European Archives in an Era of Change

Displaced European Archives: Is It Time for a Post-War Settlement?

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ON THE DAY THAT I received the invitation from Ann Arbor to write an essay on the transfer of archives, the Yugoslav Navy had just lifted for a short while the blockade of the Croatian harbors of Pula, Rijeka, and Dubrovnik. These are three cities with remarkably different historical backgrounds. Within the twentieth century alone, Pula had been Austrian, then Italian, and finally Yugoslavian. During the same period, Rijeka (known before as Fiume) passed first from Hungarian to Italian rule and then became part of Yugoslavia. Dubrovnik (or Ragusa), which had been a city-republic for centuries, went from Austria to Yugoslavia in 1918 and belonged to short-lived Croatia during World War II.

These are but three examples of the con-

stant fluctuations in European boundaries ever since the appearance of territorial sovereignties such as empires, kingdoms, principalities, duchies, city-states, and bishoprics. During the longest phase of its post-Roman history, Europe was fragmented into an extraordinary number of territorial political entities which usually had ties, either tight or loose, with the highest authorities of the continent, including the Emperor, the King of France, the Pope, and the Sublime Porte of Constantinople.

The status of the Croatian Kingdom in the Ancien Régime offers a good example of these complex ties between political entities. In 1790, Croatia possessed its own legislative body (the Sabor) but was associated with the Hungarian Kingdom, which

was part of the larger Habsburg Lands although not included in the Holy Empire. As King of Hungary, the Habsburg Emperor was King of Croatia by virtue of the house law of the dynasty (the Pragmatica Sanctio), which had been accepted by the Croatian Sabor ten years before its enactment by the Hungarian Diet in 1723. Half or more of the Croats lived outside of the Kingdom, in the Austrian Military Frontier Regiments, in Bosnia under Turkish rule, or in the Dalmatian province of Venice. At the end of the Napoleonic intermezzo of French Illyria, the Dalmatian province, with its Croatian and Italian-speaking populations, was given to Austria by the Congress of Powers in Vienna in 1814 and 1815.

Throughout Europe, there existed similar complications. Boundaries were perpetually moving as a result of conquests and compensations, royal marriages, and the extinction of dynasties. After the end of the *Völkerwanderung*, mass migrations no longer had an immediate affect on the shaping of territorial sovereignties (with the exception of the Turkish takeover of the Byzantine Empire).[1] At the "grassroots" level, each country, province, district, or free city kept its own rights, duties, and privileges. These survived the perpetual changes in sovereignty. Political boundaries concerned monarchs, not their subjects.

At the level of international politics, a new era began in the fifteenth century. Europe was gradually reorganized so that the continent was shared by a decreasing number of powers. This trend of simplification started almost simultaneously in Spain, France, the British Isles, and East-Central Europe. While maintaining their separate legal existence, the majority of medieval kingdoms or similar entities disappeared

from international politics between 1400 and 1800. Fading in prominence were Burgundy, Granada, Scotland, Aragon, Navarra, Bohemia, Hungary, Sicily, Lithuania, Norway, and the Teutonic Order as well as practically all of the southeast European states absorbed by or subjected to the Ottoman Empire. This first stage of simplification was ended with the collapse of Venice and the partition of Poland. The process was completed with the unifications of Germany and Italy. The opposite trend started in southeastern Europe somewhat earlier when Greece and Serbia entered the international scene in the 1830s as autonomous states.

Until 1914, the disintegration process, baptized as "balkanization," progressed at a moderate pace. It took an impressive leap forward after World War I with the dismantlement of the old multi-national empires. They were replaced with a dozen multi-ethnic states of various sizes, which enjoyed imagining that they were national states conceived after the French model. The geographical surgery performed in the middle of Europe produced a series of tragedies, with the latest one being the war conducted by Serbia against Croatia.

From the fourteenth century on, clauses on the devolution of public archives appear in treaties on territorial annexations. The inclusion of such clauses on the transfer of judicial and administrative archives, together with the territory to which they belong, became systematic in the seventeenth century. The Münster peace treaty of 1648 prescribed neither the transfer nor the restitution of records. It simply legalized the archival situation as it was shaped by the Thirty Years War (1618-1648) so that archives existing in the annexed territories would become the property of the annexing power, while archives which had been removed by occupying forces during the war would remain in the ownership of these powers. The practice which developed after the Thirty Years War prescribed the ces-

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[1] However, the territorial reorganization of Europe after 1918 took into account the ethnic map shaped by such post-medieval movements.

sion of archives necessary to the government of the territory annexed, including the restitution of records removed during the conflict.

