

University of New Mexico

UNM Digital Repository

Foreign Languages & Literatures ETDs

Electronic Theses and Dissertations

Summer 7-2021

Intolerable Histories and Imperfect Narratives: Nationhood, Identity, and the Integrity of Law in Post-Vichy France and Beyond

Kaela S. Holmen

University of New Mexico

Follow this and additional works at: https://digitalrepository.unm.edu/fl_etds



Part of the [Comparative Literature Commons](#), [Criminal Law Commons](#), [European History Commons](#), [French and Francophone Literature Commons](#), [German Language and Literature Commons](#), [International Humanitarian Law Commons](#), [International Law Commons](#), [Legal History Commons](#), and the [Political History Commons](#)

Recommended Citation

Holmen, Kaela S.. "Intolerable Histories and Imperfect Narratives: Nationhood, Identity, and the Integrity of Law in Post-Vichy France and Beyond." (2021). https://digitalrepository.unm.edu/fl_etds/152

This Thesis is brought to you for free and open access by the Electronic Theses and Dissertations at UNM Digital Repository. It has been accepted for inclusion in Foreign Languages & Literatures ETDs by an authorized administrator of UNM Digital Repository. For more information, please contact disc@unm.edu.

Kaela S. Holmen

Candidate

Foreign Languages and Literatures

Department

This thesis is approved, and it is acceptable in quality and form for publication:

Approved by the Thesis Committee:

Dr. Stephen Bishop, Chairperson

Dr. Pamela Cheek

Dr. Rajeshwari Vallury

**Intolerable Histories and Imperfect Narratives:
Nationhood, Identity, and the Integrity of Law in Post-Vichy France and Beyond**

By

KAELA SKYE HOLMEN

**BACHELOR OF ARTS, FRENCH, 2015
JURIS DOCTOR, 2018**

THESIS

Submitted in Partial Fulfillment of the
Requirements for the Degree of

**Master of Arts
French**

The University of New Mexico
Albuquerque, New Mexico

July 2021

ACKNOWLEDGMENTS

I wish to express my sincere gratitude to my thesis committee chair, Dr. Stephen Bishop, who not only encouraged me to pursue my passion for French outside of my legal career. In him I find an advisor, role model, and kindred spirit. Along with Dr. Bishop, my other committee members, Dr. Rajeshwari Vallury and Dr. Pamela Cheek, have been remarkably supportive and flexible, even as I was called out to Fort Benning for the last several weeks of work and research.

Firstly, I want to thank my husband, Luke. Thank you for helping to achieve my goals and for your absolutely relentless praise and reassurance. I would never have seriously considered pursuing this program were it not for your desire to see me happy and fulfilled. I love you.

Thank you to Kari Thomas, Howard Thomas, and Sue Bowers for their relentless support and kind but firm encouragement. Few things I have done in my life without them and the examples they set as my guiding lights.

I'd also like to thank my colleagues for their open love, acceptance, and encouragement. Ryan Gomez, I couldn't have done it without you. Every day, I want to live up to the person you have always believed me to be.

Lastly, I'd like to thank First Lieutenants Joe Neely, Patrick Grove, Zack Hill, and Shannon Kennedy for being my sounding boards in the barracks. I will never cease to be amazed by your depth of knowledge, intelligence, and generous willingness to listen and advise. Thank you, thank you, thank you—with you, I went into my defense comfortably.

**Intolerable Histories and Imperfect Narratives:
Nationhood, Identity, and the Integrity of Law in Post-Vichy France and Beyond**

Kaela Skye Holmen

**Bachelor of Arts, French
Juris Doctor
Master of Arts, French**

ABSTRACT

The principal aim of this thesis project is to examine the socio-legal context of the Vichy regime in World War II France, and to provide an understanding of how that context informed, and continues to inform, the integrity of French nationhood. With Ernest Renan's *oubli* serving as a framework for the solidification of nationhood, I will demonstrate that the betrayals to French law and custom that were committed in an attempt to right the wrongs of the Vichy resulted in an imperfect forgetting, and ultimately, a more fragmented national sense of self. I contend that this imperfect *oubli* resulting from attempting to erase the widespread, institutional collaboration with the German occupiers demonstrates not an antithesis to *oubli* and its purposes and value, but rather that any perfidy to a nation's most closely-held values, even with noble ends, will only serve to the dissolution of what truly makes a nation. That constant is required in order to forget those unforgettable events of the past. Without one, alternate, inconsistent versions of a nation—a Vichy versus *République*, a pre-9/11 United States and a post-9/11 United States—vie for domination and ultimately, there can be no one nation.

TABLE OF CONTENTS

CHAPTER I—The Role of Memory in National Identity	1
CHAPTER II—Building the Pendulum’s Arc.....	13
CHAPTER III—The Arc’s First Departure: <i>La Vraie France</i>	24
CHAPTER IV— <i>L’Épuration</i> and Due Process.....	39
CHAPTER V—The Price of the Altered Narrative	44
CHAPTER VI—On the Other Side of the Arc: Amnesty and <i>Oubli</i>	47
CHAPTER VII—The American Adaptation.....	55
CONCLUSION	64

« Mon grand-père me racontait toutes ces histoires [...] mais il ne parlait jamais de son frère et de sa belle-sœur, et des quatre filles, qui, pour moi, ne semblaient pas tant morts qu'égarés, disparus non seulement du monde – mais de façon plus terrible pour moi –, des histoires mêmes de mon grand-père. »¹

CHAPTER I The Role of Memory in National Identity

The phrase “Vichy syndrome” is a commonly-cited axiom present in a large bulk of academic analysis of the post-World War II period in France. Originating in the work of World War II historian Henry Rousso’s foundational book, *The Vichy Syndrome*, the term became associated with what Rousso described as *un passé qui ne passe pas*—a past, or a history, that does not pass. “Vichy syndrome” refers the post-Vichy French government’s campaign to present a palatable, clean, and rather misrepresentative version of France’s own role in the Vichy government and the German Occupation, as well as the overwhelming willingness and eagerness on the part of French citizens to accept this altered version of events that largely exonerated the French nation. This phenomenon occurred on the level of individual French men and women who appear to have, in the space of less than two generations, forgotten—or de-emphasized to the point of effectively forgetting—the true events of the few short years in which the Vichy government operated as an ally of the occupying German forces. The vast body of academic analyses vary from personal accounts of victims and collaborators, historical accounts of certain high-profile collaborators who escaped prosecution scot-free for the majority of their postwar

¹ Biégelmann, Fabienne. « Daniel Mendelsohn, *Les Disparus*. Traduit de l'anglais (États-Unis) par Pierre Guglielmina. Avec le concours du Centre National du livre. Photographies de Matt Mendelsohn. Paris, Flammarion, 2007 », *Che vuoi*, vol. 29, no. 1, 2008, pp. 179-187.

lives, to period fiction, to psychoanalytic surveys of the causes and effects of this Vichy syndrome.²

The so-called Vichy syndrome is, especially in contemporary times, a subject of only pure condemnation. I do not argue in contradiction of this condemnation; the ways in which forgetting the events of the Vichy regime and French collaboration almost immediately following the Liberation of Paris are evasive at best, and at worst, an erasure of real historical truths that continue to have tangible effects on French society through present. The issue at bar, though, is not whether or not the Vichy syndrome exists, or what effects it had and continues to have. Rather, the immediate postwar years—from 1944 through 1953—present such a dramatic political shift in such a short period of time that merits a survey of the mechanisms and the context of such a reversal. In 1944, at the fall of the Vichy regime, the rejection of the Vichy government became extremely popular, extremely quickly, regardless of the fact that, while it was in effect, it was widely recognized as the rightful government by the majority of French citizens. The anti-Vichy, anti-Germany, and anti-collaborator fervor was a fierce, raging blaze that overtook the nation and resulted in an overhaul of existing legal procedures and protections in the name of righting the wrongs of the recently-depopularized Vichy government. Then, not even a single generation later in 1953, the “re-established” and “true” French government that had replaced the Vichy regime voted by a popular margin to grant widespread amnesty to all

² See, e.g., Gordon, Bertram M. “The ‘Vichy Syndrome’ Problem in History.” *French Historical Studies*, vol. 19, no. 2, 1995, pp. 495–518. *JSTOR*, www.jstor.org/stable/286785; see also Bonneui, Christophe, and Frederic Thomas. “Purifying Landscapes: The Vichy Regime and The Genetic Modernization of France.” *Historical Studies in the Natural Sciences*, vol. 40, no. 4, 2010, pp. 532–568. *JSTOR*, www.jstor.org/stable/10.1525/hsns.2010.40.4.532.]

French citizens who had previously been convicted of collaboration and anti-national activities during the occupation.

The fact that a widespread forgetting occurred after the Liberation is, likewise, difficult to dispute. However, the circumstances that led to such a “forgetting”—and the lessons to be learned from those circumstances—may remain an underdeveloped or poorly understood aspect of the rapid development and shift of postwar attitudes in a span of less than a decade. What does it mean for France, as a collective (or, at the very least, a majority of French citizens), to have decided upon this alternate version of events? In its postwar reconstruction and formation, why would France deny, or at least heavily edit, its own complicity in the German occupation? What were the desired outcomes of such a denial, and what can be gleaned from this errant reversal of historical fact? In the end, was at least some notion of French identity preserved through the trials and tribulations of the occupation and the Vichy government?

To frame these overarching questions, one needs to establish a lens through which to understand what constitutes memory and history. Although this may seem an arbitrary distinction at first blush, it is central to one’s understanding of the series of events that led to the postwar, then contemporary, conceptions of what occurred in France in the immediate postwar period. In an 1882 conference at the Sorbonne in Paris, Ernest Renan, a French historian and philosopher, proposed a novel conception of nationhood in his address entitled “*Qu’est-ce qu’une nation?*”³ While Renan did not have the benefit of contemporary hindsight to understand the course of world changing events during the 20th century, his analysis provides a useful, unique lens through which to consider those events. In *Qu’est-ce Qu’Une Nation*, Renan posits

³ Renan, Ernest. “Qu’est-ce qu’une nation? .” 11 Mar. 1882, Paris, Université Paris-Sorbonne, www.iheal.univ-paris3.fr/sites/www.iheal.univ-paris3.fr/files/Renan_-_Qu_est-ce_qu_une_Nation.pdf.

that, as difficult as it is to define a nation, it cannot be defined merely through a shared ethnicity, geography, or indeed any of what one may have ordinarily considered the unifying factor that constitutes nationhood. According to Renan, any nation's existence is contingent on the act of forgetting. Renan wrote : « *L'oubli, et je dirai même l'erreur historique, sont un facteur essentiel de la création d'une nation.* »

Renan acknowledges that no nation, past, present, or future, is immune from certain shared, collective memories that would destabilize a sense of national unity, were it not for a nation's collective agreement to forget those memories. It is not so much the ridding of any negative events, though—Renan also acknowledges the importance of collectively negative experience in its unifying power. He wrote, « *Nous avons vu, de nos jours, l'Italie unifiée par ses défaites, et la Turquie démolie par ses victoires.* » How, then, can a nation successfully navigate such wholly negative experience, like Italy in Renan's example, while still employing the forgetting when it is called for? Is there ever a time that forgetting can truly be used as a tool for the solidification of a national identity, without necessarily denying or disregarding any of that nation's tumultuous past? And, with the knowledge and experience now available to us in the twenty-first century, can we identify any value to at least some version of Renan's appeal to forget?

In his book, *Communities of Memory: On Witness, Identity, and Justice*, William James Booth draws a comparison between the identity of an individual and the collective identity of a nation. For Booth, memory is essential to one's individual identity. He writes that an individual's essence, or "course of life" becomes lost and immaterial to the point of no longer existing. Booth extends this description to communities as well as individuals. For groups of individuals, collective memory operates in much of the same way as it does on an individual basis. According to Booth, if there is a lack of collective memory, the essence of a community can

likewise become lost. For him, collective memory is not merely limited to the obvious physical manifestations thereof, encompassed in museums, days of commemoration, archives, and the like.⁴ Instead, he identifies an additional facet of collective memory, as “the presence of that past in all of the small currency of our life-in-common, but the presence of that past of all the small currency of a community’s existence, its way of life, values...”.⁵ Those values may be present in a number of different intangible ideas and even in tacit cultural expectations. For France, those intangibles might be identified, for example, in the creation story of a nation—in France’s case, shared stories, no matter how apocryphal, are central to the sense of national identity. One might immediately think of the *Chanson de Roland* as an example of that shared French heritage and “memory.” I use the term “memory” loosely here, because certainly there is no memory of the actual events described in the *Chanson*; instead, the memory is encompassed both the forgetting of the actual events that may have occurred reflected in the epic (particularly insofar as those events are reflective of actual internal strife), along with the nebulous acknowledgement that there *is* an origin story for the nation of France, and it is one that is tacitly agreed upon as a collective piece of national memory.

The obvious manifestations of the memory of the Second World War are numerous to the point of being almost ubiquitous. In Paris, for example, the *Velodrome d’Hiver* (or “*Vel d’Hiv*”) is thoroughly and powerfully representative of the horrors faced by French Jews while they were rounded up for deportation to concentration camps. Today and since the 1990s, the *Vel d’Hiv* has become a memorial site, decorated with flowers, a Star of David statue, and a plaque with a description of the events of the *Vel d’Hiv* on July 16 and 17, 1942, stating that the victims “*furent*

⁴ Booth, 39.

⁵ Id.

parques dans des conditions inhumaines par la police du gouvernement de Vichy, sur ordre des occupants Nazis.” While it is notable that this plaque appears to at least somewhat acknowledge Vichy’s voluntary role in collaboration with the occupiers, there remains nonetheless a suggestion of incorruptibility regarding the “true” France, that which is not, and never was, Vichy. Even “under the orders” of Nazis, there is some subtle attempt here at exoneration of France. Of course, under the order of the Nazis, what power did the French possess to even attempt to resist?

How, then, can one understand the ways in which this history is preserved through memory? How important are these manifestations with regard to a nation’s ability to understand itself and its own history? Certainly, the imprecise nature of shared pieces of cultural memory, like the *Chanson de Roland*, easily lends itself to generational amendments; it would be difficult to argue that this epic reflects a wholly accurate account of historical events, but nonetheless, it fulfills the requirement of a successful *oubli* insofar as it allows for a collective accord for a nation to agree on its own nationhood. In the end, however, the crux of what is meant by national identity, as proposed by Booth, is the distinction between the “self,” whether that be the individual self or the national self, and others.

The ‘mineness,’ a sort of boundary line marking me and my ledger apart from those of others, is made possible by a self which is continuous through time, and it is at the center of moral personhood, of moral character and its requisite stability, that is, of accountability, imputation, and commitment.⁶

This aspect of identity underlined by Booth is central to this consideration of what constitutes nationhood. Although not specifically stated in Renan’s speech, the subtext of his *oubli* is the acceptance of certain national ideas or half-truths in order to facilitate the rejection of the less

⁶ Booth, William James. *Communities of Memory : On Witness, Identity, and Justice*. Cornell University Press, 2006. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1837492&site=eds-live&scope=site.

