

**OLD AND NEW LAWS ON HISTORICAL
INJUSTICES AND GENOCIDE /
MEMORY, HISTORY AND THE LAW IN
CONTEMPORARY FRANCE**

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Transitional justice, restitution or reparation politics, apologies, public policies aiming at the redress of historical wrongs or injustices have been and continue to be the source of a considerable body of literature coming from historians, lawyers, sociologists, philosophers, political scientists and many others (1). My aim here is not to add substantially to it. What I shall try to do is, in part I of this paper, to comment on what has been going on in this domain and on its causes and meaning, in part II, to discuss the French scene in this respect and explore how it has been, to this day, shaped by the combined effects of history, memory, law and politics, before offering, in part III, some final thoughts on the politics of memory.

May I, at this point, declare an interest or rather several interests with this topic, which has been with me, one way or another, for a long time ?

As a lawyer and a judge I have been observing closely its legal aspects : criminal prosecutions and trials, policies of restitution and compensation, symbolic statutes and the interplay of domestic and international law.

From the 1970s on, many visits to a number of Central and Eastern European countries, first on a private basis, later, after 1989 as an expert, a consultant, a teacher or a participant to the international Project “Justice in Times of Transition” showed me graphically the importance of the politics of memory, both under Communist rule and after its collapse, to this very day, as has been shown by the recent debate in Poland on the statute relating to “lustration” and the decision of the Constitutional Court declaring most of the statute unconstitutional.

In my own country, France, I have had the opportunity, on several occasions to think about the subject of this paper: In 1981 I published, in series of which I am the editor, the book by M.Marrus and R.Paxton, *Vichy and the Jews*, the first monograph on this subject published in France .Reading the attention the chapters the authors sent me led to some reflections on the state of national memory on this particular episode of French history. Later on I have been a close observer of several categories of events :

- The prosecution, trial and conviction of three individuals, Barbie, Touvier and Papon accused of crimes against humanity. These trials were both the first and the last of this kind.
- The adoption of memorial statutes (“lois mémorielles”).
- The public policy of compensation of the Jewish victims of the Vichy regime and of Nazism adopted in the 1990s.

Finally I participated, as a member of an independent overseeing committee, to the inquiry launched by an autonomous State financial institution, the Caisse des dépôts, on its role in the forced deprivation of property directed against Jews and in restitutions since 1944.

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PART I :

REPAIRING HISTORICAL WRONGS OR INJUSTICES SOME THOUGHTS ON A CONTEMPORARY TREND

To repair historical wrongs or injustices, one way or another, is a trend that seems to be spreading in many countries. I would like to present first some remarks on the contents of this trend, and, second, a few reflections on its causes and meaning.

1. Ten remarks on the contents of this trend

These remarks relate to the following points.

- 1) The form of these actions.
- 2) The level at which they have been taken.
- 3) The events concerned.
- 4) The categories of actors involved.
- 5) The regional variations.
- 6) The role of historians.
- 7) The place of the Nazi genocide of the Jews.
- 8) The call to the public authorities.
- 9) The link between the “politics of regret” and the politics of human rights.
- 10) The competition of memories and of victims.

1) The form of these actions

They have taken many forms: apologies, acknowledgments, public statements, policies aiming at redress, compensation, satisfaction, restitution, rehabilitation, atonement. But also statutes or actions brought before courts, hence the expression “transitional justice” (R. Teitel). The titles of many studies are telling: “The Guilt of Nations. Restitutions and Negotiating Historical Injustices” (E. Barkan); “Closing the Books” (J.Elster); “Making Whole what has been Smashed” (J.Torpey,1); “Official Apologies and the Quest for Historical Justice” (M. Marrus).

2) The level at which they have been taken

Such steps have taken place not only at the domestic level but also at the international one: e.g. Declarations, such as that adopted in 2001 by the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2) accompanied by a Programme of Action; and Agreements, like those concluded in the late 1990’s with Germany, Austria and Switzerland, or between the USA and France.

3) The events concerned

M. Marrus writes that complete apologies include the following four features: "1.an acknowledgment of a wrong committed, including the harm that it caused; -2.an acceptance of responsibility for having committed the wrong. -3.an expression of regret or remorse both for the harm and for having committed the wrong.- 4.commitment, explicit or implicit, to reparation and, when appropriate, to non-repetition of the wrong" (Marrus). Although it relates to apologies, this framework might also have a more general validity here.

Such initiatives have related to a variety of events: those which occurred during WW2 or after it, such as the treatment of certain groups of the population (the Japanese-Americans in the USA and the Japanese-Canadians in Canada); the persecution of Jews by the Vichy regime (France); the Nazi genocide of the Jews by the Nazis , the exploitation of slave laborers, the looting of property and the fate of dormant assets after the end of the war (Germany, Austria, Switzerland). Other claims concern the general condition of native populations, together with specific claims relating to land, works of art or natural resources (Canada, USA, Australia, New-Zealand).

Events that took place in the beginning of the XXth century are also involved, such as the genocide of the Armenians in Turkey in 1915 (France). So are much earlier events, such as the slave trade and slavery, or colonisation. J. Torpey (1) mentions a treaty signed in 2003 between the Land of Brandenburg , in Germany, and the Holy See under which Brandenburg would pay the Church more than a million euros as "compensation for church property confiscated during the time of the Reformation as well as at the beginning of the XIXth century.

4) The categories of actors involved

The main novelty has been the role played by non-State actors, including associations and NGOs, in several capacities:

- as authors of initiatives leading to compensation or restitution: the role of the World Jewish Congress is an apt illustration here.
- as negotiators of agreements (id).
- as authors of actions brought before courts.
- As authors of apologies, e.g. the Catholic Church for its attitude towards antisemitism and the persecution of the Jews under Nazism. The example of the 1997 statement of the French bishops in Drancy will be examined infra.

5) Regional variations

The trend discussed here is by no means an universal one. It is excluded, by definition, in Communist regimes as well as in other dictatorships. With the exception of a few courageous private initiatives, such as the Memorial association, it is non-existent in Russia, certainly not for lack of matter. Central and Eastern European countries are a fascinating example. In his preface to *A l'Est, la mémoire retrouvée*, Jacques le Goff mentions "a world invaded by memory and as if possessed by the past, where the onslaught of symbols and of the collective imagination are everywhere", and where everything arouses emotions associated with memory: flags, names of places or of cities, stamps, anniversaries,

commemorations, schoolbooks, cemeteries, national anthems, boundaries (3). A combination of blank pages and black holes. This being said, the fact is that few of these countries, if any, have developed a consistent public policy on the subject.

6) The role of historians

The role of historians has been conspicuous in this process in several ways:

- There has been a new emphasis in historical studies on the history of the forgotten, the mistreated, the enslaved, the murdered, the victims, the oppressed, the exploited.
- Historians have been active in public life as experts, e.g. as members of committees on inquiries and, at times, as expert-witnesses in trials of those accused of crimes against humanity.
- They have also been engaged in public debates on national history,(4) e.g. in Germany the debate on the singularity of the Nazi genocide of the Jews, the “Historikerstreit”(5) and, in France, the debate fuelled by the adoption of “lois mémorielles”.

7) The Nazi genocide of the Jews as a standard and model

Many authors insist on this point (Torpey,1; Marrus). The illustrations are many.

8) The call to the public authorities

In all countries the call for repairing, one way or another, historical wrongs or injustice is primarily addressed to public authorities : The Head of the State, Parliament, the Government or the courts.

9) The link between the politics of human rights and the politics of regret

Such a link has been affirmed by some commentators (Olick and Coughlin, in Torpey, 2). The term “human rights” must be used here *lato sensu*, as a reference to a quadruple body of law that has emerged since at least half a century, in domestic and international law and is composed of international human rights law, international humanitarian law, international refugee law and international criminal law.

10) A competition of victims and of memories

In an article published in *The New York Review of Books* under the title “The joys and perils of victimhood”, Ian Buruma wrote : “In a curious way, the Jewish Holocaust has been an inspiration for others ... (Other communities) have suffered wrongs, and to an increasing and in my view alarming extent, all want these wrongs to be recognized, publicly, ritually, and sometimes financially”. He then added : ”...what is alarming, however, is the extent to which so many minorities have come to define themselves above all as historical victims... It

becomes questionable when a cultural, ethnic, religious or national community bases its communal identity almost entirely on the sentimental solidarity of remembered victimhood.”

II. The causes and meaning of such a trend

Among the many explanations offered two deserve a brief comment .

Many commentators have suggested that such a trend reflects a sort of historical reorientation of politics, “an unmistakable decline of a more explicitly future-oriented politics... a kind of transitional substitute for the progressive politics associated with Enlightenment, cut for an age of diminished political expectations” (Torpey,2). According to the same author“ the shift from the millenarian striving for an utopian future to the struggle to repair past wrong-doings constitutes a sea-change in thinking about politics... Efforts to rectify past wrongs have ...arisen in part as a substitute for expansive visions of an alternate human future”. The same author adds : “The concern with memory and coming to terms with the past must therefore be understood in part as a defensive response to the disorientation induced by the collapse of an invigorating conception of a common destiny. In the same vein Charles Maier notes that ”At the end of the XXth century Western societies have come to the end of a massive collective project”. He mentions “some great exhaustion of civic culture at the end of the second millennium of the Christian era and concludes that ”the surfeit of memory is a sign not of historical confidence but of a retreat from transformative politics”. Other authors have suggested that there was a link between the apparition of this trend and the end of the Cold War : “Cold war conflicts, so long as they lasted, constrained the case for repairing the crimes of slavery, colonialism, apartheid and humanitarian violations” (E.Barkan).

I am not entirely convinced by this explanation, for a number of reasons. Firstly, as a matter of fact, when and in which societies did we exactly witness, before this trend appeared, “expansive visions of an alternate human future”, or full “historical confidence” ? Secondly it seems to me that such a quasi-functionalist approach tends to underestimate the weight of local histories and politics. Thirdly it does not help to explain why this trend exists in some societies, and not in others. Fourthly, since there is no evidence that such a trend will be a permanent one and a fixed character of our societies, does that mean that if and when it disappears we shall revert to the “expansive visions” and the “invigorating conceptions of a common destiny” mentioned supra ?

The second explanation is a different one and is often presented together with the precedent one. A link is affirmed with the “diffusion of multiculturalism and identity politics... the declining persuasiveness of national narratives”, the fact that “the idea of the nation-state has been widely discredited” (Torpey 2). According to this author “a preoccupation with the rights of culturally defined groups has extensively replaced the collective visions that animated the Fordist class politics of the XXth century”. Many authors stress what they call the communautarisation of the public mind, the fragmentation of the body politic.

PART II

AN ANATOMY OF FRENCH MEMORIES:

FROM FACING THE VICHY PERIOD TO THE SLAVE TRADE, SLAVERY AND COLONIAL HISTORY

What took place in France since the 1970s in the field of memory, history, politics and the law cannot be understood without keeping in mind the historical background represented by the two major vents of French history since WWI : the defeat of 1940, the Occupation and the Vichy regime of collaboration with Nazi Germany on the one hand and the impact of colonial history, decolonisation and the war in Algeria (1954-1962) on French society at large on the other hand. In both cases there has been an interaction between historical research ,public debates and political statements by the President of the Republic . Criminal prosecutions and trials, public inquiries and the influence of the international context were proper to the Vichy period and its consequences. As to colonial and post-colonial history they led to the adoption of special statutes relating to memory, called in France “lois mémorielles”. In both domains the role of the historian led to sometimes heated debates, both inside the profession and in public opinion.

I shall consider these two issues separately.

1. Facing the Vichy period : from the renewal of historiography to the emphasis on Vichy and the Jews

1) The renewal of historical studies

The renewal of French historical studies on the Vichy regime (1940 - 1944) and in particular on its anti-Semitic policy did not begin before the early 1980s. When Pétain died, in 1951 *Le Monde* devoted two full pages to the Vichy's policy. Its antisemitic policy was discreetly mentioned: One article mentioned “Les Israélites écartés de fonctions officielles”, another one” les déportés pour raisons raciales, victimes d’une discrimination contraire à toutes les traditions nationales, dont la politique de collaboration de Vichy avait amené Vichy à accepter le principe ». That was all.

Foreign historians were the first ones to enter seriously the field: the French translation of E.Jäckel's book was published in 1968 (*La France dans l'Europe de Hitler*, Fayard); that or A.Milward's one, *The New Order and the French Economy* , in 1970. Two years later, the proceedings of a conference organized in 1970 by the Fondation nationale des sciences politiques were published under the title *Le gouvernement de Vichy, 1940-1942. Institutions et politiques* (A.Colin, 1972). Vichy's anti-Semitic policy was voluntarily omitted. Professor Rémond mentioned, in his introduction, what he called “ l’application des mesures d’exception”, a clear understatement. In 1973 the translation of R. Paxton's seminal work,

Vichy's France, was published (*La France de Vichy*, Ed. du Seuil), the first act of what a French historian of the Vichy regime and of the Resistance, Professor Azéma, later called “ la révolution paxtonienne” .

The 1980s and 1990s saw the publication of a high number of excellent studies on Vichy's policies (6). Some dealt with the Vichy regime in general ; others concentrated on its anti-Semitic policy .The first of the latter was a book by M.Marrus and R.Paxton, *Vichy et les Juifs*; Calmann-Lévy, 1981; *Vichy's France and the Jews*, Basic Books, 1981), published in a series I edit

These studies threw a new light on a number of subjects: Vichy's anti-Semitic policy (A French historian, Pr Rousso, wrote in 1992 that before the mid 1970's “ the subject existed neither in the national conscience nor among historians”); public opinion (see Pierre Laborie pioneer studies); the attitude of the Catholic church and of Catholics; concentration camps; and finally what a Swiss historian, Pr Burrin, called ” la politique de l'accomodement”.

2) The emphasis on Vichy and the Jews

This emphasis was the result of several events.

2.1 Judicial events

Such events were of two kinds: a presidential pardon sparking a public debate; a number of criminal prosecutions and trials.

