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The Evolution and Objectives of the Holocaust Restitution Initiatives

Transcripts*

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The Evolution and Objectives of the Holocaust Restitution Initiatives

Transcripts

Abstract

Contains the records of remarks from a panel discussion on the evolution and objectives of the Holocaust restitution initiatives. Covers discussion of the moral dimension to restitution, legal questions, and complexity of the situation with regard to third party purchasers of stolen property. Panel included a social psychologist and psychotherapist, a professor of law, and the Special Representative of the German, Chancellor for the Foundation: "Remembrance, Responsibility and the Future," Germany.

THE EVOLUTION AND OBJECTIVES OF THE HOLOCAUST RESTITUTION INITIATIVES

NOVEMBER 1, 2001

MODERATOR: Dr. Eva Fogelman, *Founding Director,
Jewish Foundation for Christian Rescu-
ers, Anti-Defamation League**

PANELISTS: Professor Elazar Barkan, *Claremont
Graduate University; Author, "The Guilt
of Nations Restitution and Negotiating
Historical Injustices"****

Professor Vivian Grosswald Curran, *As-
sociate Professor of Law, University of
Pittsburgh****

Dr. Otto Graf Lambsdorff, *Special Repre-
sentative of the German, Chancellor for
the Foundation: "Remembrance, Respon-
sibility and the Future," Germany†*

* Eva Fogelman is a social psychologist and psychotherapist in private practice in New York City. She is a Senior Research Fellow as CUNY's Graduate Center. Dr. Fogelman is founding director of the Jewish Foundation for Christian Rescuers and Co-Director of the Training Program for Psychotherapy with Generations of the Holocaust and Related Traumas at the Training Institute for Mental Health. Dr. Fogelman serves as advisor to the United States Holocaust Memorial Council.

** Elazar Barkan is the Chair of the Cultural Studies Department and an Associate Professor of History and Cultural Studies at Claremont Graduate University. Professor Barkan teaches and writes extensively in the areas of the history of human rights, race and racism, postcolonialism, comparative nationalism, and cultural heritage and identity. He is the author of six books and an editor of the series *Cultural Sitings*.

*** Vivian Grosswald Curran teaches Comparative Law at the University of Pittsburgh. Professor Curran has written expert opinions on French and international law for plaintiffs in two class action suits against French banks, and writes and lectures extensively about Vichy France, fascist legal theory, and reparations claims.

† Dr. Otto Graf Lambsdorff is the Representative for the German Federal Chancellor for the "Foundation Initiative of the German Industry: Remembrance, Responsibility and the Future," and a member of the International Advisory Board Council on Foreign Relations. Until earlier this year, Dr. Lambsdorff served as the European Chairman of The Trilateral Commission. A former Minister of Economics in Germany, Dr. Lambsdorff has been a member of the Free Democratic Party (FDP) since 1951, and has served both as a leader and Honorary Chair of the FDP during his many years of membership. Dr. Lambsdorff is also former Member and Economic Spokesperson of Parliament/German *Bundestag*.

Professor Richard Weisberg, *Walter
Floersheimer Professor of Constitutional
Law, Benjamin N. Cardozo School of
Law*††

DR. FOGELMAN: Thank you, Thane.

I am honored to be chairing this distinguished panel on "The Evolution and Objectives of the Holocaust Restitution Initiatives."

Elie Wiesel has said, "If all the money in all the Swiss banks were turned over, it would not bring back the life of one child. But the money is a symbol. It is part of the story. If you suppress any part of the story, it comes back later with force and violence."¹

I am not a lawyer, but as a psychologist I know very well that restitution can be considered apart from its outcome. The mere fact that lawyers, judges, politicians, historians, and community leaders have gathered here today under the auspices of a university broadens the discussion.

I know you lawyer types speak about legal remedies, but in my world we think about remedies that make a difference, in this case in the well-being of Holocaust survivors and their heirs, and the consequences in the post-Holocaust generation of the perpetrators.

When I work with Native Americans and African Americans, they are envious of the validations that victims of Nazism have gotten. For them it is not just a monetary reward, but the public debates about how to compensate victims.

Psychologically speaking, victims need validation for their suffering and their losses in order to begin a healing process. This validation needs to come particularly from the perpetrators, but also from the bystanders.

More than half a century later, the restitution initiatives have provided an opportunity for survivors to be heard in ways

†† Richard Weisberg holds the Walter Floersheimer Chair in Constitutional Law at the Benjamin N. Cardozo Law School of Yeshiva University. Professor Weisberg helped to negotiate the recent agreement between the French and American governments, the French banks, and the plaintiffs in the matters involving Vichy property confiscations. Professor Weisberg has written extensively in the field of Law and Literature.

1. See Vivian Curran, *Competing Frameworks for Assessing Contemporary Holocaust-Era Claims*, 25 *FORDHAM INT'L L.J.* (Symposium issue) (2001).

they were not heard before because the world was not ready two and a half generations ago.

As survivors are aging and approaching their own imminent death, mourning their losses and recalling their persecution more than a half-century ago are at the forefront of their thoughts, feelings, and nightmares—yes, they have returned. The new restitution initiatives are enabling survivors to mourn communally, to feel less isolated, and, as I said, to experience some validation for their pain, suffering, and losses.

When needy survivors were applying for U.S.\$500, one rather successful Holocaust survivor was asked by the Committee who knew him: “Mr. Cohen, how come you’re applying for the needy fund? You are not needy.” Mr. Cohen replied: “I am very needy. I am needy for justice.”

For other survivors, the renewed initiatives of restitution are psychologically demeaning, that survivors are being reduced to Deutsche marks and Swiss francs at the end of their life. To them it feels like blood money.

How do we get beyond the monetary issues of restitution? Let’s say that every country doubled the checks they were doling out, but there was no acknowledgment, no sense of responsibility. Is that a valuable restitution outcome? And what is the right balance between monetary negotiation and truth seeking, moral responsibility, and justice? And in what form is the South African model of truth and reconciliation trials the answer?

Some of the questions we will be answering in our panel today by our distinguished panelists will be: How do Holocaust victims, the Jewish community, and the world seek restitution long after the Holocaust? Do restitution efforts that focus exclusively on money miss other crucial objectives, such as the healing process, reconciliation, and truth finding?

I would like to start our discussion with Count Otto Lambsdorff, who was the leading German negotiator for the Slave Labor Funds.

Count Lambsdorff, you have spent your life promoting German-U.S. relations, and your most-recent endeavor was quite challenging. My understanding of Germany today is that some Germans are obsessed with the Holocaust; others are asking: “How much longer will we have to live under the stigma?” How are the Germans reacting to the slave labor negotiations, and

here I am talking about, as I see Germany today, four different generations—the older generations who are still amongst us, whether they were the perpetrators, the bystanders, or the resisters and rescuers; those who were children, coming of age during the Third Reich; the second generation, those born after the Holocaust; and today the third generation. And who amongst the Germans feels a moral responsibility for some justice towards the victims?

