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Welcoming Remarks

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Welcoming Remarks

Dean John Feerick and Thane Rosenbaum

Abstract

Welcoming remarks and overview of the program of the Symposium.

TRANSCRIPTS

WELCOMING REMARKS

NOVEMBER 1, 2001

SPEAKERS: Dean John Feerick, *Dean, Fordham School of Law*
Professor Thane Rosenbaum, *Fellow, Louis Stein Center for Ethics and Public Interest Law, Fordham School of Law**

DEAN FEERICK: Good morning. I am John Feerick, Dean of Fordham Law School, and I am very pleased to welcome you to this most important symposium.

Before I proceed with my remarks, which will be very brief, I would like to ask Maurice Deluty to join me at the podium. Mr. Deluty is an American citizen, a Holocaust survivor, three years at Auschwitz and Buchenwald. He asked me to ask at this time, with your indulgence, a moment of silence to pay tribute both to the six million Jewish victims, and as well as to the recent Americans and non-Americans who tragically lost their lives in the World Trade Center on September 11, 2001, and the days after September 11th.

[Moment of Silence.]

DEAN FEERICK: I would like to acknowledge the presence as well of Rolf Ulrich, Head of the Legal and Consul Division of the Consulate of the Federal Republic of Germany in New York, who is here in the audience.

I commend the Louis Stein Center for Ethics and Public Interest Law, directed by Professor Bruce Green, who is here at our Law School and co-directed by other Fordham Law School Professors Russell Pearce, Matthew Diller, and Mary Daly, for sponsoring this outstanding program.

In particular, I would like to thank Thane Rosenbaum, who is a Fellow of the Stein Center and a member of our Adjunct

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Faculty, who will follow me and introduce the panel, for his truly extraordinary efforts in organizing and coordinating this most important Symposium on Holocaust Restitution.

I would like to give a warm welcome on behalf of Fordham Law School to your keynote speaker, Stuart Eizenstat, a Partner in the firm of Covington & Burling, who has led the struggle for Holocaust restitution as President Clinton's Under Secretary for International Trade and as Deputy Treasury Secretary.

In addition, I would like to acknowledge your distinguished moderators of the different panels and all the distinguished participants on the panels. In particular, I would like to thank the members of the faculty of Fordham Law School who are serving in different roles with respect to these panels.

Today's program is important in many ways. It seeks a measure of justice for victims of the Holocaust. It reminds us of our duties as citizens of the world. It reinforces our commitment to the principle that the price of freedom is eternal vigilance, and it teaches us that our strength in the fight against evil comes from our unity and our pursuit of the right, no matter how long this may take or how far we must travel.

Many of you in this room today have been an important part of this journey for many years. There have been many difficulties to overcome and there are many challenges that still lie ahead. Making the world a better place requires great effort and great sacrifice, but you have shown that dedication to the highest principles can accomplish great things.

To those of you here today leading the fight for justice and restitution, we at Fordham Law School express our gratitude for your magnificent efforts and for showing your fellow citizens through your sterling example how we must carry on as we all confront the newest threat to humanity and civilization. We salute you for your efforts on behalf of the victims of the Holocaust and we wish you a very successful program today.

It is now my pleasure to present to you Professor and Fellow of the Stein Center, Thane Rosenbaum.

PROFESSOR ROSENBAUM: Good morning.

The Louis Stein Center for Law and Ethics at Fordham Law School is dedicated, among other things, to examining the moral dimensions of legal decisions. All too often, the legal and political spheres of society are guardians only to a bureaucrati-

cally efficient bottom line. They seek to achieve correct results, but solely within the parameters of legal rules and political agendas. What remains is the false closure of a final judgment. Some legal and political remedies are applied under the assumption that people can live with them, but sometimes they cannot. Sometimes those who look to the legal system require more and deserve more.

The Stein Center is committed to understanding what draws people to the courthouse in the first place, what is missing emotionally from legal decisions, and what moral consequences are ignored in order to achieve arguably correct legal outcomes.

The question of restitution in the aftermath of atrocity, or in the case of today's Symposium, nearly sixty years after the liberation of the concentration camps, is a perfect example of where moral imperatives need to be reconciled with legal and political initiatives.

In reviving discussions about dormant bank accounts and looted Jewish assets, Stuart Eizenstat, Carl McCall, leaders of Jewish institutions and governmental agencies, and a number of distinguished class action lawyers—essentially many of the people who are participating in this Symposium—provided a fresh opportunity to think broadly about what restitution means from a moral perspective.

These complex restitution efforts, undertaken on behalf of Holocaust survivors and Jewish institutions, also raise questions about the strategies that were employed to achieve restitution and the remedies that were deemed satisfactory, given the fact that the underlying crime of genocide was committed nearly sixty years ago.

