Sidney Zabludoff

German Assets in Switzerland at the End of the Second World War
German Assets in Switzerland at the End of the Second World War
Sidney Zabludoff

Summary: At least $500 million and as much as $750 million in German assets were held in Switzerland on February 17, 1945, the day the Swiss Government blocked all such property. In today’s values, these assets would range from $11 billion to $16 billion.

The Swiss Government paid only $28 million to the Allies, although these nations insisted that all German external assets be turned over them. The Allied demand reflected two motives: their fear that the Germans would use the assets to initiate a new war; and their desire to fund efforts to assist victims of Nazi persecution. The Allies agreed to this paltry sum after nearly a decade of being worn down by Swiss prevarication and the need to address other issues took centre stage, despite the fact that a 1945 Swiss census of German property indicated a value of $230 million.

Three interrelated factors account for the difference between the real amount of German assets and the Swiss figures. They are:

Concealment: Hiding German assets in Switzerland was effortless for the Germans while locating them was extraordinarily difficult for the Allies and Swiss. This was due to the highly sophisticated Swiss financial infrastructure, its preference for secrecy, close ties between the Swiss financial community and the government, and the long-standing financial linkages between Germany and Switzerland. Moreover, the large profits earned in hiding property attracted many into the field, thereby greatly enhancing and enlarging the laundering system. Jews and other persecuted Germans, as well as Nazis, kept much of their assets in Swiss francs, other negotiable monetary instruments and bank accounts under the names of Swiss citizens. German multinational companies used their well-honed experience to disguise the ownership of their Swiss subsidiaries. In all, concealment created the major variance between the actual and Swiss estimates.

Dissipation: The asset base eroded quickly mainly because of the ease with which the Swiss used German property to offset claims they had against German individuals and companies. Such exchanges were arduous to determine and the Swiss Government did not aggressively seek them out.

Coverage: Many categories of assets were not adequately incorporated into the estimates because of their complexity and the difficulty in pinpointing them, including insurance, patents and private holdings of monetary assets.

The author: Sidney Jay Zabludoff is an expert on illicit financial flows and finding hidden assets. He has worked for the Central Intelligence Agency, the Financial Crimes Enforcement Network (FinCen) and the White House. Mr. Zabludoff participated in the London Conference on Nazi Gold in December 1997 for which he prepared “Movements of Nazi Gold: Uncovering the Trail”, a Policy Study, published by the Institute of the World Jewish Congress.
The post-war significance of secreted German assets

As World War II in Europe was ending, the Allies insisted that all German external assets be turned over to them. This action reflected the considerable evidence that the Nazis were going to use these assets, much of them hidden, to finance a Third World War. The Allies also were cognizant of the successful pre-war efforts of large-scale German enterprises, such as IG Farben, to use their intricately woven complex of foreign subsidiaries to promote Nazi military and political objectives. Halting another war seemed essential since twice within a quarter-century Germany had aggressively attacked other nations.

In addition, the Allies wanted to raise money to help overcome the enormous destruction the Nazis inflicted throughout Europe. German external assets were to be pledged to assist Jews and other persecuted individuals who survived the devastating Holocaust. Such usage made eminent sense, since much of the assets held by Germans in foreign countries were forcibly taken from those who were persecuted.

The Big Four Allied leaders decided at the Potsdam Conference in the Summer of 1945 that the Allied Control Council should draft a declaration "... to exercise control and power over the disposition over German-owned external assets not already under the control of the United Nations..." The decree (Law number 5) was passed on October 30, 1945 after some dissent, especially from the UK, in regard to its authority under international law and the political impact on relations with neutral countries. It started: "Whereas the Control Council is determined to assume control of all German assets abroad and to divest the said assets of their German ownership...."

More than 70 percent of German external assets in European neutral countries were in Switzerland. In 1945, US officials estimated that amount to be as much as $1 billion. Under prodding from the Allied countries the Swiss Government blocked German assets on February 17, 1945 and took a census of them. By year’s end, Bern released a summary of the results which indicated an asset level of $230 million. In 1953, after nearly a decade of delaying tactics, blockages, and outright stubbornness, Switzerland finally paid $28 million. The Allies acquiesced to this small amount from weariness and because other concerns took center stage, mainly the threat from the USSR.

This report estimates the value of German assets held in Switzerland in February 1945. Determining an exact amount is highly impractical—and near impossible given the scanty knowledge base and the complexity of the task. Nor is it feasible to add up all the individual transactions, nor rely on the 1945 census undertaken by the Swiss Compensation Office. Its officers relied heavily on the data supplied by banks and businesses, rarely verifying the information, and never allowing independent auditors to work with them. Their own auditors often were thwarted by those in the financial sphere who thought preserving secrecy for clients was more important than the moral obligation of Switzerland to account for German assets. The interests of the Swiss bankers and businessmen prevailed in large part because these groups had profound influence in the Swiss government.

Even if the bankers and others had been completely open, it would have taken an army of accountants years to unravel the complex and numerous transactions involved in hiding the money. Concealed transactions blended easily in the maze of the thousands of commercial exchanges that took place each day. Moreover, those trying to hide their assets held them in the form of Swiss francs, gold and monetary instruments which lack any identification tying them to the owner. Even with today’s more sophisticated tools for tracking money, most money...
laundering activity goes undetected and it takes considerable expense and time to explain just one such endeavour. The problems are much greater after 50 years, given the data loss and the unavailability of experts who had experience in hiding assets in the 1930’s and 1940s.

A reasonably sound approximation of the total amount of assets, however, can be made. Such estimates are common practice. They are based on the analysis of available and analogous information that helps bound the likely amount so that it can be said with reasonable confidence that the number falls within a particular range. In the case of German assets in Switzerland, a number of approaches are available to approximate the number and test its plausibility. This report analyses the nature of capital flows between German and Switzerland, examines pre-war and post-war estimates of the stock of assets and appraises the values of major components.

Swiss-German financial ties

The economies of Switzerland and Germany have been intimately linked since the industrial revolution. Financial connections the two countries became especially close in the years after World War I. Switzerland played a key role in providing the loans, both directly and indirectly, when the Germans needed to rebuild their industrial capacity during the 1920s. With the outbreak of World War II, the Swiss became the Nazis’ international banker. They played a prime financial role in exchanging gold, foreign exchange and other salable goods that were looted throughout Europe for goods needed to sustain the German military and its wartime economy. The Swiss Government also granted the Nazis far more credits than did other neutral nations. Swiss financial institutions, especially in Zurich and Basel, looked to Germany for much of their business. A number of Swiss banks held the bulk of their loan portfolio in German assets and thus depended heavily on that country for its profits. Other institutions were major players in the German mortgage and insurance markets.

For Germans, facing nearly a century of wars and economic upheavals, Switzerland provided a natural financial haven, as a result of proximity, financial stability and secrecy. Much of the German elite and its large-scale international corporations looked to Switzerland as a safe haven for their investments, a place to avoid taxes and handle international financial arrangements.

Movement of German assets to Switzerland: Weimar and Nazi periods

Much of the German investment in Switzerland at the end of World War II was placed there from 1924 to 1931. Capital flight from Germany during those years roughly amounted to $4 billion and about half of that went to Switzerland. Given that some of this money was repatriated and some went on to other destinations, a conservative estimate is that there would be $500 million of German assets in Switzerland in the early 1930s. A “rough census” by the Swiss National Bank in 1931 indicates a range of $500-750 million. The latter figure also includes German investments in Switzerland prior to 1924.

Besides acting as a safe haven, the large money movements into Switzerland reflected:

- Protection of assets from seizure. German enterprises used Swiss financial institutions and laws to hide the ownership of their foreign subsidiaries. They wanted to avoid a repeat of the losses suffered during and after World War I when their foreign assets were seized.
- Concealment of German investments abroad. Many countries, especially in Europe, feared economic domination by Germany and looked disdainfully at the establishment of
German subsidiaries in their country. To get around this problem, German companies established subsidiaries in Switzerland and used them to establish a presence and to camouflage their investments.

- Avoidance of high German taxes. Typically, money not reported to the German tax authorities was deposited in Switzerland. Based on these deposits, fully-backed loans were acquired and lent back to individuals or corporations from which the money originated. To the German tax authorities the money looked like a loan from a Swiss institution, thus not only exempt from local taxes on the original sum, but providing a business expense in the form of interest payments (which in fact were earned by the tax dodger’s company in Switzerland). Other tax savings resulted from the nominal control of company assets by a Swiss subsidiary rather than the home office in Germany.

- Hedge against the depreciation of the reichsmark. Funds were held in the more stable Swiss franc.

During the 1930s, global investment flows and levels were highly influenced by two significant occurrences: the Nazi takeover in Germany and the global financial upheavals of the early 1930s which led to a world-wide economic depression. After the 1931 financial crises, most nations imposed severe trade and capital controls. The objective was to conserve rapidly depleting foreign exchange reserves. For example, Germany saw its reserves plummet from a solid $1 billion in 1930 to $55 million in 1934.

While many nations attempted to halt capital outflows, the Nazi regime employed harsh measures only available to a totalitarian government. Beginning in 1933, all Germans had to turn in gold and other assets that could be easily sold abroad to the German central bank—the Reichsbank—for reichsmarks which only could be spent domestically. This included assets held both inside and outside Germany. The maximum penalty for non-compliance was death. Through a variety of laws the Nazi regime forcibly extracted considerably sums from Jews and other targets of persecution. To ensure that nothing escaped, the Gestapo and other police units were sent to Switzerland to uncover unreported assets. Although these harsh steps contained capital outflows, individuals and corporations always found ways to hurdle the capital barriers. Such methods included the simple transporting of hidden gold or foreign exchange across the border to more sophisticated money laundering schemes such as undervaluing exports. Bribes were often paid to Nazi officials. Capital outflows from Germany to Switzerland between 1932 and 1939 probably amounted to at least several hundred million dollars or just 10-20 percent of the previous seven years. Some of this money was moved out of Germany by Jews and others persecuted by the Nazis and by those who simply wanted to protect their assets. In the case of those leaving Germany, money placed in Switzerland often was moved on to countries where the emigrants settled permanently.

The strict Nazi foreign capital regulations were relaxed in the case of large companies. Such movements to Switzerland supported the regime’s economic imperialism—to retain control over the actions of subsidiaries in Allied or neutral countries. In addition, favours were granted to large companies that supported the Hitler regime. Chemical giant IG Farben, for example, always seemed to have sufficient foreign exchange in Switzerland for its business operations.
German holdings in Switzerland also rose due to interest payments and other income received from investments. Most of these accumulated earnings never left Switzerland because it made little sense to return the money to Nazi Germany where it would be difficult to get out. In addition, the Swiss placed a value ceiling on income payments sent back to Germany as part of the bilateral clearing operations aimed at equalizing the flow of money between the two countries. Finally, as World War II approached in 1939, there was a sizeable inflow of additional foreign private and corporate funds into Switzerland. The US Consul in Basel reported an increase in the nominal share value of international corporations at $60 million alone.

Partially offsetting the several hundred millions dollars flowing from Germany to Switzerland from 1931 to 1939 was a reduced value of the German assets already in Switzerland caused by the world wide economic depression and controls on capital and investment income payments imposed by Germany. For example, a loss of value occurred among the many German owned or controlled subsidiaries set up in Switzerland to raise capital. Typically, before 1931 they sold bonds and stocks and lent the money to their parent firm in Germany. The subsidiary mainly earned its money from the earnings derived from holding corporate shares of the parent firm and the loans to these German companies. When the Nazi regime placed limits on dividend and interest payments to foreigners, the earnings of Swiss subsidiaries fell well below market rates, thus pushing down the value of their shares. To sustain themselves, these subsidiaries borrowed from Swiss financial institutions, which reduced the net value of the German ownership.

In all, the value of German assets in Switzerland probably changed little during the 1930s. However, it was becoming more difficult to estimate the level because an increasing proportion of German assets in Switzerland were hidden, for obvious reasons. The majority of the funds deposited in financial institutions were handled through commingled accounts at the banks or through accounts under the names of Swiss fiduciaries, lawyers or friends. According to records of the Swiss Banking Corporation branch in New York City, which were reviewed by US authorities during World War II, two-thirds of deposits were commingled under the bank’s name. Large German corporations also undertook agreements, often complex, that made their subsidiaries look like they were under Swiss ownership and/or management.

A 1949 Bundestag study estimated that the tangible pre-war value of German assets outside that country was up to $8 billion. This figure was based on known assets of $4 billion and did not include intangible assets, such as patents, trade marks and copyrights, which were conservatively estimated at $6-7 billion in pre-war values, and properties left behind in the eastern and south-eastern European countries by expelled Germans.

The known assets of $4 billion included the $230 million in Switzerland, or 5.6 percent of the known German total. Assuming the Swiss also accounted for the same percentage of the $8 billion amount, then the Germans would have had $450 million in assets in Switzerland. That number, however, should be considered a very conservative one. The Swiss probably accounted for a large percentage of the undocumented foreign German assets, considering the enormous secrecy German individuals and corporations used in investing money in Switzerland during the 1930s. In addition, the amount of intangible assets has to be added. It is not unreasonable to estimate the Swiss portion of German external assets at between $500 million and $1 billion on the eve of the war.

During World War II much of the asset build-up resulted from capital flight. A surge occurred immediately after the war began in 1939 and after 1943, when the tide of battle favoured the Allies. Foreign holdings of the Swiss franc were estimated to have jumped more than $100
million in the early war years. Switzerland clearly was the prime destination for highly liquid
assets such as currency, stocks, bonds and valuable art objects, much of them looted by the Nazis
throughout Europe. The country was easily accessible and the only one with sophisticated markets
open to Germany. This can be seen from the fact that 85 percent of the gold looted by the Nazis
moved into or through Switzerland. Rudolf Hoess, commandant of the Auschwitz concentration
camp, said that Adolf Eichmann had told him "that the jewellery and currency were sold in
Switzerland and that the entire Swiss jewellery market was dominated by these sales."

Although several billion dollars worth of these goods probably entered Switzerland, only a
minority share were held there at war's end. The Reichsbank and other German financial
institutions were the major movers of the looted assets. They sold a large share for Swiss francs
and used this prized currency to buy goods and services in Switzerland and other neutral countries.
Another portion of the looted goods, whether it remained in their original form or was converted to
Swiss francs, flowed to other countries, mainly in Iberia and South America. Probably less than
25 percent stayed as assets in Switzerland. Some of these remained in their original form, but
most were likely converted into real estate, Swiss securities, Swiss francs or bank accounts.

Albert Nussbaumer of the Swiss Banking Corporation estimated that the Germans added between
$250-375 million to their holdings during the war. This expansion of the investment stock fits
well with a statement of an official of the German Foreign Exchange Office that flows of currency
and other movable property to Switzerland for capital flight purposes amounted to approximately
$500 million since 1940. Thus, at least half of these assets remained in Switzerland. In addition,
retained earnings from its long established asset pool likely exceeded more than $100 million
during the war. Again, this increase in holdings was partially offset by a decline in the value of
some assets already in Switzerland. This time it was caused by fear that the assets would be
confiscated. As a result, the 1945 level probably increased somewhat but remained in the $500
million to $1 billion range. Even the Swiss Compensation Office's 1945 census indicated a $100
million rise in German assets in Switzerland between September 1, 1939 and 1945.

Post-war asset estimates

No serious effort to estimate German assets in Switzerland took place until early 1945 as the war
was ending. The last known approximation was the 1931 "rough census" by the Swiss National
Bank. Although extremely important to the Swiss economy, no records were kept of the
movement of foreign capital in and out of the country, either in total or by source country. No
balance of payment statistics beyond trade were undertaken even in the rudimentary form of the
day. Undoubtedly the Swiss financial elite felt that recording and publishing capital flow statistics
would hurt business. They would alert other governments that they were losing considerable
capital to the Swiss in order to escape taxes and preserve wealth, and that their capital controls
were inadequate.

The Allies through their Safehaven program wanted to pinpoint Nazi assets abroad to prevent their
use in prolonging the war and in preparing for a new war. Considerable fervor existed on the
second point in that reliable intelligence had indicated a major meeting of leading Nazi
industrialists in Strasbourg in August 1944 to achieve that end. In response to the issue, Walter
Shoales, the American Consul General in Basel, provided the first information in January 1945 (see
table comparing the various estimates). He mentioned his 1942 estimate that indicated that there
were 10,000 or more German bank accounts in Switzerland amounting to $115 million. It is based
on German accounts in banks in Basel multiplied by 4 to include those in other cities, mainly
Zurich. That amount would come closer to $200 million if his assertion is correct... that foreign owned accounts here are in large part accounts of $20,000 or more."

Later in January 1945, Sholes tried to update his estimate by talking to a number of sources in the Swiss financial community. He raised his bank account estimate to $250 million to include net German deposits since 1942 and added $50-75 million for direct German investments in industrial and commercial concerns in Switzerland. In March, the Swiss newspaper *Die Tat* indicated German deposits at $375 million.

Realizing the fragmented reporting on the subject of foreign German assets, the State Department sent a circular telegram to all neutral posts requesting a detailed breakdown of all such assets by categories. The US Legation in Bern in turn asked the US Consuls in Basel, Lugano and Zurich to assist in compiling the information. Numerous sources were tapped in Bern and the three other cities.

Samuel Woods in Zurich came up with $375 million. He stated, “According to Nationalrat Duttweiler who organized the Association of Swiss Foreign Creditors, German assets in Switzerland amounted to at least 1.5 billion francs. This figure does not include cloaked operations that represent by far the greater part of such assets, large investments in real estate, etcetera.” It is the same figure that had been reported by *Die Tat*. Sholes stuck to his earlier partial estimate and helped derive figures for other categories via discussions with various financial community sources. James Bell, American Vice Consul in Lugano, developed an unbelievably low figure of $68 million broken down by some 10 categories. It came from “an eminent Italian banker” and seemed to be completely disregarded by the US Legation in Bern.

The US Legation in Bern prepared the first full estimate—$915 million—with breakdowns in early May and refined these categories during the next few weeks. In a cable to Washington dated May 31, 1945 it presented its official response with a range of $450 million to $810 million. The post hedged its estimate by indicating it was a “refined guess” for a number of reasons including traditional Swiss concealment of assets and the Swiss Government’s lack of adequate records.

The next estimate came from the Federal Reserve Bank of New York in October 1945 of $400-450 million. Mr. Kriz, the author, simply takes Sholes’ late January estimate for deposits and corporate investments and adds $100 million to $150 million for other categories. By year-end 1945, the Swiss indicated that their census of assets totalled $230 million. At the same time, O. F. Fletcher at the State Department prepared a “revised approximate estimate” of $600 million which excludes “assets secreted in Switzerland or re-deposited through Swiss banks in US, and foreign companies controlled through Swiss dummies.” This estimate is similar to the Milroy one mentioned below.

The Swiss stuck to their figures during the March 1946 Allied-Swiss Conference in Washington. In preparing for the Conference, US officials could chose from a number of estimates.

- In early 1946, Nicholas Milroy prepared a detailed study for the Department of State which estimated assets at $600 million, although several categories were not included which could have added another several hundred million dollars.

- In January, Treasury Assistant Secretary Harry Dexter White in a letter to a Senator indicated an estimate of $500 million, excluding numbered accounts and other hidden assets.
In February, H. Freeman Mathews, Director of the State Department Office of Western European Affairs sent a note to the Secretary of State that the assets ranged between $250 million and $500 million; thus diplomatically including in his range both the Swiss and the Treasury numbers.

In March, the US briefing book for the Conference included the US Legation in Bern estimate of May 1945 with slight variations.

Immediately before and during the Conference, the *New York Times* reported a figure ranging from $500 million to $750 million, with the source being US negotiators.

The Allies accepted the Swiss figure as part of the overall agreement signed at the Conference. Following protracted negotiations lasting six years, after the matter presumably was settled in 1946, the US and Swiss governments finally agreed to an asset level of $56 million. Half that amount ($28 million) was paid to the Allies in 1952, as stipulated in the 1946 accord.

Three key interrelated factors are largely responsible for differences in estimates. The most important was the ease by which the German assets were hidden in the Swiss financial system. The investment base also eroded over time mainly as a result of actions taken by Swiss creditors to recoup likely losses. Finally, major differences existed in how the assets were valued.

**Hidden assets**

Undoubtedly, the majority of German assets placed in Switzerland from the mid-1920s to the mid-1940s were disguised to hide the true owners, whether they were an individual or corporation. The motivations for secrecy are clear. Since the early 1930s, the penalty for any German found holding foreign assets was severe. Corporations moved to avoid high German taxes and wanted to prevent their foreign assets from being confiscated by the Allies. Toward the end of war, the Nazis clandestinely moved their assets out of Germany.

Switzerland was the natural place for Germans to hide their money. As already indicated the neighbors had long-standing highly integrated financial and economic markets. Most important, Switzerland had strict secrecy laws and had over the years developed an extensive infrastructure to conceal assets. Large number of bankers, lawyers, fiduciaries and others existed who were highly experienced in the field. These professionals had few Swiss legal restrictions on their actions since divulging client information was highly penalized.

The Swiss political and financial communities worked closely together to ensure the utmost secrecy arguing it was in the best interest of the Swiss economy. Given this circumstance, it was only natural that even the most conscientious operators in the financial community would stretch the possibilities of secrecy. Those who were more unscrupulously became involved in illicit money laundering activities with little fear of sanctions.

Thus, concealing assets in pre-war and war time Switzerland was particularly easy and probably involved the bulk of foreign assets placed there. There were numerous concealment means and examples. They include:

1. **Placement of money via third parties and commingled accounts.** Rather than place money directly into an account at a bank, even a numbered account, the common practice of persons...
depositing significant sums was to work through third parties. These depositors, who normally were Swiss citizens, placed the funds under their name in a local bank, often commingling the money of several investors. The banks receiving the money thereby did not know the names of the beneficial owners. According to the banker’s records the money belonged to Swiss citizens or institutions rather than the real foreign owners.

Those acting as third party depositors range from professionals who charge for their services to acquaintances, friends and relatives who often are simply helping others. Professionals include private bankers, fiduciaries, lawyers and trustees. Private bankers, as do non-bank financial professionals, rarely hold the funds themselves but place the money in a major bank under their name. Major banks also act as third party depositors. For example, Schweizerische Treuhandgesellschaft is the fiduciary company for the Swiss Bank Corporation. They act as a private bank, accepting money from clients and then placing the funds from a number of customers into an “omnibus” account in which the owner of record is the private bank. These arrangements greatly strengthened secrecy because, at the time, neither third party depositors nor private banks had to disclose to the commercial banks that were the beneficial owners of the accounts.

