

Give It Back

Twenty-one years after it became a democracy, Poland has still not enacted any laws regarding restitution and compensation of Jewish property seized during World War II

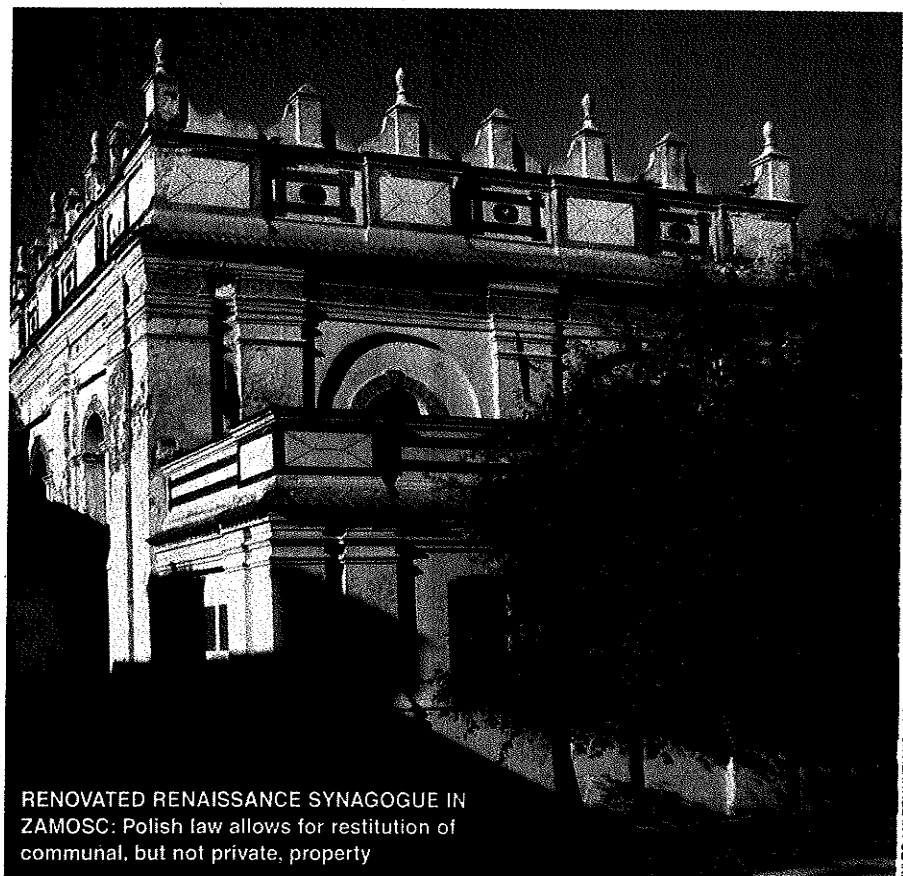
Eetta Prince-Gibson
Krakow and Warsaw

IT IS EARLY EVENING, AND Krakow is growing dark, but the streets are full. Ryszard Bornstein, his elegant, well-tailored wool coat with a matching scarf buttoned high against the penetrating cold, stands on the pavement across from a large, well-kept four-story apartment building in the Kazimierz section of the city and stares. His expressions switch between barely controlled rage, childlike helplessness and deep, deep sadness.

"My family owned this building," he says. "It should belong to me now. I'll never get it back."

Now 73, still tall and broad-shouldered, his thick white hair full and wavy, Bornstein was the only child in a prosperous Jewish family when the Germans invaded Krakow in 1939. His parents were sent to the ghetto, then to the Plaszow forced labor camp. They never returned. Elderly Polish non-Jewish relatives, who had no children, kept him alive and safe throughout the war. They died many years ago, and Bornstein says that other than his (non-Jewish) wife and three children, he has no family in the world.

"It was ours. Ours," he says helplessly. "We lived on the top floor and Jewish families lived in all the other apartments, too. I was a happy child, loved and comfortable." The Germans confiscated the building in 1939, after sending his parents to the ghetto. In the confusion following the war, Bornstein, then only an adolescent, did not think of attempting to reclaim his



RENOVATED RENAISSANCE SYNAGOGUE IN ZAMOSC: Polish law allows for restitution of communal, but not private, property

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family's possessions, and ethnic Poles had taken over. It changed hands again in the late 1940s, when the communist government of Poland nationalized it. But the government never attempted to rebuild the Kazimierz, which was badly damaged during the war, and over the years, the area was abandoned and became an unsafe, drug-infested slum.

