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ETHICAL GROUNDS FOR RETRIBUTION AND COMPENSATION
[1945]**

I

No sooner was the city of Warsaw cleared of all ruins left after air strikes than the German authorities, in October 1939, started damaging and looting whatever remained of the cultural heritage from the city. Not only objects that had any value were carried away from museums but cheap microscopes from technical laboratories or small collections of books from university faculties. A German professor from one of the universities in the Reich, who served as trustee officially taking over the Warsaw collections (his name was Pedersen, reader in prehistory at Rostock University) was asked by the Pole who was told to turn over all those things why he was taking it at all if Germany had lots of objects of the same value and even much better ones back at home. He replied, *Indeed, Germany does have it all, but what's the point of leaving all that here, if Warsaw is going to have no higher school at all.* He said that of a city that in that year 1939 had well over 20 thousand college students. From then on, the implicit conclusion went, no books or microscopes or any such collections were really needed in Warsaw. When the German professor showed his surprise at the Pole's unwillingness to turn over the objects the Polish man said, *Try to put yourself in our situation, imagine that it was Germany that lost the war, and now the winners are stripping them of all tools they need in their research work.* The German said, *No way. This is never going to happen.* Those words of his brought to light the grounds of the German behaviour: their arrogance, with a concomitant sense of impunity. With such frame of mind the Germans proceeded, in a planned and systematic manner, to destroy ruthlessly the Polish cultural heritage. They started this destruction on the first day of occupation and continued it through to the end.

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1. All higher schools across the Republic of Poland were closed from the beginning of the occupation, their property confiscated. Indeed they were not closed, but just ignored, treated as if they had never existed. The professors were not notified they were dismissed. It was only in Kraków that they were invited to hear a German delivering as lecture, but as they arrived they were detained and sent to a boot camp in Germany.

2. All general education secondary schools across Poland were closed as well the moment the Germans entered Poland, which left Poland with only a number of vocational schools working. They were not reopened through to the end of the occupation. School buildings were taken over for German purposes, as Warsaw's renowned Stefan Batory high school which was turned into a German secondary school, with its natural history facilities removed to Germany. For five and a half years, this country was left without secondary level schools, the way it was deprived of its higher schools.

3. All academic societies and research organisations were closed down, and their property confiscated. In particular, the Germans closed the Polish Academy of Sciences [Polska Akademia Umiejętności], its property taken away, and the building was refurbished to serve as reading halls for Germans.

4. All public libraries were closed for Poles. They were left open for use by Germans, and partly changed into purely German facilities. Books from public libraries and private collections were moved about from one to another. The net effect of the removals was that almost all of Warsaw's valuable collections – 300 thousand specimens of Polish old prints and 40 thousand manuscripts – were brought by the Germans to one library, and eventually, as they were leaving the city in 1944, they burnt the whole lot. Furthermore, the Germans expropriated all major bookshops working in Poland and turned them into *Deutsche Buchhandlungen*. The remaining bookshops got all their English and French books confiscated in 1940, and in 1942 Russian ones as well. Poles were prohibited to read anything in any of these languages (with the possible exception of French occupation press).

5. All archives existing in Poland were closed for Poles right from the first day of occupation. Some archives were immediately moved to Germany. Some of the most important resources that were left in Poland were destroyed by the Germans before they left. In particular, they burnt down all of the New Archives [Archiwum Akt Nowych], the depository of official documents of the central authorities of the Republic of Poland of the years 1918–1939, as well as the Main Archives [Archiwum Główne] with documents of central authorities of earlier times. That way the Germans managed to bring the central archives of this country nearly to extinction.

6. Throughout the occupation, publication of any book, academic or fictional, was banned. No scientific or literary journal, daily, let alone political journal, was allowed for publication. The only press licensed to appear then were journals published by the German authorities, low value papers bent on poisoning Polish readers' minds with every printed word.

