

Notes

1. See for example: Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York, 2000); Roy L. Brooks, ed., *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice* (New York, 1999); Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, 1998); John Torpey, "'Making Whole What Has Been Smashed': Reflections on Reparations," *Journal of Modern History* 73, no. 2 (2001): 333–358, as representative for a burgeoning literature.
2. See for example: Theodor Adorno and Max Horkheimer, *Dialectic of Enlightenment* [1944] (New York, 1999); Zygmunt Bauman, *Holocaust and Modernity* (Cambridge, 1989).
3. Charles Taylor, *The Politics of Recognition* (Princeton, 1992).
4. Thomas Carlyle, "Chartism," in *Selected Writings* (Harmondsworth, 1971), originally published in 1839.
5. Ibid.
6. Karl Marx, "The Economic and Philosophical Manuscripts of 1844," in *The Marx-Engels Reader* (New York, 1978).
7. Georg Simmel, *Philosophie des Geldes* (Berlin, 1900).
8. For the sociological process of consumption as civilizing process, see Natan Sznajder, "Consumerism as Civilizing Process: Israel and Judaism in the Second Age of Modernity," *International Journal for Politics, Culture and Society* 14, no. 2 (2000): 297–314.
9. See Gianfranco Poggi, *Money and the Modern Mind: Georg Simmel's Philosophy of Money* (Berkeley, 1993).
10. For more a detailed account, see Daniel Levy and Natan Sznajder, *Die Globalisierung der Erinnerung. Der Holocaust* (Frankfurt a.M., 2001) and Daniel Levy and Natan Sznajder, "Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory," *European Journal of Social Theory* 5, no. 1 (2002): 87–106.
11. For the entire text see: <http://www.holocaustforum.gov.se/> (30 August 2005).
12. For the historical and intellectual context of the emergence of compassion in modern society, see Natan Sznajder, *The Compassionate Temperament: Care and Cruelty in Modern Society* (Boulder, Colo., 2000).
13. Marcel Mauss, *The Gift: The Form and Reason for Exchange in Archaic Societies* (New York, 2000), originally published in 1925.

— Four —

CONVERSION, EXCHANGE, AND  
REPLACEMENT:  
REFLECTING CULTURAL LEGACIES OF INDEMNITY



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Money, as a pure equivalent and universal means of exchange, can remain indifferent toward historical and national differences. It thus seems especially suited for use as a means of international agreements and more generally for any policy tethered to a global perspective, such as international restitution policy. In the monetary sphere, conversion seems neutral vis-à-vis criteria other than the quantitative, since numbers are surrounded by an aura of the purely measurable and calculable. This attribute of neutrality may help explain why a country like Switzerland, which has defined itself and its position within the international arena via money and neutrality, has been so shaken by the affair over Nazi gold. Apparently in this specific context, it became more evident that even money is affected and sullied by the spheres through which it circulates. The images of politicians with suitcases in hand loaded with money, occurring during the latest "payoff affairs" have stoked the fires of further scandalizing money. Even money, seemingly free from other values as a medium of pure value, is prone to contamination by impurity, echoed in part in our notion of money "laundering." What is such laundering? It tries to clean money of the spots and traces of its past, its former history. So it is an attempt to restore pure money, that is, money devoid of memory, the pristine form that lies at the very basis of the concept of money.

So if on the phenomenological level there is a clear connection between money and memory, the epistemological frame constituting the foundation for an investigation of historical memory and material in-

demnification in Europe is far more complex. For that reason, it is useful to begin by discussing this epistemological bond between memory and money by looking at the foundational myth of *ars memoriae*. The current emphatic reference in memory theory to the foundational legend of the art of memory bears in itself marks of forgetting, including the thorny problem of (currency) conversion.

### The Foundational Myth of the Art of Memory

In rhetoric, the *ars memoriae* is derived from the legend, which tells of the singer Simonides of Keos. It is narrated that at a banquet given by a nobleman, Scopas, Simonides who was commissioned to chant an encomium in front of Scopas' guests and in honor of his host included, as usual, praise of the twin gods, Castor and Pollux. Scopas responded by telling Simonides that he would pay him only half of what had been agreed; the other half he should obtain from Castor and Pollux! A bit later Simonides received a message that two young men were waiting to see him outside Scopas' house, and so he left to find out what they wanted. While he was away the roof collapsed, crushing Scopas and all of his guests. So violent was the collapse that the corpses were severely mangled and could no longer be easily identified for burial. Simonides alone was able to identify them by reference to his memory of precisely the places where the dead persons had been sitting in the hall. Now this reconstruction according to the distribution of the seats in the hall became a paradigm for the program of *ars memoriae* or mnemonics as part of traditional classical rhetoric. For example, in Cicero's *De Oratore* (Book II, 354):

