'Reasonableness' or strict law? The postwar restitution of property rights in the Netherlands and in France (1945-1952).

Wouter Veraart, December 30, 2002

Introduction

In the next thirty minutes, I would like to explore the following thesis: how is it possible that the process of postwar restitution of property rights in the Netherlands was characterized by an extreme pragmatism, while in France this same process complied much more to formal principles of legality and the rule of law? Or, to put it in a different way, how is it possible that the Dutch used open-ended legal rules, and a special court of restoration, equipped with large discretionary powers, while, on the contrary, the French used strict rules and normal courts with not much freedom of decision? Furthermore, how is it possible that the interests of the Dutch administration clashed with the interests of the postwar Jewish community during the process of restitution, while the French administration expended considerable effort on making sure that the Jewish owners were really getting their fortunes back? And how is it possible that the heroes of the French restitution process, René Cassin and Émile Terroine, were distinguished members of the French 'De Gaulle' administration, while the hero of the Dutch restitution process, Heiman Sanders, was a lonely lawyer on the side of the decimated Dutch Jewish community? Let's finish these opening questions by a final one: how is it possible that recent evaluations of the Dutch restitution process tended to be very critical, while the evaluation of the postwar restitution process in France -by the Mattéoli-commission in April, 2000- has been summarized in one sentence:

> 'On the whole, the restored French Republic did its duty.'[1]

[1] *Summary of the work by the Study Mission on the spoliation of Jews in France* (Mission Mattéoli) (Paris 2000), p.12. This summary is available on the Documentation Française website: www.ladocfrancaise.gouv.fr. The report of the Mission itself consists of several volumes (including a general report), which are also published by the Documentation Française.

My main explanation for this all is that there had been a big difference in vision on the restitution process in both countries. Within French political circles, the restitution of looted property was considered as a necessary step within the project of re-establishment of legality and the rule of law, while the Dutch Government considered the restitution process primarily as just one of the exceptional measures and policies necessary for the economic reconstruction of the country.

Spoliation (1940-1945)

In my opinion, this difference in vision may help one better understand and evaluate the process of restitution in both countries during the years 1945-1952. A comparison between the French and the Dutch approach does not seem out of place as there are many similarities in the historical and legal backgrounds of their restitution operations. Firstly, the Dutch and French legal systems belong to the same legal family: the continental Roman law system. Moreover, the French Civil Code 1804 has exercised a major influence on the conception of the Dutch Civil Code of 1838. Apart from some dogmatic differences, both countries have most of their fundamental legal principles in common. Secondly, the histories of the spoliation of the Jews in both countries show some striking similarities. Both countries were at least partly occupied. In both countries the systems of spoliation were to a large degree legalized. In the legalization of the process, the Vichy government has been even more orthodox than the German military authorities in the French occupied zone.[2] In Holland the German occupation took on a civilian form. Between 1940 and 1943, the 'Reichskommissar' of the Dutch occupied territories, Seyss-Inquart, a skilled Austrian jurist, issued thirteen decrees specifically designed to deprive the Jews in the Netherlands of basically all their assets: not only their movable and unmovable assets, but also all kinds of financial rights, such as securities, mortgages, insurance policies and claims against thirds. To execute the spoliation process, the Germans used different institutions ('looting' institutions as they later were called) to deprive the Jewish population of their rights. The most notorious one used the name of a Jewish bankhouse, Lippmann, Rosenthal & Co., Sarphatistraat (Liro). Jews were obliged to deposit all their assets with this institution. Liro sold these properties without permission of the former owners. Renowned Dutch institutions such as the Dutch central bank (De

[2] *Summary of the work by the Study Mission on the spoliation of Jews in France*, 21.

