ABSTRACT

Title of Dissertation:	*THE PRICE OF RECONCILIATION: WEST GERMANY, FRANCE AND THE ARC OF POSTWAR JUSTICE FOR THE CRIMES OF NAZI GERMANY, 1944-1963*
	René Staedtler, Doctor of Philosophy, 2020
Dissertation directed by:	Distinguished University Professor Dr. Jeffrey Herf, Department of History

My dissertation links the arc of war crimes justice with the arc of reconciliation in Franco-German relations from 1944 to 1963. I argue that France initially created a retributive justice which aggressively targeted crimes committed by the German occupant from 1940 to 1944. By examining the internal debates within the French government and parliament regarding the legal foundation of Nazi war crimes trials in France, I show that the French polity dispensed with and even violated the French republican tradition in its effort to reckon with the Nazi past. In the second part, I demonstrate that the process of European integration and Franco-German reconciliation offered those in West Germany who resented the retributive justice in France the opportunity to influence, even manipulate the French government by initiating and sustaining a trajectory which bound reconciliation ever more tightly to the retreat from the goals of postwar justice.

I contend that once French Foreign Minister Robert Schuman initiated the path towards reconciliation with Adenauer's West Germany, a broad coalition centrally coordinated from Bonn utilized the desire for rapprochement to undermine French war crimes justice. By attacking French justice as a sign of its unforgiveness and its resolve to continue with the so-called "arch-enmity," the West German diplomats and government officials argued that the war crimes trials were regarded as a symbol of a period of humiliation and injustice which needed to be eradicated in order to achieve a "veritable reconciliation."

I show how the reconciliation narrative shaped the transition from a French system of justice which was one of the most extensive and consequential ones in Western Europe in the late 1940s to the complete and premature release of all remaining war criminals in French custody. The West German view prevailed and imprinted on the landmark achievement of Franco-German reconciliation the stain of privileging the perpetrators over the victims of Nazi Germany in France.

THE PRICE OF RECONCILIATION: WEST GERMANY, FRANCE AND THE ARC OF POSTWAR JUSTICE FOR THE CRIMES OF NAZI GERMANY, 1944-1963

by

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Dissertation submitted to the Faculty of the Graduate School of the
University of Maryland, College Park, in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
2020

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Dedication

For Amy and Adeline

Acknowledgements

A South African proverb states “a person is a person through other people.” This applies to this dissertation as well, since it only became a dissertation through other people. While words cannot adequately address my immense gratitude to each person’s contribution to my intellectual journey, I would like to offer the following words of appreciation. My advisor Jeffrey Herf taught me European and intellectual history with passion and knowledgeability. He has been an outstanding mentor who guided me and this project from the beginning, offering critical commentary, warm und unwavering support and words of encouragement at every stage of the way. He has been a Doktorvater in the true sense of the term. Marsha Rozenblit and Piotr Kosicki, members of my dissertation committee, have supported me throughout my graduate career and offered insights and criticisms which helped this dissertation grow. Steven Remy and Steven Mansbach joined the dissertation committee and contributed their considerable insight into transnational aspects of the project.

I received tremendous infrastructural and financial support from the Department of History at the University of Maryland, without which this project could not have been successfully concluded. Jodi Hall, the Program Coordinator, was instrumental in organizing the dissertation defense from Europe in the midst of a global pandemic. The Freie Universität’s Berlin Program for Advanced German and European Studies served as my intellectual home in the final stages of the project. Karin Goihl, the Berlin Program’s academic coordinator, provided great infrastructural, intellectual and emotional support during my time at the FU in Berlin. The Berlin Program’s generous pre-dissertation fellowship allowed me to conduct

extensive research across Western Europe. At the same, its bi-weekly colloquium, led co-jointly by Konrad Jarausch and Paul Nolte, served as the perfect venue for the development of ideas and arguments. Paul Nolte also generously allowed me to present my project to the scholars of his research colloquium at the Freie Universität.

Furthermore, I have benefitted greatly from the many helpful, competent and passionate archivists at the U.S. National Archives in College Park, the Archives Nationales in Pierrefitte, the Archives Diplomatiques in La Courneuve, the Archives of the International Committee of the Red Cross in Geneva, the Bundesarchiv in Koblenz and Berlin, the Politisches Archiv des Auswärtigen Amtes in Berlin and the Evangelisches Zentralarchiv in Berlin.

Above all, my family has been a source of support and confidence. My parents Rita and Herbert Städtler have provided me with the wings which allowed me to become the person who I am today. My wife Amy supported me from the beginning of this intellectual journey, moved with me across the Atlantic and accompanied me on extensive research trips in Germany, France and beyond. Her unwavering support is the foundation of this dissertation. She and our wonderful daughter Adeline have made this journey worthwhile, and to them I dedicate this dissertation.

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List of Abbreviations

ANFMO – National Association of the Families of Martyrs of Oradour (*Association Nationale des Familles des Martyrs d'Oradour*)

AZO – American Zone of Occupation

BdS – Commander of the Security Police and SD (*Befehlshaber der Sicherheitspolizei und des Sicherheitsdienstes*)

BZO – British Zone of Occupation

CDU – Christian Democratic Union of Germany

CFLN – French Committee of National Liberation (*Comité français de Libération nationale*)

CSM – *Conseil Supérieur de la Magistrature* (Administrative Office which supports the French president in executing his judicial prerogatives – including his pardoning power)

ECSC - European Coal and Steal Community (ECSC)

EDC – European Defense Community

FDP – Free Democratic Party of Germany

FFI – French Forces of the Interior (*Forces Français de l'Intérieur*)

FRG – Federal Republic of Germany (West Germany)

FZO – French Zone of Occupation

HICOG - U.S. High Commission in Germany

HSSPF – Higher SS and Police Leader

IMT- International Military Tribunal at Nuremberg

MAE – French Foreign Ministry seated at the Quai d'Orsay in Paris

MRP – Popular Republican Movement (*Mouvement Républicaine Populaire*)

OKW – Wehrmacht High Command (*Oberkommando der Wehrmacht*)

PCF – French Communist Party

VdH – *Verband der Heimkehrer* (Association of Persons Returning Home) – West Germany's largest Veterans' Association

ZRS – Central Legal Protection Office (*Zentrale Rechtsschutzstelle*)

INTRODUCTION

This is a study of the tension between Franco-German reconciliation after World War II and justice for the crimes committed by the Nazis in France. I argue that Franco-German reconciliation was founded on the partial rehabilitation of the Nazi past. When French Foreign Minister Robert Schuman announced his eponymous plan in May of 1950,[1] he and his French government began an expanding relationship with West Germany as the basis for European integration. With the political bridge Schuman constructed between Paris and Bonn, France also tied itself to West Germany's troubled relationship with the Nazi past.

This dissertation introduces to historiography the corollary between Franco-German reconciliation and a reevaluation of the Nazi past.[2] I argue that Franco-

[1] French Foreign Minister Robert Schuman announced on May 9, 1950, the day after the fifth anniversary of VE Day, that France would spearhead European integration based on Franco-German rapprochement. Given France's previous uncompromising attitude towards the formation of the West German state, he surprised many with his genuine plan. The Schuman Declaration, as it is now called, laid out the design for European integration based on the pooling of French and Wes German coal and steel industries, which according to Schuman's idea, would make another war between the two countries logistically impossible. His declaration is now regarded as a foundational document of the European Union and May 9, the anniversary of the declaration, is celebrated as Europe Day. See https://europa.eu/european-union/about-eu/symbols/europe-day_en, last accessed on December 18, 2019.

[2] While the scholarship on justice and memory in the context of postwar Germany and France is extensive, my distinctive contribution is to connect it to the equally extensive scholarship on European integration and Franco-German reconciliation. For instance, the literature on French war crimes trials, the commemoration of the massacre and the aftermath is extensive. Among the trials, the trial of the Oradour massacre garnered the most attention: Sarah Farmer, *Martyred Village: Commemorating the 1944 Massacre at Oradour-sur-Glane* (Berkeley: University of California Press, 1999), Farmer traces the evolution of the memory of the massacre, while Jean-Jacques Fouché, *Oradour: La politique et la justice* (Saint-Paul: Editions Lucien Souny, 2004), Fouché presents the struggle for justice for the victims of Oradour in the light of internal and international constraints on justice; Jean-Laurent Vonau, *Le Procès de Bordeaux. Les Malgré-Nous et le drame d'Oradour* (Strasbourg: Editions du Rhin, 2003), Vonau's book looks at the Oradour trial from the perspective of the Alsace and its struggle for recognition of its fate during World War II. While a large body of scholarship on Franco-German relations on one hand and postwar justice on the other exists already, there is a large gaping hole between the two of them. Ulrich Lappenküpper's authoritative work on Franco-German diplomatic relations after the Second World War relegates war crimes trials to the footnotes. Claudia Moisel's and

German reconciliation empowered a Federal government and a Federal bureaucracy[3] with a systemic personnel continuity with the Third Reich,[4] to utilize the bridge between Paris and Bonn as an avenue in the pursuit of a transition of French war crimes justice from retribution to leniency.

While post-World-War-II Franco-German reconciliation to this day remains a remarkable achievement, its story is incomplete without the twin development of the complete release of all German war criminals before Adenauer and de Gaulle signed the Franco-German-Friendship-Treaty at the Elysée in 1963. This dissertation argues that the Schuman Declaration and the subsequent reconciliation trajectory until 1963

Bernhard Brunner's excellent studies focus on the French war crimes trials without situating them into the trajectory of Franco-German reconciliation or European Integration. See Ulrich Lappenküper, *Die Deutsch-Französischen Beziehungen, 1949-1963, Von der Erbfeindschaft zur Entente Cordiale* (München: Oldenbourg Verlag, 2001); Claudia Moisel, *Frankreich und die deutschen Kriegsverbrecher, Politik und Praxis der Strafverfolgung nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2004); Bernhard Brunner, *Der Frankreich-Komplex, Die nationalsozialistischen Verbrechen in Frankreich und die Justiz der Bundesrepublik Deutschland (*Göttingen: Wallstein, 2004). On memory of the recent past, the following works deployed the similar approaches regarding Franco-German memory of the recent past: Valérie-Barbara Rosoux, *The Les usages de la mémoire dans les relations internationales : Le recours au passé dans la politique étrangère de la France à l'égard de l'Allemagne et de l'Algérie, de 1962 à nos jours* (Bruxelles: Bruylant, 2001) reviewed French foreign policy and analyzed the deployment of memory, vis-à-vis Germany on the one hand, and Algeria on the other. Unfortunately, the starting point of the work is 1962, when Algeria became independent. Nicolas Moll, "Oublier Hitler ? Les voyages officiels de l'Allemagne fédérale et la mémoire du nazisme," in: Jean-William Dereymez, Olivier Ihl, and Gérard Sabatier (eds.), *Un Cérémonial Politique : Les Voyages Officiels Des Chefs D'état* (Paris: L'Harmattan, 1998) stressed the importance of memory to West German state visits and revealed the intricate planning of the West German Foreign Office to limit exposure to the Nazi past during state visits.

[2] The tension between justice and reconciliation as a domestic problematic has preoccupied historians of Germany and France after Nazism and the United States of America after the Civil War. See for example: Tony Judt, "The Past is Another Country: Myth and Memory in Postwar Europe," in Jan-Werner Müller (ed.), *Memory and Power in Post-War Europe: Studies in the Presence of the Past* (New York: Cambridge University Press, 2002); and David Blight*, Race and Reunion, The Civil War in American Memory* (Cambridge: Harvard University Press, 2001).

[3] See for instance the works by Norbert Frei et al. on the Foreign Office's Nazi past and by Manfred Görtemaker et al. on the Federal Justice Ministry's links with the Third Reich. Eckart Conze, Norbert Frei, Peter Hayes, and Mosche Zimmermann, *Das Amt und die Vergangenheit: Deutsche Diplomaten im Dritten Reich und in der Bundesrepublik* (München: Karl Blessing Verlag, 2010); Manfred Görtemaker, Christoph Johannes Maria Safferling, *Die Akte Rosenburg: Das Bundesministerium der Justiz und die NS-Zeit* (Munich: C.H. Beck, 2016).

[4] For instance, more than 50% of the Federal Justice Ministry's personnel in leadership positions between 1949 and 1973 had been card carrying members of the Nazi party, more than 20% had even been stormtroopers.

compelled France also to accept a reconciliation with West Germany's deeply troubled relationship with the Nazi past - resulting in a reconciliation based on a selective memory of the past, privileging the perpetrators and marginalizing the victims.[5]

I argue that that in the foundational period of Franco-German reconciliation and European integration between 1950 and 1963, the thesis of Franco-German rapprochement as a break with the troubled past in favor of a new beginning needs to be amended.[6] While the two countries and their political leaders professed this new beginning, this dissertation shows that reconciliation and integration also led to the reaffirmation of the ties between the Nazi past and the postwar era and a redefinition of the Nazi occupation of France.

As evidence for this development, this dissertation focuses on the trajectory of French judicial reckoning with the crimes of the Nazi occupation from 1944-1963. I will show that the outward symbol for France's revision of its position towards the Nazi German past had been the rapidly dwindling number of Nazi war criminals in its

[5] My work builds heavily on the work of historians who have presented facets of the themes of the selective memory in postwar Germany and France respectively: Norbert Frei, *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: C.H. Beck, 1996), which emphasized the connections between democratization and re-integration of millions of ex-Nazis in West Germany. In particular of interest is Frei's treatment of the war criminal question, which developed into a veritable "amnesty hysteria" in the West German public opinion (Frei, *Vergangenheitspolitik*, 399). My dissertation argues that reconciliation and European integration ultimately allowed the West German "amnesty hysteria" to influence French justice. In *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, Mass.: Harvard University Press, 1997), Jeffrey Herf juxtaposed traditions of selective memory in the two Germanies. I argue that through Franco-German reconciliation, these inner-German approaches to the remembrance of the Nazi past and the Holocaust collided with French memory of the German occupation, a collision that was temporarily resolved by excluding memory of the Nazi past from official reconciliation discourse.

[6] Historians have framed Franco-German relations after World War II as the attempt to break with the cycles of war and vengeance. See for instance: Raymond Poidevin, Jacques Bariéty, *Frankreich und Deutschland. Die Geschichte ihrer Beziehungen, 1815-1975*, (Munich: C.H. Beck, 1982).

custody. Every one of the over 850[7] releases of war criminals by France between 1949 and 1962 was negotiated and lobbied for by an extensive network of lawyers,[8] clergymen[9] and diplomats,[10] centrally coordinated from the German mission in Paris and the headquarters of the Foreign Office in Bonn. Every one of these releases was a victory for a reconciliation dictated by the West German desire to eradicate the "postwar injustices" and to rehabilitate a substantial part of the recent past – proving Tony Judt's thesis that ""[s]ilence over Europe's recent past was the necessary condition for the construction of a European future."[11] However, by connecting the trajectory of France's judicial reckoning with the Nazi past, from the inception of the war crimes trials in 1944 to the release of the last three German war criminals in 1963, with the trajectory of Franco-German reconciliation, I show that postwar Europe had been more than just an amnesiac project. On the contrary, the pioneer phase of the construction of the European project, as this dissertation shows, enabled

[7] According to the official statistic of the ZRS, France held 867 war criminals on April 1, 1950. Between 1950 and 1951, 6 war criminals were executed by France, and between 1950 and 1953, 9 more died in captivity of natural causes. In 1954, the former head of Natzweiler Concentration Camp, Franz Hartjenstein, also died in captivity of natural causes. The remaining 851 war criminals were released between 1950 and 1962. See "STANDARDZAHELN- Zahlenmässige Übersicht über die Entwicklung des Kriegsverbrecherproblems in den westlichen Ländern," undated, BAK 305/316, p. 107.

[8] Erich Schwinge and Karl Roemer on the West German side as well as Raymond de la Pradelle and Jacques Pascal on the French side, to name a few prominent examples.

[9] Both the German Protestant and Catholic Churches lobbied extensively for the release of the Germans imprisoned in France for war crimes. The most active participants on the Protestant side had been the Bishop of the Palatinate Hans Stempel and his representative in Paris (official title: "the prison chaplain in charge of the spiritual health of the German prisoners in France") Pastor Theodor Friedrich. These two figures also successfully lobbied for the support of Marc Boegner, president of the French Reformed Church. The most active member of the Catholic Church had been Cardinal Josef Frings, archbishop of Cologne, who also successfully lobbied for the support of Angelo Roncalli (later Pope John XXIII), the Vatican Nuncio in Paris.

[10] This is the most important group of actors for this dissertation. Among the many diplomats this dissertation will introduce, a few stand out: Edgar Weinhold, the West German consular officer, who together with his deputy Dr. Guttmann was spearheading the lobbying efforts of the West German government for the release of the German convicts from Paris, and Hans Gawlik, who coordinated these efforts centrally from the Foreign Office in Bonn.

[11] Tony Judt, *Postwar, A History of Europe since 1945* (London: Penguin Books, 2006), p. 10.

the problematic West German selective vision of the past and the future to emerge temporarily victorious.[12]

The dissertation rests on primary sources retrieved by research in judicial, diplomatic, state and private archives in Germany, France, Switzerland and the United States. Specifically, I have completed research in the Archives of the German Foreign Office in Berlin, the German Federal Archives in Berlin and in Koblenz, the Central Archives of the German Protestant Church in Berlin, the French Diplomatic Archives in La Courneuve, the French National Archives in Pierrefitte-sur-Seine, the Archives of the International Committee of the Red Cross in Geneva, and the U.S. National Archives in College Park, Maryland.

The papers of Edgar Weinhold,[13] held in the Archives of the German Foreign Office, have been instructive in revealing the construction of a strategy which gave priority to reconciliation over the prosecution of war crimes in France. The Weinhold papers have not been utilized before. Furthermore, the collection B10/2119-2122 entitled "War Crimes Trials in France" revealed a trove of new information, among them a memo which linked the Schuman-Plan negotiations between Jean Monnet and

[12] This trajectory was also depending on the West German government's restitution for the crimes of Nazism. *Wiedergutmachung,* in this case the Franco-German Treaty "regarding payments to French citizens who have been affected by national-socialist persecution" from July 15, 1960, and the partial rehabilitation of the Nazi German past were two sides of the same coin. The West German government paid 400 million deutschmarks into the French restitution fund, almost half of the total sum of 971 million deutschmarks it paid to 12 European countries – and only second to the Reparations Agreement between Israel and West Germany. For the Franco-German restitution treaty from 1960, see Claudia Moisel, "Pragmatischer Formelkompromiss. Das deutsch-französische Globalabkommen von 1960," in: Hans Günter Hocketers et al., *Grenzen der Wiedergutmachung. Die Entschädigung für NS-Verfolgte in West- und Osteuropa, 1945-2000* (Göttingen: Wallstein, 2006).

[13] Edgar Weinhold served as the consular officer in the West German Embassy in Paris in the 1950s. His primary responsibility consisted of providing diplomatic support for the German suspects and convicts in war crimes trials in France.

Carl Ophüls to war crimes justice – material which has not been published before.[14] In the French National Archives, I have been among the first to conduct research in the collections of the presidential pardoning commissions (*Commission de Grace du Conseil Superieur de la Magistrature* -AN 4AG/663) revealing for the first time the weight the members of the pardoning committee gave to concerns regarding the impact on reconciliation if a death sentences of a German war criminal was carried out.[15] The collections in the US National Archives about the U.S. High Commission in Germany (RG 466 HICOG) exposed the influence of U.S.A. on the war crimes justice-vs.-reconciliation paradigm. The impact became evident in the attempts of U.S. and British authorities to avoid the extradition of Waffen S.S. general Heinz Lammerding to France (see chapter IV).

The evidence retrieved in these archives revealed a conflict over the war criminals defined by two contradictory visions of both the shared past and shared future, especially of the relationship between France and West Germany. The restored French Republic saw in the period of the Nazi occupation a time of horrendous injustices, abhorrent crimes and political humiliation. Furthermore, immediately upon the liberation, it pursued a consequential justice for the crimes committed by the Nazis in France as a lesson from the World War I settlement which failed to prevent another conflagration between France and Germany.[16] France's war crimes trial

[14] The Ophüls-Monnet memo should have been utilized a long time ago, but the fact that it is buried in a collection on war crimes trials rather than in material on European integration might explain this.
[15] Up until now, these collections were not accessible for researchers. Because the contain personal information pertaining to judicial affairs, they were blocked from declassification for 100 years – until at least 2045. However, due to a presidential decree by François Hollande, judicial documents related to World War II were released from the classification requirement in 2016.
[16] See Corine Defrance, Ulrich Pfeil, *Eine Nachkriegsgeschichte in Europa, 1945 Bis 1963* (Darmstadt: Wiss. Buchges, 2011), p. 87.

program was thus designed to break with the past and to secure a lasting peace by punishing those responsible for the crimes committed by the Nazis, serve justice for the victims and prevent the perpetrators from returning to power again.

On the other hand, the West German side did not perceive the Nazi occupation of France as a dark chapter of history.[17] The dark chapter, the humiliation and the injustices in this interpretation of many West Germans, including many of those in power, began after 1945 with the occupation, the denazification and war crimes trials and with the loss of statehood and sovereignty.[18] Furthermore, Germans and especially many high-ranking government officials in the Foreign Office and the Federal Justice Ministry viewed French war crimes justice not as effort to build a lasting peace but as an act of vengeance, even as a continuation of the hostilities by other means. Thus, the war crimes trials were not seen as evidence of France's willingness to break with the troubled Franco-German past, but as a sign of its unforgiveness and its resolve to continue with the so-called "arch-enmity."[19]

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[17] As opposed to the crimes committed during the war and the occupation in the east, the myth of the honorable campaign in western Europe and the myth of the "clean Wehrmacht" lasted well into the 1990s. Furthermore, the Blitzkrieg victory against France in a campaign of six weeks won Nazi Germany great prestige which in some cases outlasted the end of the Third Reich. Wehrmacht Generals Erich von Manstein and Franz Halder, who devised and oversaw the execution of the plans for the invasion of France in 1940, were idolized as strategic masterminds for decades to come. See for instance Ronald Smelser, Edward Davies, *The Myth of the Eastern Front: The Nazi-Soviet War in American Popular Culture (*Cambridge: Cambridge University Press, 2008), pp. 90-95.

[18] Norbert Frei has shown that the West German government began to dismantle the "downright hated denazification" as a sign of sovereignty of the new West German state. See Norbert Frei, *Vergangenheitspolitik. Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: DTV, 1999), p. 397.

[19] In June of 1951, therefore after the Schuman-Declaration, the U.S. High Commission in Bonn polled West Germans for their attitude towards France. 47% of West German respondents residing in the U.S. Zone, a relative majority, deemed the then-current state of Franco-German relations as "not so good" or even "bad" while only 1% deemed them "very good" and 16% answered "good". When asked why they deemed Franco-German relations poor, most West German respondents blamed French "hatred, dislike and prejudice toward Germany," the fact that "they still consider us their arch-enemy" and that "the French still want to take revenge." Also on the list was the answer "bad and unfair treatment by the French of the PW's [POWs]" [of course, in 1951, France held no POWs, but POWs was a common term utilized in the FRG for all Germans in foreign custody, including war

In this view of the past, the war crimes trials were regarded as a symbol of a period of humiliation and injustice which needed to be eradicated, and Franco-German reconciliation was seen as the key to this eradication. Furthermore, West German chancellor Adenauer and his close allies argued that not the war crimes trials program and the continued incarceration of the Nazi criminals in France would prevent a renazification of West Germany, but only the exact opposite: the premature release of the war criminals. Adenauer inverted the French argument regarding the lessons from the failed World War I peace settlement: not the lack of justice, but the lack of Allied support for a democratic, parliamentary and liberal democracy in Germany facilitated the rise of the Nazis. If France was to make sure that the Nazis did not return to power, Adenauer argued, then it had to support his administration, the most pro-French German government in modern history, and releasing the Nazis would have been an important signal of French support for his administration.[20]

These opposing views on the basis for Franco-German relations shaped the trajectory of reconciliation from the late 1940s to the early 1960s. They defined the transition from a French dispensation of war crimes justice which was one of the most extensive and consequential ones in Western Europe in the late 1940s to the complete premature release of the very last war criminal in French custody on the eve of the Franco-German Friendship Treaty in 1962. While the German view prevailed – and

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criminals or those accused of having committed war crimes]. See "Franco-German relations as viewed by residents of the US Zone, Berlin and Bremen, Report No. 62, Series No. 2" dated February 28, 1951, in: NARA, RG 59 Department of State, Decimal File, 1950-1954, From 651.515/5-2354 to 651.70/11-3054, box 2925.

[20] The argument that supporting Adenauer's administration was in the best French interest was well understood in Paris. In November of 1949 already, the French High Commissioner François-Poncet cabled back to Paris "Il faut que les Francais aident Adenauer." See cable of François-Poncet to Minister Schuman (MAE Paris), dated November 23, 1949, in: AMAE La Courneuve, 178QO/371.

thus imprinted on the landmark achievement of Franco-German reconciliation the stain of a rehabilitation of the Nazi German past – the voices which called for a reconciliation based on justice and atonement did not go silent, even in the moment of triumph when Adenauer and de Gaulle concluded the Franco-German Friendship Treaty at the Elysée Palace in 1963, who refused to sign on to the paradigm that freedom for mass murderers and genocidaires supported reconciliation.[21]

The extraordinary nature of this trajectory becomes especially evident when drawing comparisons with two other countries. The Netherlands and Italy also entered an ever closer relationship with West Germany as fellow founding members of the European Community of Steal and Coal, and they were also victims of a brutal Nazi Occupation.[22] Despite the fact that both the Netherlands and Italy held many fewer war crimes trials[23] and despite the fact that the issue of German war crimes was less of a centripetal force in the early years which galvanized the legitimacy of the incoming French Fourth Republic, both the Netherlands and Italy refused to release the most notorious Nazi war criminals in its custody well into the 1970s and 1980s.

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[21] The example par excellence for this refusal to acknowledge the West German view on reconciliation was Rémy Roure. As a member of the résistance, he had been a victim of Nazi persecution, a prisoner of Auschwitz and Buchenwald. After the war, he published weekly columns in *Le Figaro* and served as a co-founder of the *Comité français d'Echanges avec l'Allemagne Nouvelle*. A staunch supporter of Franco-German reconciliation, he represented the consciousness of victims of Nazi persecution who refused to accept the either-reconciliation-or-justice paradigm of Adenauer and de Gaulle.

[22] Of course, Nazi Germany occupied Italy for a much shorter time than France and the Netherlands. Nonetheless, Nazi Germany committed horrific crimes in Italy, such as the massacre at the Fosse Ardeatine just outside of Rome, where the SS killed 335 civilians in March of 1944.

[23] According to statistics kept by the Central Legal Protection Office (ZRS), France held more war criminals in its custody than any other western country [only Yugoslavia held a similarly high number of Germans in custody. There are no comparable numbers for the Soviet Union]. On April 1, 1950, France held 867, while the Netherlands imprisoned 218 Germans and Italy 11. See "STANDARDZAHELN- Zahlenmässige Übersicht über die Entwicklung des Kriegsverbrecherproblems in den westlichen Ländern," undated, BAK 305/316, p. 107.

Horst Kappeler, the former *Befehlshaber der Sicherheitspolizei* (BdS) Rom, who had ordered and personally assisted in the shooting of more than 340 hostages outside of Rome in the Fosse Ardeatine in 1944, was still imprisoned in Italy through the 1970s, and would have been so beyond that time if he had not succeeded in escaping from his imprisonment in 1977.[24]

Similarly, the Netherlands imprisoned three of the so-called Breda Four[25], Ferdinand aus der Fünten,[26] Joseph Kotalla,[27] Franz Fischer[28] for decades after the last Germans imprisoned in France were released in 1962. Kotalla died in prison in 1979 at age 70 and aus der Fünten and Franz Fischer were only released in 1989, at age 80 and 87 respectively, a full twenty seven years after the last Nazi criminals in French custody Carl Oberg, Helmut Knochen and Franz Ehrmanntraut had been released into freedom by de Gaulle in 1962.[29] While Helmut Knochen, *the Befehlshaber der Sicherheitspolizei* (BdS) Paris, who was responsible for the execution of the final solution in France, had been able to enjoy over 40 years in freedom after his release in 1962, until he passed away at the age of 93 in 2003, his

[24] The Netherlands did not release the last two of the infamous Breda Four until 1989. The Italian case, the main responsible for the massacre at the Fosse Ardeatine Herbert Kappeler, was never actually released, but he spectacularly fled from his hospital prison in 1977. See Felix Bohr, *Die Kriegsverbrecherlobby. Bundesdeutsche Hilfe für im Ausland inhaftierte NS-Täter,* p. 13f.
[25] Breda refers to the Dutch Military Prison in Breda, situated in the southern part of the Netherlands near the Belgian border.
[26] SS-Hauptsturmführer Ferdinand aus der Fünten directed the Center for the Emigration of the Jews in Amsterdam ("Zentralstelle für die jüdische Auswanderung Amsterdam") and thus was responsible for the deportation of thousands of Jews from Amsterdam, including Anne Frank and her family.
[27] The second in command at Amersfoort Concentration Camp, SS-Oberscharführer Joseph Kotalla, also known as the "butcher of Amersfoort," was imprisoned for the crimes committed in the concentration camp, including executions and torture. He died in prison in 1979.
[28] SS-Sturmscharführer Franz Fischer directed the "Jewish Desk Den Haag" ("Judenreferat Den Haag") and was held responsible for the deportations of thousands of Jews from the Netherlands. He was released at age 87 in 1989.
[29] See Felix Bohr, *Die Kriegsverbrecherlobby. Bundesdeutsche Hilfe für im Ausland inhaftierte NS-Täter* (Berlin: Suhrkamp, 2018), p. 13f.