He inferred that persons desiring to train this faculty must select places and form mental images of the things they wish to remember and store these images in the places, so that the order of the places will preserve the order of the things, and the images of the things will denote the things themselves, and we shall employ the places and images respectively as a wax writing-tablet and the letters written on it.<sup>1</sup>

In this much-quoted passage, the legend is translated into a form of mnemonics, or instructions for the practice of proper remembering. Aside from the fact that this rhetorical art involves a technique of noticing, as distinct from memory or the remembrance of what had passed, this translation itself is inscribed with a kind of multiple forgetting. In a subtle analysis, Stefan Goldmann has reconstructed the cultural-his-

torical context from which the legend was removed in order to reduce it to a textual basis for a technique of mind, pointing in particular to the repressed origin of mnemonics in the cult of the dead, which this legend contains.<sup>2</sup> In addition, the current popularity of the legend as the foundational myth of memory contains a multiple problem of translation or conversion "buried away," as it were. Despite its popularity this aspect has to date been given scant attention.

Thus, the analogy between Simonides' identification of the dead after the catastrophe and the technique of remembering points to a problematic semiotic transformation. When Cicero compares the mental images, which are to be used in mnemonics like letters with the dead identified by the poet, then these corpses are treated as though they were themselves semiotic signs. But it was Simonides' actual task to assign to the destroyed bodies the names of persons whom he had seen before the catastrophe. The forgotten heterogeneity between the corporeal remains and the names is thus a prerequisite for the entry of the dead as signs into the comparison, the deletion thus of *différance* as a possible condition for their entry into the circulation of language in rhetoric.

By contrast, the role of money in the foundation myth points to another type of conversion. While the legend of the singer springs from a cultural system of the art of commissioning, which functions by providing a reward for an encomium, in the miraculous salvation of Simonides, the worldly reward denied him is replaced and surpassed by another value: namely the divine gift of life, here in a literal sense. Within the narrative, the heterogeneity of reward and life thus corresponds to that of corporeal remains and identified individuals. Only when this mythical scenario is translated into a technique of signs is this heterogeneity lost. Thus, the complex interplay between sign and money, gift and life, as the narrative recalls it, has found as little entry into the rhetorical art of memory as into current theories on memory.

So in canonized tradition, memory was cleansed of the traces of the problems of comparison, conversion and transposition triggered by a conflict over money. These problems form the epistemological horizon serving as the backdrop against which the policy of restitution in the field of tension between memory and material restoration must also be discussed.

### Observations on the "Modern" Concept of Restitution

In his comparative study on state policies of reparation payments to individual groups, Elazar Barkan links the perspective of a new potentially global morality with the concept of restitution. This is based principally

on the difference between reparations and restitution. Reparations paid to a group, based on the recognition of national guilt or the acceptance of responsibility for injustice perpetrated by one's predecessors is the core of the "modern concept of restitution." The author regards "German reparations to the Jews" as embodied in German payments to Israel as the paradigm and first case example here: "In 1952 the Germans began to pay compensation, but instead of paying the winners, they paid those they had victimized the worst—primarily the Jews.... This was the moment at which the modern notion of restitution for historical injustices was born."<sup>3</sup> In his study, Barkan develops a comprehensive concept of restitution, ranging from forms of reparation to compensation to symbolic gestures such as apology. But there is a problem here: precisely the decisive difference that distinguishes the restitution of historical injustice from the older conventional notion of restitution, centered on compensation for material damages as a result of war, threatens to be submerged and disappears once again within this more general concept. That will be examined below in connection with the historical primal scene.

In fact, the political struggle over "reparations" (*Wiedergutmachung*) in Germany in the early 1950s revolved precisely around this difference, and thus the entire question of restitution. The difference between war and crime, which marks the conflicts over memory down to the present day, became very pointed in the question of reparations. A key, even emblematic, year was 1952 and the conflict between The Hague and London, between the Luxembourg Agreement involving Germany and Israel and the Claims Conference<sup>4</sup> on the one hand, and the London Debts Conference, on the other. Here in the one case was the attempt by the head of the German delegation in London, H. J. Abs, to avoid "special negotiations" with Israel, and to integrate the "Israeli claims" into a total settlement of the "postwar debts." In the other, we can note the initiative by the delegates in The Hague, Franz Böhm and Otto Küster, who struggled to achieve recognition for a German obligation to provide compensation for past injustice and for a German Reparations Law<sup>5</sup>: the consciousness of a war lost counterposed to a debate over historical injustice and crimes.