7. Also closed down were all museums and exhibitions. The National Museum in Kraków was changed into a casino for Germans, the National Museum in Warsaw into a shopping centre for SS-men, one exhibition facility

in Warsaw turned into a *Haus Deutsche Kultur* and another one into canteen for servicemen. Art collections were either crammed in store rooms, leaving them inaccessible for conservation, or taken away. The National Museum in Warsaw was stripped of its entire collection of medieval art and of the best works from its other divisions. Before they demolished Warsaw's Royal Castle they removed from it the paintings, including 22 views by Canaletto. The gallery of paintings in Warsaw's Łazienki Palace was considered by the SS-men as their own property, and they gave a painting from the Rembrandt school from that collection to Governor-General Hans Frank as a present for his birthday. Works of art that were not to the Germans' taste were destroyed; they tried in particular to lay their hands on a painting by Jan Matejko showing the defeat of the Teutonic Knights in the battle of Grunwald of 1410, and when they had not located the painting they detained the board of the art gallery that owned it.

8. Architecture was being ruined from the beginning of the occupation. The Royal Castle survived the siege of Warsaw, was demolished right after that, between October and December 1939, mined in 1940, and blown up in 1944. In the aftermath of the Warsaw Uprising of 1944, historic buildings in the Polish capital were burned and blown up, systematically, one by one. What remained of the million city that once had lots of age-old buildings was just one palace, a dwelling place for Germans and one they had not managed to demolish, and two churches nearby, as everything else was in ruin.

9. Memorial statues were being destroyed from the moment the Germans entered. In Poznań, all were pulled down right away, the same in Łódź. In Kraków, they pulled down the monuments there of famous Polish poet Adam Mickiewicz and of Tadeusz Kościuszko, a brave 18th century military commander. In Warsaw, some of the memorial statues, including the one of Chopin, were destroyed already in 1942 (incidentally, it should be mentioned that works by Chopin, or other Polish composers, were not allowed for performance throughout the occupation). The remaining such monuments were destroyed during and after the Warsaw Uprising. Those included two works by Bertel Thorvaldsen: a statue of Copernicus and another one of count Józef Poniatowski.

10. Private collections suffered a similar fate as public ones, or works kept in private homes. In Poland's western territories, which were incorporated in the German Reich, such objects used to be turned over right away to Germans or shipped out. Elsewhere in Poland the Germans did the same but less hastily. In particular, homes of persons incarcerated in concentration camps used to be confiscated, their belongings taken away to the last bit. The most massive action was undertaken in connection with the murder of the Jews in 1943, as sets of home equipment from tens of thousands of homes were looted, books were dumped together and sold as old paper.

The German action was concluded at the time of the Warsaw Uprising in 1944. However, while in the first years of occupation the action was geared to looting Polish cultural property, now, in the haste and fury, its only purpose was destruction. In Warsaw, the location of by far the biggest part of Poland's scientific and artistic heritage, almost all private property was destroyed. The

hostilities were responsible for just a small part of the destruction, and most of that was a result of a systematic burning and blowing up of buildings the Germans captured one by one. My own experiences were much the same as those of thousands of Poles. My first recollection is already of 2 September 1939, as one of 29 bombs German airmen dropped that day blew away my family grave in a Warsaw cemetery. That was the *second* day of war, as hostilities were still at a great distance from the capital city and there was no talk of defending it – at that early point already did the German Luftwaffe launch their wrecking action.

My last experience is of the time of the Warsaw Uprising, in August 1944. As the German troops took over in the part city where I lived they told us to leave our house immediately and they burnt it right away together with all the furnishings, collections, library, the outfit for research work. More houses were put to fire before, and after, mine, one by one. As I was leaving I managed to put into my suitcase just some underwear and a manuscript of a research paper I had worked on through the war years. On our way, as we were driven to a temporary camp soldiers took the underwear from the suitcase, and only the manuscript was left. Then a German officer came up, opened the case, and saw the papers. *What's that? A research paper*, he said. – *No, there's no Polish culture any more – 'es gibt keine polnische Kultur mehr'*. He dumped the manuscript into the gutter. Those words of his reflected the Germans' attitude to us, in particular that *no Polish culture any more*: for, there used to be, up then, such culture, yet five years into the occupation they managed to make it gone. Their action was designed not only to destroy Polish culture, but indeed to wipe it out to the last trace. It was a premeditated action. It meant the execution of Hitler's personal order. Yet that order was carried out by all and by civil authorities as well as by private individuals, academics and artists. The whole German nation took part in the looting and the destruction, so the whole nation is liable.

