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Compensation as a Mechanism of Reconciliation? Lessons from the German Payments for Nazi Forced and Slave Labor¹

By Henning Borggräfe

How did international actors affect Germany's decision to offer compensation?

What lessons can be drawn from the German compensation experience for other countries engaging in reconciliation?

In the growing scholarly discussion on reconciliation after violent conflicts, compensation payments to former victims are described as a fundamental tool besides apologies, truth commissions, or trials. Germany's confrontation with its Nazi past is generally considered a role model. Even if there is no consensus about a definition, "reconciliation" can be described as a process that offers former enemies a way to a shared future. The aim is to overcome the past, but not to forget it. Most reconciliation researchers, who are often also practitioners in this field, share a strong belief that their topic is extremely important. However, reconciliation research lacks empirical analysis. Even in those cases most researchers refer to, the actual effect of compensation payments has barely been explored empirically.²

In 2004 social scientists Rosa Sevy and John Torpey stated, "while there is much talk of 'reconciliation' among those concerned with righting injustice of the past, there is very little (if any) empirical research on the outcomes." Their study on the outcomes of compensation to Japanese-Americans and Japanese-Canadians who suffered internment during World War II is the only attempt to overcome this deficit. Torpey and Sevy determined that the payments, combined with an official apology, brought "a sense of closure" to most victims, but they warned of generalizing their findings: "In cases where more severe harms have been perpetrated, the achievement of reconciliation is likely to be correspondingly more difficult."³

In the extensive historical research on compensation, here specifically on German *Wiedergutmachung*, most conclusions are similarly reserved.⁴ Quite interestingly, in scholarly discussions on reconciliation, this historical research and its findings are hardly considered. However, historical research on compensation shows us two things: First, compensation is a means of dealing with the past, but aims and results must not necessarily be reconciliation. Second, in recognizing this, debates on compensation—its practice and consequences—must be examined empirically, rather than simply assuming effects. Germany's compensation for Nazi slave and forced labor is interesting for two reasons: To what extent is the German case an example for others, especially for debates between Japan and its former enemies? And what can we learn in general about compensation as a tool in reconciliation efforts? After giving a short overview on the debate on German compensation for Nazi slave and forced labor, I will analyze the results of these payments by focusing on three different levels of compensation's consequences for reconciliation: reactions of former victims; developments in international politics; and changes within the German society.

The German Compensation for Nazi Slave and Forced Labor

The German Foundation Remembrance, Responsibility, and Future (*Stiftung Erinnerung, Verantwortung und Zukunft*) established in 2000 after two years of international negotiations, and equipped with an endowment of DM10 billion (at the time about \$5.2 billion) offered payments to more than 1.6 million former slave and forced laborers in nearly 100 countries. This was one of the largest compensation cases, both in terms of financial dimension and the number of people affected. However, the debate resulted in more than payments: Germany's president at the time, Johannes Rau, offered an official apology; numerous local authorities and the Catholic Church established additional funds; many mu-

municipalities invited former victims to visit their towns once again; hundreds of historical studies on Nazi slave and forced labor were published; and local exhibitions were organized. Not least, the Foundation, after completing the distribution of payments in 2007, still finances humanitarian, historical, and human rights projects today.⁵

With a total of up to 20 million people affected, of whom about 13 million were deported to work in Germany, Nazi use of slave and forced labor was one of the biggest mass crimes of World War II.⁶ Despite these huge dimensions, soon after the end of the war this mass crime in Germany as well as in other European societies fell into oblivion. The 1953 German compensation law (*Bundesentschädigungsgesetz*) offered payments only to *German* victims of Nazism. Slave and forced laborers were not considered victims of Nazi injustice but of the so-called normal side effects of war.

In the 1970s the debate on compensation for Nazi victims even died down. The debate that finally led to the establishment of the foundation Remembrance, Responsibility, and Future in 2000 only re-emerged in the 1980s. In this new debate three developments were interconnected: 1. Since its beginning in the early 1980s, the debate has been related to a broad inner German discussion about the Nazi past, deficiencies of the compensation law, and groups of “forgotten victims”; 2. It gained momentum from the organization of former victims from Central and Eastern Europe and by the support of their claims by the governments of the post-socialist countries; 3. Since the mid-1990s it has unfolded its full dynamics in the context of the global discussion about Holocaust era assets and compensation of historical injustices, which was mainly promoted by the U.S. government. Dozens of governments and private institutions were forced to undertake a critical review of their own role in World War II. In an increasingly globalized economy, class action lawsuits against German enterprises in U.S. courts and public pressure in the American media became important tools in compensation politics.