- The presidential pardon of Touvier

Touvier, a leader of the Milice (a Vichy paramilitary force created in 1943 and responsible for a high number of arrests and murders of Resistants and Jews) had been sentenced to death in absentia in 1947 for treason (“Intelligence avec l'ennemi”). The court added other penalties to the sentence : two related to the seizing of his property and the prohibition to reside in the region where he had committed his crimes). In 1971 the statute of limitations (20 years) applied to the death sentence. The presidential pardon applied to the additional penalties mentioned above. One year later, in 1971, *L'Express*, a weekly, published the information, which had been kept secret. A intense public debate on the propriety of such a decision followed. On September 22, 1972, during a press conference, President Pompidou exclaimed: ”Shall we eternally keep open the bloody wounds of our national divisions (“discordes”) ? Has not the moment arrived to cast a veil, to forget these times when the French people did not like each other (“ne s'aimaient pas”), quarrelled and even killed each other ?”. Such a declaration was an apt illustration of the state of public opinion at the time.

- Criminal prosecutions and trials

Prosecutions against a number of Vichy officials began from the late 1970's on. The pace was a very slow one, due both to the Government's reluctance , to the flight of some of the persons indicted and to procedural incidents: Bousquet, the heard of the Vichy police, indicted in 1991, was killed in 1993 by a lunatic; his representative in Paris, Leguay, indicted in 1979, died in 1989 during the preparation of the case; Touvier, indicted again in 1981 for other crimes after 8 years of procedural incidents and many judgments, went into hiding, was

arrested in 1989 and sentenced to life jail in 1994 ; Papon, an important official in Bordeaux, was indicted in 1981 and sentenced in 1998 to 10 years of jail. Barbie, a former Gestapo officer in Lyons, was indicted in 1982, expelled from Bolivia in 1983 and sentenced to life jail in 1987.

These prosecutions and trials generated a lively public debate on the very principle of legal action after such a long time, on Vichy's policies and on the presence of historians as expert witnesses.

From a legal point of view, two remarks are in order : the statute of limitations applied to all crimes except crimes against humanity, under a 1964 statute, which was based on the definition contained in the UN General Assembly Resolution of 1946, itself based on the London 1945 Agreement creating the International Military Tribunal which led to the Nuremberg trial. The result was that all indictments were for crimes against humanity or complicity of them, which meant, for the persons of French nationality, their participation to Vichy's complicity in the genocide of the Jews. Did the emphasis on crimes against humanity led to a somewhat distorted view of what was the main thrust of their action ? Maybe. For Touvier the essential fight was against the Resistance; Bousquet's aim was to show the SS, that the French police could effectively collaborate with them against the Resistants and the Communists, and also in rounding up the Jews. This being said, Vichy's antisemitic policy , from the Summer of 1940 to the end, never relented. It was, for the Nazis, a central item of their policy and this why they sought - and obtained- Vichy's full collaboration.

The second remark relates to procedure: most of the prosecutions originated in actions taken by private associations the aim of which was to combat crimes of war or crimes against humanity (See Art. 2-4 of the Code of penal procedure, based on a 1983 statute) especially one of them.

2.2 The creation of committees of inquiry

Two of them had a special purpose. The first one was created by Cardinal Decourtray, then archbishop of Lyons and related to the relations between the Catholic Church and P .Touvier, a war criminal, then prosecuted. The second one was created by the Gouvernement and concerned the fate of a data-file on Jewish set up by the Vichy authorities in Paris during the war. They will be discussed infra, together with other committees.

2.3 Public statements of the President of the Republic and of the Prime Minister

On July 16 and 17, 1942, the police, acting under German orders, rounded up in Paris more than 12 000 Jews, which were later one sent to Nazi death camps. An official commemoration takes place every year in Paris. In July 1992, President Mitterrand, who persistently refused to acknowledge the responsibility of the State for acts of Vichy, was booed during the ceremony. Three years later, President Chirac, a few weeks after his election, made on this occasion a statement which indicated a clear rupture with his predecessor's silence:

“Yes. The criminal madness of the Occupant has been seconded by Frenchmen, by the French State”. He mentioned that on July 16, 1942, 450 French policemen and gendarmes, obeying Nazi orders, had arrested 10 000 Jewish men, women and children and added:” France...that very day, had committed the irreparable,...delivering people whom it was supposed to protect to their executioners.”

In 1986 Mr Chirac, then both Prime Minister and Mayor of Paris, had made a statement on the same occasion, in which he just mentioned that the Jews’s persecution had been conducted “with the active complicity of certain of our compatriots”, without mentioning the role of the police. Two years later, in 1997, the new Prime Minister, Mr Jospin made a speech echoing President Chirac’s one and going further:

“July 16 and 17, 1942 are, in the history of our own country, a mark of infamy”.

He denounced “the anti-Semitic policy which preceded, prepared and inspired the arrests.”... These arrests were decided, planned and effected by French people... Not a single German soldier was necessary to accomplish such a crime....This crime must mark our collective conscience...We must face this infamy... We do not want to forget, because the only tomb of the victims lies in our memory”. He also mentioned the forthcoming trial of Papon.

2.4 The 1997 Declaration of the French Catholic bishops

A few weeks later, in September, a number of Catholic bishops (all those in the diocese of whom a Vichy or a German concentration camp existed during the war) published a statement on the attitude of the French Catholic bishops in front of the persecution of the Jews by Vichy and by the Nazis in France during the war. The place was a highly symbolic one, Drancy, a suburb of Paris, where the Jews were detained in a camp before being shipped off to Germany. This unprecedented move cannot be understood without a reference to five categories of events : the renewal of historical studies on the French Catholic hierarchy under the Vichy regime ; the same renewal of studies on the attitude of the Vatican and Pope Pius XII during the war; the new turn of the relations between the Catholic Church and the Jews since the 1965 “Nostra Aetate” Declaration during the Vatican II Council; the declarations of other European Catholic bishops on Jews and anti-Semitism and finally the Church’s attitude towards repentance.

2.4.1 The renewal of historical studies on the French Catholic hierarchy under the Vichy regime

In 1981 Pr Mayeur, one of the best historians of the Catholic Church and of French Catholicism wrote:” Curiously, in France, the attitude of the Churches during the Second World War towards the persecution of the Jews has, during a long time, been the subject of few studies” (7). This changed drastically during the last 20 years, as shown by the bibliography on the subject (8). The contribution of these studies may be summed as follows: a greater attention to places and times; the causes of the generally favourable attitude of the Catholic hierarchy towards Pétain and the Vichy regime, going back to the late 1930s; a new light on the attitude of certain sectors of the French Catholic society (e.g. the group around *Témoignage chrétien*).

2.4.2 The renewal of historical studies on the attitude of the Vatican and of Pope Pius XII during the war

The same remark applies here (9). We can now have a better understanding of the attitudes and policies of the Vatican and the Popes Pius XI and XII towards communism, fascism and Nazism during the 1930s and of the personal role of Pius XII during and after the war. On the latter, most historians have emphasized his use of the (limited) means and language of diplomacy in front of a totalitarian regime embarked on a criminal policy leading to an unprecedented moral catastrophe. Hence his silence in 1939-1940 on Poland, after 1941 on Croatia, and on the genocide of the Jews - and his silence *after* 1945 in spite of J. Maritain's intervention in 1946.

Another point is the following one: the 1933 Concordat with Nazi Germany has been one of the causes of the German bishops' silence on the treatment of the Jews. The latter was seen as a "political" issue, not a religious one.

Full historical research is restricted by the partial and limited opening of the Vatican archives. The creation of a joint Catholic-Jewish committee of historians to study the issue has not been sufficient, as shown by the interruption of its work. The publication, between 1965 and 1981, of the 11 volumes of the "Actes et Documents du Saint-Siège relatifs à la seconde guerre mondiale", under the joint editorship of P. Blet, A. Martini and B. Schneider (Libreria Editrice Vaticana) relating to the 1939-1945 period did not put an end to the debate, far from it: this is a selection of documents and its apologetic tone has been pointed out by historians (10).

2.4.3 The new turn of the relations between the Catholic Church and the Jews since the 1965 Nostra Aetate declaration of the Vatican Council

This is not the place to describe in detail the evolution of the Catholic Church on this issue since the 1946 Seelisberg Declaration to the 1965 one and what followed in the past 42 years. There no doubt that the Nazi genocide of the Jews has been - slowly - after 1945 at the origin of a new attitude and a renewed way of thinking.

On what followed the 1965 Declaration one can mention the several documents: the 1973 Declaration of the French Episcopal Conference (drafted by the Committee in charge of relations with Judaism and its secretary, Father Dupuy): "The Christian's attitude towards the Jews: Pastoral Orientations"; the statement of the Vatican Committee in charge of relations with Judaism "Orientations and suggestions for the implementation of Nostra Aetate"; the 1985 document of the same Committee "Notes for a correct presentation of Jews and Judaism in the predication and the catechesis of the Catholic Church".

2.4.4 The declarations of the other European Catholic churches on Jews and anti-Semitism

For obvious reasons the German Catholic Church deserves a special scrutiny. Germany is the only country in Europe to have undertaken the systematic publication of documents relating to the local Catholic church between 1933 and 1945. This has been the work of a

committee of historians, the Kommission für Zeitgeschichte. It has led to the publication of nearly 40 volumes of official documents, statements, police reports, etc, including the 6 volumes of the Akten deutscher Bischöfer über die Lage der Kirche (1968-1985).

The main declarations have been the 1979 German Catholic bishops declaration following the broadcasting of “Holocaust”, a 1980 statement, the 1989 statement of the German, Austrian and Berlin Episcopal Conference on the 50th anniversary of the 1938 Kristallnacht, in which one finds the words:” History is part of the very identity of the Church”.

The 1995 declaration, marking the anniversary of the liberation of the Auschwitz camp and mentioning the “ecclesiastical dimension” of the failings and failures inside the Church.

As to other European Catholic Churches one can mention the 1995 declaration of the Polish Church condemning anti-Semitism, together with “racism, xenophobia and anti-polonism” and the Italian 1998 Declaration.

2.4.5 The Catholic Church and repentance

Three brief remarks are in order here (11) :

- The late Pope John Paul II’s emphasis on the process and meaning of repentance. In his 1994 Apostolical Letter “Tertio Millenio Adveniente” he mentioned “ways of thought and of action that were forms of adverse witnessing and of scandal”, an unprecedented statement.
- The historical, collective and institutional dimension. On the second aspect Father Dujardin aptly wrote in his book mentioned supra:” A narrowly individualistic perception of moral responsibility leads to the dissolution of any social link; it generates irresponsibility” (at p 283).

All this was very new and led to questions, if not doubts: Catholics were accustomed to individual and non public repentance. A public repentance relating to past events perceived as “political” and not “ religious” ones came as a surprise. History had to be faced publicly. Although repentance relates, by definition to the past, it also contributes to shaping the future.

2.4.6 The 1997 Drancy Declaration of the French Catholic bishops

I shall comment briefly on its origins, its contents and its reception.

2.4.6.1 The origins

They relate to the domestic events mentioned above and also to other circumstances. Since the 1980’s the idea of a declaration of the Catholic Church on its behaviour during the war and on repentance existed. Here are three illustrations: On October 4, 1983, during the meeting of the synod of bishops in Rome, Cardinal Etchegaray, archbishop of Marseilles, made a remarkable speech on the Jews. the Jewish people, he said, ”must be the first beneficiary of the double mission of reconciliation and of penitence of the Church in a purely religious approach, in view of the original link between Judaism and Christianity”. He added:”... we must take equally seriously our mission of penitence, of repentance for our

attitude toward it (the Jewish people) for centuries”. One year later, in Auschwitz, on September 21, 1986, at the beginning of the crisis caused by the establishment of a monastery of Carmelites nuns inside the camp, Father B. Dupuy, then Secretary of the French episcopal Committee for relations with Judaism, read a statement “ To have the right to pray in Auschwitz we have to confess the weak and too slow awareness ,by the Christian conscience, of the perversity of Nazism and of the mortal danger for the Jews; our repentance is not a reflex of a morbid feeling of guilt. We cannot refuse to recognize the part of Christian responsibility in the History that led to the Shoah...Yes, our responsibility is immense. Was such an abyss necessary to awaken our consciences ?” (12).

One year later, in 1987, *Documents-Episcopat*, the French bishops’ newsletter, published Father Dujardin’s, Dupuy’s successor, paper presented at the Oxford Conference on “Remembering for the future” (13) under the title “Reflexions on the Shoah” .The subtitle was:” The Christian conscience cannot evade the issue” (“La conscience chrétienne ne peut pas se dérober”. He mentioned the bishops’s silence, due to the widespread belief that there was a” Jewish question”. He quoted the 1940 unpublished statement of the Assembly of cardinals and archbishops affirming the possible legitimacy of a “ special legislative status for the Jews” if certain conditions were met.

In an article published in *Le Monde* on July 1, 1992, the title of which was “ Conscience and memory”, he wrote: “A society cannot be at peace with itself on a repressed and untrue past”. He added that the Catholic Church” had not yet cast entirely the light on its own attitude...Recalling the failings of the past will open our eyes for the present and preserve us from them for the future”.

Cardinal Etchegaray then prepared a draft statement, which was sent to Rome, in vain. By 1997 several persons were working on a paper, as a contribution to what was to become, one year later, the 1998 Vatican document “We remember: a reflexion on the Shoah”. On July 10, 1997 at a joint Catholic, Protestant and Jewish press conference, a forthcoming declaration on the attitude of the French Catholic Church was announced.

The preparation of the declaration then began. The drafting was the work of Father Dujardin, together with an historian, the late Pr Bédarida. He insisted on two points: the usual ecclesiastical language should be avoided and access to the French Catholic Church archives was necessary. A draft was shown to the permanent Council of the episcopal Conference, a body of around 15 persons empowered to take decisions between the yearly general assembly of the bishops in Lourdes. Objections were raised, as could be expected: Why pronounce judgment on the past ? Why discuss history in a Church statement ? Another, less good , draft, was circulated. There was no clear conclusion. In the absence of it, the text would have to be discussed in November by the forthcoming Assembly of bishops. This meant the postponement of any decision till then, a substantial alteration of the draft and the collision with the Papon trial, due to begin on October 8. The whole enterprise would collapse or, worse, lead to an edulcorated text.

