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Stephen A. Denburg

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RECLAIMING THEIR PAST: A SURVEY OF JEWISH EFFORTS TO RESTITUTE EUROPEAN PROPERTY

STEPHEN A. DENBURG*

INTRODUCTION

The current Swiss banking scandal has shed light on the fact that many European countries have not fully revealed the extent of, or have failed to compensate Jews for, the numerous assets and property holdings that were confiscated during the Nazi era.¹ While the Swiss banks moved quickly to establish humanitarian funds and restitute Jewish assets,² the process of property restitution in Central and Eastern Europe has proceeded more slowly.³ The seizure of Jewish real property constitutes an act central to understanding the implications of the Holocaust.⁴ Although the economic deprivation may seem trivial in comparison to the massive physical suffering, it illustrates another important facet of the victimization of the European Jewish community.⁵

While West Germany made a concerted post-war effort to compensate Jewish victims of the Holocaust,⁶ other countries tended to ignore their responsibilities to Jewish Europeans.⁷ Many nations, especially in the former Soviet Bloc, have avoided coming to terms with their complicity with the Nazi regime and their treatment of Jews and their

* Solicitations Editor, BOSTON COLLEGE THIRD WORLD LAW JOURNAL.

¹ See Nathaniel C. Nash, *Whose Accounting?: Swiss Bankers Discover \$34.1 Million from Wartime*, N.Y. TIMES, Sept. 17, 1995, at A1. In late 1995, it came to light that banks in Switzerland had misappropriated the assets of Jewish victims of the Holocaust. See *id.* Public outrage and international political pressure forced the banks to establish a \$70 million Holocaust memorial fund in 1997. See Alan Cowell, *Swiss to Share Control of Holocaust Fund with Jewish Groups*, N.Y. TIMES, Feb. 27, 1997, at A5.

² See Cowell, *supra* note 1, at A5.

³ See KRYSZYNA SIERADZKA & ANTONY LERMAN, INST. OF JEWISH AFFAIRS RESEARCH REPORTS NO. 5, JEWISH PROPERTY IN CENTRAL AND EASTERN EUROPE: NEW DEVELOPMENTS IN RESTITUTION COMPENSATION CLAIMS 2 (1994).

⁴ See LAURENCE WEINBAUM, INST. OF THE WORLD JEWISH CONGRESS, RIGHTING AN HISTORIC WRONG: RESTITUTION OF JEWISH PROPERTY IN CENTRAL AND EAST EUROPE 5 (1995).

⁵ See *id.*

⁶ See NICHOLAS BALABKINS, WEST GERMAN REPARATIONS TO ISRAEL 3 (1971).

⁷ See WEINBAUM, *supra* note 4, at 8.

property, and have instead focused the blame on Germany.⁸ The widespread avoidance of responsibility stems from the deeper problem that:

[t]he issue of Jewish property restitution digs deep into the national psyche of Europe. It highlights the fact that though Nazi Germany was the chief executioner, its crimes could not have been realized without the enthusiastic collaboration of war criminals of other nationalities and greedy bystanders who took advantage of the distress of their Jewish neighbors.⁹

Jews in Central and Eastern Europe have been referred to as "double victims" suffering persecution and repression under both the Nazis and Communists.¹⁰ Thousands of Jews throughout the former Soviet bloc were not compensated because their Communist governments did not allow them to file claims with the West German Government.¹¹

The fall of Communism in Central and Eastern Europe and the subsequent transition to democracy has led to the installation of governments that are more receptive to the principle of private property restitution.¹² This has presented an opportunity for a renewed effort by local Jewish communities and international Jewish organizations to encourage these countries to account for their past crimes and to compensate those who have been deprived of their property.¹³

This Note will be a historical and legal examination of the confiscation of Jewish property during the Nazi era, and the subsequent attempts by Holocaust survivors, the heirs of victims, and international and local Jewish organizations to obtain reparations and regain lost property. While the confiscation of Jewish assets involved both real and personal property, this Note will focus on the restitution of real property. In particular, current attempts at reclaiming property in Central Europe will be analyzed.¹⁴ Although Jews should be legally entitled to full restitution of all confiscated and converted properties, such a

⁸ See *id.*

⁹ Avi Beker, *Europe Lies Down on the Psychiatrist's Couch*, JERUSALEM POST, Jan. 3, 1997, at 5.

¹⁰ See MARILYN HENRY, INTERNATIONAL PERSPECTIVES NO. 40, RESTITUTION OF JEWISH PROPERTY IN CENTRAL AND EASTERN EUROPE 10 (1997).

¹¹ See David Binder, *Germany to Pay Jewish Victims of Nazis*, N.Y. TIMES, Nov. 7, 1992, at 3.

¹² See WEINBAUM, *supra* note 4, at 8.

¹³ See *id.*

¹⁴ Jewish property restitution has also become an issue in Western Europe, with France, Sweden, and Norway recently acknowledging the problem. See Richard Z. Chesnoff, *Fifty Years Too Late, A Reckoning*, U.S. NEWS & WORLD REPORT, Mar. 17, 1997, at 43.

wholesale return would be unrealistic. The severely diminished size of the Jewish communities in Central and Eastern Europe have neither the financial nor human resources to maintain such a large repository of property. Local Jewish communities do not want to reclaim all land that was once Jewish owned, but instead use it as a tool to rebuild a self-sufficient Jewish community.¹⁵

Part I will offer a brief historical overview of the confiscation of Jewish property during the Nazi era. It will also examine efforts made by the West German Government to compensate Holocaust survivors and their families. Part II will look at several examples of litigation that survivors or their families have instituted against the West German State and European individuals. Such suits involve claims for compensation and the return of Jewish property that had been confiscated and subsequently sold to a third party or destroyed. These cases will illustrate the various legal barriers that Jews encountered when they sought compensation independently. Part III will analyze current efforts by international Jewish organizations and local Jewish communities to obtain compensation from several former Soviet bloc countries for the vast amount of property expropriated under the Nazi and Communist regimes.

I. CONFISCATION OF JEWISH PROPERTY BY THE NAZI REGIME AND SUBSEQUENT WEST GERMAN COMPENSATION

At the end of World War II, the devastating impact of the Holocaust on European Jewry fully came to light.¹⁶ The slaughter of Jews "was accompanied by the wholesale plunder of the victims' property, movable and immovable, communal and individual, public and private: innumerable synagogues, houses, apartments, *yeshivot* [rabbinical academies], schools, hospitals, *mikvaot* [ritual bath houses], factories, orphanages, workshops, old age homes, stores, [and] land."¹⁷ It has been estimated that from 1933 to 1945, the Nazis took between \$12 and \$32 billion worth of real property from Jews.¹⁸ As a consequence of the Jewish genocide, many of these properties went unclaimed at the end of the war; often those who managed to survive the Holocaust

¹⁵ See HENRY, *supra* note 10, at 46.

¹⁶ See BALABKINS, *supra* note 6, at 14.

¹⁷ WEINBAUM, *supra* note 4, at 5.

¹⁸ See BALABKINS, *supra* note 6, at 14. These estimated figures are based on period prices. See *id.* Further, in 1945, the Jewish Agency estimated the monetary value of material losses including personal property to be \$8 billion (pre-war prices). See *id.*

found that their property had been seized by the state or private citizens.¹⁹ The situation was compounded by a continuing post-war animosity toward Jews and their own reluctance to reclaim property alongside neighbors who had turned against them during the war.²⁰ In some countries, Jews who attempted to reclaim such property "were sometimes killed, and others who sought to regain their holdings through legal measures were drowned in bureaucracy."²¹

Following Germany's defeat in 1945, the Allied countries promulgated military laws in their respective occupation zones to facilitate the restitution of Jewish property.²² In 1947, the United States Government enacted Military Law 59 (ML 59).²³ ML 59 applied to the U.S. zones of occupation and was designed to return property to persons from whom it had been taken for political reasons.²⁴ Under the law, any survivors or the heirs of those who perished could submit claims to regain the property owned in Germany.²⁵ If no surviving heirs existed, Jewish organizations were entitled to the property.²⁶ Although the United States was initially committed to returning Jewish assets, "it quickly became apparent that this was a legally complex and politically sensitive task."²⁷

In response to the legal difficulties faced by individuals, several successor organizations were created by a coalition of international Jewish agencies to help European Jews reclaim the vast amount of property confiscated by the Nazi regime.²⁸ Although some Jewish organizations were unsure whether to press the German Government for compensation, others "insisted that it would be utter folly to permit

¹⁹ See WEINBAUM, *supra* note 4, at 6. In 1933, there were over 500,000 Jews in Germany. See RONALD W. ZWEIG, GERMAN REPARATIONS AND THE JEWISH WORLD: A HISTORY OF THE CLAIMS CONFERENCE 40-41 (1987). After the Holocaust, and subsequent emigration, that number was drastically reduced to a mere 16,000. See *id.*

²⁰ See ZWEIG, *supra* note 19, at 30.

