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## Between Restitution and International Morality

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# Between Restitution and International Morality

Elazar Barkan

## **Abstract**

This Essay explores a rush of restitution cases throughout the globe. The author sees in the pattern formed by these cases a central component of a new international morality. The Essay claims that these cases testify to a new globalism that pays greater attention to human rights. The author underscores the increasing way in which our histories shape our identities. Both realism and tentativeness of the historical identity have become part of the growing liberal political space that includes no longer merely Western countries, but has become attractive to numerous diverse groups and nations globally.

## ESSAYS

### BETWEEN RESTITUTION AND INTERNATIONAL MORALITY

*Elazar Barkan\**

#### *INTRODUCTION: HISTORY AS IDENTITY*

Since the end of the Cold War, there has been a sudden rush of restitution cases all over the world. I see in the pattern formed by these cases a central component of a new international morality. These cases testify to a new globalism that pays greater attention to human rights. Critics of these trends often refer to the spread of a “victims culture.” Instead I would like to underscore the increasing way in which our histories shape our identities. This truism is particularly applicable in the postmodern and post-Cold War world, where an expanding number of groups and nations recognize the malleable nature of their own history, and based upon perceived historical rights negotiate with their victims over their shared political space. Both realism and tentativeness of the historical identity have become part of the growing liberal political space that includes no longer merely Western countries, but has become attractive to numerous diverse groups and nations globally.

This is most apparent in a world that shares vague liberal political and moral commitments to individual rights as well as to group human rights. This universe is studded with abundant contradictions, but increasingly subscribes to a shared political culture, which pays greater attention to history as a formative political force.

In the past, history supposedly provided “objective” knowledge of past events that were largely immune from reinterpretation.

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tion; history was the past and little could be done about it. More recently history has been differently controversial, a largely factual (and relatively uninspiring) winners' history. Increasingly, however, there is recognition of the growing elasticity of history, and that it is anything but fixed. As history has become increasingly malleable, it has simultaneously become more central to political discussion. History informs identity more intimately today, and being subject to reinterpretation, it has also become a space for contesting perspectives. The new "we" of history are both winners and losers. History changes who we were, not only who we are. In this sense, history has become a crucial field for political struggle. Yet the politics of memory, as it is often referred to, operate according to particular rules and tempo. For a "new" history to become more than a partisan "extremist" story, the narrative often has to persuade not only the members of the in-group who will "benefit" from the new interpretation, but also their "others": those whose own history will presumably be "diminished," or "tainted," by the new narratives.

### I. *MORALITY*

In understanding the role of history in contemporary politics we first have to empathize with the "moral imagination" of the protagonists, and comprehend the manner in which their perspectives of group identities impact international human rights and frame the discussion of global politics. The ever-present dilemma is the choice between global morality and local sovereignty and identity.

Moral fervor has informed social reforms both as a religious and a secular ideology. It is often the driving force of religious movements and it played a similar role in broadly speaking human rights movements, since the anti-slavery campaign. World War I was a war to end all wars; Wilson's articulation of self-determination was a principle, if not a policy. Similarly, Roosevelt's four freedoms were an idealist moral call to arms. The League of Nations was limited by infinite political haggling, but the spirit was of pursuing higher moral goals. Similarly, the United Nations ("U.N.") and its growing number of treaties and conventions have imagined a more moral and orderly world since the U.N.'s beginning. The rationale very often is moral, not economic or pragmatically political. Human rights activists

often anchor their ideology on a moral foundation. In a struggle for a better world, these reform movements look to the future. A somewhat different focus informs the restitution debate. While the restitution movement justified its various demands by calling on moral commitments, in contrast to other political movements, however, it focuses on historical identity as a moral constituent to amend the past.

