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Compensating for National Socialist Injustice and Indemnifying Jewish Victims: The German Experience

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- Conclusions
 - Legislative Landmarks
 - Extra-Statutory Provisions for Jewish Victims
 - Restitution and Compensation with Respect to East Germany





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Conclusions

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Indemnification Policy Contextualized (pI:s 1)

- Indemnification is a long-term political process
- The political context of the discourse on indemnification
 - The special status of the Jewish Claims Conference
 - Fear of concessions as a precedent for presumably limitless claims
- “Indemnification as legal and moral conversion” (Constantin Goschler)



Indemnification Policy Contextualized (pI:s2)

- The universalization of the German indemnification paradigm
 - The Robinson Brethren, Jacob and Nehemiah, revisited
 - Transitional justice
- Indemnification policy as medium for approaching historical justice?





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Legislative Landmarks

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From Occupation Law to Federal Law (p II:s 1)

- Occupation law
 - Military Government Law No. 59 of November 10, 1947 on Restitution of Identifiable Property, as amended (American and British zones)
 - Decree No. 120 of the French Military Government of November 10. 1947 on the Restitution of Stolen Property (French zone)
 - Restitution Order BK/O(49)180 of the Allied Kommandantura for Berlin of July 26, 1949 (all sectors of Berlin)
 - Many different compensation provisions continued to exist alongside each other
- Need to differentiate between restitution and compensation



The Concept of Restitution

(pII:s2)

- Restitution is the restoring of property to the rightful owner that had been wrongfully confiscated between 1933 and 1945 as a result of racial, religious or political persecution
- In a broader sense, it encompasses all the measures to be taken by a responsible party in order to returning an injured party to a condition or situation that would have obtained had no wrongful act been committed
- Under a narrower view, the concept is synonymous for “restitution in kind”—*restitutio in integrum*—, consisting of the attainment of the *status quo ante*, i.e., the situation existing before the commission of the wrongful act or omission.



The Concept of Compensation

(p II:s 3)

- Compensation refers usually to money, but sometimes also to other materials or goods given as an equivalent to make amends for a loss, damage, or injury when restitution is not possible.
- Compensation law governs personal injury and damage to property not covered by restitution.
 - Act of August 22, 1949 on the Treatment of Victims of National Socialist Persecution in the Area of Social Security



Principles for Uniform Restitution and Compensation Legislation

(p II:s 4)

- Chapter Three (Internal Restitution) and Chapter Four (Compensation for Victims of Nazi Persecution) of the Convention of May 26, 1952 [between the U.S.A., the United Kingdom and France, of the one part, and Germany, of the other part] on the Settlement of Matters arising out of the War and the Occupation



Federal Legislation on Restitution

(pII:s5)

- Federal Act of July 19, 1957 for the Settlement of the Monetary Restitution Liabilities of the German Reich and Legal Entities of Equal Legal Status (Federal Restitution Act)
- After reunification: analogous provisions for the new *Länder* in East Germany in the Act of September 23, 1990 Regulating Open Property Matters and the Victims of Nazi Persecution Compensation Act of September 27, 1994 (Article 3 of the Compensation and Corrective Payments Act).



Luxembourg Agreement of September 10, 1952 (“German–Israeli Reparations Agreement”)

(pII:s6)

- Under this Agreement, the Federal Republic of Germany undertakes
 - to deliver goods to the State of Israel worth a total of DEM 3 billion over a period of 12 years to support, integrate and settle Jewish persecutees who have acquired Israeli citizenship through immigration;
 - to provide, pursuant to a separate agreement with the Conference on Jewish Material Claims against Germany (Jewish Claims Conference), DEM 450 million to support, integrate and settle Jewish refugees outside Israel



Luxembourg Agreement of September 10, 1952 (“German–Israeli Reparations Agreement”)

(pII:s7)



Luxembourg Agreement of September 10, 1952 (“German–Israeli Reparations Agreement”)

(pII:s8)