²¹ WEINBAUM, *supra* note 4, at 6.

²² See *Pernikoff v. Kennedy*, 219 F. Supp. 854, 857 (D.C. Cir. 1963). The Allied victors divided defeated Germany into four zones of occupation overseen by the occupying forces of the United States, Britain, France, and the Soviet Union. See ZWEIG, *supra* note 19, at 2.

²³ See Angela J. Davis, *Beyond Repatriation: A Proposal for the Equitable Restitution of Cultural Property*, 33 UCLA L. REV. 642, 650 (1985).

²⁴ See *id.*

²⁵ See ZWEIG, *supra* note 19, at 4.

²⁶ See *id.*

²⁷ *Id.* at 2. The refugee status of many Jews and their fear or unwillingness to retain German citizenship was one of the main legal obstacles the U.S. forces faced in attempting to restore property to Jewish victims of the Holocaust. See *id.* at 3.

²⁸ See *id.* at 4-5.

those who had killed and robbed Jews to retain possession of stolen property."²⁹ The organizations argued that indemnification could in no way ever fully compensate the crimes committed against the Jewish community of Europe, but it would force countries that had perpetrated genocide to accept some moral and legal responsibility for their acts.³⁰

In 1947, a number of Jewish organizations created the Jewish Restitution Successor Organization (JRSO) in New York to handle unclaimed and heirless property.³¹ The JRSO was founded on the belief "that a nation may not retain property that it gained by the mass spoliation of minorities whom it persecuted on racial or religious grounds."³² In 1948, the JRSO was officially designated by ML 59 to recover heirless property that had been confiscated by Germany.³³

While the JRSO was able to facilitate the transfer of a number of pieces of real property, the organization was forced to resort to litigation to reclaim property held by incumbent owners.³⁴ Such suits typically involved disputes over the sales contracts that allowed for the acquisition of the confiscated properties.³⁵ In addition, the JRSO encountered numerous legal complications, including the issue of encumbrances of restituted property.³⁶

While the JRSO was focused on reclaiming heirless property, the United Restitution Organization (URO) was founded in London in 1948 as a legal aid society to help Jewish claimants regain their land.³⁷ Due to the complexity of the restitution laws, many private individuals

²⁹ BALABKINS, *supra* note 6, at 95.

³⁰ *See id.*

³¹ *See* SAUL KAGAN & ERNEST H. WEISMANN, REPORT ON THE OPERATIONS OF THE JEWISH RESTITUTION SUCCESSOR ORGANIZATION, 1947-1972, at 6 (1972).

³² *Id.*

³³ *See id.* ML 59 was promulgated in 1947 to allow Jews to submit specific claims. *See id.* Due to the U.S. delay in allowing the JRSO to pursue claims, the Organization only had five months to file claims. *See id.* Nevertheless, 163,000 claims were filed before the December 31, 1948 deadline. *See id.* at 7.

³⁴ *See id.* at 7.

³⁵ *See id.* Such lawsuits "against incumbent owners became necessary on the ground that the wrongful acquisition of confiscated properties nullified any sales contracts that pertained to them, and had to be restored to the original owner, even if the purchaser was in ignorance of the wrongful taking." *Id.*

³⁶ *See* KAGAN & WEISMANN, *supra* note 31, at 7. These encumbrances included compensation of claimants for profits derived from the property during its subsequent ownership, and compensation for incumbent owners for expenditures incurred and consideration received for the property. *See id.*

³⁷ *See id.* at 28.

needed legal help, but few could afford it.³⁸ Although the URO had established offices in countries such as Britain, France and Israel, the U.S. Military Government was unwilling to allow a nascent legal aid society to submit claims.³⁹ The U.S. feared that claimants would receive inadequate legal help from the URO and believed that the JRSO's work was sufficient to handle claims.⁴⁰ To remedy this, the JRSO agreed to collaborate with the URO to open a number of Legal Aid Departments by the end of 1948 to provide services to Jewish claimants of limited means.⁴¹

The JRSO and URO were able to accomplish some degree of restitution, but the Allied legislation failed to provide full restitution for many Jews who had suffered material losses throughout Nazi-occupied Europe.⁴² Although legislation for restitution was implemented in all of the Allied zones of occupation, "under the prevailing condition of repressed inflation[,] these measures remained grossly inadequate."⁴³ Further, restitution courts that had been created under the laws of the occupying countries did not have jurisdiction to compensate owners of property that was located outside of Germany's post-war borders.⁴⁴ Much of this property was now under the control of the newly formed governments in Central and Eastern Europe.⁴⁵ In addition, large amounts of property had been destroyed or converted, and many of the former owners could not be located or had perished in concentration and extermination camps.⁴⁶

Once the Federal Republic of Germany (West Germany) was founded in 1949, the pace of restitution and compensation accelerated.⁴⁷ Chancellor Konrad Adenauer, West Germany's first leader, was instrumental in placing the responsibility of the Holocaust on the West German State.⁴⁸ West Germany's willingness to compensate victims of Nazi aggression represented a milestone because "in no previous case

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See KAGAN & WEISMANN, *supra* note 31, at 28.

⁴² See ZWEIG, *supra* note 19, at 5.

⁴³ BALABKINS, *supra* note 6, at 85.

⁴⁴ See Robert Hochstein, Note, *Jewish Property Restitution in the Czech Republic*, 19 B.C. INT'L & COMP. L. REV. 423, 433 (1996).

⁴⁵ See *id.*

⁴⁶ See Davis, *supra* note 23, at 650.

⁴⁷ See BALABKINS, *supra* note 6, at 85. The four zones of occupation were in place from 1945 to 1949 when the Federal Republic of Germany was created. See *id.*

⁴⁸ See *id.*; ZWEIG, *supra* note 19, at 7.

in history had a state paid indemnification directly to individuals, most of them not even its own citizens.⁴⁹ American and international Jewish organizations, such as the World Jewish Congress, had found a government that would take their claims of compensation seriously.⁵⁰

These advances led to the creation of the Conference on Jewish Material Claims Against Germany (Claims Conference) in 1951.⁵¹ The Claims Conference represented the interests of twenty-four international Jewish organizations.⁵² The stated purpose of the Claims Conference was “[t]o distribute funds for the relief and rehabilitation of Jewish victims of Nazi persecution and for the reconstruction of communal and cultural institutions devastated by the Nazis.”⁵³ In 1952, West Germany and the Claims Conference entered into negotiations concerning restitution and compensatory payments to Jewish survivors.⁵⁴

The two parties reached a settlement embodied in the *Luxembourg Protocols*.⁵⁵ *Protocol I* provided for compensation and restitution to individual claimants,⁵⁶ guaranteeing “that the legal position of the persecutees throughout the Federal territory be no less favourable than under the General Claims Law now in force in the U.S. zone.”⁵⁷ *Protocol II* outlined a payment of 450 million Deutschmarks (DM) to be made to the Claims Conference.⁵⁸ Under the agreement, the Claims Conference would turn over the payment to the State of Israel for the resettlement and rehabilitation of Holocaust victims.⁵⁹ Rather than address the issue of property restitution, the agreement focused on compensatory relief for personal harm.⁶⁰ Thus, while West Germany paid a

⁴⁹ NEHEMIAH ROBINSON, *TEN YEARS OF GERMAN INDEMNIFICATION* 8 (1964).

⁵⁰ See BALABKINS, *supra* note 6, at 85–86.

⁵¹ See *Wolf v. Federal Republic of Germany*, No. 93-C7499, 1995 U.S. Dist. LEXIS 5860, at *5 (N.D. Ill. Apr. 27, 1995), *aff'd*, 95 F.3d 536 (7th Cir. 1996).

⁵² See *id.*; ZWEIG, *supra* note 19, at 16–18.

⁵³ *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *47 n.12.

⁵⁴ See *id.* at *5. Zweig defines reparations as “punitive and compensatory payments usually made by one state to another.” ZWEIG, *supra* note 19, at 2. The fact that Jewish organizations were seeking reparations from a sovereign nation to Jewish individuals was unprecedented. See *id.*

⁵⁵ See ROBINSON, *supra* note 49, at 23.

⁵⁶ See *id.* at 23–24.