The decision was then taken to have the text signed by all bishops in whose diocese internment camps existed during the war .Four persons were instrumental: Cardinal Lustiger, archbishop of Paris; Mgr Billé, president of the Episcopal Conference; Mgr Poulain ,president of the episcopal committee for the relations with Judaism and Father Dujardin. The role of Pr Bédarida was important. The declaration was signed by 30 bishops: 16 whose diocese

included a camp; Mgr Poulain; the 13 bishops of the Paris region and the bishop on charge of Catholic chaplains in the army.

What about the Vatican ? The intention was not to ask for its approval. The final text was sent to the Committee in charge of religious relations with Judaism, a short time before the ceremony. No objections were raised, but some concern could be felt.

The ceremony took place in Drancy. The local bishop, Mgr de Berranger, read the declaration. Declaration. Mr Hajdenberg, president of the Conseil représentatif des institutions juives de France (CRIF), an umbrella organization, then read a statement. This was followed by a prayer in common at the local church.

2.4.6.2 The content of the declaration

The declaration is a short (5 pages, 21 paragraphs) and a well-worded one. It is composed of three parts: the starting point; what happened; the conclusion.

- The starting point (§ 1-3). This part contains five short statements :
 - the Nazi genocide of the Jews poses painful problems to the human conscience.
 - the position of the Catholic church: Conscience includes memory; no group, no society, no individual can live at peace with itself or himself with a repressed past or a lie about it.
 - the French Catholic Church questions itself.
 - the moment: a few days before the 57th anniversary of the first anti-Semitic Vichy statute (October 3, 1940), and 50 years after the Seelisberg Declaration.
 - a firm and clear conclusion:” The time has come for the Church to submit its own history during this period in particular to a critical examination without hesitating to recognize the sins committed by its sons and asking God and men for their forgiveness”.
- What happened.
The declaration contains four statements:
 - the persecution of the Jews: From the two Vichy statutes (1940 and 1941) to the deportation to the Nazi camps, starting in March 1942.
 - The conformism, silence and abstention of the Church, with the exception of five bishops or archbishops, who protested in the Summer of 1942 against the mass arrests in Southern France and of certain groups of Catholics.
 - The causes of the Church’s attitude. This is perhaps the most interesting part of the text. Three are mentioned :
 - Ecclesiological causes: for the hierarchy “its first duty was to protect the faithful, to make sure that its institutions would continue to work.... The absolute priority assigned to such aims, in themselves legitimate ones, resulted in the occultation of the biblical command to respect every human being created in the image of God, i.e. a withdrawal into a narrow vision of the Church’s mission”.

- Intellectual and political causes; “From the hierarchy a lack of understanding of the immense planetary drama that was taking place and which threatened the very existence of the Church”; Also “a loyalism and a docility that went much beyond the traditional obedience to the established power”.
 - Cultural and religious causes. The constant repetition of “ anti-Jewish stereotypes, which can be found even after 1942 in declarations which were not devoid of courage”; the religious hostility against Jews, the prevalence, among Christians, until the Vatican II Council, of a tradition of anti-Judaism expressed “in the Christian doctrine and teaching, theology and apologetics, predication and liturgy”.
 - Helping the Jews. Many bishops, priests and other members of the Church took initiatives to help Jews escape arrest and deportation, thus saving their lives. Such acts of charity and courage must be recognized. They do not alter, however, the main picture.
- The conclusion.

It contains a statement and then indicates the consequences.

 - The statement: What happened is to be regretted because, in French society at the times, “the Church had considerable weight and influence.... Indifference was stronger than indignation.” In front of the size of the drama and of the unprecedented character of the crime, too many ministers of the Church have, by their silence, offended the Church itself and its mission.”
 - The consequences: “Today we confess that such a silence was a grave failing. We also recognize that the Church in France then failed in its mission to educate the consciences. It thus is, together with the responsibility of the Christian people (“le peuple chrétien”) the responsibility of not providing assistance from the first day on, when protest and protection were both possible and necessary... This is a fact that we recognize today. This failure of the Church in France and its responsibility towards the Jewish people are part of its history. We confess this failing. We implore God’s forgiveness and ask the Jewish people (“ le peuple juif”) to hear this word of repentance.”

2.4.6.3 The reception of the declaration

It has been, on the whole, a positive and a favourable one. As for public opinion, several French dailies published its full text, which is very rare for a Church’s statement. Many articles commented it. The very principle of such a declaration and its contents were approved.

As to the Catholic Church, one may distinguish the bishops and Catholic opinion in general. When the bishops met in Lourdes in November 1997 for their annual conference, Mgr Billé, the president of the latter, commented the Declaration in such a remarkable way that no objection was raised. However, one may have doubts on whether this acceptance was accompanied by a clear awareness of the full dimension of the step. When Father Dujardin addressed the board of the Conference in late Summer, he stressed the importance of giving explanations on the Declaration after its publication,. Such a task was primarily that of the bishops. Not many of them understood its pedagogic necessity.

Bishops received thousands of letters, a clear sign that the Declaration had been read and had led to reactions. Many expressed surprise, if not unease at the very principle of such a step and its string wording. Many approved both. Others found repentance too easy, or too

late, or even “demagogic”. As time passed it seems that the understanding and approval of the Declaration increased (see, in *Le Monde* of November 27, 1998, the results of a poll conducted that year).

The Jewish reactions were very favourable, as shown by the statement of the CRIF’s President, Mr Hajdenberg, in Drancy and the following fact : a few weeks later, Great Rabbi Bernheim, head of the main Paris synagogue, invited Mgr de Berranger, bishop of Saint-Denis and Father Dujardin to make a statement in the synagogue, an unprecedented step too.

2.5 Government decisions (1) Compensation

From the early 1990s on a number of official reports were published, leading to two Government decisions relating to compensation.

2.5.1 Official reports

2.5.1.1 The Caisse des dépôts study

In 1992 the Caisse des dépôts et consignations, a public and independent financial institution created in 1816 (14), undertook a study of its role both in the deprivation of property directed against Jews under the Vichy regime and in restitutions after the war. This followed a letter sent by both the then President of the CRIF and S. Klarsfeld to P. Saragoussi, adviser to the head of the Caisse, R. Lion. A provisional report was sent in July 1995 to the President of the Republic, the Prime Minister, the Finance Minister and the new President of the CRIF by the new head of the Caisse, Mr. Lagayette. There was neither answer nor acknowledgment, which led the Caisse not to continue its study.

It resumed it in 1996, created a special research group, with a sufficient budget and recruited historians, archivists and other specialists. Their work was supervised by an independent committee made of historians, economists and jurists (one of them was the author of this paper) which met several times each year to evaluate the work in progress. The outcome was a report (15), a conference and the subsequent publication of its proceedings (16).

What made this work unique was the decision of the successive Directors of the Caisse (MM. Lion, Lagayette and Lebègue) to undertake a study on such a subject, to gather the necessary financial resources, allow free and unlimited access to its own archives, to create an independent committee to evaluate the research, to keep informed both the Board and the staff and finally to publish the study. No other French State or private institution behaved like that.

2.5.1.2 The Mattéoli Committee

In March 1997 the Government created a State Committee to study the deprivation of property (“spoliation”) suffered by Jews during the war and to make proposals. This followed a letter sent in December 1996 to the Prime Minister, Mr Juppé, by the presidents of the main Jewish organisations in France : CRIF, the Alliance israélite universelle, the Fonds social juif unifié, the Centre de documentation juive and the Association des fils et filles de déportés

juifs de France and urging him, in view of the international context (see *infra*) and to “avoid doubt and confusion”) to create an independent Committee to evaluate the extent of the forced deprivation of liberty suffered by Jews in France. This Committee, headed by Mr. Mattéoli, a former Resistant and inmate of Nazi camps and a former Minister, did a remarkable and unprecedented work. An interim Report was published in 1998 (17). The General Report was published in 2000 (18), together with a number of additional reports). Its many recommendations related to public and private archives (access and conservation), research, restitutions to individuals, which should take place, irrespective of the status of limitations, unless already effected, the creation of a Memory Foundation, to be funded by the dormant assets arising from the deprivation of property, works of art and banks and insurance companies.

2.5.2 Government decisions relating to compensation

The Government acted with a remarkable rapidity, even before the publication of the final Report, in two areas: Compensation related to confiscated property and to persons whose parents had died in Nazi Camps (19).

2.5.2.1 Compensation for confiscated property

A decree dated September 10, 1999, created a Committee in charge of proposing compensation for deprivation of property suffered by Jews during the war. This followed a recommendation of the Mattéoli Committee in its second interim Report. The newly created Committee had no power of decision, only of recommendation. The understanding was that the Government, the banks and the insurance companies would accept them. The rules of civil and administrative law precluded judicial action. No one was eager to enter in endless litigation and the Government did not want to go to Parliament and legislate to change the law. The procedure before the Committee was a simple and costless one and it has done a very good work, following its remit.

2000 was a no less important year: A statute of July 10 created a national memorial day for “the victims of racist and anti-Semitic crimes of the French State and of public tribute to the Righteous”.

2.5.2.2 Compensating persons whose parents had died after having been deported by the Nazis

A decree of July 13, 2000 gave a right to compensation to orphans whose mother or father died after being deported on antisemitic grounds by the Nazis, if they were under 21 at the time of the deportation. The compensation took the form either of a lump sum (around 30 000 \$) or a monthly payment of 500 \$. As could be expected, this led to protests from those whose parents had either died after being deported as Resistants or had been shot by the Nazis for the same reasons. Several persons brought an action before the Conseil d'État, France's Supreme Court for administrative law and asked that the decree be quashed on the ground of discrimination. The application was rejected. During four years thousands of written questions were asked in Parliament advocating an extension of the scope of the 2000 decree. Following a report, the Government finally gave way and a decree of July 27, 2004 extended the scope of the 2000 one to the persons mentioned above.

2.6 Government decisions (2). The creation of the “Fondation pour la mémoire de la Shoah”

This initiative also followed a recommendation of the Mattéoli Commission Report. Although it is linked to the policy of compensation, it make sense to examine it separately. Created by a decree, it benefited of a considerable endowment, at least by French standards, over 400 millions \$, coming both from the public sector (the State, which gave more than 50%, the Caisse des dépôts, the Bank of France and the Post Office, which has banking activities) and the private one (banks and insurance companies). The basis was an estimation, by the Mattéoli Committee Report, of the value of property belonging to Jews and not restituted to them by the institutions mentioned above, plus donations made by the same “for moral reasons”. The aim of the Foundation is not to allocate compensation. It is a two-fold one: to encourage and fund research on anti-Semitic persecution; to subsidize welfare actions benefiting to the victims of persecution, their families and those who helped them.

2.7 Government decisions (3). The international background

International developments influenced what took place in France from the mid-1990s on.

2.7.1 What happened before the 1990s ?

The issue of compensation was absent from the London Agreement of August 8, 1945 and the Status of the IMT. After the war, under the peace treaties signed with Germany’s Allies (Hungary, Bulgaria), these States accepted to compensate for the loss of property lost by Western states citizens. This was an inter-State operation. The recipient States distributed the money to their nationals under domestic law.

Germany’s case was obviously different. Under the 1952 Treaty between the Federal Republic of Germany and the three Western States the issue of reparations would be settled in the future peace treaty. However, in another treaty, the Convention on the settlement of questions arising from the war and the occupation (Chap. IV), Germany recognized the obligation to compensate in an appropriate manner persons persecuted on the ground of their political opinions, their race, their religion or their ideology and, who, in consequence, have suffered a loss in their life, their physical integrity, their health, their freedom or their property .Hence, from 1952 on, a number of German statutes the aim of which was to compensate, inter alia, Jewish victims and their families. A private body, the Conference on Jewish material claims against Germany, operated on the Jewish side.

2.7.2 The innovations of the 1990s

From the 1990s on the issue of compensation took a new and more dynamic turn.

- The causes were many: the reunification of Germany and the opening of Central and Eastern European countries; the role of actions filed in US courts, combined with the attractiveness of US procedural law (the use of the 1789 Aliens Torts Act; class actions; rules of evidence; the existence of a jury; the size of damages) and the weight of US domestic politics, as shown in New York by the activities of Repr. D’Amato and the State Comptroller, Mr. Hevesi.
- Three characteristics of this period deserve a brief mention:
 - The international dimension, illustrated both by the number of countries involved (the USA, Germany, Switzerland, Austria, France) and that of international conferences that took place (London, 1997, on Nazi gold;

- Washington, 1998, on Holocaust era assets; the 2000 Stockholm International Forum on the Holocaust).
- The important role played by private bodies such as the World Jewish Congress.
- The place of lawyers.
- The result was a two-fold one:
 - The creation of investigative bodies such as the Bergier and Volcker Commissions in Switzerland, the Mattéoli Committee and study group of the Caisse des dépôts in France.
 - The setting-up of varied compensation funds, based on State and private money after tense negotiations involving lawyers, German industrialists, Governments, Eastern European countries, the Jewish Claims Conference and the World Jewish Congress. Such funds were created In 1998 in Switzerland, in 2000 in Germany. The names are telling: Deutsche Stiftung “Remembrance, Responsibility and Future”; in Austria the Fund for Reconciliation, Peace and Cooperation. The aim was to compensate both slave labourers and forced labourers.

This context and these events have had direct effects on Western Governments. In Norway, following the 1997 Sharpness Report on the looting of Jewish property, a statute was passed in 1999 to allow restitution or compensation, with apologies from the Government.