SS-colleagues Fischer and Kotalla where released in 1989 on compassionate grounds because they were terminally ill. Both of them died within months of their release.[30]

The central questions of this dissertation are thus the following: Given how fundamental the prosecution of Nazi crimes and the rendering of justice for the victims of these crimes had to the legitimacy of the French republic after Vichy, why did France – unlike the Netherlands or Italy - release all war criminals into freedom in the Federal Republic of Germany – even the most notorious and egregious *génocidaires*? What was the impact of Franco-German reconciliation on the transition of the French war crimes trials program from retribution to leniency? What was the consequence of this transition for the memory of the recent shared past between France and West Germany? What does the Franco-German memory politics reveal about the relationship between the Vichy Syndrome[31] and *Vergangenheitspolitik*[32] on this development?

I) Introducing the topic

This dissertation investigates the tension between justice and reconciliation between West Germany and France after World War II. When the war came to a close in France in 1944 and the Allies began to prepare for the prosecution of those responsible for Nazi Germany's crimes, the French provisional government foremost

[30] I argue that the root of this difference in length of imprisonment is to be found in the enormous importance which both France and West Germany attached to reconciliation, which in return handed the network and the networks of ex-Nazis within the Federal Republic an window of opportunity which it was not shy to exploit over the decade and a half until all the war criminals where released.
[31] Henry Rousso called the complicated relationship between the postwar French republic and its Vichy past the Vichy Syndrome. See Henry Rousso, *The Vichy Syndrome, History and Memory in France since 1944*(Cambridge: Harvard University Press, 1991).
[32] Norbert Frei called revision of the denazification policies, which served the rehabilitation and reintegration of millions of former Nazis into public life of the early Federal Republic "Vergangenheitspolitik." See Norbert Frei*, Vergangenheitspolitik*, p. 13.

formulated a justice which could support French transition from dictatorship to democracy and guarantee French security which had been violated twice by Germany in a span of 30 years. Thus, the French reckoning with the German occupation constituted an essential corner stone of its transitional postwar path from dictatorship to democracy.[33] Moreover, prosecuting and punishing those who orchestrated World War II on French territory, from Wehrmacht generals (like Otto von Stülpnagel) to SS-Generals (like Carl Oberg) went beyond a backward looking-justice by ensuring that these Nazis were unable to wage another war. French war crimes trials became therefore an integral element of one of the most consistent French policy concerns of the 20th century: the fear of German aggression.

War crimes trials alone could not resolve French security concerns, but they were integral part of the solution. The first part of the arch of French justice, I argue, was therefore described by the execution of a retributive justice towards German war criminals as a tool for traditional French security policy towards Germany. This understanding of French justice towards war criminals as part of French security policy remained constant throughout the period of investigation, 1944-1963. However, the conclusions started to shift from the late 1940s on. While the first half of the arc of French justice concluded that a retributive justice was conducive to French security concerns vis-à-vis Germany, in the wake of the Cold War, European

[33] Part oft he policy of the prosecution of war crimes had been, according to a report from the Justice Ministry from February 1945, "[…]to provide the public with objective information regarding the German atrocities […]." "[…] donner au public une information objective sur les atrocités allemandes […]." Justice Ministry Report, entitled, " Les Crimes de Guerre," dated 5. February 1945. AN Pierrefitte, 382 AP/74 Commission Interministrielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

integration and Franco-German reconciliation, a broad coalition of political and civil society rooted in West Germany began to convince French decision makers that in fact only a revision of the retributive justice would address French security concerns regarding a resurgence of German nationalism. Before these actors became active and shifted the conclusions drawn from French security concerns, at the cusp of the postwar era, the French republic pursued its retributive justice unmediated.

The French reckoning with the Nazi past stands out when compared to the Western Allies'. Unlike Great Britain and the United States, France was occupied by the Third Reich and saw its territorial integrity violated by the de facto annexation of Alsace-Lorraine. Furthermore, in the wake of the Allied landing in Normandy, it became a major theater of Wehrmacht operations.[34] Unsurprisingly, therefore, French residents became victims of almost all of the major crimes associated with Nazi Germany: the Final Solution, massacres on civilian populations, deportations, mass executions, forced labor and torture were only the most egregious among them.[35] Finally, France had been the only Western Ally which was faced with a Nazi-run concentration camp on its territory – the Natzweiler-Struthof Camp in Alsace.[36]

Therefore, the prosecution of crimes overwhelmingly included crimes committed on French soil. René Cassin, the French representative on the United

[34] Also unique among the three Western powers: France had to come to terms with its own criminal regime which collaborated with Nazi Germany. See Robert Paxton: *Vichy France*: *Old Guard and New Order, 1940-1944* (New York: Knopf, 1972).

[35] See the detailed works on the German Occupation in France: Ulrich Herbert, Ahlrich Meyer, *Die Deutsche Besatzung in Frankreich 1940-1944, Widerstandbekämpfung und Judenverfolgung* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2000).

[36] The only possible exception were the two S.S.-run camps on the Channel Islands. However, they were sub-camps of Neuengamme and they did neither compare in size and importance to Natzweiler and its vast network of sub-camps. Finally, while the Channel Islands are part of the British Isles and were a crown dependency, they were not part of the United Kingdom.

Nations War Crimes Commission, had been keenly aware of the asymmetrical relationship between France and its Western Allies when it came to the "war criminals problem." In 1944, he argued that "Even if more homes had been destroyed in London than in Paris, the number of civilians killed during the war in the latter city probably exceeds those for Great Britain as a whole."[37] The prosecution of war crimes therefore carried relatively more weight in France than in Britain and the United States.[38]

The unique position France found itself in during the war is reflected in the number of persons sought by the French government for war crimes. The list it submitted to the UN War Crimes Commission showed 18,000 individual names, more than all other countries combined.[39] Ultimately, the French justice system opened proceedings against 2345 of those 18000 war criminals. These Germans had occupied a wide range of positions within the civilian and military hierarchy of the

[37] "Si Londres a plus de maisons détruites que Paris, es civils tués en cette ville par a guerre sont probablement plus nombreux que pour toute la Grande-Bretagne." Report by René Cassin, entitled "Le Châtiment des Criminels de Guerre Ennemis," dated September 1944, AN Pierrefitte, 382 AP/74 Commission Interministrielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

[38] On June 18, 1945, barely a month after the conclusion of hostilities, René Cassin reported back to Paris from a conference on war criminals held in London, that the U.S. representatives did not trust the French military justice to be able to prosecute the war criminals speedy enough in a way that enabled the U.S.A "to reestablish as soon as possible normal relations, above all economically, with Germany…." „On pourrait être tente, […]de se demander si l'intention de [des États-Unis] n'est pas de donner une satisfaction de principe à l'opinion mondiale qui réclame le châtiment des criminels, en allant le moins loin possible dans une voie qui, à leurs yeux, devrait conduire à une prolongation de l'état psychologique d'hostilité du peuple allemand à l'égard de ses vainqueurs." [One could be tempted […], to wonder whether the intention of [the U.S.A.] is not to give a satisfaction to the principle of the world opinion, demanding the punishment of criminals by going moving as little as possible along a path which, in their eyes, should lead to an extension of the psychological state of hostility of the German people towards their conquerors.] Report entitled "Après la conférence de Londres. La criminalité dans la conjoncture internationale et les mesures prises ou à prendre sur le plan national," dated June 18, 1945, Ministère de la Justice – Le Conseiller d'État, Secrétaire Général, Service des Crimes de guerre ennemis.

[39] Norbert Frei (ed.), *Transnationale Vergangenheitspolitik: Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2006), p. 11f.

German occupation in France. The accused hailed from the highest echelons of the Nazi party, the SS, and the Wehrmacht. Examples include HSSPF Oberg, Gauleiters such as Robert Wagner, the military commander in France, Otto Stülpnagel, as well as diplomats such as ambassador Otto Abetz, local city administrators such as the mayor of Strasbourg Robert Ernst and rank-and-file members of the Wehrmacht and Waffen-SS.

The diversity of the defendants was also reflected in the wide range of crimes they had committed. The French justice system prosecuted the crimes committed during the Nazi occupation of France under the umbrella term "war crimes."[40] Among the prosecuted crimes were reprisals against the resistance, the murder of hostages, massacres of civilian populations, the preparation and execution of the Final Solution in France (including incarceration, deportation and murder of Jews), the deportation of forced laborers, and the forced incorporation of Frenchmen into Wehrmacht and Waffen-SS.

From 1945 until the spring of 1951, France executed 67 war criminals. Only one belonged to the highest echelons of the Nazi regime: the Gauleiter of Alsace Robert Wagner.[41] The remaining war criminals of the initially over 2300 cases were released into freedom, the last three – the former HSSPF Paris Carl Oberg and the

[40] In contemporary parlé this included even crimes that were not directly connected to the war, but rather to the Nazi extermination policy, such as deportations of Jews. Today, scholarship tends to differentiate between crimes actually related to war and "Nazi crimes." See Heinz Artzt, "Zur Abgrenzung von Kriegsverbrechen und NS-Verbrechen," in: Adalbert Rückerl (ed.), *NS-Verbrechen vor Gericht. Nach 25 Jahren Strafverfolgung. Möglichkeiten, Grenzen, Ergebnisse* (Karslruhe: C.F. Müller Juristischer Verlag, 1971).

[41] In contrast, the number of legal executions (as opposed to the more than 8000 illegal executions) of French collaborators is staggering: between 1500 and 1600 were executed after they had been sentenced to death by trial. See Peter Novick, Helene Ternois and Jean-Pierre Rioux, *L'Épuration française: 1944-1949*, (Paris: Balland, 1985).

former BdS Paris Helmut Knochen, as well as the former *Blockführer* of the Natzweiler concentration camp Franz Ehrmanntraut - in November of 1962. My dissertation thus investigates the politics of justice between France and West Germany which powered this transition of France from a country which extensively emphasized the memory of Nazi Germany's crimes to a country which tied its fortunes to the West German view of the past in the name of Franco-German reconciliation.

II) Summary of Arguments

This dissertation connects Western European integration and Franco-German reconciliation with the history French trials towards Germans accused of war crimes from 1944 to 1963. I argue that the West German government, compelled by the strong memory political current in West German public opinion, initiated and sustained a trajectory which bound Franco-German reconciliation ever more tightly to the retreat from the goals of postwar justice expressed by France during the transition from the Nazi occupation to a restored Republic in the 1940s, ultimately altering the very perception of the German Occupation of France.[42] An examination of this tension between the politics of Franco-German rapprochement and the negotiations and public debates in West Germany and France regarding the prosecution,

[42] Henry Rousso concluded that the amnesty laws concerning French collaborators in 1950 and 1952 amounted to a form of "legal oblivion" (*oubli juridique*) altering the "country's very perception of the Occupation, because the courts would be empowered to impose silence concerning all judgments covered by the amnesty." See Henry Rousso, *The Vichy Syndrome, History and Memory in France since 1944* (Cambridge: Harvard University Press, 1991, p. 50). I argue that the process of European integration and Franco-German reconciliation enabled West Germany to exert a similar influence over the French memory of the German Occupation, molding it to its liking.

incarceration and release of Germans convicted of war crimes in France offers insight into evolution of the meanings both societies attached to justice and reconciliation.

This evolution reflects underlying shifts in perceptions of a shared past and the success of a narrative which identified justice for the crimes of the Nazi regime as an attack on reconciliation. I argue that West Germany successfully practiced an 'inversion of justice'[43] in connection with reconciliation in order to initiate a transition away from retributive justice towards a lenient, even reconciliatory justice, mirroring the West German trajectory in the age of 'amnesty hysteria.' The notion of 'inversion of justice' turned the meanings of post-World War II justice for the crimes committed by Nazi Germany on its head: introduced by the Allies as one of the pillars of a peaceful postwar order, justice came to be understood as the opposite, namely a threat to the peaceful postwar order.

The notion of inversion of justice had such a powerful impact, because it instrumentalized, and offered a solution to the traditional and deep-seated fear held by many in France of a nascent German nationalism or even a renazification.[44] The advocates of what I am calling inversion of justice argued that the a revision of postwar justice, meaning the amnesty or release of German war criminals and the end

[43] Robert Wistrich coined the term 'Holocaust Inversion' as the justification for the anti-Semitism of the extreme left since the 1960s. It describes the claim of the extreme left that Israel was in every way comparable to the Nazi regime (see "Antisemitism and Holocaust Inversion," in: Anthony McElligott and Jeffery Herf (eds.), *Antisemitism Before and Since the Holocaust: Altered Contexts and Recent Perspectives* (New York and London: Palgrave Macmillan, 2017). Borrowing from Wistrich's concept of Holocaust inversion, I argue that reconciliation induced a "justice inversion," turning the meanings of justice towards German war criminals in France on its head.

[44] The competing notions in French public discourse on the authoritarian, anti-liberal, militaristic, nationalist and aggressive 'eternal' vs. the democratic, liberal, peaceful 'new Germany' have been well researched. See Martin Strickmann, *L' Allemagne Nouvelle contre L'Allemagne Éternelle: Die Französischen Intellektuellen Und Die Deutsch-Französische Verständigung 1944-1950 : Diskurse, Initiativen, Biografien* (Frankfurt Am Main: Lang, 2004).

of the postwar trials, was necessary to prevent the renazification of Germany and stop the coming of a 'Fourth Reich' in its tracks.[45] The proponents of inversion of justice in West Germany, foremost Konrad Adenauer, argued that the Germans who had been convicted of war crimes and who were the symbols of the brutality of the Nazi occupation in France, needed to be pardoned and released in order to lend legitimacy to his government and prevent the radical right from becoming too powerful.[46] Thus, the proponents of an inversion of justice argued that releasing the Germans convicted of war crimes had been in France's security interest, decreasing the likelihood of a third German attack on France in the 20th century.[47]

Furthermore, this trajectory reveals a remarkable shift of power and influence

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[45] The success story of the Federal Republic as it stands today was by no means a guarantee. In the 1950s, the Allies were constantly worried about a renazification and Britain even felt compelled to intervene in the case of a neo-Nazi circle in Lower Saxony ('*Naumann Affäre*') and use its executive powers as an occupation authority to prevent a coup. Only after 1953, did the threat of a renazification diminish. See Ulrich Herbert, *Geschichte Deutschland im 20. Jahrhundert* (Munich: C.H. Beck, 2014), 663.

[46] U.S. intelligence supported this fear. The U.S. High Commissioner in Germany, John Donnelly, stated in a telegram to the Department of State dated September 12, 1952: "It is clear that German agitation for release of war criminals has gained considerable momentum and it can be predicted that the increase will continue over coming months. Problem will undoubtedly cause the Chancellor difficulty in ratification process and may cut his majority by enough coalition votes to cast doubt on validity and finality of ratification vote. But the problem will not end with ratification. On the contrary, it will affect both the wholeheartedness of the German defense effort and the Chancellor's chance of success at the polls in the early summer of 1953 unless problem has been both rapidly and finally solved after EDC comes into effect, and not so soon before the election as to look contrived. " See NARA, RG 59 Department of State Decimal File 1950-1954, 662.0026/1-251 - 662.0026/4-2951 - 12-3154, box 2955.

[47] Key to the success of justice inversion was that it was also compatible with the wildly held belief at the time that the post-World War I settlement with Germany had failed because the Allies had been too harsh and "vengeful" with Weimar Germany, a democracy, and too lenient with Nazi Germany, a dictatorship (see Thomas Alan Schwartz *America's Germany: John J. McCloy and the Federal Republic of Germany* (Cambridge, Mass.: Harvard University Press, 1991), p. 295f). Emmanuel Mounier, the influential publisher of the newspaper *L'Esprit*, argued that because of Versailles' failure, France carried a special responsibility for post-war Germany, see Strickmann, p. 428.
Ironically, the second conclusion the Allies drew from the post-WWI settlement had been the war crimes trials program itself. It was designed to assign individual responsibility for the crimes committed and help normalize the relationship between victors and vanquished, which the Versailles settlement lacked (see Madoka Futamura, *War Crimes Tribunals and Transitional Justice, The Tokyo Trial and the Nuremburg Legacy* (London: Routledge, 2008), p. 43). Justice inversion supported the first part and proved the second part wrong.

over the path of reconciliation from France towards West Germany. As my dissertation shows, the West German government, compelled by a the "amnesty hysteria" of West German public opinion,[48] skillfully manipulated the trajectory of political reconciliation in order to mold the French reckoning with the Nazi crimes to its own memory politics, eventually turning what had been polemically described as "victor's justice" into a "justice for the vanquished." The arc of French judicial policy shows that European integration and Franco-German reconciliation, within the framework of the Cold War, created a window of opportunity for West Germany to influence treatment of the recent past in France, resulting in a reconciliation based on a selective memory of the past, privileging the perpetrators and marginalizing the victims.[49]

The first part of my dissertation traces the emergence of the French war crimes trials program from 1944 to 1950, including their legal foundations as well as political discourses and public debates in Western Germany and France. I demonstrate the construction of a policy which offered the French polity the opportunity to pursue goals of transitional justice. These goals included the

[48] Frei, *Vergangenheitspolitik*, p. 399.

[49] My work builds heavily on the work of historians who have presented facets of the themes of the selective memory in postwar Germany and France respectively: Norbert Frei, *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (München: Beck, 1996), which emphasized the connections between democratization and re-integration of millions of ex-Nazis in West Germany. In particular of interest is Frei's treatment of the war criminal question, which developed into a veritable "amnesty hysteria" in the West German public opinion (Frei, *Vergangenheitspolitik*, 399). My dissertation argues that reconciliation and European integration ultimately allowed the West German "amnesty hysteria" to influence French justice. In *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, Mass.: Harvard University Press, 1997), Jeffrey Herf juxtaposed traditions of selective memory in the two Germanies. I argue that through Franco-German reconciliation, these inner-German approaches to the remembrance of the Nazi past and the Holocaust collided with French memory of the German occupation, a collision that was temporarily resolved by excluding memory of the Nazi past from official reconciliation discourse.

restoration of the rule of law, demonstrating sovereignty, drawing a distinction to the previous regime, lending justice to the victims, and engaging in an inquiry to produce the historical truth about the nature of the oppressive regime. Because the perpetrators were exclusively German and their victims French, these goals did not meet any significant pushback or yield negative consequences but in fact reinforced the emerging myth of a France overwhelmingly opposed to German occupation. I argue that the legal framework crafted by the French provisional government supported this sentiment because it defined war crimes as acts committed by "enemy nationals or non-French nationals in the service of the enemy administration" against "French nationals or foreign nationals enjoying French protection."[50]

This legal construct prevented that French nationals could be prosecuted for war crimes. However, at the same time, dissenting voices emerged within both France as well as within the international community.[51] These voices began to question whether the principles of justice towards German war criminals corresponded with French republican traditions and international humanitarian law. While these voices were few in the years before 1950, they built a bridge and lent legitimacy to the emerging Western German network of agents for a revision of justice. These early criticisms of French justice hailed not from Western Germany, but from Switzerland

[50] "[L]es nationaux ennemis ou agents non français au service de l'administration ou des intérêts ennemis, coupables de crimes ou de délits commis depuis l'ouverture des hostilités soit en France ou dans un territoire relevant de l'autorité de la France, soit à l'encontre d'un national ou d'un protégé français sont poursuivis devant les tribunaux militaires français [...] lorsque ces infractions, même accomplies à l'occasion ou sous le prétexte de l'état de guerre, ne sont pas justifiées par les lois et coutumes de la guerre."
Article 1, *L'Ordonnance du 28 août 1944 relative à la répression des crimes de guerre*, in: Journal Officiel de la République Française (Alger), Ordonnances et Décrets, 30.8.1944, p. 780f.

[51] The International Committee of the Red Cross had been the international organization with the largest involvement regarding the defense of Germans accused of war crimes in France in the 1940s – thus before the foundation of the Federal Republic of Germany.

(the International Committee of the Red Cross, Geneva) and from French intellectuals, lawyers and law makers with French Alsatian background. I will show how their arguments and interventions both in the court of public opinion as well as with the French authorities themselves laid the foundation for the argument of an inversion of justice in the 1950s.[52] I further show that in 1949, the formation of the West German government elevated these positions to *de facto* state policy.

The West German government and the network described above pursued a very effective division of labor: whereas the network launched aggressive publicity campaigns portraying the alleged suffering of German prisoners in France and putting forward extreme demands, the West German government worked more discreetly using diplomatic channels at its disposal, establishing the need for a revision of the verdicts of the trials of the immediate postwar years. Furthermore, activists and organizations in the network received financial support from the West German government unbeknownst to their French counterparts. For the Adenauer administration, French transitional justice towards Germans accused or convicted of war crimes also became a matter of sovereignty, legitimacy and identity, albeit as an inversion of the goals of the French prosecutors: demonstrating West German sovereignty meant dismantling the French war crimes trials program.[53]

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[52] Erich Schwinge, and Friedrich Grimm and other proponents of a revision of justice utilized the arguments put forth by the ICRC and the Alsatian intellectuals, lawmakers and lawyers to mount a campaign characterizing the trials as victor's justice and as an act of vengeance early. Their cause was underpinned by the legal framework's definition of war crimes as illegal acts committed by enemy aliens.

[53] Brochhagen argued that Adenauer was opposed to a general amnesty which was demanded by large segments of the German population ("amnesty hysteria") but supported amnesty for all but the "real criminals." His support derived from several political calculations: electoral politics, as a matter of demonstrating sovereignty vis-à-vis the Allies and to counter claims of the opposition of being the "chancellor of the Allies." The narrow path he was walking became evident in January 1950. After Dehler made offensive remarks about French justice in the Bundestag, Adenauer initially pondered

The second part of my dissertation revolves around the moment these two divergent attitudes towards postwar war crimes prosecutions openly collided. Robert Schuman's declaration proposing European integration based on Franco-German cooperation created an opportunity for the West German network to juxtapose French determination to pursue trials of German war crimes with the emerging policies of reconciliation and integration.

The West German government, led by the Central Legal Protection Office (ZRS),[54] lobbying for the revision of outcomes of the trials, successfully deployed the notion that the French war crimes trial program constituted a continuation of the hostilities, a "revenge by other means" as Steven Remy has called it,[55] thus alleging that they prolonged the centuries old French-German enmity into the postwar period. This premise shifted the emphasis away from an understanding of the trials and imprisonment of those convicted of war crimes as a consequence of Germany's genocidal and racial war towards the notion that they were rooted in a sense of vengeance on part of the victors, enabling the West German government to argue that a serious reconciliation effort would necessitate "a solution to the war criminals

about relieving Dehler of his post as Justice Minister but was unable to do so after the French ambassador publicly intervened and compared Dehler's remarks to Goebbels. Keeping Dehler became a matter of West German sovereignty. See Brochhagen, *Nach Nürnberg: Vergangenheitsbewältigung und Westintegration in der Ära Adenauer* (Hamburg: Junius, 1994), p. 74, 131.

[54] The *Zentrale Rechtsschutzstelle* (ZRS) was created in 1950 specifically to support the defense of the Germans accused of crimes – *de facto* almost all war crimes - in foreign custody. The ZRS became an instrument of West German memory politics, since its sole purpose was to achieve the release of all West Germans accused or convicted of war crimes abroad. Its staff, led by Dr. Hans Gawlik (member of the Nazi party since 1933), had deep ties to the Nazi era. From 1950 to 1953, it was operating under the jurisdiction of the Federal Justice Ministry, afterwards it became part of the Foreign Office. The verve with which the young Federal Republic attempted to achieve the release of the war criminals stands in stark contrast to the efforts to achieve justice for the victims. This is best illustrated with the synchrony between the ZRS and the Stelle Ludwigsburg, which was only founded in 1958. See Frei, *Vergangenheitspolitk*, p. 21.

[55] Steven Remy, *The Malmedy Massacre, The War Crimes Trial Controversy* (Cambridge, MA: Harvard University Press, 2017), p. 207.

problem" as well. Precisely because the discourse on reconciliation in the 1950s and early 1960s defined itself as a break with the alleged cycles of vengeance,[56] these lobbying efforts found fertile ground. A political majority, among them many luminaries of European integration such as Robert Schuman, Jean Monnet and André François-Poncet, were convinced that without a revision of judicial policy through the release of war criminals, Franco-German reconciliation was in peril.[57] I argue that the Schuman Declaration inaugurated the era of inversion of justice, delineating the transition from an understanding of war crimes trial as a pillar of the peaceful postwar order to a threat of said order. The war crimes trials and the subsequent transnational lobbying efforts securing the release of all war criminals in French prisons in the period between 1950 and 1962 show how the meanings of justice had shifted compared to the 1940s.

This shift had been supported by a simultaneous inner-French reconciliation. Henry Rousso showed that the tension between justice and reconciliation in 1950s and 1960s France was solved by the Gaullist myth of "resistancialism," meaning that

[56] The notion of breaking with the Franco-German enmity features prominently in the Schuman-Declaration, in which Robert Schuman laid out the French design for European integration and which is a foundational document of today's European Union: "The coming together of the nations of Europe requires **the elimination of the age-old opposition of France and Germany**. Any action taken must in the first place concern these two countries [my emphasis]." The full text of the Schuman-Declaration can be found on europa.eu, the official website of the E.U.; See https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en , last accessed December 2, 2019. Corine Defrance and Ulrich Pfeil have concluded, paraphrasing Peter Sloterdijk and Albert Camus, that post-World War II Franco-German reconciliation between the Germans and the French was born at the low-point of their relationship, the crucible of the Second World War and the Nazi Occupation of France. "Realizing that the glass was empty, that the low-point had been reached, the Germans and the French realized that it was time to come together," (or as Albert Camus put it: the misfortune is now our common fatherland.") Thus, the realization that reconciliation was the higher end which must be achieved to prevent the return to the era of Valmy- (1792– begin of French Revolutionary and Napoleonic Wars). See Defrance, Pfeil, *Eine Nachkriegsgeschichte*, p. 247f.

[57] Robert Schuman saw in French justice for German war crimes a threat to European integration, especially the European Defense Community. See Moisel (2004), p. 240.

most if not all of France had resisted the Nazi occupation.[58] I argue that the French myth of "resistancialism" created the necessary space for the West German redefinition of the recent past and ultimately enabled de Gaulle to bestow onto West Germany the "gift of amnesia" by setting the stage for a (inner French) reconciliation between former enemies based on a reinterpretation of the Vichy regime.[59] When in the wake of the 'outer' reconciliation between the two countries, West German officials began to demand a revision of the French judicial reckoning with the Nazi past to match the West German "amnesty hysteria," French officials were initially reluctant to comply. However, the Bordeaux Trial of the Oradour massacre revealed, when faced with the "tension between the state's responsibility to provide justice to individuals and the necessity of maintaining social and political order," as Sarah Farmer wrote, France had already proven capable of giving "more weight to national unity than to punishing a war crime or assuaging the family of the victims."[60] When Franco-German reconciliation elevated this tension to the international stage, French institutions already possessed a blue print for a redefinition of the past.

Ultimately, the conjecture of domestic and transnational paradigm in the 1950s, the trials of the massacre at Oradour-sur-Glane, of the Nazi-era mayor of Strasbourg, Robert Ernst, and of Oberg and Knochen, failed to yield the same benefits

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[58] See Henry Rousso, *The Vichy Syndrome, History and Memory in France since 1944* (Cambridge: Harvard University Press, 1991), p.302-304.

[59] See for instance Robert Aron's Histoire du Vichy, where he claimed that both Pétain and de Gaulle resisted Hitler: "Both had been necessary [for the protection of France]: 'The Marshall had been the shield, the General the sword.'" "Tous les deux étaient également nécessaires à la France: 'Le Maréchal était le bouclier, le Général l'épée.'" See Robert Aron, *Histoire de Vichy – 1940-1944* (Paris: Librairie Arthème Fayard) 1954, p.94.

[60] See Sarah Farmer, "Postwar Justice in France: Bordeaux 1953,"in István Deák, Jan Tomasz Gross, and Tony Judt. *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, N.J.: Princeton University Press, 2000), p. 206.

of transitional justice to the French polity as the trial of Gauleiter Wagner in the 1940s, instead indicating that war crimes trials constituted a threat to France's and West Germany's common future in Europe.

While the scholarship on justice[61] and memory[62] in the context of postwar Germany and France is extensive, my distinctive contribution is to connect it to the equally extensive scholarship on European integration. In order to provide evidence for my thesis that Franco-German reconciliation was concluded at the expense of judicial reckoning , my dissertation considers important war crimes trials conducted by French authorities in France and in occupied Germany in the two decades

[61] For instance, the literature on French war crimes trials, the commemoration of the massacre and the aftermath is extensive. Among the trials, the trial of the Oradour massacre garnered the most attention: Sarah Farmer, *Martyred Village: Commemorating the 1944 Massacre at Oradour-sur-Glane* (Berkeley: University of California Press, 1999), Farmer traces the evolution of the memory of the massacre, while Jean-Jacques Fouché, Oradour: La politique et la justice (Saint-Paul: Editions Lucien Souny, 2004), Fouché presents the struggle for justice for the victims of Oradour in the light of internal and international constraints on justice; Jean-Laurent Vonau, *Le Procès de Bordeaux. Les Malgré-Nous et le drame d'Oradour* (Strasbourg: Editions du Rhin, 2003), Vonau's book looks at the Oradour trial from the perspective of the Alsace and its struggle for recognition of its fate during World War II. While a large body of scholarship on Franco-German relations on one hand and postwar justice on the other exists already, there is a large gaping hole between the two of them. Ulrich Lappenküpper's authoritative work on Franco-German diplomatic relations after the Second World War relegates war crimes trials to the footnotes. Claudia Moisel's and Bernhard Brunner's excellent studies focus on the French war crimes trials and the "war criminals problem." However, I intend to situate these into the trajectory of Franco-German reconciliation and European Integration. See Ulrich Lappenküper, *Die Deutsch-Französischen Beziehungen, 1949-1963, Von der Erbfeindschaft zur Entente Cordiale* (München: Oldenbourg Verlag, 2001); Claudia Moisel, *Frankreich und die deutschen Kriegsverbrecher, Politik und Praxis der Strafverfolgung nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2004); Bernhard Brunner, *Der Frankreich-Komplex, Die nationalsozialistischen Verbrechen in Frankreich und die Justiz der Bundesrepublik Deutschland (*Göttingen: Wallstein, 2004).