Nederlandsche Bank, which was controlled by the Germans during the war) and the Dutch Stockbrokers' Association collaborated with Liro in this process. The Stockbrokers' Association even took the initiative by asking the German authorities to sell the Jewish securities on the Amsterdam Stock Exchange. The association received a positive reply and admitted Liro to its membership and hence to dealings on the stock exchange, while a major proportion of its members were actively involved in the trading of Jewish securities. Liro did not keep the profit from these sellings; it went to another German 'looting' institution, the Vermögensverwaltungs- und Rentenanstalt (VVRA).[3]

The 'success' of the 'looting' operation in the Netherlands is mirrorred by the fact that only approximately 30.000 of the Jews falling within the German definitions survived the war. More than 100.000 were deported and murdered. The spoliation in the Netherlands exceeded the spoliation in France in scope and extent. Within France, the spoliation did not cover the entire spectrum of rights: a *systematic* spoliation of, for example, insurance policies and mortgages did not take place. Furthermore, the spoliation in France took place at a slower pace than in the Netherlands. For example, the 'aryanisation' of Jewish enterprises by the notorious General Commission of Jewish Affairs was carried out in strict adherence to legal forms. The report of the French Mattéoli-commission points to 'the inherent slowness "à la française" of the administration, which was extremely bureaucratic'. Vichy-France tried to use the aryanisation of Jewish enterprises as a means to foster French economic interests rather than as an end in itself.[4] By the time of the Liberation, the aryanisation-process was far from being completed. The percentage of unfinished dossiers (concerning assets, companies and property holdings who were still under administration and not yet liquidated or sold) varied from 53% in the Seine region to approximately 60% in the south.[5] These facts are mirrorred by the fact that in France, the number of Jews who survived the war was much higher than in the Netherlands, both in relative and absolute terms,.

Notwithstanding the differences in scope and depth of the spoliation in both countries, the basic elements are similar. The main objective was to deprive a part of the population of their rights (primarily -but not only- Jews), to outlaw them on a racist basis, to hit them in their capacities as legal subjects and citizens. As Raul Hilberg has shown, the expropriation of the

[3] See W.J. Veraart, 'Sanders contra Lieftinck. De ongelijke strijd om het rechtsherstel in de jaren van wederopbouw', in: C. Kristel (ed.), *Binnenskamers. Terugkeer en opvang na de Tweede Wereldoorlog* (Amsterdam 2002), p. 177-178.

[4] *Summary of the work by the Study Mission on the spoliation of Jews in France*, p. 21.

[5] Ibid., p. 22.

Jews was a necessary step in the process of annihilation of the European Jewry.[6] The term 'spoliation' does not capture this point very well: in my opinion it wrongly suggests that greed or profit seeking were its driving forces. This certainly was not the case, as can be shown by the fact that the so-called 'looting' operation was utterly democratic in its targets: it equally hit rich and poor.

The Joint Declaration of St James (January 5, 1943)

Let's return to the basic question: why was the process of postwar restitution of property rights in the Netherlands characterized by an extreme pragmatism, while in France this very same process complied much more with formal principles of legality and the rule of law? I've pointed out that the French and Dutch legal systems shared (and share), to a large degree, the same fundamental legal principles, and that both countries faced a similar massive deprivation of rights of one part of their populations. But there are even more similarities. A few days after the German invasion in the Netherlands on May 10, 1940, the head of state, Queen Wilhelmina fled to England and the Dutch cabinet followed her into exile. During the war the Dutch Government stayed in London and spent much time preparing for their return. Meanwhile, on June 18, 1940, the French general Charles De Gaulle responded to the 'armistice' of Pétain by his famous 'appel' from London and appointed himself leader of the Free French. As the war went on (and the name of his movement changed) De Gaulle's leadership became more and more legalized and embedded in institutions. Some of the French civilians who rallied behind him became commissionars of the French National Committee (established in September, 1941) presided by De Gaulle.

On January 5th, 1943, seventeen allied governments (including the Dutch government in exile) and the French National Committee solemnly proclaimed the Joint Declaration, in which they issued a formal warning

> 'to all concerned [...] that they intended to do their utmost to defeat the methods of dispossession practised by the Governments with which they are at war [...].'

They reserved

[6] See Raul Hilberg, *The Destruction of the European Jews*, Revised and Definitive Edition (New York 1985),

> ‘all their rights to declare invalid any tranfers of, or dealings with property, rights and interests of any description whatsoever which are, or have been situated in the territories which have come under occupation or control [...] of the Governments with which they are at war [...].’

This warning applied

> ‘whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.’[7]

The Joint Declaration of January 1943 may be considered as a common starting point in the history of the postwar restitution process in the Netherlands as well as in France.[8] But the open-ended formulations could hardly provide for real guidelines, and the allies didn’t do much to harmonize their drafts of legal measures more or less ‘based’ upon it.

