

Rage and Critique: One Jewish Girl's Story

By Libby Adler*

I.

The most surprising thing he ever said to me was “Don’t take this the wrong way, but you’re really quite beautiful.”

We were sitting across the table from one another in a bistro in Boston’s Back Bay, enjoying a brief escape from the demands of our studies. In the spring of 1998, we were classmates in the Harvard Law School Graduate Program. Conrad,** a German lawyer earning his doctorate at the University of Frankfurt, was in Cambridge for the year to bolster his academic credentials, and I, an American lawyer, was doing the same, preparing to enter the law teaching market.

We had been meaning to get together for months, knowing that we shared some interests in—among other things—family law, and intuiting that we might also share a methodological perspective. Our time together proved that we shared much more. Our conversation was easy and full of humor, much of it spent mocking the pretenses of elite academia, though we knew that we would spend the rest of our day in total devotion to them.

By “don’t take this the wrong way,” he meant: “I’m a married man, and this is not a come-on. I know that you’re in a committed relationship and in any event a lesbian and not interested.” Fair enough. He made an observation and stated it in a matter-of-fact fashion. No objection there. What so surprised me about his comment was my sense, not that he was making a sudden pass, but that it isn’t true.

It’s not that I’m so hard to look at. I’m your average-looking Ashkenazi Jew: thick, curly, short, brown hair, dark eyes and eyebrows; my skin is a little bit blemished and my nose could have been a contender; and I’m short, just about five feet. So whatever my mother has told you (for reasons passing understanding, she thinks I look like Debra Winger), “beautiful” is not the first word that comes to the lips of most men I encounter. You can see, then, why I responded blankly, was maybe even a bit agitated, and certainly was anxious to return to what had been, up until that moment, a quite satisfying project of ridicule.

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** This is a pseudonym. While the content of all of the conversations with my friend have been checked with him for accuracy, the interpretations of those conversations are mine alone. He disputes several of my readings and regards them as wrong-headed projections. He might be right. I have used a pseudonym to avoid attributing to him subjective understandings that can fairly be attributed only to me.

To my mind, the comment made the painful suggestion that in Conrad's world—not Cambridge, but his home in Germany—Jewish women are exotic.

Where I come from, Jewish women are not exotic. Asian women, as I suspect most Americans have not failed to notice, have the allure of the "other." Latin-American women have it. Not Jews. Where Conrad comes from, though, a German academic teaching abroad brought a series of Jewish girlfriends back home with him to show off at parties, and non-Jews wear the Star of David in the same way that I suppose white American kids wear the yin yang—for its exotic appeal. I could not help but imagine that what made me seem beautiful to Conrad was the history of Jewish expulsion and extermination in his home country, and as this possibility dawned on me over sandwiches in the Back Bay, it jolted me out of our lunchtime camaraderie.

A year or so after our spring outing, Conrad and I began a collaborative project that would land me in many more moments like this one. Following graduation and Conrad's return to Frankfurt, he and I began an e-mail dialogue about the growing number of legal claims arising out of the Holocaust; as various settlements were proposed, we began thinking about how recovered funds would be distributed. We wondered, as the prospect of a settlement approached, whether the funds would descend through families using an inheritance model or be distributed by government in the mode of a public welfare system, and whether private contractors would play a role, as they increasingly do under modern welfare regimes.

Ultimately, neither an inheritance nor a welfare model was employed. Instead, the German Parliament and German business jointly created a ten-billion DeutscheMark fund called the *German Foundation*, which would distribute compensation money to former slaves of the Third Reich using private contractors, purporting to eliminate the encumbrances associated with judicial and other public administration. Over the next year and a half, Conrad's and my common interests and political perspectives led us to write a law review article and teach a seminar together about the German Foundation. Our shared influences and a genuine mutual affection would bind us together through the course of our collaboration, but at times when I was least prepared, our very different histories and experiences would create stunning moments of rupture.

II.

I was crossing campus with the only other junior member of the law faculty when I heard myself say it. It came out of my mouth as if from a stranger.