In contrast to what the reconciliation research suggests, the aim of most actors involved was not reconciliation. Most victims, their U.S. lawyers, and representatives of Central and Eastern European governments demanded that Germans pay their debts: withheld wages and profits. German industry strictly rejected the existence of any legal claims. They demanded protection against the lawsuits and legal closure. The aims of the U.S. government as well as of the German government, which initiated and led the negotiations together, were both moral and pragmatic: Not only to establish some measure of justice, but also to prevent endangering international political and economic relations. The idea of offering compensation as a step toward reconciliation actually could be heard mainly in public discussions in Germany.⁷ This finding of different aims and perspectives during the negotiations is important in understanding the possibilities and limits of compensations as a mechanism of reconciliation.

Reactions of Former Slave and Forced Laborers

Looking back on German compensation, James D. Bindenagel, today one of the leading experts in post-conflict justice, quoted a Polish survivor in order to demonstrate the achieved reconciliation: The Foundation, the survivor said, has “*taken away the hatred.*”⁸ A closer look at reactions of former victims shows that it is not so simple. Even survivors, whose biographies are more or less similar, could react quite differently. Just compare, for example, the reactions of Si Frumkin and Roman Kent, both Holocaust survivors, born and persecuted in Eastern Europe, compelled to perform slave labor in concentration camps, who later emigrated to the U.S. Both described their point of view in a book published in 2006; Si Frumkin’s essay is titled, “Why won’t these SOBs give me my money?” Legal closure for him is a violation of his constitutional rights; related to withheld wages, the payments are much too low. “There are, of course, some ex-slaves who gladly accepted the agreement [but] there are others, like myself, who object. We want direct confrontation and compensation to be decided in court.” On the other hand, look at the reaction of Roman Kent: “This foundation [...] is the moral recognition for past wrongs, and we survivors take it as such. I and the other survivors [...] did not speak about money. How could we? [...] We will never equate morality and ethics in terms of dollars and cents. We only stress morality.”⁹

Different reactions resulted not only from general positions on the issue, but also from different experiences with the distribution of payments. Although the Foundation made significant efforts to pursue a victim-friendly practice, experiences of former victims varied greatly. Thousands of letters of former victims to the Foundation or German municipalities and hundreds of oral history interviews conducted after the payments offer insights and reveal an enormous range of reactions, for example:

1. A former Nazi victim received the money and therefore found some kind of closure. He/she was invited to Germany to tell his/her story to young Germans, visited the place of persecution once again, and perceived this as reconciliation.
2. A former forced laborer somewhere in a small Eastern European town searched for years to find documentary proof of his persecution but was not successful; nonetheless he/she applied for compensation, waited another few years for an answer, and finally got no more than a brief letter of rejection. From a total of 2.3 million applications, more than 644,000 were rejected. That's more than a quarter. Furthermore, by talking about victims' reactions, we have to keep in mind that tens of thousands of former slave and forced laborers passed away during the period of negotiations and distribution of payments.
3. A survivor easily filled out the application form, because he/she had clear evidence of slave labor. A few years later the money arrived in the bank account, but nothing changed in his/her attitude to Germany and the Germans.

To sum up: Compensation could lead to forgiveness and reconciliation but it could also disappoint expectations or have nearly no measurable effect. It is impossible to make a general assessment of victims' reactions to compensation. One cannot find a clear answer on this level of analysis.¹⁰

