A Final Accounting

Holocaust Survivors and Swiss Banks

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This book is dedicated to
Edward R. Korman

"Justice, justice you are to pursue."
Deuteronomy, chapter 16, verse 20

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Foreword

Hon. José A. Cabranes
Circuit Judge of the United States Court of Appeals,
Second Circuit

Between 2001 and 2005, the Court on which I am privileged to sit considered seven appeals from decisions of U.S. District Judge Edward R. Korman in the Holocaust Victim Assets Litigation. I was a member of the appellate panel in each of those appeals and wrote for the Court of Appeals on a number of occasions.

Leonard Orland, Oliver Ellsworth Research Professor of Law at the University of Connecticut, is a distinguished and broad-ranging legal scholar with long and deep experience in the criminal law and in various fields of the law of corporations—scholarship and experience that he mobilizes fruitfully in this informed account of the epic litigation and settlement of the claims of Holocaust victims against Swiss banks. He has written a clear-headed and sympathetic account based on an intimate knowledge of the record of these extraordinary cases, which ended by bringing a measure of justice to victims of Nazi murder and plunder and the denial of their rightful claims by Swiss financial institutions. In successive chapters, he presents a concise history of Nazi depredations and Swiss denials of responsibility for accounts maintained by victims of the Holocaust, and of the litigation in American courts to vindicate long-ignored claims.

Professor Orland's account permits a reader to understand the claims asserted in this massive litigation as well as the unique role of the American judicial system in managing and resolving human rights class actions. This important and praiseworthy book will deserve the attention of students of the American justice system, and of the persistence of memory of the Holocaust, for generations to come.

New Haven, Connecticut

Preface

Between 1939 and 1945, the Nazis murdered six million Jews in the Holocaust and looted Jewish assets currently valued at between $230 billion and $320 billion.[1] Through a combination of "special taxes, blocked accounts and confiscatory decrees, Jews were progressively robbed of their entire private means."[2] Most of the looted Jewish wealth found its way to the Nazi's central bank, the Reichsbank. The Reichsbank, in turn, transferred a substantial portion of that wealth to the banks of Switzerland.

As Hitler's power grew and anti-Semitism spread through Europe, many Jewish families and businesses took advantage of the promise of secrecy and protection and deposited their funds in Swiss banks. For more than a half century, these funds remained in Swiss banks, protected by a veil of Swiss banking secrecy, concealed by coordinated bank obfuscation. The Swiss banks steadfastly resisted efforts of Holocaust survivors and their families to reclaim deposited funds.

The Holocaust murder and theft raised a dilemma for survivors and heirs. Should they, unable to reclaim lost lives, seek restitution for looted assets and retained deposits? Debate continues in the Jewish survivor community about the propriety of focusing remembrance of the Holocaust not simply upon the ghastly fate of the millions of slaughtered Jews but also upon the theft and retention of their stolen assets. Elie Wiesel wrote of his initial reluctance to "… define the greatest tragedy in Jewish history in terms of money."[3] Subsequently, rethinking the value of the lost Jewish assets, Wiesel acknowledged a "duty to remember" "not only big accounts … but also less wealthy families, small merchants, cobblers, peddlers, school teachers, water carriers, beggars."[4] This book proceeds on the author's belief in an obligation to remember not only those who murdered and stole (Nazi slaughterers and plunderers) but those who facilitated and profited from that theft (Swiss banks).

For more than a half-century, neither the Swiss government nor the leading Swiss banks made any meaningful efforts to acknowledge wrongdoing or to facilitate restitution. The first Swiss acknowledgment began in 2002 with the establishment by the Swiss government of an Independent Commission of Swiss Experts chaired by an em-

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1. Helen Junz, Where Did All the Money Go? Pre-Nazi Era Wealth of European Jewry, 137–8 (2002); Gotz Aly, Hitler's Beneficiaries: Plunder, Racial War, and the Nazi Welfare State 296 (2006).

2. Paul A. Shapiro and Martin C. Dean, *Foreword to Symposium, Confiscation of Jewish Property in Europe 1933–1945 New Sources and Perspectives* at ii, United States Holocaust Memorial Museum, Center for Holocaust Studies (2003).