Actions taken by Kurt Kagi, a Zurich lawyer, provide an example of third party possibilities. In 1938, he was contracted by Heinrich Blattman-Hollweg, the owner of a German-Jewish publishing house, and an acquaintance from law school. The Jewish businessman asked—for a fee—to place some one million Swiss francs in income-generating bank accounts. As Kagi did not want to raise any suspicions he placed the money in some dozen banks throughout Switzerland, with each account under his name. Blattman-Hollweg and his family were sent to a concentration camp, where they all perished. Inquires made by Kagi after the war failed to locate even death records. By 1950, Kagi was using the sizeable funds entrusted to him to meet his own spending and investment objectives.

The magnitude of foreign money placed in the name of Swiss citizens can be seen in the two examples. Two-thirds of the value of customer deposits in the Swiss Banking Corporation subsidiary in New York City (frozen by US authorities in 1940) were in commingled accounts, with the Swiss home office as named owner. The other example is the small amount of money found in Swiss banking accounts dormant since May 1945, that indicates that most foreign deposits were made via third parties to ensure secrecy. As in the Kagi case, it is very unlikely that the accounts of Swiss third party depositors would become dormant.

2. Safety deposit boxes held in the name of a third party. According to Walter Sholes, the long-time US Consul General in Basel, knowledgeable Swiss sources indicated that the Allies were on the wrong trail if they expected to find much German assets in the safety deposit boxes of Swiss banks in their own name. In fact, no funds or securities of importance were found in a 1945 examination of thirty German owned safety-deposit boxes in a branch of the Union Bank of Switzerland in Basel. Most often the German assets were placed in safety deposit boxes at Swiss banks under fictitious names or in the private office safes of business friends, attorneys and notaries.

3. Money held outside financial institutions. During the World War II era, as today, it was common practice to move and hold illicitly acquired or hidden assets in form of financial assets that could not be traced easily, could be transferred readily and that were perceived to hold their value. In the war period, that mainly meant gold, other precious metals, bearer stocks and bonds, US dollars and Swiss francs. Precious metals included coins and bars in which the metal content
is clearly stated and accepted. Diamonds also were used but more rarely because the value of each stone could not be easily discerned. Most of these assets were held in safekeeping devices outside the banking system for Germans by Swiss citizens who were fiduciaries, lawyers, etc.

Among currencies held outside of financial institutions, the Swiss franc understandably played an important role in Switzerland and other European countries during the war. The amount of Swiss currency in circulation rose by more than 50 percent between 1938 and 1945 (after taking out inflation), at a time when the Swiss economy was declining. This substantial increase clearly points to the use of this money as a means to move and store earnings from illicit transactions, such as the selling of goods looted by the Nazis and their collaborators.

Bearer stocks and bonds were another category of easily negotiable financial instruments commonly used in Europe at the time. The popularity of these certificates, issued by corporations and governments, stemmed from the fact that there was no record of ownership. Whoever possessed the instrument was the owner. Considerable amounts of bearer stocks and bonds were looted or confiscated by the Nazis from Jews and others persons in Germany and the occupied territories.

4. Falsification of the origin of securities. Preparing and using falsified affidavits of ownership of foreign securities confiscated by the Nazis throughout Europe was a pervasive practice in Switzerland. Swiss authorities did investigate these practices but presumably the banking community wielded its powerful political clout to prevent a trials. At a pre-trial hearing, Director Hoch and Vice Director Faust of the Swiss Banking Corporation recognized this practice as common. They did not consider their action as a “swindle”, and declared that the issue should have been submitted to a higher authority; and, if this had been done, the request would have been complied with.

Known falsification certificates were provided for $1.5 million in Royal Dutch shares confiscated by the Nazis in the Netherlands. Another example involved securities brought to the Swiss Banking Corporation by Kurt Eichelt, who was engaged in using looted assets to obtain foreign exchange for the Nazi “Four Year Plan”.

5. Falsification of residence status. German citizens, along with all foreigners living in Switzerland, had to secure a domicile permit annually. Part of this procedure involved renewing German passports with the German Consul. The Consul, in agreement with the individual, refused to renew the passport under the pretext that the bearer was not a dedicated Nazi. A refusal letter was prepared by the Consul and given by the individual to the Swiss authorities. As a result, a domicile permit was issued placing the person in the “without nationality” status. Assets of these new “political refugees” thus were no longer considered as owned by a German. When the Swiss moved to block German assets on February 17, 1945, they included only citizens of Germany as of that date. Those who had falsified their residence status before that time were thus excluded from the blocking decree.

6. Building up corporate assets. Long before the war, German businesses were adept at moving assets to Switzerland and other countries thereby hurdling the tight foreign exchange controls imposed by the Nazi regime. These practices continued and were common during the war. As a result, major German companies with branches, subsidiaries or affiliates in Switzerland always seemed to have an abundance of foreign exchange, according to numerous sources in the Swiss financial community. The Nazi regime was well aware of the capital exporting practices and allowed its favorite German companies to undertake them without hindrance.
One of the most common means of surmounting capital barriers was through under-invoicing exports and over-invoicing imports. For example, a German exporter charged its Swiss subsidiary or a Swiss company for goods shipped an amount that was much less than the actual value. The Swiss importer paid the German exporter the amount stipulated in the invoice in foreign exchange and placed the undervalued amount into the exporters' account in Switzerland, after subtracting out a commission for undertaking the false transaction. On the import side, the German firm placed an order for Swiss goods and paid an amount in excess of the real value. In secret arrangements entered into between the German importer and the Swiss manufacturer it was established what part of these German payments were to be kept at the disposal of the German importer.

A number of other practices were used by German companies to move assets to Switzerland. They built up large merchandise inventories there, eventually selling the goods and depositing the receipts locally. Another example involves goods imported by German subsidiaries into Switzerland via a loan stipulating repayment after the war. The merchandise was sold and the receipts held in Switzerland. Although the company books showed no increase in net assets because of the liability created by the loan, there was no intention of repaying the loan. The loan was fake in that it was made by the company to itself.

**Erosion of assets**

The Swiss Government in conjunction with the country's business and financial communities aggressively pursued efforts to use German assets to pay off Swiss monetary claims against German citizens and corporations, throughout much of the war and the post-war years. The Swiss clearly held much greater German assets (claims) than the other way around. Their assets likely topped $1 billion. This included government trade credits worth $250 million that helped Germany buy crucially needed war goods in foreign countries and several hundred million dollars in bank and mortgage loans against firms and property located in Germany. Although significantly profiting from the war, the fear of losses among Swiss businessmen and bankers grew after the tide of battle favored the Allies after 1943. Indeed, three banks that had lent money mainly to German clients went bankrupt after the war.

Germans with blocked assets in Switzerland were also trying to free them, fearing their confiscation by the Allies. Although many German firms anticipating such actions had already hid their assets in a variety of dummy companies ostensibly owned by Swiss citizens, information was being received from Allied embassies in Bern and elsewhere of new attempts to rig records and secretly dispose of cash and securities held in Swiss companies in which Germans had a large interest.

Thousands of instances in which assets and liabilities were offset likely took place. In some cases, the Swiss Government told the Allies while energetically defending the actions of the claimant. In most instances, however, these easily accomplished offsets on company and bankbooks went undetected. The US and its allies learned of some of these arrangements mainly through communication intercepts that seemed most effective on the longer-distance links with the Far East.

The most notorious example involved funds supplied by the Allies to help feed their prisoners of war held by the Japanese. Some 40 percent were used to pay off Japanese debts to the Swiss. Although not offsetting a German claim, the move shows how far the Swiss Government went in
supporting the recouping of its nation’s financial claims against those losing the war. The Swiss Foreign Ministry, realizing the outrage that would occur against its actions, if known, told their colleagues in Washington not to mention to the Allies this confidential Swiss-Japanese agreement to share POW funds. Other examples include:

- The Union Bank of Switzerland, acting on behalf of the defunct Eidgenoessische Bank in Zurich, agreed with Commerzbank AG in Berlin in August 1946 (with an effective date of December, 1945) to offset German balances against Swiss claims in Switzerland. The transaction and funds relate to a loan of 750,000 Swiss francs provided Gewerkschaft Zeche (mining company) Heinrich of Essen-Kupferdreh in 1941.

- Union Bank of Switzerland in July 1946 used Swiss franc deposits it held for the Commerzbank’s Hamburg office to offset Reichsmark deposits it had at Commerzbank’s branches in Germany and Switzerland. The Creditanstalt in Lucerne undertook a similar switch for its correspondent accounts at the Union Bank of Switzerland as well as for the Eidgenoessische Bank in Zurich.

- German firms in mid-1945 sold their blocked Swiss franc accounts in Switzerland to Chinese importers who used these “Chinese” assets to purchase industrial goods in Switzerland, mainly from Brown, Boveri. The Chinese importers reimbursed the Germans in China with gold bars and Shanghai dollars.

- Rudi Staerker, a German citizen, held some 118 tons of tobacco worth 800,000 Swiss francs in a warehouse in Basel. He also owed nearly that much to Societe Generale de Surveillance in Geneva. Swiss authorities in May 1945 wanted the tobacco sold immediately with the receipts used to pay off the debt. They argued that the tobacco would deteriorate considerably during the summer. An examination of the case, indicated that only a small share of the loan to Rudi Staerker was related to the tobacco shipment and the Commercial Company of Salonica Limited of London claimed ownership to the merchandise.

- During the first eight months following the Swiss blocking decree on German assets on February 17, 1945, the Swiss Compensation Office allowed new mortgages to be placed on German-held real estate in Switzerland. This obviously lowered the net value of German held assets and provided a means to pay off Swiss creditors. The US Legation in Bern protested these actions but the Swiss Compensation office failed to address the complaint arguing it had the sole responsibility to determine disposals and dissipation.

- The February 1945 blocking decree permitted disposals for “current operations” and “ordinary living expenses”. Since these categories were not adequately defined they created an easy means of disposing of assets. Moreover, it was not until May 29, 1945 that Swiss law required obligatory registration of German assets. Thus, for three months after the initial decree the transfer of assets by dubious means was encouraged. Other decrees had to be passed in July and August to close the many glaring loopholes that existed. Many of these delays reflected the struggle between the Swiss Government and the financial community over how bank secrecy arrangements should be loosened temporarily. The banks fought against relaxing them including a public relations campaign that attacked the Allies for trying to ruin the competitiveness of Swiss banking.
Arrangements agreed to between Emil Puhl of the Reichsbank and officials of the Swiss National Bank in April 1945 created considerable loopholes to drain German assets in Switzerland. Germans were allowed to use the Reichsbank account at the Swiss National Bank to pay for interest, dividends, rents accruing from credit balances and property investments, and full insurance and reinsurance payments from mid-1944 (predated) to April 30, 1945.

The US Legation in Bern clearly understood what the Swiss were doing and in a message to the Office of Military Government for Germany, the United States (OMGUS) in October 1945 stated that:

“As this Legation has pointed out on numerous recent occasions the Swiss Government is encouraging and sanctioning the disposal of German property in Switzerland without notice to or consent of the Allies. These actions ostensibly are done to protect Swiss interests but clearly are contrary to Allied interests under these circumstances. Legation questions propriety of according special treatment to Swiss property in Germany.”

In Washington, the Treasury Department, also clearly recognized what was happening. In a September 13, 1945 letter to the Secretary of State from Secretary of the Treasury, Secretary Vinson states, “…I believe that unless we seize and liquidate German assets in the neutrals within a relatively short time, the probability of achieving our objectives is slight. Delay will afford the neutrals an opportunity to dissipate the German assets and greatly increase the prospect of cloaking by the Germans themselves.”

A similar grasp of the issue was espoused by those in charge of ensuring the take over of German assets in neutral countries under the Potsdam Agreement. Russell Nixon resigned in January 1946 as head of the German External Property Commission of OMGUS stating State Department has taken a leading part in hamstringing the program of the Commission. His predecessor, Colonel Bernard Bernstein left the same post earlier for similar reasons. Despite requests from the Treasury Department for sanctions they were never applied against the Swiss who prolonged the resolution of issue until 1953 at which time the Allies received less than five percent of German assets in Switzerland. Secretary Vinson’s prediction of dissipation of assets was certainly correct.

Conceptual difficulties

Conceptual differences in estimating the value of assets abound. To start with, few estimates were sufficiently comprehensive for the simple reason that determining the value of hidden assets would have been an horrendous task. The Swiss authorities did not adequately pursue the task and the Allies failed to make them do so. Items such as holdings outside the banking system, patents, insurance were largely ignored by the Swiss in their efforts to list German assets. The value of German-held companies was another thorny issue. For example, large differences existed depending on whether the companies’ worth was determined by book value, net worth, market value or the assets it controlled. These issues will be examined in the next section.

How to account for direct liabilities against the assets was also a major problem. For example, when buying real estate in Switzerland, Germans acquired a mortgage. The property might have had a value of $100,000 and a mortgage on it of $60,000. The net asset value was thus $40,000. Among the various estimates, it is unclear whether the gross amount or net amount was used or something in between. Swiss authorities wanted to use the net amount to ensure that Swiss citizens holding a mortgage against German-owned assets would be compensated. But it was
common practice to use mortgages to hide assets. For example, German citizens lent mortgage money to themselves from their own funds and used Swiss citizens, for a fee, as the nominal holder of the mortgage. Another instance that involved lending money to Swiss companies controlled by Germans is the fake loan against merchandise explained above. In reality, the real net value of assets with loans pledged against them were somewhere between the nominal net and gross values.

Who is considered German was another major coverage issue. Those living in Switzerland and elsewhere who were not repatriated after the war ended (those not considered to be Nazis or Nazi collaborators) seemed to be excluded under the 1946 Washington Accord. The Swiss also did not count those Germans who acquired “without nationality” status (often falsely as indicated earlier), German citizens who changed nationality between the beginning of World War II and the February 1945 blocking decree, and individuals with dual German-Swiss citizenship.

The difference between the amount the Swiss promised under the 1946 Washington Accord and final 1953 payment reflected a number of conceptual issues and only a partial fulfilment of the Accord by the Swiss. As Linus von Castelmur of the Bergier Historical Commission stated in his 1991 dissertation, “Paradoxically the true history of the implementation of the Washington Accord is foremost the history of its non-implementation. Only a portion of the regulations envisioned were implemented as planned.”

Asset categories

This study looks at eleven categories of German investments in Switzerland, namely: deposits in financial institutions, private monetary holdings, capital participation in Swiss enterprises, dollar assets in the United States, real estate, art objects, official Nazi Government holdings, insurance and annuities, trusts and estates, goods in transit and held in warehouses, patents, royalties and copyrights. An estimate is made for each category that involves examining key differences in terms of coverage, concealment and dissipation. Most emphasis is placed on the first three categories, as they are the most significant in estimating the total. Together, they account for at least two-thirds of all investments, according to both Allied and Swiss Government estimates.

Deposits in financial institutions

During the World War II era, as today, deposits in Swiss banks took a number of forms. All types are included in this study. They include checking and savings accounts, demand deposits as well as deposits that were invested at the discretion of customers or bank officials. Most often the directed deposits were invested in Swiss Government securities or shares traded on the Swiss stock exchange. By this broad definition total deposits in Swiss financial institutions in 1945 amounted to $4.1 billion. Excluded from this figure was a large portion of the deposits held by the numerous private banks. Although client money that the private banks deposited in a Swiss commercial or savings bank already were accounted for under the $4.1 billion figure, those funds invested directly in securities were not included in deposit statistics. Considering the importance of private banks in Switzerland, total deposits in all institutions could have easily topped $5 billion.

Estimates of German deposits in Swiss financial institutions ranged from $75 million to $250 million. The lower figure was compiled by the Swiss Compensation Office based on its 1945 census. As mentioned earlier, this calculation has a downward bias because it excludes some categories of German investors, third party Swiss depositors and dissipation of assets throughout 1945. The $250 million figure was prepared by US officials and reflects their 1942 estimate of
$115 million increased to include the inflows during the next three years which were dominated by capital flight from Nazi Germany. Although some third party deposits are captured in the $250 million, it is unclear how much.

Under these circumstances, this study considers $250 million to be a minimum estimate for total German deposits in Switzerland. It would certainly match the Swiss census figure when third party accounts are included. As already indicated, these deposits amounted to about two-thirds of the total German deposits. The extremely conservative nature of the $250 million figure can be seen by comparing it to the $5 billion in total Swiss deposits. It amounted to five percent of total deposits in Switzerland, a relatively small percentage considering the large volume of foreign deposits and that Germany was the second largest investor, after France. German bank deposits in Switzerland could be as high as $450 million considering the magnitude of third party deposits.

**Private monetary holdings**

This category includes German holdings in Switzerland of precious metals and easily transferable financial instruments (currency, bonds and stocks) that are not included under deposits in financial institutions. Diamonds are also included in this category because they can be considered near money. All these valuables were either held by their owners, or in safekeeping devices, or placed in the safes of banks, fiduciaries, lawyers or friends. When bank safety deposit boxes were used, often they were under the name of third party Swiss citizens. Most of these private monetary holdings would have been hidden from view of government census takers.

The Bern Legation’s estimate of private holdings was between $95 million and $160 million. This range looks feasible. In 1945, a Swiss banker estimated about one-third ($250 million) of Swiss francs in circulation was in foreign hands. Such an estimate may be conservative considering that today roughly two-thirds of US paper currency is circulating abroad in part because of illicit undertakings such as narcotics sales. At a minimum, it seems reasonable that 25 percent of the Swiss francs held by foreigners was in the hands of Germans or Swiss citizens on behalf of Germans—that is more than $60 million. To that amount, it is necessary to add the value of other forms of money held outside financial institutions—gold and dollars as well as easily negotiable financial instruments such as bearer stocks and bonds. Considering these instruments as well as Swiss francs, the amount of financial assets held by Germans outside the banks would have topped $100 million.

**Capital participation in Swiss enterprises**

This is a major but highly contentious category of assets because of valuation problems and the tortuous techniques used by German owners to hide their ownership. German control of companies incorporated in Switzerland mainly involved three types of structures:

- **Subsidiaries and branches.** Usually, they were fully owned and managed by the parent German corporation and they handled business for the parent in Switzerland. Many were involved in distribution, transport, and manufacturing operations.

- **Holding companies.** They were formed and heavily used by German multinational corporations mainly to hold stock in companies world-wide for the purpose of exercising control and avoiding confiscation of their assets. Often, nominal ownership of these holding companies was held by Swiss citizens rather than Germans.
Finance companies. This device, which was commonly employed by Germans in Switzerland, is similar to a holding company. Its main purpose, however, was to raise funds to meet the parent German company’s needs. Many were established in the 1924 to 1931 period to help German companies raise capital to recover at home from World War I and to re-establish their global networks. These finance companies were usually owned jointly with a Swiss bank as a minority partner. The parent companies placed their own shares in the finance companies as collateral for loans, but they owned the majority of shares in the finance companies. This allowed them to retain control over the shares owned by the finance companies although legally the shares belonged to the finance companies.

German control over Swiss enterprises also existed via numerous other means. This includes partial ownership of shares, management contracts, loans, patent usage agreements and informal arrangements that were sometimes oral rather than written. Unquestionably, German companies were the world leaders in employing indirect control devices during the intrawar and war years, an era when international cartel arrangements were common. Their sophistication and extensive experience stemmed from a desire or a need to raise capital, avoid confiscation and control international markets. Outside of Germany, Switzerland was the leading hub through which this control was maintained.

Once the war began, the urgency to conceal corporate assets was further encouraged by the Nazi regime. In a September 1939 letter, dated only three days after World War II broke out, from the Reichsbank to a German multinational directed it to camouflage its ownership of foreign subsidiaries to “…protect the German economy against losses resulting from the seizure by third parties and make sure such seizures will be ineffective as far as possible.”

Examples of hidden German investments include: repurchase assets, the use of a front, and particular loan arrangements.

**Repurchase assets.** Before the war, the pharmaceutical company, Schering used two holding companies, Chepha and Forinvent, to buy and hold shares of its Swiss companies. Although it looked like the Swiss owned the companies, the real German owners had a binding option to repurchase the shares at any time.

A similar situation occurred in the infamous and highly controversial case of IG Farben. That German multinational had set up the Swiss holding company IG Chemie which in turn owned the shares of the US company General Aniline. In a memo found by the Allies after the war, Albert Gadow, director of IG Chemie and a German who became a Swiss citizen, agreed that IG Farben, through Hermann Schmitz, a company director (also Gadow’s brother-in-law), had the “option” to buy back General Aniline at any time. Gadow also agreed never to sell these shares to anyone but IG Farben. The IG Farben-IG Chemie linkage also was indicated by a 1940 letter from Schmitz, a secret director of IG Chemie, requesting that the Swiss-based company pay him a promised pension of 18,000 Swiss francs a year. IG Chemie replied that until he was retired from IG Farben, which kept its hidden control through him, he was not retired from IG Chemie.

**Using a front.** In November 1939, Metallgesellschaft transferred its holdings in several US firms to the Swiss company, Rotopulsor. The concealment was strengthened because Rotopulsor was owned by a Dutch company which in turn was controlled by Metallgesellschaft. At the time of the transfer, the Rotopulsor board consisted of three Swiss and two Germans. To emphasize that German interest no longer existed, the two German members resigned in 1940 and were replaced by Swiss. In a letter written by Metallgesellschaft to the German foreign exchange office in 1943.
the company stated, "The future existence of Rotopulsor is of paramount interest to us as well as
to the German foreign currency economy because of the manipulations—of which you are
cognizant—for the camouflage of our American holdings. And we wish furthermore to preserve
for the post-war period this valuable instrument for the accomplishment of foreign tasks."

Loan arrangements

Two officials of the Reichsbank obtained loans from Swiss banks that were used to reduce the net
worth of German corporations in Switzerland. The loan ostensibly was be made by the Swiss
subsidiary of a German company for legitimate purposes but it was soon paid off from funds from
the subsidiary. The original loan funds were deposited in Switzerland via a third party Swiss
citizen and thus hidden away for post war use. The Robert Bosch company’s favourite technique
was to set up Swiss-owned finance companies to make loans against the stock of its Swiss
companies. A secret agreement was also concluded with the finance companies whereby the
shares were to be returned as directed upon the repayment of the loans to a hidden account.

