

Chapter 6: The Jewish Successor Organizations in the Cold War German Context

The existence of a Jewish community after the end of Nazi dictatorship possessed a symbolic meaning for Germany. As American High Commissioner John J. McCloy remarked at the “Conference on the Future of Jews in Germany” held in Heidelberg in 1949, the development of the Jewish community was carefully observed from the outside as “one of the real touchstones and the test of Germany’s progress toward the light.”¹ As a barometer of democracy of the new Germany, the tiny communities of survivors and returnees stood at the center of Jewish and non-Jewish attention, their movement highly politicized.

How did the German side react to the disputes between the successor organizations and the local Jewish communities? The successor organizations, the American JRSO among others, were perceived as “anonymous” and “foreign” by the German public and were the targets of attacks from the opponents of restitution. Flanked by the successor organizations and the German population, the Jews in Germany found themselves in a delicate position. Unlike the successor organizations which were of temporary existence in Germany, the Jewish communities were a part of German society. They needed to reconcile with the German environment and seek the way for coexistence. For the German Jews, the picture was not all black and white – German or Jewish – as it was for many foreign Jews.

This chapter examines the German-Jewish relations as seen in the light of the successor organizations, with the focus on the JRSO.

¹ Office of Advisor on Jewish Affairs, “Conference on the Future of the Jews in Germany,” September 1, 1949, ZfA.

6.1. German Authorities as a Potential Ally

From the very beginning of the successor debate, the world Jewish leadership was aware that the claims of small Jewish groups remaining in Germany could be detrimental to the overall Jewish interests. As early as September 1946, Bernard Bernstein,² who had been commissioned by the Five Organizations to report on the situation regarding restitution in Germany, reported as follows:

Consideration should be given to the possible dangers inherent in the situation of some small groups of Jews or half-Jews remaining in Germany claiming to be the successors to large amounts of Jewish communal property in Germany, or being willing to accept other provisions respecting restitution and indemnification that are not consistent with the other Jewish interests.³

The world Jewish leaders were especially concerned that the German Jewish communities might advance separate claims and seek independent settlements with the German governments. Giving the impression to the non-Jewish world that there be discord among Jews would surely be exploited. What had to be avoided at any cost was the communities' severing themselves from the "united Jewish front" against Germany. The global Jewish claims should not be satisfied with an inadequate compensation or temporary relief which the German authorities might offer to the local communities. In this regard, the participation of the German Jewish communities in the international successor organizations (as well as the Claims Conference) involved an aspect of confining them

² Bernstein had been the deputy chief of SHAEF Financial Branch. He headed the operation to evacuate the gold and other valuables which had been hidden by the Nazis in the salt mine at Merkers near Thuringia to the Reichsbank building in Frankfurt. His oral history interview is found at the Harry S. Truman Library, Missouri.

³ Memorandum from Colonel Bernstein concerning discussions in Germany on problems of restitution and indemnification, August 29-September 9, 1946, CZA, C7, 1194-2.

within the frame of world Jewry and preventing them from making independent demarches.⁴

The German Jews were, on the other hand, conscious of their position between the international Jewish organizations and the German governments. They deemed it – legitimately – the obligation of the German governments to look after the well-being of their citizens. They sought political backing from the German authorities on the restitution matters and requested them to recognize the postwar Jewish communities as the legal successors to the prewar ones. Joseph Klibansky of the Frankfurt community, for instance, considered the designation of the community as the legal successor to the communal property indispensable to negotiate with the JRSO.⁵ He factually wrote to the municipality denying the legitimacy of the JRSO, alleging the community's continuity and its identity with the predecessor.⁶ Approaches were made by the community leaders to different levels of the German authorities, and some were indeed successful, since the authorities somehow confused the communities' demand to be the legal successors with the recognition of the status as corporations of public law.

The same picture emerged in the debate over the indemnification claims. The Zentralrat sent a confidential letter, signed by the heads of the Landesverbände, to Finance Minister Fritz Schäffer, in which it was maintained that under Article 11 of the BEG, the Jewish communities and their national institutions shall be regarded as the successors of the dissolved Jewish entities. It indicated the overlapping of the claims by the successor organizations and the communities; this was exactly the concern of the

⁴ The Zentralrat was actually considering withdrawing from the Claims Conference around 1952/53 for it felt that proper representation was not given to it. On this, wrote Ferencz: "In general I feel that the Zentralrat should be kept in the Conference and not encouraged to withdraw or be kicked out. They can constitute a very real nuisance here and the German authorities are not unmindful of the cries of their German-Jewish citizens." (Ferencz to Kagan, February 6, 1953, JDC-J, Geneva IV, 9/1A, File 3.)

⁵ Minutes, Vorstandssitzung, January 5, 1949, ZA, B.1/13. A4.

⁶ Joseph Klibansky to the Stadt Frankfurt am Main, December 15, 1949, ZA, B.1/13. A.1130.