DR. GRAF LAMBSDORFF: Thank you very much, Dr. Fogelman.

Ladies and gentlemen, let me first express my gratitude to Professor Rosenbaum for having invited me. It is a great honor to be here and to be a part of this important panel dealing with, as we all know, a very important subject.

As our moderator has just explained, I have been asked by Chancellor Schröder to be his negotiator for talks leading to the Foundation “*Remembrance, Responsibility, and the Future.*”

You, Dr. Fogelman, have just asked how did the Germans react to these efforts. It was very helpful for me that German public opinion—the publicized opinion and the public opinion, even the people in the street—reacted very positively. I got great help and assistance for the efforts, which we undertook and for the targets for which we negotiated.

Of course, I do not overlook, ladies and gentlemen, that there are always people who either prefer to keep silent under the given circumstances, who will not be as positive. I would not claim that 100% of the Germans are ready to back what we did. But the German public, as I said again, all political parties, the government, newspapers, academics, were on our side, and that was and is very helpful.

I have been asked today to make some remarks on the moral and historical background of the efforts leading to the Foundation “*Remembrance, Responsibility and the Future.*”

The program of the Foundation finds its expression in its name I just quoted: *Remembrance, Responsibility, and the Future.*

Remembering the Holocaust has been a major issue in German politics, especially again in the last decade. I think several factors explain this renewed interest:

- a change of generation—you mentioned the generation problem, Dr. Fogelman—both on the political scene and

in the German business world permitted an easier and less-biased approach to the past.

- after the fall of the Berlin Wall in 1989, opening our horizon to Eastern Europe and recognizing the atrocities Germans committed during World War II,
- growing interest in the Jewish contribution to German science and culture in the nineteenth and the early twentieth centuries—and the newly opened Jewish Museum in Berlin serves as an example—is playing an important role in this debate.

Our German responsibility was summed up by President Rau in front of survivors in December 1999 during the negotiations. I see Mr. Kagan, who was present on this occasion. I quote President Rau:

We all know that no amount of money can really compensate the victims of crime. We all know that the suffering inflicted upon millions of women and men cannot be undone. I know that for many survivors it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice. I pay tribute to all those who were subjected to forced or slave labor under German rule and in the name of the German people beg forgiveness.

Ladies and gentlemen, Germany acknowledged responsibility not only two years ago. Let me go fifty years back, right after the end of World War II.

The first steps of property restitution to Holocaust victims were taken by the Allied powers after the surrender of Germany in 1945. Right after the rebirth of West German political structures at the municipal and state level, Germans took over this task.

The most important breakthrough was the Luxembourg Agreement of 1952 between the Federal Republic of Germany, the State of Israel, and the Claims Conference, making payments available for Israel to facilitate the integration of settlers and for the Claims Conference to assist Holocaust survivors outside of Israel.

At the same time, the young West German State pledged comprehensive restitution and compensation legislation. Under

this legislation, property was returned to former owners or their heirs; or, where heirs did not exist, to the Claims Conference.

After the German reunification, this restitution was extended to Eastern Germany. You may remember that the East German State did not accept any responsibility for what had happened in Germany before 1945.

On the compensation side, 4.4 million claims were filed based on acts of racial and other Nazi persecution for damage to health, liberty, and so on. About forty percent of recipients live in Israel, ten percent in Germany, and the rest in other countries.

Today still, some DM 1.2 billion (U.S.\$6.25 million) is paid every year to about 100,000 pensioners. I did deliberately omit hardship funds, global agreements with Western European nations, and Reconciliation Foundations in Eastern Europe set up after 1990.

So I have to contradict the notion of forgotten victims. As proof, the majority of people benefiting from our Foundation *"Remembrance, Responsibility, and the Future"* had already received payments out of German public funds.

The Foundation *"Remembrance, Responsibility, and the Future,"* was set up under public German law, and is not, as some like to see it, a kind of class action settlement. Half of its capital is German taxpayers' money. The other half is put up by the German industry, by the business community, although to be precise, these are tax deductible, so seventy-five percent of the DM 10.10 billion is paid by the taxpayers.

The original idea, compensation for forced and slave labor for survivors in Eastern Germany, predates by far German reunification. A project of the German Green Party, it started to take political shape more than fifty years ago in the European Parliament. It was introduced as a project of law at the German *Bundestag* in June 1989 by the Greens and the Social Democrats, then opposition parties, almost ten years before Mr. Melvin Weiss filed the first class action suit against Ford Motor Company in March 1998.

The Foundation *"Remembrance, Responsibility, and the Future"* is not a predominantly Jewish enterprise. The bulk of the payments are directed to former non-Jewish forced workers, mostly living in Eastern Europe. Nor will its most ambitious project, a

DM 700 million endowment, called the "Responsibility and the Future" Fund, be dedicated predominantly to Holocaust issues. By the will of the German *Bundestag*, it will cover a much broader field of projects, and I quote, "projects that serve the purposes of better understanding among peoples, youth exchange, social justice, remembrance of the threat posed by totalitarian systems and despotism, and international cooperation in humanitarian endeavors."

Ladies and gentlemen, with the Foundation, which is funded with DM 10 billion, and the Agreement on Lasting Legal Peace, we have made an effort to draw a financial line under the darkest chapter of our history—a financial line. It cannot be and must not be a moral line. It is only if we understand this that there can be a way out of the dark past into a bright future.

DR. FOGELMAN: Thank you, Count Lambsdorff.

Professor Elazar Barkan, who has written the superb book *The Guilt of Nations*,² raises many complex questions that we are discussing today, and the answers are equally evocative.

I would like to ask you, Professor Barkan, Count Lambsdorff seems to feel that there has been such a positive response to the new restitution in Germany, and I wonder whether in your comments you can tell us do you see a new national identity among the second and third generation Germans and is the restitution process having any impact on that?

Also, you outlined a dilemma of restitution: How are we to celebrate the proliferation of restitution as a new international morality, or is it merely the latest twist in contemporary escapism from moral responsibility? You also discuss that restitution may also be viewed by critics as a cop-out, as an excuse not to deal with the most horrendous catastrophe. Is that what the Germans are doing today? Are other nations doing that—who are involved in the new initiatives of restitution?

PROFESSOR BARKAN: Good morning. Thank you.

Well, that's a lot in five minutes, but let me try.

I see my task here as doing more of a comparative analysis—there are many people here who are more expert than I am on the particular German/Jewish issue. I think what I saw myself

2. ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* (2000).

doing is really widening the scope and making a couple of statements in general about the issue of restitution from a global perspective.

The first point is that we are talking about a relatively new phenomenon: the issue of restitution. It is not that outrages, atrocities, war crimes—say what you will, call it what you will—have not happened previously in history. It is not that restitution/reparations have not occurred previously in history. But up to 1919, including the Versailles Treaty, it has always been—and I challenge people to give me examples to the contrary—the case of a victor's justice. The victors demanded restitution from the losers, and there was no issue of voluntary recognition of responsibility.