Preparing for postwar restitution in the Netherlands (1943-1945)

How did the French and the Dutch prepare for postwar restitution as promised in the Joint Declaration? Let’s discuss the Dutch preparation first. The Joint Declaration was mentioned in a Dutch radio speech from London on January 7th, 1943. Nevertheless, it does not seem to have played an important role during the Dutch Government’s preparation of the postwar restoration of the country. In the end of 1942, the preparation of decrees concerning ‘the restoration of legal relations’ was assigned to a small committee presided by a civil law professor, Jannes Eggens. The other members were civil servants (two of them were Dutch Jews). Eggens was a renowned academic with strong but controversial views about the role of law in society. Under his influence the committee decided that under German occupation the violations and corruptions of legal relations had been so divers and complex, that they could only be repaired on the basis of ‘common sense’ in a very flexible, pragmatic way . The judge had to apply open standards of ‘equity’ and ‘reasonableness’ within the special circumstances

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[7] This declaration has been repeated in July 1944, in part VI of the Bretton Woods Declaration.

[8] It is important to note, however, that the Joint Declaration was primarily drafted as a warning to neutral states such as Switzerland and Sweden not to profit from all kinds of spoliation of the Germans in the occupied territories. Its main pupose was to protect the national interests of the allied states, much more than the particular interests of individual victims. The spoliation of the Jews was not explicitly mentioned in the Joint Declaration.

of every specific case. If a transaction was based on racist legislation retroactively declared null and void by the Dutch Government (as it did in its decree E 93 on September 17, 1944), the annulment of the transaction was presumed to be reasonable, although not obligatory. The judges were not supposed to behave like jurists but like 'good men', or 'arbitrators'. The possibility of appeal or 'cassation' was excluded, not only to speed up the process, but also to prevent too much legal discussion. Eggens' draft also provided for some rules to protect the recipients of despoiled property against claims from the former owners. They could keep the property, if they made a reasonable case that they acquired it in good faith. The committee also offered protection to persons who, under influence of German regulations, 'paid off' their debts they owed to Jewish creditors to non-Jewish institutions or persons, for example to Liro. These protective measures in favour of third persons went much further than the protection offered to thirds by normal Dutch civil law. They became a cause of distress among the 'dispossessed' Jewish community after the war.

The Eggens-Committee disposed of some specific information concerning the spoliation of the Dutch Jews. But its draft was chiefly designed to restore the Dutch legal system in a healthy state, not as a principled response to the deprivation of rights of one part of the population. Eggens believed that the exceptional situation caused by the German occupation could only be undone by an exceptional institution, equipped with exceptional powers. This became the Council of Restoration of Rights (Council of Restoration 1945-1967). In its final form, the Council of Restoration was divided in four divisions, a Judicial Division, an Administration Division, an Immovable Property Division and a Securities Division. The Judicial Division was the only independent division. The others were subjected to instructions from different members of the government. This dependency was inconsistent with the separation of powers, as the non-judicial divisions could take binding decisions in disputes about looted property (with appeal to the judicial division). According to the Dutch constitution, only the independent judiciary is entitled to decide in property disputes. Eggens, however, believed that this departure from the constitution had to be tolerated for practical reasons.[9]

In the postwar period (1945-1952), the Dutch Minister of Finance, Lieftinck, got a strong hold on the non-judicial divisions of the Council of Restoration. He used the restitution machinery mainly to pursue financial interests of the Dutch State (in order to reconstruct the

[9] The Dutch Decree 'on the restoration of legal relations' ('Besluit Herstel Rechtsverkeer', *Staatsblad* E 100) was promulgated on September 17, 1944 and changed by Decree F 272, on November 16, 1945. For more details, see Veraart, 'Sanders contra Lieftinck', p. 183-188.

economy), even when this policy conflicted with the interests of the dispossessed Jewish community. He often claimed that the Dutch State could not in any way be held responsible for the spoliation of the Jews. This position was hard to maintain when it became clear that renowned Dutch institutions such as De Nederlandsche Bank and the Stockbrokers' Association had collaborated with the Germans in the process of spoliation. But Lieftinck never changed his opinion and did everything he could to protect the Dutch financial institutions such as the Amsterdam Stock Exchange and the Dutch Central Bank against claims during the postwar period. As a result, the only institution trusted by the Jewish community became the independent Judicial Division of the Council of Restoration.