3. Elie Wiesel, Foreword to Stuart E. Eizenstat, Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II (2003).

4. *Id.* at xi.

inent Swiss professor, Jean-Francois Bergier. The Final Report of the Bergier Commission declared "that Switzerland needed to take a number of courageous steps to face up to the problems of its past."[5] The Bergier Commission recognized that the "sense of responsibility which was lacking [in Switzerland] at that time [during and immediately following World War II] was again called upon repeatedly during the past fifty years, and was found lacking yet anew."

With Bergier, I believe that restitution must "represent the expression of a rediscovered sense of responsibility," and that while material restitution "is a necessary, if scarcely adequate, precondition," restitution "also means the act of remembering."[6]

In 1996 and 1997, over a half-century after the end of World War II, Holocaust survivors sought remembrance and long-overdue restitution from Swiss banks in an American federal court. These Holocaust survivors filed four class actions lawsuits against leading Swiss banking institutions. The cases were combined with a single title, *Holocaust Victim Assets Litigation,* and assigned to Judge Edward R. Korman of the United States District Court in the Eastern District of New York, in Brooklyn, New York.[7]

The survivors claimed that before and during World War II, they were subjected to persecution by the Nazi regime, and that this persecution included genocide, as well as wholesale and systematic looting of personal and business property and slave labor. The survivors charged that Swiss banks and other Swiss institutions had knowingly concealed and retained the assets of Holocaust victims, and accepted and laundered Nazi loot as well as the profits derived from slave labor. The Swiss banks, the survivors asserted, collaborated with and aided the Nazi regime in the furtherance of war crimes, crimes against humanity, crimes against peace, slave labor, and genocide.

The central charge in the litigation was a claim that the Swiss banks violated their fiduciary duty of trust by their failure to protect the assets of their Jewish customers. In anticipation of the Nazi reign, many Jewish families entrusted their savings to Swiss banks. But when the Nazis seized power, in many instances the Swiss banks simply handed those assets to the Nazi regime. The banks ignored their legal duty to protect their clients' financial interests. In this sense, a disturbing reality emerges: thousands of Jews who entrusted their funds to Swiss banks may have funded their own deaths when those banks turned Jewish funds over to Nazi murderers.

After the war, survivors and their heirs made repeated requests for access to the funds of victims retained by the Swiss banks. The banks labeled those accounts "dormant" and denied all inquiries and claims. The banks chose self-enrichment over fiduciary obligation. Because Swiss law allowed the banks to keep these dormant accounts, the retained accounts were simply absorbed into bank profits.

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5. Independent Commission of Experts Switzerland–Second World War, Switzerland, National Socialism and the Second World War, Final Report 522 (2002) [hereinafter Bergier Report].

6. *Id.*

7. In re Holocaust Victim Asset Litig., 105 F. Supp. 139 (E.D.N.Y. 2000), aff'd, 14 Fed. Appx. 132 (2d Cir. 2001) [summary order], reissued as a published opinion In re Holocaust Victim Assets Litig., 413 F.3d 183 (2d Cir. 2005). During the pendency of the litigation, Korman became Chief Judge of the Eastern District of New York and, subsequently, Senior Judge.

Poignantly, as the Bergier Commission noted, the assets of customers prosecuted by the Third Reich "became dormant because their owners were deported and murdered."[8] To take advantage "of the exceptional situation of mass extermination by the Nazis," the Swiss banks "exploited legal principles … for corporate objectives in the name of blind adherence to the letter of the law."[9] In this respect, the Swiss banks followed a pattern established by the Nazis in the Holocaust era—use "the law" to justify murder and theft.[10]

The survivors' claims, their lawyers recognized, had to be framed to fit recognized legal theories. Accordingly, the survivors charged that the banks deceitfully concealed and retained the dormant assets of Holocaust victims and intentionally prevented survivors and heirs from claiming their own deposited funds from these dormant Swiss bank accounts. This pattern of misconduct by the Swiss bank defendants, the survivors asserted, fell within accepted legal theories: breach of fiduciary duties of trust as well as breach of contractual obligations, unjust enrichment, fraud and conspiracy.

