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The Instrumentalisation of the Right to Reparation and Dealing with the Past between Germany and Poland

This work is a sequel to all of the texts trying to provide a broad or detailed view on German-Polish relations regarding reparation and reconciliation. All of these scientific texts have in common that they are tied to the current political and bilateral situation between these two countries. Since the end of the Cold War, the expansion of the European Union, the financial crisis, the refugee crisis, and the rise of the new-right in Europe did not just touch Germany's and Poland's politics multilaterally. The new-right parties, especially, in the parliaments of European countries and which rule certain former Warsaw Pact countries have created relationships since the Cold War, hence World War II, turning their back on history and consequently have opened up unsolved topics and superficially closed discussions. This text aims to put the question of reparations between Germany and Poland in the first and the second decades of the 21st century in the spotlight. As a part of transitional justice and one of its four pillars,¹ the *right to reparation* has been an important matter since World War I to cover war costs and after World War II to compensate for the loss of homes, lands, lives, and human-dignity – and, of course, war costs as well. The first chapter serves as a base for the definition and meaning of reparation and reconciliation, followed by the second

¹ A) Right to know
B) Right to justice
C) Right to reparation
D) Right to the guarantee of non-recurrence

chapter which gives a historical overview of the treaties which have affected German-Polish relations. The text will be concluded by the interpretation of the Polish way of handling the *right to reparation* towards Germany, showing that, in the end of the 1990s, the social shift of a new German identity uncovered the fears² of Germany's eastern neighbours which seemed to have been solved after the end of the Cold War.

The main literature excerpt about transitional justice is Lambourne's article on "Transformative justice, reconciliation and peacebuilding".³ The adaption of the mechanisms and the aftermath of transitional justice, 80 years after the end of World War II, is based on the interpretations of the scholars' paper "Völkerrechtliche Grundlagen und Grenzen kriegsbedingter Reparationen unter besonderer Berücksichtigung der deutsch-polnischen Situation"⁴ initiated by the German government and the Polish perspective which is represented by Żerko's paper "Reparationen und Entschädigung in den Beziehungen zwischen Polen und der Bundesrepublik Deutschland (ein historischer Überblick)"⁵ and Sobolewska's "The Question of War Reparations in Polish-German Relations after World War II".⁶ The object of analysis for the last part will be articles in newspapers publishing the demands and announcements from the German and Polish sides, which is presented especially by Sobolewska and Żerko's articles, of dealing with the past from the end of the 1990s.

The framework of transitional justice as a base of the claims of reparation towards Germany in the 21st century

Transitional justice is the umbrella term for all the political, judicial, and social measurements after a state's crisis. A crisis is defined by internal or external wars, which also covers genocide and civil wars. The aim of these measurements is to deal with crimes in different spheres: murder, damages, slavery, abuse etc., so that those who commit these crimes face justice, the former criminal system is abolished, and there are reparation and reconciliation towards individuals and other states. Hence, transitional justice can be subdivided into a judicial and social revision of a violent past embedded

² Amongst the fears: "[...] that German compensation claims for the eastern territories will be revived [...]" P. Lutomski, "The Debate about a Center against Expulsions: An Unexpected Crisis in German-Polish Relations?", *German Studies Review* 2004, Vol. 27, No. 3, pp. 449–468. Here, p. 456.

³ W. Lambourne, "Transformative Justice, Reconciliation and Peacebuilding", in: S. Buckley-Zistel, T. Koloma Beck, C. Braun, F. Mieth, (eds), *Transitional Justice Theories*, Routledge, Abingdon 2014, pp. 19–39.

⁴ Unknown authors, "Völkerrechtliche Grundlagen und Grenzen kriegsbedingter Reparationen unter besonderer Berücksichtigung der deutsch-polnischen Situation", Wissenschaftliche Dienste [red.], *Deutscher Bundestag* 2017.

⁵ S. Żerko, "Reparationen und Entschädigungen in den Beziehungen zwischen Polen und der Bundesrepublik Deutschland (ein historischer Überblick)", *IZ Policy Papers* 2018, No. 22, pp. 14–18.

