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Moral Liability for Robbery and Restoration of Rights

Minors in the Eyes of the Law

Beam in your own Eye

Justice for All !

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Shortcomings in the post-war rehabilitation in the Netherlands

General

The murder of the Jews is the greatest disaster that ever befell the Jewish people. The Nazis wanted to exterminate them as the final solution to the Jewish question. They had to "disappear" but not what they owned. Prior to murdering the Jews, the primary task of the German occupier had been to get its hands on their possessions. Priority was therefore first given to the systematic robbery of all the earthly belongings of the Jewish population.

A centuries-old and universally accepted phenomenon of war was the plundering of the vanquished people by the mercenaries of the victors. A definitive change was effected in 1907 with the specification of a revised version of the Laws and Customs of Wars on Land (LCWL) drawn up during the First Hague Peace Conference. It was part of a treaty that regulated the laws and customs of wars on land. The Hague Conventions are a series of international treaties and declarations negotiated at two international peace conferences at The Hague in the Netherlands. The First Hague Conference was held in 1899 and the Second Hague Conference in 1907. Along with the Geneva Conventions, the Hague Conventions were among the first formal statements of the laws of war and war crimes in the body of international law. A third conference was planned for 1914 and later rescheduled for 1915, but it did not take place due to the start of World War I.

The LCWL, valid during World War II, had been cosigned by Germany. The robbery perpetrated against the Jews by the German occupier did not take place by violent force, but on the grounds of a series of regulations. Implementing them was therefore "lawful." The Jews in Europe were in fact declared outlaws. Regulations also made it easier—as well as more bureaucratic, legal, and impersonal—for Dutch civil servants and financial institutions to act as accessories to the robbery on a mass scale. Robbery and restitution of Jewish property can be divided into three periods:

1. The robbery of the Jews during the Second World War (1940-1945);
2. The post-war rehabilitation of the Jews (1945-1970);
3. Recognition and restitution (from the government, insurers, banks and association of stock brokers) of deficits in the post-war rehabilitation (1997-2000);

1. Robbery of the Jews during the Second World War[1]

With the knowledge and cooperation of the Dutch government in exile in London and the financial institutions, the Jews were systematically robbed during the Second World War.

The robbery committed against the Jewish population of the Netherlands, unions, and companies where Jews fulfilled an important function, was total. It encompassed every conceivable form of property: stocks, bank balances, cash, insurance policies, receivables, sold and liquidated companies, real-estate properties and mortgages, household effects, furnishings, jewelry, and other valuables.

2. The post-war rehabilitation of the Jews[2]

The post-war restoration was based on Royal Decrees drafted by the Dutch government in exile. The main purpose of these decrees was to return to normal capital and legal transactions as quickly as possible. The rehabilitation of the Jewish victims of German terror did not have the highest priority in this context. If priority was given to the restoration of rights under all

[1] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 1-132.
[2] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 135-283.

circumstances, in the opinion of the then policymakers, legal transactions would be considerably delayed. The Dutch government did not feel responsible for the occupier's actions.

3. Recognition and Restitution[3]

Not only during the war, but also after the war, millions of euros have disappeared, money that the Jewish war victims, including many war orphans, are entitled to.

After the war it appeared that many Jewish children had lost their parents. The Dutch Jews had to fight to recover their material possessions, but the most bitter and emotional struggle was to bring their children back to a Jewish environment. The post-war restoration of the Jews lasted from May 1945 to the 1970s and was far from just and perfect.

In the summer of 1995, there was a sudden resurgence of interest about Jewish assets—especially in Dutch journalistic and political circles. It had to do with Jewish flight capital that had found its way during the war to neutral Switzerland. All because of the media offensive that the World Jewish Congress had unleashed. At first the Swiss bankers were not that concerned about all the commotion. That started to change when the American president Bill Clinton assigned Stuart E. Eizenstat the task of dealing with the matter of Jewish assets. Eizenstat was the undersecretary of commerce for international trade and special envoy of the Department of State on property restoration in Central and Eastern Europe. Things started getting tougher for the Swiss. The good reputation of the country had been affected, and that had a bad influence on business. In the end, the Swiss set up a fund to compensate war victims.