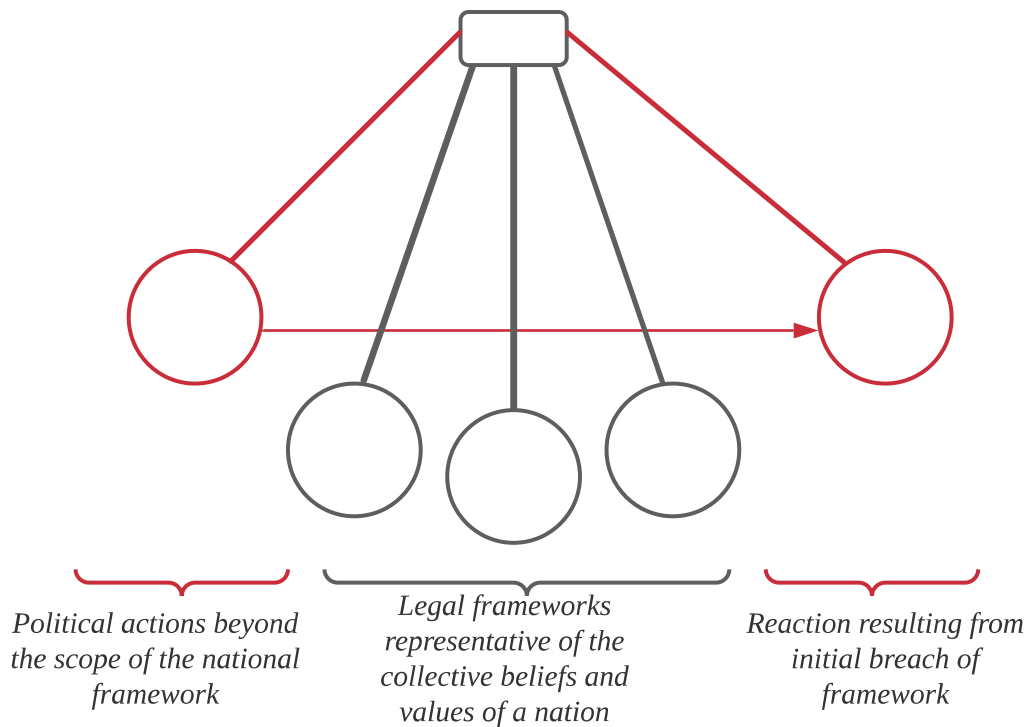
pleasant and more divisive periods of a nation's history. While those intangible pieces of memory, like the *Chanson de Roland*, are vulnerable to varying interpretations that any piece of literature is, and the erosion of the centuries that have passed since it was first recorded, there exist other such intangible pieces of nationhood that may be identified and employed more explicitly as a source of what Booth dubs the "mine-ness" that sets a nation apart from others. A demonstrative example of such an intangible piece is a nation's body of law or constitution. While the citizens of a nation might not necessarily have the ability to recite verbatim the content of their nation's constitution or legal precedent, I posit that every citizen of a given nation has at least some understanding, familiarity—and pride—in that legal, ethical, and moral framework set out by a constitution or by shared laws. This in itself constitutes a shared memory. The notion of "eternal lawfulness" is central to national identity, as law is often understood as existing from either eternal principles or principles from some only partially accurate past (even if neither is true).

For France, the legal framework set out at the time of its first revolution is recorded in its first constitution. Although additional political tumult would occur during the 19th century, much of the constitution's contents remained untouched, especially those that exist as a shared notion, such as the guarantee to due process, and the prohibition against arbitrary or indefinite periods of detention. Even through the reign of Napoleon, the brief returns to monarchy, and the return to the status of the *République* left that framework more or less intact. However, during the postwar period, particularly in the period following the collapse of the Vichy regime, the "political pendulum" of France was pulled so far away from the confines of that cultural framework, and thus swung so hard in the opposite direction in the 1953 amnesty, that, although much of the

actions taken during that period were in the interest of attempting to preserve and promote French unity, the opposite resulted.

While the notion of a “political pendulum” has long been used in the context of American politics (especially American presidential elections), this representation is equally applicable to the notion of national memory and the integrity of a nation’s identity. In continuing with the metaphor of the pendulum, swings from one direction to the other are normal and to be anticipated. There is a predictable arc outlined by the path of the pendulum, and that arc is representative of the legal and cultural frameworks upon which a nation has agreed, either explicitly or tacitly. Within that arc, such frameworks remain intact and respected; although public opinions may ebb and flow in one direction or another, the framework remains in place. However, if the pendulum is pulled too far in one direction, such that it “escapes” the predictable arc within the existing social framework, the result will inevitably be another violation of that framework on the opposite end of that extreme swing.

Included in the space in which the pendulum is red in the diagram is not only the violation of legal and social frameworks alone (e.g., the violations of laws or rights), but also the violation of a nation’s collective memory, insofar as it is represented by those legal and social frameworks. Within the red areas in the diagram is the space in which the *negative* forgetting occurs (that is to say, Renan’s *oubli* taken to the extreme). Here, one will find not only the denial of certain events or periods of unsavory history, but also the insistence upon an alternative, inaccurate series of event that, instead of reinforcing the sense of national identity included in the grey arc of the pendulum, results ultimately in a destabilization of the predictable arc’s framework and therefore to a nation’s identity. For a proper *oubli* to occur, it must occur within the bounds of the legal frameworks representative of the collective beliefs and values of a nation.



7

In France, following the Second World War, the circumstances were ideal for the institution of an *oubli*; the pain, division, and horrors of the late 1930s and early to mid-1940s left an indelible scar on the fabric of French society, and as such, the French were beyond eager to begin that process of forgetting. Instead of remaining within the predictable, grey arc of the metaphorical pendulum, however, an immediate “overswing” occurred; first, in the rampant, highly disorganized and very brutal period of *épuration*, or purification, of any and all suspected collaborators. This was the initial swing that resulted in the opposite backswing. In 1953, the process of granting amnesty to many of those collaborators who had been subject to the chaos of

⁷ Figure 1: the political pendulum demonstrating the inevitable swing back once the pendulum is pulled too far in any direction, violating the cultural framework constituting national identity.

the *épuration* begun in 1944 begun, which represents the opposite end of the inevitable swing back of the political pendulum. Instead of remaining within the confines of the cultural framework set out by social and legal agreements, the French nation and its government(s)⁸ attempted to undergo an immediate, severe, and ultimately unsuccessful *oubli* of this extremely difficult period of its history.

In the hallmark article, “Between Memory and History: *Les Lieux de Mémoire*,” authors Nora and Roudebush discuss how memory is preserved in physical locations, and how those representations function as reminders, or as signposts, to understand memory. According to this analysis, there is an important line to be drawn between history and memory. On the one hand, history is a more rigid, collective, and intellectual presence; on the other hand, memory is constantly in flux:

Memory is life, borne by living societies founded in its name. It remains in permanent evolution, open to the dialectic of remembering and forgetting, unconscious of its successive deformations, vulnerable to manipulation and appropriation, susceptible to being long dormant and periodically revived. History, on the other hand, is the reconstruction, always problematic and incomplete, of what is no longer. Memory is a perpetually actual phenomenon, a bond tying us to the eternal present; history is a representation of the past. Memory, insofar as it is affective and magical, only accommodates those facts that suit it; it nourishes recollections that may be out of focus or telescopic, global or detached, particular or symbolic-responsive to each avenue of conveyance or phenomenal screen, to every censorship or projection. History, because it is an intellectual and secular production, calls for analysis and criticism. Memory installs remembrance within the sacred; history, always prosaic, releases it again.⁹

⁸ I use parentheses here because, as discussed in more detail in the following chapters, the issue of whether or not there was any continuity of the French government from before, during, and after the Vichy period is still highly disputed and plays an important role in understanding the alternate narratives presented by Charles De Gaulle and others and widely accepted following the Liberation.

⁹ Nora, Pierre, and Marc Roudebush. “Between Memory and History: *Les Lieux De Mémoire*.” *Representations, Special Issue: Memory and Counter-Memory*, no. 26, 1989, pp. 7–24. *JSTOR*, <https://www.jstor.org/stable/2928520>. (8-9)

This distinction is an essential component of understanding the question at bar. In *Qu'est-ce qu'une nation*, was Renan speaking only of memory—that is to say, recollections that ebb and flow and connect events and communities of the past to those of the present—or was he speaking of history? Or was Renan advocating for the forgetting of only that “problematic reconstruction” of the past? Again, without the advantage of the knowledge of this distinction when he spoke, it is more likely that Renan would not have been advocating for the absolute eradication of history as it is defined in *Lieux de Mémoire*. In his speech, in fact, he presents several examples of events that *have* successfully undergone the process of his *oubli*:

*Or l'essence d'une nation est que tous les individus aient beaucoup de choses en commun, et aussi que tous aient oublié bien des choses. Aucun citoyen français ne sait s'il est burgonde, alain, taïfale, visigoth; tout citoyen français doit avoir oublié la Saint-Barthélemy, les massacres du Midi au XIIIe siècle. Il n'y a pas en France dix familles qui puissent fournir la preuve d'une origine franque, et encore une telle preuve serait-elle essentiellement défectueuse, par suite de mille croisements inconnus qui peuvent déranger tous les systèmes des généalogistes.*¹⁰

Surely, if those events can still be recollected even after having been forgotten per Renan, then what Renan must have meant was the eradication of certain divisive *memories*, rather than histories. That is to say, the acknowledgment and understanding of past wrongs and hardships is permitted under Renan's doctrine. The implication behind this apparent contradiction is that *oubli* is something discreetly different than what is commonly understood as forgetting. An *oubli* is forgetting in the sense only that whatever event has gone through the process of *oubli* does not continue to exert a negative force on a populous. It may be remembered as a historical event, but it has been cataloged and packed away such that, while its significance may persist, its power to fracture cohesive national identity has been blunted.

¹⁰ Renan, Ernest. “Qu'est-ce qu'une nation? .” 11 Mar. 1882, Paris, Université Paris-Sorbonne, www.iheal.univ-paris3.fr/sites/www.iheal.univ-paris3.fr/files/Renan_-_Qu_est-ce_qu_une_Nation.pdf.

Even immediately following the Liberation, the narrative surrounding the Vichy period was already “highly partisan, containing either romanticized descriptions of the resistance or (less frequently) apologias for the leaders of the Vichy regime.”¹¹ This rendering of events, which was championed by Charles de Gaulle as the representative of the return of the “rightful,” “legal” French government, became highly popular almost instantaneously. While the Resistance ultimately made up only a very small portion of French citizens, France embraced the notion that the “real” France had been resisting the German occupation all along, and that the Vichy government, as well as all its associates and supporters, had consistently represented the “enemy” against the will of the “true,” patriotic French citizens.¹²

Not long after, the haphazard, inconsistent, and largely illegal series of events that led to a muddying of the true history of what had transpired to bring about the Vichy regime also led to another chaotic series of events that culminated in the French government, now “restored,” granted amnesty to all French citizens who had been prosecuted for collaboration with the enemy.

It goes without saying that one cannot undo past events. However, neither can one limit the value in examining those past events, especially as similar events continue to play out around the world. Perhaps there is a place for both the *oubli* described by Renan and the individual consistency and accountability identified by Booth when a nation is confronted with turmoil and pain. Perhaps, when the proceedings resulting from such uncertainty and mayhem are conducted

¹¹ Pendas, Devin O. “Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany, 1945–1950.” *Central European History*, vol. 43, Sept. 2010, pp. 428–463. *JSTOR*, <http://www.jstor.com/stable/27856215>.

¹² Sweets, John F. “Hold That Pendulum! Redefining Fascism, Collaborationism and Resistance in France.” *French Historical Studies*, vol. 15, no. 4, Oct. 1988, pp. 731–758. EBSCOhost, doi:10.2307/286556

in a way that remains within the predictable arc of a nation's political pendulum, then such accountability and such forgetting can be accomplished simultaneously. Therefore, if a country is respectful of its own social and cultural parameters, and appropriate action is taken, then a nation may proceed to the point at which that unrest can be, if not fully forgotten, set aside and used instead to reinforce the importance of those social and cultural parameters and the reasons they were put in place to begin with.

CHAPTER II **Building the Pendulum's Arc**

In order to understand a detailed account for some of the most outstanding examples of the French pendulum following the conclusion of the Vichy regime, particular aspects of France's cultural and social framework must be examined. For the purposes of this examination, a focus on the shared aspect of the prohibition against ex-post facto law is illustrative of these deeply-held socio-political values. Since the 18th century in France as well as in the United States, it was codified that no person could be tried for an act or omission for which there was no prohibition at the time of the commission of the act or omission.

Restrictions upon the application of ex-post facto law, or laws passed after the purportedly criminal act or acts were committed, have a long legacy in the context of European law.¹³ The set of legal and moral principles called *nulla crimen, nulle poena sine lege*¹⁴ includes the prohibition against ex post facto lawmaking and was well-established in Europe by the end of the

¹³ Pendas.

¹⁴ From Latin, "no crime, no punishment without law."

18th century.^{15,16} In France, the prohibition against the ex-post facto application of laws was codified in law during the first French Revolution in Article 8 of the *Déclaration des Droits de L'Homme et du Citoyen*:

*La Loi ne doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une Loi établie et promulguée antérieurement au délit, et légalement appliquée.*¹⁷

The prohibition against the application of ex-post facto law remained in force in French law through the promulgation of Napoleon's 1810 *Code Pénal* (originally published under the title, “*Code des Délits et des Peines*”), which, similar to the 1791 *Déclaration*, states:

*Nulle contravention, nul délit, nul crime, ne peuvent être punis de peines qui n'étaient pas prononcées par la loi avant qu'ils fussent commis.*¹⁸

The 1810 Penal Code underwent only two significant revisions before World War II, once in 1832 and another in 1863; however, in both revisions, the language concerning the concept of *nulla crimen, nulle poena sine lege* remained unchanged, even under the Vichy government, which is inarguably one of the most dictatorial governments France has known.¹⁹ Immediately

¹⁵ Glaser, Stefan. “Nullum Crimen Sine Lege.” *Journal of Comparative Legislation and International Law*, vol. 24, no. 1, 1942, pp. 29–37. *JSTOR*, www.jstor.org/stable/754902.

¹⁶ As discussed in the article, “Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany, 1945–1950,” *nullum crimen, nulla poena sine lege* includes three elements: (1) there can be no retroactive law or punishment; (2) there can be no customary law or analogous jurisprudence; and (3) the law must be precise in its stipulations of the elements of a crime and the association punishment. *See* Pendas, 432.

¹⁷ *Déclaration Des Droits De L'homme Et Du Citoyen Du 26 Août 1789*, Ministère De L'Education Nationale, De La Jeunesse Et Des Sports . www.education.gouv.fr/declaration-des-droits-de-l-homme-et-du-citoyen-du-26-aout-1789-10544.

¹⁸ *Code Pénal De 1810, Code Des Délits Et Des Peines*, Première Partie, Article 4, ledroitcriminel.fr/ledroitcriminel.fr/la_legislation_criminelle/anciens_textes/code_penal_1810/code_penal_1810_1.htm.

¹⁹ Ancel, Marc, and Jacques Verin. “France.” *The American Journal of Comparative Law*, vol. 21, no. 2, 1973, pp. 263–268. *JSTOR*, www.jstor.org/stable/839123.

following the conclusion of World War II, the Civil Code, the Code of Procedure, and the Code of Commerce were all revised in part as a response to the great public desire to reform the French legal system; however, the Penal Code was not again revised until 1958.²⁰ Nevertheless, all versions of the *Code Pénal* have included a provision prohibiting the application of ex-post facto laws.

The current such French law in force is found under Article 112-1 of the *Loi Pénale*, First Chapter, under “*Des principes généraux*,” and is written as follows:

Sont seuls punissables les faits constitutifs d'une infraction à la date à laquelle ils ont été commis. Peuvent seules être prononcées les peines légalement applicables à la même date.^{21,22}

Based upon its nearly two-hundred and fifty years of history in French legislation, and despite the political and social tumult that occurred in France from its first promulgation in 1789, the prohibition against the retroactive application of laws is of central importance to the French conception of justice and civil rights. The issue of *nulla crimen, nulle poena sine lege* is of utmost importance in both criminal and civil proceedings, not only in France, but in the long list of other countries with robust protections against retroactive application of law. Its significance is not limited to what may appear at first to be a logical treatment of chronology. It is not only representative of the inherent logic in a series of events but, more importantly, recognizes and reinforces the belief that no human being ought to become subject to laws that may be promulgated to target acts already committed. It is a testament to the importance of fairness in

²⁰ Ancel, 264.

²¹ Loi n° 92-683 du 01 mars 1994.

²² “The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense.”

the French criminal justice system, and a reassurance that any nation that includes such a prohibition in its laws will adhere to its own rules of law and prosecute only in a manner consistent with its own statutes and precedent.

Perhaps most importantly, this law, in its various iterations throughout the centuries of French statutory modifications, demonstrates an understanding that “the criminal law cannot originate from custom, that custom is never able to create new forms of an offence, and consequently, it cannot justify a punishment.”²³ Central to the notion of *nullem crimen sine lege* is not only the idea that it is inherently unfair to prosecute acts that were not illegal at the times of their commission, but also that such laws enabling governmental bodies to do so are worse than no laws at all.²⁴ In his 1942 article, Stefan Glaser went so far as to say that the prohibition against the retroactive application of the law is “unquestionably one of the most important safeguards against the worst of all oppressions—the oppressions which hides itself under the mask of justice.”²⁵

Similarly, Article 6 of the *Déclaration des Droits de L’Homme et du Citoyen* establishes explicit protections for French citizens against not only inconsistent application of French laws, but protects French citizens’ right to hold all high offices, public positions, and employments. In relevant part, Article 6 states:

*La loi ... doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les citoyens étant égaux à ses yeux sont également admissibles à toutes dignités, places et emplois publics, selon leur capacité, et sans autre distinction que celle de leurs vertus et de leurs talents.*²⁶

²³ Glaser, 33.

