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Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II

Address by His Excellency Ambassador Stuart E. Eizenstat as part of
Vanderbilt University's Twenty-sixth Annual Holocaust Lecture Series
"Justice, Redress, and Restitution."
Vanderbilt University Law School, October 9, 2003*

I want to tell you an improbable story about how fifty years after the end of World War II, long-forgotten victims of not only the greatest genocide in history, but of what we learned was also the greatest theft in history, finally achieved some belated, as I call it, imperfect justice. This includes: those who placed their most precious assets in the safest banking system in Europe—in Switzerland—to keep them out of Hitler's clutches (for fifty years after the war, they were unable to recover them); those who were forced into brutal slavery and forced labor at the hands of German and Austrian employers and were never compensated (most of these, by the way, were non-Jews in Eastern Europe); those whose hard work, businesses, and apartments were confiscated and never restituted after the war; those whose insurance policies were never paid; and more broadly, those whose entire culture was stolen from them. It is

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a story of how some of the world's most powerful corporations were finally held accountable five decades after the end of World War II. It is a story of political intrigue, of diplomacy at the highest levels, involving our president and the heads of government of a number of European countries. It is a story of threats of sanctions by state and local authorities, and a story that involves a colorful cast of characters reminiscent of a Shakespearean play.

It started for me on a typically wet, dreary January day in 1995 when I was in Brussels serving as the U.S. Ambassador to the European Union, and I got an unexpected call out of the blue from Richard Holbrook who was then Assistant Secretary of State and would later become our U.N. Ambassador. He asked if I would undertake a dual mission and become a special envoy for the State Department in addition to my ambassadorial responsibilities. My goal would be to encourage the new democracies in Eastern Europe, which had arisen after the fall of communism in the 1990s, to return to the reawakened, reemerging religious communities—Protestant, Catholic, and Jewish—the communally owned property that had been stolen, confiscated by Hitler, and then nationalized by the Communists. Churches, synagogues, schools, community centers, and even cemeteries, were all necessary to provide the physical infrastructure for these newly reawakened religious communities to begin practicing their religion again.

I did not immediately accept. My staff at the U.S. Embassy in Brussels was unanimously against my engaging in a diversion of my energies, they said, in a lose-lose proposition. I would be trapped between the religious communities in Eastern Europe that wanted all their property back and the new democracies that wanted to keep it because the property had been, over the decades, converted into income-producing property. I checked with my fellow ambassadors in Eastern Europe to get their advice, and they were unanimously opposed to my taking the job because I would be intruding on their turf on an unpopular issue trying to get their governments to give back property they did not want to give back. Yet I disregarded the advice and started down a path that lasted, not the few months that Holbrook told me was all that was involved, but the full balance of the six years of the Clinton Administration, ending only in the waning moments of the Administration in January 2001.

Now, why did I disregard that advice and start down this path of a dual job? Well, first, I think if you are in public service (and I hope those of you with an interest in public service will all find this out) and you are asked to do a job, you just do it; it is that simple. You are not paid by the hour, you are not in it for profit, and if you are given an additional responsibility, your instinct should always be to accept it, regardless of the additional burdens. But I have to admit, there was a more personal reason, and for that, just a little bit of background is necessary.

I grew up in Atlanta, in a Jewish household. My father and both uncles served in World War II, and both sets of grandparents came from Eastern Europe. But mine was a household in which the Holocaust was never once discussed. I never met with a survivor growing up, and I never took a course on the Holocaust or attended seminars like the one that Vanderbilt is having, because the Holocaust was not available as an academic course of study anywhere in the United States when I was going to college in the 1960s. It was not considered a suitable topic for academic study.

Well, if that is the case, with that kind of background, what then that gravitated me towards accepting Holbrook's job offer? I had two epiphanies when it came to the Holocaust. The first occurred in 1968, after I had graduated from Harvard Law School, and I was working on the Hubert Humphrey presidential campaign. One of my co-workers in the campaign was a person named Arthur Morse, who had just published a path-breaking book called *While Six Million Died*, an earthshaking book about what President Roosevelt and his top aides knew about the genocide that was occurring to the Jews and others, and how they had failed to act upon it. This was a great shock to my political system because Roosevelt was, for our household, an icon. There was a Yiddish joke that the Jewish community believed in three things, and if you know any German, it is very similar: "De Velt," this world; "Yenna Velt," the world to come; and "Roosevelt." So, this was an enormous shock that this icon, this great champion of human rights, would have had this kind of knowledge and not acted on it.

I said to myself, literally at the time, maybe sometime I will have an opportunity, if I am ever in government, somehow to rectify the moral cloud over our country, which had done so much to win the war but so little to help the civilians during the war (and it got little better after the war). After the war, those who survived the Holocaust and had the temerity to go back to try to reclaim their homes, their apartments, their buildings, and their businesses were driven off by the new occupants, or they were actually killed in places like Lithuania and Poland. Others drifted aimlessly into displaced persons camps run by a U.S. military that had been expert at winning the war but had no experience for this new job of handling stateless refugees. If that sounds similar to what we are seeing now in Iraq, I will let you draw that conclusion.