With respect to looted securities, virtually nothing happened until 1952, because the Securities Division blocked restitution to the former owners. A breakthrough became possible in 1953, after a sensational judgment of the independent Judicial Division and after Lieftinck's departure as Minister. In June 1953, the Government, the Stockbrokers' Association and representatives of the Jewish community, reached an out of court settlement. Former owners of looted securities which were sold by Liro on the Amsterdam Stock Exchange, received from the Dutch State a compensation of 90% of the current value of their assets.[10]

Preparing for postwar restitution in France (1943-1945)

In early 1945, a brilliant French professor of law, René Cassin, De Gaulle's main legal advisor, held a lecture on the difficulties De Gaulle and his movement experienced during the war:

> 'While the governments of the Queen of the Netherlands, or of the King of Norway could be recognized thanks to [the presence of] their sovereigns, we had no head of state, no legitimate chief of government in Great Britain. As a consequence, the institution representing France in the coalition of allies has been incompletely recognized, between June 1940 and October 1945.'[11]

[10] Ibid., p. 192-194; 200-204. See also *Eindrapport van de Begeleidingscommissie onderzoek financi:ele tegoeden WO-II in Nederland* (Scholten-Commission), Part II, 'Effecten' (Leiden, December 15, 1999), p. 393-400 (available at www.minfin.nl).

[11] Lecture of René Cassin 'sur les problèmes juridiques posés au Comité français et au Gouvernement provisoire par la poursuite de la guerre et la Libération', March 21, 1945, in*: Bulletin trimestriel de la société de Législation Comparée* (Paris, 1946 No. 1-2), p. 13: 'Tandis que le gouvernement de la reine des Pays-Bas ou du roi de Norvège avait la possibilité d'être reconnu aux côtés de son souverain, nous n'avions ni chef d'état ni chef

This ‘political and legal handicap’ as Cassin called it[12], had been rather serious. For example, according to US president Roosevelt, De Gaulle’s leadership lacked credibility and the president did not change his mind until very late in the war.[13] The Free French had to prove to the world they were the only legitimate representatives of France. They fought this uphill battle for recognition on two fronts: on the one hand they were looking for support in the colonies and among the resistance-movements in France, on the other hand they set up a complex institutional framework that complied, as much as possible, with the best traditions of democracy and the rule of law -traditions Vichy had forsaken. A significant step in this regard, was the establishment of the Provisional Advisory Assemblee, in October 1943.[14] This was a provisional parliament in which the populations of the colonies, resistance groups and victims of persecution were, more or less, represented. Cassin, who was an assimilated Jew himself, became chairman of two influential committees on legislation, which were also set up. As such he played a key role in the preparation of the French restitution laws.

The preparation of these laws has been a complex and lengthy affair. To begin with, the French National Committee took the Joint Declaration of January 7, 1943 very seriously. Just a few weeks later it published another Free French declaration, directly based on it. The following major step was taken on August 9, 1944. On that date, the Decree ‘on the re-establishment of the republican legality’ was issued. This decree re-established legality by invalidating in principle all legal measures taken by the Germans or by the Vichy authorities. In general, the invalidation of concrete legal acts was postponed to a later date. However, in its section 3, it mentioned a few categories of legal measures, which were declared null and void from the outset. Among these figured ‘all [legal texts] which apply or enforce any sort of discrimination based upon the Jewish quality.’[15]

It is the direct link between the re-establishment of the republican legality of France and the retroactive annulment of the unjust, racist legislation that interests me here. The Decree

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de gouvernement en Angleterre. Par conséquent, l’institution qui représentait la France dans la coalition a été, de juin 1940 à octobre 1944, incomplètement reconnue.’ (Translation by the author.)

[12] Ibid.

[13] See Simon Berthon, *Allies at War: The Bitter Rivalry among Churchill, Roosevelt, and De Gaulle* (New York 2001).

[14] Lecture of René Cassin on March 21, 1945, p. 15-16.