²⁴ Novick, Peter. “Nullen Crimen Sine Lege.” *The Resistance Versus Vichy : The Purge of Collaborators in Liberated France*, Columbia University Press, 1968, pp. 140–156.

²⁵ Glaser, 37.

²⁶ Article 6, *Déclaration des Droits de l’Homme et du Citoyen*, 1789.

As such, *nulla crimen, nulle poena sine lege* is firmly within the realm of what constitutes Booth's "memory," or the continuing sense of collective identity; not only has this concept been endorsed by the French government and population for centuries, but is based upon even a longer legacy, perhaps more distant, and perhaps in the employment of some *oubli*; the term is often credited as having originated in during the Roman Empire.²⁷ Having existed even longer than the French state, it would not be an unreasonable leap to say that this legal notion makes up a significant portion of France's cultural legal framework.

In the aftermath of the Second World War, the application of *nulla crimen, nulle poena sine lege* was truncated in the extreme with the creation of a new crime with which the French government punished low-level Vichy collaborators, called *épuration légale*. How could this period circumvent such culturally significant and apparently immutable aspects of French ethos? What can we garner from the context of the postwar French desire for justice that it became acceptable to create and apply a statute which stripped suspected collaborators of their civil rights? While it is true that international laws and courts that came after the Second World War, including the *Cour Européenne des Droits de L'Homme (CEDH)*, or the European Court of Human Rights, expanded the standard ex-post facto laws as they appeared throughout the history

²⁷ Glaser.

of French legislation,²⁸ such agreements were not in force when the *épuration* laws came into force.²⁹

Following the fall of the Vichy regime and the end of the Second World War, the desire for a “rewrite,” so to speak—or a re-negotiation of France’s own role in cooperating with the German occupation—was a tantamount force in not only assuring the French of their own moral dignity, but also in demonstrating a new, revised version of events to the rest of the world, or more specifically, to the Allied countries which had prevailed. Following the events of the Second World War, it was quickly understood by both those in and outside of the government that the moral and legal dignity of France could be reestablished without the outward-facing public demonstration of French outrage against collaborators.³⁰

The *Comité Français de Libération Nationale* (CFLN) aided in establishing the Commission d’*épuration*, or “Purification Commission.” This body was created by ordinance on August 18, 1943, and under the leadership of François de Menthon, assumed the following mission statement:

²⁸ « L’article 7 de la CEDH et l’art du pacte international relatif aux droits civils et politiques, disposent que le principe de non-rétroactivité « ne portera pas atteinte au jugement et à la punition d’une personne coupable d’une action ou une omission qui, au moment où elle a été commise, était criminelle d’après les principes généraux du droit reconnus par les nations civilisées. » Cours de droit. “Le Principe de Non-Rétroactivité De La Loi Pénale plus Sévère.” *Cours De Droit*, 29 Mar. 2019, cours-de-droit.net/le-principe-de-non-retroactivite-de-la-loi-penale-plus-severe-a121607254/#:~:text=Article%20112%2D1.,applicables%20C3%A0%20la%20m%C3%A0me%20date%20BB.

²⁹ The CEDH was created in 1959.

³⁰ Veraart, W. (2016), Two Rounds of Postwar Restitution and Dignity Restoration in the Netherlands and France. *Law and Social Inquiry*, 41: 956-972. <https://doi.org/10.1111/lsi.12212>

*[T]raduire en justice, dès que les circonstances le permettront, le maréchal Pétain et ses ministres, ceux qui avaient capitulé ou porté atteinte à la Constitution, ceux qui ont collaboré avec l'ennemi.*³¹

It is of note here that, in this mission statement, there is a specific reference to violations of the Constitution, although, as previously noted, the legal basis for such an alleged constitutional violation is not a one-way street for collaborators to be prosecuted. The legitimacy of the Vichy regime came into question only following the Liberation. Beginning in 1944, just days before the officially-denoted date of the Liberation of Paris, the provisional government of the French Republic passed *Ordonnance du 9 août 1944 relative au rétablissement de la légalité républicaine sur le territoire continental*. This Ordonnance's primary function was to describe and solidify in the body of French law the illegality and illegitimacy of the Vichy regime, and invalidating the *loi constitutionnelle du 10 juillet 1940*, which marked the establishment of the Vichy government. Article I of the Ordonnance states, "*la forme du Gouvernement de la France est et demeure la République. En droit celle-ci n'a pas cessé d'exister.*"³² Although the Ordonnance specifically denies the legitimacy of the Vichy regime, the provisional government appears to acknowledge the continued, uninterrupted existence at least some version of the French nation (Vichy excluded). Again, this oblique reference to the idea of a *vraie France*, which, according to this largely inaccurate narrative, existed only as an Ally and consistently resisted any association or collaboration with Nazi Germany. Consistent with this instantaneous rewrite of France's wartime history, Article II of the Ordonnance fails to even specifically

³¹ "La Seconde Guerre Mondiale Dans Le Cher Archives Des Juridictions Spéciales (1941-1948)." Edited by Didier Arnold, *Cher - Département 18*, 2013, www.archives18.fr/.

³² Ordonnance du 9 août 1944 relative au rétablissement de la légalité républicaine sur le territoire continental—Version consolidée au 10 août 1944. <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006071212/> .

reference the so-called Vichy regime; instead, only the dates delineating the existence of Vichy are mentioned:

*Sont, en conséquence, nuls et de nul effet tous les actes constitutionnels législatifs ou réglementaires, ainsi que les arrêtés pris pour leur exécution, sous quelque dénomination que ce soit, promulgués sur le territoire continental **postérieurement au 16 juin 1940 et jusqu'au rétablissement du Gouvernement provisoire de la république française.***³³

The omission of the name of the French government is not coincidental. The provisional government that came into power following the Liberation of Paris proudly proclaims that it is itself a continuation of whatever version of France existed before the occupation and before the war. This narrative is further complicated by the fact that the French parliament of the Third Republic voted to reallocate and centralize power under Pétain and effectively dissolved itself. The authors of this Ordonnance chose to refer to the provisional government as a *rétablissement* in order to reinforce this idea of continuity, as if to say, whatever happened between these two dates is null and void, but pre-1940 France has returned. Article III continues with the following proclamations:

*Cette nullité doit être expressément constatée.
Est expressément constatée la nullité des actes suivants ;
L'acte dit loi constitutionnelle du 10 juillet 1940 ;
Tous les actes dits : "actes constitutionnel",
Tous les actes qui ont institué des juridictions d'exception,
Tous les actes qui ont imposé le travail forcé pour le compte de l'ennemi,
Tous les actes relatifs aux associations dites secrètes,
Tous ceux qui établissent ou appliquent une discrimination quelconque fondée sur la qualité de juif.³⁴
L'acte dit "décret du 16 Juillet 1940" relatif à la formule exécutoire. Toutefois, les porteurs de grosses et expéditions d'actes revêtus de la formule exécutoire prescrite par l'acte dit "décret du 16 juillet 1940" pourront les faire mettre à exécution sans faire ajouter la formule exécutoire rétablie.*

³³ Ordonnance du 9 août 1944 relative au rétablissement de la légalité républicaine sur le territoire continental—Version consolidée au 10 août 1944 (emphasis added).

³⁴ Ordonnance du 9 août 1944 relative au rétablissement de la légalité républicaine sur le territoire continental—Version consolidée au 10 août 1944.

Here, we begin to see a formulaic deconstruction of what ought to be considered a constitutional act under French law. Without endorsing any of the acts or omissions of the Vichy government and/or its agents, the constitutionality of the establishment of the Vichy government is difficult to argue against. On July 10, 1940, the parliament of the Third Republic, made up of the *Chambre des députés* and the *Sénat*, voted by an overwhelming majority to effectively dissolve the Third Republic and institute what was then referred to as the *État Français*, or the French State, rather than the *République Française*. Of the 544 members of the *Chambre des députés*, 414 participated in the July 10 vote; 357 voted in favor of this *loi constitutionnelle*, with 57 voting against and numerous members abstaining or absent (approximately 86% of those who cast votes voted in favor of the adoption of this act). Of the 302 total members of the *Sénat*, 235 cast votes, with 212 in favor of the *loi constitutionnelle* and only 23 casting votes against, with a number of members abstaining or absent (approximately 90% of those who cast votes voted in favor of the adoption of this act).³⁵

The parliament, under the constitution of the Third Republic as it existed immediately before the July 10, 1940 vote, is specifically tasked with issues relating to the constitution.^{36,37} While the question of the degree to which the parliament of the Third Republic had the power to furnish Pétain with so much more unilateral power than he had prior to July 10, 1940, the fact remains that the vote in itself did not constitute a violent overthrow of the *vraie* Third Republic

³⁵ *Annales de L'Assemblée Nationale, Annexe au Procès-Verbal de la séance du Mercredi 10 Juillet 1940.* <https://www.assemblee-nationale.fr/histoire/vote-80.pdf>

³⁶ Azéma, Jean-Pierre, and Olivier Wieviorka. *Vichy: 1940-1944*. Perrin, 2006.

³⁷ Later, in 1958, the *Conseil constitutionnelle*, or the Constitutional Council, was created to determine the constitutionality of proposed legislation after such legislation has already undergone the votes of both branches of the Parliament. However, no such council existed prior to the Fifth Republic.

government. Certainly, an element of desperation under the duress of the invasion of Paris and the depth of the losses already suffered by the French nation as of July 1940 ought to be acknowledged. Nonetheless, as demonstrated by the overwhelming support with which this proposal passed, it is unconvincing to attribute all the support to feeling powerless against the German occupiers.

As Peter Novick argues, the trials of suspected collaborators after the conclusion of the war were not purely a result of a desire for justice.³⁸ Indeed, the apparent desire to right the wrongs of all those who participated in the Vichy government (and even many civilians with dubious charges alleged against them) went hand-in-hand with the near-instantaneous *oubli*. While it may be tempting to categorize the postwar reactions in two distinct stages—the first being the epuration and the second being the forceful forgetting via the amnesty granted to collaborators—the series of ordinances and proclamations that came along with the CFLN’s rampant and aggressive policies of prosecution are themselves highly reflective of the earliest attempts to de-contextualize and present an alternate version of the events of the War. This version of the history of Vichy is one in which the Vichy collaborators were somehow rogue, acting outside the scope of regular government activities while “real” France persisted in the *Zone Libre* in the north, or across the channel in Great Britain.

To the degree that the Vichy government was a continuation of the French government as it existed prior to the German invasion in 1940, actions committed by government officials may have posed a problem in prosecuting for crimes “against the state.” In fact, the vast majority of

³⁸ Novick, 140.

French citizens believed that the Vichy government was the legitimate governing body of France for the four years in which it existed.³⁹

In 1939, before the establishment of the Vichy regime, Article 75 of the *Code Pénal* criminalized “intelligence with the enemy.”⁴⁰ This Article poses significant chronological issues insofar as it was included in the *Code Pénal* during the Occupation. As noted by Rousso, one must ask which ideological commitment is the proper one in context of sentencing such crimes.⁴¹ During the *épuration* period, sentencing was often haphazard and unpredictable.

The *épuration légale* saw the passage and implementation laws promulgated immediately after the fall of the Vichy regime. However, such laws did not accomplish anything that French laws existing during the commission of such collaboration could not. Until 1981 in France, there were numerous crimes for which an individual could face the death penalty. These crimes *contre la sûreté de l'État* (crimes against the security of the State) include treason (Articles 70, 71 and 72 of the Code Pénal), actions against the authority and integrity of the State and its territory, with the use or attempted use of weapons (Articles 86, 88, 89, and 90), actions against peace in the interior (Articles 93 and 95), and participation in an insurrection movement (Articles 98 and 99). Why not, then, simply use the existing legal framework to punish collaborators to the most severe degree (i.e., execution) rather than create new laws after the collaboration had already occurred? Here, we see the initial departure from the pendulum's predictable arc, committed with the goal of preserving a sense of French national identity at the expense of any true acknowledgment of France's own role in collaboration through Vichy.

³⁹ Novick, 141.

⁴⁰ Goldhammer, Arthur, translator. “Unfinished Furling (1944-1954).” *The Vichy Syndrome - History and Memory in France since 1944*, by Henry Rousso, Harvard University Press, 1991, 21.

⁴¹ Goldhammer, 20.

CHAPTER III The Arc's First Departure: *La Vraie France*

The shift from the epuration period to the 1953 amnesty demonstrates a sudden, unprecedented shift of the French political pendulum. How could the outrage of the immediate postwar period transform, in the timeframe of not even a single generation, from a staunch rejection of France's Vichy period and all who associated with it to the widely supported decision to forgive all those found guilty just years earlier of collaboration?

To return to the metaphor of the pendulum, one must consider the extremity with which it was pulled to one end—that is to say, the side representing the anti-Vichy narrative spurred on by Charles de Gaulle after the Liberation. Indeed, as noted by Rousso, de Gaulle's August 24, 1944 speech (given over a year before the declared conclusion of World War II) solidified this version of the war in which France was helplessly dominated by a foreign power and liberated by France itself and France alone. In this address, de Gaulle said:

*Paris! Paris outragé, Paris brisé, Paris martyrisé mais Paris libéré! Libéré par lui-même, libéré par son peuple avec le concours des armées de la France, avec l'applui et le concours de la France tout entière : c'est-à-dire de la France qui se bat. C'est-à-dire de la seule France, de la vraie France, de la France éternelle.*⁴²

There are numerous curious aspects of this excerpt of de Gaulle's speech. It is clear that de Gaulle's intention was at least in part an attempt to unify the country and to re-establish a sense of national identity and continuity, despite the significant rupture that occurred at the moment that the Vichy regime was created through democratic means by the French government itself. The myth of the "*France tout entière*" is central to the emerging belief and agenda that only a miniscule minority of traitorous Frenchmen and women were responsible for any collaboration

⁴² Goldhammer, Arthur, translator. "Unfinished Furling (1944-1954)." *The Vichy Syndrome - History and Memory in France since 1944*, by Henry Rousso, Harvard University Press, 1991, p. 16.

or cooperation with the German occupiers during the war. Notably, this address was given at the very beginning of the epuration period. The intention to re-unify a country so clearly divided, both ideologically and literally as delineated by the border between the *Zone Libre* and the *Zone Occupée*, is clear; however, the result was, perhaps unintentionally, the fuel that encouraged France to embrace this explanation as the reason behind the shaken, destabilized, fractured nation. After all, following the Vichy regime, was there a true France, an eternal France, behind the chaos of Vichy and the war? And, if so, what exactly *was* the Vichy government? With a total estimated forty-thousand French citizens sentenced for collaboration by 1945,⁴³ and an estimated majority of French citizens believing that Vichy was the rightful, legal government while it was in power, the myth of the true France hiding behind the curtain of the Vichy regime seems to the contemporary historian tenuous at best. However, at the time, the prevailing belief quickly became that which de Gaulle pressed. And thus, with the quick turn of French opinion, the epuration was the only logical conclusion; for their crimes, the supposed minority of French citizens who were involved at any level, or in some cases, even suspected of collaboration, were to be punished by any means, and to any extent, necessary.

Within the range of expected shifts in political opinion, shifts in political alignment or national belief adhere to the set of standards that are thought to be immutable characteristics of a given society or nation. A “political pendulum” that swings back and forth within a controlled, predictable, and steady arc, between liberal and conservative, traditional and progressive, will permit itself operate under the same static rules. Those rules take the form of cultural mores and values, expectations, and ideas about society, laws, and jurisprudence. However, when the pendulum is pulled too far in any direction, outside the acceptable bounds of the steady back-

⁴³ Goldhammer, 51.

and-forth swing respectful of the set scaffolding of cultural values, the resulting swing in the opposite direction will likely also fall outside those boundaries. The steady, predictable back-and-forth of politics is disrupted to the degree that the very basis of a nation's understanding of itself is disregarded, violated, or otherwise ruptured. Despite the inevitable hunger for justice and a return to normal following unprecedented events like the Second World War, Germany's occupation of France, and the Vichy regime, the *vraie France* that de Gaulle references in his August 1944 speech represented the beginning of that initial swing beyond the structure provided by the legal and cultural scaffolding of French law and social principles.