Developments in International Politics

If obviously not all former slave and forced laborers were reconciled by the payments, is German compensation for Nazi victims still an issue in international politics or was the Foundation successful in bringing an end to this debate? In the short term, the termination of the conflict succeeded to a great extent. The legal closure has proved to be very stable. All pending lawsuits against German companies in U.S. courts were dismissed. New lawsuits, both against German companies, as well as against the Foundation, remained unsuccessful. To receive compensation payments, all applicants had to waive further demands in writing. At the same time, almost all other possible claims of compensation for Nazi injustices were dismissed by the German foundation law. The extensive media attention, endangering companies' public images as much as the lawsuits, immediately decreased after payments began.¹¹ An important aspect of the quick end of the international political debate was the fact that all participants in the negotiations were also integrated in the process of distributing the payments. All had a seat on the Foundation's Board of Trustees; the Jewish Claims Conference and foundations in Central and Eastern Europe became so-called partner organizations of the German Foundation and distributed the payments in their respective areas. Based on this structure, most conflicts were regulated internally, not publicly.

Viewed over the long term, the success of compensation seems to be more than far-reaching legal closure. Compensation for Nazi slave and forced labor also contributed to a significant shift in the discourse of dealing with Nazi injustices in two interrelated ways: First, Germany is no longer seen as the principal debtor and Germany's compensation plan is increasingly seen as a model. For example, Stuart Eizenstat, former U.S. chief negotiator on compensation issues, summarized unsolved questions in 2006 by stating that even if not every single aspect was fully sufficient it was still, as Eizenstat called it, an "imperfect justice," Germany's compensation went very well. In his view, much more was not possible. In contrast, other countries still need to deal with remaining issues of the Holocaust era. A hearing in 2007 in the U.S. House of Representatives showed a similar picture. Issues still unresolved included the restitution of former Jewish property in Central and Eastern Europe; compensation for insurance policies; and the question of looted art—all together not German, but European, problems.¹²

Second, and combined with this shift, according to current discussions, what is needed is not addi-

tional compensation, but—and this is described as a task of all nations—health care for the survivors. In June 2009, representatives of the forty-six states participating in the Prague Conference on Holocaust Era Assets insisted in their Terezin Declaration: “the Participating States take note of the special social and medical needs of all survivors and strongly support both public and private efforts in their respective states to enable them to live in dignity with the necessary basic care that it implies.”¹³ As Andrew Baker, Vice President of the Jewish Claims Conference, pointed out, even his organization does not charge new compensation claims against Germany. Their goal in ongoing negotiations is only rededication of pensions of deceased Holocaust victims for the purpose of financing the care other victims still need.¹⁴

Especially in talking with victims’ representatives it becomes very clear that the payments did not automatically establish reconciliation. This is primarily because compensation was regarded as a debt, which the Germans had to pay at any rate. In general the effect of compensation on this level mainly seems to be solving a serious problem that burdened relations between the nations/groups of former victims and perpetrators for decades, and thus no longer impedes developments of deepening cooperation.

Changes in Dealing with the Nazi Past within German Society

While discussions on cases of interstate reconciliation primarily focus on changes in international relations between former enemies, compensation also leads to changes within the respective societies that are likewise crucial.

In order to understand the effect of slave and forced labor compensation within Germany, one has to know that almost all major German activists also contributed to the work of the Foundation Remembrance, Responsibility, and Future. For example, Günter Saathoff, for years the most important German activist in compensation politics, has been a senior employee of the Foundation, responsible for organizing the payment process. Today he is one of the two members of the Foundation’s Board of Directors. The Cologne-based Association for the Information and Consultation of Victims of Nazi Persecution (*Bundesverband Information und Beratung für NS-Verfolgte*), the biggest German pressure group in support of Nazi victims got funds to organize a center to find documentary proof of slave and forced labor, which tens of thousands of victims needed. Almost all German activists participated in this program on a local level.

At the same time, there were broad activities to promote the memory of slave and forced labor. In addition to hundreds of historical studies and exhibitions on forced labor in municipalities, many companies commissioned historians to research their participation in the crimes. The foundation funded an exhibition on Nazi slave and forced labor, which was on view in Berlin and can currently be seen in Moscow. However, despite all these efforts, the German population’s huge interest in Nazi slave and forced labor weakened quickly. As a survey in 2010 found, knowledge on this topic in Germany seems to be rather low.

