

Restitution: Wartime Policy Formulation in the U.S. State Department

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The Beginnings of Restitution Policy at the State Department

Internal State Department policy discussions about providing restitution to individuals were held in the context of formulating more general policies toward a postwar Germany. As the Economic and Financial Group of the Council on Foreign Relations put it in a strictly confidential memorandum on March 18, 1943, if reparations were not carefully handled, “barriers to the development of a workable world economic order and reconciliation between peoples” could result.¹

To the Council on Foreign Relations, ‘reparations’ were seen “primarily as a means of speeding recovery and achieving the economic peace aims of the United Nations,” while ‘restitution’ was defined as the obligation to return identifiable stolen property. Restitution was complicated by “a need to decide what has been stolen and what bought,” including sales under compulsion, though restitution “could be made to apply virtually without question to such things as art objects, historical relics, collections of various sorts, etc.” precisely because they were identifiable.

By late 1943, a “working exploratory body” called the Interdivisional Committee on Reparation, Restitution and Property Rights had been formed in the State Department, its charge to formulate “the general bases of departmental policy on the questions of reparation, restitution, and related matters.”² That this was solely a State Department body is attested by a cover note from December 14, 1943: “the Committee is purely

departmental and no attempt has been made to obtain the views of the Treasury Department or other interested governmental agencies". Fortunately, one participant, John Maktos, suggested early on that the minutes record "the discussion and reasoning by which we arrived at those conclusions." There is thus an internal guide provided by a participant-observer, one who even periodically indicated who contributed which formulations. Perhaps the best-known participant in the Interdivisional Committee was Eleanor Dulles, sister of Allan and John Foster Dulles, an economist who began working on the Board of Economic Warfare in April 1942, and who had joined the State Department that September. At the first meeting of the Interdivisional Committee, on November 30, 1943, with 14 present, Chairman Durward Sandifer noted that the British were already at an "advanced stage" in their study of the German reparation problem, and that a variety of other official and unofficial bodies had begun addressing such matters.³

The Political Studies Division in the State Department had compiled a collection of official declarations and unofficial suggestions on "Restitution, Reparations, and Enemy Property" shortly beforehand, on November 20, 1943. In the section entitled "Demands for Restitution," this compilation notes that while the January 5, 1943, London Declaration had "reserved the right to declare invalid any transfer of property, rights, and interests situated in enemy-controlled territory or belonging to persons resident in those territories," non-governmental observers noted that reserving such a right "says nothing about reparation for wrongs."⁴ The London Declaration signatories had set up an investigative "Inter-Allied Armistice Study Commission" to "register the demands of the European governments-in-exile for recovery of property taken by the enemy." Individual ministers of the British, Belgian, Dutch, Norwegian and Polish governments also had

expressed their desires to “press for restitution of property,” but “in the United States, the question of restitution has not been a subject of popular debate.” The “Inter-Allied Armistice Study Commission” was reported to have found the problem of restitution to be “almost insoluble ... because Hitler had so changed the economic face of Europe that a return to the status quo ante was impossible.” The journalist reporting on these discussions argued that “instead of demanding restitution to individuals, he advocated the establishment of a cartel of the plundered to make possible a sensible exploitation of the Nazi liquidation.”⁵

First Meetings, First Definitions

At the outset on November 30, 1943, the Interdivisional Committee tentatively agreed that reparation and restitution “should be formulated in such a way as to interfere as little as possible with the major economic objectives of this government,” that “reparation (over and above restitution) will be levied on Germany,” and that “an effective world system of collective security” would need to be in existence to control Germany. In amending the minutes on December 2, 1943, John Maktos noted that Secretary of State Cordell Hull’s views (as characterized by W.A. Fowler) were that reparation should not be used punitively, the amount should not be excessive and reparations should not be used as a means of keeping Germany in line.

On this same date (December 2, 1943), John Maktos and Eleanor Dulles completed a preliminary draft offering definitions of reparation, restitution, and replacement. ‘Reparation’ was to be the overall term for “the endeavor by the United Nations as claimants to secure compensation for injuries suffered as a result of German

[Japanese, Italian, other enemies] aggression.” ‘Replacement’ was a part of reparation and based on value equivalents: “the restoration to claimant states of items which are similar to ... specific goods taken away.”