As a result of these and other concealment techniques, assets controlled by German companies in
Switzerland certainly were much greater than any financial measure such as equity ownership and
net worth. But unable to quantify the value of assets controlled, the US Legation in Bern
calculated the German ownership of equity interest. This information most likely was based
mainly on book value rather than net worth or the market value of the companies’ shares. The
latter category was not available because these shares rarely were traded on exchanges and net
worth figures were not published. Based on information gathered in the Spring of 1945 from its
files and Swiss publications, the Legation found more than 250 enterprises in Switzerland with
combined German ownership valued at about $125 million. More than $80 million were shares in
holding and finance companies. Of the remainder, about $25 million were in manufacturing
establishments, $15 million in distribution and $5 million in banking and insurance.

Swiss statistics in 1942 indicated the country had 17,312 companies with a total capitalized of
$1.7 billion. If the latter number is compared to the Legation’s German data, seven percent of
Swiss capitalization would be German-owned. The same relationship for holding and finance
companies would be nearly 20 percent and for other enterprises less than three percent. In terms
of the number of establishments, the Germans held 1.5 percent of the total. Such proportions tend
to make the Legation’s estimates conservative considering the very close economic and financial
ties between the two countries and substantial use of holding and financial companies by the
Germans in Switzerland.

A 1939 Swiss survey shows registered foreign firms in Switzerland were worth about $900
million. Using the 1945 German estimate it would mean the German share would be about 15
percent. But with overall foreign corporate investment probably rising after 1939, the 1945
German share would be lower. Again these relationships make the Legation’s estimate seem
reasonable, if not cautious.

Using its calculation, the US Legation in Bern estimated in May 1945 that German assets ranged
between $110 million and $180 million. It felt the actual number was near the high end of the
range because of the use of book value rather than net worth and because data was lacking on 95
enterprises. A January 1945 estimate valued enterprises other than holding and finance companies
at $50 million to $75 million. The October 1945 Federal Reserve Board assessment uses the low
end of that range. These amounts conform with the May calculation since two-thirds of the value
of German ownership were in holding and finance companies.
Nicholas Milroy, in a 1946 State Department study, found 444 firms with a value of $220 million to $280 million, using a broad definition – German-controlled or -influenced firms. Finally, the Swiss in 1948 report a figure of $34 million for equity investment or 40 percent of the total of German assets. If that percentage is applied against the Swiss total estimate of $230 million in December 1945, the equity proportion would amount to $90 million. But that estimate misses much of the concealed investments. To be extremely conservative, this study uses a minimal estimate of $100 million.

**Dollar assets in the United States**

Swiss commercial banks, excluding the Swiss National Bank, held assets worth $625 million in 1945 in blocked accounts in the United States. Most were deposits in US banks and Swiss branches in the United States. Before the war, Swiss banks deposited money in the United States on behalf of their customers, which included corporations doing business in the United States as well as individuals who felt the money would be safer there than in Switzerland. In most cases, the customer deposits were commingled and deposited in the name of the Swiss bank. This procedure provided the depositor another level of security and secrecy.

US officials at the Bern Legation approximated that this category of German assets ranged from $10 million to $35 million. It was based on what they considered as a reasonable estimate from an authoritative source in Switzerland who said one-half of one percent of the total (or $3 million) was deposited under the name of German citizens. He added another 20 percent came from foreign nationals permanently domiciled in Switzerland and 30 percent was from Swiss nationals domiciled in Switzerland. The bulk of German assets in blocked US accounts went through these latter two categories, given the penchant for secrecy and the use of third party depositors. Although this would mean the Legation’s range would make sense, there is a question of possible double counting - once when the Germans deposited the money in Swiss banks and again when the Swiss banks placed the funds in US banks. It is impossible to judge how much of the blocked deposits were double counted.

The argument for using the upper end of the Legation’s range stems from the fact that the $625 million figure does not include assets deposited in the United States directly by Swiss firms and persons on behalf of Germans. The source believes that if they were included, it would increase the total considerably above the bank amount. Given all these considerations and again to be cautious, German assets among Swiss blocked assets in the United States are estimated at $10 million in this study.

**Real Estate**

Information on German private investments in Swiss real estate is minimal. Most informed persons at the time believed it was substantial and Bern Legation officials used a range of $25 million to $80 million which they stated was an educated guess. In 1948, the Swiss Compensation Office stated indicated a value of $9 million, excluding property held by third persons for German nationals and Swiss residents without nationality. By that time, a significant proportion of the German property also had been sold to pay for maintenance, other expenses and provide “hardship” funds. All these factors point to a German real estate investment of at least $25 million or the bottom end of the Legation’s range.
Art objects

The Nazis looted billions of dollars worth of art objects from individuals, businesses, governments, museums and individuals throughout Europe. Although paintings have received the most attention, there were also large quantities of antiques, jewellery and valuable household items. Many of the items that were sold in neutral countries were handled via the very active Swiss market. Undoubtedly the bulk was sold to collectors in Switzerland and other countries for foreign exchange. Only a minority share of the looted art objects reaching Switzerland likely remained there in German hands at the end of the war. In addition, German citizens held objects that they originally owned and brought to Switzerland for safekeeping.

Many of the art objects owned by Germans were probably held by third parties or deposited in private and bank safe depositories. Some estimators—for example, Milroy— included art along with other non-monetary valuables as part of their calculation of private monetary holdings. This study excludes all art objects from the latter category, except for precious stones. The US Legation in Bern in May 1945 estimated the value of art at $30 million to $45 million. An Allied expert team sent to Switzerland in the Fall of 1945 quoted an “official” estimated range of $25 million to $80 million, and included art works held by Swiss dealers. Valuing the art category requires making an educated guess, since hard facts are limited. One British estimate valued some 11 paintings at an average of $20,000 each. It was believed that there were “several hundred others for which no values have been assigned.” In all likelihood, the total amount did not exceed $50 million. Given the paucity of data, this study uses a conservative estimate of $10 million.

Official Nazi government holdings

The US Bern Legation calculation of $15 million for official assets seems accurate. Much was known about the official holdings of the Nazi Government in May 1945. About $10 million was held by the Reichsbank and other government institutions in the form of gold and Swiss franc deposits. Another $5 million was real estate and property found at German Legations, Consulates and other German organizations. In any case, by the time of the 1953 agreement with the Allies all the property had been liquidated and the receipts used to pay the Swiss Foreign Office for the cost of representing German interests.

Insurance/annuities

The insurance figure has the potential to be very large. The German and Swiss markets were highly interwoven. There were 14 insurance companies, with head offices in Switzerland, operating in Germany. The normally tight Nazi foreign exchange controls were minimal, even during the war, on reinsurance payments—which allowed insurance companies to spread their risks. The large German reinsurance companies had subsidiaries in Switzerland such as Union Reinsurance Company and the Universale Insurance Company, both of Zurich. Under the leadership of the Munich Reinsurance Company, a cartel was formed in 1941 that included companies from Switzerland and Italy as well as Germany. In addition, shadow agreements existed in all reinsurance contracts for eventualities of war. For example, the Union Reinsurance company of Zurich replaced the Munich Reinsurance in countries with which Germany was at war. All these factors provided an easy means of laundering money from both insurance and non-insurance sources.

Cash values of German holders of life, annuity and other policies bought from Swiss companies probably were sizeable. At war’s end, German firms probably had claims of some $100 million or
more against Swiss insurance companies as a result of property destroyed during the war. The Nazi regime at times granted permission to local companies to secure Swiss policies against war time losses resulting from destroyed machinery, property and the loss of estimated income (which had high premiums).

In addition, German-owned insurance companies operating in Switzerland owned considerable assets. Given the nature of the insurance business, it makes more sense to look at total assets rather than book value or net worth. The capitalized value of the seven German insurance companies with branches in Switzerland was about $8 million in 1942 or less than 10 percent of all such companies incorporated in Switzerland. If that percentage was applied against all assets held by insurance companies incorporated in Switzerland (for 1944) of $750 million, the German share would be about $75 million.

The May 1945 US Legation in Bern estimate for insurance is $10 million to $60 million. At the time, its officials said that because of inadequate information they only could make an educated guess and the figures were probably higher. With all the considerations above, the $25 million used in this study is a cautious amount. Hopefully, the several studies now underway on the wartime insurance business in Europe will provide the basis for calculating a more precise figure.

Trusts and estates

With only one report in which German nationals were the beneficiaries of a small trust, the US legation used a range from $2 million to $15 million. This study does not make an estimate due to the lack of information and the likelihood that the number is small enough to be subsumed in any rounding of the overall amount of German assets in Switzerland.

Merchandise

This category includes merchandise in transit at the end of the war and held in storage, both in regular facilities and import-free zones, by Germans and third parties for them. Placing merchandise in Switzerland was a common means of illicitly moving assets from Germany to Switzerland. The transaction was considered a normal part of trade and once the merchandise was in Switzerland it could be sold easily for cash. Other uses of merchandise to disguise assets included borrowing against the goods, as this study has already pointed out. In addition to privately held merchandise, this category includes war material stored by the Nazi Government and German aircraft that were interned or crashed during the war.

In 1948, the Swiss reported this category at $7 million in goods, of which $4 million probably was anti-tank and anti-aircraft guns and ammunition that the Nazi Government had paid for and were in Swiss warehouses at the end of the war. The US Legation’s estimate of $25 million to $60 million was based on reports from Swiss transit agencies. This study uses the low end of that range inasmuch as the Swiss number excludes merchandise hidden under third party names and the disposition of merchandise after February 1945 ostensibly to meet Swiss loan and other obligations.

Patents, royalties, copyrights, trademarks, etc.

Patents played an extremely important role in the ability of German companies to control markets and companies in Switzerland. Germans accounted for two-thirds of the patents granted to all foreigners in Switzerland during the 1930s with that share rising to three-fourths during the war.
In fact, patents granted German citizens and companies, about 2,500 a year, nearly matched those going to the Swiss during both periods.

Determining the monetary value of the patents is especially difficult. Most were held on the corporate books at little or no value. Although often sold to other companies, the price received was in many cases nominal, if it was to a subsidiary or affiliated company. In most situations, when payments were received for a patent, it involved a percentage of the sales revenue of the product or service containing it. Rarely was a patent sold at market value.

In 1948, the Swiss Compensation Office stated that "at the present time there are approximately 15,000 German patents registered in Switzerland of which between 3,000 and 4,000 are valid. ...The major portion of the patents which are valid are believed to have a commercial value; whereas, the lapsed patents are generally considered worthless." They had lapsed from non-payment. If the average valid patent is worth $10,000, then at a minimum total patents would be valued at $30 million, the amount used in this study. This amount is considered conservative in that it excludes all other forms of intellectual property that are normally protected by governments, such as copyrights and trademarks. Although the value of patents was judged large and extremely important by the US Legation in Bern, it did not even make an educated guess. The 1948 Swiss figure was less than $1 million.

Total assets

When all categories are added together, German assets in Switzerland, as of February 1945, certainly exceeded $500 million. The actual minimum estimate is $585 million. Of that, the three major categories--deposits, private monetary holdings and capital participation--alone account for $450 million or about three-fourths of the total. Even if all the remaining categories, of which some are the result of educated guesses, have a combined total of only $100 million, the overall total would still readily exceed $500 million.

As all these estimates are considered conservative, there is a definite possibility that the actual total asset number is higher. Given the various unknowns, the figure calculated by adding up categories plausibly could be some 25 percent higher, or about $750 million. The three major categories could easily account for another $200 million and insurance and patents for $50 million. When this estimate is compared to the various other procedures used in this study, the $500 million to $750 million range holds up well.

Today’s prices

Converting the estimated value from the prices of the time to today’s prices requires applying two factors--the growth in the value of the assets due mainly to interest/income payments and the change in the value of the Swiss franc. The annual return on assets for the past 53 years conservatively would be four percent. The value of the Swiss franc has increased from 24 cents per dollar to 67 cents today. When these two factors are considered the $500 million to $750 million range in February 1945 becomes $11 billion to $16 billion in February 1998.

Conclusion: Lessons learned

Currently, the world spotlight is focused on two issues regarding Swiss economic behaviour during and after World War II: the huge amounts of Nazi looted gold handled by the Swiss; and
the onerous roadblocks Swiss banks imposed on Holocaust victims and heirs seeking to recover bank accounts. Another story, however, remains largely untold. The Swiss prevented assistance worth hundreds of millions of dollars from reaching the many refugees left in the wake of Nazi atrocities.

After the war, the Allies insisted that neutral countries turn over to them all German owned property. This demand reflected two motives: their fear that the Germans would use the assets to initiate a new war, and their desire to fund efforts to assist victims of Nazi persecution. In responding to the Allied demand for German assets, the Swiss government did little but procrastinate. With the strong backing of the country's financial community, it prolonged the negotiations with the Allies for nearly a decade and ultimately paid less than five percent of the value of German assets in Switzerland. To make matters worse, the time the International Refugee Organisation, the group charged with providing relief and rehabilitation in the crucial early post-war years, received the funds from Bern in 1953, it was no longer active.

Swiss government officials clearly allowed narrow economic interest to take precedence over any moral obligation to help overcome the devastating events of World War II. They were able to do so mainly because they turned a blind eye toward the hiding of assets in their country. Concealing assets in Switzerland was effortless for the Germans, while locating them was extraordinarily difficult, especially for the Allies. This was due to the highly sophisticated Swiss financial infrastructure, its preference for secrecy, the Swiss financial community's close linkage with the government, and the long-standing close financial ties between Switzerland and Germany. Moreover, the large profits earned in hiding property attracted many into the field, thereby greatly enhancing and enlarging the laundering system. Indeed, Swiss money launderers at that time faced much less criminal penalties and social stigmatisation than do today's launderers who handle vast sums of drug money.

The German asset base eroded quickly as Swiss entities used German property under their control to offset claims they had against German individuals and companies. Swiss companies clearly were acting out of self-interest to help partially recoup sizeable losses they anticipated in their loans to Germans and their holdings of investments in Germany. German companies also found ways to recoup their Swiss holdings. By moving slowly, Swiss officials allowed the assets to dissipate quickly. Altogether, those in charge of Switzerland at the time clearly placed self-interest in preserving bank secrecy, maintaining German economic ties and recouping their claims against Germany above the moral obligation of finding German assets that could be used to help Nazi victims.

Although the Swiss are the main culprits, fault also lies with the inaction of Allies. Despite their clear resolutions in regard to German assets in neutral countries, the Allies took no action when they could. For example, the US government could have used its mighty economic weapons at the end of the war – placing sanctions on Swiss foreign trade and continuing the blockage of Swiss assets in the United States. Although these possibilities were discussed, the Allies allowed the negotiations to drag on for nearly a decade, in part because other concerns took center stage, mainly the threat from the Soviet Union.

What lessons are to be learned from this and similar situations? The answer is clear. Settlements should be quick and driven by pressing needs and morality rather than by endless legal maneuvering based on narrow self-interests. In the case of World War II German assets, the Swiss should have put forward a reasonable amount immediately. They should have recognized that the Nazi horrors were a unique historic event and that meeting the immediate needs of the refugees
was compelling. The actual liquidation of German assets then could have been accomplished over time.

Today, governments world-wide still have difficulties in balancing their countries’ economic interests and morality. In many cases, the issues are not clear cut and the circumstances are not as devastating or time-sensitive as during and after World War II. There is an exception, especially in regard to timing. The need to immediately assist Holocaust survivors is crucial given the biological clock. It is also important to help rebuild Jewish institutions in central and eastern Europe that were destroyed by Nazi malice and communist tyranny. The most favorable time to achieve that end is now when new social arrangements are being forged in these countries. Payments, for example, should be made now to restore or replace confiscated community property rather than wait to resolve the endless arguments over ownership rights and the precise amounts due.
was compelling. The actual liquidation of German assets then could have been accomplished over time.

Today, governments world-wide still have difficulties in balancing their countries' economic interests and morality. In many cases, the issues are not clear cut and the circumstances are not as devastating or time-sensitive as during and after World War II. There is an exception, especially in regard to timing. The need to immediately assist Holocaust survivors is crucial given the biological clock. It is also important to help rebuild Jewish institutions in central and eastern Europe that were destroyed by Nazi malice and communist tyranny. The most favorable time to achieve that end is now when new social arrangements are being forged in these countries. Payments, for example, should be made now to restore or replace confiscated community property rather than wait to resolve the endless arguments over ownership rights and the precise amounts due.
Sources

Note of Abbreviations

USNA - United States National Archives, College Park, Maryland.
RG - Record Group

Introduction to Discussion


2. US and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II, Preliminary Study, State Department, May 1997.


Movement of German assets to Switzerland


8. Nicholas R. Milroy, German Economic Penetration of Switzerland, State Department, no date (probably 1946), USNA RG 239, entry 10, box 24.


10. Deputy Dr. Pfleiderer, Concerning an Investigation Regarding the Problem of German Foreign Assets, Committee on the Occupation Statute and Foreign Affairs, German Bundestag, 1st Legislative Term, 1949, document 3327 and 3389.

11. Interview with Dr. Landwehr, May 27, 1946, USNA RG 226, Liaison Office X2.


Asset Estimates


20. Walter H. Sholes, American Consul General, Basel to Secretary of State, January 23, 1945, USNA RG 84, Basel, entry 3228, box 4, file 851.6; Also appears in German Economic Assets and Activities Outside Germany, Enclosure 4 to report number R454-45, Military Attaché, London, no date (probably 1945).


22. Samuel E. Woods, American Consul General, Zurich to Leeland Harrison, American Minister, Bern, May 18, 1945, USNA RG 84, entry 3222, box 4, file 850.3SH.

23. Estimate of Total German Assets in Switzerland, prepared for use in conversation with Mr. G., May 1945, USNA RG 84, entry 3222, box 4, file 851.6.

24. James C. Bell, American Vice Consul, Lugano, May 25, 1945, to Leeland Harrison, American Minister, Bern, May 18, 1945, USNA RG 84, entry 3222, box 4, file 850.5SH.

25. From Leland Harrison, American Minister, Bern to Secretary of State, May 31, 1945, USNA RG 59, decimal files, 1945-1949, 800.515/5-31-45.


27. M. Kriz, Foreign Research Division, Research Department, Federal Reserve Bank of New York, to Mr. Knoke, October 25, 1945, USNA, RG 82, federal international files, box 60, file temporary.


29. Nicholas R. Milroy, German Economic Penetration of Switzerland, State Department, no date (probably 1946), USNA RG 239, entry 10, box 24.

30. Memorandum from H. Freeman Matthews, Director of Western European Affairs, Department of State to Secretary of State, February 15, 1946, USNA RG 59, decimal files, 1945-1949, 800.515/2-1546.


33. Swiss German Creditor-Debtor Position, March 5, 1946, USNA Treasury Accession 56-67A1804, box 27, file German External Assets Negotiations Briefing Volume II.

35. Preliminary Report, Proceedings Sub-Committee on Claims, Sessions of March 26 and March 28, 1946, USNA RG 84, Entry 3221, box 2, file enemy assets.

36. Safehaven Department, British Legation, Bern to Economic Warfare Department, UK Foreign Office, January 20, 1948, USNA RG 84, entry 3221, box 3, file 501.8 SH-Q.

**Key differences in estimates**

37. Telegram sent from US Embassy Brussels, October 18, 1946, USNA RG 84, Entry 3208, box 31, file gold in Switzerland.


39. From Leland Harrison, American Minister, Bern to Secretary of State, March 8, 1946, USNA RG 84, Basel, confidential files, box 13, file 851.6.

40. Preliminary List of German Cloaks in Switzerland, USNA RG 169, entry 170, box 991, file Safehaven exhibits.


44. Memorandum for Mr. Sholes concerning Swiss finance (holding) companies, From American Consul General Sholes, Basel to Bern, November 16, 1944, USNA RG 84, entry 3221, box 4, file holding companies.

45. List of Wholly German-Owned Swiss Firms, American Legation, Bern, February 5, 1947, USNA RG 84, entry 3222, box 1, file German assets.

46. Deutsche Bank Report 200-249, OMGUS Finance Department, April 26, 1946, USNA, RG 260, box 46.

47. Falsified affidavits of ownership of foreign securities, US Treasury Representative, Bern, March 4, 1947, USNA.

48. From Leland Harrison, American Minister, Bern to Secretary of State, May 13, 1943, USNA RG 169; entry 48, box 134, file public finance.

49. Letter to American Minister, Bern, May 15, 1945, USNA RG 84, entry 3222, box 4, file German assets in Switzerland.

50. Criticism of Swiss Safehaven Legislation by Polish Member of Swiss Bar, Safehaven report #163, Bern, December 15, 1945, USNA RG 226, OSS, XL34569.

51. Memorandum for Files, American Legation, Bern, July 18, 1945, USNA RG 84, entry 3222, box 4, file 850.3.

52. Joint Commission on Swiss Compensation Office Expose No. 98, American Legation, Bern, April 11, 1949, USNA RG 84, entry 3221, box 1, file 501.8.
53. Safehaven Report, USNA RG 169, entry 170, box 991, pages 137-144.


55. Possible Violations of Allied-Swiss Accord, OMGUS, Finance Division, External Assets and Intelligence Branch, May 14, 1947, USNA RG 84, entry 3221, box 3.

56. Alleged Transfers of Blocked Accounts in Switzerland, October 2, 1946, USNA RG 260, Property Division, box 654, file German assets misc.

57. Telegram sent Bern, September 10, 1946, USNA RG 260, Property Division, box 654, file German assets misc.

58. Disposition of Consignment of 118 tons of Tobacco in Switzerland, Safehaven Report, #211, London, July 9, 1945, USNA RG 84, entry 3222, box 4, file 850.3.

59. Telegram sent by American Legation in Bern, October 16, 1945, USNA RG 84, entry 3221, box 9, file 850.3.

60. Memorandum sent Finance Division from OMGUS, Office of the Director of Political Affairs, October 24, 1945, USNA RG 260, Property Division, box 654, file German assets misc.


63. Letter from Leland Harrison, American Minister, Bern to Sy (likely Rubin), October 23, 1945, USNA RG 84, entry 3221, box 4, file 850.3.

64. Letter from Secretary of the Treasury to Secretary of State, copy (no date, likely Fall 1945), USNA RG 260, General Intelligence 1945-50, box 649.

65. Top Secret Ultra message #0-026511 and 12, War Department, April 12, 1945, USNA RG 457, Allied-Swiss Negotiations, box 1.


67. Top Secret Ultra message #OTP 001728, War Department, April 6, 1945, USNA RG 457, Allied-Swiss Negotiations, box 1.

68. Top Secret Ultra message #2575, War Department, November 3, 1945, USNA RG 457, Allied-Swiss Negotiations, box 1.


Asset Categories


73. Looted Art in Occupied Territories, Neutral Countries and Latin America, Foreign Economic Administration, Enemy Branch, External Economic Security Staff, August 1945, USNA RG 84, entry 3221, box 8, file looted art.