Further, the survivors asserted, the banks unlawfully concealed the facts from claimants in an effort to frustrate the ability of victims to pursue their claims. The claims went beyond simple appropriation of bank accounts. The survivors also charged that the banks dealt in laundered Nazi loot, engaged in financial transactions derived from the profits of slave labor, and assisted the Nazi regime in the furtherance of war crimes. This pattern of misconduct, the survivors asserted, violated international law as well as Swiss banking law.

The Swiss banks filed numerous motions and voluminous briefs that challenged the legal basis for the suits. The banks sought dismissal of the complaints. These motions were not decided. Instead, with the active participation of Judge Korman, settlement negotiations ensued. In 2000, Judge Korman issued an opinion which approved a historic settlement of $1.25 billion. Judge Korman prefaced his opinion approving the settlement by quoting the words of a Holocaust survivor:

> I have no quarrel with the settlement. I do not say it is fair, because fairness is a relative term. No amount of money can possibly be fair under these circumstances, but I am quite sure it is the very best that could be done by the groups that negotiated the settlement.[11]

In 2001, the United States Court of Appeals for the Second Circuit affirmed the Korman settlement opinion.[12] A number of appeals followed in the next five years, as the details of the settlement emerged and sharply conflicting claims for monetary awards appeared. *A Final Accounting* introduces, organizes, explains, and evaluates this complex litigation, and frames the case in a larger historical and jurisprudential context.

Part One of *A Final Accounting* reexamines the historical record and explores the myth of Swiss neutrality during World War II. Subsequent chapters trace the painstak-

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8. Bergier Report at 443.
9. *Id.* at 448.
10. Judge Korman elaborates on this theme in his Introduction to this volume.
11. In re Holocaust Victim Asset Litig., 105 F. Supp. 139 (E.D.N.Y. 2000).
12. In re Holocaust Victim Asset Litig., 14 Fed. Appx. 132 (2d Cir. 2001), reissued without alteration, 413 F.3d 183 (2d Cir. 2005).

ing process of establishing that the Swiss banks, seeking to maximize their profits, unjustly retained the deposited funds in dormant bank accounts that rightfully belonged to Holocaust victims. The investigation into the Swiss banks' misconduct faced near-insurmountable evidentiary obstacles because the banks doggedly obstructed all investigations. They engaged in patterns of secrecy, document destruction, and obfuscation beginning as early as the onset of World War II and continuing well into the 1990s and through the time of litigation.

Part Two of *A Final Accounting* introduces the relevant parties of the *Holocaust Victim Assets Litigation*, enumerates the massive defense legal motions filed by lawyers for the banks, and explains the steps taken by the court to resolve this complex litigation. This analysis presents an overview of how the American class action system became a forum for justice for Holocaust victims. The objective is to enable readers to better understand and evaluate the legal theories and actions underpinning this lawsuit and other human rights class actions. Additionally, Part Two of *A Final Accounting* addresses the pressures for settlement exerted by several government officials and shares with the reader insights into the actual negotiation of the settlement between the survivors and the Swiss banks. At the same time, this section explains the inherent difficulties in reaching out to a world-wide pool of potential claimants.

The *Holocaust Victim Asset Litigation* provided an opportunity for thousands of Holocaust survivors to document the injustices visited upon them and to share the frustration of their futile efforts to seek restitution. Judah Gribetz, a distinguished New York City lawyer, was appointed by Judge Korman to act as Special Master of the litigation. A particularly noteworthy aspect of this case is the detailed, scholarly, and humane documentation of the experiences of Holocaust victims under the Nazi regime, as well as the current needs of the Holocaust survivors in the twenty-first century. In four massive volumes, Special Master Gribetz and Deputy Special Master Shari C. Reig, produced an unprecedented catalogue, both comprehensive and compassionate, of the human and financial toll exacted by the Nazis and facilitated by the Swiss banks. *A Final Accounting* undertakes to present this extraordinary documentation to a wider audience.