⁶ P. Sobolewska, "The Questions of War Reparations in Polish-German Relations after World War II", *Review of International, European and Comparative Law* 2019, Vol. 17, pp. 139–159.

in a post-conflict society.⁷ Moreover, it is set at a time which can be described as the “interim process”⁸ that connects the time before the conflict and violence with the time afterwards, yet it is temporarily limited in contrast to the transformation, which is rather a long-term process. This transformation consists of the recognition and addressing of “multiple justice needs”,⁹ rebuilding infrastructure and state institutions, humanitarian tasks, and the psychosocial factor of regaining the people’s trust, and abolishing fear and mistrust amongst the different groups of the population.¹⁰

The right to reparation is not solely the monetary fulfilment of payments demanded from the victorious party. It is also aimed at reparations for individual victims. The role of the newly established or modified state is to grant these reparations and protect their feasibility. These reparations can be divided in three categories: restitution, compensation, and rehabilitation. Restitution aims to re-establish the victim’s former situation, such as re-employment of the victim in their old workplace, financial restitution of their former capital which had been expropriated, and allocation of the victim’s former living-place. Compensation refers to restitution which cannot be covered or restored one-to-one. Under this category fall examples such as “physical and mental injuries, [...] lost opportunities with respect to employment, education, and social benefits, [...] expenses related to legal aid [...]”.¹¹ For these uncoverable exchanges, financial help is mostly granted in the form of social care, monthly payments, or special rabats at certain institutions. Rehabilitation, as a part of reparation, is closely linked to compensation. On the one hand, it points out the physical and psychological necessity for victims to receive extensive access to healthcare, on the other hand, this kind of reparation is more a crutch rather than a literal reparation for a trauma experienced during the time of crisis. The individual’s health, under compensation point, tries to evoke either the possibility of weighing up the psychological and physiological suffering experienced or financial compensation. Rehabilitation focusses on the indirect effects of experienced crimes and losses. The victim shall be granted “medical care, including physiotherapy and psychological treatment”.¹² However, all three categories of the right to reparation need the state’s duty of provision and fulfilment.

The term *Wiedergutmachung* is mostly used as the translation of transitional justice in the scientific realm as well as colloquially. Immediately after World War II, the German term was used as a conglomerate of single laws inside the *Bundesrückerstattungsgesetz* (BRüG), which is the base for every individual to demand *Wiedergutmachung* (WG), who had been persecuted because of their political opposition, ethnicity, beliefs, or ideology under the Nazi regime. In addition, the *Bundesentschädigungsgesetz* (BEG) covers the main area of WG in terms of restitution

⁷ N. Zupan, *Vergangenheitsarbeit*, “bpb”, 26.07.2016, <https://www.bpb.de/internationales/weltweit/innerstaatliche-konflikte/54742/vergangenheitsarbeit> (accessed: 20.06.2020).

⁸ W. Lambourne, “Transformative Justice, Reconciliation...”, pp. 19–39. Here, p. 19.

⁹ Ibidem.

¹⁰ N. Zupan, “Vergangenheitsarbeit...”.

¹¹ J. Sisson, “A Conceptual Framework for Dealing with the Past”, *Politorbis* 2010, No. 50–3, p. 13.

¹² Ibidem.

and compensation. As indicated, the meaning of *reparation* according to international law is replaceable by war indemnity. It must be made clear that the term *reparation* in this work serves as the umbrella term for restitution, compensation, rehabilitation, and its original meaning of war indemnities. Nonetheless, reparations were judicially separated from WG in the London Debt Agreement on 27 February 1953, which states that reparations are only the financial services the defeated nation must render to the victorious ones. In conclusion, the judicial term of reparation in post-war Germany excludes German citizens, but upon reversion, WG does not exclude all non-Germans since it is based on the principal of territory, which of course changed during the time of occupations. The example of prisoners of war or civilians in occupied territories highlights how demands could either be made on the basis of WG or on reparational grounds.¹³

Treaties between Germany and Poland after the World War II

The basis of every subsequent treaty and contract between East or West Germany and Poland is the Potsdam Agreement. The clause about the realisation of reparations between the USSR and Poland is mentioned in the agreement under IV No. 2 as well as in the Soviet-Polish Agreement of 16 August 1945. There it is explicitly mentioned that “The USSR is going to satisfy the reparational demands of Poland out of its own shares of the reparation.”¹⁴ The first real treaty between East Germany and Poland was the Treaty of Zgorzelec in 1950. Of course, the subject concerned was the Oder Neisse line, the future border between the two neighbouring states. The treaty, imposed by the USSR, consequently led to a topic about which no public discourse was allowed, especially due to the fact that 25% of the East German immigrants were from the newly Polish lands.¹⁵ In 1953, the USSR decided to renounce all claims from East Germany concerning reparations. Bolesław Bierut’s proclamation, as it is known, included the whole of Germany, not only the GDR.¹⁶ Simultaneously, Bierut thanked the USSR for dropping the coal clause. While Poland could never expect, during this time, to receive the appropriate amount of reparations by Germany via the Soviet Union, the most important economic action was to get out of the adhesion contract with the USSR – *quid pro quo*, as the USSR demanded, Poland renounced the claims of reparations from Germany as a whole. After Poland was burdened with the coal clause by the USSR, which meant that Poland had to sell the USSR 8 to 13 million tons of hard coal at the USSR agreed price of ten times less the worth of the market value, Poland’s losses after three years (1956) were calculated as 836 million dollars. Żerko mentions

¹³ U. Kischel, “Wiedergutmachung und Reparationen: Zur Dogmatik der Kriegsfolgen”, *Juristen Zeitung* 1997, Vol. 52, No. 3, pp. 126–131. Here, p. 130.