- Agreement between the Federal Republic of Germany and the State of Israel [on indemnification of material damage and on global recompense for the cost of the integration of the Jewish refugees]
- Article 16(a)(ii): Letters No. 1a (Moshe Sharett to Konrad Adenauer) and 1b (Konrad Adenauer to Moshe Sharett) enshrining the “automatic accrual of rights clause”



Luxembourg Agreement of September 10, 1952 (“German–Israeli Reparations Agreement”)

(pII:s9)

- Hague Protocol No. 1 Drawn Up by Representatives of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany
 - Compensation
 - Restitution
 - Establishment of a Special Fund for the Support, Integration and Settlement of Jewish Victims of National Socialist Persecution outside Israel



Luxembourg Agreement of September 10, 1952 (“German–Israeli Reparations Agreement”)

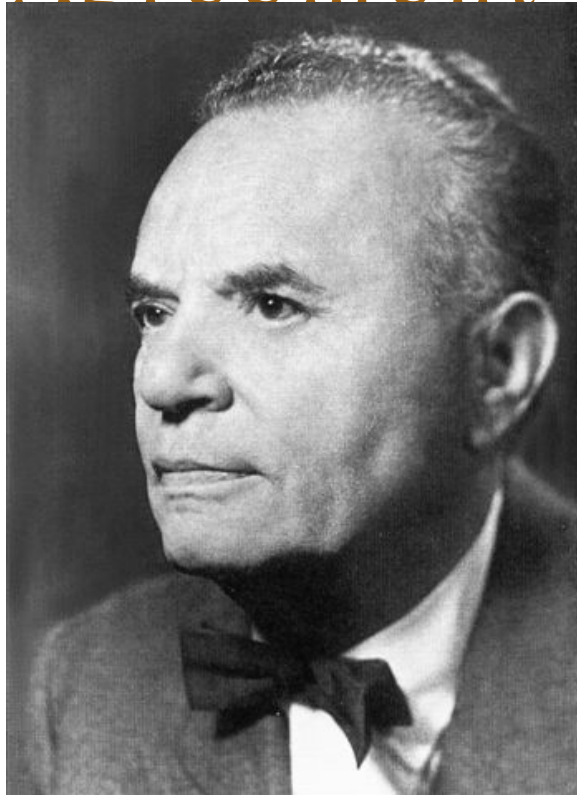
(pII:s 10)

- Hague Protocol No. 2 Drawn Up by Representatives of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany Consisting of Several Enumerated Organizations
 - Commissioning of the Jewish Claims Conference with the implementation of the provisions entailed in the Agreement between the Federal Republic of Germany and the State of Israel for the benefit of the Jewish Claims Conference



Luxembourg Agreement of September 10, 1952 (“German–Israeli Reparations Agreement”)

(pII:s 11)



Jacob Robinson
Jokūbas Robinzonas
(1889–1977)



Nehemiah Robinson
Nahumas Robinzonas
(1898–1964)

- *Indemnification, Reparations, Jewish Aspects* (1944)
- *Problems of European Reconstruction* (1945)
- *Beraubung und Wiedergutmachung: Der materielle Schaden der Juden während der Verfolgung. Reparationen, Rückerstattung und Entschädigung* (1962)
- *Ten Years of German Indemnification* (1964)



Federal Compensation

(pII:s 12)

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- Additional Federal Compensation Act of September 18, 1953
 - Federal Compensation Act of June 29, 1956
 - Final Federal Compensation Act of September 14, 1965
 - Article VIII(1): No claims could be made after December 31, 1969.
This means that applications can no longer be submitted.
 - General Act of November 5, 1957 Regulating Compensation for War-Induced Losses



- Special legislation
 - Act of May 11, 1951 Governing Compensation for National Socialist Injustice for Public-Sector Employees
 - Federal Act of June 25, 1958 on Compensation for National Socialist Injustice through War Disablement and Survivors' Pensions [addressing, *inter alia*, Jewish WWI veterans]





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Extra-Statutory Provisions for Jewish Victims

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The Need for Extra-Statutory Provisions