These international developments influenced directly what took place and was decided in France, namely the creation of the Mattéoli Committee, of a Committee to advise on compensation for looted property and of the Fondation pour la mémoire de la Shoah , and also the decision to award compensation to those whose parents had died in Nazi camps (19). Negotiations took place between on the one hand the USA, represented by Stuart E. Eizenstat, the World Jewish Congress and the Simon Wiesenthal Center and, on the other hand, a French delegation composed of Mr Andreani, former French Ambassador in Washington, Pr Steg, President of the Alliance israélite universelle and Claire Andrieu, an historian who had participated to the work of the Mattéoli Committee. The American negotiators were no doubt influenced by the attitude of the Swiss banks and over-estimated the proportion of Jews, especially of foreign ones living in France in 1940, who had bank accounts, and also their assets. Moreover they thought, wrongly, that no restitution had taken place after the war. They also thought that all institutions, on the French side, had one preoccupation: to hide the truth to the survivors. In addition a number of lawyers and of law firms were eager to initiate litigation against banks. Direct contacts between Israel Singer, the General Secretary of the WJC and P. Saragoussi , who represented the Caisse des dépôts, led to an improvement of the climate. The WJC publicly congratulated the Caisse on its work .Further meetings in New York between Pr Steg, Israel Singer and Elan Steinberg, of the US branch of the WJC, contributed to dissipate the suspicion .

A good illustration of the influence of the USA on what was done in France is the Washington Agreement of January 18, 2001 between the two Governments together with its three annexes and an exchange of letters. It relates exclusively to the restitution of owners of bank accounts. Several actions had been brought against French banks before US courts. Both Governments, as well as the banking profession and the representatives of victims and claimants on both sides of the Atlantic were aware of the necessity of an agreement putting an end to such actions and establishing clearly the basis of a fair and public system of restitution and of compensation. The lengthy statement inserted at the beginning of the Agreement is explicit .It is composed of three parts: It recalls what has been done so far in France. It then states the common aim of both Governments and of the private parties behind them. It ends

by a series of detailed and precise prescriptions on the functioning of the restitution and compensation mechanisms.

Part one recalls what has been done in France: the restitutions which took place since 1944, President Chirac's 1995 declaration (a rare example of an international agreement mentioning a presidential statement), the creation in 1997 of the Mattéoli Committee, the appreciation of its work and recommendations, among which the creation, which took place in 1999, of a Committee in charge of proposing measures of restitution or of compensation, the 2000 decree creating a special compensation for the descendants of Jews who died in the Nazi death camps, the creation, at the end of 2000, of the Foundation for the Memory of the Shoah, the decision of the banks to create a 22,5 million \$ fund in order to compensate authors of claims agreed to by the Committee mentioned above.

The agreement then mentions the collaboration of lawyers, banks and other representatives of the victims to its preparation. The funding of the Foundation for the memory of the Shoah shall allow the integral restitution by the State, the banks and other institutions of all forms of unjust enrichment. The Foundation, in addition, will contribute to the memory of the victims. The agreement notes that the banks have agreed to accept all claims approved by the Committee. In addition, they have contributed 100 million \$ to the funding of the Foundation. They have thus guaranteed the complete compensation of all victims of the Shoah. Consequently one cannot demand them to accept, in addition, the claims pending before courts or other instances.

Part two states that it is in the interest of both Governments, to find for these two issues an amicable, extra-judicial solution excluding litigation, in the respect of the 1959 Franco-American establishment Treaty. The combination of the Committee, the Fund and the Foundation represent a satisfactory, fair, quick and equitable mechanism. It is in the interest of both Parties that they be the exclusive means and framework for the settlement of claims concerning banks, composed of these three institutions. Consequently the authors of actions brought before US courts have accepted to withdraw their claims.

Part three contains a number of detailed prescription on the working of the Committee on restitution and compensation and the banks' Fund, mentioned in Annex B to the Agreement. As to the banks, they undertake, in writing, to follow promptly and completely the recommendations of the Committee. A special account of 50 million \$ is to be created for that purpose. Rules relating to evidence are mentioned (uncontrovertible evidence; presumption; conviction). The Committee was under an obligation to ensure adequate publicity both to its very existence and its work, in France and abroad (offices in French embassies and consulates abroad) cooperation with international Jewish organizations, especially in the USA and Israel; publication of an annual report; organization of an international appeal after an initial rejection of the claim (which led to the subsequent revision of the 1999 decree creating the Committee).

Annex C to the Agreement contains the text of a Statement of Interest to be presented, together with a declaration of S. Eizenstat, in all pending or future actions brought, whenever the USA will be informed of claims directed against banks and based on their activities in France during WW2, whether or not the applicants have withdrawn them. Actions relating to works of art excluded. The contents of the statement replicates those of the preamble of the Agreement, summed up above. Other agreements complementing or revising the 2001 one were signed in 2002, 2005 and 2006. The 2006 one increased the amount of compensation that could be awarded by the Committee.

II. THE SLAVE TRADE, SLAVERY AND COLONIAL HISTORY: LEGISLATING ON HISTORY AND MEMORY

The second domain in which the meeting of history, memory and law led to animated and sometimes violent public debates is that of slavery, the slave trade and the history of colonisation.

The general context may be summed up as follows : from the XVIIth century to the end of the war in Algeria in 1962 France has been a colonial power, with possessions in Africa, America, Asia, the Indian Ocean, Oceania and the West Indies. A substantial number of French citizens lived in the colonies, especially in Northern Africa. French colonial history is part of the country's national and military history. France participated, as other European and non European countries to the slave trade. Slavery was abolished in the French colonies in 1848. A sizeable proportion of the troops who fought in the French army during the two world wars came from the African colonies. During the XXth century two long and bloody wars were fought in Indochina (1945-1954) and in Algeria (1954-1962). The first one was fought by the regular Army, the second one by the regular Army together with troops from the draft. The war in Algeria was the immediate cause of a change of regime in May 1958 and threatened, in 1961, the regime itself. It has left, on both sides of the Mediterranean, deep traces in public and private memories: 400 000 dead in Algeria, 30 000 on the French side. More than one million French nationals living in Algeria had to be resettled in France in 1962.

A substantial part of the immigrants who settled in France in the second half of the XXth century came from French overseas possessions or former possessions such as the West Indies (Guadeloupe, Martinique, Réunion and French Guyana became regular "departments" in 1946), Africa South of the Sahara, Morocco, Algeria and Tunisia. The legacy of colonial and post-colonial history is still today reflected in the composition of immigration into France. In France as elsewhere in Europe immigration and integration policies are part of the political debate.

Two dimensions will be explored : the slave trade and slavery and the history of colonisation. I shall then comment of the positions of historians.

1) The slave trade and slavery : legislating on memory, Act 1

1.1 Two statutes on memory : 1983 and 2001

Under a statute of June 30, 1983, the commemoration of the abolition of slavery by France was to lead to the creation of a holiday in the four "departments" of Guadeloupe, Guyana, Martinique and Réunion and in the territory of Mayotte, an island off Malagasy. A decree would later determine on which day of the commemoration would take place in each of the places mentioned above and how the commemoration would be celebrated in mainland France. Six months later a decree of November 23, 1983 determined the date of the commemoration, which, for historical reasons was a different one in the five territories reasons respectively, May 27, June 10, May 22, December 20 and April 27. On April 27 of each year, or the nearest day a one hour reflection on slavery and its abolition would take place in all primary and secondary schools.

15 years passed. In 1998 four bills went tabled in the National Assembly, among which three came from the Communist and the Socialist parties. The first Communist bill (20) related to the commemoration of the abolition of slavery. 1998 would mark the 150th anniversary of the abolition. The idea was to determine, by a decree, the date of the commemoration in France itself. The second Communist bill (21) related to the building of a

memorial of slavery and of a museum of slavery. The Socialist bill (22) was preceded by a lengthy declaration affirming the necessity to recall the realities of the slave trade and of slavery, due to the “silence” surrounding them and the divisions of historians on numbers. The contents of the bill may be summed up as follows : France shall recognize that the transatlantic slave trade and slavery perpetrated from the XVth century on by European powers against African populations sent to Europe, to the Americas and in the Indian Ocean are a crime against humanity. Schoolbooks and research programs will give its due place to such a massive crime. Archives and oral sources shall be used for that purpose. France shall request the recognition mentioned above from the European Union, the UN and international organisations. Each year, on February 8, there will be a commemoration of the condemnation of the transatlantic slave trade by the Vienna Congress as “abhorrent to the principle of humanity and of universal morale”. Free nations shall be incited to commemorate this date. A special committee shall be created to determine the loss incurred and study compensation. Denial of the crime against humanity mentioned above would become an offence. Associations the aim of which is the defence of the memory of the slaves and the honour of their descendants will be empowered to initiate prosecutions against those who glorify crimes against humanity. The fourth bill (23), signed by three deputies, asked for a proclamation according to which the slave trade and slavery perpetrated from the XVIth to the XIXth century against populations from Africa, Malagasy and India sent to the Americas and the Island of reunion are a crime against humanity.

A few weeks later the discussion began in the National Assembly. The rapporteur of the four bills was Mme Taubira-Delannon, a deputy from Guyana. She criticized, in her report the fact that in 1848 the owners of slaves had been compensated, but not the slaves and that slave trade and slavery were absent from national memory. Mentioning several historians as well as a resolution adopted in 1998 by the UN Human Rights Commission, she insisted on the fact that the transatlantic slave trade could not be compared to other forms of that trade (24). The text was adopted by the national Assembly on February 18, 1999. Two more years passed, after a shuttle between the Assembly and the Senate, before the statute was finally adopted. It might be worth to recall the exact wording of Art. 1 of the statute of May 21, 2001: “The French Republic recognizes that the Transatlantic slave trade and the slave trade in the Indian Ocean, on the one hand, and slavery on the other hand, perpetrated (plural) from the XVth century on, in the Americas and the West Indies, in the Indian Ocean and in Europe against African Amerindian, Malagasy and Indian populations area crime against humanity”.

The rest of the statute concerns schoolbooks and the determination of the date of the commemoration of the abolition of slavery in the overseas “departments” as well as in France, thus revising the 1983 statute. A Committee was created to propose initiatives in order to perpetuate the memory of this crime. Associations the aim of which was to defend the memory of the slaves and the honour of their descendants were allowed to initiate prosecutions for publicly inciting to discrimination, hatred or violence against a person or a group of persons on the ground of their origin or belonging or not belonging to a given, ethnic group, nation, race or religion and for libel or insult on the same grounds.

The wording of Art.1 of the statute is problematic for two reasons, both historical and legal ones. Firstly it mentions mainly the slave trade and slavery operated by the Western nations and omits totally the intra-African trade. The Eastern trade is indirectly mentioned. Two strange omissions, or near omissions for what purported to be a “loi de mémoire”. Secondly using the notion of crime against humanity was bound to invite a comparison with the Shoah.

Nearly three years later, a decree of January 5, 2004 created the Committee for the memory of slavery, composed of 13 members (scholars, members of associations, experts on

overseas territories). Its Report, presented to the Prime Minister in April 2005, proposed that the anniversary of the abolition of slavery be commemorated in mainland France on May 10 as “Day of the memories of the slave trade, slavery and their abolitions”. It also proposed that schoolbooks and programs of examinations for the recruitment of secondary schools teachers and university professors be revised to include topics relating to the slave trade, slavery and their abolition, the creation of a National Centre for the History and memory of the slave trade and slavery and a further inventory of the relevant archives (25).

1.2 The Pétré-Grenouilleau affair : 2005

In the fall of 2004 Pr Pétré-Grenouilleau, a historian, published a book *Les traites négrières. Essai d'histoire globale* (“The slave trades. An essay in global history”) (26), which was recognized as a major work of scholarship and received several prizes. He studies the three slave trades which took place in history : that operated by the Europeans towards the Americas; the intra African trade and the trade directed towards Arab and Muslim States. He also examines their evolution and the abolitionist movement and evaluates the place of the slave trade on the history of the Western world, of Africa and of the Muslim world .In 2005, due to the climate created by the publication of the report mentioned above and other related events, he became the object of a violent and unprecedented polemic.

Towards the end of 2004 and the beginning of 2005 a French Black humorist, called Dieudonné (his real name is M’Bala M’Bala) made violent anti-Semitic statements : on French TV, in December 2004, he said that Jews were responsible for the spreading of AIDS in Africa. During a press conference in Algiers, in February 2005, mentioning the international commemoration of the 60th anniversary of the liberation of the Auschwitz camp, he spoke of “memorial pornography” (27). In an interview to an Algerian daily he said that Zionism was “the AIDS of Judaism”. In the same month, during a press conference in Paris, he complained of the lack of commemoration of 400 years of slavery (27). Calixthe Beyala, a French African writer, protested against such statements (28).

In January 2005, an appeal “We are the natives of the Republic” (“Nous sommes les indigènes de la République”) was published. Its central theme was a violent denunciation of the condition of immigrants in France, especially those coming from former French colonies: discrimination in employment and housing; anti-immigration policies; ethnic profiling by the police, etc. The methods used, according to the appeal, are the same as those used during the colonial period .France thus remains a colonial state, as shown by the situation and practices in the French West Indies, New Caledonia and French Polynesia. Hence the meeting of interests between post-colonial France and President Bush’s policy. The text advocated the decolonisation of France and called for a conference on anti-colonialism and a march on May 8, 2005. One illustration of the affirmation of a link between past and present is the words used such as “We, descendants of African slaves and “déportés” (a word used in French exclusively in connexion with concentration camps), daughters and sons of colonised people and of immigrants...etc” . R. Bertrand, an historian, rightly spoke of a “militant genealogy”.

