

## France and Trials for Crimes against Humanity

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On April 2, 1998, a verdict was finally reached in the longest trial in the history of French justice. Maurice Papon was sentenced to ten years in prison for complicity in crimes against humanity. This may be the last French trial linked to the events of the Second World War.<sup>1</sup> It is probably also the most complex and significant.

Trials were numerous immediately after the war. They took place within the framework of long-standing legislation, persons found guilty being sentenced under article 75 of the penal code, which punished the crimes of treason and collusion with the enemy.

Those who were charged at this time appeared before various courts of law, most notably the High Court. It was made up of three magistrates and twenty-four jurors, selected from members of parliament who had not voted to give Pétain full power<sup>2</sup> and from persons best known in the Resistance. It was the task of the High Court to judge the head of state, Marshal Pétain, as well as the ministers, secretary generals, and governors who had held their positions after June 16, 1940. One hundred of them were tried, fifteen of them in absentia. Of the eighteen death sentences (ten reached in absentia), five were commuted (among them Pétain's) and three were implemented: Laval, de Brinon, and Darnand were executed.

In addition to the High Court, the accused could appear before military tribunals, already an antiquated structure;<sup>3</sup> they could come before courts of justice composed of one magistrate and four jurors who functioned as an assizes court; or they could come before "civic rooms" whose power was limited to advocating either acquittal or a newly created sentence, "national indignity." The latter submitted that

the person in question had in effect excluded himself from the nation by participating in the Vichy regime's activities and was therefore deprived of his civil rights.

The Nuremberg trials took place elsewhere—geographically, politically, and judicially. France, a signatory of the London accords that established the Nuremberg tribunal, accepted de facto the new notion in international law of crimes against humanity. But accepting this notion did not mean integrating it, either in French law or in concept. Time had to pass, mentalities had to evolve, and politics had to be worked through before the first charges of crimes against humanity were brought. Such were the charges that led to the trials of Klaus Barbie, Paul Touvier, and Maurice Papon.

### *France, Nuremberg, and Crimes against Humanity*

France hardly invested itself in the preparatory phase of the Nuremberg trial. It sent only one man to the London conference, Judge Robert Falco. The process by which he was chosen reveals the French government's indifference to the preparations. "In early June" (1945), he writes,

while I was pursuing my peaceful tasks at the Court of Appeals, a note informs me that English-speaking councilors wishing to be placed as judges at the international tribunal, which was just being created, were asked to make themselves known. I hesitate due to my incomplete command of a language I have not used in over forty years, but on the advice of certain family members I eventually sign the list, on which, by the way, I am the only one to appear. Several days later, I suggest to the minister of justice that in fact I should occupy the public minister's seat and that the judge's seat, by all rights, ought to be conferred upon Mr. Donnedieu de Vabres, professor of penal law at the University of Paris. I would then be responsible for preparing the French indictment and presenting it to the jury. A particularly ponderous honor is thereby conferred upon me. But Coste-Floret, cabinet member of the Ministry of Justice, Teitgen, as well as the vice president of the Council of State, Cassin, who plays a big role in the organization of the repression of war crimes, strongly urge me to accept, and, com-

pletely dumbfounded, I am informed that I am to leave for London immediately in order to participate in a preliminary conference among the representatives of the United States, England, the USSR, and France—simply to make contact, I'm told at the Chancellery and at the Ministry of Foreign Affairs, a mission more diplomatic than judicial that should last no more than a few days.<sup>4</sup>

Falco left France on June 25. In London he was supposed to fulfill a task for which, he says, he had received no instructions. Falco lacked everything, having neither interpreter nor secretarial staff. The French ambassador in London tried in vain to focus the attention of the provisional government of the French Republic on the necessity of being well represented in London because the trial would be of historical importance. But the interest France brought to this trial was slim, and its contribution to working out the London accords was limited.