That has changed, as we have heard just a minute ago, first after World War II, with the agreement between the Germans and Israel.

The first point I want to make is that the phenomenon that we are talking about involves the acknowledgment—the explicit acknowledgment—by the perpetrators that they have done wrong. Sometimes it includes an assumption that such an acknowledgment does amend; other times the assumption is that it does not fully amend, but that it makes some gestures in the direction of amending the past. But generally, the first point is that it involves the issue of voluntary recognition.

By “voluntary,” I do not mean that there is no pressure, but there is a difference between pressure, political and otherwise, and actually imposition. It is not an imposition. It is pressure—a political constellation that leads to voluntary recognition by the perpetrators.

The second point I would like to make is that after the 1952 Agreement, we have had a lull until the late-1980s when the trend of restitution became really global and encompassed many other groups around the world. I will not go through the list, but I will just comment that I see this as broadly divided into two parts: one part is cases that stem from World War II, which is what I call post-war; and the other is cases that stem from the decolonization, or the post-colonial situation.

The post-colonial situation in this case primarily involves ex-British colonies, including the United States, whereby indige-

nous people and people who have suffered under colonialism, which is a much longer case, demand restitution and reparation.

That brings me to the next point, which is that I believe that this restitution effort is very much a post-Cold War phenomenon in its larger case—not the restitution of the specific 1952 Agreement, which was an important precedent, a unique precedent. In the post-Cold War period, in a society that for shorthand I will call “post-Colonial,” a new perception of history emerged.

It is not objective history, but it is a malleable, subjective, or inter-subjective history. What that means is that while we have a larger frame, which we can agree upon, the specifics and the particularities can only be agreed upon by the interlocutors, by the protagonists of every particular case.

There are many different narratives or stories that you can tell about particular cases. The restitution story, the restitution narrative, in each particular conflict—the Holocaust is what I would like to call a non-paradigmatic example of that, but it is the most important one in that regard—brings the perpetrators and their victims together in some forum in which they can tell their history in a similar way. Their stories are not identical, but they create enough of a common ground to actually be able to understand each other and not to say “this is my history, this is your history, and we cannot bridge those together.”

As I have outlined in my book, there are many cases. In each particular case, there are tremendous difficulties. We have cases where there is no yardstick by which we can agree, or the outsider can agree, that such a solution is right or such a compromise is wrong.

We are limited in the broader frame. So, for instance, obviously we cannot agree to a negotiated agreement whereby atrocities will remain and will continue. However, when there is a sum of money—whether it’s U.S.\$10 billion or U.S.\$1 billion—the only yardstick to decide if that is the right amount is whether both parties can agree upon that amount, given the political situation, given their willingness, given the contemporary suffering of the victims, given the willingness of the perpetrators to recognize and acknowledge their responsibility. Then they can come to some kind of an agreement. The acknowledgment is the most important part.

The monetary side is, obviously, a way in which, we usually

get to a compromise where it is financially significant for the victims and it is not financially significant for the perpetrators. It is not necessarily a cynical view, but that is how we make political compromises.

For the Jews in 1952, the agreement with Germany was very financially significant. For the Germans, it was meaningful but not significant. It influenced somewhat the London discussions, but it did not really deprive Germany of its ability to prosper economically. It facilitated an economic improvement for Israel and for the Jews.

So I think that in between those categories there is a very large space to negotiate whether it will be millions, billions, a few billions, or many billions. If you would like to talk about comparable post-colonial cases, I would be happy to make that comparison as well.

DR. FOGELMAN: If you don't mind, I will let you continue, but I just want Professor Richard Weisberg, who has written *Vichy Law and the Holocaust in France*,³ which has been an eye-opener that dispels the myth that the French were not responsible for the persecution of the Jews—the French have been notorious for hiding behind the Vichy Government and their resistance movement.

I wonder, Professor Weisberg, the kind of acknowledgment that Professor Barkan is talking about—how does that fit in today with France, and particularly the book that was published in France, your book *Vichy Law and the Holocaust in France*, in 1998, and what was the reaction to your findings that the French law was responsible and that powerful lawyers and institutions were responsible for deporting the 75,000 Jews from French soil to their death camps?

PROFESSOR WEISBERG: Thank you very much, Dr. Fogelman.

I also want to join my fellow panelists in thanking the Law School here at Fordham and also Thane Rosenbaum. I want to thank Thane not only for organizing this conference, but also for his own writings connected to this subject, which are both inspirational and I think quite brilliant.

3. RICHARD H. WEISBERG, *VICHY LAW AND THE HOLOCAUST IN FRANCE* (1998).

The question of France I think is especially interesting in a way when we tackle the relationship of restitution and reconciliation. I want to take just a few minutes to track three time lines for you that may be both informative and help us to continue a conversation—and maybe a debate—about the relationship of restitution and reconciliation.

In my view, just to get to my conclusion—with France being the particular subject of my interest, although not exclusively so, over the last couple of years—reconciliation and restitution are not mutually exclusive. They are not antonyms. They can work together.

I would also state my view at the outset that, although there are significant complexities about relating any monetary award or monetary restitution with an event as sacred as the Holocaust, there are also symmetries between an attempt to bring a measure of individual justice. The only way at present that this is possible may be through monetary restitution. There are symmetries between that attempt and preserving the memory of the Holocaust and, more importantly, continuing to bring out the truth of the Holocaust.

In this sense, the two hats that I have worn, that of historian and that of litigator, sometimes merge and fit together on my head. Litigation has helped us to continue work that began in the archives with documentation to uncover what actually happened.

As much as has been written about and talked about the Holocaust, particularly over the last ten to twelve years, we still, in my view, only know about forty percent of the factual data connected to that sad event. Litigation plays a role, indeed, in uncovering further historical truths.

So on the level of truth, on the level of reconciliation, on the level of morality, it seems to me that these conflicting approaches—historical research on the one hand, litigation on the other—are actually grayer. They merge and they have elements in common.

The time lines that I briefly want to describe are as follows.

One relates to the uncovering of historical material about Vichy France itself, and there are analogues I think in almost every other country in Hitler's Europe. I started research on my

book in 1982, and at that particular time it was almost impossible to get into French archives connected to the sad period of Vichy.

There had been very little written about it. The most notable book was by two North Americans, Marrus and Paxton, a book you should read if you haven't already, called *Vichy France and the Jews*.⁴ There were some wonderful books that had been written shortly after the war by Jewish historians, like Joseph Billig. These works are still very important, and they were important to me. They were not that easy to find. For the most part, you could find them in this wonderful documentary center, the *Centre de Documentation Juive Contemporaine*, which is still around. You should visit it when you go to Paris, if you're not familiar with it. It was the only archival center open in 1982 to people trying to find out what happened during the war years.