What was the effect in Germany of negotiations about compensation? Within Germany, too, the main effect of slave and forced labor compensation was to bring an end to the long-lasting debate on compensation for Nazi victims in general. Even if there are still unsolved issues—a second foundation, in favor of groups of “forgotten victims” such as gypsies, so-called asocial elements, homosexuals, and victims of forced sterilization, announced in the 1998 coalition agreement between the SPD and the Greens, has never been established. Soviet prisoners of war still have received no payments for their suffering; claims of victims of massacres conducted by the German army in Greece and Italy have been rejected. The German movement that pushed these issues forward in the past has vanished. Remaining activists are marginal.

This development is likewise connected with a shift in discourses on the Nazi past: In 2009 the long-time critic Günter Saathoff was honored for his achievements with the German Federal Cross of Merit. In his speech he emphasized that compensation was very important to return dignity to the victims. But at the same time, he said, “such an obligation for me was always just one side of the coin. The other side was: We have to do it for ourselves. We can regain our dignity as a country

and as citizens of this country only if we are able to face the historical truth, instead of suppressing it or denying.”¹⁵ In the mid-1990s the Kohl government tried to use a supposedly successful coming to terms with the Nazi past as a source for German national identity. Back then, the activists strongly opposed this attempt. “Remembrance isn’t enough!” was a popular slogan. After compensation of Nazi slave and forced labor, such criticism disappeared from the public. Today there is a broad consensus among political elites about the successful dealing with the Nazi past as a foundation for a new German identity. German journalist Bernd Ulrich has recently labeled this phenomenon as “*Sekundärstolz*” (secondary pride). He explained: “Many Germans are proud of how this country has dealt with its past and that it continues to deal with it.”¹⁶

Conclusion

What are the lessons of the German case? First of all, compensation payments are extremely difficult to achieve. Success came about through the willingness of former perpetrators and, in particular, strong external pressure on German companies. Since all later attempts to reach compensation in other cases of past injustices by using “plaintiffs’ diplomacy” failed, the German case in this regard hardly serves as a model. However, even if payments are agreed upon, it turned out that compensation is not an easy tool of reconciliation.

The payments by the Foundation Remembrance, Responsibility, and Future brought three results. First, the Foundation offered both money and apology to a large number of victims, for most of them for the first time after nearly sixty years. For many victims, the compensation was of great significance. For some, the significance was lower, and others were actually disappointed. Victims’ responses were too varied to come to a simple conclusion on this level of analysis.

Second—and here may be a higher relevance for the Japanese-Korean or Japanese-Chinese context—although many former victims received no compensation and many were still dissatisfied, the payments brought an end to the international debate on compensation by creating effective legal closure and by promoting changes in discourses about the past: Unresolved issues are now a common challenge for all nations. At this level of analysis too, the outcome of compensation is not immediate reconciliation. However, it removes an important hurdle and opens the space for future developments to improve relations.

There are similarities in the third level of analysis, changes within Germany: Compensation contributed massively to bring peace to the internal-German conflict about the correct way to deal with the Nazi past. Since the early 1980s, this controversy had divided German political elites. Now, however, leftists, liberals, and most conservatives found a common view of the Nazi past and a common view of themselves as “secondarily proud” Germans. Thus, the compensation of Nazi slave and forced labor—and this might be of interest especially for Japan—appears not least as a mechanism of German self-reconciliation.

NOTES

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² As an introduction on reconciliation research: David Bloomfield, “On Good Terms: Clarifying Reconciliation,” *Berghoff Report* 14 (2006). As an example for just mentioning compensation as a tool, without looking on it more thoroughly: Yaacov Bar-Siman-Tov, ed., *From Conflict Resolution to Reconciliation* (New York, 2004). In contrast, see Lily Gardner Feldman’s empirical research on Germany, even if compensation is not the central focus: Lily Gardner Feldman, “The principle and practice of ‘reconciliation’ in German foreign policy: relations with France, Israel, Poland, and the Czech Republic,” *International Affairs* 2, 75 (1999): 333-56.

³ Rosa Sevy and John Torpey, “Commemoration, Redress, and Reconciliation in the Integration of Immigrant Communities: The Case of Japanese-Canadians and Japanese-Americans,” *Research on Immigration and Integration in Metropolis*, Working Paper Series (2004): 17, previous quote: p. 3.