By now an assistant professor at Northeastern University, I was grouching to my colleague about the endless aggravation that the project, so promising at its inception, already seemed to have brought me. I had carefully reviewed all of the judicial decisions dismissing lawsuits brought by survivors of the Nazi labor program, on statute of limitations and other technical grounds, and had carefully reviewed the terms of the Foundation Law purporting to settle and preclude all pending and future claims. Still, while I

was writing every day, experimenting with different introductions and arguments, I simply could not arrive at a satisfying thesis.

President Clinton's point-person on Holocaust affairs, Deputy Treasury Secretary Stuart Eizenstat, had led the American delegation in negotiations that yielded a diplomatic solution to claims made by survivors of the Nazi labor program all over the world. The Germans would create and fund the Foundation, and the U.S. government would file a *statement of interest* in all pending and future lawsuits in American courts advocating dismissal of survivors' claims in favor of the Foundation as the exclusive avenue to recovery. The Germans got what they wanted: an end to the pesky lawsuits that aging Holocaust survivors kept filing in American courts, not only putting German corporations at risk of having to pay hefty judgments, but also threatening their public image and shaking their confidence that the past was behind them.

The sums available under the Foundation law were paltry. The most egregiously abused former slave from Auschwitz could receive a maximum of \$7,500 for his or her trouble, and survivors of German slavery who had not been held in concentration camps could receive only about \$2,500. Almost no heirs were eligible to recover in the names of their dead, so the Germans effectively managed to avoid paying compensation for the millions of people who died exerting themselves for corporate ends in the 1930s and 40s, as well for those who had died in the ensuing years leading up to the agreement. Those who were enslaved in agricultural, domestic, or ecclesiastical (as opposed to industrial) settings were not guaranteed anything. People whose claims were denied by the private contractors administering the Foundation funds could not, according to the terms of the law, resort to the courts for relief.

"The settlement is pathetic," I reported to my friend, "but I think that under the circumstances it was probably the best they could have hoped for."

In the moment following, I could not have told you exactly what was wrong with my comment, but I knew immediately that my initial assessment should be regarded with skepticism. A moment like this one, in my experience, a moment in which you hear yourself say something that does not sound quite right, if it is caught, can be a port of entry into something important. Right then, I knew that the person I just heard speaking had been sold a bill of goods, and that my job now was to vindicate her weaker impulse, reexamining with a more critical eye what I had up until that moment merely accepted with resignation.

Even after this watershed conversation, though, I scrapped multiple attempts at a thesis. Some I thought worthy enough to e-mail to Conrad in Frankfurt, but none really gratified.

At least some of the difficulty resided in an inner conflict between the outraged granddaughter of a man who had been nearly starved and worked to death at the Sachsenhausen concentration camp in the late 1930s, and the recently-minted, critically-inclined academic writing and teaching in the postmodern age. The former wanted the bastards to pay and believed with certainty that they should. The latter was skeptical that the relevant legal materials, including treaties, German legislation, and German and American

judicial decisions, required it. With each new stab at a thesis, I became more deeply entrenched in my dilemma, one day disappointing myself intellectually by waving the banner for the survivors' claims and sounding more wounded than rigorous, the next day fending off the guilt that comes with dispassionately and critically assessing those claims despite the painful and haunting images of my family's history that have resided in my mind's eye since childhood.

In our daily e-mails, Conrad and I mulled over the lousy deal that survivors wound up with as well as the mockery of representation in the negotiations (many of the people affected by the agreement went unrepresented except in the most tenuous sense). Things didn't start to open up for us until we shifted our attention away from the terms of the agreement and the process by which it was reached and redirected ourselves toward the *rationales* offered by proponents of the Foundation in support of their solution.

In particular, two shrewd and deeply entangled rationales troubled us. First, because plaintiffs' odds in the courtroom were poor and litigation is a notoriously lumbering process, Eizenstat and others argued that judicial resolution of the claims would not be a suitable approach. The best chance that aging survivors, dying at a rate of about one percent each month, had to see some restitution for their suffering was a diplomatic, global settlement disbursed expeditiously by private contractors.

The second rationale lent rhetorical support to the first. Proponents suggested that the low dollar amounts contemplated in the law stood immune from reproach because the plaintiffs' claims were never "about the money." It was memory or acknowledgment that the survivors really wanted. Eizenstat, presumably cognizant that former concentration camp inmates were being asked to satisfy themselves with a few thousand dollars in a legal culture in which people who spill hot coffee on their laps stand to recover millions, called the sums "dignified," which, as far as I could tell, meant "low, but don't complain about it."