‘Restitution,’ by contrast, was defined in both broad and narrow terms, and would include real estate and securities. If it was carried out as a restitution program, it “could have a time limit – beyond which the restitution of looted items might be considered to be outside the scope of the question of reparation.” The broad definition was “restoration to individual claimants or to governments, of identifiable objects which have been removed from the ownership or control of the owners by the enemy.” The argument for this definition was that “it may prove advisable to have no reparation in addition to restitution and in this case, some may insist upon the replacement of objects looted even though they may not wish to demand compensation for less specific injuries.”

The narrow definition was the “restoration of unique and valuable items,” including art objects, scientific equipment, books, “and in some cases household effects such as heirlooms.” Excluded from this narrower definition were items that though identifiable were not unique, such as machines, trucks, and livestock, where “payment in similar goods or in cash is reasonable compensation.” The argument for “this narrow and somewhat artificial definition is the avoidance of undue complication of a program involving a large number of specific claims and attempts to find and identify property which is not unique.”

Eleanor Dulles, W.A. Fowler and Paul Ellsworth drafted a tentative set of principles and aims a week later, on December 10, 1943. They stated that reparation “shall not be relied upon as a major instrument of control over German military power;”

instead it “should be designed primarily as a means of speeding reconstruction and recovery.” In addition, the “ends of justice will not be adequately served either as to states or individuals” if compensation were only limited to the “physical reconstruction of devastated areas.” The principle underlying acts of restitution was that “Germany must not be allowed to profit in any way from spoilation and domination of other countries,” but the recommendation for what to actually do under restitution - namely to confine it to “a narrow category of claims” - was far more specific.

The reasons given for limiting claims categories might be best characterized as “administrative expediency” and the “avoidance of conflicting claims.” Limiting claims to a narrow category will “restrict the number of individual claims for specific property to manageable proportions,” though the “restitution of unique objects to the original owners” is urged - listing art objects, rare books, and scientific instruments here again - since monetary compensation is not an adequate substitute for the “peculiar importance” these items have to their original owners. At the same time, too much “earmarking of Germany’s wealth, whether looted or not” in order to satisfy particular claims may result in an injustice “in providing for restitution before meeting the claims, equally legitimate, of other victims of Germany’s looting.” That such a view was not unique to Dulles, Fowler and Ellsworth is indicated by a memorandum from Donald Hiss, who, in discussing a reorganization of the Interdivisional Committee, noted in passing that “present indications (February 9, 1944) are that there will be demands for very heavy reparation payments by many, if not all, of the allied governments whose countries have been occupied by the Germans.”

Securities were to be regarded as a special case because “it may not be desirable ... to carry through restitution immediately” partly owing to complex questions of ownership and control, partly owing to economic policies that might be pursued. The restoration of real estate, particularly to refugees, “may require special provisions” and “will have to be worked out.” All these recommendations were repeated verbatim four days later, on December 14, 1943, in a further memorandum, accompanied by a cover note emphasizing the tentative nature of these views and that they did not represent the position of the U.S. or of the State Department.

By December 29, 1943, seven special subcommittees of the Interdivisional Committee had been established to examine topics including peace measures, German liability, or creating a viable plan for post-war Germany. The most significant here was No. 6: Subcommittee on Restitution and Replacement; members at the time were John Maktos, Alexander Rosenson and Jacques Reinstein.⁶

Rebuffing the Roberts Commission

The attitude toward certain other interested parties was decidedly standoffish, to judge by a note from the January 25, 1944 minutes of the Interdivisional Committee. Jacques Reinstein reported he had been approached by a representative of the Roberts Commission, which had been constituted on August 20, 1943, who wanted to know the State Department’s views on restitution, with an eye to having the Roberts Commission “serve as the depository of claims for the restitution of art objects.” Reinstein explained “some of the problems involved in locating, identifying and restoring property” to this representative and suggested that “these tasks were beyond the scope of a semi-official

body like the Commission.” After a discussion in the Interdivisional Committee, it was agreed that the function of the [Roberts] Commission was properly in the fields of fact-finding and advice, and that it should not purport to lay down general principles on restitution and replacement.

Rebuffed, the Roberts Commission apparently did not try to discuss restitution principles with the State Department again until July 1944, according to their own final report “when the success of the Allied landings in France was assured.” This renewed attempt by the Roberts Commission occurred after the Interdivisional Committee of the State Department had not only concluded its deliberations (by June 24, 1944) but had completed its work and presented it to the Executive Committee on Economic Foreign Policy (on June 29, 1944), then presided over by Assistant Secretary of State Dean Acheson. The Roberts Commission clearly wanted to give advice, but the State Department responded that “some statements of policy had been formulated” already, and that the Roberts Commission was only being “asked to express its opinion.” The Roberts Commission wording about restitution - that “the existing governments of the countries where the property was formerly located should at first receive such restored looted property rather than the former owners individually” - mirrored the position the State Department had already taken, as did the assertion that “all property taken to Germany during the period of German occupation should be considered to have been acquired under duress.”⁷ For the Roberts Commission to state that consultations had “led to the formulation, in the spring of 1945, of a set of principles of restitution prepared in the Department of State” makes it clear whose formulation of principles counted.