At the Nuremberg trials the prosecution of war crimes and crimes against humanity in the West was allotted to France; those perpetrated in the East were the responsibility of the Soviet prosecution. Was there a clear distinction in the mind of the French prosecution of the difference between war crimes and crimes against humanity? I don't believe so. Nevertheless, in rereading the minutes of the trial I am struck by the acute analysis of the persecution of the French Jews given by one young lawyer, Edgar Faure. In his analysis Faure benefited from an extraordinary opportunity given him by the Center of Contemporary Jewish Documentation, an organization secretly created in 1943 by Isaac Schneersohn in Grenoble, then occupied by the Italians, whose task it was to collect all documents pertaining to the persecution of Jews in France.<sup>5</sup> Historians like Léon Poliakov and Joseph Billig worked there. The opportunity from which the French adjunct prosecutor benefited is that at the last moment the officials of the CCJD handed him "in the utmost personal confidence" a "manna of unpublished documents." "I spent entire afternoons examining these archives on microfilm, from which I was able to ascertain a number of decisive details allowing me to understand the complicity that went on at all levels and in all ramifications."<sup>6</sup>

Faure undertook his task in a highly conscientious and masterful manner, and the reflections he offered at the time have hardly aged, even in light of the many subsequent studies. In a work published in 1947, he summarizes the positions that guided his procedure in

Nuremberg: "Just as anti-Semitism does not constitute the entire racist doctrine but is its primary and promotional manifestation par excellence, so the persecution of the Jews does not exhaust Nazi criminality—far from it—but it constitutes, in different countries and at different periods of the war, its most permanent and undoubtedly its most significant aspect."<sup>7</sup> What Faure showed, as would many historians after him,<sup>8</sup> was that all the parts of the state contributed to the crimes against the Jews: "the monstrous function is not juxtaposed to the regular functions; it is articulated in them and comments on them." And, he asserts, "In this mechanism of 'the criminal public service,' which itself results from an inhumane doctrine, reside the novelty and profound evil of the proceedings that this tribunal had to judge."

"It is in the persecution of the Jews—the most general and, if one may phrase it thus, the most 'fundamental' of Nazi crimes—that the methodic nature of Nazi criminality is most blatant and thus best lends itself to analysis."<sup>9</sup>

In his introductory speech, the French state prosecutor, François de Menthon, spoke in vague terms of "race" and "racism" and never mentioned anti-Semitism. Faure, on the other hand, was fully explicit. What he wanted to show the tribunal was that if Nazism had a philosophy of criminal activities, it also possessed a "bureaucracy of crime." Every crime, he explained, implies a chain of transmission; it matters little to an executive that his signature appears on a document. That executive's responsibility is established "by the fact that a criminal act was perpetrated administratively by a department whose hierarchy ends with that executive." And, he explained, "In all hierarchical state departments there exists a continuous network of authority which is at the same time a continuous network of responsibility."

In addition to the definition of crimes against humanity, to which we will return, a link exists between the charges elaborated by Faure at Nuremberg and the trials of Klaus Barbie and Maurice Papon. Klaus Barbie's trial in 1987 centered around the arrest and deportation of the children of Izieu; it was this trial that made France, as a nation, aware of the tragedy of these children, who became a part of French history and collective memory.<sup>10</sup> Faure had mentioned the tragedy of Izieu in his closing speech for the prosecution. Among the documents read to the jury was a simple telegram:

Lyon, April 6, 1944, 20h10

Subject: Jewish children's home in Izieu (Ain)

This morning, Jewish children's home, "children's camp" at Izieu (Ain) was closed. A total of 41 children, ages three to thirteen, were taken. In addition, the entire Jewish staff, which consisted of ten individuals of whom five were women, was arrested. We were unable to obtain either cash or other articles of value. Transportation to Drancy will take place April 7, 1944.

Faure specified at Nuremberg that this telegram contained a handwritten note: "Matter discussed in the presence of Dr. V.B. and Hauptsturmführer Brunner. Dr. V.B. said that for matters like this, special procedures concerning the lodging of children had been foreseen by SS-Obersturmführer Röthke. SS-Hauptsturmführer Brunner says he has no knowledge of such instructions or plans and that in principle he does not approve of such measures. In this case he will also proceed in the usual manner of deportations. I have not yet made an official decision in this matter." He commented:

I think one can say that there is something even more striking and more horrifying than the concrete fact of the children's deportation, that being the administrative nature, the report that is made of it along hierarchical channels, the conference at which different officials calmly discuss that matter as they would any in the course of their normal day. All the cogs of the state, and I speak of the Nazi state, are put in motion in such a case and to such an end. This is the true illustration of the term we find in the Danneker report ["La question juive en France et son traitement," July 1, 1941], "the cold-blooded manner."