Between 1982 and 1994—and this is a much longer story—the archives opened up, at least to some extent, the French National Archives, in particular, and I was able to get into boxes of documents that clearly had not been opened since they were put in there some forty years before.

My book came out in 1996 and was translated into French in 1998. During all that time I was interrelating with the French, interviewing them, and also receiving quite a bit of support from French historians as to my own work.

I think over that period of time there was a certain reconciliation, if I can use that word, on the level of historical truth finding among the French, because at the beginning of my enterprise in 1982 very few French thought that the idea of uncovering what happened during Vichy was a good idea, and most people tried to dissuade me and the few others who were doing this from doing it at all.

By the end of the period, there was support. There were debates and lectures at the Sorbonne. The area had opened up considerably. Anyone who goes to FNAC or Gibern or any other major bookstore in France will see now two or three bookshelves worth of material, some of it quite excellent, on the story of Vichy.

So we have, as far as documentation during those fifteen years a kind of reconciliation, at least in the historical commu-

4. MICHAEL R. MARRUS & ROBERT O. PAXTON, *VICHY FRANCE AND THE JEWS* (1981).

nity, reconciliation too to the finding that the French were themselves responsible for the almost 200 laws that were promulgated during Vichy against the Jews, that anti-Semitism on a legalistic level was a cottage industry, a huge industry, among French lawyers, judges, law professors, private attorneys, et cetera, during that period, and that much of it was done without any German pressure. Eventually, indeed, the Germans were delighted to see the French fully involved in their own brand of anti-Semitism, because it saved the Germans significant political costs, manpower, and treasury by letting the French do it themselves—and they did it themselves; 75,000 Jews were deported from France, mostly under the color of French law.

The second time line is a litigation time line. A year after my book came out, lawyers who were engaged in the *Swiss Bank* case asked me to participate, and I also became involved in what were first called the insurance company cases. These were cases brought in American courts, as most of you know, against various European private institutions, banks and insurance companies at the beginning.

Those institutions had not been cooperative with individuals who had tried to resolve the fact that they were owed money on life insurance policies, people who died in Auschwitz and elsewhere, or who tried to go to their local banks and to get the banks to disgorge moneys that had been deposited in those banks. They were treated with coldness, indifference, and most of you know the stories now—an almost astounding sense of unawareness, deliberate unawareness, of what it was to die in a camp and how impossible documentation was under those circumstances.

It was for these reasons—these individual clients—that these lawsuits began. We had no idea at the time what the reaction of American courts of justice would be to this litigation.

I became involved, asked by several superb lawyers who are in this room, a year or two later in a case against the French banks. Here I want to again briefly bridge the gap between restitution and reconciliation, because the story of the *French Bank* case is a story of both. It is a story of restitution to individual clients. It is a story of reconciliation among plaintiffs' lawyers, the French banks, and the French Government itself, which has

significantly changed its attitude about the lawsuit and about the notion of individual restitution over the last two years.

The Dray Commission has been established, and under the agreements of January 2001, which Stuart Eizenstat and Ambassador Andreani of France masterfully negotiated between the plaintiffs, the banks, and the two governments, an agreement has been reached which vests in the Dray Commission the responsibility for providing individual restitution with some oversight by the plaintiffs' lawyers and others as to whether they are doing that job.

And they are doing the job now. Whereas two years ago the notion in France that individual restitution would be a way of resolving the memory and history of the Holocaust was anathema, it was something they didn't believe in and they deeply resented, they are now participating. I can tell you, since I do not deal with them any longer on an adversarial or litigation level, but on an ambassadorial level, that there is great good faith now in terms of a process that originally they resented and they felt was being thrust upon them.

Meanwhile, and more importantly, individuals are finally beginning to receive from the banks a measure of justice. Of course, money is nothing to these victims or their descendants compared to the personal horrors of their lives, but money and the fact that their stories are heard and recognized, first by courts of American justice, now by the French commissions, these are significant elements when you speak to our clients. These are the significant elements that are important there.

The third time line has to do with France itself. Here, in line with earlier speakers, I agree that acknowledgment of wrongdoing is terribly important. In 1995, Chirac for the first time acknowledged for France its responsibility, reversing decades of a mythology of resistance or absence that Charles de Gaulle set in motion after the war. This was terribly important.

But it took six more years of struggle for that acknowledgment to translate itself into individual justice, where the actual specific victims of French wrongdoing received a measure of justice, however small.

Thank you.

DR. FOGELMAN: Thank you, Professor Weisberg.

I would like to bring Professor Vivian Grosswald Curran into

the conversation. She is a prolific writer on the demise of democracy in Vichy France and also Nazi Germany.

I wonder, Professor Curran, whether you see the same kinds of turning points and shifts as a nation from going from denial to acknowledging the moral dimension of the apology in France.

PROFESSOR CURRAN: Thank you very much.

I would also like to thank Professor Rosenbaum for inviting me here.

My comments are going to focus on what is suggested by the title of this conference, "Reconciling Moral Imperatives with Legal Initiatives." I think what we have here is the suggestion of a dilemma—namely, that although there are legally cognizable viable claims, there also is much more, and in that much more are considerations that somehow have to be reconciled with recourse in and through law.

First, it should be perfectly clear that there are legally legitimate claims here. With respect to the property claims, not only was there theft and robbery, which are crimes under the laws of every nation involved—consequent unjust enrichment—but also this was a crime of such massive proportions that one legal scholar felt the need to coin a new term. He calls it "thefticide."

But this theft, this thefticide, the stealing of Jewish property, was not just an act forbidden as a violation of both normative and statutory law relating to property ownership.

First of all, one of the distinctive features of this theft was that it was also legalized. It had a dual—a binary—nature of simultaneous legality and illegality. It was cloaked in the habit of legality when committed because of the mimicry of law that was Nazi law and Vichy French law, and undoubtedly the law of some other places, as well as through the theoretical foundations laid by the Nazi legal theorists of the day, people like Schmitt, Larenz, Maunz, and others, who constructed a theoretical basis in law for genocide.

But it simultaneously was illegal through the unchanged laws, which are still on the books from the pre-war era that never decriminalized theft. As some of you may know, in Germany Hitler seriously considered repealing the entire German Civil Code, the BGB, but he didn't, and Pétain in France also did not repeal the French Codes.

Even more significantly, however, this theft, this thefticide,

was not an isolated infraction of property law because it also was part and parcel of mass murder. It was woven into the fabric of genocide. It was a facet, a feature, of genocide, a prelude to it in some circumstances, a consequence of it in others, and this is true without exception for all of the theft we are discussing in these cases.

So the legal violations of which we are speaking remain inseparable from genocide. And consequently, the dilemma which arises from this when we speak of moral imperatives is whether law is the right instrument for this subject.

A first order of problems arising under this dilemma has to do with what Isaiah Berlin called attention to throughout his life. This is the problem of clashing systems of thought, the tendency that we have to compare incommensurables.