⁵⁷ *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *6.

⁵⁸ See ZWEIG, *supra* note 19, at 24.

⁵⁹ See *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *7. Article 2 of *Protocol II*, provides in pertinent part that “[t]he amounts so paid and transmitted by the State of Israel to the Conference on Jewish Material Claims against Germany will be used for the relief, rehabilitation and resettlement of Jewish victims of National-Socialist persecution, according to the urgency of their needs as determined by the Conference.” *Protocol II*, Article 2, *reprinted in* ZWEIG, *supra* note 19, at 169.

⁶⁰ See ROBINSON, *supra* note 49, at 26–27. Since World War II, the West German government

significant amount of monetary compensation to individual Jews and to Israel, restitution of heirless and communal property only amounted to \$300–\$400 million.⁶¹

Despite West German efforts at compensation, the human toll of the Holocaust precluded many assets and properties from being claimed. Although the German Federal Compensation Law, which went into effect in 1956, provided for more comprehensive coverage for victims, it was limited to persons who had lived within Germany's pre-war borders.⁶² Consequently, "German compensation laws [did] not provide for the payment of compensation in respect of property confiscated by Germany in the countries occupied, annexed or under its sphere of influence during the war."⁶³

Thus, Jews in Central and Eastern Europe have not only failed to be compensated by their own governments but also by Germany itself.⁶⁴ While those survivors who emigrated to Israel and the West received some form of compensation, Central and East European Jews had for the most part been excluded from receiving any of these reparations.⁶⁵ Despite the significant compensatory efforts made by the West German State, the vast majority of Jewish victims of the Holocaust (who had lived in other European countries) had no mechanisms for reclaiming their assets and property.⁶⁶

II. POST-WAR LITIGATION EFFORTS TO GAIN REPARATIONS AND RESTITUTION

To gain a better understanding of the legal impediments faced by Jews, it is instructive to look at a number of cases in which Jewish plaintiffs have independently sought compensation through judicial means. The case law illustrates that even when Jews attempted to assert claims for the restitution of property, national and international legal barriers prevented them from doing so.⁶⁷ Additionally, because many

has paid over \$60 billion to victims; currently, it provides pensions to 130,000 Holocaust survivors. See Stephanie Simon, *Proof of Suffering is Price of Holocaust Reparations*, L.A. TIMES, June 4, 1996, at A1.

⁶¹ See Hochstein, *supra* note 44, at 433.

⁶² See ROBINSON, *supra* note 49, at 28.

⁶³ WEINBAUM, *supra* note 4, at 9–10.

⁶⁴ See Rick Atkinson, *Slow to Redress; Holocaust Survivors in Former East Bloc Excluded from Millions in Compensation Paid by Germany*, WASH. POST, May 26, 1995, at A29.

⁶⁵ See *id.*

⁶⁶ See WEINBAUM, *supra* note 4, at 9–10.

⁶⁷ See, e.g., *Wolf v. Federal Republic of Germany*, No. 93–C7499, 1995 U.S. Dist. LEXIS 5860,

Holocaust survivors became naturalized United States citizens, many litigants brought suit in American courts.⁶⁸ These courts were often unfamiliar with European laws, and misunderstood the jurisdictional power it could assert to assess liability for confiscation.⁶⁹

Litigation has also been affected by the fact that West Germany "has accepted historical responsibility as a successor state to the Nazi regime. It pays substantial reparations compensation, and indemnification to individual Jews, to Jewish organizations, and to Israel."⁷⁰ Consequently, West Germany's acknowledgement of its responsibilities, coupled with the fact that the vast majority of displaced Jews had neither the financial resources nor the will to independently pursue claims has led to a paucity of post-war litigation regarding claims for reparations and the return of property confiscated during the Nazi era.

A. *Claims Brought Against the West German State*

The case of *Wolf v. Federal Republic of Germany* is one example of litigation brought against West Germany for inadequate reparations.⁷¹ In 1995, Wolf, a Holocaust survivor and a naturalized American citizen, brought suit in United States District Court for the Northern District of Illinois against West Germany and the Claims Conference.⁷² Wolf alleged that he received inadequate reparations and was entitled to a pension from the West German Government for his incarceration and other injustices he suffered during the war.⁷³ Wolf was forced to perform slave labor and suffered inhuman conditions as a prisoner in a series of German labor and extermination camps including Auschwitz-Birkenau and Mauthausen.⁷⁴ After the war, he was plagued by a series of health problems due to these wretched conditions.⁷⁵ Wolf alleged that the West German Government had failed to pay him restitution

at *28-29 (N.D. Ill. Apr. 27, 1995), *aff'd*, 95 F.3d 536 (7th Cir. 1996); *Kalmich v. Bruno*, 450 F. Supp. 227, 230 (N.D. Ill. 1978).

⁶⁸ See *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *28-29; *Kalmich*, 450 F. Supp. at 230.

⁶⁹ See *Kalmich*, 450 F. Supp. at 230.

⁷⁰ Sholom D. Comay, *The Jewish Stake in German Reunification*, CHRISTIAN SCI. MONITOR, May 24, 1990, at 19. In referring to German payments of reparations, it is important to note that the responsibility of compensation was undertaken by West Germany, and only recently did the former East Germany also acknowledge its responsibility to Jewish victims. See *id.*

⁷¹ See *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *10.

⁷² See *id.* at *1-2.

⁷³ See *id.* at *13.

⁷⁴ See *id.* at *3-4.

⁷⁵ See *id.* at *3-5.

for loss of property and disability payments for the suffering he endured.⁷⁶

The West German State filed a motion to dismiss for lack of subject matter jurisdiction, asserting that the case violated two international law principles.⁷⁷ West Germany claimed that both the Act of State Doctrine and the Foreign Sovereign Immunities Act (FSIA) precluded Wolf from bringing a claim.⁷⁸ Wolf asserted that West Germany's actions of paying restitution and entering into a contract with the Claims Conference made West Germany amenable to this suit.⁷⁹ However, the court disagreed, and granted West Germany's motion to dismiss concluding that Wolf had failed to state an exception to sovereign immunity in his complaint.⁸⁰

The court also dismissed the complaint against the Claims Conference.⁸¹ It found that *Protocol II* between the Claims Conference and West Germany "specifie[d] that any disputes arising out of the obligations of Germany and the Claims Conference shall be decided under the arbitration provisions contained in the agreement between Israel and West Germany."⁸² Consequently, Wolf was not entitled to bring a claim under the *Protocols* against the Claims Conference because it was a matter for arbitration between the two states.⁸³ Furthermore, the court held that the Act of State Doctrine also applied to the Claims Conference because it followed the terms set by West Germany.⁸⁴ Thus, Wolf was denied relief by the court because he could not overcome the jurisdictional boundaries imposed by international law.

⁷⁶ See *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *3-5.

⁷⁷ See *id.* at *14.

⁷⁸ See *id.* The FSIA allows for jurisdiction over foreign sovereigns as "a foreign state is presumptively immune from the jurisdiction of United States courts unless a specific exception to immunity applies." *Id.* at *15. The foreign state bears the burden of establishing a prima facie case of immunity by showing that it is a foreign state, and that the claim relates to a governmental act of the foreign state. See *id.* Once a prima facie case is made, the state is presumptively immune from suit. See *id.* The Act of State Doctrine "requires that a court regard as valid the acts that foreign sovereigns take within their own jurisdictions." *Id.* at *29.

⁷⁹ See *id.* at *22-23. Wolf claimed that these actions constituted a commercial activity, which is a recognized exception to the FSIA. See *id.* The court ruled that "a voluntary payment of funds for past wrongs is not in any sense a trade and traffic or commerce," and that a state does not engage in commerce by entering into treaties. *Id.* at *24.

⁸⁰ See *id.* at *28-29.

⁸¹ See *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *54.

⁸² *Id.* at *46. *Protocol II* involved the lump sum payment of 450 million Deutschmarks to the State of Israel for use by Holocaust victims. See ROBINSON, *supra* note 49, at 24.

⁸³ See *Wolf*, 1995 U.S. Dist. LEXIS 5860, at *46.

⁸⁴ See *id.* at *54.