[15] ‘Article 3: Est expressément constatée la nullité des actes suivants: […] Tous ceux qui établissent ou appliquent une discrimination quelconque fondée sur la qualité de juif.’ Translation by the author. The legal texts published in the official French and German journals from 1940 to the present (both those regarding the spoliation as those regarding poswar restitution) have been collected in a single volume by the Documentation Française*: La persécution des Juifs de France (1940-1944) et le rétablissement de la légalité républicaine* (Paris 2000).

'on the re-establishment of the republican legality' possessed an immediate practical relevance, but it also had a very strong symbolic value. During the session of the Advisory Assemblee on June 26, 1944, Cassin emphasized in his speech the 'particular significance' of this decree, 'for the future, for the psychology, for the state of mind of our people.'[16] In the same speech he stressed the importance of the undoing of the spoliation for the victims: 'Returned in a liberated France, not one of them [Jews, patriots, Gaullists and others] would tolerate not being immediately reintegrated into his premises or his enterprise.'[17] The same message could also be deduced from the system of the Decree itself: re-establishing the republican legality meant, obviously, annulling the unjust pseudo-legislation of Vichy. And this could only be realized by undoing the spoliation -the deprivation of rights of some parts of the population- in a principled, legal way.

At the time of liberation, the Decree 'on the re-establishment of the republican legality' has been directly used to bring about restitutions. This mode of operation has sometimes been very effective, though it was deemed to be inconvenient, because the August 1944 Decree did not lay down any material or procedural rules with regard to the restitution of property. It took, however, a considerable amount of time before this legal gap was filled in. After different decrees in November 1944, by far the most important piece of legislation was a decree issued on April 21, 1945. The long delay was partly due to a political struggle between the Department of Justice on the one hand, and the commissions on legislation, the Advisory Assemblee, and certain organisations of Jewish victims of persecution on the other. In contrast with the Dutch situation, where the Jews who survived the war were decimated and could hardly organize themselves, representatives of the French Jewish community participated in the preparation of the restitution laws. The Department of Justice tried to modify the restitution rules in favor of the current owners of looted property, but finally lost the battle.[18]

The Decree of April 1945 contained a principled response to spoliation: its section 1 stated that the judge was obliged to acknowledge the nullity of any transaction of property

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[16] See 'Assemblée Consultative Provisoire.Séance du 26 Juin 1944' in*: Journal Officiel de la République Française* (Alger, June 29, 1944), p. 97-98: 'M. René Cassin, président de la commission de législation et de réforme de l'état: "[…] Mais, je le crois, cette ordonnance sur la légalité républicaine - qui est première après l'ordonnance sur le rétablissement des pouvoirs publics - cette ordonnance a pour l'avenir, pour la psychologie, l'état d'esprit de notre peuple, une particulière significance."'

[17] Ibid., p. 98: 'Il faut enfin, prendre des mesures mettant à néant les spoliations voulues par l'ennemi ou inspirées par lui dont beaucoup de citoyens francais ont été les victimes. Qu'il s'agisse d'Israélites, de patriotes, - gaullistes ou autres- victimes de condamnations iniques, qu'il s'agisse des Alsaciens ou des Lorraines qui ont été chassés de leur terre paternelle, aucun d'eux ne pourra supporter, de retour en France libérée, de ne pas être réintégré immédiatement dans sa ferme ou son fonds de commerce.' (Translation by the author.)

[18] See Mission d'étude sur la spoliation des Juifs de France (Mission-Mattéoli), *Aryanisation économique et restitutions* (Paris 2000), p. 67-69.

performed after the original owner had lost his right to dispose of it. This meant that all the transactions performed by so-called 'administrators' were null and void and had to be undone. The judge had very little freedom to decide otherwise, since all recipients of despoiled property were considered to be in bad faith (with exceptions for some special categories). Another important rule was stated in section 11: possible victims of persecution, who had sold their property beforehand, were presumed to have acted under duress, unless the buyer could prove he had paid a just prize (in that case the burden of proof switched back to the former owner). There were some exceptions to these rules. Section 1 did not apply to stocks and bonds which were sold on the Paris Stock Exchange.[19] This protection of the stockmarket was, as it was in the Dutch case, motivated by political and economic reasons. I cannot expand on this here, but there are some compelling reasons why, from the perspective of the former owners, the consequences of this exception were less dramatic in the French case than they were in the Dutch situation.[20] Besides, section 11 did not apply to all kinds of property.

