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Property and Justice (February 19, 2004)

Richard Schröder had been elected to the GDR *Volkskammer* in 1990 as a member of the SPD. In the face of yet another flare-up in the debate on how to deal with expropriations carried out during the Soviet occupation (1945-49), Schröder reminded readers of the *Volkskammer's* role in solving restitution issues. He rejected the interpretation that back in 1990 the Federal Republic had treated the GDR like the Hereros, a tribe of African herdsmen colonized by Germany in the late nineteenth century. By mentioning the Hereros, Schröder alluded to the argument advanced by some that East Germany had been colonized by the West.

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### **“We, then, were your Hereros”**

*The second expropriation of the victims of land reform was unjust but unavoidable. Otherwise there would have been a revolt.*

A suspicion haunts Germany: “At the beginning of German unification was a lie.” An immense breach of the constitution was supposedly staged with single-minded determination. The guilty parties were Helmut Kohl, Lothar de Maizière, and, coming ever closer to the fore, Wolfgang Schäuble. We are talking about the expropriations in the Soviet Occupation Zone between 1945 and 1949, which were not reversed in the Unification Treaty of 1990. Previously, these sorts of arguments were put forth by those fighting for their lost property. By now, the suspicion has turned into a statement of fact.

Two questions are at issue: Did the Federal Government do everything possible in 1990 to reverse those expropriations? And did the Soviet Union actually demand that those expropriations not be reversed? The original owners say no to both.

German unity came about through the “Two plus Four” negotiations. “Four” refers to the victorious powers of the Second World War, and “Two” to the two German states. The new discourse over unity now revolves around another pair: the Federal Government and the government of the Soviet Union. German unification is being introduced as a kind of annexation of a passive East by the West. The legal counsel representing the original owners and their heirs before the European Court for Human Rights has complained that there were first-class and second-class victims. According to his argument, the first-class victims are not, as one might think, those Germans who had to endure a second dictatorship and, on top of that, an

economy of scarcity, the effects of which they are still suffering from today, as opposed to the West Germans who, during that same time, were able to live in freedom and with considerable opportunities for self-fulfillment and prosperity. Rather, we are talking about two groups of victims, most of whom were citizens of the Federal Republic in 1990. Which of them profited more from German unification? Those who were dispossessed after 1949 – that is, by the GDR – benefited from the principle of “restitution before compensation;” the others, who were dispossessed under the Soviet occupying power, are supposed to make do with compensation payments. And that, of course, is unjust.

In this case, as so often, the question of justice is in fact complicated and impossible to resolve to everyone’s satisfaction. But in the new unification discourse, the GDR appears merely as a kind of Hong Kong that was swallowed up by the mighty neighbor state. In reality, however, the people of East Germany brought down the SED dictatorship in a peaceful revolution and gave themselves, in free elections, legitimate popular representation and a democratic government. But their opinion and will do not count in this new reunification discourse. For as the writer Constanze Paffrath (*Macht und Eigentum [Power and Property]*), for example, wrote in the *Frankfurter Allgemeine Zeitung*: “At no time did the GDR have the political power to push through its own demands in the German-German negotiations.”

Another comparison comes to mind here. We East Germans were your Hereros. That someone should assert such a thing has to be tolerated. That nobody expresses vociferous outrage is devastating for us. In truth, we had nothing to ask for in the matter of land reform. We warned against reversing it. And the Western side was quite receptive to such warnings. It was acknowledged that our side was better informed about us than the Western side. With all due respect to Western expertise, we had the on-the-ground knowledge. Where the negotiations on the unification treaty assumed the quality of a battle, it was not a battle between East and West, but one between the Federal Government and the *Länder* – over the issue of the costs of unification. To say that the Federal Government did not want to reverse the expropriations carried out between 1945 and 1949 because it wanted to use the proceeds from “national property” to finance unification – as Michael Naumann has asserted – is nonsense. There were no reliable estimates on the value of these assets, because the GDR side could only furnish fantastic numbers for intrinsic value, not profit numbers based on opening balance sheets calculated in Deutschmarks. Such figures were first available in the middle of 1992. But there was the devastating appraisal of October 31, 1989, made by GDR planning chief Schürer and others, of the disastrous state of the GDR and its mountain of debt.

It is indisputable that the freely elected *Volkskammer* took the unanimous position that it was impossible to reverse the expropriations carried out between 1945 and 1949. Not that we regarded those expropriations as justified. We always said that one cannot make up for old injustice with new injustice. The announcement of general restitution would have been received as a new injustice. But, it is said, a large portion of the expropriated land had become national property! That land wouldn’t have been taken away from anyone. It was, however, being worked

by the LPGs<sup>1</sup>, and the rural population viewed it as “their land.” Although the LPGs had come about through massive repression, they had gained acceptance in the meantime.

We did not wish to upset the conditions in the countryside, and had we announced something along the lines of general restitution, it would have resulted in unforeseeable consequences. I do not rule out terrorist excesses. I exaggerate? The revolution remained peaceful, but in 1990 the GDR was a volcano. After a number of death threats, the most important GDR politicians were receiving personal protection. In the summer of 1990 there were problems selling pork, because the Soviet Union no longer took any of it. That was enough to spark heated demonstrations by farmers, during the course of which the agriculture minister’s car was wrecked. This provides an inkling of what the repeal of land reform would have unleashed.