We also had a series of negotiations after the war with the neutrals: Sweden, Turkey, Portugal, Spain, and Switzerland, to try to recover assets that they had taken from Germany, in order to pay for these stateless refugees, to help them get resettled. Those negotiations were often fruitless, particularly the ones with Switzerland.

I had a second epiphany some years later in the 1970s, when I met a Catholic-Polish professor at Georgetown University, a

remarkable man who just passed away a few years ago, named Jan Karski. Karski was a leader in the free Polish government, in exile in London during the war. I do not know if any of you saw the recent movie *The Pianist*, but this movie will give you an even greater sense of what Karski went through, because twice he left the relative safety of London and secreted himself through the sewers into the Warsaw ghetto so that he could bear witness to what he saw and try to catalyze Western leaders to do something to stop the civilian slaughter. He told me the story of going to see FDR after the second of his two trips to the Warsaw ghetto, and of being in the Oval Office describing with his own eyes what he had seen. He was an elegant, very believable person, and he said to me that Roosevelt listened quietly and patiently, and then said, "I want you to talk to my confidant, Justice Felix Frankfurter, Justice of the Supreme Court. I look to him for advice, so you repeat the story, and I will do what Frankfurter suggests." So he said he went to see Frankfurter and repeated the story, and the great jurist said, after pausing for a moment, "Mr. Karski, I'm not suggesting you're lying, but I simply choose not to believe what you are telling me." That, in very many ways, was the attitude we had during the war.

When I came into the Carter White House, I brought with me these experiences and recommended to President Carter that he create a permanent memorial for Holocaust victims and a presidential commission headed by Elie Wiesel, who not coincidentally wrote the forward to my book. That led to the U.S. Holocaust Memorial Museum in Washington, D.C. A year later, in 1979 (as we are all now transfixed by Iraq, al Qaeda, Osama bin Laden, and Islamic fundamentalism) the first radical Islamic revolution occurred. The Ayatollah Khomeini came out of exile in Paris, went back to Tehran, and the Shah abdicated his throne. There were, at that time in Iran, a hundred thousand Christian believers and Jews. This was the oldest, continuous Jewish community in the history of the world. It had dated back to the destruction of the First Temple. And these three religious groups, for good reason, feared for their lives because a radical, Islamic republic had been declared. They started streaming out of Iran to our consulates in Bonn, Vienna, and Rome, desperate to get visas to come to the United States. They were being told by our consular officers, "No room, no visa status, go back to Iran." When this came to my attention in the White House, all sorts of bells and whistles went off. Karski, Arthur Morse, Roosevelt, the *St. Louis*, (the boat filled with European refugees that was turned back), and I said to myself, "We cannot let this happen twice." I was able to convince President Carter to issue special visa status to over fifty thousand of these refugees, Bahais, Christians, and Jews, so that instead of having to go back to the country you came from in sixty days, which is a normal visitor's visa, they could

stay until the Shah was returned to his throne, which has not happened yet!

Much more was needed, however, to bring back, fifty years later, an issue which had gone dormant. Why had it gone dormant? The refugees and civilians were not a priority during the war; they were not a priority after the war; and any instinct to try to help them was quashed when the Cold War began. With the Berlin Blockade and the new Cold War so soon after the end of World War II, all of the energies, and perhaps properly so, of our country were oriented toward creating a new Western alliance, what became NATO, to combat the new Soviet threat, rather than looking back at trying to help the refugees from World War II.

So it appeared that their fate would evaporate into the mists of history, gone forever. But, there were three things that brought this back onto the world stage fifty years later. The first was simply the fact that survivors were reaching the ends of their natural life cycles. They had hidden, often from their own children and grandchildren, the pain of what they had gone through during the war. Now, before it was too late, they wanted to tell their story; they wanted to reconnect with what had been taken from them, in the twilight of their years.

At the same time, the Cold War ended, and just as the Cold War had extinguished any embers of effort to help the refugees after the war, the end of the Cold War had the opposite effect. It freed up energies; it opened up borders; the Iron Curtain fell; people who were trapped behind it could now travel to try to find what had been stolen from them.

Third, at the same time, in 1995, when I was in Brussels as Ambassador to the European Union, we had a series of fiftieth anniversary celebrations, which I think in many ways had more impact in Europe than in the United States. There were fiftieth anniversaries of major World War II events: D-Day, the Battle of the Bulge, the end of the war in Europe itself. This led to a retrospective by journalists and historians, looking back at what I call, in the subtitle of my book, the unfinished business of World War II. One of those journalists doing a retrospective was Peter Gumbel, from the *Wall Street Journal*, who wrote a front-page article, in the summer of 1995, about an issue no one knew about. I certainly had no earthly idea about it. I was just plodding along, doing my property restitution work and being ambassador to the European Union. I read this article at my desk in Brussels. It was an article about something Gumbel called dormant Swiss bank accounts, bank accounts that had been created in Switzerland by people trying to shield their assets from Hitler's armies as he stormed through Europe. Those who survived, or the families of those who did not, spent fifty years after the war trying to reconnect with those bank accounts, being told things like "We can't give it to you under our bank secrecy laws" or

"We can't give it to you because you don't have a death certificate" (which Auschwitz did not, conveniently, provide).