¹⁴ Freely translated from German, *Potsdamer Abkommen*, IV, No. 2, 02.08.1945: “Die UdSSR wird die Reparationsansprüche Polens aus ihrem eigenen Anteil an den Reparationen befriedigen”.

¹⁵ J. Rynhold, “The German Question in Central and Eastern Europe and the Long Peace in Europe after 1945”, *Review of International Studies* 2011, Vol. 37, No. 1, pp. 249–275. Here, p. 258.

¹⁶ See Footnote 56.

more examples in which Poland had to agree to contracts with the Soviet Union to accept a loss-making venture. De facto, Germany's reparations never reached Poland in the intended amount.¹⁷

In 1970, with Willy Brandt as the first social-democratic chancellor of West Germany, a new approach towards Poland arose, the *Ostpolitik* (East Politics). This included the "de facto acceptance of the post 1945 status quo"¹⁸ from West Germany's side. The Warsaw Treaty in 1970, between West Germany and Poland, constituted an implicit recognition of the Oder Neisse line and a "commitment to non-violence".¹⁹

The most important contract, concerning the demand of reparation from the German side, is the contract in which this topic was not even mentioned, the Two-plus-Four-Contract. The German government and the German jurisdiction agree on this point that this contract rules out any claims of reparation from the Polish side by not including reparations as a topic.

The Neighbour Contract from 1991 states, from the German side, that claims by Polish individuals against the German state could just be granted when German individuals could do the same against the Polish state – the reciprocity principle. This implies, of course, that German citizens would have the right to file a lawsuit against the Polish state as a consequence of the expulsion. For this reason, both sides agreed to the extracontractual solution.²⁰ In 2004, Jan Sandorski stated that the external factor of pressure made the renunciation interpretable as null ab initio.²¹ After the reunification of Germany, the foundations were founded to grant reparational and compensational payments to Polish victims of the occupation. Of course, these payments were not legally named so. Helmut Kohl stressed that these payments of 500 million Marks through the foundation were not compensation but support and help. Yet, the foundations only paid compensation to those who had been in forced labour for at least six months or who had been forced to do work, before they were 16, at their place of residence. A one-time payment from Germany had been proceeded for the victims of forced labour and war crimes in Poland by pressure from the US Government and Jewish initiatives. Another foundation, "Remembrance, Responsibility, and Future"²² was established in 2000 by Gerhard Schröder and 12 leading German companies to grant Polish victims access to a fund of around 1.8 billion Marks. Indirect compensation was received by 484,000 Polish victims with the last payment in 2006.²³ To conclude,

¹⁷ S. Żerko, "Reparationen und Entschädigungen in den Beziehungen zwischen Polen und der Bundesrepublik Deutschland (ein historischer Überblick)...", pp. 14–18.

¹⁸ J. Rynhold, "The German Question in Central and Eastern Europe and the Long Peace in Europe after 1945...", p. 260.

¹⁹ Ibidem.

²⁰ W. Jarzabek, "The Authorities of the Polish People's Republic and the Problem of Reparations and Compensation from the Federal Republic of Germany 1953–1989", *The Polish Foreign Affairs* 2005, Vol. 4, No 17, some references are missing pp. 151–181.

²¹ S. Żerko, "Reparationen und Entschädigungen in den Beziehungen zwischen Polen und der Bundesrepublik Deutschland (ein historischer Überblick)...", p. 19.

²² Ibidem, p. 39.

²³ Ibidem, pp. 38–39.

Żerko sees no ambitions from Germany's side in the past until now to provide proper measurements for (part-)compensation or even the lowest provisions possible to compensate victims of German war crimes. Moreover, he observes Germany's behaviour as a "reckless defence for [its] financial interests, [...]".²⁴ In addition to that, he imputes manipulation by Helmut Kohl towards his presidential counterpart in the USA, George Bush, whom Kohl persuaded that Germany had already paid 100 billion Marks, from which Poland had just received 100 million Marks.²⁵ In summary, the semi-official peace treaty between Poland and Germany was solely created in favour of Germany, on the one hand so that an official peace treaty was not established, in which the topic of reparation was announced and signed, and on the other hand a *de facto* peace treaty was proclaimed, in which Poland – from the German perspective – did not find it necessary to mention the topic of reparation because that implied that Poland renounces each claim – or, in other words, renews Bierut's proclamation. The topic of reparations, hence, can be seen as a masterpiece of diplomatic and judicial work, on which the aggressor state could capitalise more than all its victim states in continental Europe.

