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Vichy, Crimes against Humanity, and the Trials for Memory

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I would like to begin this talk about the way France coped with its past by making some general statements. Why it may be interesting to study the Vichy legacy, except of course if you are impassioned by French History? Why the history of the memory of the “Dark Years”, the years of the Nazi Occupation, may have some interest for other periods or other situations, in contemporary history? Why to study precisely how the representations of the past or the behaviour towards the past has evolved from 1944, the Liberation, to the present days, may have a universal meaning ?

We can propose several answers :

- We may learn a lot in studying the “Dark years” because it’s a period in which a great power, the second world power at that time in terms of political and economic influence, collapsed in six weeks, after a brutal and unexpected aggression against its territory. The panic of the defeat, the disarray coming from the vanishing of the State and of other authorities, led to a strong support for a dictatorship, the Vichy Regime, which abolished most of the political rights. The new regime, using the fear of most of the population, declared that France was no more a Republic, and that she had a lot of enemies : not the Nazi Occupiers, but the Jews, the Foreigners, the Free-Masons, all kind of opponents: in short, for Vichy, one of the result of the defeat, enemies were at home.

- Another characteristic of Vichy’s “National revolution”, the official ideology of the regime, was to say that the war was over, despite that the fact that the war was becoming more and more a world war. One of the consequence has been the idea that France had to fold on itself, and to be isolate from the rest of the World : “La France, la France seule” – I sounds a little bit like “America’s first”, usual nationalist slogans.

- It could be also quite fruitful to understand the Vichy legacy, after 1944, in order to understand what is a “historical trauma”, how a society can face it, why it takes a long time to endorse or to accept the burden of the past, even if it’s not “acceptable”. It is a good way to avoid a simplistic view of history, that is to say the human experience, in which you divide the world between evil and good, between Friends and Enemies, saying that all those who are not supporting you, are against you: that’s precisely what a totalitarian regime says all the time. However, if you look afterwards, the legacy of a traumatic event is always telling us that history is a much

more complex picture, in which it's always very difficult to recognize the evil and the good.

This lecture about how the Vichy Regime has been put on trial is also, at least, I hope so, a way to think about the real possibility and the limits we encounter when we want to change the past, to "repair" it, to do better than the generations who lived before, whatever you are dealing with : the Slavery, the Holocaust experience, other Genocides, other Totalitarian experiences, etc.

On April 12, 2002, the *Conseil d'État*, the supreme administrative jurisdiction in France, took an important decision in the Papon case. Maurice Papon served during the Vichy regime as a high civil servant and made after the war, a brilliant political career. He was condemned to ten years in prison, in 1998, for having been an accomplice in the deportation of the Jews of Bordeaux, between 1942 and 1944. In the civil trial which followed the criminal one, he was also condemned to pay about 700 000 \$ to the victims and their relatives.

The *Conseil d'État* declared that Maurice Papon had without a question a personal responsibility in the crimes against humanity he was condemned for, and then he had to pay most of this sum. However, the Court declared also that these crimes were committed on the behalf of the State. Yes, indeed, a famous decision, taken in August 1944, by De Gaulle's Provisionary Government, defined the Vichy regime as an unconstitutional authority, and cancelled all its laws and decrees. But the Supreme Court, invoking strongly the principle of the « *continuité de l'État* » (the continuity of the State) decided that the last might share with the accused part of the consequences for the crimes committed. Then, the State was condemned to pay 25 % of the damages Maurice Papon had to pay to the victims.

This decision was strangely taken in a general indifference : no headlines, no breaking news, even CNN or Fox News didn't know it, while it could have been useful to use it. This was like if the « Vichy syndrome » was now an old story. Despite the fact that this decision appeared as something normal for most of the observers, it is clearly a tremendous change in the representation of the past and the way the French society sees the Vichy era. From June 1940 and the beginning of the Free French fighting against Vichy, till very recently, the official line has been to establish a strict borderline between the Vichy regime and the Republican one. From the 4th to 5th Republic, from De Gaulle to Mitterrand, the official position, with some nuances, has been to condemn the Petainist State but to refuse – not without strong historical arguments – any kind of political continuity. As François Mitterrand constantly repeated it in the 90's, « *la République n'est pas responsable des crimes de Vichy* ». Even if the 4th Republic endorsed part of the consequences of the crimes committed during 1940-1944, the general tendency until recently was to reject any kind of « repentance ». This is President Jacques Chirac who, in a famous speech delivered