The "not about the money" rhetoric undoubtedly alleviated some of the widespread unease over the Holocaust lawsuits. Commentator Charles Krauthammer, for example, warned that the suits were sure to evoke "Shylockian stereotypes" and, while assuring readers of his belief that the Holocaust demands to be remembered, condemned the pursuit of money damages, protesting that it "debased the sacred." Incredibly, even Abe Foxman, national director of the Anti-Defamation League, derided the lawsuits as an "opportunity of a lifetime" for tort lawyers and went so far as to call one of the plaintiffs' attorneys an "ambulance chaser," himself reviving a classic anti-Semitic archetype. Norman Finkelstein, CUNY's bomb-throwing professor, published a book entitled "The Holocaust Industry," impressing the scholarly imprimatur on the taboo against Jews seeking financial restitution.

The alleged inaptness of the judicial process helped to ease the move from the courtroom to diplomacy and private disbursement, while the insistence that the claims were not, or should not be, "about the money," silenced would-be critics of the low amounts. Who could be so crass as to suggest that mere money could compensate survivors of the Holocaust? Observers' attention was steered away from the sums to the more polite "ac-

knowledge” objective. Conrad and I would ask whether that objective was achieved.

III.

It isn't as if they're going to put you in a concentration camp, I kept telling myself as I prepared for a trip to Frankfurt in the winter of 2000. During my stay, Conrad and I would work out the general outlines of our paper and teach a seminar related to our research. My father, who arrived in the U.S. from Germany on the eve of 1939 as a baby, offered to go with me. I was thirty-three years old, living four hundred miles from my parents' home, and not in the habit of traveling with my father, so this was an absurd offer on its face, but I understood what he was really asking: “*Germany? Are you sure you want to go to Germany?*” A retired high school social studies teacher, my father knows that Germany rejoined the world of nations some time ago, but deeply ingrained fears die hard.

My grandfather, by contrast, provided me with a long list of sites to see during my visit, “and try not to think too much about the Holocaust,” he advised. While my father has no memories of Europe, my grandfather's are many and lucid. Having fled for his life and the lives of his wife and children at the age of twenty-eight, he remembers Germany with a strange amalgam of joy and pain. He still suffers from his memories: the six months he served in solitary confinement for dating a gentile girl in violation of the Nuremberg laws; the night of the general round-up in which the police roused him and my grandmother from bed, machine guns drawn, arrested him as a “habitual criminal,” and sent him to the concentration camp; the camp guard who became perturbed when a weaker man could not keep up with a forced march, stepped on the man's throat until he died, and ordered my grandfather and others to toss the body to the roadside.

But Germany is also the place where he played soccer, had his bar mitzvah, married my grandmother, and saw two children born. The feelings of those who lack first-hand knowledge, it seems, are more uniformly anxious than those of the survivors. I was only mostly joking, therefore, when I said to my partner Nancy “I should probably get a cell phone, so if the Nazis come for me, I can call you.”

IV.

Nancy accompanied me for the first week of my stay, and before Conrad and I settled down to work, she and I toured the country together. It was a schizophrenic tourism, crossing the ground where my grandfather and the other inmates stood for roll call one day, dining out festively in Berlin's gay section the next.

It somehow came as a surprise to me that the earth did not stop rotating on its axis when I set foot in that country. I had moments, though. I suspect that most any American Jew who has visited Germany knows them. The first time you see an old person, for example, and you do the math. *Shouldn't he have to account to me? I mean now, right now.*

Or it happens on the trains. We boarded one from Hamburg to Frankfurt during daylight, and as I watched the countryside go by, I remembered that two policemen threw my grandfather off of a train as he attempted to flee the country. I envisioned him out there on the side of the track: stunned, bruised, and uncertain whether he would make it to Holland where he was to reunite with my grandmother and their children.

As the sun set, my window darkened and became reflective. Instead of looking out at the landscape, I now gazed at my own Semitic image. *Oh my God*, I thought, *everybody on this train knows I'm Jewish*.

V.