II

The state of things is now, briefly, this:

1. In the five years of occupation, the Germans were busy systematically and continuously destroying Polish academic culture, as well as its artistic culture, libraries and archives, schools and writings, just as museums and monuments, facilities and private property. Some of those goods were taken away by the Germans to their own country, other items were destroyed right away. They destroyed both objects of culture and work facilities that could be used to produce objects of culture in the future. Their destructive action was targeted and systematic. They did it right from the beginning, from the first day of the war. They prepared themselves for their job before: German spies who busied themselves before the war with watching the status of Polish wealth in different areas moved right away with German troops into Poland, to take charge of the liquidation of such Polish property – as did Dr. Dagobert Frey, art historian from Wrocław, who used to visit Poland regularly for *research purposes* and used information he gathered from colleagues in this country; he showed up in Kraków as soon as in September 1939 and the

following month he arrived in Warsaw to take away valuable objects of art and to oversee demolition works on the Royal Castle there. The circumstance that they had prepared themselves to carry out the action, and their relentless perseverance in the job accounts for the extraordinary extent of destruction the Germans were able to inflict in just a few years time.

2. They carried on their action through to the end. They even sabotaged their own contractual undertakings, as they vouched to keep safe any public collection, which they promised to do in a capitulation agreement concluded with the Warsaw insurgents. What they actually did was to raise obstacles all the time only not to have to keep that particular promise, so it was only their flight from Warsaw under the Soviet offensive in January 1945 that saved some of the collections. Historic relics and monuments in Kraków were also left under mines. A total of 111 mines were found in the Wawel castle hill alone. Again, it was only due to the hasty flight of the Germans that the castle was saved.

3. The destruction wrought by the Germans was even more hideous because: a) while being absolutely illegal it was cloaked in a semblance of lawful action; b) the Germans masqueraded their action cynically as an effort to rescue the cultural heritage. An ordinance issued in 1939 made it mandatory for any valuable works of art in private hands to be turned over to ensure their *protection*. The ancient Jagiełło Library was closed for Poles by the Governor-General, and when it re-opened for their own people the move was lauded as a *eminent cultural action*; c) yet first and foremost all that was covered up by propaganda in brazen contempt of the truth quoting facts and historical theories hastily invented for that particular purpose. Official announcements, publications claiming to be scholarly, dailies, would present whatever in Polish culture could be seen to be of value as things produced by Germans alone. Polish culture had no Polish element in it. In Poland, the only artistically creative element over the centuries used to be the German arrivals. Kraków and Poznań were invariably treated as *age-old German* cities, and Warsaw or Lublin, Radom or Tarnów no less so. Any fine-looking corner, old church or building used to be praised as *works of the creative German spirit*, in defiance of the visible fact that at the time Poland was developing its statehood, just as in modern times, the German contribution to the arts in Poland, especially architecture, was oddly scarce, incomparably less than one would expect in normal neighbourly relations.

4. One more truth to remember here: as far as political conditions are concerned, Germany fared far better than Poland over several centuries. Poland was long deprived of national independence and state protection over its culture, and in wars and historical ravages Poland lost parts of what had been created or gathered. Germany, on the other hand, lived in eminently favourable conditions, as they managed to collect in their museums, libraries or private homes much more cultural goods than they had produced themselves.

III

1. Every state of things to which we may respond in one way or another, a situation we can keep going or change, raises an ethical issue for us. For if

it can be changed, it can be made better or worse. The ethical issue then is, generally, what should we do in order to add as much good as possible, or, where that is unavailable, at least to detract as much bad things as possible.