The *épuration* is unequivocally a period demonstrative of the first postwar pull of the French political pendulum. After the Liberation of France, and at the outset of the popularization of de Gaulle's *vraie France* narrative, the process of prosecuting, sentencing, or otherwise punishing collaborators or suspected collaborators was almost immediate. Of those who held a prominent office in the Vichy government, or who were vocal supporters of the Vichy regime, approximately nine-thousand were either killed extrajudicially or following incomplete, short-lived court-martials.⁴⁴ The pent-up aggression and upset across France during the immediate postwar period also resulted in some grim expressions of misogynistic attacks against women who were suspected to have had sex with collaborators or suspected collaborators.⁴⁵ There are

⁴⁴ Darcy, 81, citing Novick.

⁴⁵ Darcy, 81-82, citing Deák, István. *Europe on Trial: The Story of Collaboration, Resistance, and Retribution during World War II*. Westview Press, 2015. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=cat05987a&AN=unm.881665380&site=eds-live&scope=site.

“Women condemned as “horizontal collaborators,” seen as guilty of sleeping with the enemy often became scapegoats of the pent-up anger of entire communities in western Europe. In France, Italy, Denmark, Holland and the Channel Islands such women were turned into social outcasts and ritually humiliated in public by having their hair shorn, being stripped naked, and sometimes having their bodies daubed with excrement. In France alone about twenty thousand women were subjected to degradation in front of large crowds, overwhelmingly male, from their local population” (internal citations omitted).

numerous accounts of American soldiers in France who worked to save suspected collaborators from essentially being murdered by their countrymen prior to having been arrested, tried, or found guilty of such collaboration.⁴⁶ While many collaborators were rightfully prosecuted and sentenced for their egregious criminal acts (often by the more procedurally-intact Allied nations), the panic-fueled desire to bury all that was suggestive of collaboration on the national scale was demonstrated by the attacks and murders committed in the immediate aftermath of the War.⁴⁷

Beginning in 1942, jurists and members of the French Resistance were already considering what new punishment ought to be instituted to punish those who collaborated with Germany and the Vichy government. The final product of this contemplation was the *Ordonnance du 26 août 1944*, published on August 28, 1944. This *Ordonnance* begins with a preamble, stating that the *Ordonnance du 27 juin 1944*, which applied criminal charges to certain high-level collaborators, was insufficient to address those acts which may not have risen to the level of criminal activity. The preamble states in relevant part :

*Les agissements criminels des collaborateurs de l'ennemi n'ont pas toujours revêtu l'aspect de faits individuels caractérisés susceptibles de recevoir une qualification pénale précise, aux termes d'une règle juridique soumise à une interprétation de droit strict ; ils ont souvent composé une activité antinationale, répréhensible en elle-même.*⁴⁸

Throughout the text of this *Ordonnance*, there are numerous, rather vague allusions to “*l'ennemi*,” Germany, and “anti-national” activity, though includes no specific references or explanations regarding the rise and fall of the Vichy regime. Additionally, despite the fact that the preamble specifically states that the charge of *indignité nationale* is meant to be applied to

⁴⁶ Darcy, 81, citing Novick.

⁴⁷ *Id.*

⁴⁸ *Ordonnance du 26 août instituant l'indignité nationale. Version initiale.*
<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000504738?isSuggest=true>.

those collaborators for whom no portion of the existing penal code applied when such “antinational acts” were committed, the Ordonnance states nonetheless that « ...*tout Français qui, même sans enfreindre une règle pénale existante, s’est rendu coupable d’une activité antinationale caractérisée, s’est déclassé* »⁴⁹.

According to this new punishment, “unworthy conduct” (which may or may not have fallen under the umbrella of criminal acts) includes any activity that assisted the “enemy” after July 16, 1940, any violation of the French constitutional tenets of *liberté, égalité* and *fraternité*, involvement or membership with a Vichy cabinet, involvement with a collaborationist organization, and writing or speaking in favor of collaboration, “the enemy,” racist, and/or totalitarian doctrines.⁵⁰ Sentencing under this novel penalty included the loss of civil rights, prohibition from employment in “influential positions,” including journalism, prohibition from joining certain professional organizations, loss of rank in the armed forces, the prohibition of bearing or keeping arms, and sometimes, restrictions on residence and property ownership generally.⁵¹

At the root of the charge of *indignité nationale* was, in short, national dishonor. At risk of appearing too lenient to the rest of the world and perhaps, too, of fully experiencing the national complicity with the German occupation, this penalty was created to punish even the low-level offenders whose actions fell on either side of severity warranting a more serious criminal charge

⁴⁹ “Any French citizen who, even without having violated an existing penal rule, is guilty of an antinational activity [as described in the Ordonnance] will have their rights reduced per the advent *indignité nationale*.”

⁵⁰ Koreman, 97.

⁵¹ *Id.*

of collaboration.⁵² As Dov Jacobs states, the reality of the events which transpired during the Vichy regime's government were so unpalatable in the context of liberated France that some action needed to be taken in order to underline and insist upon the idea of a pure France, the spirit and essence of which was unadulterated and nothing but anti-Nazi, anti-Occupation, and anti-Germany.

From a political perspective, it could not be accepted that the French Republic had voluntarily relinquished power to Pétain and Laval. This would lend the Vichy government a legitimacy that was not compatible with the idea that the real government of France was represented by De Gaulle and his supporters in exile.⁵³

The notion of legitimacy is a key portion of understanding the political maneuver to invent an additional civil punishment against anyone who may have been involved with the Vichy government, regardless of the extent of their involvement. If France and its citizens were compelled to admit and hold themselves accountable for their cooperation with the occupying German forces, the line of their national story, so to speak, becomes too complicated, too blurry. Much easier and more attractive was the conclusion that the Vichy regime lacked legitimacy entirely, and could not have been an accurate reflection of the French nation as a whole in any way. It is for this reason primarily that the offense of *indignité nationale* was created; not for accountability, per se, but to clean up an otherwise very complicated, often troubling, and inarguably ugly moment in the existence of the nation.

⁵² Jacobs, Dov. *Hidden Histories of War Crimes Trials*, by Kevin Heller and Gerry Simpson, Oxford University Press, 2014, pp. 122–136.

⁵³ Jacobs, 130.

The proponents of *indignité nationale* relied on several arguments to preserve the constitutionality and legality of a sentence of *indignité nationale*.⁵⁴ One defense in favor of the creation of this new charge was that a finding of *indignité nationale* was not, in fact, a criminal charge, and therefore was not subject to the legal principle of *nullem crimen sine lege*. While the body of international human rights law was rather limited at the time of the creation of these rules, most codified interpretations of *nullem crimen sine lege* would not have excepted the types of punishments applied to those charged with *indignité nationale* from the collective understanding of retroactive prosecution.⁵⁵

Another argument in favor of this new charge was that *indignité nationale* fell under the umbrella that of *lex mitior*, a legal principle that excepts retroactivity if a law is created or amended and enacted after the commission of a crime, the lighter of the two sentences ought to be applied. Essentially, this is to say that a law may be retroactively applied if it is beneficial to the individual charged with the crime, if the individual will be charged under one of the laws addressing that act. Clearly, this defense is also problematic for a number of reasons. Firstly, this argument is in direct conflict with the argument that *indignité nationale* was not actually a criminal offense. If it is a criminal offense, then the issue of retroactivity must be examined. If it is not a criminal offense, then of *lex mitior* would also not apply. Regardless, those who relied upon this argument must inevitably run into the issue of

Persons who could not have been prosecuted under the stricter provisions on national security cannot seriously be said to be benefitting from a more lenient law, because without that law they would not have been prosecuted at all. Second, technically this justification would only work if the new law replaced the former one, which was not the

⁵⁴ Simonin, Anne. “L’indignité Nationale De 1944, Une Bonne Loi Mal Faite Et Mal Appliquée.” *Slate France*, 2016, www.slate.fr/story/112649/indignite-nationale1.

⁵⁵ Jacobs, 126.

case. It was perfectly within the powers of the charging authorities to choose to prosecute under the Criminal Code, despite the existence of the law on *indignité nationale*.⁵⁶

Additionally, proponents of *indignité nationale* argued that the remarkable, unique social and political context of postwar France was so unprecedented that it would be more straightforward and fairer to create a new crime rather than attempt to prosecute collaborators with the existing legal scaffolding. Of course, this argument is at the heart of this legislative examination. The truth of the matter is that, while World War II and the creation of the Vichy government presented a unique challenge to France, the likes of which had never been experienced, there is truly no such thing as a *precedented* social event. Comparable, certainly, to other situations, even quite similar; but the reliance upon the argument that any unprecedented situation (declared unprecedented by whom?) ought to warrant a complete reversal or suspension of a nation's closely-held beliefs in law and justice fails on its face. It is an obvious loophole to the serious legal challenges that the actions of the *épuration*, including *dégradation nationale*, faced upon their introduction. Nowhere in the constitution does it state that any of the enumerated rights may be disregarded in "unprecedented" times; such rights are, and should be treated as, immutable, regardless of era, social climate, or urgency.

Finally, proponents argued that, because the time frame in which any French citizen could be charged with the crime of *indignité nationale* was fixed, it would be an easy, limited, targeted, and clean solution to the question of the Vichy period. According to the language of the Ordonnance, this offense could only be instituted six months following the Liberation of May 8, 1945:

Enfin, la volonté d'opérer un prompt retour à une vie politique normale est à la base de la disposition qui limite à six mois après le délai pendant lequel l'indignité nationale peut être prononcée. Une justice n'est sévère que si elle est rapide.

⁵⁶ Jacobs, 126.

Therefore, after November 8, 1945, no court would continue to punish collaboration with this crime. This six-month timeframe was not maintained, however; French citizens were still sentenced to *indignité nationale* until 1951. Although the intent of the drafters of this Ordonnance can only be speculated from today’s perspective, one cannot help but take note of the final line of this portion of the Ordonnance—the *rapidity* of justice is central to the purpose of *indignité*. The notion of a swift justice plays directly into de Gaulle’s two-prong approach to burying the complications of the French government between 1940 and 1944: here, by whatever means necessary (including the questionable, if not explicitly unconstitutional deprivation of the civil rights of French citizens convicted of low-level “collaboration” with the French government under Pétain), the nation forced a sham reconciliation, amounting to what was essentially an attempt to return the pendulum, which had swung so far out of its scaffolding bounds, back to the center, without the acknowledgment that the reason it had arrived out of bounds in the first place was a result of a popular decision to cede more unilateral power to Pétain.

*Mal faite et mal appliquée, l’indignité nationale n’en était pas moins une bonne loi, une loi reposant sur une idée juste. Ne défendait-elle pas, pour la première fois dans l’histoire de la République, une définition de la liberté invitant à mener, au coeur des pires violences et au sortir de l’une des plus graves crises nationales, une répression politique modérée?*⁵⁷

Political repression, of course, played a central role in the postwar de Gaulle narrative. Less important were the details of the actual series of incidents leading to Vichy, its tenure, and its downfall; instead, the important fact—the only fact, for de Gaulle and so many other French citizens who wished to move past the War and its numerous devastations—was that France had

⁵⁷ Simonin.

been on the right side of history, the prevailing side, now that a prevailing side had definitively been declared.

La prise en compte de la jurisprudence de l'indignité nationale permet de mesurer l'écart entre les intentions du législateur et l'application d'une peine qui a fabriqué des «morts sociaux» à grande échelle. Condamnés à la dégradation nationale à vie, les «morts sociaux» ont représenté 10% environ des 100.000 Françaises et Français frappés d'indignité nationale à la Libération. Rappelons, par comparaison, que, pendant cette période dite de l'épuration, 1.500 condamnés à mort ont été exécutés. Pendant les cinq années où elle a produit des effets, la lourde peine de la dégradation nationale a, en quelque sorte, inversé le stigmate et transformé les vichystes sinon en martyrs, du moins en victimes de la Libération.⁵⁸

With regard to the question of whether or not the Vichy regime can really be considered an extension—or a portion—of the uninterrupted continuum of French governance rather than a brief fascist coup that ultimately failed upon the Liberation—a close examination of the armistice signed by both German and French government officials on June 22, 1940 is essential. It is difficult to argue against the fact that this armistice afforded the German Reich the power to regulate and govern the occupied portion of France, including Paris, as stated in Article 3:

ART 3. Dans les régions occupées de la France, le Reich allemand exerce tous les droits de la puissance occupante. Le Gouvernement français s'engage à faciliter par tous les moyens les réglementations relatives à l'exercice de ces droits et à la mise en exécution avec le concours de l'Administration française. Le Gouvernement français invitera immédiatement toutes les autorités et tous les services administratifs français du territoire occupé à se conformer aux réglementations des autorités allemandes et à collaborer avec ces dernières d'une manière correcte.⁵⁹

The language in this Article is suggestive of a considerable latitude granted to the French government—only later referred to as the Vichy regime. While it is certainly true that France was under immense pressure to accept the terms of this armistice with the German occupying

⁵⁸ Simonin.

⁵⁹ “Texte De L'armistice Signé à Rethondes Le 22 Juin 1940 .” *Digitèque De Matériaux Juridiques Et Politiques*, Digitèque MJP, 2006, mjp.univ-perp.fr/france/1940armistice.htm.

forces given its resounding defeat in the Battle of France in 1939, in addition to the extent of its losses during the First World War, it should be emphasized that the terms of this armistice are not suggestive of some fringe offshoot of the French government as it existed prior to the Battle of France.

Despite the interruption of the then-President Albert Lebrun's tenure with the introduction of the office of the Chief of State, occupied by Pétain from 1940 until the end of the War, the transition between the two governments was not indicative of a struggle for dominance or power over the government. In short, Lebrun and Pétain were not adversaries. In a phone call between the ambassador to France, William Christian Bullitt Jr., and Lebrun on July 1, 1940, Lebrun's perspective on the occupation and the armistice are explicitly made:

I called on Lebrun at 11:30. When he entered the room he had a telegram from the United States (Atlanta, Georgia) imploring him not to surrender the French Government... to Germany. He said that he had received hundreds of such telegrams. I replied that these telegrams unquestionably had shown him the terrible shock to American public opinion that had been produced by the idea that France could deliver into the hands of her enemy a weapon with which to cut the throat of her ally, England. He immediately became very excited and said that the French positively would not deliver the fleet to Germany for the Germans intended to carry out the clauses of the armistice and that he was certain that they would not take and employ these warships.

He then said that the United States had done nothing to help France which had been fighting the battle of all the democracies and that criticisms from the United States were in extremely bad taste.

I replied that we had done all that we could; that we had made it clear to France from the beginning that we would not enter the war; that the people of the United States could understand that the French Army had been obliged to surrender and that this action was considered as bad as the action of the King of the Belgians in withdrawing his army from the battle at Dunkirk which had been vigorously condemned as an act of treachery by the French. The permitting the fleet to fall into German hands was, however, much more serious. It meant providing means to destroy an ally.⁶⁰

⁶⁰ Bullitt, William Christian. "The Ambassador in France (Bullitt) to the Secretary of State La Bourboule, July 1, 1940—9 P.m." *Office of the Historian*, FOREIGN RELATIONS OF THE UNITED STATES

Ambassador Bullitt spoke with Maréchal Pétain immediately following this conversation with then-President Lebrun. At no point during this conversation was the legitimacy of Pétain's power questioned, either by Bullitt himself or by Lebrun. In the above summary of this conversation, it is clear that, while France was in a state of turmoil following the establishment of the German Occupation, no deep ravine between what would later be described as the "legitimate" French government and Pétain's Vichy existed. Instead, Lebrun emphasized that he believed that the Germans would adhere to the terms of the Armistice, i.e., allowing the French government to continue to operate albeit in a subordinate capacity to the occupiers. In fact, Bullitt wrote that Pétain stating the following during their conversation:

[Pétain] thought that German conduct in France indicated a desire to obtain the collaboration of the French as the chief conquered province of Germany. He did not believe that the Germans would break the terms of the armistice and he thought that they would on the contrary do everything to obtain the good will of the people of France and their cooperation in a subordinate role.⁶¹

Similarly, although Pétain refers to France as a "conquered province," it is clear that Pétain has a genuine belief in the possibility of averting further strife by cooperating with the German government. At no point during either conversation does either Pétain or Lebrun express any concern for undue German influence, or the inability of the French government to function properly in France's own interests.

The armistice agreement between the French and Germans marking the advent of the Vichy government gives further insight into the true context of this managerial transition. In

DIPLOMATIC PAPERS, 1940, GENERAL AND EUROPE, VOLUME II,
history.state.gov/historicaldocuments/frus1940v02/d536.