Yet in the cultural memory of the Federal Republic, these controversies have remained largely in the shadow of the concept of *Wiedergutmachung*. Within its frame, the concrete facts of restitution<sup>6</sup> blur in a diffuse amalgam in public consciousness where material and psychological elements are fused, in accordance with that pathos formula enunciated by Adenauer as a new dictate of conscience in his famous declaration of 1951: "Yet unspeakable crimes were committed in the name of the

German people which obligate us to *moral* and *material* reparations."<sup>7</sup> So at the very beginning of German obligation to provide compensation stands an emphatic emphasis on the specifically moral dimension.

Barkan is primarily interested in the fact that "the idea of compensation, the rhetoric of guilt, and limited recognition-forgiveness were *translated*, through the legal medium of restitution, into new possibilities in international relations."<sup>8</sup> Here I would like to focus once more on the prerequisites for that translation, looking at another previous transformation in this process inherent in restitution. It involves Adenauer's use of "and" and the hidden relation between moral and material reparations—that is, the transformation of historical injustice into the form of material compensation and the associated conversion of guilt into debts.<sup>9</sup>

### The Transformation of Guilt into Debts (*Schuld* into *Schulden*): Asymmetries in Reparations in the Federal Republic<sup>10</sup>

Beginning with the early postwar period, there was talk about German guilt within the discourse of debts, balancing of accounts and payments, a monetary discursive field. In this context such concepts as guilt and suffering, victims and crime, become measurable, quantifiable entities in the medium of rhetoric of comparison and counter-calculation. Thus the deaths in bombing raids and expulsion of Germans are interpreted as some form of recompense for the crimes committed by Hitler's Germany. It is striking that in talk about one's own sufferings as Germans, there is also often a note of fear of punishment and retribution. This discourse, involving a kind of balance sheet of blame and suffering, formed the mental prerequisite for a politics in which the consciousness of an unsettled balance—one in which the crimes done to others outweigh the suffering inflicted by others on Germans—is articulated in the image of an abiding and constant guilt. This then forms the basis of an obligation to pay reparations, making the project of *Wiedergutmachung* possible in the first place; no matter how half-heartedly and reluctantly it was and still is implemented. In this frame, compensation or indemnification gets at the same time the meaning of a mode of discharging of indebtedness, of *Entschuldung*, not *Entschuld-ig-ung*, to apologize. This moral rehabilitation corresponds to the political reentry of the Federal Republic as a sovereign state onto the stage of the international community. The Federal Compensation Law (*Bundesentschädigungsgesetz*, *BEG*) was the precondition for this rehabilitation of the nation.

But in the complementarity and simultaneity of compensation and the discharging of debts inscribed in the modern concept of restitution

we can find non-simultaneities and asymmetries in respect to restoration. These point to the complex problems of symbolic exchange and conversion, which are operative in the interplay between moral and material reparations. My earlier remarks on the asymmetry of reparations<sup>11</sup> revolved primarily around the fact that the symbolic exchange of guilt into debts in German restitution policy corresponds to the wish for the restoration of the self in a psychoanalytic sense: the overcoming of a depressive position when stabilizing the ego by identifying with the better object.<sup>12</sup> So the detour via money leads back to the moral motif, on the German side. For them the transformation of guilt into debts corresponds with a reverse transformation of payment into rehabilitation. But when it comes to the victims, where “damage to life and limb, health, freedom, property and economic and professional advancement,” as the Federal Compensation Law puts it, is supposed to be compensated in the main by financial payment of some kind, the traces of the problematic of all material compensation for nonmaterial, suffering or damage are inscribed in the intended restitution. A restoration in the sense of a reimbursement, a return to the status quo ante or a substitution can only function in the sphere of what is measurable. Inherent in the concept of indemnification in the literal sense, i.e., the removal or cancellation of the damage, is always the heterogeneity of money and what was suffered.

Therefore it is not surprising that the practice of reparations of the damage to “property and economic and professional advancement,” viewed in the framework of the extremely restrictive regulations, appeared to be functioning relatively smoothly, while “damage to life and limb” and deprivation of freedom first had to become normalized in terms of the laws on insurance, so to speak, before they could be treated as a case of arranging provisions for family members and claims for damages by those who were falsely imprisoned. These went hand in hand with all precarious accompanying phenomena of such a normalization, such as disregard for the specific forms of violence in the context of Nazi policies of annihilation, that had, of course, not been considered when formulating possible types of insurance, since they were indeed not imaginable in any actuarial sense. The most lasting and tenacious conflicts arose around “damage to limb and health.” Here the problem of conversion came into play as an endless dispute over questions of the measurability of damage (in terms of percentage) and over the definition of a “causal relation” with persecution.