The right to reparation and its instrumentalisation in the case of the relations between Germany and Poland

The right to reparation is the most controversial topic, either from the point of view in Germany or from outside. Reparations are more than a financial guilt, that could be weighed. There is always a moral and an ethical obligation within. People died without receiving any reconciliation, financial or social help from the German state, solely for the reason they were living in a country with which West Germany did not have any diplomatic relations. WG is directed towards the individual and not the state and could have been successfully implemented to help these individuals, who undoubtedly had a moral entitlement to any kind of help from the state of the perpetrators. Nonetheless, this topic, due to its ongoing interest and the usage of reparations as a political rhetoric tool, is the core topic of this chapter.

The German government initiated a scientific service to develop a paper regarding "the principles of international law and limits of war-affected reparations under the recognition of the German-Polish relationship".²⁶ On 10 September 2004, the first chamber of the Polish parliament claimed to renew their demands for reparations, yet until now, there has been no judicial valid initialisation of an international proceeding to re-open the issue of reparations. In August 2017, the governing party of Poland, PiS, ignited another public debate about the topic. A scientific service has also been commissioned to examine, from the Polish side, whether the demand for reparations could be justified and what would be the chances of enforcing these demands. The

²⁴ Ibidem, p. 40.

²⁵ Ibidem.

²⁶ Unknown authors, "Völkerrechtliche Grundlagen und Grenzen kriegsbedingter Reparationen unter besonderer Berücksichtigung der deutsch-polnischen Situation...", pp. 20–22.

German statement from 2 August 2017 summarises the core point that Germany “of course, stands to its political, moral, and financial responsibility [grown] out of World War II [...]” and Germany “paid extensive reparations for general damages of war – as well as to Poland – and still pays a great amount in compensation for the injustice of the National Socialists. [...]”. Yet, the statement is inflexible, as “the question of German reparations to Poland has been exhaustively regulated judicially and politically.”²⁷

While Germany excessively highlights Bierut’s explicit revocation of any further reparations, Poland sees this example as a purely initiated revocation by the oppression and infiltration of Soviet politics on and of a non-sovereign Poland.²⁸ Germany sees its position on the basis of international law. For this, segregation of the different forms of Polish renunciation of reparations from the German side has been established.

1. Expressive unilateral renunciation
2. Implicit unilateral renunciation
3. Silent agreement in international law
4. Statute of limitation.

The *expressive unilateral renunciation* is associated to the renunciations of the Soviet Union and Poland in the 1950s and the approval of foreign minister Winiewicz in 1970 during the Warsaw Treaty.²⁹ Concerning *implicit unilateral renunciation*, Germany relies on the international jurisdiction of the International Court of Justice, which because of a clear renunciation, the debtor state, Germany, had relied on or either the debtor state experienced a judicial disadvantage or the creditor state, Poland, experienced a benefit. This example shows that a judicial right for the creditor state might theoretically exist, yet it does not have to be fulfilled by the debtor state. A party cannot contradict itself about past expressions and statements – *venire contra factum proprium*.³⁰ The third point emphasises *tacit consent*. Nonetheless, one cannot find any negotiated clause concerning *acquiescence*. Acquiescence would, hence, be defined as an approval consent. This silence and inaction towards another acting state, while specific cases are standing in between these parties/states, can become judicially valid if an expressive reaction could be expected. The political argument behind this judicial clause is the stabilisation of the relationship between the states, the preservation of peace, prevention of conflicts, and legal certainty. Especially in connection to the Two-plus-Four-Contract, Germany sees this point as valid since Poland has taken an active part in the negotiations, the contract defined the termination of all demands by the Allies and Poland did not counteract by proclaiming their demands or by protesting. The *statute of limitation* means that a claim can be still existent and valid, however, the claim cannot proceed anymore. International law does not regulate the statute of

²⁷ Ibidem, p. 4–5.

²⁸ See Footnote 59. There is not such footnote. e.g., “Polish official says country should seek German reparations for WWII”, *Times of Israel*, May 2019, <https://www.timesofisrael.com/polish-official-says-country-should-seek-german-reparations-for-wwii/> (accessed: 04.08.2021).

²⁹ Ibidem, pp. 17–19.

³⁰ N. Otz, *Intertemporalität im Spannungsverhältnis von Staatenimmunität und Menschenrechtsverletzungen*, Mohr Siebeck, Tübingen 2019, pp. 193–194.

limitation explicitly, but it is seen as an argument of legal certainty.³¹ In addition to this, Germany interprets the declaration of renunciation in 1953 as an inclusion of individual compensations for Polish citizens. Currently, during the 2010s, individual compensations are being adduced as part of international law. Because of the inability to reproject individual compensations on former international jurisprudence, Germany initiated the mentioned funds.

