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Jewish Claims Conference's Duty to Victims of Nazis

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March 8, 2016

A sad, surprising turn of events is happening with the Jewish Conference on Material Claims Against Germany Inc. It is a relatively unknown situation that, precisely because it has elements of betrayal, deserves publicity and oversight and correction.

Consider the case of Albert L. and his children. Albert owned a 25 percent share in a Berlin company that produced oilcloth and carpets. Since the owners were Jewish, the Nazis seized the company. The claims conference received a damage award of \$3,127,593 for the loss of the company. Albert died, leaving two children, Helga and Claude. Helga, who had health problems, filed a claim and was paid \$312,800. Her brother Claude, who does not have comparable health problems, is being offered about \$129,000. Thus, of the \$3,127,593 received, the claims conference is not paying out more than \$441,000 in total.

A comparable situation exists for the heirs of Fritz O., who had a one-third share in a German company that produced artificial flowers and feathers in Berlin. All three shareholders were Jewish and were forced in 1937 to sell the company to non-Jewish businessmen. The claims conference received \$810,000 for the loss of the company. Fritz died and his daughter Jean filed a claim but was only offered 33 percent of her father's one-third share, or \$89,000. The other two shareholders had no children, so the claims conference is going to keep their shares, as well as 67 percent of Fritz's shares. Put another way, the conference would keep \$721,000 of the \$810,000 received. Numerous other similar examples abound.

What is going on here?

The Conference on Material Claims Against Germany was set up in 1952 in New York as a friend of the Jewish people. It was established to help Jews get back property they lost due to Nazi persecution. The conference's charitable purpose, according to its certificate of incorporation, is to "act for and on behalf of Jewish persons ... who were victims of Nazi persecution and discrimination ... and relating to the restitution of property rights of every nature and description ... to claim, obtain, receive, hold, distribute [such property] for the benefit of victims of Nazi persecution." Not everyone thinks the claims conference is living up to its charter.

The claims at issue were made following the reunification of Germany in 1990. Before then, property in East Germany lost to Nazi persecution could not be recovered because it was in the Communist zone. But in 1990, the unified German legislature passed a law to permit Nazi victims or their heirs to make claims for property they lost in East Germany. The 1990 law was designed to insure that Nazi victims, and not the German government, would recover Jewish-owned property that had been seized by the Nazis.

The solution the German government adopted was to name the claims conference as the fictitious "legal successor" of the Nazi victims or their heirs. In a real sense, then, the conference became a trustee for the victims and heirs. Where, however, the Nazi victims and their heirs perished in the Holocaust, and the confiscated property was deemed heirless, then the property would be held in trust by the claims conference for the benefit of the Jewish people generally and in particular for Holocaust survivors.

But the passage of time created a problem. Forty-five years had passed between the end of World War II (1945) and German reunification (1990). That long stretch of time meant that many victims or heirs would not file timely claims under the new German law because, mainly, the heirs simply did not know about the lost property. Yet the law gave them only until December 1992 to file claims for real estate and a half year later for personal property such as artwork.

Despite its intended status as trustee, the conference, unilaterally and, some might say arbitrarily, dealt with post-reunification claims simply by rejecting the distinction between property claimed by heirs as opposed to heirless property. Instead, the conference sees itself not as a trustee just for victims and their heirs, nor for heirless property and all other property, but rather as a trustee for all the Jewish people, whatever that means.

As a consequence, the conference regards itself as having unfettered discretion over all of this property. If correct, its position could fairly be said to amount to expropriating and disinheriting Jewish victims of the Holocaust, and their living heirs, in favor of the claims conference. Thus, the conference appears to be acting at cross-purposes with the 1990 German law, the evident intent of which was to make it trustee of the Jewish victims and their heirs.

The amount of property at stake is substantial. After being named "legal successor," the conference has obtained approximately \$3 billion in property. But in fact, it has returned only about \$1 billion of that to the actual victims or their heirs.

While doing so, it refuses to accept the distinction between victims and Jewish people generally. Indeed, the conference has never formally acknowledged the legal right of the Nazi victims or their heirs to receive back their property. On the contrary, it described its return of such property, in those cases where it was returned, as a matter of "goodwill" as opposed to a legal right. It even distributed those funds through what it called a "Goodwill Fund" program.

But what about the \$2 billion it has not returned to Nazi victims or their heirs? After some prodding by "late" claimants, the conference has set up another fund, with only about \$64 million (that is, 3 percent of the \$2 billion), from which it gives a 33 percent initial payout. Anything left in the \$64 million fund will be distributed equally to the claimants up to 80 percent of the value of the claimed asset. Claimants may thus receive only one-third of what the conference received for their claims. And even to qualify for such payments, claimants must formally waive any right to greater compensation commensurate with the value of their loss.

The rest of the money is not going to Nazi victims or their heirs. Instead, the claims conference purports to be using those funds for what it contends are "charitable purposes," in particular, it so states, to aid Holocaust survivors and for Holocaust education. This misdirection of funds seems, on its face, to violate the plain language and clear intent of the 1990 German law. The conference's decision-making attitude is even more peculiar in light of the German government's separate funding for the very same charitable purposes. In fact, Germany has given the claims conference about another \$1 billion to fund its Home Care program for Holocaust survivors.

In other words, the claims conference has itself chosen which groups of Jews should receive billions of dollars. Rather than give the money to Jews or their heirs who actually lost property to the Nazis, the conference has decided to use the bulk of the money for general Jewish charitable purposes. Of course, general Jewish charities are conceivably a laudable purpose, but it does not appear to be the purpose of the funds at issue.

Then there is the distressing experience of the claims conference's ombudsman, Shmuel Hollander. A highly respected Israeli civil servant, Hollander was fired by the conference after he submitted a report critical of its internal operations in July 2013 following an embezzlement scandal.

Hollander's report stated that the claims conference: (1) failed in "tailoring its organizational structure to meet the growing range of activities and needs," (2) "was governed in a manner unacceptable in both public and corporate bodies," (3) demonstrated "systematic failings and problematic organizational behavior," and (4) operated with an "absence of professional control systems ... [that] constituted a key factor in enabling and certainly in facilitating the [\$57 million] fraud" that could otherwise "have limited the enormous scope of the fraud." He added ominously, "only the tip of the iceberg was revealed to us."

What is to be done? Serious issues of law, fiduciary duty, transparency, accountability and public policy are involved. Has the claims conference violated its own declared charitable mission? Does it, as "legal successor" to the claims, owe a fiduciary duty to the owners of property (and their heirs) taken by the Nazis, as seems to be the intent of the common law? Has it abused its position as trustee and its status as a New York nonprofit corporation to expropriate Nazi victim property, rather than return it to its true owners?

In October 2013, the Claimants Representative Committee, made up of law firms and other business professionals who represent Nazi victims and their heirs who lost property in eastern Germany, filed a complaint with Attorney General Eric Schneiderman against the conference for refusing to return their clients' property.

Why hasn't Schneiderman's office responded to the complaint in more than two years? Surely, the charities bureau has a duty to look into this unhappy situation and then, at the very least, provide a legal explanation as to whether or not the claims conference is acting in accordance with its charitable purpose under New York law; and if not, what the attorney general intends to do about it.

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