Gumbel gave a human face to that story, as good journalists always do: Greta Beer, an elegant, elderly survivor, who literally spent four and half decades trudging through the snows from bank to bank in Switzerland, trying to locate her father's account about which he had told her before he died. When I read that story about these dormant Swiss bank accounts, I called Holbrook in Washington and said "Dick, you've already got me involved in this property restitution issue in Eastern Europe. This seems like it is in some way connected. It's a World War II story about property, how about I explore it?" He said fine.

I also learned that I was not the only one, of course, who read this story. It was read by Edgar Bronfman, the powerful head of the World Jewish Congress and a close political and financial supporter of Bill and Hillary Clinton. At the same time in New York, Alfonse D'Amato, Chairman of the Senate Banking Committee and a very colorful senator, was in the midst of the Whitewater hearings, trying to link President and Mrs. Clinton to the failed Arkansas S&L. D'Amato was facing a tough reelection in two years. He was holding these hearings hoping they would get him good press in New York, but they seemed to have just the opposite effect. Every day he held hearings, his popularity went down, and the President's and the First Lady's went up. So when Bronfman both activated Clinton and then went to D'Amato with this dormant Swiss bank issue, it was like political manna from heaven for D'Amato. He pivoted a hundred and eighty degrees, out went Whitewater, in came hearings on the Swiss bank at which Beer, Bronfman, and I testified.

Suddenly, in ways that it never would have occurred had my mission been limited to property claims in Eastern Europe, the spotlight of history shone not only on Swiss banks, but on the whole issue of Holocaust justice, fifty years later. Now, I can say this being a lawyer, being in a law school. We all know what happens in our country anytime there is controversy: there are going to be lawsuits. We are the most litigious society in the history of the world, and this was certainly no exception. A whole bevy of class action lawyers started suing the Swiss banks all over the United States. So contentious and confrontational were they, that they literally could not sit in the same room with each other to negotiate a settlement, let alone try to settle with the Swiss banks. So I was called in to be the mediator. I called myself the ringmaster of a three-ring circus! Suddenly, the whole issue of Holocaust restitution became a front-and-center story around the world.

Then it was like peeling back the layers of an onion. One discovery led to another. One set of law suits and one set of negotiations led to another. First, it was property restitutions in Eastern Europe, then Swiss banks, then German and Austrian slave

labor employers, then French banks. When we looked back six years later, at the close of the Clinton administration, there was a wildly implausible set of accomplishments that no one would have dreamed possible when it all began with Dick Holbrook's call. Thousands of pieces of religious property were being returned in Eastern Europe, though it is important to remember that there are still problems. For example, the Catholic Church in the Czech Republic continues to have great trouble getting its property back. But much was accomplished.

Regarding Swiss bank accounts, I went to Switzerland to meet with the Swiss Bankers' Association and actually carried with me Peter Gumbel's *Wall Street Journal* story. I plopped it down at the meeting and said to the Swiss Bankers' Association, "Is this true? I mean, these dormant Swiss bank accounts, is this really a true story?" They said, "Well, we read the story, too, and we were concerned about it. We had an investigator look at it. We looked at all the bank records, and we have located 775 World War II era accounts that have Holocaust connections. We will return every nickel in those accounts." Four years later, after a commission we appointed headed by Paul Volcker, the former Chairman of the Federal Reserve Bank, charged the Swiss banks \$200 million in audit fees, the Volcker Commission found not 775 accounts, but, so far, 21,000 of a possible population of up to 54,000. Those are being returned to families as I speak.

We got eight billion dollars in settlements of class-action suits against French, German, Austrian, and Swiss companies—the first time in the annals and history of warfare, private corporations were held accountable for their violations of human rights. We will come back to that as a potential precedent later.

We got hundreds of pieces of art returned; we learned that regarding the dimensions of the theft in art alone, the Germans stole 600,000 paintings. The best of these were given to Hitler and reviewed for a Führer museum in the town in which he grew up, Linz, Austria, after the war. I have a picture of Hitler in his bunker looking at a model of this museum. He fancied himself an art connoisseur. I call the art chapter, "The Barbarians of History." There are still 100,000 of those paintings unaccounted for.