The Polish position is rather focussed on the amount of money, initiating calculations of war destructions, in connection to an ethical duty towards Germany. A judicial basis can hardly be found because of the non-existing charges at international courts. It is not questionable that the Polish nation experienced, amongst Jews and Russians, the most suffering and destruction during World War II. The Polish-Jewish (Jewish people living in Poland) minority in Poland before 1945 and those living there after World War II are expressively excluded from Polish demands nowadays since Jews have experienced the exclusion of the Polish nation during the post-war time and had to leave the country. This, however, does not change the fact there was immense suffering of the Polish nation under German occupation. Moreover, one can observe a combination of claims of individual compensation and reparations towards the Polish state. Another ground for the argument about the re-enrolment of the topic of reparations are the *Draft Articles on Responsibility of States for Internationally Wrongful Acts*³² initiated by the International Law Commission in 2001. Hereby, “[...] reparations must [...] wipe out all the consequences of the illegal act and re-establish the situation which would [...] have existed if that act had not been committed”.³³ On the other hand, Patrycja Sobolewska argues that “restitutions, compensations, and satisfactions [...] can be satisfied in many shapes and forms that are not mentioned [...]”.³⁴ She refers to “[...] territorial guarantees, guarantees of non-repetition, and symbolic reparations”.³⁵ As Jan Sandorski evaluates the renunciation of 1953 as invalid ab initio, consequently the governing PiS party “[...] announced that *Germany owes Poland \$850 billion dollars for the Second World War*”,³⁶ a sum which will be hard to justify in any way to the German population almost 80 years after the end of World War II, when the bearers of these costs have to be the generations not involved in any way in the German crimes of World War II.

In 2004, the Sejm carried out a survey about the topic of reparations. The results were that 52% of Poles found a renewal of claims of reparations to be redundant and the opinion of 32% was to use the claims of reparation as pressure in the case of new class action lawsuits by displaced Germans. Though the Polish identity is very much

³¹ Unknown authors, “Völkerrechtliche Grundlagen und Grenzen kriegsbedingter Reparationen unter besonderer Berücksichtigung der deutsch-polnischen Situation...”, p. 20–22.

³² “Draft Articles on Responsibility of States for Internationally Wrongful Acts”, *Yearbook of the International Law Commission* 2001, Vol. II, part 2.

³³ *Ibidem*, p. 91.

³⁴ P. Sobolewska, *The Questions of War Reparations in Polish-German Relations after World War II...*, pp. 140–141.

³⁵ *Ibidem*.

³⁶ *Ibidem*, p. 156.

connected to the historical tradition, and especially the time of occupation of World War II, the survey from 2004 showed a clear distinction between remembrance of the war and the present relationship between Poland and Germany.³⁷ The survey was part of the reaction of the Polish parliament (Sejm) in 2004 for claiming reparations resulting from World War II. Four points were constituted as follows and will be portrayed by their content:

1. Poland did not receive a proper amount of financial reparations and compensation due to destruction, material and immaterial losses. The Sejm demands action from the government of the Germany regarding this topic.

2. Poland will not assume any liability in financial form for German citizens because of World War II.

3. The Sejm requests the public establish an estimation of the material and immaterial damages, which were a result of World War II.

4. The Sejm appeals to the German authorities not to call the Polish compensation claims unreasonable and unlawful. Moreover, the German authorities should not pave the way for German civilians to consider legal actions against the Polish state.³⁸

In summary, the Polish ambassador in Berlin, Andrzej Byrt, classifies the resolution as the answer for the organisation of displaced Germans, called the “Prussian Trustee Relationship” (Preussische Treuhand), under Rudi Pawelka, which planned to file a lawsuit at the International Court of Justice for the restitution of former property. Byrt, at that time, did not expect any official demand of reparation and compensation from Poland towards Germany. Byrt closes the topic that “the Polish government sees the question of reparation as settled”.³⁹ Since Pawelka’s organisation is re-opening old wounds, the topic is taking on a redundant discussion, however important it is; who are the victims and who are the perpetrators? The German newspaper “taz”/“Die Tageszeitung” pointed to a more emotional picture for understanding the Polish side. As a reaction to Pawelka’s institution, the article explains how Polish Lord Mayors have been already starting to calculate the destruction caused by Germans in World War II. Furthermore, the fear of Polish farmers has been described in the article as the consequence of the loud proclamations of Germans claiming back their former property. Yet, at that time, Chancellor Schröder made it clear that the government will counter these German claims and in front of any international court. Even the president of the “Union of the Displaced” (Der Bund der Vertriebenen), Erika Steinbach, announced her disapproval with Pawelka by saying that she could shoot him to the moon. She does not support the planned lawsuit by Pawelka. When Pawelka is talking about the past in the article, he leaves out the fact that German aggression started the war with Poland, five to seven million Polish died in World War II and Poland lost one-third of its territory to the Soviet Union. His only perspective is the transfigured German, which

³⁷ K. Ruchniewicz, “Die historische Erinnerung in Polen”, *APuZ* 2005, pp. 18–26. Here, pp. 25–26.