However, in what follows it is not intended to examine the conflicts in the practice of reparations or to address the sense and value of the

German *Wiedergutmachungs* project altogether. Rather, the focus is on the cultural-historical prerequisites from which those problems of conversion, symbolic exchange, and asymmetry derive, and that are operative in restitution, by outlining a sketch of the problems as illuminated by a few scenes on the stage of cultural history.

### Legacies and Estates

With increasing distance to the historical events themselves, or, to put it differently, to the degree that the cases involving questions of restitution and their settlement are passed on to the second and third generation, restitution appears to become more and more a question of purely material restoration, or a question of money. This may be explained partly by the fact that the protagonists of those events, perpetrators and survivors—and with them, naturally, the embodied presence of guilt and suffering—are gradually disappearing from the contemporary historical stages. One effect of time passing is that the two parts that are involved in the conversion move further apart during the transferal between generations, because the inheritance of guilt on one side, and the genealogy of damage and sufferance on the other, differ enormously. So there is an increasing and continuing asymmetry.

On the German side, it is evident that in the imaginary of the second generation, historical inheritance has assumed the form of an interest on debt: the debts are recognized but the responsibility for them is separated from a person's origin as part of the nation of the perpetrators. Thus, the later generations in Germany tend to view reparations payments largely as the interest on a debt, which has nothing to do with one's own. One symptom, or memory symbol, of the degree to which reparations and personal guilt can separate in the consciousness of the second generation was the political scandal around money and capital in the 1968 movements. The critique of capitalism then was dominated by the phantasm of a fundamental impurity intrinsic to money. An apt formulation for the specific socialism of 1968, as for no analogous historical constellation before or since, was Benjamin's comment in his essay “Capitalism as Religion,” in which he combines Freud and Marx: “What has been repressed, the idea of sin, is capital itself, which pays interest on the hell of the unconscious ... the capitalism that refuses to change course becomes socialism by means of the simple and compound interest that are functions of *Schuld* (consider the demonic ambiguity of this word).”<sup>13</sup>

If political discourse in the decades following was marked by a shift of the desire for purity into the channels of the ecological movement,

in the private sphere inherited property increasingly was infused with feelings of the uncanny, a product of the blind spots in knowledge regarding the real origin of inheritance in the *Society of the Heirs*—as an issue of *Kursbuch* 1999 aptly labeled the contemporaries.<sup>14</sup> In taking care over inheritance, the knowledge returns that a community of heirs is always at the same time a community of guilt/debt. By contrast, in Germany of the third generation there has been almost a total rupture in the link to blame as a result of the crimes of the forefathers. So that in their eyes all that remains is the settlement of outstanding debts, which people are again quite prepared to negotiate over in the form of “Jewish claims”—a return of the repressed rhetoric from the first generation.

By contrast, with increasing distance to the immediacy of suffering, the survivors and their descendants gradually also remember the material assets they were robbed of and that were withheld from them. In part, this is a reaction to the remarkable fact that in the project of reparations—that grand enterprise of *Wiedergutmachung*, which was heavily marked by moral rhetoric and the discharging of blame by means of reparations—a major dimension went largely forgotten, namely, restitution in the *actual* sense of the term, that is, the repayment of the concrete monetary or material debts such as property, real estate, companies, art objects, wages, insurance benefits, and the like.

### Inherited Sin vs. the Passing On of Guilt and Debt in History

The increasing legalization and monetarization of the process of *Vergangenheitsbewältigung*, “coming to terms with the past” as events fade into history, points to the fact that the current project of restitution is already responding to the history of a partially failed reparation. There is a split in it between the relations of the generations and the conception of inheritance, bifurcated into a privatized concept of inheritance and a political-cultural heritage, which also subsumes the debates about compensation for forced laborers in World War II. Guilt and debts have separated here, in a sense uncoupled: while there was never any debate about the need for the descendants of Hitler’s Germany to accept the material inheritance, the transgenerational responsibility for the consequences of the crimes tends to be rejected, interpreted as the false attribution of a hereditary guilt of some kind or even a hereditary or “original” sin, an *Erbsünde*.