Insurance policies are being paid at ten times their face value, to take into account the passage of fifty years. Aryanized property and bank profits are being disgorged. Each of the negotiations we did had its own character and spoke volumes about the capacity of the countries with whom we were dealing to face their pasts. That is what made the first of these major negotiations with Switzerland so difficult. The Swiss had convinced themselves and the world that they were the pristine neutrals during World War II, and indeed they were officially neutral, and had been since 1815. Their neutrality in World War II had certain advantages to the Allies. Their people were

virulently anti-Nazi, but their government was playing a very different game. It was their government which recommended to the Germans that they put a J-stamp on all visas of fleeing refugees so the Swiss government would know which refugees to keep out of Switzerland. Of greater significance to the war effort, it was the Swiss National Bank that acted as banker for the Third Reich, helping to finance the war.

How did the Germans finance a war effort that almost won a two-front war against the Soviet Union and the Western Allies with a worthless currency? They did it by stealing the gold out of the central banks of the countries they occupied, and the rings and gold fillings of the victims they killed, smelting it all into gold bars disguised to look like it came from their own central bank. Then, as we would say in today's terms, they laundered it through the Swiss National Bank. The Germans used those funds to purchase ball-bearings from Sweden, cobalt from Turkey, hardened steel and tungsten from Spain and Portugal—all the things that were necessary to run the war effort.

The Swiss National Bank participated in this, knowing as early as 1941, the first year that the United States got into the war, that they were dealing in looted gold, even when they were admonished and told time and time again during the war to stop the practice. If that was not bad enough, after the war when they could have plead, "Well, we were still afraid; we feared an invasion," instead of giving the gold and other assets back for the benefit of refugees, they negotiated for six long years. The chief negotiator for the United States, who just passed away a few months ago, Seymour Rubin, told me that they just "wore us down." After six years of fruitless negotiations, the United States settled for a tiny fraction of the looted gold and assets that the Swiss National Bank had. Because this was such a shattering of their own myth, the emotions surrounding the Swiss negotiations were tremendously difficult. Allegations came from all sides: the class-action lawyers, the Jewish groups, and the Swiss banks. The United States was caught in the middle.

When we moved to Germany, we faced a very different context. Here we were dealing with a different issue, but one also unaddressed: slave and forced labor. This was a country, during the war, with about seventy million people. They had seventeen million people under arms. One out of every two males between the ages of sixteen and forty-five was in a military uniform. How did they run their economy? Who ran the farms and factories to keep the economy going? Hitler had an answer for that, too. Just as he stole gold, he stole the people. He moved up to ten million people to be forced and slave laborers on German farms and in German factories. There are still a million and a quarter to a million and a half who survived, and our negotiations were about getting them compensation. The vast majority of those are non-Jews living in Eastern Europe. About

eighty percent of the money that we got from the Germans from the slave labor portion (about ten billion deutsch marks or five billion dollars) has gone to non-Jews in Eastern Europe.

In Germany, we faced a country that had already confronted its past. Although it had not dealt with slave labor, Chancellor Schroeder, not terribly popular here perhaps because of the Iraq war, was very courageous. He rallied the private sector—the Siemens, Volkswagens, the Daimler-Chryslers, and yes, the IBMs, General Motors, and Fords, whose German divisions had been slave labor employers; and he matched their contribution out of his public treasury, at a time when Germany was cutting thirty billion deutsch marks in popular programs. He came up with a settlement in which Germany again faced its past, as it had done in giving sixty billion dollars to Holocaust victims since the 1950s.

When we moved to Austria, unlike Germany, we faced a country which was just beginning to come to terms with its past. It still called itself the “first victim” of World War II, rather than Hitler’s willing accomplice. There is a joke in Vienna coffee houses that Austria is the only country that has convinced itself that Beethoven was an Austrian and Hitler was a German, when of course, the opposite is true. And yet Chancellor Wolfgang Schuessel even in a coalition with the far right party, headed by a xenophobic, anti-Semitic leader named Jorg Haider, was able to get his country to face its past. He contributed out of the public treasury and got the Austrian private sector to pay both for their slave labor and for property that was taken. In the course of that, he laid the groundwork for a new and happier chapter in Austrian history.

Finally, we had our negotiations with the French. When you negotiate with the French, as I have done in so many contexts, they are always last. We are seeing that even today in Iraq. They can be difficult and contentious, but they are excellent negotiators. I call the French chapter in the book, “The French Exception.” They were exceptional during the war. The French always like to think of themselves as exceptional, but not in this way. They were exceptional because they were the only Western democracy that actively collaborated with the Germans in killing their own citizens. Through Vichy France, and then for fifty years after the war, from Presidents Charles de Gaulle to Francois Mitterrand into the 1990s, the French denied that post-war France was responsible for the actions of Vichy France, asserting that Vichy was some German-imposed entity. Here is someone even less popular in the United States today than Schroeder, Jacques Chirac, but someone who was very courageous in what he did. On the forty-third anniversary of the deportation of the Jews of Paris, Chirac effectively said “Vichy est la France.” Vichy is France. Vichy was France, and we are responsible for it. That created a context within which we could negotiate a settlement for French

survivors and get France to act in accordance with its best historic principles.

Let me close with some questions and some thoughts about the future application of such principles.