German Länder governments since they did not want to pay twice for two different Jewish groups. The Zentralrat further requested to be involved – along with the successor organizations – in the negotiations with the Federal governments on the monetary claims against the Reich.⁷

The German establishment, on the other hand, was generally more sympathetic to the local Jewish groups than to the “international” Jewish successor organizations. One may recall that the restitution claims of the Jewish communities and foundations were supported by the opinions of the German authorities, who identified them as the original entities which existed before the war (the communities of Augsburg and Rheda, and the Minna-James-Heinemann Foundation in Hanover). Some Länder issued laws to the effect that the existing Jewish communities be recognized as the legal successors of the prewar ones (Rhineland-Palatinate, Bremen, and North Rhine-Westphalia, which was vetoed by the British High Commission). However, it would be wrong to assume that this was the legal interpretation of the German authorities on the identity of the communities. They were born out of the necessity to deal with the plight of Jews, to which they felt obliged to take some measures, while its principal means, the restitution, was not really in their hands. On the other hand, the German governments considered it within their competence to recognize religious associations and bestow them the right to collect church/synagogue taxes.

For the Federal Government, the revival of the Jewish communities inside Germany was of national interest. In face of the European nations’ wariness toward the resurgence of German militarism, and the strong Jewish opposition against the rehabilitation of Germany, the existence of a Jewish community should be a buffer against the prevailing

⁷ Zentralrat to the Bundesminister der Finanzen, March 11, 1955, BA, B136, 1144.

anti-German feeling. They possessed symbolic value in domestic and international politics. In this regard, the provision of the *Überhang* in the revised BEG, allowing the local communities to go over the DM 75,000 limit, should be seen as an expression of the government's will to rehabilitate the Jewish communities inside Germany. Sir Henry D'avigdor Goldsmid, the chairman of the JTC, wrote as follows:

Particular difficulty arose from the fact that the German authorities desired, above all, to see the rehabilitation in Germany of the former Jewish communities there, and were very sensitive to any suggestion that the Successor Organizations might be acquiring possession of funds at the expense of present or even future Jewish communities in Germany.⁸

German sympathy for the local Jewish groups was not only the expression of the German wish to see the revival of the Jewish community, but also the reflection of their opposition toward the restitution. The German public considered the restitution laws unfair occupation laws, and taking back restitution from Allied hands had been one of the dominant themes of the politics of the day. The lack of uniformity in restitution laws had been severely criticized, for example, the absence of the protection of bona fide acquirers in the American law, the difference in presumption of duress,⁹ and the uneven treatment of the heirless property (the French Branch was born only in 1952). The conversion rate of ten Reichsmark (RM) to one German Mark (DM), set by the currency reform, devalued what the restitutors could receive against the release of the property to a mere 10 percent of the sum they had actually paid. This had been the greatest source of indignation of those affected by the restitution. The strongest resistance came from those who actually

⁸ Kapralik, *Reclaiming the Nazi Loot*, p.3.

⁹ The American and British laws considered that the Jews in Germany were under collective duress after the promulgation of the Nuremberg Laws in September 1935, while the French law set June 14, 1938 as the beginning of duress, when the Jewish enterprises were ordered to register.

for years lived in the “Aryanized” houses and apartments, or those who earned their living from shops and agricultural land bought from the Jews.¹⁰ In an intelligence report of HICOG (Office of High Commissioner for Germany, United States) in the year 1950 the situation was described as follows:

A large part of the German population considers the restitution law unjust. It is argued that the particular person who acquired Jewish property was not the one who exercised force or pressure to deprive a Jew of his property, but that the Jews had sold their property in consequence of the general force or pressure which was exerted by the German government to an over [*sic*] increasing extent. For this reason it is felt that all restitution claims should be realized as compensation claims against the Reich or its legal successor but should not be directed against the particular person who had acquired the property in “good faith” for “good money”.¹¹

The organized opposition toward restitution gained momentum in approximately 1950/51 with the debate to replace the Occupation Statute with a treaty with Germany. It was rumored that the Allies would relinquish their reserved power on restitution by making it a contractual obligation of Germany, or that at least an extensive change in restitution laws was to be expected. The *Vereinigung für loyale Restitution e.V.* (Association for Loyal Restitution), established on October 17, 1949 in Baden-Baden in the French Zone,¹² led a political campaign against restitution. Its monthly *Die Restitution* was widely read by lawyers dealing with the restitution cases. Similar organizations of the German holders of former Jewish property were established in two other zones, with branch offices all over Germany.¹³ On May 4, 1950, five organizations

¹⁰ Rainer Erb, op. cit., p.239.

¹¹ Weekly intelligence report No.21, May 24, 1950, NACP, RG 466/250/84/23/7.

¹² *Die Restitution*, No.1, April 30, 1950.