This is the case of the state of things brought about by the Germans as they destroyed or seized cultural artefacts of other nations. There are people in whose power it is to react to this particular state of things, people who are in a position to get the looted objects back returned, and to demand compensation for damaged objects. These people, in their capacity to react, just have to react, for failing to react is itself a reaction, one that endorses the existing state of things, a reaction that sanctions a situation where those who had grabbed someone else's goods can go on holding the loot while those who were robbed of their possessions are left dispossessed.

Generally, then, such state of things is a dual one: either it is good (or at least neutral) in which case the ethical point thereof is to make it even better; or else, it is bad, as the evil had been wrought, in which case the ethical point thereof is to remove, or at least reduce, the evil. This is exactly the present state of things in relations between Germany and Poland: evil had been wrought.

2. Now, someone may ask if any evil had been wrought? For many a thing that in people's eyes appear to be bad, are not really so. Especially [in the eyes of] people who suffered wrongs, and so are not impartial. If someone wants to take an impartial approach to things, as in ethical discourse they definitely should, they need some objective criterion of good and evil, in the first place.

Universal accord, which is often mentioned in this connection, is no such criterion, for it is virtually impossible to achieve anything like that in any more involved case. What is, however, is self-evidence of judgement. What is self-evident, that is to say, what cannot conceivably be seen as possibly different, is certain. Only that is for sure. This is the only unchallengeable criterion of good and evil. It was used already by the ancients, beginning with Aristotle, as modern thinkers, not even the subtlest minds, have come forward with anything else.

In the light of this criterion it turns out that judgements about good and evil are scarce, for very few are self-evident. Not even damage of someone else's property is unquestionably an evil, if it occurred by chance, amidst a fight or in necessary defence. Damage of someone else's property, if it is a premeditated act, is a self-evident, indubitable, unquestionable, evil. Such was the evil the Germans did to Poland. Poland was destroyed by fire and dynamite, in a scheduled and premeditated act. The destruction was carried out intentionally, in a deliberate, well-designed, systematic, and methodical, manner. It did not happen by chance, on a sudden impulse, or in the frenzy of battle. If that was an impulse, or a frenzy, it continued, uninterrupted, through the 5 and a half years of the occupation, gripping all Germans in Poland. German history shows that whenever they had the means to do that they always resorted to that method against their enemies.

The evil they wrought has in fact a double impact. First, that evil has a spiritual dimension, rooted as it is in the very intent of destroying the cultural heritage of another nation. Second, that evil has also a material dimension: the annihilation of memorial objects, residences, libraries, works of art, workshops. If such destruction is evil, then that is as clear as the sun in the sky. If such destruction is not evil, then there is no evil under the sun.

3. So, evil has been wrought, so what kind of intervention should be applied to remove it, to drive it back, to remedy it, or, in the least, to lessen it. This follows immediately from the notion of ethical conduct, as progress towards good. If evil exists and if it can be removed, then removed it should be. Intervention would be unacceptable only where the evil was impossible to remove, and it would deserve condemnation only where it would itself be evil and where, rather than remove, it would only enhance, the evil. But, is the evil impossible to remove, or is intervention condemned to employ evil? Spiritual evil, if anything, is non-remediable; material evil is remediable. While intervention in certain forms does employ evil, it does not when undertaken in other forms.

Indeed, suppose intervention does apply evil, when it is used as retaliation. Or as punishment. Or even as a deterrent, for prevention. But there is a type of intervention that is neither retaliation nor punishment nor prevention. Intervention whose sole intent is to remedy the evil that has been done. Such intervention holds in it no seed of evil. It applies where an evil done by one wronged another. If an evil wrought by one (a nation, in the same sense as an individual) corresponds to a wrong done to another (a nation, in the same sense as an individual), then such wrong has to be remedied. This is the case considered here: what the Germans did wronged others. Such wrong, suffered as it was, can be remedied, at least partly; if the spiritual wrong cannot be remedied, the material one certainly can.

Our moral sense tells us clearly and patently that retribution, if at all possible, should be provided. Should this be questioned, ethical relations would be left with no self-evident truth, no norm, no moral order, and everybody would be free to do as they please, as long as they are in power and have the authority. But then, probably everyone's instincts tell them a different thing. A person keeps to a very simple and most basic principle, namely the principle of equity. This very simple and absolutely basic principle settles the case in favour of compensation.