in July 1995, recognized that the French were « collectively guilty » – a very controversial statement – because of the involvement of Vichy in the Holocaust. After a decade of polemics, and taking an opposite view of his predecessors, Jacques Chirac made a clear breaking point in the juridical and cultural tradition invented by Général de Gaulle to erase the legacy of the Vichy regime and of the Collaboration, seen as “*une poignée de misérables*” (« handful of misérables ») : « misérables », why not ; « handful », it's another question.

This unusual decision is the most recent consequence of the juridical reopening of the Vichy case, and it is one of the most paradoxical, and in two senses. On one hand, the republican and democratic regime which was abolished by Vichy in July 1940 but which finally prevailed over its enemy, had to assume its crimes sixty years later. On the other hand, the same republican regime which decided to put Vichy on trial, and twice, in 1945, and in the 90's, was finally obliged to pay part of the damages.

Nobody could have predicted this situation thirty years later, when was launched in France the first indictment for crimes against humanity. It illustrates the thesis of the German social scientist Otto Kirchheimer, quoted by Hannah Arendt in *Eichmann in Jerusalem* : all trials, he said, are of course a « show », and the political trials, like Nuremberg, Jerusalem or the French trials for crimes against humanity are much more exposed to this criticism. But trials are shows whose nobody can predict the end – or the direct or indirect consequences. A trial in a democratic State, and sometimes even in a totalitarian State has or might have a part what Kirchheimer called an « irreducible risk ». I'll try to show that this was exactly what happened all along the troubled and long story of the trials against Vichy and the Collaboration.

1° - The first wave of purges or the missing link.

To understand and to evaluate the impact of what I have called the « second wave of purges », one must keep in mind the importance of the first wave, which has been recently, for political reasons completely under-estimated. In 1993, for example, when René Bousquet, the former Secretary General for the Vichy police, and the most prominent accused for crimes against humanity was murdered by an insane before any judgment, *L'Humanité*, the communist daily, wrote a sensational headline : « *le procès de Vichy n'aura pas lieu* » (“Vichy won't ever put on trial”). It was a quite surprising statement when one knows the crucial role played by the French communist party in the Liberation purges.

Between the summer 1944 and the beginning of 1945, about 10 000 people were executed without any real judgment. Many of the victims – but not all – were

policemen, members of the fascist parties, or members of the *Milice française*, who had persecuted the population during the German Occupation.

On the judicial scene, the High Court of justice put on trial about 100 ministers and other politicians, including Pétain and Laval, the head of the State. More than 50% were condemned to term or life in prison ; 18 were condemned to death and 3 executed.

The justice launched civil or criminal investigations on about 350 000 French citizens, among whom more than a third were actually put on trial, including some very famous writers, journalists, etc., like Robert Brasillach. This number, unknown until recent researches, is a very important one. It gives an idea of how many people were considered as potential « suspects », rightly or wrongly. It shows to what extent the purges were a very important social phenomenon. Among the accused, more than 75%, about 95 000 people, were actually condemned to several kind of penalties : from the suspension of the civil rights to term or life in prison. Finally, 7000 death penalties were pronounced, and at least 1600 people were really executed.

The French trials were among the most tough all over Europe : for example, there were 6 to 7 times more people legally executed in France for collaboration than former Nazis in all Occupied Germany, including in the Soviet Zone (about 200 to 300 people). In France, only 50 Nazi War criminals were executed between 1945 and 1954 : there is a tremendous gap between the faith of the Nazis, the Germans, and the one of the French collaborators, their accomplices.

Most of the people condemned were accused for murder, denunciation, and torture. The collaborators were as a whole considered as traitors, for having cooperate with the enemy, they were not really seen as fascists. Very few of them were accused for crimes committed against the Jews, and none of them was judged for crimes against humanity, even if the formal possibility existed. Actually, the purges were a kind of partial revenge against the Vichy dictatorship, the humiliation of the military defeat of 1940 and the 4-years-long occupation. They were of course a necessary retribution owed to the victims, but in the spirit of those who conducted the process, the main victim was actually the Nation itself. The shed blood of the collaborators had to participate to the reconstruction of the national identity, in a larger scale than in any other country, including Germany.