When Faure read the telegram to the court, presented under the code RF 1235, he did not specify the name of the signatory, who was not important to his presentation and who was yet a minor character in comparison to those who sat in the dock. This signatory was Klaus Barbie. Barbie himself was later tried in France in absentia in 1952 and 1954, but at these trials the deportation of the children of Izieu was not

mentioned. It is precisely this “oversight” in specifying Barbie’s role in the persecution of Jews that made it possible to try him again, as French law does not permit double jeopardy, that is, allowing those who have already been judged to be tried again for the same crime.

*The First Two French Trials of Crimes against  
Humanity: Klaus Barbie and Paul Touvier*

Crimes against humanity were, for several reasons, not at the center of the Nuremberg trials. One reason has to do with their definition, which ultimately makes them very close to war crimes,<sup>11</sup> a charge that was in most cases enough to ensure the conviction of the accused.<sup>12</sup> But above all, in the definition used at Nuremberg, crimes against humanity had to be committed immediately following or in connection with other crimes: crimes against peace, plotting against the peace, or war crimes. Crimes against humanity were thereby bound to the war itself; they could not constitute autonomous charges. This restriction was linked to the desire of the United States—largely shared by other countries—not to judge crimes committed by the state against its own nationals or foreigners residing in the country—to put it plainly, so as not to allow interference in the interior affairs of a heretofore sovereign state. Therefore the Nazi leaders could not be prosecuted for crimes committed in Germany before the declaration of war, except by relinking them to the war by means of a “plot against the peace.” Thus, as the French judge Donnedieu de Vabres noted, the notion of crimes against humanity, which had been so difficult to define, and which had been introduced as a backdoor measure, was “dismissed in the face of hard evidence.”<sup>13</sup>

It was over the question of evidence that an anxiety began to emerge in the early 1960s. By that time, in most European countries crimes committed during the war would have to be proved twenty years after the fact. If Hitler, Borman (who was sentenced to death in absentia at Nuremberg), or Mengele were still alive, they could resurface, unpunished and free. For that reason, the French parliament voted unanimously to pass a law that made crimes against humanity, as they were described at Nuremberg, imprescriptible. No one at this time dreamed that the complicity of the French state, that is to say, the Vichy government, in the deportation and killing of Jews would eventually

come to light. It was not until the 1970s that the memory of the fate of the Jews in France was awakened and entered the public arena.<sup>14</sup>

With the arrest, extradition, and trial of Klaus Barbie, what had been nothing more than a declaration of intent—the imprescriptibility of crimes against humanity—was confronted with legal reality. The difficulties in the definition of crimes against humanity became evident when it was applied to the case of Klaus Barbie. The state prosecutor in his trial in Lyon, Pierre Truche, noted the twofold difficulty: How to rightly define the victims of crimes against humanity? How to rightly define the authors of such crimes?

The definition of Nuremberg described victims as “civilian populations.” Barbie was accused of having deported some 650 people, Jews and Resistance fighters in almost equal numbers, on one single train on August 11, 1944. The Jews were apparently civilians, arrested, deported, and assassinated simply because, as the apt expression of Frossard goes, they had been born.<sup>15</sup> But the Resistance fighters deported to Buchenwald, Dachau, or Mauthausen—who were they? In France, after the war, they were given the title *voluntary combatants of the Resistance*. In their role as combatants, their arrest, torture, and inhumane treatment in the Nazi camps fell into the category of war crimes, prescriptible in French law. If, however, one puts in parentheses their character as combatants and instead emphasizes the singular nature of their sufferings, that is to say their character as victims, they are victims of crimes against humanity.

In the early stages, the president of the Court of Criminal Appeals, Huber Ogier, kept to the definition of Nuremberg, as did the prosecutor, Pierre Truche.