Then, in 1993, the newly-constituted democratic Polish government, established in 1989, which "inherited" the property from the Polish communist government, sold the building to a private developer. By 1993, Kazimierz was on the upswing – the movie, "Schindler's List," was filmed here (although the Krakow ghetto had actually been located elsewhere), and gradually the region was becoming gentrified. Kazimierz became fashionable again, filled with upscale restaurants and bohemian bars and cafés, alongside the many reviving Jewish institutions that have been returning to the neighborhood as the Jewish community in Poland begins to reestablish itself. The highly successful Jewish Cultural Festival is held here every year.

The developer renovated the building in 1999 and sold the apartments to private citizens. "They paid a lot of money for those apartments," Bornstein says. "And they'd have to

pay even more now."

Bornstein continues to stare as Kazimierz turns on the streetlights and signs. Well-dressed, professional-looking people fill the restaurants and bars. A crowd mills outside the Judaica Foundation – Center For Jewish Culture, where a concert of the music of Yiddish poet and songwriter Mordechai Gebirtig, born in Krakow and best known for his painful song, "Unser Shtetl Brent" (Our Town is Burning), written after a pogrom in 1936, will start soon.

"Getting the apartment house back, or at least some compensation for it, would make me wealthier than I can even imagine," Bornstein says matter-of-factly. Then he quickly, forcefully adds, "But it's not about the money, you know. I am comfortable and can provide well for my family's future. I do not need the money. I need the justice. My parents were murdered, my community was destroyed. I deserve to have this property back."

BUT IT IS UNLIKELY THAT Bornstein or any of his descendants will ever receive restitution or compensation for the imposing red-brick building. Poland has consistently failed to pass a private property restitution law, leaving Holocaust survivors

and their heirs with little chance of restitution or compensation for property seized by Nazi Germany in World War II and kept by the Soviet-dominated Polish governments until the demise of communism in 1989.

In fact, only two Eastern European countries – Poland and Lithuania – have failed to adopt such laws. All the other states have enacted legislation of some sort or another, some more just and generous and others less so, but all at least providing for an organized, structured and relatively transparent process of application, usually for compensation.

Over the past decade, Poland has consistently received high regard from Jewish and international groups for embracing its growing, culturally flourishing Jewish community and, most recently, for the sponsorship of the commemoration of the 65th anniversary of the liberation of Auschwitz – perhaps the last major memorial to be attended by survivors and liberators. The Polish government has been hailed internationally for the construction of the national museum that will commemorate eight centuries of Jewish life in Poland and will be located in the heart of Warsaw's former Jewish quarter.

Relations with Israel are strong: And when President Lech Kaczynski was killed on April 10, together with his wife and other senior members of his government, the State of Israel and the major institutions of the Jewish people expressed their sorrow and condolences.

The issue of restitution and compensation was first raised in the Polish Senate in 1990. Since then, successive democratically elected Polish governments have proposed different forms of legislation and schemes to provide administrative mechanisms for the restitution of private property. But none have passed the Polish parliament, and observers see little chance for such legislation in the foreseeable future.

The sums involved in such restitution would be astronomical. But as Bornstein says, questions of restitution and compensation are not primarily about – or at least not solely about – money. These issues cut to the quick of complicated historical, political and moral questions. At their deepest level, they pose troubling questions about collective memories and point to the different, conflicting narratives that Poles and Jews tell themselves and teach their children.

IN NO COUNTRY IS THE QUESTION of the restitution of the property of the victims of the Holocaust as complex as it is in Poland.

First of all, even the definition of “what is Poland” is complicated. After the outbreak of

the war in 1939, what had been Poland had been divided between two powers – the Germans, who devastated it, and the Soviets, who exploited it. Subsequent to Operation Barbarossa, when the Germans violated their agreements with the Soviets and marched eastward, the rest of Poland was nearly leveled as well. With the end of the war, the border alterations of Poland, determined largely at the conferences at Yalta and Potsdam, were radical and traumatic. One-third of prewar Poland became

‘My parents were murdered, my community was destroyed. I deserve to have this property back.’
– Ryszard Bornstein

part of Belarus, Lithuania or Ukraine, while large section of today's Poland was German territory before the war. Then came the communist regime, which took over the property that had been expropriated by the Nazis and nationalized much of the rest.