B. Claims Brought Against Individuals

While the *Wolf* case is indicative of the difficulties Jews faced in bringing suits directly against the West German Government,⁸⁵ other Jewish plaintiffs also experienced difficulties in asserting claims against private individuals and companies who benefited from property transfers facilitated by the Germans.⁸⁶

Pernikoff v. Kennedy involved the seizure of Pernikoff's corporation by the Nazis.⁸⁷ In 1942, "Nazi Germany, as part of its persecution of Jews and Jewish-owned corporations, adjudicated the corporation . . . bankrupt, liquidated its German assets, and dissolved the corporation."⁸⁸ A portion of the corporate assets was subsequently transferred to a New York bank.⁸⁹ Pernikoff's heirs brought suit to reclaim these assets and the defendants moved for summary judgment.⁹⁰

The U.S. District Court for the District of Columbia reasoned that a German corporation existing during the Nazi era, whether Jewish owned or not, would be considered an enemy under the U.S. Trading With the Enemy Act.⁹¹ Enemy status would preclude the return of funds to the plaintiffs.⁹² However, the court held that the Act was not applicable, because Pernikoff was the sole shareholder and owner of the corporation.⁹³ To reach this conclusion the court looked to previous rulings by the Supreme Restitution Court in Berlin.⁹⁴ In other cases, the Restitution Court concluded that title to the assets of a one-man corporation resided in the sole shareholder.⁹⁵ The court stated that the plaintiffs' claims were valid considering that Pernikoff was the sole shareholder of the corporation and the funds deposited by the corporation were owned by him.⁹⁶ Further, the court denied the defen-

⁸⁵ *See id.*

⁸⁶ *See KAGAN & WEISMANN, supra* note 31, at 28.

⁸⁷ *See* 219 F. Supp. 854, 855 (D.C. Cir. 1963). The corporation was solely owned by Pernikoff and was established to help persons persecuted by the Nazis escape from Germany. *See id.*

⁸⁸ *Id.*

⁸⁹ *See id.* at 856.

⁹⁰ *See id.* This suit named Robert F. Kennedy, Attorney General of the United States, as Defendant in his capacity as successor to the Alien Property Custodian. *See id.*

⁹¹ *See id.* The Act defines an enemy as any business entity incorporated within the territory of a nation at war with the United States. *See id.*

⁹² *See Pernikoff*, 219 F. Supp. at 856.

⁹³ *See id.* at 857. The court may have been further swayed by the humanitarian purpose of the corporation. *See id.* at 855.

⁹⁴ *See id.* The Court was an international tribunal created by the occupational powers in West Berlin. *See id.* at 857.

⁹⁵ *See id.* at 857-58.

⁹⁶ *See id.* at 858.

dants' motion for summary judgment, and determined that the plaintiffs alleged sufficient facts to establish Pernikoff's interest or title to the funds.⁹⁷

The disposition in the *Pernikoff* case appears to have been quite rare. Typically, Jews who attempted to regain their property through litigation came upon barriers illustrated in the *Bernstein v. Van Heyghen Freres Societe Anonyme* case.⁹⁸ *Bernstein* is indicative of how gaps in the post-war restitution laws have prevented the settlement of many Jewish claims.⁹⁹ Similar to *Pernikoff*, *Bernstein* involved the confiscation of a German corporation by Nazi officials because its owner was Jewish.¹⁰⁰ Bernstein was imprisoned in 1937 and under duress was forced to sign over ownership of the company to a Belgian citizen.¹⁰¹ Bernstein's affidavit in the case stated: "I was told and led to believe by Nazi officials . . . that unless I surrendered my shipping interests to a 'trustee' designated by the Nazis, I would be kept imprisoned indefinitely, my remaining property would be confiscated and my life and the lives of my immediate family would be imperiled."¹⁰² The Belgian individual took possession of the corporation's assets and subsequently transferred those assets to the defendant.¹⁰³ Bernstein brought suit, alleging that the defendant was aware that the property was forcibly obtained.¹⁰⁴

The United States Court of Appeals for the Second Circuit reasoned that property wrongfully taken by the German Government during World War II should be viewed as reparations and thus was not a matter for an American court but an issue for international settlement with the government of West Germany.¹⁰⁵ Although the court recognized that laws promulgated by the U.S. Military Government at the end of the war addressed issues such as property restitution, it reasoned "that this law, standing alone did not provide a means of settling controversies such as that at bar; it was only a preliminary to a law which should make them justiciable in some court to be later designated or set up."¹⁰⁶ However, in a strong dissent, Judge Clark

⁹⁷ See *Pernikoff*, 219 F. Supp. at 860.

⁹⁸ See 163 F.2d 246, 247 (2d Cir. 1947).

⁹⁹ See *id.*

¹⁰⁰ See *id.*

¹⁰¹ See *id.* All of the shares of the corporation were transferred to Marius Boeger. See *id.*

¹⁰² *Id.* Even after Bernstein signed over the corporation he was not released by the Germans. See *id.* In 1939, friends paid a "ransom" allowing him to leave Germany. See *id.*

¹⁰³ See *Bernstein*, 163 F.2d at 247.

¹⁰⁴ See *id.*

¹⁰⁵ See *id.* at 251.

¹⁰⁶ *Id.* at 250. The case was litigated in 1947, prior to the finalization of a restitution law. See *id.*

argued that “if the policy of our Executive is nonrecognition of Nazi oppression and of restitution to the Jews[,] I think we are bound to observe it in our courts.”¹⁰⁷

The case of *Kalmich v. Bruno* also illustrates the inability of the courts to grant a legal remedy to an individual who had been clearly wronged.¹⁰⁸ Kalmich sought recovery for the confiscation of his property by Nazi occupiers in Yugoslavia in 1941, and its subsequent conversion by a private owner.¹⁰⁹ He argued that the confiscation and subsequent conversion of his business was a violation of both international and Yugoslavian law.¹¹⁰

The U.S. District Court for the Northern District of Illinois ruled that while Kalmich’s claims involved principles of international law, those principles did not confer on him a cause of action. The court reasoned that the tenets of international law primarily deal with relationships among nations, not among individuals.¹¹¹ The court then looked to Yugoslav law and found that Kalmich’s property rights had been violated and “that the German confiscation of that property violated international law principles thus foreclosing defendant from arguing that he obtained good title to the plaintiff’s property from the Nazi occupation force.”¹¹² Thus, the court viewed the defendant as a converter of Kalmich’s property when he purchased it from the Nazi regime.¹¹³

The court acknowledged that a Yugoslav statute—“Law Concerning the Treatment of Property . . . Taken Away from the Owner by the Enemy or its Helpers”—provided Kalmich with a cause of action, and would be recognized under the public policy considerations of the state of Illinois.¹¹⁴ However, the court found that it had insufficient information on the nature of Yugoslavian law because neither party submitted authority supporting their respective positions.¹¹⁵

¹⁰⁷ *Id.* at 255 (Clark, J., dissenting).

¹⁰⁸ *See* 450 F. Supp. 227, 230 (N.D. Ill. 1978).

¹⁰⁹ *See id.* at 228. Kalmich’s textile business was taken under a program which involved the confiscation of Jewish property in German occupied countries. *See Kalmich v. Bruno*, 404 F. Supp. 57, 60–61 (N.D. Ill. 1975). Bruno was an official of the General Plenipotentiary for the Economy of Serbia who converted the business for his personal use and ownership. *See id.*

¹¹⁰ *See Kalmich*, 450 F. Supp. at 228.

¹¹¹ *See id.*

¹¹² *Id.*

¹¹³ *See id.*

¹¹⁴ *Id.* at 230. The Yugoslav law provided a civil cause of action for persons whose property had been confiscated by the German regime. *See id.* at 230 n.6.

¹¹⁵ *See Kalmich*, 450 F. Supp. at 230.

The court also ruled that Kalmich was barred from pursuing his claim because the statute of limitations had run.¹¹⁶ Under conflict of laws principles, the court applied the Illinois statute of limitations which set a five year limit on asserting a claim from an injury to real property, and Kalmich failed to show that the statute had been tolled pursuant to Illinois law.¹¹⁷ This case provides another example of a court's failure to provide a recourse for Jews who attempted to reclaim property stolen by the Nazi regime.

As evidenced by the aforementioned cases, individual attempts by Jews to recover property were often unsuccessful.¹¹⁸ International law has not been effective in helping individual Jews or Jewish communities reclaim property that is rightfully theirs.¹¹⁹ Due to the failure of such individual claims, international organizations have become involved in pressing European governments for restitution.