74. Memorandum for the Files, May 8, 1945, USNA RG 84, entry 3222, box 4, file German assets in Switzerland.

75. Airgram from Leland Harrison, American Minister in Bern, to Secretary of State, February 27, 1947, USNA RG 84, entry 3221, box 4, file German Government archives and public property in Switzerland.

76. Known Official German Assets in Switzerland and their Availability to the German Interests Office, From Bern to Secretary of State, September 27, 1945, USNA RG 84, entry 3222, box 4, file German assets in Switzerland.

77. Airgram from Leland Harrison, American Minister in Bern, to Secretary of State, February 23, 1946, USNA RG 84, entry 3221, box 4, file German Government archives and public property in Switzerland.

78. German Assets in Switzerland, Safehaven report, October 5, 1945, USNA RG 84, entry 3222, box 4, file German assets in Switzerland.


80. Nicholas R. Milroy, German Economic Penetration of Switzerland, State Department, no date (probably 1946), USNA RG 239, entry 10, box 24.

81. German War Material in Switzerland, Bern, March 25, 1947, USNA RG 260, Property Division, Box 654, file German asset misc.

82. Number of Patents Granted in Switzerland in 1931-1943. Memo from John A. Lehrs, American Vice Consul, Basel to Bern, May 1, 1945, USNA RG 84, entry 3222, box 4.

83. German owned and controlled patents, Memorandum of conversation, American Legation, Bern, April 15, 1948, USNA RG 84, entry 3221, box 10, file patents.

84. German ownership of shares in Swiss insurance companies and considerations regarding the payment of claims to German beneficiaries, April 26, 1946, USNA RG 43, lot M-88, Conference on German External Assets, Box 198, file external assets 1945-1949.

85. American Legation, Bern, A-462, July 24, 1945, USNA RG 84, entry 3222, box 4, file German assets in Switzerland.

Hi - it was a pleasure speaking with you. I thought you might want to add this to your stack of reading material.

All the best

Marilyn Henry
The Restitution of Jewish Property in Central and Eastern Europe

Marilyn Henry
The American Jewish Committee protects the rights and freedoms of Jews the world over; combats bigotry and anti-Semitism and promotes human rights for all; works for the security of Israel and deepened understanding between Americans and Israelis; advocates public policy positions rooted in American democratic values and the perspectives of the Jewish heritage; and enhances the creative vitality of the Jewish people. Founded in 1906, it is the pioneer human-relations agency in the United States.
The Restitution of Jewish Property in Central and Eastern Europe

Marilyn Henry
Marilyn Henry has been the staff correspondent in New York for the 
Jerusalem Post since 1994. She gratefully acknowledges the assistance of 
Kurt Donnelly of the U.S. State Department, Sam Gruber of the World 
Heritage Foundation, and Sonia Misak of the Institute for Jewish Policy 
Research, London, in preparing this report.
CONTENTS

Foreword v
Executive Summary 1
The Restitution of Jewish Property in Central and Eastern Europe 5
Introduction Germany: An Atypical Model 10
Impediments to Restitution in Central and Eastern Europe 17
Western Europe: New Allegations, Old Scandals 26
A Patrimony Imperiled: The Restitution of Cultural Property 30
The Politics of Restitution 37
Conclusion 51
Notes 53
FOREWORD

In the heyday of the Soviet Empire, when official histories were often rewritten to accommodate the latest denunciations of previous leaders, a popular joke described this strange reality: “The future is not a problem, it is history we cannot predict.”

Until 1989 it was impossible to imagine that the countries of the former communist world would one day face an honest examination of their history, let alone confront its consequences. The legacy of the Holocaust, the Nazi destruction of Jewish life, and the plunder of Jewish property were all part of the hidden truths that communist governments kept locked away. Only in these last few years have archives been opened and details revealed which tell these stories. Only in these last few years have the governments begun to examine their nations’ actions during the Nazi era.

At the same time, Jewish communities in these countries have begun to revive. Many are and will remain small fractions of the prewar communities, but they have nevertheless demonstrated the resiliency and ability of Jewish life to restore itself. Of course, they have been assisted by free and open contact with the State of Israel and with international Jewish organizations.

A sign of this relationship was the creation in 1992 of the World Jewish Restitution Organization (WJRO), which held out the promise of assisting local Jewish communities in negotiating the return of Jewish communal and private property seized by the Nazis and nationalized by the communists. There were additional hopes that these efforts would also promote a serious review of Jewish history and national responsibilities for Holocaust-era persecutions. “This is not about money, but about justice,” it was often emphasized.

Five years since the founding of the WJRO, it is possible and appropriate to review the successes and failures in these efforts to restitute Jewish property, to see how some problems have been solved while others have been created, and to better understand how these issues ought to be pursued in the coming years.

Rabbi Andrew Baker
Director of European Affairs
The American Jewish Committee
EXECUTIVE SUMMARY

The plunder of Jewish property in Central and Eastern Europe is the last of the great, unresolved injustices of World War II. The property was first confiscated by the Nazis, then nationalized by the communist regimes. The collapse of communism, and the subsequent reprivatization programs in Eastern Europe, have offered an unexpected opportunity to press for the restitution of Jewish property.

Jews contend that the failure to restore Jewish property means that the oppressors and their successors are profiting from Jewish blood. It is a simple and obvious argument. But, in practice, property restitution does not lend itself to simple solutions.

Instead, it is plagued by historical, legal, diplomatic, and financial complications with specific characteristics and circumstances that are unique to each state. Property restitution defies a single "grand" solution, and the notion of any "model" to serve across Europe seems unduly optimistic.

The most invidious threat to the recovery of Jewish property, however, appears to be the politics of restitution. Property restitution in Central and Eastern Europe is beset by competing interests and agendas; varying degrees of sympathy and sensitivity, or hesitation and hostility; different conceptions of justice and truth; and outright greed.

There have been acrimonious disputes between the international Jewish organizations that have taken the lead in pursuing restitution and the local European Jewish communities. The local communities are excluded from leadership roles in those organizations, although they live in the states where the property is located and live with the consequences of restitution measures.

They battle over who is the legitimate heir of the communities that were destroyed in the Holocaust, who should negotiate with the governments for restitution, what negotiating tactics to use, how much property to pursue, which property to pursue, and how to use the proceeds. There are no winners.
Executive Summary

There are 1.9 million Jews in Europe these days, fewer in all of Europe than lived in Poland before the war. The international Jewish organizations contend that these European communities are too small to be the legitimate heirs of the millions who died and too weak to successfully negotiate with the successors to the communist regimes. The international organizations also contend that the local Jewish communities do not have the capacity to absorb the property, and that they fail to pursue all the Jewish property.

The local communities counter that they are trying to rebuild their communities and that they have the responsibility for caring for the property they recover. They offer to cooperate with international organizations, but insist on having a role in restitution noting that they are the ones with the experience of dealing with their own governments.

Jewish politics aside, there are other substantial political considerations. The Central and Eastern European nations, emerging from communist rule, are raw democracies struggling to reform their societies and economies. Although they tend to profess sympathy for Jewish property claims, their priorities lie elsewhere. Further, although central governments are the natural negotiating partners for international Jewry, the Eastern European states have been decentralized since the fall of communism. The central governments no longer have the power, and often lack the will, to impose restitution measures on their reluctant societies.

Other actors include the American government, which has been a powerful voice for the recovery of property, and Israel, which has claimed, or has had foisted upon it, a role in restitution to which it has been essentially indifferent.

There was a fairly successful restitution effort in West Germany after the war, and an effort is now under way in unified Germany to recover Jewish property. The experiences in Germany may provide lessons that are useful for restitution efforts in Central and Eastern Europe. There is a danger, however, in trying to apply them universally across the European landscape, because Germany's unique experience as the perpetrator of the Holocaust imposes on it special obligations that are not shared by other nations.

In practical terms, property restitution is a cumbersome process of identifying, documenting, and recovering plundered Jewish property. The process is made especially difficult by the passage of more than fifty years, inadequate records, and the likelihood of multiple property transfers, with competing and overlapping claims of ownership. The result is that identifying property can be tricky. Documenting ownership can be difficult. Recovering property can be impossible.
There are three basic categories of Jewish property: public or communal properties, including cemeteries, synagogues, and schools; private property with recognized heirs; and heirless or "abandoned" private properties. Restitution of all property in Central and Eastern Europe has been sluggish. In theory, though, communal property is the easiest to recover.

In general, the major hurdles to recovering property are citizenship and cost. Many states impose citizenship or residency requirements on claimants. While these requirements appear rational and benign, they have the effect of discriminating against the majority of Jews who are trying to recover property but who live outside the country.

Cost also is a significant problem, and Jewish claims may be abandoned because the expense of recovering the property is simply too high. Many restitution policies place onerous financial burdens on the claimants, such as compensation to the current occupant, as well as liability for taxes and liens. In other instances, the property may be unencumbered by debts, but the community or individual claimant cannot afford the costs of rehabilitating and maintaining it. This often is the case where small communities find themselves guardians of numerous cemeteries or synagogues, properties that require care but that do not generate the income to sustain themselves.

No one knows with any certainty how much property was stolen, spoiled, destroyed, and lost during the Nazi rampage. The traditional figure was derived more than fifty years ago by Nehemiah Robinson. He developed a sophisticated matrix to develop an estimate of $8 billion, which was based on the exchange rates prevailing before the outbreak of the war.

The Jewish property in Central and Eastern Europe is sought not only to rectify an injustice but to assist needy Jews. Of special concern are those in Central and Eastern Europe, who have come to be known as the "double victims." "They have lived through a twin tragedy unlike anything we in the West have ever sustained: Nazism and communism, six years of systematic extermination and over forty years of repression and deprivation," said Stuart Eizenstat, the lead American official on property restitution.

Delays in restitution now threaten to turn them into the "triple victims": first of the Nazis, then of the communists, and finally of opportunities lost.
THE RESTITUTION OF JEWISH PROPERTY
IN CENTRAL AND EASTERN EUROPE

Introduction

In a world where few issues are black and white, restitution is profoundly gray. It boils down to this: Jews want back the property they lost first to the Nazis and their collaborators, then to the communists. The Nazis had no right to steal it, and the communists had no right to keep it. The failure to return it means that the oppressors and their successors are profiting from Jewish blood.

But property restitution—even the suggestion of it—creates political, legal, diplomatic, and financial problems across the landscape of the twenty-one European countries that were occupied by the Nazis. The primary focus is in Central and Eastern Europe, where restitution is buffeted by economic factors, foreign policy, angst, domestic relations, fear, history, sympathy.

The plunder of Jewish property has repeatedly been called “the last sad chapter” of the Holocaust, and it may be the longest. Many survivors and heirs have been trying to recover property since the end of World War II; their efforts have outlasted the cold war.

The end of the cold war has been credited for the surge in property restitution—at least the discussion of it, if not the results. In short order, there was the collapse of communism, the opening of numerous archives, and the public introspection that surrounded a years-long, seemingly endless stream of commemorations and ceremonies marking the fiftieth anniversary of every milestone in World War II. Other than remembrance, by 1995 recovering the property that was expropriated during World War II was the only task left from that era.

It got a push from Switzerland, which sat out World War II but is arguably propelling restitution in Europe, both East and West, more than anyone else.

Switzerland’s relations to the Reich, its receipt of Nazi loot, its treatment of Jewish refugees, its failure to willingly restore heirless and un-
claimed Jewish assets, and its reluctance to make a significant contribution to rebuild Europe dominated Holocaust-related news accounts of 1996.

The allegations about Switzerland, so far, have dwarfed all revelations about other nations. There seems to be no comparison between, say, Switzerland's refusal to turn over to the Allies the full amount of looted gold it received from the Nazis and France's failure after the war to diligently seek the owners of 1,955 plundered works of art, giving them instead to French museums.

The Swiss actions, collectively, have incited passions and prompted calls from many quarters about rectifying the injustices of World War II, to close this "last sad chapter." But those who profited from the Nazis' genocide and plunder are found not only, as expected, in Germany and Switzerland but throughout Europe.

In such a climate, European states find themselves pressured to plan for restitution, or to make some kind of move to preempt it, such as commissions to examine their wartime activities.

It is not yet clear what Western Europe will demand of itself. The West, though, approaches restitution very differently than the East.

The Central and Eastern European states already were on notice that they would have to deal with this issue. Although Western Europe's own record on restitution is spotty, that did not stop the European Parliament from passing a resolution in December 1995 calling on Central and Eastern European states to adopt legislation to facilitate restitution, "given the twofold plundering of the property of Jewish communities, first under the regimes of the Nazis and their collaborators, and then under the communist regimes." Soon after, Sir Leon Brittan, the vice president of the European Commission, noted the importance of Central and Eastern European countries "tackling" restitution issues, implying that this was a step toward their membership in the EU.

To varying degrees, the Eastern nations are undertaking economic reforms that usually include reprivatization programs. However daunting the restitution of Jewish property may be, it is just another element in an already complicated restructuring that entails massive property transfers.

But the possibility of restitution disrupts the status quo in the West. Many nations are startled at the prospect of restoring Jewish property, believing that the time for their Holocaust-era accounting has long passed. National leaders may be willing to apologize for the atrocities committed against the Jews, but they stop there. They point out that their states were Nazi victims, that they were occupied by Germany, and that their populations sustained significant losses and are not liable for Jewish damages.

In Germany, of course, the principle of government responsibility for
Jewish losses was, and remains, the operative premise. But it was not so elsewhere, and the suggestion that Western governments, so many years after the war, have material obligations to persecuted minorities simply rattles them.

In practical terms, restitution entails the cumbersome process of identifying, documenting, and recovering plundered Jewish property. It worked—though not flawlessly—in Germany, first under the U.S. military occupation authorities, then in West Germany, and finally in unified (East) Germany. Now it is tempting to apply that model across Europe.

Elsewhere in Central and Eastern Europe, however, identifying property can be tricky. Documenting ownership can be difficult. Recovering property can be impossible.

In virtually all instances, the process is made knottier by the passage of more than fifty years, inadequate records, and the likelihood of multiple property transfers, with competing and overlapping claims of ownership.

The process is further complicated because the property—originally expropriated or sold under duress—was nationalized four decades ago by the communist regimes. These nations, emerging from communist rule, are raw democracies struggling to reform their societies and economies. Although they tend to profess sympathy for Jewish property claims, they have been unable or unwilling to surmount the domestic political and financial obstacles for massive restitution. Instead, restitution runs the gamut from limited to nonexistent.

The claims for property confiscated during World War II by the Nazis and their collaborators, and later by the communists, fall into three basic categories. The categories also reflect the degree of difficulty for recovery:

- public or communal properties, including cemeteries, synagogues, and schools
- private property with recognized heirs
- heirless or "abandoned" private properties

Restitution of all property in Central and Eastern Europe has been, to put it kindly, sluggish. Although the return of communal property presents a number of problems, theoretically these are the easiest properties to recover, and they are the ones most likely to be offered by governments.

It is generally understood and respected, for example, that cemeteries belong to specific communities with enduring rights to them, as well as liability for them. Cemeteries are not inviting properties. They usually are undeveloped sites. Without structures that would be coveted by others,
they do not encourage squatters who would invest to develop the land, then wage a subsequent battle over the rights to it. The difficulties arise when cemeteries sit near prime real estate. There have been isolated cases where local people tried to sell the property, and where building projects encroached onto the cemeteries.

It is more difficult to recover properties that are suitable or easily adaptable for alternative uses, such as schools, office buildings, and community centers. The difficulty of recovery is proportional to the value of the real estate. The rule of thumb is that the more lucrative the property, the harder it is to recover.

Many nations have yet to consider measures to repatriate private individual properties. The number of properties would be staggering, and dread of the social and political upheaval expected from the displacement of the current occupants makes this an unpleasant and risky venture for governments.

Claims for private property would be extremely difficult to realize. The standard hurdles, common to virtually all claims, include proving both ownership and the right to inherit. Other obstacles may include citizenship requirements for claimants, liability for debts and liens on the property, and prohibitive obligations to compensate current occupants.

Claims for heirless or "abandoned" properties present a number of serious, often insurmountable, problems. Perhaps the most significant is whether these properties may be permanently lost because of the Jewish community's inability to identify them. People claiming private property have some familial knowledge, however meager, that the property once existed. A vague reminiscence about once having heard a family story about life in a shtetl somewhere in Galicia can offer clues about where to begin to look for other clues that would lead to a claim. But these clues have perished with the owners of heirless property. Jewish communities, now focusing on the repatriation of communal property, also must conduct extensive, and expensive, surveys of archival material to create an inventory of formerly Jewish properties that are now without heirs.

The politics of restitution has simply been overwhelming, and often invidious. There are numerous actors in the quest for restitution. These include the European governments, which must be induced to act, and the American government, which has been a powerful voice for the recovery of property. Israel has claimed, or has had foisted upon it, a role in restitution, to which it has been essentially indifferent. Jewish organizations, acting collectively as the World Jewish Restitution Organization (WJRO) as well as individually, have advocated and agitated for the return of
Cemeteries

Every community had a cemetery. Now, without caretakers, they have been neglected, vandalized, or desecrated by encroaching development.

Unlike most properties, cemeteries usually are not hard to reclaim. They inherently are understood as Jewish property and, in many cases, have never been alienated from the Jewish community.

Problems arise, though, when the cemeteries abut valuable property. The cemetery originally may have been outside a town, but with the passage of time and the development of cities, it may now occupy a coveted space in the center.

In Ukraine, for example, "someone got the idea to sell Jewish cemeteries. Some of them are good real estate," said Rabbi Chaskel O. Besser of the Commission for the Preservation of America's Heritage Abroad. One cemetery is adjacent to a hotel that began to encroach on the burial grounds. "They thought they would add one or two acres for a garage," Besser said.

In most cases, though, governments are happy to be relieved of them. But Jewish communities in Central and Eastern Europe are often reluctant to receive the cemeteries, because they cannot afford to care for them.

Some indirect assistance for cemeteries comes from the Commission for the Preservation of America's Heritage Abroad. The commission has nothing to do with America's heritage. Instead, it keeps a vigilant eye on endangered cemeteries that are important to American citizens—the burial grounds in those portions of Central and Eastern Europe from which the Jews emigrated or were deported.

The commission, with the implicit power of the U.S. State Department, concludes treaties with East European countries in which these nations give some kind of guarantee to protect cemeteries, as well as monuments and historic buildings.

The commission can draw on the prestige of the State Department, but it has limited ability to protect the sites. "We don't have a police force at our disposal to check all these things," Besser said, adding that the European governments are trying to be cooperative. In the case of the Ukrainian hotel, the commission told Kiev officials that it did not want a garage built on a Jewish cemetery, and reminded the government that it was bound to protect the site.

Preservation of cemeteries is also of concern to the nonprofit Jewish Heritage Council, which is part of the World Monuments Fund. The council's broad mission is to identify, document, and rehabilitate the buildings and monuments that remain in the countries from which the Jews have disappeared.

In Germany, the situation is different; the state is responsible for the maintenance of the Jewish cemeteries in perpetuity. That was a concession wrested in the postwar restitution talks.

Under German law, a cemetery is maintained for twenty years. During the restitution negotiations with the Jewish Restitution Successor Organization (JRSO), German officials had said that, after the twenty-year period, the Jewish community would be responsible for the cemeteries.

This was unacceptable to the JRSO. Jewish law requires that cemeteries be maintained forever, Benjamin B. Ferencz, the JRSO's first director general, told the Germans.

"Forever? It costs money. You have to cut the grass, have a fence around it. We're not going to pay that," Ferencz recalled the Germans saying. "If you have a peculiar ritual, we're not bound by that. Why should we treat you better than we treat our own?" the Germans asked the JRSO.

Ferencz ultimately persuaded the Germans to maintain the Jewish cemeteries in Germany in perpetuity, with an emotional and dramatic gesture. "I convinced them," Ferencz said, "by slamming on the table the bones that I had brought with me from Auschwitz."
property. The primary role, though, belongs to the Jewish communities in Central and Eastern Europe—the remnants, heirs, and successors of the communities that were annihilated.

The Jews in these communities have come to be known as the “double victims.” “They have lived through a twin tragedy unlike anything we in the West have ever sustained: Nazism and communism, six years of systematic extermination and over forty years of repression and deprivation,” Stuart Eizenstat, the lead American official on property restitution, said in April 1997 in a speech to the Jewish community in Washington.

Delays in restitution now threaten to turn them into “triple victims”: first of the Nazis, then of the communists, and finally of opportunities lost.

No one knows how much property was stolen, spoiled, destroyed, and lost during the Nazi rampage. The traditional figure is one that was derived more than fifty years ago—in 1944—by Nehemiah Robinson. He used a sophisticated matrix of Jewish wealth, occupational patterns, land distribution, currency values, and population figures throughout Europe to measure Jewish material losses. And even then he qualified his estimate of $8 billion, which was based on the exchange rates prevailing before the outbreak of war.

The endurance of Robinson’s calculation, adjusted for inflation, says much about his skill. It also is a tacit acknowledgment that measuring losses has never been easy and that it becomes more difficult over time. It may also mask a certain discomfort in talking about properties; it feels so unseemly to be calculating their value, to be scavenging, when so many people were murdered.

The plunder of Jewish property is the last of the great injustices of World War II. Unfortunately the language of restitution fails to reflect the vast material, spiritual, and psychological devastation of the Jewish communities of Europe. The object is not to recover property. A school is not a building; it is the next generation of teachers, scholars, and rabbis. A synagogue is the transmission of tradition from one generation to the next. All of these are sorely needed in Central and Eastern Europe. Property restitution, then, is a mission to rescue Jewish heritage and to preserve Judaism in Europe.

Germany: An Atypical Model

In 1947, Jewish organizations challenged a time-honored principle, one that goes back to the code of Hammurabi. It says that heirless property reverts to the state. This is the principle of escheat.
This was the operative condition in Europe after World War II. But it was unacceptable to the Jews, who invoked the biblical challenge, "Shall you murder and inherit?" It was inconceivable that Germany, having annihilated the Jews, could later claim Jewish property by arguing that the Jews left no heirs. "If you murder the Jews, the state which is responsible can hardly be the proper recipient of the heirless property," said Benjamin B. Ferencz, the first director general of the Jewish Restitution Successor Organization (JRSO).²

However logical that view, it was much easier said than done. To recover the property for themselves, a dozen Jewish agencies united to form an organization to serve as the successor to the Jews who died without heirs. Then they had to persuade batteries of international lawyers and foreign officials to overlook the millennia-old principle of escheat and to consider a Jewish organization as a successor.