At the end of the first week, Nancy returned to Boston, and Conrad and I got down to the business of writing our paper and planning for the seminar. Each morning, I awoke early, made coffee and turned on the laptop in the little studio apartment that Conrad had arranged for me prior to my arrival. Mostly, I reviewed what we had written the night before with a fresh eye and clarified the language. Conrad took his boys to day care and worked for awhile in his office, typically joining me around ten o'clock. We worked in my studio, first me at the keyboard and him on the floor leaning against the bed, until intellectual inspiration swelled up in him and he rose to loom over me, pressuring me to yield my seat. Then it was my turn to lean against the metal bed frame until inspiration favored me. We would go on like this until lunch, which we usually ate in the university cafeteria, and then head for Conrad's office for a change of scenery.

Our hours together were strewn with moments of extraordinary intellectual engagement, almost one-mindedness, as well as some of tension, distance, and even flashes of regret over having committed to a joint undertaking of such enormity. Our teachers were, metaphorically speaking, in the room with us, most noticeably when one of us would chastise the other, "No, that isn't right! What would Professor So-and-So say?"

During those hours, I heard about Conrad's year in the United States as a high school exchange student hosted by a Midwestern family and about how, after that year, he helped to prepare other German teenagers for the experience of sitting in an American social studies class while the topic of the Holocaust was discussed. I began to understand Conrad as a progressive in his political context and to appreciate the public discourse within which his politics were forged. The debate, played out in the newspapers and in government, over whether Germany owes more, in dollars or confessions, to the survivors of Nazism, became clear, and I could not avoid noticing how the politics of memory in Germany—especially the brimming resentment among those most anxious to rid the present of the past—bore an undeniable resemblance to the politics of affirmative action in the U.S.

On a few occasions, Conrad described a reportedly brilliant Jewish couple he was friendly with at Harvard. One played the cello proficiently, the other the violin. They were fluent in several languages. In their Cambridge apartment, books were stacked from floor to ceiling, and their kitchen table was covered with newspapers from all over

the world. Conrad would tell me romantic stories about these extraordinary friends, and I could not help feeling at those moments that I—who had not read Habermas, did not speak a word of French, was woefully underschooled in the arts—was failing him. Some days I wanted to impress Conrad, conform to the European ideal of the Jewish intellectual, an ideal he disclaims, but which I imagined him to hold. Other days, though, the pressure I felt at such moments led me to want to disappoint him. I even sounded like a philistine intentionally on a few occasions, driven by a compulsion to upset expectations of what I was supposed to be.

Accustomed as I was to American Jewish iconography, in the personae of Woody Allen, the characters of Philip Roth's novels, the residents of Hester Street and Amy Irving crossing Delancey, the European ideal was new to me. The refinement and sophistication of the Western European Jew clashed with the schlumpy and neurotic images with which I have always comfortably identified. I couldn't tell how to conform and how to defy.

We both admired Theodore Adorno, Max Horkheimer, Franz Neumann, Walter Benjamin, and the other mostly Jewish intellectuals who composed the radical *Frankfurt School*, an interdisciplinary group of critical theorists forced into exile when Hitler came to power. The famous Institute for Social Research, in which these gifted scholars worked, sits directly across the street from Conrad's office at the university and could be seen from his window. Each of us drew inspiration from looking out at the stolid, Marxist, rectangular structure, ugly though it was, but mine was tainted and self-conscious. I'm not the granddaughter of a brilliant, German-Jewish intellectual, back for a reunion of greatness. I'm the granddaughter of a dry goods salesman. I like American football and think soccer is boring. *Am I not Jewish enough for you?*

VI.

It happened over a late dinner one night in a Frankfurt restaurant filled with smoke, clunky, wooden tables and noisy, jovial Germans in their twenties and thirties. We had entered the restaurant feeling festive and triumphant, riding the high that comes with having cemented a thesis we thought thrilling and having completed the outline of our paper. It was after ten o'clock and we'd been working all day, just now feeling that we could break, not just to eat, but to celebrate, and also to shift gears from writing to class prep. The seminar would begin in a couple of days.

After a self-congratulatory and comradely toast, we resumed business and discussed our teaching strategy. Most of the planning was already done. Our research lent itself naturally to a curriculum beginning with the political and economic structure of the Third Reich, continuing with the roles of specific corporations such as Volkswagon and I.G. Farben, followed by the post-war treaties, reparations agreements, and national compensation legislation, then the lawsuits in German and American courts, and ending with the German Foundation, the mother-settlement, casting itself as the conclusion to it all.