The association with *Erbsünde* is symptomatic in that it in Christianity means *peccatum originale*, which stands in opposition to *peccatum actuale*, or sin that springs from an actual deed: so that in the concept of

original sin, the connection with deeds perpetrated associated with reparations again fails to be taken into consideration. Because original sin as systematically formulated by St. Augustine does not signify a sin inherited from one’s fathers but rather the sinful nature of humankind since the Fall, including the fall from man’s similitude to God (which in Augustine is only considered as a phenomenon of the soul). In other words: the sin, which emerges in the same moment when mankind falls into history. Since the descendants of the perpetrators grasp the historical legacy in the image of an inherited original sin, the crimes of Nazi Germany take on the status of a sinful Fall from Grace—one from whose inheritance there can be only one exit; via redemption. Against the backdrop of such a mythologization of history, we can interpret many rituals in contemporary German culture as substitutes or surrogates for the ritual of baptism, which for Augustine promises a ritual cleansing from original sin.

The fact that Germany was reconstructed after the war as a capitalist system must perforce be viewed by the descendants as disturbing in the context of the desire to purify oneself from guilt inherited from the fathers and the associated search for corresponding rituals. To quote Benjamin’s analysis of “capitalism as religion” once again, which stresses the cultic nature of the system but sees this cult, in contrast with the conventional function of cults, as one that produces blame: “Capitalism is probably the first instance of a cult that creates guilt, not atonement.”<sup>15</sup> This phenomenon may explain why anticapitalist rhetoric runs like a recurrent leitmotif through German discourse on guilt since the early postwar period.

To present an alternative concept of inheritance from cultural history, one that does not engage in a splitting into economic and moral components, it is useful to recall a scene from Heinrich Heine’s *Memoirs*. In this scene the narrator reflects on the afterlife of that “dream time” in which he lived in the writings from his ancestors. Both the possibility of dealing in a relaxed manner with the relation between guilt and debts by means of a word play and the following chain of associations—on another person’s account, to demand the debts of a bond, debt and guilt—are based in Heine on a natural recognition of the indivisibility of a debt register handed down from previous generations.

In Heine’s *Memoirs*<sup>16</sup>, the narrator tells us that he is accustomed to count certain baffling mistakes on the account of his oriental double. He explains this hypothesis to his father in order to gloss over one of his own failures. The roguish answer of his father is: “He hopes, that my granduncle has not signed bonds which I would once have to pay for.”

By taking the phrase “on account of” literally and by translating this into the monetary equivalent of an account from the past—i.e., a bond—the father turns his son’s attempt to get rid of blame (*Schuld*) back into the possibility of debts (*Schulden*). Through the detour of the wit transforming guilt into debts, the word play has turned into a serious reflection, leading to the quotation of a biblical sense of guilt. Heine notes:

But there are certainly worse debts than debts of money, which our ancestors leave us to settle and discharge. Each generation is the continuation of the one preceding and is responsible for its acts. The Bible says: “the fathers have eaten unripe grapes, and the children’s teeth will be set on edge” (Jeremiah 31:28).

Through this reference to the Bible the transformation from guilt to debts has been returned and we end up again with guilt—this time, however, in a reverse perspective: “There is a solidarity of the generations which follow one another, yes even of the peoples which follow each other upon history’s stage take over such a solidarity, and in the end all of humankind liquidates the great bequest of the past.” The author names two competing solutions for this liquidation: “In the Valley of Josaphat, the Great Registry of Debts will be destroyed. Or maybe before hand by a universal bankruptcy.”

The life of the descendants is described here as an action, interpretable as a kind of coming to terms with a generational heritage.<sup>17</sup> Inheritance in this sense is not suitable for a process of individual discharging of debts, as often used today in explanations based on pop psychology. Rather, it entails a burden of responsibility for blame, which is not placed on the shoulders of the individual as moral guilt but rather shapes the law of action in history. Historical action—that is, acting in that field opening up within the Valley of Josaphat, the Last Judgment on the one side and a universal bankruptcy (rejection of responsibility, the casting off of inheritance and debts, or, in Heine’s view, revolution as well) on the other—this means acting in the wake of the debt registry handed down from the past. The acceptance of responsibility here is not a voluntary act derived from a universal morality. Rather, it springs from what Heine calls the “solidarity of the generations,” or, put more simply, from genealogy, from history manifested as a sequence of generations.

### Incommensurability of Compensation and Punishment

With the complementarity of compensation and discharge of blame in the project of restitution, a mixture of punishment and indemnifica-

tion returns that extends back beyond the history of modern insurance systems and the separation of civil and penal law insofar as money there takes on the meaning of both substitution (*Ersatz*) and penalty.