The purges ended in 1953, 9 years after the end of the Occupation, with two amnesty laws, promulgated in order to facilitate the end of the reconstruction of the country as well as for political reasons, in the context of the cold war. These decisions were inscribed in a long tradition of pardon and juridical forgetfulness : similar laws were for example voted after the Commune, in the 1880's, or after the Algerian War, in the 1960's. Even if these two laws raised a national debate and were very controversial issues (most of the prisoners were released in the following years), all of a generation considered, not without a feeling of bitterness, that the Vichy case was over, at least in the juridical sense. Vichy had been put on trial, in a good or in a bad way, but it was done : that's what François Mitterrand will repeat 60 years after, unable he was to understand why the ghosts of Vichy, at least some of them, had to be put on trial for a second time.

2° - Why the Vichy case was reopened, or how to repair the wrongdoings of the past?

First, there is a political and juridical reason. In 1964, like in other European countries fearing the announcement of a statute of limitations in the Federal Republic of Germany, France's Parliament voted a law suspending the statute of limitations for the crimes against humanity, according to the Nuremberg definition. It was a very important innovation in the legal French traditions. The idea was to keep the possibility to put on trial Nazi criminals, like for example Klaus Barbie who escaped in late 1940's. But why these crimes only ? Why not also the war crimes, after all the main indictment in the Nuremberg trials into which France took a very active part ? The answer has nothing to do with the legacy of World War II : the French Parliament feared at that time that cases against French officers in Algeria could be raised, especially for those who committed torture – in a very large scale, we know it today. For the same reason, France refused to sign the 1968 UN international agreement on war crimes and crimes against humanity, which declared that both would never benefit of any statute of limitations. The behavior of the French state at that time may be partly compared to the US behavior towards the International Criminal Court : it refused to abandon part of its sovereignty, but all over, it wanted to keep control on its own home policy, memory and history. The Algerian war, like the Vichy regime, was in a process of oblivion, and it was not acceptable that any external decision stopped this evolution.

This French distinction between war crimes which can benefit from the statute of limitations after 20 years, and the imprescriptible crimes against humanity had an unpredictable consequence : it became one of the best tool, and a legal one, to emphasize the concept of the uniqueness of the Holocaust, changing radically the evolution of the way France coped with its past.

The 1964 law was voted in order to let open the possibility to put on trial any Nazi criminal alive. But no depute or senator could imagine that it will be a very useful instrument used by associations of former resisters, and, later, by Jewish survivors in order to reopen the Vichy case, on very different grounds than those of the first wave of purges.

As I tried to show it in previous works, the memory of Vichy has known three major steps since the end of the German Occupation, an evolution quite similar to other European situations. After the era of justice and revenge, until the mid-50's, began a long period of oblivion and official repressing. The black pages of the period 1940-1944 were partly obliterated in the public debate – if not in popular or personal memories. During the same time, the Nation celebrated the legacy of the French Resistance, sometimes in a pompous way. This period, which corresponds broadly to the Gaullist era, ended in the early 70's. In the following of the May 68 uprising, a new generation asked embarrassing questions about what really happened during

the German occupation. Issues like Collaboration, Fascism, and Anti-Semitism were again on the political and cultural agenda. There was a raising need to re-evaluate the Vichy period. And this revival of memory lasted about thirty years, from the *Sorrow and the Pity* (shown in 1971) to the present days.

In the last fifteen years, there was another important change. The major question (not to say the only one) that has been at stake, is the question of the French Anti-Semitism, and the attitude of the Vichy regime towards the Jews. Nobody is discussing anymore about the fact that Vichy accepted the military defeat, nobody is discussing the question of the absence of legitimacy of the Vichy regime. The only problem on the political agenda is the involvement in the Final Solution.

On one hand, it's the consequence of an internal debate, but, on the other hand, it is probably the consequence of a growing interest about the Holocaust issues in a global perspective. This is particularly obvious since the USA have been strongly involved in these matters, in the early 1990's. Then, what I have called the « Vichy Syndrome » may be seen, in its late part, as the French version of an international debate, and no more as « *une exception française* ».

