Fifty Years of Holocaust Compensation

BY MARILYN HENRY

AT THE CLOSE OF THE 20th century, a dramatic juncture of legal, political, moral, and economic pressures culminated in agreements that led to the greatest amounts of compensation for victims of Nazi persecution since the original German compensation programs of the 1950s. They came with demands and pleas to "secure a measure of justice" for the surviving victims. "For these victims, the approach of a new millennium takes on a uniquely poignant significance. We must not enter a new millennium—when the issues of today will begin to become ancient history—without completing the work before us," said Stuart Eizenstat, undersecretary of state and the Clinton administration's point man on restitution. "We must not enter a new century without completing the unfinished business of this century. We have a collective responsibility to leave this century having spared no effort to establish the truth and to do justice."[1]

There seemed to be no shortage of efforts. In the late 1990s, there was an unprecedented series of interrelated and often competing negotiations, audits, class-action lawsuits, and international commissions. They entangled governments, courts, lawyers, survivors' organizations, historians, nongovernmental organizations, agencies and institutions in a dozen countries, members of Congress, and national, state, and local regulators and public finance officers. There was a flurry of announcements, beginning in August 1998, that Nazi victims—primarily Jews—were expected to receive billions of dollars in settlements of claims from German, Austrian, Swiss, and French governments and enterprises.

As was the case in the 1950s, the demand for compensation in the 1990s raised awkward moral and material issues. The notion

[1]Closing Plenary Statement, London Conference on Nazi Gold, Dec. 4, 1997, http://www.stategov/www/policy__remarks/971204__eizen__nazigold.html.

that damages demand redress is universal, and the idea that perpetrators should not profit from murder is rooted in the Bible, the prophet Elijah challenging King Ahab: "Hast thou killed and also taken possession?"[2] But if life is priceless and the losses are incalculable, what amount of compensation, if any, is proper? If payments are, to some extent, symbolic gestures, what precisely are they gestures of? For the victims, restitution is a form of recognition of suffering; for the perpetrator, it is a settlement of claims.[3] In the original compensation talks, Jews had worried that payments would be confused with the expiation of the perpetrators. Two generations later, facing the German sentiment *"Gnade der späten"* (the "clemency" of postwar birth), they were concerned that the perpetrators' heirs and successors would refuse to acknowledge their moral debt for Nazi-era crimes.

In the 1950s, the circumstances were unprecedented—the Holocaust was a catastrophe of unimaginable horror and loss—and so were the demands. The insistence that direct compensation be paid to individual surviving victims, and to a state that did not exist at the time of the atrocities, was revolutionary. The compensation was intended primarily for one group of victims—Jews. And the arrangement itself was novel: A voluntary association of Jewish organizations—the Conference on Jewish Material Claims Against Germany (often called, simply, the Claims Conference)—negotiated with a sovereign state, West Germany.

"Holocaust compensation" is an unwieldy shorthand for a multifaceted array of payments and activities stemming from the material claims of World War II:

1. The payments to Nazi victims are known as indemnification, which is compensation for specific personal losses or damages. The original German indemnification program provided one-time settlements as well as monthly payments, known as pensions, for a variety of persecution-related damages, including harm to a victim's health or loss of professional opportunity.

2. Reparations are payments in money or materials from one nation to another for damages inflicted. Thus reparations generally

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[2]I Kings 21:19.

[3]See Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York, 2000).

refer to the war-related debts of a defeated aggressor nation, and may entail a punitive element, as well.

3. Restitution is the return or recovery of identifiable assets, including machinery, real estate, business enterprises, and cultural properties that are restored to the original owners—nations, communities, institutions or individuals. (There were parallel claims for compensation in lieu of restitution for assets that could not be restored.) For Nazi-era properties, international Jewish organizations lodged claims after the war only against Germany and Austria for properties that were looted, confiscated, and "Aryanized." Restitution in Western Europe was a domestic matter; the states in the Soviet bloc did not believe in restitution. Since the collapse of communism, there have been claims to recover Jewish properties in Central and Eastern Europe. These have been fraught with legal and economic difficulties because Nazi-era claims compete with communist-era claims.

The language of compensation, in both the vernacular and legal meanings, fails to convey the uniqueness of the circumstances and the claims. The German term *Wiedergutmachung* is anathema to the Jewish community because it means "to make whole." Israel originally used the word "reparations" for its claim against Germany, but that term was unsuitable; the State of Israel technically could not seek reparations because it did not exist until after World War II, the event in which the damages were inflicted. Israel subsequently used the Hebrew term *shilumim* to refer to the goods that West Germany provided, in lieu of cash, under the 1952 Luxembourg Agreements.

The Holocaust has been called a compilation of crimes, and the redress has been spotty. Germany has paid some DM 100 billion in compensation. It is a substantial sum, but clouds the fact that tens of thousands of Nazi victims received only minimal payments, or were excluded from compensation programs altogether. The restitution of properties proceeded fairly successfully in Germany (first in West Germany, and, after the 1990 reunification, in the former East Germany), but abysmally in Central and Eastern Europe. And the plunder of cultural properties, which got significant attention from the Allied authorities right after the war, practically disappeared from view until its sudden reemergence at the end of the century.

ESTABLISHING THE PRINCIPLE

The first declaration of war by Nazi Germany was against the Jewish people, and it took a special form. Chaim Weizmann, then president of the Jewish Agency, told the Allies in 1945:

> Its aim was not conquest and enslavement, but the complete physical extermination of the Jews, the utter destruction of their spiritual and religious heritage, and the confiscation of all their material possessions. In executing their declaration of war, Germany and her associates murdered some six million Jews, destroyed all Jewish communal institutions wherever their authority extended, stole all the Jewish treasures of art and learning, and seized all Jewish property, public and private, on which they could lay their hands.[4]

Nazi Germany relentlessly expropriated the assets of German Jews through numerous measures after the enactment of the 1935 Nuremberg Laws, which lent a veneer of legality to the thefts of German and Austrian Jewish properties: special discriminatory taxes, blocked accounts, the "Aryanization" of property, and outright confiscations. In addition, Nazi restrictions and boycotts of Jewish businesses and the ejection of Jews from professions forced Jews to liquidate their possessions under duress, often at only a fraction of their value. Jews able to flee Germany before deportations began in 1941 were forced to pay a heavy "emigration" tax (*Reichsfluchtsteuer*). Jews also were compelled to pay the *Judenvermögensabgabe,* or JUVA, a property tax the Germans initiated after Kristallnacht in 1938, contending that, having "provoked" the outrage of the German people, the Jews had to pay for the damages.

Across Europe, the Nazis plundered the assets of the Jewish populations, communities, and institutions, as well as the assets—particularly the gold reserves—of the occupied nations. With the defeat of Hitler, all had restitution claims.[5] Restitution and reparations are matters for governments. Traditionally, governments

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[4]Weizmann letter to the Allied Powers, Sept. 20, 1945, in Israel Ministry of Foreign Affairs, *Documents Relating to the Agreement between the Government of Israel and the Government of the Federal Republic of Germany* (Jerusalem, 1953), p. 10.

[5]In their January 1943 London Declaration, known officially as the "Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control," the Allies warned that they "reserved the right" not to recognize property transfers in Axis-occupied territories, whether the transfers appeared to be legal, voluntary, or the result of looting. The declaration, however, was vague about the disposition of the confiscated property.

make claims against each other, on behalf of themselves and their citizens. When the Allies recovered certain identifiable assets after World War II, they restituted them to the countries of origin.[6] It was then that nation's responsibility to locate and return the property to the rightful owner. Materials subject to restitution included cultural properties, securities, and agricultural, industrial, and transportation equipment.[7]

International law was inadequate to address the unique circumstances confronting the Jewish victims. Weizmann said that Hitler's war against the Jews created a three-fold problem—of reparation, rehabilitation, and restitution. He demanded indemnification and compensation from Germany. He also called for heirless Jewish property to be turned over to the Jewish Agency, since that body was the official representative of the Jews and bore the cost of resettling Jewish refugees in Palestine.

The measures to aid and benefit Jewish victims of Nazi persecution were first established by the multilateral postwar reparations agreements and later by the Allied authorities in the Western zones in Germany. However, these measures were intertwined with, and subordinate to, the Allies' priorities of reconstructing Europe and preventing the spread of communism.

When the Allied governments attempted to recover assets that had been plundered by the Nazis, they focused on the theft of the gold reserves of the central banks of Nazi-occupied Europe, not on private property. Throughout the war, Germany had acquired gold as she occupied territory. In addition to gold from the occupied countries' national reserves, gold, silver, and valuables of all kinds were amassed through the systematic dispossession of private businesses and individuals, and in particular of the Jewish communities in Germany and elsewhere. In April 1945, the British Ministry of Economic Warfare and the Bank of England set the value of gold looted since 1939 at $545–$550 million. But this estimate was based primarily on information regarding government-

[6]Gold was treated separately, its restitution conducted by the Tripartite Gold Commission, established by the U.S., Britain, and France in 1946.

[7]*Plunder and Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States* (Washington, D.C., Dec. 2000). The commission said it found no evidence that the United States monitored the recipient countries' compliance with their expected restitution responsibilities.

owned gold rather than private gold, and therefore understated the true total.[8]

The Allies kept their distance from the question of individual property claims. They said it was impossible to make individual restitution or satisfy individual claims except for very specific items whose origin was incontestable. Not only would the validity of claims be difficult to prove, the Allies reasoned, but the number of claims would likely be overwhelming.

Further, the Allies were confronted with millions of displaced people. Their primary concern was to be relieved of the burden of refugees, not to restore refugees' property rights. Special arrangements clearly had to be made for what the postwar governments called "non-repatriable refugees." These were stateless, destitute Jews, refugees from Germany, Austria, and other Nazi-occupied areas, as well as the survivors of concentration camps. They could not use the traditional mechanism to pursue their claims; they were unable or unwilling to make restitution claims through their former governments.

The Paris Agreement

When the Allies met at the end of 1945 to discuss reparations from Germany, they dealt with two sources of aid for refugees—funds derived from German assets, and the recovery of Jewish properties. Under the terms of Article 8 of the 1945 Paris Reparations Agreement, 18 nations agreed to allocate a total of $25 million for those "who suffered heavily at the hands of the Nazis and now stand in dire need of aid to promote their rehabilitation but will be unable to claim the assistance of any government receiving reparation from Germany."[9] The funds were to come from German assets in

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[8]Foreign & Commonwealth Office General Services Command, History Notes No. 11, *Nazi Gold: Information from the British Archives* (London, Sept. 1996, rev. ed. Jan. 1997). This amount included some $223 million of Belgian gold and $193 million from Holland. According to historian Arthur L. Smith, in *Hitler's Gold: The Story of Nazi War Loot* (New York, 1989), Germany looted some $621 million in gold from the central banks of Europe.

[9]Those eligible were defined as "nationals or former nationals" of Nazi-occupied countries who had been incarcerated in Nazi concentration camps or camps erected by regimes "sympathetic to the National Socialists." In addition, refugees from Nazi Germany or Austria could obtain aid if they were unable to return to those countries "within a reasonable time because of prevailing conditions." Victims living in Germany and Austria were eligible for assistance "in exceptional cases in which it is reasonable on grounds of humanity

neutral states. Survivors would be assisted based on their needs, not on the size of their losses; and all needy survivors would be eligible for assistance, not only those from Germany. It was expected that $11 million would come from Switzerland and $14 million from Sweden, both neutral states that had traded with Germany.[10]

In addition, the Allies designated two other sources of funds for refugee assistance: nonmonetary gold found in Germany, and heirless property found in neutral countries. Although part of the Paris agreement, they were not "reparations," since, unlike German external assets, these properties once belonged to the victims themselves. There were untold assets that had belonged to people who had no living heirs. Nonmonetary gold referred to the Nazi war loot that the Allies recovered in Germany, but whose individual ownership could not be determined. The single most-valuable cache, uncovered in a cavern at the Merkers mine, contained jewelry, cigarette cases, silverware—and gold teeth that clearly had been taken from murdered inmates of concentration camps.[11]

Under the Paris accord, the neutral governments were to identify and forward the $25 million and the heirless assets to the Inter-Government Committee on Refugees, which later became the International Refugee Organization (IRO). In turn, the IRO was to allocate the funds to designated field agencies—in this case, the Jewish Agency and the American Jewish Joint Distribution Committee (JDC). Ninety percent of the $25 million and of the nonmonetary gold, and 95 percent of the heirless property was to be used to rehabilitate and resettle Jews. The remainder was to assist non-Jewish victims. This ratio reflected the reality that the overwhelming majority of those persecuted on political, racial or religious grounds were Jewish, and that the recovered funds were overwhelmingly Jewish in origin.

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to assist such persons to emigrate and providing they emigrate to other countries within a reasonable period."

[10]Seymour J. Rubin and Abba P. Schwartz, "Refugees and Reparations," *Law and Contemporary Problems* 16, no. 3, Summer 1951, pp. 379–94. With the decision in Paris, the Allies linked their financing for refugee resettlement to the formidable political issue of how they would gain access to German property that was outside of Germany. The Allies' access to German assets located in Switzerland became part of a broader dispute between the Allies and Bern over Switzerland's relations with Germany and its obligations to restore Nazi-looted gold and to cede private German assets to the Allies.

[11]*Plunder and Restitution,* p. 98.

The restitution of identifiable property began in the German *Länder* (states) under the Occupation governments, although the measures taken in Bavaria, Baden-Württemberg, and Greater Hesse in the Western zone were independent of the Occupation authorities. The Allies began to pay serious attention to restitution after a limited program was initiated in Thuringia in the Soviet zone. In 1946, U.S. officials began to work on restitution laws with German representatives, but they were unable to orchestrate a restitution policy that had the support of the other Allies or the *Länder,* and that would cover all of Germany. There were disagreements over who would benefit from restitution and what properties would be eligible for recovery. German officials wanted to limit restitution to Nazi-seized property that was in public hands after the war. Jewish groups, however, with the support of the U.S., wanted to include private property. They also sought a legal presumption in the restitution measures that properties transferred after the Nuremberg Laws were not voluntary, but forced.[12]

There were also disputes over the use of heirless assets. Jewish groups maintained that a successor organization should use them for the rehabilitation and resettlement of Jews, but the British feared that Jewish organizations would use them to fund immigration into British Mandatory Palestine.[13] The Soviet Union, for its part, argued that heirless assets belonged to the state.

General Lucius Clay, the American military governor, acted unilaterally to break the impasse. In November 1947, he promulgated Military Government Law 59, entitled "Restitution of Identifiable Property." The law, limited to the American zone, was intended to "effect to the largest extent possible the speedy restitution of identifiable property . . . to persons who were wrongfully deprived of such property within the period from 30 January 1933 to 8 May 1945 for reasons of race, religion, nationality, ideology, or political opposition to National Socialism." By the deadline set for fil-

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[12]The Jewish organizations were the American Jewish Committee, the American Jewish Conference, the Jewish Agency, the Joint Distribution Committee, and the World Jewish Congress.

[13]See Nehemiah Robinson, *Indemnification and Reparation, Jewish Aspects* (New York, 1944). For evidence that the Palestine issue was far more important to the British than the problem of displaced persons see Ronald W. Zweig, "Restitution and the Problem of Jewish Displaced Persons in Anglo-American Relations, 1944–48," *American Jewish History* 78, Sept. 1988, pp. 54–78.

ing claims—December 31, 1948—property worth close to $250 million in the American zone was restored to former owners, who lived in 60 countries throughout the world.[14]

In 1947, Jewish groups formed the Jewish Restitution Successor Organization (JRSO) to claim heirless property and the assets of dissolved Jewish organizations and communities.[15] On the basis of legal theories developed by Jacob and Nehemiah Robinson—Lithuanian-born brothers who were the intellectual force behind the push for reparations—the Jewish groups persuaded the U.S. political and military authorities to accept the principle that Jewish property in the American zone should be restituted to the survivors or their heirs. As for heirless property, which, under customary inheritance law, escheats to the state, the Jewish groups also won a victory: properties that had become heirless as a result of Nazi persecution, together with properties belonging to dissolved Jewish communities, were to be transferred to a Jewish trust organization that would use the proceeds for the relief and rehabilitation of the victims.[16]

However, the JRSO was not designated as the successor organization in the American zone until the summer of 1948, just a few months before the claims deadline at the end of the year. Benjamin B. Ferencz, a former Nuremberg prosecutor, was hired to run the JRSO in August 1948. "We had about three months, four months, in which to find staff, find funding, train staff, locate the property, submit the claims," he later recounted. Investigators were dispatched to every real-estate registry in Germany with instructions to make note of any property transferred since 1933 that listed a Jewish name. "About the day of the filing deadline, we loaded all the claims into a U.S. army ambulance, which I had requisitioned somewhere, and drove it up the claims center and filed, I think it

[14]Benjamin B. Ferencz, "Restitution to Nazi Victims—A Milestone in International Morality," in Harry Schneiderman, ed., *Two Generations in Perspective* (New York, 1957), p. 302.

[15]The JRSO operated only in the U.S. zone. Similar agencies subsequently were named as successor organizations in the British and French zones, but the JRSO enjoyed an especially advantageous position because the American authorities were more sympathetic than its allies to Jewish claims.

[16]Others had developed similar restitution proposals, among them Sir Herbert Emerson, director of the Inter-Governmental Committee on Refugees, and Dr. Siegfried Moses of the Association of Central European Immigrants in Palestine.

was 173,000 claims for 173,000 pieces of property in the American zone of Germany," he recalled.[17]

Property claims in postwar Germany entailed navigating a morass of military, civilian, Allied, and *Länder* rules and regulations. Each claim had to be negotiated with the current German possessor, or adjudicated by German administrative agencies and courts. "These proceedings, touching the private pocket-nerve of persons long in possession, encountered bitter opposition and hostility," Ferencz noted. The process was slow, and the JRSO later used bulk settlements with the *Länder* to collect cash to aid survivors.[18] All told, it recovered more than DM 220 million.[19]

AGREEMENTS WITH GERMANY AND AUSTRIA

Indemnification laws also were established in some of the *Länder* under the Occupation authorities, but they "differed considerably and none of them was satisfactory," according to Nehemiah Robinson.[20] The most comprehensive and uniform laws were those in the *Länder* in the American zone, promulgated in August 1949, shortly before the Federal Republic of Germany (FRG) was founded. But even these were insufficient. "We had a rather inferior German law, which had been passed by the state of Bavaria, under pressure from the American government, to provide compensation for false imprisonment, the time spent in the concentration camps," according to Ferencz.[21] The original compensation for deprivation of liberty (*Schaden an Freiheit*), based on the earnings, at that time, of a lower-class laborer, was a one-time payment of DM 150 per month of internment—or DM 5 a day. In the British zone, compensation was provided to former residents of Germany, primarily for the loss of liberty, but no such measures were enacted in the French zone. When the Western Allies and West

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[17]Transcript of interview with Benjamin B. Ferencz, Oct. 21, 1994, U.S. Holocaust Memorial Museum Oral History Library.

[18]Ferencz, "Restitution to Nazi Victims," p. 302.

[19]Saul B. Kagan and Ernest H. Weisman, *Report on the Operations of the Jewish Restitution Successor Organization, 1947–1972* (New York, 1975), p. 4.

[20]Nehemiah Robinson, *Ten Years of German Indemnification* (New York, 1964), p. 22.

[21]Transcript of interview with Benjamin B. Ferencz, Apr. 1971, Hebrew University of Jerusalem Oral History Library.

Germany drafted agreements in 1952 toward ending the occupation, the FRG agreed to enact a uniform federal compensation law that was at least as favorable as that in the American zone.

In the interim, the new State of Israel had sent a diplomatic note to the four occupying powers—the United States, Great Britain, France, and the Soviet Union—seeking compensation from Germany. "When the victorious Allies at the end of the war allocated the reparations due from Germany, the Jewish people had as yet no *locus standi* [legal standing] in the community of sovereign nations," Israel, then three years old, pointed out in its note of March 12, 1951. "As a result, the claims, though morally perhaps stronger than those of any other people that had suffered at the hands of the Nazis, went by default. The time has come to rectify this omission." Between 1939 and 1950, nearly 380,000 Jews had come to Israel as refugees from, or survivors of, the Nazi-conquered territories. "Israel has made itself responsible for the absorption and rehabilitation of the survivors of that catastrophe," the note said. "The State of Israel regards itself as entitled to claim reparations from Germany by way of indemnity to the Jewish people." It asked for $1.5 billion, which it calculated as the cost of resettling the Jewish immigrants from the Nazi-occupied countries. However, Israel cautioned, "No indemnity, however large, can make good the loss of human life and cultural values or atone for the suffering and agonies of the men, women and children put to death by every inhuman device."[22] The Soviet Union simply ignored the Israeli note, and the Western Allies suggested that Israel deal directly with Germany, which left the nearly bankrupt Israel with little choice.