¹³ Such organizations were as follows: the *Interessengemeinschaft der Rückerstattungspflichtigen e.V.*,

of the restitutors, including that in Baden-Baden, established an umbrella organization, the *Bundesvereinigung für loyale Rückerstattung* (Federal Association for loyal Restitution) with its seat in Frankfurt.¹⁴ The number of people who were directly or indirectly affected by the restitution, including the families and relatives of the restitutors and their friends and acquaintances, amounted to, alleged the Association, eight to ten million people (and they could therefore constitute a serious opposition)!¹⁵ These organizations lobbied on local and federal level to seek the revision and the abolishment of the restitution laws. The Federal Association circulated a uniform draft restitution law in the Parliament (*Bundestag*) in April 1951, in which the successor organizations were to be abolished.¹⁶ Obstruction of the successor organizations' operation through economic means was also attempted. The association of real estate brokers in Württemberg-Baden took organized action not to purchase the restituted properties, for the reason that they would probably have to be given back to the restitutors.¹⁷

Not surprisingly, the American JRSO was the target of their attack. Being the first Jewish successor organization established inside Germany by the most draconian American restitution law, it had to bear the full brunt of German antagonism. The restitutors maintained that the personal relationships which had existed between the Jewish vendors and the German vendees were disregarded by these "anonymous" organizations,

Nürnberg, the Vereinigung für loyale Rückerstattung, Regensburg, the Vereinigung der durch das Gesetz 59 Betroffenen in Hameln, the Arbeitsgemeinschaft für Rückerstattungsfragen in der britischen Zone, Herfold.

¹⁴ *Die Restitution*, No.2, May 31, 1950.

¹⁵ Bundesvereinigung für loyale Rückerstattung to Bundesjustizminister, February 19, 1951, BA, B126, 12562. The number of the people who were directly affected by the restitution was estimated to be little more than 100,000. (Peter Reichel, *Vergangenheitsbewältigung in Deutschland: Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (Munich: C.H. Beck, 2001), p.79.)

¹⁶ *Die Restitution*, No.1, April 1951; Memorandum on the problems connected with the restitution of identifiable property, May 25, 1951, CAHJP, JRSO-NY, 464a; Eli Rock to Geoffrey Lewis, the Department of State, June 18, 1951, AJA, WJC, C277, 3.

¹⁷ Memorandum on the problems connected with the restitution of identifiable property, May 25, 1951, CAHJP, JRSO-NY, 464a.

and that the latter might have indeed wanted to help the persecuted Jews by buying the property to enable their emigration. Such was the rule rather than the exception, asserted the Federal Association for Loyal Restitution.¹⁸ They saw in the Jewish successor organizations an apparatus of exploiting the German holders of former Jewish property by creating gigantic “concerns”¹⁹ lead by professional lawyers and bankers, which harmed the German economy by accumulating the capital and transferring it to foreign countries.²⁰ Injustice can not be righted by new injustice – this was their preferred slogan. It was even implied that the successor organizations make business with the “human misery” of the restitutors.²¹ It is not difficult to sense a strong influence of Nazi doctrines and traditional economic Anti-Semitism in that the mystified “international Jewish capital” conspired to exploit the innocent German people.

In the discourse on the restitution, the presence of “other” victims – families of fallen soldiers, people whose property was destroyed or damaged by war, and above all, the Germans who had been expelled from the former Eastern provinces of the Reich (*Vertriebene*) – loomed large. As Erb points out, there was an imagined order in the need of these victims, where the racially persecuted were placed behind those, whose misery was indeed the result of the lost war but not of Hitler’s persecution.²² It was asserted that the Jews claiming the restitution were in no way the most destitute, since most of them had acquired the citizenship of the countries to which they had immigrated. The “poorest of the poor” were, according to *Die Restitution*, the German refugees.²³ The presence of

¹⁸ *Die Restitution*, No.1, April 1951.

¹⁹ Translation, Association for Loyal Restitution to the members of the organization, February 8, 1951, CZA, Z6, 530.

²⁰ *Die Restitution*, No.11, February 1951; Bundesvereinigung für loyale Rückerstattung to the Bundesjustizminister, February 19, 1951, BA, B126, 12562.

²¹ *Die Restitution*, No.1, April 30, 1950.

²² Erb, op. cit., p.248.

²³ *Die Restitution*, No.2, May 31, 1950.

close to eight million expellees and refugees in West Germany in 1950 – they were the visible remainder of the lost war, and represented potential explosive elements of the society.

The mixture of Philo-Semitism and Anti-Semitism, which was observed at different levels of German society in different forms, also found its place in the German courts and among German jurists. G. Blessin and H. Wilden, who wrote a number of commentaries on the restitution and indemnification laws, had been critical of the rights granted to the successor organizations for restitution and indemnification of the communal properties at the expense of the reconstituted Jewish communities.²⁴ Weismann mentions cases in which the lower courts ruled in favor of the persecuted groups, denying the claims of the successor organizations.²⁵ However, it would be difficult to substantiate the German courts' preference for local Jewish groups, not only because the litigations involving rivaling claims of Jewish groups were few, but also because each judgment had to be considered in its merit. Nevertheless, it is possible to see this in the general trend of the German courts to rule in favor of the defendants. According to statistics of the United Restitution Office (URO), of the first 110 cases in which CORA gave out its opinions, about three quarters of them dealt with Jewish property. 65 percent of the appellants were claimants, and 35 percent restitutors. This indicated that many more claimants felt that they were denied justice by the lower courts than the restitutors. CORA decided in favor of the claimants in 57 percent of all cases. CORA reversed the decisions of the lower courts in favor of the claimants in 84 percent of the cases, while on the other hand, in favor of the restitutors, only 16 percent.²⁶ CORA had been very critical of the lenient

²⁴ Katzenstein to Kagan, March 20, 1956, JDC-J, Geneva IV, 9/1B, Folder 9.