Part Three of *A Final Accounting* explores the controversies arising out of the $1.25 billion settlement and the Special Master's proposals for distribution of the proceeds among the five classes of victims specified in the class action settlement agreement. One aspect of those proposals for fund distribution generated sharp controversy within the Jewish survivor community. The controversy concerned the portion of the settlement—$205 million—which was allocated to needy Holocaust victims. Several American Jewish groups complained that distributing this portion of the settlement fund based on current need unfairly favored Holocaust survivors in the former Soviet Union, who were determined to be the most in need. Judge Korman's opinions rejecting these complaints were upheld by the Second Circuit on two separate occasions. In affirming Judge Korman, Circuit Judge Cabranes characterized the Korman decisions as "Solomonic" and the distribution process "exemplary."[13]

13. In re Holocaust Victim Asset Litig., 423 F.3d 132, 149, n.15 (2d Cir. 2005).

In Part Four, *A Final Accounting* addresses the legacy of the *Holocaust Victims Asset Litigation.* Other Nazi-era cases spawned by the *Swiss Banks* Case resulted in substantial settlements with Germany and its industries, and, less successfully, with Austria and its industries and French banks. As Morris Ratner, a leading attorney in these cases explained, the *Swiss Banks* settlement was "historic because it was the first resolution of mass tort claims arising from Nazi-era conduct during World War II." "The same factors that produced the Swiss Banks Settlement," Ratner observes, "facilitated the relatively prompt resolution of class action cases against German, Austrian, French and other entities that had potential liability for Nazi-era misconduct."[14]

In a concluding chapter, *A Final Accounting* examines the limits of court awards as an instrument to rectify horrific wrongs. Many of the claims and legal theories raised in the Holocaust era restitution cases were never tried, and the ability of those claims to withstand dismissal is far from clear. Other Holocaust-era cases resulted in political settlements, not court victories. Moreover, post-Holocaust-era human rights class actions to vindicate historic wrongs faced substantial legal obstacles. Most of these cases were dismissed.

In the final analysis, *A Final Accounting* argues that the legacy of the *Holocaust Victim Assets Litigation* should not be evaluated solely in terms of the development of legal doctrine or the success or failure of the more recent human rights class actions. Quite apart from legal principles advanced or substantial settlements achieved, perhaps the most important outcome of the *Holocaust Victim Asset Litigation* is that claims made by Holocaust victims in American courts were recognized and responded to in an American court by a wise and courageous federal judge. Moreover, as historian Regula Ludi has observed, in recent years, "Holocaust legacies have attained an unprecedented and unexpected political significance on an international scale." "For many observers," Ludi continues, the dormant accounts of Nazi victims in Swiss banks

> came to symbolize how justice had been denied to Holocaust victims and their children.… The entire process of [international] examination and restitution was accelerated by the … class action suits filed by Holocaust survivors … these lawsuits have pushed governments and corporations to allow investigations into their wartime past and, eventually, to consider offering compensation to Holocaust survivors and their descendants.[15]

This volume includes three appendices. Appendix A is an English language translation and summary of the Bergier Commission Special Reports. (Unfortunately, the complete text of these reports are not available in the English language.) Appendix B gathers the principal historical and legal documents that are the foundation for this book, and Appendix C presents an exhaustive bibliography prepared by Special Master Judah Gribetz.

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14. Morris A. Ratner, *The Settlement of Nazi-Era Litigation Through the Executive and Judicial Branches*, 20 Berkeley J. Int'l L. 212, 213 (2002).

15. Regula Ludi, Waging War on Wartime Memory: Recent Swiss Debates on the Legacies of the Holocaust and the Nazi Era at 116.

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I take this occasion to express my gratitude to Keith Sipe, the extraordinary and dedicated publisher of Carolina Academic Press, and to Tim Colton of the press, who provided superb editing, design, and production for this volume.

I am deeply grateful to the two federal judges who have been the major judicial voices in the *Holocaust Victim Assets Litigation*, Second Circuit Judge José A. Cabranes and Eastern District of New York Judge Edward R. Korman. I also want to acknowledge my indebtedness to Special Master Judah Gribetz and Deputy Special Master Shari C. Reig for their extraordinary contributions to the *Holocaust Victim Assets Litigation* and for their larger efforts to seek justice for Holocaust victims.

Introduction[1]

Hon. Edward R. Korman
United States District Judge, Eastern District of New York

I am delighted to contribute this introduction to what I believe to be the unique contribution of Professor Leonard Orland to the literature of the law and the Holocaust. Professor Orland's book constitutes an accurate and comprehensive chronicling of a litigation which has been my central concern for more than a decade.