Pragmatism, Expediency, Conflict Avoidance: reasons not to retribute to individuals

The first mention that “individual claimants should look for satisfaction of their claims solely to their national governments” came in the deliberations of Subcommittee 2 (on Compensation for Losses; its members in December were W.A. Fowler, J. Plakias, Alexander Rosenson, and the chair, R. Hooker) of February 5, 1944. In their discussion, it was argued that “no attempt can or should be made...to regulate or otherwise deal with the relations between individual claimants and their national governments,” perhaps out of a desire to not interfere in the affairs of other sovereign nations.

The mixing of restitution and reparation claims was acknowledged by noting that “it will be politically more expedient for individual claimants to seek satisfaction out of reparation receipts from the defeated enemy than from national revenues,” so “there will clearly be strong tendency on the part of such claimants to press for maximum reparation.” The effect will be pressure for greater reparations in order that there is enough money for individual claims. At the same time, Subcommittee 2 noted the special claims of stateless and persecuted persons, whose “injuries suffered as a result of religious or racial persecution, as such, cannot be compensated by reparation” and “whose claims for reparation will lack the advocacy of a constituted government.” The demands of the stateless and displaced will create a situation in which it will clearly “not be practicable for claims thus approved to be satisfied individually by Germany,” and the subcommittee recommended the appointment of a Trustee who would receive reparation payments on behalf of such persons. These were persons who “unlike other claimants, will not have the possibility of receiving additional compensation from a national government.”

Subcommittee 6 on Restitution and Replacement reiterated the same ‘non-restitution to individuals’ argument in Reparations Memorandum 20, “Recommendations on Restitution,” some time later (April 10, 1944), stating that “no attempt should be made to make restitution to the original owners individually.” Identifiable looted property from occupied countries should be returned to the legitimate governments of the liberated countries, as all property transferred to Germany during its occupation “should be presumed to have been transferred under duress.” Here again, politics and practicalities are mixed together:

For political reasons the right to restitution should be recognized in all cases and for all classes of property, but, as a practical matter, restitution should be restricted to relatively few kinds of property such as archives and records of the occupied countries; gold; works of art, books and other cultural and educational treasures... [Bates 320633]

Looted property was to be returned in the condition it was found, with recompense for damage or deterioration covered under reparations. The key statements come in the commentary:

The question of restoration to individual owners is a matter for these [legitimate] governments to handle in whatever way they see fit. The original owners may have received part payment for property taken from them under duress and the governments in question may wish to make adjustments for this circumstance in

returning the property. In some cases it may be impossible to locate the original owners or their heirs and the governments involved will have to decide what should be done with the property or proceeds therefrom [Bates 320634].

Complications arise if Germans “gave an asset of real value in acquiring title to property in an occupied country,” and restitution should “be restricted to property in existence prior to German occupation.” Practicalities predominated: “A thorough search for all the miscellaneous kinds of property which have been looted is utterly impracticable,” and

practical considerations make it necessary to ignore the problem of restoring small items such as furniture and fixtures, rugs and hangings, and similar items... the occupation authorities should not be burdened with a task so difficult and at the same time so relatively unimportant. No particular effort should be made to secure the return of these items....A search of Germany by large numbers of private individuals looking for looted property should not be permitted [Bates 320637].

Not only that, but “the right to restitution should be restricted to a definite interval of time following the armistice;” that time limit was countered with the argument that it would only stimulate “efforts to conceal looted property and prevent its return until the time when it would no longer be subject to seizure and return.” “In the last analysis,” this memo concludes, “the settlement with Germany will be on a pragmatic basis,” as it “will be impossible or at least inexpedient to include all the losses inflicted by or traceable to

Germany” into reparations calculations. Where property is “irretrievably lost or destroyed, recompense...will probably never be made in full.”