The treaties concluded in the seventeenth and eighteenth centuries brought forward a number of remarkable innovations which gradually became part of the routine. These included the prescription of a deadline of usually two to four months for the delivery of the archives to be transferred or restituted;[2] the obligation of the party receiving the originals to produce authentic copies for the other party (usually the former owner) in order to avoid the dismemberment of archival entities;[3] the designation of expert commissioners for making the partition of records;[4] and the distinction between public records attached to the territory and the ruling family's private papers, which would be exempt from transfer obligations.[5]

Sovereigns in Ancien Régime Europe believed in the value of records as titles that were instrumental in supporting territorial gains. They used them accordingly. Hence the impressive efforts of a Louis XIV or a Maria Theresa to concentrate archives and exploit them. This monarchic conception of the importance of possessing archives survived the French Revolution of 1789. Combined with the new practice of cultural plundering introduced by revolutionary France in order to enrich the Bibliothèque nationale and the Louvre, and with the Napoleonic vision of a new Roman Empire, it produced an extraordinary archival project. The most prestigious record accumulations of the continent, such as the archives of the Holy See in Rome, the German Empire archives in Vienna and the Simancas archives of the Spanish Kingdom, as well as the archives of provinces annexed by France (including Piedmont and Belgium) were transferred to Paris in a gigantic archival institution. The long-distance transportation of hundreds of thousands of cubic feet of documents and their safe storage in Paris required both huge financial resources and uncommon organizing capabilities. France had both of these at the beginning of the nineteenth century. The central figure of the whole operation was Pierre-Claude-François Daunou, head of the French national archives from December 1804 to February 1816 and again from August 1830 until his death in June 1840.

The organization of the Imperial Archives in Palais Soubise (still part of the headquarters of the Archives nationales) was more than mere plundering even though it was carried out by virtue of conquest.[6] It was part of the great design of an empire which Napoleon had planned to survive beyond his personal reign. In 1812, three years after the beginning of the mass transfers, he decided to erect a building large enough for the storage of all records of government or general historical interest from France and from all annexed, occupied, and subjugated territories.[7]

The Empire collapsed before this project could materialize. The transportation to Paris and subsequent organization were achieved with such impressive care and professional skill that the Emperor of Austria, after having recovered the holdings, awarded Daunou with a golden snuffbox for the good order imposed upon the archives of the Aulic

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[2]E.g., the 1658 Treaty of the Pyrenees between France and Spain.

[3]E.g., the 1621 Treaty of Nikolsburg between Emperor Ferdinand II and Transylvania.

[4]E.g., the 1748 Treaty of Aachen between Austria and France.

[5]The Vienna Convention between Austria and France (1736) recognized the right of Francis, Duke of Lorraine, to retain his personal papers.

[6]The Imperial Archives were also expected to produce a regular income for the Imperial Treasury through taxes on copy delivering.

[7]This building was to occupy a site near the Champ de Mars on the left bank of the Seine.

Council.[8] The custodians for the archives removed to Paris were invited to continue their work as French imperial employees. The Prefect of the Vatican Archives and his assistants complied. The keeper of the archives of Simancas declined the offer.

In 1814, France agreed to return the removed archives in compliance with the Treaty of Paris (art. 31). Some shipments were made immediately. Thus the Netherlands recovered 3,000 cases of Belgian archives, which had been evacuated to Vienna at the beginning of the French wars and subsequently transferred to Paris in 1809. During the Hundred Days of Napoleon's resurgence, the implementation of the Treaty of Paris was suspended. Once peace was restored in the summer of 1815, the restitution of archives to Austria, Spain, the Vatican, and various Italian states could finally begin in earnest.[9]

All European powers agreed on the principle that removed archives should be restored to their rightful owners. Problems arose nevertheless. The Holy See could never raise enough money to cover the cost of transportation back to Rome.[10] As a consequence, hundreds of volumes and bundles were sold to butchers and grocers or to paper mills. Fortunately, some of these documents were retrieved and purchased by the Bibliothèque nationale. The restitution procedure could finally be considered completed in July 1817.

Yet another complication in the process of restitution was the reluctance of French custodial institutions to surrender those parts of the Vatican manuscripts and Simancas documents which seemed to be of major historical interest to France. Most of the latter were returned to Spain only as recently as 1941.

The French unwillingness to return removed manuscripts and archives and the comments of frustration that the restitution provoked even decades later were in sharp contrast to the matter-of-fact, purely legal approach to transfer issues during the Ancien Régime. Modern nationalism was born. According to the new spirit, the possession of prestigious codices added to a nation's grandeur. Those acquired in glorious campaigns gained additional emotional value.

The position adopted for the French-related records taken from Simancas proved to be rather dangerous in the long run. It founded what later generations would call the "principle of pertinence" or "territorial pertinence." This new principle asserted that the rightful ownership of records may be determined by their content. Referring to this principle, a country may claim possession of archives relating to its history. Admitting the content of records (territorial pertinence) as a criterion for determining ownership means that political circumstances may override provenance for any record group, and that cases may be opened for any record group at any time.