As a follow-up to these international discussions, Holland began asking itself whether or not the uproar about the Jewish assets would spread to other countries, including that little country on the North Sea. On March 10, 1997, the Assets WW II group (Van Kemenade Commission) was set up by Dutch Minister of Finance Zalm. Its brief was an investigation into the actual methodology of Dutch restoration of rights and the possible assets of war victims that still remained. At the beginning of 2000, the conclusions and recommendations of the Van Kemenade Commission became available to the general public.

As a result of the research reports, talks took place on restitution between the Dutch Jewish community and those institutions where the remnants of Jewish assets, originating from looting during World War II, were still present.

The agreements between the Jewish community and the financial institutions added a moral dimension to the material restitution. Moral restitution came in the form of the publication of expressions of regret and, therefore, a recognition of the shortcomings of the restoration of rights after World War II. The Jewish community also received material restitution and, through this, access to €346.8 million–from the Dutch government €181.6 million[4], €22.7 million from the banks[5], €22.7 million from the insurers[6], and from the stock exchanges €119.8 million[7]. These monies, referred to as MAROR monies, are refunds. They in no way constitute compensation for damages incurred through the looting of assets during World War II, but are in recognition of shortcomings in postwar restoration of rights. The MAROR monies are made available to private individuals as well as for collective aims. It was agreed by representatives of the Dutch Jews that 82% of this amount will be paid to survivors of the Sjoa who lived in the Netherlands during the war, or to their descendants if the Sjoa survivor had died in the meantime. The remaining 18%

[3] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 285-474.
[4] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 291-301.
[5] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 302-303.
[6] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 289-290.
[7] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 304-343.

will be paid to Jewish organizations in the Netherlands (74%) and associations of Dutch people in Israel (26%).

3.1. Minors in the Eyes of the Law – Beam in your own Eye

Since 1997 to the present day, there have been scores of research reports and books published concerning Jewish property from the Second World War. The Jewish community deemed it necessary and decided to conduct their own research, despite the impressive list of independent scholarly commissions that had been assigned the task of conducting research into the postwar Dutch restoration of property rights that had yielded thousands of pages of reports. All of these reports and books have been analyzed and scrutinized to the last detail by politicians, lawyers, and financial experts. Research was done concerning practically every financial aspect of postwar restoration of property rights. In so doing, insurers, government authorities, banks, and stock exchange members were put under the microscope.

After having studied those research reports, to my surprise and disappointment, I discovered that Jewish organizations such as the guardianship institution Le-Ezrath Ha-Jeled (The Child for Help) and the Jewish Funeral Service (JBW) were not investigated:

- The Van Kemenade Commission has not been granted access to the JBW archives. The association refused to cooperate in research in its archives. The association also did not answer written questions regarding insurance of family members of war victims.
- The Central Jewish Consultation (CJO) deliberately did not insist that the Van Kemenade Commission, which would, after all, review the entire restoration of justice, would also investigate the case of the Jewish war orphans[8].

I noticed that there was still one group of people who had been forgotten. A group who at that time were underage and therefore minors in the eyes of the law[9]. Nothing had been said in all those reports concerning the restoration of property rights to the children who had survived the war without parents. War orphans had not been mentioned in the various commissioned reports and surveys. Reason I decided to investigate myself to find answers to the following three questions:

- Had the guardians received stewardship of the complete estates?
- Had the guardians properly managed the assets of war orphans?
- Had the guardians, once their foster children had legally come of age, transferred the complete estates to the war orphans?

The answer to the above questions is, see my research report, negative. Even today–nearly seventy five years after the end of World War II–restoration of property rights still has not been concluded.

On the fourth of June 2004–a few months after I had submitted my case study and claim to JMW–the Jewish Social Work Alliance lodged its merger proposals with the custodian organizations[10]. Fifteen Jewish organizations accuse JMW of using the money from the merger partners to wipe out deficits in their own budget.

The Staal vs. JMW case was scheduled to be heard on September 27, 2004 by the Amsterdam sub-district court. But at the last minute, both parties decided to apply for a postponement to allow for further consultation to resolve the conflict outside of the court. The date for a possible

[8] Elma Verhey, Kind van de Rekening, De Bezige Bij Amsterdam 2005, page 242, note 13.
[9] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 144-146.
[10] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 254-261; 268-278.

future legal hearing was set for November 29, 2004. On November 1, 2004, a meeting took place between JMW and me in which an attempt was made to settle the dispute. JMW was represented by Harry Jacob van den Bergh and Hans Vuijsje and Agsteribbe.