Subcommittee 6 also discussed the idea of ‘replacement’ as something different than ‘restitution in kind,’ noting that since it was all to aid reconstruction, whether or not the items were “similar to the original items would seem to make little difference.” The exceptions were provided by “gold and works of art or other cultural treasures which have been looted, destroyed, or lost through German action. In this connection replacement would mean the restoration of items as similar to those originally looted or destroyed as possible.” For gold in particular, the ease with which identifying marks on gold bars can be mutilated makes the principle of restoring only identifiable property inoperable: the memo gloomily notes that “the likelihood of being able to find and identify gold looted from occupied countries by the Nazis is not great.” For art, archives and other cultural treasures, replacement should be as similar as possible, since their uniqueness means “no adequate recompense can be made for their loss in money or ordinary goods.” One difficulty is that “objects which are of peculiar German cultural significance” should not be seized and used as replacements, since this “might easily arouse resentment in Germany, altogether disproportionate to their value to the recipient countries.”⁸

April Discussions about Reparation Memorandum 20

In the discussion of Reparation Memorandum 20 in the Interdivisional Committee the next day (April 11, 1944), Seymour Rubin pointed out that if restituted property is returned to governments, they “may distribute based on need or social policy rather than

that of prior title,” which raised the “possibility that one set of individuals will be receiving full compensation, while another set which was no less injured would be receiving only partial compensation.” W. A. Fowler, acting chairman of the meeting, thought “recipient governments have the liberty of returning property to its original owners or not, as they see fit.” On the question of securities, Eleanor Dulles thought they should be returned not based on residence but on the citizenship of the owners, a position “opposed by other members of the Committee on grounds of both administrative convenience and equity.” She also felt that some of the wording (“the right to restitution should be recognized in all cases and for all classes of property”) “would raise false hopes of receiving looted goods back.” Jacques Reinstein agreed that it was “politically impossible to deny the right of restitution to any individual who may find his property, but that a serious attempt should be made to find only a few important classes of goods.”⁹

At a subsequent meeting of the Interdivisional Committee a few days later (April 14, 1944), R. Bowen suggested that the wording of Reparation Memo 20 be altered to read: “The German government and/or Allied control authorities in Germany should restore whatever looted property they find to the then-existing governments of the territories where the property had its situs and not to the former owners individually.”¹⁰ In a summary and reordering of what she thought Reparation Memo 20 had said, Eleanor Dulles said “she would have the memo recognize that property should be returned to governments and not to individuals” and that “she wanted at all costs to avoid a great mass of intergovernmental claims.”¹¹

In meetings of the Interdivisional Committee on April 18, 1944, with 13 present,¹² and on April 20, 1944, with 10 present,¹³ the latest recommendations on restitution

drafted by Subcommittee 6 were discussed.¹⁴ W.A. Fowler and Paul Ellsworth successfully argued that for practical reasons, reparation obligations should be kept separate from restitution - the whole committee agreed to this - and the issues surrounding securities and gold were revisited.

Subcommittee 6 thought looted securities should be collected at an inter-allied agency that would make a preliminary determination of ownership and then forward these securities to the countries from which they were looted, which Eleanor Dulles again objected to, preferring to return them to the government of which the owner is a national. Seymour Rubin, Jacques Reinstein and Earl Hackworth all disagreed, on the grounds that there would be numerous legal problems as well as conflicting jurisdictions, and that it would be “impractical to saddle an international body with the responsibility of disentangling the numerous conflicting claims which would be made.” Eleanor Dulles thereupon said she “thought that the Reparation Committee was going beyond its terms of reference when it laid down the principle by which the commission handling the securities should be guided.”¹⁵ Subsequent recommendations of the Reparation Committee would incorporate elements of all of these suggestions and objections.¹⁶

As for gold, the suggestion that “gold should be seized and pro-rated among the Allied countries whose gold stocks were acquired by the Germans under duress” was regarded by Paul Ellsworth and Eleanor Dulles as limiting the ability to use such gold for European reconstruction: gold should, Eleanor Dulles added, “go [to] the place where it is needed most.” W.A. Brown and Jacques Reinstein noted the political difficulties of distributing gold in any manner but pro-rating, with W.A. Brown adding that the “psychological value attached to gold would serve to blow up the issue entirely out of

proportion to its real importance.” John Maktos thought countries should only be entitled to the restitution of “gold which they can identify as their own,” a purpose not served by pro-rating, and that pro-rating would not serve “the needs of reconstruction” - to which W. A. Brown responded that Mr. Maktos’s proposal “though entirely logical, would be utterly unconvincing.” The discussion continued, and it was finally agreed the subcommittee recommendations include wording that identifiable looted gold should be restored to the respective country, the restored amount charged against the country’s pro-rated share, and that no country be entitled “to more gold than it had lost by looting.”¹⁷ The “available” gold in Germany might not be sufficient, but should be divided “among the looted countries in proportion to their losses,” a later formulation put it.¹⁸ Because the United States was the largest holder of gold in the world, Subcommittee 6 also felt the solutions to looted gold problems should emanate from European countries,¹⁹ and the United States “should avoid taking the initiative on this question.”²⁰