Theoretically, public archival institutions should not aim to acquire holdings or items outside of their jurisdiction as it is defined by law or provenance. Practice however does not always obey principles, sound as they may be. Antiquarianism and nationalism often interfere with decisions about acquisitions.

After 1815, Europe became accustomed to a long era of relative peace. All of the concerned powers accepted the Vienna settlement. The armed conflicts of the 1848-1871 period could be contained so as not to degenerate into a continental confronta-

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[8]The Reichshofrat was one of the high courts of the Holy Roman Empire of the German Nation.

[9]In addition the victorious powers imposed the restitution of manuscripts and artistic treasures that France had taken away from Italy, Germany, and the Netherlands during the war.

[10]According to Daunou, the transportation from Rome to Paris of some 820 tons of documents had cost more than 600,000 francs. A senior French civil servant at that time received an annual salary of 10,000 francs.

tion. Archival settlements subsequent to changes in sovereignty followed the eighteenth century pattern whereby archives were transferred in accordance with annexations.[11]

The devolution of archives after the end of World War I became an extremely complicated issue east of the Rhine. Most of the new boundaries were based on either linguistic or strategic considerations, disregarding historical territorial entities. The resulting establishment of new boundaries meant that archival holdings could contain records relevant for the citizens of two, three, or more successor states in the case of records created by a provincial agency or district court of former Austria-Hungary. Records of central offices could interest up to seven countries. Only part of the problem could be solved through the transfer and exchange of documents. Large scale copying initiatives were necessary. Some of these programs were still underway fifty years later.

World War II inaugurated yet another chapter in the history of archives: that of the mass movement of archives for reasons of politics, ideology, military strategy, and state intelligence. Governments prepared to act promptly, and managed to evacuate to Britain or the United States sensitive files before the complete occupation of the country by the Wehrmacht. In all occupied countries, the German authorities seized large quantities of diplomatic, military, police and intelligence records as well as archives of Jewish, Masonic, and political organizations. These were transferred to various concentration points throughout the Reich. During the final phase of the war, archival evacuations were carried out by retreating German troops from the Baltic Republics, Poland, and Germany's eastern provinces. Military operations ended in Europe in May 1945, but archival transfers continued for years. Huge masses of German records were captured and removed by the Allied Armies. The records removed from countries occupied by the Third Reich were also found, although they were not necessarily returned to their owners.

During the nearly half century since the end of the hostilities, a number of archival issues originating from the war were settled at least partially. Issues emanating from postwar measures were also resolved to a certain extent. Archives of extinct Jewish communities were shipped to Israel. Limited exchanges and replevin operations took place involving inter alia Germany, Poland, and the USSR. A large portion of the records captured by the United States and the United Kingdom were returned to Germany.

However, due to the unprecedented postwar conditions and the decades of East-West tension, the archival problems inherited from the war evaded straightforward solutions.[12] It was as though a sort of Münster treaty had again been concluded some three hundred years after the 1648 precedent, accepting the archival status quo in devastated Europe. Restitution of records was of course not out of the question, since no Münster treaty had been signed this time. However, up until today there have been no positive initiatives for an overall settlement. We are very poorly informed about the scope of the problem. We have no idea how various governments would react were the matter to be raised publicly.

Most governments have preferred to keep records of various and often surprising origins in more or less safe conditions,

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[11]Archival settlements during this period were written into the London Treaty in 1839 between the Netherlands and Belgium; the Zurich Treaty in 1859 between France, Austria, and Sardinia; the Vienna Treaty in 1864 between Prussia, Austria, and Denmark; and the Frankfurt Treaty in 1871 between Germany and France.

[12]The peace restored in 1945 through the surrender of Germany has not yet been sanctioned by a peace treaty.

American soldier inspects German loot stored in a church at Ellingen, Germany, April 24, 1945. (*National Archives and Records Administration Record Group 111-SC-204899*).

avoiding publicity and awaiting the time when their restitution would be politically possible. Discretion, or rather, secrecy has had to be observed regarding the mere existence of such removed archives, which automatically excluded access to and use of them.

Similar silence surrounds the war-time archival transfers carried out in Asia. China and Japan are certainly concerned. To my knowledge, no information has been published about other countries.

Even though a peace treaty has still not been signed with Germany, the absurd division of Europe has come to an end. The *après-guerre* is over, or so it seems. All European nations claim to respect the same values and share the same ideals. In this new atmosphere, one could reasonably expect that all concerned would agree on the timeliness of an arrangement inspired by article 31 of the 1814 Paris treaty, rather than by article 110 of the 1648 Münster Treaty. Timeliness does not imply that a replevin program would not encounter objections and difficulties.