“How will we handle it,” Conrad asked me, “when a student says that we cannot judge the perpetrators, since we did not live when they did and cannot know what it was like?”

“Do you really think someone will say that?” I asked, surprised.

“Someone will, of course,” he answered. “We’ve all wondered what we would have done, whether we would have participated, if we had been alive then, haven’t we? Are you telling me you’ve never asked yourself that question?”

I felt my temperature climb and our alliance evaporate. “No,” I said, the muscles in my abdomen tightening, “I haven’t.” My God, I thought, of course that’s not what I wonder! I wonder whether I would have survived! How could he not know that? I wonder whether I would have had the resolve to endure the suffering and the humiliation. I wonder whether I would have turned on other Jews for a piece of bread. I do not wonder whether I would have been a Nazi.

More cold than bewildered then: “It never seemed like an option.”

We sat in silence, against the music and chatter of the restaurant, for I’m not sure how long. In my solitude I became aware of how hot it was in there, and how smoky. I was exhausted, flushed, and on the verge of tears. I turned my gaze up from the plate in front of me to meet his and managed to utter the words I’d been holding inside for weeks: “I don’t think you understand what it means for me to be here.”

“Tell me” he replied softly, his face open, his eyes squarely on mine.

VII.

The seminar was held at a conference center named for a Lutheran minister, Martin Niemöller, who was arrested from the pulpit for his criticism of the Nazis. Coincidentally, Niemöller was in Sachsenhausen with my grandfather, who remembers him as a friend and as remarkably courageous in the face of the extraordinary vitriol that the guards had for him. “I believe in God, not Hitler!” my grandfather reports him exclaiming, as he was compelled at gunpoint to ingest his own waste. To an American Jew alone in Germany, the setting could not have felt more Protestant. It wasn’t just the cloth wall-hanging of Lucifer falling into Hell. The site was alcohol-free, the heat was kept on low (in mid-December), and all of the beds were singles.

Conrad and I co-taught what German universities refer to as a “bloc seminar,” meaning that instead of attending thirty class hours spread over the course of a semester, students wrote their papers on various facets of the relevant legal history in advance, and then gathered for an intensive four-day classroom experience. We had twenty law students, eighteen of them German, one American, and one Russian. We structured the course so that student presentations were interspersed with class discussion and an occasional short talk by a visitor. Together, we proceeded through the details of the Nazi labor program and much of its legal fallout, in both Germany and the U.S., over the preceding half-century.

German law students, it will not surprise you to learn, are not accustomed to engaging in a Socratic-style dialogue with their teachers. Their habit is to receive professorial wisdom, write it down, memorize it, and then write it down again under test conditions. A young man named Viktor quickly struck me as among the brightest and certainly the most ambitious of the students in the class. He wore black jeans and had a wave of black hair brushed back to match. Almost immediately upon meeting me, he announced his plans to attend the graduate law program at the University of Chicago after completing his basic law studies. Thinking he was probably the toughest, I picked on Viktor to get the rest of the class acclimated to my American style of law teaching. Even Viktor suffered a minor meltdown, though: “I don’t understand what you want from me!” he cried, under what seemed to me to be fairly gentle prodding.

Each day, though, the students seemed a little less scandalized to be asked to think. Thinking was crucial to the attainment of our goals for the course. The syllabus was designed to get students to trudge through post-war legal history, not for its own sake, but to identify at each moment the moral and political judgments—moral in the sense of assigning responsibility, political in the sense of having important distributive implications—that lay beneath every legal event.

For example, one post-war treaty, known as the London Debt Agreement, deferred, for an indeterminate period, war-related legal claims “against the Reich, or agencies of the Reich,” leaving open the question of what sorts of entities qualify as “agencies of the Reich” entitled to benefit from the indefinite deferral. Surely any governmental agency would qualify, but private companies have argued over the years that they, too, should benefit from the deferral, on the grounds that they did not act of their own accord when they exploited slave labor in the course of wartime production, but were forced to do so by Reich officials. Since they were acting strictly at the behest of the Reich, the companies have argued, they ought to be regarded as “agencies of the Reich.”