Then, when the Iron Curtain fell, creating a kind of “year zero,” there could have been fair settlements for much of the private property. But, as in Bornstein's case, the newly democratic Polish state chose to sell countless properties to private individuals and newly formed corporations.

And many ethnic Poles, who still have not forgotten their treatment under the Germans and the Soviets, are enraged that Poland is being told that it must pay out billions for crimes that were committed by the regimes of Hitler and Stalin.

All this begs the thorny question: Who should make the reparations to the Poles? The Germans? The Soviets? Russia? The once-Polish parts of Belarus, Lithuania or the Ukraine?

IN THE ABSENCE OF ANY GUIDING legislation, some properties have been restituted, and some individuals and families have received compensation, on an ad-hoc basis. In December 2009, for example, a Polish aristocratic family was finally awarded, after years of court cases and protests, compensation for the communist-era seizure of its Warsaw mansion, which was demolished to make way for the new U.S. Embassy in the 1960s.

But ownership is difficult to trace and prove. Many documents were lost during the

war, and the communists were notoriously careless about property registrations, since they were ideologically opposed to the very concept of private ownership. Many buildings were razed and later rebuilt by new owners. And most agree that individuals who later came to own or live in these properties bear no liability towards the original owners.

For these reasons, compensation rather than restitution seems the only reasonable solution. But what is compensation? The current value of the property? The value of the property at the time? A percentage of one of these values? Currently debated proposals suggest that applicants would receive between 10 and 15 percent of the wartime value of their property. Or perhaps, some Polish politicians have argued, a finite fund should be set up – with hefty contributions by other countries – which would then be distributed, according to some as yet not specified key, among all the applicants.

Whatever the criteria, it is clear that this will amount to vast sums of money. Monika Krawczyk, CEO of the Warsaw-based Foundation for the Preservation of Jewish Heritage in Poland, which oversees Jewish historical and religious sites across Poland on behalf of the Jewish community, says there was a huge number of ethnic and religious minorities in Poland before the war, and they comprised some 30 percent of the population. At least 10 percent of Polish citizens (some 3.4 million) were Jews; in some shtetls, Jews comprised more than 80 percent of the population.

With deft mental arithmetic, Krawczyk says, “Even if only 10 percent of the Jews were real estate owners, according the statistics, there must have been some 300,000 properties belonging to Jews.” Qualifying her own calculations with the fact that Jews had been prohibited from farming but had been permitted to settle in the cities to stimulate commerce, she continues, “Actually, the number of Jewish town properties must have been even higher. And to this we must also add jewelry, antiques, art objects, insurance policies, bank accounts, and so forth. But those are probably lost forever, so we focus solely on real estate.”

“The issue of the property is not financial,” insists David Peleg, director general of the World Jewish Restitution Organization and former Israeli Ambassador to Poland. “It is a matter of justice. Our demands, in the name of the Jewish people and of those individual Jews, are just.”

But, of course, at least on the pragmatic level, it is about money. The cost of restitution and compensation has been estimated at anywhere between 11 and 47 billion dollars, which would strain the Polish economy, perhaps

irreparably in today's tenuous global economy.

These issues apply to Polish Jews and non-Jews alike. Some 80 percent of claimants for Polish property are probably non-Jews, Miroslaw Szykowski, who heads an umbrella group seeking restitution, tells *The Report*. "Jews and non-Jews lost property and are entitled to get it back," says Szykowski. "Poles suffered at the hands of the Germans more than any other country, and then we had to face the nationalization by the Communists. Jews and non-Jews alike are entitled to the same justice."

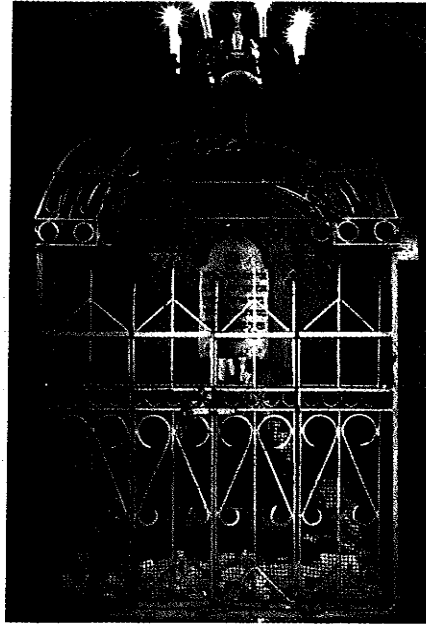
But while Szykowski's organization works and lobbies within Poland, and has only in the past year begun to consider appeals to the European Courts, many of those who have made claims against Poland are Jewish foreign-nationals.