III. CURRENT JEWISH ATTEMPTS FOR COMPENSATION IN CENTRAL EUROPE

When countries in Central Europe such as Poland, Hungary, and the former Czechoslovakia came under the Nazi sphere of influence, laws which facilitated the confiscation of Jewish property were extended to the region. However, the citizens of these countries often did not oppose such laws. "[T]he prospect of both the 'legal' and 'unofficial' plunder of Jewish property was often a tempting incentive for the local population to actively assist in, or even orchestrate, the murder of Jewish neighbors—and was often exploited as such by authorities."¹²⁰ This was most evident in Central and Eastern Europe, the Jewish cultural and population center of Europe.¹²¹

Shortly after the war, much of Central and Eastern Europe was absorbed into the Soviet sphere of influence, as the Soviet Union installed Communist regimes.¹²² The Communists expropriated much of the property that had been taken from Jews during the Nazi era.¹²³ Although the 1947 Treaty of Paris committed the countries of Eastern Europe to compensation for the confiscation of property, the Commu-

¹¹⁶ See *id.*

¹¹⁷ See *id.*

¹¹⁸ See *id.* at 228.

¹¹⁹ See Hochstein, *supra* note 44, at 436.

¹²⁰ WEINBAUM, *supra* note 4, at 5.

¹²¹ See ZWEIG, *supra* note 19, at 31.

¹²² See BALABKINS, *supra* note 6, at 42.

¹²³ See *id.*

nist states ignored the agreement.¹²⁴ The Communist regimes refused to accept any responsibility for crimes against Jews, and instead blamed the Nazis for any atrocities.¹²⁵ Thus, for much of the post-war era, the governments of Central and Eastern Europe were “inimical to the principle of restitution of private property in general, and of Jewish property in particular.”¹²⁶ As such, no efforts were made by these countries to compensate Jewish communities until the democratic revolutions of 1989.

The “collapse of Communist rule in Central and East Europe presented the Jewish [p]eople with the opportunity to reactivate efforts to reclaim lost property.”¹²⁷ It also provided the newly democratized governments of these countries with an opportunity to address their own responsibility to Jewish victims of the Holocaust.¹²⁸ Due to the relatively large size of the pre-war Jewish communities in Central and Eastern Europe,¹²⁹ the return of Jewish private and communal property was expected to “surpass in scope the watershed reparations treaty concluded in 1952” with West Germany.¹³⁰ However, in many cases, the newly democratized countries did not have the legal structure in place to restitute property to Jewish communities and individuals.¹³¹ Furthermore, the countries faced severe financial constraints that impeded compensatory efforts.¹³²

Recognizing the need for an international organization to represent and pursue claims on behalf of Jews, the World Jewish Restitution Organization (WJRO) was created in 1992, in cooperation with the State of Israel.¹³³ The purpose of the WJRO is “to research confiscation cases and national laws and help negotiators with governments of all European countries except those of Germany and Austria, which deal with the Claims Conference.”¹³⁴

¹²⁴ See Andras Doncseu, *Jewish Leaders Reach Accord*, BUDAPEST SUN, July 18, 1996, available in LEXIS, World library, Allwld file.

¹²⁵ See WEINBAUM, *supra* note 4, at 8.

¹²⁶ *Id.*

¹²⁷ *Id.* at 4.

¹²⁸ See *id.* at 8.

¹²⁹ See ZWEIG, *supra* note 19, at 31.

¹³⁰ Jay Bushinsky, *Europe Talks in Works on Seized Jewish Assets*, CHI. SUN-TIMES, Sept. 27, 1992, at 72.

¹³¹ See *id.*

¹³² See *id.*

¹³³ See WEINBAUM, *supra* note 4, at 10.

¹³⁴ *Clinton Supports Restitution for Jewish Property*, JERUSALEM POST, Sept. 12, 1995, at 12.

Essentially, the WJRO is a successor to Jewish organizations such as the JRSO and the Claims Conference which helped Jews regain property and assets immediately after World War II. The WJRO negotiates with European governments to facilitate the legal transfer of communal Jewish property taken under the Nazi and Communist regimes to its former owners.¹³⁵ The WJRO's policy is "to seek agreements with local European Jewish communities in order to jointly pursue claims for communal property, and to establish foundations to jointly manage it."¹³⁶

The restitution of property has engendered substantial controversy and reluctance on the part of many East European countries without the economic means to pay compensation.¹³⁷ Consequently, the WJRO recognizes the futility of demanding full compensation for fear of angering the local populations and raising anti-Jewish sentiment.¹³⁸ The WJRO acknowledges the problems surrounding restitution: "[n]o one is going to be happy to lose their home or business, even if generously compensated, if they have been occupying the building for decades. Officials and governments may recognize the Jewish claims but, as politicians, they will not ignore the feelings of their electorates."¹³⁹ Despite the acknowledgment of these issues, the WJRO often conflicts with local Jewish communities over the size and pace of restitution.¹⁴⁰ The Jewish communities are also afraid of antagonizing the Christian population and provoking anti-semitism.¹⁴¹ An examination of these social, economic, and political constraints on the populations and governments of Central Europe are indicative of the difficulty in establishing a successful restitution policy.

A. *The Hungarian Approach to Restitution and Compensation*

Hungary was the first country in Central Europe to establish procedures for Jewish property restitution and compensation.¹⁴² Approximately 300,000 immovable properties owned by Jews or Jewish

¹³⁵ See SIERADZKA & LERMAN, *supra* note 3, at 2.

¹³⁶ WEINBAUM, *supra* note 4, at 12.

¹³⁷ *See id.* at 2.

¹³⁸ *See id.*

¹³⁹ *Id.* at 13.

¹⁴⁰ *See* HENRY, *supra* note 10, at 44.

¹⁴¹ *See id.* at 46.

¹⁴² *See* Mitya New, *Hungary Reaches Agreement on Jewish Property Issue*, Reuters World Service, July 19, 1995, available in LEXIS, World library, Allwld file.

institutions were seized during the Nazi occupation of Hungary.¹⁴³ After the war, the provisional Hungarian government returned Jewish communal property to the Jewish community, but it was expropriated again following the Communist takeover in 1949.¹⁴⁴

With the fall of Communism in Hungary in 1989, "the incoming conservatives were quick to return confiscated property to Christian churches, but Jews were kept waiting."¹⁴⁵ In July 1991, the Hungarian Parliament passed a law addressing the status of ecclesiastical buildings that had been seized after January 1, 1948.¹⁴⁶ The purpose "of the law [wa]s to restore to the religious communities properties required for them to resume their traditional ecclesiastical and social role."¹⁴⁷

The difficulty with this measure was that it resulted in eliminating Jewish claims for property where a Jewish community no longer exists.¹⁴⁸ The law was also a violation of Hungary's 1947 Peace Treaty obligations to transfer heirless and unclaimed Jewish property to representative organizations in Hungary.¹⁴⁹

On August 24, 1991, the Hungarian Government passed its first compensation law which applied to property nationalized or expropriated after June 8, 1949.¹⁵⁰ The law affected "4 million hectares of agricultural land . . . ; more than 400,000 residential and business premises; and 3,840 commercial and industrial enterprises."¹⁵¹ However, the law was not successful in returning Jewish property for many reasons. The law only affects Jews if their properties were restored to them between 1945 and the Communist takeover in 1949, thereby excluding property taken during the Nazi era.¹⁵² Under the law, claimants must have been Hungarian citizens at the time the property was expropriated which excluded many Jews who emigrated to the United

¹⁴³ See WEINBAUM, *supra* note 4, at 25. The substantial property holdings in dispute reflect the fact that the Hungarian Jewish pre-war population exceeded 800,000 people. See New, *supra* note 142.

¹⁴⁴ See WEINBAUM, *supra* note 4, at 25-26; Imre Karacs, *Hungary to Give £19m in Atonement for Holocaust*, INDEPENDENT (London), July 4, 1996, at 16. Although some payments from West Germany were received by the Communist authorities during the 1960s, the money was often misappropriated rather than distributed to Jews. See Karacs, *supra*, at 16.

¹⁴⁵ Karacs, *supra* note 144, at 16.

¹⁴⁶ See WEINBAUM, *supra* note 4, at 26.

¹⁴⁷ *Id.*

¹⁴⁸ See *id.* Although 100,000 to 200,000 Jews currently reside in Hungary, it is a significant reduction from the pre-war population. See ZWEIG, *supra* note 19, at 32.

¹⁴⁹ See WEINBAUM, *supra* note 4, at 26.