(pIII:s 1)

- Automatic accrual of rights clause vs. the reality of hardships
- The concept of “Article 2 Agreements”
- Article 2 Fund eligibility criteria
- Hardship Fund and hardship benefits for Jewish victims of persecution
- Compensation for Jewish victims living in Central and Eastern Europe
- Care for elderly survivors of the Holocaust
- *Kindertransport* Fund



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The Concept of “Article 2 Agreements” (pIII:s2)

- Article 2 of the Agreement of September 18, 1990 on the Enactment and Interpretation of the Unification Treaty:

The Federal Government is prepared, in continuation of the policy of the Federal Republic of Germany, to enter into agreements with the Claims Conference for additional Fund arrangements in order to provide hardship payments to persecutees who thus far received no or only minimal compensation according to the legislative provisions of the Federal Republic of Germany.



The Status and Role of the Jewish Claims Conference (pIII:s3)

- The Jewish Claims Conference was tasked with distributing the funds provided by Germany.
- The Jewish Claims Conference has sole responsibility for making decisions in individual cases, based on the criteria set out in the Article 2 Agreement, as revised.
- The Federal Ministry of Finance conducts regular talks with the Jewish Claims Conference about the implementation of the Agreement with the aim of adjusting the entitlement to payments.



Article 2 Fund Eligibility Criteria

(pIII:s4)

- Jewish Nazi victims who were persecuted as Jews and who
 - Were incarcerated in a concentration camp or labor battalion during specific time periods as defined by the Federal Ministry of Finance; *or*
 - Were imprisoned for at least three months in a ghetto; *or*
 - Were imprisoned for at least three months in certain “open ghettos”; *or*
 - Were in hiding for at least four months, under inhumane conditions, without access to the outside world in German Nazi occupied territory or Nazi satellite states; *or*
 - Lived illegally under false identity or with false papers for at least four months under inhumane conditions in German Nazi occupied territory or Nazi satellite states; *or*



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- Special cases of hardship continued to emerge where applicants were not eligible for payments because they had missed the deadline.
 - Moreover, various Eastern European countries introduced emigration opportunities for Jewish citizens in the late 1970s, as a result of which significant numbers of Jewish victims of Nazi persecution were able to emigrate from these countries to Israel.
 - Under the German law applicable at the time, individuals in this group did not qualify for compensation.



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- For this reason, the Knesset demanded changes in German compensation provisions.
 - Under the Guidelines of the Federal Government of October 3, 1980 for Hardship Benefits for Jewish Victims of Persecution, Jewish victims of Nazi persecution can receive a one-off payment of DEM 5,000 (EUR 2,556.46) through the Jewish Claims Conference.



Hardship Benefits for Jewish Victims of Persecution

(pIII:s 7)

- In 2012, the arrangements that had been made until then were documented in a revised version. Under this Article 2 Agreement, as revised, Jewish victims of Nazi persecution who were directly affected by Nazi violence as defined in Section 2 of the Federal Compensation Act, or those who lost their parents due to Nazi violence (child victims of persecution), and who have received no compensation payments to date, can receive a one-off payment of EUR 2,556.46. Claims under the hardship fund can also be made by individuals who were not yet born at the time of the persecution but suffered in the womb from their pregnant mother's persecution.



Hardship Benefits for Jewish Victims of Persecution

(pIII:s 8)

- In addition to one-off payments, the Agreement also covers ongoing monthly payments for Jewish victims of Nazi persecution who are in financial distress and, in addition,
 - were detained in a concentration camp or ghetto as described in Section 42(2) of the Federal Compensation Act; *or*
 - lived under degrading conditions either in hiding or in illegality under a false identity.



Compensation for Jewish Victims Living in Central and Eastern Europe

(pIII:s9)

- The Revised Article 2 Agreement now also covers assistance under the Agreement of January 29, 1998 Governing Compensation for Jewish victims Living in Central and Eastern Europe (the former “Central and Eastern European Fund,” or CEEF).
- There is no legal entitlement to assistance under the Article 2 Agreement, as revised. Payments are strictly tied to the individual recipient. They cannot be inherited, or transferred, or be paid out to third parties—with the exception, under additional conditions, of surviving spouses or, if the spouse is also deceased, of surviving children as joint beneficiaries.