At the same time, there were overtures back and forth between the first chancellor of the FRG, Konrad Adenauer, and Jewish groups concerning redress for Nazi crimes.[23] They culminated in Adenauer's 1951 speech, entitled "Attitude Toward Jews," delivered

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[22]Israel Ministry of Foreign Affairs, *Documents Relating to the Agreement Between Israel and Germany*, pp. 20–24.

[23]Adenauer was said to be motivated by religious and moral convictions, as well as by his government's self-interest, because the West—primarily the Americans—expected the FRG's "reconciliation" with the Jews. The chancellor's first gesture toward the Jews came in a November 1949 interview with the German Jewish paper *Allgemeine Wochenzeitung der Juden in Deutschland*. The chancellor offered DM 10 million to Israel as "an immediate sign of Germany's determination to redress the wrongs done to the Jews throughout the world." Israel did not respond, but the World Jewish Congress issued a statement say-

in the German Parliament on September 27—Rosh Hashanah eve. Adenauer said that Germany was responsible for material compensation and restitution to Jewish victims of Nazism.

> The federal government and with it the vast majority of the German people are conscious of the immeasurable suffering that was brought to bear on the Jews in Germany and in occupied territories during the period of National Socialism. The great majority of the German people abhorred the crimes committed against the Jews, and had no part in them. During the time of National Socialism, there were many Germans who, risking their own lives for religious reasons, obeying the commands of their conscience, and feeling ashamed that the good name of Germany should be trodden upon, were prepared to help their Jewish compatriots. But unspeakable crimes were perpetrated in the name of the German people, which impose upon them the obligation to make moral and material amends, both as regards the individual damage which Jews have suffered and as regards Jewish property for which there are no longer individual claimants . The Federal Government is prepared, jointly with representatives of Jewry and the State of Israel, which has admitted so many homeless Jewish refugees, to bring about a solution of the material reparation problem, in order to facilitate the way to a spiritual purging of unheard-of suffering.[24]

Nahum Goldmann, longtime president of the World Jewish Congress, noted the significance of Adenauer's initiative:

> What was truly revolutionary was the fact that the new Germany was to make global restitution to the Jewish people as a whole to help it secure a new life and establish new institutions in the devastated communities of Europe. According to international law, the Jewish people was not at war with Germany, since only sovereign states can wage war. To ask reparations for this people was as audacious as it was ethically justified.[25]

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ing that "the German state and people must acknowledge their solemn obligation to redress the wrongs inflicted on the Jewish people and to make such reparations as would enable the survivors to rebuild their lives in Israel and elsewhere in freedom and security."

[24]Although Adenauer deserves much credit for the compensation program, it was proposed originally in Germany by Kurt Schumacher, the head of the opposition Social Democratic Party. Further, German compensation for Jewish victims lagged behind benefits and services for former Nazi functionaries, and had less public support. According to a survey of German public opinion conducted by U.S. Occupation authorities, in December 1951, compensation for Jews was supported by 68 percent of the population. It trailed far behind support for German war widows and orphans (96 percent); people who suffered damage by bombing (93 percent); and "refugees and expellees," meaning ethnic Germans who had been expelled, primarily from the Sudetenland (90 percent).

[25]Nahum Goldmann, *The Autobiography of Nahum Goldmann: Sixty Years of Jewish Life* (New York, 1969), p. 251.

The Claims Conference

One month after Adenauer's declaration, representatives of 23 voluntary Jewish organizations from the West and the State of Israel, substantially the same groups that made up the JRSO, met in New York for a "conference on Jewish material claims against Germany."[26] The conference was convened by Goldmann.

"Israeli Foreign Minister Moshe Sharett (Shertok) approached me with the suggestion that as chairman of the Jewish Agency for Palestine, I should invite the leading Jewish organizations of the United States, the British Commonwealth, and France to a conference to support Israel's demands and create a body to execute them," Goldmann wrote in his autobiography. "I did so because I realized that Israel would not be able to negotiate with Germany alone and that a body as representative as possible of all Jews, whose authority both the Jewish public and the German Federal Republic could respect, would be required."[27] The participants decided to create the Conference on Jewish Material Claims against Germany (Claims Conference), to endorse Israel's claims, and to present additional ones on behalf of Jews outside Israel. The organizations agreed to negotiate with West Germany only about material claims—compensation and restitution—not moral claims.[28] Goldmann, who had excellent relations with Adenauer, was elected president, a position he would hold until his death in 1982. Jacob Blaustein of the American Jewish Committee, who had extraordi-

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[26]The current membership of the Claims Conference remains essentially the same as the original founding membership, though one founding member, the Synagogue Council of America, is defunct, the Jewish War Veterans of the U.S.A withdrew in 1953, and survivor organizations—the American Gathering/Federation of Jewish Holocaust Survivors and the Center of Organizations of Holocaust Survivors in Israel—did not join until 1988. There is no specific representation of Jews from Central and Eastern Europe. The members are: Agudath Israel World Organization; Alliance Israëlite Universelle; American Jewish Committee; American Jewish Congress; American Jewish Joint Distribution Committee (JDC); Anglo-Jewish Association; B'nai B'rith International; Board of Deputies of British Jews; Canadian Jewish Congress; Central British Fund for World Jewish Relief; Conseil Représentatif des Institutions Juives de France (CRIF); Council of Jews from Germany; Delegación de Asociaciones Israelitas Argentinas (DAIA); Executive Council of Australian Jewry; Jewish Agency for Israel; Jewish Labor Committee; South African Jewish Board of Deputies; World Jewish Congress; World Union for Progressive Judaism (joined 1957); and Zentralrat der Juden in Deutschland.

[27]Goldmann, *Autobiography,* p. 255.

[28]For a detailed account, see Nana Sagi, *German Reparations: A History of the Negotiations* (Jerusalem, 1980).

nary access to key figures in the American government, was elected senior vice president.

The Claims Conference membership represented a broad spectrum of Diaspora Jewish life. "This was the first time where 23 Jewish organizations of divergent geographical and ideological coloration sat around one table for one objective that did not exist before," said Saul Kagan, who was the long-time director of the Claims Conference until his retirement in 1998. "There were people whose entire past public Jewish record was a record of public antagonism," he said, referring, for example, to the tensions between the World Jewish Congress and the American Jewish Committee, and those between the ultra-Orthodox Agudath Israel and the Reform movement's World Union for Progressive Judaism. "Even in the worst Nazi period there wasn't that type of a structural joining of forces and hands together."[29]

In January 1952, after stormy protests and emotional debates over whether it was acceptable to negotiate with West Germany, the Knesset, Israel's parliament, voted 61-50 to accept Chancellor Adenauer's invitation. "The debate raged in the whole Jewish world and the Jewish press, the main opposition coming from the two extremes of the political spectrum, the right-wing Herut-Revisionists, and the Left, i.e., Mapam and the communists, but also from large circles of religious Jewry, Mizrachi and Agudath Israel," according to S.J. Roth of the Institute of Jewish Affairs. "In fact, the split over this great moral issue stretched across all Jewish parties and communities."[30]

There were those who passionately opposed negotiations with the Germans, arguing that such talks were immoral and that any payment received would be "blood money." The conference countered that it would be immoral to allow Germany to enrich itself with Jewish property. There was nothing moral in relieving the perpetrator of the obligation to pay for injuries, Kagan said. "The concept was that whatever will come out of these negotiations is not going to be German philanthropy or charity or goodwill, but

[29]Transcript of interview with Saul Kagan, Dec. 10, 1971, American Jewish Committee Oral History Library, housed at the Dorot Jewish Division, New York Public Library.

[30]S.J. Roth, "West German Recompense for Nazi Wrongs: 30 Years of the Luxembourg Agreement," research report of the Institute of Jewish Affairs, in association with the World Jewish Congress, London, Nov. 1982, p. 19.

it will be in payment of legally established and legally anchored claims and demands."[31]

The Jewish-German negotiations opened in The Hague, under heavy security, on March 21, 1952. There were two parallel, coordinated sets of talks—one between the FRG and Israel, and the other between the FRG and the Claims Conference. "The Claims Conference is, in a sense, the trustee for a broad collective interest, acting on behalf of hundreds of thousands of survivors," Kagan said.[32]

In its opening statement, the Claims Conference delegation supported the claims of Israel "in respect of rehabilitation in Israel of victims of Nazi persecution." The Israeli claims bore no relationship to the Jewish material losses in Germany. The Claims Conference, in contrast, pursued compensation for individual victims for damages resulting from Nazi persecution, and a "global payment" for relief and rehabilitation of Nazi victims. Like the 1951 Israeli note, its demands came with a strong caveat. "We are ready to negotiate on certain claims of a material nature. But we want to make clear from the beginning that there can be no negotiation on moral claims," the Claims Conference said in its opening statement. It sought a uniform measure to cover all of the FRG that would also expand the scope of compensation for the surviving victims. As for claims for which there were no living owners or heirs: "The millions who have perished are, together with their survivors, the ones whose rights are at stake here. Though they are absent, their assets must not be abandoned. Germany should not retain any benefit from the thoroughness of the Nazi extermination program," the Claims Conference delegation said. It called for heirless and unclaimed Jewish property to accrue to Jewish organizations caring for the survivors.[33]

The negotiations, which began under tense conditions, were arduous. They almost collapsed when the German government offered Israel some $300 million, less than one-third of the Israeli

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[31]Kagan interview, American Jewish Committee Oral History Library. These differences often led to confrontations, and some New York hotels, wanting to avoid turmoil, would not allow the Claims Conference to rent space for meetings.

[32]Saul Kagan, "Morality and Pragmatism: A Participant's Response," remarks at symposium, "*Shilumim* in the 1950s," Deutsches Haus of Columbia University, New York, Mar. 15, 1991.

[33]Claims Conference Delegation Statement at opening of negotiations with West Ger-

demand. The Israeli delegation broke off the talks, and the two principal German negotiators, Franz Boehm and Otto Küster, resigned to protest the unwillingness of their government to fulfill its promises. It required Adenauer's intervention to break the deadlock and meet the Israeli claim.

It was more difficult to reach an agreement on the global payment to the Claims Conference. The Germans objected to the conference's insistence on $500 million, based on an estimate of heirless assets; the Germans contended that the payment to Israel would discharge this obligation. They also said that the Claims Conference was not a representative body from a "legal point of view," and therefore the FRG could not undertake to make a global payment to it.[34] Goldmann refused to budge, saying it was immoral for Germany to retain Jewish property. Goldmann also reminded the German delegation that Adenauer, in his declaration, had invited representatives of the Jewish people to negotiate; there was no point in negotiating if the Germans decided from the start not to provide anything to the representatives of world Jewry. Further, Jewish organizations had spent millions of dollars on the relief and resettlement of Nazi victims living outside of Israel. To continue the welfare work and to reconstruct the institutions the Nazis destroyed, he argued, new sums had to be mobilized, and it was Germany's duty to help.[35]

Although the U.S. government was not a party to the talks, High Commissioner John J. McCloy quietly insisted that West Germany make restitution, even as others on the American side worried that forcing the FRG to undertake such a financial commitment would increase its dependence on American aid. McCloy reminded Chancellor Adenauer that the reconciliation of West Germany with the Jewish people was "so significant" for Germany's international position.[36]

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many, Mar. 21, 1952, Claims Conference file no. 14597, Central Archives for the History of the Jewish People, Jerusalem.

[34]Sagi, *German Reparations*, pp. 143–44.

[35]Goldmann, *Autobiography*, p. 269.

[36]McCloy was convinced that German fulfillment of Jewish claims would help rehabilitate Germany's image among the American public and thus help pave the way for its acceptance as a credible American ally. See Thomas Alan Schwartz, *America's Germany: John J. McCloy and the Federal Republic of Germany* (Cambridge, Mass., 1991).

The Luxembourg Agreements

The Hague negotiations led to the Luxembourg Agreements of September 10, 1952. Under these, West Germany was to pay Israel DM 3 billion in goods and services over the course of more than a decade, to go toward the costs of absorbing refugees. The German agreements with the Claims Conference were "protocols"—so named because a voluntary organization could not sign a treaty with a sovereign state. Under Protocol I, West Germany was obliged to enact federal legislation providing direct compensation and restitution for individual victims of Nazi persecution. Under Protocol II, West Germany agreed to provide DM 450 million to the Claims Conference to aid Jewish organizations for the relief, rehabilitation, and resettlement of Jewish victims who lived outside of Israel. The payment was in recognition of uncompensated Jewish losses.[37]

Protocol I ultimately led West Germany to pay more than DM 100 billion in compensation. At the turn of the century, some 100,000 Nazi victims were still receiving monthly pensions, valued collectively at DM 1.2 billion a year, and the average monthly payment was about DM 1,000.[38] Although the FRG initially saw its responsibility as limited to compensation to its former citizens, the Claims Conference negotiated terms that added two other important groups of beneficiaries: stateless people and refugees living in the West.[39] Between 1953 and 1965, the West German government enacted three laws that established the basis for compensation for "victims of National Socialist persecution."[40] Under these

[37]West Germany's payments reflected two-thirds of Germany's obligation, as determined by these negotiations. East Germany would theoretically be responsible for the remaining one-third. However, the latter did not view itself as a successor state of the Nazi regime, and refused to pay compensation. Its liabilities for Nazi-era damages were not resolved until after the 1990 reunification of Germany, as described below.

[38]"State payments made by the Federal Republic of Germany in the area of indemnification," Jan. 2000, http://www.germanemb.org.il/messages/318.htm. The actual numbers of claimants from the period was not known, because individuals submitted multiple claims under different categories, such as deprivation of liberty, loss of property, and damage to health. As of 2000, about 40 percent of those receiving compensation lived in Israel, 20 percent in Germany, and 40 percent in other countries.

[39]Under German law, "stateless persons" referred primarily to Holocaust survivors who were in displaced-persons camps after World War II. "Refugees" were those who emigrated or who were deported from an area that was German on December 31, 1937.

[40]The word "victims" is significant, indicating a wider group than "survivors," since the latter could conceivably be limited to survivors of camps and ghettos.

laws, which were known as the *Bundesentschädigungsgesetze* (B.E.G.), individuals could file multiple claims for a variety of damages caused by Nazi persecution.[41] Some damages—such as deprivation of liberty—were compensated for with one-time payments. Others—primarily involving damage to health—resulted in monthly annuities called pensions.[42] Between October 1953 and December 1987, more than 4.3 million claims were submitted, and almost half, 2,014 million, approved.[43]

None of the compensation measures that would follow later neared the value of the pensions created by the German legislation under Protocol I. For Nahum Goldmann, however,

> more important than the financial significance of the Luxembourg Agreement is its moral significance. It established a precedent. Here for the first time a mighty nation had declared itself ready to make partial restitution for the wrong it had done a weaker people, and it had done this in response to an ethical imperative and the pressure of public opinion and out of its respect for moral law, not because of the force of a victor's military power. This agreement is one of the few great victories for moral principles in modern times.[44]

The indemnification laws were open-ended; West Germany did not set a ceiling on what it would pay or on the number of claimants it would try to satisfy, so long as they met the eligibility requirements. Compensation was not uniform, and there were "historic anomalies" in which victims who endured the same persecution received widely disparate treatment under the German laws. Compensation depended on prewar citizenship, the location and duration of incarceration, the extent and nature of the damages suffered, and assorted other criteria, including where the survivor lived after the war.[45] For four decades, compensation was limited

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[41]The B.E.G. is referred to by its initials, and is not pronounced "beg."

[42]Early in the compensation program, victims faced traumatic medical examinations by German or German-approved physicians to establish that their injuries were related to persecution and that they therefore were eligible for pensions for damage to health. There is evidence that victims abandoned claims rather than submit to the exams, and that physicians were exceptionally rigid before affirming that injuries were related to persecution.

[43]http://www.germanemb.org.il/messages/318.htm.

[44]Goldmann, *Autobiography*, p. 276.

[45]Country of origin made a significant difference. Former German citizens, for instance, were entitled to pensions for damage to professional advancement. A German lawyer and a Polish lawyer who each survived the same concentration camp and emigrated to the U.S.

to victims living in the West; there were no benefits available to those behind the Iron Curtain.

There was a separate procedure for citizens of Western European nations who returned to their home countries after the war. They were not eligible for direct payments from West Germany. Instead, Bonn negotiated a series of bilateral agreements with 11 Western European states in the 1950s and 1960s, whereby the FRG made payments to each state with the understanding that that state would, in turn, provide compensation to the Nazi victims among its population.

Adenauer's commitment to compensation encountered political and administrative resistance in Germany, including from members of his own political party, the Christian Democratic Union (CDU). This was apparent from the outset. The Bundestag vote to ratify the Luxembourg Agreements was 238-34, with 86 abstentions. It was the opposition Social Democratic Party that voted unanimously in favor of the agreements, while 39 members of Adenauer's CDU abstained.[46]

The implementation of the laws was widely criticized by the Claims Conference and by German parliamentarians for being too rigid. "In no other area of law are the administration and courts so narrow-minded, sometimes heartless, so petty, or do they act in such a hairsplitting and quibbling fashion," complained Adolph Arndt of the Social Democratic Party in 1955. "Thus, a task whose generous fulfillment should move an entire people has fallen to the ink blotters and pen pushers."[47] The laws' novelty and intricacy added to the difficulty in implementation. "There is hardly any major provision of the law which, in one way or another, did not become controversial," said Nehemiah Robinson. Within the first decade of the indemnification laws, the German Supreme Court was called upon to render almost 2,000 decisions.[48]

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after the Holocaust would be entitled to compensation for deprivation of liberty; but while the German lawyer also would be entitled to a lifelong pension for damage to his professional advancement, the Polish lawyer would not. The rationale was that the FRG had a greater responsibility to its former citizens.

[46]*New York Times,* Mar. 19, 1953.

[47]Christian Pross, *Paying for the Past: The Struggle Over Reparations for Surviving Victims of the Nazi Terror* (Baltimore, 1998), p. 46.

[48]Robinson, *Ten Years of German Indemnification,* p. 35. Many of the improvements in compensation resulted from lawsuits brought on behalf of Nazi victims by the United Restitution Organization, a legal-aid society supported by the Claims Conference.

Later Compensation Agreements

Subsequently, Germany enacted other compensation programs, but they were not as broad as the original law and did not carry the same legal rights. Instead of basing eligibility on the extent of persecution or the damages suffered, the new programs were predicated on the victims proving "hardship."

The first of these, the so-called Hardship Fund, came into effect under a 1980 agreement between the Claims Conference and the FRG. It dealt with the many Holocaust victims among the Jews who were able to leave the Soviet Union beginning in 1965. Once they arrived in the West, their Nazi-era experiences made them eligible for the German B.E.G. program. By that time, however, the deadlines for application had long passed. West Germany was unwilling to reopen the filing period for these victims. Instead, it agreed to finance this new Hardship Fund for victims who had not been able to obtain compensation earlier. It provides one-time payments of DM 5,000.

This fund changed the fundamental nature of the Claims Conference. Its original mission had been to negotiate for benefits for Nazi victims that would be provided under German legislation and administered by German agencies. The new fund, in contrast, was administered by the Claims Conference, which thus became an operating agency responsible for processing and approving (or disapproving) applications for compensation. By the end of 2000, more than 238,000 victims had received a one-time payment from this fund.[49]

Yet another fund for Jewish victims of Nazi persecution was created in conjunction with the 1990 reunification of Germany, and it was based on the premise that the former East Germany had not paid its share of compensation as a successor state to Nazi Germany. After intervention by the American government, German foreign minister Hans-Dietrich Genscher pledged that Germany would "seek, shortly after unification, to provide expeditious and satisfactory resolution of claims of Jewish victims of the Nazi regime against the German Democratic Republic."[50] That resolu-

[49]Claims Conference, *Annual Report 2000*, p. 17. The fund was only for Jewish victims. In 1981, West Germany created a fund of DM 100 million for hardship payments to non-Jewish victims who had previously been unable to receive compensation.