⁶¹ *Id.*

Article 1 of the June 22, 1940 Armistice, the French government agreed to cease hostilities against the German Reich:

*ART.1. Le Gouvernement français ordonne la cessation des hostilités contre le Reich allemand, sur le territoire français, ainsi que dans les possessions, colonies, protectorats et territoires sous mandat et sur les mers. Il ordonne que les troupes françaises déjà encerclées par les troupes allemandes, déposent immédiatement les armes.*⁶²

It is not insignificant that this Article is the first listed in this document. Before any mention of any restructuring of French authority, the first, and arguably most important, point of this document was to end hostilities between the two nations. As previously mentioned, it was of course extremely important for a weakened France to concede in a significant way to the German occupiers; however, and perhaps obviously, a truly “conquered” nation typically would not enter into an armistice agreement.⁶³ The very definition of an armistice holds the implication of consent between both parties.⁶⁴ Consistent with this point is the fact that, included in this Armistice is a provision relating specifically to the representation of French interest, even as an allegedly conquered territory:

⁶² “Texte De L’armistice Signé à Rethondes Le 22 Juin 1940 .” *Digithèque De Matériaux Juridiques Et Politiques*, Digithèque MJP, 2006, mjp.univ-perp.fr/france/1940armistice.htm.

⁶³ Armistices are not indicative of an agreement to long-term conditions for peace, while peace treaties, on the other hand, are formal agreements between two parties to end a war. *See, e.g.,* “Understanding Peace Treaties.” *American Bar Association*, 18 Nov. 2018, www.americanbar.org/groups/public_education/publications/teaching-legal-docs/understanding-peace-treaties/.

⁶⁴ *See, e.g.,* Levie, Howard S. “The Nature and Scope of the Armistice Agreement.” *The American Journal of International Law*, vol. 50, no. 4, 1956, pp. 880–906. *JSTOR*, www.jstor.org/stable/2195628. In this article, Levie makes a distinction between armistice agreements and what he refers to as “so-called armistice agreements,” or a capitulatory armistice, wherein a defeated party enters into an agreement with the understanding that there has been a de-facto victor in prior hostilities. However, nonetheless, as Levie describes, there is an essential element of negotiation in any armistice agreement.

*Le Gouvernement français constituera au siège de la Commission d'armistice allemande une délégation chargée de représenter les intérêts français et de recevoir les ordres d'exécution de la Commission allemande d'armistice ...*⁶⁵

While this dissection of the language of this agreement may appear to be excessively meticulous, and could rightly be criticized as an inappropriate insistence upon the language of a document that really only existed as a formality for France to fall under the control of its German occupiers, it ought to be noted that no such armistice agreement was generated between, for instance, Germany and Poland when Germany invaded in 1939.

For the populous, too, the transition between the Third Republic and the Vichy regime was not considered to be such an abrupt transition according to the later *vraie France* narrative borne of the *épuration*. As attractive as a complete abandonment of all associated with the French government that, for a time, worked closely and largely by its own accord with occupying Germany, the truth of the widespread, casual collaboration—from the level of many individual French citizens to a massive portion of the French nation—bears a much less comfortable conclusion. The relationship between the various iterations of the French government, including between the Third Republic, the Vichy period, and the Fourth Republic, are not indicative of a variable, fickle nation that was temporarily occupied. Instead, the Vichy's regime is a reflection of the outer limits of France's existing ideological and political infrastructures:

The crux of the issue is less to determine whether it is appropriate to consider the Vichy Regime as dependent on the rule of law than to acknowledge the terrible consequences of this conjunction of the formal absolute of the law, inherited from the French Revolution, and an authoritarian and counter-revolutionary ideology.⁶⁶

⁶⁵ "Texte De L'armistice Signé à Rethondes Le 22 Juin 1940 ." *Digitèque De Matériaux Juridiques Et Politiques*, Digitèque MJP, 2006, mjp.univ-perp.fr/france/1940armistice.htm. (emphasis added).

⁶⁶ Baruch, 154-155.

It is in this analysis that we find an essential element of the fault in France's attempt to undergo an *oubli* to absolve itself of Vichy and all its implications and complications. As stated, with the understanding of a nation's political spectrum within the limits of that which constitutes national values, legal, and social structures, there is indeed room to forget in the name of national unity. In the formation of any nation, one will find examples of Renanesque *oubli*; the repression or reconstitution of certain truths that uncover painful divisions within a society, but which are rightfully in a position to be cast aside, assuming that no diversion from those structures that define a nation. For postwar France, though, the diversion from the framework is not so clear in the inception of the so-called Vichy regime, but rather, in the attempts to convince both itself and the world's spectators that it bore no culpability for its involvement in the proliferation of fascist, anti-Semitic policies.

Likewise, after the transition from the Vichy government to the Fourth Republic under de Gaulle, the return to what de Gaulle sold to his constituents as the normal operation of a real, patriotic, Ally French government was not marked by any particularly extensive rearrangement or reconstruction of the relationship between the government, its employees, and the public at large:

As a prefect of the time wrote candidly, civil servants had to serve the future government, headed by General de Gaulle, as loyally as they had served the previous government, that of Marshall Pétain.⁶⁷

Despite the numerous, troubling questions raised by the facility with which the Third French Republic transitioned to the Vichy government (especially prior to the generation of the *vraie*

⁶⁷ Baruch, Marc-Olivier. « Vichy and the Rule of Law », *Bulletin du Centre de recherche français à Jérusalem*, 6 | 2000, mis en ligne le 07 juillet 2008. <http://journals.openedition.org/bcrfj/2992>

France narrative, when there was no fallback alternative explanation or traitorous minority scapegoat), de Gaulle's assumption of power was initially perceived, especially by foreign governments, as a possible reiteration of Pétain's dictatorial fascism.^{68 69}

This officer, who had seized leadership of the Resistance and attacked parliamentary government, led at least some to suspect him of dictatorial ambitions for postwar France.

Contemporary memory correctly preserves the idea of the Third Reich and Nazi Germany as a highly militarized and centralized power structure, which was then dispersed and refocused more broadly following the end of the Second World War. In France, on the other hand, no massive decentralization was required. While the importance of returning to postwar votes following the fall of the Vichy regime, De Gaulle, to at least some degree, took up where Pétain had left off, though obviously with drastically different politics and beliefs.

CHAPTER IV ***L'Épuration and Due Process***

Following the fall of the Vichy government, and even during the Vichy regime, France's court proceedings were modified. In 1941, the *Cours d'Assises* was rearranged to more closely resemble the German and Italian courts; additionally, the employment of a twelve-man jury was replaced with a jury of six.⁷⁰ Nonetheless, even during the Vichy regime, jury trials remained in place. The courts that heard the cases involving suspected collaboration were the *Cours de Justice*, which were smaller versions of the French criminal courts, the *Cours d'Assises*, which

⁶⁸ See, e.g., Cowans, Jon. "French Public Opinion and the Founding of the Fourth Republic." *French Historical Studies*, vol. 17, no. 1, 1991, pp. 62–95. *JSTOR*, www.jstor.org/stable/286279.

⁶⁹ Cowans, 57.

⁷⁰ Ploscowe, Morris, "Jury Trial in France" (1945). *Minnesota Law Review*. 1984. <https://scholarship.law.umn.edu/mlr/1984>.

heard felony cases under the 1939 *Code Pénal*.⁷¹ This Court was made of one judge and four lay jurors, who were drawn specifically from lists of *résistants*, and retained the power to sentence the suspects who went before it to death.⁷² Additionally, for cases heard in this Court prior to the *épuration* hearings and the institution of the Vichy government, juries were selected from a group of thirty-six male French citizens, and the attorney for each party had the opportunity to excuse the attorneys for each party would have the right to an equal number of peremptory challenges, not to exceed twelve.⁷³

The prosecutions of the *épuration* began in quick succession following the Liberation; the administrative chaos of prosecuting such a massive number of French citizens was overwhelming at best, and impossible at worst. As explained by Megan Koreman in *The Expectation of Justice: France, 1944-1946*, “no courts, no matter how dedicated to the cause, could have made their way through the avalanche of cases very quickly.”⁷⁴

Rather than the jury selection process that was in place both before and during the Vichy regime, the jurors for the *Épuration* trials were chosen from a list of known *résistants*, rather than lists of individuals chosen from lists compiled by commissions of judges, administrative officials, and legislative officials.⁷⁵ Naturally, a jury made up of those known to be *résistants* during the war meant almost certainly that any suspect in from of this *Cours de Justice* would not be afforded a fair trial. And, with an estimated total of at least forty-thousand French citizens

⁷¹ Koreman, Megan. *The Expectation of Justice: France, 1944-1946*. Duke University Press, 1999. (97).

⁷² *Id.*

⁷³ Ploscowe, 377.

⁷⁴ Koreman, 98.

⁷⁵ *Id.*

prosecuted for collaboration in the period of approximately one year following the Liberation, some corners would almost certainly have to be cut.⁷⁶ The cases were heard quickly, by resisters, and often presided over by local judges, resulting in wildly inconsistent sentences for similar charges. Additionally, there was some question as to the validity of some of the charges.

Koreman cites an example:

The public also complained that the courts punished the wrong people. For instance, Moutiers' paper reported that a local man who had gone to Germany as a voluntary laborer received ten years of national degradation for 'the crime of believing, in good faith, that his departure would mean the return of a POW or prevent the deportation of a father of a family.'⁷⁷

A full accounting of the miscarriages of justice that occurred during this period is likely impossible. In addition to haphazard trials and sentences, many suspected collaborators were summarily executed by their communities even prior to trial. Regardless, the rights theoretically afforded to French citizens, whether or not they were guilty of a crime, were summarily violated by both the mob justice-style attacks and farcical court proceedings. In its panic to define itself as a definitive Ally nation, regardless of what truly transpired during the Vichy regime, France as a nation was shaken to the core, not only by the creation of epuration, but also by the rushed "justice" rendered to those whose actions may have told a different story to the world than that which de Gaulle and his supporters would have projected. It is likely that any large-scale prosecution for collaboration would have been nearly impossible; in Koreman's words, "...[I]f half of France were locked up as collaborators, how could all of France been in the Resistance?"⁷⁸

⁷⁶ Goldhammer, 51.

⁷⁷ Koreman, 99.

⁷⁸ Koreman

Certainly, too, while some suspected collaborators who were convicted were almost certainly innocent of any crime that existed either before or after the Liberation, neither the French citizens who partook in the ex-parte violence nor the judges and jurors who served to almost certainly convict those who came before them for collaboration did not apply such brutal treatment to all those who likely ought to have been harshly punished. In an oddly contradictory move, de Gaulle decided to commute seventy-three percent of all death sentences meted out to collaborators, perhaps in an effort to ease the illogic of attempting to punish such a massive percentage of the overall population of France.⁷⁹

In this immediate post-Liberation period, one can easily see France's political pendulum swinging outside the bounds of its framework. Not only were the prosecutions largely botched, but there were also individuals well deserving of harsh prosecution who fell through the cracks. The best-known of all such bad actors is Maurice Papon, who benefitted immensely from de Gaulle and the French population's attempt to obscure and transform the Vichy narrative. By stating that the *vraie France* had been, except a small minority, committed to the Resistance movement, those like Maurice Papon were allowed to fall through the cracks because de *vraie France* narrative, "denied legitimacy to this narrative of evolving and ambivalent allegiances, and for the historical actors who had pursued this latter course it had since become, in the words of Rousso and Conan, an 'encumbering secret.'"⁸⁰ Instead of being held accountable for the actions he took as a Vichy official, the sped-up process of forgetting via the epuration resulted in Papon's place beside de Gaulle. Serving no time in prison in the postwar years, Papon began a

⁷⁹ Koreman, 102.

⁸⁰ Wood, 62.

successful career in the new Republique, ascending to the positions of police prefect of Paris under de Gaulle from 1958 to 1966 and budget minister from 1978 to 1981.^{81, 82}

It was not until the 1990s that Papon was finally brought to trial for the crimes he committed during the Vichy regime, but prosecuting him so long after the commission of his crimes posed numerous problems. To start, while many who likely were not complicit in any crimes against the state were prosecuted during the epuration, more influential officials who did legitimately commit crimes during their tenures were able to escape the thirst for accountability rampant during the epuration. Obviously, too, as more time passes, it becomes more difficult to acquire and amass evidence against the accused. Finally, so many decades after the commissions of the acts, it should be noted that Papon received a fairer trial, rather than a rushed sham trial that many of his countrymen faced in the 1940s. As Nancy Wood states, the precedent set by France's shifting standards and legal frameworks made the trial of Papon all the more difficult:

...Maurice Papon became for many the remaining living symbol of a French functionary who had been complicit in crimes against humanity. However, writing for L'Express in the week the trial opened, Éric Conan noted that the case of Maurice Papon had posed new legal challenges for a juridical system that had hitherto proved itself so malleable in its definitional strictures and so prone to political and public pressure alike.⁸³

⁸¹ Wood, Nancy. "Crimes or Misdemeanours? Memory on Trial in Contemporary France." *French Cultural Studies*, vol. 5, no. 13, Feb. 1994, pp. 001–021, doi:10.1177/095715589400501301.

⁸² Papon is best known for his role in the Paris massacre of October 17, 1961 while serving as the police prefect of Paris. While the official death toll of this event is not certain, historians believe that between 50 and 120 Algerian anti-war demonstrators were killed and thrown into the Seine at the direction of Papon. While much has been written on the subject of Papon himself, the obscuring of this event falls in line with the discussion of the Vichy period, and Papon as a sort of archetype of a powerful individual who profited directly from the forced forgetting and was allowed to continue to commit atrocities. *See, e.g.,* Willsher, Kim. "France Remembers Algerian Massacre 50 Years On." *The Guardian*, 17 Oct. 2011, www.theguardian.com/world/2011/oct/17/france-remembers-algerian-massacre.

⁸³ Wood, citing Conan, Éric, "Le casse-tête juridique," L'Express, 2 Oct. 1997.

Malleable is the most important word that Wood uses here. All that occurred in the *épruration* is perfectly demonstrative of this fact. Not only were new, additional punishments created for acts that would not have been deemed illegal at the times at which they were committed, the push for justice once France as a nation realized it wanted to solidify its place firmly as an Ally and victim for purposes of the War. Once a nation begins to transform or warp those structural frameworks that define its values, the harms of the past are unable to ever be truly put to rest.

The *épruration* was, by all measures, meant to alleviate some of the trauma undergone by the French nation. It was a well-intentioned amendment to the cloudy, grey truth of France's existence as a split nation between the north and south, and it was whole-heartedly embraced by a grieving nation that, above everything else, just needed to move on from an unimaginable, collective tragedy. After all, following such national trauma, split, and strife, how could France understand itself but through a brighter, more optimistic lens? This, however, is not the variety of forgetting that lends itself to the formation and solidification of a national identity. In Booth's example of defining memory and identity, he cites the notion of a continual presence—an unpunctuated experience—as a central tenant of self-definition. Despite the intended ends of the *épruration* and resulting ramifications, the ultimate result of this initial lurch away from those processes that were once established to protect French citizens marked the beginning of what would need to return in the other direction.

CHAPTER V **The Price of the Altered Narrative**

It ought to be considered, too, that the very establishment of the Vichy regime should also have been some sort of unprecedented shift that does not adhere to the values set by French politics, law, and society. However, by virtue of the fact that the Third Republic voted to institute the Vichy Regime, even a staunch supporter of de Gaulle's alternative narrative exonerating

“real France” and its participation in any fascist activities must concede at the very least that there was no violent overthrow of the French government.⁸⁴ The cooperation on the part of the then-existing French government with the establishment of Vichy cannot be solely be understood as a gesture made under duress and under duress only. In fact, with specific regard to the French cooperation with the deportation of French Jews in beginning in 1942, the Vichy government offered the German government more assistance in deporting French citizens to concentration camps more than even overt allies to Germany, like Hungary and Romania.⁸⁵

If the Vichy government and its supporters were so overtly cooperative with the German occupiers, would a mere mass-prosecution of French citizens have been preferable to the pendulum effect described above? If each and every individual suspected of or found guilty of collaboration with the German government within the parameters of French laws of due process, for instance, would the work of properly forgetting this ugly period of French history have begun and ended successfully? Indeed, the vast support for the Vichy regime up until the Liberation would have made it difficult to prosecute each and every individual who was suspected of collaborating with the Vichy or German governments—with an approximate total of 40,000 French citizens prosecuted for alleged crimes against the state and collaboration.

As noted by Koreman, though, the victims of the *épuration* were not limited to those who were murdered, wrongly accused and/or prosecuted, and otherwise brutalized in contradiction to

⁸⁴ The Germans were responsible, however, for the creation of the Demarcation Line dividing France into the “Zone Libre” and the “Zone Occupée” in the south and north, respectively, and the Germans marching into Paris remains a potent image of the helplessness of France at the outset of the Occupation, which also helped to solidify the notion of “true France” versus “Vichy France” following the fall of the Vichy regime.