[62] For instance, Valérie-Barbara Rosoux, *The Les usages de la mémoire dans les relations internationales : Le recours au passé dans la politique étrangère de la France à l'égard de l'Allemagne et de l'Algérie, de 1962 à nos jours* (Bruxelles: Bruylant, 2001) reviewed French foreign policy and analyzed the deployment of memory, vis-à-vis Germany on the one hand, and Algeria on the other. Unfortunately, the starting point of the work is 1962, when Algeria became independent. Nicolas Moll, "Oublier Hitler ? Les voyages officiels de l'Allemagne fédérale et la mémoire du nazisme," in: Jean-William Dereymez, Olivier Ihl, and Gérard Sabatier (eds.), *Un Cérémonial Politique: Les Voyages Officiels Des Chefs D'état* (Paris: L'Harmattan, 1998) stressed the importance of memory to West German state visits and revealed the intricate planning of the West German Foreign Office to limit exposure to the Nazi past during state visits.

following the end of World War II and the relationship of these trials to the goal of Franco-German reconciliation. At the core of my project lies the tension between justice for past crimes and the pressures for future reconciliation and integration.[63] The postwar treatment of war crimes committed by French and Germans illuminates the complex and difficult issues facing both postwar France and postwar Germany. The judicial treatment of these war crimes sheds light on the need for justice for victims of wartime atrocities and the need to assert the legitimate role of the state through its legal apparatus. Further, the normative role of law is an important consideration in any postwar reconstruction.[64] I argue that while Franco-German reconciliation and ultimately West European integration[65] had been successful,

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[63] The tension between justice and reconciliation as a domestic problematic has preoccupied historians of Germany and France after Nazism and the United States of America after the Civil War. See for example: Tony Judt, "The Past is Another Country: Myth and Memory in Postwar Europe," in Jan-Werner Müller (ed.), *Memory and Power in Post-War Europe: Studies in the Presence of the Past* (New York: Cambridge University Press, 2002); and David Blight, *Race and Reunion, The Civil War in American Memory* (Cambridge: Harvard University Press, 2001).

[64] The normative role of law is a central concept in the field of transitional justice. As a substantive category, transitional justice includes such processes as the trials, purges, and restorations that occur after regime change. A more theoretical interpretation of transitional justice considers the notion of justice in periods of regime change and political transition, how the rule of law is created (or re-created), whether law has transformative significance, and how law can help with liberalizing process. The growing literature on transitional justice includes: Ruti G. Teitel, *Transitional Justice* (Oxford University Press, 2000); Brigitte Bailer-Galanda, "Old or new right? Juridical denazification and right-wing extremism in Austria since 1945," in: Stein Ugelvik Larsen, ed., *Modern Europe after Fascism* (Boulder: East European Monographs, 1998), pp. 413-35; Jon Elster (ed.), *Retribution and Restoration in the Transition to Democracy* (Cambridge University Press, 2006); Istvan Deak, Jan Gross, and Tony Judt, (eds.), *The Politics of Retribution in Europe* (Princeton University Press, 2000); Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge University Press, 2004); and A. James McAdams, *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997).

[65] In focusing on the success of reconciliation after World War II, historians of Franco-German relations and European integration have either ignored the "costs" altogether or relegated them to the footnotes. For example, the authoritative, 2000 page two volume work by Ulrich Lappenküper, *Die Deutsch-Französischen Beziehungen, 1949-1963, Von der Erbfeindschaft zur Entente Cordiale* (München: Oldenbourg Verlag, 2001), only mentions the war crimes trials in half a paragraph on page 118. There is considerable scholarship on Franco-German reconciliation with many difference focuses. These focuses include the role of the United States, the Schuman-Plan and ECSC, decolonization, the Saar and Franco-German reconciliation, security policies, East Germany and Franco-German reconciliation, cultural relations, and economic relations. Only two monographs discuss the Franco-German war crimes trials, and one of them, Bernhard Brunner's *Der Frankreich-*

imperfect and incomplete postwar justice against war crimes undermined the extent of this success.

III) Historiographical essay

In the following section, I will briefly review the existing literature relevant to the subjects of my inquiry. Thus, I will first begin with a review of the scholarship on Franco-German relations and European integration, including the issue of judicial reckoning with the Nazi occupation of France. The second section of this historiographical essay will focus on a comparison of the historiography on the reckoning with the past in France and Germany with an emphasis on the two countries' foreign ministries during and after Vichy and the Nazi era.

a) Franco-German Reconciliation and European Integration

Scholarship on Franco-German reconciliation and West European integration is heavily interdependent and historians of European integration cannot explain its trajectory without taking Franco-German relations into account. Further, Franco-German reconciliation after World War II depended on the larger framework of the Cold War and West European integration, which gave the bilateral relationship between France and West Germany a "sense of cohesion and purpose."[66] It is

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Komplex focuses solely on the West German treatment of the crimes committed by Germans in France during the Second World War, without any reference to bilateral relations. Claudia Moisel's *Frankreich und die deutschen Kriegsverbrecher, Politik und Praxis der Strafverfolgung nach dem Zweiten Weltkrieg* provides an excellent overview of the prosecution of German war crimes in France. However, her focus is directed more on the judicial aspects of the trials, while I focus on war crimes and their impact on West European integration and Franco-German reconciliation.

[66] William Hitchcock, *France Restored*, *Cold War Diplomacy and the Quest for Leadership in Europe, 1944-1954* (Chapel Hill: University of North Carolina Press, 1998*),* pp. 2f.

therefore almost impossible to define clear lines of demarcation between these two subfields. This section, however, will first provide a very brief overview of the development of historiography on European integration to position Franco-German relations within that larger context.

The preeminent French historian on European integration, Gérard Bossuat,[67] has described the holistic approach to the study of European integration as *histoire nouvelle*: a balanced analysis of the mentalities, ideas and actions of political elites and the influence of societal forces and pressure groups on the evolution of the politics of integration. This approach was made possible by a paradigm shift in historiography in the late 1940s and 1950s, which had its origins in the cataclysmic nature of World War II. Historians Henri Brugmans,[68] Max Beloff,[69] Rolf Hellmut Förster,[70] Heinz Gollwitzer and Walter Lipgens[71] began to transcend the narrow framework of the nation state and started to explore the history of a common,

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[67] Gérard Bossuat, *Inventer l'Europe, Histoire nouvelle des groupes d'influence et des acteurs de l'unité européenne* (Brussels: P.I.E.-P. Lang, 2003). In *Inventer l'Europe*, Gerard Bossuat echoes the theories of the French school of the history of international relations, e.g. Pierre Renouvin, Jean-Baptiste Duroselle, *Introduction à l'histoire des relations internationals* (Paris: Librairie A. Colin, 1964).

[68] Franco- Dutch historian Henri Brugmans, the founder of the College of Europe in Brügge, Belgium, published his landmark *Histoire de l'Europe 1, Les origines de la civilisation européenne* (Paris: R. Pichon & R. Durand-Auzias, 1958).

[69] British historian Max Beloff published his *Europe and the Europeans* (London: Chatto & Windus, 1957).

[70] Rolf Hellmut Förster, *Die Idee Europas 1300–1946. Quellen zur Geschichte der politischen Einigung* (Munich: DTV, 1963).

[71] Lipgens has shown that the impetus to European Integration came from the resistance to Nazism during World War II, thus disproving the continuity thesis between the Nazi World Order and the European Union expounded by "Eurosceptical" historians such as Thomas Sandkühler (ed.), *Europäische Integration, Deutsche Hegemonialpolitik gegen Westeuropa 1920-1960* (Göttingen: Wallstein-Verl., 2002). Lipgens rightly points to the remarkable continuity in personnel between the resistance to Nazism and political advocates of European integration after World War II, such as Alcide De Gasperi, Robert Schuman, Jean Monnet, Albert Camus, René Coty, Carlo Schmid and Konrad Adenauer. See Walter Lipgens, *Die Anfänge der europäischen Einigungspolitik* (Stuttgart: Klett, 1977).

European identity prior to the actual start of West European integration. This new emphasis was a reflection of the fundamental change in postwar Western European political and intellectual thinking: the experiences of Nazism, war and occupation have generated a broad understanding of European integration as the solution to the warring of nation states.[72] The liberation of Western Europe from Nazism was the catalyst for the emergence of the "European founding consensus" which was not to overcome the nation state, but to supplement it with federal and confederal European elements to guarantee peace and stability.[73]

The first major scholarly work on European political and economic integration was completed by the political scientist Ernst B. Haas.[74] Hass argued that European integration reached a momentum which enabled integration to "spill-over' into further areas of society, politics and economics ascribing to it a sense of inevitability. The first historians of European integration did not emerge until the late 1970s and early 1980s. Pierre Gerbet published one of the first synthesis works focusing on the political and economic gestation of the European integration process. In the 1980s, Gerbet and Walter Lipgens assembled the liaison committee of historians at the European Commission, which was responsible for producing a wealth of material on the diplomatic stages of European integration.[75] The 1980s also led to what Winfried

[72] Albert Camus has summed it up succinctly: "Das Unglück ist heute unser Vaterland." Cited in: Peter Sloterdijk, *Theorie der Nachkriegszeiten* (Frankfurt am Main: Suhrkamp, 2008), p. 47.
[73] Robert Schuman, in his memoires entitled "Pour L'Europe" called peace the leading motif of European integration, see Robert Schuman, *Pour L'Europe* (Paris: Nagel, 1963), p. 30.
[74] Ernst B. Haas, *The Uniting of Europe* (London: Stevens, 1958).
[75] Publications of the committee are: Raymond Poidivin (ed.), *Histoire du debuts de la construction européenne: Mars 1948-Mai 1950* (Brussels: Bruylant, 1986); Klaus Schwabe (ed.), *Die Anfänge des Schuman-Plans 1950-51* (Brussels: Bruylant, 1988); Gilbert Trausch (ed.), *Die europäische Integration von Schuman-Plan bis zu den Verträgen von Rom* (Baden-Baden: Nomos Verlag, 1993); Anne Deighton, Alan S. Milward (eds.), *Widening, Deepening and Acceleration, The European Community 1957-63* (Baden-Baden: Nomos, 1999).

Loth called the "Europeanization of contemporary history."[76] This process referred to by Loth saw a vast increase in scholarly output due to several developments: First, the commissioning of endowed "Jean Monnet" professorships at European universities by the European Commission; second, the founding of the *Arbeitskreis Europäische Integration e.V*;[77] and third the advent of the era of "European Institutes" at European universities. Further, since 1995, the *Journal of European Integration*, which is published twice a year, serves as a network for scholars of the field.

With the emergence of the field, scholars have focused on many different aspects and influences of European integration, such as the role of individual actors,[78] the role of individual states,[79] the role of governmental institutions and branches,[80] and constitutional and legal aspects,[81] economic-historical considerations,[82] the

[76] Wilfried Loth, „Beiträge der Geschichtswissenschaft zur Deutung der Europäischen Integration," in: Wilfried Loth, Wolfgang Wessels (eds.), *Theorien europäischer Integration* (Opladen: Leske + Budrich, 2001).
[77] Arbeitskreis Europäische Integration e.V. is the association of German scholars, mainly historians, political scientists and legal and economic scholars broadly interested in European integration.
[78] See for instance Raymond Poidevin, *Robert Schuman – home d'etat* (Paris: Impr. nationale, 1986), Hans Peter Schwarz, *Adenauer und Europa* (Melle: E. Knoth, 1985), Gerard Bossuat, *Les Fondateurs de l'Europe* (Paris: Belin, 1994), Gerard Bossuat, Andreas Wilkens (eds.), *Jean Monnet, l'Europe et les Chemins de la paix* (Paris: Publications de la Sorbonne, 1999), Andreas Wilkens, *Interressen verbinden, Jean Monnet und die europäische Integration der Bundesrepublik* (Bonn: Bouvier, 1999).
[79] Graziella Marchal-Van Belle, *Les socialistes belges et l'intégration européenne* (Bruxelles: Éditions de l'Institut de sociologie (de l') Université libre de Bruxelles, 1988), Michel Dumoulin, *La Belgique, Les petits états et la construction européenne* (Bruxelles: PIE-Peter Lang, 2003).
[80] Neill Nugent, *The European Commission* (New York: Palgrave, 2001), Neill Nugent, *The Government and Politics of the European Union* (Durham: Duke University Press, 2003).
[81] Heiner Timmermann (ed.), *Eine Verfassung für die Europäische Union* (Opladen: Leske + Budrich, 2001); Larry Siedentop, *Democracy in Europe* (New York: Columbia University Press, 2001).
[82] Alan S. Milward, *The Reconstruction of Western Europe* (Berkeley: University of California Press, 1984).

impact of economic interests and considerations,[83] the role of political parties,[84] and the role of regions and regionalism.[85]

Within the discipline at large, a number of controversies deserve a closer consideration. First, there are two debates evolving around the source and nature of the integration impulse. On the one hand, the "Idealist" school of historians influenced by Girault argues that the paradigm shift of political elites after World War II led to the integration impulse. On the other hand, scholars of the "history from below" approach have argued that European integration was supported by broad societal forces that lead to a distinct "European way of life."[86] Furthermore, the "Realist" school of Alan Milward contended that European integration arose out of business networks with the primary purpose of harvesting profits and the selfish interest of nation states to survive the postwar era, and that the idealist explanation of integration as an idealist motif of Europe's "founding fathers" such as Schuman, Adenauer and De Gasperi is purely mythical.[87] Second, diplomatic historians debate the influence of the United States on European integration. On the one hand, historians have shown the crucial role of the United States in pressuring France to

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[83] Éric Brussière, Michel Dumoulin (eds.), *Milieux économiques et intégration européenne au XXe siècle: la relance des années quatre-vingt (1979-1992)* (Paris: Comité pour l'histoire économique et financière de la France, 2007).
[84] Wolfram Kaiser, *Christian Democracy and the Origins of European Union* (Cambridge: Cambridge University Press, 2007); Wilfried Loth, *Die Christen und die Entstehung der Europäischen Gemeinschaft (*Stuttgart: Kohlhammer, 1994); Dieter Ramuschkat, *Die SPD und der europäische Integrationsprozess* (Niebüll: Videel, 2003).
[85] Matthias Schulz, *Regionalismus und die Gestaltung Europas* (Hamburg: Kraemer, 1993).
[86] Hartmut Kaelble argued that this European way of life is characterized by secularism, prevalence of the nuclear family, individualism, urbanity with a tendency to medium-sized urbanities, the welfare state, comparatively strong employee rights and a strong bargaining position of unions, accompanied by low social mobility and lack of competitiveness, see: Hartmut Kaelble, *Auf dem Weg zur Europäischen Gesellschaft* (München: C.H. Beck, 1987).
[87] Milward, *European Reconstruction*.

spearhead the integration process, which culminated in the Schuman-Plan and the launch of the ECSC in 1950.[88] Other historians went even further to argue that European integration was the consequence of a successful American "Empire by integration."[89] On the other hand, historians have argued that the "Franco-German motor" of European integration emerged because of the tensions between the US and Great Britain on the one hand and France (and a lesser extent West Germany) on the other.[90]

The historiography of Franco-German reconciliation emerged concomitant with the "Europeanization of contemporary history." Following the declassification of official government records from the postwar years in the late 1970s, Gilbert Ziebura's book[91] founded the school of historians of Franco-German reconciliation. Historians of this school initially argued that France, the "belated victor", originally pursued a harsh occupation policy against Germany in the late 1940s, with the goal of preventing a German economic and political recovery.[92] Only British and American pressure on France led to a reluctant change of mind.[93] Recent historical studies have attempted to revise this standpoint by claiming that France pursued both a

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[88] Raymond Poidevin, „Die Europapolitischen Initiativen Frankreichs 1950- aus einer Zwangslage geboren?," in: Ludolf Herbst, (ed.), *Vom Marshallplan zur EWG* (München: Oldenbourg, 1990).
[89] Geir Lundestad, *"Empire" by Integration. The United States and European Integration 1945-1997* (Oxford: Oxford University Press, 1998).
[90] Paul M. Pitman, "'A General named Eisenhower:' Atlantic Crisis and the Origins of the European Economic Community," in: Marc Trachtenberg, *Between Empire and Alliance* (Lanham, MD: Rowman & Littlefield Publishers, 2003).
[91] Gilbert Ziebura, *Die deutsch-französischen Beziehungen seit 1945. Mythen u. Realitäten* (Pfullingen: Neske, 1970).
[92] Eschenburg claimed that France saw its Zone of Occupation as an "*Ausbeutungkolonie*." See Theodor Eschenburg, Eberhard Jäckel, *Geschichte der Bundesrepublik Deutschland. Jahre der Besatzung, 1945-1949* (Stuttgart: Deutsche Verlags-Anstalt, 1983), p. 96.
[93] See A. W. DePorte, *De Gaulle's Foreign Policy, 1944-1946* (Cambridge: Harvard University Press, 1968).

reconciliatory and an aggressive-punishing policy towards Germany.[94] Recent studies have emphasized the pragmatism of French policy toward occupied Germany. These studies have focused on re-education, denazification, economic policies, trade union and business policies, social policies, party policies and cultural policies.[95] Franco-German reconciliation emerged out of the realization first by the British and Americans[96] and later also by French leaders, that the European founding consensus[97] was impossible to achieve without reconciliation between the two supposed "hereditary enemies"[98] France and (West) Germany. Although Alan Milward and more recently William Hitchcock disagree, the consensus among historians now is that the motif for reconciliation is rooted both in moralistic and ideological idealism and pragmatic (economic and political) interests.[99]

There is considerable scholarship on Franco-German reconciliation with many different focuses. The following aspects of Franco-German reconciliation have been

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[94] See Dietmar Hueser, *Frankreichs „doppelte Deutschlandpolitik". Dynamik aus der Defensive – Planen, Entscheiden, Umsetzen in gesellschaftlichen und wirtschaftlichen, innen- und außenpolitischen Krisenzeiten 1944–1950* (Berlin: Duncker & Humblot, 1996).
[95] Sylvie Lefèvre, *Les relations économiques franco-allemandes de 1945 à la coopération* (Paris: Comité pour l'Histoire Economique et Financière de la France, 1998), Rainer Hudemann, *Sozialpolitik im deutschen Südwesten zwischen Tradition und Neuordnung, 1945-1953: Sozialversicherung und Kriegsopferversorgung im Rahmen französischer Besatzungspolitik* (Mainz: V. Hase & Koehler 1988), Reinhard Grohnert, *Die Entnazifizierung in Baden, 1945-1949: Konzeptionen und Praxis der "Épuration" am Beispiel eines Landes der französischen Besatzungszone* (Stuttgart: Kohlhammer, 1991), Corine Defrance, *La politique culturelle de la France sur la rive gauche du Rhin, 1945-1955* (Strasbourg: Presses universitaires de Strasbourg, 1994).
[96] Gérard Bossuat especially claims that the American pressure, via its influence gained by Marshall-Fund moneys, led French foreign policy to change to reconciliation, see Gérard Bossuat and René Girault, *La France, l'aide américaine et la construction européenne, 1944-1954. Vol. 2* (Paris: Comité pour l'histoire économique et financière de la France, 1997), p. 657.
[97] The European founding consensus consisted of the commitment to use the liberation from Nazism to transform the traditional framework of warring European nation states to guarantee peace and stability.
[98] Jürgen Elvert, *Die Europäische Integration* (Darmstadt: Wissenschaftliche Buchgesellschaft), p. 1.
[99] See Andreas Rödder, „Deutschland Frankreich und Europa. Interessen und Integration 1945- bis 2005", in: *Jahrbuch für Europäische Geschichte* 8, Issue 2 (2007), pp. 151-159.

closely investigated: the role of the United States,[100] the role of individuals and personal relationships between political actors,[101] the Schuman-Plan and ECSC,[102] decolonization,[103] the Algerian conflict and Franco-German reconciliation,[104] the Saar and Franco-German reconciliation,[105] security policies,[106] East Germany and Franco-

[100] Eckhardt Conze, "Hegemonie durch Integration. Die amerikanische Europapolitik und ihre Herausforderung durch de Gaulle," in: *Vierteljahresschrift für Zeitgeschichte* 43 (1995), pp. 297-340; Beate Neuss, *Geburtshelfer Europas? Die Rolle der Vereinigten Staaten im europäischen Integrationsprozess, 1945-1958* (Baden-Baden: Nomos, 2000).

[101] Jacques Bariety, "Die Rolle der persönlichen Beziehungen zwischen Adenauer und General de Gaulle," in: Hans-Peter Schwarz, *Adenauer und Frankreich, Die Deutsch-Französischen Beziehungen 1958-1969* (Bonn: Bouvier, 1985); Lappenküper, „Die Vision der ‚Europe européenne,' Adenauer und de Gaulle auf dem Weg zum Elysee-Vertrag," in: *Dokumente* 2 (2007), 35-39; Raymond Poidevin, *Robert Schumans Deutschland und Europapolitik* (München: Vögel, 1976); Hans-Peter Schwarz, „Präsident de Gaulle, Bundeskanzler Adenauer und die Entstehung des Élysee-Vertrages," in: Karl Dietrich Bracher (ed.), *Deutschland zwischen Krieg und Frieden, Beiträge zur Politik und Kultur im 20. Jahrhundert* (Bonn: Bundeszentrale für Politische Bildung, 1990); Georges-Henri Soutou, "Georges Bidault et l'Europe," in *Revue d'histoire diplomatique* 105 (1991) 3 /4, pp. 267-306; Gerard Bossuat, Andreas Wilkens (eds.), *Jean Monnet, l'Europe et les Chemins de la paix* (Paris: Publications de la Sorbonne, 1999), Andreas Wilkens, *Interessen verbinden, Jean Monnet und die europäische Integration der Bundesrepublik* (Bonn: Bouvier, 1999).

[102] Ulrich Lappenküper, „Der Schuman-Plan, Mühsamer Durchbruch zur Deutsch-Französischen Verständigung," in: VfZ 42 (1994), 403-445; Raymond Poidevin, Dirk Spierenburg, *Histoire de la Haute-Autorité européenne du Charbon et de l'Alcier* (Bruxelles: Bruylant, 1993); Klaus Schwabe (ed), *Die Anfänge des Schuman-Plans, 1950/51: Beiträge des Kolloquiums in Aachen, 28.-30. Mai 1986* (Baden-Baden: Nomos, 1988).

[103] Jean-Paul Cahn, "La RFA et la question de la présence d'Allemands dans la Légion étrangère française dans le contexte de la guerre d'Algérie," in : *Guerres mondiales et conflits contemporains* 186 (1997), 95-120.

[104] Nassima Bougherara, *Les rapports franco-allemands à l'épreuve de la question algérienne, 1955-1963* (Bern: Lang, 2006).

[105] Rainer Hudemann, *Das Saarland zwischen Frankreich, Deutschland und Europa 1945-1957* (Saarbrücken: Kommission für Saarländische Landesgeschichte, 2007).

[106] Dietmar Hüser, "Druckmittel Deutschland, Französische Sicherheit und amerikanisches Engagement in Europa," in Stephen A Schuker (ed.), *Deutschland und Frankreich: vom Konflikt zur Aussöhnung: die Gestaltung der westeuropäischen Sicherheit, 1914-1963* (Munich: R. Oldenbourg, 2000); Hartmut Kaelble, "Europa zwischen Krieg und Frieden, Robert Schumans Konzept einer Sicherheitspolitik und die Präsenz der Amerikaner," in SZ 5/9/2003; Georges-Henri Soutou, *L'alliance incertaine: les rapports politico-stratégiques franco-allemands, 1954-1996* (Paris: Fayard, impr. 1996).

German reconciliation,[107] cultural relations,[108] and economic relations.[109] Historians of Franco-German relations and European integration have, while focusing on the success of reconciliation after World War II, either ignored the "costs" or relegated them to the footnotes. For example, the authoritative, 2000 page two volume work by Ulrich Lappenküper*, Die Deutsch-Französischen Beziehungen, 1949-1963, Von der Erbfeindschaft zur Entente Cordiale*, only mentions the war crimes trials in half a paragraph on page 118.

Of the 1500 titles on Franco-German history after World War II appearing on the bibliography published by the German Historical Institute's *Francia*, only two titles deal with war crimes trials, and only one in the context of France and Germany. Bernhard Brunner's *Der Frankreich-Komplex*[110] focuses solely on the West German treatment of the crimes committed by Germans in France during the Second World War, without any reference to bilateral relations. Claudia Moisel's *Frankreich und die deutschen Kriegsverbrecher, Politik und Praxis der Strafverfolgung nach dem Zweiten Weltkrieg*, however is more relevant.

Moisel completed the first scholarly treatment of German war crimes trials in in France. Her 2004 monograph, *Frankreich und die deutschen Kriegsverbrecher*

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[107] Ulrich Pfeil, *Die DDR in den deutsch-französischen Beziehungen* (Bruxelles: Presses Interuniversitaires, 2014).
[108] Ansbert Baumann, *Begegnung der Völker?: Der Élysee-Vertrag und die Bundesrepublik Deutschland: deutsch-französische Kulturpolitk von 1963 bis 1969* (Frankfurt am Main: P. Lang, 2003); Hans-Manfred Bock, "Wiederanfang und Neubeginn der deutsch-französischen Kulturbeziehungen," in *Lendemains* 21 (1996) 84, pp. 58-64. Corine Defrance, *La politique culturelle de la France sur la rive gauche du Rhin, 1945-1955* (Strasbourg: Presses universitaires de Strasbourg, 1994).
[109] Sylvie Lefèvre, *Les relations économiques franco-allemandes de 1945 à la coopération* (Paris: Comité pour l'Histoire Économique et Financière de la France, 1998).
[110] Bernhard Brunner, *Der Frankreich-Komplex: Die nationalsozialistischen Verbrechen in Frankreich und die Justiz der Bundesrepublik Deutschland* (Göttingen: Wallstein, 2004).

provides a comparative analysis of French justice after World War II, as well as its challenges and limitations. Moisel argues that the French justice regime was considerably more aggressive in its pursuit of German war criminals compared to its British and American counterparts, in part because France was the only Western power which suffered from German occupation and also because de Gaulle hoped to use Germans in French prisons as a bargaining tool in negotiations with a future German state.[111] Moisel also illuminates the political debates surrounding the war crimes questions in French and German political circles[112] as well as public discussions. Her very good book surveys public opinion by reviewing two French[113] and two West German[114] newspapers. While her work is the first comprehensive survey of French justice after World War II, my dissertation goes beyond her thesis by tying the trajectory of Franco-German reconciliation to the war crimes trials themselves. I argue that war crimes trials were more than an irritant to Franco-German reconciliation. Those indicted and other convicted of war crimes became a symbol of the state of Franco-German reconciliation in itself. Therefore, it was only consequential that de Gaulle released the last three German war criminals in French custody eight weeks prior to conclusion of the Franco-German Friendship Treaty at the Elysée Palace in January 1963.

b) Franco-German trajectories of V*ergangenheitsbewältigung*

[111] Claudia Moisel, *Frankreich und die deutschen Kriegsverbrecher: Politik und Praxis der Strafverfolgung nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2004), p. 54.
[112] She researched in the archives of the French and German foreign offices, as well as in the French and German national archives.
[113] Le Monde and L'Humanité.
[114] Süddeutsche and Frankfurter Allgemeine Zeitung.

Comparing the French and German trajectories of reckoning with the Vichy/Nazi past offers fascinating insights into the memory politics of the two neighbors.[115] A comparison of the French reckoning with the Vichy past of its *Ministère des Affaires Étrangères* with the German case reveals both important similarities and differences and evidences the continuity of the complicated relationship of France with the Vichy past – into our time. Some of the differences between the two have obvious reasons: French political legitimacy was contested between the government in Vichy and a government in exile in London and later Algiers which saw itself, later confirmed by the Western Allies,[116] as the legitimate heirs of the Republic.[117] This fact gave rise to the long-standing position of many French leaders on all levels of the Republic: "France" was not responsible for Vichy

[115] Vichy France and Nazi Germany were two very different dictatorships – indeed "incommensurable" as Defrance/Pfeil called them (Defrance, Pfeil, *Deutsch-Französische Geschichte*, p. 41). Among the many differences, one must be singled out here: Anti-Semitism had been a defining, constituent element of Nazism. In support of the "Final Solution", the murder of European Jewry, the Third Reich mobilized the entire state-apparatus, including the Foreign Office. The case of Vichyite anti-Semitism was more nuanced – the murder of France's Jews was never the goal of the Vichy government. Rather, it pursued a policy of exclusion by reducing Jews to second class citizens. Henry Rousso argued that „L'antisémitisme est central dans le nazisme, pas à Vichy, où il découle d'un nationalisme exclusif qui n'a pas pour objectif d'exterminer les Juifs mais d'en faire des citoyens de second rang, en opérant de surcroît une discrimination entre les étrangers et les Français." See Veronique Sales, "Vichy et le 'cas' Mitterrand," in: *L'Histoire*, no. 181 (October 1994). Despite these differences, the history of the two regimes lends itself to a comparison of the coming to terms with Vichy/Nazi past on a political as well as individual level.

[116] Although the Western Allies did not confirm the legitimacy of de Gaulle's government until after the liberation (October 1944), his *Comité français de la Liberation nationale* (and its predecessor *France libre*) was eligible for U.S. support through the Lend-Lease Act beginning in 1942. See Andrew Buchanan, *American Grand Strategy in the Mediterranean during World War II* (Cambridge: Cambridge University Press, 2014), p. 89.