They succeeded, and as one of the occupation forces in Germany, the Americans were the first to recognize the right of Jewish organizations to claim property in the name of communities that had been destroyed. In November 1947, the U.S. military government in Germany promulgated Military Government Law No. 59, "On the Restitution of Identifiable Property," which provided for the restitution of property that had been stolen or confiscated from, or sold under duress by, minorities who were persecuted on religious or racial grounds, Jews and non-Jews.

Law No. 59 also contained a provision that the heirless and unclaimed property of Nazi victims would go to a successor organization—essentially acting as the victims' heirs—that would use the proceeds for the benefit of the survivors. The JRSO was appointed in June 1948 to recover heirless and unclaimed Jewish property.³

Recognition of a successor organization "was a revolutionary principle," said Saul Kagan, the executive director of the Conference on Material Claims Against Germany and a longtime official of the JRSO.⁴ "And this is to the credit of the United States. The U.S. government was the first one to accept it."

The British and the French were slow to follow, with property restitution laws promulgated for the British and the French zones only in 1949 and 1952, respectively. "One had to go to the British Parliament and raise the British equivalent of Cain, and finally the British turned around," Kagan said.

There also were separate property restitution laws for the three Western sectors of Berlin. There was no provision for East Berlin, which was occupied by the Soviet Union. "The Russians didn't believe in private property, didn't believe in property restitution," Kagan said.
Jewish successor organizations, which worked in tandem, were designated for each of the Western zones. They claimed, recovered, and sold property whose proceeds were used largely for the resettlement of survivors.

Ferencz, a former Nuremberg prosecutor, began working on property restitution in August 1948. He faced an immediate major crisis. The restitution law required that all claims be submitted by the end of December 1948. The JRSO had four months to find and train staff, locate the property, and submit property claims.

With a clever appeal to General Lucius D. Clay, the commander of American forces in Germany, Ferencz borrowed 1 million marks from the U.S. military government, which he used to assemble a team that worked round-the-clock to identify Jewish property and prepare the claims. Ferencz’s team submitted more than 160,000 claims for property in the American Zone of Germany—delivering them to the claims center in a U.S. Army ambulance that he had requisitioned from “somewhere.”

Submitting the claims was only the beginning of the process, and some of the problems that bedeviled early restitution efforts in West Germany would crop up again, some fifty years later, in the former East Germany after reunification. And they were harbingers of dilemmas that would surface in Central and Eastern Europe when emerging democracies began to reprivatize property that had been nationalized by postwar communist regimes.

“Legal complications arose on every hand,” Kagan and his colleague Ernest H. Weisman wrote in their history of the JRSO.5

Under the original restitution program, a person whose property had been confiscated or who had been forced to sell under duress could file a claim. The JRSO, filing a claim for heirless property, had no way of knowing the circumstances of the transfer, and could only presume it had occurred under duress. But that was not necessarily so.

Often there was a counterclaim from a current owner who insisted he had paid fair value for the property to, for example, help a Jewish neighbor: “I wanted to help him escape so I gave him 100,000 marks. The property wasn’t even worth more than 80,000 and as a result of that he escaped,” a counterclaimant would argue, according to Ferencz. “He sent me three letters when he was in Brooklyn. I don’t where he is now, but he didn’t file the claim because he felt fairly treated. Who are you to come here and claim the property?”

Or there might be multiple claimants for a property. Such instances would initiate a complicated legal process that began with a hearing by a
restitution agency, an administrative unit. Dissatisfied claimants could then appeal to the restitution court, which was part of the regular judicial system. Subsequent appeals would be heard by the appellate branch of the German judicial system. The final court was the Court of Restitution Appeals, which was composed of Allied judges.

Or a counterclaimant would say that he had paid off the mortgage on the property or made substantial improvements and wanted to be compensated for those costs.

When money had to be exchanged, new problems arose. Making “duress” sales void, in theory, would be a simple transaction in which the seller returned what he had received and the buyer returned the property. But restitution in West Germany was complicated by the demise of the currency and subsequent conversion rates. Forced sales would have been made using the Reichsmark, which was replaced after the war by the Deutschemark. The currency exchange devalued the Reichsmark, which meant that a new sale, to nullify the coerced sale, would involve a substantial loss. Who would bear it? The victim or the person who had acquired the property? The authorities determined that the loss would be borne by the person who had acquired the property. The reasoning held that this person would have taken a loss if he had kept his Reichsmarks in the bank rather than using them to acquire property.

Occupants might be entitled to compensation. On the other hand, they might also be liable for profits that had been willfully diminished or neglected.

Before long, restitution in West Germany became what Ferencz later called “a very bitter business.” It was cumbersome, and it was stirring up anti-Semitism. Many Germans did not want to give up the houses and businesses they had acquired and in which they had made investments.

“There was fierce resentment against this strange organization which comes along and insists upon taking the property back and paying only a small fraction of what has been given for the property. Or in an outright confiscation, paying nothing, because very often whatever the Jew got [for the property] was taken from him by discriminatory taxes of various kinds,” Ferencz recalled.

Further, the JRSO did not want to thrash out claims, case by case, in restitution agencies and courts. Nor did it want to be in the property management business—maintaining properties, collecting rents, and finding buyers. And it urgently needed cash. Jewish welfare organizations were buckling under the strain of providing refugee relief and resettlement; survivors were languishing in D.P. camps or were being moved to Israel, which was destitute.
In the end, Ferencz pursued bulk settlements in which he "sold" the JRSO's property claims to the governments of the four German states, the Länder, and to Berlin. These settlements, which were reached between 1951 and 1955, required the governments to come to terms—in court or through some other kind of settlement—with the claims made by those who had acquired the property. In return, the governments agreed to pay the JRSO DM 48.38 million for the property claims.

The arrangement was "fair and sensible," Ferencz said. "And it was a way to get out. We had begun on a legal path which seemed right at the time, but found it to be insurmountable as it went along."

The recent reunification of Germany has entailed a colossal transfer of property. The original intent of the reunification restitution plan dealt with the property of West Germans that had been expropriated after 1949 by East Germany, according to Sebastian Schutz, an attorney in Berlin who handles restitution cases. "The Claims Conference played a major role in negotiations to ensure that Bonn also focused on restitution of [Jewish] property that was sold under duress between 1933 and 1945," he said.

The role of the Claims Conference stems from the original reparations agreements that were negotiated in 1952. West Germany concluded two pacts, one with Israel that dealt with the Jewish state's costs in resettling the refugees from Europe, and a second agreement with the Claims Conference for "material" compensation for the Jewish survivors. The Claims Conference has continued its negotiations with Germany until today.

The property restitution provisions after reunification were similar to the postwar restitution rules that were first imposed on, and later adopted by, West Germany. These contained presumptions in favor of the claims of Nazi victims. For example, transfers of property during the Nazi period, especially after the Nuremberg Laws of 1935, were presumed to have been sales made under duress.

In addition to covering property that had been expropriated by Jews, the restitution legislation also included the principle that had once applied to the JRSO in West Germany, but now applied to the Claims Conference: that heirless and unclaimed property and the property of dissolved Jewish communities and organizations could be claimed by the Claims Conference, which was designated as the successor organization to those communities.

The original West German restitution programs had concerned only the property that had been confiscated by the Nazis. In the unified Germany, the legislation was, at once, "reprivatization" of East German property
as well as restitution or property compensation to Nazi victims. This created layers of property claims: Jewish claims from the Nazi period, followed by claims from Germans to recover property that had been nationalized by the postwar communist regime. It has created a situation that is extremely complex and fraught with emotional, legal, political, and financial pitfalls, harbingers of those that confront restitution in Central and Eastern Europe.

There is usually more than a single applicant for the onetime Jewish property in the former East Germany: the survivor or heir who lost the property, or the Claims Conference, acting as heir; and the German who had that property expropriated by the German Democratic Republic. By the 1992 filing deadline, the official German restitution agency was contending with a total of 1.3 million Jewish and non-Jewish claims for property in the former East Germany.

“The law usually says that the German has to return the property,” Schutz said. “From the legal side, and for historical reasons, the chances for Jewish property restitution are better than for Germans.”

However, one of the significant issues in Jewish property restitution in the former East Germany is which Jews should inherit. There has been a contretemps between some heirs who failed to file timely claims and the Claims Conference, which recovered the property in their place. The Claims Conference contends that it does not try to edge out legitimate heirs but tries to recover property that would otherwise have gone unclaimed. Had the Claims Conference not filed and won its claim, the organization says, the property would have reverted to the state. This is an internal Jewish dispute; potential heirs who failed to file claims by the deadline have no legal remedies under German law.

The Claims Conference shares the proceeds from the property with the late claimants, according to a progressive scale. But defeated and disgruntled heirs grumble that the Claims Conference does not turn over the full amount and complain that they have been cheated.

It is a charge Kagan rejects. “We are essentially weighing the Claims Conference’s responsibility for the utilization of its funds for projects benefiting the Holocaust survivors versus the claims from late claimants, many or most of whom are not needy survivors,” Kagan said. “This is an equitable way of dealing with it, trying to reconcile a private interest with a public need.”

By the end of 1996, 3,200 Jewish heirs had recovered their East German property in 3,200 cases. The Claims Conference, by contrast, had 1,153 “positive property decisions” for heirless or unclaimed property: 613 confirmed restitution cases, which have not been appealed by German
The question that haunts property restitution is: Who should inherit the substantial property of the Jewish communities that were decimated in the Holocaust? The Jews who live in those countries today, or the Jews who do not?

There is a precedent, from the early days of the restitution program under the U.S. military occupation authorities in West Germany, when an international organization blocked the resident Jews from recovering the property in one community. This is known as the Augsburg case.

In Germany, every town had Gemeinden, or congregations, which were legal entities. The members of the congregation paid taxes to the state, which in turn supported the congregation with the use of these funds. Under the Reich, the Gemeinden had been dissolved and their property seized.

After the war, there were some 10-12,000 Jews in the U.S. occupation zone in Germany and in Berlin. The majority were survivors of the concentration camps, and many were of Eastern European origin.

The Augsburg group of perhaps fifty—some local, some not—had reconstituted themselves after the war into a Gemeinde, declared themselves the owners of the congregation’s property, and claimed restitution of the property of a community that had once numbered 1,000.

The group was challenged by the Jewish Restitution Successor Organization (JRSO). Under U.S. military law, the JRSO was entrusted with the property of the Jewish communities and organizations that had been dissolved by Nazi decrees. Its mission was to generate funds to be used for the survivors’ rehabilitation and to rebuild Jewish communities.

The JRSO contended that the newly formed communities were not entitled to receive all the communal property because they were not identical to their predecessors. “Wide-ranging disparities between the new membership and the old should not be lost to view,” the JRSO said.

Benjamin B. Ferencz, the first director general of the JRSO and a former Nuremberg prosecutor, successfully argued in the Court of Restitution Appeals that the Augsburg group should not recover the property. “I made the argument that those who are entitled are scattered everywhere and we couldn’t give the assets to a small self-proclaimed group who were not subject to any kinds of controls,” Ferencz recalled.

The court ruling set an important precedent at the time, and compelled most of the smaller communities in the American occupation zone to reach an agreement on the division of property with the JRSO.

The current relevance of the Augsburg case is in doubt, however. The JRSO was legally designated by U.S. military authorities to claim communal and heirless property in the American zone in West Germany. It does not have a counterpart today that is universally recognized by Jewish communities or European governments to act as a decisive successor or heir.

The Augsburg group was considered a usurper, in part, because it was newly formed and lacked established links to the property it was claiming. In Central and Eastern Europe, however, the existing Jewish communities, however small, are indigenous and often are the remnants of those communities. And by virtue of the passage of fifty years, they have become the successors.

owners, plus 540 decisions for compensation in lieu of restitution. Since 1995, the sale of some of those properties has generated more than DM 150 million, much of which the Claims Conference used to finance programs for survivors in the former Soviet Union and in Eastern Europe.
The Claims Conference's policy is to sell the property as soon as it is recovered, which in turn has drawn criticism that it is not holding out for the best price. To these detractors, Kagan says: "We are not acquiring real estate. We are dealing with survivors who are aging."

The JRSO's and Claims Conference's experiences in Germany—particularly those after reunification—provide lessons that are useful for restitution efforts in Central and Eastern Europe. But there is a danger in trying to apply them universally across the European landscape, because Germany's unique experience as the perpetrator of the Holocaust imposes on it special obligations that are not shared by other nations.

It also must be noted that Germany's restitution program was initiated by Allied occupation authorities after World War II. It can be argued that Germany had inherited its restitution obligations—even if it later accepted them willingly. Although other European states had fascist regimes and populations that collaborated with the Nazis and exploited the Jews, many European nations do not acknowledge an obligation to make full restitution, arguing that they, too, were victims of German oppression.

Impediments to Restitution in Central and Eastern Europe

The collapse of communism, and the subsequent reprivatization of the property that had been nationalized by the Eastern European states, offered an unexpected opportunity to press for the restitution of Jewish property that had been confiscated during World War II.

But, outside of the former East Germany, the first five years of international Jewish efforts to recover property have shown only barely perceptible results. The restitution of Jewish property has been distracted and hampered by internal Jewish bickering. Politics aside, though, restitution as a "generic" issue is daunting and presents numerous pragmatic problems. It defies a single "grand" solution, and the idea of any "model" to serve across Europe seems unduly optimistic.

Instead, the issue is complicated by a kaleidoscope of factors unique to each state. These include historical factors: when and for how long the nations were occupied by the Nazis, the degree of local support for and collaboration with the Reich, the size of the prewar Jewish population and its legal and social position, the significance and extent of its wealth, and to whom it was lost. Modern factors include the relationship of the current Jewish communities to the postcommunist governments and the pace of national economic and legal reforms.

Restitution also is complicated by international and regional strategic
and political considerations. These can be independent of Jewish interests. The United States, for example, has been exerting pressure on Central and Eastern European states to restore property for several years, while admission to the European Union appears to be linked to progress in property restitution. Each state must decide if, say, EU membership is valuable enough to tackle restitution. Jewish property restitution can arise in unexpected forums, such as when it surfaced as an ancillary issue in the resolution of the German-Czech Sudeten dispute.

Wartime population movements and transfers, as well as shifting boundaries, have linked Jewish property restitution to current geopolitical as well as historical issues. In parts of Galicia, which were once in Poland but now in Ukraine, for example, what nation should be responsible for Jewish wartime losses? The wandering borders have meant that states may need to consider restitution in zones that account for differences in prewar and postwar territory.

The restitution process has been lethargic. But many fledgling democracies in Central and Eastern Europe counter that they have more urgent priorities in building new societies and that restitution is a distraction. They also approach restitution hesitantly because it entails unpleasant domestic considerations that are highly politicized and inevitably traumatic. Any nation weighing restitution automatically invites a public debate of its wartime conduct and obligations. It can be political folly to volunteer to review national history. The experience of Switzerland, which is slowly coming to terms with its role as the Reich’s banker, illustrates the anxiety, commotion, and pain that beset a people when comfortable national myths are deflated. A government may agree emphatically that such a review is needed, but that does not ease its reluctance, because examining national history remains a path fraught with peril.

Restitution may exacerbate a state’s political and social tensions and aggravate its economic problems as well. Restoration may be delayed because of the magnitude of the properties, as a state weighs its capacity to absorb its own losses by returning property to its owners. Also, a state’s confusion or ambivalence about the extent to which it should undertake general reprivatization can also stymie restitution, as the two are likely to be linked.

All these factors can interact, in dizzying combinations. Different issues are more prevalent in some states than in others, which makes it impossible to provide a neat summary assessment of restitution in Central and Eastern Europe. Instead, restitution efforts are moving at different paces (although all fall somewhere on a continuum between slow and stop), and are contending with different political, legal and economic
Impediments to Restitution

Considerations in each nation.

In addition, these efforts often cover different kinds of properties and impose different requirements, creating a hodgepodge of problems and defects that, collectively, militate against the recovery of Jewish property.

Perhaps the only aspect of property restitution that Central and Eastern Europe shares with virtually all previous reparations and restitution programs is the problem of documenting claims. There are two significant hurdles in establishing the validity of a claim. The first is to provide acceptable proofs of original ownership of the property. This is not a major challenge for Jewish communal buildings, although it can be an insurmountable obstacle to claimants for private property. Records may have been destroyed during the war, lost in flight from the Nazis, or simply disappeared with the passage of time—especially given the circumstances of the decades after the war, when there was no reasonable expectation of recovering the property.

The second is the right to inherit, which can be problematic at both the individual and communal level. An individual claimant, or group of claimants, would be expected to prove not only that they are the legitimate heirs, but that they are the sole surviving heirs. For communal property, there may be competition among different Jewish institutions over the same property, or disputes between local Jewish groups and international Jewish organizations over who is the legitimate heir. This issue cropped up in the American occupation zone in Germany directly after the war, and is a particular problem on the horizon in Central and Eastern Europe. The World Jewish Restitution Organization (WJRO) has maintained that the current Jewish communities are too small to stand in as the exclusive heirs for the prewar communities and that the property should be shared by world Jewry.

Most restitution efforts under way or proposed for Central and Eastern Europe concern the recovery of existing property. Usually left out of the equation is compensation in lieu of restitution. In the former East Germany, where there is an energetic restitution program, for example, not all property is being returned. However, there are efforts to compensate former owners and heirs when the property cannot be restituted, such as when the building no longer exists, or the property is being used for a public purpose, such as for a school or park.

What follows is a general review of some of the political, legal, and economic constraints and impediments that plague the restitution of Jewish property in Central and Eastern Europe a half century after the end of World War II.
**Who Plundered?**

Some European governments are pursuing "reprivatization" programs, not full restitution, and they make a distinction between Holocaust- and communist-era claims. These states are concerned only with the expropriation and nationalization of property during communist rule, after 1948, and do not feel obliged to deal with Jewish losses from the Nazi period. In this sense, they discriminate against the Reich's victims by allowing the state to retain Nazi-confiscated property.

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

There are a number of other reasons, both pragmatic and ideological, that governments may limit their measures to the reprivatization of communist-era claims. On a purely practical level, the communist-era claims are easier to deal with. During the Soviet era, national boundaries remained stable. There is no doubt about the government's responsibility within a specific, uncontested area, and there are no overlapping or conflicting claims rooted in different historic events.

But governments may also use the 1948 cutoff date for ideological reasons: they may reject responsibility for Nazi actions, including the plunder of property.

Many see restitution as a condition imposed by outsiders, and one that is sought too late. Some of the Eastern European governments—Romania, Hungary, Bulgaria, Poland, and Czechoslovakia—introduced an assortment of restitution measures shortly after World War II, but they were largely without meaningful results. Then the measures, such as they were, were forgotten after the communist takeovers. And it appears there was not substantial local or international Jewish opposition to the losses of communal property in those states.

**Setting a Precedent**

Millions of people were displaced during the war, and it could be argued that everyone has someone else's property, land, or territory. Governments fear that restituting Jewish property will open a Pandora's box by establish-
ing a precedent or otherwise lead to calls for "universal" restitution. These would overwhelm the state with a flood of requests from people trying to recover ancestral and communal property. Although others were not displaced as a result of racial and religious persecution, the restitution result would be the same. The Czech Republic, for example, may be willing to return Jewish property, but hesitates because it is not willing to make full restitution for church property or to pay compensation for the claims of Sudeten Germans who were expelled after the war.

**Under Whose Flag?**

Many states impose citizenship or residency requirements on claimants seeking restitution. These appear rational and benign, but such requirements have the effect of discriminating against the majority of Jews who are trying to recover property but who live outside the country. These requirements also do not take into account that the original loss of citizenship was unlikely to have been voluntary, and that the restriction further penalizes people for having been persecuted.

And these requirements overlook the possibility that, in some societies, the return of Jews to claim their property is simply not a reasonable option. Survivors and heirs should not be required to return to decimated communities for the sake of recovering property that already is theirs; they already have created new lives elsewhere—occasionally elsewhere in Eastern Europe. The return of claimants also would generate local hostility, and put the Jews at risk, by displacing those who have used the property for the last fifty years. Here, history casts another shadow—that of the postwar violence against survivors, including the June 1946 pogrom in Kielce, Poland, when a mob murdered forty-two Jews and wounded fifty others, some of whom had returned to reclaim their property.

There are other confusing citizenship and residency requirements, which vary across national lines. The citizenship requirement may prevail in cases involving communist nationalizations but not Nazi confiscations. In some cases, the claimant must be a citizen of the state against which the property claim is made, although there would be no residency requirement. In other cases, foreigners can receive titles to residences and buildings, but they cannot own land. (Germany, which based its program on U.S. military restitution law, has no citizenship and no residency requirements for former owners or heirs.)

Citizenship requirements are not unique to current property restitution efforts. They also were used immediately after the war by Western European states to exclude "foreigners" from the right to claim war damages. This
was the case in France, where more than half of the Jewish population were not citizens, and in Belgium, where, before 1940, only 15,000 of the country's 95,000 Jews were citizens. "Germany paid France 400 million marks in reparations to the victims, but the French state refused to give the slightest sum to thousands of [Jewish] orphans on the grounds that their parents were foreigners," said French Nazi-hunter Serge Klarsfeld.8

In some instances, the "residency" requirement is more concerned with the property's income than with the claimant. Many governments fear that restitution will lead to the flight of capital from the country, and some nations insist that funds generated from the restituted property remain in the state.

Who Inherits?

Claimants for private property are often unable to prove to authorities' satisfaction that they are the legitimate and only surviving heirs. Compounding that problem are restrictions that may be imposed by the government on who has the right to inherit. In some instances, claims may be limited to direct descendants; in the case of businesses, this would rule out investors, shareholders, and creditors, despite the potential legitimacy of their claims.

In other instances, only "natural persons" would qualify as heirs, which would preclude institutions, associations, or successor organizations from claiming property and also would have the effect of excluding heirless and unclaimed property from the restitution pool.

Competing Authorities

The return of property is often uneven within a state because restitution may rest with municipal, rather than national, authorities. This has created a patchwork of diverse rules and restrictions.

The climate worsens when there are conflicts between local authorities and the central governments over the return of property. The central governments—the natural negotiating partner in the efforts to recover Jewish property—are likely to be attuned to international opinion and to be amendable to the principle of restitution in order to advance their foreign policy goals, such as admission to the European Union. But, at the same time, they often are unable to broker meaningful deals because they don't have the authority to dispose of the property.

As Central and Eastern European states are decentralized, the federal
officials are losing both the carrot and the stick necessary to prod local authorities. Usually too poor to offer financial incentives, national governments also lack the political power or the will to compel municipalities to return property. “We are not dealing with dictatorships anymore,” said historian Sam Gruber of the Jewish Heritage Council. “The central governments cannot do things by fiat.”