²⁵ Weismann, *op. cit.*, pp.757-759.

²⁶ Statistical analysis of U.S. Court of Restitution Appeals opinions, opinions No.1-110, November 12, 1957, CBF, 218/563-566.

attitude toward the restitutors which was observed in the lower courts and denounced it with strong words in some occasions. For the anti-restitution groups and the politicians representing their interests, CORA was a symbol of an occupation power with German subjugation to it. They proclaimed their opposition to CORA and strove for the removal of its final jurisdiction.²⁷

Furthermore, the Federal Revenue Court (*Bundesfinanzhof*) handed down a decision allowing the taxation on the restituted property in 1952.²⁸ With an unexpected means such as taxation, the German authorities attempted to revise and weaken the effect of the restitution. The decision was repealed by the intervention of the High Commission, on the grounds that it intruded on the Allied authority. Ferencz noted in 1956:

There has been a very strong tendency in Germany to undermine the position of the Military Government appointed successor organizations in favor of the local groups ... recent decisions of the German Courts indicated that the position taken by the Court of Restitution Appeals is by no means invulnerable. The German legislature too, has been seeking means for granting rights to recreated Jewish organizations.”²⁹

The restitutors' antagonism toward the JRSO surfaced in an ambivalent sympathy toward the dissenting Jewish community of Augsburg. It could have been the simple logic of “my enemy's enemy is my friend” in that they thought that some of the Jews also shared animosity toward the JRSO. They must have thought that there was no better

²⁷ See, for example, Excerpt from the minutes of the sixteenth meeting of the Committee for Constitutional Problems held on May 8, 1951, CZA, C2, 1687. The journal *Die Restitution* led the strong campaign against CORA. The composition of the courts was disputed: the American CORA and the British Board of Review consisted solely of Allied judges, while the French Cour supérieure had one German judge.

²⁸ Jürgen Lillteicher, “Die Rückerstattung in Westdeutschland,” pp.65-69. Although the restitution laws forbade the taxation of the property for the period it was not in the hands of the claimants, the Federal Revenue Court in this case attempted to tax the property after November 11, 1947, the promulgation of the restitution laws, to the moment of restitution.

²⁹ Ferencz to Philip Klutznick, President of B'nai B'rith, May 17, 1956, USHMM, RG12.003.01*01.

person than the Jews themselves to attest to the “injustice” of the Jewish successor organizations. The development of the case was followed by the German press, and the *Sontags Post* in Munich for example, “quoted” the members of the Augsburg community that the JRSO’s behavior reminded them of the “Nazi method of expropriation.”³⁰ However, when it likened the JRSO to Shylock and spoke of the “confiscation” of the property from the true claimants, its bare Anti-Semitism was unmasked.

In the complex of power and interests developed around the restitution in the 1950s, the German authorities remained theoretical allies of the local Jewish communities for two reasons. The potential liaison between the two was not made into a concrete alliance, first because there was an understanding among the Jews in Germany that their guardian was nonetheless the foreign Jewish organizations. Discord with their brethren was indeed more like a quarrel between brothers, who would in any case reconcile with each other. The German Jewish leaders were further concerned that their disagreement not be exploited, therefore it rarely reached the public eye. The German-Jewish newspaper *Allgemeine Wochenzeitung der Juden in Deutschland* seldom carried articles on the conflicts with the JRSO (although it was often hinted at). It was not misunderstood that the fights which they were fighting were against the Anti-Semites, the Neo-Nazis, and the opponents of Wiedergutmachung, but not with the coreligionists.

Political alliance remained a possibility, also because the Bonn Government kept its distance from the inner Jewish conflict. Despite the occasional approaches made behind the curtain by the German Jewish groups (the Council of Jews and the Zentralrat) in the matters of Wiedergutmachung, it preferred to negotiate with the acknowledged

³⁰ “Rechts ist, was der JRSO nützt,” *Sontags Post*, May 31, 1954.

international Jewish representation. It cared for the international reputation of the Federal Republic and kept the pledge made under the international spotlight to do good again to the Jews. Straying from the negotiations with the mainstream Jewish leadership would have discredited its commitments.

6.2. Beginning of the German Wiedergutmachung

The postwar international Jewish policy had been, largely, to isolate Germany from the Western democratic nations. As late as in 1950, the Israeli executive of the WJC was discussing placing Germany under a ban for Jews.³¹ Yet, with the intensifying Cold War, the Federal Republic was pushed to the forefront of the East-West confrontation, and its political rehabilitation could no longer be halted. Israel's Foreign Minister Mosche Sharett stated in the U.N. assembly in 1950 that "[t]he people of Israel and Jews throughout the world view with consternation and distress the progressive readmission of Germany by the family of nations, with her revolting record intact, her guilt unexpiated, and her heart unchanged."³² Hard-line policies against Germany were becoming more and more obsolete in face of the strong anti-Communist wind blowing in the international scene.

The change of atmosphere led the Jewish leadership to realize that time was working strongly against the successor organizations.³³ Winding up the operation of the JRSO in Germany swiftly seemed increasingly necessary in the face of the waning Jewish

³¹ Minutes of the meeting of the WJC executive, February 9, 1950, CZA, Z6, 322.