⁸⁵ Marrus, Michael R, and Robert O. Paxton. *Vichy France and the Jews*. New York: Basic Books, 1981. Print.

France's existing social structures. More importantly, the desperation and haste of the *épuration* further victimized the targets of mass deportations, both at the hands of the Vichy government and the German forces.⁸⁶ In de Gaulle's swift, initially successful attempt at obscuring widespread national complicity, and in the interest of returning to a perceived "normal," true France, the deportees, the survivors, the casualties, their families, their friends, and their loved ones, all victims of both the actions of France and of the German occupation,⁸⁷ were entirely deprived of the chance to be honored by the most minute acknowledgement of the France's role in the misery they suffered. Indeed, it was not until the 1990s that the French government under Jacques Chirac explicitly acknowledged France's role in the Holocaust. It was not only symbolically that those victims and their communities were robbed of any accountability whatsoever on the part of the French government until the 1990s, either. When de Gaulle centered the French political lens upon his *vraie France*, showcasing the valiant efforts of the Resistance and their supporters instead of acknowledging the circumstances and French zeitgeist that led to the induction of the Vichy government, that lens was also taken off other, more prescient issues relating to the continuing hardships of those who had often suffered at the hands of their *own* government. The results of this refocus were demonstrable and material.

⁸⁶ Koreman, 103.

⁸⁷ It is important here that one does not reduce the extent of the victims of the genocide in France and throughout Europe by acknowledging only that which occurred between the years of 1940 and 1944. Like the vast majority of Western European countries, France entered the 20th century with an extremely long history of anti-Semitism sentiments, policies, and laws. Therefore, those who suffered during the tenure of the Vichy regime were not only victims of the Vichy government, but of the sturdy legacy established by French history that allowed for such genocidal beliefs and acts to have existed and occurred during the War. *See generally* Leff, Lisa Moses. Review of *Roots of Hate: Antisemitism in Europe before the Holocaust*. *Shofar: An Interdisciplinary Journal of Jewish Studies*, vol. 24 no. 1, 2005, p. 183-185. *Project MUSE*, doi:10.1353/sho.2005.0192; *see also* Airiau, Paul. *L'antisémitisme Catholique En France Aux XIXe et XXe Siècles*. Berg, 2002. *EBSCOhost*, search.ebscohost.com/login.aspx?direct=true&db=cats05987a&AN=unm.49606100&site=eds-live&scope=site.

The relatively obscured story of what had happened during the Holocaust meant that few people in France were forced to reexamine their own attitudes toward the Jewish community... Even through the lens of the Holocaust, French anti-Semites could always argue that their anti-Semitism had never been like that of the Nazis...⁸⁸

By casting aside any degree of complicity, both on the individual scale and on the greater governmental scale, France and its citizens were deprived the opportunity to closely examine what it means to be French. Was France a nation that could really have embraced Pétain's pseudo-fascism on such a large scale? How much do the French have to continue to grapple with their own preexisting attitudes regarding minority communities, including their anti-Semitism? What were the attitudes and events that could have contributed to the embrace of Vichy and Pétain? How did these events change relationships within and between French communities, and how can those fissures be refilled, or at least improved, moving forward? Regrettably, it was not until decades later that the French populous at large had the opportunity to consider these questions, after having already lived those decades with them under the thin but durable shroud of uncomfortable history.

CHAPTER VI **On the Other Side of the Arc: Amnesty and *Oubli***

It is impossible not to acknowledge the rapid, jarring shift from the *épuration* to the early 1950s that saw the pardon of all those who had previously been the pariahs of French society following the Liberation. A distinction must be made between an advocacy for the type of amnesty that was granted to the collaborators in 1953 by the French government and the general function of amnesty when conducted in a fashion consistent with the metaphorical, predictable arc of the political pendulum. The amnesties granted to collaborators in France during the early

⁸⁸ Deacon, Valerie. *The Extreme Right in the French Resistance : Members of the Cagoule and Corvignolles in the Second World War*. Louisiana State University Press, 2016.

1950s is illustrative of the ill effects of the first round of imperfect *oubli* evidenced by the *épuration*; here, the pendulum's hard postwar swing propelled a swing to the opposite direction. Amnesty plays an important role in the realm of forgetting, especially in the name of national unity; the term itself originates from a Greek term that means "to cast into oblivion."⁸⁹ As Mark Freeman wrote, the meaning of amnesty is directly linked to forgetting: "Amnesty in this original sense was a tool to wipe the slate clean, erase, or bury the memory of certain past events to as to focus on the future."⁹⁰ The use of the word "bury" is notable in this context. While Renan argued that a nation's ability to forget is essential in creating widespread unity and unanimity, despite even the most appalling events and atrocities, amnesty is not necessarily merely a tool to *erase*. If coupled with proper legal proceedings against wrongdoers, including those who may have been confused or caught up in an ambiguous transition of power, as was the case throughout the Vichy period, amnesty is not simply to say, "all is forgiven, and our nation has forgotten." Instead, it is a deliberate political move to acknowledge individual wrongdoing, but in turn, to also acknowledge a force even greater than individual actors and their acts. Amnesty, by definition, is not meant to wipe a slate clean; by granting amnesty, a given government is acknowledging the wrongdoings for which amnesty is granted.

Certainly, amnesty is—and should be—a rare measure for times in which whatever existing protections or legal or social scaffolding was unable to perform as it was designed to. For *épuration*-era France, the failure was not only in the omission of both the French government

⁸⁹ Freeman, Mark. *Necessary Evils : Amnesties and the Search for Justice*. Cambridge University Press, 2009. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=cat06111a&AN=unm.EBC501406&site=eds-live&scope=site

⁹⁰ *Id.*

and the majority of France's citizens to denounce the Vichy government as soon as it came into power, but also in the utter incompetence and carelessness that resulted in unfair proceedings. Amnesty is, as Freeman states, "a palliative for the state's incapacity to govern criminal justice."⁹¹ Indeed, when a government becomes so ineffectual in its ability to recover from an era of great unrest and tragedy, amnesty measures could be the only way to preserve a sense of national unity while still representing a collective agreement to place such actions firmly in the nation's memory, and to put those specters of uncertainty and failure to rest.

The stabilizing force of amnesty can be a significant asset to nations like France while recovering from World War II. Ideally, of course, no amnesty measures would be required at all. For countries with a firm understanding and strong adherence to their own core values and identities, including their own legal structures, amnesties are a relic of the past and no longer required, as their pendulums' deviations are so unlikely and prevented that they are in no danger of collapsing under the weight of instability.⁹²

The manner in which France's 1950s amnesties occurred was chaotic at best, cynical at worst. From 1944 to 1953, in the space of less than one decade, the position of the French government made an enormous pivot; at first, in favor of harshly prosecuting and executing all those who had been associated with Vichy, and then, to the seemingly forced and rushed

⁹¹ Levy, Rene. "Pardons and Amnesties as Policy Instruments in Contemporary France." *Crime and Justice: A Review of Research*, vol. 36, 2007, pp. 551–590. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.cjrr36.14&site=eds-live&scope=site.

⁹² Freeman, 98. In this section, Freeman includes France as one of the countries that has become so stable as to be able to rid itself of the need for amnesty or other clemency measures. Generally, that is true; since the 1960s, France has been relatively stable in terms of its government, legal proceedings, and power structure. However, the negative effects of what occurred in France (both the *Épuration* and the ill-conceived amnesties, as further discussed here, should not be underestimated as a significant destabilizing force that persists.

leniency granted to those same citizens. The shift did not happen immediately. In 1951, the first amnesty law was passed, granting amnesty specifically to those collaborators who had received the penalty of *dégradation nationale* and a prison sentence of less than fifteen years.⁹³ This initial step in the amnesty process marked a distinct moment in postwar France. Not only was the shadow of the war beginning to lift, but the majority of the French nation—particularly those untouched by the Holocaust—were eager to proceed with France’s future as an Ally, and as a consistently liberal paragon of positive nationalism. Like in much of the West, the perceived threat of the USSR and the specter of communism versus the good, free capitalist nations led by the United States took center stage in French politics; instead of the blurry lines between the *Résistance*, the Vichy government, Vichy supporters, victims, and German occupiers, the black-and-white, good-versus-evil beginnings of the Cold War were quickly blooming. Sweeping away the complications of the 1940s, the new nationalism that France conceived was directly related to the Cold War.⁹⁴ For both politicians and French citizens alike, the French nation ought not remain divided in the face of the Soviet threat, particularly while its next-door neighbor, Germany, was enduring the partition between its East and West sectors. Of course, this new nationalism was not one that accounted for or even attempted to understand or ameliorate the actions of the French government during the first half of the 1940s.

The first amnesty bill, relatively conservative in its scope, was passed fairly easily with the assumption that anyone eligible to receive it had not committed any egregious crimes. The 1953 bill, however, was much more inclusive in its scope, allowing for the release of “all

⁹³ Goldhammer, 51.

⁹⁴ *Id.*

remaining prisoners of the purge, except those guilty of the most serious crimes.”⁹⁵ Similar to the original intention stated in the Ordonnance introducing the charge of *dégradation nationale*, however, the limit on this second round of amnesty did not remain restrained by the promise of the language used in the bill. In 1964, only twenty years following the Liberation of Paris and the beginning of the *épuration*, there were no remaining prisoners who had been sentenced in 1945.⁹⁶ Recall that, initially, approximately forty-thousand French citizens were charged with some form of collaboration crime. While no official governmental action was ever published or publicized, the ultimate result of the French government’s struggle with the question of how to handle the issue of such an overwhelming number of its own citizens having participated in what had been definitively deemed as the *untrue* France was simply the release of all those who had been previously incarcerated or otherwise punished.

It is clear that much of what led to this massive change of course in the French postwar zeitgeist was born out of a desire to forget—and to purge—the haunting memories of its own complicity with the horrors of the Second World War. From wildly extrajudicial prosecutions and executions to the 1953 amnesty, the frantic hope of effacing the true nuance of France’s role in both the Resistance and in collaboration creates an extremely difficult lens through which to imagine a more controlled (and legally supported) method of accountability and recovery. Would there have been a possibility of including both fair punishment and amnesty in another version of this history?

Amnesty is, in broad terms, an extremely valuable and often overlooked method of handling the aftermath of political turmoil, from revolutions to coups to wars to complicated

⁹⁵ *Id.* 53.

⁹⁶ *Id.*

situations regarding feuding governments and civil disputes. Although not negotiated until 1949, the four Geneva Conventions identifies what it calls “grave breaches,” or international war crimes like willful killing, torture, inhuman treatment, and unlawful confinement of civilians.⁹⁷ Such grave breaches must be punished, or those guilty must be extradited for prosecution—and such offenders cannot be granted immunity or amnesty.⁹⁸

In the abstract, amnesty is used only in *extremely* rare situations, wherein the lines of legality, or even voluntariness, are so blurred, and a nation is so hurt, that broad measures to excuse certain actions committed not by isolated individuals, but by groups, made those fraught periods is the most feasible, best option for a nation to continue in its existence, with the understanding that, while what may have transpired was difficult, traumatic, and horrific, the fortitude of the nation, and its unity, will ultimately prevail once justice has been served. Certainly, and although the Geneva Conventions did not exist at the time of the 1944 and 1945 trials of collaborators, there are offenders who ought never have been granted amnesty, when those individuals are guilty of such egregious criminal activity that it rose to the level of a grave breach, as defined in the Conventions. There are some crimes against humanity that even the importance of national unity cannot eclipse, and such crimes should be punished to the furthest extent of the laws that existed at the time of the commission of those crimes.

In addition to national healing after an unprecedented event, proponents of amnesty following the *épuration* also cited the fact that amnesty could serve to repair, or at least attempt to atone for the haphazard, sometimes extrajudicial, and altogether pseudo-anarchic prosecutions

⁹⁷ Sterio, 387.

⁹⁸ *Id.*

of collaborators and alleged collaborators.⁹⁹ This argument, of course, is indicative of some degree of circular thinking. To best understand this problem, a return to the metaphorical pendulum is effective. In 1944, those *épuration* processes (including extrajudicial executions), both by courts of law and by individuals and communities, were a direct result of France's and its citizens' diversion from the predictable arc of their socio-legal pendulum. Had there been some oversight, some control over that back-and-forth motion of the pendulum that threatened to exit that arc and enter into an uncontrollable swing to heedlessly disregard the tenets held most dearly by a nation, those prosecutions of the *épuration* would not have resulted in such an unsystematic frenzy of inconsistent so-called justice. In accepting this argument in favor of the 1951 and 1953 amnesties, one would then also be required to accept that, because that pendulum swung so far out of control during the immediate postwar period, a swing in the other direction is the only appropriate response. In other words, a diversion from the confines of the legal structures and protections then necessitates another diversion in order to right the first diversion. This creates an endless loop of attempting to right past wrongs by hastily agreeing to suspend *any* degree of accountability for whatever those wrongs may have been.

What would have been the result, then, if France had had a measured and fair series of prosecutions for collaboration? Of course, it is impossible to know from the standpoint of the context within which this thought experiment is conducted. Nonetheless, consider the possibility of a history in which the *épuration* had not occurred as it did; instead, to continue with the metaphorical pendulum, the pendulum was forced to remain within that predictable, controlled arc. As outlined above, the legitimacy of the Vichy regime remains one of the most important questions regarding France's identity. While "following orders" was a failed defense for many

⁹⁹ Goldhammer, 51.

Nazis tried in international courts, there should nonetheless have been a consideration of the fact that the Vichy regime was, by all accounts, accepted as the rightful and legal government. As such, those who were found guilty of crimes against the state (rather than *dégradation nationale*, which constitutes a violation of *nulla crimen sine lege*) ought to have been evaluated on a case-by-case basis. The interests of fairness would have far outweighed the importance of France's desperation to forget. Certainly, it would have taken much more time than the *épuration* did. It would have been costlier, and it would not have satisfied France's immediate desire to forget and convince itself that the end of Vichy meant the return of de Gaulle's *vraie France*.

Another argument in favor of the 1951 and 1953 amnesties was, of course, that it would be the only path to national reconciliation.¹⁰⁰ This argument is at the heart of the progression of history and the nation's understanding of itself. As stated above, Renan's *oubli* is a required facet to link and bond a nation and to create a somewhat fabled shared story, uninterrupted from the nation's inception through present day. The very fact that amnesties were granted largely as a result of the initial constitutional violation of *dégradation nationale* and the incompetent trials, both formal and informal, is a testament of the importance of remaining within the bound of legality and social considerations in the quest to achieve the kind of *oubli* that Renan described. This is not possible when the solution for the initial violation was another violation; regardless of the actual language of the Ordonnance, the fact remains that there were no collaborators in prison by 1964, despite the fact that it is certain that some of those collaborators were sentenced to, and deserved, a much longer prison sentence than that they received.

In this parallel, speculative version of events, what would have been the role of amnesty, if it played a role at all? In the continued investigation of what could have instead resulted from

¹⁰⁰ Goldhammer, 51.

the turmoil of this period of French history, the potential for amnesty for certain offenders could have played an important role, if it had been performed under the right conditions and in the right manner. In situations like that of the Vichy government, when the distinctions between the legal government of France and the power of the German occupiers became blurred almost beyond recognition, and with the massive number of French citizens prosecuted in at least some way for their collaboration-adjacent acts or behaviors, amnesty could have been a powerful tool in the national unity in a way that the 1951 and 1953 amnesties were not.

CHAPTER VII **The American Adaptation**

It would be a flagrant distortion of reality to suggest that the type of political tumult of the post-Vichy period in France was limited temporally or geographically. Although the circumstances resulting in the postwar pendulum losing control were unusual and unprecedented in postwar France, the desperate need for justice in analogous events has not been limited to the Second World War. Though at first blush a comparison to the United States immediately post-September 11, 2001 may seem mislaid, many of the same patterns of behavior in an imperfect attempt at *oubli* are impressively analogous to those resulting from Vichy. In the United States, and around the world, communities were shocked by the sudden and devastating incursion, but the resulting reaction and intense social fracture followed only shortly after a period of national and international mourning.