³⁸ *Der polnische Parlamentsbeschluss zu Reparationen*, 12.09.2004. <https://www.dw.com/de/der-polnische-parlamentsbeschluss-zu-reparationen/a-1325765> (accessed: 10.05.2021).

³⁹ *Gegenseitige Aufrechnung*, 27.09.2004, <https://www.dw.com/de/gegenseitige-aufrechnung/a-1325738> (accessed: 10.05.2021).

is the one being feared by Poland at this time, especially due to the hurtful financial and diplomatic memories in the Polish-German relationship. This article should have shown that the reporting of this topic was not only (pseudo-)down-to-earth, but also supportive towards the Polish political reaction and to society.⁴⁰

Since the refugee crisis which started with the Syrian civil war, the issue of reparation and compensation from the Polish side is not divisible from the problems Poland is facing due to non-solidarity towards the European Union. Poland denies taking any refugees. Additionally, Poland's status as a democratic rule of law is questioned by the EU Commission. PiS and Kaczynski's politics and reactions towards inner- and outer-political issues did not change. The main rhetorical device is the use of unpaid reparations and compensations. Poland's world of media and politics is pervaded by an obsession of historically wrong analogies connected to the German occupation and the Holocaust, for example, the analogy of SS-Runes with the symbol of the anti-abortion-law movement by Ryszard Telecki.⁴¹ Ryszard Czarnecki, a member of PiS and former vice president of the EU Parliament, offended EU Parliamentarian Thun by calling her a "Szmalcownik" (sic!), a Nazi collaborator, who betrayed Jews to the Nazis against payment from the betrayed.⁴² Journalist Gabriele Lesser from "die tageszeitung", who has lived in Warsaw since 1995, states that this rhetorical behaviour of exaggerated analogies of democratic individuals with the people and happenings of Nazi times reached a "[...] new quality".⁴³ Unfortunately, these are a few examples of the many that put the rightful and legitimate discussion and discourse of reparations and compensation concerning World War II into a political category, by using victims' fates and appropriate anger towards Germany's reparation policies as part of an anti-EU-agenda. Reparations are instrumentalised by the governing Polish party, not in the favour of the victims, but for the division of the European Union, the worsening of the German-Polish relationship, the emotionalisation of the own population. Using reparation as an instrumental tool for issues without any connection to the time between 1939 and 1945 in Poland emotionalises and radicalises people towards their neighbours. Any progress in political, social, inter-cultural, and economic terms is neglected between Germany and Poland. On the German side, the opposite exists. Every legitimate demand for analysing and judging Germany's political past and handling transitional justice became a keyword in the "final-stroke debate" within the German media and especially the public discussion. The construction of a national state demands responsibility and a fight against the revisionism of history. The demands of a few German individuals to get back their former property in current day Poland set

⁴⁰ K. Küppers, *Der Anführer*, "taz archiv", 18.08.2004, <https://taz.de/!711161/> (accessed: 15.05.2021).

⁴¹ M. Scislowska, *Poland's leader wants church defended, condemns protests*, "abc NEWS", 27.10.2020, <https://abcnews.go.com/Health/wireStory/polands-pm-defends-abortion-ruling-condemns-protests-73850706> (accessed: 15.05.2021).

⁴² S. Schaper, *Polen: Nazi-Vergleiche gegen Kritiker der PiS*, "NDR", 24.01.2018, <https://www.ndr.de/fernsehen/sendungen/zapp/medienpolitik/Polen-Nazi-Vergleiche-gegen-kritische-Presse,polen628.html> (accessed: 15.05.2021).

⁴³ Ibidem.

the discussion on a political non-balanced level. While German politics, in the form of its governments, did not support these demands, Poland's politics reacted emotionally. Hence, the discussion is still not on a balanced level and has strong momentum, meaning, that until the future is more important than the past, instrumentalisation of the darkest chapter of the European history will be part of international politics. Nevertheless, this argumentation only scratches the surface.