At the federal levels, there may be disputes between the executive and the parliament about who has the authority for restitution policy, and whether it should be determined by decree or legislation.

Even in the unlikely scenario when there are no disputes, restitution may be hampered by extensive bureaucratic delay. (A related bureaucratic-legal issue concerns deadlines for filing property claims. They may be so tight that applicants cannot reasonably be expected to file complete and timely claims.)

The courts may offer relief to claimants contending with municipal officials, or with current occupants, who resist authoritative demands to surrender properties. But this is not considered an effective route; the process is expensive, time-consuming, and offers only limited chance of success.

In Central and Eastern Europe, the courts are overburdened and often inexperienced. Nor are the courts reliable or their judgments final. The emerging democracies may not have fully developed legal systems with recognized lines of judicial review and single codes of law that are consistently applied. In Romania, for instance, a court restitution ruling based on current law was reversed by another court applying Soviet-era law.

What Property Is on the Table?

The Nazi-plundered property that is to be restituted falls into two broad categories, “communal” and “private.” Most early restitution programs focus on communal property, leaving the overwhelming problems of private property until some later date.

The broad definition of communal property includes anything that was owned by the kehilla, the organized Jewish community. However, some countries divide this category into “religious” and “secular” property, and their restitution measures provide only for the return of “religious” communal property. This ignores the fact that such distinctions between religious and nonreligious properties and activities did not exist in the Jewish community before the war.

Under a narrow interpretation of “religious,” some properties, such as cemeteries and synagogues, are obvious candidates for restitution, while
hospitals and old-age homes would fall beyond the reach of restitution. “We have urged [nations to take] a liberal interpretation of the term, pointing to the difficulty of drawing a line between the ‘religious’ and the ‘secular’ in terms of Jewish communal property restitution,” Stuart Eizenstat said, noting, “Many properties had ‘mixed’ uses.”

A report by the Institute of Jewish Affairs also expressed the concern that, although some municipalities have returned synagogues to Jewish communities, there were incomplete transfers. The municipalities allowed the communities to use the properties without actually owning them, and there appeared to be inherent restrictions on use. The institute noted that “this may be setting a precedent that property should be returned to religious groups only if it will again be used for functional purposes.”

Some states, such as Poland, have legislation that would restitute so-called “abandoned property,” which is defined as property that was seized by the Nazis, was not reclaimed at the end of the war, and was subsequently nationalized. That would omit property that technically was transferred by the Jews themselves, even if the sale was made under duress.

Even if the property meets the criterion of one-time abandonment, the current or pending measures may exclude some or all of the communal property that is now in private hands. The governments balk at forcing the current users out, especially if they have made substantial investments in the property.

Piled one on the next, restitution could be restricted to the extreme: to unused, unoccupied, government-held property that does not generate income.

What Can the Jews Afford?

Many restitution policies place onerous financial burdens on the claimants, and these can effectively deter efforts to recoup Jewish property. One of the most onerous is a requirement that the claimant provide compensation to the current owner or occupant. 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 has likely changed hands or title since the fall of the Berlin Wall. This often deposits Jewish claimants in a position that is morally defensible but extremely awkward: in effect, making a claim against a current occupant who may be innocent of any intent to steal or defraud.
The compensation can take a variety of forms. The claimant may be required to compensate the occupant for improvements and other expenses, even if the occupant can keep the income he derived from the property. Or a government may ask the successful claimant to provide alternative facilities for current occupants, or to contribute to the relocation of people who are displaced by the claimant's return.

The claimant—the individual or the community—may be saddled with taxes, liens, and fees, but have no rights to adjust expenses and income in order to cover the expenses. The Latvian restitution system, for example, allows current tenants to remain in the property for up to seven years, paying controlled rents, which often are below maintenance costs. However, the new owner is obliged to pay the property's existing debts.

There are other costs that may diminish the appeal of the property or make the cost of recovery prohibitive. Many properties require substantial rehabilitation after decades of abuse or neglect, followed by expensive maintenance.

Last year, for example, B'nai B'rith recovered its pre-World War II headquarters in Prague, which had been confiscated by the Nazis in 1939 and held by successive Czech governments since the end of World War II. The renovations will cost at least 10 million crowns, or $300,000. "It is falling apart," said Tomas Kraus, executive director of the Federation of Jewish Communities in the Czech Republic. "Since 1945, nobody has invested anything in there."

Industrial properties present special problems. They often were heavily contaminated because the Warsaw Pact states demanded no protective measures for the environment, and require substantial cleanup before they are usable. Environmental costs, however, are not confined to industrial sites. Take the Chernobyl zone, the area of Belarus and Ukraine that was contaminated by the April 26, 1986, accident at Chernobyl, the worst nuclear accident in history. An estimated one-third of Belarus was tainted by the accident. Much of that property was Jewish, but there is no clamor to have it returned.

The usual costs—compensation for current occupants, rehabilitation, and maintenance—may discourage cash-strapped Jewish communities, struggling to revive in Central and Eastern Europe, from pursuing all the one-time Jewish properties to which they may have valid and sustainable claims. That, in turn, leads to a contentious Jewish political question: Who decides what is affordable?

An ancillary question concerns how communities determine which properties to seek. There have been instances in which tiny communities, motivated in part by nostalgia, have sought to recover massive synagogues
they can neither afford to rehabilitate nor to maintain, nor can they fill. The size of the building simply dwarfs the needs and the resources of the community.

A community may also feel compelled to pursue “unrealistic” properties because they fear that abandoning a claim for any property would prejudice future claims. A government might balk at pick-and-choose restitution, or say that if the Jewish community wants to choose which properties it will take, the government can choose which it will offer.

When a community is poor, restitution may not be in the best interests of the site. After the war, for example, the Jews of Greece had their synagogues returned, but the community could not afford them and tore them down.

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 rather than generate income to sustain themselves or support the community. One way, in theory, of preserving Jewish property and raising money is to recover property that would be useful for “Jewish tourism.” That raises an additional and entirely new set of concerns, including whether communities are interested in properties that they may not use themselves, whether the sites that are suitable for tourism require intervention and assistance from outsiders, whether such aid is likely, whether the local community and the government will support such intervention and, indeed, whether they will cooperate with the very idea of “marketing” a site.

Western Europe: New Allegations, Old Scandals

In Paris, the sale of a city-owned apartment was suspended in October 1996 when the city's ownership was suddenly cast into doubt. It seems that hundreds of Paris flats that had been plundered from deported Jews may have been kept by the government and later parceled out as favors, according to allegations in Private Domain, a book by journalist Brigitte Vital-Durand. One of those apartments, it appears, went to the brother-in-law of President Jacques Chirac.

On the heels of the “flats scandal” came evidence that thousands of paintings, which now hang in the Louvre and other national French museums, had been confiscated from Jews.

These, of course, were not the first charges that France had retained the property of Hitler’s victims. But they were the first to get serious, official French attention in many years. Indeed, all of Western Europe
must now grapple with an issue from which it had been spared in the last fifty years: accounting for the property of Jews who died in the Holocaust.

Some 75,000 Jews had been deported from France to the concentration camps. Only a few thousand returned. In France, and elsewhere in Western Europe, Jews who survived the war were sometimes able to recoup their property or to obtain compensation from the state. They also worked feverishly to reorganize their institutions and reclaim their communal property—their synagogues, cemeteries, and school buildings.

But unlike the situation in occupied West Germany—where heirless Jewish property was protected first by U.S. military law and later by British and French measures—it appears there was no concerted effort throughout Western Europe to recover or restitute unclaimed and heirless Jewish property. On occasion, a Western European state enacted a postwar measure under which heirless property would be assigned to a Jewish entity, which was expected to use it for the benefit of survivors. Even these anemic moves, however, appear to have met with only scant success.

Jewish attention immediately after the war was not fixed on property. "For the [early] years it did not seem so important," said Serge Klarsfeld. "Our first priority for years was to identify the victims and the survivors, to put the families back together, to deal with all the people aspects. The second stage was to bring the executioners to trial. The matter of money and property came last."12

Jewish agencies, meanwhile, were busy with the urgent need to rehabilitate and resettle survivors. On the diplomatic front, their efforts centered on the creation of the State of Israel and on preparing for reparations claims against Germany. It was a pragmatic approach, given the exigencies of the time. But in the long run, it contributed to what can only be described as a chaotic process for the recovery of heirless and unclaimed property. These were ad hoc efforts within each state, rather than a systematic, Europe-wide approach.

Europe's attention also was focused elsewhere, on rebuilding the ruined continent. "One-hundred thousand homes had been destroyed in Holland, Germany in ruins, Britain facing a desperate shortage of coal and electric power, factories crippled all across Europe, trade paralyzed, millions fearing starvation," President Bill Clinton said in a speech in The Hague, Netherlands, where world leaders convened in May 1997 to celebrate the fiftieth anniversary of the Marshall Plan. That was a multimillion-dollar American commitment, first proposed by Secretary of State George Marshall in a commencement address on June 5, 1947, at Harvard University, to help underwrite the technical, economic, and social recovery of Europe.13
Fifty years ago, the major restitution crusades were those pursued by the European states themselves. The once-occupied nations were trying to recover their national wealth, particularly the gold that had been looted from their central banks after 1938 as the Nazis moved through Europe. The amounts of looted gold—based on pre-1939 U.S. dollars when gold was valued at $35 a troy ounce—were staggering: Belgium, $223.2 million; the Netherlands, $163 million; Austria, $102.7 million; Czechoslovakia, $44 million; Luxembourg, $4.9 million; Italy, $80 million.

As many Western European countries commemorate the war and its victims a half century later, they also have been compelled to examine their wartime histories. Some have used anniversary and memorial ceremonies to publicly apologize and atone for their nation's treatment of the Jews.

France, said President Jacques Chirac, had handed over those under its protection to their murderers. "Yes, the criminal madness of the [German] occupier was assisted by French people, by the French state," Chirac said at a ceremony commemorating the 1942 roundup of Paris Jews by the Vichy regime's police. "These dark hours tarnish forever our history and are an insult to our past and our traditions."

Next door, in Switzerland, President Kaspar Villiger two months earlier had apologized for Switzerland's treatment of the Jews, including its insistence in 1938 that the Nazis stamp Jewish passports with the distinctive "J"—which made Jews easy to identify and, therefore, to turn back from the Swiss border to face certain death. Switzerland admitted 28,000 Jewish refugees during the war, but it turned away another 30,000.

"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 on May 7, 1995, in a speech to the Swiss Federal Assembly.

"Did we always do all that was humanly possible for the victims of persecution and those who had been deprived of their rights?" he asked. "... We made a wrong choice in the far too narrowly interpreted interest of our country. The Federal Council deeply regrets this and apologizes for it in the knowledge that such a refusal is inexcusable in the final analysis."

In many nations, the apology—however heartfelt—was thought to be the end of the matter. The various fiftieth anniversary ceremonies offered a neat opportunity to close the books on the war. The hostilities, many officials thought, well, these were history.

But the matter did not end, and the book was not closed. Far from it. An admission of guilt would, logically, invite demands for restitution.
Moral and symbolic statements were welcome, but they had to be consummated by substantive acts.

Now come the historical panels—same would say the "truth commissions." These were not voluntary creations, but the products of pressure from different quarters to confront the past. Switzerland, France, Norway, and other European states have organized such panels to comb archives and review their nations' wartime histories. Where the panels do not exist, there is continuing pressure to create them.

"Most of the task of coping with that period still lies before us," Swiss foreign minister Flavio Cotti said on January 17, 1997, in a speech in Zurich. "Switzerland is today faced with a task which should have been dealt with many years ago."

Among the neutral states, the primary interest is to uncover their true financial relations with the Nazis, including the extent to which they trafficked in looted gold. (The Iberian states, Portugal and Spain, were technically "nonbelligerents" during World War II; they were not neutral. They, along with Sweden and Turkey, were important commercial partners with Germany.)

"We won't change the picture," said Jean-François Bergier, of the Federal Institute of Technology in Zurich, who is the chairman of the international panel of historians that was convened by the Swiss Federal Council to examine Switzerland's wartime history. "We'll clarify it—like picture restorers."16

For the other Western European states occupied by the Nazis, the reprieve on examining the fate of the loot is over. Their national historical commissions are expected to indicate what happened to Jewish property.

Left unsaid is what will happen once these reviews are concluded, which is expected, in most cases, before the turn of the century.

Even before they are concluded, much is already known about what the reviews will expose. In the Western European states that were occupied by the Nazis, the revelations about the postwar disposition of Jewish property will show haphazard and lopsided measures that produced limited results on private property and usually overlooked the heirless assets, which then were absorbed into the nations' economies.

The Western European reviews also are expected to reveal that in the postwar period survivors faced some of the same problems in recovering private property that now plague Eastern European restitution: insurmountable burdens of proof regarding the ownership of the property and struggles as they assert the right to inherit.

They also will illustrate some of the discriminatory practices in both restitution and reparations. France, for example, is expected to find that
citizenship requirements hampered the French Jews' recovery of property. Jewish survivors who had never attained French citizenship may have been considered foreigners, which meant they had no claim on land when they returned to France. Others had lost their citizenship; they were disenfranchised by the collaborationist Vichy government.

When it came to heirless property—elsewhere than in Germany—the norm throughout Western Europe appeared to be the traditional common-law approach—that is, the law of escheat, under which heirless property reverts to the state. That was unacceptable in Germany, where escheat would have allowed the state and its citizens to keep the property of the Reich's victims.

Elsewhere in Europe, both East and West, the state acted—by habit, design, or indifference—as the heir of the Jews who perished. The state ignored its own relations with the Nazis and its role in the genocide and the plunder of the Jews. But all these states, the occupied and the neutral, fell somewhere along what Deborah Dwork, the director of the Center for Holocaust Study at Clark University, calls "the C continuum": a progression of compromise, collusion, complicity, collaboration. By retaining heirless Jewish property, each state, regardless of its location on the continuum, profited at the victims' expense.

A Patrimony Imperiled:
The Restitution of Cultural Property

"Consideration of the fate of objects should always be secondary to that of the alleviation of suffering," writes Lyndel V. Prott. "Yet we at UNESCO are constantly confronted by the pleas of people who are physically suffering to help them save their cultural heritage, for their suffering is greatly increased by the destruction of what is dear to them. Their cultural heritage represents their history, their community and their own identity. Preservation is sought, not for the sake of the objects, but for the sake of the people for whom they have a meaningful life."17

The Nazis' thrust through Europe cut a swath of purged synagogues, libraries, and homes. Through the organized confiscation, calculated destruction, and random looting of its cultural property, the Nazis plundered and razed the legacy of European Jewry, at the same time they also raided Europe's patrimony of architecture, paintings, and sculptures.

The effort to recover cultural property is the crusade to salvage a heritage. But for the Jews and for Europe—both East and West—the venture often is like looking for a needle in a haystack.

Throughout Europe, cultural property was plundered and destroyed,
first by the Nazis. Then much of it was carried off by the Soviets, who later justified their looting by calling it "reparations" for their own losses. Property also disappeared into a corrupt art market and into private households, where it was given, transferred, or sold from owner to owner, in a perpetual movement that respected no national border and that continues until today.

The restitution of cultural property is not limited to a specific group, state, or geographic region. It has become something of an international treasure hunt. All this time after the war, virtually all Nazi-occupied nations and persecuted groups still are trying to locate and recover their patrimonies. However, lurking in the shadows of the search is the painful recognition of the Nazis' motives for the cultural plunder: European art appealed to Hitler's greed; it was coveted. Judaica, however, was anathema; it was to be destroyed, except for a remnant saved as relics of a despised race.

The properties that usually arouse the general public's interest are the lost major works of art. In the fives decades since the war, many of these works quietly reentered the legitimate art trade and museum world, gradually acquiring what appeared to be authoritative provenances. However, in Paris, Vienna, and Chicago, recent events have challenged the ownership of some works of art, and these events illustrate assorted aspects of the problems in the restitution of cultural property.

France, for example, was compelled to open a public exhibition of art of questionable provenance in April 1997, three months after the government announced it was forming a commission to determine the legal status of 1,955 works of art in French museums—including drawings and paintings by Picasso, Rodin, Renoir, Courbet, and Monet. The French Audit Office, in a confidential 1995 report, said the art had been stolen, primarily from Jewish collectors, during World War II.

The artworks were recovered by 1949 and were briefly displayed in France to allow their owners to locate, identify, and recover them. But the display was poorly publicized, and the unclaimed works were then distributed to French museums. "From 1954 onward, there was no question of giving any publicity to these works. They were simply buried in the ordinary management of the national collections," said the Audit Office's report, which was dated December 7, 1995. It was made public thirteen months later by the Paris newspaper Le Monde.

In Vienna, an emotional, two-day auction in October 1996 raised $14.5 million for Holocaust victims. There were some 8,000 items on the block at what came to be called the "Mauerbach auction"—paintings, books, tapestries, textiles, carpets, furniture, coins, and arms and armor. The trove was
an assortment of loot that had been plundered from Viennese Jews by the Nazis, then stored for four decades in a fourteenth-century monastery in Mauerbach, Austria.

The heirless remnants were "a window on the world of Austrian Jewish family life which was snatched from an entire generation," Julia Hobsbaum, of the London office of Christie's, said of the items on the auction block. "And that is what gives this sale such poignancy."¹⁹

The stolen Jewish art had been found by the Allies after the war and was turned over to the Austrian government in 1955. The government, although responsible for finding the heirs, placed the artworks in museums or stored them at Mauerbach, some thirty miles from Vienna.

Austria was pushed to make a new effort to locate the owners or heirs of the Mauerbach art in the mid-1980s after an investigative reporter, Andrew Decker, published "A Legacy of Shame: Nazi Art Loot in Austria" in ARTnews magazine, which suggested that the Austrian government was inept, negligent, and on shaky legal ground regarding the looted art.²⁰

Austria also agreed that if the owners or their descendants could not be located, the remaining Mauerbach property would be assumed to be heirless and would be transferred to the Federation of Austrian Jewish Communities, which would sell the property and use the proceeds to benefit the victims of persecution.

In Chicago, meanwhile, a battle over the ownership of a Degas is pitting the grandsons of a Dutch-German banker who was beaten to death in Theresienstadt against the scion of an American pharmaceutical company family who bought it more than fourteen years after the war.

The untitled Degas monotype, painted in pastel, has come to be known by its description, "Landscape with Smokestacks." Once owned by banker Friedrich Gutmann, the Degas was among the untold thousands of works seized in Nazi-occupied areas by the Einsatzstab Reichsleiter Rosenberg, the unit named for Alfred Rosenberg, a Nazi ideologue and Hitler's "cultural adviser."

The legal battle, which was filed in 1996, weighs the rights of the Gutmann heirs against the rights of the buyer, Chicago businessman Daniel Searle, who bought the painting in 1987 for $850,000.

"It's clear here that we've got two innocent people, two victims," said John Merryman, a specialist in art law at the Stanford University Law School. "The issue is how we choose between them."²¹

Common law, on which the American legal system is based, tends to favor the owner over the "good-faith" buyer, even fifty years later. If an artwork was stolen, the buyer would have to give it up. But if the buyer
was acting in good faith, then the owner or heir must show “due diligence” in his search. How diligently did the heirs try to find the artwork? And how far did the buyer go to ensure that the painting was truly free to be sold?

The provenance of the Degas should have aroused suspicions among legitimate art dealers, the Gutmann heirs argue, because it indicated that the work was once in the hands of Hans Wendland, an art dealer who collaborated with the Nazis. That should have been a “red flag” warning that further investigation was required to ensure that the Degas had a clean title.

Gutmann’s heirs had sought the family’s art collection throughout Europe, according to Gutmann’s British-born grandsons, Nick and Simon Goodman, who now live in California. The Degas, however, had come to the United States, where it had been exhibited and published several times in the last three decades.

In his defense, Searle argues that the Gutmann heirs failed to prove “due diligence” because they had sufficient time to claim the painting. Further, there is no presumption of theft or of a sale under duress, according to Searle’s attorney. The heirs will be expected to prove both that Gutmann owned the Degas and that he did not sell it before he died in a concentration camp. The irony is Friedrich Gutmann did not consider himself Jewish; his father had converted the family to Christianity.

The Allies had tried to quash the emerging market in Nazi loot—including that for cultural property and for gold—with a warning in January 1943 that said they were reserving the right “to declare invalid” any transfers of property, rights, and interests in the territories under Axis control. “This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected,” the Allies declared in the “Inter-Allied Declaration Against Acts of Dispossession Committed in Territories under Enemy Occupation or Control.”

The Allies, however, had produced a declaration without much effect. “A pattern was set in regards to restitution: the pattern of laboriously developed agreements on principles unaccompanied by specific procedures on implementation,” said Michael Kurtz of the U.S. National Archives, an authority on restitution.

Only France was vitally interested in wartime restitution policy, according to Kurtz. The Americans and the British showed peripheral interest, while the Soviet Union had its own idea on how to recoup losses—which was to cart off the “spoils of war.” Until today, the Russian
parliament refuses to part with its "trophy art," including works by Renoir, Rembrandt, Cezanne, Goya, Van Gogh, Dürer, and Matisse. The looted art enriches some of Russia's most prestigious museums, including the Pushkin State Museum in Moscow and the Hermitage in St. Petersburg.

The restitution of cultural property is beset by all the usual problems—such as proving ownership and the right to inherit. But there also are special characteristics that set cultural property uniquely apart.

Modern-day claims—whether they are pursued by individuals, communities, institutions, or nations—are efforts to recover specific and identifiable items 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 that are open to different legal interpretations. The lawsuit over the Degas, for example, illustrates the problems inherent in such things as "good faith" sales, suspicious provenance, and statutes of limitation.

Cultural property losses also must be viewed through a distinctive, heartbreaking prism. Like the loss of life, cultural property cannot be redeemed. It does not lend itself to restitution-in-kind or to compensation in lieu of restitution. There is no such thing as restitution-in-kind for the work of Camille Pissarro, a Jewish impressionist painter. There is no restitution-in-kind for a set of Talmud that has been lovingly passed from father to son for generations or a centuries-old Torah scroll that was consigned to the flames. There is no restitution-in-kind for archives, libraries, diaries, and letters that documented the vibrant Jewish life and thought in Poland during the millennia before Hitler.

Traditionally, unclaimed and heirless cultural property reverted to the state to be distributed among museums and libraries. After World War II, however, the U.S. military occupation government in Germany authorized the Jewish Restitution Successor Organization (JRSO) to claim all heirless Jewish property. It recovered tens of thousands of Jewish cultural and religious objects that had been collected by the Germans, including a warehouse full of Torah scrolls and literally tons of ceremonial objects that had been looted from all the Nazi-occupied territories.