After explaining in detail what his function entailed as chairman of the SJMW and prospective chairman of the JMW Supervisory Board, Mr. Van den Bergh gave a short summary of the context in which the meeting was taking place and ended with a question, directed at me:

"Are you surprised, Philip, that in our statement of defense (page 23, 5.28), we are invoking the statute of limitations?"

"What really hurts is that a foundation that owes its right of existence to the Shoah, is pleading the statute of limitations on assets from World War II. There can be no question of rights being subject to any statute of limitations. The law was not written proceeding from the idea the Shoah would ever take place. Furthermore, in an interview with Joop Bouma in the daily newspaper *Trouw*, Vuijsje is quoted as saying he would rather that our claim be dealt with in civil court. He also went on to say 'If it does come to a trial, then in a private capacity, I will not be able to invoke the statute of limitations.' And what are you doing now?"

"You're right, Philip, Vuijsje said it in a personal capacity. The board takes a different view."

"By invoking the statute of limitations, you deprive us and other war orphans of the option of lodging any claims with the court. Are you afraid the court, with reference to my report, will rule in our favor against the merger?"

Harry did not answer the question, but in his final statement, he said:

"The Merger partners will not refrain from invoking the limitation period for compensation claims, partly in view of the general interest of JMW continuity."

I was disappointed and angry.

"You have to choose between bankruptcy or a loss of honor. It is clear that JMW places a higher value on material matters than it does on moral heritage. Because of that, JMW loses it right to exist as a social organization."

It is intriguing that JMW invoked the statute of limitations in the case against the merger that my brother and I were contesting on behalf of all Jewish war orphans. But it still remains a mystery, owing to the fact that to third parties this foundation has always stated that it felt it was morally reprehensible to speak of a statute of limitations when it came to what happened in the Second World War.

This formalism is reminiscent of the question concerning Jewish assets, when in 1999–2000, we, the Jewish war victims, came knocking on the doors of insurers, banks, the stock exchange, government and lately the Dutch Railways (NS) for restitution of the remains of our looted possessions. Here too, there was no legal basis for the claims, since in accordance with Dutch law the statute of limitation period on these matters had expired in the 1970s. But from the very first talks, in a show of remorse, they had decided not to resort to invoking the statute of limitations. The government, the financial institutions and the Dutch Railways were sympathetic to the special circumstances of the Jewish population after the war. JMW was not! But moral claims do not lapse! Some matters never expire! In any case, for me as one of the negotiators and signatories involved in the agreements entered into with banks and the stock exchange, it remains extremely painful and unacceptable that it is precisely the Jewish Social Work (JMW), of all institutions, that are the only ones to have relied on the statute of limitations in questions dealing with the Shoah.

JMW could have had extensive research be conducted after the first reference to war orphans. Instead of initiating comprehensive scientific investigation, it chose it let the matter be examined by lawyers. In that sense, JMW has left the matter for the court to decide. But, by now choosing to invoke the statute of limitations, the JMW has made it impossible for a civil court to rule on the substance of any further claims. This is cowardly and weakens their moral stature. Naturally, there

is nothing left to claim since these debts had expired in the 1970s. It nevertheless leaves a nasty aftertaste that an organization making a moral appeal to third parties on the basis of sound reasoning not to allow the statute of limitations to take precedence, then proceeds to invoke it themselves.

The JMW had been founded on November 28, 1946, thereby allowing Jewish institutions involved in social work to join as members. The need for an organization such as JMW was a direct consequence of the Shoah. How on earth could this organization have resorted to the statute of limitations when it came to the blackest page in our history? In one fell swoop, this destroys JMW's very right to exist!

Are they only capable of seeing the mote in their brother's eye but not see the beam in their own?

3.2. Real-estate – one of the many examples

In the year 2000, Elma Verhey had received notary documents from the war orphan Siegfried (Shalom) Pront indicating that his guardian, Le-Ezrath Ha-Jeled (LEHJ), had sold four buildings (three in Amsterdam and one in Groningen) in 1953 that had been owned by his grandparents who had been murdered in Sobibor. Pront had a right to an eighth share of the proceeds. But in the final statement he received on March 14, 1956, on his twenty-first birthday, there was no mention of any proceeds accruing from the sale of any real estate. To reiterate: the guardian had to provide a final statement of the settlement to his or her ward when he or she had come of age. One can see the assets, expenditures, and income on Siegfried Pront's statements of assets and liabilities as drawn up by his guardian, Le-Ezrath Ha-Jeled. Furthermore, two deeds of sale were found with regard to buildings in Groningen (one house) and Amsterdam (three buildings). These properties had been owned by Siegfried Pront's grandparents who had been murdered in Sobibor.