The cultural character of both countries is of importance. Even during the Adenauer era in West Germany, the Nazi reign was called "tyranny",⁴⁴ which is certain for the persecuted, yet it should not be forgotten that most Germans were aware of the crimes against humanity and either supported them openly or silently. The term tyranny implies solely that a small group of people tyrannised and forced the majority to act as they wanted them to. The German population exonerated itself with this term, which stands in contrast to the guilt formulated by Karl Jaspers.⁴⁵ Each generation had its different motto of absolution. While the first one declined any knowledge about the Holocaust, for the 1968 generation, the moral compass went from neglecting the past to a total accusation of their "fathers' generation",⁴⁶ that also ended a truthful discussion. The third generation, born in the 1960s and 1970s, had been confronted with the Holocaust and National Socialism in schools, films, and memorial places, for which the statistics show that the grandparents of the third generation were seen as heroes or victims.⁴⁷ Furthermore, victims of the Germans had been outplayed by German victims, leading to a "relation of competition".⁴⁸ In Poland there was also a competition about interpreting the past between the AK (Armia Krajowa), the Home Army, hereby meaning their former soldiers, and the owner of the monopoly of interpretation from 1945–1989, the PVAP, the Polish United Workers' Party. The most important occasion for Polish individuals immediately affected by the encounter with the German pre-owners was after 1 January 1972, when East Germans travelled to their former homelands. In most cases, this was a positive experience for both sides, while the East Germans never formulated any claims. Sometimes even an understanding developed on both sides, when it was possible to communicate that the German as well as the Polish families were expelled from their homes.⁴⁹ Subsequently, the German-Polish Barometer clearly demonstrates Germans and Polish associations with each other. From the Polish side, even an increase of four percentage points in the matter of the association between

⁴⁴ B. Olschowsky, "Die Gegenwart des Vergangenen", *APuZ* 2005, pp. 27–32. Here, p. 27.

⁴⁵ K. Jaspers, *Die Schuldfrage*, Lambert Schneider, Heidelberg 1946. *Political guilt* asks for the individual's duty as a citizen, "Everybody is responsible for the way he is governed."; The third form of guilt is *moral guilt*. For every act, an individual has moral responsibility. There are no exceptions in orders from above, neither in military nor political acts. Hence, every act is a subject of moral judgement. (Ibidem, pp. 31–32)

⁴⁶ B. Olschowsky, "Die Gegenwart des Vergangenen...".

⁴⁷ S. Moller, *Familiengedächtnis und NS-Vergangenheit in Deutschland*, 27.11.2014, <https://www.bpb.de/geschichte/nationalsozialismus/die-wohnung/196963/familiengedaechtnis-und-ns-vergangenheit-in-deutschland> (accessed: 09.08.2021).

⁴⁸ B. Olschowsky, "Die Gegenwart des Vergangenen...".

⁴⁹ Ibidem, p. 30.

the Germany of today and “criminals; Hitler; Nazis; concentration camp” is visible compared to 2016.⁵⁰ Interestingly, on the other hand, the Poles show an increase of “fondness for Germans” (2008: 30%, 2018: 56%) while the Germans’ “fondness for Poles” has stayed quite stable at around 30%. Creating a three-factor of the German-Polish relations in regard to the past, the question “What should Polish-German relations focus on?” is answered by Germans and Polish with a huge majority focussing on the “present and future”. Nonetheless, more Poles mention focussing on the “past” than Germans (20% compared to 13%), and Poles again show an increase of the sensibilisation concerning the past, while in 2011 20% were in favour of the focus on the past, in 2018 this was 32%.⁵¹ This shows the ambiguity of how the Germans might perceive the Poles when they are talking about the past. Being a political and economic neighbour, and even partner, does not exclude mentions of the wrongdoings of Germany in the form of talks of reparation and reconciliation.

While under Gerhard Schröder, Poland felt in between the macho-relationship of Schröder and Vladimir Putin, Angela Merkel’s rule started expressively supportive. After the “Orange Revolution”, Russia blocked any meat imports from Poland, for which Poland blocked the EU-Russia Treaty in 2006. Angela Merkel’s attack on Russia was hard, announcing that Poland was outside the zone of influence of Russia, being a member of the European Union. Even economically, one can observe in the positive relations between Poland and Germany that Poland is a bigger trading partner than Russia.⁵² These small examples of a relationship, which surely has more dark sides, show that there is and always has been an interest from the German side to keep and re-establish good relations between Poland and Germany, especially since the beginning of the 21st century and Poland’s membership of the EU. However, these two paragraphs shall draw a cumulated picture of the importance of certain acts, which represent a relationship, that is based on two asynchronous assumptions about what is of importance in a relationship between neighbouring countries. Yes, Germany could not fulfil its moral contract of reparations and compensation towards Poland. After 1990, Germany tried to repair relations (*wiedergutmachen*!) with Poland, while at the same time not giving Poland a legal basis on which re-unroll the whole procedure of reparations, and therefore other states from former countries of the Warsaw Pact. Nonetheless, in the last ten years, imprudent statements, especially from today’s party of governmental in Poland, PiS, which create propaganda-like analogies of the Federal Republic of Germany and Germany between 1933 and 1945, worsen the relationship between Poland and Germany and a moral and ethical discourse of Germany’s failed role of reparations is solely undermined by the country of the victims misusing and instrumentalising the suffering of millions. It is known that German politics is

⁵⁰ German-Polish Barometer, *Germans and Poles - A divided past, a common future?* 2018, https://www.koerber-stiftung.de/fileadmin/user_upload/koerber-stiftung/redaktion/fokusthema_der-wert-europas/pdf/2018/deutsch-polnisches-barometer/PL-DE-Barometer-2018_brochure_EN.pdf (accessed: 09.08.2021), p. 4.