But while in the modern system of law indemnification is oriented to the consequences of the act for the injured party and seeks to restore his or her rights, punishment is a means to an end: rehabilitation of the perpetrator. If compensation is oriented to the victim, the idea of punishment is centered on the perpetrator. It is the prerequisite for his other reintegration into the social community. And it serves this function even when it assumes the form of a monetary penalty, which today is regarded as a less discriminating form of punishment than imprisonment. So a monetary penalty is strongly and strictly distinguished in law from compensation. Both are associated with different problems in conversion and the compatibility of yardsticks and amounts. In the context of the history of insurance, compensation is subsumed under a monetary concept in which compensation never means restoration; rather, damage to limb, life, or property that damages the biography of a person is recalculated as money-value. By contrast, meting out punishment is confronted with historically alterable evaluations of different types of crime. The task is to translate these changes in concepts of criminality, rooted in cultural mentality, into a form of penalty that is obtrusive and interferes in the biography of the perpetrator, demanding from him or her lifetime or a monetary penalty. Money is only indirectly involved here, via imprisonment, as its equivalent in the sense of provoking in the perpetrator a sense of repentance or penance.

In his *The Philosophy of Money* (1900), Georg Simmel reminds us in the chapter on the “money equivalent of personal values” of an old variant of a monetary penalty, “penance for the act of murder by payment of money.” He discusses in this connection past cultural norms in which “the connection between the value of the individual and money-value” often dominated “legal conceptions.”<sup>18</sup> Simmel links this with the archaic phenomenon of blood money, demanded for compensating the debt of a death. In Simmel’s evolutionary model of history, this monetary penalty replaced blood feud: “The tribe, the clan, the family demanded compensation for the economic loss which the death of a member entailed.”<sup>19</sup> This archaic form of indemnification was related to the claim for settlement of a personal, concrete loss.

But quite independent of how one views Simmel’s evolutionary image of history, his description of a broad, cultural-historical phenomenology of monetary equivalents—equivalence relations between

money-value and the value of life and limb; from blood money to slavery and bride price to monetary penalty—presents us with an uneasy question. Simmel emphasizes that the conception of a fundamental incommensurability between material values and the absolute value of the human being is a genuinely Christian concept, linked to the concept of the soul (and thus the body-soul dualism). “When Christianity declared the human soul to be the vessel of divine grace, it became totally incommensurable for all mundane criteria, and so it has remained.”<sup>20</sup> This conception is predominant in the European history of philosophy and discourse about human rights:

But the value of the personality, which by this means removes it from any possibility to be compared with the purely quantitative criterion of money, can have two meanings that must be kept quite separate. It may concern the human being qua human being as such, and it may concern the human being as this definite individual.... In the first perspective, on whose soil “human dignity” and “human rights” have grown, we see the most decisive contours of that development which renders inwardly impossible any sale of a human being or penance for his killing by means of money.<sup>21</sup>

In regard to the connection asserted by Simmel, the modern conception of restitution, insofar as it relates to a universal moral condition, should be interrogated regarding its inherent central contradiction: anchored in the idea of human rights (the absolute worth of every single individual, “man as man”), restitution introduces at the same time a policy of compensation into the discourse on human rights based on older, pre-Christian or non-Christian conceptions of the equivalence between money and human value.

At the same time, more light should be shed on the paradigm of incommensurability from a perspective grounded in the history of comparative religions. The Christian principle discussed by Simmel has to be viewed in connection with a contrast between the soul and all mundane earthly values, a contrast derived from the uniqueness of the Christian concept of sacrifice. As distinct from the cultic concept of sacrifice dominant in most ancient religious cultures—sacrifice in the sense of a gift addressed to God or the gods<sup>22</sup>—Christianity, in the death of Jesus as expiatory sacrifice, has introduced the concept of a unique, one-time sacrifice. This sacrifice can be adequately approached by means of an ideal form of devotion:

This idea is in the service of paranesis (moral exhortation): through his sacrificial death, Christ has opened the path to a new life for Christians in “purity and truth” (1 Cor 5:8). This has brought into view the “ethical” or better parnetic turn and application of the idea of sacrifice. The true sacrifice of the Christians, pleasing to God, is that they present their bodies to God as a “living” sacrifice pleasing to God (Romans 12:1). This sacrifice is not an achievement of some kind nor is it the presentation of an object or *gift* external to the person. Rather it is the *devotion* of one’s entire human existence. That has been made possible by God’s mercy shown to the sinner, which opens for him the door to a new freedom. The self-sacrifice of the individual is the true sacrifice in keeping with God’s will and wish.<sup>23</sup>

Compared to this, the cultic sacrificial rituals of many other religions know no conflict with money. Temple money, rather, is an example of the sacred origin of money.<sup>24</sup> In addition, there are repeated reports that coins could be used instead of sacrificial animals, which themselves were substitutes for human beings. Money thus was able, in the cult and long before it was secularized into a universal means of exchange, to assume the status of a gift or a substitution for animals or even human beings. This would mean that in restitution, the function of money reconnects with such cultic conceptions.