³² Quoted in Thomas Alan Schwartz, *America's Germany: John J. McCloy and the Federal Republic of Germany* (Cambridge, MA: Harvard University Press, 1991) p.176.

³³ See, for example, Minutes of the Jewish Agency-JRSO-JDC discussion on restitution and indemnification, November 11, 1949, CZA, A370, 974; Memorandum on the global settlement of Jewish restitution and indemnification claims in Germany, June 1950, CZA, Z6, 386.

influence on the Western powers. The idea of a bulk settlement for the unsettled JRSO claims with the Länder governments was brought forward from such discussions.³⁴ It was originally proposed as a means to dispose of the bulk of the JRSO claims against the former Reich. As mentioned, claims against the German Reich and the former Länder could be brought against the Land Ministries of Finance. The Länder governments were hence the restitutors in numerous cases, and disposing of the claims collectively in bulk settlements would also serve their interests of saving time and human resources. The JRSO desired, however, the disposal of the entirety of the claims which had not yet been settled – regardless of whether they were against the individuals or the Finance Ministries. This meant that the Länder governments would take over the pending claims of the JRSO against the payment of an agreed sum, and then pursue the claims in lieu of the JRSO, if they were filed against individuals.

The Länder governments were understandably unwilling to enter into such agreements with the successor organization, because it meant that they became the claimants against their own citizens, and would have to press them to pay an equitable sum or to surrender the properties. There was a fundamental contradiction for the Länder, which had been the persecutors of the Jews and the vendors of the confiscated Jewish properties, to demand the restitution of those same properties after the war. Many German buyers paid the purchasing price into the blocked accounts in accordance with the instruction of the regime, payment which never reached the Jewish sellers. In addition, it was deemed extremely difficult to enforce the claims in the cases of bona fide purchasers. Politically, it was not possible for the Länder to use the argument based on the occupation law, toward which the majority of the German public was opposed. It should not be forgotten that the

³⁴ There is almost no literature on the political and financial backgrounds of the negotiations between the Länder and the JRSO to conclude the bulk settlements. This makes a quite a serious gap in the research on the Wiedergutmachung. In the British and French Zone, no such settlement was concluded.

people affected by the restitution were the constituency of the Länder governments, to whose cries they could not remain unmindful.

For the JRSO, the advantage in ceding the unresolved claims to the German Länder was, first of all, that it would speed up the conclusion of the restitution. According to a study prepared by the JRSO, it was estimated that it would take twenty or thirty years to complete the restitution program under the usual procedures.³⁵ It was the policy of the JRSO to settle claims on a cash basis whenever possible, and the restitution in kind was sought only when the resitutors refused to pay what was considered reasonable.³⁶ Taking over the landed properties accompanied maintenance and repair work, and the need to look for buyers, which was not appropriate in light of the JRSO's aim to liquidate the recovered property speedily in order to allocate the proceeds to the survivors in need. Disposing of the bulk of claims would absolve the JRSO of such obligations. HICOG too, desired the swift termination of the restitution program. The remains of the occupation era should be cleaned in order to pave a way for an alliance against the Communist block.

The general unwillingness of the German resitutors for settlement was greatly slowing down the pace of the conclusion of the program. According to a HICOG report, from the date of promulgation of the U.S. restitution law in 1947 to April 30, 1951, of the total of 66,776 cases of individual claimants, 31,319 were actually disposed of (approximately 46.9 percent). On the other hand, of the total of 48,472 cases of the JRSO, only 11,409 were disposed of (approximately 23.5 percent).³⁷ The anti-restitution pressure groups openly advocated delaying proceedings by refusing amicable settlements and by

³⁵ Minutes of the Jewish Agency-JRSO-JTC discussion on restitution and indemnification, November 11, 1949, CZA, A370, 974.

³⁶ By September 1952, a total of 975 pieces of estate was reacquired by the JRSO.(JRSO annual report, October 1951-September 1952 CAHJP, JRSO-NY, 464a.)

³⁷ Cumulative statistical internal restitution progress report, 10 November 1947 to 30 April 1951, CZA, C2, 1687.

appealing to the higher instances, with the expectation that the severity of the restitution laws be mitigated if the Federal Republic become sovereign.³⁸

In response to the rumor of a fundamental change in Allied restitution policy which circulated during the discussion on the revision of the Occupation Statute, McCloy felt obliged to make clear the American position to continue the restitution program to the end. He wrote to three Minister-Presidents of the Länder on this regard in June 1951.³⁹ He further pressured the Länder governments to conclude bulk settlements with the JRSO, even implying the removal of the Marshall Plan aid.⁴⁰ McCloy was in general very helpful and understanding toward the operation of the JRSO.⁴¹ For instance, it was largely due to his efforts in the Allied High Commission that the successor organizations were finally permitted to transfer blocked DM to Israel in the end of 1951 (there had been no free convertibility of DM into foreign currency), without which the relief work for the victims would have yielded few results. McCloy's commitment to the restitution seems to have stemmed from his belief that the treatment of the Jews was a yardstick of German democracy. He wrote to Ferencz when he resigned from his post in 1952 to return to the United States: "I have always had a deep conviction that unless Germany dealt well with the problems of restitution we had little hope for the future of Germany."⁴²

With considerable pressure from HICOG, the Länder acceded. The first Land to conclude the bulk settlement with the JRSO was Hesse. On February 13, 1951, the JRSO

³⁸ Weekly intelligence report No.21, May 24, 1950, NACP, RG 466/250/84/23/7.