By April 24, 1944, Subcommittee 6 had created a revised set of Recommendations on Restitution,²¹ incorporating various suggestions of committee members. Here the ‘non-restitution to individuals’ formulation suggested by R. Bowen ten days previously was reiterated, as well as the formulations “no attempt should be made to make restitution to the original owners individually” and “restoration to individual owners is a matter for these governments to handle in whatever way they see fit.” Other subjects discussed in the meantime - that governments would be responsible for equitable disposition of the property under their laws, that property transfers under German occupation should be presumed to have been transferred under duress, that official efforts to locate property would have to be limited and concentrated on few

categories of property such as archives, gold, works of art, cultural treasures, and securities - were incorporated into this revision. "In the last analysis," the memo notes,

the settlement with Germany must be on a pragmatic basis. Efforts ought to be made to achieve rough equity but exact justice as between claimants will be impossible to obtain. The losses inflicted by Germany are so enormous that full recompense can never be made [Bates 320676].

Jewish Property

The issue of Jewish property was raised at the meeting on April 14, 1944, and was much more extensively discussed in Reparation Memorandum 23: "Recommendations on Property of Racial or Religious Minorities Seized by the Germans or Otherwise Transferred under Duress" (April 15, 1944), generated by Subcommittee 6. The first recommendation was that the German Government be required to aid in cash or in kind "in the resettlement of persecuted racial and religious minorities," and it was clearly recognized that such minorities "will mostly be refugees at the war's end and will mostly be Jewish."²² The amount was to be related to the costs of resettlement, "not to the losses suffered by the refugees" themselves, for "it only seems fair that the German Government should be required to provide aid for helping to solve the problem it created."²³

As for property losses, the recommendation was that there be "an indemnity up to some fixed amount, for example \$10,000, per person for people dispossessed of their property" through Nazi racial laws and discriminatory measures. There was a practical

problem, since if “refugee Jews should not be obliged to return to Germany to obtain the benefit of this provision,” then enough foreign exchange would have to be available to compensate abroad, and that do so. There was also the possibility of requiring Germans, as part of the peace settlement, to return property taken from Jews before the war, but

it is felt that such a course would probably create more problems than it would solve. It might well build up further resentment against the Jews. No German Government could be expected to administer such a program sympathetically [Bates 320657]

The “practical expedient” of providing an indemnity had “the virtue of giving some recompense to dispossessed persons and at the same time of being within the bounds of practicability.”²⁴ Because recommendations that the German government pay for resettlement and dispossession did not address the “many Nazis [who have] been unjustly enriched at the expense of Jews and other minority groups in Germany,” the subcommittee also suggested an “unjust enrichment tax” be levied to “deprive these Nazis of their ill-gotten gains.”

Subcommittee 6 disagreed about whether those persecuted for their political views should be included, with a majority favoring “exclusion of political minorities from any benefits on the ground that all states reserved the right to take necessary measures against dangerous political minorities.” A minority on the Subcommittee argued for inclusion “on the ground that Hitler’s treatment of such persons was as repugnant to the American way of life as his treatment of racial and religious

minorities.”²⁵ The split in opinion led the Subcommittee to suggest passing the question to the main Interdivisional Committee for decision.

Reparation Memorandum 23 was revised a week later (April 22, 1944), with some wording changes, but with the same calls for resettlement aid, indemnification for property losses and an unjust enrichment tax.²⁶ In the text, the recommendations were now specified as applying to German nationals, former German nationals inside or outside Germany, and stateless persons resident in Germany on or before September 1, 1939. In the accompanying comment section, memorandum 23a notes that resettlement aid is justified because “the wrongs these people have suffered are directly traceable to the Nazis and began long before the war.” As for property losses,

the difficulties and questionable aspects of a program to restore all their former property to the German Jews and other individuals subjected to discriminatory laws by reason of their racial or religious status appear to dictate some compromise measure. As a practical expedient, it is believed feasible to require the German Government to provide an indemnity up to a moderate maximum per person, which should be identical for all claimants regardless of the amount of loss [Bates 320668].