As both these sales contracts show, both Pront brothers were entitled to an eighth share each of the proceeds accruing from the sale. Apart from that, this sale was necessary because in the undivided estate (including the four properties), there were, among others, four underage heirs involved. Three of the minors were represented by their guardian institution, the fourth by his mother. Le-Ezrath Ha-Jeled acted as mandatory to two of the minors, Siegfried and Ingfried Pront.

As far as the sale of these four properties was concerned, the guardians had not acted improperly. After all, this undivided estate had to be divided. However, the proceeds did have to be visibly included on the war-orphan statements of assets and liabilities.

At the beginning of this century, Siegfried Pront sent me his statement of assets and liabilities and the sales contracts for the sale and purchase of the real estate for a critical examination. I was struck by the following:

The deeds of sale and purchase of the three properties in Amsterdam had been executed by notary Jakob van Hasselt on January 19, 1953. The three Amsterdam houses were sold as usual, put up for Dutch auction in Amsterdam to sell to the highest bidder. The highest bid for one of these properties was 3,700 guilders, made by real-estate agent J. Springveld. It was subsequently put on sale by bid-and-exit and purchased by the firm Simon Godschalk Engelsman Junior for the price of 5,200 guilders. Real-estate agent Engelsman claimed to have bought these premises for one B. F. Martini, who in turn accepted to purchase it for the sum of 5,200 guilders. In the short space of minutes, Engelsman had seen more than 40 percent profit.

The deeds of sale concerning the property in Groningen were executed by notary Gouverne. Naturally, the proceeds from this sale were also divided into the deed of sale. This notary was not even mentioned in Siegfried Pront's final settlement. So the proceeds of the four houses cannot be considered to fall under the heading of "part of the heirs entitled to the estate." Siegfried

Pront's statement of assets and liabilities was dated March 14, 1956, while the properties in Amsterdam and Groningen were sold in 1953.

How was it possible that on Pront's statement of assets and liabilities, drawn up by the custodian organizations, there was no mention of proceeds of the sale of these properties, although?:

- Notary Jakob van Hasselt was at the time, treasurer of the Jewish Custodian Organizations, Le-Ezrath Ha-Jeled.
- Real-estate agent Simon Godschalk Engelsman Junior was at the time, board member of the Jewish Custodian Organizations, Le-Ezrath Ha-Jeled.
- The minors were represented by their Jewish Custodian Organizations, Le-Ezrath Ha-Jeled.

The question is glaring: who acquired the share that had been intended for the Pront brothers?

The great majority of those vacant estates of absent persons during the war could only be settled after the law of 11 June 1949 had been instituted[11]. That is why most of the administration, under the supervision of the Netherlands Property Administration Institute, took place between 1945 and 1951. The number of administrated estates rapidly decreased thereafter. Therefore, for the most part, the transfer of the assets to the rights-holders (in the case of war orphans to their guardians) occurred up until 1951.

With regard to disputes dealt with concerning the ownership of real-estate properties and the mortgages attached to them, there are approximately 12,800 cases on file. The Real-Estate Department archives of the Council for the Restoration of Rights are housed in the National Archives in The Hague. At the beginning of 1959, nearly fourteen years after the war, all disputes had been dealt with and the Real-Estate Department archives of the Council for the Restoration of Rights was abolished.

One can conclude from the above that in the vast majority of cases, the original owners of real-estate properties did not recover their real rights during the transfer of assets. Therefore, no mention is made of real-estate properties in the majority of the accounts provided by the administrators to the Netherlands Property Administration Institute.

From this we can deduce that, during the transfer of assets from the Netherlands Property Administration Institute to the guardians of war orphans, no real-estate properties were included. In the vacuum that ensued, it is a simple and very tempting matter of letting real-estate properties simply *disappear*.

The ultimate disappearing act!

[11] Philip Staal, Settling the Account, iUniverse Bloomington 2015, pages 169-171.