

# Caduca, or es(cheat)ed heritage

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Post-violence countries often face the problem of how to deal with the abandoned heritage of those who fell victim to events. The term 'orphan heritage' was recently coined to describe such forsaken legacies. According to Jon Price, orphan heritage is 'owned by people distant from the territories that contain the material.'<sup>(1)</sup> Communities linked to those who were murdered, expelled, or emigrated maintain symbolic, emotional, or discursive relationships to tangible objects or properties that remain in the country from which they or their kin fled but there is 'a separation between those who would normally wish to enact codes of behaviour, policy structures and legislation by reason of ownership of heritage, and those who are legitimately able to by reason of ownership of location.'<sup>(2)</sup> The current 'owning country' can have 'a variety of responses ranging from being co-operative to being completely disinterested, destructive, or not enacting any form of protective legislation.'<sup>(3)</sup> The orphan heritage might be thus destroyed, appropriated, misappropriated, commodified, or may become a magnet for newly formed 'heritage communities.'<sup>(4)</sup>

In post-genocide countries the problem is exacerbated. The totalising scale of genocidal acts often results in the lack or extreme deficiency of a population that could - even from afar - negotiate care for their patrimony or sustain its meanings. The 'owning country' might even be implicated in the destruction of the heritage-originating population, a situation that further impedes post-genocide relations. How might the concept of 'orphaned heritages' be re-calibrated to comprehend the processes unfolding in countries that suffered extreme population loss and are left with the heritage of the dead?

The ancient legal term *caducus* might help to grasp the complexity of the phenomenon. *Caducus* (derived from the Latin *cadere*, or *fall*) means *fallen*, figuratively connoting something doomed or connected with death. As a legal term it relates to

lapsed, vacant, *escheatable*(caducary) ownership.(5) The concept of *caducus* was developed in feudal times to describe a situation when ‘a land or fee had been fallen back or reverted, or returned or become forfeited to the lord.’(6) A more recent term for such a situation is *escheat* derived from ancient French *eschier* (a variant of *eschiver* - meaning to *avoid, prevent, refuse*): ‘when, by accident, lands fall to the lord of whom they are holden - we say the fee is escheated.’(7) *Escheat*, in turn, means in legal terminology a sudden or unexpected falling back or reverting of ownership ‘in consequence of an extinction of the blood of tenant, either for his dying without heirs (*propter defectus sanguinis*) or by his attainder for treason or felony (*propter delictum tenantis*).’(8) Modern societies replaced the feudal owner with the state: ‘It is a general principle in the American law that when the title to land fails from defect of heirs or devisees, it necessarily reverts or escheats to the people, as forming part of the common stock to which the whole community is entitled.’(9)

The definition of ‘orphan heritage’ proposed by Price clearly refers to an estranged or abandoned possession; a property with no heirs present to ‘enact codes, policies or legislations of care.’ Thus the terms *caducus* meaning *caducary*, or escheated heritage may be a useful tool for describing the particular situation of post-genocidal ownership relations. *Caducus* would then generally denote the ‘ownership’ status of an erased population, which left no descendants, to the material heritage they left behind. The *caducary heritage*, traditionally falling in the feudal past to an individual, politically stronger subject, today can describe a publicly sanctioned appropriation or looting by a particular person. *Escheated heritage*, - an old legal term for nationalisation, can today refer to actions undertaken by the state in the name of the people.

In Polish, the old legal term survived in the saying to do something ‘by the law of caducus’ (‘prawem kaduka’), meaning done unfairly, without rights, using instead blunt force and disregard for the law. While drawn from a legal term, the popular use suggests that *caducus* is a dubious act, with negative associations, an act of violence rather than justice. It is no surprise that one can hear the word *cheat* resonating in *escheated*.

*I did not leave any heir here,  
So let your hand ferret out the J things,  
Chominowa of Lwów, brave wife of a snich,*

*Sly informer, mother of Volksdeutsch.*

*Let them serve you and yours, why should they serve strangers.* (10)

Zuzanna Ginczanka, a Polish-Jewish poetess wrote these sarcastic lines on fleeing Lwów in 1943, leaving her scanty belongings behind. The poem is often referenced today in discussions in which post-genocide countries struggle to come to terms with material heritage that was appropriated in the wake of mass violence on their territory, whether via state-level writ or individual looting. (11) Property nationalisation - even if grounded in old traditions or modern legal procedures - still feels unjust and raises a whole range of affectual responses from fear of the appropriators to anger of the disowned.

Interestingly, in Polish the old - and almost forgotten - term for transferal of ownership in the absence of heirs is *puścizna* - a derivate of the word *spuścizna* (literally: *legacy*). (12) *Puścizna* also derives from the word *puścić* - meaning *to let something go*. For a modern-day speaker it also resonates with the word *pustka* - meaning *emptiness*.

Hence, *escheated/caducary heritage* reminds us always of loss, and recalls brutal deaths. Its appropriation by new users - whether private or communal, and no matter how zealously justified or officially sanctioned - retains the sense of trespassing some older, universal moral principle. Research on the terminology developing among post-genocidal populations will permit the ascription of further, more detailed meanings to the concept. Observing local discussions of processes catalysed by heritage with no heirs leads to deeper understanding of the phenomenon of irreversibly orphaned heritage.

## Notes

(1) Jon Price, J. "Orphan heritage: Issues in managing the heritage of the Great War in northern France and Belgium," *Journal of Conflict Archaeology*, 1 (1/2005): 182.

(2) Ibid.

(3) Stephen Thomas Miles, *The Western Front: Landscape, Tourism and Heritage (Modern Conflict Archaeology)* (Barnsley: Pen & Sword, 2016), 73.

(4) See Erica Lehrer, “From ‘Heritage Communities’ to ‘Communities of Implication’,” *TRACES Journal* 05 (April 2018), accessed April 26, 2018, <http://www.traces.polimi.it/2018/07/26/from-heritage-communities-to-communities-of-implication/>

(5) See: Wiktionary, “Caducus,” accessed March 15, 2018, <https://en.wiktionary.org/wiki/caducus>

(6) See: Alexander M. Burrill, *A New Law Dictionary and Glossary: Containing Full Definitions of the Principal Terms of the Common and Civil Law* (Clark: Lawbook Exchange, [1850] 1998), 173.

(7) *Ibid.*, 430.

(8) *Ibid.*

(9) *Ibid.*

(10) See the translated poem in: Shallcross Bożena, *The Holocaust Object in Polish and Polish-Jewish Culture* (Bloomington: Indiana University Press, 2011), 38.

(11) Such discussion in Poland, for example, is heated. For an overview see, for example: Jan Grabowski and Dariusz Libionka (eds.) *Klucze i kasa: O mieniu żydowskim w Polsce pod okupacją niemiecką i we wczesnych latach powojennych 1939-1950* (Warszawa: Centrum Badań nad Zagładą Żydów, 2014). See also: Piotr Forecki, “Nasze mienie ‘pożydowskie’,” accessed March 15, 2018, <http://krytykapolityczna.pl/kultura/historia/forecki-nasze-mienie-pozydowskie/>. Jan T. Gross and Irena Grudzińska-Gross, *Golden Harvest: Events at the Periphery of the Holocaust* (New York: Oxford University Press, 2016).

(12) Barbara Kirshenblatt-Gimblett distinguishes legacy from heritage in Kirshenblatt-Gimblett Barbara, Sławomir Sikora, and Karolina J. Dudek, “Wytwarzanie dziedzictwa,” *Muzealnictwo* 57 (2016): 40.