The nature of these more recent restitution initiatives, which involves the recovery and allocation of stolen property, looted assets, and compensation for slave labor, presents an entirely different moral basis for restitution for the original crime of mass murder that first gave rise to these discussions decades ago.

The first question to ask yourself is this: Can there ever really be restitution? In the aftermath of genocide, there is no authentic way to make victims whole again. After such unspeakable losses, how is it possible to speak in terms of reparations? Reparations, after all, assumes the possibilities of repair, which is

impossible when lives were so violently taken away. For millions of people in the twentieth century, their future was canceled and so many children became instant orphans.

A painting in a house perhaps can one day be returned to its true owner, but a murdered father and all those children can never enjoy such a reunion. Nor is it possible to achieve closure, because there are wounds that are unhealable and there are losses that are irreplaceable.

Finding remedies for mass murder is ultimately an endgame with no possibility for justice and final judgment. Every resolution is ultimately inadequate. The victims can never walk away satisfied.

So what is it that we mean then we speak of restitution, which in itself is also a deficient word, but perhaps it is one that is more emotionally neutral than the word reparations. The fact is, while we can't truly compensate for the magnitude of these crimes, morally speaking, we must do something to try, even if we know that in the end, morally speaking, we are also destined to fail.

Restitution, even if insufficient and lacking, is not just for the victims, but for the perpetrators and the silent witnesses as well. Survivors of atrocity must be assured that the memory of what had happened to them is not forgotten, that there is no statute of limitations on inhumanity, and even in the case of looted assets and stolen bank accounts, self-interest, bad faith, and greed are punishable and those unjustly enriched will be held legally accountable.

Restitution is also important as a way to force perpetrators to confront the enormity of their crimes and the repugnance of their deeds, and it also places moral pressure on those who are not directly guilty but yet are still responsible for what was done on their soil; and of course the rest of humanity benefits from restitution because it reminds bystanders of the moral duty to act otherwise and compels each of us to reject the poison of complacency, indifference, and neglect.

But if memory is important, we also find that the legal system and governmental diplomacy tend to define restitution solely in terms of money. Memory and money—they seem to go hand in hand in the restitution business.

But there is nothing wrong with money. Indeed, even

money has a moral component. Governments, banks, and insurance companies shouldn't profit from their ill-gotten gains, and when money is what was illegally taken, money is what should be morally returned. The correct moral outcome is to divest those of the spoils of genocide, even if the proceeds can't be returned to their original owners because they are dead.

But moral justice and restitution can also be achieved by non-monetary remedies. Often, what victims want, and what moral justice demands, is the opportunity to have their stories told, their losses counted, their pain acknowledged, as often as is emotionally required.

Moreover, similar to the South African Truth and Reconciliation Commission, it is equally important for the moral health of nations that perpetrators admit to what they have done, and in the case of these recent Holocaust initiatives, where decades have passed, it is morally necessary that nations inherit responsibility for the crimes and misdeeds of their fathers and grandfathers.

Moral justice requires acknowledgment as much as it requires money, because money will always be inadequate, but there can be no value placed on truth. In an open atmosphere where grievances are expressed and crimes acknowledged, there are the possibilities for true expressions of shame, guilt, and apologies, and perhaps even forgiveness and reconciliation.

Restitution can also include the rebuilding of communities, the search for historical truth, and punishment by way of either legal trials or condemnation from the court of public opinion.

Yet, class actions, by definition, have a way of depriving claimants of the opportunity to preserve their individual claims and to participate meaningfully in the process. And allocating some of the proceeds of restitution for general humanitarian purposes rather than to Holocaust survivors directly, along with the question of what to do with property that was acquired in good faith but once belonged to a victim of genocide, presents its own set of moral dilemmas.

But of course that is why we are here today, to think about the difficult moral issues that give rise to restitution and the moral justice that we expect from restitution. In the end, we know how important morality is in these circumstances—after all, we are compelled to apply legal rules and invoke the full

force of governmental pressure all because of the moral decline of what was the Holocaust.

Thank you. Those are my brief remarks.

Let me tell you a little about how today's Symposium will proceed. The moderator, who I will soon introduce for the first panel, which will be on the objectives of restitution, will not introduce the remaining members of the panel. We have produced biographical data outside, hopefully all of you have received.

Today, Fordham is very proud to be able to host a Symposium that is essentially an "A Team" of people involved in the restitution efforts on behalf of Holocaust victims and Jewish institutions. We are privileged to have such an illustrious community of people participating. They really need no introduction. There is so much conversation and the discussion of ideas that we are expecting today, we don't want to spend much time on introductions. We would prefer getting right to discussing what we all came to hear.

The panels in all instances will function as conversations among the panelists, although there will be brief introductory remarks. Let me introduce the moderator for the first panel.

She is Dr. Eva Fogelman. She is an internationally recognized psychologist, author, and film-maker, and she is here to moderate the very first panel on the objectives of restitution.

Thank you.