First, was this worth six years of effort? This was moonlighting for us. We all had regular jobs. I had a team that numbered in the dozens. Was it appropriate for the U.S. government even to be involved in negotiating private law suits? The U.S. government was not a party to these suits. These were private victims against private foreign corporations. None of the people we helped got a king's ransom. Eight billion dollars sounds like a lot of money, but when you divide it over a million and a quarter slave laborers, and you have to pay for insurance, bank accounts, and confiscated property, it is not that much. A slave laborer gets \$7,500. Was it worth the effort? Survivors tell me that it was, regardless of the number of zeros on their check, because at least at the end of their day, someone had been held accountable for their suffering.

Let me suggest that there are three long-term implications of what we did. These go beyond money, art, property, and bank accounts. The first is simply the emergence of truth. We did not want the last word on the Holocaust to be about money, but about memory. So we got the presidents of Germany and Austria, as part of the settlement of these law suits, publicly to apologize for their companies' misuse of forced and slave laborers. A printed version of that apology accompanies every check that goes to every one of the million and a quarter to a million and half surviving laborers. We also had four international conferences with over forty countries participating, urging them to open their archives, to look at their pasts. Twenty-one of them, at our encouragement, from Argentina which harbored Nazis in our hemisphere during and after the war, to Lithuania which willingly participated in the Holocaust, have created Holocaust/World War II commissions to look at their pasts. By the way, the best, most honest, most searching of those, including our own, are the Swiss and French commissions. We created a sixteen-nation Holocaust education task force, not because we wanted young kids to be exposed to the gory details of the Holocaust, but because we wanted them to learn the lesson I learned from Arthur Morse: what happens when good people and good countries stand aside in the face of injustice. This is a lesson that we have unfortunately still not learned as a world as is clear when we look at Rwanda, Burundi, Cambodia, the Balkans and so many other instances.

A second long-term implication is the advancement of the cause of human rights by making private corporations accountable for violations of human rights. It acts as a shot across the bow for private companies doing business in countries with repressive regimes. Now I want to say to you very clearly that I am a great believer in U.S. companies investing around the world, transmitting Western values,

managerial experiences, and technology. Our lesson was not that you should not invest in countries with difficult regimes, but that you should stay at arm's length from the repressive regimes in places like Burma. If you are aiding and abetting their violations of human rights, you can get caught up in the same vortex that the private Swiss, German, Austrian, and French companies did in the course of their World War II activities.

The third implication involves longer-term foreign policy. Let me suggest that there are three foreign policy implications. One is simply a democratization of foreign policy. Our negotiations were not government-to-government negotiations. They involve governments; they involved private corporations; they involved state and local officials who had formed a committee under the leadership of Alan G. Hevesi, then the Comptroller of the City of New York, which threatened to withdraw billions of dollars or pension funds from Swiss banks and German companies if they did not settle the suits I was negotiating. So, our negotiations were a more open form of foreign policy making.

A second way in which foreign policy was implicated was in the correction of historic wrongs through the U.S. court system. This is very controversial; the Bush Administration is strongly opposed, but let me just encapsulate it. In the last few years, since our class actions were finished, let us look at what has happened in our court system to redress other wrongs as a sort of copycat to what we did. Korean comfort women have sued Japanese companies for their forced prostitution during the war. American POWs, still some 6,000 alive, have sued regarding being forced into slave labor in Japan after being captured by the Japanese. Victims of South African apartheid have sued dozens of U.S. companies, that allegedly aided and abetted the apartheid regime in South Africa. Even closer to home, African-Americans are using the same techniques, even some of the same lawyers, and some of the same legal theories in seeking reimbursement for slave labor 150 years ago. This is inevitably drawing the United States into this court-adjudicated area of foreign policy. These cases may stand on legal quicksand, but so did ours. Two of the judges actually dismissed the German slave labor cases, and yet the Germans still paid this massive ten billion deutsch marks, five billion dollars, because they did not win in the court of public opinion. That is where these cases were won, with political pressure, U.S. government intervention, threats by state and local governments and press, and congressional attention.

There is also another way in which we created new concepts in law. We called it "rough justice." How do you do justice fifty years later? Evidence is destroyed; witnesses are not available. Our court system is not designed to deal with these kinds of situations, so we created the concept of rough justice. What does that mean? It means we created administrative remedies and tribunals outside of the court

system to pay claims in places like Austria, Germany, and France. It meant that instead of individualizing justice, any slave laborer gets \$7,500 regardless of whether they spent a day, a week, a month, or a year as a slave laborer; we could not have individual trials for each person.

Last, and I think but not least (and I wrote an op-ed article in *New York Times* on July 4, 2003 on this), I believe that the kinds of commissions, apologies, and claims processes we created can help settle post-war conflicts in places like Iraq and between the Palestinians and Israelis, by creating vehicles to deal with property restitution and other contentious issues.