A second order of problems is the role of the symbolic, of meanings, of significances. Within this order of problems lie issues of erasure and suppression of language and silence. One thinks of the terrible weight of silence of those who have died, the silence, which we try to interpret. Language is, after all, the symbolic system through which we think, mean, and through which we hide meaning, all of which have played a great role in the history of the Holocaust at many different levels.

For more on this issue I refer you to the written materials of mine that are in the distributed materials.

With respect to the issue of incommensurables, we see two domains encountering each other that are different and yet that intersect. We have law. We have legal actions brought in U.S. courts against entities of other nations, complaints in civil—that means non-criminal—law, the ultra-modern, ultra-American procedural device of the class action lawsuits, and suits half a century after the events that transpired.

Law has its own categories and grids, its own cognitive processes for absorbing data, and, especially in the United States, its own criteria for admitting or rejecting evidence. From this process the law creates a version of facts that the court record constitutes, concretizes, and sanctifies as truth, for it becomes legal truth, it becomes a set of axioms that are deemed the universe of true facts, the narrative of the past that is invulnerable.

The court's decision may be reversed on appeal, but unless

a case is remanded for a new trial, the trial court records remain the unassailable narrative of past events, fixed, frozen, immutable, at least until future case law revises it in the interpretive process which we lawyers call *stare decisis*.

The very justice courts hope to generate is a function of the system which produces it, and the legal system does not aspire to reflect history beyond the legal issues of each pending case. It is not equipped to address genocide, to create monuments to memory, to recollect in the sense that Ernst Cassirer speaks of memory and history as re-collections, a process that one also sees so beautifully in the novel of Marcel Proust, *Remembrance of Things Past*.⁵

Goods and evils are ascertainable and explicable from within systems, but not necessarily across them. How does U.S. civil class action law intersect with the Holocaust? Law can grant financial remedy to compensate for stolen property. But law sends the message, whether intentional or not, that justice has been done. But is it justice in these cases, or, rather, are we not speaking of two very different sorts of justices? Do pennies per day suffered in Auschwitz or Treblinka constitute justice? Will the Holocaust now be deemed shelveable and forgettable because allegedly legally remedied?

In the clash of the different domains involved here, we need to remember that law is perceived as resolving injustice where it speaks, and that, in part, is because its self-understanding and its projection is of justice generation. If the courts mandate money as the legal remedy with many tens of millions of dollars reserved for the attorneys, would this be what the victims would have advised us to seek? Have the six million been vindicated or betrayed?

Yet, if some elderly survivors now can live in less financial distress and with better health care than before, is that not a worthy result? And do those who were robbed not deserve financial compensation like anyone else in the civilized world?

The problem is that it is both justice and not justice, depending on which frame of reference we use, such that, as Isaiah Berlin warned us, our widespread conviction that all things good are mutually reconcilable is both illogical, and even incoherent.

5. MARCEL PROUST, REMEMBRANCE OF THINGS PAST (trans. C.K. Scott Moncrieff & Terence Kilmartin) (1981).

Let me end with a 1946 comment of the French Committee of Writers, the *Committee Nacional d'Ecrivans*, which had been an anti-Nazi group from the beginning. They wrote about collaborationist writers who were executed in the purge trials which immediately followed the *Libération* known as the *Épuration* which were extremely harsh, and they wrote then of collaborators who had been executed, that they had not paid enough, and they said: "Those people paid only in the eyes of justice, but not in the least in the eyes of human conscience."

Because the court verdict is defined from within its own system as constituting justice, many will equate Holocaust restitution settlements and court verdicts with the verdict of human conscience. And if this equation is invalid because the cases necessarily are limited to legally cognizable issues, and therefore do not satisfy the larger dimension of human conscience that this writers' group was evoking, but if we believe that it is precisely the domain of human conscience that is and must remain the point of reference with respect to the Holocaust, then can we reconcile the moral imperatives with the legal initiatives?

Thank you.

DR. FOGELMAN: Thank you, Professor Curran.

We see that we have come a long way in this third generation on acknowledging the persecution. The moral complexities are a field that I would like to get a more global view on from Professor Barkan, and if you can also address if you see the way that Professor Curran sees that the legal road is not the way to deal with the moral complexities, and in what other dimensions can victims get justice, and is it possible to get any kind of justice?

PROFESSOR BARKAN: It seems to me that in the comments the panelists expressed a contradiction between lawsuits and memory, as though restitution leads to forgetting, because once we have restitution, supposedly it is a closed case, and that actually leads to some kind of forgetting.

I think actually that the contrary is the situation, that restitution actually enhances the memory. Restitution and acknowledgment are steps, are components, of memory. It is not in contradiction to memory. It is not that we say, "Okay, so we have

reached an agreement and therefore we can sort of put it behind us.”

On the contrary, we say “we have reached an agreement, and from this we step further. We have more memory. We have more memory that we can build upon, that recognizes the victims.”

So I think that the legal and the moral are not at all contradictory. On the contrary, when we can get some legal resolution, it enhances the moral historical notion of memory and validation of the victims.

Having said that, perhaps I should add that it is very difficult to think of a global moral yardstick. I will give you just a very brief example.

Let’s think with regard to the post-World War. You have the case, for instance, of, relatively speaking, guilty bystanders. During all the atrocities that happened during World War II, the Swiss were clearly not the ones who were at the forefront, so they, at least at the time, were viewed more as bystanders. Yet, today, and certainly after the agreement, we see this as the notion of the guilty bystanders.

On the other hand, you have the notions of innocent perpetrators. Nobody thinks of the Soviet occupation of Germany as lacking in perpetration of war crimes. There is no lack of that. Yet, when the negotiations between Germany and the Soviet Union actually came, it was clear that there were much more profound perpetrations than even the perpetrations of the crimes in 1944 and 1945. They were done in a particular context and, therefore, you have what I call innocent perpetrators.

And then you have the guilty victims, which is another category. Think of the *Sudetendeutsche*, the ethnic Germans from Eastern Europe, from Poland, who were what we would call today ethnically cleansed at the end of the war. Clearly, there were millions who suffered who could not under any circumstances be conceived as perpetrators, yet they are not on the top of our list of compassion. They are not on the top of the list of those whose suffering has to be amended.

I am not saying that those issues have to be reversed, but I just want to show that in each case when you address it, there are greater moral complexities, and the pragmatic notion is not just the actual case that happens, but also the context. In this con-

text, the German recognition of its own role in the perpetration of the Holocaust includes also the ability of not being able to recognize, or giving up the recognition of, the suffering of the German people in different categories because it is overshadowed by other things.

So moral judgment is very complex. We are able to segment it or to parcel it into some components of legal adjudication and we address those that we can, we do not address those that we cannot. But all together we create a memory that is much more complex, it is non-linear, and it is actually increased by the discussion, it is not diminished with the closure of some kind of a case.

DR. FOGELMAN: Thank you.

Professor Weisberg would like to comment.