## II. AN OVERVIEW OF RESTITUTION

Let us look briefly at the historical record. I use restitution as a cultural, a political, and a legal concept. This is in contrast to enforced retribution—or 'punishment'—and to the age-old custom of imposing war reparations. Traditionally, the winner imposed various payments on the loser. The Versailles Treaty (1919)<sup>1</sup> postulated harsh terms for the losers. In public memory the war indemnity levied upon Germany in 1919 caused (or at least heavily contributed to) World War II. Politicians and scholars strongly criticized the Versailles terms along *Realpolitik* lines and viewed the policies of vindictiveness as a failure.<sup>2</sup> Learning from experience, in 1945 the Allies did not impose reparations upon Germany. Instead, the United States accepted the burden of rebuilding Europe and Japan and initiated the Marshall Plan. This introduced a novel factor into international relations: rather than holding to a moral right to exploit enemy resources, as had been done previously, the victor underscored future reconciliation and assisted its defeated enemies to re-establish themselves. In hindsight the policy is widely celebrated.

Within this context of non-vindictiveness the modern concept of restitution was born. Germany, acting on vaguely comparable motivations of perceived international interests, but also on its unique need to re-establish political and moral legitimacy, sought to repent for its sins under Nazism by reaching an agreement<sup>3</sup> with its victims.

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1. Treaty of Peace Between the Allied and Associated Powers and Germany, (Versailles Treaty), June 28, 1919 *reprinted in* INSTITUTE OF INT'L AFF., THE GERMAN TREATY TEXT 2-239 (1920).

2. *See generally* T.E. JESSOP, THE TREATY OF VERSAILLES: WAS IT JUST? (1942); JOHN MAYNARD KEYNES, ESSAYS IN PERSUASION 7-18 (1932); Harold Nicholson, *Peacemaking 1919—A Critique*, in THE VERSAILLES SETTLEMENT: WAS IT FOREDOOMED TO FAILURE? 17, 20 (Ivo J. Lederer ed., 1960).

3. Agreement Between Federal Republic of Germany and the State of Israel, Sept.

Let me mention five quick points to illustrate the uniqueness of the agreement:

1. The Germans paid compensation not to the winners but to those they had victimized the worst: primarily the Jews.
2. The perpetrator compensated the victims on its own volition in order to facilitate self-rehabilitation.
3. This admission of guilt had to be done in concord with the victims.
4. The restitution agreement was formulated between West Germany and Israel, both 'descendant' entities of the perpetrators and the victims.
5. The idea of compensation, the rhetoric of guilt, and limited recognition-forgiveness were translated, through the legal medium of restitution, into new possibilities in international relations.

Restitution in this sense is a political agreement driven by a fuzzy moral view of justice regarding relations between national groups in an attempt to amend historical injustices. It takes into account pragmatic considerations, and can best be understood as occupying a space between a moral aspiration and resignation to political limitations. This ambivalence was obvious in the agreement between Germany and the Jews in 1952. Following 1990, the credence of the moral framework of restitution was challenged further.

### III. *HOW DO VICTIMS AND PERPETRATORS NEGOTIATE RESTITUTION AND HISTORICAL INJUSTICES?*

Restitution for historical injustices is a new phenomenon. In addition to the German-Jewish agreement, where victims and perpetrators came face to face to barter the suffering and responsibility for the past and create a future, which both sides can subscribe to, the post-colonial world provided another embryonic model.

This source for politics of restitution emerged from the place of indigenous peoples in modern democracies, primarily ex-British colonies. That is the United States, and even more so Australia, New Zealand, and Canada. In these countries, beginning in the sixties, indigenous peoples won elementary civil

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10, 1952 (Luxemburg Agreement) *reprinted in* NANA SAGI, *GERMAN REPARATIONS: A HISTORY OF THE NEGOTIATIONS* 212 (1986).

rights that expanded over time. These include various forms of restitution of property, land, economic resources like fishing rights, casino rights in the United States, and variations of affirmative action. The legal system had to change and more explicitly accommodate group rights. Overtime, political shifts in each country led to changes of pace and at times even direction in the attitudes of the state to the indigenous peoples, and the achievements are noted for the frustration and disappointment among activists. While the struggle continues, restitution remains the major form of enabling indigenous peoples greater equality.

The third force to underscore the centrality of moral consideration in politics and the need to amend for historical crimes was the civil rights movement in the United States. Affirmative action, never precisely articulated as reparation, was at least in part viewed as compensation for historical injustices. It included a welfare component, as well as a gesture to minimally compensate for past discrimination. The language of restitution however was not used.