[117] If measured by defections at its diplomatic posts abroad, Vichy's MAE suffered indeed from a lack of legitimacy compared to *France libre*. Beginning in 1941, a number of Vichy diplomats defected to France libre. While every defection greatly undermined the legitimacy of Vichy, these diplomats were often isolated individuals loyal to de Gaulle, stationed in a foreign country while facing the entire consulate or embassy of Vichy France. See Jean-Marc Dreyfus, *L'Impossible Réparation*, *biens spoliés, or nazi, comptes bloqués, criminels de guerre* (Paris: Flammarion, 2015), p. 33.

and its crimes. François Mitterrand epitomized this view which distinguished between "France" on the one hand and "Vichy" on the other and provided the grounds for the rejection of "French" responsibility. As late as September of 1994, he argued that concerning the crimes committed by Vichy France "[t]he Republic had nothing to do with this. I do not believe [...] France is responsible. [...] I will not apologize in the name of France."[118] Of course, West Germany had no such history of two governments competing for legitimacy. Nazi Germany was the only legitimate Germany, and thus this long tradition of rejecting responsibility by pointing to the noble cause of a government which continued the liberal traditions in exile was not a mechanism available in the FRG case.[119]

The second major difference concerns the judicial and administrative treatment of transgressions and crimes committed during the Vichy and Nazi eras. France experienced a judicial reckoning with Vichy which received broad popular support and was carried out without foreign involvement. The *Épuration*, as Henry Rousso argued, in fact constituted evidence for a broad condemnation of the Vichy regime by French society.[120] However, this fact also contributed to the rise of the

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[118] "Non, non, la République n'a rien à voir avec ça et j'estime, moi, en mon âme et conscience, que la France non plus n'en est pas responsable ; que ce sont des minorités activistes qui ont saisi l'occasion de la défaite pour s'emparer du pouvoir et qui sont comptables de ces crimes-là, pas la République et pas la France [...]Et donc je ne ferai pas d'excuses au nom de la France." Interview of François Mitterrand by Jean-Pierre Elkabbach televized on the TV Station France 2 on September 12, 1994. A transcript is available on https://fresques.ina.fr/mitterrand/fiche-media/Mitter00297/le-parcours-de-francois-mitterrand-pendant-la-seconde-guerre-mondiale-et-a-vichy.html, last access on November 14, 2019. It was not until 1995, that a French president, the newly inaugurated Jacques Chirac, acknowledged French responsibility for the first time.

[119] However, the German Democratic Republic's rejection of any responsibility for the Nazi crimes based on its self-understanding as the "antifascist Germany" shows similarities with official French memory politics until Chirac's discourse at Vel'd'Hiv in July of 1995. For East German memory practices and its view on the Nazi past, see Jeffrey Herf, *Divided Memory*, p. 391.

[120] Henry Rousso argued in an interview with the French monthly journal *L'Histoire* that the épuration from 1944 on was evidence for a broad condemnation of Vichy by French society: "Quand on demande en 1992 que l'État reconnaisse officiellement les crimes de Vichy, on dit implicitement que

Vichy Syndrome, as Rousso called it, because those who rejected French responsibility could point to the *épuration* and claim that Vichy had been dealt with by the French republic.

On the other side of Rhine, the reckoning was imposed on Germany and the Germans by the Allies. The Nuremberg trials and the denazification efforts rested solely on the authority of the Allies in occupied Germany – and as soon as the Western Allies transferred stewardship over the denazification efforts to German authorities, these had little interest in pursuing the efforts and forced them to a halt. Therefore, when the Foreign Office was recreated in 1951, no administrative procedure, purge, epuration or denazification was in place which ensured that the Federal government rehired only staff and diplomats who were free of any association with Nazi Germany. On the contrary, as subsequent research revealed, the FRG Foreign Office's ties to the Nazi era run deep and wide.[121] For all the above reasons, the ties of the FRG Foreign Office to the Nazi era may have been much firmer than the those of the Quai d'Orsay to Vichy, and this might be part of an explanation why there is no, to this day, study about these ties.

Vichy n'a jamais été condamné. On fait l'impasse sur dix ans d'épuration! C'est absurde." See Veronique Sales, "Vichy et le 'cas' Mitterrand," in: *L'Histoire*, no. 181 (October 1994).

[121] Of course, the Wilhelmstrasse Trial, one of the Nuremberg successor trials conducted by the U.S.A., was the only exception to this rule. The convicts of these trials were personae-non-gratae and were not re-employed. However, the trial only affected and ended the careers of 8 high-ranking Foreign Office employees – most famously Ernst von Weizsäcker – while the Foreign Office in 1943 employed over 703 persons on the top career level (*im Höheren Dienst*) alone. 573 of these 703 were card-carrying Nazi party members. In 1952, the Foreign Office employed 75 top level employees (directors of departments and divisions, so called Ministerialdirektoren, -dirigenten and Referatsleiter). 49 of these 75 officials who shaped and executed West German foreign policy had been members of the Nazi party before 1945. See Eckart Conze, Norbert Frei, Peter Hayes, Moshe Zimmermann, *Das Amt und die Vergangenheit. Deutsche Diplomaten im Dritten Reich und in der Bundesrepublik* (Munich: Karl Blessing Verlag, 2010).

The coming to terms with the FRG -Foreign Office's Nazi past consisted, and still consists of two distinct yet related lines of inquiry. The first line of inquiry relates to the critical assessment of German foreign policy and the Foreign Office during the Second World War and the Holocaust – thus of the Nazi period itself. First, in the 1980s, historians began to dismantle the myth of the Foreign Office as an institution steeped in aristocratic traditions and thus skeptical of Nazism and hostile to its rabid anti-Semitism. Hans Jürgen Döscher's work in the mid-1980s[122] proved the myth of a Foreign Office ignorant of the Holocaust and removed from the crimes of the Nazis wrong. The second line of inquiry transcends the Nazi-era and investigates the continuities, both in personnel and thought, of the Foreign Office from the Nazi era into the Federal Republic. Again, Döscher was instrumental to the initiation of this thought-process with his 1995 book *Verschworene Gesellschaft, Das Auswärtige Amt unter Adenauer.*[123] Given that his findings and conclusions directly questioned one of the core-tenants of the Federal Republic, the demarcation [*Abgrenzung*] from the Nazi era, it was not surprising that Döscher's second book with its conclusions regarding the extent of the continuity between the Third Reich and the Federal Republic met with resistance and rejection.[124] However, only four years later, the Foreign Minister Joschka Fischer himself commissioned a *Historiker Kommission* which confirmed

[122] Hans-Jürgen Döscher, *Das Auswärtige Amt im Dritten Reich: Diplomatie im Schatten der "Endlösung"* (West-Berlin: Siedler, 1987).
[123] Hans-Jürgen Döscher, *Verschworene Gesellschaft: Das Auswärtige Amt unter Adenauer - Zwischen Neubeginn und Kontinuität* (Berlin: Akad.-Verl, 1995).
[124] See for instance Helga Haftendorn's critique of Döscher, who accused him of focusing on the "shades of brown" while underappreciating the achievements of the Foreign Office under Adenauer. "Durch seine Konzentration auf die 'Brauntöne' im Amt gelingt es ihm jedoch nicht, den im Titel genannten ‚Neubeginn' angemessen in den Blick zu bekommen." See Helga Haftendorn, „Rezension: Verschworene Gesellschaft. Das Auswärtige Amt unter Adenauer zwischen Neubeginn und Kontinuität von Hans-Jürgen Döscher," in: *Politische Vierteljahresschrift*, Vol. 38, No. 1 (March 1997), pp. 214-215

Döscher's conclusion and expanded vastly on the scope of the involvement leading numerous cases of pictures of postwar diplomats being removed from galleries. By the time the commission published its final conclusions in 2013 entitled *Das Amt und die Vergangenheit* both components of the aforementioned lines of inquiry have become accepted truths both outside and within the Foreign Office.[125]

The French reckoning with the Vichy past of its *Ministère des Affaires Étrangères* evolved largely on a similar trajectory. The long accepted point of view in historiography had been *"attentisme,"* defined by Vichy's neutrality and combined by a wait-and-see tactic of Pétain, even of a "double game"[126] waiting for the right moment to finally join the anti-Hitler coalition again.[127] The re-assessment of Vichy foreign policy began around the same time as Döscher worked to dismantle the myth of the Foreign Office's detachment from the Nazi crimes.[128] In 1985, Henri Michel published an article[129] arguing that the then-accepted thesis of Vichy neutrality

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[125] The historiographical revision regarding the Foreign Office's role during the Nazi era has been complete with *Das Amt und die Vergangenheit*. Far from the erstwhile interpretation of the Foreign Office as an aristocratic stronghold resisting the temptations of Nazification, Eckart Conze, the principal historian who authored *Das Amt,* described the Foreign Office as a "verbrecherische Organization" (criminal organization). See article in der Spiegel entitled „Verbrecherische Organisation," in: *Der Spiegel, 43/2010*, dated October 25, 2010, pp. 40-43.

[126] "Double jeu" is one of the most persistent apologias of Vichy's foreign policy. It argues that the Vichy government, foremost Pétain, only conceded to the Nazis what was absolutely necessary while secretly negotiating with the British (and/or the American) government. These works of apologia usually contrast Pétain ("the good Vichy") with Laval ("the bad Vichy"). See for instance the work of François-Georges Dreyfus, *Histoire De Vichy* (Paris: Perrin, 1990), pp. 323-326.

[127] The most prominent historiographical work which argued that Pétain followed "attentisme" was Robert Aron's *Histoire de Vichy - 1940-1944* (Paris: Fayard, 1954). See Robert O. Paxton, "Le régime de Vichy était-il neutre?," *Guerres mondiales et conflits contemporains*, No. 194 (Décembre 1999), p. 160.

[128] A topic that still needs further exploration remains Vichy France's knowledge regarding the Holocaust of European Jewry. While recent scholarship uncovered that Vichy French diplomats cabled reports back to the MAE regarding mass executions in the Baltics as early as the summer of 1942, Jean-Marc Dreyfus argued that Vichy French diplomats lacked sufficient information regarding the genocide of the Jews in Eastern Europe. See Jean-Marc Dreyfus, *L'Impossible réparation*, p. 31.

[129] Henri Michel, "Le régime de Vichy était-il neutre?," in: Louis-Edouard Roulet, Roland Blättler (eds.), *Les États neutres européens et la Seconde Guerre mondiale* (Neuchâtel: La Baconnière, 1985), p. 335. Henry Rousso noted that Michel, in particular with *Vichy, année 40* (Paris: Robert Laffont,

concerning Nazi Germany's hegemony over continental Europe needed to be revised. Michel began a revision in historiography which was continued by Robert Paxton, Jean-Pierre Azéma, Yves Durand, Marc Ferro and others. While Vichy's neutrality after the armistice in 1940 was mostly dependent on Hitler's wish, Darlan and Pétain also determined that it was advantageous to Vichy's interests.[130] After the United States entered the war on December 7, 1941, the underlying conditions for that determination changed and Vichy concluded that the Allies posed the greatest threat to the French Empire. Vichy France's foreign policy henceforth centered on defending the French Mediterranean from an Allied intervention which included the strategic construction of fortifications and the warning to American diplomats that an Allied invasion would be pushed back forcibly by French armed forces.[131] *De jure*, Vichy France remained neutral until the end of the war.[132] *De facto*, however, its

1966) and *Pétain, Laval, Darlan, trois politiques? (*Paris: Flammarion, 1972) had been one of the earliest historians who began to re-evaluate Vichy history, but notes that his works on Vichy had very little impact on historiography (as opposed to Michel's work on the resistance). Most importantly, however, Rousso notes that Michel's work on Vichy, while vastly less influential "was not in complete rupture" with the work of Robert Paxton [most importantly his *Vichy France. Old Guard and New Order, 1940-1944* (New York: Alfred A. Knopf, 1972)] which initiated and sustained the revision of historiography on Vichy à la Robert Aron [see his *Histoire de Vichy - 1940-1944* (Paris: Fayard, 1954)]; see Henry Rousso, *Histoire et mémoire des années noires. Mémoire pour l'habilitation à diriger des recherches* (Paris, Institut d'études politiques de Paris, 2000), p. 25.

[130] Robert Paxton argued that "[la] condition fondamentale de la neutralité de Vichy était que Hitler la voulait." Yet, Vichy also took advantage of the economic aid offered by the United States before Pearl Harbor which hoped it would keep the collaboration with Nazi Germany at a minimum. See Robert O. Paxton, "Le régime de Vichy était-il neutre?," in: *Guerres mondiales et conflits contemporains*, No. 194 (Décembre 1999), pp. 149-162.

[131] See Robert Paxton, "La coupure décisive pour Vichy en Novembre 1942. L'État français vassalisé," in: Jean-Pierre Azema, Francois Bedarida, *La France des années noires*, Vol. II (Paris: Seuil, 1993), p. 10-16.

[132] Vichy neither declared war on the Soviet Union nor on the United States in 1941. After the Allied landing in Normandy on June 6, 1944, Pétain issued a statement asking the French people not interfere in the fighting between the Allies and Nazi Germany which unfolded on their territory. See Paxton, "Le régime de Vichy était-il neutre?," p. 158.

foreign policy inevitably aided and abetted Nazi rule in Europe, a fact which was obvious to the Allies beginning in 1942,[133] because it best suited its own interests.

This revision in historiography from "*attentisme"* to a veritable foreign policy jockeying for a privileged position in Hitler's Europe, however, only corresponds the first line of inquiry, regarding the time frame of 1940 to 1944, not the second line of inquiry which concerns the after-life of Vichy in the postwar period.

The second line of inquiry is still lacking, and thus not in-sync with the German *Vergangenheitsbewältigung*. The historiography on the French Foreign Ministry and its diplomatic corps, the Ministère des Affaires Étrangères (MAE) was deeply influenced by what Henry Rousso called the *Vichy Syndrome*, the tenants of which could still be seen in the early 2000s. The *magnum opus* on the history of French diplomacy authored in 1984 and 1985 by some of the most prestigious French scholars of the time exemplified the persistence of the Vichy Syndrome in official scholarship. The 1024 page long second volume which covered the period from 1870 to 1980, simply entitled "*Les Affaires étrangères et le corps diplomatique français, tome II, 1870-1980*" marginalized Vichy as a footnote, presenting the period from 1939 to 1945 as if the Third Republic gave quickly way to the French resistance to Nazism, focusing on the French government in exile in London and Algiers as the locus of uninterrupted French republicanism culminating in the re-founding of the Republic in 1944.[134] The narrative of the 1984 book thus eliminates Vichy almost

[133] As opposed to Spain, Sweden, Switzerland, the Allies included strategic locations on Vichy France's territory as targets for aerial bombing campaigns. Ibid., p. 157.

[134] The chapter which included Vichy covered the period from 1940-1980 and thus constituted the last chapter covering then-recent diplomatic history. While a caesura of 1940 might be very appropriate, depending on the subsequent vantage point of the authors, the 1940-1944 period was not treated at all as such a reference point. On the contrary, the period of 1940-1944 is presented in a "preliminary

altogether from the history of the MAE, essentially claiming that there was never a dual Foreign Policy, one conducted by Vichy and one by de Gaulle in London and later Algiers. The Foreign Policy of Vichy was disregarded, while the Foreign policy of *France libre* endowed with the status of official French Foreign policy, according to the myth of "la France, une et indivisible." This constituted an re-itineration of the *Vichy syndrome*, claiming that "France" only existed in the resistance and not in the collaboration.[135]

The attempt to exclude Vichy from France's history books regarding foreign policy, an obvious example of the tradition of selective memory, was a reflection of the self-understanding of the Fifth Republic's Quai d'Orsay with the Vichy past – any lines between Vichy and the Republic were denied, marginalized or excluded.[136] This attitude was also reflected in the list of Foreign Ministers provided in the appendix of the volume. The appendix lists all the names and dates of French Foreign Ministers from the inception of the Third Republic in 1870 to the 1980s. The last Foreign Minister of the Third Republic is listed as Paul Renaud with his tenure ending on June 16, 1940 – the beginning of Pétain's premiership. Renaud's successor Paul Baudouin, is listed as the Foreign Minister of the "armistice government," and an end date of July 15, 1940, is given, an artificial date which does not correspond to any events except that it demonstrated that the authors of the book believed that the

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chapter" and the bulk of the scholarship focused on the period thereafter. See *Les Affaires étrangères et le corps diplomatique français, tome II, 1870-1980* (Paris: Éditions du C.N.R.S, 1984).

[135] Denis Rolland argued that the 1984 *Les Affaires étrangères et le corps diplomatique français* marginalized Vichy or "manipulated its memory" probably for that reason: "Au passage, et c'est peut-être cela l'enjeu principal, on élimine pratiquement Vichy." Denis Rolland, "La 'mémoire manipulée' et l'histoire institutionnelle. Pour une histoire rénovée des Affaires étrangères," in: *Matériaux pour l'histoire de notre temps*, n°65-66, 2002, p. 29.

[136] See above mentioned statement of Mitterrand regarding his refusal to apologize for Vichy France's crimes on the grands that Vichy was not "France." Note that Mitterrand did not contest Vichy crimes.

political legitimacy passed from Vichy to London. Thus, Baudouin's successor was listed as Maurice Dejean, with a start date of July 15, 1940, although he did not begin his tenure as *Commissaire national aux Affaires étrangères* until September of 1941. The list continues with all the names of the Foreign Ministers in exile (René Pleven and René Massigli), then neatly followed by the Foreign Ministers of the Provisional Government (Georges Bidault, Léon Blum) and then the Fourth Republic (Bidault again and then Robert Schuman). Completely missing are the Vichy Foreign Ministers - with the exception of Baudouin whose tenure was artificially cut short in the list while Dejean's was moved up to create the illusion of an immediate passing of political agency from the Third Republic to *France libre* in London due to the armistice.[137]

By excluding the MAE of Vichy, the postwar Quai d'Orsay claimed the mantle of uninterrupted Republican legitimacy, which passed to the Fourth and Fifth Republic from the Third Republic via the resistance to Nazism in London and Algiers. This remained the official position of the MAE well into the 2000s: the *annuaire diplomatique*, the official yearbook of the *Ministère des Affaires Étrangères* followed this chronology until at least 2002. Similarly, a 1995 book entitled "*Histoires de diplomatie culturelle des origines à 1995*" also has a "résistancialiste" view on the MAE during Vichy: the chapter on 1939-1945 is primarily on London and Algiers, Vichy is discussed afterwards and only to discuss actions in support of the resistance of certain MAE officeholders.

[137] Ibid., p. 35.

Thus, by the year 2000, sixty years after the "brutal and almost unanimous suppression of republican institutions and sixty years after tragically discriminating policies had been implemented, the Vichy Syndrome is still not a thing of the past."[138]

Since the early 2000s, historiography has answered the criticisms of Robert Paxton and others and accepted Vichy's foreign policy as a genuine (and as French). In 2005, the major historians of the field, endorsed by then-Foreign Minister Dominique de Villepin who contributed a foreword, published *L'Histoire de la diplomatie française* in two volumes,[139] which replaced the 1984 *Les Affaires étrangères et le corps diplomatique français* as the reference work for French diplomatic history. The second volume broke up the chronology and discussed the period between 1940 and 1944 not as a preface to the postwar period but as an integral period in a chapter which covered both World Wars as well as the immediate postwar period until 1958, entitled "The Sorrow of the Power" ["Le Deuil de la Puissance"].[140] However, the author, Georges-Henri Soutou, while trying to avoid the marginalization of Vichy, gives considerable more weight to *France libre* and the *CFLN* whose influence on postwar France become evident in sentences like "France [...] remained, despite eclipses and gradations, faithful to its message of human

[138] Ibid.
[139] Françoise Autrand, Lucien Bély, Philippe Contamine, preface by Dominque de Villepin, *Histoire de la Diplomatie Française. Vol. I, Du Moyen Âge à L'empire* (Paris: Perrin, 2005); Jean-Claude Allain, Pierre Guillen, Georges-Henri Soutou, Laurent Theis, Maurice Vaïsse, *Histoire de la Diplomatie Française*. *Vol. II, De 1815 à nos jours* (Paris: Perrin, 2005).
[140] In choosing the title "Le Deuil de la Puissance" for his chapter, Georges-Henri Soutou referred to the decline of French international influence in the period under investigation. The victory of 1918 came with an enormous price, and France failed to reestablish its international role after the defeat of 1940. See Georges-Henri Soutou, "Le Deuil de la Puissance," in: Jean-Claude Allain, Pierre Guillen, Georges-Henri Soutou, Laurent Theis, Maurice Vaïsse, *Histoire De La Diplomatie Française*. *Vol. II, De 1815 à nos jours* (Paris: Perrin, 2005), p. 409.

freedom and national self-determination of all peoples."[141] The impact of Vichy, alluded to as an "eclipse" in the previous sentence, on the MAE and French diplomacy remains obscure.[142]

As described above, the purges could serve as a justification for the thesis that Vichy only constituted a brief interruption of the Republican continuity. Indeed, it was not surprising that the purges affected the MAE, since the office which would be charged with carrying out de Gaulle's foreign policy – the MAE – was one of the offices with a history of collaboration – after all some of Vichy's most infamous collaborators had ties to the Quai d'Orsay – first and foremost Pierre Laval as Foreign Minister[143] but also Xavier Vallat, the Commissioner-General for Jewish Questions and thus a leading force behind Vichy's anti-Semitic policies until 1942.[144] Apart from the automatic dismissal of diplomats who had been serving at Vichy French embassies and did not join France libre after November 11, 1942,[145] the MAE was also affected by the *épuration administrative*. Especially the highest-ranking diplomats at the Quai d'Orsay were deeply implicated by the collaboration and Vichy and thus became subject of administrative purges.

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[141] "[...] la France [...] est restée, malgré des éclipses et bien des nuances, fidèle à son message de liberté humaine et d'indépendance des peuples [...]." Ibid., p. 409.
[142] Soutou does not mentioned the impact of the *épuration* on the MAE, nor does he cite any works which situate the afterlife of Vichy into the history of French diplomacy or the MAE after World War II.
[143] Pierre Laval held the office of foreign minister briefly in late 1940 and then again from 1942 until the Vichy government collapsed in August of 1944. No Vichy foreign minister held the office longer than Laval.
[144] Xavier Vallat was employed by the Quai d'Orsay after his dismissal from the Commissariat for the Jewish Question. He held the title of minister plenipotentiary without portfolio. See Jean-Marc Dreyfus, *L'impossible Réparation. Déportés, Biens Spoliés, or Nazi, Comptes Bloqués, Criminels De Guerre* (Paris: Flammarion, 2015) p. 57.
[145] The Provisional Government issued on ordinance on April 26, 1944, which decreed that all Vichy diplomats who served abroad and did not join the resistance after November 11, 1944 (the day Nazi Germany occupied the remainder of France), were to be automatically dismissed from diplomatic service. Ibid., p. 56.

The purges of government agencies were conducted by *commissions d'épuration*. In September and October of 1944, within weeks of the liberation of Paris, each government agency created its own *commissions d'épuration* which investigated the agency's personnel based on the ordonnance of June 27, 1944[146]. This ordinance extended the group of persons who were to be subject to punishment.[147] In addition to members of the PPF,[148] RNP,[149] *Légion française des combattants*,[150] and the *Groupe Collaboration*,[151] the ordinance created four categories of offenses which were grounds for disciplinary action from unpaid leave of absence to removal from office. According to the ordinance, the commissions prosecuted former Vichy government employees and officeholders for the following offenses: 1. Supporting or privileging any enemy business or organization; 2. Undermining the war effort of France and its allies; 3. Attacking the constitutional institutions or preventing the public from exercising the fundamental rights and liberties; 4. Benefitting materially or attempting to benefit materially [from the collaboration].[152]

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[146] "Ordonnance du 27 juin 1944 relative à l'épuration administrative sur le territoire de la France métropolitaine," in: *Journal Officiel de la République Française* (Algier), July 6, 1944.
[147] François Rouquet, Fabrice Virgili, *Les Françaises, les Français et l'Épuration. 1940 à nos jours*, (Paris: Gallimard, 2018), p. 224.
[148] The French Popular Party led by Jacques Doriot – The Fascist and anti-Semitic French party which was considered ultra-collaborationist.
[149] The National Popular Rally led by Marcel Déat – heavily influenced by fascism, it was founded by formers members of France's Socialist Party SFIO.
[150] The *Légion française des combattants* was a Vichy veterans'organization charged with "regenerating the Nation by virtue of the example of the sacrifices of the war from 1914-1918."
[151] The *Groupe Collaboration,* chaired by the 1911 Prix Goncourt winner Alphonse de Chateaubriant, was an organization which sought foster a closer collaboration with Nazi Germany in the cultural and intellectual realm. It appealed to an elite audience by organizing discussion circles, hosting art exhibitions and book tours, etc. It published two journals and a weekly radio show and was financially supported by the German Embassy led by Ambassador Otto Abetz.
[152] "Ordonnance du 27 juin 1944 relative à l'épuration administrative sur le territoire de la France métropolitaine," in: *Journal Officiel de la République Française* (Algier), July 6, 1944.

François Rouquet et Fabrice Virgili argued that these legal definitions gave each commission considerable leeway in the prosecution and punishment. The Pétain-Hitler meeting in October of 1940 in Montoire sealed the collaboration between *l'État française* and the *Third Reich.* It *de facto* rendered the entire Vichy government, and everyone who worked for it, guilty of the charge of "having supported enemy enterprises of any sort"[153] stipulated by the ordinance from June 27, 1944. In reality, however, the dossiers of the *commissions d'épuration* showed that it frequently required a denunciation, sometimes by a colleague, charging the person with being a Vichy sympathizer, or "germanophile," "anti-Allié," "pro-nazi," or "anti-Français."[154] These charges related to pure questions of political opinion were the most frequent found in the dossiers. Less frequently, but vastly more egregious, were the charges related to actual actions sanctioned by the ordinance from June 1944: denunciations of the enemies of Vichy, the dissemination of propaganda, economic exploitation of the collaboration.

The Quai d'Orsay created its *commission d'épuration* on October 4, 1944. The commission, led by diplomats[155] who joined de Gaulle's *France libre* in London and who were thus proscribed by Vichy and had to be reinstated in 1944, sanctioned 83 of 506 Vichy diplomats. The sanctions ranged from forced retirement (14 cases),

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[153] "avaient favorisé les entreprises de toute nature de l'ennemie," Rouquet, Virgili, p. 224.
[154] Ibid, p. 226. Rouquet and Virgili argued that the charges that were brought forward by the épuration commissions continued in some cases work or social conflicts between institutions and/or individuals which predated the Vichy-regime. Rouquet and Virgili argued that some of these accusations were justified, while others were "the product of subjective interpretations from colleagues, from the disappointed [...]."; "le produit d'interprétations subjectives de collègues, de déçus, d'abus de langage [...]."
[155] The commission was led by Paul-Emile Naggiar (1883-1961), a career diplomate of the Third Republic who had been the ambassador to China and the Soviet Union in the 1930s before he was forced out by the Vichy government in 1940. He was reintegrated into the MAE after the liberation in October of 1944. See Jean-Marc Dreyfus, *L'impossible Réparation,* p. 57, p. 376.

unpaid leaves-of-absences (4 cases), to removals from office (65). 28 of the 61 Vichy ambassadors or ministers plenipotentiary were removed from office, two more forced into retirement – thus almost half of the highest-ranking Vichy diplomats. The percentages are much lower for consuls (11 out of 126 or 9%) and vice-consuls (11 out of 106 or 10%).[156] The total number of removals from office and forced retirements – 79 out of 506 or 15.6% – were situated on the lower end of the spectrum when compared to other government entities.[157] While these numbers show that postwar France confronted the Vichy past and attempted to cut ties with the most egregious of Vichy collaborators,[158] they are also evidence for a significant level of continuity: more than 84% of the Vichy-era diplomats continued to serve – this time as diplomats of the French republic.[159] This, of course, should not be surprising. The postwar French government was subject to the same pressures as its West German counterparts a few years later: to put in place an experienced diplomatic corps and a

[156] Ibid., p. 365.
[157] 12% of judges were purged; 60 % of prefects, while the other 40% were sanctioned with a preliminary sentence and a few were executed; 20% of the police force were purged; only 841 of the 18,500 military officers were purged, but all Vichy officers had to appear in front of tribunals and explain their actions during Vichy; ca. 75% of Vichy-era national representatives were barred from running for public office again; see Rouquet, Virgili, *L'Épuration*, pp. 209-226. The magisterial work on the épuration by François Rouquet and Fabrice Virgili provides an excellent and detailed history of the épurarion in France. However, their book fails to mention the Quai d'Orsay. Jean-Marc Dreyfus, without drawing on comparisons with other government entities, argued that the épuration at the Quai d'Orsay had been especially severe. Jean-Marc Dreyfus, p. 56.
[158] Two of the Quai d'Orsay's collaborators had also become subject to the rare ultimate punishment: execution after a death sentence as part of the judicial epuration. Pierre Laval and Fernand de Brinon, the ambassador to Nazi Germany, were executed in 1945 and 1947 respectively; see Jean-Marc Dreyfus, *L'impossible Réparation,* p. 56. These facts led Dreyfus to conclude that the epuration at the Quai were especially severe. However, when compared to the statistics found in Rouquet and Virgili, who did not even address the epuration at the Quai d'Orsay, the epuration had been – if anything – less severe than in other government entities.
[159] This number was further increased by the wave of amnesties in the late 1940s and early 1950s. Jean-Marc Dreyfus showed that approximately 40 of the sentences by the commission d'épuration were subsequently expunged or attenuated by amnesty decrees, further increasing the personnel continuity between Vichy and the postwar republics. See Jean-Marc Dreyfus, *L'impossible Réparation*, p. 57.

bureaucracy at home which was immediately capable to ensure that the country's interests are excellently represented abroad – after all, the country's international standing depended on it. However, the consequences of these personnel continuities between Vichy and the postwar republics remain largely unknown[160] – and this is the key difference to the (West) German case.