A few weeks after Dieudonné’s statements and this Appeal, Pr Pétré-Grenouilleau published in *Le Monde* an article “The slave trade: diverting history” (“ Traite négrière: les détournements de l’histoire”) (29). Why, he asked, is the history of the slave trade diverted in such a manner ? The fundamental reason, for him, was that this tragic episode of mankind’s history is not yet recognized as an authentic object of history. The moralizing approach dominates. The white racist stereotype, i.e. the civilized West facing Black savages, has been replaced by a no less distorted image, that of exclusively white executioners facing Blacks

who were exclusively victims. To analyse the slave trades of the past through the prism of a contemporary and moralizing vision of the relation between the developed countries and the Third World ones is dangerous. Dieudonné's statements are an attempt to establish a kind of Richter scale of suffering and responsibilities, leading to a competition between the Shoah and the tragedy of the slave trade. We must understand, Pr Pétré-Grenouilleau added, that this is a complex history, and not a Manichean one. The amount of research on the slave trade allows us to say that it cannot be summed up by the triangular trade Africa-Europe-the Americas. During the XIXth century the first world port for the slave trade was Rio de Janeiro. No triangle here. Turning to figures he affirmed that 11 million Africans were sent to the Americas between 1450 and 1867. The Eastern slave trade concerned around 17 million persons between 650 and 1920. To which one must add the intra-African trade in pre-colonial Africa, around 14 million persons. There were three slave trades in history. Those who participated in the slave trade were Westerners, Blacks and Easterners.

Three months later, in an interview (30), O. Pétré-Grenouilleau explained the title of his book, namely the plural he used: the history of the slave trade, he said, lasted 13 centuries and took place on five continents. It started around 650 C.E. in the Muslim Empire, because the Muslims were forbidden to have Muslim slaves. Africa South of the Sahara has been both a victim and an actor of the slave trade. Referring to Dieudonné's statements, he said that the 2001 statute inevitably led to a parallel with the Shoah. The slave trade was not a genocide, since there was no intention to exterminate a whole people. There could not be a Richter scale of suffering. As to those who said they were "descendants from slaves", he added that this expressed a choice of identity, not a reality. Their ancestors might have been slaves, free man or slave traders.

In April the Committee for the memory of slavery presented its report to the Prime Minister. In June the French Senate awarded its history book prize to Pétré-Grenouilleau's book. In September and again in October an association claiming to represent individuals from the French West Indies, Guyana and Réunion brought a civil action against Pétré-Grenouilleau, based on Art 1382 of the Civil Code on liability. The basis of the action was the June interview. The association alleged that he had directly challenged the fact that slave trade was a crime against humanity, as affirmed by the 2001 statute and also had minimized the sufferings inflicted to the slaves who had been its victims. He had thus injured the feelings of the descendants of slaves, whom the association claimed to represent. It asked for damages (30 000 e). This action was accompanied by a violent and personal campaign asking for the withdrawal of the two prizes awarded to the book and for the initiating of disciplinary proceedings against its author. He was also accused of being a "racist" and of "glorifying" the slave trade.

From a legal point of view, one thing was certain: under the case law of the Cour de cassation, proceedings against the media must be based on the 1881 statute on press (for example, libel, or group libel, or hate-speech). They may not be based on Art. 1382 of the Civil Code. The action was clearly inadmissible. The Association and its lawyers were probably aware of that. Their aim was to intimidate O. Pétré-Grenouilleau and other historians working on the subject and to achieve some publicity. In February 2006 the action was withdrawn.

The reactions of historians and of academics against this aggression took place during the Fall and Winter of 2005, under the combined effect of the Pétré-Grenouilleau affair and of another one, relating to the history of colonisation.

2. The history of colonisation. Legislating on history, act. 2

The second half of 2005 saw a collision between the Pétré-Grenouilleau affair and another debate ignited by a 2005 statute relating to colonial history.

Legislating on colonial history, especially on the war in Algeria was not something new. A statute of October 18, 1999 mandated that in all administrative documents the expression “Algerian war” should replace “the words” operations in North Africa”. This had financial and legal consequences for veterans. The main event was the contents of another statute, that of February 23, 2005.

Its legislative history is interesting. The Government bill sent to Parliament in 2004 related almost exclusively to welfare and compensation provisions applying to former residents of Morocco, Algeria and Tunisia and extending the scope of former statutes of 1970, 1978 and 1987. The main issue was of course Algeria, because of the war and its consequences for those who lost their property and for those Algerians who fought on the French side and were lucky enough to leave Algeria in time in 1962 (31). The only provision relating to history and memory was Art.1: “The Nation expresses its gratitude to the women and men who participated to the achievements of France in the former “départements” of Algeria, in Morocco and in Tunisia and in the territories under French sovereignty”. The final text was different, due to amendments adopted by Parliament. The text of Art.1 contained a new para recognizing the sufferings and the sacrifice of several categories of victims. Under Art. 3 a Foundation for the memory of the war in Algeria and of the fighting in Morocco and in Tunisia will be created, with the help of the State. But what touched off the crisis was Art. 4 which read:

“Academic research programs give the place its deserves to the history of French presence overseas, especially in North Africa. (Para 1)- School programs recognize in particular the positive role of the French presence overseas, notably in North Africa, and give to the history and to the sacrifices of those inhabitants of these territories who fought in the French forces the eminent place to which they are entitled. (Para 2)- Cooperation allowing the networking of oral and written sources available in France and abroad is to be encouraged .” (Para 3).

This provision was adopted by Parliament in a climate of general indifference and the Socialists voted for it. Nevertheless it led to a public debate which took three dimensions :an international one, concerning to the Franco-Algerian relations; a domestic political one and a third dimension, in which historians took sides on “memorial statutes” (“lois mémorielles”).

- Franco-Algerian relations, never easy at the best of times (32), were directly affected by the new statute. A few days after its publication the French Ambassador in Algiers made a remarkable declaration in Sétif. This city has a particular place in Algerian memory. On May 8, 1945, during the celebration of the German capitulation, a political demonstration of Nationalists led to skirmishes, gunfire and the killing of more than 1 000 Europeans. The repression was ruthless. The number of Algerian victims, for which there are no exact figures, varies, according to estimations, between 10 and 30 000 (33). Many historians insist on the link between what took place there in 1945 and the beginning of the war in 1954. Speaking at the local Ferhat Abbas University- the occasion was the signature of a cooperation agreement between the local University and that of Clermont-Ferrand- the Ambassador said: “I must mention a tragedy that particularly plunged into mourning your region. I mean the slaughters of May 8, 1945...an inexcusable tragedy”. He called for a “clear knowledge of the past and of the diverse memories”. President Bouteflika, in a declaration made on May 7,

2005, mentioned the conquest of Algeria by the French in the XIXth century and used the words “genocide” and “ovens” when he alluded to the caves where the Algerian fighter were choked by fires lit by the French troops (34). On July 3 he spoke of “pitiful attempts to falsify history”(35). On July 7 the Algerian Parliament condemned the February 23, 2005 statute, perhaps another unconscious imitation of the former coloniser. On July 26 the French Foreign Affairs Minister recommended the creation of a committee composed of French and Algerian historians in order to evaluate the statute. The net result was the postponement of the signature of the planned friendship treaty between the two countries. Algerian domestic politics also played a role: the campaign for the September 29 referendum on national reconciliation proposed by President Bouteflika has begun .

- Throughout 2005 Art. 4 of the 2005 statute was a permanent political embarrassment for President Chirac and the Government. All were aware that it had been a mistake. The Minister of Education tried to backtrack, affirming that the statute did not imply any change in the history programs and underlining the independence of research (36). The memories of the war reappeared brief when, in November 2005, during the riots in the Parisian suburbs, the Government decide to use a 1955 emergency law (“loi sur l’état d’urgence”) adopted at the beginning of the war in Algeria. Some commentators tried to establish a connection between those against whom the 1955 statute was directed and the rioters .An editorial in *Le Monde* went as far as to speak of a “colonial provocation”, of “cynism or the return of what had been repressed” (37). In December the Prime Minister declared before the National Assembly that its was not the task of Parliament to write history. This belonged to historians (38). True enough, but a bit too late. The President of the Republic then suggested to the President of the National Assembly to create a special committee to evaluate legislative action in the domains of history and memory and to hear historians on the subject. Another suggestion was to create quickly the Foundation mentioned in Art. 3 of the statute, so as to make Art.4 useless. The parliamentary majority explicitly refused, in November, 2005, to abrogate Art 4. The abrogation did finally took place a few weeks later. The French Constitution delineates the legislative domain and that of the Government (Art.34). When a statute contains provisions which do not belong to the former, the Government may abrogate or change them by decree if the Constitutional Council recognizes their non legislative character, once asked by the Government. This is what the Council did for the second para of Art.4, which related to school programs (40). Two weeks later a decree abrogated it, almost one year after it had been adopted (41).

3. The reactions of the historians and the debate on colonial history

The public reactions of the historians to the 2005 events were accompanied by a much less publicized but significant debate within the profession on the state of colonial and post-colonial studies in France. From the point of view of cultural history ,the second debate affords a deeper insight into French cultural history.

3.1 The reactions to the 2005 events

The reactions of the historians took place from the Spring of 2005, immediately after the adoption of the statute to the end of the year. The action brought against Pr Pétré-

Grenouilleau led to a second wave of protest and to a debate between historians, no less interesting and revealing deep differences of approach to the issue.

On March 25, 2005, one month after the publication of the statute, a number of historians (42) published a statement in *Le Monde* protesting against it and asking for the abrogation of Art.4, which they saw as imposing an official history contrary to neutrality in the schools and freedom of thought, which are at the core of secularism (“laïcité”). Art.4 mentioned exclusively the “positive role” of colonisation, imposing what they called an “official lie” on its crimes, on slaughters resulting sometimes in genocide, on slavery and on racism as an heritage of this past. The statute, they added, legalised a nationalist communitarism provoking in reaction that of groups which, until now, had been forbidden to accede to any past. Historians have a special responsibility to promote research and teaching giving to colonisation and immigration and to the resulting plurality all their place and which account for the complexity of such phenomena. This petition was signed by more than 1000 historians.

On June 17, 2005, the Watch Committee on the public uses of history published another manifesto, a more qualified one in its contents: Historians, it said, do not live in an ivory tower. Since the XIXth century the political and social context had influenced the renewal of the object of their studies. There is a relationship between historical research and collective memory but these two modes of approaching the past cannot be confused one with the other. There had been many attempts, since a century, to use history for political aims and the examples of the manipulation of the past were many. The manifesto criticized the statute because it was based on a conservative vision of the colonial past and a deep contempt for colonised peoples and the work of historians. It also criticized the competition between victims of historical wrongs and the attempts to manipulate history and historians for political aims. Hence the final appeal for a collective reflection of historians on two topics: the teaching of history and the uses of history in the public space.

On September 20, 2005 four historians (42 bis) published in *Le Monde* an article “The responsibility of historians in colonial history”. Commenting on the events of the past months they wrote : “Historians are not in charge of pronouncing a fatwa on the good and bad sides of colonisation”. They strongly criticized the statute and its acceptation by the Government. They also criticized President Bouteflika’s attitude, mentioned above, as well as the rhetoric of the manifesto “The natives of the Republic”. Colonisation, they added, had been an ambiguous phenomenon, transforming in depth the dominated societies.

On December 13, 2005 a group of 19 historians (43), following the action brought against Pr Pétre-Grenouilleau, published a manifesto “Freedom for history “. They began by recalling a number of principles : history is not a religion. Historians accept no dogmas. History is not morality. The historian’s role is not to exalt or to condemn, but to explain. He should not apply to the past contemporary ideological notions and he should not introduce into past events today’s feelings. History is not memory, although it takes it account. Neither Parliament or the courts should define historical truth. They finally asked for the abrogation of several statutes which, in their opinion, unduly restricted the freedom of the historian. Which statutes ? The 2001 one on the slave trade and slavery (on which no protests had been heard), the 2005 one and two others, which deserve a brief mention : the 2001 statute on the genocide of the Armenians in 1915 and the 1990 statute on denial of the Shoah.

The January 29, 2001 statute on the genocide of the Armenians

For years the Armenian community in France had been asking for a public recognition, by a statute, of the genocide which took place during the first World War. On May 29 1998 the National Assembly adopted a single article private bill which read: “The Republic recognizes publicly the Armenian genocide of 1915”. After further discussion in Parliament this text became the statute of January 29, 2001. Three elements are remarkable in it: the first one is that crime is mentioned, using a category of international and domestic criminal law. So are the victims, the Armenians. The second element is the total silence on two points: the country where this crime took place and the authors of the crime, due to obvious diplomatic considerations. Last and not least, this historical event had no connection whatsoever with French history, whether one looks at the place, the authors of the crime or its victims.

This was the first act. The second one opened in late 2005 and in 2006, when several private bills were introduced in the National Assembly making it an offence to deny the genocide of the Armenians (44). Their authors failed in May (45) and succeeded in October 2006 (46). The final bill was sent to the Senate and has remained there since then, and few people seem to think that it will be ever adopted.

The 1990 statute on the denial of the Shoah.

In 1990 Parliament adopted a statute making it an offence to deny or grossly minimize the genocide of the Jews by the Nazis. This statute, which has equivalents in a number of European and non European (Canada) countries was thought to be necessary for the following reason: Denial of the Shoah cannot be seen as the expression of an “opinion” among others. It is part of a deliberate, political and international scheme, illustrated by the flow of books and writings on the subject. In accusing the Jews of having “invented” the Shoah for their own interested purposes, it aims at the erasure of the very conscience of this crime from our conscience. The only tombs of these victims, whose anonymous death had been meticulously planned by their executioners, is our memory, and P. Vidal-Naquet was right to call those who denied the existence of the Shoah “les assassins de la mémoire,” the murders of memory”. Negationism” is indeed a major element of temporary anti-Semitism., as was recognized by the European Court of Human Rights (47) .The 2001 statute has not restricted any historian freedom of research. It has been useful in combating “negationism”. To abrogate it would be a legal and political regression, at the moment when the EU has just adopted a draft Directive prohibiting the Shoah’s denial (48). For the historians to include this statute into the list of those to be abrogated was thus more than problematic and showed an incomplete analysis of the issue. This being said, it is true is that the 1990 statute has been constantly invoked in France in the Armenian side and has served as a model in order to ask for the same provision as applied to the genocide of the Armenians in 1915.