Efforts to amend historical injustices bore fruit unexpectedly perhaps in the case of the Japanese Americans, who were compensated in the late 1980s for suffering internment during World War II. The success of this reparation campaign was very implausible. It was done under a Republican administration that did not pursue pro-minorities policies. It was at a time of large budgetary deficits, when nobody was in the mood to spend unnecessarily. Japanese Americans were not an important voting block. And yes, these were the days when Japan bashing was a national pastime. Despite these factors, the compensation was represented as a moral policy, as the right thing to do. Certain African Americans immediately asked that similar considerations would be extended to them, after all, who deserve more U.S. acknowledgment of its historical crimes than African Americans?

The case of restitution for African Americans remains a most profound challenge in American politics. As was evident in the U.N. Conference Against Racism in Durban, South Africa last September, this issue has global ramifications and involves Africans and African descendants globally.

*A. Eastern Europe*

There were largely two focal points in the post-1989 era for the politics of restitution in East Central Europe: (1) those that resulted from communist rule and (2) those that stemmed directly from unresolved World War II issues. In 1990, both had to be part of the consideration.

The first category included the ex-communist countries' attempts to address the complexities of a cascade of historical crimes. Poland, the Czech Republic, and Hungary have struggled with these issues perhaps more than other countries.

The second category involved such disputes as between Russia and Germany over the plundered cultural objects, the Swiss handling of Nazi Gold, various insurance claims, and German compensation and restitution for art plundered and for slave labor.

One major challenge was sorting out "deserving" and "undeserving victims." In order to explore such possible demarcation, we have to pose a larger question: Is there justified political violence?

Under extreme war suffering and severe national destruction, politicians and public opinion seem to accept types of actions, which would otherwise be rejected as horrendous crimes against humanity. Such were the strategic bombing or ethnic cleansing during and in the aftermath of the war. In such cases, inflicting extraordinary suffering is justified as a way to achieve higher aims, specifically to stop worse crimes. The policies of the Allies at the end of World War II are the best known examples for such collateral victims: those who were not implicated directly as responsible nor participants in the crimes that were being stopped through this extraordinary violence.

How are we to think of the collateral victims? Who are these "undeserving victims" whose suffering has to be accepted as part of the historical process? (It is hardly necessary to state the relevance of this question these days).

Morally the very category of "undeserving victims" may be offensive, especially to the victims and their descendants. Or not. For the observer, historical context helps to sort out the "deserving" from the "undeserving victims," and suggests a moral yardstick, which may be applicable to contemporary conflicts too.



I would like to briefly talk about these issues in the context of Central Europe and the legacy of the War.

In 1910 East Central Europe was the embodiment of European multiculturalism. Nationalism was a powerful force, but so was the mosaic of ethnicities. Over the next eighty years, the region was subjected to genocide, ethnic cleansing, revolutions, fascist and communist dictatorships, and two world wars. While the earlier period was hardly a Garden of Eden, it surely seems so in hindsight.

With the fall of Communism each country sought to establish its own new, post-Communist identity. Restitution became a focal point for these domestic debates. The dilemma was what aspects of historical infliction should be reversed: personal suffering—such as loss of freedom and other human rights abuses—or property loss? Which of the historical constituencies should be privileged and become the future identity of a country? Which, if any, ethnic or other groups decimated by the war should be revived, for example: Jewish, German, the aristocracy, or the church?

### B. *The Real Foreigners*

The big losers in Eastern Europe were the ethnic minorities.

In the immediate post-Communist governments' drives to construct priorities and strengthen cohesion in East Central Europe, present and past minorities were largely ignored. Across the region, German, Jewish, and Roma minorities had existed in different numbers, together with other minorities in specific countries (Hungarians in Romania and Slovakia). The attitudes towards these minorities underscored the moral economy of restitution. Historical, moral, and pragmatic considerations led to dissimilar outcomes in the case of each minority.

The legal questions turned out to be the easiest to untangle and served to manipulate political ends.

At one end of the spectrum were the Roma, who are perhaps the clearest example that in East Central Europe, perceived justice without economic interest or political power does not lead to any restitution. On the other end of the spectrum were the ethnic Germans, who were exiled from Eastern Europe after the war.