I take this occasion to address an issue that emerged from that litigation—the use of law by both Swiss banks and the Nazi regime prior to and during World War II to shield the essential illegality of that misconduct.

My involvement in the Swiss Bank Holocaust case has revealed to me sad truths about the discordance between law and morality, between law and justice, between law and liberty. My experience in that case forced me to confront the use by the Nazis of the law and the courts to deprive Holocaust victims of their dignity, their property and indeed, their very lives. It also enlightened me about the role of the Swiss banks, sometimes acting pursuant to Swiss law and sometimes in violation of it, as their willing accomplices.

My initial understanding of the case was that the dispute centered on accounts that were opened in Swiss Banks before World War II and which became dormant during the war mainly because the owners of the assets of the accounts were murdered by the Nazis.

After the war, Holocaust survivors and their heirs sought to claim the funds deposited in Switzerland. The Swiss banks imposed insurmountable barriers. They destroyed documents and stonewalled heirs of account holders. Swiss law provided both the incentive and the mechanism for this misconduct. Swiss law had no requirement for escheat which would have required banks to turn unclaimed accounts to the state. Without an escheat law, Swiss banks were permitted to keep any assets as long as the money remained in the dormant bank accounts. Swiss law required banks to maintain records for only ten years. Even though the banks knew the importance of maintaining those documents to assist in the processing of Holocaust-related claims, they relied on Swiss law to justify their wholesale document destruction policy. Using Swiss law, the banks also applied charges to these accounts, frequently depleting them to zero.

So much we knew when the case settled. The case appeared to involve misconduct by Swiss banks *after* World War II. What we did not have was a clear understanding of the misconduct of the Swiss banks *prior to and during World War II.*

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1. This introduction derives from my remarks delivered on the occasion of the award of the Federal Bar Council's Learned Hand Medal for Excellence in Federal Jurisprudence, May 1, 2006.

One Holocaust victim's case highlights that behavior as it does the misuse of law by the Nazis and the Swiss to justify their illegal and immoral behavior. Some background is necessary.

Of the $1.25 billion settlement of the case against the Swiss Banks, up to $800 million was set aside to pay claims for deposited assets. To avoid a distribution process in which the amount set aside was simply divided among every person who filed a claim, we established a Claims Resolution Tribunal which operates out of Zurich, Switzerland. This Tribunal receives, researches and meticulously processes claims in a way that results in awards that bear some relationship to the amounts deposited.

In 2005, I approved a $22 million award that had been recommended by the Tribunal. The award went to the survivors of an Austrian Jewish family, who, along with others, owned most of the outstanding shares of the largest sugar refining company in Austria. I refer to it here as OZAG, the acronym of its Austrian name.

As described in the CRT award,[2] shortly before Nazi Germany sent its troops into Austria and incorporated it as part of the German Reich, the members of the families that owned most of the shares of OZAG, which were publicly traded, entered into a Syndicate Agreement with a Swiss Bank. This agreement was designed to protect the family interest from forced transfer to a designee of the Nazis, a practice known as "Aryanization" that was already taking place in Germany.

Under the Syndicate Agreement, the Jewish owners of more than 50 percent of OZAG's shares transferred them to the bank's name. They instructed the bank that the shares subject to the Syndicate Agreement could not be sold or transferred without the consent of the bank. Moreover, the Syndicate Agreement explicitly provided that the bank could not give its consent to such sales or transfers without the unanimous agreement of the beneficial owners. The clear objective was to set up a barrier to enforced sale or confiscation that depended almost entirely on the mutual expectation, embodied in their Syndicate Agreement with the bank, that the bank would not cooperate with, or give in to, the Nazis.

Within days of the *Anschluss*, the worst fears of the Jewish OZAG shareholders were realized. Criminal tax proceedings against the company, supported by an audit report drafted by a self-proclaimed anti-Semite and Nazi party member, were commenced by Nazi functionaries. The objective was to drive down the price of OZAG shares in order to enable a distress sale at a fraction of true value to a hand-picked Nazi "purchaser" with close ties to the Nazi party.