Those who happened to inherit goods of an unclear origin do not necessarily feel enthusiastic about restoring them to their rightful owners. On the contrary, they may consider that such treasures, archival or otherwise, are compensation for the losses they suffered during the war years. Furthermore, the rightful owner is not always easy to identify. In the 1940s, millions of people fled or were expelled and resettled

hundreds of kilometers away from their homelands. The devolution of archives may be determined both on the basis of territorial sovereignty and according to the needs and rights of displaced populations but legal principles, even if admitted by all partners, are not always easy to apply.

Because of the reluctance of national authorities or the public at large to open cases half a century later, files containing information on individuals in occupied Europe still remain restricted. If displaced, such war-time records on collaboration and resistance will probably not be included in replevin operations, at least for the time being. The discretion that they require should not, however, hinder the work of getting rid of the archival disorder inherited from the war. Their bulk is limited.

The ethnic puzzle of Central and Eastern Europe, the confrontation between nations for land or rights, and their divergent interpretations of history constitute an unfavorable background for negotiations on archival issues. As Central European unrest cannot be suppressed, any replevin program should recognize that in some instances consensus will be out of reach.

The professional community has proven more than once over the years that it is capable of addressing major policy issues at the international level. These have included the liberalization of access to archives and the reconstitution of archival heritages through microfilming. We are entitled to assume that it will be capable of handling the long-delayed post-war replevin with the necessary caution, dedication, and skill.

The objective is the establishment of a realistic, legally and technically sound program to submit to the competent decision-making authorities. The first efforts should obviously concentrate on information gathering in order to estimate the scope of the problem (list of countries interested in supporting the initiative and approximate quantity of records concerned) and size up the difficulties to overcome (objections to the project, bulk of disorganized records, tracing of owners, etc.). Substantive discussions may begin once the information needed becomes available. The fiftieth anniversary of the end of the war is not far away. If the preliminary work starts in 1992, the program should be ready by then.

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Displaced European Archives: Is It Time for a Post-War Settlement?

Abstract: With the current political transitions in Europe, the relocation of national, regional, and ethnic archives is once again a timely issue. The author provides a historical analysis of the development in Europe of the archival principles of provenance and pertinence, as they have been challenged and used over the centuries for political gain in the displacement and reclaiming of records. In anticipation of Europe moving beyond the archival standstill of the *après-guerre*, the author foresees both the inevitable problems and the necessary preconditions for a replevin program of a multi-national magnitude.

Archives européennes déplacées: le temps est-il venu pour un règlement d'après-guerre?

Résumé: Les transformations politiques actuelles en Europe ont remis à l'ordre du jour le problème du rapatriement d'archives d'intérêt national, régional et ethnique. L'auteur présente une analyse historique du développement en Europe des principes archivistiques de provenance et de pertinence tels qu'ils ont été contestés ou appliqués, au cours des siècles, en vue de s'assurer des avantages politiques au moyen de transferts et de revendications de documents. Estimant que la situation gelée de l'après-guerre en matière d'archives déplacées devra maintenant se débloquer, l'auteur esquisse les difficultés prévisibles et les contours d'un programme multinational de restitution d'archives.

Verlagerte Europäische Archive: Ist der Zeitpunkt reif für eine Nachkriegsregelung?

Abstrakt: Angesichts der gegenwärtigen politischen Veränderungen in Europa ist die Wahl einer Verlegung der nationalen, regionalen und ethnischen Archive wieder einmal ein aktuelles Thema. Der Autor liefert eine historische Analyse der Entwicklung der archivarischen Prinzipien der Herkunft und Relevanz in Europa, so wie sie für politische Gewinne in der Verlagerung und der Forderung nach Rückgabe von Dokumenten in den einzelnen Jahrhunderten jeweils in Frage gestellt und benutzt wurden. In der Erwartung, dass Europa über den den archivarischen Stillstand der Nachkriegszeit überwindet, sieht der Autor im Voraus sowohl die unvermeidbaren Probleme als auch die notwendigen Voraussetzungen für ein Programm multi-nationalen Ausmasses zur Herausgabe gegen Sicherheitsleistung.

Los desplazados archivos europeos: es hora ya para un acuerdo de posguerra?

Resumen: Con las actuales transiciones políticas en Europa, la nueva localización de los archivos nacionales, regionales y étnicos es otra vez un tema vigente. El autor provee un análisis histórico del desarrolla en Europa de los principios archivológicos de procedencia y pertinencia, de como ellos han sido puesto a pruebas y usados durante siglos para provecho político en el desplazamiento y reclamación de los documentos. En anticipación al movimiento de Europa mas allá de la pausa completa de los archivos de la *après-guerre*, el autor prevé ambos, los inevitables problemas y las necesarias condiciones anteriores para un programa de desembargo de una magnitud multi-nacional.