Only four weeks following the September 11 attacks, Congress voted to approve the now-infamous USA PATRIOT Act (“Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism”). The passage of the Patriot Act was not particularly controversial in the immediate aftermath of September 11; it was approved by a vote of 357 in favor to 66 against in the U.S. House of Representatives

(approximately 84% in favor), and by a vote of 98 in favor to just 1 against in the Senate (approximately 99% in favor).¹⁰¹ The government felt a need to act swiftly in order to protect the country from another similar attack to the one that had just occurred, and despite the fact that the Act significantly limited privacy rights for American citizens, Congress' action was not limited to an increase in surveillance and preventative measures. The lesser-known Authorization for Use of Military Force Against Terrorists act, passed on September 14, 2001, greatly expanded the powers granted to the President.

...[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States.¹⁰²

In addition to granting the President broad authority in the identification, arrest, and detainment of any person or organization affiliated with the September 11, 2001 attacks, this law also granted broad authority to the U.S. government to perform surveillance on American citizens,¹⁰³ in apparently blatant violation of American citizens' constitutional right to privacy.

It is not a stretch to compare this Authorization for Use of Military Force Against Terrorists act with the decision on the part of the French government to expand Pétain's power as it did at the outset of the establishment of the Vichy regime.

¹⁰¹ Wyden, Ron. "Law and Policy Efforts to Balance Security, Privacy and Civil Liberties in Post-9/11 America," vol 17 *Stanford Law & Policy Review* 331 (2006).

¹⁰² Public Law 107 - 56 - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

¹⁰³ This provision is commonly known as "John Doe roving surveillance," which permitted the Federal Bureau of Investigation to monitor, for example, telephone calls and Internet activity of certain individuals without specifically identifying the individual under surveillance.

When faced with extraordinary circumstances, it is natural for a nation to seek to streamline and bolster a more centralized government. In France, the tragic loss of between 1,357,000 to 1,397,000 citizens during the First World War¹⁰⁴ created the desperate circumstances that led to the consolidation of power under Pétain, which would later be disowned as an unconstitutional aberration carried out by a minority of the population. In the United States, which, by 2001, had grown to be both the nation with the world's largest economy and the nation with the world's largest military since the First World War,¹⁰⁵ was shocked by its own vulnerability in the September 11, 2001 attacks. Where once the United States seemed to be impenetrable and nearly omnipotent, the destabilization caused by the attacks created a climate that had never before existed.¹⁰⁶

The slew of court cases that followed the immediate post-September 11 legislation are a testament to the tenuousness of these new laws. Beginning in 2004, the alleged constitutional

¹⁰⁴ Huber, Michel. *La Population De La France Pendant La Guerre*. Paris: Les Presses universitaires de France; New Haven, Yale University Press, 1931. Print. Some estimates of total deaths during World War I, including deaths resulting from the influenza pandemic, place France's toll as high as four percent of the entire population of the country.

¹⁰⁵ Garamone, Jim. "World War I: Building the American Military." *Www.army.mil*, 3 Apr. 2017, www.army.mil/article/185229/world_war_i_building_the_american_military.

¹⁰⁶ Arguably, the December 7, 1941 attack on Pearl Harbor by the Japanese during World War II created a similar series of events, culminating in the 1944 U.S. Supreme Court's landmark decision in *Korematsu v. United States*, in which the Supreme Court decided in a 6-3 vote that Congress' decision to confine Japanese citizens to internment camps was constitutional in order to avert possible "espionage and sabotage" against the United States during wartime. Despite the fact that the number of deaths was similar between the two incidents, I argue that the aftermath of the September 11, 2001 attacks are unique, largely because the attack on Pearl Harbor targeted United States military personnel, whereas the September 11, 2001 attacks targeted American civilians; the threat, or perceived threat, therefore had that much more of an effect on the American psyche. No distinction between the two incidents should be understood as a minimization of the horrors that American citizens of Japanese descent underwent in internment. For additional information regarding the controversial 1944 Supreme Court decision, see Black, Hugo Lafayette, and Supreme Court of The United States. U.S. Reports: *Fred Toyosaburo Korematsu v. United States*, 323 U.S. 214. 1944. Periodical. Retrieved from the Library of Congress, www.loc.gov/item/usrep323214/.

violations were heard by the Supreme Court. The Fifth Amendment, for example, was brought as a defense for Yaser Hamdi, an American citizen arrested by U.S. military personnel in 2001 and subjected to indefinite imprisonment without access to an attorney. Despite his status as a citizen of the United States, it would be four years until the Supreme Court ruled that Hamdi was entitled to the rights afforded to other American citizens, regardless of his “enemy combatant” status. The very power to deem an individual, including American citizens, as “enemy combatants” was a direct result of the Authorization for Use of Military Force Against Terrorists act.

If the record establishes that United States troops are still involved in active combat in Afghanistan, those detentions are part of the exercise of “necessary and appropriate force,” and therefore are authorized by the [Authorization for Use of Military Force Against Terrorists act].¹⁰⁷

Effectively, this means that the United States Supreme Court ruled, in a decision that has yet to be overturned, that any individual may be *indefinitely detained*. While the Justices who penned this opinion lacked the foresight to know just how long the United States would be “involved in active combat in Afghanistan,” the fact remains that no deadline was set for the end of combat at the time the opinion was written. As of the current date, the United States has been involved in active combat in Afghanistan for over twenty years.¹⁰⁸ To write into law a provision as imprecise and open to designate a time for as long as U.S. troops are “still involved in active combat in Afghanistan” is nothing short of an affront to our closely-held notions of freedom, including the

¹⁰⁷ U.S. reports: *Yaser Esam Hamdi and Esam Fouad Hamdi, as Next Friend of Yaser Hamdi v. Donald H. Rumsfeld, Secretary of Defense, et al.*, 542 U.S. 507. 2004.

¹⁰⁸ As of April 13, 2021, President Biden has announced that all U.S. troops will be removed from Afghanistan by September 11, 2021. See Cooper, Helene, et al. “Biden to Withdraw Combat Troops From Afghanistan by September 11, 2021.” *New York Times*, 13 Apr. 2021, www.nytimes.com/2021/04/13/us/politics/biden-afghanistan-withdrawal.html.

right to be either released or prosecuted, instead of indefinitely detained. Regardless of whether the sitting Supreme Court at the time of this decision could know how long U.S. troops would be involved in active combat in Afghanistan, it is clear that the panic and overwhelming desire for restitution resulting from the September 11, 2001 attacks spurred the highest court in the United States to effectively suspend the constitutional right to habeas corpus under Article I, Section 9: “The privilege of the Writ of Habeas Corpus shall not be suspended unless when in Cases of Rebellion or Invasion the public Safety may require it.”^{109,110} Later, in 2005, Congress passed the Detainee Treatment Act, which stated that all U.S. federal courts lacked jurisdiction to hear any applications for habeas corpus filed by an alien detained at Guantanamo Bay.¹¹¹ In very short order, the American understanding of habeas corpus was upturned and, despite the contemporaneous outcry and considerable unpopularity and skepticism regarding these transformations, the fact remains that such alterations have had a resounding effect on American identity and politics.¹¹²

Much like the situation in postwar France, this practice went against an extraordinarily important facet of American constitutional law and the cultural framework that informs that which constitutes American freedom and due process. The violation of this long-held, basic legal concept is almost uncannily similar to France’s own postwar constitutional violations. In the

¹⁰⁹ Constitution of the United States,” Art. I, Sec. 9.

¹¹⁰ Although the Constitution provides some latitude with regard to Congress’ power to determine whether habeas corpus may be suspended, it is worth noting that Congress’ decision to not only place this power in the hands of the President but to interpret this Section was unprecedented. Issues surrounding unlawful, indefinite detainment in the United States have transformed drastically since 2001.

¹¹¹ Detainee Treatment Act of 2005, Pub. L. No. 109-148, § 1005(e)(1).

¹¹² See, e.g., Hafetz, Jonathan. “Habeas Corpus and the Right to Challenge Unlawful Imprisonment.” *Habeas Corpus after 9/11: Confronting Americas New Global Detention System*. NYU Press, 2011, pp. 81–100. *JSTOR*, www.jstor.org/stable/j.ctt9qfh9f.9.

same breath, the American government claimed to be actively protecting that which is quintessentially American—freedom and personal independence—while simultaneously taking directed action to encroach upon those same freedoms. In the interest of promoting that American national identity, the flawed forgetting, in this case, manifested in an attempt to push a flawed narrative to accomplish political and legal aims that would otherwise have never been permitted in peaceful historical contexts.

There is no guarantee on the stability and steadfastness of any nation’s legal and cultural frameworks. The only assurances are the constant reinforcement of those values, regardless of the era and situation in which those reinforcements are required. As noted by Robert Chesney, “[America] keeps on violating Constitutionally-protected rights during national crises, only to have to make amends later,” pointing to the internment of Japanese-Americans, German-Americans and Italian-Americans during World War II and McCarthyism during the 1950s.¹¹³ Chesney goes so far as to argue that the nature of the American government changed from being an “open, democratic society” to being a “closed, garrison state.”¹¹⁴

What, then, can one conclude about the United States’ understanding of itself following the post-September 11, 2001 legislation? It may still be too soon to tell; many of those pieces of legislation are still in force, and it is likely that we have not yet fully arrived at the resulting “swing back” that will almost certainly result from this moment in American history. Regardless, the very fact that this legislation was put in place is testament to the pendulum—by falling

¹¹³ Chesney, R. M. “Cole & Dempsey: Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security; Cole: Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism.” *Michigan Law Review*, no. 6, 2003, p. 1408. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=edsbl&AN=RN144129441&site=eds-live&scope=site.

¹¹⁴ Chesney, 200.

outside the bounds of our established framework, that which constitutes the United States, including our forgetting, our memory, and our identity.

Because of the fact that France has largely done without needing to consider granting amnesty since the events of the Second World War (including those actions that were not prosecuted until decades after their commissions), a legitimate question necessarily arises: If, only a couple of generations after the conclusion of the War and the *épuration*, France enjoys considerable political and social stability, what were the *actual* effects of the partial, imperfect forgetting that occurred between 1944 and 1953?

To reiterate a previous point, the first and most important result of France's deeply flawed postwar *oubli* was the re-victimization of those who had already suffered as a result of the actions of both the French and German governments during the Occupation. The fact that it was not until the mid-1990s that the French government truly considered and executed large-scale reparation payments to French citizens, who, of course, by that time, had mostly attained old age or already passed away. It was not until *seventy decades* following the conclusion of World War II that the French victims of the Holocaust and mass-deportations performed at the hands of the acting French government.¹¹⁵ Even given the fact that the events of the Second World War and its aftermath occurred two-and-a-half generations ago, and the fact that almost all those with any living memory of the Holocaust and mass deportations have already passed away, the deficient

¹¹⁵ Many of the reparations were the result of international agreements with then-Allied nations, like the 2014 agreement between France and the United States for France to pay reparations to Holocaust victims in exchange for the dismissal of numerous court cases against the French national train system, SNCF. See Shaver, Katherine. "Holocaust Survivors Receive Reparations for Deportations on French Trains." *Washington Post*, 6 Feb. 2019, www.washingtonpost.com/local/trafficandcommuting/holocaust-survivors-receive-reparations-for-deportations-on-french-trains/2019/02/06/69da6d52-2a23-11e9-b2fc-721718903bfc_story.html.

de Gaullian attempt at presenting an alternate history of Vichy continues to affect France's perception of itself. In a 2002 article published in *The Guardian*, Julia Pascal discussed the ever-present phantom of *vraie France*, and the strife it continues to cause in the lives of ordinary French youths. One seventeen-year-old interviewee, Alexandre, living in Vichy for most of his life stated that the town of Vichy (where the Vichy government was headquartered), continues to hold a negative connotation, and he feels shamed by his peers for the mere fact that he lives there.

Whenever he meets people from other towns, "They always say, 'Ah, you come from Vichy, you must have some pretty extreme ideas.'" Even the local rugby team is routinely abused as "Pétainist". Alexandre says his generation can't identify with Vichy and wants to get out as soon as possible. His school history lessons "neglected" to detail occupied France, but he is only too aware of the town stigma. Alexandre came here as a seven-month-old baby, but insists, "I am not from Vichy."¹¹⁶

Even after the decades and generations that have passed, and despite the fact that many if not most French citizens have come to understand, at least to some degree, that de Gaulle's *vraie France* narrative was a simplistic and largely distorted version of French World War II history, the notion that Vichy was an aberration and an extraordinary, one-off situation borne from the inconceivable evil of a tiny number of French citizens (apparently to include the entire contemporary population of the town of Vichy) remains a powerful distractor and detractor from the potential for France and its citizens to have an honest and profound reckoning with what it means to be French, and to have been French, through the extent of the 20th century through today.

To assume that there will never be an event like the Second World War in the Western world ever again would be short-sighted at best, and entirely dismissive of the ebbs and flows of

¹¹⁶ Pascal, Julia. "Vichy's Shame ." *The Guardian*, 2002, www.theguardian.com/world/2002/may/11/france.weekend7.

politics and history at worst. Of course, there will probably never be a situation exactly like that of early 1940 in France ever again; but to say certain “unprecedented circumstances” are unforeseeable and so rare as to warrant a complete reversal of a nation’s social framework like the authors of *dégradation nationale* argued would be to assume the immortality of a nation, which would be an absurdity. Flux, instability, upheaval, unpredictability, and unanticipated events, whether local, national, or global, always wield the power to present such an unforeseen, unprecedented series of events that threaten to destabilize or menace the existence of a given nation. By all accounts, it appears as though the continued legacy of Vichy does not exert an extreme effect on most French citizens’ daily lives. Nonetheless, there is naïveté in the belief that the West is immune from a return to comparable turmoil as was suffered during the War.

The notion of France’s inherent, unchanging goodness in the face of the evil German occupiers (with the exception of that small minority of traitors who facilitated Vichy and its activities) directly interferes not only with France’s ability to take accountability and responsibility for its actions as a nation throughout history, but also for its ability to understand and navigate some of its contemporary social issues. Today, the future is uncertain today as it was on the eve of the Second World War. While peace and stability are massively improved for Western Europe than they were some eighty years ago, there remains the possibility of additional unrest and turmoil in the future.

More realistically, perhaps wartime France provides a foretaste of the many horrid choices we may soon have to make in this fast-declining Western world already full of its own rackets.¹¹⁷

¹¹⁷ Singer, Barnett. “The Changing Image of Vichy in France.” *Contemporary Review*, no. 1693, 2009, p. 197. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=edsgao&AN=edsgcl.205755180&site=eds-live&scope=site

There is no doubt that the wisdom of events already passed allow us to take measures to protect against the same events recurring. Nonetheless, the casual scapegoat of “unprecedented events” is unworkable and dishonest. The fact is, in Western Europe as well as anywhere else in the world, there is a perpetual threat of political and civil unrest, colossal destabilizing events, and, more so in recent history, global environmental disasters. Now more than ever, it is essential to understand what happened in situations like the Vichy government and its aftermath, because there will never be a moment in history immune from precedent.

CONCLUSION

Most, if not every contemporary legal scholar is familiar with an old adage attributed to U.S. Supreme Court Justice Oliver Wendell Holmes : “Hard cases make bad law,” or sometimes more simply put, “bad facts make bad law.” Used most famously within the context of Northern Securities Co. v. United States, a 1904 case regarding the regulation of monopolies, this axiom has come to be known as a sort of all-purpose explanation for questionable lawmaking, whether legislative or judicial, when a case or a situation presents complicated, difficult, or otherwise unpleasant questions. Otherwise phrased, bad incidents rarely result in good law. While this saying is used as a sort of built-in explanation for court rulings or legislation that, from the perspective of the well-informed spectator, may seem dubious, there are far more serious implications contained therein. If one becomes comfortable with the admission that we—as human beings, as organizations, as governments, and as nations—are reduced in our capacities to judge and make decisions when those decisions are the result of challenging circumstances, then one is essentially conceding that there is nothing that can be done regarding those

Eventually, those facts would begin to come to light in the 1960s through the 1990s, as the abuses that were committed by France and its citizens during World War II were uncovered

through the release of records and historical documents. Doubtlessly, and as tends to be the case more often as the availability of information improves globally, there is a turning point at which the comfort of unresolved nationalism (like the concept of *vraie France*) must come to the surface. Even in most instances of that which has been forgotten using the terms of Renan's *oubli*, within the collectively-understood framework within which a given society operates, there can never be a final erasure of an event, and nor should there be. The forgetting, then, is not so much a denial; it is itself an acknowledgment, an accounting, but also a putting to rest with the security and knowledge that those things that a nation and its people hold most dear—systems of justice, values, morality, fairness—remain intact, regardless of whatever may have occurred during times of unimaginable tumult.