Historical evidence is far from conclusive on this point. There is no doubt that Reich officials placed heavy demands on the private sector to fulfill wartime manufacturing obligations and that refusal to take advantage of the cheap labor being offered by the regime combined with the failure to meet production quotas would have tested Nazi patience. It is also the case, however, that historians have unearthed all sorts of incriminating corporate memoranda, for example, requesting the shipment of additional slaves, or proposing to build or expand factories at concentration camp sites for easy access to cheap labor.

But the point is not that German industry did or did not act freely. The point is that the language of the treaty tells us only so much. To decide whether a company ought to benefit from the deferral, a court would have to make a *judgment* about the extent of a company’s *accountability* for its use of slaves. There simply can be no legal judgment about the application of the treaty without a moral and political one.

Another example comes from the federal district court in New Jersey. Dismissing claims against German companies who used slave labor, Judge Dickinson Debevoise found that the claims raised a “political question” best resolved by the executive branch of government. The problem, according to Judge Debevoise, was that the plaintiffs were

seeking *reparations*, or restitution paid by a vanquished nation to a victorious one. Reparations arise out of war, and therefore are not, according to conventional international law thinking, the province of individual claimants, but the province of sovereigns to be determined diplomatically. Judge Debevoise dismissed the case before trial, reasoning that the matter was properly one for the political branches, not for the courts.

Prior to Judge Debevoise's ruling, an expert had testified that the plaintiffs' claims were not in the nature of reparations, but were instead claims for compensation for a civil wrong, just like any tort or contract claim that might come before a court sitting in civil session. The wrongs complained of by plaintiffs, this expert contended, arose out of Nazi ideology governing race and the domestic labor market, and were related to the war only temporally. Since the claims did not arise out of war and were therefore not claims for reparations, they should not be dismissed on political question grounds, but rather should be permitted to proceed to a jury as would any valid civil claim.

Again, the historical evidence is inconclusive. Slave labor was undoubtedly used to advance wartime production when the Germans understood themselves to be experiencing a labor shortage. There must have been intense pressure to bolster armament and other production to sustain Hitler's massive war effort. Furthermore, the majority of the laborers were conscripted in occupied territories that had fallen to the Reich as it spread across the continent.

On the other hand, a close look at the details of the Nazi labor program reveals an elaborate racial hierarchy, ranking the French, Belgians, Russians, Czechs, Poles, Jews, Roma, and others, and assigning roles for each group. From 1942 on, those on the bottom rungs were earmarked for extermination, even at the expense of maximal productivity. Advancing the Final Solution superseded production goals.

Moreover, the alleged labor shortage was conceived without a thought given to the untapped capacity of German women, who, according to Nazi ideology, were to stay home and attend to the reproduction of the master race. The seminar students readily offered the labor shortage as an historical explanation for the Nazi labor program, but when I informed them of the influx of *American* women into the industrial work force during World War II, they seemed stunned. It had never occurred to them that the "fact" of the labor shortage might have been a product, at least in part, of the racism and sexism of Nazi ideology.

But again, the point is not that the labor program was war-related, giving rise to a claim for reparations, or independent of the war, giving rise instead to an ordinary civil claim. The point is that the legal materials alone cannot provide us with an answer. The law tells us only that *if* the claims are war-related, *then* the plaintiffs are asking for reparations, which courts cannot grant. To determine *whether* the claims are war-related, however, requires another kind of judgment. It might be best understood as a moral judgment or as a political one, but it cannot be described as strictly legal and without a moral or political underbelly.

As we proceeded through the legal history, we turned each argument over and over, and the students uncovered what lay beneath fifty years of legal rationales for denying

former slaves of the Third Reich any recovery in German or American courts. They began to comprehend how victims of Nazism had been denied restitution on grounds that were ostensibly technical, but were actually rich in human judgment about some of the most difficult questions associated with the Holocaust: questions about causation and agency, such as who can fairly be held responsible for the millions of acts of inhumanity, and to what extent the conditions of the time should be held to excuse private behavior.

VIII.

On the third day of the seminar, we heard from a guest. Michael Jansen, a handsome and distinguished looking man in his late forties with thick, salt and pepper hair and a finely tailored charcoal suit, enters a room with the confidence of someone who has met with great success in his life, is comfortable in elite business and diplomatic settings, and has earned the respect of those around him.