⁴ See for example: John Torpey, *Making Whole What Has Been Smashed. On Reparation Politics* (Cambridge, 2006);

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1755 Massachusetts Ave. NW
Suite 700
Washington, DC 20036
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Michael J. Bazylar and Roger Alford (ed.), *Holocaust Restitution. Perspectives on the Litigation and Its Legacy* (New York/London, 2006). On Germany's "Wiedergutmachung": Constantin Goschler, *Schuld und Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945*, 2nd Edition (Göttingen, 2008); Norbert Frei, José Brunner, Constantin Goschler, eds., *Die Praxis der Wiedergutmachung. Geschichte, Erfahrung und Wirkung in Deutschland und Israel* (Göttingen, 2009).

⁵ Former slave laborers in concentration camps and ghettos received DM 15,000 (about \$7,500), forced laborers in German industry and diverse sub-categories received up to DM 5,000 (about \$2,500). For details see: Michael Jansen and Günter Saathoff, eds., 'A Mutual Responsibility and a Moral Obligation.' *The Final Report on Germany's Compensation Programs for Forced Labor and Other Personal Injuries* (Basingstoke/New York, 2009). To current activities of the foundation, see: <http://www.stiftung-evz.de/eng/>

⁶ Living and working conditions of former slave and forced laborers varied a lot. The Nazi use of forced labor ranged from concentration camp slave labor for the war industry to forced labor in German private households. See: Jens Binner and Volkhard Knigge, eds., *Forced labor. The Germans, the forced laborers, and the war; companion volume to the exhibition* (Weimar, 2010). For a first overview see also: <http://www.ausstellung-zwangsarbeit.org/en/280/>

⁷ For example, the later name of the foundation was a result of the internal German discussion. Remembrance, Responsibility and Future, which means: We now have to draw consequences in order to overcome past hostility and create a common future. On the international negotiations: Stuart E. Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York, 2003).

⁸ Interview with James D. Bindenagel, Washington, 6 September 2011. Also see: James D. Bindenagel, "The German Experience," in *The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimization, and Post-Conflict Justice*, Volume 1, ed. Cherif Bassiouni (Antwerp/Oxford/Portland, 2010): 709-34.

⁹ Roman Kent, "It's Not about the Money: A Survivor's Perspective on the German Foundation Initiative," in Bazylar/Alford, ed., *Holocaust Restitution*, 213. Also see: Si Frumkin, "Why Won't These SOB's Give Me My Money? A Survivor's Perspective," in: Bazylar/Alford, ed., *Holocaust Restitution*, 92-100.

¹⁰ Nearly 600 oral history interviews with former slave and forced laborers can be found here: <https://zwangsarbeit-archiv.de/archiv/> The victims' reactions also are a topic in the international research project on the history of the Foundation Remembrance, Responsibility, and Future, mentioned above.

¹¹ On the class actions: Michael J. Bazylar, *Holocaust Justice: The Battle for Restitution in America's Courts* (New York/London, 2003). As an example of the media interest, in the *Financial Times*, the annual number of articles on the topic increased in the late 1990s from an average of less than 15 to 77 in 1999, since then decreased to less than 15 after 2001. In 2010 only 6 related articles were published. Search with ProQuest, Search term: (Nazi OR Holocaust) AND (Compensation OR Reparation) AND (Germany OR German).

¹² Stuart E. Eizenstat, "The Unfinished Business of the Unfinished Business of World War II" in Bazylar/Alford, *Holocaust Restitution*, 297-314. Also see: Minutes of the Hearing of the Subcommittee on Europe of the House Foreign Affairs Committee, 3 October 2007.

¹³ Terezin Declaration, 30 June 2009, available at: <http://www.holocausteraassets.eu/program/conference-proceedings/declarations/>

¹⁴ Interview with Andrew Baker, Washington, 9 September 2011.

¹⁵ Excerpts of Saathoff's speech are published in: *Überleben*, December 2009.

¹⁶ Bernd Ulrich, "Was geht und das an?" *Die Zeit*, no. 4, 21 January 2010.

Henning Borggräfe is a doctoral candidate at Ruhr-University Bochum (RUB) and research assistant at the Chair of Contemporary History at the Department of History at RUB. He was a Harry & Helen Gray/AICGS Reconciliation fellow in August and September, 2011.

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