[50]President George H.W. Bush, statement accompanying submission of "2+4 Agreement"

tion came under Article II of the September 1990 "Agreement on the Enactment and Interpretation of the Unification Treaty," known informally as the "2+4 Agreement" (referring to the two Germanys and the four postwar Occupation powers).

Under Article II, Germany agreed to establish a fund for victims who had received little or no compensation previously. Known as the "Article II Fund," it is administered by the Claims Conference and provides monthly pensions of DM 500. These payments, however, were not a matter of right. Instead, victims had to prove "hardship," and the income of the applicant was taken into account as one of many factors determining eligibility. Like the Hardship Fund, it was available only to victims living in the West. Unlike B.E.G. pensions, it did not provide for cost-of-living adjustments. As of the end of 2000, more than 53,000 Jewish victims were receiving Article II pensions.[51]

Reunification also prompted Germany to negotiate bilateral agreements in the early 1990s with Poland, Belarus, the Russian Federation, and Ukraine. In the new political environment after the fall of the Berlin Wall, Germany provided a total of DM 1.5 billion for "Reconciliation Funds" in those states to compensate victims of Nazi persecution, both Jews and non-Jews.[52] These funds paid an average of DM 1,000 to each victim, primarily former forced laborers. "It is not that Jews are excluded from getting money," Kagan said. "But when you add the forced laborers, the fund is diluted, the per-capita claims are minimal."[53] That created another anomaly based on geography: Had the Jewish victim gone to the West, he would have been eligible for DM 5,000 from the Hardship Fund.

Even after these programs were launched, German compensation was still oriented to the West. By 1995, 50 years after the end of World War II, Nazi victims in Central and Eastern Europe remained ineligible for the German compensation programs. In the

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to U.S. Senate, Sept. 25, 1990, included in *101st Congress, 2 Sess., Senate, Treaty Document 101-20.*

[51]Claims Conference, *Annual Report 2000,* p. 19.

[52]In 1997, a German-Czech agreement was reached under which Germany provided DM 140 million to finance projects to benefit Nazi victims.

[53]*Jerusalem Post,* Feb. 25, 1996. There were other complaints. For instance, given the long-term Soviet occupation of the Baltic nations, the Latvian Jewish victims resented being steered to Moscow for compensation. These victims contended they were twice injured: as Jews and as Latvians.

1950s, the FRG had refused to pay compensation to Nazi victims in the Eastern bloc, arguing that it did not have diplomatic relations with those states, and, in the era of cold-war politics, it was unwilling to make payments that would infuse cash into the communist world. By 1995, Germany simply was unwilling to undertake any new Nazi-era compensation commitments.

It was, however, compelled to act, amid publicity, beginning in 1996, that it was providing monthly disability pensions to Latvian veterans of the Waffen SS, but not to their victims.[54] Among the most powerful inducements for Germany to alter its policy was a dramatic May 1997 newspaper advertisement published by the American Jewish Committee in several American and international publications. It featured a photograph of a former Nazi officer alongside one of a Holocaust survivor. "Guess which one receives a pension from the German government," said the text of the ad. "If you guessed the survivor, you're wrong." In August, the AJC published another ad, displaying an "open letter" to German chancellor Helmut Kohl signed by 82 American senators who said it was "distressing" that Kohl's government "refused to provide any meaningful compensation to this forgotten group of Holocaust survivors." Under that pressure, Germany and the Claims Conference reached an agreement on a new fund for Jewish Nazi victims in Central and Eastern Europe. The fund, which commenced payments in 1998, had a lower rate of compensation than the others—DM 250 per month—and, like the Article II Fund, was based on the victims' "hardship."[55]

Property Restitution

The restitution of identifiable property in Germany, based on laws that had been developed in the occupation zones, was covered in Protocol I of the Luxembourg Agreements, and again, decades later, under the "2+4 Agreement."

The restitution legislation envisioned under Protocol I was not enacted for five years. Under the Federal Restitution Law (*Bun-*

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[54]Ibid.

[55]Claims Conference, *Annual Report 2000,* p. 20. In 2000, more than 15,000 Jewish victims in Central and Eastern Europe received these monthly payments.

desrückerstattungsgesetz) of 1957, Nazi victims were eligible for compensation (in lieu of restitution) for a variety of assets—including bank accounts, securities, and household furnishings—that had been confiscated by Nazi authorities. The compensation paid did not bear a direct relationship to the value of the plundered assets. The law included stringent burdens of proof and, as in the case of indemnification claims, there is evidence that the legal requirements prompted victims to abandon claims for restitution in the belief that their applications were futile. West Germany paid some DM 3.9 billion for restitution claims, most of which were settled by 1987.[56]

With reunification, Germany again enacted restitution measures. These were concerned primarily with the reprivatization of property in the former East Germany that had been nationalized by the communist government. In a harbinger of what would come in Central and Eastern Europe, restitution of property was simply one aspect of a larger effort to overhaul and Westernize the economy and political system in the former communist nations. Nazi-era property claims competed against those of owners whose properties had been confiscated by the communist regimes. The 1990 restitution law, called the Act on the Regulation of Unclarified Property Questions, did not address the rights of Nazi victims, but dealt solely with acts of confiscation that occurred between 1949 and 1990. The law was changed, after the intervention of the Claims Conference, to include a presumption in favor of Nazi victims whose property was confiscated between 1933 and 1945.[57] The deadline for filing claims was tight—December 1992.

As had happened earlier in the American zone, when the JRSO became eligible to file property claims, a "successor organization" was given the right to claim unclaimed and heirless properties in the former East Germany. In this case it was the Claims Conference, which subsequently found itself fighting over the rights to properties against heirs who had missed the filing deadline. The Claims Conference subsequently developed a Goodwill Fund to share the proceeds of the properties with these heirs; as of 2000, the fund had paid out DM 136 million. The other proceeds, again

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[56]http://www.germanemb.org.il/messages/318.htm.

[57]Claims Conference, *Annual Report 2000,* p. 21.

using the model developed by the JRSO, were used primarily for social services for survivors.[58]

The Case of Austria

Nazi victims from Austria found themselves in a unique position. Germany refused to provide compensation to them, contending that Austria was a successor state to the Nazis, and therefore Austria should pay. The birthplace of Hitler and Eichmann had welcomed Nazi troops with a wild reception in the 1938 Anschluss. "The only injuries the German soldiers received on entering Vienna was from the stems of the flowers that were enthusiastically thrown at them as they marched by," French ambassador Robert Coulondre wrote in his memoirs.[59] However, Austria refused to see itself as a Nazi successor state, and in this it had help from the Allies. In the 1943 Moscow Declaration, the Allies had anointed Austria as "the first free country to fall a victim to Hitlerite aggression."[60] Armed with the declaration, Austria refused to pay compensation. Its argument was that, as the first victim, it should be entitled to receive compensation, not required to pay it.

Austria's stand drew criticism at the time. "Whatever the validity of these arguments, there is one point that would seem to take precedence over all others, and this is that the issue is not primarily a legal one, and in view of the sum involved not even one of economics, but first and foremost a moral one," the *New York Times* said in a 1953 editorial. "Since the anti-Jewish atrocities were perpetrated not only by German but also by Austrian Nazis, it would seem that the Austrian government would act in its own best interest if it did its utmost to settle the issue in conformity with the conscience of the Western World, to which it belongs."[61]

In fact, the Austrians, until the turn of the 21st century, over-

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[58]Ibid., pp. 22–23. The Goodwill Fund itself became a bone of contention, and in the late 1990s the Claims Conference was obliged to raise the proportion it shared with heirs.

[59]Robert Coulondre, *Von Moskau nach Berlin 1936–1939* (Bonn, 1950), p. 257.

[60]*Österreichische aussenpolitische Dokumentation, Sonderdruck: Österreichische Massnahmen zur Restitution und Entschädigung von Opfern des Nationalsozialismus* (Vienna, 2002), p. 7. The declaration was issued by the foreign ministers of the United States (Cordell Hull), the Soviet Union (Vyacheslav Molotov), and Great Britain (Anthony Eden).

[61]*New York Times*, Dec. 21, 1953.

looked the second paragraph of the Moscow Declaration, which stated: "Austria is reminded, however, that she has a responsibility, which she cannot evade, for participation in the war at the side of Hitlerite Germany, and that in the final settlement account will inevitably be taken of her own contribution to her liberation."

Austria paid only modest compensation to Nazi victims, and the government portrayed it as a charitable gesture, not an obligation. The payments were financed, in part, by DM 102 million that West Germany paid to Austria under the terms of their 1961 Bad Kreuznach Treaty, which settled their Nazi-era claims.[62] In lieu of a compensation program akin to the German B.E.G., Austria gave preferential treatment to Austrian-born Nazi victims, allowing them to participate in the national social-insurance pension program even if they were too young at the time of the Anschluss to have worked in Austria. These "social security" pensions became the primary means through which Austria compensated Jewish Nazi victims who reached retirement age. The Austrian government acknowledged that the pensions were not quite restitution. However, it said, "In many respects [the pension program] nevertheless contains important elements of restitution and compensation (preferential treatment) for victims of National Socialism with respect to pension rights."[63]

It would take years before Austria was finally jolted into examining its Nazi-era history. In a 1991 parliamentary debate, Jörg Haider, the leader of the right-wing Freedom Party who was also the governor of the province of Carinthia, praised the Nazis: "They had a sound employment policy in the Third Reich, which is more than your government in Vienna has managed," Haider told a Socialist member. Austrian chancellor Franz Vranitzky responded: "We must not forget that there were not a few Austrians who, in the name of this [Nazi] regime brought great suffering to others, who took part in the persecutions and crimes. We own up to all facts of our history and to the deeds of all parts of our people. As we take credit for the good, we must apologize for the

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[62]Boris Sapir, "Austria," AJYB 1962, Vol. 63, pp. 362–63.

[63]Office of the Special Envoy for Restitution Issues Ernst Sucharipa, "Survey of Past Austrian Measures of Restitution, Compensation and Social Welfare for Victims of National Socialism," Oct. 2000, http://www.nationalfonds.parliament.gv.at/aef/deutsch/aufgPastMeasures.htm.

evil."[64] But it was not for another ten years, until January 2001—and after Austrian banks had been sued in the U.S.—that Austria, the U.S., and the Claims Conference would reach an agreement for expanded compensation and restitution measures for Austrian Jewish victims of Nazi persecution.

SWISS GOLD AND SLAVE LABOR

There was a new wave of interest in Holocaust compensation at the end of the century. In the final moments of the Clinton administration, in 2000, there was a race to conclude agreements with Austria and France on the restitution of Nazi-looted assets. Those came six months after an agreement with Germany to establish a Foundation for Remembrance, Responsibility, and the Future that was intended to be the "exclusive remedy" for all outstanding Nazi-era claims against the German government and German industry.

The roots of the new focus on compensation can be traced to 1995 and the events commemorating the 50th anniversary of the end of World War II. In Switzerland, President Kaspar Villiger apologized for his nation's treatment of the Jews during the Nazi era. At that time, Switzerland had instituted the distinctive "J" stamp on the passports of Jews, and had turned away more Jewish refugees than it had admitted. "Was the boat really full? Would Switzerland have been threatened with destruction if she had been considerably more open toward victims of persecution than she was? Did anti-Semitism in our country also play a part in this issue?" Villiger asked in a speech to the Swiss Federal Assembly on May 7, 1995. "Did we always do all that was humanly possible for the victims of persecution and those who had been deprived of their rights? We made a wrong choice in the far too narrowly interpreted interest of our country. The Federal Council [the Swiss cabinet] deeply regrets this and apologizes for it in the knowledge that such a refusal is inexcusable in the final analysis."

A month later, a *Wall Street Journal* story revealed the daunting problems victims faced in attempting to recover Holocaust-era ac-

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[64] *New York Times*, July 19, 1991.

counts in Swiss banks. Since the end of World War II, these banks "have cast a dismissive blanket of silence over the question of what they did with accounts opened by Jews and others who were then persecuted, and often murdered, by the Nazis," wrote reporter Peter Gumbel in "Secret Legacies: Heirs of Nazis' Victims Challenge Swiss Banks On Wartime Deposits."[65] That story opened a Pandora's box that led to class-action lawsuits, congressional hearings, historical commissions, and international inquiries into the fate of Holocaust-era assets, and settlements valued at billions of dollars.

Gumbel reported that the Swiss Bankers Association planned to establish a centralized, independent office to handle claims for accounts that had been sent to Switzerland to avoid Nazi confiscation. The World Jewish Congress soon met with Swiss government and banking officials to discuss the procedures for handling the dormant and unclaimed accounts. "Nobody really knows the exact amount that is being held in the Swiss banks or what has happened to the money. I have figures that range from tens of millions of dollars to billions of dollars, if you take into account currency fluctuations and accrued interest," said Israel Singer, secretary general of the World Jewish Congress.[66]

That claims process might have been the end of it. In February 1996, however, the bankers association released a survey indicating that the dormant accounts deposited in Swiss banks by foreign clients before 1945 were valued at $32.75 million. The chief executive of the largest Swiss bank, Robert Studer of Union Bank of Switzerland, said his bank had found the equivalent of $8.9 million, adding, "I think I can say in this case that the original amounts were peanuts."[67]

The association report incensed the WJC, which thought that the process had been one-sided and had not been transparent. The WJC turned to U.S. Senator Alfonse D'Amato, a New York Republican. "You have to figure out what kind of a lever to use if you have to move a very heavy rock. And it occurred to Israel Singer and myself that maybe that lever was the chairman of the Senate

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[65] *Wall Street Journal,* June 21, 1995.
[66] Reuters, June 22, 1995.
[67] Ibid., Feb. 23, 1996.

Banking Committee, Alfonse D'Amato," recalled Edgar Bronfman, the WJC chairman.[68]

From that moment, events moved at a dizzying pace. In April 1996, D'Amato convened the first of what would ultimately be more than a dozen congressional hearings on the fate of Jewish Holocaust-era assets in Europe and held by European institutions. At the same time, D'Amato and the World Jewish Congress each began to release documents from the Safe Haven files in the U.S. National Archives. Operation Safe Haven had been a broad U.S. wartime intelligence operation to identify and track the flow of Nazi assets in neutral countries in order to deprive Nazis of resources for any possible resurgence after the war. The release of the Safe Haven documents was intended to bolster claims for dormant Jewish bank accounts; instead, they diverted the focus to a broad review of Switzerland's relations with Nazi Germany.[69]

This was no longer a controversy between the Swiss bankers and the WJC, a nongovernmental organization. Holocaust restitution had some muscular political backers. D'Amato threw the weight of his powerful committee behind the issue. And Bronfman, a leading fund-raiser for the Democratic Party, mobilized other political support—the White House. The Clinton administration began to show a serious interest in the dormant Swiss accounts after Bronfman "buttonholed Hillary back in 1996, and said I had to see him the next day because the time for redress was running out," President Clinton recounted. "And I did as he said."[70]

The congressional hearings and the documents generated wide publicity, putting moral, economic, and political pressure on Switzerland, which depended on American markets for its powerful banking industry. In congressional hearings in 1996, Swiss of-

[68]*Los Angeles Times,* Apr. 13, 1997.

[69]The documents appeared to have been released for their effect, without any historical analysis or attempt to confirm the material or its significance. Some appeared to be profoundly damaging to Switzerland and its banks. Others were curiosities, such as the September 1996 media reports of a U.S. intelligence document indicating that Hitler's royalties from *Mein Kampf* may have been deposited in a Swiss bank account belonging to his publisher. When released to the media, the documents usually were declared "newly declassified," which added a sense of urgency, if not mystery, to the contents. However, much of the material had been declassified two decades earlier, but had failed to attract interest or attention.

[70]Clinton remarks delivered at the World Jewish Congress "Partners in History" dinner, New York, Sept. 11, 2000, distributed by the White House press office.

ficials and bankers pledged to resolve the accounts. "At the end of the day, not one penny that could have belonged to victims of the Holocaust will be held by Swiss banks," said Hans Baer, chairman of Bank Julius Baer and a member of the executive board of the Swiss Bankers Association.[71] In short order, the WJC, the World Jewish Restitution Organization, and the Swiss Bankers Association signed an agreement establishing an independent committee of Jewish and Swiss delegates to supervise a "forensic" audit of dormant accounts in Swiss banks. Paul Volcker, formerly chairman of the U.S. Federal Reserve, was named chairman of the committee soon afterward. The Swiss Parliament began to draft legislation to enable a "critical legal and historical review" of the scope and fate of Jewish assets that were received in Switzerland during World War II. The measure led to the creation of an international panel of historians to review Swiss wartime activity; bank-secrecy laws were modified to facilitate the inquiry.

More actors became involved in the fall of 1996, but they were not focused on individual assets. The British Foreign Office, for instance, released a report based on material in its archives saying that Switzerland turned over to the Allies only a small part of the Nazi gold it had bought during World War II. The U.S. State Department said it would conduct a "thorough and immediate study of the retrieval and disbursement of Nazi assets after the Second World War."

For individual victims, the key event was the October 1996 filing of a class-action lawsuit, in U.S. District Court in New York, against the dominant Swiss commercial banks, seeking $20 billion in damages and a full accounting of the deposits made by the survivors and their families. A second lawsuit was filed weeks later.[72] Once its banks were sued, the Swiss government became actively engaged. That elevated the matter to the diplomatic level, and an additional set of actors, with different interests, styles, and constraints, emerged and attempted to command the issue.[73]

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[71]Baer made his remarks at the April 23, 1996, hearing of the D'Amato committee, at which he also rued the paradox of the flawed results of a 1962 search of Swiss banks for dormant accounts. "On the one hand, we are being asked to explain why there are any assets left at all, and on the other hand, we are being asked why there are so little assets left."

[72]Reuters, Oct. 24, 1996.

[73]Swiss officials, unschooled in American political style and initially naive about the significance of the issue in the U.S., made a series of blunders. On December 31, 1996, Jean-

Impact of the Eizenstat Reports

In the meantime, the U.S. historical inquiries also seemed to raise the stakes—again, not in a manner that directly aided victims. In two reports, published in 1997 and 1998, the U.S. examined the massive plundering by the Nazis of gold and other assets from conquered nations and individual victims. It was "no rogue operation," said Stuart Eizenstat, then the undersecretary of commerce, who led the 11-agency task force that produced the reports. "It was systematic, intentional, and essential to the financing of the German war machine, and they used neutral countries as banking and financial facilitators."

The 1997 report "documents one of the greatest thefts by a government in recorded history—the confiscation by Nazi Germany of an estimated $580 million of central bank gold, which would be worth about $5.6 billion in today's values, along with indeterminate amounts of other assets from individual victims of Nazi atrocities during World War II," said Eizenstat in a briefing, on May 8, at the release of the report. It was entitled "U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany during World War II (Preliminary Study)."[74] Most of the looted gold, which Germany used to pay for its wartime imports, went to Switzerland. The report also found that despite postwar agreements with the Allies, Switzerland had resisted parting with Nazi-looted gold. Under the Washington Agreement of 1946, Switzerland agreed to turn over to the Allies some $58 million, which was far less than the $185–$289 million in looted gold that the U.S. estimated was in Swiss national accounts. The Swiss were "even less forthcoming" in providing the Allies with a nego-

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Pascal Delamuraz, finishing his one-year rotation as Swiss president, said in a newspaper interview that demands for a $250-million fund to compensate Jews who lost assets in the Holocaust "amounts to being blackmailed and held to ransom." Delamuraz later said he had been misunderstood, but his retraction failed to placate Jewish groups, who then raised the prospect of a boycott of Swiss banks. The Swiss ambassador to the U.S., Carlo Jagmetti, was compelled to resign in January 1997 after a blunt cable to Bern was leaked to the media. "In light of the main goal, for once it is good advice for us to do things differently than what we are used to and to release the necessary means without bargaining, which gives a poor impression to the outside," he said in his cable. "Once again: We are faced with a war which Switzerland must conduct and win abroad and at home. Most of the opponents cannot be trusted."

[74]http://www.state.gov/www/regions/eur/970507eizenstat.html.

tiated share of the German assets in Switzerland, badly needed at the time both for the economic reconstruction of Europe and for refugee relief.