This led to a prompt and strong answer from the four initial co-authors of the Appeal for a watch on the public uses of history (49). It is wrong, they said, to ask for the repeal of the 1990 and the two 2001 statutes on the genocide of the Armenians and on the slave trade and slavery. To condemn publicly genocides and other crimes against humanity is necessary. The task of historians, they added, is not to dictate collective memory .Besides, no one was habilitated to speak in the name of all historians .The 2005 statute should be repealed but it might be legitimate that society, through Parliament, took a position on events of the past(50). Also in December 2005 Pr Belhoste, professor of history at the University of Paris X, wrote a letter to one of the signatories of the manifesto “ Freedom for history”. Neither the 1990 statute nor the 2001 ones on the genocide of the Armenians and on the slave trade and slavery restricts, he wrote, the freedom of historians. Turning then to Art 4 of the 2005 statute

and to what it said on school programs and research, he remarked that its wording was inspired by that of the same article of the 2001 statute on the slave trade (51)

In a letter sent to the journal *L'Histoire*, another historian, Professor Dorigny, from the University of Paris-VIII also criticized the 19 for asking the repeal of the three statutes mentioned supra and for putting the 2005 one on the same level (52). Pr Noiriel, in another text, affirmed that if one criticized statutes as those mentioned supra, one had to do it *qua* citizen, and not *qua* historian. He opposed putting on the same level the 2005 statute and the three other ones for *political* reasons (53).

3.2 The debate on the state of colonial and post-colonial studies in France

Some of the participants to the public debate analysed above such as O. Pétré-Grenouilleau mentioned the critical state and the insufficiency of colonial and post-colonial studies. This topic had already been discussed but the 2005 debates led to a widespread and meaningful debate on the state of the art and its causes. To paraphrase S. Freud's book (54), its sub-title might have been "Unease in colonial and post-colonial studies". This is not the place for a full analysis of the issue. One example may be an apt illustration and give the flavour of it. In 2005 several historians published a book on French society and the colonial heritage (55). Some of them had already published studies on French colonial culture (56). Its review in the journal, *Politique africaine* in 2006 was followed, in the same issue, by several articles (57). The main argument ran as follows French Republic was also a colonial power, from the last quarter of the XIXth century to the end of the war in Algeria in 1962. The colonies were part of the republican culture and teaching in the schools. This left deep traces. Today colonial and post-colonial studies are neglected in Universities, they lack legitimacy. Colonial history seems to be a "forgotten" one. Pr Coquery-Vidrovitch speaks of "the silence of a generation (1972-2000)". As for the history of the Vichy years, she adds, there has been both forgetting and denial.

A reminder might be necessary here: This was not the first time French historians participated to a public debate on the Vichy regime and in particular its persecution of the Jews. During the late 1980s and the 1990s they did so in two capacities. In the late 1980s and the 1990s they did so in two capacities. The first one was uncontroversial. Historians sat as members of committees of inquiry set up to explore a specific issue. Here are two illustrations. Before and after Touvier's arrest in 1981 the fact that he had benefited, at different levels, including high ones, from the active help of members of the Catholic Church was widely commented. Cardinal Decourtray, then archbishop of Lyons and President of Conference of French bishops, took an unprecedented initiative. He created an independent committee of historians and gave it full access to his diocese's archives, which provoked the surprise, if not the concern, of many members of the Catholic hierarchy. The result was, in 1992, a report which shed full light on the extent and nature of the assistance granted by Catholic Church circles to Touvier (58). The second Committee was created by the Minister of Culture in 1992 and its scope was widened in 1993 by the Prime Minister. It related to the existence, exact content and use of the data-file on the Jews of Paris and the Paris region created by the French police during the war. A controversy had arisen on several issues regarding it. The Committee's report was published in 1996 (59).

The second capacity was controversial among historians. In the course of the trials mentioned supra a number of historians were called as witnesses by the accusation. Although

“witness” is the exact legal term, “expert witness” might be more appropriate. They were not asked to give evidence on the extent of the responsibilities of the accused but to describe the general context. This what F. Bédarida and R. Rémond did at the Touvier trial, J.-P. Azéma, M.-O. Baruch and R. Rémond did during the Papon trial in Bordeaux, while H. Rousso refused. This led to a discussion on the appropriate character and the exact meaning of the presence of the historian, *qua* historian, in such trials (60).

Final remarks on the French case

This has been mainly a game of three categories of actors, facing a number of domestic or international issues or events and leading to a public debate revealing certain central characteristics.

- *Political actors*: The President of Republic, the Government, Parliament and political parties.
- *The civil society*: such groups as the Jewish community, the Armenian one, spokesmen for the immigrants, associations of former settlers in Algeria, and the Catholic Church.
- *Historians*: they have been involved in a two-fold manner, through their productions and through their reactions to events.

Public opinion seems to have been so far more a spectator than an actor.

The action or reaction of these actors to such events as a statement, a trial, a new statute, a book, a commemoration, or international events such as the Jewish dormant assets issue in the mid-1990s or the Durban conference in 2001 had led to a public debate revealing notheworthy characteristics.

- 1) Both for the Vichy period, and especially for the Vichy régime’s policy against the Jews and for the history of colonisation, especially Algeria, a period of relative silence, if not of forgetting has been followed by a new awareness, fuelled by the renewal of the pertinent historiography and unexpected events. As to the former, one can add to the observations formulated supra G. Noiriel’s remark (61) according to which, until the end of the 1970s, the French historians of the Shoah were “amateurs”, animated by personal or familial motivations. Professional historians simply abstained (62).

As to Algerian war one is reminded of Benjamin Stora’s remarks in an article published 40 years after the end of that war: “Algeria is there, like an obsession, it is impossible to forget it. This is really the beginning of the end of denegation and of silence...In fact, when the war ended, after 1962, no one felt really responsible or guilty. The Europeans from Algeria had a strong feeling of having been betrayed and abandoned by the powers that be...They “were forgetting” the unequal status of the “natives”. The French soldiers from the draft felt certainly not responsible for the war...The officers affirmed they had simply obeyed the orders of the politicians. They “were forgetting” the important political powers they possessed, especially during the famous battle of Algiers in 1957. As to the Muslim soldiers who fought with the French army, they have been abandoned. They have been slaughtered, and could not feel responsible...When the war ends, no one is responsible. (All) consider themselves to be victims.” Hence the amnesia that followed, he adds, distinguishing the human reaction of individuals (“Sometimes it is perhaps necessary, too, to forget in order to

live”) and the organized amnesia and lying of the States, aiming at hiding responsibilities. With the passing of generations, things have changed today, and there is - on both sides of the Mediterranean, since, in Algeria, the war of independence has also been a cruel and bloody civil war - a thirst to know the past. Comparing the memory of the war in Algeria and that of Vichy and the war years, he writes that sometimes 30 or 4 years are necessary to take on painful histories, to pass from memory to history (63).

Four years later, in 2006, commenting on the weight of the trauma of the war in Algeria, Mary Lewis noted: “All this is mentioned in an incredibly contemporary manner, as if it was yesterday”(64). And, no doubt to the delight of historians and others, the Direction of the French National Archives announced in 2005 that a new data base, Ulysse, had just been created, allowing free access to documents relating to French colonial history: maps, photographs, postcards, posters and drawings (65).

- 2) The debate on colonial and post-colonial history cannot be understood without a reference to two of its components. The first is a social and a political one: the presence in France of a large number of immigrants, most of which come from former colonies, the difficulties or insufficiencies of integration and the public debate about it. The second is a psychological and sociological one: the search or the affirmation, in certain circles, of a new identity, found in a particular mix of memory and history, both reconstructed. The debate on the slave trade, slavery and their abolition was an apt illustration. The way certain spokesmen of the Black population mentioned the “descendants” of slaves or attributed themselves this identity was eloquent, claiming a status of victim, of exploited, or that of heir of them, i. e. as a member of a community of suffering. As O.Pétre-Grenouilleau aptly wrote, such a stand is based on “une vision doloriste et moralisante de l’histoire”. The same can be said of the attempt to establish a link between this character and the present social situation in France, as shown by the “Manifesto of the natives of the Republic” (66).

Several events which took place in 2005 were as many manifestations of such a state of mind: the contents of the report of the Committee for the memory of slavery, the dispute on the choice of the date or dates of the latter (May 10 was chosen, and the first commemoration took place in 2006); the publication of articles on the existence of a “Black question” in France (67); the creation, in November, of a Representative Council of Black Associations (“Conseil représentatif des associations noires”: CRAN”, on the model of the Jewish CRIF (68). The coronation, if I may say so, came in December. On December 2 there is usually a commemoration of Napoleon’s stunning victory in Austerlitz. But Napoleon also happens to be the man who re-introduced slavery in the French colony of Saint-Domingue (part of which became later Haiti) after its abolition in 1794. The association who had brought an action against Pr Pétre-Grenouilleau led a demonstration in front of the Invalids, where Napoleon is buried, exposing him as “slave trader” and a “criminal”. The Prime Minister’s instructions was to show discretion. A book used the term “genocide”, “concentration camps” and “gas chambers” to describe the repression against the Blacks. The parallel with the Nazis was expressed used in the book, the cover of which showed Hitler in front of Napoleon’s tomb in 1940 (69).

Another episode was no less telling: In 2005 a journalist, Serge Bilé published a book discussing several issues such as the massacre of the Herreros by the Germans in South West Africa at the beginning of the XXth century, colonial violence and Nazi crimes but also purporting to reveal that Blacks had been sent to Nazi camps during the war(70). Historians quickly showed, in addition to the many errors in his relation

of the killing of the Herreros by the Germans in South West Africa at the beginning of the XXth century, that Blacks were never sent to camps by the Nazis qua Blacks and had not been, in general the object of a particular attention by them. The Blacks who found themselves in these camps had been sent there on varied grounds, as Resistantists or victims or reprisals (71). A surfeit of history, indeed, to borrow the title of Pr. Charles Maier 's article (72) .

On other occasions, to acknowledge the events of the past was much easier for the Government or the President of the Republic. In 1947 a Nationalist uprising in Malagasy led to a very severe repression. In July 2005, during a visit to this country President Chirac acknowledged "the unacceptable character of the repressions generated by the abuses of the colonial system". The lapse of time and the absence of a sizeable French population in the island made things much easier.

What took place in French New Caledonia, in the Pacific, in 1998 deserves a mention. During the mid 1980s violent incidents between Nationalists and the French authorities led to many deaths on both sides and to a political stalemate. Later in, in 1998 the new Prime Minister, Mr Jospin took the initiative on inviting both sides (the independentists, represented by the FLNKS and the Europeans' party, the RPCR, then in power locally, to a conference which took place in Nouméa. The result was a remarkable declaration, the Agreement on New Caledonia, signed by all on May 5, 1998. The Preamble is a statement of what took place in reality in New Caledonia since the arrival of the French in 1853. The treaties signed with local authorities were in fact unilateral acts. The local Kanak population had a culture of its own and its identity was defined through a relation with the land, i.e. a specific part of the territory. Colonisation then took place, here as elsewhere. Settlers brought their skills, their ideals, their ambitions, their illusions and their contradictions. Some of them (priests, officers, physicians, engineers, civil servants) understood better the local population. The relationship with France has been, during a long time, a colonial one, marked by the refusal to recognize local specificities. The time has come, the document adds, to recognize the dark side of colonisation, even if it had also bright ones. Colonisation led to a lasting trauma for the local population. Clans lost both their names and their lands. Whole populations were resettled. The fabric of Kanak society was disrupted.. The fundamental components of Kanak identity were negated. Hence the suffering and the resentment. "It is indispensable, the text insists, to recall the memory (the French expression, "faire mémoire" is stronger) of these difficult moments, to recognize mistakes give back to the Kanak people its confiscated identity, which is for it the equivalent of a recognition of its sovereignty, as a preliminary of a new shared sovereignty in a common destiny". Communities living in New Caledonia, the document adds, have a right to participate to its future. The rest of the statement contains the basic principles of political reform in New Caledonia.

There is no other example of such a statement the history of French post-colonial history.

2007 will see the inauguration of a new museum on the memory of immigration, a welcome and belated initiative. It will be located in the building of the former Overseas France museum, which housed the 1931 colonial exhibition. The symbol was quickly commented and criticized. The first conference organized by it even before its opening related to immigration from the colonies, whereas from the 1850s on the first waves of immigration came from Germany, Belgium and Italy (73).

- 3) As to the other domain, the sequels of Vichy's policy against the Jews, two parallel and unconnected series of events took place: the first one was a purely domestic one, composed on the one hand of a series of prosecutions and trials, ending in 1998 with Papon's conviction and ,on the other hand, of the 1997 French bishops declaration in Drancy. The second one related to the inventory to the forced deprivation of property, leading to a public policy of compensation and restitution. For this second series the international context was a key element, both in setting off the momentum and in defining the answers.

Last remark: the Nazi genocide of the Jews and Vichy's persecution of the Jews, their sequels, the international and domestic recognition it led to and the decisions taken at both levels have constantly been an explicit model for other categories: The Armenians asking for a statute making it an offence to deny the genocide by the Turks in 1915; for the Blacks using the notion of crime against humanity and trying to raise the issue of compensation. In an article published in 2005, Mr Farid Laroussi, to teaches French literature at Yale, wrote:" Half a century has been necessary for France to repent of its killing the Jews ("judéocide") under Vichy's Government. There is an annual commemoration for the persons sent to Nazi camps (" déportés). When shall we have one for the colonised people ?" (74). In the article on Bilé's book quoted supra (75) the authors explain the surprising success of the book by the very mention of the Nazi death camps and saw in it another illustration of what has been called, wrongly according to them, the "competition of victims". They affirmed that the "Black question", like the so called "Jewish" one, rightly haunts the European conscience and finally asked: "Why this reference to the Nazi horrors to ensure that Black victims at last find a place in the media ?". Other events, during the same year, might have led to such a state of mind in certain circles. In January 2005 President Chirac made two statements relating to the persecution of the Jews: the first one on January 25, on the occasion of the inauguration of the Shoah Memorial in Paris; the second one two days later in Auschwitz, during the commemoration of the 60th anniversary of the liberation of the camp in 1945.

PART III

ON THE POLITICS OF MEMORY

I would like to present here three series of remarks, that could be summed up as follows:

- (1) The intervention of the State into collective memory has many antecedents.
- (2) What the totalitarian regimes of the XXth century, and especially the Communist ones did or tried to do in this domain was unprecedented..
- (3) There are many roads towards the restoration of memory.