While Frederik Bozo's 2019 *La Politique Étrangère de la France dépuis 1945* mentioned that French foreign policy entered the postwar period with the baggage of the defeat in May and June of 1940, he failed to mention Vichy and the collaboration, but argued that the post-1945 French foreign policy continued logically de Gaulle's war-time diplomacy in London and Algiers.[161] In a similar vein, Geoge-Henri Soutou argued that after the end of Vichy, French foreign policy and the MAE began to restore the diplomatic concepts, methods and traditions of the Third Republic, with only one notable exception: the training of foreign service officers was not completed

[160] While the bibliography of Rouquet's and Virgilis 2018 most recent and most comprehensive work on the *épuration* and its long afterlife in France contains more that 550 titles covering subjects such as the gendarmerie (Marc Bergère, "L'Épuration administrative des officiers de la gendarmerie à la Libération") barristers (Liora Israël, "La défense accusée") or trade unions (Gilles Morin, "L'Épuration syndicale à la Libération") there is not one title which addresses the *épuration* and its consequences at the *Ministère des Affaires Étrangères*. Similarly, the work itself does not address it. Jean-Marc Dreyfus' work on the Quai d'Orsay raised the issue of the mutually exclusive priorities of the Provisional government in 1944: to ensure that the Quai d'Orsay, which had been a pillar of Vichy's collaboration with Nazi Germany, was purged of those responsible, while on the other hand ensuring that French diplomacy could be carried out by experienced staffers who could be tasked with supporting de Gaulle's foremost diplomatic goal, the restoration of France's "*rang*" in the world. He also pointed out the level of personnel continuity between Vichy and the postwar MAE. However, while provides an extensive bibliography on the German Foreign Office, its role during the Holocaust and the subsequent reestablishment in the FRG with all its problematic ties to the Nazi era, he does not provide such detail for the French case – because such a body of literature does not exist. French diplomatic historiography seems still unconcerned with the second line of inquiry regarding the continuity between Vichy and the postwar era.

[161] Frédéric Bozo, *La Politique Étrangère de la France depuis 1945* (Paris: Flammarion, 2019), p. 13f. "Surtout, la puissance française, en 1944-1945, est hypothéquée par le drame de la défaite de mai-juin 1940." [De Gaulle's objective, beginning with his flight into exile on June 18, 1940, was to restore the standing of France amongst the Great Powers]; "[a]ussi la politique étrangère d'après-guerre s'inscrit-elle, logiquement, dans la continuité de sa diplomatie du temps de guerre."

internally at the MAE but passed to the *École Nationale d'Administration* which was responsible for the education for most of France's administrative and political elite.[162]

My research points to a different conclusion. The MAE had been one of the most vocal internal French government supporters of the West German quest for the release of the Germans convicted for war crimes. As I will demonstrate, the Quai d'Orsay persistently lobbied other French government entities for the pardons and the release of Germans convicted of war crimes – almost exclusively by arguing that this release was conducive to Franco-German reconciliation. In addition to this reason, however, many of the 84% of the hold-over employees and diplomats from the Vichy-era may have had personal connections to some of the convicts, for instance to Otto Abetz, the Nazi German ambassador to Vichy France. Further research needs to be done to reveal whether in the French case, similar dynamics were at play as in the West German case when it came to the rehabilitation of the recent Vichy/Nazi era past. It is proven conclusively that the West German campaign for the release of the German convicts of war crimes in France was heavily influenced by diplomats and government bureaucrats who had a personal interest in pursuing the partial rehabilitation of the Nazi past. The evidence presented in this dissertation raises the question whether the history of the collaboration had a similar impact on the MAE's crucial support of the release of the German convicts of war crimes.

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[162] Georges-Henri Soutou, "La diplomatie française et les diplomates français entre tradition et réforme," in: Reiner Marcowitz, *Nationale Identität und transnationale Einflüsse. Amerikanisierung, Europäisierung und Globalisierung in Frankreich nach dem Zweiten Weltkrieg* (Munich: Oldenbourg, 2007), p. 107. Soutou writes that while moving the training of future diplomats away from the MAE to ENA diminished their knowledge concerning global questions, it better equipped them for their careers in non-traditional, technocratic fields such as the administration of atomic energy or the production of Coal and Steel in Europe.

Chapter Outline

This dissertation divides the period under investigation into two distinct eras. Part I introduces the politics of justice in the age of retribution from 1944 to 1949. Part II follows the arc of justice to its conclusion in the age of reconciliation from 1950 to 1963.

Chapter I introduces the political and judicial dynamics of the age of retribution. The chapter demonstrates that justice for the Nazi war crimes amounted to cornerstone in the reestablishment of the political legitimacy of the Fourth Republic after the Vichy regime. In particular, I discuss France's role at the Nuremberg trials and the emergence of a dominant French interpretation of the Vichy and Nazi past – what I call the Gaullist myth.

Chapter II presents the two laws governing the prosecution of the war criminals in France as important markers of the age of retribution. I demonstrate how French lawmakers prioritized punishment for crimes committed by the Nazis over fundamental republican legal principles – a decision which soon exposed the French war crimes justice to severe criticism which began to build a bridge between the age of retribution and the age of reconciliation and ultimately helped the effort to brand French justice as an act of vengeance rather than a legitimate and fair effort to serve justice.

Chapter III introduces the prosecution of the crimes committed at Oradour-sur-Glane as an important turning point between the age of retribution and the age of

reconciliation. Specifically, the prosecution of a French perpetrator in one of the most infamous war crimes, Paul Graff, as a French citizen, revealed the limits of the Gaullist myth in regard to bringing the perpetrators to justice and signaled the end of the phase of a French consensus on war crimes. The consensus which prioritized justice over reconciliation began to crumble with the case of Paul Graff.

Chapter IV brings this development to its logical conclusion. At the center of the chapter stands the 1953 Bordeaux trial of the Oradour massacre and the subsequent quest for the release of the German perpetrators and the effort to prevent the prosecution of those suspects who remained in freedom in West Germany. I show how the unequal treatment of the French and German convicts became a rallying cry for the critics of the French judicial reckoning with the Nazi crimes. The chapter argues that the failure of prosecuting the perpetrators of the Oradour massacre rested on the desire to protect Franco-German reconciliation by *de facto* privileging the perpetrators over the victims of the crimes of Nazism in France.

Chapter V shows how the competing notions of justice versus reconciliation became the subject of negotiations at the highest levels of government of West Germany and France. Adenauer, as well as many other West German government officials[163] linked the French reckoning with the Nazi crimes not to an attempt to punish the individual perpetrators of egregious crimes and serve justice for the victims of Nazism in France, but to a political justice designed to punish *the Germans*. I present the negotiations between Jean Monnet, the French chief diplomat

[163] Among these, the following stand out: Justice Minister Hans-Joachim von Merkatz, Ministerialdirigent and head of the Politische Abteilung in the Foreign Office Heinz von Trützschler, Consular Officer in the West German Embassy Edgar Weinhold and the director of the Central Protection Office (ZRS) Hans Gawlik.

in the Schuman-Plan negotiations, and his West German counterpart Carl Ophüls, as evidence as well as the *Natzweiler controversy*,[164] and the subsequent quest to obtain the release from prison of the Natzweiler "*Schutzhaftlagerführer*" Wolfgang Seuss, whose egregious crimes shocked the audience during the trial proceedings, as evidence how reconciliation forced France to tacitly accept this partial rehabilitation of the Nazi past as a necessary corollary. Seuss' pardon and release in particular evidences the impact of reconciliation on the dispensation of justice in France. The conclusion of this development, and its culmination, is the release of the last three war criminals, Oberg, Knochen and Ehrmanntraut, by de Gaulle on the eve of the signing of the Franco-German Friendship Treaty in 1963 over the vigorous protest of the victims of Nazism.

Discourse on Terminology – War crimes and crimes against humanity

The terminology utilized to describe the crimes of the Nazi regime can be very confusing. The scholarship in Germany today summarizes these crimes under the term "Nationalsozialistische Gewaltverbrechen" – "violent crimes of the Nazi regime."[165] However, these terms were not used in the time frame which is under investigation in this dissertation. The terms used then frequently and interchangeably were "war crimes" and "crimes against humanity." "War crimes" had been defined by

[164] The Natzweiler controversy is a political dispute regarding legal support for the prosecution of high-ranking SS personnel of the Natzweiler-Struthof concentration camp.
[165] As an example for the use of the term "Nationalsozialistische Gewaltverbrechen," see Edith Raim, *Justiz zwischen Diktatur und Demokratie – Wiederaufbau und Ahndung von NS-Verbrechen in Westdeutschland, 1945-1949* (Munich: Oldenbourg Verlag, 2013).

the Hague Convention from 1907 and by the Geneva Convention from 1929 and were therefore well established in international law. According to these two international doctrines, the legal category of war crimes was defined as:

1. Acts which violated the customs and rules of warfare were generally considered war crimes.
2. Hostile acts of non-belligerents (such as partisans, members of a resistance movement disguised as civilians.)
3. Espionage and high treason
4. Pillaging

Each country was competent to prosecute its own nationals for infractions. Each country was also competent to prosecute enemy combatants for aforementioned infractions if they were captured. A suspect could not be held responsible for having followed orders of his government. According to international law, only the government could be held responsible for these acts.[166]

After the emergence of crimes against humanity as a legal category in connection with the Nuremberg Trial, an important distinction between the former and war crimes emerged. Crimes against humanity could be perpetrated before the beginning of a war and did not have to be in the context of the waging of war at all, unlike war crimes. War crimes were perpetrated against persons, frequently, but not exclusively, war crimes were perpetrated at a specific time and a specific place by specific perpetrator against a specific victim, in connection with the waging of war. For instance, the London Charta of the IMT, in its definition of war crimes in Article 6

[166] Yveline Pendaries, *Le Procès de Rastatt, 1946-1954* (Bern: Peter Lang, 1995), p. 56f.

(b), mentions specific persons: hostages, POWs or persons on the seas, while the definition of crimes against humanity focuses on entire populations or large groups such as persons persecuted because of race or religion. A crime against humanity, as opposed to a war crime, had less of a spatial or temporal focus. Crimes against humanity were politically or racially motivated, they were almost exclusively perpetrated against civilian populations. The traditional, pre-World War II penal codices were ill-equipped for the prosecution of persons who committed crimes against humanity, since these crimes did not exist in common penal law, nor could they be charged with crimes prescribed by the Hague or Geneva conventions, since they were not simple violations of the customs and rules of warfare. Therefore, the international community had to create retroactive laws to bring those perpetrators to justice.[167]

The term "crime against humanity" was generally only entering international law in 1945, with the London Charta of the IMT. Before then, the lawmakers of the Allied nations attempted to subsume them under war crimes as well. The French ordinance from 1944 which laid the legal foundation for the prosecution of Nazi crimes in France did therefore not mention crimes against humanity and all French trials of Nazi crimes were war crimes trials. The prosecution may have mentioned crimes against humanity, as in the trial of Oberg and Knochen, but the judgement was entirely based on war crimes, which subsumed crimes against humanity.

[167] Pendaries, p. 57ff.

PART I – THE AGE OF RETRIBUTION, 1944 -1949

The age of retribution is defined by the construction and implementation of a justice which prioritized the exaction of punishment for wrongful acts committed by the Nazis. In the following three chapters, I show that France went to extraordinary lengths to prosecute the crimes committed by the Nazis. France submitted more names of suspects of war crimes to the United Nations War Crimes Commission than all other member states combined, and French lawmakers were willing to suspend fundamental republican principles in their quest to bring the perpetrators to justice. Chapter 1 opens with a discussion of the French role at the International Military Tribunal in Nuremberg. I show that the French approach at the IMT, the most high-profile war crimes trial, revealed the distinctly French elements of war crimes justice in the age of retribution. In chapter 2, I discuss the two laws which governed the prosecution of war crimes in France as important markers of the age of retribution. Chapter 3 follows with an analysis of the impact of the elements of the age of retribution on the prosecution of a suspect who had participated, even confessed to murder, in the massacre at Oradour-sur-Glane on June 10, 1944.

While this part demonstrates the importance of a consequential war crimes justice to the restored French republic, it also shows that the flaws of French retributive war crimes justice exposed it to criticism which conflated retribution with revenge or the desire for vengeance. These voices which increasingly began to insinuate that French retributive justice was personal, directed at the Germans or even

Germany as a whole, and not impartial and impersonal, became persuasive arguments in the age of reconciliation which is the subject of the second part of this dissertation.

CHAPTER 1 The French Reckoning with the Nazi Past at Nuremberg and at Rastatt

"History of the *épuration* has so far shown little interest in the prosecution of the German occupiers. For a long time, it was considered self-evident that the *épuration* had been and remained a Franco-French affair, sometimes even described as an *ersatz* civil war. Historiography reflects this: there is an abundant body of scholarship on the épuration, while the judgment of the crimes of the occupant is being neglected."[1]

This chapter introduces the French role at the Nuremberg Trial as a blue-print for the prosecution of Nazi crimes in France during the age of retribution. While the Epuration, the extra-judicial and judicial reckoning with the crimes of the Vichy Regime, over the decades continued to receive tremendous attention in French scholarship, it has largely ignored trials of the crimes of the German occupants, even Nuremberg,[2] limiting the term "Epuration" to the post-liberation retribution of Vichy's collaborators.[3]

The French prosecution of German war crimes consists of three theaters. First, the most extensive one, pertained to the prosecution of war crimes committed on French soil, which is the main topic of this dissertation. Over 2000 suspects were

[1] François Rouquet, Fabrice Virgili, *Les Françaises, les Français et l'Épuration, 1940 à nos jours* (Paris: Éditions Gallimard, 2018), p. 427. "L'histoire de l'épuration s'est jusqu'à présent peu intéressée au jugement des occupants allemands. Il est longtemps allé de soi que l'épuration avait été et demeurait une affaire franco-française, parfois même décrite comme un *ersatz* guerre civile. L'historiographie en témoigne, abondante sur l'épuration, rare sur le jugement des crimes de l'occupant."

[2] The first serious scholarly work on France at Nuremberg was the 1996 edited volume by Annette Wieviorka*, Les Procès de Nuremberg et de Tokyo* (Paris: Ed. Complexe, 1996).

[3] Rouquet/Virgili marked the first attempt to include the prosecution of the over 2000 Germans for crimes of war as part of the French reckoning with Vichy *and* the Occupation. However, the fact that 40 pages (out of a 820 page oeuvre) marked the first time that the war crimes trials are not entirely forgotten or relegated to the footnotes, speaks volumes about the relationship of French historiography to the case of German war crimes in post war France. The only exception to this rule is the case of Oradour and the Bordeaux-Trial. However, even the Oradour-Trial has been mostly discussed in French scholarship because of its domestic implications.

tried from 1944 to 1956, more than 60 death sentences were executed from 1945 to 1951. The French Republic crafted two laws[4] for the prosecution of these suspects. After the conclusion of the trials, the Federal Republic and the French Republic engaged in extensive negotiations which culminated in the pardoning of the last three war criminals in 1962, eight weeks before the Adenauer and de Gaulle concluded the Elysée Treaty. However, apart from this main theater of events which played out in French military tribunals in metropolitan France[5] and in negotiations between the French and West German governments, influenced by the amnesty lobby as well as victims‘ associations, there are two more important theaters which need to be discussed.

The second theater of French prosecution of German war crimes was the Nuremberg Trial in 1945 and 1946. France, as one of the four occupation powers in Germany, created and conducted the IMT at Nuremberg co-jointly with the U.S.A., Great Britain and the Soviet Union. While its influence on the trial was more limited than that of the other western powers, it does not justify the neglect it has received in scholarship.[6]

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[4] To be more precise: One is an ordinance and not a law, because it was passed by the Provisional Government in exile, and not by the National Assembly. While there existed an “Assemblée consultative provisoire,” the quasi National Assembly in exile under authority of the Free French state in Algiers, it only advised the Provisional Government and did not possess any legislative powers. The Provisional Government therefore governed via “Ordinances” which were similar to “Executive Orders” or Executive Actions” in the U.S.: “Ordinances” had the force of law, but they could be revoked by a new government at any time or by act of parliament.

[5] Metropolitan France designates France without its overseas possessions.

[6] See Antonin Tisseron, *La France et le Procès de Nuremberg: Inventer le Droit International* (Paris: Prairies ordinaires, 2014), p. 17; Tisseron summarized historiographical scholarship’s portrayal of Frances role at Nuremberg as purely symbolic, painting the image of a France for which participation alone was a success. Laurent Ducerf, the biographer of France’s chief prosecutor de Menthon, described the French role at Nuremberg as a “stratégie de présence.” See Laurent Ducerf, *François De Menthon. Un Catholique au Service de la République, 1900-1984* (Paris: Cerf, 2006), p. 322; cited in: Antonin Tisseron, *La France et le Procès de Nuremberg. Inventer le Droit International* (Paris: Prairies Ordinaires, 2014), p. 17.

The third theater was situated in Rastatt[7] in the French Zone of Occupation. French law allowed and allows, and as such it constitutes a rarity compared to other national criminal laws across the globe, for the prosecution of crimes committed against French citizens before French courts regardless of the location of the crime.[8] Thus, at Rastatt, France also prosecuted the war crimes and crimes against humanity committed against its citizens on German soil, such as slave labor, deportation, incarceration in concentration camps, and crimes in connection with the Holocaust. In the following chapter, I will discuss each of these two additional theaters as they are essential elements of the French reckoning with German war crimes in the age of retribution. The second chapter of Part I will then turn towards the war crimes trials in France itself and discuss the legal foundation whose premises were a fundamental element of the age of retribution and framed the dispensation of justice from which the age of reconciliation would then attempt to retreat.

[7] Rastatt is located at the outskirts of Baden-Baden, the headquarters of the French occupation authorities. It is also situated at the eastern banks of the Rhine River, which marked the border to France. Until 1939, Rastatt had been connected by bridge with the with the Alsatian town Seltz. However, it was destroyed in October of 1939 by the French army.
[8] Rouquet, Virgili, *Les Françaises, les Français et l'Épuration,* p. 428.

France and the Nuremberg Trial

The French delegation headed by the judge at the Parisian court of appeals Robert Falco[9] and supported by André Gros[10] arrived in London in June of 1945 to lay the groundwork for the trial and to negotiate the framework with the delegations of the other powers. The different war time experiences of their respective home nations led quickly to the formation of fault-lines between the British and American on one side and the Soviet and the French on the other. The American and British delegations wanted to focus primarily on crimes against peace and conspiracy to wage an aggressive war, while the Soviet and French delegations, whose territories were invaded and occupied by the Nazis, ranked war crimes first on their list of offenses they wanted to prosecute. The delegations negotiated in 15 sessions for almost two months, and on August 8, 1945, they signed the *Charter of the International Military Tribunal,* also known as the London Charter, which set the framework for the tribunal for the prosecution of the major war criminals at Nuremberg. The U.S. and British delegations succeeded in convincing their French and Soviet counterparts so that crimes against peace and conspiracy to wage an aggressive war were the first ones to be prosecuted. After these offenses, the Tribunal was to prosecute war crimes as desired by the French and Soviet delegations. In order to arrive at a more precise definition of war crimes, the four powers adopted a list of

[9]Robert Falco was born in 1882 into a Jewish family, the Vichy government terminated his employment as a judge at the court of appeals in Paris because of his Jewish background. See Annette Wieviorka*, Les Procès*, p.70.

[10] André Gros collaborated with René Cassin during the war in London as part of the French delegation at the UN War Crimes Commission. See Ann-Sophie Schoepfel, "Justice and Decolonization," in Kerstin von Lingen, *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945-1956* (Cham, Swisse: Palgrave, MacMillian, 2016), p. 178.

offenses derived from the deliberations of the UNWCC.[11] The long deliberations of the four delegations also centered around another group of offenses to be included in

[11] Article 6 of the London Charter listed the following offenses as war crimes: "Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity." See United Nations General Assembly - International Law Commission, *The Charter and Judgment of the Nürnberg Tribunal: History and Analysis Appendix II* (New York, 1949). The UNWCC list of offenses considered war crimes had been more specific and detailed, because it incorporated the post-WWI list drafted by the *Commission on the Responsibility of the Authors of the War and on the Enforcement Pénalités*. The UNWCC preferred this list, instead of a new list reflecting Nazi Germany's unique crimes, because it was legitimized by the fact that both Japan and Italy had been a member of the commission in 1919 and Germany, while not a member, had never objected to any of the listed offenses. To this list the UNWCC added one more item based on recommendations by the Polish delegation: "indiscriminate mass arrests for the purpose of terrorizing the population, whether described as taking of hostages or not". Below, please find the full list of 33 offenses which were described as war crimes, adopted by the UNWCC :

1. Murders and massacres; systematic terrorism.
2. Putting hostages to death.
3. Torture of civilians.
4. Deliberate starvation of civilians.
5. Rape.
6. Abduction of girls and women for the purpose of enforced prostitution.
7. Deportation of civilians.
8. Internment of civilians under inhuman conditions.
9. Forced labor of civilians in connection with the military operations of the enemy.
10. Usurpation of sovereignty during military occupation.
11. Compulsory enlistment of soldiers among the inhabitants of occupied territory.
12. Attempts to denationalize the inhabitants of occupied territory.
13. Pillage.
14. Confiscation of property.
15. Exaction of illegitimate or of exorbitant contributions and requisitions.
16. Debasement of currency, and issue of spurious currency.
17. Imposition of collective penalties.
18. Wanton devastation and destruction of property.
19. Deliberate bombardment of undefended places.
20. Wanton destruction of religious, charitable, educational and historic buildings and monuments.
21. Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.
22. Destruction of fishing boats and of relief ships.
23. Deliberate bombardment of hospitals.
24. Attack on and destruction of hospital ships.
25. Breach of other rules relating to the Red Cross.
26. Use of deleterious and asphyxiating gases.
27. Use of explosive or expanding bullets, and other inhuman appliances.
28. Directions to give no quarter.
29. Ill-treatment of wounded and prisoners of war.
30. Employment of prisoners of war on unauthorized works.
31. Misuse of flags of truce.

the charter: crimes against humanity, which were crimes not directly related to military operations and thus included offenses before the beginning of the war.[12] The London Charter also set two important precedents. First, and the French prosecution of German war crimes would at times collide with this precedent, the Charta stressed that the responsibility for the crimes was to be personal: "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility."[13] Second, superior orders may not be used as exculpatory justifications: Article 8: "The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires."[14] Beginning in 1947, these two provisions in the London Charta were utilized by supporters and opponents of France's war crimes trials program in the attempt to legitimize or undermine it. The delegations also agreed on a list of 24 high-ranking Nazi leaders which were to be prosecuted at Nuremberg as the major war criminals. The Charta was signed for the U.S.A. by Robert Jackson and for France by Robert Falco on August 8.[15]

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32. Poisoning of wells.
33. Indiscriminate mass arrests for the purpose of terrorizing the population, whether described as taking of hostages or not.

See United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: H.M. Stationary Office, 1948), 34f, 170ff.

[12] Article 6(c) of the London charter: "Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated." Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

The Nuremberg trial proceedings opened on November 20, 1945. Robert Falco received the appointment as alternate judge. Given his involvement in the negotiations for the London Charta, and his previous experience as a judge at the Parisian court of appeals, his appointment had been almost a natural choice. Falco had been a rare case of someone who brought a wealth of experience in jurisprudence, as a former attorney, prosecutor and judge and France's most important court of appeals, without being incriminated by the collaboration and the Vichy regime. In fact, the extend of the collaboration of the judiciary with the Vichy regime made it hard to find reliable judges for sensitive trials involving the crimes of occupation and the Vichy regime – another circumstance which set France apart from the other three Allied powers. As a Jewish judge at an appeals court, Falco had been dismissed by the Vichy regime in 1940 because his case fell under article 2 of the infamous "*loi du 3 octobre 1940 portant statut des Juifs.*" Falco wrote on November 15, 1940, to the Justice Minister Raphaël Alibert protesting his dismissal:

"In spite of the awareness of having to carry the heavy burden of defeat, I cannot help but say to you: Do you believe that proscriptions as general as those enacted by the "statute" are not fraught with inequities? Do you not think that they risk by their excess to go against the goal that they pursue? Indeed, do you not feel that this excess deeply hurts this sense of the statute, the nuance, the differentiation and the right balance which, through the changing regimes, remains the fabric of this French community from which I – with tremendous pain - will be expelled tomorrow?" [16]

[16] The quote was cited by André Rocca, Avocat-général près la Cour de Cassation, as part of the obituary delivered on October 3, 1960, on the occasion of the opening of the new court session. See "Discours prononcés par monsieur André Rocca à l'occasion des audiences solennelles de rentrée, année 1960." Published at https://www.courdecassation.fr/venements_23/audiences_solennelles_59/audiences_debut_annee_judiciaire_60/annees_1960_3337/octobre_1960_10453.html. Last access October 17, 2018. "En dépit de la conscience que j'ai des dures obligations de la défaite, je ne puis cependant m'empêcher de vous dire: croyez-vous que des proscriptions aussi générales que celles édictées par le « statut » ne soient pas lourdes d'iniquités particulières? Ne pensez-vous pas qu'elles risquent par leur excès d'aller à

In 1940, Falco was expelled from the French community because he was Jewish. In 1945, after the liberation, he became a perfect fit for the position of France's alternate judge at Nuremberg as someone with abundant experience in the judiciary *while* at the same time being beyond and above reproach.

The other position the French government had to fill was even more prestigious, since it was the job of the French principal judge. The French government appointed Henri Donnedieu de Vabres, who would be the only judge on the tribunal without any prior experience as a judge.[17] Despite this obvious shortcoming, he had been uniquely qualified to serve on the first international tribunal. Besides being one of France's preeminent jurists, he had focused on international penal law throughout his career. Since he joined the faculty of the law school at the Sorbonne in 1922, he became "the uncontested master of the international penal law" publishing two standard works on the topic*: Introduction à l'étude du droit pénal international* (Introduction to the study of international penal law) in 1922 and *Principes modernes du droit pénal international* (Modern principles of international penal law) in 1926. Outside of his permanent academic appointment in Paris, he also taught at the Hague Academy for International Law.[18] Furthermore,

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l'encontre du but qu'elles poursuivent ? Ne sentez-vous pas, en effet, que cet excès heurte profondément ce sens de la mesure, de la nuance, de la discrimination et du juste équilibre qui, à travers les régimes changeants, demeure la trame de cette communauté française dont je vais avoir l'immense douleur d'être demain écarté ?"

[17] Falco had been a judge at the Parisian Court of Appeals, the British and American judges had served as civilian judges prior to their appointment. The Soviet judges had experience as military judges during World War II.

[18] Donnedieu (1880-1952). See his obituary "Henri Donnedieu de Vabres" in *Revue de Science Criminelle et de Droit Pénal Comparé*, No. 1, 1952 (January-March), pp. 1-5. "[L]e maître incontesté du droit pénal international."

because he had been a member of the law school faculty rather than a magistrate or judge, Donnedieu's time during the occupation and Vichy has not been as incriminating. While there is insufficient research on Donnedieu's Vichy-era career,[19] he published a legal analysis of Vichy jurisprudence in 1942 which provides us with some information about his attitude towards the regime. Written at a time when it appeared that the Vichy regime might be there to stay, the work contains remarkable statements of candor and suggests anything but proximity to the regime. In the treatise, entitled *Le droit pénal de la guerre et de la Révolution nationale* (The Penal Law of the War and of the National Revolution) he condemned the new legislation of Vichy as a 'weapon of war' and argued that 'science and barbary were no longer the scandalous paradox of the past,' while pointing out the repressive spirit of the new laws. I consider these statements bold, especially since Donnedieu was not writing from the safe space of exile, but from his desk in German-occupied Paris.[20] With this background as one of France's outstanding scholar on international penal law, who had been advocating for the creation of international tribunals for the prosecution of war criminals at least a decade before, and with his Vichy-critical bona-fides, he became the French principal judge at the International Military Tribunal at

[19] There is surprisingly little about Donnedieu's role during Vichy. Before the war, he attended a 1935 conference at the invitation of Hans Frank (whom he ten years later sentenced as a war criminal at Nuremberg), later Governor-General of the *Generalgouvernement*. In his address in front of the *Bund Nationalsozialistischer Juristen,* he argued for the creation of an international tribunal for the judgment of war criminals. See Frank Neubacher, *Kriminologische Grundlagen einer Internationalen Strafgerichtsbarkeit : Politische Ideen- und Dogmengeschichte, Kriminalwissenschaftliche Legitimation, Strafrechtliche Perspektiven* (Tübingen: Mohr Siebeck, 2005), p. 168.
[20] See Yves Beigbeder, *Judging War Crimes and Torture: French Justice and International Criminal Tribunals and Commissions, 1940-2005* (Leiden: Martinus Nijhoff, 2006), p. 246; Henri Donnedieu De Vabres, *Deuxième Supplément au Traité Élémentaire de Droit Criminel et de Législation Pénale Comparée. Le Droit Pénal de la Guerre et de la Révolution Nationale, Septembre 1939-Mars 1942* (Paris: Librairie Du Recueil Sirey, 1942).

Nuremberg, which, at the age of 65, became the most prestigious and crowning achievement of his already distinguished career.

As chief prosecutor, France sent François de Menthon to Nuremberg. De Menthon was a central figure of the French reckoning with the collaboration and occupation. As France's first justice minister after the liberation in 1944 and 1945, he presided over the retributive phase of the Epuration, for which he became a frequent target of criticism from both the left and right. He resigned in the fall of 1945. Shortly thereafter, de Gaulle made him France's chief prosecutor at Nuremberg.[21] Edgar Faure, who as Justice Minister and Prime Minister in the 1950s would preside over the age of reconciliation, served as his deputy prosecutor.[22] The prosecution led by de Menthon suffered from very limited resources, both regarding personnel and material, reflecting the economic difficulties France itself was experiencing shortly after the war. It resembled more the Soviet prosecution than those of its Western Allies. In fact, the French and Soviet prosecution combined could only rely on half of the staff of the British prosecution, which numbered 168 persons.[23] On the other end of the spectrum, the U.S. prosecution, led by Robert Jackson, numbered 640 persons, including 150 lawyers.[24]

After the opening of the trial in November of 1945, the first two months were dedicated to crimes against peace and conspiracy to wage an aggressive war, followed by war crimes and crimes against humanity from January onward. The

[21] See Rouquet, Virgili, *Les Françaises, les Français et l'Épuration,* p. 436.
[22] Yves Beigbeder, *Judging War Crimes and Torture*, p. 248.
[23] Antonin de Tisseron estimated that the French delegation at its peak consisted of ca. 50 persons. See Antonin Tisseron, *La France et le Procès de Nuremberg*, p. 136.
[24] Yves Beigbeder, *Judging War Crimes and Torture*, p. 247.