There is, on the one hand, the Resistance fighter who knew of the consequences of an arrest to his physical well-being and his life and who courageously accepted the dangers being incurred. . . . On the other hand, there is a two-year-old Jewish child like the one who was deported August 11 on the last train, who does not really know yet what it means to be Jewish. There are the old people, couples without means of defense who pose absolutely no threat to the occupying army and who are therefore “innocent.” That is to say they are harmless, they are “inoffensive.” And the opposite is not “guilty” but “offensive.” Is it not natural that the strongest legal protection should go to those who are without protection?<sup>16</sup>

In the end the Court of Criminal Appeals did not follow Truche but instead expanded the definition of the victims of crimes against humanity so as to include “the adversaries—whatever the form of their action—of a politics of ideological hegemony in whose name inhumane acts and persecutions were committed.” Truche, in his closing comments against Barbie, aligned himself with this definition: “Thus, although in Nuremberg the notion of a war crime had absorbed that of a crime against humanity, here, the opposite has happened.”<sup>17</sup>

Who can be considered the author of a crime against humanity? During Barbie’s trial the question was hardly posed, so evident was it that Barbie, head of the Gestapo of Lyon, was the author of crimes. This was nevertheless the ruling of the Court of Appeals, which in expanding the definition of the victims also expanded—as if by ricochet—that of the executioners by introducing a notion absent from the Nuremberg law, that of “the state practicing a politics of ideological hegemony.” Although the state in question was Nazi Germany, the definition allows for the possibility that another state could practice such a politics—Vichy France, for instance.

This is exactly what happened with Paul Touvier. The indictment and trial of the former militiaman show the difficulty of a notion that was inconsistently applied in France. Like Barbie, Touvier had already been tried *in absentia* twice, on September 10, 1946, by the court of justice in Lyon, and on March 4, 1947, by the court of justice in Chambéry, and been sentenced to death both times for his participation in assassinations perpetrated by the militia in the Lyon region. Touvier in January 1944 was the regional commander of the second division of the Rhone Militia, a position that made Touvier, like Barbie, a culprit of second rank. He therefore had escaped the execution of his sentence with the support of a network linked to the Catholic Church.<sup>18</sup>

These sentences were statutorily prescribed in French law twenty years after the condemnation. At the end of the sixties, Touvier could therefore reappear. Nevertheless, even though the principal sentence (the death penalty) was dismissed, two sentences considered subsidiary were not: the confiscation of his belongings and the deprivation of his civil rights. But President George Pompidou pardoned him, except for the deprivation of his civil rights. The media seized on the affair,<sup>19</sup> and Touvier went underground again, with the result that in November 1973, the son of one of the victims of a firing squad at Rillieux-la-Pape brought a charge of crimes against humanity. We will not

spend time here on the events that finally brought Touvier before the Court of Assizes of Versailles.

Of what crimes, then, could Touvier be found guilty? The investigation of his case was handled within a legal framework that was redesigned by the trial of Klaus Barbie. A member of the militia<sup>20</sup> created by the French state and an instrument of its policy of "ideological hegemony," the crimes he committed would then be crimes against humanity. Among these crimes was the assassination of seven men, all Jewish, in Rillieux-la-Pape, Ain, on June 29, 1944, in reprisal for the execution by the Resistance of Phillippe Henriot, the secretary of state for information and propaganda.

On April 13, 1992, the Court of Criminal Appeals in Paris dismissed the case for lack of evidence, the three magistrates maintaining that in Vichy "no precise ideology existed." The decision surprised some of the public and irritated certain historians, who did not take kindly to the law overstepping its role and passing judgment on historical fact.<sup>21</sup> Indeed the Court of Criminal Appeals delivered a verdict not on the crimes of Touvier but on the nature of the Vichy government. According to the ruling, the expression "state practicing a policy of ideological hegemony" might apply to Hitler's Reich, but could not be applied to Vichy.

I will not here enter into the twofold debate opened by the Court of Criminal Appeals, one on the nature of the Vichy government and one on the law's right to claim historical fact. Under Pierre Truche, who had been promoted to attorney general, the Court of Criminal Appeals partially nullified this ruling on November 27, 1992. Only partially, however: of the crimes with which the investigation was concerned—notably the assassination of the former president of the League of the Rights of Man, Victor Bosch, and of his wife Hélène on January 10, 1944—only one crime remained: the assassination of the Jewish hostages at Rillieux-la-Pape. The investigation retained this charge precisely by using the definition offered at Nuremberg: the assassinations at Rillieux were committed by order of the Gestapo, an organization belonging to a state practicing a policy of hegemony.