Millions were driven to Germany. Those from the East

spread throughout Germany, while those from the Sudeten settled in Bavaria. The former largely ceased to exist as a political force, while the Sudeten Germans remain a significant political pressure group. In the 1990s they reemerged on the international arena, shaping the internal politics of the Czech Republic, and its relation with Germany. They became the "Undeserving Victims."

### C. *The Sudeten German—Undeserving Victims?*

The suffering of German refugees in the aftermath of World War II may appear indistinguishable from any other of the period. Yet, it aroused the least compassion and created minimal sympathy as political capital. In responding to the outcry of the suffering of the Sudeten refugees, the Czech argued in the U.N. debate fifty years ago: "we have suffered more than many delegates in this room can imagine."<sup>4</sup> This quantification of suffering explained, if not justified, the horrors of the war's aftermath, and the refusal to recognize the German refugees as victims.<sup>5</sup>

Of all of the World War II victims, it was, and remains, hardest to weep publicly for German suffering. Notwithstanding the number of German refugees, they were viewed by the Central European nations, not as victims, but as perpetrators.

Before and during World War II, the German minorities in Central Europe often supported the Nazi invasion, and after the war large numbers of Germans were expelled by Czechoslovakia (2.5-3.5 million), Poland (1.5 million), and Hungary (500,000).<sup>6</sup> They were part of the more than twenty million refugees of post-war Europe. The refugees were often the lucky ones; many others did not survive the war's onslaught and extermination.

In 1989 when the Sudeten Germans again raised their case, Czechoslovakia largely shrugged it off. More than forty years after the fact, nobody was eager to explicitly justify the expulsion, and certainly not the individual victimization. But the Czechs

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4. MICHAEL R. MARRUS, *THE UNWANTED: EUROPEAN REFUGEES IN THE TWENTIETH CENTURY* 329 (1985).

5. *Id.* at 329-30; ALFRED MAURICE DE ZAYAS & CHARLES M. BARBER, *A TERRIBLE REVENGE: THE ETHNIC CLEANSING OF THE EAST EUROPEAN GERMANS, 1944-1950* (1994).

6. MARRUS, *supra* note 4, at 330. *See generally* NATIONALE FRAGE UND VERTREIBUNG IN DER TSCHESCHOSLOWAKEI UND UNGARN 1938-1948: AKTUELLE FORSCHUNGEN (Richard G. Plaschka et al. eds., 1997).

viewed the Sudetens as responsible for their own fate. Public opinion decried that, as representatives of the German atrocities, these victims deserved neither restitution nor sympathy. Was the late 1940s expulsion an appropriate and legitimate retribution? Against their better judgment, Germany and the Czech Republic were to feud over the fate of the Sudeten Germans for the next decade. Exploring the legacy of the Sudeten expulsion underscores the primacy of moral economy over legal considerations in the politics of restitution.<sup>7</sup>

At issue is the juxtaposition of the Sudeten German claim to restitution for their expulsion, and the Czech counterclaim regarding the lack of German compensation to Czechoslovakia. The Sudeten Germans demanded that the Czechs recognize their right to a homeland, namely to return to Bohemia and other regions, and that they be allowed to build a community with minority rights. This, they claim, would restore the pre-war situation. The Sudeten Germans emphasize their demand for a restored community and not just individual rights. The individual rights of free movement and equal citizenship, which was forthcoming as part of the anticipated Czech membership in the European Union, would not have been enough. Rather, their demand was that Germans returning to the Czech Republic be treated as an old minority, instead of merely recently arrived immigrants.

The Sudeten Germans view the repeal of the Munich Agreement<sup>8</sup> of 1938 and the return of the Sudeten lands to Bohemia as accomplishing a return to the *status quo ante* which could not be completed without restitution. This limited view of what constitutes a revocation of the Munich Agreement, and the return to the *status quo ante* may not be shared by those who view the war as the major catastrophe that resulted from that disastrous agreement. The German emphasis is that only by achieving restitution of national minority rights would the moral and psychological stigma of the collective punishment inflicted by the Czechs in 1946 be alleviated. In the meantime, property demands lurk in the background, left for a later stage in the negoti-

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7. Bradley F. Abrams, *Morality, Wisdom and Revision: The Czech Opposition of the 1970s and the Expulsion of the Sudeten Germans*, 9 *EAST EURO. POL. & SOCIETIES* 234-55 (1995).