I drove myself and my team unmercifully. We all had full-time jobs; this was a second job, but that was not the reason. We were already working overtime, but that was not the reason. The reason was that survivors were dying at the rate of ten percent a year. We had a very narrow window of opportunity. I call our work "imperfect justice" because it did not help those who died during the war or those who passed away between the end of the war and the beginning of our work in the mid-1990s. Even for those it did help, it is justice for sure, but there can be no final accounting for the devastation, the brutality to individuals and to their property. So I close this chapter in my own life and in the book with one of my favorite sayings from a religious work called *Ethics of the Fathers*, and it sums up what we were trying to do. I hope for you young people, it will sum up your work when you get to be my age, maybe even when you are younger and you can think about this as a sort of guiding principle: "It is not your obligation to finish the task, but neither are you free to exempt yourself from it." Thank you, and I will be glad to take your questions.

Question and Answer Session

Let me tell you a humorous story before we start the question period because obviously the talk is heavy and the questions will be as well. This involves someone that I knew from the Senate and from my White House days with President Carter. His name was Russell Long. He was the very colorful chairman of the Senate Finance Committee, the senator from Louisiana, and if any of you remember your twentieth-century U.S. history, his father was the even more colorful, populist governor, the Kingfish (if you read *All the King's Men*), Huey Long. Huey was an incredible character, and Russell used to regale everybody with stories about Poppa. He told one story that when he, Russell, was a young boy growing up in the governor's mansion in Baton Rouge and Poppa was the governor, Poppa came home late one night just stone-cold drunk and staggered up the stairs of the governor's mansion, reached into his pocket with a very shaky hand, finally got the key to align in the keyhole, and turned the key. The door opened and Russell was on the other side of the door

holding on to Mama's apron strings. Poppa just collapsed in the foyer. Mama had her arms crossed, looking sternly down to see how this state of affairs could have occurred to the governor of the great state of Louisiana, and without pause, Poppa said, "Momma I've completed my prepared remarks and I will now take questions from the floor." So, in a very different state, (I can assure you this is only H₂O), I will be glad to take your questions.

I assume during the discussions and negotiations there might have been arguments made by various countries about our situation, and about reparations and apologies for our past. How do you address that?

Let me address the slavery issue here, and I am glad you raised it because I think it is a very difficult one. I have written an article about that for the *L.A. Times*, and I think it is very difficult. We made a very difficult decision in our German negotiations: we would only pay forced and slave laborers who were still alive, not the families of those who had died during or after the war. Now why would we do that? Partly it was the difficulty of proof; partly it was because if we had to get the families of ten million people and locate them, it would have taken forever; there was not enough money to pay them. It was a tough judgment, but we all made it. If that is the case then one would, by logical inference, say that for the descendants of slaves during the pre-Civil War era there should be no direct compensation, and that is my position.

But that is too easy an answer, and I think there are many things in our experience which are relevant to the slavery experience, and let me suggest a couple. The first is that we created these public apologies from the German and Austrian presidents. There has never been a public apology by the President or the Congress for slavery. Now interestingly in 1988, Congress passed a law giving each Japanese-American family \$20,000 per family (only for survivors, not heirs) for their being interned in camps on the West coast during the war, combined with a public apology in the legislation. We have never done that for slavery.

Second, just as we created these commissions all over the world, we could have one here, a presidential commission, to examine slavery and the implications of slavery, and the long-term memory of it. Such a commission could help develop a curriculum on the impacts of slavery in school systems, like our international Holocaust education task force is doing. I can assure you, growing up in Atlanta when I studied the Civil War, I did not study a lot about slavery.

Third, and this is very controversial, I am sure many of you in law school and others have studied this issue, my alternative to individual reparations, with which for reasons I have just said I do not agree, is affirmative action. That is our generation's response to

the aftermath of slavery. I grew up in Atlanta, and slavery may have occurred 150 years ago, but the after-effects occurred in my lifetime. I grew up in a segregated system. I played basketball at a high school in a segregated system. I rode on buses that were segregated. I went into restaurants and stores in Atlanta, in Rich's and places like that, where no blacks were allowed. And that is in my lifetime. I am not saying fifty years from now we should have affirmative action, but certainly for the near-term this, to me, is the best way of dealing with this difficult issue.

You asked in your talk, and perhaps it was a rhetorical question) whether it was right for the U.S. government to be involved in these negotiations? I suspect that your response is going to be that it was right; therefore, I want to go a step further and ask whether you think there is an ethical responsibility for us to act, not just to standby, but to become involved? Is there an ethical responsibility to act in a coordinated fashion to resolve issues with such lasting repercussions?