PROFESSOR WEISBERG: Yes. I agree with much of what Professor Barkan just said about the possibilities inherent in litigation to reinforce and add to memory, rather than to restrict or bring a violent kind of closure to the memory of the Holocaust.

I did not read my friend and colleague Vivian Curran really as saying something that different, but I would be interested in hearing her. I think what she is trying to say is that there clearly are differences between the pathway to truth in litigation and also the memorialization of truth in a legal opinion and what we usually associate with history and other means to the memory of the Holocaust.

But what I want to say about that is the following. Most of the Holocaust lawsuits that I have been involved with can be described more as a process than as a bringing of closure through a judicial opinion to specific adversarial claims that have been made.

The litigation has involved significant decisions. I would note Judge Sterling Johnson's magisterial decision in the Eastern District of New York in the *French Banks* case in August of 2000, denying in every respect the defendant banks' motions to dismiss. This was significant both as a document which was very sensitive to the history of the Holocaust and as a legal moment in the case, because until then most of the banks were reluctant to even discuss with us the possibility of reconciliation, which in law talk is usually called negotiation and settlement.

But many of the cases never had a significant decision by a judge. That includes the *Swiss Banks* case. It is not that the judge was not important. He was important in some ways in precisely not rendering a decision and in waiting for events that involved political reconciliation among various parties and many, many other complexities to take place.

So sometimes silence, which we usually do not associate with courts and lawyers, silence or a refusal to act to bring closure has been as important in the Holocaust cases as specific decisions with their perhaps too closed or constricted notions of memory.

Lawrence Langer has written quite a bit about the problems that arise when we think about litigation and courtrooms and decisions in connection with memory generally, and those exist. But in the Holocaust cases, I think there has been some very interesting, again, reconciliation of means to an end of truth-seeking that we do not usually put together in the same breath.

DR. FOGELMAN: Let me ask you, Professor Curran, do you think that the class action suits defeat the memory of the dead, thus impeding mourning rather than facilitating the process?

PROFESSOR CURRAN: Well, first, let me say that I do agree with Professor Weisberg's comments and also with the previous speaker's, in the sense that the ideal would be for this to be a process not of diminishing returns but of opening to further thinking and memorialization.

One of the problems with the use of law, I believe, is that law does pose as closure. Law symbolizes that on one level, and is likely to be interpreted in that manner, as allowing for remedies and finalizing a problem.

With respect to the class action lawsuit, one can immediately see why one needs it, what the advantages are. But the phenomenon itself also poses particular problems in the context of the Holocaust, in my view.

One of the hallmarks of Nazism and of the experience in the concentration camp was the utter and complete de-individualization of human beings. This de-individualization, which was one of the most horrific aspects of the entire Holocaust, is in some sinister way reproduced in the phenomenon of the class action suit, despite its good intentions, in the sense that: What is

a class action suit? It is a lumping together. One plaintiff, two plaintiffs, five plaintiffs represent thousands or millions. And who are those thousands or millions? They once again become faceless and de-individualized.

I do not just say that in the abstract. I am in a Holocaust Internet discussion group which has many members who are themselves survivors, and one of the comments that I have seen with some frequency is a bitter comment that, "No one asked if they could represent me. I didn't empower anyone to speak for me." This, I think, is a problem that is peculiarly tragic in this particular context of all contexts.

I also happen to believe that there are major problems with class action lawsuits in American law on other levels, but I think that this is one of the particular problems here.

Maybe I could just add one more word. I went back and forth innumerable times on the issue of these lawsuits, and I did end up agreeing to be an expert on behalf of the plaintiffs. But I would like to tell you why.

When I saw what the motions to dismiss were from these French banks and that the greatest legal scholars in France claimed there was no such thing as unjust enrichment because the French Civil Code doesn't actually say that, which is such baloney. It reminded me that this is what law was like in the Vichy period that my parents lived through, and I thought, "I can't just not let this be answered."

So in the end, I have very mixed feelings about this, but I do not feel completely at peace with it either.

DR. FOGELMAN: Professor Weisberg?

PROFESSOR WEISBERG: I am pleased that Professor Curran perceived that some of the defenses that were raised were baloney.

I would characterize her association of a class action suit with the depersonalization of Jews that took place during the Holocaust as a form of—I would just call it—kosher salami. You cannot put those two things together in the same sentence.

It is true that there are aspects of the class action suit that, I guess in a kind of strange way of reasoning, have representatives stepping forward. But to say that that produces depersonalization at all in the other litigants is not true either to my experi-

ence of dealing with hundreds of people, whether they are named or not named, all of whom, at least in our situation, were absolutely—I would say you cannot describe the word. “Delighted” is the wrong word.

But the chance to participate in receiving recognition of these terrible events from adjudicators, decision-makers, and even eventually from the country that perpetrated the event, was precious to these people.

It’s true that some of the fits and starts of a class action litigation are difficult, just like any other litigation. Clients are very rarely in any litigation totally thrilled with what their lawyers are doing at all times. There is some mystification about how the law works. I do not think there is anything special about Holocaust litigation in that respect.

I think it is simply wrong to equate what is a resolution of the horrors of the Holocaust in the same breath with the victimization of people, the depersonalization during the Holocaust of those individuals.

DR. FOGELMAN: Count Lambsdorff, I wonder whether you could tell us a cynical view that exists, that restitution is a device so that the rich and powerful who have perpetrated crimes in the past can establish their moral virtue by using resources to buy a just and ethical past. Is that something that you have heard, this kind of criticism about what Germany has been trying to do in the new restitution initiatives?

DR. GRAF LAMBSDORFF: Allow me to make a few remarks on what I have heard here.

I find it difficult to understand why the class action lawsuits lead to depersonalization. Looking to the German Foundation, the result is that we do pay money to individuals, to persons. Of course, it starts with a number of plaintiffs, a class, but at the very end the result of these class action lawsuits, or negotiations—I come back to why I make this distinction—is giving money to individual people. These are persons, and they are certainly not depersonalized.

Second, I would underline Professor Barkan’s remark that restitution enhances the memory. That is certainly our experience. During these negotiations, which as you know took more than two years, the debate, the memory, the dealing with Holo-

caust affairs in Germany became more and more lively. Companies are looking into their archives. Companies have asked academics, professors, to write reports, to find out what has happened within the companies. So we have certainly seen that the restitution debate has fueled the reconciliation debate. There is no doubt about that.

But one thing should be said too. Class action lawsuits have been filed against German companies. Not one company has lost one law case, not one. The moral responsibility was of course, on the government and political side the most important motivation—but there were two very practical or pragmatic approaches.

First, the companies against whom the class action lawsuits were filed wanted to try to avoid all the public noise which goes along with class action lawsuits and which would damage their business in the American market—very clear business interest.

Second, the German Government wanted to avoid the damage, which would have happened to German-American relations by these class action lawsuits.