8. Munich Pact, Sept. 29, 1938, F.R.G.-Great Britain-Fr.-Italy, available at <http://www.yale.edu/lawweb/avalon/imt/document/munich1.htm>.

ation.<sup>9</sup>

German officials tried to evade formally recognizing the German Sudeten responsibilities in cooperating with the Nazi regime, and attempted to establish a parity of victimization between the Czechs and the Sudeten Germans. When apologizing to the Czechs, both German President Roman Herzog and Chancellor Helmut Kohl said that Germans ask for forgiveness and want to forgive.

Yet, the Czech response to the Sudeten German demands has been ambivalent. While refusing restitution as such, Czech leaders have, at certain moments, acknowledged the injustice of the mass expulsion, and recognized it as Czechoslovakia's moral responsibility to correct. Václav Havel accepted in principle the notion of the collective guilt as immoral, and condemned the expulsions. He called this injustice the "greatest immoral deed," adding that the expulsions "caused not only the Germans but possibly to an even greater degree also the Czechs themselves moral and material damage."<sup>10</sup> By recognizing that the perpetrator's integrity is injured, Havel both validated the victimization and claimed a part of it.

Yet in the calculus of moral economy, even the most liberal and conciliatory Czechs view their nation as a victim of the upheaval, worse off than the expelled Germans. Because of Czech ambivalence, as well as the German economic power and the political potency of the demands by the Sudeten Germans in Germany, the diplomatic maneuvers by the Czechs have been precarious and the official exchanges between the two countries were far more constricted than would be expected.

The Sudeten Germans' continuous intervention in the Czech privatization process, calling it a "provocation" and a "hostile act," coupled with their rejection of compensation for Czech victims of Nazism and their pressure to reject the German-Czech friendship treaty, did not make negotiations easier. Nor did it endear their case to the Czechs. By 1993, the German government was implying that a resolution of the Sudeten issue would

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9. The Sudeten German Landsmannschaft was quoted as demanding 160 billion Deutschmarks in compensation. CTK NATIONAL NEWS WIRE, Jan. 23, 1996.

10. *Profile of the Sudeten German Problem*, CTK NATIONAL NEWS WIRE, May 30, 1995 (reporting that German President Richard von Weizsacker, on December 22, 1989, quoted from a letter from Václav Havel sent in early November).

be a precondition for Czech integration into Europe. Restitution became a potential showdown.

The rhetoric testified to the nature of the negotiations; it was not intended to persuade the adversary of the justification of one's claim, and hardly to advance compromise. Rather, it was directed at domestic political gains. In the meantime, the Czechs embarrassed the German government by restituting 20,000 victims of the Nazis, including 3,000 Jews who, because they were not refugees, and therefore, did not fall within the international definition of victims, were never eligible for German reparations. (For the same reason, the surviving Czech Jews were ineligible for reparations under various German-Jewish agreements.)

The Sudeten German self-perception as victims led them to ignore any role they may have had as a cause of World War II, either by supporting the Nazi regime or as beneficiaries from the occupation. In comparing the war's infliction on the Czech Republic to the damage to Germany and the German people, the Sudeten Germans argue that the Czechs have suffered less. They claim not only that the Czechs suffered very little material damage, but that the Nazi policy of building up Bohemian industry actually benefited the Czechs.

Reciprocal calculation, say the Sudeten Germans, would only benefit them. This unrepentant position, which views the Sudeten Germans only as victims and ignores their role in supporting the Nazis and profiteering from the 1938 expulsion of Jews, is clearly targeted for internal Sudeten consumption and could never amount to a serious effort to find a common ground. For the Sudeten Germans, the only just restitution would be German self-determination in Bohemia and the return of property.