1) The intervention of the State

To suggest that the intervention of the State into collective memory has many antecedents is trite. It might, however, be useful to recall here some of them, if only to differentiate them what we have witnessed in our time. I have chosen three examples.

The first one comes from ancient Greece. In 403 BC, after Athens's defeat in the Peloponnesian war, the regime of the 30 Tyrants and the return of the democrats, the Athenians had to take an oath "not to recall the evils of the past", that is both an oath and a prohibition, a kind of amnesty, of enforced forgetting, as the price to pay for political reconciliation, "un oubli fondateur" (N.Loraux) According to Plutarch, N. Loraux adds, the Athenians took off from the calendar the anniversary of the conflict and built in the Erechtheion a statue to L  th  , the goddess of forgetting (76).

The second example comes from Rome, where the "damnation memoriae" consisted in cancelling the name of a person from any rolls of honor and from the temples and in the destruction of the monuments and of the statues commemorating him. Such was the fate of the Emperors Nero, Domitian and Commodus and of Geta, Caracalla's brother.

The third example is drawn from France's history at the end of the XVIth century, when the wars of religion ended and King Henri IV converted to Catholicism, the Nantes Edict of 1598 proclaimed in unambiguous terms much more than a general amnesty. Under Art.1 "...the memory of things which happened from one side and from the other one since the beginning of March 1585 until our accession to the Crown, and during the preceding troubles and on their occasion shall be extinct and asleep ("assoupie") *as if it had not happened*" (my italics)". All persons without exception were prohibited to mention them for whatever reason or to use them for a judicial action. Under Art.2 all subjects were prohibited to "renew their memory" (77).

2) Totalitarianism and memory

What the totalitarian regimes, especially the Communist ones, did or tried to do during the XXth century was different. The Communist regimes, to take their example, did not rest only on fear and terror. One of their instruments has been the political confiscation of memory, its invalidation, directed against the whole society and aiming at the reconstruction of a "new past". The mortal danger for society was immediately perceived by the dissidents. This is why one of their first goals has been to maintain and restore memory, and combat official falsifications and deformations, to prevent amnesia to spread and to allow their compatriots not to forget not only their past but also their very identity, of which the past was a part. An illustration of this central preoccupation can be found in a document the title of which is "The right to history", published in Prague in 1977 by the Charter 77 movement. "Our engagement for the respect of human rights includes, without restriction, the reviving of historical memory". For them the fight against the falsification of memory was an act of resistance against a mutilation of the public mind (78). As Adam Michnik aptly wrote: "Communism did not want only to take over the people's work and freedom. It also wanted to own their memory" (79).

3) On the restoration of memory

Public statements by State authorities are irreplaceable, as was shown by the examples of Germany and of France. Courage and frankness are catching. So are silence and evasion.

The historians come usually later, for obvious reasons. Their task is primordial: to tell what happened. When the subject is historical crimes or wrongs such an imperative applies to the acts, to their authors and to their victims. As to the authors historical research has showed,

again and again, that at all levels one could find organizers, bureaucrats and administrators of death and human suffering, zealous and meticulous, obeying orders, but not always devoid of initiative or invention. As to victims there is a pressing social need, a moral imperative to name them, to identify them, to prevent them to suffer for ever the anonymous fate planned by their executioners. In an article published in New York in June 1942 which commented on the killing by the Nazis of Jews and other victims in Europe Hannah Arendt wrote: "Not one mass will now be sung, not one Kaddish will be said". These dead leave no written wills behind, hardly so much as a name; we cannot pay them our final respects, we cannot comfort their widows and orphans. They are victims in a way that there have been no victims since Carthage and its Moloch were destroyed." (80). Indeed the only tomb of these victims is our memory.

Historians are easily thought to have a social and political mission, in addition to the basic task of writing history. Chateaubriand certainly had it in mind when he wrote, in his *Mémoires d'outre-tombe* the famous lines: "When, in the silence of abjection, the only sounds to be heard are those of the slave's chain and the informer's voice; when all tremble in front of the tyrant and when it is as dangerous to receive his favour than to deserve his wrath, then enters the historian, in charge of the peoples' revenge. Nero prospers in vain, Tacitus is already born in the Empire." It would be nice and even comforting to think that this description fits all historians.

Yosef H. Yerushalmi's warning is indeed addressed to all:

"Historiography - that is, history as a narrative, discipline or "genre" with its rules, institutions and procedures - cannot, I insist on it, be a substitute for collective memory, nor create an alternate tradition which could be shared. But the essential dignity of the historian's calling remains and its moral imperative seems even to be more urgent than ever. In this world of ours, the issue is no more; now, that of the decadence of collective memory and of the decline of the awareness of the past, but that of the brutal rape of what memory can still keep, of the deliberate lie engineered by the deformation of the sources and archives, of the invention of mythical and remade pasts in the service of the power of darkness."

And he concludes:

"Against the militants of forgetting, the forgers of documents, the murderers of memory, against the revisers of encyclopaedias and the conspirators of silence...the historian, only the historian, driven by the austere passion of facts, of evidence, or witnesses, which are the nourishments of his profession, can watch and be on guard" (in *Usages de l'oubli*, see n.1, pp. 19-20).

Before historians begin or are able to finish their work, other writers are up to the task of maintaining the memory of what happened. The names of Primo Levi, Vassili Grossman, Varlam Chalamov, Alexander. Soljenytsine and Imre Kertez come to the mind, among many others.

And the poets. In 1943 Cezlaw Milosz, powerless spectator of the crushing of the Warsaw ghetto's uprising, mentions in his "Campo dei fiori" "the loneliness of the dying" and adds:

" Those dying here, the lonely
forgotten by the world,
our tongue becomes for them
the language of an ancient planet"

Seven years later, as an exile in Washington, he affirmed in “You who wronged” the power of the pen:

“Do not feel safe the poet remembers.
You can kill one, but another is born.
The words are written down, the deed, the date.

Ands you’d have done better with a winter dawn,
A rope, and a branch bowed beneath your weight”.

The last word here is Anna Akhmatova’s in “Requiem” :

“ In the terrible years of the Yezhov terror, I spent
Seventeen months in the prison lines of Leningrad.
Once, someone recognized me. Then a woman with
bluish lips standing behind me, who, of course, had
never heard me called by my name before, woke up from
the stupor to which everyone had succumbed and
whispered in my ear (everyone spoke in whispers there):
“Can you describe this ?”
And I answered:” Yes, I can”.
Then something that looked like a smile passed over
What once had been her face” (81)

NOTES

1) Here are a few titles, among many others: E.Barkan, *The Guilt of Nations .Restitutions and Negotiating Historical Injustices*, Norton, New York, 2000 ; J.Elster, *Closing the Books. Transitional Justice in Historical Perspective* ,Cambridge University Press, Cambridge,2004; B. Lewis, *History .Remembered, Recover, Invented*, Princeton University Press, Princeton,1975;Ch.Maier,“A Surfeit of Memory ? Reflections on History, Melancholy and Denial”, *History and Memory*, 1993. 136 ; M.R.Marrus, *Apologies For The Past And The Quest for Historical Justice*, Munk Center for International Studies, Toronto; Occasional Papers, n°III,206; M.Osiel, *Mass Atrocity ,Collective Memory and The Law*, Transaction, New Brunswick (N .J.),1997 ; French transl.: *Juger les crimes de masse: la mémoire collective et le droit*, Ed. du Seuil, 2006. ; P.Ricoeur, *La mémoire, l’histoire, l’oubli* , Ed. du Seuil, 2000 ; N. Tavuchis, *Mea Culpa. A Sociology of Apology and Reconciliation*, Stanford University Press,1991 ; R.Teitel, *Transitional Justice*, Oxford University Press, London and New York,2000 ;T.Todorov, *Les abus de la mémoire*., Arléa, 1995 ; J.Torpey (1), *Making Whole What Has been Smashed. On Reparation Politics* ,Harvard University Press, Cambridge (Mass.),2006 ; J. Torpey (2) Ed., *Politics and The Past: On Repairing Historical Injustice*, Rowman, New York and Oxford, 2003 ; E.Traverso, *Le passé, mode d’emploi: histoire, Mémoire, politique*, La Fabrique, 2005 ; Y.H Yerushalmi , *Zakhor:Jewish History and Jewish Memory*, University of Washington Press, Seattle and London,1982 ; French transl.: *Zakhor: histoire juive et mémoire juive*, La Découverte, 1982; Y.H. Yerushalmi et al., *Usages politiques de l’oubli*, Ed. du Seuil,1988 ; G.Zelis, Ed.,*L’historien dans l’espace public. L’historien face à la mémoire, à la justice et au politique* ,Ed. Labor, Loverval (Belgium),2005.

2) See M. Bossuyt and S.Vandeginste, “The Issue of Reparation for Slavery and Colonialism and the Durban Conference against Racism », *Human Rights Law Journal*, vol. 22, 2001, n°9-12, p. 341.

3) A..Brossat, S.Combe, J.Y.Potel and J.C. Szurek, Eds, *A l’Est .La mémoire retrouvée*, La Découverte, 1990, p.13.

4) See *L’historien dans l’espace public*, *op. cit*, n.1.

5) *Historikerstreit*, Piper, Munich, 1987 ; French transl. : *Devant l’histoire .Les documents de la controverse sur la singularité de l’extermination des Juifs par le régime nazi*, Ed. du Cerf, 1988.

6) Here is a short and necessarily incomplete overview , by chronological order: E.Jäckel, *La France dans l’Europe de Hitler*, Fayard, 1968 ; R.Paxton, *La France de Vichy, 1940-1944*, Ed. du Seuil,1973 ; M.R. Marrus and R.O.Paxton, *Vichy et les Juifs*, Calmann-Lévy,1981 ; English ed. :*Vichy France and the Jews* , Basic Books, New York, 1981 ;G.Wellers, A. Kaspi and S.Klarsfeld, Eds, *La France et la question juive,1940-1944*, Ed. S.Messinger,1981 ; S.Klarsfeld, *Vichy-Auschwitz. Le rôle de Vichy dans la solution finale de la question juive en France*,2 vols, Fayard, 1983 and 1985 ; H.Rousso, *Le syndrome de Vichy*, Ed. du Seuil, 1990 ; Cl. Andrieu, *La banque sous l’occupation. Paradoxes de l’histoire d’une profession*, Presses de la Fondation nationale des sciences politiques, 1990 ; P.Laborie, *L’opinion française sous Vichy*, Ed. du Seuil, 1990 ; new Ed.,2001 ; A.Kaspi, *Les Juifs pendant l’Occupation*, Ed. du Seuil, 1990 ; J.P.Azéma and F.Bédarida, Eds., *Vichy et les Français*, Fayard, 1992 ; *Paul Touvier et l’Eglise*, Fayard, 1992 ; H.Rousso, *Les années noires. Vivre sous l’Occupation*, Gallimard, 1992 ; J.P.Azéma and F.Bédarida, Eds, *La France des années noires*, 2 vols., Ed. du Seuil, 1993 ; *Annales* ,May-June 1993, « Présence du passé, lenteur de l’histoire .Vichy, l’Occupation et les Juifs » ; S.Klarsfeld, *Le calendrier de la persécution des Juifs en France*,

1940-1944, Association ,FFDJF, 1993 ; R .Poznanski, *Etre juif en France pendant la Seconde Guerre mondiale*, Hachette, 1994 ; *Juger sous Vichy*, Ed. du Seuil, 1994 ; E.Conan and H.Rouso, *Un passé qui ne passe pas*, Fayard, 1994 ; Ph. Burrin, *La France à l'heure allemande* ,Ed. du Seuil, 1995 ; *Le ' fichier juif'*, Plon ,1996 ; *Le droit antisémite de Vichy*, Ed. du Seuil, 1996 ; D.Peschanski,*Vichy, 1940-1944.Contrôle et exclusion*, Ed. Complexe, Brussels, 1997 ; R.Badinter, *Un antisémitisme ordinaire .Vichy et les avocats juifs,1940-1944*, Fayard,1997 ; M.O.Baruch, *Servir l'Etat. L'administration en France de 1940 à 1944*, Fayard, 1997 ; E.Fouilloux, *Les chrétiens français entre crise et Libération,, 1937-1947*, Ed. du Seuil, 1997 ; Ph. Verheyde, *Les mauvais comptes de Vichy. L'aryanisation des entreprises juives*, Perrin,1999 ; H.Rouso, *Vichy, L'événement, la mémoire, l'histoire*, Gallimard, 2001 ; J.Joly, *Xavier Vallat. Du nationalisme chrétien à l'antisémitisme d'Etat,1891-1972.Biographie*, Grasset, 2001 ; D.Peschanski, *La France des camps. L'internement,1938-1946*, Gallimard, 2002 ; L.Douzou, *Voler les Juifs, Lyon,1940-1944*, Hachette, 2002 ; L.Joly, *Darquier de Pellepoix et l'antisémitisme français*, Berg International, 2002 ; id., *Vichy dans la ' solution finale'.Histoire du Commissariat général aux questions juives, 1941-1944*, Grasset, 2006.

7) *Commentaire*, Summer 1981.

8) See, inter alia : J.Duquesne, *Les catholiques français sous l'Occupation*, Grasset, 1966 ; new Ed., 1986 ; « Eglises et chrétiens pendant la seconde guerre mondiale dans le Nord- Pas de Calais », *Revue du Nord*, 237,April-June 1978, p.225; 238, July-September 1978, p. 475 ; *La France et la question juive,1940-1944*, Ed.S.Messinger,1981, ;see Part II : « Les Eglises » ; *Eglises et chrétiens dans la seconde guerre mondiale .La France*, Presses de l'Université de Lille, 1982 ; F.Delpech, *Sur les Juifs .Etudes d'histoire contemporaine*, id, 1984 ; *Paul Touvier et l'Eglise*, Fayard, 1992 ; E.Fouilloux, *Les chrétiens français entre crise et Libération.1937-1947*, Ed. du Seuil, 1997 ; M.Cointet, *L'Eglise sous Vichy. La repentance en question* Perrin, 1998. See also the excellent study of F.Le Moigne, *Les évêques français de Verdun à Vatican II. Une génération en mal d'héroïsme*, Presses universitaires de Rennes, 2005.