These new relevations raised serious moral issues. "In the unique circumstances of World War II, neutrality collided with morality. Too often being neutral provided a pretext for avoiding moral considerations," Eizenstat said. The Americans noted that while many of Switzerland's actions benefited the Allies, "without question, Switzerland and other neutral nations benefited from their trade and financial dealings with the Germans and helped prolong the war effort."[75]

The second report, released on June 2, 1998, looked at Germany's links with the other neutrals: Argentina, Portugal, Spain, Sweden, and Turkey. The report, entitled "U.S. and Allied Wartime and Postwar Relations and Negotiations With Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury," essentially completed the 1997 report. "By illuminating the trade as well as the financing side of the equation, our two reports together provide a seamless web, a comprehensive and integrated view of the important part the wartime neutrals cumulatively played in the structure of the German war economy," Eizenstat said. Although the transactions between Nazi Germany and the neutrals were legal for much of the period, trade continued "in many cases well past the point where, from the Allied perspective at the time, there appeared to be a genuine threat of German attack."[76]

Eizenstat cautioned that the reports should not be seen as "finger-pointing." "I really view this as a sort of cleansing process for all of us—the Axis, the neutrals, the Allies—about the worst events and hidden events, particularly with respect to the confiscation of assets, that occurred in this century—a century we're about to leave," he said. "I think it's important before we do, and

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[75]Ibid.

[76]http://www.state.gov/www/policy_remarks/1998/980602_eizenstat_nazigld.html. He noted that different factors shaped these nations' neutrality, including traditional avoidance of entanglements in European wars, fear of Nazi invasion or reprisal, and a desire to profit from the trade. Although the 1998 report concentrated on financial and trade matters, Eizenstat noted that these nations provided refuge to more than 250,000 Jews.

as we prepare for the next, that we be a little more just, a little more sensitive and that we have a clear understanding."[77]

In May 1997, Britain's foreign secretary, Robin Cook, announced that London would host an international conference on Nazi gold. It was the first of four extraordinary forums that elevated the question of restitution to the highest levels of governments. The London Conference, in December 1997, drew delegations of ranking officials and historians from 41 countries, the Vatican, and six nongovernmental organizations (NGOs). It was intended to provide a forum for discussion, not to apportion blame.

The conference focused on the facts relating to looted gold; a review of efforts to reimburse countries through the Tripartite Gold Commission and to compensate individual Nazi victims; and consideration of the possibility of providing additional funds for claimant countries or individuals.[78] The claimant nations had received, on average, about 60 percent of their claims. By 1997, the gold commission was ready to shut down, and had some $60 million in so-called "residual gold" in its coffers. In light of the new attention given to the losses of Nazi victims, the commission's triad—Britain, the U.S., and France—proposed that the residuals be used to aid survivors, and seven nations at the London conference agreed to do so.[79]

If national governments were interested in Nazi gold, victims of Nazi persecution had more personal concerns, including what had

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[77]Ibid.

[78]The term "Nazi gold" is often used as shorthand for assets that the Nazis looted. In this context it refers primarily to the gold the Nazis took from the national treasuries of occupied countries.

[79]*Jerusalem Post,* Sept. 14, 1997. The residual gold financed the so-called "Nazi Persecutees' Relief Fund." The fund was flexible; donor countries could choose how their funds would be allocated. Nongovernmental organizations were eligible to receive money if they would use it to assist needy victims of Nazi persecution, or for relevant educational projects. The initial pledges were from Argentina, Austria, Britain, Croatia, Greece, and Luxembourg. The U.S., although not a claimant nation, also made a pledge. The gold conference opened two weeks after the first payments were distributed from a separate Swiss "humanitarian fund." Overseen by a board of Swiss and Jewish delegates, the Swiss private-sector fund was established in February 1997 as a goodwill gesture to aid needy Nazi victims. The first recipients were from the small survivor community in Riga, Latvia, whose members—like those elsewhere in Central and Eastern Europe—had not been eligible for compensation under earlier German programs. Riva Sefere, who survived a Nazi labor camp, received the first check. It was for $400. "What I really need is a washing machine, because all my life I had to do the washing by hand," she told reporters. "Unfortunately, this sum isn't even enough for a washing machine." *Los Angeles Times,* Nov. 19, 1997.

happened to their bank accounts, insurance policies, securities, and artworks. Some of these were on the agenda the following year, in December 1998, when the U.S. State Department, in conjunction with the U.S. Holocaust Memorial Museum, convened the Washington Conference on Holocaust-Era Assets. Like the London Conference, Washington drew prestigious delegations from 44 countries and 13 NGOs. And, like the 1997 conference, it was not a venue for governmental decision-making. The conference was intended "to forge an international consensus on how governments and other entities can cooperate to redress grave injustices that remain from the Holocaust era, especially issues relating to art and insurance, communally owned property by religious groups—Catholic, Jewish, Protestant—and other assets," said Eizenstat on November 24.[80]

By this time, however, the issue was no longer solely a matter of establishing a solid historical record or of restoring looted assets. While governments were writing historical reports and convening international conferences, class-action lawsuits, "monitoring groups," and commissions had become independent venues for recovering assets. Public finance officers imposed—or threatened to impose—sanctions against European businesses until they resolved Nazi-era claims.[81] Five months after the 1996 lawsuits against the Swiss banks, Holocaust survivors and heirs filed a class-action lawsuit against seven European insurers, charging that the companies failed to honor insurance policies purchased by Nazi victims before the war. Class-action suits were filed in U.S. federal courts in 1998 against German banks and businesses, contending that the companies profited from the "Aryanization" of Jewish property and failed to pay compensation for slave labor used during the Nazi era.[82]

Governments continued to express concern for Nazi victims, but they were equally, if not more, anxious about the effect of the lawsuits and sanctions on open markets and diplomatic relations.[83]

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[80]http://fcit.coedu.usf.edu/holocaust/resource/assets/holocaust.htm.

[81]*Jerusalem Post,* Oct. 12, 1997.

[82]For an overview of the litigation, see Michael J. Bazyler, "The Holocaust Restitution Movement in Contemporary Perspective," *Berkeley Journal of International Law* 20, no. 1, 2002, pp. 11–44.

[83]Eizenstat implicitly made this point in his July 22, 1998, testimony to the Senate Banking, Housing and Urban Affairs Committee (http://www.senate.gov/~banking/98_07

These were not theoretical concerns. Businesses that operated in the U.S. were vulnerable to state and local regulatory pressures. The New York State Banking Department, for instance, had a long reach, supervising more than 190 foreign banks that maintained agencies or branches in the state. Months before the 1998 settlement of the Swiss banks case, the department had recommended that federal authorities disapprove the planned merger of UBS and Swiss Bank Corporation. The banks' "seemingly inattentive regard for the depositors who fell victim to the Holocaust, or their heirs, who have never received funds to which they are entitled, raises regulatory questions about the character and fitness of these banks' privilege to maintain operations in the United States," said Elizabeth McCaul, the superintendent of banks.[84] In turn, Swiss officials suggested that they would take retaliatory "countermeasures" against American companies if sanctions were imposed on their banks.[85] (Nor were these concerns limited to business and diplomatic matters. As will be noted below, American museums warned that litigation on the ownership of Nazi-looted art threatened international cultural exchanges and undercut confidence in the world art market.)

The Nazi victims and their heirs, whose claims had been largely ignored during the cold war, now found those claims complicated by political debates on economic and foreign policy. The pursuit of compensation and restitution through litigation and regulatory measures could hurt bilateral relations. Eizenstat, for instance, repeatedly took American state and local finance officials to task for threatening to impose sanctions on European enterprises. "We also have a responsibility to safeguard the preeminence of the United States as the most open financial market in the world," Eizenstat told D'Amato's Senate committee. And, he admonished, "Mr. Chairman, I get paid to make judgments about how our ac-

hrg/072298/witness/eizenst.htm). Survivors and foreign relations seemed to be on an equal footing when he said: "The U.S. Government continues to have important interests in seeing this matter resolved both in order to obtain prompt justice for aging Holocaust survivors and in order to maintain positive relations with Switzerland."

[84]McCaul letter to Alan Greenspan, Mar. 19, 1998, provided to the author by the New York State Banking Department. The merger was subsequently completed, creating the world's second-largest bank.

[85]Reuters, Mar. 19, 1998.

tions affect foreign countries. I can assure you that far from helping Holocaust survivors achieve a just and fair settlement, sanctions will delay and retard the process—making it more difficult for us to get a measure of justice for Holocaust survivors."[86]

In addition to warning American officials, Eizenstat also appealed to Europeans to resolve Holocaust claims. "It appears to us in the United States that the consequences of the public debate can be destructive, bearing the seeds of future political conflicts, unless we, the international community, try together to find cooperative and constructive ways to address this subject," he said. "Unresolved Nazi-era insurance issues, for instance, risk acrimony affecting the foundation of our business relations."[87]

Confronting History

Restitution propelled important Holocaust scholarship, as at least 18 nations created national commissions to study their war-era history. There were extraordinary educational initiatives, such as the Task Force for International Cooperation on Holocaust Education, Remembrance and Research, the first intergovernmental effort to promote Holocaust education around the world. The third international conference on the Holocaust, held in Stockholm in January 2000, focused on education and remembrance.

The historical inquiries carried out in different countries did not have uniform mandates or composition—some included Jewish communal participation, others not. Nor did the inquiries necessarily presuppose that restitution would be the end result.

The Swiss commission, headed by Swiss historian Jean-François Bergier, spent five years studying all facets of Swiss wartime trade with Nazi Germany. The commission—made up of historians from Switzerland, Israel, the United States, and Poland—established that Switzerland had been an indispensable supplier of foreign exchange to Germany, had amassed at least $1.25 billion in German assets by the end of the war, and had engaged in postwar economic deals that violated agreements with the Allies.

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[86]http://www.senate.gov/banking/98_07hrg/072298/witness/eizenst.htm.

[87]Opening Statement, Washington Conference on Holocaust-Era Assets; Organizing Seminar, June 30, 1998, http:www.ushmmm.org/assets/eizen.htm.

"The question which arises is not whether Switzerland should or could have maintained its business contacts and foreign trade with the warring powers in the first place, but rather how far these activities went: In other words, where the line should be drawn between unavoidable concessions and intentional collaboration," the Bergier report said.[88] It found that, in general, Swiss companies played a "significant role" in preparing German industry for the war, that Swiss exporters found a profitable market in Germany, and that Swiss subsidiaries employed forced labor and, in some cases, prisoners from concentration camps.

Swiss business interests stood in a "triangular relationship" with the Swiss government and Germany before the end of 1937, when German rearmament and the expropriation of Jewish property intensified, the report said. "Swiss authorities had no doubts about the illegality of the measures taken in Germany. However, as a result of Germany's strengthened position, the Swiss business community sensed a growing pressure to conform to German behavior and with few exceptions accommodated itself," even though such accommodation violated Swiss legal principles. Specifically, this meant "the neglect of the interests of those banking and insurance clients who were persecuted by the Nazis," and even "pressure on Swiss newspapers not to antagonize German commercial partners or political bodies through critical commentary." While one rationalization for these policies was the hope that "a more prosperous Germany would be a more peaceful and friendlier Germany than an isolated one," the report found that "more important, however, were business and commercial interests, upon which both the business world and the authorities agreed."[89]

The Bergier report also confirmed earlier research on the "draconian measures" that Switzerland had used to limit the influx of refugees, saying that "in terms of humanitarian aid and asylum where its refugee policy was concerned, neutral Switzerland not only failed to live up to its own standards, but also violated fundamental humanitarian principles."[90]

However, none of these findings led to restitution measures. The

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[88]*Switzerland, National Socialism and the Second World War, Final Report, the Independent Commission of Experts, Switzerland* (Zurich, 2002), p. 497.

[89]Ibid., p. 504.

[90]Ibid., p. 499.

settlement of the lawsuits against the Swiss banks was reached in 1998, preceding the Bergier report by several years.

The Netherlands, in 1997, established committees to examine the postwar restoration of bank accounts, insurance policies, art, stocks, and securities that had belonged to Dutch Jews. The reports criticized the government's bureaucratic approach to postwar restitution. According to Prime Minister Wim Kok, the investigators found that the "restitution of legal rights in the impoverished postwar Netherlands was basically correct from a legal and formal point of view, but at the same time their reports identify and criticize a number of shortcomings: the length of the process, the cumbersome and inflexible procedures and, above all, the chilly reception and lack of understanding that awaited those returning from the camps"—adding, "a situation that was without any doubt not unique to the Netherlands."[91]

In 2001, the Dutch government, banks, insurers and the Bourse tacitly acknowledged that they had profited from the deaths and deportations of the Jews, and paid some 764 million guilders, primarily in the form of individual one-time payments to all Jews who were in the Netherlands during World War II (see below, pp. 369–70).[92]

France made funds available in conjunction with the findings of the government-sponsored commission led by Jean Mattéoli, a member of the World War II resistance (see AJYB 2001, pp. 334–36). That panel reported in April 2000 on the Nazi and Vichy measures that despoiled the 330,000 Jews in France between 1940 and 1944. The losses were significant: The Nazis or the Vichy government froze 86,000 Jewish-owned bank accounts and safe-deposit boxes, confiscated 50,000 Jewish companies or properties, and seized 100,000 Jewish-owned artworks and the contents of 38,000 Jewish apartments. The commission found that the French government often did this work more zealously than the Nazis. But

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[91]http://www.holocaustforum.gov.se/conference/official_documents/messages/kok.htm.

[92]The payments of 14,000 Dutch guilders ($6,000) were for Jews born before May 8, 1945, and who were in the Netherlands for any amount of time between May 10, 1940 (the invasion of Holland) and the end of the war, and who were still alive on May 8, 1945. The funds, which were expected to be paid to an estimated 35,000 victims and some heirs, were distributed by a new foundation known as Maror. That name has a dual meaning: it is an acronym for the Dutch words referring to responsibility for looting and the restoration of rights; in Hebrew, it refers to the bitter herb used during the ritual Passover Seder.

it also reported that some 90 percent of the assets had been restored after the war. "Two things struck us in particular. One was the scale of the despoilment, which was much greater than we originally thought," said historian Claire Andrieu. "The other was the scale of the restitution after the liberation. The Republic really did do its duty."[93]

The commission estimated that Jewish-owned assets worth some $205 million were still in French custody, and recommended that those funds be used for a Remembrance Foundation, and the government established this in December 2000. France also set up a special compensation program for orphans whose parents were victims of anti-Semitic persecution.[94]

Slave and Forced Labor

Compensation, however, was not generally driven by international conferences or historical commissions. More often it was propelled by specific events—primarily lawsuits, sanctions, and, in the case of Austria, by domestic political turmoil. The lawsuit against the Swiss banks, which reached a $1.25-billion settlement in August 1998,[95] was followed by a steady stream of other suits targeting European governments and enterprises. In 1998 and 1999, some 50 lawsuits were filed against more than 100 German and Austrian companies for the use of slave labor during World War II.

The Nazis and German industry exploited millions of slave and forced laborers to build war materiel, dig tunnels, harvest crops, and perform other life-threatening labor under subhuman condi-

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[93]*Los Angeles Times*, Apr. 18, 2000.

[94]"Agreement between the Government of France and the Government of the United States of America Concerning Payments for Certain Losses Suffered During World War II," French embassy press release, Washington, D.C., Jan. 18, 2001.

[95]The Swiss settlement set aside $800 million to cover claims for Swiss bank accounts. Other funds were for slave and forced laborers for Nazi-era companies that hid their assets in Swiss banks, and for refugees fleeing the Nazis who were ejected or turned away from Switzerland. Among those who originally were supposed to benefit were people whose assets had been looted. However, because of costs associated with claims for specific looted assets and the likelihood that the per-capita payments would be low, the court instead ruled that the funds assigned to this class should be used for the neediest elderly Nazi victims, primarily in the form of food packages, medical assistance, and emergency cash grants.

tions during World War II. Although non-Jews also were coerced into labor, the Jews worked under the imminent threat of death. The Nazis understood Jewish slave labor as *Vernichtung durch Arbeit* (destruction through work), part of their extermination plan.

The B.E.G. recognized slave labor as persecution, but provided no specific compensation. In the 1950s and 1960s, after a lawsuit brought in a German court by Auschwitz survivor Norbert Wollheim against the I.G. Farben firm, a handful of companies—out of the thousands that had exploited slave labor—reached agreements with the Claims Conference to provide compensation to the surviving workers of their particular enterprises. Agreements with the companies—Farben, Krupp, Siemens, AEG-Telefunken, and Rheinmetall—totaled some DM 52 million, and provided modest compensation to 14,878 survivors in 42 countries.[96] The agreements differed in their terms and levels of compensation. What they had in common was that all were "voluntary"—none of the companies accepted legal responsibility for their use of slave labor. As the German courts had issued no final ruling on corporate liability for slave labor, it was virtually impossible to extract compensation for laborers from enterprises that ignored the demand or refused to pay, from those that had been run by the Nazi government or the SS, or from private companies that had gone out of business after the war.

After prodding by the Claims Conference, Daimler-Benz in 1988 made a payment of DM 10 million, but the company refused to provide compensation to individual victims. Instead, the funds were distributed to organizations that provided support for "former forced workers in need." The same condition applied four years later, when Volkswagen provided the Claims Conference with DM 2.5 million for institutional programs that aided Holocaust survivors.[97]

In 1998, under threats of legal action in Germany and lawsuits in the U.S., both Volkswagen and Siemens announced that they

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[96]For a detailed discussion of slave labor and the early agreements on compensation, see Benjamin B. Ferencz, *Less Than Slaves: Jewish Forced Labor and the Quest for Compensation* (Cambridge, Mass., 1979). There also was an agreement in principle with Dynamit Nobel, but it was not honored until the company was sold, some 20 years later, to Deutsche Bank.

[97]Claims Conference, *Annual Report 1996*, pp. 36–37.

each would establish a DM 20 million "humanitarian" fund for Nazi-era slave laborers. Victims who labored for those companies during the Nazi era were to receive DM 10,000 each. Volkswagen had another incentive for paying compensation: It was an election year in Germany, and the Social Democratic Party candidate for chancellor, Gerhard Schröder, was then the minister-president of Lower Saxony, and that state owned 20 percent of the automaker.

Shortly after Schröder became chancellor, the federal government and German industry announced plans for the creation of a "Remembrance, Responsibility and the Future" fund, which would provide "humanitarian" compensation to former laborers. The fund was designed to address the "moral responsibility of German firms with regard to such issues as forced laborers, 'Aryanization,' and other injustices during the Nazi regime." After 16 months of negotiations, an agreement was reached in July 2000 for the German government and industry to pay a total of DM 10 billion for slave-labor compensation and assorted restitution programs, on condition that the U.S. ensure "legal peace"—an end to further lawsuits for Nazi-era claims.

One million surviving victims were expected to benefit from the fund, which was to provide DM 15,000 to each former "slave laborer," and DM 5,000 to each "forced laborer." Under the agreement's definitions, slave laborers were those who had been inmates of concentration camps or similar facilities; forced laborers were those who were forced to live and work under less harsh conditions. There were Jews and non-Jews in both categories.[98]

ALLOCATIONS

In the decades since the Shoah, there have been literally millions of individual and collective claims for compensation and restitution. The collective claims—primarily against Germany, German industry, and Austria—have yielded hundreds of millions of Deutsche marks that changed the Jewish landscape in Israel and postwar Europe.

The funds that went from Germany to Israel in the 1950s and

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[98]"Joint Statement on occasion of the final plenary meeting concluding international talks on the preparation of the Foundation, 'Remembrance, Responsibility and the Future,' " http://www.usembassy.de/policy/holocaust/jointstatement.htm.

1960s were not intended as direct benefits for Nazi victims, but to aid the new state in the absorption of refugees. The funds to aid Holocaust survivors, on the other hand, were those obtained by the Jewish Restitution Successor Organization and, later, by the Claims Conference. More than $353 million and another DM 515 million were obtained through numerous collective claims over the course of 50-plus years, and used to finance relief, rehabilitation, and resettlement, to reconstruct postwar Jewish communities in Europe, and for research, education, and documentation of the Shoah. Though impressive, the sums do not represent the totality of the Jewish material losses.