Jansen was in-house counsel to one of the companies that was sued in Judge Debevoise's court, the Degussa Corporation, which not only profited from the use of slave labor, but also bears the distinctions of having produced Zyklon B for the gas chambers and melted down gold from the teeth of the dead. Jansen spoke tearfully about his trip to Israel to attend to his company's financial contribution to Yad VaShem, the Holocaust museum in Jerusalem, and recounted his own reverence at listening to the story of one survivor he met there. German Chancellor Gerhard Schroder appointed Jansen to the distinguished post at the helm of the Foundation, and Jansen generously took time out of his schedule to come to our class to tell us about the lawsuits as well as his work with the Foundation, which he spoke of with a great sense of purpose and honor.

As if on cue, Jansen began by stating our problematic: "The lawsuits," he explained to the class, "consisted of emotion on one side, and professionalism, reason and law on the other." The emotion, of course, came from the plaintiffs, who tried to turn the issue into a "political" one, and hoped that a sensational appeal would persuade a jury to award them damages. Law and reason, however, begged to differ, and Jansen praised Judge Debevoise for seeing that so clearly.

Jansen's explanation was entirely consistent with that of other German industry representatives, who maintained from the outset that they owed a moral, but not a legal, obligation to the survivors of the Nazi labor program. The preamble to the Foundation Law corroborates their position, describing in majestic terms every possible kind of responsibility *except* legal. When Jansen recited this corporate mantra, I sat up: "Dr. Jansen, may I interrupt you for a moment?" He nodded.

I turned to our students. (By late in the third day, they surely were *our* students.) "Dr. Jansen has just taken the position that Degussa owed the plaintiffs a moral obligation but not a legal one. Let's think back for a moment to that case. What were the key issues? What kinds of decisions had to be made along the way to a determination of *no legal responsibility*?"

One by one, they ran through them, demonstrating how each was decided without explicit reference to its moral or political implications and yet could not have been resolved without these kinds of judgments. Were the companies “agencies of the Reich” or weren’t they? Are the claims “war-related” or not? For each legal question, they recalled the complex moral and political underbrush.

“So what do you think of this contention, that Degussa owed a moral but not a legal obligation?” I asked them.

If you teach, then you know what I mean when I describe the next moment as exalted. They got it; they got it completely. An answer to the question of legal responsibility requires answers to layers and layers of intermediate moral and political questions. It was untenable for German industry to deny legal responsibility on these technical grounds while conceding some inarticulate moral responsibility. The denial of corporate *legal* responsibility amounts finally to a refusal to take *any* responsibility for German industry’s past. Jansen’s thesis had been sabotaged.

I turned back to our guest. “Dr. Jansen, do you really believe that there is something to this distinction between moral and legal responsibility or do you cite the distinction for strategic purposes?” Taken by surprise, he responded that it would have been costly for his company in public relations and legal fees if the suit had gone forward. I was relentless. The students deserved it, and I wanted it. I asked him again: “So do you offer this distinction between moral and legal responsibility strictly for strategic purposes?”

Michael Jansen was not a Nazi; he never did my grandfather or his contemporaries any harm. My cruel blindsiding of Jansen—throwing my voice to my students the way the Foundation’s apologists spoke through me when I heard myself say that the settlement was the best deal the survivors could have hoped for—had at least as much to do with what comes after the Holocaust as it did with the Holocaust itself. My desire to punish Jansen, to extract a concession from him, was not merely displaced rage at the Nazis that I was born too late to vindicate, but fresh rage over today’s corporate actors’ certainty that they are entitled to resume a position of respectability, their presumption of an unambiguously innocent association with their predecessors. How can they be so sure, so soon? If I had to suffer the uncertainty of my own relationship to the Holocaust, I sure as hell was not going to do it alone.

The blood rose in Jansen’s face. He paused, flustered, “eh... well...” but seeing no way out, he conceded. “Yes, for strategic purposes.”

All that noblesse, that solemnity... it was a bad faith cover story for German industry’s steadfast position of denial. Even he didn’t know it before that moment. At the coffee break, Conrad, who is a tall man, picked me up so high I feared I might hit my head on the lights.

IX.