This principle could be counter-balanced with only one other principle, that of leniency. Yet precisely in this case leniency finds no justification. The evil that was wrought was done in a premeditated and persistent way, as an expression of arrogance and a sense of impunity. A judge's leniency may be fair action anywhere, but not where it comes to remedying a wrong. In such cases it would inflict a fresh wrong on the wronged one; leniency would then be injustice.

4. By the same token, the equity principle cannot be counter-balanced with the principle of happiness. No doubt a man's happiness is eminently important, and, ethically, a fair end of human pursuits. But no apprehension of happiness can justify what the Germans had done, nor would it justify a

waiver of any intervention against them. Happiness is a fair end ethically but only with two reservations: first, the principle of happiness must be supplemented with the principle of equity.

One man's happiness is worth no less than another man's, one nation's no less than another nation's. The idea is – as the Germans themselves used to say – not just to live but to let others live as well. So, happiness of Germans alone would justify none of the wrongs they had done to other nations.

Secondly, the principle of happiness must be supplemented with the principle of morality. Happiness is unquestionably something good, but it is not the only such thing. Another good is a man's moral value.

John Stuart Mill is remembered for holding that happiness is the supreme good. Yet he added that it is better to be a satisfied Socrates than a satisfied fool. The Germans recognised neither of these two reservations: if they pursued their own happiness, then only at the expense of unhappiness of others and in defiance of any moral standards. It is worth recalling what some of the greatest Germans thought of happiness. Kant wrote, *How can a man be made happy without being made moral and clever*. F. Hebbel held that to someone not deserving to be happy, happiness, once it came, would be a most terrible thing, an anguish hard to bear.

5. These very simple and most general ethical principles – those of equity, happiness and morality – not only allow but indeed command retribution and compensation for property damaged. Other more specific principles lead up to the same as well.

First there is what can be called the ethical principle of consistency. It says essentially this: if someone adopts a view and then applies it as that is to their advantage, even while knowing it was to the disadvantage of others, then it is right to apply the same view against them when things have changed and it has ceased to be to their advantage. The Germans, as they were powerful, held the view that the powerful have a right to use their power and to take away from the weak whatever they wanted. Nobody would be willing to apply that view in the way the Germans did, not even against them. But that view provides extra moral justification for retribution of wrongs one has suffered, even where he who had done the wrong resisted and justice would have to be done by the use of force.

6. A further specific principle can be called the principle of greater or lesser accountability of evil. This principle says, essentially, that if every damage or appropriation of another's property is evil, it is even a greater evil when the perpetrator has damaged or appropriated the property from an individual or a nation that are less affluent than their own.

This is the case of the Germans. As a result of political developments over the last 150 years, Germans grew rich in cultural production as in other respects as well, while Poland, deprived as it was of national independence and state protection of its property, had even earlier lost a sizeable part of its cultural heritage.

7. A third extra principle may be called the principle of common usefulness. It says that certain goods, if put in the care of reliable keepers, are thereby more useful, more productive, to humanity at large, so it is ethi-

cally right to support a turn-over of such things to those keepers rather than to others. Now, the Germans and their friends claim that the world will be able to enjoy the cultural objects best as long as they are in German hands, for Germans do most of the research work, they manage museums, libraries etc. better than others do. In particular, it is supposedly the smaller and less affluent nations that are in no position to rival the Germans in that respect. But this claim is very easy to challenge. In pre-war Poland, for instance, protection of the arts and sciences, museums, conservation work, organisation of archives, organisation of schools, in particular art schools – all that was done up to the best standards of the time and was growing – until the occupiers put an end to it. It is further open to doubt that Germany indeed does have a higher culture which would enable them to put to use any better the treasures of art or science they collected in their country. Even certain Germans had their doubts there. Nietzsche, himself a German, believed German culture was just apparently a high culture, that Germans in their culture actually lagged behind no less than two centuries and that they will never be able to make good that cultural lag.