Sadly, the bank did not live up to the expectations of the OZAG shareholders or to its fiduciary commitments. Instead, the bank actively cooperated with the forced sale of their OZAG shares by transferring those shares held by the bank to the designated Nazi "purchaser" at a small fraction of their value. This was done without obtaining the unanimous consent of the Syndicate Agreement participants. By transferring a controlling interest in OZAG through this sale, the bank enabled the Nazis to acquire the remaining shares at a fraction of their true value.

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2. Claims Resolution Tribunal Awards, *In re* Account of Österreichische Zuckerindustrie AG Syndicate, Claim Number 215866/MC (2005), *available at* http://www.crt-ii.org/_awards/_apdfs/Osterreichische_Zuckerindustrie%20.pdf, from which I have taken much of the discussion of the case that follows.

While the $22 million awarded in the OZAG case was unique in its size, it is merely a striking example of the widespread betrayal of Jewish clients by Swiss banks. Having marketed themselves to the Jews of Europe as a safe haven for their property, Swiss banks repeatedly turned Jewish-owned property over to Nazis in order to curry favor with them. They did this either in violation of their contractual obligations or by honoring requests to transfer to the Nazis money and property entrusted to them with full knowledge that the written requests were coerced—both of which violated Swiss law.[3]

The explanation for their conduct was provided by Paul Rossy, the chief executive officer of the Swiss National Bank. Rossy told a forum of economic leaders in July, 1940 that

> [t]he world, and naturally our country as well, is confronted with totally new conditions to which it must become accustomed. … [O]ur country will have to consciously seek its place in this new world and endeavor to play an active role in it. In no case should we limit ourselves to passive adaptation alone.[4]

The OZAG award is also striking in that no record of the rise and fall of the OZAG Syndicate was found in the bank's records. Rather, the documents upon which this award and others are based were submitted by the claimant and/or obtained as a result of research by the staff of the Tribunal from archival sources. We will never know how many other examples of betrayal were buried in the records of the 2.7 million accounts the banks concede they have destroyed completely or how many would have been found in the remaining accounts for which only fragmentary records survive.

The OZAG case is also significant, because it reflects the strategies used by Nazis to seize control of Jewish property, ranging from outright theft to sophisticated distress sales orchestrated by compliant tax officials and faithless banks, all disguised by the veneer of "law."

I want to address briefly this effort by the Nazis to give the theft of property the appearance of an ordinary legal transaction. When I first read a draft of the Tribunal's recommendation in the OZAG case, I wondered why the Nazis had gone to the trouble of conducting a tax audit designed to depress the value of OZAG shares and then have the additional shares purchased, albeit at a fraction of their true value. After all, the shares were simply a paper record ownership. The Nazis had the hard assets of the company in hand and it was being run by a Nazi installed administrator.

The manner in which thefts like this took place was not the only aspect of the Nazi era that was cloaked under veil of legal legitimacy. As one scholar (Omer Bartov) has catalogued it:[5]

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3. *See* Final Report of the Independent Commission of Experts, Switzerland-second World War 276 (2002) [Bergier Commission], *available at* http://www.uek.ch/; Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks, in* Holocaust Restitution: Perspectives on the Litigation and Its Legacy 115, 119–20 (Michael Bazyler & Roger P. Alford eds. 2006).

4. Independent Commission of Experts, Switzerland and Gold Transactions in the Second World War, Interim Report 77 n.64 (1988) (Bergier Commission), available at http://www.uek.ch/.

5. Omer Bartov, Genocide and the Law: Legalizing Murder, Criminalizing the State, Remarks at Touro College symposium, Lawyers, the Holocaust and Democratic Values: What Would You Do? (May 30, 2002). I have adapted Omer Bartov's list, adding some examples and deleting or modifying others; only items four through seven are directly from his remarks.

1. Hitler was legally appointed Chancellor by the President of the Republic.

2. After the burning of the Reichstag, an emergency decree was issued pursuant to a specific article of the Constitution, that suspended civil liberties in order to "defend the state against Communist acts of violence. . . .' "[6] Linking the decree with the purported Communist threat "was designed to give it the appearance of legality."[7]

3. The Reichstag was at least overtly never dispersed by Hitler. Instead, by a two-thirds vote, sufficient to amend the Constitution, it gave Hitler dictatorial powers by legal means.[8]

4. The Nazi persecution of victims—Jews, Communists, the Roma, the handicapped—was largely carried out by means of orders given by legally recognized authorities and recognized by the courts.