Political changes in Germany have largely brought the dispute to an end. Yet, the rhetorical insistence on both sides suggests that nothing of the conflict's poignancy has abated. Both sides see themselves as victims and are adamant in rejecting their protagonist's position. The details of the negotiation, which we cannot get into here, were a fascinating illustration of how the moral frame trumped legal and even pragmatic political considerations. The most salient point was "who was the victim?" and

the Czech public, aside from Havel and a small minority, could find very little sympathy for the affluent ex-refugees in Bavaria.

#### *D. Innocent Perpetrators*

If the Sudeten Germans were viewed as undeserving victims, the moral fuzziness increases when we consider the question of the Russian plunder of art.

Following Russia's 1992 disclosure of the Trophy Art in its possession, including the numerous masterpieces, hundreds of thousands of art objects, a couple of million books, the image of a new Ali Baba's cave was created. By 1995, with major exhibits mounted in Leningrad and Moscow, the (re)discovery of the looted art has become, perhaps, the most important cultural event of the Nineties.

The discovered treasures raised the dilemma of who owns the art. The intense politicking in this regard, in Russia and to a lesser degree in Germany, captured the public imagination. Initially, a moral resolution to the ownership question seemed desirable and feasible but the window of opportunity quickly disappeared under political pressure, and with it, the moral certitude.

The general story has become well known. While liberating Eastern Europe from the Nazis at the end of World War II, the Soviet army engaged in retribution against Germans and Germany. And there was much to avenge.

Today it is hard to regard the transfer and relocation of trainloads of treasures under horrendous conditions which sometimes caused a great deal of damage, with any of the heroism that was widely depicted by those in the Soviet Union who performed it. How are we to think of the pillage? Should the Soviet plunder be understood and legitimized in retrospect?

Understandably observers are queasy when faced with the demand to arbitrate ethically between validating either Soviet injustices or German claims. The German-Russian dispute is constructed as a national rivalry over national art treasures. The national essentialism imposed upon the Trophy Art is especially noteworthy because most of the art is actually European in origin and lacks any explicit national symbols for either country. Germany, for example, demanded the return of art objects taken by the Soviets regardless of their origin, including art which was previously seized by the Nazis from other locations in

Europe, particularly Dutch and privately owned art. Conversely, from the Russian perspective there is little that can be called Russian by any definition because much of the Russian art was destroyed. Yet, in both countries national pride is projected onto these treasures as though these objects are imbued with the national identity.

The Soviet Army's atrocities against the occupied civil populations at the end of the war have been the subject of criticism for many years. The question is: Whether the 1945 plunder ought to be condemned as part of these atrocities, or as legitimate restitution? This raises a larger question: Are there, or ought there be certain instances in which ordinary moral considerations are suspended in favor of a "locally moral, legitimate" revenge? There are excellent reasons to assert that no revenge can ever be considered legitimate. Those who hold such an honorable position would find it hard to empathize with any of the parameters of this debate. For those who privilege a more contextual approach to morality, the debate could present a significant challenge. Even those who entertain the possibility of a legitimate, limited revenge under national pain, as certainly was the Russian position in 1944-45, face the perplexing dilemma of choosing a criterion by which to evaluate such actions, either at the time or a generation later. How are such relative historical (in)justices to be evaluated? Should actions, which happened a generation ago, be judged wrong or immoral with the passage of time? The answer may depend on the context one chooses.

#### IV. *DEBATE IN THE NINETIES*

The West, as well as the Russian public, first learned of the existence of the plundered art in 1991. The initial enlightened impetus, both in Russia and the West, was to return the art. Indeed, naming all of it "plundered," left little room for moral questioning. After all, how could plunder be moral? In those early post-Communist "euphoric" days, even unofficial and "private" restitution was attempted. Several librarians even volunteered to send back collections that were kept under their supervision.

Yet opposition in Russia to returning the art led to debate and re-assessment of the controversy. The only way one can give serious credence to the notion of plunder-as-justice is by recog-

nizing the dissonance between historical and contemporary justice. This predicament is shaped by: 1) the role of national cultural politics, 2) the historical memory in both countries, and 3) the relative wealth and potential of German reparations to Russia.