#### Money as an Equivalent or Substitute: Observations on the Prohibition on Usury

So the conversion problem in restitution is situated within the context of a complex cultural history of money and its function as substitute, equivalent, and means of exchange. The conflicts over the relation between the value of life and value of money were also involved in debates on the prohibition of interest. Particularly in the myriad arguments for prohibiting interest, we find a recurrent comparison between interest and natural procreation. “*Nummus nummum non gerit*” (“money cannot create money”)—there was a similar dictum voiced by Aristotle, Thomas Aquinas, and many of their successors. However, the thesis that money is not fruitful, is “infertile” has generated a whole repertoire of images and narratives about “money procreating money” (*das Geld beckende Geld*<sup>25</sup>) that engage in subtle play with the analogy between monetary and sexual reproduction.<sup>26</sup> In political economy, Marx was the first in a critical analysis of the transformation of money into capital to ascribe to money itself the ability to reproduce itself. In his view, only as capital does money acquire the power to reproduce

itself, though here by means of a detour via the investment of human life through the use of labor power.

By contrast, in the *Merchant of Venice*, in the correspondences between the story of Shylock and Portia, there is a specific reflection of the asymmetries between money lending and pawn on the one hand and family economy and bride-price on the other. Both stories or narratives come together before the bench of the law, or rather collide in court: while Shylock's pound of flesh from the body of his adversary marks an absolute limit in the exchange between bodily pawn and money, Portia's position as a bride tends to illuminate the interplay between general circulation and the power of family genealogy.<sup>27</sup> The detour via the family or private sphere conceals the role of physical procreation in general circulation and in the reproduction of wealth, while the dogma of the incommensurability between human beings and money is at the same time bolstered by the Christian ban on interest and usury. By contrast, the restriction of the ban on interest in the Hebrew Bible to the circle of relatives proceeds from a clear separation of the two spheres: internally it is a matter of physical, natural reproduction: externally, an increase and reproduction of wealth. This is expressed in the *Merchant of Venice* in the metaphor of treasure. While Portia's treasure chest regulates the ritual of looking for a bride, Shylock, when he loses his daughter, bemoans the loss of his treasure.

But there is no intention here to maintain a strict contrast between Jewish and Christian tradition. Thus, for example, the notion of the incomparability between the "infertile value of money" and the potential of natural procreation is also expressed in the regulations in ancient Israel on compensation for stolen domestic animals, which Simmel cites in the context mentioned: namely that "stolen domestic animals must be replaced by a double measure. But when they were no longer present naturally, and the payment of money came in their stead, the value of that payment had to be four or five times their worth."<sup>28</sup> This means that compensation in the sense of a restoration or restitution, with an eye to the potential of procreation and reproduction, was conceivable only as compensation in the same form, *in natura*, while the monetary equivalent was denied this quality. This is why, in the case of compensation in the form of money, the potential value of natural procreation, of offspring, had to be taken into account when figuring out the amount. Four or five times the amount of compensation is the provision for the virtual life of the offspring of the stolen domestic animals. This idea can be interpreted as a kind of *natural interest*, which far exceeds the criteria of monetary interest, since body and money are incommensurate. Precisely because of

the fact that life and money cannot be compared, compensation cannot be geared to the norm of the equivalent. Rather it has to be oriented to compensating the stolen possibility for life, the expropriated potentiality of life, or that virtuality of life that is inherent in all bodies.

These differences between money functioning as an equivalent and money as substitute, surrogate, or compensation should also be taken into account in terms of the consequences for that concept of reparation that is at the core of modern restitution: compensation for the sacrifice of life and limb. In terms of the cited logic of a destroyed or stolen *potential* life, compensation would have to grow greater rather than smaller in proportion to the temporal distance from the events, regarded as an equivalent for lost *virtual* life, for life that never came into being, life that was un-lived.