5. The "race defilement" trials, which were carried out by regular German courts, and of the Nuremberg Laws themselves which became the law of the land and were recognized by the legal establishment, reflect its deep involvement in the enforcement of racial policies.

6. The concentration camp system was given legal sanction by the judicial authorities, courts were informed of the dispatch of criminals to be worked to death in the camps.

7. German judges were also intimately involved in the sterilization and euthanasia campaign by sanctioning the decisions of physicians.

Law school faculties, purged of Jewish and dissident professors, provided the theoretical justification for the conduct of the regime. Raul Hilberg, the preeminent historian of the Nazi war against the Jews, has written: "Lawyers were everywhere and their influence was pervasive. Again and again, there was a need for legal justifications."[9] In the first three years of the Nazi regime alone, 4,000 decrees, ordinances and statutes were published in the official law bulletin.[10] In the 12-year period of Nazi rule, some 2000 laws were aimed "solely, specifically, and directly at the Jews."[11]

In 1938, after the issuance of a special decree making it mandatory for all Jews to register their property—a step towards its confiscation and Aryanization—front-page newspaper stories appeared explaining the mechanics of the decree. Joseph Goebbels, the Propaganda Minister, "announced proudly at the time, that Jewish influence of the economy would be broken within a short time 'by legal measures.' "[12]

Raul Hilberg describes a conversation at the end of 1938 between Herman Göring, the number two Nazi, and Goebbels. Göring "suggested … that German travelers could

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6. Ingo Müller, Hitler's Justice: The Courts of the Third Reich 47 (Deborah Lucas Schneider trans., 1991) (quoting preamble of Reichstag Fire Decree).

7. *Id.*

8. Richard Lawrence Miller, Nazi Justiz: Law of the Holocaust 45–46 (1995) [hereafter Miller].

9. Raul Hilberg, Perpetrators Victims Bystanders: the Jewish Catastrophe, 1933–1945, at 71 (1992) (hereafter Hilberg).

10. Matthew Lippman, *The White Rose: Judges and Justice in the Third Reich*, 15 Conn. J. Int'l L. 95, 113 (2000).

11. Harry Reicher, *The Day Evil Became the Rule of Law*, Forward, Sept. 23, 2005, *available at* http://forward.com/articles/4013.

12. Robert Gellately, Backing Hitler: Consent and Coercion in Nazi Germany 124 (2001).

always kick Jewish passengers out of a crowded compartment on a train, … Josef Goebbels replied: 'I would not say that. I do not believe in this. There has to be a law.' "[13]

Why did there have to be a law? For a long time, prior to the rise of the Nazis, Germany had an extremely developed and sophisticated legal system known and respected outside of Germany. Indeed, Germany regarded itself as a *Rechtsstatt*—a "constitutional state," which was understood to be a government subject to law.

While the Constitution of Germany was flawed and while right-wing partisanship was widespread among judges of the Weimar Republic, the rule of law was part of accepted German political culture. For this reason, as Richard Miller has observed, the regime's apparent

> obedience to legal forms strengthened its power. Upstanding citizens felt a moral obligation to submit to the law's authority; Thoreau's doctrine of civil disobedience was alien to the German public. Resistance was immoral. If any citizens felt unease about a particular policy, their pained consciences were salved via display of a suitably stamped document in pursuance to a decree.[14]

In sum, the law "removed the question of the morality of legitimacy of the process."[15]

Professor Orland's book illuminates the misuse of "law" by both the Nazi regime and Swiss banks and in the process provides a memorable chronicle of the positive use of law in American courts to rectify historic injustice.

Brooklyn, New York

13. Hilberg at 71.

14. Miller at 1.

15. Peter Hayes, *Summary and Conclusions, in* Confiscation of Jewish Property in Europe, 1933–1945: New Sources and Perspectives: Symposium Proceedings 143, 147 (2003).