The trial of Touvier would not then be the trial of Vichy, or more precisely of its anti-Semitic policy, as some claimed. The crime against the Jews remained chained to Nazi anti-Semitism. Touvier, who in his defense insisted that the execution of the hostages was carried out under German command, found himself, by a boomerang effect, caught in a trap of his own making.

What remains of Touvier's trial in the public's memory? Virtually nothing. The names of the hostages killed in Rillieux-la-Pape have hardly entered the collective memory. Touvier was an insignificant regional officer of the militia whose actions were quite often—shall we say banally?—villainous. Public opinion was slightly aware that the global fate of Jews was marginally revealed in the shape of men like Touvier, to whom murdering Jews and pillaging their goods was an ordinary way of life and whose crimes were in certain respects related to crimes of common law. It is not only the legal obstacles that prevented this trial from being "the Vichy trial," but equally the personality and the role of Touvier.

For these reasons, the trial of Maurice Papon assumed an unusual importance.

### *The Trial of Papon and Crimes against Humanity*

Papon was the first Frenchman belonging to the Vichy administration to be brought before the courts on charges, not of crimes against humanity, but of complicity in crimes against humanity. Herein lies the essential importance of Touvier's trial. Crimes against humanity were still defined as they were at the Nuremberg tribunal. A major difference between Klaus Barbie and Paul Touvier on the one hand and Maurice Papon on the other was that the latter had not been tried during the Liberation. And if Barbie and Touvier had directly perpetrated their violent acts on their victims, this was not the case with Papon.

The Papon affair exploded on May 6, 1981, between the two rounds of presidential elections that would see the victory of François Mitterand over Valéry Giscard d'Estaing. On that day the *Canard enchaîné* published documents carrying the signature of Papon that implicated him in the deportations of Jews in Bordeaux. Papon at the time was minister of finance, the apogee of a long and illustrious career for him: prefect of Landes, of Corsica, of Costantine in Algeria, then prefect of police in Paris from 1958 to 1966 (that is to say during the Algerian war),<sup>22</sup> président directeur général of Sud-aviation, deputy of Cher Union de Défense de la République, then Rassemblement pour la République. In response to the published documents, in May 1982 Serge Klarsfeld brought six charges. In July 1982, the public prosecutor's office filed a preliminary indictment. On January 19, 1983, Papon was charged for the first time with crimes against humanity.

The reading of the charges, an interminable list, sixty-nine pages

long, began Tuesday, October 14, 1997, in the Bordeaux Court of Appeals and took two afternoons. The court charged that Maurice Papon committed crimes against humanity "by being complicit in the illegal and arbitrary arrests, the illegal and arbitrary sequestration, the premeditated murders . . . that were carried out or committed by the representatives of agents of the German government against persons of Jewish origin." He "knowingly provided aid and assistance that was necessary to the preparation or execution of their actions to the perpetrators of these crimes, in this case by participating through personal acts and instructions to his subordinates in the necessary operations." The indictment concluded with the reading of a list of the eight trains that left Bordeaux between July 1942 and May 1944, and that of the seventy-two victims in whose name the charges were brought.

The trial could then begin. It was, as the state prosecutor noted on the first day, "the trial of a man and not of a regime." There was reason to mention this in the courtroom: the press had been saying for weeks that the trial was meant to judge the Vichy government and thereby to give the country's youth a "history lesson."

One man then: Maurice Papon, named secretary general of the Gironde prefecture in May 1942. A month later, he was given signatory rights for the prefect's duties that were associated with the war. Among these duties was the matter of the Jews. The prosecution asserted that he had "total control" of that matter and that he actively participated in the organization of a dozen trainloads of Jewish prisoners between the camp at Mérignac, near Bordeaux, and the transit camp at Drancy in the outskirts of Paris, a holding camp for Auschwitz. As Victor Basch stated, "Maurice Papon would not be able to maintain that he was no more than a subordinate official acting only under orders and without power over the camps at Mérignac. . . . The prosecution shows that he intervened in the duties of the civil and military police by giving orders of arrest and internment" in keeping with anti-Jewish laws.

The prosecution focused on Papon's zeal: "Even when instructions had been requested from the central authorities of the Vichy government, this did not prevent Maurice Papon and the department of Jewish affairs from anticipating their answer and executing the orders of the occupying force without waiting." "It appears," added the prosecution, "that in the matter of anti-Jewish persecutions, Maurice Papon acted as technician, always trying to prove his incontestable competence and efficacy."