The Russian response initially split along the liberal reformist and the conservative nationalist line. On one side stood the reformists who, in the Russian tradition, are "Westerners" because they appeal to Western values. On the polarized side stood the nationalists, the slavophiles, who reject those standards. Russian history informed both camps: the first impulse of the reformers was to restitute the art. For Russians who advocate stronger connections to the West, returning the art would provide a golden opportunity in support of Russia's emerging role in the West. For the slavophiles retaining the art was restitution for the lost Russian art. The West's initial response followed predictable lines. There was little doubt as to which Russians should be supported: on one side were the liberal reformers, on the other side were the xenophobic, anti-Semitic, nationalists.

The implicit context was: "If the Russians had behaved in Germany the same way the Germans behaved in Russia, the problem of restitution would not exist." This disparity, where Germany has nothing to restitute, placed Russia at a seeming disadvantage.

To the degree that Germany has come to terms with its responsibility for the Nazi war crimes, it has done so gradually and under pressure. Its continuous negotiations with Jewish representatives introduced a culture of national repentance but even this recognition was slow and partial. Due to the Cold War, Germany has had neither reason nor opportunity to participate in a similar public discussion regarding its obligations to Russia. The art dispute could have provided such an opportunity if Germany had rethought its obligations to Russia rather than merely isolate the art dispute and hide behind national self-righteousness.

Today, the raw pain and anger directed at Germany have largely subsided, which makes it hard to empathize, in hindsight, with the actions by the Allies; actions which challenge our current moral convictions. Towards the end of the war procedural justice in Eastern and Central Europe was either set aside or reshaped to suit the international community's embrace of a



higher, if inexplicable, justice. The actions of 'moral' retribution included international agreements to expel millions of peoples across borders because of their ethnicity. The expulsion of ethnic Germans from Eastern Europe, for example, was inflicted upon many Third Reich collaborators, but equally so upon millions of innocent individuals. At that time, this form of "ethnic cleansing"—as similar ethnic expulsions have become known—was not considered a crime. Rather, it was done according to an international agreement with little or no protest, as we mentioned regarding the Sudeten Germans. This was justice through retribution. It is a type of justice to which nations over generations have succumbed, but which can hardly be justified in hindsight. Nonetheless, it was hard to oppose it at the time, especially when faced with the millions of survivors and the painful memories of those who were subjected to the military brutality, the genocidal policies, and the general suffering of the war.

#### V. *SWITZERLAND AND NAZI GOLD: GUILTY BYSTANDERS*

Switzerland's neutrality during World War II made it attractive to Jewish refugees as a country in central Europe in which victims fleeing the Nazi regime's gas chambers and reign of terror could find safe haven. Over 20,000 Jews found refuge in Switzerland in the years just prior to, and just after, the beginning of World War II. Other managed to deposit their hopes and savings in Swiss banks. After the war, agreements led to certain financial transactions, which supposedly took care of balancing the books, and giving whatever money was there to the Allies and the survivors. Switzerland remained a beacon of civility in the midst of savaged Europe. This picture remained throughout the Cold War as Switzerland maintained its allure as neutral ground for unsavory politicians, illegal political acts, and dirty money. In polite company this was the face of morality. And most importantly, this is how the Swiss viewed themselves. The dispute has shaken the Swiss self-image, which is founded on the self-perceived "humanitarian traditions of Switzerland."

The fact that while Switzerland accepted Jewish refugees, over 30,000 other Jews were turned away, often only to find themselves on their way to the extermination camps and hidden from Swiss memory. Similarly hidden was the Swiss profit from handling German money and gold and the crucial services they

provided to the Nazis. Swiss banks also became the repositories for the victims' property through Nazi confiscation. All that and much more remained repressed.

Switzerland was not alone in this; other countries were implicated in similar acts.

Especially since 1996, questions regarding the precise knowledge and action of other neutral, conquered, and even Allied countries during the war have become central issues for domestic policies. Several have set up special commissions to internally examine their own history and conscience.

The Swiss, however, have become the focus.