French prosecution under de Menthon had been tasked with the principal responsibility to conduct the prosecution of these two accounts for crimes committed in Western Europe (France, Norway, Denmark, the Netherlands, Belgium, Luxembourg) – which also included crimes related to the Holocaust.[25]

On January 17, 1946, chief prosecutor de Menthon delivered his opening address to the tribunal, and he immediately proceeded to engage in the selective tradition of interpreting the past.[26] He viewed the recent past exclusively through the prism of the Gaullist myth of *La France résistante,*[27] assigning only two properties to the French during the war: heroism, as members of the resistance, or martyrdom as victims of Nazi German persecution. Unsurprisingly, he remained completely silent about Vichy and the collaboration.[28] Within the first five minutes of his address, he stressed that France had become the victim of aggression by "German imperialism" twice within the last 30 years, a view which lumped World War I and World War II together akin to de Gaulle's thesis of the Second Thirty Years War (1914-1944).[29]

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[25] See Annete Weinke, *Die Nürnberger Prozesse* (München: C.H. Beck, 2006), p. 49.
[26] I have borrowed the term 'selective tradition' from Jeffrey Herf. See Jeffrey Herf, *Reactionary Modernism. Technology, Culture, and Politics in Weimar and the Third Reich* (Cambridge: Cambridge University Press, 1984), p. 122.
[27] De Menthon's reiteration of the Gaullist myth was also noted by Michael Marrus. See Michael R. Marrus, *The Nuremberg War Crimes Trial 1945–46, A Documentary History* (Bedford Books, Boston/New York, 1997), p.88.
[28] Again, the French prosecution compares better to the Soviet than the British and U.S. prosecution. The Soviet prosecution also engaged in the selective tradition of interpreting history in order to smooth over many acts of complicity with Nazi Germany, beginning with the Ribbentrop-Molotov Pact.
[29] In a radio address from London in 1941, de Gaulle declared: "La guerre contre l'Allemagne a commencé en 1914. Le traité de Versailles n'avait en fait rien terminé. Il n'y a eu, de 1918 à 1936, qu'une suspension d'armes, au cours de laquelle l'ennemi refit ses forces d'agression [...] En réalité le monde fait la guerre de trente ans, pour ou contre la domination universelle du germanisme [...] Quant à l'avenir, nous en répondons. Ã mesure que les peuples libres, dont depuis 1914, la France fut l'avant garde, parviendront à l'affranchir, nous répondons de son effort guerrier qui ne cessera pas de grandir jusqu'à devenir, sans doute, décisif." See Charles de Gaulle, *Discours et messages. Vol. 1, Pendant la Guerre, 1940-1946* (Paris: Plon, 1970), p. 102f, cited in: Annette Becker, Henry Rousso, "D'Une Guerre l'Autre," in: Stéphane Audoin-Rouzeau et. al. (eds.), *La Violence de Guerre 1914-1945: Approches Comparées Des Deux Conflits Mondiaux* (Bruxelles: Editions Complexe, 2002), p. 20.

This view also shared similarities with the interpretation of World War II as the climax of the cycles of war and vengeance between the two "arch enemies" which Robert Schuman adhered to – albeit they drew different conclusions from this interpretation.[30] De Menthon also argued that the French people mounted a "popular uprising," after being only "temporarily crushed by superiority in numbers, material, and preparation," to the "Nazi invader" because the "Hitlerian dogmas [...] were in absolute contradiction to their traditions, their aspirations, and their human calling." In this part of his address, de Menthon selectively produced a heroic narrative of French history during World War II, turning it into a Manichean struggle between the forces of evil, personified by Nazi Germans, on one side, and the French forces for good, which were endowed with French republican values: democracy, liberty and human progress. Finally, de Menthon also referred to the martyred France, the France "which was systematically plundered and ruined; [...] whose sons were tortured and murdered in the jails of the Gestapo or in concentration camps; [...] which was subjected to the still more horrible grip of demoralization and return to barbarism diabolically imposed by Nazi Germany." It was in the name of this France, that de Menthon asked the tribunal "that justice be done."[31]

The crescendo of de Menthon's address on the heroic and martyred France, a nation of resisters and martyrs, was the following sentence: "France, so often in history the spokesman and the champion of human liberty, of human values, of

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[30] Robert Schuman's conclusion was not retributive justice but leniency, believing that one must not punish but seduce Germany to control it. See Raymond Poidevin, *Robert Schuman, homme d'Etat, 1886-1963* (Paris: Imprimerie Nationale, 1986), p. 221.

[31] International Military Tribunal, *Trial of the Major War Criminals Before the International Military Tribunal*, *Nuremberg, 14 November 1945-1 October 1946* (Nuremberg, Germany: Government Publishing Office, 1947), p. 367.

human progress, through my voice today also becomes the interpreter of the martyred peoples."

The minutes from the Nuremberg Trial did not record any reaction from Robert Falco, who in 1940, had been dismissed by the Vichy regime solely because he was Jewish, and who, as the French alternate judge, had been seated just a few feet away from the lectern from which de Menthon was giving his address. It is instructive that de Menthon, who merely weeks prior had presided over the retributive phase of the Epuration, now presented the image of a France unified as martyrs of and resisters to Nazi Germany. De Menthon understood that the Nuremberg Trial offered France the chance for an externalization of its own internal discord. By stressing Nazi German responsibilities for all evil which befell France, de Menthon helped reunify a country torn apart by internal strife by forging a French identity as victims of German crimes. This constituted a cornerstone of the age of retribution: each French trial vis-à-vis German suspects of war crimes offered the opportunity to put these dynamics of French victimhood or heroism and German perpetration on display, thus supporting the trajectory of French unification through externalization. Many of the trials before the Schuman-Plan represented the chance to present a local version of de Menthon's "France [...]through my voice today also becomes the interpreter of the martyred peoples" address.[32]

In addition to his silence concerning Vichy and the collaboration, de Menthon's opening speech also set a precedent for the importance of the Holocaust to

[32] After 1950, the trials' implication to French interests started to shift. Far from providing unity, they began to form a detrimental meaning, both internally (because of French participation in war crimes), as well as externally, because West Germany regarded the trials as a continuation of the arch enmity between the two countries. This will be discussed in chapter III.

the French prosecution. The Holocaust, considered part of the charges of "crimes against humanity," was part of the French prosecutions legal jurisdiction in the trial. De Menthon mentioned the Holocaust of European Jewry only fleetingly in his speech.[33] Annette Weinke[34] argued that the French prosecution deliberately attempted to marginalize the persecution of Jews because of the extend of the involvement of French authorities in the preparation and execution of the Holocaust in France – what Rousso aptly called the Vichy Syndrome.[35] It is remarkable, however, that one of the victims of Vichy's anti-Semitism, Robert Falco, was sitting a few feet away. It is not known whether Falco disapproved of the attempt to marginalize the Shoah.[36] The assistant U.S. prosecutor Telford Taylor, for instance, noted a "jarring omission of reference to Jews and the Holocaust" in de Menthon's speech, but only did so four decades later. On January 17, 1946, the absence of the Holocaust in the French prosecution's case did not raise his suspicion.[37]

The French Prosecution at Nuremberg under de Menthon and his successor was heavily influenced by a particular view on Germany and the Germans which had

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[33] The first instance: "It is also known that racial discriminations were provoked against citizens of the occupied countries who were catalogued as Jews, measures particularly hateful, damaging to their personal rights and to their human dignity." The second instance: "The leaders of National Socialist Germany received other warnings [that they will be prosecuted for the crimes they committed]: I refer to [...] the second inter-Allied declaration of 17 December 1942. The latter was [...] after receipt of information according to which the German authorities were engaged in exterminating the Jewish minorities in Europe." See International Military Tribunal, *Trial of the Major War Criminals Before the International Military Tribunal*, *Nuremberg, 14 November 1945-1 October 1946* (Nuremberg, Germany: Government Publishing Office, 1947), pp. 411, 413.

[34] Annete Weinke, *Die Nürnberger Prozesse* (München: C.H. Beck, 2006), p. 49.

[35] Henry Rousso, *The Vichy Syndrome: History and Memory in France Since 1944* (Cambridge, Mass.: Harvard University Press, 1994).

[36] In his diary, he wrote only in general terms of de Menthon's address: approving its content "un travail excellent" and criticizing its delivery: "une voix et une diction médiocres." See Robert Falco, Jeanne Falco, and Guillaume Mouralis. *Juge À Nuremberg: Souvenirs Inédits Du Procès Des Criminels Nazis* (Nancy: Arbre bleu éd, 2012), p. 73.

[37] Telford Taylor, *The Anatomy of the Nuremberg Trials*. *A Personal Memoir* (New York: Knopf, 1992), p. 296

developed under the influence of the war of 1870/1 and continued to increase in influence during World War I and the rise of the Nazis. This view had an impact on the type of justice sought by France. It was what Martin Strickmann[38] had described as "eternal Germany" – a view on Germany that emerged as a consequence of the 1870/1 conflict and was projected back into time: an incorrigibly revanchist, aggressive, militaristic, Prussian dominated Germany which composed a threat to the security of republican, liberal and democratic France. In this view of Franco-German relations of the past centuries, Nazi Germany constituted the climax of a centuries-long development.[39]

The principal representative of this view had been Edmond Vermeil – a Germanist and historian by training who taught German history and "civilisation" at the university of Strasbourg from 1919 until 1933 and at the Sorbonne from 1933 on. Under the influence of the First World War, Vermeil understood himself as "distrustful" and "vigilant" Germanist who saw his task as an intellectual guardian staffing a "semi military watch tower at the banks of the Rhine."[40] He attempted to explain - and after 1933 warn of - Germany to the French and in the process formed the image of two generations of French,[41] his work was as influential for the French view on Germany of the mid 20th century as Madame de Staël's *De l'Allemagne* had

[38] Martin Strickmann, *L'Allemagne Nouvelle contre l'Allemagne Éternelle, Die Französischen Intellektuellen und die Deutsch-Französische Verständigung 1944-195, Diskurse, Initiativen, Biografien* (Frankfurt am Main: Lang, 2004), p. 16.
[39] This view shows some commonalities with the Sonderweg arguments, although the Sonderweg thesis was foremost an argument made after World-War II.
[40] Katja Marmetschke, *Feindbeobachtung und Verständigung: Der Germanist Edmond Vermeil (1878-1964) in den Deutsch-Französischen Beziehungen* (Köln: Böhlau, 2008), p. 500.
[41] See Kim Christian Priemel, *The Betrayal: The Nuremberg Trials and German Divergence* (Oxford, United Kingdom: Oxford University Press, 2016), p. 45.

been for the French of the early 19th century. [42] In his landmark 1940 book *L'Allemagne. Essai d'Explication*[43] he constructed a narrative which projected the emergence of the Nazi dictatorship back in time, or as Priemel argued "which told the history of the thousand-year Reich in reverse."[44]

His arguments resembled, although predating it by decades and he did not use the term, the German Sonderweg –- a special illiberal path to modernity, a rejection of both Western and Eastern civilization culminating in the Nazi dictatorship.[45] This deviation from the Western path of civilization already began in the 16th century with the Protestant Reformation and its idea of statehood as a divine institution.[46] The pangermanism[47] unleashed after 1815 and utilized by the Prussian dominated Germany under Bismarck and William II continued this "German attack on humanism" and inevitably culminated in *völkisch* ideology of Nazi Germany.[48] He also constructed a cliché of a typical German, who was politically and psychologically immature, even infantile and did not possess any "exact sense of reality. The clear vision of things, the meaning and the safety of judgment are all too

[42] Marcel Tambarin, "L'Allemagne d'Edmond Vermeil. Une Tentative d'Explication Totale," in: Philippe Alexandre, *Culture et Humanité. Hommage à Elisabeth Genton*, (Nancy: Presses Universitaires de Nancy, 2008), p. 322.
[43] Edmond-Joachim Vermeil, *L'Allemagne. Essai d'Explication* (Paris: Gallimard, 1940). Vermeil's work was published only weeks before the invasion by Nazi Germany. Wanted by the Gestapo, Vermeil fled Paris to the unoccupied zone and eventually joined de Gaulle in London.
[44] See Kim Christian Priemel, *The Betrayal*, p. 45.
[45] Marcel Tambarin astutely pointed out the similarity between Vermeil's 1940 description cited above, and Heinrich August Winkler's 2005 book *Der lange Weg nach Westen*, in which he described Nazi Germany as the climax of Germany's revolt against the Occident. See Tambarin., p. 336.
[46] Luther's reformation, according to Vermeil, "annonce la rupture avec la pensée occidentale." Vermeil, *Allemagn*e, p. 75.
[47] Ibid., p. 197.
[48] See Tambarin, p. 97.

often lacking" [49] which rendered the Germans completely unable to govern themselves. [50]

Vermeil concluded that

> Germany's present attitude is not a novelty [...] On the contrary, it is the result of a long historical process [...] the Nazi tradition is only a degeneration of the German intellectual tradition. In the same way, the psychology of the normal Nazi stresses and exaggerates the features of the Bismarckian or Wilhelmian German [...] It is therefore advisable to declare a grand style offensive against the entire spiritual, moral and political tradition of the Prussian-German imperialism. [51]

His work, written at the eve of the German invasion, stood under the star of his political activism against Nazism and was his attempt to mobilize the French against the threat from across the Rhine.[52]After the liberation, Vermeil's 1940 book, most copies of which had been destroyed by the Nazis in September of 1940,[53] was published again in liberated France and received renewed attention. World War II seemed to be the inevitable climax of the pangermanism described by Vermeil in 1940 – and Nazi Germany itself seemed the brutal climax of "Prussianisme" with its

[49] Vermeil, *Allemagne*, p. 425. He [the German] does not possess any "sens exact de la réalité. La vision claire des choses, le sens et la sûreté du jugement lui font trop souvent défaut."
[50] Vermeil, *Allemagne*, p. 45. Tambarin, p. 97. Whether this could be seen as a historical justification of the French argument against U.S. and UK. plans of restoring German sovereignty remains to be investigated.
[51] Vermeil, *Allemagne*, pp. 31, 290ff; "L'attitude présente de l'Allemagne n'est pas une nouveauté [...] Elle est au contraire, le résulte d'un long processus historique [...] la tradition nazie n'est qu'une dégénérescence de la tradition intellectuelle de l'Allemagne. De même la psychologie du Nazi normal souligne et grossit démesurément les traits de l'allemand bismarckien ou wilhelmien [...] Il convient [...] de prononcer une offensive de grand style contre toute tradition spirituelle, morale et politique de l'impérialisme prusso-allemand."
[52] Katja Marmetschke, *Feindbeobachtung und Verständigung: Der Germanist Edmond Vermeil (1878-1964) in den deutsch-französischen Beziehungen* (Köln: Böhlau, 2008), p. 504f.
[53] See Tambarin, p. 321.

emphasis on "discipline, subjection and obedience." [54] His conclusion that "organized in a nation-state, the Germans are unbearable"[55] supported the French position after World War II that it was best to divide Germany into a host of small confederate states without a central government at the national level. Vermeil had joined de Gaulle in exile and during and after the war advised the provisional government in important political decisions regarding Germany. In 1946, he became influential in shaping France's occupation policy – especially the re-education policy in the French Zone of Occupation (FZO). [56]

Just prior to his appointment in the FZO, however, he also occupied an important position at the nexus of justice and reconciliation, since he significantly shaped, as an advisor to the French prosecution under de Menthon, the French prosecution of war criminals at Nuremberg. He submitted to de Menthon a 30 page study on German history which summarized his theses from *L'Allemagne, Essai d'excplication* and informed de Menthon's view during the trial. Furthermore, it was Vermeil who together with the Lyonnais legal scholar Suzanne Bastid drafted de Menthon's opening statement – which shaped the French prosecution. Vermeil's pessimism, guided by the realization that the German people have "adhered almost entirely to Hitlerism"[57] turned the French prosecution into an indictment of the eternal Germany which the Nuremberg trial sought to help eradicate. De Menthon's

[54] Vermeil, *Allemagne*, p. 211; Nazi Germany as the climax of Prussianism with an emphasis on "discipline, sujétion et obéissance."
[55] Vermeil, *Allemagne*, p. 428; Vermeil concluded that "organisés en nation, les Allemands sont insupportables."
[56] Jacqueline Plum, *Französische Kulturpolitik in Deutschland 1945-1955: Jugendpolitik und Internationale Begegnungen als Impulse für Demokratisierung und Verständigung*. (Wiesbaden: Deutscher Universitäts-Verlag, 2007), p. 29-32.
[57] Vermeil, *Allemagne*, p. 448; Vermeil's pessimism was based on the realization that the Germans have "adhéré presqu'en totalité à l'Hitlérisme."

prosecution rested on the premise of *la France martyr* which, according to Tisseron, put "German barbarism [and] a people considered responsible for too many wars" on trial. Neither the Jewish fate nor German victims fit into this picture.[58] This view on Franco-German relations as a struggle between the liberal, republican France, and the pangerman, militaristic, aggressive Germany which lasted for centuries would also be influential to the conclusion of the "war criminals problem."[59]

Since the West German government, starting in the late 1940s and culminating in the 1950s, convinced Schuman, de Gaulle and others that the continued prosecution and incarceration of the German war criminals was just a continuation of this eternal arch-enmity and which would only strengthen a German revanche, which Vermeil understood as the "eternal German" trait, the argument to discontinue the war crimes trial program and end the incarceration seemed to support an "Allemagne nouvelle"[60] symbolized and represented by the anti-Nazi West German state leaders Konrad Adenauer and Theodor Heuss, liberal, democratic and oriented towards the West. Schuman saw in Adenauer and the West German state a singular chance to break once and for all with the "eternal Germany" in favor of a

[58] Tisseron, p. 365. Despite de Menthon's concept of the eternal Germany, other considerations coexisted within the French prosecution, sometimes in uneasy tension. René Cassin and André Gros regarded the Nuremberg trial as a chance to project the French concept of international law and justice without vengeance, as well as a desire to construct a lasting peace while guaranteeing French security, while de Menthon, according to Tisseron, wanted to try "la barbarie allemande, [and] un peuple considéré comme responsable de trop de guerres."

[59] "Das Kriegsverbrecherproblem" was a term frequently utilized in West German sources at the time and symbolized the attitude of the West German administration towards war crimes trials.

[60] It is more than symbolic that Edmond Vermeil became one of the founding members of the *Comité Français d'Échanges avec l'Allemagne Nouvelle* which promoted the formation of a pluralistic, democratic Germany and staunchly supported Adenauer's *Westintegration.*

new Germany, and he was willing to go to considerable lengths to support Adenauer's government and its course of European integration.[61]

Informed by Vermeil, de Menthon and the Gaullist interpretation the French prosecution for the next two months presented meticulous evidence on the horrendous crimes committed by the Nazis in Western Europe. It drew on thousands of documents and eleven defense witnesses. Befitting the lack of emphasis on the Jewish suffering, the only Auschwitz survivor the prosecution called upon was a member of the communist resistance.[62] After initially drawing national attention to the crimes committed by the Nazis, the attention paid to the trial dropped off. The trial's meticulous, detailed oriented, yet slow progression – almost eleven months of hearings until the verdict was announced on October 1, 1946 - seemed not conducive to generating much of a public interest. All of these efforts, according to Rouquet and Virgili, solicited very little reaction in the French public. Only those last two weeks, from the announcement of the verdict until the execution of the ten of the eleven convicts who had been condemned to death (Göring committed suicide to prevent his execution) generated a large public interest again.[63]

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[61] In November of 1949 already, a mere few weeks into Adenauer's chancellorship, François-Poncet, the French High Commissioner in Bonn, realized that Adenauer's pro-Western ideas constituted a rare opportunity for France. He cabled to Schuman, who as French Foreign Minister was his superior: "Il faut que les Français aident Adenauer." See MAE, Archives Diplomatiques, 178QO/371 (EU 49-60/Allemagne 371, Letter of François-Poncet to Commissariat Général des Affaires Allemands et Autrichiens, dated 26. August 1949.

[62] The witnesses included two French communist members of the resistance who had been deported to concentration camps (Auschwitz, Buchenwald, among others), one French POW who had been deported to concentration camp and one POW who testified about the murder of French POWs in a Stalag (Rawa Ruska in Galicia), a Norwegian resistance fighter, who was incarcerated at Natzweiler as part of the *Nacht-und-Nebel-Befehl* and testified about the atrocities in the gas chamber at Natzweiler, including the medical experiments on Romani inmates. See Rouquet, Virgili, p. 437.

[63] Rouquet, Virgili, p. 438.

After the public hearings concluded in the summer of 1946, the judges began to deliberate *in camera*. During the public hearings from November 1945 through the summer of 1946, Donnedieu de Vabres and Falco remained largely silent. However, during the internal deliberations of the panel of judges,[64] which started in early summer of 1946, Donnedieu de Vabres developed an exceptionally lenient legal outlook concerning the major war criminals. He introduced a memo suggesting that count one of the indictment, participation in a common plan or conspiracy for the accomplishment of a crime against peace, be struck down by the judges. He justified this motion by arguing that, first, it was a charge unknown in international law. Second, the conspiracy charge necessitated a level of equality among Nazi Germany's leadership and among the defendants, which, according to Donnedieu, it did not attain. He argued, according to his French colleague Falco "obstinately,"[65] that the evidence showed that Hitler dominated the planning stages of the war, and that no common plan existed. The other participants who followed his orders and thus helped to unleash the war could be charged for criminal accessory, but not for the main count, according to Donnedieu. This view *de facto* mirrored the line of arguments of

[64] The deliberations *in camera* were conducted in secret, and the information we have about them were relayed through memoirs of the participants and memoirs of those close to the participants and should therefore be treated carefully. The following participants published memoirs: Telford Taylor (U.S. Prosecutor responsible for the prosecution of the German High Command): *The Anatomy of the Nuremberg Trials* (New York: Knopf, 1992); Edgar Faure (Deputy Prosecutor): *Mémoires II, "Si tel doit être mon destin ce soir..."* (Paris: Plon, 1984); Robert Falco's memoir has been published in 2012: Roberto Falco, J*uge à Nuremberg. Souvenirs inédits du procès des criminels nazis (1945–1946)* (Nancy: Arbre bleu éditions, 2012). The American Judge Francis Biddle left notes and papers at the University of Syracusae which provided an account of the deliberations of the judges. His notes were first analyzed by Bradly F. Smith in: *Reaching Judgment at Nuremberg* (New York: Basic Books, 1977).

[65] Falco, Nuremberg, p. 150. Falco wrote that he disagreed with Donnedieu. One of the rare cases where he stressed his disagreement with Donnedieu.

the defense and is problematic. The argument that the defendants could not have been conspiring because the Nazi apparatus lacked equality essentially meant that the defendants were simply following orders. However, the London Charta, Article 8, specifically excluded the defense argument of having followed superior orders as a reason for exculpation,[66] a fact which the other judges utilized to reject Donnedieu's motion.[67]

Donnedieu's motion also questioned whether the conspiracy count served any practical purpose, since those convicted of count one would also be guilty of count two, the waging of an aggressive war, and many if not all were guilty of war crimes and crimes against humanity. Donnedieu's motion was opposed by the other judges, with the exception of possibly U.S. primary judge Francis Biddle, who unsuccessfully attempted to broker a compromise. The other judges accused him of 'raising the wrong issue at the wrong time.' [68] This episode was first revealed when Francis Biddle's papers were discovered and confirmed by Robert Falco's memoir published posthumously in 2012.[69] Donnedieu's opposition to the "conspiracy" charge, which is based on a form of collective responsibility,[70] and which was not known until many

[66] In fact, Donnedieu's position on the validity of "superior orders" as a defense argument was also in conflict with the majority position of the tribunal. He argued later that the "superior orders" defense should be accepted if the defendants were lacking real moral choices, however, not necessarily with exculpatory powers, but as contributory evidence establishing lack of moral choice. See Yoram Dinstein, *The Defence of "Obedience to Superior Orders" in International Law* (Leyden: A.W. Sijthoff, 1965), p. 151.
[67] George Ginsburgs and V.N. Kudriavtsev (eds.), *The Nuremberg Trial and International Law* (Dordrecht: Martinus Nijhoff Publishers, 1990), p. 144.
[68] See Yves Beigbeder, *Judging War Crimes and Torture*, p. 252.
[69] Falco, Nuremberg, p. 150.
[70] "With regard to conspiracy, it should be noted that the concern is less with the inchoate crime than with conspiratorial liability, whereby co-conspirators can be made equally liable for acts done in furtherance of the criminal conspiracy. [...] aspects of these criminal liability models may conflict with the *nulla poena sine culpa,* the principle that persons may be punished only for crimes for which they are personally culpable." See Shane Darcy, *Collective Responsibility and Accountability under International Law* (Leiden, The Netherlands: Brill, 2007), p. 198.

decades later, helps explain his opposition to the French law of 1948 which introduced collective responsibility for the purpose of prosecuting German war crimes in France, utilizing the Nuremberg Judgment as a precedent. Given that Donnedieu had been the French judge at Nuremberg, his opposition to the law of 1948 lent an enormous amount of credibility to the critics of French war crimes trials in general. Donnedieu unwillingly became a character witness for Nazi apologists like Erich Schwinge,[71] a fact which belatedly confirmed the earlier warning from the other judges that his opposition to conspiracy had been 'the wrong issue at the wrong time.'[72]

When the tribunal moved on to deliberate on count two, the waging of an aggressive war, Donnedieu once again stirred a controversy within the panel of judges – and once again supported a more lenient dispensation of justice than the other judges. The other three voting judges[73] wanted to count each attack by Nazi

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[71] Donnedieu de Vabres, although posthumously and involuntarily, became character witness to Alfred Jodl, in his posthumous rehabilitation trial in front of a Munich *Spruchkammer* in 1953. The *Spruchkammer*, in a scandalous decision, declared Jodl posthumously *"not guilty*" and ordered the state of Bavaria to return Jodl's assets to his widow. The decision was partially based on an affidavit by Erich Schwinge, which declared that Donnedieu de Vabres had told him in 1949 that the verdict on Jodl – death by hanging – had been a mistake. The Jodl's exculpation by the Munich denazification court caused an uproar and precipitated U.S. intervention. The Allies were worried that the Munich *Spruchkammer* decision would set a dangerous precedent which could cause an avalanche of legal challenges to the Nuremberg verdicts in German courts. After the U.S. High Commission intervened, the Bavarian state government rescinded the rehabilitation verdict. See Alaric Searle, *Wehrmacht Generals, West German Society, and the Debate on Rearmament*, 1949-1959, (Westport, Conn.: Praeger, 2003), p. 234. The Schwinge affidavit is cited by Eugene Davidson, *The Trial of the Germans: An Account of the Twenty-Two Defendants Before the International Military Tribunal at Nuremberg* (Columbia, Mo.: University of Missouri Press, 1977), p. 363; Davidson's source was the *Archiv des Instituts für Zeitgeschichte* which held copies of the *Haupt-Spruchkammerverfahren Jodl*. While Davidson's account of Nuremberg was problematic because of his tendency to over-emphasize the criticisms of the trial and to treat the defendants benevolently, the portrayal of Donnedieu is believable because it has since been corroborated by other sources, including Robert Falco's memoir published in 2012. According to Falco, Donnedieu had cast the only vote against the capital punishment for Jodl. See Falco, Nuremberg, p. 155.

[72] See Yves Beigbeder, *Judging War Crimes and Torture*, p. 252.

[73] Only the principal judges had voting rights. The alternate judges were participating in all hearings and deliberations but did not possess the right to vote.

Germany individually, while Donnedieu argued that each campaign after the attack on Poland in 1939 followed inevitably once the war had begun. The other judges rejected Donnedieu's motion, and each attack was listed individually in the final judgment.[74]

Furthermore, Donnedieu also proved to be the most lenient judge when it came to the vote for a verdict on each defendant. He was the only judge who voted against the death sentence for Alfred Jodl, the ex-Chief of the Operations Staff of Wehrmacht's High Command (OKW). He wanted Wilhelm Keitel, the former Chief of the OKW, on grounds of his military career, to be sentenced to death by firing squad, considered a more honorable death than by hanging. For Alfred Rosenberg, the former Reich Minister for the Occupied Eastern Territories, Donnedieu again proved himself the only judge who wanted to spare his life, opining that as a Reichsleiter he had "been dominated [...], without being able to unshackle himself, by Himmler and his Gestapo"[75] The same applied to Hans Frank,[76] Wilhelm Frick[77], and Arthur Seyss-Inquart:[78] only Donnedieu voted against their death sentences because he doubted that they had much agency. While he initially voted, both in Hjalmar Schacht's and Fritzsche's case, for a prison sentence, he reversed his vote a day later, to acquittal, because he believed if von Papen was acquitted, then these two defendants deserved an acquittal, too. In fact, Donnedieu wanted to sentence von

[74] Ginsburgs, Kudriavtsev (eds.), *The Nuremberg Trial and International Law*, p. 145.
[75] Falco, *Nuremberg*, p. 154. Here again, Donnedieu's motif for sparing Rosenberg's life was akin to the "following superior orders" defense of the defendants; Donnedieu argued that Rosenberg had "été dominé[...], sans pouvoir s'en affranchir, par Himmler et par sa Gestapo."
[76] Hans Frank served as the Governor-General of the General Government of Occupied Poland.
[77] Whilhlem Frick occupied, among others, the post of Reich Minister of the Interior between 1933 and 1943.
[78] Arthur Seyss-Inquart served first as Hans Frank's deputy and then as *Reichskommissar* for the Occupied Netherlands.