The collective sums were negotiated and obtained in three distinct periods: from 1947 through 1965; in the 1980s; and after 1995. They came either from government and industry, or from the recovery of heirless and unclaimed Jewish properties. In the 1950s and 1960s the funds were spent primarily in Europe, where they financed a wide variety of services, ranging from kindergartens to old-age homes.[99] At the end of the 20th century, the overwhelming majority of the funds were used in Israel and the former Soviet Union (FSU), almost entirely for social-welfare programs and capital projects to aid elderly victims of the Nazis.[100]

1947–1965

Between 1947 and 1972, the JRSO collected DM 222.3 million through the recovery of heirless and unclaimed Jewish properties in West Germany and bulk settlements of property and financial claims. The funds were not used for direct payments to individuals. Instead, most was allocated to the Jewish Agency for Israel and to the JDC to expand their relief and resettlement activities. In 1956, the JRSO established an allocations formula whereby the Jewish Agency received 56.95 percent; the JDC, 28.05 percent; the Council of Jews from Germany, 11 percent; and religious projects in Israel (synagogues, yeshivahs, and seminaries), 4 percent.[101]

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[99]Claims Conference, *Twenty Years Later: Activities of the Conference on Jewish Material Claims Against Germany, 1952–1972* (New York, 1973), pp. 14–15.

[100]Claims Conference, *Annual Report 1996*, p. 27.

[101]Kagan and Weisman, *Report on the Operations of the Jewish Restitution Successor Organization*, p. 37. In the years between 1947 and 1972, the organization spent 6.4 percent of its receipts on administrative expenses.

The Jewish Agency got more than DM 114 million, which it used to finance prefabricated homes (*ma'abarot*), agricultural machinery, and construction equipment, as well as immigration and absorption services in Israel. The funds to the JDC—DM 56 million—were used at the Foehrenwald DP camp and for institutional care of the elderly and handicapped, including the Malben institutions in Israel that provided special services to aged and disabled immigrants.[102]

The 1952 Luxembourg Agreements vastly increased the amount of money available—but from a very different source. While the JRSO distributed funds it had acquired from recovering properties that had belonged to murdered Jews and destroyed Jewish communities, the Luxembourg Agreements generated payments from the West German government.

The State of Israel received DM 3 billion from West Germany, delivered in the form of goods and services over the course of a dozen years. The funds established the basic industrial and economic foundations of the state. Thirty percent of the German payments went directly to Britain to buy crude oil for Israel. The rest were in capital and consumer goods, making German products—like the ubiquitous Mercedes taxis—common in the Israeli market. Some 1,400 initiatives in assorted branches of Israeli industry received equipment and machinery with funds generated by the Luxembourg Agreements. German funds built transport, power, and communications facilities, the Israeli merchant fleet, and the port at Ashdod. Israeli agriculture was mechanized and modernized with German equipment and services, including a water-diversion project that expanded the cultivation of the Negev. The improvements were so extensive that local agriculture was able to supply all domestic needs except for cereals.[103]

Under Protocol II, West Germany pledged to provide the Claims Conference, via Israel, with DM 450 million over a dozen years. Those funds were used for the relief and resettlement of Jewish victims, and to rebuild Jewish communities in Europe and Jewish cul-

[102]Foehrenwald, near Munich, was one of the largest Jewish DP centers in the American zone, and it was the last of 66 camps to close. Foehrenwald functioned until 1957 as a home for Jewish survivors, many of them severely ill, who were unable or unwilling to emigrate.

[103]Sagi, *German Reparations*, pp. 197–98.

tural life, according to "the urgency of the need" as determined by the Claims Conference.[104]

When the funds first became available, the Claims Conference was overrun with applications from Jewish communities and institutions across the continent, and the requests far exceeded the amounts on hand. There also were appeals from individual Nazi victims. "We received countless letters from individuals to the effect that 'There are so many survivors and so much money; when the money is divided up, my share is $1,400. Please send me a check,' " Saul Kagan recalled.[105]

The funds were directed to existing agencies, primarily the JDC, the preeminent provider of relief, transit, social, and medical services to Jews in Europe, which received about $7.5 million a year.[106] Those funds were directed to programs in the countries that had been occupied by the Nazis, even though thousands of victims had left Europe. The Claims Conference financed cash assistance, medical care, vocational training, housing grants, and educational and religious assistance.[107] "Not only had individual members of the European communities suffered, but the whole structure of their institutions and services had been destroyed," said Kagan. "The conference felt it should try to make the kind of contribution to their total reconstruction that would rebuild their basic framework as well as meeting immediate relief needs."[108] By 1965, France—with two-thirds of Western Europe's postwar Jewish population—was the largest single beneficiary of Claims Conference aid. But there was scarcely any community of any size in Western Europe that had been occupied by the Nazis that did not have at least one capital project financed by the Claims Conference. There were 480 capital projects in 29 countries—primarily in Western

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[104]For a detailed analysis of the Claims Conference's use of German funds until 1965, see Ronald W. Zweig, *German Reparations and the Jewish World: A History of the Claims Conference*, 2nd ed. (London, 2001).

[105]Saul Kagan, "The Claims Conference and the Communities," *Exchange* 22 (1965), p. 13.

[106]The JDC was both a key member of the Claims Conference and an applicant for large sums from it, and this caused friction at times.

[107]In addition to aiding Nazi victims, in the 1960s the Claims Conference initiated a program to provide modest assistance to needy "righteous" non-Jews who had saved Jewish lives at the risk of their own. From its inception through 2000, the program helped 784 people, with total payments amounting to $2.4 million. See its *Annual Report 2000*, p. 39.

[108]Kagan, "The Claims Conference and the Communities," p. 13.

Europe—including 150 schools, 107 community and youth centers, 65 religious institutions, 56 homes for the aged, and 12 medical institutions.[109]

"The transformation in Jewish life that took place in western and central Europe, in the course of the years 1954–64, is all but incredible," the Claims Conference said:

> In 1953, the Jewish communities on the European continent, the bearers of historical traditions centuries old, were on the verge of destitution in many instances. Sacked and plundered at Nazi hands, their communal leaders, rabbis, teachers and other officials mostly murdered or driven off to overseas lands, their surviving members impoverished, their possessions accumulated in the course of centuries looted, their communal institutions razed or reduced to ruin, the prospect that they would ever flourish again within our own lifetimes seemed all but visionary.[110]

Overall, nearly half the original funds held by the Claims Conference—some $48 million—was used for a then-secret welfare program with the vague name of "relief in transit." Under German law, Nazi victims were not eligible for compensation unless they were in the West. Likewise, the Claims Conference was barred from overtly using Protocol II funds for projects behind the Iron Curtain. In 1954, with an allocation of $1 million, it began financing "relief in transit," spiriting cash and material goods to Jews in Central and Eastern Europe. By 1964, some 200,000 people had been assisted in this way.

The cultural and educational programs attempted to train a cadre of communal leaders for European Jewry. "The shortages of trained personnel—rabbis, teachers, social workers, administrators—were as serious for the continuity of communal life as this shortage of funds, and attracting the younger generation to Jewish life was a vital facet in building for the future," Kagan said.[111] The cultural program was pluralistic, recognizing the right of groups to their particular cultural, spiritual, ideological, and religious beliefs.

Some 13,000 people each year attended Jewish primary, secondary, and supplementary schools, yeshivahs, seminaries, teachers colleges, and adult-education programs financed by the Claims

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[109]Claims Conference, *Twenty Years Later*, p. 15.

[110]Ibid., pp. 10–11.

[111]Kagan, "The Claims Conference and the Communities," pp. 18–19.

Conference. Special funds were established to aid refugee rabbis as well as displaced former leaders of Jewish communities. About 1,800 victims participated in fellowship programs for Jewish scholars, artists, and writers. Among them was Nathan Rappaport, whose *Wall of Remembrance,* a bronze sculpture commemorating the Warsaw Ghetto uprising, is prominently displayed at Yad Vashem. Another fellow was André Schwarz-Bart, whose novel, *The Last of the Just,* won the French literary prize Prix Goncourt in 1959. With aid from the Claims Conference in its first dozen years, victims of the Nazis produced more than 400 books written in a dozen languages, including general and religious literature, children's stories, Jewish social studies, and textbooks.

Funds were also set aside to salvage cultural treasures, primarily through the YIVO Institute for Jewish Research in New York, the Centre de Documentation Juive in Paris, and the Wiener Library in London. The Claims Conference, also committed to documenting what was then known as the "Jewish Catastrophe" (the word Holocaust was not yet in vogue), gave an important allocation to help found Yad Vashem in Jerusalem.[112]

In its early years, the Claims Conference allocated some $19.4 million, 20 percent of its funds, for cultural and educational programs in 30 countries. It expected to close after it had distributed the funds from Protocol II, and the bitter issue it faced in 1964 was how to use its last $15 million. The JDC wanted it used for relief, but Nahum Goldmann, the forceful and charismatic president of the Claims Conference, insisted that the funds be used for culture. "*Tzdoke* [charity] is a very dangerous thing with Jews; billions have been wasted on that. But what maintained a people is cultural life, and not hospitals," he said. "If I had all 100,000 intellectuals buried in Auschwitz, I would rebuild the Jewish people. But if you go on and spend it for relief, then everything will become meaningless."[113]

In the end, the Claims Conference decided that one-third of its remaining funds would be used for relief, and two-thirds (roughly $10 million) would go to create a "cultural trust"—the Memorial Foundation for Jewish Culture, which still exists today.

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[112]Yad Vashem was built by a partnership of the Claims Conference, the Jewish Agency, and the State of Israel.

[113]Quoted in Zweig, *German Reparations and the Jewish World,* p. 183.

Since 1980

Fifteen years after winding down Protocol II, the Claims Conference entered its second phase, administering payments to individual victims and making institutional grants. In 1980, the Claims Conference and West Germany reached agreement on the creation of the Hardship Fund (see above). It provided one-time payments of DM 5,000 each to Nazi victims who arrived in the West after 1965. The fund also set aside 5 percent of the total (some DM 63 million) for grants to institutions that provided shelter and social services to needy survivors. These funds, however, came with restrictions: West Germany did not permit allocations to institutions in the Soviet orbit. Between 1981 and 1993 (when the Hardship Fund programs were consolidated with another program), the Claims Conference made institutional grants under the fund to 166 programs in 16 countries, but primarily in Israel. There also were some limited funds made available through a 1988 agreement with Daimler Benz, which provided DM 10 million for grants to institutions that provided shelter or home care to survivors. And in 1991, Austria provided $23.5 million for projects to aid Austrian-born victims.

The largest pool of funds for institutions that aided survivors became available in 1995, and this marked the beginning of the third stage of allocations. These were the funds generated, after German reunification, from the Claims Conference's recovery and sale of unclaimed and heirless Jewish properties in the former East Germany. From 1995 through 2000, the Claims Conference, as the "successor organization," distributed more than $400 million from the funds generated by these sales. In 2000 alone, it allocated $81.86 million to projects in 26 countries.[114]

Unlike the funds from German sources, there were no restrictions on how these new funds could be used. Thus, for the first time in decades, money was available for aid to Central and Eastern Europe—particularly in the regions of the FSU that had been occupied by the Nazis. Nazi victims there had not benefited from the German compensation programs and were living in extreme poverty in states that lacked social safety nets for their most vul-

[114]Claims Conference, *Annual Report 2000*, p. 23.

nerable members. Once again, the Claims Conference worked with the JDC, this time as its conduit to the East, establishing regional *hesed* (welfare) centers for survivors. "We have a holy responsibility to use the money from people who did not survive for the benefit of those who did," Rabbi Israel Miller, president of the Claims Conference, said at the 1996 inauguration of the center in Kiev.[115] In the period between 1995 and 2000, the Claims Conference allocated $122 million to projects in the FSU.[116]

Twenty percent of the funds were designated for research, education, and documentation of the Shoah, the first time in some 30 years that substantial funds had been available for these purposes. In the first few years, the Claims Conference's primary use for these funds was capital construction and renovation projects for "established" institutions engaged in Holocaust education and documentation, and the primary beneficiary was Yad Vashem. Money has also been used to collect and preserve documents and archival materials, and to fund teacher-training and educational programs, including the "March of the Living," which takes Jewish teenagers from around the world to sites of Nazi atrocities, followed by a visit to Israel.

The research, education, and documentation funds have stirred some controversy. Many among the survivors argue that, while education is important, the funds belong to the victims, and all available moneys should be used to assist them. Other critics oppose the preferential treatment given to established institutions, such as Yad Vashem and the U.S. Holocaust Memorial Museum in Washington. The Claims Conference is partial to these institutions because of the wide impact and influence they command. The critics contend, however, that such institutions can easily attract money from alternate sources, while newer programs compete for very modest grants, or go begging. There also are ideological disputes about the breadth of Holocaust education—whether it should be limited to the 1933–45 period, or cover Jewish life before and after the Shoah as well, and if it should be targeted toward Jewish or non-Jewish publics.

Israel is the largest beneficiary of Claims Conference funds. Be-

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[115]*Jerusalem Post,* Nov. 7, 1996.

[116]Claims Conference, *Annual Report 2000,* p. 27.

tween 1995 and 2000, Israeli institutions and projects received $213.8 million.[117] This priority reflects both the fact that the largest number of survivors are there, and also the moral assumption that funds from the Claims Conference should help develop resources that will be of long-term benefit to the state. The money certainly has made a dramatic impact on the provision of geriatric care in Israel, contributing to the construction and renovation of more than 3,000 geriatric and nursing beds, sheltered living, and day-care centers for seniors. Even in this instance, however, there were clashes over whether it was more important to build facilities or to support home care. The latter is provided through the Foundation for the Benefit of Holocaust Survivors, financed by the Claims Conference, which supplements home-care services provided by Israeli agencies and also makes one-time grants to needy survivors to buy items not covered by Israel's national health program, such as dentures, hearing aids, and orthopedic shoes.

Some survivors living outside of Israel complain that they do not have the same services and benefits as the Israelis. However, programs such as the foundation are particularly well suited to Israel because of the small size of the country. Further, regions in the U.S. that are home to large numbers of survivors, such as metropolitan New York, often have publicly financed social-service and medical programs.

Allocations via the Claims Conference successor organization are expected to continue at least until 2010. In addition, new sources of funding for services to survivors were due to become available in 2002, more than 60 years after the war. These are from "humanitarian funds"[118] associated primarily with settlements of slave labor, insurance, and "Aryanization" claims against the German and Austrian governments, and the industries of the two countries. The funds, which could total more than $400 million, are to be distributed by the Claims Conference, which was chosen for this role because it is the traditional agency administering Holocaust-related compensation.

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[117]Ibid.

[118]"Humanitarian," which implies charity, is a misnomer, since the funds are a substitute for global payments to cover heirless assets.

RESTITUTION

Shimshon Klueger was the last Jew living in an Upper Silesian city in Poland. It wasn't much of a life. A former Belzer Hassid, Klueger was a tormented recluse who lived in a hovel. Townsfolk and visitors would leave food and money in a wooden bowl outside his door. Klueger died in June 2000, at the age of 72. He was buried by a minyan of foreign visitors he had never met—students from the Ramaz School in New York and the director of the Morasha Heritage seminars.

Klueger was the last Jew in Oswieçim, whose Jewish community had been founded in the 16th century and whose name became forever infamous for the death camp built astride the town—Auschwitz. The death camp is synonymous with the extermination of Jewish life in Europe. Klueger's burial itself was a powerful symbol. "I was helping perform a Jewish ritual that will never again be performed in this city," said Michael Berl of Jerusalem, the director of Morasha, which organizes Holocaust educational programs. "There will never be another Jewish burial in Oswieçim. It means that the door is closed on this town—finished. Another door in the history of Polish Jewry has been slammed shut."[119]

The end of Klueger's life coincided with the reopening of the last surviving synagogue in Oswieçim, Chevra Lomdei Mishnayot. Used as a carpet warehouse under the communist regime, the synagogue building was returned to the Jewish community of Bielsko-Biale early in 1998, the first edifice restored to the Jews under Poland's legislation on the restitution of communal property. The community transferred ownership of the building to the Auschwitz Jewish Center Foundation in New York, which renovated it as a religious and cultural facility. "Our goal is to recreate a permanent structure symbolizing Jewish life in a place that, for too many years, has only represented Jewish death," said Fred Schwartz, a New York philanthropist and businessman who led the foundation.[120] The site reopened in 2000.

In Central and Eastern Europe, property restitution was akin to the situation in reunified Germany—the recovery of Nazi-confiscated properties in the former East Germany occurred amid

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[119]*Jerusalem Post,* June 18, 2000.
[120]Ibid., June 16, 1998.

the reprivatization and modernization of the society and its institutions. However, unlike Germany, whose western *Länder* had a prior history of restitution and compensation for the damages of the Nazi era, the Eastern European states were novices in the technical and practical aspects of restitution. Morever, they were concerned with communist, not Nazi, expropriations, and thus, as was the case in the former East Germany, restitution of confiscated properties of the Nazi era was a marginal concern.

Like Chevra Lomdei Mishnayot, there are tens of thousands of other Jewish communal properties across Central and Eastern Europe—synagogues, cemeteries, yeshivahs, clubs, and *mikvaot* (ritual baths)—as well as an untold numbers of private houses, farms, and businesses that were confiscated and plundered during the period of Nazi rule, and then nationalized by the communist regimes that followed. These sites were both tragic monuments to the millennium of Jewish life, culture, and tradition that had found its home in Europe, as well as the potential building-blocks to begin to resurrect that life decades after the Holocaust. With the collapse of communism came the possibility to reclaim them.[121]

At the end of the 20th century and more than a decade after the fall of the Berlin Wall, there were some opportunities to recover properties in Central and Eastern Europe, especially as archival materials increasingly become available to document specific losses. But the prospects that at first seemed broad have proven disappointing. Property-restitution laws, where they exist, are limited, and, in most cases, filing deadlines for property claims have passed.

At stake in Central and Eastern Europe were three different types of Jewish properties that had been "stolen" twice—confiscated by the Nazis, then expropriated by the communists. There were public or communal properties, including cemeteries, synagogues, and schools; private properties with recognized heirs; and heirless or "abandoned" private properties. Restitution of these properties entailed different economic, political, and social costs, making some more or less "attractive" for governments to retain.[122]

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[121]On attempts, mostly unsuccessful, to recover properties of deported Jews in Western Europe, see Nehemiah Robinson, *Spoliation and Remedial Action* (New York, 1962). In 1946, Greece became the first European country to pass property-restitution measures: the state waived its right to inherit heirless properties, and they were turned over to the Greek Jewish community.

[122]The prospect of recovering "heirless private property" in Central and Eastern Europe

From the outset, a variety of factors unique to each state complicated the recovery of Jewish property, which was never more than a marginal aspect of a broader reprivatization plan to transform the Central and Eastern European economies. Within the Jewish community, complications arose from the acrimony between the survivor communities and the new centers of Jewish life in Israel and the U.S. They battled over who was the legitimate heir of the communities that were destroyed in the Holocaust, who should negotiate with the governments for restitution, how much and which property to pursue, and how to use the proceeds. Collectively, these factors militated against the restitution of both public and private Jewish properties. (Virtually no Jewish organizations or international advocacy groups paid sustained attention to individual rights to private property; the claimants were left to their own devices and compelled to rely on private lawyers to pursue claims.)

For more than five years, beginning in 1995, the United States was the most powerful and steadfast proponent of property restitution in Central and Eastern Europe. The effort was led by Stuart Eizenstat, who supplemented the moral argument with appeals to these nations' aspirations to join the economic and military alliances of the West. Eizenstat suggested that progress in restitution would be a consideration for states in the East seeking to join NATO and the European Union (EU). Property rights were a measure of these nations' commitment to values of the West. He said:

> The basic principle that wrongfully expropriated property should be restituted (or compensation paid) applies to them all, and their implementation of this principle is a measure of the extent to which they have successfully adopted democratic institutions, the rule of law with respect to property rights, and market-economy practices. As these governments seek to join Western economic and political organizations, and to integrate their economies more closely with ours, we do expect them to adopt the highest international standards in their treatment of property.[123]

For its part, the EU has said it would welcome property restitution measures but would not impose them. With specific regard to

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remains only theoretical. In the absence of the formation of a special Jewish successor organization, no one is legally entitled to claim it.

[123]Testimony before the Commission on Security and Cooperation in Europe, Washington, Mar. 25, 1999, http://www.restitution.org/us/eizenstat.399.htm.