As in the Dutch restitution system, the French legal procedure was speeded up, this time by a fast-track procedure before normal courts. Contrary to the Dutch system, appeal and cassation were permitted, but it did not slown down the process: the executive orders of presiding magistrates were enforceable by anticipation.

Restitution in France and in the Netherlands. Concluding remarks

In France, the postwar restitution of property rights became an integrated, almost normal, part of daily legal life, while in Holland the restitution process remained outside of the normal legal system. It became an exceptional, almost exotic legal chapter in the history of Dutch law.

In France, the strict restitution rules made it relatively easy for the former owners to get their property back. In addition to this, on the initiative of a French resistance fighter, professor Émile Terroine, a Service of Restitutions was set up by the administration. This probably unique institution had no judicial powers, but put much effort in verifying whether former Jewish owners were receiving their property back.[21] In the Netherlands, on the other hand, the former Jewish owners did not receive support from the Dutch state. They had to

[19] See section 13.
[20] See Mission d'étude sur la spoliation des Juifs de France (Mission-Mattéoli), *La spoliation financière. Volume 1* (Paris 2000), p. 79-80.
[21] See Mission-Mattéoli, *Aryanisation économique et restitutions*, p. 65-67; 77-83.

fight a harsh, incertain legal struggle for every property they had lost. If the current owner had acquired it in good faith, restitution did not take place. In that case, the former owner had a right to be paid out of the assets of the German 'looting' institutions such as Liro which had confiscated his property and sold it during the war. This meant that the amount of his compensation was dependent on the total amount of assets these 'looting' institutions possessed at the time of the liberation.[22] After the war, the 'looting' institutions came under the administration of the Dutch State. The liquidation of these institutions took many years. In the late fourties it became clear that during the occupation the Dutch Central Bank (De Nederlandsche Bank) had greatly profited from Liro-assets by a number of money transactions between Liro and the Dutch Central Bank, at the expense of the dispossessed Jewish owners. Finance Minister Lieftinck refused to pay compensation (dozens of millions Dutch guilders), and an enormous legal battle broke out. This legal battle was set up in early 1950 and won in August 1952 by a Jewish Committee, established by a Jewish lawyer, Heiman Sanders, a born fighter with high principles and many exceptional talents. He was also Lieftinck's chief opponent in the important fields of insurance policies and securities. Sanders only confided in the Judicial Division and distrusted the other divisions of the Council of Restoration, as well as the Dutch State. His militant, uncompromising attitude anguished his Jewish colleagues. They refused to believe in his lonely struggle.[23]

Nevertheless, Sanders was heard by the Judicial Division of the Council of Restoration and was supported by a number of Dutch professors of law of high reputation. His legal struggle could not be a 'Blitzkrieg' as he once said[24], but it was extremely successful. The fact that the final material results of the Dutch restitution process regarding financial rights have not been so bad after all -with regard to financial rights, most people who did not receive restitution, received a 90% compensation[25] in the early fifties[26]-, is largely owed to the force and the courage of this one man.

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[22] See Committee on the Investigation of WW II Assets (Scholten-Commission), '*Preface, conclusions and policy recommendations*, (December 1999), p. 6-7. This English summary and final conclusions from the Dutch Scholten-Commission are available at www.minfin.nl (the site of the Dutch Ministry of Finance). This site contains lots of reports and summaries of Dutch historical commissions of inquiry with regard to spoliation and restitution.

[23] See Veraart, 'Sanders contra Lieftinck', p. 193-195.

[24] Heiman Sanders, 'Afkoopbare polissen. De eerste bres', in: *Nieuw Israelietisch Weekblad* (Amsterdam, June 19, 1946).