³⁹ Die amerikanische Hohe Kommission Presseveröffentlichung Nr. 684, June 12, 1951, CZA, C2, 1674. Also, see, T. A. Schwartz, *op. cit.*, p.177.

⁴⁰ Ferencz to Rock, June 12, 1951, CZA, S35, 86.

⁴¹ McCloy was criticized by his contemporaries as well as by later historians for his rejection to bomb the Auschwitz death camp and for the clemency he gave to the prisoners of Landsberg in 1951. Ferencz, in an interview with the author in March 2003, denied McCloy's political expediency to appease the increasingly confident Germany, and stressed that he had been very helpful throughout the operation of the JRSO. Kagan, too, told the author in an interview in August 1999 that the support of the American authorities, notably that of General Clay and McCloy, was indispensable for the JRSO.

⁴² McCloy to Ferencz, July 19, 1952, NACP RG466/250/84/23/7.

signed away the claims which had not been settled before September 6, 1950 to the Land government of Hesse against the payment of DM 25 million.⁴³ Yet, the JRSO retained the rights on cemeteries, synagogues of historic significance, various ritual objects such as Judaica and Hebraica, and others. The properties which had been claimed by the constituted Jewish communities in Hesse were not included. On June 28 of the same year, Land Bremen signed for DM 1.5 million.⁴⁴ Württemberg-Baden on the other hand, insisted that it was politically inconsistent that the ancient persecutor now enter into the negotiations as the claimant.⁴⁵ It agreed on November 6, 1951,⁴⁶ however, to buy the 700 immovable properties which had been already restituted to the JRSO for DM 1 million. Another 260 properties, of which the German Reich was the restitutor, was to be kept by Land Württemberg-Baden for DM 800,000.⁴⁷ It did not accept the buying of the unsettled claims against individuals. The settlement with Land Bavaria required much assiduous effort and perseverance. There was considerable resistance toward the bulk settlement in the Land Parliament – one recalls that Bavaria had a higher proportion of the German refugees among its population (21.2 percent)⁴⁸ – and the settlement was signed only on July 29, 1952.⁴⁹

Although it was doubtful whether the Länder would have accepted the bulk settlements without the pressure from HICOG, this shall be seen nonetheless as one of the watersheds in the history of the Wiedergutmachung. With the knowledge of the strong opposition

⁴³ Vertrag, February 13, 1951, BA, B141, 463. For the bulk settlements with each Land, see also, Weismann, op. cit., p.768-769.

⁴⁴ Vertrag, die JRSO und die Freie Hansestadt Bremen, June 28, 1951, BA, B141, 463.

⁴⁵ Interestingly, it was indeed Otto Küster, a great friend of the Jews who played an important role in German-Jewish negotiations in Wassenaar in 1952, who insisted on this position and refused to accept the bulk settlement.

⁴⁶ Weismann, op. cit., p. 769.

⁴⁷ Vertrag zwischen der JRSO und das Land Württemberg-Baden, November 29, 1951, BA, B126,-12562.

⁴⁸ *Deutschland unter alliierter Besatzung: 1945-1949/55*, ed. Wolfgang Benz (Berlin: Akademie, 1999), p.125.

⁴⁹ Vertrag, die JRSO und der Freistaat Bayern, April 7, 1952, BA, B126, 12562.

toward the restitution in certain segments of the society, and the political representation they made in the parliaments, the buying up of the claims which the Länder governments themselves were not sure of settling successfully (and possibly at the expense of “other” victims), was accompanied with great political risk. Certainly, it was possible to see a hint of Anti-Semitism in the Länder’s opposition toward the bulk settlements, but the more important aspect of it was that the German governments were ready to bear the financial responsibility for Nazi crimes. Needless to say, this should be seen in the light of *Vergangenheitspolitik*⁵⁰ rather than the “Germany’s progress toward the light,” as McCloy once phrased it. As Brodesser’s book title *Wiedergutmachung und Kriegsfolgenliquidation* aptly suggests, the Wiedergutmachung was coupled with the liquidation of the consequences left by the war, such as, the settlement of prewar debt, reparations, compensation for German victims of war, etc.⁵¹ It was not solely an act of morality and good will, but also a task to dispose of the complex of legal and political debt left by the previous regime.

From 1949/1950 the Federal government issued a series of laws to compensate and alleviate the plight of the “other” victims: expellees from the Eastern provinces, ethnic German refugees, war prisoners and their families, returned soldiers, former public servants, etc.⁵² Just to name a few important legislations, the so-called *131er-Gesetz* (Law for those who fell under Article 131 of Basic Law, 1951) rehabilitated the former public servants (including career soldiers of the German Army) who had lost their employment on May 8, 1945, or otherwise guaranteed their rights to receive pension

⁵⁰ The term was coined by Norbert Frei in his 1996 book *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: C.H. Beck, 1996). He described the policy of the Adenauer government toward former Nazis and Nazi sympathizers in light of re-integrating them into the political mainstream of the Federal Republic.