In unison, the magistrates who drafted the charges preempted an objection: "Maurice Papon would not be able to plead the position of constraint in which he would have found himself." In fact, they said, if "one can take for granted that the German demands were expressed with force and determination and that in certain cases they were accompanied by threats of reprisal against the officers of the French police, the investigation does not show that these pressures were so great as to constitute a constraint that would abolish the free will of Maurice Papon." Thus, "Maurice Papon cannot avail himself either of the order or the authority of the law, nor the order of his superior, the illegality of an order in matters of crimes against humanity always being manifest."

Papon knew that the arrest, the sequestration, and the deportation of Jews, which were themselves crimes against humanity, "would ineluctably lead them to their death." It was asserted that "even before taking his office, the former secretary general of the Gironde prefecture had a clear, reasoned, detailed, and continuous understanding of the plan designed by the Nazis . . . even if he was able to remain ignorant of the exact conditions of their final sufferings and of the technical means employed to kill them." This last point the defense would contest by calling on the work of historians in particular.

It was primarily the lawyer Michel Zaoui, the last to plead on behalf of three associations of deportees and of the Federation of the Jewish Society of France who, with Arno Klarsfeld, established the connection between Nuremberg and the trial of Maurice Papon. It was Edgar Faure's closing speech at Nuremberg that inspired his own: "Nazism had a philosophy of criminal activity and a bureaucracy of criminal activity," he explained, quoting Faure. "The Vichy government did not have a criminal philosophy, but it did nevertheless have a criminal bureaucracy."<sup>23</sup> Still drawing on Faure, he then underlined that "it is not the signature that is the demonstration of responsibility, but the very involvement 'in the chain of responsibility in the execution of the crime'" because the "crime against humanity is made up of an infinite number of criminal acts that are disassociated one from the others. It is a matter of a collective crime. Maurice Papon has, whether one likes it or not, participated in this chain of death." And he called again on Faure's words, already cited, which asserted that there existed a continuous network of authority and a continuous network of responsibility. To Zaoui, a crime against humanity was therefore a "crime of

office." The lawyer may not have entirely convinced the jury, but his presentation was taken up by the media in general. Bertrand Poirot-Delpech, columnist for the newspaper *Le Monde*, chose the expression "crime of office" to entitle his piece on the trial.<sup>24</sup>

The framework of the trial was thus set. As the legal editor for the daily *Le Monde*, who was covering the trial, wrote, "The rest is henceforth legal documentation. Much discussed by the press during its sixteen years of proceedings and within the justice system for nearly as long, the Papon affair finally led to this unusual trial that defied all statistics: six months in all, ninety-four days of hearings, sixty-three hundred documents brought to the proceedings, thirty thousand pages of documentation, eighty-five witnesses, twelve hours of opening remarks, forty hours of speeches for the defense of civilian litigants, twenty hours of defense, nineteen hours of deliberation."<sup>25</sup> The extensive coverage by all media<sup>26</sup> and the publication of a large number of books both during and immediately following the trial should also be mentioned.<sup>27</sup>

I will not give the account of its unfolding, which was full of events that kept the media holding their breath. What definitively appeared—and this is probably the trial's true lesson in history—is the extreme difficulty in tracing a precise diagram of the local Vichy administration and its connections to Nazi offices, and to thereby grasp where the real decisions were made. Papon certainly belongs to what Primo Levi called the "gray zone," a zone practically indefinable that at one and the same time links and separates the veritable organizers of mass crime and its victims. This probably explains the mixed verdict of the Bordeaux jury.

On April 2, 1998, the court condemned Papon to ten years of imprisonment, a sentence accompanied by the suspension of his civic and civil rights for that same length of time. This verdict meant that Papon did not have criminal intent and that the inhumane acts of which he was accused concerned only complicity in arrests and "the arbitrary sequestration," that is, the organization of the deportations. The French jurors showed little enthusiasm for the legal label "crimes against humanity."

The three belated trials of Barbie, Touvier, and Papon posed multiple problems that were widely debated. What is the relationship between history and justice? What is the role of the witness in this kind of a trial? Can memory only be used through the intermediary of judi-

cial procedures? One of the tangible results of these trials, however, is that they introduced the notion of crimes against humanity to the legal landscape and to public opinion.