One of the earliest and still best-known cases, for example, was a class action suit brought against Poland in 1999 before a New York court in the name of 11 American Jews, demanding return of property and compensation for loss of use. The suit was rejected but Jews in the West, and especially in the U.S. continue to exert pressure in other ways – by lobbying the U.S. Congress to hold Congressional hearings, by lobbying the State Department to ensure that it will continue to monitor restitution and compensation for property in Poland as an issue of human rights, and so forth. News of these efforts reaches the Poles quickly – and angers them.

"These are the noisy American ways of doing things," says Paulina Krusinski, 43, a public relations consultant from Warsaw. "We don't need Jewish intervention here. The Jews are entitled to compensation – just as all Poles who have been wronged are. I don't think this is a Jewish issue. Our government has not done what it should, and laws should have been passed years ago to take care of property. But this is an internal Polish and human rights issue, for Jews and non-Jews alike."

WHILE JEWS WILL LIKELY make up a small percentage of the claimants of property in Poland, it is the issue of heirless property that causes the most tension, not only because most of the heirless property once belonged to Jews (since less than 10 percent of Poland's Jewish community survived the Holocaust), but because it goes to the heart of the question of identity: Did the Jews of Poland die in the Holocaust as Jews? Or as Polish Jews? And accordingly, who should inherit the heirless property that once belonged to Jews?

Since ancient times, heirless property has reverted to the state. This principle was broken



RESTORED GLORY: Before the Holocaust, there were at least 3,000 synagogues and other communal facilities in Warsaw alone

Only two Eastern European states – Poland and Lithuania – have failed to enact private property restitution or compensation legislation

for the first time in Germany following the Holocaust. In November 1947, Americans enacted U.S. Military Law 59, which called for the restoration of identifiable property and established the principle that a "successor organization" would have the right to claim the assets of those who had perished and to use the proceeds for the relief and rehabilitation of survivors. A year later, the military government established the Jewish restitution Successor Organization to recover unclaimed Jewish property and the property of dissolved Jewish communities and associations.

By 1951, Konrad Adenauer, the first chancellor of the (Western) Federal Republic of Germany, delivered a landmark address before a special session of the Bundestag that set the stage for the compensation of victims, recognizing the duty to make "moral and material amends, both as regards the individual damage which Jews have suffered and as regards Jewish property for which there are no longer individual claimants." Adenauer extended an

invitation to the State of Israel and representatives of World Jewry to enter into negotiations. Two months later, representatives of 23 organizations met and formed the Conference on Jewish Material Claims Against Germany (popularly known as the Claims Conference), which represents the Jewish world to Germany.

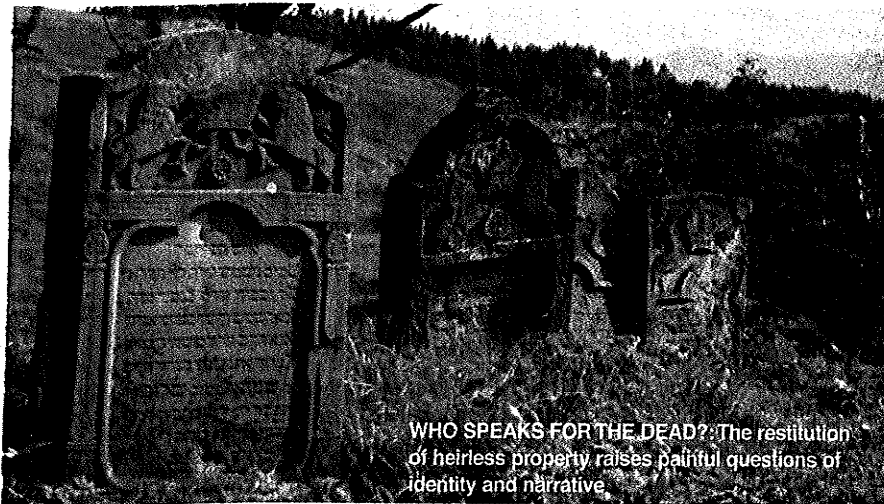
Says Reuven Merhav, chairman of the executive committee of the Claims Conference, "This was a fundamental breakthrough in international law and not all countries agreed with it. But to us it was obvious that the German government, even if it was no longer the Nazi government, could not benefit from the property of the very people it had murdered. As Jews, we would not allow the Germans to both murder and inherit," he says.