The split opinion in Subcommittee 6 led to a full discussion in the Interdivisional Committee on June 8, with 10 present, over how compensation to persecuted minorities was actually to be handled.²⁷ The opinions of the full Committee were no less divided than on the Subcommittee. At issue was whether the treatment of individuals deserved a

separate report, thereby potentially delaying submission of the final report since more study of the problem would be needed, but more important was the question who should be compensated, and whether those inside and outside Germany should be treated differently. The committee, with Eleanor Dulles opposed and Ralph Bowen abstaining until they could see the wording, eventually voted on Paul Ellsworth's suggestion to recommend resettlement [aid], a "moderate maximum payment" to persecutees, but that those who had suffered for their political views would need "a careful determination," and "perhaps the German Government would do more for these persons."

The Final Report: from Interdivisional Committee to ECEFP

The Final Report of the Interdivisional Committee, submitted to the Executive Committee on Economic Foreign Policy (ECEFP), was completed on June 24, 1944, and was divided into three parts. The first contained "Recommendations with Respect to Reparation During the Immediate Post-Armistice Period,"²⁸ the second had "Recommendations with Respect to a Final Settlement of German Reparations,"²⁹ and the third covered "Recommendations with Respect to Matters Related to but not part of a Reparation Settlement."³⁰

Restitution formed a relatively small part of a report devoted largely to reparations, as was clear from how little text was devoted to restitution in the final report summary. In toto, it read:

There should be an unlimited obligation upon Germany to restore looted property. In practice, restitution will have to be limited by the needs of European

reconstruction and by considerations of administrative feasibility. Looted property should be restored to governments rather than to former individual owners and should be restricted to property in existence prior to German occupation.

Restitution should be apart from and in addition to any deliveries made by Germany as reparation. Replacement should be limited to gold and to works of art, books, and other cultural treasures [Bates 204293].

As for indemnification, it “should be provided for minority groups persecuted by the Nazis,” either as support for organized resettlement schemes” or as “individual payments up to a moderate maximum,” and the groups who would benefit “should be carefully defined so as not to be unreasonably inclusive.” As for individuals, “individual claimants should look for satisfaction of their claims solely to their national governments.”

The report was presented by Paul Ellsworth to the ECEFP, at its meeting on June 29, 1944, accompanied by Donald Hiss and Alexander Rosenson of the Interdivisional Committee. Dean Acheson presided, and other State Department members included Harry Hawkins, Robert Carr and James Reber; also present were representatives of the Treasury (Norman Ness), Agriculture (Eric Englund), Commerce (Amos Taylor), and Labor (A.F. Hinrichs) Departments, as well as representatives from the United States Tariff Commission (Oscar Ryder), Bureau of the Budget (Walter Laves) and Foreign Economic Administration (Lauchlin Currie and James Angell).³¹ Paul Ellsworth noted that the final report of the Interdivisional Committee “had been approved by the Postwar Programs Committee of the Department of State with some reservations,” which from the ensuing presentation apparently had to do with whether Germans (particularly those who

had been in the Todt organization, S.A., S.S. and Gestapo) would be recruited or forced to do labor service after the war.³²

The main point of Ellsworth's presentation was that the United States, though it "had suffered no war damage" should not oppose reparation. The "object of reparation, however, should be economic reconstruction" and "Germany should be permitted as soon as feasible to become integrated into the world economy."³³ Reparation itself should not last more than ten years. Restitution, defined as relating "to identifiable stolen or looted property," was assumed to "be carried on as rapidly as possible," but "more study is also needed on the subject of compensation to be granted to persecuted religious, racial and political groups."³⁴

At this meeting few questions were raised directly - Norman Ness (Treasury) asked about "dealing with reparation in a manner similar to that followed in reverse lend-lease" and Eric Englund (Agriculture) suggested that "a heavy burden of reparation immediately after the war would preclude an early restoration of German commerce" – though a catalog of questions solicited from each member present at the meetings was included at the end of the minutes. None of these questions directly addressed restitution, though one (unidentified) member did ask "what claims in respect of social security rights of forced labor should be admitted for reparation?"

In a subsequent ECEFP meeting, on July 5, 1944, with ten of the members from the June 29 meeting present, and with some substitutions, most of the discussion concerned the total amount of reparation Germany would be asked to pay and where it might come from.³⁵ The only mention of restitution concerned terminology, since Lauchlin Currie felt the term reparation "is associated with the unfortunate experiences

with reparation after the last war,” and substituting for it the term ‘restitution’ might be advisable. Alexander Rosenson demurred, arguing that the terms reparation, restitution and replacement “had taken on specialized meanings” and substitution would only lead to confusion now. Because other committees had also been considering postwar policy, Alexander Rosenson was asked to compare the conclusions reached by the Interdivisional Committee with a document entitled “General Objectives of United States Economic Policy with Respect to Germany” (D-22), but upon doing so two days later, Rosenson found relatively few points of inconsistency.³⁶ The ECEFP decided that where there were differences, the “Germany document (D-22) should be made consistent with the reparation report.”