¹⁵⁰ See *id.*

¹⁵¹ *Id.*

¹⁵² See *id.*

States and Israel after the war.¹⁵³ The law stipulates that citizens of countries that have signed compensation agreements with Hungary, such as the U.S., are precluded from recovery.¹⁵⁴ Further, the law only allowed for partial monetary compensation rather than full restitution, with compensation calculated as the value of the land at the time it was taken, adjusted for inflation.¹⁵⁵ Additionally, the law only covered property that was expropriated within Hungary's current borders, thereby ignoring the significant amount of territory that Hungary controlled prior to and during World War II.¹⁵⁶

Restitution efforts have been supported by the Hungarian Constitutional Court which ruled in 1993 that Hungary had violated its Peace Treaty obligations. In 1946, Hungary instituted Law XXV which was designed to establish a Jewish Rehabilitation Fund.¹⁵⁷ The Constitutional Court ruled that the fact that the government never established a fund violated the Treaty.¹⁵⁸ The court also ruled that the government had a continuing obligation to pay compensation to Holocaust survivors.¹⁵⁹ Moreover, the eventual creation of such a fund would not preclude Jews from pursuing individual property claims.¹⁶⁰

The intervention of Jewish organizations, such as the WJRO, have also been instrumental in subsequently reaching a just settlement with the Hungarian Government over Jewish property.¹⁶¹ In July 1995, the Hungarian Government and the WJRO reached an accord establishing a procedural framework to deal with property seized between 1939 and 1945.¹⁶² The agreement established two subcommittees: one to deal with legal and technical aspects of compensation, and the other to verify claims.¹⁶³ After compilation of a definitive list of properties, the properties would be restituted to a local foundation that would administer the property to benefit local Jewish communities.¹⁶⁴

¹⁵³ See *id.* at 26-27.

¹⁵⁴ See WEINBAUM, *supra* note 4, at 26-27.

¹⁵⁵ See *id.* at 27.

¹⁵⁶ See *id.* Hungary's present day borders represent a significant reduction in the territory that it once controlled including southern Slovakia, the Transylvania region of Romania, and portions of the former Yugoslavia. See *id.*

¹⁵⁷ See *id.* at 26.

¹⁵⁸ See *id.*

¹⁵⁹ See Karacs, *supra* note 144, at 16.

¹⁶⁰ See *id.*

¹⁶¹ See New, *supra* note 142.

¹⁶² See *id.*

¹⁶³ See *id.*

¹⁶⁴ See *id.*

In July 1996, Hungary further addressed the issue of compensation by pledging \$26 million to establish a foundation to compensate victims and promote Jewish culture.¹⁶⁵ The foundation will be supplemented by funds from the sale of Jewish properties that had been returned by the state.¹⁶⁶ The fund is also designed to manage properties once owned by Jews, and will be overseen by a committee composed of government appointees and Jewish leaders.¹⁶⁷ The money will be used to compensate Hungarian Jewish Holocaust victims either in the form of pensions or as coupons that can be used to invest in privatized companies.¹⁶⁸ The heirs of those who perished will also be compensated for family properties that were confiscated or converted; however, they are not precluded from pursuing individual property claims.¹⁶⁹

Hungary's novel approach creates a binary system encompassing both restitution and compensation.¹⁷⁰ This will allow for both the return of property and monetary compensation for the largely poor and elderly Hungarian Jewish community.¹⁷¹ Hungary's approach to restitution will also protect a severely decimated Jewish population¹⁷² from the burden of maintaining countless property holdings that belonged to the much larger pre-war population.

B. Poland's Slow Move Toward Restitution

While the Hungarian Government has been willing to acknowledge and act on the restitution of Jewish property, "Poland is doing all it can to avoid it."¹⁷³ Poland saw the most dramatic example of destruction of Jewish life in Europe.¹⁷⁴ The issue of restitution in Poland is a contentious one:

Legal considerations apart, the moral dimension of the issue of Jewish property is particularly strong in Poland, where as

¹⁶⁵ See Doncseu, *supra* note 124.

¹⁶⁶ See Karacs, *supra* note 144, at 16.

¹⁶⁷ See *id.*

¹⁶⁸ See *id.*

¹⁶⁹ See *id.*

¹⁷⁰ See HENRY, *supra* note 10, at 44.

¹⁷¹ See Karacs, *supra* note 144, at 16.

¹⁷² See WEINBAUM, *supra* note 4, at 26.

¹⁷³ Jay Bushinsky, *Inhuman Delay*, JERUSALEM POST, July 8, 1996, at 6.

¹⁷⁴ See *id.* "Jews constituted some 10% of the population of inter-war Poland—and there were more Jews in Poland than the other countries of Central and East Europe combined." WEINBAUM, *supra* note 4, at 28. Much of the Jewish population was urban, and in Warsaw, Jews owned approximately 40% of residential property. See *id.*

a result of the unprecedented situation created by the genocidal extermination of nine-tenths of the 3.5 million pre-war Jewish population by the Nazis, the bulk of Jewish communal, public and private assets became heirless or remained unclaimed and as such escheated to and enriched the state.¹⁷⁵

During the post-war era, the Communist Polish Government nationalized much of the property that was Jewish owned, and refused to recognize any responsibility for the deaths of so many Jewish citizens.¹⁷⁶ After the Communist authorities seized the property, much of it was destroyed or converted into warehouses, factories, and government buildings.¹⁷⁷

The WJRO has been the dominant force in fighting for restitution in Poland.¹⁷⁸ It looked to how the Polish Government had settled the property issue with the Catholic Church as indicative of how to proceed with its own claims.¹⁷⁹ The Polish Government passed laws in 1989 to deal with the return of property to the Church.¹⁸⁰ The restitution involved a "regulatory procedure similar to judiciary arbitration, [with] disputes being resolved by an arbitrator appointed jointly by both parties."¹⁸¹ As of early 1994, of the 3,000 restitution claims lodged by the Catholic Church, 640 had been successfully concluded and only 120 had been rejected.¹⁸² Thus, Poland's initial foray into restitution allowed the Catholic Church to regain a considerable amount of its property, while ignoring claims of the Jewish community.¹⁸³

Unlike the restitution of Church property, the idea of returning property to former Jewish owners has been met with a decided lack of enthusiasm from both the general Polish population as well as the government.¹⁸⁴ The Polish Parliament's initial reluctance to move forward on the restitution issue can be attributed in part to the disparate

¹⁷⁵ SIERADZKA & LERMAN, *supra* note 3, at 10.

¹⁷⁶ See KONRAD Niklewicz, *Jewish Property Restitution, Long Legal Road Home*, WARSAW VOICE, Sept. 10, 1995, available in LEXIS, World library, Allwld file.

¹⁷⁷ See *id.*

¹⁷⁸ See SIERADZKA & LERMAN, *supra* note 3, at 9.

¹⁷⁹ See *id.* at 10.

¹⁸⁰ See *id.* at 11. Despite the fact that the population of Poland is overwhelmingly Catholic, the restitution led to a degree of anti-Church feelings. See WEINBAUM, *supra* note 4, at 29. Poles believed that the restitution of confiscated private property was more pressing. See *id.*

¹⁸¹ SIERADZKA & LERMAN, *supra* note 3, at 11.

¹⁸² See *id.* at 12.

¹⁸³ See WEINBAUM, *supra* note 4, at 29.

¹⁸⁴ See William R. Youngblood, Note, *Poland's Struggle for a Restitution Policy in the 1990's*, 9 EMORY INT'L L. REV. 645, 673 (1995).

composition of the legislature.¹⁸⁵ The parliament is composed of numerous parties that typically fail to reach a consensus, with the lower house largely composed of Communist representatives who find the restitution of private property an anathema to their socialist ideals.¹⁸⁶ The hesitance of the Polish general population could arguably be attributed to latent anti-Semitism, but it is more likely that many Poles are concerned “that restitution would only return Poland’s upper class to their prewar social status.”¹⁸⁷

Recently, the Polish Government has grudgingly moved toward restitution. In 1993, the WJRO signed an agreement with the government that allowed the organization to negotiate the return of Jewish communal and unclaimed property.¹⁸⁸ Initially, however, negotiations did not focus on property that was owned by private Jewish citizens, but only on such communal property as synagogues, cemeteries, and school buildings.¹⁸⁹

A reprivatization draft law addressing Jewish property, also drawn up in 1993, applied “to assets appropriated by the state in the years 1944–60 in obvious breach of the law then in force or on the basis of laws which were flagrantly harmful to former owners.”¹⁹⁰ The draft law allowed for three kinds of restitution: restitution *in natura*, provided the property is still owned by the state and is currently being used for public purposes; substitute property, that would come from parcels owned by local and state governments, provided they are not being used for public purposes; or reprivatization bonds, which would allow persons to gain shares in privatized enterprises.¹⁹¹

Monetary compensation would be based on the property’s value at the time it was expropriated, adjusted to current prices.¹⁹² If the individual seeking restitution is an heir of the original owner a reprivatization fee would reduce compensation by ten to twenty percent.¹⁹³ Furthermore, the draft law limited its application to those persons who were Polish citizens both at the time their property was taken, and when the law goes into effect.¹⁹⁴ Essentially, the draft law was designed

¹⁸⁵ *See id.*

¹⁸⁶ *See id.*

¹⁸⁷ *Id.*

¹⁸⁸ *See* SIERADZKA & LERMAN, *supra* note 3, at 9.