⁵¹ Hermann-Josef Brodesser, et al, *Wiedergutmachung und Kriegsfolgenliquidation: Geschichte – Regelungen – Zahlungen* (Munich, C.H. Beck, 2000).

⁵² See, Brodesser et al., op. cit., 170-181.

payments.⁵³ The *Lastenausgleichsgesetz*⁵⁴ (Law for the Equalization of Burdens, 1952) placed a capital levy on property to create assets to indemnify the German victims of war. Those who had been less damaged in terms of assets through the war shouldered the burden of assisting those who had suffered more.⁵⁵ The *Bundesvertriebenengesetz*⁵⁶ (Federal Law for Expellees, 1953) provided various forms of assistance to the refugees and expellees from the East.

The subjects of these legislations were the groups of people who felt politically and economically marginalized under the new norms introduced by the Allies. Among them was not a small number of former Nazis and their sympathizers, and they represented the latent destabilizers of the young Republic for their sympathy towards extremism. It was therefore an urgent task for the government to improve their economic situation and integrate them into the political mainstream. These laws were intended to prepare the conditions in which they could accept the democratic model as an alternative.

Importantly, however, the Parliament discussed and passed these laws parallel to the measures to indemnify the victims of National Socialism. It was approximately in the same period (1951) that the West German legislation for the *Wiedergutmachung* commenced. It was symbolic that the first of its kind, a law to compensate the public servants who had lost their work on the “racial” or political grounds, was passed only several days before the *131er-Gesetz* was approved. In fact, they were published on the

⁵³ “Gesetz zur Regelung der Rechtsverhältnisse der unter Artikel 131 des Grundgesetzes fallenden Personen,” May 11, 1951. Under Article 131 of Basic Law, securing the economic existence of the former public servants was recognized as the government’s impending task. The people who came under this article were called “those under Art. 131.” On the political implication of this law, see, Frei, *op. cit.*, pp.69-100.

⁵⁴ “Gesetz über Lastenausgleich,” August 14, 1952.

⁵⁵ The government initially contemplated including the restituted Jewish property among the subjects of the Equalization of Burdens’ Tax. Since it was estimated that the Jewish property would lose up to 50 percent in value by this special tax, the Jewish organizations fiercely fought this attempt. By the terms of Bonn Conventions signed in 1952, Jewish property was excluded from this tax.

⁵⁶ “Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge,” May 19, 1953.

same day.⁵⁷

Returning to the restitution, the day of the opponents of the restitution laws and the successor organizations did not come soon. The “Convention on the Settlement of the Matters arising out of the War and the Occupation” (the so-called *Überleitungsvertrag*)⁵⁸ signed on May 26, 1952 stipulated that the Allied restitution laws shall remain in full force and that the successor organizations shall be maintained until they have completed their task (Art.3).⁵⁹ The Allied restitution courts, CORA, the Board of Review, the Cour supérieure, were to be replaced by the *Oberste Rückerstattungsgericht* (Supreme Restitution Court) to be presided by two Allied, two German, and one neutral judge. However, the Convention did not come into force until 1955,⁶⁰ and to the chagrin of the restitutors, CORA remained the highest court of restitution in the U.S. Zone for another three years.

By the terms of this Convention, the Federal Republic acknowledged its liability for the monetary claims against the Reich to a ceiling of DM 1.5 billion (Art. 4). As is known, confiscations of the Jewish properties under the Nazi regime had taken place by order of the state. Contrary to the landed property, property of monetary value, such as bank accounts, securities, insurance policies, jewelry, etc., had become to its majority no more identifiable at the end of the war. Therefore, the monetary claims were filed not for

⁵⁷ Frei, op. cit., p.83.

⁵⁸ This was one of the related conventions of the Convention on Relations between the Three Powers and the Federal Republic of Germany (“Bonn Convention”), through which West Germany was to become sovereign.

⁵⁹ “Convention on Relations between the Three Powers and the Federal Republic of Germany and the Related Conventions signed at Bonn on 26 May 1952,” p.25, YIVO, 347, 7, FAD 41-46, Box 26.

⁶⁰ The coming into force of the Bonn Convention and the related conventions was conditioned on the ratification of the treaty to create the European Defense Community (EDC), and the French National Assembly rejected it in August 1954. Nevertheless, the Bonn Conventions of 1952 without that of the EDC were saved in the form of the Paris Conventions signed on October 23, 1954. The German Parliament ratified them on February 1955, and on May 5 of the same year, the entirety of the Conventions came into force. On this day, the Occupation Statute was repealed and the Federal Republic regained full sovereignty.

restitution in natura, but for damages. Yet, it was disputed whether the Federal Republic should be held liable for such claims at all. Restitution courts issued orders to the effect that these claims should be met, however, they possessed only declaratory value, since the claims could be satisfied only when the properties actually existed.