After the fall of the Iron Curtain, the World Jewish Restitution Organization (WRJO), created in 1993 to deal with the questions of property in the states that were freed from the Iron Curtain, sought to apply the same or parallel principles – that is, that heirless once-Jewish property should be inherited by Jewish successor organizations and used for Jewish purposes. The WJRO sees itself, according to Peleg, as the voice for the Jewish people and its mission is to serve "as the legal and moral representative of world Jewry, victims and exterminated communities... with regards to claims for recovery of Jewish property in Europe (excluding Germany and Austria, where the Claims Conference handles these issues). We work vis-a-vis the governments and parliaments, together with the Jewish communities, to impress upon these governments the crucial moral and political importance of passing the proper legislation and doing justice."

"This absolutely infuriates me," Piotr Zychowicz tells *The Report* from his desk in Warsaw at the mass-circulation daily newspaper, *Rzeczpospolita*. A highly-regarded journalist, Zychowicz covers contemporary debates on politics, culture and society in Europe. "Property should be returned according to the law. If the person is alive, it should be given back. If not – the property should revert to the state. These are basic rules of justice."

"As a Pole, it infuriates me that representatives of international Jewish organizations, who do not live here and have nothing to do with Poland, try to make claims in the name of a Jew who lived and died here, on Polish soil, at the hands of the enemy, the Germans. The Polish government and Polish institutions represent all Poles, of all religions and cultures."

He perceives the involvement of the international Jewish organizations as an affront to Polish identity. "The Jews who died here would never have moved to Israel. They



WHO SPEAKS FOR THE DEAD?: The restitution of heirless property raises painful questions of identity and narrative.

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thought of themselves as Poles. The international Jewish organizations are putting the blame on us. But we did not kill the Jews. The Germans did. By killing the Jews who lived here, the Nazis sinned against Poland. They took our heritage, our legacy of multiculturalism," Zychowicz says heatedly.

Ewa Junczyk-Ziomecka, Minister in the Presidential Chancellery responsible for Polish-Jewish relations, responds more diplomatically, but offers a similar message. "Poland is not merely a place where Jews died. It is a place where Jewish life thrived for over 800 years. Despite some anti-Semitism, Jews were free to be Jews here. Yes, all Jews were sent to die by the Germans, but every single Pole could have been killed, too. We were victims of the Nazis, not the murderers."

Junczyk-Ziomecka continues, "Poland is an ancient country, but is really only 20 years old, and we are only now rediscovering our true identity and true history. Poland was always a nation of many different cultures and religions, and we are very proud of that. The Nazis tried to murder this, and the Soviets tried to wipe it out.

"In democratic countries, people discuss these things all the time, and they have archives where they can check facts. But for years we were not allowed to ask or to speak. It was not safe – we never knew the history of Polish Jews. We were not allowed to speak of the Holocaust. Now we are beginning to understand and we are delighted that the Jews are flourishing in Poland again. As an ethnic Pole, I embrace our minorities – all of them, the Roma, the Tartars, the Jews and everyone else. They are part of our heritage, part of us."

Until about five years ago, Polish officials were notably unwilling to meet with leaders of world organizations, such as the WJRO. On the day in 2008 when the Claims Conference held its executive meeting in Warsaw for the first

time, Rzeczpospolita lead with the headline: "Here come the Jews."

Bornstein says that he finds these issues very troubling. "I don't think that I wish to claim my property as a Jew. Or as a Pole, either. My parents died as Jews. I was kept alive by non-Jewish relatives. My wife is Catholic, but I am increasingly fascinated by my Judaism, which I know nothing about.

"I am thankful that institutions – general Polish or Jewish – lobby for my rights as a human being. This is the situation for many Jews in Poland today – we are Jewish and we are Polish, so we are both and we are neither."

THE SITUATION WITH REGARD TO private property, claimed or heirless, is unlikely to change soon. In the 1990s, countries seeking membership in NATO were told by the U.S. government that their treatment of the Jews would influence their admission. But it didn't. And the European Union, which Poland joined in 2004, made no such demands.