9) Cf. S.Friedlander, *Pie XII et le IIIème Reich*, Ed. du Seuil, 1964 ; G.Lewy, *The Catholic Church and Nazi Germany*, McGraw Hill, New York,1964 ; French transl. *L'Eglise catholique et l'Allemagne nazie*, Stock, 1965; F.Bédarida, " Pour faire avancer l'histoire:les archives du Vatican, 1939-1945", *Esprit*, May 2001 ; also in J.Dujardin, *L'Eglise catholique et le peuple juif .Un autre regard*, Calmann-Lévy, 2003, p.202 ;B.Dupuy, « L'Eglise catholique, les Juifs et la Shoah. En scrutant les archives allemandes », *Istina*,2003,p.374 (review of M.Phayer, *L'Eglise et les nazis*, Ed.Liana Levi, 2000) ;D.Kertzer, *The Popes against the Jews*, Knopf, New York, 2001 ; French transl. : *Le Vatican contre les Juifs .Le rôle de la papauté dans l'émergence de l'antisémitisme moderne*,R.Laffont, 2002 ;G.Miccoli, *I dilemmi e silenzi di Pio XII*, RCS Libri, Milan, 2000 ; French transl. ;*Les dilemmes et les silences de Pie XII.Vatican ,Seconde Guerre mondiale et Shoah*, Ed. Complexe, Brussels, 2005.

10) See Bédarida, *loc. cit.* and Dujardin ,*op.cit.*, supra n.9.

11) Dujardin, *op. cit.* supra n.9, p.263.

12) Manuscript communicated by Father Dupuy

13) *Remembering for the Future Jews and Christians During and After the Holocaust*, Pergamon Press, Oxford et al, 1988,in Supplementary vol, p.80," The Shoah - what should it teach ?".

14) See "La Caisse des dépôts et consignations.175 ans », *Revue d'économie financière*, special issue,1991.

- 15) Caisse des dépôts et consignations, *La spoliation antisémite sous l'Occupation :consignations et restitutions. Rapport définitif*, 2001.
- 16) A.Aglan,M.Margairaz and Ph.Verheyde ,Eds, *La Caisse des dépôts et consignations, la seconde guerre mondiale et le XXème siècle*, A.Michel, 2003.
- 17) Mission d'étude sur la spoliation des Juifs de France, *Rapport d'étape, janvier-décembre 1998*, 1998 .
- 18) Id, *Rapport général*, La Documentation française, 2000.
- 19) The following developments are based on P.Saragoussi's study, « Naissance d'une politique publique. Spoliations et restitutions des biens juifs,1992-2000»,*Cahiers Bernard Lazare*, n°s 276, March 2007, 277, April 200 and 278, May 2007.
- 20) N° 792, AN, March 31, 1998.
- 21) N° 1060, AN ,July 7, 1998.
- 22) N° 1297,AN, December 22, 1998.
- 23) n° 1302, AN, December 22,1998.
- 24) Rapport n° 1378, AN, February 16,1999.
- 25) Comité pour la mémoire de l'esclavage, *Mémoires de la traite négrière, de l'esclavage et de leurs abolitions*, La Documentation française, 2005 ;
www.ladocumentationfrancaise.fr/brp/notices/054000247.shtml.
- 26) O.Pétre-Grenouilleau, *Les traites négrières. Essai d'histoire globale*, Gallimard, 2004.
- 27) *Le Monde*, February 27, 2005.
- 28) id, February 22, 2005.
- 29) id, March 6-7, 2005.
- 30) *Le Journal du dimanche*, June 12, 2005.
- 31) At the end of the war, in 1962, around 320 000 persons had taken part to it on the French side, i.e. in the French forces, as members of the French army or of auxiliary forces. Several tens of thousands were subsequently killed in Algeria. Around 20 000 families left for France.
- 32) See B.Stora, *La gangrène et l'oubli. La mémoire de la guerre d'Algérie*, La Découverte ,1998 ;D.Borne,J.L.Nembrini and J.P.Rioux, Eds. *Apprendre et enseigner la guerre d'Algérie* , DESCO, Paris, 2002.
- 33) A.Horne, *A Savage War of Peace. Algeria, 1954-1962*, Macmillan, London, 1977 ; Penguin, London,1979,0pp.23-28 ; On the Sétif massacre see J.L.Planche, *Sétif, 1945. Histoire d'un massacre annoncé*, Perrin, 2006.
- 34) *Le Monde*, June 11,2005.
- 35) Id, July 5, 2005.
- 36) Id, October 18, 2005.
- 37) Ph.Bernard in *Le Monde*, November 19, 2005.Another commentator wrote:" The November popular revolt has been ' polluted' by colonial visions. The Minister of the Interior saw himself as a pacificator while certain youngsters intended to avenge the outrage suffered by their ancestors.", N.Bouttinier, *Témoignage Chrétien*, quoted by R.Bertrand," La mise en cause(s) du fait colonial. Retour sur une controverse publique", *Politique africaine*, 102, June 2006,p.39.
- 38) AN, 1st sitting, December 14,2005.
- 39) On the parliamentary debate see Bertrand, *loc.cit*, supra n.37.
- 40) Conseil constitutionnel, Decision 2006-203 L, January 31,2006.
- 41) Decree of February 15, 2006.
- 42) Their names include those of G. Noiriel, Cl.Liauzu and G.Meynier.
- 42 bis) R.Branche, Cl.Liauzu, G.Meynier and S.Thénault.
- 43) Among whom J.P. Azéma, P.Nora, M. Ozouf, A.Prost, R.Rémond,J .P.Vernant, P.Veyne and P. Vidal-Naquet. See *Libération*, December 12,2005.

- 44) See n°s 2778, AN, December 22,2005 ; 3030, AN, April 12, 2006 ; 3053,AN, April 28,2006 and 3054, AN, April 26, 2006.
- 45) See the Committee's Report, AN, n° 3074, May 10, 2006 and its discussion on May 18,2006, JO. AN, 1st sitting, May 18,2006,p 3646 ss.
- 46) JO. AN.,1st sitting, October 12, 2006, p.6095 ss.
- 47) *Garaudy v. France*, June 24, 2003, Applic. 65831/01.
- 48) See *International Herald Tribune*, April 20, 2007.
- 49) M. Giraud, G. Noiriel, N.Offenstadt and M.Riot-Sarcey.
- 50) <http://cvuh.free.fr/debat/appel.usag.histoire.html>.
- 51) <http://cvuh.free.fr/debat/belhoste.lettre.html>.
- 52) <http://cvuh.free.fr/debat/dorigny.histoire.html>.
- 53) <http://cvuh.free.fr/debat/noiriel.liberté.historien.html>.
- 54) S.Freud,*Das Unbehagen in der Kultur*, Vienna , 1929.
- 55) P.Blanchard ,N. Bancel and S. Lemaire, Eds., *La fracture coloniale. La société française au prisme de l'héritage colonial*, La Découverte,2005.
- 56) P. Blanchard and S. Lemaire, Eds., *Culture coloniale (1871- 1931)*, Ed. Autrement, 2003; P. Blanchard, N. Bancel and F. Vergès, *La république coloniale. Essai sur une utopie*, A.Michel,2003.
- 57) See in *Politique africaine, loc.cit*, supra n.37, the articles of J.P.Chrétien,p.189,J.Copans, p.194 and C.Coquery-Vidrovitch,p. 203.
- 58) *Touvier et l'Eglise. Rapport de la commission historique instituée par le cardinal Decourtray*, Fayard, 1992.The Commsision, chaired by R.Rémond, included six historians (J.P. Azéma, F. Bédarida, G.Cholvy, B.Comte, J.D. Durand and Y.M. Hilaire) and Father J. Dujardin, General Superior of the Oratoire in France and then Secretary of the French episcopal committee for relations with Judaism.
- 59) *Le ' fichier juif' .Rapport de la commission présidée par R.Rémond au Premier ministre*, Plon,1996.The committee, chaired by R.Rémond, included J.P.Azéma,Ch.Bonazzi,A.Kaspi and P.R. Bazin. J .Kahn was the only non historian .
- 60) On this debate see H. Rousso, *La hantise du passé*, Textuel,1998 ; J.N.Jeanneney, *Le passé dans le prétoire. L' historien, le juge et le journaliste*, Ed. du Seuil, 1998 ;id, « A quoi servent les historiens ? », *L'Histoire*, n° 222, June 1998 ;Y.Thomas, « La vérité, le temps, le juge et l'historien », *Le Débat*, n° 102, November- December 1998 ; H.Rousso, « L'expertise des historiens dans les procès pour crimes contre l'humanité », in J.P.Jean and D.Salas, Eds., *Barbie, Touvier, Papon .Des procès pour mémoire*, Ed. Autrement, 2002, p.58 ; Richard J.Evans, « History, Memory and the Law : the Historian as expert witness », *History and Memory*,2002.3.p.326 ; F.Bédarida, "Les responsabilités de l'historien expert », in F.Bédarida, *Histoire, critique et responsabilité*, Ed. Complexe, Brussels,2003,p.289 ;H. Rousso, « Justice, History and Memory in France. Reflections on the Papon trial », in J.Torpey, Ed., *Repairing Historical Injustices*, Rowman, New York et al.,2003, p.277, at 287; O.Dumoulin, *Le rôle social de l'historien. De la chaire au prétoire* ,A.Michel, 2003 ; M.O. Baruch, « L'historien dans le prétoire :le procès Papon », in G.Zelis, Ed., *L'historien dans l'espace public. L'histoire face à la mémoire, à la justice et au politique*, Ed. Labor, Loverval (Belgium),2005, p.57.
- 61) In « Histoire, mémoire et engagement civique »,*Hommes et migrations*, January- February 2004.
- 62) One should ,however, mention the following books: L.Poliakov, *Le bréviaire de la haine. Le IIIème Reich et les Juifs*, preface by F.Mauriac, Calmann-Lévy,1951 ; id and J.Wulf, *Das Dritte Reich and die Juden*, Arani, Berlin,1955; French transl.: *Le IIIème Reich et les Juifs*, Gallimard, 1959;J.Billig, *Le Commissariat général aux questions juives, 1941-1944*, 3 vols., CDJC,1955,1957 and 1960.

- 63) B.Stora, “La mémoire retrouvée de la guerre d’Algérie”, *Le Monde*, March 19, 2002. B.Stora has written extensively of the history of Algeria since the XIXth century, during the war (1954-1962) and since its independence. His most recent book is *La guerre des mémoires. La France face à son passé colonial. Entretiens avec T .Leclère*, Ed. de l’Aube, 2007. On two important aspects of the war in Algeria see S.Thenault, *Une drôle de justice.les magistrates dans la guerre d’Algérie*, préface by J.D .Bredin, postface by P.Vidal- Naquet, La Découverte, 2001;R.Branche, *La torture et l’armée pendant la guerre d’Algérie, 1954-1962*,Gallimard,2001.
- 64) Mary Lewis, *Le Monde*, January 29-30, 2006.
- 65) www.archivesnationales.culture.gouv.fr/caom/fr
- 66) See O.Pétre-Grenouilleau ‘s excellent article « Les identités traumatiques », *Le Débat*, n°136, September - October 2005, p.93.
- 67) See, e.g. » La question noire posée à la France », in *Le Monde 2*, August 20, 2005.
- 68) *Le Monde*, November 27, 2005 ; *La Croix* ,November 30, 2005.
- 69) C.Ribbe, *Le crime de Napoléon*, Ed. Privé, 2005. See P.Nora’s reply, *Le Monde*, December 13, 2005.
- 70) S..Bilé, *Noirs dans les camps nazis*, Ed. Le serpent à plumes, 2005.
- 71) See J.Kotek,T.Bruttman and O.Morisseau, « Les nazis n’ont pas déporté les Noirs », *Le Monde*, March 21-22,2005 and S.Bilé’s reply, id, March 30,2005.
- 72) Ch. Maier, » A Surfeit of Memory ? Reflections on History, Melancholy and Denial”, *History and Memory*,1003. 136.
- 73) On the history of immigration in France see: G.Noiriel, *Le creuset français. Histoire de l’immigration .XIX-XXème siècles*,_Ed. du Seuil, 1988 ; P.Weil, *L’aventure d’une politique de l’immigration.1938-1991*, Calmann - Lévy, 1991 ;G.Noiriel, *Population, immigration et identité nationale en France, XIX-XXème siècles*, Hachette, 1992 ; Ph. Dewitte, Ed., *Immigration et intégration. L’état des savoirs*, La Découverte, 1999 ;P. Weil, *La République et sa diversité :immigration, intégration discrimination*, Ed. du Seuil, 2005 ; Y.Lequin, Ed., *Histoire des étrangers et de l’immigration en France*, Larousse, 2006.
- 74) F.Laroussi, « Nouveau révisionnisme »,*Le Monde*, May 12, 2005.
- 75) Cf. supra n. 71
- 76) N.Loroux,*L’oubli dans la mémoire d’Athènes*, Payot, 1997 ; id, « De l’amnistie et de son contenu », in Y.H.Yerushalmi et al., *Usages de l’oubli*, Ed. du Seuil, 1988 ;J.Elster, *Closing the books*, *op.cit.* p. 315.
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- 78) See V.Havel’s “ Letter to Dr. Gustav Husak, General Secretary of the Czechoslovak Communist Party”, in J. Vladislav, Ed., *Vaclav Havel or Living in Truth*, Faber and Faber, London, 1987,p.3.
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- 80) H.Arendt, *Jewish Writings*,J.Kohn and R.Feldman, Eds, Schocken Books, New York, 2007, p. 162.
- 81) *The Complete Poems of Anna Akhmatova*, translated by J.Hemschmeyer, Edited and with an Introduction by R.Reeder, Zephyr Press, Somzeville (Mass.),1990