This context opened the way to a new public policy of retribution towards the Jewish victims. There was first a symbolic retribution when President Chirac recognized the responsibilities of the State – I mentioned it before. There was a financial retribution and compensation after the work done by a special historical committee, the Commission Mattéoli, who worked in the last three years. Last but not least, the major kind of retribution was the one delivered at the judicial level.

Since 1973, there have been seven indictments for crimes against humanity : 2 against former Nazis (Klaus Barbie and Aloïs Brunner, an officer from the Gestapo who headed the Drancy Camp in 1943), and 5 against French collaborators or members of the Vichy Regime. Among them, the most important were : René Bousquet, Maurice Papon and Paul Touvier. These 7 indictments led to 3 major trials : Klaus Barbie, in 1987, who was condemned to life in prison ; Paul Touvier, in 1994, a member of the French Milice and the first who was indicted in 1973, he was also condemned to life in prison ; and Maurice Papon, indicted in 1983, and judged in 1997-1998, who got ten years in prison.

These trials were at the same time similar and different. The Barbie trial examined the Nazi policy in occupied France. The Touvier trial put under the spotlights the barbarian behavior of some French radical fascists, especially in 1943-1944: Touvier was charged for the murder of 7 jewish hostages, in June 1944. The Papon trial was strictly dedicated to understand how the Vichy policy helped the Nazis in the achievement of the Holocaust in France.

Barbie was practically absent all the time in his six weeks trial, in Lyon. Paul Touvier was physically present but remained silent, in Versailles. Only Maurice Papon, during the longest trial in France's history, more than six months, defended himself vigorously. The consequence is that only one trial heard the contradictory voice, the one of the accused. This was emphasized by the fact that in the 3 trials there were no witnesses – except the accused – to speak from the point of view of the perpetrators : Barbie was the only Nazi heard in the court ; Papon was the only one to have worked into the Vichy administration, and not any single former member of the German administration in Bordeaux came at the bar during his trial. In this last case, this gave the impression that the French high civil servant was the lone responsible for the crimes committed, even if he was an accomplice, and even if the order for the deportation of the Jews was a German one, not a French one.

There were other controversial issues in the juridical debates that took place during these unusual long procedures. Before each trial, for example, the *Cour de Cassation*, the Supreme Criminal Court, changed the definition of the crimes against humanity, in order to be adapted to the specific circumstances of each case: let's say that this is quite unusual.

- In the Barbie trial, the *Cour de cassation* accepted that the circuit court examined some crimes committed against Resisters as crimes against humanity and not as war crimes. As a matter of fact, the resisters were fighters ; then, any irregular action against them might be considered as a war crime... which was benefiting at that time from the statute of limitations : this was the problem. By introducing this special element, the Court changed the meaning of the Barbie trial, which has not been only a « Holocaust trial ».

This special element was refused in the two others trials, Touvier and Papon, which applied the qualification of crimes against humanity only to those committed against the Jews. This strange situation – all of the three accused fought the Resistance as well as they participated to the Final Solution – led to a kind of rivalry, a competition between different categories of victims. The former Resisters were quite angry because the subtle distinction between the two categories of crimes put them aside. This is why I said above that this particular application of the statute of limitations emphasized – in a complete unwilling way – the concept of the uniqueness of the Holocaust, while only the crimes committed against the Jews could be judged in the recent procedures.

- In the Touvier case, there was another problem. The Paris Court of Appeal, in 1992, declared that Touvier had actually murdered the hostages – he always recognized it -, but this was not enough to define this crime as a crime against humanity: it was a war crime, and then Touvier can benefit the Statute of limitations. To avoid this obstacle, the *Supreme criminal court* made an important comment on this case: if a crime committed between 1940 and 1944 was done in order to help the Third Reich, the German Occupiers, and if the last had committed a crime against

humanity, then those who helped the Nazis might be suited for crimes against humanity as accomplices. This was the only way to re-qualify Touvier's crime: he couldn't be suited for treason, collaboration or even war crime while all these incriminations were absolved after 20 years.