⁵¹ *Ibidem*, p. 7.

⁵² A. Krzeminski, “Im Osten viel Neues. Deutsche Ostpolitik aus polnischer Perspektive”, *Zeitschrift für Außen- und Sicherheitspolitik* 2014, Vol. 8, pp. 403–425. Here, pp. 410–411.

reacting verbally to these accusations, using a tone of resolution in a dispute, yet these statements never endanger German politics to act reactionary towards Poland.

To not to confuse the statements, the point of reparations between Germany and Poland, but with other countries as well, is at least dubious. Right now, there is no international judgement in sight, which could nullify the judgements from the German courts. There is not even an expectation that if a judgement were to be in favour of the claims of the Polish government, that Germany would turn against this. For exactly this reason, certain payments have been made but not under the explicit name of reparations, thus they are proclaimed as either bilateral funds or radically low interest on credit.

This responsibility can easily lead to an instrumentalisation of transitional justice. While in Germany the debate about *coming to terms with the past* “since we have done so much” (sic!) is alive and blooming since the 1950s, in the victims’ states, the insufficient amount of reparations is instrumentalised against European policies, which were initiated by Germany or to generate better election outcomes by creating the scapegoat of comparing Nazi Germany to the Federal Republic of Germany. Both views have no aim of effectively working together on reconciliation. The instrumentalisation on the political level, nevertheless, does not cause a rightful debate, which is initiated from the Polish side in terms of unfinished reparation. The instrumentalisation rather shows itself in a rhetorical manner criticising the EU’s and Germany’s politics regarding the criticism of today’s Polish lack of democratisation, especially towards the segregation of power within the state and the nationalisation of history (Polityka historyczna). Even President Andrzej Duda expressed that the “politics of history [Polityka historyczna] shall be used as an instrument by the Polish state in matters of the Polish position in the international context, but the most, as an instrument of education of future Polish generations”.⁵³ As Lech M. Nijakowski conclusively states, the “politics of remembrance (Erinnerungspolitik) are both purposive and conscious acting and unconscious and arbitrary acting”.⁵⁴

Abstract

The Instrumentalisation of the Right to Reparation and Dealing with the Past between Germany and Poland

Dealing with the past is an essential part of transitional justice. It combines the four main pillars: the right to know, the right to justice, the right to reparation, and the guarantee of non-recurrence. Dealing with the past indicates that a significant amount of time has passed since the crime and injustice. Therefore, the problem of

⁵³ J. Adrychowicz-Skrzeba, “Geschichtspolitik aus polnischer Perspektive. Anmerkung zum Begriff sowie zur Schaffung neuer polnischer Mythen”, in: K. Ziemer, J. Adrychowicz-Skrzeba (eds.), “Jenseits der Jubiläen. Gechichtspolitik im deutsch-polnischen Alltag”, Fundacja Friedricha Eberta, Warszawa 2017, pp. 59–85. Here, p. 65. “Der polnische Staat solle Geschichtspolitik als Instrument der Positionierung Polens im internationalen Kontext, vor allem aber als Instrument der Erziehung künftiger Generationen von Polen betreiben.”

⁵⁴ Ibidem, p. 63.

forgetting and modifying history deliberately or unconsciously forms the core of the instrumentalisation of dealing with the past. On the one hand, unconscious forgetting or modifying is usually the result of a non-responsible educational system (youth and adult education); on the other hand, deliberate modification of the past is driven by the desire to reach an aim which morally cannot be supported by its measures. One can observe governmental desire to modify and therefore instrumentalise history to secure the government's power, divert attention from domestic issues and thus shape national pride/patriotism which is built on a selective historical memory. This article highlights the development of German and Polish relationships in the context of reparations for World War II and a selective history spread by the German movement called 'Prussian Claims Society' that fights, using selective Nazi analogies, to reclaim former German property from Poland represented by the Polish government. The movement also wants to create a selective history to divert attention from the national separation of the population. The aim of the article is to show how Germans and Poles handle the topic of reparations for World War II.

Keywords: dealing with the past, German-Polish relations, reparation, transitional justice, Political instrumentalisation, selective history.

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