The dispute over the Nazi gold, as these treasures have come to be known, addresses issues of guilt and morality by questioning Swiss behavior during and after the war, as well as the specter of anti-Semitism raised by the country's response during the crisis of 1996-97. The Swiss were taken aback by the negative international publicity and while internally debating their own national morality, they mounted a defense of the virtue of neutrality which they claimed guided their war policies. Yet, it was significant that although much of the criticism was focused on the post-war policies and actions of the banks, there was little defense of these post-war activities. The Swiss did not defend the specific accusations but broadened the dispute into a question of national defense and pride. Both external critics and defenders have accentuated the dispute as it became a struggle for historical identity. The dispute was exacerbated by the magnitude of the treasure in contrast to the fate of the small number of surviving victims. Personal stories were juxtaposed to the allure of fantastic sums, the existence of which was asserted, investigated, and fueled by the banks' slow and piecemeal admission of "discovering" a few more millions here and there, as well as by their questionable practice of not responding to individual inquiries over the years. According to this revisionist history, Switzerland is viewed by its critics as a Nazi accomplice, guilty of prolonging both the war and the Holocaust itself.

At a certain level, the demand for justice has been long standing, but Swiss banks had successfully fielded this demand in an orderly and official, if obstructionist, manner. In the mid-nineties, however, Jewish demands for justice were taken seriously and were exceptionally productive, initiating an unprece-

dented global exposure of an embattled national conscience regarding historical (almost distant) issues.

Why did such a historical catharsis/witch-hunt erupt in the nineties? Where did the Swiss go wrong? How could a country which had rarely been in the news suddenly be propelled onto the front page and receive an intense public relations scolding for doing what it has always done best: keeping information about its banking industry inaccessible to the public? All politics is local and the answer to these questions must be investigated in the Swiss context. But beyond the local looms international morality. As was exposed a short while later, many other nations had acted similarly and the Swiss investigations reverberated to those other countries in what became an international historical self-investigation; a litmus test of each contemporary society's view of its own history and morality during and after the war.

There were several important reasons for the timing of the dispute. The foremost was the end of the Cold War and the decline in the Swiss role as a theme park for international corruption. Secondly was the internal American and Jewish politics, both of which facilitated politicians who aimed at exploiting the situation. The increased visibility of restitution made it an attractive proposition for those politicians and lawyers. But these ambulance chasers are always there; their focus was directed to Switzerland because it became vulnerable. This was particularly true as the Swiss bungled their responses: the dissonance between the Swiss self-perception as a moral nation, and their actions, which left them susceptible for such pressures. Eventually the Swiss chose to attempt to match their actions to their public moral reputation and not to give up on the humanitarian legacy. This is basically the domestic dispute in Switzerland: to claim that this is business as usual, and deny the moral claims of the victims, or to try and address these concerns. The latter seems to have won, for now.

### *CONCLUSION*

Drawing on the discussion of restitution, I attempt to outline even broader conclusions regarding the role of morality in international relations. War and conquest have always led to crimes and injustices by one group against another. Yet, while international morality is an ancient topic, the discussion of inter-

national moral commitments has assumed new vigor in the post-Cold war world. In this context, public awareness of crimes against humanity committed by governments are increasingly translated into a political force. The abhorrence of such violations of human rights has even become an acceptable motive for national and international intervention in "domestic" politics, and a rationale for war waged by regional and international organizations. No longer does the brute and immediate existential security need of the country form the sole legitimate justification or motive in formulating a foreign policy. Instead, opposition to genocide, support for human rights, and the fear of being implicated in crimes against humanity (even by inaction), have become practical, not merely lofty ideals. These ideals increasingly shape political decisions, and the international scene.

Although restitution spreads globally, it is not a catchall solution to every conflict. In many cases it is not part of the political agenda, and in other cases the parties have failed to reach an agreement. Restitution is successful as far as it goes, and has possible appeal to other cases, but it is not a panacea. Restitution does not apply in cases of transitional justice where the ruling and victorious power determines the fate of the perpetrators (whether through a war crime tribunal or a commission of reconciliation).

In addition, we must point out that negotiations over restitution fail at times. While we underscore the potential of restitution, we also must underline cases where restitution fails to barter memory, identity, and reparation. Such are the cases, between Germany and Russia, between Japan and China (Nanking and more), or the very partial success in Eastern Europe.