This comment, which is actually a rewriting of history and a special narrative coming from a juridical perspective, had two majors consequences in the representation of the past:

1° - the Supreme Court declared that, before 1994, and to avoid a retroactive law (which is in principle forbidden), only a crime committed by the Third Reich and their accomplices could be defined as crimes against humanity. All other crimes, either during the German Occupation or after, until 1994, were other kind of crimes, all benefiting of a statute of limitations. This strange decision prevented definitely any will to put on trial any French officer for his behavior in the Algerian War. Despite a movement in favor of judging the role of the Army in 1957-1958, in Algeria, this decision put an end to any juridical reopening of these kinds of cases while it could have been quite difficult to pretend that these officers were "helping the Third Reich", which collapsed ten years before.

2° - the French accused in the procedures related to WWII, Paul Touvier and Maurice Papon, were then judged and condemned as « accomplices » for crimes against humanity, and not as the main perpetrators. This is a very important nuance. Actually, this is, to my point of view of a historian, closer to the historical reality. Vichy was not responsible for the « Final Solution ». It collaborated with the Nazis, the main criminals. Then, it is true to see some of his members as « accomplices », which has, by the way, no consequences on the penalties : to kill or to help to kill could lead to the same penalty in the French law.

This fits perfectly in the case of Papon, and that's why he got ten years in prison, and not the maximum : historians and magistrates could agree.

But it did not fit at all in the case of Touvier. Touvier's crime was undoubtedly an Anti-Semite crime. But, actually, all the historians who worked on the case know that no German authority ordered this crime : this barbarian action was done in retaliation of the murder by the French Resistance of one of the head of the French milice, Philippe Henriot. It was a « French crime », as pointed out Arno Klarsfeld, one of the lawyer, a crime which was the consequence of the civil war of 1943-1944, in France. However, to qualify it as a crime against humanity and then to open the possibility to judge him more than twenty years after the facts, the court had to lie and to allege that Touvier acted as an accomplice of the Germans. Otherwise, despite the fact that Touvier admitted his guilt, no court could judge him because of the statute of limitations. In this case, historians, at least myself, did not agree at all with the magistrates.

The paradox in these contradictory narratives is that the Touvier trial – like the others trials for Crimes against humanity - was expected to be a pedagogical one,

able to emphasize not the Collaboration of some French Fascists with the Germans (which is the interpretation of the court) but the “genuine” Anti-semitism which was one of the trademark of the Vichy regime (which is the interpretation of the historians, and, I must add, the historical reality – as you see, I’m not really a post-modern historian).

To end this quick comparison between the three trials, it must be said to what extent they played a crucial role in the hearing of the witnesses : 111 witnesses came at the bar in the Barbie trial - half were former resisters, half were Holocaust survivors ; in the Touvier trial, there were 51 witnesses, and in the Papon trial, about 120 people came to testify, half being Holocaust survivors, half being witnesses of « general interest », including ten professional historians. By comparison, the biggest trial of the crimes related to the Third Reich, the Nuremberg main trial, which lasted about eleven months, heard 94 witnesses. An until today, the Milosevic Trial has heard about 250 witnesses.

The presence of so much witnesses is probably the main characteristic of the French trials for crimes against humanity. They were organized, like the Jerusalem trial, less for judging and individual than to offer a nationwide pedagogic lesson, even a dubious one, and to give to the survivors the possibility to talk in an official and symbolic place. For the first time in France, some trials were recorded and broadcasted a few years after the verdict (Barbie, in 2001, Touvier, last year). In an unusual way, the presidents of the different courts let the people talk, sometimes during hours, and quite often about experiences very far from the specific case judged in the court. For the first time, a court based its verdict on a still elaborated historical expertise, given by professionals who came at the bar to explain what they have done in previous works : to see historians raising their right hand, and swear that they will say the truth, all the truth, only the truth was not the less bizarre image of these « show-trials ».

Conclusion

The debate over the pedagogic role of political trials is a very old one. In the history of the Holocaust legacy, it began in 1945, with Nuremberg. Hannah Arendt raised again the issue in 1961, and criticized the idea of holding a trial for a moral and political improvement. Regarding the experience of the French situation, I will conclude in a more ambivalent way.