The Policy is Transmitted Further

On August 4, 1944, the ECEFP approved the revised “Report on Reparation, Restitution, and Property Rights – Germany,”³⁷ and transmitted it to the Secretaries of War and Navy.³⁸ In it, the formulations that had been worked over since November, 1943, can be found in their final form, with the most relevant to restitution that:

- a) In principle there should be an unlimited obligation on Germany to restore identifiable looted property, even though in practice official efforts to locate such property will have to be confined to a limited number of categories.
- b) Restitution should be restricted to identifiable property in existence prior to German occupation. Looted property should be restored to the existing governments of the territories where the property had its situs and not to the

former owners individually [Bates 204373 or Bates 204281].

The alterations in the formulations of the last section, “Compensation for Injuries to Persecuted German Minority Groups” are interesting as much for the tone adopted as for the policy of resettlement aid and indemnification for property loss that is suggested. “The moral basis for such compensation is self-evident,” this section proclaims, “moreover, it is now recognized that minority baiting and persecution is a potent weapon in the hands of totalitarian demagogues.”³⁹ But practicalities and politics make compensation difficult:

- a) most of the individual involved are either dead or outside the country and many would not find it worthwhile to return in order to regain their property
- b) large-scale transfers of funds abroad in full satisfaction of these claims would be out of the question
- c) the full return of property to members of these groups at a time when the general German public was passing through a period of great difficulty would tend to create strong social tension in Germany
- d) lack of proof by claimants, and the varying circumstances under which property was lost or sold, would make the administrative problem of restitution extremely difficult [Bates 204377-204378 or Bates 204382].

Conclusion

The orientation toward restitution that the foregoing has detailed was subsequently reflected in international agreements and in policies implemented in 1945 and 1946. At the Paris Conference on Reparations, held from November 9 to December 15, 1945, the same argument over non-restitution to individuals appears. “The allocation of German assets as reparation is made, not to the individual persons who suffered losses, but to the several governments involved,” one can read in the State Department Bulletin’s report on the Paris Conference.⁴⁰

More relevant for policy actually implemented was that the Allied Secretariat of the Allied Control Authority’s Coordinating Committee received the ECEFP’s final summary report on restitution in early 1946. This Coordinating Committee, a quadripartite body, passed the document on to the “Reparations, Deliveries and Restitutions Directorate,” which “approved the attached paper and has forwarded it to Zone Commanders for application” including with it detailed procedures for restitution.⁴¹ In short, what had been drafted internally in the State Department on restitution became the policy that was to be implemented by those in charge of the Occupation Zones in Germany.

¹ Bates 320607; this is an internal numbering system for copies of documents in the National Archives. These documents were used in the course of research undertaken to craft the Staff Report of the Presidential Advisory Committee on Holocaust-Era Assets in the United States, issued by the GPO in 2000. Bates numbers can be used to find the original sources used; they are now available in the Clinton Digital Library. This memo was entitled “Reparations Policy Toward Germany” and according to a December 2, 1943, memo from John Maktos to Durward Sandifer [Bates 320615], this particular March 18 memo was the basis for a report prepared by Mr. W. A. Fowler for Secretary of State Cordell Hull that was submitted to - but not discussed at - the Tripartite Moscow Conference on October 25, 1943 [Bates 320614]. However, as Maktos notes, “Mr. Fowler thought that the Secretary had not made up his mind as to all the points involved in the document” [Bates 320615].

² Bates 320607-320610 for previous three quotes. Both the number of Interdivisional Committee participants and the number of State Department offices represented on this committee fluctuated, but in late 1943, 14 participants represented 10 offices [Bates 320612, 320622]. Sometimes there were visitors [Bates 320645], especially as the date for the final report [Bates 204284-204290 and 204378-204395] neared.