Poland, "the European Commission is fully aware that this issue is both from the legal and the fiscal point of view a very sensitive one and mainly one of Poland's internal policy," said an EU official. "Within the European Union, the division of competencies (or powers) is such that the creation of schemes for restitution of property falls within the competence of member state countries rather than at the level of the European Union itself."[124]

In raising the moral argument for restitution, Eizenstat stressed the importance of returning property because religious groups, which had been barred from practicing their religion by decades of repression, were trying to reestablish their roots. These were the "double victims" of both fascism and communism. They needed the properties to generate income and develop institutions in order to flourish. "They need to have places to pray, places where the kids can be educated, communal facilities to use," Eizenstat said.[125]

Local Resistance

But Central and Eastern European governments, even those that were sympathetic to Jewish claims, had practical and ideological incentives to limit their measures to the reprivatization of communist-era properties.[126] For one thing, the communist-era claims were easier to manage. There was no doubt about the previous government's responsibility for expropriation, and no overlapping or conflicting claims rooted in different historical events. Further, national borders were stable behind the Iron Curtain. That was not the case in the Nazi era. Eastern Galicia, for example, was in Poland before the war and in Ukraine afterward; which postwar government should be liable for property claims there? Ideologically, too, governments have preferred to confine themselves to dealing with communist confiscations. In regard to Nazi confiscations, the people of these countries often see themselves as victims, and therefore reject responsibility for Nazi actions, including the plunder of property.

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[124]Correspondence dated Mar. 14, 2001, on file with the author.

[125]Briefing on Washington Conference on Holocaust-Era Assets, Nov. 24, 1998, http://fcit.coedu.usf.edu/holocaust/resource/assets/holocaus.htm.

[126]For an overview, see Marilyn Henry, *The Restitution of Jewish Property in Central and Eastern Europe,* American Jewish Committee International Perspectives no. 40 (New York, 1997).

The postcommunist governments' willingness to deal with the restitution of Jewish assets depended on several historical factors: the degree of local support for and collaboration with the Nazis, the size of the prewar Jewish population and its legal and social position, the extent of its wealth, and to whom it was lost. There were also other factors affecting restitution that had to do with the new post-1990 reality: the pace of national economic and legal reforms, the financial stability of the state, the relationship of the current Jewish communities to the postcommunist governments and their place in the postwar society, and the economic hardship and social turmoil that religious communities' claims would stir.

Jewish property restitution is unpopular in societies with a tradition of violent anti-Semitism, since the governments fear that restitution measures would revive these sentiments. Restitution is also a delicate issue in regions where national borders had shifted, and large segments of the population had been transferred, or experienced considerable losses from the war and Nazi occupation. Emerging Eastern European democracies feared that these populations, bearing the scars and memories of trauma, would resent being asked to make good on Jewish property claims when they had not been compensated for their own losses.

In Poland alone, where some 3 million Jews were murdered by the Nazis, there were an estimated 5,000 communal properties and an unknown number of private properties that had once belonged to Jews. The costs of compensation for the properties and the potential social upheaval involved in displacing the occupants of once-Jewish sites militated against a law governing the return of private property. After more than a dozen attempts to pass a reprivatization restitution law since 1989, Poland, at the end of the 20th century, had the dubious distinction of being the only postcommunist country in Europe without one.

In March 2001, President Aleksander Kwasniewski vetoed legislation that would have compensated individuals for property seized during the Nazi and communist eras. "First of all, [the legislation] strikes against Poles' basic interest, which is creation of the best possible conditions for economic growth," said Kwasniewski, a former communist. His veto was in line with the public mood. With the unemployment rate above 15 percent in the spring of 2001, some 60 percent of the population thought restitution would harm the economy, according to a published poll. Further-

more, less than half the population—48 percent—thought that restitution of confiscated property was "morally correct," even though many Poles themselves would benefit from it.[127] In addition, the proposed legislation was considered flawed because it would have limited its provisions to Polish citizens.

The restitution laws, where they exist in Central and Eastern Europe, cover different types of property, are controlled by different levels of government, and impose different conditions on claimants. In many cases, national restitution laws are confounded by the fact that much of the property is controlled by provincial or municipal authorities that balk at the measures. In these decentralized post-Soviet days, national governments, even when they have the official authority, often lack the will to impose restitution measures on their reluctant provinces. In addition, many of the laws are limited to properties remaining in public hands, long after many valuable properties have passed into the market economies.[128]

Restitution measures are often further limited in terms of who can recover properties and which properties are eligible for return. The broad definition of Jewish communal property includes anything that was owned by the community, the *kehillah*. However, some countries divide this category into "religious" and "secular" property, and their restitution measures provide only for the return of "religious" property. This narrow interpretation includes such obvious properties as synagogues and cemeteries, but excludes hospitals, social facilities, and old-age homes. Similarly, some national laws name the officially recognized "religious" community as the sole eligible claimant, barring Jewish social or fraternal associations from recovering their assets.

The "local" nature of the laws, however rational in appearance, create enormous problems for individual Jewish claimants. These often include citizenship requirements, which in effect discriminate against the majority of Jews trying to recover property, who live abroad. Such requirements also do not take into account that the original loss of citizenship that resulted in leaving the country was

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[127] *Jerusalem Post,* Mar. 23, 2001.

[128] In the overwhelming majority of instances, restitution concerns the recovery of existing property. Usually left out of the equation is compensation in lieu of restitution in in-

unlikely to have been voluntary, and thus the restriction further penalizes people for having been persecuted.[129]

Intra-Jewish Coordination

There is a corollary to the citizenship requirement when it comes to communal property. The laws assign to the local Jewish communities the right to recover property. This excludes Jewish organizations and *landsmanschaften* (organizations of Jews who came from the same European communities) abroad. Fifty years after the Holocaust, the Jewish world had changed dramatically. There are fewer than 2 million Jews in Europe—less than the number who lived in Poland before the war. After the murder of 6 million, the heart of the Jewish world is no longer in Europe; it beats elsewhere. With its birth in 1948, the State of Israel claimed to be that heart, while millions of Jews live in the United States.

American and Israeli organizations joined forces in 1992 to form the World Jewish Restitution Organization (WJRO) to pursue Jewish property claims in Central and Eastern Europe.[130] They contended that the European Jewish communities were too feeble or timid to successfully negotiate with their governments, did not have the capacity to absorb the properties, and were too small to be the legitimate heirs of the millions of Jews who died. This had a subtext, as well: property had became a proxy measure for attitudes about the viability of Jewish life in Eastern Europe, and for whether "world Jewry" could come to terms with the Jews of Eastern and Central Europe. Many simply viewed Europe as a grave-

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stances in which the site no longer exists, because of war-era destruction or postwar abuse and neglect, or removal for postwar land development.

[129]It is widely believed that these citizenship requirements are tinged with anti-Semitism. However, it seems equally likely that rather than intentionally discriminating against the Jews, the criteria are designed to give preferential treatment to local populations over "outsiders," because the locals, who are domestic voters, should be rewarded for having endured communist deprivations. In the case of Poland, there also is anecdotal evidence that a citizenship requirement was meant to exclude any benefits for "Polonia," the Polish diaspora, which includes a large contingent of Polish army veterans who refused to return to Soviet-occupied Poland after World War II.

[130]The founding members of the WJRO were the Claims Conference, the World Jewish Congress, the Jewish Agency, the JDC, B'nai B'rith, Agudath Israel, the World Zionist Organization, the American Gathering/Federation of Jewish Holocaust Survivors, and the Center of Organizations of Holocaust Survivors in Israel.

yard and denied the authenticity and the rights of the surviving Jewish communities. Jewish leaders in Central and Eastern Europe vehemently disagreed.

That the Jewish communities in these countries were weak was certainly true, but after a decade in postcommunist societies, none had disappeared. Instead, to varying degrees, they were beginning to mature. "The Holocaust and decades of communist oppression—often with its own special form of anti-Semitism—led many to conclude that immigration to the West or aliyah to Israel were the only real choices for those few Jews remaining," said Rabbi Andrew Baker, director of international Jewish affairs for the American Jewish Committee. "In the past decade Jewish communal life has again taken root. Synagogues have been rebuilt and Jewish schools have opened. Special links have been established with the State of Israel. Rabbis and teachers as well as material assistance have come from abroad, while at the same time a new generation of local leaders has also emerged."[131]

The WJRO tried to assert its role by noting that the surviving property owners and their descendants were not in Europe. "There are more than 1.5 million Jews of Polish origin or descent, Holocaust survivors and their heirs, living elsewhere in the world," the WJRO's Naphtali Lavie told the Polish prime minister in 1997. "They are the people to whom compensation should be made."[132]

A way to include the Jewish organizations abroad was for the local Jewish communities to form foundations or partnerships with them, through which they would jointly file claims, and recover and administer properties. In theory, this provided the Jews abroad

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[131]American Jewish Committee, *Anti-Semitism, Holocaust Memory, Property Restitution, and Related Issues Confronting the Jewish Communities of Central and Eastern Europe: A Status Report* (Washington, D.C., 2002), p. 1.

[132]*Jerusalem Post*, Mar. 5, 1997. Only months later, however, at a particularly tense moment, he seemed to shift position and advocate for the local community. Frustrated with the pace of restitution, Lavie threatened that the WJRO might work against the admission of Poland, Romania, and the Czech Republic into NATO "until these countries return all the property to their local Jewish communities," according to the June 5, 1997, edition of the Polish daily newspaper *Rzeczpospolita*. "It is difficult to imagine that countries that do not respect private property, the rights of ethnic and religious minorities, could be integrated into European structures and western civilization." He later retreated, but not before he had irritated the American government and exacerbated tensions with the Jewish communities in Warsaw, Bucharest, and Prague, over what they saw as interference in their nations' foreign relations.

with a significant voice in the process. In exchange, such an arrangement could provide the local Jewish community with legal and financial assistance, and technical expertise.[133] This system seemed to work in Romania and Hungary, where the WJRO and the local Jewish communities created foundations to oversee restitution of communal property. The Hungarian initiative was especially noteworthy because it established a fund that provided stipends to victims of the Nazis. However, these foundations were not without flaws, one of which was that they sometimes underestimated the value of the properties.

The attempt to create a foundation could also become the focus for acrimonious intra-Jewish disputes, as happened in Poland. For about two years, relations between the WJRO and the local Union of Jewish Religious Communities in Poland deteriorated over this issue, and Henry Clarke, a State Department official with the rank of ambassador, had to be called in to mediate, without much success.[134] This was a battle with practical consequences: As the two Jewish groups clashed, the deadline for filing claims was nearing. An agreement on a joint approach was not achieved until there was only one year remaining in the original five-year claims period. Although the local community filed property claims without the WJRO's assistance in the early stages of the claims period, it seemed likely that an untold number of properties would be left unclaimed at the deadline because the two sides had been distracted arguing over who would control property that had not yet been claimed. Another potential long-term consequence was that such battles would leave the local communities vulnerable by exposing the lack of international Jewish commitment—real or presumed—to their stability and success.

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[133]At the 1998 conference on Holocaust-era assets, Eizenstat encouraged the establishment of "foundations jointly managed by local communities and international groups to aid in the preparation of claims and to administer restituted property, where these are needed to assist the local communities. Such foundations enable international groups to share the burdens, and potentially some of the benefits, of the restituted property."

[134]Antagonism between local and international Jewry was not confined to Central and Eastern Europe. At a meeting of the World Jewish Congress in November 1996, Henri Hajdenberg, the president of CRIF, the umbrella group of French Jewish secular organizations, warned that he would oppose "Jews from America or from Israel coming in and speaking to our government," insisting that outsiders did not understand the local situation.

Practical Problems

No one knows for sure the scope of European Jewry's assets before the Holocaust, and how much Jewish property was stolen, spoiled, destroyed, and lost during the Nazi rampage. The long-used figure was one derived before the end of World War II by Nehemiah Robinson. Using a sophisticated matrix and prewar exchange rates, he estimated Jewish wealth at $8 billion.[135] A half-century later, economist Helen B. Junz studied Jewish prewar assets in Austria, France, Germany, Hungary, the Netherlands, and Poland, countries that together had an estimated Jewish population of 5 million—more than three-quarters of European Jewry outside the Soviet Union—before the Holocaust. Junz estimated that the Jewish communities in these six countries had prewar assets valued (in 1938 dollars) at some $12 billion.[136]

The lack of clarity has created a profound hardship for individual claimants, who have faced an onerous process of identifying and documenting plundered Jewish property. Other factors compound the difficulties: the passage of more than 50 years, inadequate records, and the near certainty of multiple property transfers, guaranteeing that there will be competing and overlapping claims of ownership. Furthermore, the recovery of Nazi-era Jewish property depends on the existence of clear laws, fair regulatory agencies, functioning judicial systems, and the authorities' will to enforce legal decisions.

The early days of postcommunist restitution and reprivatization proceeded amid the chaos of other economic and legal reforms, often resulting in confusion about the applicability or interpretation of laws—where they existed. The courts were often overbur-

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[135]Robinson, *Indemnification and Reparations, Jewish Aspects*, p. 83.

[136]Helen B. Junz, *Report on the Pre-War Wealth Position of the Jewish Population in Nazi-Occupied Countries, Germany and Austria, Annex to Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks, Independent Committee of Eminent Persons* (Bern, 1999). The Independent Committee of Eminent Persons, also known as the Volcker Committee, was established in 1996 to conduct a forensic audit of Holocaust-era accounts in Swiss banks. The committee engaged Junz to conduct a baseline study of prewar European Jewish wealth in order to estimate the potential amounts available for "transfer to, or already lodged in, a safe haven destination." It is noteworthy that until the Volcker Committee, there had been no concerted postwar effort to identify the scope of Jewish assets and losses in Europe, outside of Germany and Austria (which had been undertaken after the war by the JRSO and the Claims Conference).

dened, and inexperienced in the fledgling Westernization of their institutions. There were occasions when the courts operated with dueling systems of law—the entrenched Soviet-era versions and the underdeveloped Western ones. And if the courts were unreliable, their judgments were not necessarily enforceable. In Bulgaria, for instance, nearly a decade after Sofia's Jewish community first won a 1992 court ruling to recover its stake in a hotel—prime real estate in the heart of the capital—the government has consistently failed to enforce the ruling. The legal battle over the hotel, which stands on the site of a former Jewish school that was destroyed in World War II by American bombs, was paradoxical, in light of Bulgaria's pride in being the first Eastern European state to have enacted a postcommunist restitution law. To compound the conundrum, the site was partly privatized after the court ruling, compelling the Jewish community to battle on two fronts: against the government and against the new "owners."[137]

Costs associated with property restitution posed a significant problem, and there is anecdotal evidence that Jewish claims were abandoned because the expense of recovering the property was simply too high. Many restitution laws place severe financial burdens on the successful claimant, including liability for back taxes and liens. In other instances, the property may be unencumbered by debt, but the community or individual cannot afford the rehabilitation, maintenance, and preservation costs. This often is the case where small communities find themselves guardians of properties that require care, but that do not generate the income to sustain themselves.

Another significant cost is compensation to the current occupant for improvements he or she made to the facility, or simply to ease what would otherwise be an eviction. Central and Eastern European governments—as well as the U.S.—have expressed great concern for the rights of current occupants. Two generations after the war, it is common that property would have been transferred several times. It had been "Aryanized" by the Nazis through confiscation or sales that are presumed to have been under duress. The property was later nationalized by the communists, and may have changed hands since the fall of the Berlin Wall. Jewish claims, while morally defensible, are thus extremely awkward, since they

[137] *Jerusalem Post,* July 30, 2000.

are against current occupants who may be innocent of any theft. Often, restoring Jewish property is viewed as correcting one injustice with another.

While costs have discouraged many individuals from pursuing their properties, they pose a special dilemma for cash-strapped Jewish communities. The properties that the governments are most eager to return and for which Jews abroad clamor, are the most religiously significant—and the most expensive to protect and preserve—cemeteries.

There are between 5,000 and 10,000 Jewish cemeteries and mass-burial sites in Europe, and this number refers only to those that have been identified or presumed to exist, according to Samuel Gruber, director of the Jewish Heritage Research Center and president of the International Survey of Jewish Monuments. But cemeteries are not the local communities' immediate priority. They are a distracting burden without any tangible benefit. "Our priorities are with the Holocaust survivors, the living generation," said Tomas Kraus, head of the Czech Jewish community, echoing a sentiment heard across Central and Eastern Europe. "Take care of them, and then we can talk about heritage."[138]

Some claims, however, are driven by emotion and nostalgia. There have been instances in which tiny communities, motivated in part by a desire to regain symbols of their past, have sought to recover prominent sites they cannot afford to rehabilitate and do not have the members to fill. In Poland, the local Jewish community claimed Yeshivat Chachmei Lublin. "The yeshivah is a monument to the Jewish past and we want to preserve it," said Helena Datner, an official of the community. But she added: "What do people want to do with Yeshivat Chachmei Lublin?"[139]

It often appears that the properties that are most accessible to the Jewish communities of Central and Eastern Europe are precisely the ones that drain resources. In theory, one way of preserving Jewish sites and generating funds is to recover properties that would be useful for "Jewish tourism." There has been a flowering of interest in European "Judaica" in the decade since the collapse of communism. The "European Day of Jewish Culture," a

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[138]Ibid.

[139]Ibid., May 11, 2000.

continental "open house" of cultural events in dozens of Jewish communities, draws tens of thousands of people, and quickly was established as an annual event. This is what author Ruth Ellen Gruber has called the "Judaizing terrain," in which monuments, museums, concerts, and cafés conjure up a rich Jewish tradition and a "virtual Jewish world" in places with few Jews.

However, this prospect raises an additional and entirely new set of concerns, including whether communities are interested in properties that they may not use themselves, whether gaining title to the sites that are suitable for tourism requires assistance from outsiders, whether such aid is likely, and whether the local community and the government will support such intervention. More important, would such efforts fairly and authentically reflect Jewish life and culture?[140]

CULTURAL PROPERTY

On January 30, 2002, the president of Israel, Moshe Katzav, was at Ben-Gurion International Airport to greet the arrival of Torah scrolls, as the scrolls, along with hundreds of Jewish holy books, arrived in Israel on a special El Al flight from Vilnius, Lithuania.[141] After six decades, the sacred items were reunited with the People of the Book. This Judaica had been confiscated by the Nazis, then kept under wraps in Soviet-ruled Lithuania. It was only in October 2000, on the eve of an international conference on Nazi-looted cultural property, that independent Lithuania's parliament voted to release the scrolls to Jewish groups and synagogues outside the country. Lithuanian officials did not know what a Torah scroll was and had no conception of the different Jewish holy books, let alone their sacred significance to the Jewish people. Yet many Lithuanians had believed that these items were part of their national patrimony, and they did not want to part with them.

The scrolls are highly symbolic in the long struggle to recover Nazi-looted cultural property. For years, their survival had been

[140]Ruth Ellen Gruber has explored these and other issues regarding postwar European Jewish culture in *Upon the Doorposts of Thy House: Jewish Life in East-Central Europe, Yesterday and Today* (New York, 1994), and *Virtually Jewish: Reinventing Jewish Culture in Europe* (Berkeley, 2002).

[141]*Ha'aretz,* Jan. 31, 2002.

unknown to the Jewish community. When their existence was publicly revealed, they were difficult to extricate from Lithuanian control, and, finally, Jews bickered over who was entitled to them. Their fate mirrors that of an untold number of other Jewish cultural properties that were despoiled and damaged in the Nazi and communist eras—artworks subsequently held by governments, museums or private collectors, and Jewish books and ceremonial objects that wound up in the permanent custodial care of non-Jewish institutions.

Hitler looted Europe of its treasures. But, because of the Nazis' different motives for the cultural plunder, the treasures faced different fates. European art appealed to Hitler's greed; it was coveted either for its aesthetic significance or its market value—art could be sold to finance the German war machine. Judaica was anathema; it was to be destroyed, with only a remnant to be saved as a relic of a despised race. Entire art collections, archives, and libraries were despoiled.