The recent trials, sometimes unexpectedly, played different roles :

- they offered, even very late, a small and symbolic retribution to the victims, at least those who survived enough to be lucky to see the perpetrators in the dock ; the

justice gave them a recognition of their suffering, which has been denied for a long time, and a punishment for the criminals. However, these noble tasks needed some legal distortions, in a context where the accused symbolized alone all of an epoch. At least, they could not avoid completely part of the « irreducible risk » I was talking about earlier – which is a proof that they were quite democratic and fair processes.

- they offered an extraordinary vector of memory, in several senses :

- once a time, I asked to Serge Klarsfeld, the French Nazi hunter, if he was angry because of the length of the procedures against Bousquet, Touvier, and Papon – an average of 20 years ! – ; he replied, off the record, that the length itself has been an extraordinary chance for the collective action dedicated to the memory. Each episode, each dramatic turn in the procedures – and there were a lot – launched a new debate on the past, on the responsibilities of the Vichy regime, on the fact that it was not the time to forget and to turn the page. Moreover, what happened in the court itself, the testimony of the witnesses, which testified not only at the bar, but in the medias, in the news press, for writers and historians was probably the most important achievement of these trials. In addition, because one recorded the moving voices and the suffering faces, they will remain in the national and international patrimony.

- These trials tried to play a role in the knowledge of the past, which is actually inherent to any trial. Nevertheless, on the contrary to what happened in other similar cases, and despite their importance, the French trials related to the Vichy legacy did not produce, to my point of view, any real knowledge on the history of the period. The Nuremberg trial was like a first milestone in the historiography of the Third Reich and the history of WWII. It provided numerous documents and interpretations, and influenced historians for a long time. The same happened in the recent trials in Germany, since the 60's, when lawyers, magistrates, historians, sociologists used the same judicial sources to provide new analyses and interpretation of the Nazi period. In the French case, not a single book has been published using the sources of the recent trials, or providing any new perspective. On the contrary, the courts and the juries used knowledge still available, they gave a juridical confirmation of what we already knew on the Vichy regime.

- I shall end this lecture with a more general statement about the history of the Vichy Syndrome. The meaning of a trial is to open, and sometimes to re-open a case, and then, after the verdict, to close it. The trials were good vectors of memory before the final act, and more or less during the hearings. But after ? Is the Vichy Syndrome still a relevant notion to understand the way the French society is coping with its past ? I do not believe it anymore.

Firstly, I have tried to show here and in other works to what extent the last period of retributions – including the Papon trial – had nothing to do with a so-called

« *exception française* ». It was linked to the general situation of the legacy of the Holocaust.

Secondly, what will probably put an end to the general obsession in Europe about the Nazi past, will be... the sequels of September 11. Among the consequences of this tremendous event, one can observe the return of the war as a concrete experience and a possible future. Before the uncertainty (not to say more) of the US intervention in Iraq, the fear of a more general war was in the minds. It is astonishing to see how, in Europe, not to talk about the USA, the concrete experience of the war was actually out of the minds. The recent generations have been obsessed by the legacy of the Holocaust or the Fascism. At the same time, they have completely forgotten what a real war is. The « *service militaire* », the draft, has been abolished in France a few years ago without any reaction despite the fact it was a pillar of the Republican tradition, in a country which has experienced 3 invasions in a century. The defense of the motherland, or military actions abroad have been released to professional soldiers: this is one of the only field in which we accept without a discussion to delegate our duties to professional experts (and we hope that they are professional). The idea that a war is not killing only enemies, is not really accepted. Who knows today the famous word of Général Pétain, during the battle of Verdun, in 1917 : « *le feu tue* » ?

Therefore, while the war is coming back in our conception of the future, the debate on Vichy or on Fascism seems to me less relevant. The Vichy Syndrome as well as the Holocaust legacy as a whole has become in the recent years, a moral issue, sometimes completely disconnected from the concrete history of the period. However, debates and disputes on memory did not prevent other genocides in the last decade, especially in Rwanda or in Bosnia, and today in West Africa.

Sometimes, one must forget the past and pay attention to the present, in order to cope with the uncertainty of the future, and to accept the irreducible part of the newness of history.