Papen to five years in prison, according to Falco not because of "his deeds than his immorality." Von Papen had been the only defendant for whom Donnedieu had proposed a harsher sentence than the majority of the judges.[79]

On one important issue, however, Donnedieu showed that he was capable of deviating from his generally lenient approach when compared to the other judges. Francis Biddle, the U.S. principal judge, submitted a motion to throw out the declaration of criminality of a number of Nazi organizations. Donnedieu, who in an earlier deliberation had attempted to convince the court of the illegitimacy of the 'conspiracy charge' on the grounds that it constituted in his view a form of collective responsibility, this time was supporting the declaration of criminality. What caused this change of opinion? Bradley Smith recorded that Donnedieu

> found that it was simply impossible for him to vote to exempt groups such as the Gestapo and the SS. The inhabitants of every French village knew that there was a fundamental difference between the SS and the units of the German Army, de Vabres claimed, and public opinion simply would not understand or accept the failure of the Court to declare groups like the SS to have been criminal.[80]

While Biddle objected to declaring membership in a host of Nazi organizations criminal, also a form of collective responsibility, Donnedieu could not support his motion because of the specific French experience during the German occupation – Donnedieu was concerned that the public acceptance of the Nuremberg judgment in France depended on the court declaring Gestapo, SS and other Nazi

[79] Falco, *Nuremberg*, p. 152-157; According to Falco, Donnedieu wanted a prison sentence for von Papen, not because of "ses actes positifs que son immoralité."
[80] Bradley Smith, *Reaching Judgement at Nuremberg*, p. 162, cited in Ginsburgs, Kudriavtsev (eds.) *The Nuremberg Trial and International Law*, p. 241.

organizations criminal, which in this case outweighed his concerns about collective responsibility. Furthermore, if he had voted against the declaration of criminality, he would have undermined one of the central positions of the French government. After all, the initiative for the declaration of criminality had been launched by the Free French delegation at the UNWCC led be André Gros. [81] When the UNWCC's Legal Commission debated in March of 1944 what evidentiary threshold must be met before an individual could be added to UNWCC's wanted list of war criminals, Gros argued that " the real crime consisted in the mere fact of being a Gestapo member operating in an oppressed territory."[82] This proposal was rejected by the Committee and the entire Commission.

In the meantime, the provisional French government crafted the ordinance of August 28, 1944, which assimilated "terroristic organizations or enterprises," Gros specifically referred to the Gestapo and SS, with "association des malfaiteurs" described by French Penal code Article 265. Gros urged the UNWCC to pass a similar declaration. However, the UNWCC was unable to reach an agreement and referred the case back to sub-committees for further review, were no agreement could be found. André Gros, on behalf of the French delegation, started another attempt and submitted a memorandum in March of 1945, arguing that "a large number of war criminals would escape punishment solely on account of the difficulty of proving their individual guilt. To require such evidence in the case of large groups of

[81] André Gros submitted the first request for a declaration of criminality of groups to the UNWCC in March of 1944, before the issue was raised by Lieutenant Bernays of the U.S. War Department in September of 1944. See Darcy, *Collective Responsibility*, pp. 257-265.
[82] See United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: H.M. Stationary Office, 1948), p. 291.

criminals would place upon any prosecutor an impossible task." His memo specifically referred to the Oradour massacre as an example underlining the importance of collective responsibility for the dispensation of justice for the crimes committed by Nazi Germany. He argued that

> it would be impossible to attempt to prove what part every individual took in the [Oradour] massacres, so that, if the general principles of criminal law were to be applied in a strict sense, most of the perpetrators would have to be acquitted. They had themselves taken care that this should be so, by killing all the possible witnesses.[83]

After the repeated and renewed intervention by Gros, the UNWCC commission passed the "Recommendation of 16th May, 1945" which recognized a collective responsibility for crimes "committed during the war by organized gangs, Gestapo groups, S.S. or military units, sometimes entire formations, in order to secure the punishment of all the guilty[...]."[84] While stopping short of declaring all S.S. and Gestapo units criminal, this compromise which was pushed by the French delegation constituted a significant step towards the Nuremberg judgment and explains why Donnedieu de Vabres, while having significant doubts about the concept of collective guilt, was unable to backtrack in 1946.[85]

An important lesson from Gros' and Donnedieu's arguments in the deliberations on concepts of collective responsibility was how the specific French war time situation informed their opinions. Gros specifically raised the massacre of Oradour as an argument for why the UNWCC should issue a declaration pursuing

[83] Ibid.
[84] Ibid.
[85] Robert Falco, André Gros and the other members of the French delegation which negotiated the London Charta from the very beginning on supported Robert Jackson's "Proposed Agreement" which declared a number of Nazi organizations criminal. See Darcy, *Collective Responsibility*, p. 268.

national governments to adopt the declaration of collective responsibility for the purpose of prosecution the perpetrators. Donnedieu may have had the same or similar crimes in mind when he declared that he was unable to join Biddle in opposition to the declaration of criminality – the specific French context of a country on whose very soil, and whose very citizens were victims of crimes perpetrated, did not allow for such an opposition, an experience which Biddle did not share. Biddle, who found the declaration of criminality "shocking,"[86] like Donnedieu when it came to the "conspiracy" charge earlier in the deliberations, found them to be in violation of the legal western tradition of individual criminal responsibility. While Donnedieu hinted that he shared Biddle's concerns, he felt compelled to vote against his motion, because the Gestapo and S.S., for millions of victims of Nazism in occupied Europe, had become the symbols of the Nazi oppression and criminality. Having lived in Nazi occupied Paris, he understood that the news of the Nuremberg trial failing to declare Gestapo and S.S., among other organizations, criminal would be akin to acquittal, albeit a symbolical one, which "would not only produce political protests, but would create a psychological situation that many Europeans would find simply unbearable."[87]

The impact of the French judges and the French prosecution at Nuremberg on the dispensation of justice vis-à-vis the major Nazi war criminals may not have been as significant as the one of the their Western Allies. However, for the future of the French reckoning with the Nazi past, their role set important precedents and gave

[86] Smith, *Reaching Judgment at Nuremberg*, p. 161; cited in: Darcy, *Collective Responsibility*, p. 277.
[87] Smith, *Reaching Judgment at Nuremberg*, p. 162f, cited in: Darcy, *Collective Responsibility*, p. 277. 161. Smith's sources included the personal papers of Francis Biddle.

insights into the tensions within France when it came to addressing the period of the German occupation of France. While Donnedieu sided with the majority of the panel on the issue of criminality, his lenient positions on many other of the panel's decisions foreshadowed his future role in the campaign for a revision of French war crimes justice. Furthermore, de Menthon's prosecution informed by Vermeil view about the course of German history and the Gaullist myth, represented a formidable example for the French governments lessons from the past which informed its politics and justice in the age of retribution.

The Gaullist myth combined with Vermeil's version of the *Sonderweg*[88] which de Menthon put on prominent display at Nuremberg, offered the opportunity to draw two opposing conclusions for French policy towards the reckoning with Nazi Germany. One the one hand, and this what the first arc of French justice focused on, including the Nuremberg prosecution: A retributive justice as part of the denazification (in the French context and befitting Vermeil's Sonderweg arguments, this was also known as 'déprussification' in the French context)[89] efforts constituted an integral part of guaranteeing French security vis-à-vis the "eternal Germany." Prosecuting the Nazi leaders at Nuremberg and the leaders of the Nazi occupation of France, Robert Wagner, Otto Stülpnagel (who committed suicide before he could be sentenced), Helmut Knochen and Carl Oberg, besides the backward looking justice

[88] Neither de Menthon nor his intellectual mentor on German matters, Vermeil, utilized the term Sonderweg. The Sonderweg attribute has been bestowed by historians. See Tambarin, p.335.
[89] After the shock of the 1870/1 war, Ernest Renan famously contrasted the "humanist Germany" with the "militarist Prussia" and expressed hope that "La Prusse passera, l'Allemagne restera." See Ernest Renan, "La Guerre entre la France et l'Allemagne," in: *Revue des Deux Mondes*, 2e période, tome 89, 1870, pp. 264-283, cited in: Tambarin, p. 326. Christopher Clark described how France, as an occupying power in Germany, pushed for a wholesale dismantling of Prussia after 1945. See Christopher Clark, *Iron Kingdom: The Rise and Downfall of Prussia, 1600-1947* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2006).

elements which served to punish for past crimes and lent justice to the victims, also contained forward looking elements: ensuring that the these leaders and with them "the eternal Germany" were unable to wage another war against France - the leaders because they were imprisoned or executed, "the eternal Germany" because it had been thoroughly discredited as a consequence of the trials.[90] These elements of retributive justice in support of French security concerns vis-à-vis '*l'Allemagne éternelle'* had been under attack during the age of retribution – from the Churches, the Red Cross, West German government institutions - but they were in the national interest at the time. The Schuman Plan changed the underlying fundamentals of French policy towards (West) Germany.[91] France no longer sought to achieve its security goals with a retributive justice, but with a policy of "control through seduction."[92] The war crimes trials were a quickly becoming a roadblock along this path of seduction.

[90] Antonin Tisseron wrote about the Nuremberg Trial in particular and French justice in general: "For the defenders of a judicial solution, the Nuremberg trial is an essential element in the eradication of the German threat through exemplary judicial punishment, but also measures aimed at the reeducation, the dismantling of its power and the understanding that the crimes committed lead to punishment for all those responsible for the war: political, military and economic leaders […]";"[P]our le défenseurs d'une solution juridique, le procès de Nuremberg est un élément essentiel de l'éradication de la menace allemande à travers une répression judicaire exemplaire, mais également des mesures visant à la rééducation, au démantèlement de sa puissance et à une prise de conscience que les actes commis entraînent des sanctions pour l'ensemble des responsables de la guerre: chefs politiques, militaires et économiques […]"; see Tisseron, p. 364.

[91] While Dietmar Hueser argued *in Frankreichs Doppelte Deutschlandpolitik* that France had always pursued a dual strategy while publicly advocating for strategy of delay.

[92] See Raymond Poidevin, *Robert Schuman, homme d'Etat, 1886-1963* (Paris: Imprimerie Nationale, 1986), p. 221.

The Rastatt Trials

The Moscow Declaration of the governments from the United States, Great Britain, the Soviet Union and China had announced that "at the time of granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of free governments which will be erected therein."[93] This provision had been the basis for the trials of crimes committed by the Nazis in France. The *London Charta* regulated how the crimes, which had no specific geographic focus, and which were committed by major war criminals, were to be prosecuted, namely by the IMT at Nuremberg.

There remains a third category of crimes: those committed within Germany. The Allied Control Council issued Control Council Law No. 10[94] which gave each occupying power jurisdiction over the offenses set forth in the London Charta which were committed within its own zone.[95] Following the issuance of the Control Council

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[93] "Declaration regarding German atrocities, November 1, 1943," in: United States Congress Senate Committee on Foreign Relations, *A Decade of American Foreign Policy. Basic Documents, 1941-49* (Washington, DC: United States Government Printing Office, 1950), p.13.

[94] Control Council Law No. 10 lists the same offenses as the London Charta, plus the offense of "Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal." See Telford Taylor, *Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials under Control Council Law No. 10* (Washington, DC : Government Printing Office, 1949).

[95] Article Three of the CCL10 stipulated: "Each occupying authority, within its Zone of Occupation,
(a) shall have the right to cause persons within such Zone suspected of having committed a crime, including those charged with crime by one of the United Nations, to be arrested
[...]
(d) shall have the right to cause all persons so arrested and charged [...]to be brought to trial before an appropriate tribunal."

Law No. 10 on December 20, 1945, each of the four occupying powers created tribunals to judge the crimes committed within their own zone.

Therefore, the Control Council Law No. 10 declared the French occupation authorities responsible for trying crimes in their own Zone of Occupation. In March of 1946, the French authorities created the "Tribunal Général," as the highest court in their zone. Under its roof, the tribunal united four different jurisdictions: court of first instance, appeals court, court of cassation and international tribunal. After a judicial reform, the Tribunal Général was replaced by the Tribunal Supérieur as the highest court in the FZO.[96]

Between 1946 and 1954, the French authorities tried 2107 individuals at Rastatt and passed 1639 condemnations, among them 104 death verdicts,[97] according to these principles.[98] The French Tribunal prosecuted the leaders of the Gestapo prison Neue Bremm (Saarbrücken), leaders of concentration camps and sub-camps of Natzweiler and of the special camp Schirmeck in south-west Germany (KZ Porta

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In case that crimes had been committed by Germans against Germans or stateless persons, the Control Council Law No. 10 gave German tribunals jurisdiction.
See Telford Taylor, *Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials under Control Council Law No. 10* (Washington, DC : Government Printing Office, 1949), Appendix D.

[96] Yveline Pendaries, *Les Procès de Rastatt (1946–1954). Le jugement des crimes de guerre en zone française d'occupation en Allemagne* (Paris: Collection Contacts, 1995), p. 9.

[97] Pendaries, p. 64.

[98] These numbers need to be considered with care. Due to the extraordinary long classification period of documents at the French Military Archives, 100 years, we still do not have reliably numbers about the Rastatt Trials. The best source remains Yveline Pendaries, *Les Procès de Rastatt (1946–1954). Le jugement des crimes de guerre en zone française d'occupation en Allemagne* (Paris: Collection Contacts, 1995), and these numbers have been taken from her book (p. 64, 314). However, Pendaries' numbers do not agree with Yves Lemerles account. Yves Lemerle had been a judge at Rastatt and wrote a final report to the Ministère des Affaires Étrangères in 1956. He listed only 780 convicts for the period between 1946 and 1956 which had been detained at the Wittlich central prison. See AN, BB 18/7225 – Yves Lemerle to MAE , 20. July 1956 ("Au sujet des condamnés pour crimes de guerre détenues a la maison centrale de Wittlich"). Furthermore, the third account, by Adalbert Rückerl, lists over 2000 convictions. Adalbert Rückerl, *Die Strafverfolgung von NS-Verbrechen 1945–1978. Eine Dokumentation (*Heidelberg/ Karlsruhe: Müller, 1979).

Westfalica, KZ Bruttig-Treis, among others). The third crime complex had been war crimes and crimes against humanity committed by industrial leaders. The Röchling case, the leading steel- and ironworks company in the Saarland (which owned the Völklinger Hütte), was the cornerstone of the prosecution of industry leaders in the FZO.

The French prosecutors indicted Hermann Röchling, the head of the family, and other family members based on three charges: waging of an aggressive war, punishable actions for the strengthening of the German military potential and personal enrichment from pillaging. After he was found guilty for all three charges, Röchling appealed. While the verdict of the appeals court struck down the first two accounts, it doubled down on the third account and sentenced him to prison for ten years for his company's use of slave labor and the economic exploitation and pillaging of occupied territories – which he had to know about and at least tolerated it, according to the verdict.[99]

This trial in particular antagonized German public opinion and served as an early roadmap of the Franco-German trajectory at the crossroads of justice and reconciliation. The trial and the verdict solicited accusations of vengeance from German observers, and the Federal government itself connected the trial and the verdict with the Sarre question. Röchling's property, the Völklingen foundry and other sites, had been sequestered by France, and the Federal government pulled all levers, especially after the founding of the European Community of Coal and Steel in

[99] See Françoise Berger and Hervé Joly "'Fall 13': Das Rastatter Röchling-Verfahren," in: Kim Christian Priemel, Alexa Stiller (eds.) *NMT: Die Nürnberger Militärtribunale zwischen Geschichte, Gerechtigkeit und Rechtschöpfung* (Hamburg: Hamburger Edition, 2013), p. 487.

1951, to delay the sale of these sequestered shares until the Sarre question had been resolved. Once the Sarre question was resolved in West Germany's favor in 1956, the Röchling property was returned to the family. In the meantime, the French High Commissioner in Germany André François-Poncet, under intense pressure from the West German government, released Hermann Röchling from Wittlich prison in 1951, a few weeks after the founding of the ECSC.

The Röchling Trial showed that the prosecution and eventual release of the war criminals were closely linked with European Integration and Franco-German reconciliation. Even though the prosecution evidenced with excruciating detail the interconnection between the Röchling empire and the criminal Nazi machine, the West German side was distrustful of the ability of the French to judge Röchling fairly and impartially, given how his case was linked with the history of the Sarre as an apple of discord between Germany and France since 1919.[100] It utilized the levers of power at its disposal through the European integration process to roll back the consequences of the Rastatt trial – with more or less begrudging French complicity. The Röchling trial, which concluded in 1949, was one of the last actively pursued cases. From 1950 on, the Rastatt Tribunal almost ceased its activities completely. The first pardons had been issued in 1949, and by 1957 Wittlich prison released the last of its formally over 780 inmates.[101]

[100] See Berger, Joly, p. 490.
[101] See Claudia Moisel, "Résistance und Repressalien. Die Kriegsverbrecherprozesse in der französischen Zone und Frankreich," in: Norbert Frei, *Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2006), p. 266.

Whether or not the French Tribunal at Rastatt ceased its activities voluntarily is questionable. By the early 1950s, the Tribunal had concluded all the trials of the suspects which were apprehended in the FZO or which had been extradited by the other powers. Yet, according to a 1952 report of the Justice authority in the FZO, hundreds of case files with suspects residing in the other zones were still pending. Unfortunately, the report complained,

> [the western allies] have since 1947 instituted a veritable extradition procedure which has had the effect of significantly reducing the transfer of war criminals who have sought refuge in their zone [...]" Consequently, "war criminals who have not yet been arrested, are now at risk of remaining secure in their zones." The Western Allies had decided that "their mission has been accomplished, and their view do not allow us to continue with ours.[102]

Without the cooperation of the British and American occupation authorities, the French tribunal at Rastatt simply ran out of defendants and was forced to cease operations.

Finally, the Rastatt Trials and French justice in Germany did not solicit nearly as much public interest, neither in Germany nor in France itself, as the trials in Bordeaux, Paris or Metz. In February 1951, when the German amnesty campaign was in full swing, French High Commissioner Poncet wrote that "public opinion has never shown any interest in [t]he war criminals tried in our zone and no criticism has been

[102] See MAE, Archives Diplomatiques 1AJ/3629, "Note sur le Service de Recherche des Crimes de Guerre", dated 20. October 1952 – Baden-Baden, [The western allies] "ont depuis 1947 institué une véritable procédure d'extradition qui a eu pour résultat de gêner considérablement, en pratique, la livraison des criminels de guerre refugiés dans leur zone [...]." Consequently, "criminels de guerre qui n'ont pas encore été arrêtés, risquent désormais de vivre en sécurité dans les autres Zones." The Western Allies had decided that "leur tâche est terminée, et leurs conceptions ne nous permettent pas de poursuivre la nôtre."

brought to our attention regarding this matter."[103] The conjecture of disinterest on French justice at Rastatt and the lack of new cases forced by the *de facto* end of extraditions from the British and U.S. zones have been the reason why the French justice regime at Rastatt and the prison at Wittlich ceased operations rather quietly without controversy or impact on Franco-German relations while the trials in France stirred tensions and threatened to undermine the still fragile progress that had been achieved in the construction of the European project.

[103] See MAE, Archives Diplomatiques, 1AJ/3629, "Note sur la répression des crimes de guerre," dated 10. February, 1951, signed by André François-Poncet; "[l]es criminels de guerre jugés dans notre zone n'ont jamais intéressés l'opinion publique et aucune critique n'a été portée contre nous a ce sujet."

CHAPTER 2 The Legal Foundation of War Crimes Trials in France

The following chapter will present the first part of the arc which I call the age of retribution. The third cornerstone of French justice comprise the reckoning with the crimes committed by the Nazi Germany in France proper. In itself, the largest and longest lasting part which also exerted the greatest impact on Franco-German relations, it consisted of cases exclusively tried in France under French jurisdiction.[1] 2345 suspects were sentenced or acquitted by French tribunals from 1944 to 1956. The last three of the convicted criminals were released in 1962. These trials at times shook and deeply divided public opinion, like the Oradour trial in 1953 or the trial of Robert Ernst in 1954 and 1955. By 1950, the war criminals lobby succeeded in convincing substantial parts of West German public opinion, that the trials and the subsequent execution of the verdict and the pardoning process were indicators of the state of Franco-German relations.

At the beginning of the arc of justice stood two legal texts, an ordinance and a law. They not only provided French war crimes trials with a legal framework, but also revealed the concept of the French state on the mutual Franco-German past. The context and discourse surrounding these legislative works, the motivations behind their inception, the legislative debates which accompanied the laws as well as the criticism and support they solicited, provide us with a window into the inner workings of the French state and society attempting to reckon with the four years of the

[1] The Allies had stipulated in the Moscow declaration that those responsible for crimes committed in occupied countries would be sent to these countries to stand trial according to national law.

occupation by Nazi Germany. Both the Ordinance of August 28, 1944, and the Law of September 15, 1948, bore the hallmark of the age of retribution: punishment for atrocities overrode concerns about republican legal principles. Furthermore, the Ordinance of 1944 also limited the prosecution of war criminals exclusively to "enemy combatants," citizens of axis powers, thus shielding French citizens from prosecution.

The authors of the Ordinance translated the Gaullist interpretation into the law.[2] It thus served as a prime example of the impact of the Vichy Syndrome on French justice. When the impunity of the French co-authors of atrocities became a political liability for the Fourth Republic, the French government sponsored and, after some amendments, the legislature passed the law of September 15, 1948. This law, including the debate within the government and legislature, evidenced a painful and challenging process of a justice vis-à-vis war criminals which was primarily directed at Germans[3] and for which it was willing to suspend republican principles while

[2] Anne Simonin coined the term "fiction" in a *Liberation* article, entitled "1946: la France renaît sur une fiction" from October 5, 2016. I believe, however, this term is to strong. The Nazis did commit major atrocities and many of their victims were indeed French. The Gaullist myth, when it came to the memory of the recent past, constructed a French national identity based on French resistance or victimhood to Nazism, denying French complicity and assigning responsibility for the crimes to the Nazi occupiers alone. While the Gaullist myth engages in the tradition of selective memory, it was based nonetheless on the historical fact of the German invasion and occupation, a fact which the term "fiction" may not fully cover.

[3] While the official terminology of the war crimes legislation did not explicitly refer to "German" war crimes, it was almost exactly what it intended to address when utilizing the thinly veiled term "enemy crimes" or crimes of enemy combatants. In internal correspondence of the provisional government, the outright referral to "German crimes" appears frequently and interchangeable with "enemy war crimes." For instance, in this 1945 memo from the Justice Ministry: "[...] Ces crimes allemands seront châtiés avec une impitoyable rigueur. [and for this purpose, France maintains a delegation at the UNWCC in London since 1943, which], est chargé d'effectuer toutes les enquêtes relatives aux crimes commis par les agents de l'ennemi pendant l'occupation [....and] se préoccuper aussi de donner au public une information objective sur les atrocités allemandes [...] ." See Justice Ministry Report, entitled, "Les Crimes de Guerre," dated 5. February 1945, in AN Pierrefitte, 382 AP/74 Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

reluctantly coming to terms with French complicity. The following chapter discusses these two acts as the legal foundation of the French war crimes trials.

The Ordinance of 1944 and the Gaullist Myth

The ordinance of 1944 was one of the last acts passed by the French provisional government in Algiers before it officially relocated to the recently liberated capital of Paris on August 31, 1944. The government, led by acting prime minister Henri Queuille[4] enacted the "Ordinance of August 28, 1944, concerning the prosecution of enemy war crimes,"[5] distinguishing itself by being the first country formerly occupied by Nazi Germany which crafted legislation addressing the prosecution of war crimes[6] at a time when most of eastern France had yet to be liberated from Nazi control. Alsace-Lorraine was still de-facto part of the Third Reich – and many of its male residents still served in the German forces – in the Wehrmacht as well as in the SS and Waffen-SS.[7] All of these circumstances gave the ordinance the spatial and temporal context of a country which embarked on a transition from

[4] De Gaulle had already been in liberated Paris.
[5] "Ordonnance du 28 août 1944 relative à la répression des crimes de guerre." Note that the term "crime against humanity" had not entered legal terminology yet. In general, "crimes against humanity" was not utilized in French war crimes trials. As opposed to British and U.S. war crimes trials, which referred to international law when prosecuting the crimes committed by the Nazis, French war crimes trial legislation referred exclusively to domestic penal law. Since "crime against humanity" did not appear in French penal law, the term was not utilized as a charge or criminal category.
[6] See Justice Ministry Report, entitled, "Les Crimes de Guerre," dated 5. February 1945. AN Pierrefitte, 382 AP/74 Commission Interministrièlle de Crimes de Guerre 1945 - Documents de René Cassin – Repression de crimes de guerre.
[7] Approximately 130,000 Alsatian had been drafted into the Wehrmacht and Waffen-SS. They were so-called 'malgré nous,' forced to serve a different country against their will. The 'malgré nous' were essential to the Alsatian identity as victims of German aggression during, and French indifference to their suffering after World War II. Circa 2000 Alsatians volunteered to be members of the SS. See Frédéric Mégret, "The Bordeaux-Trial, Prosecuting the Oradour-sur-Glane massacre, " in: Kevin Heller, Gerry Simpson (eds.), *The Hidden Histories of War Crimes Trials* (Oxford: Oxford University Press, 2013), p. 145f.

war, occupation and dictatorship to peace, sovereignty and the restoration of democracy. An essential part of this transition was the understanding that the prosecution of the Nazi crimes committed on French soil required equipping the French justice system with the appropriate tools to account for the systematic and collective nature of the crimes.

Behind the idea of a new law or legal tool for the prosecution of Nazi Germany's war crimes was the fear that the existing French penal code, dating back to the year 1810, or the French Military Justice code, dating back to 1857[8] would be ill-equipped for addressing the horrendous and novel crimes of the Nazis. The French government in Algiers wanted to ensure that those who oversaw the operation of gas chambers would be punished appropriately and not receive a mild or no sanction because the French penal code had no provision on the books or because the perpetrators defended themselves by arguing that they had simply followed superior orders. For the purpose of ensuring that the Nazi crimes received their proper punishment, the French law makers were prepared to break with one of the Republic's sacred democratic legal traditions: the prohibition of ex-post-facto laws.[9] In a July 1944 report, the provisional government in Algiers argued, that "it is indispensable to allow for retroactivity, if we do not want to leave unpunished a whole series of crimes which were exclusively committed in circumstances impossible to foresee for the legislator before the evil befell our country. Therefore,

[8] For an overview over the development of the French military justice system, see Raoul Girardet, *La société militaire de 1815 à nos jours* (Paris:Perrin, 1998).
[9] The Ordinance of August 28, 1944, was not the first ex-post-facto law. Two days early, on August 26, the French provisional government enacted the "Ordinance du 26 août 1944" which created a new crime category: "National indignity."

it would have been impossible to prosecute them because we could not even conceive of them […]."[10] Finally, the legislators had to reckon with another uniquely French complication virtually unknown to their British and American allies: When it came to the prosecution of war crimes, a sizeable portion of French civil servants, including the judiciary, were compromised by four years of collaboration with Nazi Germany.[11]

In response to these pressing concerns, the Provisional Government crafted the ordinance from 1944. This ordinance gave the prosecution the tools to prosecute the unique crimes committed by the German occupants within the domestic judicial framework. First, as a lesson from the failed post-World War I attempt to prosecute crimes as a violation of international law, the French provisional government created the ordinance to ensure that war crimes could be prosecuted as a violation of domestic law:

> A war crime is a violation of the domestic penal law, a crime defined by common law which ought to be prosecuted as such, because even in times of war, the attacks by the enemy on property and the right to life and physical

[10] "Il est indispensable d'admettre la rétroactivité, si l'on ne veut laisser impunis toute une série de crimes qui n'ont pu être commis qu'à raison de circonstances qu'il était impossible au législateur de prévoir avant que le Malheur ne s'abattit sur notre pays, qu'il lui était donc impossible de réprimer parce que on ne pouvait même pas le concevoir, et qui, consommés à la faveur d'une régime n'aura connu qu'une fois, ne se renouvelleront plus." René Cassin "Observations Générales Précédant l'Examen des Textes, July 1944. AN Pierrefitte 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

[11] In his memoires, de Gaulle commented on the problems with the judiciary's ties to Vichy and the need to appoint members of the resistance to posts in the judiciary: *"*Il va de soi que les juridictions criminelles et correctionnelles ordinaires ne sont pas faites pour juger de telles causes. Elles ne le sont par leur nature. Elles ne le sont pas par leur composition, car beaucoup de magistrats ont été contraints de prêter serment au Maréchal et de rendre des arrêts conformes aux ordres de Vichy. Il nous faut donc innover. [...] A tous égards, il paraît, en effet, indiqué d'associer la résistance à l'œuvre officielle de la justice." Charles de Gaulle, *Mémoires de la Guerre, L'unité, 1942-1944* (Paris: Plon, 1956), p. 178. However, the provisional government's solution to this perceived threat to impartiality only served to shift these concerns around, it did not eradicate them at all. In fact, one of the most frequent attack against French war crime trials became the accusation of lack of impartiality.

integrity of persons must be reprimanded if they are not justified by the laws and customs of war.[12]

Second, while the ordinance constituted an ex-post-facto law, the Provisional Government attempted to address concerns about the violation of French republican principles by associating the unique and novel infractions perpetrated by the Nazis with already existing ones in the French penal code.[13] Therefore, the government did not create a unique and isolated penal code for war crimes, but it gave judges the power to punish the Nazi crimes, such as operating a gas chamber, by associating these crimes with infractions already on the books. For instance, the third sentence in Article 2 of the ordinance associates the crime described in Article 301 of the Penal Code as 'Poisoning' with the following Nazi-era related crimes: "any exposure [to harmful substances] in the gas chambers, any poisoning of water or food stuffs, any keeping, sprinkling or using of harmful substances designed to kill."[14] This gave the judges at the Metz trial in 1954 the power to issue the capital punishment to the

[12] "Le crime de guerre est une violation du droit pénal interne, un crime de droit commun qui doit être sanctionné parce que même en période d'hostilités les atteintes à l'intégrité de la personne physique et des biens d'un ennemie doivent être réprimées lorsqu'elles ne sont pas justifiés par les lois et coutumes de la guerre." See Justice Ministry Report, entitled, " Les Crimes de Guerre," dated 5. February 1945. AN Pierrefitte, 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

[13] According to Fouché, the fact that existing domestic penal was applicable for the prosecution of war crimes meant that a violation of an important French legal tradition, retroactivity or *nulla poena sine lege*, could be avoided. See Fouché, *Politique et Justice*, p. 71f. The *nulla poena* principle is enshrined in French law: see article 4 of the French penal code, 1961. However, Fouché ignored first that the French lawmakers themselves as cited above admitted retroactivity, and that second, the ordinance, by excluding "superior orders" as exculpatory circumstances (which was existing French law), was going beyond the mere association of offenses listed in the penal code with offenses committed by the Nazis. If nothing else, this clause revealed the retroactive nature of the ordinance.