[25] In the case of Dutch securities, the final 90% compensation was based on a much more profitable calculation than the one used before: that's why the original Jewish owners of securities felt satisfied with this compensation in the early fifties. However, the stock exchange contributed almost nothing to this compensation, which has largely been paid by the State. The remaining 10% has become subject of recent negotiations between Dutch

I will now come to a conclusion. In one of his reports the director of the French Service of Restitutions, Terroine, once defined restitution as follows:

> 'a labour both of justice and humanity, which moral and political meaning far transcends the material values in question.'[27]

Due to different circumstances such as the establishment of democratic institutions, the presence of strong personalities as Cassin and Terroine within the De Gaulle administration and last but not least the fact that a relatively large part of the French Jewish community survived the war, this idea guided the French restitution process already in its preparatory phase. It resulted in the Decree of April, 1945, which was primarily based on the principle that the spoliated owners be returned in their former situation, irrespective of the good or bad faith of the buyers or current owners. This strict principle is closely related to the project of re-establishing a situation of legality, in which 'equality before the law' of all parts of the population is one of the most fundamental principles.

The Dutch administration did not conceive of the restitution process in the same way. As I pointed out before, the Dutch Government mainly considered it as one of the exceptional policies necessary for the restoration of the legal system and the economic reconstruction of the country. According to the Minister of Finance, this meant that the restitution process could be blocked or even ended, if it conflicted with other vital economic interests or with the financial interests of the Dutch State. Against the vision of Lieftinck, Sanders defended his own vision before the Judicial Division of the Council of Restoration. According to Sanders, restitution involved much more than mere material values. In his opinion, it was directly related to the highest values of the Dutch people as a whole. In 1951, in one of his very long pleas before the Judicial Division, he associated the impoverishment of the Netherlands:

Jewish organisations and the Amsterdam Stock Exchange. In 2000, the Stock Exchange agreed to pay a substantial amount of money to the Dutch Jewish community.

[26] See Committee on the Investigation of WW II Assets (Scholten-Commission), *'Preface, conclusions and policy recommendations*, p. 7. For a general (though not very balanced) overview of the Dutch restitution process and its results, see Gerard Aalders, *Berooid. De beroofde joden en het Nederlandse restitutiebeleid sinds 1945* (Amsterdam, 2001).

[27] 'Pour moi, la restitution des biens spolié aux israélites est une oeuvre à la fois de justice et d'humanité dont la signification morale et politique dépasse de beaucoup les valeurs matérielles en cause.' Émile Terroine, report d.d. December 29, 1944, as cited in Mission d'étude sur la spoliation des Juifs de France (Mission-Mattéoli), *Rapport général* (Paris 2000), p. 13. (Translation by the Mission-Mattéoli.)

‘not only with material deteroriation, which had been the fate of the Dutch population since the German invasion. But I also think about the loss of the higher values of our people, the weakening of the apparently unshakeable civil rights, such as the equality of all before the law and the other principles of our constitutional law, most prominently the principle of the independency of the judge, and the respect owed to the principles of the civil law, which the judge cannot put aside while looking up to someone.

[…]

If you want to consider the struggle I fought for more than six years for the protection of our [Jewish] community against discrimination and other injustice which have come to us from the east, not as a struggle for material property, but as a struggle against the impoverishement of the Netherlands in the aforementioned sense, this in itself would satisfy me.’[28]

It is clear that Sanders’ vision on the postwar restitution of rights corresponded to the dominant vision in France on the resitution process. However, within the Netherlands, Sanders had been the only one in defending this vision in the immediate postwar years.

Sanders did not receive the Noble Prize, as Cassin did in 1968 for his work on human rights. Yet he was decorated by the Dutch State in 1954, a few years before he died. Sanders was very pleased with this late national recognition for his work, which had essentially been a struggle against the Dutch State.[29]

Discussion

After this lecture was held at Yad Vashem (during and after the session) the following points were discussed[30]:

[28] ‘[Bij de verarming van het vaderland] denk ik niet alleen aan de stoffelijke achteruitgang, welke het lot van het Nederlandse volk is geworden sinds de inval der horden. Maar dan denk ik aan het inboeten van de hogere waarden van ons volk, de verzwakking van de axiomatisch veilig gewaande grondrechten, waaronder de gelijkheid van allen voor de wet en de overige beginselen van ons Staatsrecht, op een der eerste plaatsen het beginsel van de onafhankelijkheid des Rechters, mitsgaders de eerbied voor het privaatrecht, welks grondslagen de Rechter niet op zij mag zetten uit aanzien voor, ja opzien tot een persoon. […] Indien Gij de strijd welke ik sinds 6 jaren heb gevoerd voor de bescherming van onze volksgroep tegen discriminatie en ander onrecht uit het oosten over ons gekomen, wilt beschouwen, niet als een strijd om materieel bezit, maar als een strijd tegen de verarming van Nederland in de zo-even bedoelde zin, dan zal mij dit op zich zelf reeds tot voldoening strekken.’ Plea Heiman Sanders on November 13, 1951 as cited in Veraart, ‘Sanders contra Lieftinck’, p. 198-199. (Translation by the author.)