8. A fourth principle to mention in this connection is the principle of moral cultivation. It implies that only he represents a certain moral standing has a right to have in their care the higher values of mankind. We feel it is inappropriate and wrong when bad people provide patronage of noble goods such as the arts and sciences, when people who neither could nor wanted to care for foreign museums, libraries, recklessly wrecking them, should run their own magnificent museums and libraries keeping there the heritage of nations they sought to destroy.

9. A fifth principle would be the principle of true ownership. The point of it is that what is owned, in the legal sense, by an individual or a nation, belongs to them partly in a deeper sense and partly in a more superficial sense. Works a nation has produced itself belong to this nation in a different sense than do works it has acquired, or especially works it has appropriated. Works a nation has to hold as a cherished treasure, works that, if destroyed, would hold back the nation in its development, are owned by the nation in a different sense than are an excess of riches, a plethora of cultural treasures, brought to a country from all over the world. It should be observed that Germans of late did not appreciate well enough those countless foreign works of art or scientific works they held in their collections, for they esteemed only what was German. Already a century and a half ago, philosopher Fichte, a precursor of modern Germany, called for closing down the borders to seal the country off against foreign intrusion. The same, not only in theory but in actual practice, was done by the national socialism of today. Losing something that is not cherished is not really painful, so losing foreign works of art from museums and foreign books from libraries is not going to hurt Germans.

10. Lastly, there is a sixth principle to mention, the principle of equitable right. This principle (which German lawyers are so fond of invoking) says that any act of law, even one issued perfectly in keeping with the law, that abuses the sense of equity and justice, has in fact no validity; it

lacks validity where it is at odds with *ius naturalis* and *ius divinum*. The Germans of course will insist that all acts of appropriation or damage they had done were in line with regulations of the law they had issued. But this principle of equitable right invalidates such regulations.

IV

The above–quoted ethical principles, which are valid generally, apply in the particular case of retribution and wartime compensation the Germans owe to Poland.

1. It is of course not right, ethically, to retaliate with evil to evil, or to destroy the culture of those who destroyed our culture. But again, it is not right, either, to appropriate it the way they appropriated our culture. Even worse is anything that damages the seeds or workshops of culture of the future. Any such move, rather than remove the evil, would breed fresh evil and worsen the existing one. Such was the policy of the Germans towards Poles, but it cannot be a policy Poles or any cultural and humane nation should apply in relations with them (even though the principle of consistency may apparently justify that).

2. But it is right, ethically, to demand the recovery, and to try to recover, what was wrongfully taken away from us. If the such objects cannot be located, it is ethically right to seek equivalent substitution. Likewise, it is ethically right to seek equivalent substitution for what was damaged. This follows first of all by the principle of equity, but indirectly from the principle of *consistency* as well. Furthermore, in the case here considered the principle of *accountability* applies too, for those who appropriated works of art or objects of science not only did have plenty of such goods but even more than those whom they expropriated. If they defend themselves against such retribution the Germans can bring forward neither the principle of *common usefulness* nor that of *equitable right*. Collections parts of which they are to return are not their *true property*. Nor do they have any *moral title* to their ownership.

3. In determining any equivalent substitutes for property damaged or lost it would be ethically inappropriate to demand a return of things that are Germany's *true property*. Specifically, this includes things made by Germans. The German Reich is the proper place to keep such things. Yet it is ethically right to demand the return of:

a) objects which are linked to Poland, such as, e.g. sculptures by Wit Stwosz, or objects that were kept in Polish collections before, such as, e.g. a tondo by Botticelli, which used to be owned by the Raczyński gallery but was taken over by a Berlin museum;

b) objects that were bought by Germans for funds taken, at least in part, from Polish lands, as was the case of paintings the Saxon kings of Poland named August bought for the Dresden gallery;

c) objects that were included in German collections following purchases but which are not linked to German culture. That is the case of works of art of Greek or Italian origin. Such objects can be taken away from Germany, especially since politicians and certain German scholars hold that many of such

objects are alien to the German spirit. So it will be better that great works of art will not be in the hands of those who neither could, nor were willing to, appreciate foreign works of culture and science.

transl. by Z. Nierada