¹⁸⁹ *See id.* at 6.

¹⁹⁰ *Id.*

¹⁹¹ *See id.* at 7.

¹⁹² *See id.*

¹⁹³ *See* SIERADZKA & LERMAN, *supra* note 3, at 7.

¹⁹⁴ *See id.* at 6.

to avoid restitution in kind and to restrict compensation to properties seized in violation of the law that they were based upon.¹⁹⁵ Such a proposal has been characterized as:

discriminatory against former owners of Jewish property in that it deals solely with property taken in the course of nationalizations during the years 1944–1960 and does not take into account that Jewish property was seized during the German occupation and that by 1944 the vast majority of Jews had already been murdered and despoiled.¹⁹⁶

Several committees in the Polish Parliament also approved a bill on restitution in January of 1997.¹⁹⁷ The legislation would allow the Jewish community to retain ownership of property currently under its administration, provided it is related to religious or charitable activity.¹⁹⁸ In addition, the Jewish community could regain property in its possession prior to September 1, 1939.¹⁹⁹ The bill concerns only Jewish communal property, and fails to address private property claims.²⁰⁰ The Polish Government expects to address the issue of private Jewish property in a re-privatization act in the near future.²⁰¹

The total value of Jewish communal property, however, will be difficult to assess.²⁰² Many buildings were destroyed during the war, making the identification of claims difficult.²⁰³ Estimates made by the WJRO and the Polish Government diverge sharply.²⁰⁴ The WJRO estimates the number of pieces of communal property to be near 6,000, while the government uses a figure closer to 2,000.²⁰⁵

In addition, as much as eighty percent of the property is now under new ownership, and the bill precludes infringing on the rights of third parties.²⁰⁶ The bill stipulates that restitution can not violate the

¹⁹⁵ See *id.* at 8.

¹⁹⁶ WEINBAUM, *supra* note 4, at 29.

¹⁹⁷ See *Law to Rule on Jewish Property Claims*, POLISH NEWS BULL., Mar. 6, 1997, available in LEXIS, World library, Allwld file [hereinafter *Polish Law*].

¹⁹⁸ See *Bill on Return of Jewish Property Endorsed*, POLISH NEWS BULL., Jan. 22, 1997, available in LEXIS, World library, Allwld file [hereinafter *Bill Endorsed*].

¹⁹⁹ See *id.*

²⁰⁰ See *Polish Law*, *supra* note 197.

²⁰¹ See *id.*

²⁰² See *id.*

²⁰³ See Youngblood, *supra* note 184, at 647.

²⁰⁴ See *Polish Law*, *supra* note 197.

²⁰⁵ See *id.*

²⁰⁶ See *id.*

legal ownership rights of private individuals and companies.²⁰⁷ If property has been destroyed and can not be returned, substitute property or monetary damages will be used for compensation.²⁰⁸

The bill also proposes the creation of a Committee for Regulating the Matters of Jewish Religious Communities.²⁰⁹ The Committee would be composed of representatives of the Polish Ministry on Internal Affairs and members of local Jewish communities.²¹⁰ However, the bill and its administration would be limited to the Jewish community within Poland, and thus ignores the thousands of Polish Jews who live abroad.²¹¹

In resolving the claims of the Jewish community through the WJRO, the bill is seen as "extremely important from the point of view of Poland as a democratic country respecting human rights and the rights of national and religious minorities."²¹² The Polish Government has grudgingly acknowledged the importance of settling restitution claims, so as not to sully its international stature or impede foreign investment.²¹³

C. Slovakia's Successful Policy

Restitution of property in Slovakia has been relatively successful, but is still limited to communal property.²¹⁴ During the war, Slovakia was a German satellite, with the Slovak Government "orchestrat[ing] proceedings for the despoilation, deportation[,] and extermination of its Jewish minority."²¹⁵ However, in recent years the newly independent state has enacted legislation to address the wrongs committed against Jews and the confiscation of Jewish property.²¹⁶ Consequently, one commentator has noted that "satisfaction of Jewish claims in Slovakia is in a more advanced state than in most other countries."²¹⁷

²⁰⁷ See *Bill Endorsed*, *supra* note 198.

²⁰⁸ See *Polish Law*, *supra* note 197.

²⁰⁹ See *Bill Endorsed*, *supra* note 198.

²¹⁰ See *id.*

²¹¹ See *id.*

²¹² *Id.*

²¹³ See Youngblood, *supra* note 184, at 662.

²¹⁴ See SIERADZKA & LERMAN, *supra* note 3, at 3.

²¹⁵ WEINBAUM, *supra* note 4, at 33.

²¹⁶ See *id.* at 33-34. Slovakia gained its independence in January, 1993. See SIERADZKA & LERMAN, *supra* note 3, at 3.

²¹⁷ WEINBAUM, *supra* note 4, at 33-34.

The Slovak Government passed the Law on Partial Redress of Property Wrongs Inflicted on Churches and Religious Communities in 1993.²¹⁸ The law would potentially affect more than 300 pieces of property that had been expropriated.²¹⁹ Initially, cemeteries were the first pieces of property returned under the law.²²⁰ Other properties have not been handed over voluntarily, forcing many Jews to resort to litigation.²²¹ However, "the fact that a law was passed which makes specific provisions for Jewish claims must be considered a landmark in relation to similar efforts in the rest of Central and Eastern Europe."²²² In contrast to Hungarian and Polish legislation, "Slovak law sets an important precedent for other states in the region insofar as it covers communal properties of both existing and defunct Jewish communities."²²³

D. *Restitution in the Czech Republic*

Progress on Jewish restitution claims in the Czech Republic has been complicated by the claims of Sudeten Germans and the Catholic Church.²²⁴ In 1938 the German-speaking Sudetenland region was annexed by Nazi Germany,²²⁵ and the majority of Jewish property was "aryanized" during the Nazi occupation.²²⁶ From 1945 to 1948, the government under Edvard Benes confiscated land that the German regime had taken over as well as the property of the Sudeten German and the ethnic Hungarian minority populations.²²⁷ Under the Benes decrees, the government promised to return Jewish property that had been "aryanized" by the Nazis after temporary use by the state, but, when the Communists took power in 1948, they succeeded in expropriating the property on what appeared to be a permanent basis.²²⁸

²¹⁸ See SIERADZKA & LERMAN, *supra* note 3, at 10.

²¹⁹ See *id.* at 3. The Communists compromised the integrity of many Jewish buildings, including synagogues, by allowing them to be converted to other uses such as grain storage areas. See *id.*

²²⁰ See R.T.J., *Restitution of Jewish Property Faces Difficulties in Slovakia*, CZECH NEWS AGENCY, July 25, 1996, available in LEXIS, World library, Allwld file.

²²¹ See *id.*

²²² SIERADZKA & LERMAN, *supra* note 3, at 3.

²²³ WEINBAUM, *supra* note 4, at 34.

²²⁴ See *id.* at 19.

²²⁵ See Richard Cronder, *Restitution in the Czech Republic: Problems and Prague-nosis*, 5 IND. INT'L & COMP. L. REV. 237, 238 (1994).

²²⁶ See WEINBAUM, *supra* note 4, at 19.

²²⁷ See Cronder, *supra* note 225, at 238.

²²⁸ See KRYSZYNA SIERADZKA, INST. OF JEWISH AFFAIRS RESEARCH REPORTS NO. 7, RESTITU-

"The final result . . . was that Czechoslovakia endured the most intensive and comprehensive private property confiscation and business and industry nationalization of any of the Soviet Bloc countries."²²⁹

The Czech Government enacted three restitution laws immediately after the democratic revolution of 1989.²³⁰ The Small Restitution Law became effective in 1990 and applied to citizens who lost property during the nationalizations from 1955 to 1959.²³¹ The law provides for restitution in kind, when possible, or monetary compensation.²³² The Large Restitution Law was enacted in February of 1991; it affected expropriations that occurred between 1948 and 1990, but did not apply to property nationalized under the Benes decrees (1945–48).²³³ According to the law, a claimant must be a Czech citizen and have permanent residence in the country.²³⁴ The Land Law was passed in May of 1991.²³⁵ Again, however, it dealt with property that had been confiscated between 1948 and 1990,²³⁶ ignoring property that was taken during the Nazi era.²³⁷

These legislative limitations were imposed in part to prevent Sudeten Germans from making similar confiscation claims.²³⁸ Thus, "[b]ehind the Czechs' harsh attitude lies a potentially painful problem: how to prevent large-scale restitution of Jewish property from becoming a precedent for the return of the even more valuable assets seized from the German population of the strategic Sudetenland."²³⁹ Consequently, the Czech fear of having to return property to Germans has impeded the settlement of Jewish claims.²⁴⁰

TION OF JEWISH PROPERTY IN THE CZECH REPUBLIC: NEW DEVELOPMENTS 2 (1994); Hochstein, *supra* note 44, at 434.