First of all, I would like to say that the answer to my rhetorical question is "Yes, but. . ." What I mean by that is, first of all, that there were a lot of times during these torturous negotiations, which I hope you will read about in my book, when I questioned whether it was appropriate for us to be involved. We were getting the slings and arrows from both sides, foreign corporations and governments, plaintiffs' attorneys and Jewish groups. I often wondered, "What are we doing here?" In the end, we were involved because many of the citizens who had been victims during the war were U.S. citizens who had never gotten the justice they deserved, for reasons which I have mentioned. On the other side, we were asked by the foreign governments to mediate. We did not just intervene, with one exception, which I will come back to. The German, French, and Austrian governments said to me, "We want you involved; we have to get rid of these law suits. Even though our governments are not to be involved, our companies are involved, our icons, are big banks, our big companies. They stand for Germany, Inc., or Austria, Inc., or France, Inc.—we have got to get rid of these or our reputation will be sullied." So they wanted us involved.

The exception was in the Swiss case against the Swiss private companies. The banks agreed with the class-action lawyers that I should get involved, but the government, although it did not formally object in any way, was happy to see us try to settle the cases. The Swiss government was never a negotiating partner. One of the reasons we had such difficulty with the Swiss negotiations is that the Swiss government never contributed a nickel to the settlement; it all

fell on the private companies. To this day, (we settled the Swiss cases in August 1998), the government has yet to bless the settlement. So, I did come to the conclusion, this is where my “but” comes from, that if the government on the other side is not interested; we ought to say, “Why should we be?” But the basic answer is that I think it was the right thing to do, and I would like to see more of it, and in a coordinated way.

You made some wonderful connections between the issue of slavery, forced labor, and what happens in the United States, but what about looted property? What would happen if American Indians started going back and asking about looted property?

First of all, with respect to slaves, there was no property looted. They were considered “property.” With respect to the American Indians, almost all of that is now being decided, even as we speak. There are always court cases involving treaties. Those treaties may have been one-sided and unjust, but they are the legal documents that govern this. You have the reservations; you have some repayment; you have, as when I was with President Carter, one of the most confrontational issues, dealing with a federal judge who gave special fishing rights to the Indians because of their treaty so they could go in advance of the regular fishing season. This caused tremendous contention with the regular fisherman. So I think that is really governed by treaties, which was not the case in the World War II context.

What justice is ever going to come with respect to the Swiss banks or the Swiss government, if they are still not cooperating? Have they gone back on your agreement?

Returning to the “rough justice” concept, there were several differences between the Swiss settlement and all the others. One I have already mentioned: the government was not involved. So, we did not have a government partner. I had to deal with these unruly private people. The second difference was, because of that, the settlement was done under a federal judge in the Eastern District of New York, not by setting up one of these efficient claims processes as in Germany, Austria, and France, where we are getting money out of the door, and getting it to the people—rough justice, \$7,500. You sign an affidavit that you were in a particular camp; no evidence as would be required in a court; you get your money; and that is it. But because the Swiss settlement was done under a federal court, it took two and a half years to get the first nickel out of the door what with appeals and class action processes. Even today, there is a problem. Then the

third problem is the Swiss banks themselves. Paul Volcker, who is an eminent central banker, told me that as soon as we settled our class action suits in August 1998 (his \$200 million audit was still going on), the Swiss bank cooperation stopped. The records for his auditors were shut down, and to this day, as a recent *New York Times* article mentioned, they are still not fully cooperating. It shows what their motivation was fifty years ago, and it has not changed since.

I am very interested in this concept of rough justice and the idea that U.S. private litigators can redress historical wrongs done in foreign countries by a foreign government. Is it conceivable also that U.S. private litigation can address issues, for example, in communist Russia and communist China where wrongs of monumental proportions have been done? The way I see it, laying it out structurally, this would be possible.

Only if private companies from those countries are doing business in the United States and would be subject to jurisdiction. Only in those situations and only if those companies were themselves involved. Now, this is going to go to the Supreme Court, because the Bush Administration is dead set against these lawsuits. They see an interference with foreign policy. But these suits fall under the Alien Tort Claims Act, going back to 1789, a law passed by the first Congress of the United States to deal with piracy, which said that aliens could sue in a U.S. court for something called the violation of the law of nations.

That is an odd term, the law of nations. What does it mean? It is not clear what it means, and what courts are saying today is that it means accepted standards of human rights, involving torture and assassination. That is what the law of nations means, so they are saying that if human rights laws, like the U.N. Human Rights Resolutions going back to 1948, are being violated, you can go into federal court if you can find a defendant who is doing business in the United States.

You mentioned earlier that one of your ways of solving problems was just to address restitution for survivors, but not their families or decedents. My question is how do you think that impacts people today who are trying to reclaim life insurance policies their families had?

That is a very good question, and I should be more precise. We made this tough cutoff concerning heirs and survivors only with respect to slave labor. On physical property, bank accounts, art, businesses, apartments, insurance, or real property, heirs can bring

claims. We have a special process that was set up, special tribunals in these foreign countries so that you can go into the German property tribunal, and if your family had property that was confiscated or sold at bargain basement prices under force (what was called Aryanization), you can get it back, or at least get the monetary value of it back.