*Translated from the German by Bill Templer*

## Notes

1. Cicero, *De Oratore/Über den Redner* (Stuttgart, 1976); here Liber Secundus, 354. Engl. transl. quoted from F. Yates, *The Art of Memory* (London, 1966), 17f.
2. On the analysis of this forgotten origin and the reading of mnemonics as a *Deckerinnerung*, a "concealing memory," see Stefan Goldmann, "Statt Totenklage Gedächtnis," *Poetica* 21 (1989): 43–66.
3. Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustice* (New York/London, 2000), XXIIIff. In Barkan's view, several elements constitute the new structure of this altered concept of restitution: the form of negotiation and agreement, the national dimension of the agreements, the declaration of intent by the perpetrators or their descendants to compensate the victims, and the associated self-rehabilitation of the perpetrators.
4. The agreement approved payment of DM 3 billion to Israel for the absorption of refugees and survivors and DM 500 million to the Claims Conference, and entailed a formal obligation on the part of the Federal Republic to draft a Federal Compensation Law (*Bundesentschädigungsgesetz*).
5. On the analysis of the political debate, see Christian Pross, *Wiedergutmachung. Der Kleinkrieg gegen die Opfer* (Hamburg, 1988). See also Hans Günter Hockerts, "Wiedergutmachung in Deutschland. Eine historische Bilanz 1945–2000," *Vierteljahreshefte für Zeitgeschichte* 49, no. 2 (2001), in English translation in the present volume.
6. Such as compensation in accordance with the *Bundesentschädigungsgesetz*, which regulates individual compensation and entitlements for application, as well as payments on the basis of bilateral agreements of the Federal Republic, especially with Israel and several West European countries.



7. Bundestag, 27 September 1951, quoted in Pross, *Wiedergutmachung*, 57, emphasis added.
8. Barkan, *Guilt of Nations*, XXIII, emphasis added.
9. The conversion of "Schuld" into "Schulden." The ambiguity of the German word Schuld and its double sense in terms of a moral and a monetary meaning is the basis of the whole analysis presented here.
10. Here I refer to ideas in my essay "Shylocks Wiederkehr. Die Verwandlung von Schuld in Schulden oder: Zum symbolischen Tausch der Wiedergutmachung," in *Fünfzig Jahre danach. Zur Nachgeschichte des Nationalsozialismus*, ed. Sigrid Weigel and Birgit R. Erdle (Zurich, 1996), 165–192.
11. Ibid.
12. See Melanie Klein's concept of restoration, localized in the phase of infantile sadism and related to the childhood phantasies of restoration as a beloved object vis-à-vis the mother.
13. Walter Benjamin, "Capitalism as Religion" (1921), in *Selected Writings*, ed. Marcus Bullock and Michael W. Jennings, vol. I, 1913–1926 (Harvard, 1996), 289.
14. *Kursbuch*, Heft 135, 1999.
15. Benjamin, *ibid.*, 288.
16. See Heinrich Heine, "Memoiren," in *Sämtliche Schriften*, ed. Klaus Briegleb, vol. 6/1 (Munich, 1976), 574 ff.
17. It was precisely in this sense that Sigmund Freud later in his *Der Mann Moses und die monotheistische Religion* developed his concept of phylogenesis—as dealing with of an archaic inheritance passed on as it were in the (collective) unconscious over many generations, which creates in this way a memory that goes beyond the boundary between generations.
18. Georg Simmel, "Philosophie des Geldes" (1900/1907), in *Gesamtausgabe*, ed. v. Rammstedt, vol. 6 (Frankfurt a.M., 1989), 482.
19. *Ibid.*, 485.
20. *Ibid.*, 492.
21. *Ibid.*, 493.
22. See Gene Girard, *Das Heilige und die Gewalt* (Frankfurt a.M., 1992), first published in 1972.
23. A. Schimmel, "Opfer," in *Die Religion in Geschichte und Gegenwart. Handwörterbuch für Religionsgeschichte und Religionswissenschaft*, ed. Kurt Galling (Tübingen, 1956–63), vol. 4, 1648.
24. See inter alia Horst Kurnitzky, *Ödipus. Ein Held der westlichen Welt. Über die zerstörerischen Grundlagen der Zivilisation* (Berlin, 1978).
25. See Karl Marx, *Das Kapital*, vol. 3, Marx-Engels-Werke 25 (Berlin, 1971), 404 ff.
26. See inter alia Jochen Hörisch, *Kopf und Zahl. Die Poesie des Geldes* (Frankfurt a.M., 1996), chap. II. 4.
27. For a more exact analysis, see Sigrid Weigel, "Das Motiv der Kästchenwahl' und 'Shylock'. Zur Differenz von Gabe, Tausch und Konversion in der allgemeinen Zirkulation von 'The Merchant of Venice'," in Sigrid Weigel, *Literatur als Voraussetzung der Kulturgeschichte. Schauplätze von Shakespeare bis Benjamin* (Munich, 2004).
28. Simmel, *Philosophie*, 499.

### PART III: COMMISSIONS OF INQUIRY AND THE PRACTICE OF RESTITUTION



# RESTITUTION AND MEMORY



Material Restoration in Europe

*Edited by*  
Dan Diner  
*and*  
Gotthart Wunberg



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