## NOTES

Translated by Lynn Prince, University of Massachusetts Translation Center.

1. At the time of this writing the first complaint has just been brought against the French state concerning the despoilment of goods during the Occupation. The plaintiff is accusing the French state of "receiving stolen goods," an imprescriptible crime, and of complicity in crimes against humanity. It is therefore not impossible that other proceedings will open up that will be linked to the question of the belongings of those people whom the Vichy government and the Germans defined as Jews during the occupation (1940–44). On the other hand, Aloïs Brunner, one of Eichmann's adjuncts, who was responsible for deportations from France from the summer of 1943 on, a refugee in Syria, is to be tried in absentia in the coming months unless proof is furnished that he is deceased.

2. On July 10, 1940, the deputies and senators who had come together at the National Assembly bestowed full authority on the government headed by Philippe Pétain to promulgate a new constitution of the French state, a constitution that never saw the light of day. This full authority was obtained thanks to the vote of 569 deputies; 20 members of parliament abstained, and 80 voted against it.

3. The army's war councils arose during the Directory (law of 13 Brumaire, year V). They were renamed as military tribunals in 1928. See Jean-Claude Farcy, *Guide des archives judiciaires et pénitentiaires, 1800–1958* (Paris: CNRS Editions, 1992), 69ff.

4. Robert Falco, "Souvenirs de Nuremberg. 1945–1946," manuscript made available by Mme Pouillon-Falco, Judge Falco's daughter, whom I wish hereby to thank. A copy of these memoirs was made available at the time of the colloquy organized in 1995 at the Caen Memorial. Robert Falco, a Jew, was dismissed by the Vichy government. He therefore had no professional occupation during the war.

5. For information on the creation of the CCJD, I point to my study "Un lieu de mémoire et d'histoire: Le mémorial du martyr juif inconnu," *Revue de l'Université de Bruxelles* nos. 1–2 (1987): 107–32. Unlike Oneg Shabbat d'Emmanuel Ringelblum, I show in this piece that the Documentation Center worked during the Occupation in preparation for the postwar period. In particular they worked toward the restitution of "aryanized" goods. Their archives, which are the center's richest resource, were acquired after the war.

6. Edgar Faure, *Mémoire II. Si tel doit être mon destin ce soir . . .* (Paris: Plon 1984), 33.

7. *La Persécution des Juifs en France et dans les autres pays de l'Ouest présenté par la France à Nuremberg*, a collection of documents published under the direc-

tion of Henri Monnery, deputy public prosecutor of the International Military Tribunal, with a preface by René Cassin, and an introduction by Edgar Faure, adjunct public prosecutor at the International Military Tribunal (Paris: Editions du Centre, 1947).

8. In particular Raul Hilberg, in his major work, *La destruction des Juifs en Europe* (Paris: Fayard, 1988). On the French administration see especially Marc-Olivier Baruch, *Servir l'Etat* (Paris: Fayard, 1997). Aside from a handful of jurists and those who in one capacity or another attended or participated in them, the Nuremberg trials elicited surprisingly little commentary or studies until the last few years. The international colloquy of historians organized in Caen on its fiftieth anniversary constitutes one exception. It was organized by the Caen Memorial and the CNRS (CRHQ) and held October 26, 27, and 28, 1995. The papers were collected and published as *Les procès de Nuremberg et de Tokyo*, ed. Annette Wieviorka (Brussels: Complexe, 1996).

9. Edgar Faure in *La Pésécution des Juifs*, 21–22.

10. In fact, shortly after Klaus Barbie's trial, the decision was made to create the association for the memorial museum. In July 1990, thanks to a contribution, the association acquired the house in Izieu, in the Ain region, where forty-four Jewish children, their principal, and their teachers were rounded up by Klaus Barbie's Gestapo. The goal was to create a museum whose theme would be the children of Izieu and crimes against humanity. President Mitterand inaugurated the museum on April 24, 1994, the National Day of Deportation.