[29] See Martin Levie, ‘Mr. Heiman Sanders. Rusteloos strijder voor het recht’, in: *Nieuw Israelietisch Weekblad* (Amsterdam, June 20, 1958).

[30] I would like to thank Claire Andrieu, Richard Chessnoff and Helen Junz for their remarks.

1. One cannot make a fair comparison between the restitution policies in France and the Netherlands without taking into account three major political, economic and historical differences. Firstly, on the political level, De Gaulle's French National Committee during the war expressed several times that it was deeply motivated to *undo*, as much as possible, the crimes and injustices committed by 'Vichy'. This explains the principled approach of De Gaulle's provisionary parliament and his legislative institutions with regard to the annulment of the spoliations. In the occupied Netherlands, on the other hand, no 'Vichy' had existed. During the German occupation the remaining Dutch civil authorities were civil servants, not politicians. The Dutch Government in exile refused to accept Dutch (state-) responsability for the crimes committed under German occupation. According to the Dutch Government the Germans were entirely responsible for the spoliation and the deportation of the Dutch Jews, despite signs of Dutch collaboration.
   Secondly, one should keep in mind that immediately after the war the French economy was still virtually intact, while the Dutch economy was devastated. Thirdly, it is important to note that the liberation of France took place in August-September 1944, while in the northern part of the Netherlands (including Amsterdam), the worst part of the war, the terrible winter ('hongerwinter', winter of hunger) of 1944-1945, was still to come. When the northern part of the Netherlands was liberated on May 5th, 1945, the Dutch inhabitants of this part of the country were completely demoralized. In assessing the differences in vision behind the postwar restitution processes in France and the Netherlands, these big political, economic and historical differences should not be ignored. It explains to a large degree why the Dutch Minister of Finance Lieftinck (1945-1952) was almost entirely focused upon the economic reconstruction of the country. However, these factors do not *justify* the fact that the Minister of Finance could have so much control over the Dutch restitution process, *nor* the fact that he used this position to block or even end the restitution of despoiled property to the original owners.
2. The difference in political vision behind the restitution process in the Netherlands and in France does *neither* imply that the carrying out of the restitution process in France has been perfect, *nor* that the process in the Netherlands has been a total disaster. On the contrary, it is interesting to see that the *material results* of the restitution process in both countries approach each other to a larger degree (although certainly not completely!) than one would expect on the basis of the big differences in vision and legal rules. Moreover, in difficult areas of the restitution policies, such as the restitution of stocks and bonds and the

reintegration of private tenants, the practical solutions in both countries are remarkably similar.

About the author

Wouter J. Veraart (1971) studied law and philosophy and worked after his studies at the history of law department of the Erasmus University Rotterdam. As a researcher, he wrote an extensive report on the restitution of financial assets (stocks and bonds) in the Netherlands after WWII on behalf of the so-called Scholten-commission. This report has been published (in Dutch) as the second part of the final report of this commission in December 1999. The Scholten-commission was only one of the commissions established by the Dutch government to research problems of spoliation of Jewish property and its restitution after the war. The domain of research of the Scholten-commission was limited to financial assets: it covered not only stocks and bonds but also insurances, bank accounts, mortgages and other financial rights. During his independent research, Veraart received full cooperation from all parties and enjoyed free access to all relevant state-archives, the archives of Dutch banks and the archives of the Amsterdam Stock Exchange.

Since 1999 Veraart is working on a PhD-thesis about problems of postwar restitution in France and the Netherlands (1940-1958). This research includes a theoretical part in which principles of restitution are evaluated in a legal-philosophical framework. This work is still in progress, though he intends to defend his thesis in the end of 2003. Currently, he is working as a lecturer at the Legal Philosophy and History of Law Department of the Faculty of Law at the Vrije Universiteit of Amsterdam.