In Central and Eastern Europe, it is not clear how many items survived the Nazi era because it is not known what was captured afterwards by Soviet troops and carted off as booty. Among the Jewish cultural materials that have been recovered, the most remarkable are in Prague. After the war, there were 15,000 Jews in the city out of a prewar population of more than 300,000. Unable to care for its Jewish Museum, the surviving community ceded the museum to the communist government in 1949. In 1994, the government returned the museum to the Jewish community.[142]

The recovery of cultural properties is subject to legal, moral, economic, and political problems that are far more entangled than those hampering the recovery of real estate and other types of Nazi-looted assets. For one thing, artworks and artifacts travel. Through public exhibitions and the private art market, they cross borders in which different and often conflicting legal codes govern ownership and concepts of theft. Also, the objects themselves are far more intimate than other kinds of assets. Cultural property, in a sense, embodies a personal history that reflects its creator and owner. To the individual, the objects often represent the last link

[142]Ruth E. Gruber, "Head of Prague Jewish Museum yearns for an 'active' institution,' " Jewish Telegraphic Agency Daily News Bulletin, Dec. 17, 1995.

to families that were annihilated by the Nazis. To a community, they represent a proud legacy created and nurtured by its members over generations. Jewish cultural, religious, and intellectual traditions—and the objects that embody them—collectively represent the soul of the Jewish people. The theft of cultural objects is not simply a robbery, but the theft of identity, and the effort to recover them is a crusade to restore memory and salvage a heritage.

That salvage work began shortly after the beginning of World War II, with the relocation of the YIVO Institute for Jewish Research, established in Vilna (Vilnius, then in Poland) in 1925, to New York in 1940. Then, prominent scholars in the U.S., led by Professor Salo Baron of Columbia University—supplied with information gleaned from refugees and other sources—began the task of trying to inventory the Judaica and other cultural properties that had to be salvaged from Europe. They founded Jewish Cultural Reconstruction (JCR) in 1947 as a "cultural agent" of the JRSO, which recognized the JCR as trustee for heirless cultural properties.[143]

There were vast quantities of them. The U.S. military in Germany and Austria found extraordinary hoards of Nazi loot in deserted SS headquarters and government agencies, salt mines, concentration camps, castles, and corporate offices, and on intercepted trains. In September 1948, the U.S. military occupation authorities estimated that U.S. forces had found some 1,500 repositories of art and cultural objects—containing some 10.7 million objects worth an estimated $5 billion—in Germany alone.[144]

The plundered property was assembled at collection points in Germany. At one time, the JCR depot at Offenbach had a half-million books, 8,000 ceremonial objects, and 1,024 Torah scrolls. "Our first goal was to restore them to the rightful owners, but usually you couldn't tell," recalled Benjamin Ferencz.[145] JCR, representing constituencies in the U.S. and Mandatory Palestine, developed a distribution formula—resented in Europe at the

[143]The founders were essentially the same as those who founded the JRSO, with one significant addition: The Hebrew University was among the JCR founders. The president of the JCR was Professor Baron; Hannah Arendt served as executive secretary.

[144]*Plunder and Restitution,* p. 97. This source provides an overview of the collection points and the activities of Jewish Cultural Reconstruction.

[145]Transcript of Ferencz interview, Oct. 21, 1994, U.S. Holocaust Memorial Museum Oral History Library.

time—that would aid in the reconstruction of Jewish life, which, at that moment, was seen as being possible only outside the continent. The surviving European communities would receive objects limited to "the prospective religious and cultural needs of the community and its capacity to retain, to care for, and to use them for the religious and cultural purposes for which they were intended." Of the rest, 40 percent of the books were sent to Israel and another 40 percent to American Jewish institutions. The remainder was divided among Jewish communities outside Europe.[146] (Rare books were treated differently, and their distribution was not confined to Jewish institutions. In recognition of the American government's aid to JCR, the Judaic departments of non-Jewish institutions were also recipients, including the Library of Congress, the New York Public Library, and Harvard, Yale, and Columbia universities.) The distribution was completed in 1952. In addition to the books, scrolls, and Judaica, "a total of 700 works of Jewish art, which had been seized by the Gestapo, were sent to enrich the new museums of Israel," Ferencz said. "The temples had been destroyed, but these symbols of a great tradition would be seeds of the regeneration of Jewish life."[147]

Who Owns It?

In general, JCR was widely credited for a thoughtful and practical policy that was of enormous benefit to the postwar centers of Jewish life. Five decades later, however, a more-confident European Jewry began to assert its rights. The venue was Vilnius, which, in October 2000, hosted the last of four annual international conferences focusing on Nazi-era looted assets (the first three had been held in London, Washington, and Stockholm). The Vilnius conference was devoted to the question of cultural property. "Our Jewish community of Europe is not negotiable," said Rabbi Aba Dunner, secretary general of the Conference of European Rabbis. "We want our history here. We want those Jewish communities to build themselves up with their own history, with their pride."[148]

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[146]Michael J. Kurtz, "Resolving a Dilemma: The Inheritance of Jewish Property," *Cardozo Law Review* 20, no. 2, Dec. 1998, p. 643.

[147]Ferencz, "Restitution to Nazi Victims," p. 303.

[148]http://www.vilniusforum.lt/proceedings/d/rabbi_aba_dunner_en.htm.

It was a sentiment expressed the year before in the Council of Europe, where Emanuelis Zingeris, a member of the Lithuanian delegation to the Parliamentary Assembly, had been the rapporteur for Assembly Resolution 1205 on "Looted Jewish Cultural Property."[149] It said that the restitution of cultural property "to its original owners or their heirs (individuals, institutions or communities) or countries is a significant way of enabling the reconstitution of the place of Jewish culture in Europe itself."[150]

This raised the tricky issue that emerged at the conference in Vilnius. Much of the heirless and unclaimed Jewish cultural property had been distributed by JCR, a Jewish organization, to Jewish institutions around the world. In the interim, however, "communities and museums, which had been written off as never again to exist, have taken on new lives," said Tom Freudenheim, the director of the Gilbert Collection in London and the former director of YIVO. At the end of the century, there were Jewish museums in Berlin, Frankfurt, Vienna, Vilnius, and other cities the Nazis had looted, but their art and artifacts had been dispersed. "Material formerly belonging to Jewish institutions in those cities now sits in New York, Los Angeles, Jerusalem, and elsewhere," Freudenheim said. And he asked:

> Is today's Jewish museum in Frankfurt somehow less deserving of works that are documented to have belonged to the prewar Jewish museum of Frankfurt? Does the Israel Museum have higher legal or moral rights to works documented to have belonged to the Jewish community museum in Berlin, when today there are two Jewish museums in Berlin? Indeed, did the Israel Museum have the legal right to sell on the open market works it had been given after the war "on behalf of the Jewish people" as part of the conventional deaccession process that most museums engage in?[151]

The Israeli delegation, led by Colette Avital, chair of the Knesset committee on war-era assets in Israel, made a moral claim to heirless property. Holocaust-era art, books, paintings, sculpture, and Judaica should be returned to their rightful owners or heirs, said Avital. But if these properties were heirless, "it should be es-

[149]Zingeris also was a primary organizer of the Vilnius Forum.

[150]Council of Europe, Parliamentary Assembly, Resolution 1205, adopted by the Standing Committee, acting on behalf of the Assembly, Nov. 4, 1999.

[151]http://www.vilniusforum.lt/proceedings/d/tom_freudenheim_en.htm.

tablished that the Jewish people and its representatives will become the natural heirs, both in their right to claim, and in their right to ultimately own that property."[152]

The Vilnius conference was not a forum for decision-making. Nonetheless, it concluded with a declaration, adopted by officials from 37 countries, asking all governments "to undertake every reasonable effort to achieve the restitution of cultural assets looted during the Holocaust era." It did not take a position on the contentious issue of who had the right to heirless Jewish cultural property, noting simply the "urgent need to work on ways to achieve a just and fair solution to the issue of Nazi-looted art and cultural property where owners, or heirs of former Jewish owners, individuals or legal persons, cannot be identified."[153]

In truth, the phrase "Jewish cultural property" is ambiguous. While Torah scrolls, Hebraica, and Judaica are obvious, Jewish "art" is less clear. The definition in the 1999 Parliamentary Assembly resolution is broad. It states that an "essential part of the Nazi plan to eradicate the Jews was the destruction of the Jewish cultural heritage," defined as "movable and immovable property, created, collected or owned by Jews in Europe." There is a difference, however, between "Jewish" and Jewish-owned" art, and a question of how restituted heirless Jewish-owned art should be used. Some say it should be auctioned, and the proceeds used to aid survivors. Others believe it should be exhibited and its history recounted, to serve as a tool in Holocaust education. But some Jewish museums are not interested in displaying the recovered art if the artists were not Jewish, and, even if they were, their work would not necessarily be exhibited in these institutions. Thus while the restitution is to be applauded, and legally the object would be "Jewish property," an item may not be valuable as a "Jewish" artifact. For instance, one of the most celebrated recoveries at century's end was the restoration of a Nazi-looted painting to the heirs of Viennese collector Philip von Gomperz. The painting is a small devotional image by the German Renaissance artist Lucas Cranach the Elder, entitled *Madonna and Child in a Landscape*.[154]

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[152]http://www.vilniusforum.lt/proceedings/session/colette__avital__en.htm.

[153]http://www.vilniusforum.lt/media/declaration.htm.

[154]Much of the celebration concerned the heirs' generosity under the terms of the settlement in 2000. The painting had been a bequest, in 1984, to the North Carolina Museum

There are numerous instances in which heirless, formerly Jewish-owned art is considered part of the "national heritage" of the country where the Nazi victims once lived. Although Lithuania's former claim to the Torah scrolls as its patrimony strained credulity, the principle is real. The French, for instance, claim Camille Pissarro, a member of the founding group of 19th-century French Impressionists, as part of their cultural heritage. For Colette Avital, however, he is a Jewish painter, his works "a testimony of Jewish creativity, spirituality and talent."

There is not much incentive for European nations to part with Nazi-era cultural property, and a state may have a number of reasons to resist restitution and claim the art for itself. The artists and the art may truly express, and be associated with, that specific place or national culture.[155] The works may have a decades-long history as vital ingredients in the "permanent" exhibitions of prominent museums, and restitution would create a profound loss both for the museum and the public it serves.[156] Four Vienna museums in 1999, for instance, had to relinquish more than 200 Old Master and 19th-century paintings that were restituted to Bettina Looram-Rothschild, the daughter of Alphonse and Clarice Rothschild. Several years later, in 2002, there were continuing legal battles between Austria and the heir of industrialist Ferdinand Bloch-Bauer over six important Gustav Klimt paintings in the Belvedere, the Austrian national gallery. The surviving heir argues that the paintings, valued at $150 million, were seized twice—by the Nazis in 1938, and again when the Austrian government refused to return them to Bloch-Bauer's heirs after World War II. The legal issues in the case are murky, but it is clear that if Austria returned the paintings to the heir, the Belvedere would lose some of its most

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of Art in Raleigh. Although the museum was alarmed to learn that a prized possession had been confiscated by the Gestapo in 1940, it returned the Cranach to the heirs. The museum then offered to buy the painting, but its acquisition budget of $600,000 was only half the painting's appraised value. In appreciation of the museum's no-fuss return, the heirs accepted $600,000 for the painting, which was returned to Raleigh.

[155]This, of course, does not preclude a museum from trying to reach a settlement with the rightful owner and paying compensation for the object.

[156]For an outstanding review of private versus collective rights to a variety of cultural properties, including art, scientific and historical documents, and the Dead Sea Scrolls, see Joseph L. Sax, *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures* (Ann Arbor, 1999).

prized possessions, including two famous paintings of Viennese beauty Adele Bloch-Bauer.

After the war, it was the policy of the victorious powers to repatriate artworks to the national government of the object's country of origin, and the recipient government was responsible for locating the rightful owner. However, the United States did not monitor the recipient countries' compliance, and there was little public discussion of the repatriation efforts until a December 1984 article in *ARTnews* magazine, "A Legacy of Shame: Nazi Art Loot in Austria." It revealed that a cache of art that had been stolen from Viennese Jews was turned over to the Austrian government in 1955. Austria did not make a strenuous effort to find the heirs. Instead, it placed the artworks in its museums or stored them in a 14th-century monastery in Mauerbach, some 30 miles from Vienna.

The article prompted the Austrian government to undertake a new effort to locate heirs, and, a decade later, it turned over to the Jewish community of Vienna the residual unclaimed articles. There were some 8,000 items—paintings, books, tapestries, textiles and carpets, furniture, coins, and arms and armor. They were sold in an emotional, two-day auction in October 1996 that raised $14.5 million for Holocaust victims.[157]

The extraordinary publicity generated by the Mauerbach auction (coupled with the publication of Lynn Nicholas's book *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War,* and attention to Holocaust-era assets generated by class-action lawsuits against the Swiss banks) stimulated interest in how other nations had handled Nazi-looted art. The situation in Austria was not unique. The Netherlands in 2001 tacitly acknowledged problems in the restoration of repatriated artwork to Dutch victims. The government's Art Property Foundation, known as the Stichting Nederlandsch Kunstbezit (SNK), had been responsible between 1945 and 1952 for the recovery and restitution of works of art. At the turn of the century, however, about 4,000 items—including some 1,600 paintings—remained in the state-administered Nederlands Kunstbezit collection. It appears that the government used the postwar repatriation program to stock its national museums. "The SNK acted in [prominent]

[157]Reuters, Oct. 31, 1996.

cases as a kind of art requisition bureau for the state," said Dr. Gerard Aalders, a researcher at the Netherlands Institute of War Documentation in Amsterdam and the author of *The Art of Cloaking Ownership.*[158]

The Shulz Fragments

In January 1995, the Bard Graduate Center for Studies in the Decorative Arts, in New York, convened an impressive symposium of officials, historians, curators, and lawyers from two dozen countries to discuss problems with the repatriation of World War II-era cultural property. It was called "The Spoils of War."[159] At that time, it was customary to refer to the art stolen during the war as "trophy art," and it was perceived, in general terms, as "spoils of war." Jewish claims were a stepchild in the discussion.[160] Soon after, the new international focus on Jewish material losses changed the frame of reference, and it became common to refer to "Nazi-looted" or "Holocaust" art.

If the old terminology had marginalized Jewish claims, the new vernacular masked the fact that nations themselves still focus on their substantial war-related art losses, of which Jewish or Nazi-looted art may be only a fraction. For instance, as part of its campaign to deal with Nazi-looted art, Germany, in April 2000, launched a Web site listing some 2,000 works of art of dubious origin that were held in public institutions. The works are generally known as the "Linz list," referring to a collection that Hitler planned for an art museum near his Austrian hometown. Michael Naumann, the minister of culture, estimated that only 10 percent of the 2,000 paintings were looted from Jews.[161] In addition, many governments and cultural institutions are searching for their own

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[158] *ARTnews,* Sept. 2001.

[159] The proceedings were published: Elizabeth Simpson, ed., *The Spoils of War—World War II and its Aftermath: The Loss, Reappearance and Recovery of Cultural Property* (New York, 1997).

[160] At the Bard symposium, for example, there were dozens of presentations by government and museum officials representing Austria, Belarus, France, Germany, Hungary, the Netherlands, Poland, Russia, Ukraine, and the United States. There was only one presentation dealing exclusively with Judaica, by Vivian Mann of the Jewish Museum in New York.

[161] *Jerusalem Post,* Apr. 21, 2000.

wartime cultural losses, not for the loot in their possession. Germany, for instance, has outstanding claims for the hundreds of thousands of objects that were seized by the Soviets as "compensation" for war damages. The Russians, willing to restore Nazi-looted art to individual Jews, are not so inclined with the German government.

In May 2001, Yad Vashem "acquired" the fragments of murals of fairy-tale figures that had been painted on the walls of a Nazi officer's house in Drohobycz by Bruno Schulz, a Polish artist and writer who was murdered on the streets of that city on November 19, 1942. The decaying fragments had been discovered in February 2001 by German documentary filmmaker Benjamin Geissler, in a room being used as a pantry in what had become a private flat. The "acquisition," in one fell swoop, set off a multifaceted debate on a host of legal, moral, and ideological issues that divided Jewish communities, institutions, governments, artists, and preservationists. These overlapping issues included how to define Jewish cultural property, who has the rights to artifacts, whether Holocaust-era artifacts differ from others, how cultural property should be preserved and used, and what public purpose preservation serves.

Yad Vashem insisted it had a "moral right" to the remnants of Schulz's work, which were painted in the room of the children of SS officer Feliks Landau. "As Bruno Schulz was a Jewish artist forced to illustrate the walls of the home of a German SS officer with his sketches as a Jewish prisoner during the Holocaust, and killed by an SS officer purely because he was a Jew, the correct and most suitable place to house the drawings he sketched during the Holocaust is Yad Vashem, the Holocaust Martyrs' and Heroes' Remembrance Authority in Jerusalem," it said in a statement. Yad Vashem also argued that it had gotten the approval of local officials, but the latter disputed that account.

What Yad Vashem called a rescue, others called a robbery. "Bruno Schulz is one of the key figures of Polish literature in the 20th century," said Konstanty Gebert of Warsaw, the founding editor of the Polish Jewish magazine *Midrazs*. "I can hardly begin to describe how much outrage and how much pain we feel," Gebert said in New York, at a forum in July 2001 sponsored by the American Jewish Committee and the National Foundation for Jewish

Culture. "We feel robbed. We feel something, a living part of our heritage, has been smuggled away."[162]

Given the shifts in postwar borders, the Polish city where Schulz worked and was murdered is now in Ukraine. Ukrainian national law bars the export of antiquities and pre-1945 cultural objects without a permit. But it was not clear whether the fragments qualify as cultural property, whether national or local authorities had the right to determine their disposition, or whether indeed the fragments are considered Ukrainian. Looked at from a different perspective, the fragments may have been the legal property of Nikolai Kaluzhny, who, some 60 years later, owned the flat.

Within the Jewish world, moral issues hover over the legal ones. Yad Vashem's claim to a moral right has its supporters, both because it is a documentation-commemoration center and because it is in Jerusalem. Schulz "lived as a Jew and died as a Jew. I see no more appropriate repository," said Melvin James Bukiet, a New York novelist who is a member of Yad Vashem's board. But local communities argue that they have the moral right to their communal patrimony. They take umbrage at the implication that they are unwilling or unable to preserve their cultural property, as well as with the presumption that Israel represents the Jews. The idea that the fragments belong in Israel "invalidates us—not just the small Jewish communities in Ukraine and Poland, but also the Diaspora," said Gebert.[163]

During the cold war, there had been the sense of an urgent need to rescue Jewish heritage sites in Central and Eastern Europe, quickly and often surreptitiously. That was no longer the case, said Samuel Gruber. It was quite the reverse, he felt, and he feared that Yad Vashem's act could have "a destructive effect on hundreds of other Jewish sites throughout the world. It sets back recent progress in preservation of Jewish monuments and Holocaust sites in Central and Eastern Europe, where local involvement and legal protections are still evolving." Yad Vashem's claim of a "moral

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[162]Schulz's stories were originally published in the 1930s in Poland. They were reissued in Poland after the war, and have since been translated into several languages. The two books so far published in English are *Street of Crocodiles* (1992) and *Sanatorium Under the Sign of the Hourglass* (1997).

[163]The debate at the forum was reported in the *New York Times*, July 18, 2001.

right" to remove Holocaust artifacts is a "kind of false reasoning" that could be used by anyone "to justify plundering cultural heritage," he wrote. "Whose moral right should prevail, particularly in postcommunist Europe, where local Jewish communities are attempting to reassert their identity?"[164]

There were other nagging questions: Were the fragments "Jewish art," or art painted by a Jew? Were they art, or were they the product of slave labor, or both? Yad Vashem said that it would preserve the work for generations, and so it "may be viewed by the millions of tourists from all over the world who visit Yad Vashem each year." There is no doubt that millions more people would view the fragments in Yad Vashem than at some restored site in Drohobycz. And yet many argue that sites must be preserved at the source, where they serve as an important historical marker and educational tool in a locality's confrontation with its past. Under Yad Vashem's logic, all evidence of Jewish life in Europe could be removed, piece by piece, and its history erased.

The "Bondi Schiele" and Other Artworks

The museum world was shaken early in 1998 when the heirs of a Jewish art dealer from Vienna appealed to New York's Museum of Modern Art to detain an Egon Schiele painting that was part of an exhibit on loan from Austria's government-financed Leopold Foundation. The painting, *Portrait of Wally,* was due to leave the U.S. when the exhibition closed, and the heirs of Lea Bondi Jaray were urgently trying to keep the painting in the country. They contended that it had been confiscated from the dealer, who was unable to recover it and who was never compensated for the loss. "We earnestly request that you do not return the painting to the jurisdiction of the 'lenders' until the matter of true ownership has been clarified," the heirs said in a letter to MOMA.[165] The museum, expressing sympathy, said it was contractually obligated to release the painting. It also feared that any detention would disrupt the orderly conduct of other international exhibitions.