Care for Elderly Survivors of the Holocaust

(pIII:s 10)

- In recent years, the need for home nursing and medical care for the elderly survivors of the Holocaust has increased particularly strongly.
- That is why the Jewish Claims Conference also receives funds under the Article 2 Agreement, as revised, for Jewish victims of Nazi persecution as defined in Section 1 of the Federal Compensation Act who have not yet received any payments for the purpose of maintaining and improving nursing and care options, especially care in their own homes.



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- Following intensive discussions in connection with the 80th anniversary of the *Kindertransport*, the Federal Ministry of Finance and the Jewish Claims Conference agreed on a one-off symbolic payment of €2,500 for *Kindertransport* evacuees.
 - The term *Kindertransport* (“children’s transport”) refers to an evacuation operation which began following the *Reichspogromnacht* on November 9, 1938. Around 10,000 Jewish children travelled without their parents from Germany and territories that had been annexed or occupied by Germany to safe countries.



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- The one-off payment is intended to recognize the suffering of these children, who were forced to leave their families in peacetime. In many cases, they never saw their families again.





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Special Aspects of Restitution and Compensation in East Germany



Restitution to, and Compensation for, Jewish Persecutees in East

Germany

(p IV:s 1)

- Pursuant to its Section 1(6), the Act of September 23, 1990 Regulating Open Property Matters applies to individuals and associations that were persecuted between January 30, 1933 and May 8, 1945 on racial, political, religious or ideological grounds and lost their property as a result.
- The Act thus builds on provisions governing the return of property, *i.e.* on the principle of restitution taking precedence.



Restitution to, and Compensation for, Jewish Persecutees in East

Germany

(p IV:s 2)

- The Act stipulates that the Jewish Claims Conference is the legal successor to any heirless or unclaimed Jewish lost property.
- The principle underlying the legislation is that returning property is preferable to providing compensation for it. Thus, assets confiscated are returned *in specie*, if possible. If it is not possible, for reasons of fact or law, to return the property or if the persons concerned have exercised their right to opt for compensation instead, they receive compensation under the Victims of Nazi Persecution Compensation Act.



Restitution to, and Compensation for, Jewish Persecutees in East

Germany

(p IV:s 3)

- These payments come from the Compensation Fund, a special federal fund.
- Starting in 2002, comprehensive settlements were reached between the Compensation Fund and the Jewish Claims Conference in cases in which the Conference is the eligible party.



Restitution to, and Compensation for, Jewish Persecutees in East

Germany

(p IV:s 4)

- The settlements reached were in respect of, *inter alia*,
 - synagogues and their contents (2002),
 - movable property and household effects (2004),
 - the property of self-employed persons (2006),
 - security rights over land and bank account balances (2007),
 - assets of organizations (2009),
 - businesses without immovable property (2013),
 - small shareholdings (2013),
 - compensation in accordance with section 1(1) of the Victims of Nazi Persecution Compensation Act (2014)



Settlement of Claims Made by Jewish Persecutees

of U.S. Nationality in East Germany (pIV:s5)

- Until 1976, U.S. citizens could submit claims for loss of assets in the former German Democratic Republic to a commission set up by the U.S. Government. Subsequent talks conducted with the German Democratic Republic on compensation did not produce any results.
- After reunification, the Agreement of May 13, 1992 between the Federal Republic of Germany and the Government of the United States of America Concerning the Settlement of Certain Property Claims made it possible for U.S. citizens to either accept compensation in the United States under the Agreement or to claim restitution (or compensation) in Germany.



Settlement Agreements

(pIV:s 6)

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- The German Democratic Republic had concluded settlement agreements with Austria, Denmark, Finland and Sweden that covered all restitution claims of victims of Nazi persecution living in these States.





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