A JRSO-affiliate, Jewish Cultural Reconstruction (JCR), under the direction of Professor Salo Baron, a prominent historian at Columbia University, was responsible for receiving, processing, and distributing the looted property, which also included art, books, manuscripts, archives, ritual objects, and Torah curtains, mantles, and crowns.

The loot recovered by the Allies included such treasures as several extensive libraries from Holland, including that of the Biblioteca
Rosenthaliana and the 20,000-volume library of the Portuguese-Jewish community of Amsterdam.

The plundered property was assembled at collecting points in Offenbach and Wiesbaden, Germany. At one point, the JCR depot at Offenbach had a half million books, 8,000 ceremonial objects, and 1,024 Torah scrolls. These were distributed to new congregations and other Jewish institutions in Israel, Europe, the United States, and elsewhere by early 1952.

“Our first goal was to restore them to the rightful owners, but usually you couldn’t tell,” according to Benjamin B. Ferencz, the first director general of the JRSO. “So, the next goal was to try to distribute them wherever they were needed for Jewish reconstruction, the reconstruction of Jewish life.”

In Central and Eastern Europe, there are different degrees of efforts, made by different actors, to recover cultural property, with varying levels of success. Perhaps the greatest modern success has been in Prague. After the war, there were 15,000 Jews 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 September 1994, the government returned the museum to the Jewish Federation, although a representative of the Czech Ministry of Culture serves among its directors.24

Prague may be considered a unique instance, however, because the collection already was well established and it was maintained in one place before it was restituted. There are numerous other instances in Central and Eastern Europe where the “collections” have been artificially created through Nazi confiscation policies and subsequent Soviet library policies.

Lithuania offers a prime example not only of an “artificial” collection, but of some of the numerous political problems inherent in the restitution of cultural property.

Vilnius has books from an assortment of cultures, in numerous languages, reflecting that it served as a central collection point for the Nazis, as well as for material confiscated from other libraries by the Soviet regime. It has Torah scrolls. It also has claimants for Judaica, from the Telshe Yeshiva and from YIVO, the Institute for Jewish Research. YIVO had been established in 1925 in what was then Vilna, in Poland. It was the building of the venerable Yiddish institute that the Nazis used as a collection point.

What Vilnius doesn’t have are funds to maintain the precious collection. And it doesn’t have Jews. The Reich killed 240,000 Jews in Lithuania;
today, fewer than 4,000 remain. And so some people argue that because Judaica is of no use in a society where few can read or write Yiddish or Hebrew, the collection should be transferred to New York or Israel.

Lithuania counters that the collection is part of its cultural heritage. Critics answer that it is hard to understand how the materials could be Lithuanian treasures when they are remnants of the world of Polish Jewry. (Actually, it is difficult to say which nation could stake a credible claim to Vilna’s Jewish heritage. Vilnius—the capital of the grand duchy of Lithuania in 1325—has been passed back and forth between Poland and Lithuania since the late eighteenth century. But regardless of which nation claims Vilnius’s heritage as its own, the distinction is meaningless for the Jews, whose denominations are Litvaks and Galitzianers, not Poles and Lithuanians.)

Even if Lithuania agreed to give up its claim to the materials, however, in many cases they cannot be returned to their owners because the institutions that created them no longer exist. That raises yet another issue: who is the legitimate heir? Many in the Diaspora would argue that Lithuanian Jewry, by virtue of its severely diminished size, cannot be considered the heir.

The books are the remnants of the culture of the Jews of Lithuania. It is dear that the Judaica must be saved, both for its intrinsic value and to remind people of what once flourished in Vilna, a bustling center of secular and traditional learning. This was the place Napoleon called “Jerusalem of the North.” The home of Elijah ben Solomon Zalmen, known as the Vilna Gaon, the preeminent eighteenth-century rabbi of the non-Hasidic world, Vilna once boasted 100 synagogues, the Strashun Library, and the repertory theater known as the Vilna Troupe.

Within the Jewish community, outside of Lithuania, it is agreed that the usable Torahs should be in synagogues, not in a library or a museum. However, there are vastly different ideas about whether and where the rest of the Judaica should be moved. Some say its location is not important, so long as the material is catalogued and properly cared for, with ready access by scholars.

Some think an acceptable compromise is to house the material in the Jewish State Museum in Vilnius. Yet this could prove to be a mixed blessing. On one hand, it would place the Judaica in Jewish hands. But, on the other, it is unlikely that the Judaica would be permitted to leave the country.

“Is there some simple way to resolve this?” said Mikhail Jakobas, director of one of two Hebrew schools in Lithuania. “No, of course not. But I came from Telshe. And I wonder now did my grandfather write in
the margins of those books? Are they what turned my father into a great and learned man?"

"I can't say that this will ever be a center of Jewish learning again," he said in an interview with the New York Times. "I know that our renaissance here is in the past. But books are our love and our obligation. And as much as I admit that more people would use them someplace else I cannot hope to see them leave. Too much has left here already."

That is one of the aching issues about restitution in Central and Eastern Europe. The suggestion that their cultural patrimony does not belong there implies that the Jews do not belong there, either.

"Unfortunately, these books and the Jews here are one," Jakobas told the Times. "Maybe the best thing in the world is for the books to go and for the Jews to go. But if the books go we should not be naive. It means the Jews are gone too."25

The Politics of Restitution

Even before contending with the legal and financial hurdles of recovering Jewish property, one must confront the greatest foe: the politics of restitution. Property restitution in Central and Eastern Europe is a realm of rivals, with competing interests and agendas, varying degrees of sympathy and sensitivity, or hesitation and hostility, different conceptions of justice and truth, and outright greed—all weaving in and out of the shadows of history.

The fall of the Berlin Wall and the collapse of the Soviet Union may have provided unexpected opportunities to reach hundreds of thousands of Jews who had been isolated behind the Iron Curtain and to recover astounding amounts of expropriated Jewish communal and private property. But the first five years of organized Jewry's efforts to recover the property have shown only limited results. While there are agreements with many Central and Eastern European states covering some facet of restitution, the actual return of property has been anemic. There is abundant blame to go around.

The natural address for restitution activity was the Conference on Jewish Material Claims Against Germany. With some two dozen organizations representing the spectrum of world Jewry, the Claims Conference had nearly four decades of experience in negotiating with Germany and Austria for compensation and restitution for Holocaust survivors. However, the reunification of Germany also had provided a narrow window of opportunity to recover Jewish property in the former East Germany, and the organization was loath to take on any additional responsibility, according to
Rabbi Israel Miller, president of the Claims Conference.  

The Claims Conference, instead, proposed that an alternative agency contend with restitution in Central and Eastern Europe, and convened a meeting in June 1992 at which the World Jewish Restitution Organization (WJRO) was formed, Miller said. It was composed of nine organizations, all members of the Claims Conference, and included the Claims Conference itself. The leadership was to rotate between the World Jewish Congress and the Jewish Agency. The other member organizations were the Joint Distribution Committee, B’nai B’rith, Agudath Israel, the World Zionist Organization, and the primary Israeli and American survivors’ organizations.

In November 1992, Edgar Bronfman, president of the WJC and also the new leader of the WJRO, and then-finance minister Avraham Shohat of Israel signed an agreement that was intended to regulate the relationship between the WJRO and the government of Israel. The agreement established Israel’s “special interest in the restitution of Jewish property in Eastern Europe to its owners or legal heirs.”

Israel, the agreement said, “considers itself to be the natural and principal heir to Jewish public property and, where there is no other heir, to Jewish private property, together with the local Jewish communities and the Jewish people.”

The pact’s objectives were to ensure the cooperation and coordination of the WJRO and Israel regarding restitution and “to ensure that such [restitution] activities do not prejudice the foreign relations of the State of Israel.”

However noble its purpose, the agreement suffered from some serious flaws. The first was that it overestimated the WJRO. The organization could not claim to be representative of the universe of Jewish interests in restitution. Although the agreement was intended to cover restitution activities in Central and Eastern Europe, the Jewish communities of those countries were excluded from the organization. Israeli and American survivors’ organizations were members, while survivors from the countries directly affected by the pact—one-time property owners in Eastern Europe—did not have seats at the table. (Nor are they members of the Claims Conference.)

The WJRO was later to say that these communities were indirectly represented because of their membership in the World Jewish Congress and because of their relationships with the Joint Distribution Committee. These proxies, however, cannot substitute for the local communities’ direct participation.

Further, the agreement between the WJRO and Israel alludes to
cooperation and consultation with the local Jewish communities in Central and Eastern Europe. But unlike the formal statement of WJRO-Israel relations, these links are not publicly spelled out, and the rights and interests of the local communities are not specifically recognized.

Agudath Israel is a member of the WJRO, and reportedly represents Orthodox interests. However, other segments of the highly organized haredi (rigidly Orthodox) community do not recognize it as their representative. During negotiations on another restitution issue—for dormant and heirless Jewish assets in Swiss banks—the World Council of Orthodox Jewish Communities challenged the authority of the WJRO to represent world Jewry.

"The World Jewish Restitution Organization had no mandate to represent us in these negotiations [with the Swiss]," said Mel Urbach, an attorney representing the World Council, which is composed primarily of Satmar Hasidim. "Are they elected? Are they representative?" 28

The World Council also issued a summons on April 7, 1997, for the WJRO to face a beit din in Brooklyn. The summons charged the WJRO and its member organizations with misrepresentation of survivors' claims. It also called on the WJRO to immediately cease all such "unauthorized" activities and to disclose all agreements and activities conducted in the name of survivors. 29

The summons to a religious court was widely spurned as a stunt, but it served notice that, at least in one noisy and aggressive corner, the WJRO did not have universally recognized and sanctioned authority to negotiate on behalf of the Jews.
In fact, the WJRO is composed of groups that are neither elected nor, generally, accountable. Of the lot, the Jewish Agency has the strictest public accountability; the JDC and the Claims Conference are service agencies that operate under fairly rigorous scrutiny. The others, however, are archetypal Jewish organizations—they are voluntary membership groups that have chosen missions in accordance with their own interests and for their own motives. The organizations are dependent on private donations and have little, if any, public accountability or oversight. Their membership rolls often are determined by how many people made any financial contribution to the organization in the past year. Their officials and boards usually are the most generous donors, who are not necessarily the most qualified to lead. Their professional staffs are accountable to their boards.

The presumed role of Israel, meanwhile, gave the WJRO a veneer of legitimacy, because foreign governments assumed that a negotiation with the WJRO had the moral and political support of the government in Jerusalem. It was an assumption the WJRO cultivated.

During the WJC's global assembly, held in January 1996 in Jerusalem, government officials from Poland, Estonia, Hungary, Slovakia, and Romania met with then-prime minister Shimon Peres, Bronfman, and Avraham Burg, the head of the Jewish Agency. At a news conference, the officials made general announcements committing their states to the restitution of Jewish property.30

The meeting was historic because it was an unusual and unlikely assortment of officials and individuals convening at the same time and in the same place. Israel Singer, an official of both the WJC and WJRO, subsequently told the Jewish Telegraphic Agency that the restitution commitment was made “not only with a Jewish organization, but with a country. It has become a bilateral agreement.”31

The WJRO, however, was grasping beyond its reach, because Israel is an indifferent partner. Israel treats the question of restitution with a nonchalance bordering on the extreme. It has diplomatic and commercial interests in Central and Eastern Europe, but its interest in the Jewish communities there rests not in their property but in their emigration. And in that, the government defers to the quasi-official Jewish Agency. The agency's objective is to promote aliyah, which is antithetical to the efforts of European Jewish communities to recover property to rebuild after the decimation by the Nazis and decades of suppression and isolation under communist regimes.

The Israeli government became seriously engaged in restitution early in 1997 when it appeared that funds for needy Holocaust survivors would
become available through a Swiss humanitarian fund. However, the Israeli official assigned to restitution was the “diaspora affairs adviser” from the office of the prime minister, not a ranking official from the Foreign or Finance Ministries who was well versed in diplomacy and who could assess the impact of restitution endeavors and agitation on Israel’s foreign relations.

Left unsaid was why the Israeli government “considers itself to be the natural and principal heir to Jewish public property.” Israel was a destination for survivors after World War II, but it was not the exclusive one. It is also true that Israel got reparations from Germany, but those were intended to be applied to the costs of absorbing the refugees—an argument that is not compelling fifty years later when European communities are rebuilding. Given the vitality of Jewish life in the West and the efforts of Jewish communal revival in the former East Bloc, it could be argued that Israel’s interest is limited to its national, diplomatic concerns.

There are some 1.9 million Jews in Europe these days, fewer in all of Europe than lived in Poland before the war. They are what Stuart Eizenstat calls the “flowers in the graveyard.”

The blooms are fragile. And so it is that when a Jewish school in the Czech Republic was scheduled to open in 1997, the first since the 1939 Nazi occupation, it had all of nine first-graders.

“Every big thing has its small beginning. We should not forget that, especially as our beginning is really small,” Rabbi Karol Sidon of Prague said at a ceremony at the Lauder Prague Elementary School. “This school is evidence that [the community] believes in its future and has returned to the womb of the people of Israel.”

Some would find that assessment premature, reflecting one of the competing sentiments about modern Jewish life in Central and Eastern Europe. Those sentiments have powerful force in the debates about property, restitution, which has become a proxy for attitudes about the viability of Jewish life in Eastern Europe.

The effort to recover plundered Jewish property has revealed a fault line with potentially invidious consequences: whether world Jewry can come to terms with the Jews of Eastern and Central Europe.

The Eastern European Jews are pragmatic. They are trying to recover property, not to rectify an injustice or to raise cash for world Jewry, but because they need income to rehabilitate and sustain their communities. They are building, and their tools are the properties of the Jews who preceded them in those places.

These local communities—usually the better organized ones—often
find themselves cornered by disputes with international Jewish organizations as well as with Landsmenschalten whose members have made new lives elsewhere. They battle over who is the legitimate heir of the communities that were destroyed in the Holocaust, who should negotiate with the governments over property restitution, what negotiating tactics to use, how much property to pursue, which property to pursue, and how to use the proceeds. There are no winners.

Five years after the restitution efforts began in earnest, the first hurdle to restitution appears to be the often ferocious tug-of-war between the Jews. Bemused governments, already lacking enthusiasm for restitution, often face competing claims from different sets of Jews about who is the authoritative spokesman for the group.

“Divisions only complicate the restitution effort and make it difficult for governments to place their trust in the process,” Eizenstat said. That was an understatement. The argument not only serves to dissipate any collective Jewish power but may also weaken the local Jewish communities. It conveniently provides governments with an excuse to defer the repatriation of property, which delays or prevents the local Jewish communities from getting at least some of the resources they need to revive. The battles may have longer-term dire consequences, making the local communities vulnerable by exposing the lack of Jewish commitment—real or imagined—to their stability and success.

For many outsiders, these Jewish communities are not the “flowers in the graveyard”; they are simply the graveyards. Rather than being supportive, many outsiders are pessimistic about the revival of Jewish life in Central and Eastern Europe. Others are contemptuous, believing that any Jew with any sense would have left at the first opportunity. This is not a Zionist argument that says that the only authentic Jewish life is to be found in Israel. This is not negation of the Diaspora. It is the specific negation of Eastern European Jewish life after World War II.

Although the outsiders want to recover the Jewish property, they would share it only reluctantly with the local community. If Jewish life in Central and Eastern Europe is doomed, they reason, any money spent there is money wasted.

The initial international Jewish interest in restitution, however, seemed to begin on a far more positive note, one that kept the interests of the European communities paramount.

“We don’t want these communities to be schnorrers,” Singer, the WJC’s secretary general, said in a 1994 interview with The Forward. “There’s no reason for them to be dependent on the West, because they have such great communal wealth and economic vitality of their own,
which in due time should be restituted to them... These are people who were twice wronged, whose communal wealth was illegally taken from them twice—first in the Nazi period, then in the communist period—and now they have a chance to become economically, culturally, religiously and communally independent at last.”

But only a few years after the restitution crusade began, international organizations may also reject the locals' contention that the current community has the right to negotiate for the property of the dead. The tiny communities cannot stake exclusive claims to the communal property of the prewar Jews, they argue, saying that world Jewry and the State of Israel are the heirs of the Jews who were murdered in the Holocaust.

The World Jewish Restitution Organization has taken exception to the property restitution legislation that was passed in 1997 by the government of Poland. It is generally agreed that the Polish legislation is deeply flawed. It also highlights some of the general Jewish complaints about restitution: The restitution measure covers only a limited amount of communal Jewish property, and much of it is undesirable because it will consume resources without generating income to help sustain the Polish Jews. It also covers a limited geographic region, not all of prewar Poland.

In a letter to the Polish government, the WJRO and the World Federation of Polish Jewry condemned the legislation, saying it “legitimizes, facilitates and sustains the great Nazi plunder of Jewish public property [that was] left in the country following the destruction of Polish Jewry.”

But the WJRO's wrath was not confined to the Polish property law; apparently it extended to the Polish Jewish community, which got preferential treatment in the legislation. The WJRO did not recognize the local community as the legitimate heir. There were once 3 million Jews in Poland; now there are about 10,000, by the most generous estimates. With the largest Jewish community in prewar Europe, Poland had the critical mass of Jewish property. To concede in Poland would mean to absorb the greatest loss.

“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, Włodzimierz Cimoszewicz. “They are the people to whom compensation should be made.”

Not only are the local communities too small to represent the millions who died, the organizations say, they do not have the capacity to absorb the property. Further, the local communities do not ask for all the Jewish property. They usually seek only a portion. But, the international groups ask, who are they to discard our legacy?
The local communities acknowledge their limits. They seek no more than they can use, and often cannot afford even that. The Polish law, for example, enables the Jewish community to reclaim “a bunch of devastated cemeteries and ruined synagogues which we won’t even have the money to protect, let alone rebuild,” said Konstanty Gebert, editor of the Polish Jewish publication *Midrasz.* In a debate of seemingly endless acrimony, indignant officials of international organizations—when aggravated enough—will whisper that the local communities cannot be the heirs because they are not “kosher” guardians. They are not “real” Jews; they are intermarried and assimilated, not to be entrusted with the legacy of a great Jewish tradition and of once vibrant Jewish communities. Others will suggest that local communities are unreliable and corrupt, a relic of the communist era, when graft was a survivor tool.

Finally, the international organizations say, the local communities are too weak, too timid, too vulnerable to successfully negotiate with the successors to the communist regimes. Before the war, Jews were 9.8 percent of the population of Poland, 5.1 percent of Hungary, 4.2 percent of Romania, 2.4 percent of Czechoslovakia. Now, these Jewish communities are too small to register on their countries’ population scales.

The charge of timidity may be true in some instances, but not all. The European Jewish communities are slowly maturing. The strength of a community is measured not only by its size but by its internal cohesion and its relationship to postcommunist officials.

Take the Czech Jewish community. Representing an estimated 10,000 Jews, it is one of the feistiest opponents of the WJRO in Central and Eastern Europe, and proud in asserting itself. The idea that the Jewish communities were frail and needed help was true in communist times, said Tomas Kraus, executive director of the Czech Jewish community, “but it is not true now.”

“We have a government that respects us because of the past. We were in front in the fight against communism,” Kraus said. “Today's government has people of the same breed. We are not strangers.”

“The WJRO wants the situation to be just as it was before the war,” federation spokesman Jiri Danicek said. “But they can't see the complications. The WJRO does not understand the reality of Czech life.”

Not all relationships are antagonistic. The WJRO and the Hungarian Jewish community worked out a modus vivendi, creating a foundation to oversee compensation and restitution of communal property. Under the agreement, the foundation was endowed in June 1997 with the equivalent of $26.5 million to use for compensation to Holocaust survivors. The key
here, observers said, was that the Hungarian community was fractured and had requested outside intervention.

Antagonism between local and international Jewry is 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.” Outsiders do not understand the situation in France, said Hajdenberg, who favors a cautious approach to restitution. With that, Hajdenberg was dismissed by some in the WJC leadership as not representative of French Jewry, and they suggested that his apprehension was misplaced.41

However, the locals’ sentiment was echoed anew in June 1997 in Strasbourg, France, where a conference on strengthening Jewish life in Europe became the latest forum for venting spleen about restitution. Maitre Theo Klein, also of the CRIF, issued a statement in which he assailed the “ignorance and chutzpa” of American Jews and Israelis “who scream so loudly” for restitution. Neither the Jewish Agency nor American Jews have a mandate to interfere in a nation’s restitution issues, he said.

“We do not delegate to anyone,” said Gregory Krupnikov, the co-chair of the Council of Jewish Communities of Latvia. “We need our voices heard and spoken by ourselves,” he said at the conference, announcing that the local Jewish communities, acting collectively under the auspices of the European Council of Jewish Communities, were pursuing a seat on the WJRO. Representing Jewish organizations in thirty-five nations, the European Council is the only energetic and functioning trans-European agency; its primary mission is to develop lay and professional communal leaders.

There are some in the West who still see the Eastern Europeans as Jews to be “rescued—from themselves or from their naïveté, rather than from totalitarian governments,” Rabbi Andrew Baker, director of the Office of European Affairs of the American Jewish Committee, said at the Strasbourg conference, which was sponsored by the European Council, the London-based Institute for Jewish Policy Research, the Joint Distribution Committee, the French Fonds Social Juif Unifié, and the AJC.

“It is time to recognize that they are no longer objects—not objects for rescue, nor for aliyah, nor for fund-raising,” Baker said. “They ought to be partners in this common enterprise of strengthening Jewish life in Europe and throughout the world.”

In one of the great ironies, the strongest voice on behalf of the local
Jewish communities comes not from the Jewish world but from the United States.

"The fledgling Jewish communities in Central and Eastern Europe must be an important focus of the international Jewish community. We must ensure that efforts by the Nazis and communists to decimate these once-thriving institutions and neighborhoods fail completely," Eizenstat said April 9, 1997, in a speech to the Jewish community in Washington.

"The Jewish populations in most of these countries were almost destroyed," he said. "But our hope is that with the support of the Jewish community around the world, the local Jewish communities in these countries will be able to deepen their roots, renew their spirituality and prosper once again—providing inspiration for Jews around the globe."

Those have to be welcome words in Poland, where the Jewish community is both defensive and assertive. "It's not like we want to reclaim all that was Jewish in this country and make ourselves rich," said Gebert. "We want to be able to educate our kids, build walls around our cemeteries, send our children to Israel and help Jews elsewhere instead of relying on handouts. I don't think that's an excessive demand."