Today, Poland is a member of NATO, the EU and the World Trade Organizations. Polish forces have been engaged in Afghanistan and Iraq, so that while the U.S. State Department annually makes mention of Poland's failure to enact restitution and compensation legislation, it does little more than that.

Poland has even become one of the European countries most supportive of Israel. As a result, an Israeli Foreign Ministry official, who spoke with The Report on condition of anonymity, says Israel is unlikely to publicly pressure Poland in any way. "We leave that to the international Jewish organizations," the official said, "and try to keep it out of our diplomacy."

In June 2009, 46 countries ratified the Terezin Declaration, a non-binding set of guiding principles aimed at developing more expe-

dent and transparent restitution of art, private and communal property as well as issues of survivor care. Approved at the Prague Holocaust Era Assets Conference, the Terezin Declaration is the first comprehensive multi-country document of its kind covering the issue of land confiscation together with survivor care. The conference, which singled out Poland as a particularly recalcitrant and problematic country with regard to property restitution, calls for the establishment of a Holocaust Institute at Terezin, where the concentration camp was located, which will study "best practices" in compensation, restitution, looted art research, Holocaust education, care for Holocaust survivors and combating anti-Semitism.

But the Terezin Declaration is non-binding and has only its moral impact for backup.

Peleg says that newer countries seeking admission to Europe will be told clearly that "the road to Brussels passes through restitution, for all peoples."

But not through Poland. As Polish historian Dariusz Stola has written, "When people die and cities lie in ruins, the abstract title to property paradoxically remains in place – precisely because it is an abstraction."

IN CONTRAST TO PRIVATE PROPERTY, in 1997, the Polish Parliament adopted the Law on the Relation of the State to Jewish Communities. Wryly, Krawczyk notes that this legislation was motivated primarily by the Polish governments' wish to maintain good relations with the all-powerful Catholic church – but the Jewish community has benefited, too.

Properties include synagogues, *mikvaot* (ritual baths), religious schools, cemeteries, social-help institutions – the visible remnant of the once-thriving life in Poland. Some were razed, and those that were not taken over by developers and turned into factories or discos and movie theaters have eroded and are in danger of imminent collapse.

The application for these properties entails complex research and difficult legal processes. Applications must conform to the provisions of the law, requiring research in archives – some of which no longer exist – before they are processed by a special government Regulatory Commission on Jewish Property Restitution, which acts as a semi-arbitration body and much of its success depends on mutual understanding and the willingness of the government to acknowledge the rights gained by the Jews.

The potential total number of properties, says Krawczyk, is staggering. In Warsaw alone, there were more than 3,000 synagogues, study houses, ritual baths and other such com-

munal facilities. And that doesn't take into account the large number of such facilities that were privately owned. Some 5,500 claims have been filed; only 30 percent of them were not rejected.

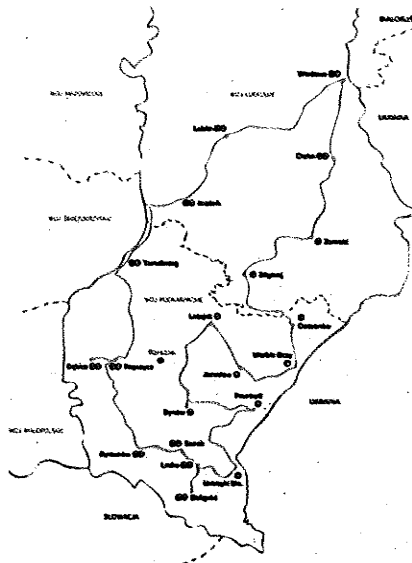
Of those that were actually awarded to the Foundation, more than half of them are cemeteries. Their current assets include 91 cemeteries and 12 historical synagogues – all in ruins. "What are we to do with the cemeteries?" she asks rhetorically. "Our commitment to Jewish tradition means that we must honor the dead. But the cemeteries are in terrible shape, and it costs a fortune to rehabilitate them. Where is this money to come from? And what about the living? The survivors? They need the money, perhaps more than the honor of the dead."

The authorities, she notes, are usually quite willing to give back the cemeteries and the synagogues – as if demanding that the Jews clean up their own mess. They are much less forthcoming when it comes to properties that could be money-makers or that are located in particularly lucrative regions. When they do, she says, it is usually a building that requires massive repairs. "And when we do reclaim a synagogue, we do not want to turn it into a wedding hall or a bingo hall, even if that would help us make money and continue our work. But if we leave it as a synagogue – even a beautiful one – in a small Jewish community, who will come to pray there?"