In our Foundation negotiations, morality, and business came very close to each other. That has to be said and it has to be seen. I have always said that this was the basis on which we negotiated. We did not want a class action settlement. We could, of course, not expect a law passed by the American Congress—and that is why we used the way of the Statement of Interest, which I cannot explain here, but which was the way out of the dilemma we had.

A class action settlement would have meant, of course, first for us to admit that there is a legally based claim, which never has happened; and second, we would have all the publicity which goes along with such a procedure.

What Professor Weisberg said about the situation in France: We are the last ones who can point to other countries on these issues. But it is not only France, Professor Weisberg. Our European neighbors suddenly experience a debate on what they have done, what their people have done, to assist the mass murder during the Nazi period. It is very difficult for them. We see that and we feel that.

You have mentioned President Chirac. He certainly was a courageous exception in France. But look to other countries as

well, which had nothing to do with the Holocaust. See what happened or did not happen in Japan, for instance.

And finally, Professor Barkan mentioned voluntary recognition and voluntary restitution, and you added that a little bit of pressure was behind it. That is exactly true. Of course it is true. There was, from the German Government and from the German political forces, the recognition we have for our responsibility, not our guilt. Guilt is something which is individual. My children have no guilt, but my children have a responsibility for what has happened in German history and by Germans, and we have to live with that. Not with personal guilt—I cannot find that. That point is very important. Voluntary recognition and restitution, yes, but again, as you said, with pressure.

And finally, I have heard some remarks here that the monetary aspect of restitution is not so important. It was the most difficult task during our negotiations to find an amount of money: Is 10 billion enough? Is 5 billion enough? Do we need 50 billion? When we started this, it was between DM 1.5 billion and U.S.\$23 billion. That was the gap we had to overcome, we had to bridge.

If I buy a house, I offer this price, and if it is not enough, I give you some more or say no.

But here: a price? We knew how difficult that was. The other side and I were absolutely relieved and delighted that all the people around the table came to a result. Whether this is a just result or an unjust result, nobody can say that. I do not know it.

But to say that money is not so important, do not take it too lightly in New York, in the United States. To a survivor who is living here in, hopefully, well-to-do or reasonably satisfactory conditions, DM 15,000 is not that much. For a survivor in the Ukraine or Belarus, it is a fortune. What they receive now in their old days is a fortune for them. So there are different aspects from different sides. It depends under which conditions you are living.

Therefore, I would like to stress that certainly money cannot compensate for people who have been killed, people who have been in a concentration camp, people who have been forced to work in Germany, but it can help at least those people who are in need and can really make the last few years of their life better.

Thank you.

DR. FOGELMAN: We appreciate your honesty, Count Lambsdorff, particularly the fact that the debates around the restitution in Germany, its political significance has been heightened, as you say, by getting other nations to talk about their role in the persecution of Jews.

I am wondering, Professor Barkan, is there anything you would like to add to the monetary debates, on how that enhances or diminishes the moral motivation and the moral responsibility of restitution?

PROFESSOR BARKAN: Thank you.

I think that it clearly enhances it—there is no doubt. But when I referred to it, I was not so much referring to your comments in terms of the class action suits, but actually to the whole issue of restitution, going back to 1952 and the almost-revolutionary opposition in Israel to “blood money” must be remembered. The issue that restitution or reparation is “blood money,” that it white-washes, has been crucial to our understanding of whether restitution is moral or not moral, whether you are contaminated by getting restitution and reparation. I think that has to be remembered, that—even in the limited spectrum within which we agree or disagree at the moment—it is very limited compared to the whole spectrum of whether there ought to be any reparation, that it is sacrilege.

But I think the other very important aspect to restitution is that one should never be satisfied with it. That is a constitutive element of restitution. It is not that restitution is agreed upon and therefore everybody goes home having reached an agreement. Part of the agreement is to emphasize that it is not satisfactory. The issue is that you have the aspiration that you talked about in terms of class actions. The aspirations are there. One has to have the recognition, the personal recognition, and if one’s story is not being told, then one really feels violated again. I have more than full sympathy for that.

But this is part of the nature of the restitution. The alternative is not a different, better restitution. The alternative is no restitution. That was a very real alternative in 1952. That is a very real alternative to many people in the world today who

don't get to the table to give their violations of the past, the crimes against them being negotiated in such a way.

So having said that, money is very important, but so is the lack of closure.

DR. FOGELMAN: With that, I would like to continue to ask a question. We see that one of the important elements is to prevent guilt, as Count Lambsdorff is saying—that the victims are not interested in second and third generation feeling guilty about what happened. After all, they were not responsible. But I think that, as survivors, as children of survivors, we expect the second, the third, the fourth generations to feel a sense of moral responsibility.

If there are new disclosures ten years from now, should these restitutions be able to be revived yet again? Should there be some kind of a statute of limitations? I would like to raise this to Count Lambsdorff and to the other panelists.

DR. GRAF LAMBSDORFF: Well, legally speaking, the statute of limitations, of course, does exist. That is one of the reasons I said to you that a lawsuit has never been won against one of the German corporations, not in Germany and not in the United States. Two are still on appeal in the United States, but all the others have been dismissed, however, of course, in the combined framework of the negotiations of the Foundation and the combined Statement of Interest.

Therefore, as I said, all of us tried to bring a financial closure, to what has happened, not a moral closure. That can never be and should never be. It will not happen.

PROFESSOR CURRAN: I would just like to add to this dilemma of the role of money in these cases. When Elie Wiesel has been asked this kind of question, he always says, first of all, that he never speaks in the name of anyone who died. He does not feel he has the right to. He, of all people, feels he has no right to do that. The one thing he sought was to have the German *Bundestag* say they were sorry. That is how he saw the appropriate restitution.

PROFESSOR BARKAN: Just a word about the issue of the statute of limitations. I think clearly the question of restitution,

as we understand and discuss it here, goes beyond the statute of limitations.

The whole issue of historical crime, as opposed to contemporary crime, is that it tries to address crimes that have long passed, that in some way are beyond being addressed in an ordinary way in a legal forum, and therefore we go beyond the ordinary statute of limitations.

There you have special legislation. It is more equivalent to the whole field that is developing of transitional justice, where you try to address issues that cannot be addressed in an ordinary forum, either because of its magnitude or because of duration or otherwise.

But having said that, I do not know whether those aspects that have not been addressed by the current litigation or non-litigation agreement would be able to come up, but probably they would. The issue is really the political resolution and the political agreement between both parties.

And when I emphasize the issue of voluntary recognition, I want to speak about what we think is voluntary about it. It is really the example of the alternative way with Japan. Japan refused altogether, even today, to take the offer, so although the statute of limitations may have been reached, Japan still has to come to terms for its own crimes. Whether it will or not depends on its own willingness to embark on such a method.

PROFESSOR CURRAN: The statute of limitations, in itself, I think brings up one of the problems of law's involvement in this area. The statute of limitations is a very fundamental legal notion, so that defendants, after a certain amount of time, are not expected to keep documents, the witnesses die, and this whole problem is really exacerbated here.