We had noted with relief that the Stasi and the SED functionaries had withdrawn in resignation and disappointment. Had they found an issue over which to make common cause with those afraid of losing their rights, it could have turned out otherwise. The decisive slogan was already on everyone’s tongue: “Sell-out of the GDR.” If anyone had said: “But restitution is also advantageous for you!,” he would have merely poured oil on the fire – and he would have been wrong. After all, East German agriculture is competitive today, and what industry was missing above all could not be conjured up by the original owners either: markets for their products. We do not know who shot Detlev Carsten Rohwedder. The target, at any rate, was the chief of the *Treuhand*.

The property question was one of the main topics during the campaign leading up to the *Volkskammer* elections on March 18, 1990. In 1990, there were two fears that GDR citizens associated with the longed-for unification: the fear of expropriation and the fear of devaluation. The PDS had eagerly stoked both fears. The office of the Minister President received approximately the same number of letters on both issues: about 8,000 each. The fear of joblessness was added to this later.

Until now, critics of the unification policy in East and West have agreed on two points: the principle of “restitution before compensation” and the policy of the *Treuhand* poisoned German-German relations. How we were taken to task for the *Volkskammer*’s acceptance of the principle of “restitution before compensation”! Now the unification politicians are being taken to task for the opposite.

The thesis of *Volkskammer* impotence can be readily refuted: it had to accept accession and pass the treaties, with a two-thirds majority, no less. The *Volkskammer* would have rejected a unification treaty that would have reversed the land reform. The Federal Government, claims Constanze Paffrath, should not have agreed to a prohibition on restitution under any circumstances, “not even at the price of reunification.” But without unification, nobody would

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<sup>1</sup> Acronym for *Landwirtschaftliche Produktionsgenossenschaft*, a term for large, collectivized farms in the former GDR – eds.

have gotten anything back! This shows that the law and politics are two different things, and one hears the merciless *fiat iustitia, pereat mundus*.<sup>2</sup> “justice” even at the price of the end of the world.

We imagine this in very concrete terms. The citizens of the GDR proclaim: “We are one people!” The Federal Government responds: “But only if you give our citizens their lost property back.” The quarrel goes back and forth – and the world is amazed. On November 9, [1989], the Germans were the happiest people, shortly thereafter they are behaving like a family in an inheritance quarrel. The Federal Government did not in fact do everything conceivable to bring about complete restitution. Fortunately, it did not use the threat of the failure of unification.

But it has been proven, so goes one argument of the plaintiffs before the European Court for Human Rights, that the Soviet Union never made the prohibition on restitution a condition of unification! Therefore, Helmut Kohl lied. The fact is that Helmut Kohl and Mikhail Gorbachev did not negotiate about restitution – not because the issue was secondary, but because it had already been settled by the time they met in July 1990. In all treaty negotiations, only the open questions are discussed in top-level talks; those that have already been agreed upon at the bureaucratic level are not reopened, otherwise one would never be finished with anything. When Helmut Kohl met then-Prime Minister Modrow in Dresden in 1989, they agreed on a joint commission that would deal with the property question. The de Maizière government could pick up on this preliminary work. The Soviet Union was brought into the negotiations. The result was the Joint Declaration by the two German governments of June 15, 1990. It stated: “Expropriations on the basis of occupation law or occupational jurisdiction (1945 to 1949) cannot be reversed. The governments of the Soviet Union and the GDR see no possibility of revising measures taken at that time. The government of the FRG acknowledges this in view of historical developments. It is of the opinion that the right to make a final decision on possible state compensation must be reserved for a future all-German parliament.” In that sense Gorbachev was quite right when he stated in a letter dated July 5, 1994: “On my level as President of the USSR, this question was not discussed, and there was most certainly no talk of a choice between either a prohibition on restitution or the treaty.”

[ . . . ]

But it is unfair that some can now claim only settlement payments, while others can claim compensation. For agricultural and forestry land, the settlement payments amount to triple the ratable value in [the year] 1935, degressively staggered. Payments are higher for building land. That, then, is too little. But has anyone asked what the GDR paid its citizens for expropriations in connection with strip-mining and the like? Triple the 1935 ratable value in GDR marks. After the monetary union, that turned into 1.5 times the value. Hence, those compensations should also be reopened in the name of justice.

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<sup>2</sup> Literally: Let there be justice, though the world perishes – eds.

Many expellees settled in the GDR. They never received any *Lastenausgleich* [equalization of war-induced burdens] in the GDR, unless one wants to count the land-reform land they received as farmers. The Western *Lastenausgleich* was terminated on October 3, 1990 – when “we” came. The expellees in the GDR received merely a one-time payment of 4,000 Deutschmarks. And anyone who had to suffer as a political prisoner under Stalin and who was an East German citizen on October 3, 1990, receives compensation only if he is indigent. Those who lost relatives in Stalin’s camps get nothing. The person who could not attend university and was not allowed to take over his father’s pharmacy also gets nothing. In Germany there are first-class, second-class, and third-class victims. The third-class victims are the citizens of the GDR.

I am not complaining; rather, I am outraged about the outrage of the Western victims of the second class. Germany lost a war that was instigated by a criminal regime and used as the occasion for a horrendous genocide. We are atoning for this with a gigantic Holocaust memorial. But the property losses as a result of the war should be kindly compensated for, retroactively, to the second and third degree. If not, we will become unpleasant and will accuse the politicians of unification of lies, fraud, and breach of the constitution. Now the chief target is Wolfgang Schäuble. I know why. One cannot make good on old injustice through new injustice. Today the new injustice is the charge – formulated wholly out of touch with reality – of lies and breach of the constitution.

Source: Richard Schröder, “Also waren wir eure Hereros” [“We, then, were your Hereros”], *Die Zeit*, February 19, 2004.

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