²²⁹ Cronder, *supra* note 225, at 239.

²³⁰ *See id.* at 240.

²³¹ *See id.* at 240–41.

²³² *See id.* at 242.

²³³ *See id.* at 242–43.

²³⁴ *See* Cronder, *supra* note 225, at 243.

²³⁵ *See id.* at 245.

²³⁶ *See id.*

²³⁷ *See* SIERADZKA, *supra* note 228, at 3.

²³⁸ *See id.* At the end of World War II, the Sudetenland was returned to the Czechoslovak state and its numerous ethnic German residents were expelled by the Czechoslovak government. *See* BALABKINS, *supra* note 6, at 50, 54. German claims on property in the Czech Republic remains a contentious issue. *See* Jay Bushinsky, *Jews, Prague Debate Reparations Claims*, CHI. SUN-TIMES, Feb. 25, 1994, at 35.

²³⁹ Bushinsky, *supra* note 238, at 35.

²⁴⁰ *See id.*

The WJRO found that such a legal restraint made the recovery of Jewish property difficult.²⁴¹ The newly created Communist state viewed property confiscated by the Nazi regime as German property and it was subsequently confiscated by the Czechoslovak state.²⁴² Consequently, "while thousands of other Czech citizens have already regained their property, Jews living in the Czech Republic whose property was confiscated by the Nazis and never returned by Czechoslovak authorities have remained the only group of Czech citizens unable to benefit from the restitution law."²⁴³

President Vaclav Havel has strongly supported the restitution of Jewish property.²⁴⁴ Havel helped the government reach a "consensus . . . that Jewish property restitution should be resolved through legislation and not through goodwill or an administrative act."²⁴⁵ Subsequently, two laws were proposed in 1994: one dealing with the restitution of private property of individual Jewish citizens, and the other addressing the issue of Jewish communal property.²⁴⁶

In 1994, the Czech Parliament rejected a bill that would have returned a limited number of property sites.²⁴⁷ Instead, the government would only restitute synagogues and cemeteries already in use by the local Jewish community.²⁴⁸ Part of the Czech reluctance to return the disputed property stems from concern that the Catholic Church would also seek restitution of the substantial amount of property it formerly owned.²⁴⁹

An amended version of the Large Restitution Law was passed in April 1994 allowing the return of property to Jewish Czech citizens.²⁵⁰ Jews were now entitled to make claims for property expropriated by the Communists after 1948.²⁵¹ However, in order to have a valid claim, Jews still need to prove that their property was taken because of "racial persecution."²⁵² This "considerably narrows the conditions laid down in the post-war restitution laws, which provided for restitution of prop-

²⁴¹ See SIERADZKA, *supra* note 228, at 2.

²⁴² See *id.*

²⁴³ *Id.* at 3.

²⁴⁴ See *id.* at 7.

²⁴⁵ *Id.*

²⁴⁶ See SIERADZKA, *supra* note 228, at 7.

²⁴⁷ See SIERADZKA & LERMAN, *supra* note 3, at 3.

²⁴⁸ See *id.* at 4.

²⁴⁹ See *id.*

²⁵⁰ See SIERADZKA, *supra* note 228, at 2.

²⁵¹ See *id.* at 10.

²⁵² *Id.*

erty that had been transferred under the pressure of national or political as well as racial persecution."²⁵³ This excludes property taken by the Communist Government from the reach of the law.²⁵⁴

Under the amended law, restitution would be in the form of property with monetary compensation only allowed if the original property could not be returned.²⁵⁵ Property would not be restituted if it had been privatized or was part of a privatization project after 1991.²⁵⁶

Several legislators who felt that the bill, even as amended, was inadequate brought their claims to the Czech Constitutional Court in 1994.²⁵⁷ The legislators claimed that the provision allowing for restitution only when property had been transferred due to racial persecution would allow for the exemption of property taken for national and political reasons.²⁵⁸ Furthermore, they argued that the provision violated the Charter of Fundamental Human Rights and Freedoms, which has been incorporated into Czech Constitutional law, as well as other international human rights conventions.²⁵⁹

The Court upheld much of the legislation but allowed Czech citizens who do not permanently reside in the Republic to make restitution claims.²⁶⁰ However, the Court has yet to decide whether the disputed provision violates international human rights conventions and the Czech Constitution.²⁶¹

"Although the restitution laws initially slowed privatization and economic reform, these laws successfully introduced the concepts of private property and ownership which were previously unknown to most Czechs."²⁶² The return of Jewish property is not only important for symbolic and legal reasons, but the recovery of Jewish communal property is instrumental in providing financial resources for local Jewish communities, particularly in caring for elderly Jews.²⁶³

²⁵³ *Id.*

²⁵⁴ *See id.* at 11.

²⁵⁵ *See* SIERADZKA, *supra* note 228, at 10.

²⁵⁶ *See id.*

²⁵⁷ *See id.* at 11.

²⁵⁸ *See id.*

²⁵⁹ *See id.*

²⁶⁰ *See* SIERADZKA, *supra* note 228, at 1.

²⁶¹ *See id.*

²⁶² Cronder, *supra* note 225, at 262.

²⁶³ *See* WEINBAUM, *supra* note 4, at 12.

CONCLUSION

Although the restitution of Jewish property in Eastern Europe is still in its infant stages, "[w]hat is clear is that the response of new governments in the former Soviet bloc to the present challenge will be seen as a test for basic human rights and the rule of law."²⁶⁴ It is important that these countries institute laws that recognize and come to terms with their responsibility to the Jews whose rights were so clearly violated.

However, surviving Jews and their families face several legal obstacles to qualify for restitution.²⁶⁵ For example, some countries require citizenship and permanent residence before property can be recovered.²⁶⁶ These countries have recognized that "[l]inking domicile and citizenship to restoration of property would effectively wipe out the vast majority of Jewish claims."²⁶⁷

The efforts of the WJRO have been instrumental in setting the groundwork whereby private and communal Jewish property can be recovered. The fall of Communism in Central and Eastern Europe has allowed the WJRO to implement successful negotiations for restitution, where private individuals had previously failed in attempting to retrieve their lost property and assets. However, while many Central European countries have been forthcoming in returning Jewish communal properties such as synagogues, attempts at regaining private property have proven more difficult.²⁶⁸

There has been some backlash to the work of the WJRO from both Central and Eastern European governments and local Jewish communities.²⁶⁹ Many Jews living in former Soviet bloc fear repercussions from their governments and the general population if the WJRO pushes too ambitious an agenda for the return of property.²⁷⁰ Some members of local Jewish communities in countries such as Poland and Hungary feel that the WJRO's activities are detrimental to the Jewish commu-

²⁶⁴ *Id.* at 39.

²⁶⁵ *See id.*

²⁶⁶ *See id.*

²⁶⁷ *Id.* at 9.

²⁶⁸ *See* Barry Meier, *Spending It; The Reparations Game: A Byzantine Playing Field*, N.Y. TIMES, May 26, 1996, at 7.

²⁶⁹ *See* Jay Rayner, *Jews Fall Out Over Long-Lost Property*, OBSERVER (London), Mar. 9, 1997, at 12.

²⁷⁰ *See id.*

nity's moral standing and largely unrealistic (due to the small size of the current Jewish population in Central and Eastern Europe).²⁷¹

While property restitution in Central and Eastern Europe will continue, it is likely that monetary compensation would be more beneficial than a wholesale return of property. The numerically reduced local Jewish populations typically do not have the sheer numbers or resources to maintain such holdings. By allowing the sale of restituted properties to be used for the compensation of survivors as well as the rest of the Jewish community, Hungary's approach to the problem would fulfill some of these goals.²⁷²

With many Holocaust survivors elderly and indigent, the WJRO and other Jewish organizations have recognized that, when it comes to compensating Jews for the injustices committed, time is of the essence.

²⁷¹ See *id.*

²⁷² See HENRY, *supra* note 10, at 44.