I left Germany three days later. The seminar and initial conceptualization of our paper behind us, Conrad and I e-mailed one another two or three times daily, developing

the details of our analysis. The two mainstay rationales offered again and again by proponents of the German Foundation operated in tandem. The “not about the money” rationale shamed would-be critics for debasing the memory of the Holocaust by quibbling over money. This alleged reverence did no favors for Holocaust survivors, however, chastising them for seeking restitution and deflecting attention from the poor terms of the settlement. The more fitting objective for the survivors, proponents urged, was acknowledgment.

But careful examination reveals that the acknowledgment objective was never attained either. The Foundation Law is premised on an *absence* of legal responsibility. Stuart Eizenstat, the leading American diplomat, confirmed this premise with his prediction that the plaintiffs were likely to lose in court—the other rationale for the Foundation—while at the same time giving high praise to German industry representatives for their acceptance of moral responsibility. Once scrutinized, however, it becomes clear that German industry’s legal defenses, such as the claim that German corporations were mere “agencies of the Reich” rather than autonomous actors, amount to a denial of *any* kind of responsibility.

My inner conflict was no conflict after all. The legal materials were not determinative; they did not conclusively require a victory for the plaintiffs in court. What they did require was the intervention of human judgment—an assessment of responsibility for the corporate use of slaves. The critically-inclined, new law professor found the gaps left by the legal materials, and the granddaughter’s rage found its target in the series of judgments that filled those gaps.

X.

My efforts to hold the slave labor claims in a critical gaze for a year and a half did not reveal to me the correct legal conclusion, or even the morally correct outcome, of any litigation—I suppose I had my own idea about the latter before the project even began. Really, in the end, my work on this project taught me nothing about the debt that the Nazis incurred to their victims. What the experience did lay bare for me was the tangle of complicated, uncertain, and never fully justifiable feelings passing among the inheritors of the Holocaust, including Conrad, Jansen, my students, and myself.

This essay, which I shared with Conrad at multiple stages and that incorporates many of his reactions and criticisms, has been tough on our relationship. It has been painful for him to endure a re-reading of our time together in which the authoritative voice is mine alone. The act of extricating my individual perspective to shape our story, perhaps especially after we struggled as co-authors to harmonize our intuitions and methodologies, has done some violence to us that might not be repaired. We will, despite this loss, remain importantly related, politically and intellectually. I chose his pseudonym because of its closeness to “comrade.”

My grandfather, now ninety-four years old and living outside Fort Lauderdale, received the first installment of his \$7,500 about three years after the German parliament

agreed to the deal. The Foundation solution, designed to be a speedy alternative to litigation, turned out to be not so speedy. The letter that accompanied his check, a decidedly unceremonious document, adorned by neither seal nor signature, not unlike something one might receive from the Department of Motor Vehicles, did no more than inform him of the contents of the envelope and remind him that he has waived his right to sue.

Re-reading the letter, I wonder what my grandfather gained by all this. Neither the material nor the psychological conditions of his life seem much improved. I cannot help but fear that he has been put to use by German industry again—that he and others who survived their enslavement have relieved German companies of yet another burden. In a few years, though, none of the survivors of German corporate cruelty will be around to complain and German industry finally will have succeeded in avoiding confrontation with its past.

Postscript

After I wrote this essay, but before the journal was ready for publication, my grandfather died after being admitted to a Florida hospital with pneumonia. Observing *shiva* in his second wife's home, a relative directed my attention to the Lazyboy loveseat that my grandfather purchased with his slave labor money. I'm not sure if it was the irony of a recliner as compensation for slavery or the vividly trifling quality of the recompense, but when I learned of the couch's origins I had a feeling that, while mournful, came out as a laugh.

I could have gone back through the essay and changed all references to my grandfather to the past tense, but I decided against it. I knew that when my grandfather died, I would feel the loss not only of the man, but also of my most immediate and real connection to the Holocaust. One might sensibly inquire, "well, the further away you are from the Holocaust, the better, right?" Fair enough. But it feels as if something that has had an enormous, if mysterious, impact on me and on my family was evacuated of its materiality, even its believability. With my grandfather's death, the Holocaust became mere history, just something I will tell my son about where his great-grandfather came from. I left the text as it was before my grandfather died because I wanted him to be alive for you.