, the jewelry, artifacts, and other possessions of Romani families taken from them during the Holocaust have never been restored. Also, Kosovar Roma who lost their houses and properties during the 1999 war and were forced to flee to Serbia or other parts of the former Yugoslavia are still attempting to ensure restitution of their properties.<sup>88</sup> These legitimate restitution claims need to become a government priority in the territories where claims arise, just as other comparable restitution claims have been adopted as government policy.

### *Apology*

Apologies are fundamental to the process of reparations. As Minow underscores, through apologies perpetrators “acknowledge the fact of harms, accept some degree of responsibility, avow sincere regret, and promise not to repeat the offense.”<sup>89</sup> Though, to date, Romanian state institutions and the Orthodox Church have failed to issue a formal and comprehensive apology for the history of enslavement, some signs of progress toward the acknowledgment of Roma enslavement exist. As underlined above, in 2007, the Romanian government established a national commission to study Roma enslavement. In 2011, the Romanian Parliament affirmed its commitment to the official remembrance of enslavement by declaring February 20 the commemorative day of Roma slavery. A member of the European Parliament of Roma origin placed a memorial plaque in the Tismana monastery, where the first references to enslaved Roma were documented.<sup>90</sup> These symbolic measures signify welcome progress against the long backdrop of denial, even though they are merely a prelude to the much-needed process of conducting an effective, clear, and public apology for Roma enslavement by state institutions and the Orthodox Church. Apologies are also still required for other forms of state-sponsored racism or genocide against Roma, from the eighteenth-century genocide in Spain to the twentieth-century Holocaust across Europe.

### *Reparative Compensation*

Compensation constitutes a critical element in the reparations process. Where a clear legal case can be made for attributing culpability, such payments seem appropriate and just. But neither European nor national legal mechanisms currently oblige countries such as the Czech Republic or Slovakia to acknowledge and repair the damage suffered by all victims as a result of forced sterilization or segregation in special schools. Little attention has been paid to the question of compensations for opportunities squandered—the willful deprivation of educational opportunity, the trauma of forced sterilization, the legacy of abusive family separation, the quotidian damage of racial hatred and contempt. Though court decisions in the cases of forced sterilization of Romani women have indeed included pronouncements about improving future laws and reforming current and future practice, no compensatory obligations by states parties toward the class of affected Romani women have been established. In 2009, the government of the Czech Republic announced a bill to compensate Romani women unlawfully sterilized. The Czech prime minister “expressed regret but did not acknowledge the state-supported” role in the sterilization process. As Albert and Szilvasi note, “In September 2015, however, the Czech government added insult to injury by rejecting the compensation bill without public explanation.”<sup>91</sup> Yet, in August 2019, state action on compensations progressed, as “the Chamber of Deputies’ Commission on the Family, Equal Opportunities and National Minorities has called on the Czech Health Ministry to do so, and the ministry has agreed with Czech MPs Pastuchová and Válková to submit the necessary bill to do so.”<sup>92</sup>

Turning to enslavement, nearly five hundred years of enslavement in the territory of contemporary Romania generated huge gains for key beneficiaries of the institution, among them the Romanian Orthodox Church, the nobility, and the state itself. But the profits derived from enslavement, the inherited capital generated by centuries of exploitation and accumulation, have never been redistributed. After abolition, in 1856, the 250,000 freed Roma (some scholars argue

that the number was higher) were given no reparations. More than 160 years later, the same remains true for the descendants of enslaved Romani people—neither compensation, individual or collective, nor moral or legal acts have addressed the five centuries of cruel oppression.

Arguably, what is most essential in the case of past harms, including enslavement, is redress in the face of its enduring legacy. The collective disenfranchisement and marginalization of the Romani people need to be repaired, including through financial compensations. Also, social and economic measures to reduce the legacy of enslavement, including the wealth gap, and preventive measures to forestall further harm need to be complemented by a comprehensive and integrated process of societal repair and healing. Historical acknowledgment and symbols, infrastructural development, educational and training scholarship funds, affirmative action programming following constructive examples elsewhere, vigorous public antibias and anti-racist measures in relation to issuance of birth certificates and other critical identity registration documents, allocation of public housing, provision of medical and related services, and employment inclusion are all programmatic investments that require purposeful political, fiscal, and social engagement over time.

### *Legal Measures*

No corrective or reparatory obligations have been set by the courts or indeed by other state institutions to compensate for and apologize to the large numbers of children placed in special schools or sterilized women unable to file court complaints. Yet this is necessary to challenge the status quo, which, as Derrick Bell notes, seems “logically self-evident, objective, *a priori* valid.”<sup>93</sup> A new, integrated, and radical approach, with legal and policy mechanisms, public pronouncements, and societal memorialization, is needed to correct collective injustice while also making a sustainable contribution to future healing and flourishing for the Romani people as a whole.

We are suggesting, therefore, a more holistic, antiracist, integrated, and corrective stance than the existing legal doctrines that focus predominantly on individuals, because the racial oppression of Roma is structural and the human rights violations tend to affect individuals belonging to minority groups in large numbers. Its efficacy, however, will in large part depend on active and sustained engagement with the issues of affected constituencies, their allies, and particularly the new generation of leaders and thinkers whom we hope to encourage. Ultimately, governments responsible, whether directly or as a matter of historical legacy, for the collective injustices we have described have an urgent duty to initiate these processes.<sup>94</sup>

### **Conclusion**

The reparations agenda we have outlined in this chapter is an extensive, expensive, and ambitious one. It requires considerable resources of political will, institutional engagement, and public consciousness and mobilization. However, European institutions have shown little inclination to move in any of these directions despite vigorous advocacy attempts. To date, as this volume testifies, all-too-numerous victims of state-sponsored collective injustice receive no reparations, government accountability is weak or nonexistent, and institutions in a range of domains are not penalized for perpetrating or acquiescing in collective wrongdoing.

The reparations agenda we outline is both essential and feasible. Essential because the unaddressed legacy of Roma suffering and discrimination constitutes one of the most egregious vestiges of past cruelty within Europe, and feasible because a plethora of tools to achieve this end exist, including tools that we have outlined above. But we need to mobilize and organize to translate the reparations agenda into effective and transformative practice.