In the course of time, a legal view came to dominate: “identifiable” in the meaning of the restitution laws meant “identifiable” at the moment of confiscation and wrongful deprivation, not at the moment of filing the claims. This entirely changed the nature of the restitution, since the bank accounts and the securities and all other no longer identifiable properties had surely existed when they had been taken. As a result of this view, a very large volume of new claims were born. However, due to the legal uncertainty of the Reich claims which had prevailed in the preceding years, many victims did not file claims at all. The property and the property rights which were not claimed, belonged solely to the successor organizations.

Accepting the liability for the claims against the Reich was another watershed in the history of the Wiedergutmachung. This was the basis for the Federal Restitution Law (*Bundesrückerstattungsgesetz*, hereafter BRüG) of July 1957.⁶¹ When the BRüG was still being drafted, a bulk settlement on the monetary claims against the Reich was concluded between the Federal Government and the three successor organizations. On March 16, 1956, the successor organizations agreed to waive all the Reich claims against the lump sum payment of DM 75 million.⁶² The government agreed on the payment, even before the size and scope of the claims which would arise based on the BRüG were known. In addition, the claims against the Reich were reopened for those individuals who had missed the filing period, without prejudice to the rights which were vested in the

⁶¹ “Bundesgesetz zur Regelung der rückerstattungsrechtlichen Geldverbindlichkeiten des Deutschen Reichs und gleichgestellter Rechtsträger,” July 19, 1957, in *BGBl*, Teil I, pp.734-738.

⁶² On the text of the agreement, see, Kapralik, *Reclaiming the Nazi Loot*, pp.162-166.

successor organizations and which were waived by the bulk settlement. There is another important aspect. When the Länder in the former U.S. Zone concluded the bulk settlements with the JRSO between 1950-1952, they also paid for the Reich claims. Therefore, the JRSO's claims against the Reich had already been partially met, although the sum was not sufficient in light of the true volume of the claims. The Federal Government, after recognizing its liability for the Reich claims, reimbursed the Länder the sum they had paid the JRSO.⁶³ Furthermore, the *Reparationsschädengesetz* (Law for the Reparations Damages)⁶⁴ was issued in 1969, and those who had been "damaged" due to the restitution were compensated, along with those who had suffered war damages.⁶⁵ The anti-restitution lobbies finally had their day.

One needs to evaluate the German Wiedergutmachung in light of the Vergangenheitspolitik – this point is undisputed. Yet, it should not be denied either that the Federal Government was a strong democratizing factor of the German public in this matter. While it accepted the moral and financial responsibility of Nazi crimes, it acquitted, rehabilitated, compensated, and reintegrated those who were burdened by the past. This seemingly contradictory policy of the government indeed served the same end of stabilizing the society and enhancing the international reputation of the Federal Republic. This is a picture of a government which pulled the German masses and their lower representations to the democratic model it presented. By doing so it was successful in isolating the true subversives and extremists, and in making the majority of the citizens moderate in their political disposition or even de-politicized. Democratization from above – this was the essence of Adenauer's Vergangenheitspolitik.

⁶³ Weismann, op. cit., p.774.

⁶⁴ "Gesetz zur Abgeltung von Reparations-, Restitutions-, Zerstörungs- und Rückerstattungsschäden," February 12, 1969.

⁶⁵ Lillteicher, "Die Rückerstattung in Westdeutschland," pp.69-75.

It was in such a context that close ties developed between the Jewish communities and the German establishment. By the end of 1950s, the operations of the successor organizations were largely concluded. The immediate concern of world Jewry – that of restitution and indemnification – was resolved by the Luxembourg Agreements, the BEG , and the BRüG. The last remaining Jewish DP camp Föhrenwald was closed in 1955. The foreign Jewish organizations faded away from public life in Germany. Into the vacuum created by the withdrawal of the foreign Jewish organizations, entered the Federal Government. The Jewish community – much in need of finding a new political and financial sponsor, and the Bonn government – concerned with the image of the Federal Republic in the world’s watchful eyes, found mutual interest in each other. The latter could be the guardian of the former, and the former could help the latter to portray a better picture of Germany. The potential alliance which did not concretize during the successor debate finally found fruitful ground. The sociologist Bodemann described it as “bureaucratic patronage,” where the Jews in Germany, the Jewish leadership and the German governments formed vertical relations based on their interests.⁶⁶ Although this model contained certain truths of the postwar German-Jewish relationship and explained the close liaison between the Jewish and German establishments, it must be revised in light of the Vergangenheitspolitik and its rather positive balance. The Federal Government emerged as a democratizing factor (there were of course occasional deviations), taking over the role played by the Allies in matters of restitution and indemnification. The Jewish communities were made the participant of the government’s democratization from above. They were assigned a role to criticize, educate, and remind the German people of

⁶⁶ Y. Michael Bodemann, “Staat und Ethnizität: Der Aufbau der jüdischen Gemeinden im Kalten Krieg,” in *Jüdisches Leben in Deutschland seit 1945*, ed. Micha Brumlik, et al. (Frankfurt a. M.: Athenaeum, 1986), p.65. See, also, *Bodemann, Gedächtnistheater: Die jüdische Gemeinschaft und ihre deutsche Erfindung* (Hamburg: Rotbuch, 1996).

its recent past, and were integrated into the postwar German system which proved largely successful.