Now this gets to the Palestinian/Israeli situation. I got a call, and I mention this in the book, in July 2000 from Madeline Albright just as I was concluding the German negotiations. She was at Camp David with Arafat, Prime Minister Barak, and President Clinton. In the eleventh hour of those talks, when it looked like they were going to produce an agreement, Arafat suddenly put on the table the so-called right of Palestinians to return to their homes and get their property back. Madeline called me up and said, "You have been doing all this property restitution work, maybe you can shed some light on this; what do we do about it? I blinked a couple of times and said, "Look, this is a historical debate: were the Palestinians driven out, or, more likely, did they voluntarily leave, when the Arab government said leave, so we can get the Jews into the sea, and then you will get your property back?" In any event, I told Madeline, and this is actually what the President followed at Camp David and I think it is the way this issue will be settled, that it is impossible, as we found in Eastern Europe for private property—not communal property, not churches and synagogues and things which can be physically returned—but for private property.

It is not fair to a current user of private property who may have acquired the property in good faith and probably did so fifty years later to say, "You should leave it because there is an heir of a family that had it confiscated by Hitler or nationalized by the Communists with a rightful claim." There is a basic unfairness in this, so what do you do? What we have done in some Eastern European countries, like Hungary, the Czech Republic, or Slovakia is to create a fund to provide compensation in lieu of the return of property. This fund would not provide one hundred percent of the fair market value, but five percent or even one percent. It is a token payment, but it is something. So what I suggested was the creation of an international donor fund that would have contributions from people all over the world to provide money for the Palestinians in the camps, in lieu of them getting their property back. I think, in the end, that is the way, if we ever get to that later stage, we will settle this issue.

My question is two-fold: First, did you experience any hostility or any reactions, when you were in Europe, dealing with these issues related to the Holocaust victims as a representative of the United States, or were you faced with any contention that the United States itself engaged in genocide through African-

American slavery? What was your response, if any, in that context? Second, you characterize affirmative action as a reparation policy, but as African-Americans are not the primary beneficiaries of affirmative action, how is that similar to reparations?

First of all, at least in my book, African-Americans are the primary beneficiaries of affirmative action. There certainly are other minority groups that benefit, but African-Americans are, without question, one of the primary beneficiaries in terms of admissions to schools and other programs. There are also minority set-asides in federal programs like the public works programs for minority contractors and those are the kinds of things that I think should be done.

In terms of the reaction in Europe, I would say that the most negative reactions came in Switzerland. There were grumblings about who the United States is to be telling us that we should deal with our past when they have not dealt with theirs? There certainly was an undercurrent of that.

You mentioned several times an emphasis on restitution for non-Jews, and I was wondering about your choice of emphasis there and if it had something to do with any findings that you were surprised about or if it was a point of contention as far as restitution going to Jews.

Yes, in fact, one of the most interesting parts of the book is that after we had settled on the deutsch mark amount with the Germans for slave enforced labor, which was ten billion deutsch marks, or roughly five billion dollars, we thought we were in the clear; and that the rest would be easy. But, the most difficult part of negotiations came after that, in dealing with how to allocate that money between Jews and non-Jews, because of the non-Jewish forced labors.

Let's put some numbers to this. There were ten million forced laborers; there are a million and a quarter to a million and a half still alive. Of that number, 140,000 are Jews and the rest are all non-Jews. The non-Jews, mostly from Russia, Ukraine, Poland, Hungary, and Slovakia, said, "We admit that we were not being worked to death, which slave laborers were. Our conditions were somewhat less harsh, but they were harsh. We were ripped from our homes. We were put under very difficult circumstances. If we were paid, it was very modest. Yes, we were not being killed, but it was tough and not only that, but you, Germany, have not paid us a nickel in fifty years, and you have paid sixty billion dollars to the Jews, not for slave labor but for general damage done during the Holocaust." The Jews, on the other hand, said, "Yes, we have gotten money in the past, but we

have never been paid for our slave labor, and we were being worked to death. It was an alternative form of extermination.”

So you had this tremendously emotional confrontation. What we ended up doing ultimately was coming to a three-to-one ratio of slave laborers, and by the way, even slave laborers—this was something I never thought would be the case—fifty-five percent of the survivors are Jewish but forty-five percent of the slave laborers, the ones being worked to death, were non-Jews, political prisoners, Slavs and others. The Germans hated the Russians, and so they were treated much in the same way the Jews were. There was this wonderful, chilling PBS documentary, it was Charles Guggenheim’s last film before he died, *Berga: Soldiers of Another War*. It is the incredible story of U.S. soldiers who were captured and forced into labor under the same terms as the Jewish slave laborers, so this was a tremendously contentious thing. We ended up settling it in the following way: slave laborers got three times the amount of forced laborers. So, if a slave laborer, Jewish or non-Jewish, got \$7,500, a forced laborer would get \$2,500. Now, frankly, the \$2,500 goes a long way because most of those former laborers are in countries in Eastern Europe where the per capita average income for a year is \$1,200. It is not a king’s ransom, but it is two years’ worth of average per capita income.

I appreciate your good questions and your thoughtfulness in coming.

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