11. Let us remind ourselves of the two definitions of war crimes, "violations of the laws and customs of war. These violations include, but are not limited to, the assassination, inhumane treatment or deportation for forced labor or any other purpose of civilian populations in occupied territories; the assassination or inhumane treatment of prisoners of war or persons at sea; the execution of hostages, the pillaging of public or private goods, the unfounded destruction of cities and towns or devastation that is not justified by military necessity." Crimes against humanity are "the assassination, execution, sequestration, deportation and all other inhumane acts committed against any civilian population, before or during the war, or persecution for political, racial or religious purposes so long as these acts or persecutions, whether or not they constitute a violation of the internal laws of the country in which they are perpetrated, were committed immediately following any crime which lies in the domain of the tribunal or which is related to that crime." See *La Pésécution des Juifs*.

12. Julius Streicher was the only accused to be given the death penalty for crimes against humanity alone.

13. Cited by Pierre Truche, "Le crime contre humanité," in *Les Cahiers de la Shoah*, ed. André Kaspi (Paris: Liana Levi, 1994).

14. I refer you to two of my publications: *Déportation et génocide, entre la mémoire et l'oubli* (Paris: Plon, 1992; new ed. Hachette-pluriel, 1995), and *L'Ere du Témoin* (Paris: Plon, 1998).

15. "A crime against humanity has been perpetrated when one kills some-

one under the pretext that he was born." André Frossard, *Le Crime contre l'humanité* (Paris: Laffont, 1987), 9.

16. Cited by Pierre Mérindol, *Barbie. Le procès* (Paris: Laffont, 1987), 14.

17. Truch, "Le crime contre humanité," 39.

18. The complicity of certain sectors of the church in Touvier's various escapes was brought to light by the commission presided over by René Rémond at the behest of Cardinal Decourtray. The commission's investigation was made possible by the opening of the archives of the archbishop of Lyon, and the results have been published in René Rémond et al., *Paul Touvier et l'Eglise* (Paris: Foyard, 1992).

19. First there was an article by Jacques Derogy in *L'Express*, June 5, 1972, then a press conference by Georges Pompidou. "Paul Touvier's name, though remembered by several resistance fighters who had dealings with him and by the painful memories of close relations of some who disappeared, was unknown to the general public: only in 1972 did he become a symbol of the collaboration of some Frenchmen with the enemy" (Rémond et al., *Paul Touvier et l'Eglise*, 10).

20. The French militia issued from the Legionnaire Service, which itself emanated from the most activist kernel of the Legion of Combatants. It was created on January 30, 1943, and directly answered to the head of government, Pierre Laval. On December 30, 1943, its head, Joseph Darnand, was named secretary of state for the maintenance of public order. The militiamen, who were never very numerous (a maximum of thirty thousand for the whole territory), were renowned for their violent acts and crimes that targeted Resistance fighters and Jews in particular.

21. It would nevertheless be interesting to compare the ruling with the analyses made by several historians who adhered to Vichy ideology. They seem less antagonistic than the violent reactions to the ruling at the court of appeals might lead one to think.

22. Notably during the demonstration organized by the FLN on October 17, 1961, during which the Parisian police resorted to violence. The number of Algerian dead was at the center of controversies and was brought to the forefront.

23. I am using Michel Zaoui's stenography for the defense, which he sent me. I wish hereby to thank him for doing so.

24. Bertrand Poirot-Delpech of the Académie française, *Papon: Un crime de bureau* (Paris: Stock, 1998).

25. *Le Monde. Le Procès de Maurice Papon. La chronique de Jean-Michel Dumay* (Paris: Fayard, 1998), 15.

26. *Le Monde*, for example, had four people on the spot and dedicated a page a day to the trial.

27. Among these publications, aside from those already cited, I point you to Daniel Schneidermann, *L'Etrange procès* (Paris: Fayard, 1998); Eric Conan, *Le Procès Papon. Un journal d'audience* (Paris: Gallimard, 1998); Jean-Noël Jeanneney, *Le passé dans le prétoire. L'historien, le juge et le journaliste* (Paris: Seuil-

essai, 1998); and Sorj Chalandon and Pascal Nivellet, *Crimes contre l'humanité. Barbie, Touvier, Bousquet, Papon* (Paris: Plon, 1998). The defense speeches of Jean-Marc Varaut, Maurice Papon's lawyer, and of Arno Klarsfeld have also been published, as has a stenography of the trial in two volumes, published by Albin Michel.