Furthermore, according to Polish law, the owner – in most cases of reclaimed Jewish communal property, this is the Foundation – must maintain and preserve. If not, the authorities have the right to fine the community for the upkeep. Last year, the Foundation received an order to carry out renovations in the ruined synagogue of the community of Bydgoszcz, which had been reclaimed. "The cost of fixing the roof was more than we had in our entire account," she recalls. "The authorities could bankrupt us." The synagogue in Bydgoszcz was renovated thanks to a one-time private donation.

Indeed, Krawczyk acknowledges that she feels they are facing a terrible dilemma. "The entire process of research and application is time-consuming and very, very expensive. And then, once we do take over a property, it costs us even more money to renovate and maintain it. But we must – this is our history. Cemeteries cannot generate income for our work or our communities – but we owe our lives and culture today to the people buried in those cemeteries."

Krawczyk also acknowledges her fear that these claims may lead to confrontations between Jewish and local interests. But then



THE CHASSIDIC ROUTE: Following the traces of Jewish communities across southeastern Poland

she responds, as if to answer her own concerns, "We know that anti-Semitism is not caused by Jews. It is caused by anti-Semites. So we must do what is moral and just."

The question of "who is the successor" comes up with regard to communal property, too. Treading carefully, Krawczyk notes that in 2002, only after tough negotiations between the WJRO and Distribution Committee, the Jewish Heritage Foundation, which is supposed to manage the properties, was established for the "common heritage" of all Jews.

Explains Peleg, "It is not reasonable to assume that the re-emerged communities are the successors to the large, flourishing communities that existed before the war. Can a fledgling community of a dozen Jews really claim to be the successor of the vibrant community of tens of thousands that lived there before? Is this the totality of the community? Who should speak collectively for their history? This is why the Foundation was established, and this is why reclaiming and maintaining these historic buildings is the responsibility, not merely of the local community, but of the entire world Jewish community. We do this in full cooperation with the local Jewish communities."

In response to both the prohibitive costs and the incipient threat of anti-Semitism, the Foundation has instituted a number of innovative projects. The "To Bring Memory Back" program brings together schools from across Poland to become aware of the significant role that Jews and Judaism have played in Polish

life. Often, these teens participate in cleaning a cemetery or working on the rehabilitation of a synagogue.

They have also instituted the Chassidic Route – a tourist route that runs through the picturesque areas of southeastern Poland. "We want to develop this route for the good of the Jewish and the general communities. As we restore these synagogues, more and more tourists will come to the area. This provides an important historical and heritage opportunity for the Jewish and non-Jewish tourists – and an important economic opportunity for the local towns, who now will have an incentive to maintain the properties," Krawczyk explains.

The recently renovated Renaissance synagogue in the Zamosc Old City, owned by the Foundation since 2005, will be the center of this project, serving as a venue for education activities and cultural events for the residents of Zamosc and for tourists traveling along the Chassidic Route. Only 50 Jews survived the Holocaust of the 12,000 who lived there before the war. The Nazis turned the magnificent building, first established in 1588, into a stable and then a carpenters' workshop. In the communist era, it served as a warehouse and then as the provincial and municipal public library.

But unlike the Zamosc synagogue, throughout Poland, hundreds of Jewish historical and religious sites across Poland are in danger of deterioration and imminent collapse and Krawczyk encourages world Jewry to take a greater interest. "I hear Poles asking me why we are not doing more to fix up the sites and prevent their ruin. They say, 'If the Jews don't care about their own history, why should we?' In another ten years or so, if we don't act now, there will be nothing left to see."

She is also critical of the Israeli programs that bring youths to Poland. "They come to see the concentration camps. But wouldn't it be so much better if they were to create friendships with Polish youth, Jewish and non-Jewish, and were to take part in activities to clean up cemeteries and synagogues, to actually be part of the revival and preservation," she challenges.

"The majority of Ashkenazi Jews in Israel and throughout the world have Polish roots. I wish that they would view Poland as their little homeland. We have over 1,200 such little homelands in Poland, and we want the Jews of the world to 'live' there, virtually, spiritually.

"These sites symbolize nearly 1,000 years of Judaism, and though the people were murdered, Jewish thought and spirituality never left here."