The controversy created a predicament for Ronald S. Lauder,

[164]Op-ed in *New York Times,* July 3, 2001.
[165]*New York Times,* Jan. 1, 1998.

which also was a dilemma for the organized Jewish community. The businessman-philanthropist was the museum's chairman. He also was the chairman of the World Jewish Congress's Commission on Art Recovery, an entity newly created to assist claimants seeking Nazi-looted art. When the commission was announced, the incoming director, art historian Constance Lowenthal, said, "We will try to recover art wherever we find it."[166] Jewish organizations, however, never advocated for Nazi-looted art with the energy they devoted to Holocaust-era bank accounts, insurance policies, or real estate.[167]

A legal battle over the Schiele began in January 1998, when the Manhattan district attorney, Robert Morgenthau, seized the painting until its ownership could be determined. When state courts subsequently ruled that Morgenthau had exceeded his authority and was obliged to release *Wally,* the federal government detained the painting. At the end of 2001, the case was still pending in U.S. District Court in Manhattan.

Morgenthau's seizure led Austria's minister for education and cultural affairs, Elisabeth Gehrer, to establish a Commission for Provenance Research, whose work in 1998 served as the basis for legislation to restitute property that, more than a half-century after its "Aryanization," remained under state control, or that had been extorted in the course of export proceedings after 1945. That paved the way for new art restitution, such as that to the Rothschild family, which had been coerced into donating the majority of its art to the state after the war in exchange for the right to "export" the remaining objects.[168]

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[166]Ibid., Nov. 29, 1997.

[167]In the subsequent legal skirmishes over *Wally,* Jewish organizations were conspicuous by their silence. While a number of nongovernmental organizations had set up entities to deal with Nazi-looted art, they concentrated on collating existing information from multiple sources and creating databases. They did not see themselves as aggressive agencies assisting individual claimants seeking specific objects. The only authoritative body conducting such work, at no cost to the claimant, was the Holocaust Claims Processing Office, established in 1997 in the New York State Banking Department.

[168]The heirs auctioned the recovered items and divided the proceeds. The sale, in London in July 1999, broke the record for European auctions, bringing in $90 million, more than twice the presale estimated value of the objects. Along with Old Masters, the family sold the *Rothschild Prayerbook,* a 16th-century illuminated manuscript that fetched a record-breaking $13.3 million.

In Europe, governments and museums, prompted in part by fear that objects on loan in the U.S. might be seized as stolen property, began to establish mechanisms to examine the provenance of works held by public institutions. The museum community in the U.S. also began such review. "The hunt for Nazi loot has turned into the greatest treasure hunt in history," said Lord Greville Janner of the London-based Holocaust Educational Trust. "We don't know where it will end."[169]

In 1998, at the Washington Conference on Holocaust-Era Assets, delegations from 44 countries adopted the so-called "Washington Principles." These were non-binding guidelines that aimed to restore Nazi-looted art. They called for the opening of archives to facilitate research, a central registry, public announcements of unrestituted works, alternative dispute-resolution strategies for resolving ownership questions, and a "just and fair solution" for looted works whose owners cannot be identified. "The art world will never be the same in the way it deals with Nazi-confiscated art. From now on, the sale, purchase, exchange, and display of art from this period will be addressed with greater sensitivity and a higher international standard of responsibility," said Stuart Eizenstat. "This is a major achievement which will reverberate through our museums, galleries, auction houses, and in the homes and hearts of those families who may now have the chance to have returned what is rightfully theirs. This will also lead to the removal of uncertainty in the world art market and facilitate commercial and cultural exchange."[170]

The Washington principles were "moral commitments," said Ambassador J.D. Bindenagel, who organized the conference. "How they are applied is up to governments, individual auction houses, galleries, and museums."[171] Although not binding, the principles had an impact. They encouraged nations to examine the history of the war-era cultural property they had acquired, or supported efforts already under way, in a manner that was not threatening to individual nations or institutions. "There is a value to the international arena, where each country is undertaking a task, each in

[169]Reuters, Nov. 17, 1998.

[170]Eizenstat's concluding statement, Dec. 3, 1998, http://fcit.coedu.usf.edu/holocaust/resource/assets/concl2.htm.

[171]*ARTnews,* May 1999.

its own way, instead of being isolated, or with the finger-pointing as was originally the case with Switzerland," said one French official. "Our review is the French answer to a problem that is not only French."[172]

The Washington principles recognized that countries must "act within the context of their own laws." The call for "resolution strategies" and "just and fair" solutions is vague, in part, because cultural property has special characteristics that set it uniquely apart. Modern-day claims—whether they are pursued by individuals, communities, institutions, or nations—are efforts to recover specific and identifiable items that have to be tracked one by one, and that are subject not only to international conventions on cultural property, but also to national, civil and criminal legal codes that vary by jurisdiction and are open to different legal interpretations. Different jurisdictions have various rules governing such key elements of restitution claims as "good faith" purchases and statutes of limitation.

Individuals have turned to civil courts for redress, but the process is taxing, time-consuming, and expensive. For instance, when the heirs of Friedrich Gutmann filed a lawsuit in 1996 to recover a single painting plundered from the family's art collection, they faced uncontrollable costs to document and litigate the claim, and resorted to placing an ad in the *Forward,* a weekly Jewish newspaper based in New York, seeking donations for a "legal defense fund."[173] Given the original size and subsequent dispersal of the Gutmann collection, the heirs, in their quest, had to hire researchers to scour archives, libraries, and galleries around the globe, and engage legal services in three different cities and translators for documents in five different languages. The costs of litigation are "astonishing," said Thomas Kline of Washington, an attorney who represented the Gutmann heirs. "I am almost at the point where I would say that if the art is worth less than $3 million, give up."[174]

For the individual claimant, the major hurdle to recovering art is simply locating the object. Prewar collections did not survive in-

[172]Interview with author, Apr. 25, 2001.

[173]The painting at the center of the 1996 lawsuit was Edgar Degas's *Landscape with Smokestacks,* which, at the time, was owned by a Chicago art collector.

[174]*Jerusalem Post,* Apr. 3, 1998.

tact. They were dispersed during the Nazi era through confiscations and forced sales. In the decades since the war, objects have moved through commercial and cultural exchanges, and many plundered works have quietly reentered the legitimate art trade and museum world, gradually acquiring what appeared to be authoritative provenance. They can suddenly emerge, startling both the claimant and the current possessor.

Consider the tale of two paintings that were separated, sold, and seized during the Nazi era from the collection of Ismar Littmann of Breslau, who committed suicide in 1934 in the face of the Nazi persecution. *Seated Nude on Blue Cushion,* a 1927 painting by the German artist Karl Hofer, was seized by the Gestapo in 1935, only days before it was to be sold at a "Jew auction." The Gestapo turned the painting over to the National Gallery in Berlin, then seized it again in 1937 for the Munich exhibition of "degenerate art." To earn foreign exchange, the Nazis put the painting on the market, where it was bought by a Norwegian collector in 1941. Almost 60 years later, in 1999, it was consigned to a London art dealer, when it was claimed by Littmann's Israeli daughter, who by that time was in her 80s. Another item from the Littmann collection, Lovis Corinth's *Portrait of Charlotte Corinth,* was sold in 1935 at a "Jew auction" and changed hands several times before it was acquired by a Berlin dealer in 1940. Over time, it changed hands at least three more times before arriving at the Hamburger Landesbank, as collateral for a loan. The bank put the painting up for auction in November 2000 when the borrower defaulted. Littmann's daughter recovered both paintings in November 2001, with the assistance of the New York State Banking Department's Holocaust Claims Processing Office, after exhaustive research to track the paintings' distinctive paths over six decades and a number of countries.[175]

HAS JUSTICE BEEN DONE?

There is much talk, more than 50 years after the end of the Shoah, about "doing justice" for Nazi victims. Shortly after the end of World War II, "doing justice" meant ensuring that victims were

[175] *ARTnews,* Feb. 2002.

compensated for the material damages they suffered from persecution, and that they could recover the properties, bank accounts, art, and artifacts that were taken from them. By that standard, there has been a measure of justice. In 2000, nearly 100,000 Nazi victims were still receiving a check each month of about DM 1,000 from Germany, payments based on agreements that were negotiated in The Hague in 1952. Of course, despite the duration and the amount of the payments, they cannot compensate for the loss or relieve the suffering. Nor did the original German programs address all facets of material losses—either for all groups of Nazi victims, or for assets outside of Germany.

At the beginning of a new century, it was still not clear who should determine what measure of justice is sufficient, what form it should take, and which vehicle is appropriate. There were "monetary" and "nonmonetary" forms of justice, and these were of varying degrees of relevance and importance to the extraordinary number of actors who had become involved in these issues.

The most visible of the actors was the peripatetic Stuart Eizenstat, who represented the American government's interests between 1995 and 2001. There also were the Claims Conference, the World Jewish Restitution Organization, and the World Jewish Congress; American state insurance commissioners and local finance officials; as well as government officials from Germany, Austria, France, Israel, and Central and Eastern Europe—not to mention the class-action lawyers representing victims.[176] They represented different agendas, many of them adversarial. All were swimming in uncharted seas. Restitution and compensation claims had legal, diplomatic, economic, historical, moral, and political dimensions, and these claims were being pursued through courts, commissions, legislation, and regulation. The discordant approaches often threatened to derail each other and delay any resolution—in part because each of the varied approaches had its own requirements, advocates, and constituencies.

"We know there are survivors in need, and they deserve to be

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[176]Because of overlapping memberships and common interests between the Claims Conference, the WJRO, and the WJC, it was often unclear which organization assumed which role in the various proceedings. In the summer of 2002, Israel Singer, the new president of the Claims Conference and also cochairman of the WJRO, called for a formal merger between the two. He had just stepped down as secretary general of the WJC.

helped now," said Andrew Baker of the AJC. "Everyone agrees with this statement, but it appears to be the beginning and not the end of problems and controversy, as help is delayed and as organizations and lawyers and governments vie with each other to be the conduit for this aid."[177]

Where claims could be consolidated,[178] no particular potential "conduit" was universally beneficial for the victims. Each had merits and disadvantages. The issue of the Swiss banks, for example, seemed suited to a legal settlement because it was concerned primarily with recovering a specific type of asset from private institutions for a specific group—the bank accounts of particular depositors. However, in the slave-labor cases, the German foundation, which was a creation of both legal and diplomatic initiatives, appeared to be superior to a court settlement.[179] The foundation would provide benefits to many more former slave and forced laborers than would have been covered by a court judgment against the companies being sued, especially since the claimants including workers from Nazi-era public enterprises and from now-defunct businesses. It also would benefit Nazi-era agricultural workers who had no company to sue.[180]

Efforts to develop the appropriate venue led to some proceedings

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[177]Plenary session on Nazi-confiscated communal property, *Proceedings of the Washington Conference on Holocaust-Era Assets* (Washington, D.C., Dec. 1998), p. 704.

[178]This refers to instances in which the claimants or the assets themselves have something in common—such as slave and forced laborers, or insurance policies and banks accounts.

[179]It is not clear that any of the cases against German industry for war-era slave labor compensation would have prevailed in U.S. courts. In September 1999, in the first ruling in the recent spate of American class-action lawsuits, the U.S. District Court in Newark, New Jersey, dismissed the cases against two companies, Degussa and Siemens. The federal judge, Dickinson Debevoise, said that he was bound to defer to the postwar treaties governing reparations claims, and that his court "does not have the power to engage in such remediation."

[180]The processes themselves have different virtues and drawbacks. The Swiss settlement was subject to formal procedural rules governing all class-action lawsuits filed in American federal courts. Those rules guarantee a substantial amount of transparency in the process, provide opportunities for the potential beneficiaries to comment on the settlement terms, and appear to be a bulwark against political pressure. However, these rules also significantly lengthen the amount of time between a settlement and the actual distribution of the funds. The demographics of the claimants also extended the time involved in the Swiss case: legal materials had to be translated into dozens of languages and sent to potential claimants who lived in dozens of countries. The German foundation could distribute funds at an accelerated pace, but it is not governed by established rules. Instead, it is run by a board representing victims, nine governments, and German industry, and they must thrash out competing interests.

that, in retrospect, were bizarre, and, for all the good intentions, appeared to harm survivors' interests. In August 1998, for instance, American insurance regulators scuttled a proposed settlement in which the Italian insurer Assicurazioni Generali agreed to pay some $100 million to settle a class-action lawsuit filed in an American court. Deborah Senn, then the Washington State insurance commissioner, said that survivors' and heirs' claims for Generali policies could easily be worth more than $1 billion. "We cannot allow individual insurance carriers to cap their liability unfairly," Senn said.[181] The commissioners argued that they had a special role, not only because of their regulatory powers, but because insurance policies were legally binding contractual arrangements that had to be scrupulously honored. The implication was that a settlement negotiated through a court was inadequate to the task. At the time, there was considerable pressure for Generali—and other European insurers—to join the International Commission of Holocaust-era Insurance Claims, a consortium of insurers, American state regulators, and Jewish organizations that was formed in 1998 to resolve the claims. Generali joined the commission, which was chaired by Lawrence Eagleburger, a former secretary of state. Two years later, the commission approved a settlement of Holocaust-related insurance claims against Generali—for $100 million, the amount the company had been prepared to pay two years earlier.[182]

The settlements reached between 1998 and January 2001 generated more than $6.5 billion, most of which was to be allocated directly to individual Jewish and non-Jewish victims of Nazi persecution. However, many of the wrenching claims were in limbo or went unresolved. Communal and private properties in Central and Eastern Europe, as well as Nazi-looted cultural property and art, were assets that had to be pursued one by one, often by individuals.

Whether the German and Swiss settlements provided "justice"—symbolic or otherwise—is essentially a question for the individual victims. The "survivors" are not a monolithic group. They have disagreed ideologically about whether it is appropriate to pursue com-

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[181]Press release from Commissioner Senn's office, Aug. 17, 1998.

[182]*Jerusalem Post,* Nov. 17, 2000. Eagleburger's commission faced fire on multiple fronts. For instance, it was attacked at a November 2001 hearing of the House Committee on Government Reform over its expenses; in its first three years, the commission had spent $40 million in administrative costs but recovered less than half that in Holocaust-era policies.

pensation, the strategies of the pursuit, and the justness of the agreements. The German foundation's payment of DM 15,000 (about $7,500) to each surviving former slave laborer, for instance, was intended to be a "dignified" sum. For some recipients this could have been true. However, as Eli Rosenbaum, director of the Justice Department's Office of Special Investigations, noted, it did not seem quite so dignified when compared to certain class-action awards for other kinds of crimes in the United States. He referred specifically to a $45.7-million settlement in 1994 against an American restaurant chain, Denny's, which was accused of refusing service to, or otherwise discriminating against, minority customers. "If a person of color in this country is not seated at a Denny's restaurant, he or she will get a lot more than $7,500," Rosenbaum said.[183]

With all the attention focused on Holocaust claims, there also was public hand-wringing that the "last word" on the Holocaust would be about money, not memory. That certainly seemed to be the case. There were occasions when the murder of 6 million Jews appeared to be relegated to the shadows. The relief was almost palpable when the third of the international conferences on the Holocaust, convened in Stockholm on January 26–28, 2000, had as its theme Holocaust education and remembrance. "We have been dealing heavily with restitution of assets, trying to bring some measure of justice to surviving victims in everything from communal property to art to Swiss bank accounts to German slave and forced labor and insurance. These are all important and we are making progress in each of those areas," Stuart Eizenstat said. "The significance of this historically important conference is that it begins, as we enter a new century, to move us away from what is important and immediate—money and assets—to what is enduring and lasting—memory and education. Financial restitution, while critical, cannot be the last word on the Holocaust. This conference assures [that] education, remembrance, and research will be."[184]

However, while a number of nations have issued apologies for their war-era activities, there were perils in how the 46 governments represented in Stockholm chose to convey their history.[185] In their

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[183]"Symposium: Holocaust Restitution: Reconciling Moral Imperatives with Legal Initiatives and Diplomacy," *Fordham International Law Journal* 25, 2001, p. 193.

[184]Eizenstat's remarks at the closing press conference, http://www.usembassy.it/file2000_01/alia/a0013109.htm.

[185]An interesting review of this topic that preceded the recent wave of litigation is Judith Miller, *One, By One, By One: Facing the Holocaust* (New York, 1990).

presentations, both Latvia and Lithuania deflected attention away from their local populations. "Through an aggressive campaign of racist, anti-Jewish propaganda, the Nazi German regime succeeded in recruiting local collaborators to carry out some of the worst crimes ever committed on Latvian citizens," said Vaira Vike-Freiberga, the president of Latvia. Lithuania's prime minister, Andrius Kubilius, went even further in exculpating his nation, saying: "The Jewish community, remarkable for its culture and intellectual achievements, was almost totally wiped out in Lithuania during World War II. So far, no one can explain why this happened in Lithuania, a country with no anti-Semitism throughout its recorded history."[186] Given the niceties of diplomacy, both statements went unchallenged.

The end of the cold war has been credited for the surge in efforts to recover Jewish assets. After the fall of the Berlin Wall and the collapse of communism, Central and Eastern European nations rushed to try to reverse the effects of decades of communist rule. Their legal and economic reforms appeared to create the opportunity to recover properties that had been plundered decades earlier. There also were other factors at work. The massive declassification of documents and the opening of archives made it possible to research the fate of people and properties. The stream of commemorations and ceremonies marking the 50th anniversary of war-era events provided occasions for national introspection, as did the advent of the millennium. In the U.S., public awareness and interest in the Shoah was heightened by the phenomenal popularity of two cultural events in 1993: the opening of the U.S. Holocaust Memorial Museum and the film *Schindler's List.*

And there was the moral imperative of the victims themselves. After struggling privately to rebuild their lives and families after the war, many had reached old age in dire need of financial aid and specialized welfare and medical assistance. Demographic studies conducted in the 1990s also revealed that the number of surviving Jewish victims was substantially higher than anyone had anticipated, with estimates ranging as high as 935,000.[187] The need was

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[186]*Jerusalem Post,* Jan. 28, 2000.

[187]This estimate uses the broadest definition of a Nazi victim: a Jew who lived in a country under Nazi occupation or under a regime of Nazi collaborators, as well as those who fled from a Nazi-occupied country. See In re Holocaust Victims Assets Litigation (Swiss banks settlement), CV 96-4849(ERK)(MDG), Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, Sept. 11, 2000, Vol, I, Annex C.

especially acute among the "double victims" in the former Soviet Union and Central and Eastern Europe, who had been excluded until 1998 from the German compensation programs.

In the demands for redress a half-century after the war, there also was a tendency to accompany the "legal" demand for the restoration of what had belonged to the victims with a "moral" demand for the public acknowledgment of war-era guilt. But events showed this was not so simple. It became known in 1997, at the height of the controversy over the Swiss banks, that the successor institution to the Anglo-Palestine Bank had more than 10,000 dormant accounts. These were the so-called "minimum" prewar deposits of £1,000 that European Jews made in order to acquire an entry permit to Mandatory Palestine. The successor bank was Bank Leumi, which admitted in 2000 that it held dormant accounts that are believed to have belonged to Holocaust victims. Another Israeli institution, the Jewish National Fund, had parcels of land that may have belonged to Nazi victims. The dormant and unclaimed assets in Israel—primarily land and bank accounts—were valued at as much as 25 billion shekels, according to Colette Avital.[188]

Fifty years of efforts to achieve justice for the victims of Nazi persecution have had limited success. Collectively, these efforts form a haphazard system in which some survivors of similar fates received some compensation for their damages once; some got compensation twice—once in the 1950s and again at the end of the century; and others will get virtually nothing. The recovery of properties shows even more meager results. The frenetic activity of the last decade, with its few important settlements, likely signals the end of this search for justice, however inadequate it may be, in what the noted legal scholar Irwin Cotler has called "thefticide," the greatest mass theft on the occasion of the greatest mass murder in history.[189]

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[188]*Jerusalem Post,* Nov. 9, 2001. The bank accounts were first brought to light by Israeli historian Yossi Katz in his 1997 book, *Forgotten Assets,* which has not yet been translated from Hebrew into English.

[189]Irwin Cotler, "The Holocaust, Thefticide and Restitution: A Legal Perspective," *Cardozo Law Review* 20, no. 2, Dec. 1998, pp. 601–23.