Trying to navigate between the two, Eizenstat has called for property settlements that meet the expectations of local Jewish communities and that are credible to international Jewish organizations. In acknowledging the different approaches between the two, he suggested that international organizations can offer the local communities support in identifying property to be claimed and in maintaining the restituted property. "International organizations also are important in that they represent the larger Jewish community's interest in resolving these difficult issues," Eizenstat said.

"At the same time, local Jewish communities have a deep, historical understanding of their communities and their countries and wish to rebuild their lives and to provide a future for their families," he said.

For precisely that reason, some Jewish communities also have cringed at the tactics used to try to compel restitution. Local Jewish communities fear that some tactics not only set back restitution efforts, but undermine their security by sparking social unrest and anti-Semitism.

It is impossible to assess the extent to which restitution may rouse anti-Semitism. But there is no doubt that some will say the recovery of property should be pursued fearlessly, regardless of the consequences. Others are more discreet, anxious that, unless restitution efforts proceed cautiously, Jews will be perceived as "Shylocks," which would create a dangerous situation for the European communities.

Uri Huppert, a Jerusalem attorney who is active in Polish-Israeli
relations, spoke of the need for prudence. "You have to ask if the potential gains outweigh the potential damage," he said in an interview with the Jerusalem Post shortly after the formation of the WJRO.

"The Jewish establishment still says everyone owes the Jews everything. This will outrage countries whose citizens sat in Auschwitz along with Jews," he said. He cited Poland, whose citizens fought against the Nazis; 450,000 Poles fell in Warsaw fighting the Nazis. "The perception will be that the Jews are following the Nazis and the communists to take advantage of the Poles," he said.44

The Polish Jewish community, for example, was shaken in April 1996 when the World Jewish Congress said it had run out of patience with Polish authorities and warned that countries that do not take steps toward Jewish property restitution will be "publicly attacked and humiliated."45

A year later, Polish and Romanian Jews leaped to the defense of their governments when the WJRO said it would work against the admission of Poland, Romania, and the Czech Republic into NATO unless they cooperated over the restitution of Jewish communal property.

"We will use all the means accessible to prevent the Czech Republic, Poland and Romania [from] joining NATO until these countries return all the property to their local Jewish communities," Naphtali Lavie of the WJRO was quoted as saying in the June 5, 1997, edition of 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 from that comment, but not before he had lengthened the distance between the WJRO and the Warsaw, Bucharest, and Prague communities.46

That comment also irritated American officials, who have been urging Central and Eastern European nations to repatriate Jewish property, but without conditions. Instead, property restitution is distinct from the U.S. efforts to admit the Czech Republic, Poland, and Romania into NATO, which is the chief American foreign policy objective of the post-cold war era.

An advocate for the rights of the local Jewish communities, the United States also has advanced progress in restitution in Central and Eastern Europe by elevating the issue in American foreign policy. In 1995, the State Department created the position of "special envoy" for property restitution in Central and Eastern Europe, and assigned Eizenstat to the role. Eizenstat was the Clinton administration's point man on restitution during his tenure as undersecretary of commerce for international trade,
and retained the task after his June 1997 swearing-in as undersecretary of state for economic, business, and agricultural affairs.

Much of the impetus for the creation of Eizenstat's mission came from the recognition that large numbers of American citizens were immigrants who were victims of Nazi or communist aggression and they had property claims in Central and Eastern Europe. It was not relevant that the vast majority of claimants were not Americans at the time their claims arose, Eizenstat told the Helsinki Commission during a 1996 review on the status of restitution in Europe.47

The broad question of property restitution in Europe then was highlighted on May 7, 1997, when Eizenstat issued a blistering federal report on the Allies' efforts to recover Nazi loot. Although it focused primarily on the activities of Switzerland and other neutral nations during World War II, the report—and the massive international publicity—referred to the challenge "to complete the unfinished business of the Second World War, to do justice while its surviving victims are still alive." That was a call for restitution.48

Eizenstat has been a roving envoy, traipsing back and forth across Central and Eastern Europe, meeting with presidents and prime ministers, urging them to institute restitution procedures. But his has been a gentle touch—one that has consistently commended all progress and that has remained circumspect in the face of disappointment and displeasure.

The American policy emphasizes equity, as well as sensitivity to the quandaries that confront the emerging democracies. "I have stressed the importance of resolving property claims issues in ways that are just, fair, and nondiscriminatory," Eizenstat has said in numerous forums on restitution.

Property restitution has been framed as one component in the transition from communist to democratic development, part of what members of the Helsinki Commission have called "the difficult and wrenching process of trying to right the past wrongs of previous totalitarian regimes."

Eizenstat has been almost soothing in his efforts to prod fragile democracies to take the moral high ground. "Although we understand their financial constraints as they struggle to reform their economies, the new democracies of Central and Eastern Europe should avail themselves of this historic opportunity to stand against the enduring evils of Nazi and Communist persecution," Eizenstat said. "Through the open, fair and comprehensive return of confiscated and stolen property, these countries can finally begin to address a half-century of injustice."49

But the United States, while acknowledging the public fracas between local and international Jewish organizations, has no advice on this score for
The postcommunist governments, except to encourage them to try to please everyone. “We do not seek to dictate solutions or negotiating partners,” Eizenstat told the Helsinki Commission. “Rather, we urge that governments address the question of promoting restitution and compensation of communal and private properties in ways that meet the expectations of local communities and are credible to international organizations which act in partnership with local groups.”

A sympathetic observer would conclude that most of the Central and Eastern Europe governments already have their hands full. These are fragile democracies with unrelenting domestic problems. The quality of life has deteriorated in the past decade in Eastern Europe and the former Soviet Union. Since the fall of communism, about one-third of the population lives on less than $4 a day, according to the 1997 Human Development Report, which was published by the United Nations Development Program. Since the transition to a market economy, 120 million people in the region live in impoverished conditions, compared to 4 million in 1988, the report said.

The governments do not enjoy unflinching support. In the Czech Republic, for example, the government of Prime Minister Vaclav Klaus in June 1997 only narrowly won a vote of confidence after Klaus announced severe austerity measures to counter a sharp fall in the Czech currency.

Restitution, then, takes place against a precarious political and economic backdrop in which governments often have no practical incentives to return property and, in fact, many reasons to resist. The moral imperatives are likely to falter against domestic and regional demands and conditions.

One of those conditions has to do with nations’ responsibility for properties within their current borders in light of the significant changes since 1939 in European boundaries and in national populations. Some governments fear that restoring Jewish property would create a precedent that would expose them to claims from ethnic Germans who were expelled after the war. Or, conversely, negating the claims of ethnic Germans could have the effect of negating Jewish claims as well.

Prague and Bonn, for example, struggled to create a “clean slate.” Difficult as it was to orchestrate, this made strategic sense for the two nations. Their fifty-year dispute over the Sudeten Germans was one of Europe’s last unresolved bilateral issues from the Second World War. The issue was murders of tens of thousands and expulsion of 3 million Sudeten Germans from Czechoslovakia, and subsequent compensation claims from both Germany and the Czech Republic.

Prague wanted to avoid the Germans’ claims for compensation of their
confiscated property. Neither state seemed eager to revisit their tangled history. They did not want to talk about whether the Sudeten Germans had been an eager fifth column in Czechoslovakia or a persecuted minority that was "pushed" to support Hitler, and whether the ethnic Germans had been purged from Czechoslovakia or simply transferred under the terms of the 1945 Potsdam Agreement.

The recent German-Czech declaration of reconciliation, Czech president Vaclav Havel told the Bundestag on April 24, 1997, offered the two nations a "historic opportunity" for cooperation. Germany and the Czech Republic did not want to burden their relations with long-ago events that cannot be undone, he said. "As the Germany of today is not in the position to bring the tens of thousands of Czech victims of Nazism back to life and to take us back to the time before 1938, when Czechs, Jews and Germans lived together [in Czechoslovakia], so, too, the Czech Republic of today can as little give the expelled Germans their old home back," said Havel.

No doubt other nations would like to be relieved of the "burden" of history. But Jewish ventures for restitution allow for no such relief. Instead, they leave nations fretting about tumult from their own citizens. Any significant restitution would involve some dislocations of the population. Some societies will not abide it, saying they are also Nazi victims and are not obligated to contend with Nazi crimes.

That raises dicey questions, including a potential competition among "victims."

Poland, for example, sees itself as a Nazi victim. Of the 6 million who were killed in Poland, half were Polish Jews, the rest Polish Christians. The Poles would argue that they suffered and they lost property, including the family of Poland's president, Aleksander Kwasniewski, whose house in Vilnius, Lithuania, was seized during World War II. The fact that Poles were anti-Semitic and were responsible for the Kielce pogrom after the war does not negate that the Poles also suffered at the hands of the Nazis, some say. And that suffering and uncompensated loss makes it a political hazard for the government of Poland to endorse the full restitution of Jewish property. Why, some ask, should a state focus on Jewish losses at the expense of its own national losses?

Further, central governments in the postcommunist regimes often find restitution hostage to the mercy of municipal authorities. City governments often control the property or have the power to obstruct the central authorities' wishes. Central officials then need a powerful incentive to prevail over local resistance and restitution's unpopularity. They do not have one.

Finally, Russia looms in the background, setting another tone for
restitution. The Soviet Union viewed confiscated property as "reparations" for its war losses and declined to participate in postwar international forums that were intended to govern reparations and restitution. Fifty years later, the Russian parliament has retained that policy. It has refused to repatriate to Germany the "trophy art" seized from the Nazis during World War II, saying this art is compensation for Nazi-inflicted damages. 51

The restitution of the "trophy art" has become a battle between Russia president Boris Yeltsin and the Russian legislators that offers several significant lessons for Central and Eastern Europe states. The Russian conundrum shows that there are no international penalties for failure to repatriate property, and it illustrates the extent to which competing notions of how to handle the property lead to serious domestic perils.

European states are resolved to find pragmatic ways to advance their current interests—such as economic reforms, new security arrangements, and the expansion of NATO. Restitution is unlikely to be part of the equation. It costs dearly, creates social tensions, and often puts central governments at odds with their cities. It is a political problem whose resolution confers no apparent benefit on the state.

Yet Jews are unwilling to accept the status quo on property. That would make Jewish property losses permanent, penalizing the Nazi victims while favoring the Aryanizers and their successors, and would leave local Jewish communities struggling for resources. For the Jews, all Jews, the issue is how to agree on an approach to restitution in an unstable political climate in which Jewish organizations have limited, if any, real leverage, and where appeals to justice may fall on indifferent or powerless ears—and all this while Europe is poised to leap into the next century, while Jewish groups appeal for redress of the injustices of the last.

Conclusion

On May 7, 1997, then-undersecretary of commerce Stuart Eizenstat walked into the State Department briefing room to talk about Nazi gold and he laid down a gauntlet.

"Now, half a century later, this generation's challenge is to complete the unfinished business of the Second World War, to do justice while its surviving victims are still alive," he said.

On that day, he issued a long and long-awaited federal report that reviews how the Allies fared in their efforts to recoup Nazi loot. Virtually none of the actors is spared from criticism.

The report assails Switzerland for its role as the Nazis' bankers whose assistance helped prolong the war, the other neutrals for their commercial
ties with Germany, and the Allies for inertia in assisting the victims of the Third Reich. The victims were not only victims of the Holocaust, Eizenstat said at the State Department briefing, “but of the sad combination of indifference on the part of neutrals and inaction on the part of the Allies.”

Eizenstat was talking primarily about the neutrals, the Allies, and looted gold, which he called a “vital but relatively neglected dimension of the history” of World War II.

“For the victims, justice remains elusive,” Eizenstat said. “Their grievances must be seen as the appropriate responsibility of the entire international community on behalf of humanity.”

The grievances go beyond the gold. By focusing attention on Jewish losses and the lack of justice, Eizenstat’s challenge could propel the recovery of property, primarily in Central and Eastern Europe, that has been largely beyond the grasp of the Jewish community since the Nazis plundered it during World War II.

At the same time, Eizenstat also called on each nation “involved in these tragic events to come to terms with its own history and responsibility.”

With the benefit of hindsight, he said, it was clear that there were “unfortunate consequences” resulting from the decision of a postwar conference of eighteen nations to leave aid and reparations for the victims in the hands of national governments and international relief agencies. “Serious inequities developed in the treatment of victims, depending upon where they lived after the war,” Eizenstat said. The implication was that these states should now rectify the injustices of the past.

With Eizenstat’s Nazi gold report, restitution issues have gained a sustained public attention and scrutiny they have never had before. Under that spotlight, though, restitution is not a simple matter of justice. Instead, it is exposed as a moral issue that often seems to defy pragmatic solution, because pragmatism calls for the sorts of compromises that morality rejects.

Pragmatism asks: What is possible and constructive from a material and political point of view? The pragmatic solution for property restitution in Central and Eastern Europe would recognize the Jewish losses, but it would also acknowledge the limited ability of the fragile emerging democracies to deal with them. In place of morality, it speaks of fairness.

“The guiding principle on this very sensitive question should be one of fairness,” Eizenstat told the Helsinki Commission in a 1996 report on property restitution. “Any solution which provides restitution to prior owners unjustly dispossessed of their holdings should recognize the need to
provide current tenants with the means to relocate without undue hardship."

Such a proposal may look reasonable in antiseptic modern terms, but historically it is suspect. It seems lopsided: The Jews lost their property to the Nazis, then the communists, and now, fifty years later, they are expected to be fair to the postcommunists, who still have the property. The proposal requires that Jews overlook the bitter sense of betrayal because the current owners would benefit from the sympathetic consideration the Jews were denied, first when their property was confiscated, and later when they sought to retrieve it.

Yet the flip side also seems lopsided: Central Europe was overrun and occupied by the Nazis, then taken over by the Soviet Union, which kept it in a state of inferior development from which it is finally emerging on the eve of the twentieth-first century. The restitution proposal requires Central Europe to overlook that no one seems to remember that it was Germany—not Prague or Budapest or Warsaw—that started the war and committed the genocide.

In the end, the choice is this: Property restitution can remain an exclusively moral question, trapped in the realm of feuds and agitation until the last expropriated synagogue crumbles from neglect. Or the actors can pick up Eizenstat's gauntlet and complete the unfinished business of the Second World War.

But this is not a task for the faint-hearted. It is a field of political, diplomatic, and financial mines, often camouflaged by emotion, history, memory, and guilt. It demands stamina as well as reservoirs of goodwill that do not yet exist.

Notes

7. Sebastian Schutziu interview with author.
9. Eizenstat Testimony, Senate Committee on Banking, Housing, and Urban Affairs, Apr. 23, 1996.
11. A compelling example is Kazimierz in Krakow, the largest and most complete historic Jewish quarter to survive the war. An exploration of the concerns is “What's to Be Done?” in Ruth Ellen Gruber, Upon the Doorposts of Thy House: Jewish Life in East-Central Europe, Yesterday and Today (New York: John Wiley, 1994).


16. Jean-François Bergier interview with author.
24. Ibid., p. 85.
26. Rabbi Israel Miller interview with author.
27. Memorandum of Agreement, November 1992, Part B.
33. Eizenstat Testimony, Senate Committee on Banking, Housing, and Urban Affairs, Apr. 23, 1996.
38. Figures from Robinson, Indemnification and Reparations, p. 32.
39. Tomas Kraus interview with author.
43. Eizenstat Testimony, Senate Committee on Banking, Housing, and Urban Affairs, Apr. 23, 1996.
47. Eizenstat Testimony, Commission on Security and Cooperation in Europe, July 18, 1996.
48. U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II: Preliminary Study (Washington, 1997).
The International Perspectives Series

1. Harris, Arab Opposition to Jewish Immigration to Israel
2. Gordon, The Situation of the Jews in Hungary
3. Gordon, The Jewish Community of the Czech and Slovak Federative Republic
4. Gordon, The Hungarian Election: Implications for the Jewish Community
5. Gordon, The Jewish Community of Romania
6. Gordon, The Jewish Community of Austria
7. Avineri, Israel in a Postcommunist World
8. Gordon, The Jewish Community of Poland
9. Baram, Israel and Iraq After the Gulf War
10. Bandler, Jewish-Arab Relations in Israel
11. Gordon, The New Face of Anti-Semitism in Romania
12. Avineri, The Return to History
13. Gordon, Israel and India: A New Beginning
15. Golub, The Jewish Dimension of the Yugoslav Crisis
16. Golub, Anti-Semitism in Argentina: Recent Trends
17. Bútorová and Bútora, Wariness Toward Jews and "Post-Communist Panic" in Slovakia
18. Cramer, Germany and the Jews 50 Years After the Holocaust
19. Stern, German Unification and the Question of Antisemitism
20. Lerner, Iran’s Threat to Israel's Security: Present Dangers and Future Risks
21. Current Concerns in Germany: and in German-American Jewish Relations
22. Gordon, Muslim Fundamentalism: Challenge to the West
23. Gruen, Jerusalem and the Peace Process
24. Golub, Anti-Semitism in South Africa: Recent Trends
25. Gruber, Right-Wing Extremism in Western Europe
26. Lewis, Koreans and Jews
27. Kovács and Fischer, Anti-Semitism Among Hungarian College and University Students
28. Golub, Anti-Semitism in France: Recent Trends
29. Pinto, Beyond Anti-Semitism: The New Jewish Presence in Europe
30. Current Concerns in American Jewish-German-Israeli Relations
31. Gruber, The Struggle of Memory: The Rehabilitation and Reevaluation of Fascist Heroes in Europe
32. Kiernan, Atrocity in Buenos Aires: The AMIA Bombing, One Year Later
33. Clawson, Business As Usual? Western Policy Options Toward Iran
34. Kiernan, Waiting for Justice: Two Years After the AMIA Bombing
35. Gruber, Filling the Jewish Space in Europe
36. Examining the New Realities of Ukraine
37. Avineri, Chlenov, Gitelman, Jews of the Former Soviet Union
38. Henry, Switzerland, Swiss Banks, and the Second World War
40. Henry, The Restitution of Jewish Property in Central and Eastern Europe

All titles $2 per copy.
PHOTOCOPY PRESERVATION

The American Jewish Committee
The Jacob Blaustein Building
165 East 56 Street
New York, NY 10022-2746

July 1997

Single copy $2.00
Quantity prices on request
To: Mr. Gene Sofer, fax 202-565-2784

From: Sybil Milton, fax 301-656-4334

Date: 25 January 1999

Dear Gene:

Here is a list of US companies that had relations with Nazi Germany and may therefore be relevant to you:

1. IG Chemie (cloaked subsidiary of IG Farben) in the US
2. Standard Oil of New Jersey
3. JP Morgan bank (involved in Dawes and Young plans during the mid-1920s and therefore had potential business in Nazi Germany after 1933)
4. National Citibank
5. Dupont
6. General Motors
7. General Aniline and Film Corporation
8. ITT (International Telephone & Telegraph Corp.)
9. IBM (Höchst-Dehomag)
10. Chase National Bank in New York and Chase Bank in Paris (postwar prosecution of the American directors of the latter bank never resulted in a final court judgement)
11. Ford
12. ? Rockefeller controlled corporations
Dear Friends,

The year 2000 will mark the 10th anniversary of passage of the Americans with Disabilities Act ("ADA"). Celebrations and speeches will mark the occasion. The ADA was indeed landmark legislation, declaring that people with disabilities are entitled to the same opportunities and rights as other people; for people with disabilities the ADA is our Bill of Rights. But I will not spend much time celebrating this anniversary. Although we have accomplished much, I am reminded daily that our work is far from done.

Our work is not done when three out of four Americans with significant disabilities (the vast majority of whom want to work) still do not have a job, when one out of three people with significant disabilities live below the poverty line, when many people with disabilities cannot get to work due to inaccessible mass transit systems.

Our work is not done when two million Americans with disabilities are still relegated to isolated lives in institutions, such as nursing homes, often due to lack of community-based support services. Our work is unfinished when discrimination against people with mental or learning disabilities is still the norm.

Our work is not done when people with disabilities in many countries throughout the world lack even the most basic rights and opportunities to live with dignity.

Throughout the ages, disability all too often meant second-class treatment, poverty, and exclusion. Such conditions are not an inevitable result of disability. Most often, they are due to unnecessary physical and social barriers that can—and must—be removed.
DISABILITY HOLOCAUST PROJECT

During the Holocaust, people with disabilities were the first to be taken away. Yet the world has ignored the fact that Germany, before its terrible campaign against the Jewish people, systematically tried to exterminate all people with disabilities. This omission also has profound contemporary significance. Throughout the world today, people with disabilities lead lives of exclusion and poverty, pushed to the margins of society and segregated by architectural and attitudinal barriers. Moreover, many current and even fashionable notions concerning disability echo the mind set which fueled the Nazi horrors.

The Disability Holocaust Project has two main purposes. It will bring to world attention the systematic, compulsory sterilization and mass extermination of over three-quarters of a million people with disabilities during the Holocaust. At the same time, it will raise the level of international awareness about the current desperate plight of people with disabilities, particularly in Central and Eastern Europe. With funding from the Open Society Institute, DRA is convening a strategic planning conference involving activists who have worked on international human rights projects. This Project—through public education, political campaign, research and legal action—will utilize the shared history of the Holocaust as an organizing vehicle for building greater communication and cooperation between organizations of people with disabilities, relate pre-Holocaust concepts to contemporary attitudes, and heighten awareness of existing mass discrimination against people with disabilities.

DRA has also been invited to submit a proposal for a portion of the Swiss Bank compensation cases to be distributed to people with disabilities and is taking similar legal action with respect to other reparations funds, such as those involving Deutsche Bank, Daimler-Chrysler and others.

DRA ATTORNEYS

Alison Aubry is a 1997 graduate of Stanford Law School. Following graduation, Alison clerked for U.S. District Court Judge Susan Illston. Alison recently joined Disability Rights Advocates as a DRA Fellow, and is working primarily on the firm's cases challenging discrimination by insurance companies.

Rhoda Benedetti is a 1996 graduate of John F. Kennedy University School of Law. As the mother of a 14-year-old child with special needs, Rhoda is determined to fight for the rights of children with disabilities to equal access to public schools. Rhoda is delighted to be a 1998 NAPIL/Cothen-Furth Equal Justice Fellow at DRA. Her two year NAPIL project involves insuring ADA compliance in the public schools in Contra Costa County, where Rhoda lives and raises her two daughters.

Rowena Gargaliana, who is hard of hearing, is the first recipient of the William Brockett Fellowship. She received her undergraduate degree from the University of California Los Angeles and her Juris Doctorate from the University of San Francisco School of Law in May 1997. She has chosen to pursue a career in disability law to fulfill her commitment to protecting and further establishing the civil rights of her community.