Now, what the French did is they made the crime against humanity what they called *imprescriptible*, which means not subject to a statute of limitations. One of the things we have seen in recent years in France in the trial of Papon, among others, which uses all sorts of convoluted efforts to argue that things are crimes against humanity, which do not necessarily fit the legal concept of a crime against humanity precisely because everything else would be barred under statutes of limitations.

DR. FOGELMAN: Professor Weisberg.

PROFESSOR WEISBERG: Just one technical point. The cases that were thrown out against the German companies by district courts in New Jersey were not thrown out for statute of limitations reasons. I was not involved in those cases, but as I understand them, they were thrown out because of treaty relationships that the federal court deemed barred the actions.

Statute of limitations is the first thing that comes to mind when you think about a possible bar to litigation of this kind, but in general the courts in the United States have not been open to or persuaded by that particular defense.

DR. FOGELMAN: Count Lambsdorff, you wanted to add something.

DR. GRAF LAMBSDORFF: Just in relation to what Professor Weisberg had said, the decisions by Judge Bassler and Judge Mukasey in New Jersey and New York came as a result of our negotiations, so they did not reach the point where the court had to think about the statute of limitations.

PROFESSOR WEISBERG: In New York.

DR. GRAF LAMBSDORFF: Both in New Jersey as in New York. And the same was true with Judge Kram. I would find it difficult to see that any court could push that aside. However, we do not want court procedures. That is the whole intention of what we negotiated, what we did. I hope we can avoid it.

Professor Curran, you just mentioned that the survivors, the victims expect a declaration or resolution of apology from the German *Bundestag*. Now, the *Bundestag* has said that several times over the last years, and the *Bundestag* has passed the law to set up the Foundation almost unanimously. What I quoted here was the President, President Rau, and he is the head of State. If the head of State has declared this apology, I think it would not add—perhaps even to the contrary—if the *Bundestag* were to take a second resolution. If the President of the Republic gives this statement, *Roma locuta, causa finita*.

DR. FOGELMAN: It seems to me that the governments have taken on the moral responsibility as a nation, because the perpetrators themselves, all the trials that took place—the Nuremberg trials, other trials that took place, the interviews that took place with Nazi doctors by Robert J. Lifton—I do not think

we have one perpetrator on record who has apologized for the crimes against the Jews. They all felt that they were doing the right thing. I think this is part of the reason why the debate and the need for the Holocaust survivors to continue to get some kind of an apology continues, because from the real perpetrators they will never get it.

DR. GRAF LAMBSDORFF: I would just like to underline that in the criminal cases, the German *Bundestag* has removed the statute of limitations. Criminal cases related to the Holocaust, no statute of limitations. What we were talking about before were civil cases, civil lawsuits.

DR. FOGELMAN: I would like to talk about the reverse. Now that the passage of time has gone by, do you feel that these conversations as a result have become easier to have in France, in Germany?

PROFESSOR WEISBERG: The conversation is a difficult one because the memory that the conversation is based on is a sacred memory to some, a memory that others still want to avoid. But I do think that it is possible now to have a conversation, whereas fairly recently—twenty years ago, fifteen years ago—it was difficult to engage people at all, even well-meaning people, in a discussion of this very dark period in their own histories.

And that is true in the United States too from time to time, and it is true in a way in the United States even about the period that we are talking of today. It is difficult to come to grips with one's own wrongdoing, either individually or nationally.

But I think conversations go on. It is clear from people on this panel that there are still rather serious differences of opinion about various things. But what certainly has occurred—and I think there are a variety of reasons why this happened, including the passing of time, the passing of the torch to newer generations in Europe, and the historical work and litigation—it seems to me we are now in a position where people are talking to each other across the divide, and a measure of reconciliation as well as restitution is taking place.

DR. GRAF LAMBSDORFF: I do not like to call the possibility—and I agree it is very possible—of a conversation easy or easier. These conversations never have been easy and they cannot

be easy, and so therefore they cannot be easier. They are possible. They are necessary. There is more openness now. That is all correct.

But I have met a concentration camp inmate in Denmark, and he said, "I don't want your money. I am not ready to accept it," for obvious reasons, which he explained. I had to respect that. Others do not react in the same way. But there are very different reactions to what we are doing, and that is understandable and cannot be discussed in the sense of being questioned from all sides, certainly not.

PROFESSOR CURRAN: The nature of the conversation also has changed in certain places because of the passage of time. In France, in particular, the relation of the executive branch to the judicial branch was such that essentially the trial of French collaborators was avoided and delayed and delayed, and the hope was essentially that they would all die before they had to be brought to trial.

But what happened was that a new generation was so intent on understanding the nature of Vichy: Was Vichy French? Was Vichy a puppet government of the Germans? What was it? So that, eventually, you had a conversation whose forum was the judiciary, which again was not always well equipped to address the questions that the nation needed to have answers to, but certainly the conversation broke through almost this surface of silence that had existed for so long.

DR. GRAF LAMBSDORFF: I just think the point is that whichever way we discuss it, there is a greater legitimacy to discuss those issues, both because of the passage of time and because of the world political situation and the legitimacy of other nations doing so. So there is a global movement.

This is the main cause, the restitution for Holocaust survivors, but it is one of the other causes, where the fact that the Committee discussed forty-three countries' responsibilities, various shades of guilt, various shades of responsibility, the issues of indigenous peoples, the descendants of slaves—all of those questions are becoming part of the conversation by which countries are more willing to discuss their own complicity and responsibility for past injustices.

DR. FOGELMAN: Some people have a much more cynical

view and are saying that the conversations now about the new restitutions are to avoid current situations of genocide. Does anyone have any thoughts on that?

PROFESSOR BARKAN: I think that it is true. I think that it is always possible. I think the important issue is to turn the question around and ask: If we weren't talking about restitution, would we deal with the contemporary genocides? There is no doubt that the cynical component is there.

But what I have found—and I have surveyed across the world about this issue—is that those who emphasize the cynicism are those who are the candidates to be criticized when these questions are being raised. The descendants of victims, wherever the case is, hardly ever minimize the importance of the conversation; they hardly ever point to the cynical aspect.

If you look at the post-colonial aspect of it, usually the Conservative British press is very eager to talk about how cynical and unimportant it is and how it is a victim culture, et cetera. But for the victims, any recognition of their suffering is usually embraced rather than looked at from a cynical perspective.

So it is not only the claim of cynicism, but it is also important for us to look at who is bringing forth the claim of cynicism and who is actually embracing the discussion of historical injustices.

DR. FOGELMAN: I would like to thank our panelists this morning for opening up the conversation, for being honest, and, most importantly, for their lives' dedication to the work that they are doing, which ultimately has a tremendous healing effect on the victims of the Holocaust. Thank you very much.

PROFESSOR ROSENBAUM: Thank you all, and thank you Eva and the rest of the panelists.