³ Bates 320617 and 320616 for previous quotes. In particular, he noted the following: Universities Committee on Post-War International Problems (Report on Treatment of Defeated Enemy Countries), Committee of Allied Ministers of Finance, Subcommittee on Dispossession (Interim Report), Conference of Allied Ministers of Education, Commission on Books and Periodicals (Minutes of Subcommittees on Revindication of *objects d'art* and Scientific Equipment), the American Commission for the Protection and Salvage of Historic and Artistic Monuments in Europe, called the "Roberts Commission," UNRRA (Documents on "delooting" of Germany), and the Technical Advisory Committee on Inland Transport Requirements (Reports of Allied Post-War Requirements Bureau). Chairman Sandifer asked Mr. W. A. Brown, Jr., who had been present at this meeting, to analyze what these committees recommended, inasmuch as they related directly to reparation [Bates 320612-13].

⁴ Bates 315144-315-146. The observer was Lester Woolsey. See "The Forced Transfer of Property in Enemy-Occupied Territories," *American Journal of International Law* (April 1943). Woolsey also pointed out that a "nullification" of transfers depended on having a legitimate government - not necessarily represented by the refugee governments at the time - and that a number of countries (the Baltic nations and Denmark) were not signatories to the London Declaration.

⁵ Bates 315146-315147. While one should not blame the messenger (the American journalist Donald Bell), this November 20, 1943, compilation is the first mention we have found in State Department documents of the idea that there should be an alternative to restituting to individuals.

⁶ The previous paragraphs contain material from Bates 320614-320615, 315137-315143, 315108-315116, and 320617-320621. In the records there is also a list of a "Special Committee on Reparation, Restitution, and Property Rights," possibly composed of members who were higher up in the State Department's administrative ladder, that includes names (Pasvolsky, Hiss, Riddleberger, Livesey) not previously listed in the Interdivisional Committee memos [Bates 320622]. There is also space on this list for representatives from Treasury, Commerce, the Federal Reserve, and the Alien Property Custodian, though no names were listed, suggesting this "Special Committee" may have been meant to be interdepartmental.

⁷ Bates 320624; 204291-240294; 204346-204352; Roberts Commission 1946, pp. 12-13. Among other formulations that appear to mirror State Department wording, the Roberts Commission also stated that looted property should be restored in the condition that it was found, that reparations payments and the restitution of looted property should be separate, that there should be restitution in kind for art or cultural objects from German public or private collections. The Roberts Commission had many more specific policy suggestions relevant to art and cultural property that were not addressed directly by the State Department in its 1943/44 internal deliberations.

⁸ Bates 320625-320632; 320633-320639

⁹ Bates 320646-320647

¹⁰ Bates 320650. This would become the standard formulation; see Bates 204281, 204384, 320670

¹¹ Bates 320651

¹² Bates 320659-320660

¹³ Bates 320661-320664

¹⁴ Bates 320638-320640

¹⁵ Bates 320661-320662

¹⁶ Bates 320678-320679

¹⁷ Bates 360663-360664

¹⁸ Bates 320680

¹⁹ Bates 320682

²⁰ Bates 320664

²¹ Bates 320670-320679

²² Bates 320656

²³ Bates 320657

²⁴ Bates 320658

²⁵ Bates 320656

²⁶ Bates 320665-320669 320688-320693

²⁷ Bates 320688-320693

²⁸ Bates 204284-204290

²⁹ Bates 204378-204389

³⁰ Bates 204390-204395

³¹ Bates 204352

³² Bates 204347

³³ Bates 204348

³⁴ Bates 204350 54-56

³⁵ Bates 204354-240356

³⁶ The General Objectives are at Bates 204357. The possible points of inconsistency between ECEFP Documents on (1) Economic Policy with Respect to Germany, and (2) Reparation, Mr. Alexander M. Rosenson, Department of State, July 7 1944, ECEFP - D-26/44, RG 353, Entry 192, 5.19B ECEFP Meetings, 3. Documents 21/44-30/44, Box 45. 204362-204377

³⁷ Bates 204362-204377

³⁸ This report, verbatim, is reproduced in Foreign Relations of the United States, Diplomatic Papers 1944, Volume 1, General (Washington: GPO, 1966), pp. 287-299. See also Bates 204277-204283.

³⁹ Bates 204376 or Bates 204282

⁴⁰ From John Howard, "The Paris Agreement on Reparation from Germany," *Department of State Bulletin*, Vol. 14, No. 363 (June 16, 1946), p. 1026 (cf. Bates 208743-208754, quote at 208752).

⁴¹ Allied Control Authority Coordinating Committee, Quadripartite Procedures for Restitution, 17 April 1946, CORC/P(46)143. Archived as RG 260, Reparations and Restitution, Policy Matters, Box 23.

Written 5 February 2000; references and text cleaned in late 2025