In addition to an agreement to commit disagreeable events and periods to history, rather than allow them to remain an eternal phantom and tacit reminder of the tenuousness of a society or nation, it is important to have a consistent, fair, legal application of law and culture standards and not abandoning important cultural standards in the name of retribution or justice, particularly when such retribution or justice is so desperately desired as an antidote to facing and addressing internal national concerns.

For France, the rush for justice resulted not only in a series of shockingly insufficient and inconsistent due process for accused collaborators during the *épuration*, a poorly-penned and poorly-applied additional punishment for some of those collaborators, and the rushed, incomplete, and ultimately harmful amnesties of the early 1950s; it also resulted in the persistent incapacity of France to consider what within itself allowed for the ascension of Pétain and his policies. In the last several years, anti-Semitic, and more broadly, xenophobic attitudes and

crimes are spiking in France.¹¹⁸ It would be reductionist to attribute all such growth to the flawed reactions to the Vichy regime and French complicity. However, it would be likewise naïve to assume that Vichy and its legacy do not contribute to this double-France. All at once, the French nation and its citizens must now grapple with the impossibility of both the comfortable narrative of *vraie France* and its many resisters, side-by-side with this contemporary France that has not released its hold on ancient, inherited, and reignited attitudes that are nothing if not reflective of one of the darkest periods in French history.

When a nation can forget? Within the bounds of its own rules, and without denying that such events occurred, a nation may establish its own continuity and understanding of itself that is not interrupted by strange political “blips.” In this way, a nation can develop the ability to develop a holistic, temporally unbroken, and comprehensive understanding of itself and its own history. Without such an understanding, the process of identifying potentially deep-seated or insidious problems becomes almost impossible. In veiling the Vichy period as a moment of someone *else’s* failing—whether that be Pétain, the German government, or Vichy supporters—the ultimate result is a messy, unfinished mosaic of history that provides no clues and no pathways to self-betterment. Ultimately, this narrative confuses the structure that cements a nation together, those same standards by which a nation and its citizens agree to live. In doing so, the cultural basis of a nation is liable to be corrupted under the weight of the destabilization of that national identity and continuity of self.

This subject is not limited to time, geography, or situation. Regardless of the country or context, national integrity is one of the most important aspects of a functioning society. Without

¹¹⁸ Wiewiorka, Michel, et al. *The Lure of Anti-Semitism: Hatred of Jews in Present-Day France*. Brill, 2007.

dismissing or deliberately mis-recording historical events, there is something to be said for Renan's century-and-a-half year old speech in which he advocated for an element of forgetting. Not the event itself, and not the victim of the event; but rather, the constant replay, the resurrection, and the lingering haunt of those events which continue to plague a nation with questions like, "who are we, really, if such a thing happened here?" Here, we find room not only for generous reparations, memorials, and educational reinforcement of those events and what can be learned from them; we find room, too, for the possibility of amnesty, performed properly, when the chaos of a political upheaval also victimizes some caught between successive rulers or governments.

In a heavily nuanced, ever more complicated, increasingly globalized world, there is a curious phenomenon in which the borders between nations have a tendency both to blur and to become bolder, deeper and darker lines in the map designating territories. Contact between nations is at an all-time high; trade deals, skirmishes, tensions, and all other manners of interaction are a constant fact of contemporary existence. At the same time, emerging past the dawn of the 21st century and deeper into this era, nations grapple with adapting to the speed of this new world, the questions posed, the relationships between other nations, the best possible manner to preserve and act in the best interest of its citizens. Emerging from 2020 is a testament to this world and its nations in flux. If there is a single lesson to be gleaned from our perspective, looking back upon the 20th century and all which transpired from the Second World War in France through September 11, 2001 in the United States, it would be that of the importance of affirming and reaffirming the bedrock of a nation's scaffolding, built upon an ideal imperfectly realized through a nation's institutions and processes created to reflect that scaffolding. That constant is required in order to forget those unforgettable events of the past. Without one,

alternate, inconsistent versions of a nation—a Vichy versus *République*, a pre-9/11 United States and a post-9/11 United States—vie for domination and ultimately, there can be no one nation.

BIBLIOGRAPHY

- Airiau, Paul. *L'antisémitisme Catholique En France Aux XIXe et XXe Siècles*. Berg, 2002. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=cat05987a&AN=unm.49606100&site=eds-live&scope=site.
- Ancel, Marc, and Jacques Verin. "France." *The American Journal of Comparative Law*, vol. 21, no. 2, 1973, pp. 263–268. JSTOR, www.jstor.org/stable/839123.
- Annales de L'Assemblée Nationale, Annexe au Procès-Verbal de la séance du Mercredi 10 Juillet 1940. <http://www.assemblee-nationale.fr/histoire/vote-80.pdf>
- Azéma, Jean-Pierre, and Olivier Wiewiorka. *Vichy: 1940-1944*. Perrin, 2006.
- Bancaud, Alain. "La Magistrature Et La Répression Politique De Vichy Ou L'histoire D'un Demi-Échec." *Droit Et Société*, vol. 34, 1996, pp. 557–574., www.persee.fr/doc/AsPDF/dreso_0769-3362_1996_num_34_1_1384.pdf.
- Baruch, Marc-Olivier. « Vichy and the Rule of Law », *Bulletin du Centre de recherche français à Jérusalem*, 6 | 2000, mis en ligne le 07 juillet 2008. <http://journals.openedition.org/bcrfj/2992>
- Biégelmann, Fabienne. « Daniel Mendelsohn, *Les Disparus*. Traduit de l'anglais (États-Unis) par Pierre Guglielmina. Avec le concours du Centre National du livre. Photographies de Matt Mendelsohn. Paris, Flammarion, 2007 », *Che vuoi*, vol. 29, no. 1, 2008, pp. 179-187.
- Bonneui, Christophe, and Frederic Thomas. "Purifying Landscapes: The Vichy Regime and The Genetic Modernization of France." *Historical Studies in the Natural Sciences*, vol. 40, no. 4, 2010, pp. 532–568. JSTOR, www.jstor.org/stable/10.1525/hsns.2010.40.4.532.
- Booth, William James. *Communities of Memory : On Witness, Identity, and Justice*. Cornell University Press, 2006. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1837492&site=eds-live&scope=site.
- Bullitt, William Christian. "The Ambassador in France (Bullitt) to the Secretary of State La Bourboule, July 1, 1940—9 P.m." *Office of the Historian*, FOREIGN RELATIONS OF THE UNITED STATES DIPLOMATIC PAPERS, 1940, GENERAL AND EUROPE, VOLUME II, history.state.gov/historicaldocuments/frus1940v02/d536.
- Chesney, R. M. "Cole & Dempsey: Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security; Cole: Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism." *Michigan Law Review*, no. 6, 2003, p. 1408. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=edsbl&AN=RN144129441&site=eds-live&scope=site

Chomienne, Christian. “Juger Les Juges?” *Le Genre Humain*, 1994, pp. 9–16., www.cairn.info/revue-le-genre-humain-1994-1-page-9.htm.

Code Pénal De 1810, Code Des Délits Et Des Peines, Première Partie, Article 4, ledroitcriminel.fr.
ledroitcriminel.fr/la_legislation_criminelle/anciens_textes/code_penal_1810/code_penal_1810_1.htm.

Conan, Eric, and Henry Rousso. *Vichy : An Ever-Present Past*. University Press of New England, 1998. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=34277&site=eds-live&scope=site.

Constitution of the United States,” Art. I, Sec. 9.

Cooper, Helene, et al. “Biden to Withdraw Combat Troops From Afghanistan by September 11, 2021.” *New York Times* , 13 Apr. 2021, www.nytimes.com/2021/04/13/us/politics/biden-afghanistan-withdrawal.html.

Cours de droit. “Le Principe de Non-Rétroactivité De La Loi Pénale plus Sévère.” *Cours De Droit*, 29 Mar. 2019, cours-de-droit.net/le-principe-de-non-retroactivite-de-la-loi-penale-plus-severe-a121607254/#:~:text=Article%20112%2D1.,applicables%20%C3%A0%20la%20m%C3%Aame%20date%C2%BB.

Cowans, Jon. “French Public Opinion and the Founding of the Fourth Republic.” *French Historical Studies*, vol. 17, no. 1, 1991, pp. 62–95. *JSTOR*, www.jstor.org/stable/286279.

Deacon, Valerie. *The Extreme Right in the French Resistance : Members of the Cagoule and Corvignolles in the Second World War*. Louisiana State University Press, 2016.

Deák, István. *Europe on Trial : The Story of Collaboration, Resistance, and Retribution during World War II*. Westview Press, 2015. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=cat05987a&AN=unm.881665380&site=eds-live&scope=site.

Déclaration Des Droits De L'homme Et Du Citoyen Du 26 Août 1789, Ministère De L'Education Nationale, De La Jeunesse Et Des Sports . www.education.gouv.fr/declaration-des-droits-de-l-homme-et-du-citoyen-du-26-aout-1789-10544.

Detainee Treatment Act of 2005, Pub. L. No. 109-148, § 1005(e)(1).

Fichte, Johann Gottlieb. “Addresses to the German Nation.” *From Absolutism to Napoleon, 1648-1815*, vol. 2, 1807, germanhistorydocs.ghi-dc.org/pdf/eng/12_enlightphilos_doc.8_english.pdf.

Freeman, Mark. *Necessary Evils : Amnesties and the Search for Justice*. Cambridge University Press, 2009. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=cat06111a&AN=unm.EBC501406&site=eds-live&scope=site

Garamone, Jim. "World War I: Building the American Military." *Www.army.mil*, 3 Apr. 2017, www.army.mil/article/185229/world_war_i_building_the_american_military.

Gibert, Pascal. "Vichy Contre Vichy. Une Capitale sans Mémoire." *Apropos [Perspektiven Auf Die Romania]*, 2019, pp. 143–146., doi:<https://doi.org/10.15460/apropos.3.1471>.

Glaser, Stefan. "Nullum Crimen Sine Lege." *Journal of Comparative Legislation and International Law*, vol. 24, no. 1, 1942, pp. 29–37. *JSTOR*, www.jstor.org/stable/754902.

Goldhammer, Arthur, translator. "Unfinished Fourning (1944-1954)." *The Vichy Syndrome - History and Memory in France since 1944*, by Henry Rousso, Harvard University Press, 1991, pp. 20–21.

Gordon, Bertram M. "The 'Vichy Syndrome' Problem in History." *French Historical Studies*, vol. 19, no. 2, 1995, pp. 495–518. *JSTOR*, www.jstor.org/stable/286785.

Hafetz, Jonathan. "Habeas Corpus and the Right to Challenge Unlawful Imprisonment." *Habeas Corpus after 9/11: Confronting Americas New Global Detention System*. NYU Press, 2011, pp. 81–100. *JSTOR*, www.jstor.org/stable/j.ctt9qfh9f.9.

Huber, Michel. *La Population De La France Pendant La Guerre*. Paris: Les Presses universitaires de France; New Haven, Yale University Press, 1931.

Jacobs, Dov. *Hidden Histories of War Crimes Trials*, by Kevin Heller and Gerry Simpson, Oxford University Press, 2014, pp. 122–136.

Klarsfeld, Serge, et al. "Histoire Et Justice." *Esprit (1940-)*, no. 181 (5), 1992, pp. 16–37. *JSTOR*, www.jstor.org/stable/24274604.

Koreman, Megan. *The Expectation of Justice: France, 1944-1946*. Duke University Press, 1999. (97).

"La Seconde Guerre Mondiale Dans Le Cher Archives Des Juridictions Spéciales (1941-1948)." Edited by Didier Arnold, *Cher - Département 18*, 2013, www.archives18.fr/.

Levie, Howard S. "The Nature and Scope of the Armistice Agreement." *The American Journal of International Law*, vol. 50, no. 4, 1956, pp. 880–906. *JSTOR*, www.jstor.org/stable/2195628

Levy, Rene. "Pardons and Amnesties as Policy Instruments in Contemporary France." *Crime and Justice: A Review of Research*, vol. 36, 2007, pp. 551–590. EBSCOhost,

search.ebscohost.com/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.cjrr36.14&site=eds-live&scope=site.

Marchal, Leon, et al. *Vichy: Two Years of Deception*. The Macmillan Company, 1944. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=cat05987a&AN=unm.401583&site=eds-live&scope=site.

Marrus, Michael R, and Robert O. Paxton. *Vichy France and the Jews*. New York: Basic Books, 1981. Print.

Nora, Pierre, and Marc Roudebush. "Between Memory and History: Les Lieux De Mémoire." *Representations, Special Issue: Memory and Counter-Memory*, no. 26, 1989, pp. 7–24. *JSTOR*, <https://www.jstor.org/stable/2928520>. (8-9)

Novick, Peter. "Nullen Crimen Sine Lege." *The Resistance Versus Vichy : The Purge of Collaborators in Liberated France*, Columbia University Press, 1968, pp. 140–156.

Ordonnance du 9 août 1944 relative au rétablissement de la légalité républicaine sur le territoire continental—Version consolidée au 10 août 1944. <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006071212/> .

Ordonnance du 26 août instituant l'indignité nationale. Version initiale. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000504738?isSuggest=true>.

Pascal, Julia. "Vichy's Shame ." *The Guardian*, 2002, www.theguardian.com/world/2002/may/11/france.weekend7.

Paxton, Robert O. *Vichy France: Old Guard and New Order, 1940-1944*. Columbia University Press, 2001. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=cat05987a&AN=unm.47825026&site=eds-live&scope=site.

Pendas, Devin O. "Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany, 1945–1950." *Central European History*, vol. 43, Sept. 2010, pp. 428–463. *JSTOR*, <http://www.jstor.com/stable/27856215>.

Ploscowe, Morris, "Jury Trial in France" (1945). *Minnesota Law Review*. 1984. <https://scholarship.law.umn.edu/mlr/1984>.

Public Law 107 - 56 - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

Renan, Ernest. "Qu'est-ce qu'une nation? ." 11 Mar. 1882, Paris, Université Paris-Sorbonne, www.iheal.univ-paris3.fr/sites/www.iheal.univ-paris3.fr/files/Renan_-_Qu'est-ce_qu'une_Nation.pdf.

Simonin, Anne. "L'indignité Nationale De 1944, Une Bonne Loi Mal Faite Et Mal Appliquée." *Slate France*, 2016, www.slate.fr/story/112649/indignite-nationale1.

Singer, Barnett. "The Changing Image of Vichy in France." *Contemporary Review*, no. 1693, 2009, p. 197. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=edsgao&AN=edsgcl.205755180&site=eds-live&scope=site

Smith, A., & Lothian, J. M. (Eds.). (1963). *Lectures on rhetoric and belles lettres*. London: T. Nelson

Sweets, John F. "Hold That Pendulum! Redefining Fascism, Collaborationism and Resistance in France." *French Historical Studies*, vol. 15, no. 4, Oct. 1988, pp. 731–758. EBSCOhost, doi:10.2307/286556

"Texte De L'armistice Signé à Rethondes Le 22 Juin 1940 ." *Digitèque De Matériaux Juridiques Et Politiques*, Digitèque MJP, 2006, mjp.univ-perp.fr/france/1940armistice.htm.

U.S. reports: *Yaser Esam Hamdi and Esam Fouad Hamdi, as Next Friend of Yaser Hamdi v. Donald H. Rumsfeld, Secretary of Defense, et al.*, 542 U.S. 507. 2004.

Veraart, W. (2016), Two Rounds of Postwar Restitution and Dignity Restoration in the Netherlands and France. *Law and Social Inquiry*, 41: 956-972. <https://doi.org/10.1111/lsi.12212>

Wexler, Leila Sadat. "Reflections on the Trial of Vichy Collaborator Paul Touvier for Crimes against Humanity in France." *Law & Social Inquiry*, vol. 20, 1995, pp. 191–221., doi:10.2307/828861.

Wieviorka, Michel, et al. *The Lure of Anti-Semitism: Hatred of Jews in Present-Day France*. Brill, 2007.

Wilsher, Kim. "France Remembers Algerian Massacre 50 Years On." *The Guardian*, 17 Oct. 2011, www.theguardian.com/world/2011/oct/17/france-remembers-algerian-massacre.

Wood, Nancy. "Crimes or Misdemeanours? Memory on Trial in Contemporary France." *French Cultural Studies*, vol. 5, no. 13, Feb. 1994, pp. 001–021, doi:10.1177/095715589400501301.

Wyden, Ron. "Law and Policy Efforts to Balance Security, Privacy and Civil Liberties in Post-9/11 America," vol 17 *Stanford Law & Policy Review* 331 (2006).