[14] Article 2 de l'Ordonnance du 28 août 1944 relative à la répression des crimes de guerre, *Journal Officiel* (Algier), Ordonnances et Décrets, 30.8.1944, 780f.
"L'empoisonnement prévu par l'article 301 du Code pénal: toute exposition dans les chambres à gaz, tout empoisonnement des eaux ou denrées consommables, ainsi que tout dépôt, aspersion ou utilisation de substances nocives destinées à donner la mort." Furthermore, the Article ensured that the German occupants practice of killing French citizens as retaliation for the activities of the *maquis* was classified as murder: "L'assassinat prévu par l'article 296 du Code pénal: la mise à mort par représailles," Ibid.

operators of the gas chamber at Natzweiler concentration camp, since the only punishment for crimes listed in article 301 had been death. [15]

Furthermore, article 3 of the ordinance addressed the problem of "superior orders." Article 327 of the French Penal Code ensured that persons who killed or injured persons based on superior orders of a "lawful authority" were treated with impunity. The article read: "There is no crime or offense, if a homicide, or bodily harm had been ordered by law and imposed by lawful authority."[16] This provision in the penal code, which was drafted decades prior to knowledge of the magnitude of Nazi Germany's organized criminal nature, could have led to impunity of all German Nazi criminals prosecuted by France. Nazi Germany, as a criminal regime, frequently ordered its citizens to act criminally, by imprisoning, torturing, deporting and killing civilian populations. The defense argument of 'superior orders' could therefore be used to exculpate anyone except the last and highest station in the chain of command – Hitler himself. The provisional government, wary of these facts, created Article 3[17] of the Ordinance of August 28, 1944, which proscribed that, in contradiction to article 327 of the penal code, which the article addresses specifically, defendants in war

[15] "Tout coupable d'assassinat, de parricide et d'empoisonnement, sera puni de mort." See Article 302 of French Penal Code from 1810. The French Penal Code is accessible via https://www.legifrance.gouv.fr/affichCode.do;jsessionid=89DE1BBA1365BA72F6A4A30805A90046.tplgfr42s_2?idSectionTA=LEGISCTA000006182033&cidTexte=LEGITEXT000006071029&dateTexte=19940228 , last accessed on October 29, 2018.

[16] See https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006490207&cidTexte=LEGITEXT000006071029&dateTexte=19940228, last accessed on December 2, 2016. Article 327 of the French Criminal Code has been abrogated in 1992.

[17] "Les lois, décrets ou règlements émanant de l'autorité ennemie, les ordres ou autorisations donnés par cette autorité ou par les autorités qui en dépendent ou qui en ont dépendu, ne peuvent être invoqués comme faits justificatifs au sens de l'article 327 du Code pénal, mais seulement, s'il y a lieu, comme circonstances atténuantes ou comme excuses absolutoires." See *Journal Officiel* (Algier), Ordonnances et Décrets, 30.8.1944, 780f.

crimes trials cannot refer to 'superior orders' as a claim to exculpation. Superior orders can only act as attenuating circumstances, not as an exculpatory one.[18]

Wary of the fact that the responsibility for Nazi atrocities went far beyond the rank-and-file S.S. member, the Provisional government crafted Article 4 to ensure that the superior officers of subordinates who have committed war crimes could be prosecuted as "accomplices, in case they have organized or tolerated the criminal assignments of their subordinates," and if they could not be charged as coauthors of the crime.[19]

Article 5 was the last substantive article of the ordinance.[20] It also became one of the most controversial ones and a lightning rod for the campaign against French

[18] The fact that lawmakers specifically excluded French defendants in war crimes trials, because by definition of article 1 suspects had to be enemy combatants, mostly Germans, stirred intense feelings and accusations of 'victor's justice' from the amnesty lobby in West Germany. Erich Schwinge, a prominent defender of German war criminals: "Only German soldiers had been prosecuted even if they had been unaware of the illegality of the superior order […] this constituted a severe discrimination of German soldiers and policemen." See Ursula Schwinge Stumpf (ed.), *Erich Schwinge - Ein Juristenleben im 20. Jahrhundert* (Frankfurt/Main: Societätsverlag, 1997), p. 241. Schwinge also referred to a 1948 trial of a French commandant of a internment camp for German POWs in Lorraine, who according to Schwinge, was ordered to execute fourteen foreign prisoners deemed to be dangerous before they could fall into the hands of the advancing Wehrmacht in May of 1940. During the trial in March of 1948, the defendant, named M. Faucompret, was acquitted because he invoked Article 327 of the Criminal Code. See Schwinge, p. 185.

[19] According to the Provisional Justice Ministry's February of 1945 commentary on the prosecution of war crimes, the lawmaker wanted to ensure that "the law permits to prosecute all the crimes and to locate the criminals," which meant that the ordinance had to contain provisions for the prosecution "of the two distinct responsibilities which are at work when war crimes are being perpetrated: the responsibility of the individual who committed the infraction and the one of the person who ordered or tolerated its execution. The responsibility of those who ordered [a war crime] is in this instant as grave as the one of those who executed it."
Justice Ministry Report, entitled, "Les Crimes de Guerre," dated 5. February 1945. AN Pierrefitte, 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.
Hence the Article 4 of the ordinance proscribed: „Lorsqu'un subordonné est poursuivi comme auteur principal d'un crime de guerre et que ses supérieurs hiérarchiques ne peuvent être recherchés comme coauteurs, ils sont considérés comme complices dans la mesure où ils ont organisé ou toléré les agissements criminels de leurs subordonnés." *Journal Officiel* (Algier), Ordonnances et Décrets, 30.8.1944, 780f.

[20] The last article, article 6, only states that the ordinance was also applicable to French Algeria and the colonies. Ibid.

justice vis-à-vis German war criminals. It required that the majority of judges on the Military Tribunals charged with trying the war criminals belonged to a resistance organization.[21] The French provisional government, cognizant of the collaboration of large parts of the judiciary, wanted to ensure that "the prosecution of German atrocities will be the work of those men, who did not shy away from the risks and who surmounted all dangers to rise against the German yoke."[22]

The ordinance became the legal foundation for all French war crimes trials from 1944 onward. Almost from the moment of its inception, the ordinance attracted criticism. Given the climate of the immediate post-liberation era, it was not surprising that this criticism did not argue that the ordinance was too severe. René Cassin[23] and Paul Coste-Floret of the Interministerial Commission on War Crimes in fact argued that it did not go far enough to provide the French justice system with the

[21] "Sauf impossibilité dûment constatée par l'autorité militaire compétente, les juges militaires doivent être en majorité choisis parmi les militaires appartenant ou ayant appartenu aux forces françaises de l'intérieur ou à une organisation de résistance." Article 5, *Journal Officiel* (Algier), Ordonnances et Décrets, 30.8.1944, p. 780f.

[22] "La répression des atrocités allemands sera l'œuvre des hommes qui ont négligé toutes les menaces et surmonté tous les dangers pour se dresser contre le joug de l'Allemagne." See Justice Ministry Report, entitled, "Les Crimes de Guerre," dated 5. February 1945. See AN Pierrefitte, 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

[23] René Cassin, from an assimilated Jewish background, had been shaped by his World War I experience. Severely wounded and mutilated for the rest of his life, he became and an advocate for veterans' rights, a legal scholar and French representative at the League of Nations from 1924-1938. The outbreak of World War II meant a personal defeat to the efforts and aspirations of Cassin, who had been personally acquainted with Aristide Briand. In 1940, just prior to the German invasion of France, he faced an outbreak of anti-Semitism from his French colleagues at the Faculty of Law at the Sorbonne. He fled to London where he joined de Gaulle's *France Libre*. His was the author of *Un coup d'état, la soi-disant constitution de Vichy* (Cairo: H. Urwand et Fils, 1940), a foundational text of *France Libre*, which declared Pétain's assumption of power nothing but a coup-d'état and the armistice treasonous, punishable by the laws in place at the time (Code Penal, Art, 75 and 76: treason; Art. 77: espionage; etc.) and legitimized de Gaulle's claim to represent the Government of France in exile. See Moisel, *Frankreich und die deutschen Kriegsverbrecher*, pp. 43ff; Rouquet, Virgili, *Les Françaises, les Français et l'Épuration,* p. 145.

tools to prosecute the authors of atrocities given that frequently entire units collaborated in the perpetration of mass atrocities.

Legal experts and politicians such as René Cassin advocated for supplementing the ordinance with a law which would give the judiciary the power to prosecute atrocities that had been perpetrated collectively, most famously the massacre at Oradour-sur-Glane. That massacre emphasized the necessity to include French citizens as authors of war crimes, a possibility the ordinance from 1944 specifically precluded by restricting the definition of war criminals to enemy combatants.[24] The project spearheaded by Cassin, who as the chair of the Comité Juridique [25]advised the provisional government concerning legislative aspects and was responsible for drafting ordinances and laws which the government would send to Parliament,[26] led to the passing of the so-called law of September 15, 1948. It became the second legal pillar of French war crimes trials and began to attract even more criticism than the ordinance of 1944.

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[24] In 1947, the Prosecutor General at the Cour de Cassation, the highest-ranking state prosecutor at France's Supreme Court, informed the Justice Minister that French citizens, according to then-current French law, cannot be prosecuted for war crimes. The letter refers to the case of an Alsatian-French, named Paul Graff, who had been identified as one of the perpetrators at Oradour and who was subsequently arraigned at the Limoges Court of Justice (a civil law court), which ruled that it had no jurisdiction since Graff had been a member of the military. However, the Prosecutor General noted that "[…] la Cour de Limoges a perdu de vue que GRAFF était alsacien c'est -à-dire français. Que le fait qu'il avait commis les actes retenus à sa charge, alors qu'il était 'enrégimenté' et sous l'uniforme allemand était indifférent. Qu'en effet, les crimes de guerre ne peuvent être retenus qu'à l'encontre des 'Nationaux ennemis' ou 'agents non Français au service de l'administration ou des intérêts ennemis'. Qu'en conséquence, étant de nationalité française indiscutés et indiscutable, GRAFF ne pouvait être justiciable de la juridiction militaire [...]". See Procureur général près la Cour de Cassation to Ministre de la Justice, dated 11. August 1947, in AN Pierrefitte BB 18/3575.

[25] The *Comité Juridique* had been created by de Gaulle's provisional government in exile (French Committee for the National Liberation - CFLN) as a consultative body tasked with previewing and vetting all new legislation. According to Jay Winter and Antoine Prost, "no text would be discussed by the CFLN before the *Comité Juridique* examined it." This gave the *Comité Juridique* extraordinary influence over legislative matters. See Jay Winter, Antoine Prost*, René Cassin and Human Rights: From the Great War to the Universal Declaration,*(Cambridge: Cambridge University Press, 2013) p. 173.

[26] Moisel, *Frankreich und die deutschen Kriegsverbrecher*, p. 69.

The Law of September 15, 1948

Soon after the ordinance from August 28, 1944, came into effect, René Cassin, Justice Minister François de Menthon and his chief of staff Paul Coste-Floret[27] in the Interministerial Commission on War Crimes chaired by Coste-Floret engaged in a conversation about an amendment. The commission questioned whether the ordinance's legal tools were adequate to prosecute the unprecedented magnitude of crimes committed by the occupants. One aspect of the war crimes the Nazis committed was particularly troublesome. The Ordinance was based on a traditional understanding of criminality as an individual act perpetrated "rarely or occasionally." However, "in the course of this war, the enemy's criminality has assumed a character which clearly distinguishes its methods from those of ordinary criminals. [...] The enemy's criminality, on the contrary, has been systematic and had had as its agents of execution entire units who acted collectively."[28]

The report specifically refers to one case which will later lend its name to the entire legal project:

> When, as in Oradour sur Glane, the crime is the work of two or three German companies sent to the scene to accomplish their task [...] it is practically impossible to provide evidence against each member individually in order to proof the role each of them played in the crime. If we were leave the provision as is and force the public prosecutor to adhere to it, it would be tantamount to

[27] Paul Coste-Floret, representing de Menthon's Justice Ministry chaired the *Commission Interministérielle de Crimes de Guerre*, which was formed in May of 1944. Cassin had been a member of this commission. Moisel, *Frankreich und die deutschen Kriegsverbrecher*, p. 69.

[28] See "Exposé des motifs", dated 26. February 1945, in AN Pierrefitte, 382 AP/74 Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.
"La criminalité ennemie a pris au cours de cette guerre un caractère qui distingue nettement ses méthodes de celles des malfaiteurs ordinaires. […] La criminalité ennemie au contraire s'est exercée de façon systématique […]."

> wishing to ensure that the culprits receive impunity. […] If you strictly apply the ordinary rules designed for the occasional and individual crime to this collective or systematic crime, it will likely lead frequently to outrageous acquittals.[29]

It is this prospect of acquittals in the trials of massacres which were perpetrated by entire Wehrmacht or Waffen-SS units, which motivated French law makers to amend the ordinance from 1944.

In a report from October 1945, the war ministry argued that

> to strictly apply the rules admissible concerning ordinary criminality means to impose on the prosecution a too heavy burden. For example, if like in the case of ORADOUR SUR GLANE [sic], the crime had been perpetrated by two or three German companies, […] it would be excessive to require that the state prosecution has to establish with precision the individual role played by each member of the companies involved in the crime. [30]

Rather, the war crimes commission envisioned legislation which would give the judiciary the tools to prosecute members of an entire formation or unit which has been proven to have engaged in "systematic crimes or if the repetition or importance of the crimes allows for the assumption that all members had to participate" as "authors or accomplices […] of the crimes." "it is therefore necessary, that in these cases the presumption resulting from the facts may suffice to justify a condemnation."[31]

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[29] Ibid.; "Lorsque, comme à Oradour sur Glane, le crime est l'œuvre de deux ou trois compagnies allemandes envoyées sur les lieux pour accomplir leur forfait […] il est pratiquement impossible de rapporter individuellement, à l'encontre de chacun de ses membres, la preuve positive de […] la part prise par eux dans le forfait. Vouloir laisser cette preuve à la charge du ministère public équivaudrait à vouloir assurer l'impunité des coupables […] Si l'on prétend appliquer strictement à cette criminalité collective ou systématique les règles ordinairement admises en matière de criminalité occasionnelle et individuelle, on risque d'aboutir trop souvent à des acquittements scandaleux."

[30] Ministère de la Guerre, draft of "Ordonnance complétant celle du 28 août 1944 relative à la répression des crimes de guerre," dated 23 October 1945, AN Pierrefitte, 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

[31] Ministère de la Guerre, draft of "Ordonnance complétant celle du 28 août 1944 relative à la répression des crimes de guerre," dated 23 October 1945, AN Pierrefitte, 382 AP/74, Commission

The entire legal project of introducing the concept of organizational guilt as a response to the unique legal situation of prosecuting crimes committed by a criminal regime had been legitimized by similar attempts by France's allies. A report from June of 1945 by the Justice Ministry commented "it should be noted that the position of the French lawmakers is bolstered by the moral support recently rendered by the report Judge Jackson presented to President Truman."[32] The report refers to Robert Jackson's proposal for the prosecution of Nazi Germany's top war criminals which he submitted to President Truman on June 7, 1945. In this document, Jackson proposed to, as the New York Times reported, "indict such organizations as the Gestapo and the S.S. and thereafter to place upon their acknowledged members the burden of proof in establishing extenuating circumstances."[33] The French justice ministry interpreted Jackson's legal project as "going much further than the French lawmaker"[34] towards a collective responsibility. The report argued, the French project was less severe than Jackson's because it required two acts before collective responsibility took effect: First, membership in a criminal organization; second, the

Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre.

[32] Ministère de la Justice – Le Conseiller d'État, Secrétaire Général, Service des Crimes de guerre ennemis, "Après la conférence de Londres. La criminalité dans la conjoncture internationale et les mesures prises ou à prendre sur le plan national," dated June 18, 1945, AN Pierrefitte, 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre; "il convient de remarquer combien la position du législateur français se trouve renforcés par l'appui moral que lui prête le rapport présenté au président Truman par le Juge Jackson ces jours-ci."

[33] "The War Criminals," *New York Times*, June 8, 1945, page 18.

[34] Ministère de la Justice – Le Conseiller d'État, Secrétaire Général, Service des Crimes de guerre ennemis, "Après la conférence de Londres. La criminalité dans la conjoncture internationale et les mesures prises ou à prendre sur le plan national," dated June 18, 1945, AN Pierrefitte, 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre; Jackson's proposal "va beaucoup plus loin que le législateur français."

prosecution had to proof a concrete criminal act committed by the Gestapo or S.S. unit to which the individual belonged. On the other hand, the report argued, Jackson

> [h]as very well established [...] the principle that all members of the S.S. and Gestapo must be considered war criminals, placing on each of them the burden to justify themselves. The mere fact of membership in [...] the SS or the Gestapo constitutes a punishable crime. It is then up to each individual to prove the opposite.[35]

In addition to these legal tools which were motivated by the desire to make the prosecution of war crimes less onerous, the ordinance of 1944 also had to be amended to account for another important circumstance: the participation of French citizens in war crimes. The case of the Alsatian Paul Graff,[36] the first person to stand trial for crimes committed at Oradour and a French citizen, emphasized the legal void related to French perpetrators of war crimes – and if not addressed was bound to embarrass French justice in the eyes of the victims. The ordinance of 1944 did not pertain to French citizens, and Graff's case proved that the jurisdictional vacillations between military tribunal and civilian courts, the declarations of incompetence, the transferal of the case from the Bordeaux Military Tribunal to the Court of Limoges, which was then declared invalid by the Appeals Court, creating a double incompetence of both civilian and military courts, was a judicial and political embarrassment. All the while,

[35] Ministère de la Justice – Le Conseiller d'État, Secrétaire Général, Service des Crimes de guerre ennemis, "Après la conférence de Londres. La criminalité dans la conjoncture internationale et les mesures prises ou à prendre sur le plan national," dated June 18, 1945, AN Pierrefitte, 382 AP/74, Commission Interministérielle de Crimes de Guerre 1945 - Documents de René Cassin – Répression de crimes de guerre; Jackson "a fort bien établi […] le principe que tous les membres S.S. et de la Gestapo doivent être considérés comme criminels de guerre, mettant à la charge de chacun d'eux le devoir de se justifier. Le simple fait d'appartenir […] aux S.S. ou à la Gestapo constitue une culpabilité. Il reste à chaque individu la faculté de prouver le contraire."

[36] Graff's case will be discussed in detail below.

Graff's legal journey made it unlikely that other courts would take up the case of French citizens suspected of having committed war crimes.

The government had to intervene. Four days prior to President Vincent Auriol's emotional visit to Oradour on the 3rd anniversary of the massacre, the Justice Minister, on behalf of the French government – the draft law was signed by Prime Minister Paul Ramadier, Justice Minister André Marie and Foreign Minister Georges Bidault, among others - finalized the aforementioned draft and submitted it to the National Assembly for review.[37] With the draft, the government submitted an explanatory memorandum ("exposé des motifs")[38] which laid out in detail why it believed the ordinance from 1944 was insufficient for the prosecution of war criminals:

> The Ordinance [of 1944] did not contain any special provisions concerning war crimes attributable to the collective action of members of enemy groups, such as those who operated in Oradour, Ascq, Maille and Robert-Espagne. The members of SS units who took part in the killings could escape justice if their personal participation in these atrocities could not be evidenced.[39]

The government justified the collective responsibility with the terms of the London Agreement and the Nuremberg Judgment – two foundational texts for the prosecution of war crimes, which, according to the report, gave "the French

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[37] *Journal Officiel de la République Française (JO),* Débats Parlementaires (Assemblée Nationale), Année 1947, No. 50, 7. June 1947, 2e Séance, page 1990: "J'ai reçu de M. le garde des sceaux, ministre de la justice, un projet de loi complétant et modifiant l'ordonnance du 28 août 1914 sur les crimes de guerre. Le projet de loi sera imprimé sous no. 1620, distribué et, s'il n'y a pas d'opposition renvoyé á la commission de la justice et de législation. (Assentiment)."

[38] *JO*, Documents Parlementaires, Assemblée Nationale, année 1947, annexe no. 1620, pp. 1278-80.

[39] Ibid.;"L'ordonnance ne contenait aucune disposition particulière relative aux crimes de guerre imputable à l'action collective des membres des groupes ennemies, tels que ceux qui ont opéré à Oradour, à Ascq, à Maillé et à Robert-Espagne. Les membres des unités de S.S. qui avaient pris part à ces massacres pouvaient donc échapper à la répression si la preuve de leur participation personnelle à ces atrocités ne pouvait pas être faite."

Government [...] the right to bring before the French criminal courts the members of the organizations declared criminal by the International Military Tribunal in light of the punishment that may be incurred due to membership in these organizations. Among these figures the SS responsible for the massacres of Ascq, Maillé and Oradour."[40] The ordinance of 1944, the report goes on, had already incorporated a form of collective responsibility, which made membership in Nazi organizations punishable by life-long forced labor. The government believed, however, that "members of the S.S. units responsible for the massacres mentioned above must be [sentenced to death]."[41] After planting this thought into the minds of the deputies, the report back-tracked: "The government does not propose to go so far."[42] Instead, it proposed a bill which "merely assumes the culpability of all members of a group or a group guilty of murder or a series of murders [if the organization had been declared illegal by the IMT]."[43] Only those who can prove their innocence were exempted from this presumption of culpability.

The next paragraph explained the other major reform of the ordinance: "A special provision was deemed necessary to permit the joinder of proceedings brought against individuals not referred to in Article 1 of the Ordinance who are co-perpetrators or accomplices of the same crimes or related crimes. The presumption of

[40] Ibid.;"le gouvernement français [...] le droit de traduire devant les juridictions pénales françaises, les membres des organisations déclarées criminelles par le tribunal militaire international en vue de l'application des peines qui peuvent être encourues du fait de l'appartenance à ces organisations parmi lesquelles figure l'organisation des S.S responsables des massacres d'Ascq, de Maillé et d'Oradour."
[41] Ibid. ; "les membres des formations S.S. responsables des massacres rappelés plus haut doivent être [punis de mort]."
[42] Ibid.,"Le Gouvernement [...] ne vous propose pas d'aller jusque-là."
[43] Ibid., "se borne à présumer la culpabilité de tous les membres d'une formation ou d'une groupe coupable d'une assassinat ou d'une série des assassinats [if the organisation had been declared illegal by the IMT]."

guilt will not be applicable in their case."[44] This provision, the language concealing the true intentions given its explosive nature, allowed for the prosecution of French citizens for war crimes.

The report concluded with a final explanation of the motive behind the law: "To ensure the effective prosecution of crimes against humanity which have shocked the public conscience in all civilized nations."[45]

This document revealed the extent to which the French government was willing to suspend "ordinary rules of legislative and judicial jurisdiction" in order to seek justice for the crimes committed by the Nazis. When the government revealed that "our country would be justified in rendering [...] the death penalty applicable to all members of this organization [...]"[46] regardless whether or not individual culpability had been determined, the age of retribution in France vis-à-vis the German war criminals reached a new climax.

In conclusion, the explanatory memorandum to the French government's bill expressed the motivations behind the legislative initiative in divergent ways. While the government described the provision allowing for the prosecution of French citizens in veiled, cautious and overly legalistic terms ('individuals not referred to in Article 1 of the ordinance'), it utilized uncharacteristically blunt and undiplomatic

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[44] Ibid.; The government proposal excluded French citizens from the reversal of the burden of proof – the suspension of this long-standing republican principle was only applicable to non-French, mostly German defendants; "Une provision spéciale a été jugée nécessaire pour permettre la jonction des poursuites engagées contre les individus non visés à l'article 1er de l'ordonnance qui sont coauteurs ou complices des mêmes crimes ou de crimes connexes, la présomption de culpabilité ne leur étant pas applicable."

[45] Ibid.; "Pour assurer la répression efficace de crimes contre l'humanité qui ont révolté la conscience publique dans toutes les nations civilisées."

[46] Ibid.; "règles ordinaires de compétence législative et juridictionnelle;" "notre pays serait fondé à [...] rendre la peine de mort applicable à tous les affiliés à cette organisation [...]."

terms when explaining the judicial reforms it envisioned for the prosecution of all other Nazi war criminals – most of which were German nationals. The horrendous crimes, so argued the memorandum, justified the extraordinary step of a French republican government asking the French National Assembly to pass a law which would allow tribunals to impose the death penalty without proof of individual responsibility. The fact that the government exempted its own citizens from this provision only amplified the extreme deviation from traditional French republican values and made clear that this was only permissible because the bill targeted foreign suspects.

While the French government had asked the National Assembly to utilize the urgency legislative procedure ("la procédure d'urgence") in order to accelerate the legislative process, it took the parliament ten months before it took the next step: In April of 1948, the relevant committee ["Commission de la justice et de la législation"] passed its official report on the government draft. The rapporteur[47] Alfred Jules-Julien, who authored the report, immediately grasped the nature of the government's contradictions. After walking the parliament through the extraordinary difficulties of prosecuting crimes which had been committed by "groups that are guided by a criminal spirit *sui generis*"[48] as the root cause of the difficult evidentiary situation the government was faced with at the time, the rapporteur asked "[h]ow can this particular circumstance be reconciled with the penal law tradition which demands

[47] The rapporteur was a powerful position, elected by the members of the committee and serving as a liaison between the legislature and the government. The role came with outsize influence over the legislative process.

[48] Crimes which had been perpetrated by "des groupements qui soient animés d'un esprit criminel *sui generis*." *JO*, Documents Parlementaires, Assemblée Nationale, année 1948, annexe no. 3972, pp. 662f. (séance du 22 Avril 1948).

that evidence of a crime be brought forward for each individual culprit?"[49] Jules-Julien pointed out the tension between the desire to punish the perpetrators and the legal protections which where enshrined by the republican legal tradition, seemingly an impasse.

Jules-Julien then summarized the arguments of the exposé des motifs of the government in four bullet points:

1: The membership in a criminal organization alone was punishable.

2: France could apply the same rules as applied by the Control Council in Germany and "pass a death sentence for the simple membership in an organization."[50]

3: However, we will not go that far, "because we want to respect the traditional rules of justice."[51]

4. "But we will establish a presumption of guilt[...]."[52] "

After contrasting these contradictory provisions in the government's draft bill, Jules-Julien concluded with uneasiness about the impact of the proposed law: "We cannot give our approval to this analysis." The rapporteur was alarmed by the notion of collective guilt, writing that "no fact or circumstance, however impressive it may seem to us, can justify the abandonment of the fundamental notions of the rule of law

[49] Ibid.; "Comment cette circonstance particulière peut-elle se concilier avec la tradition pénale qui implique l'administration de la preuve d'un fait criminel à l'égard de chaque coupable individuellement?"
[50] Ibid.; France could "punir de mort la simple appartenance à l'organisation."
[51] Ibid., However, France will not go so far "car nous voulons respecter les règles traditionnelles de la justice."
[52] Ibid.; "Mais nous établirons une présomption de culpabilité […]."

in our country. The legitimate concern to prosecute Hitler's crimes should not lead us to the temptation to pass a law of opportunity on our part, because this path is the very same one that leads to the excesses we claim to punish."[53] These two sentences were later echoed by both French republican critics of the law as well as supporters of the inversion of justice, the former arguing that it betrayed the French republican values and risked to be unfavorably compared with the jurisprudence of the past regime while the latter argued Jules-Julien's statement constituted evidence for their claim that the German perpetrators were in fact victims of French justice.[54]

While Jules-Julien seemed to indicate that he and the committee opposed the new law, he agreed with the government's position, that the consequence of a failure to pass legislation which strengthened the prosecutorial powers would be unacceptable. He argued that his rejection of the governments analysis "does not mean that we must accept the impunity of men guilty of horrendous crimes due to the difficulty [of finding evidence], because it is not in fact a lack of proof, but a singularity of proof."[55] He thus recommended that the draft of the government be accepted with two changes," the first designed to give the judge more independence

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[53] Ibid.;"Nous ne saurions donner notre approbation de cette analyse."
"Aucune circonstance de fait si impressionnante soit-elle, ne nous parait justifier l'abandon des notions fondamentales qui constituent notre civilisation juridique. Le légitime souci de sanctionner les crimes hitlériennes ne doit pas nous induire à la tentation de faire à notre tour du droit d'opportunité, car cette voie est elle-même qui conduit aux excès que nous prétendons punir."

[54] For instance, the German Protestant Pastor Gerhard Lindner, who in the late 1940s served as the Protestant prison chaplain in France, published an op-ed in *Der Spiegel* in 1950, in which he cited the Julian statement verbatim as evidence for his position as a vocal opponent of French justice vis-à-vis the German war criminals. He utilized Julien's statement in support of his thesis that the French war crimes trials were an injustice, drawing a picture of the perpetrators as victims of the French "justice machine" [Justizmaschine]. See Gerhard Lindner, "Der Staatsanwalt entschuldigt sich," in: *Der Spiegel, 52/1951*, dated 26.12.1951, p.12-14.

[55] "[I]l ne s'ensuit pas que nous devons accepter l'impunité d'hommes coupables de crimes affreux, en raison d'une difficulté qui n'est pas en réalité une absence de preuve, mais une singularité de preuve." *JO*, Documents Parlementaires, Assemblée Nationale, année 1948, annexe no. 3972, pp. 662f. (séance du 22 Avril 1948).

about whether or not to apply the "presumption of culpability," (the bill changed the words from "are to be punished as co-authors" to "can be punished as co-authors" and therefore provided judges with the option and not the duty to apply the presumption of culpability) and the second change designed to satisfy Alsatian members in the Assembly by inserting language which declared that "forced conscription" into the unit should serve as an exculpatory reason.[56]

Despite having the most serious doubts about the conformity of the law with fundamental republican values, the rapporteur Jules-Julien accepted that impunity in this case was a price too high to pay. In this conflict between the markers of the republican identity and punishment for war crimes, which had already played out within the French government, as discussed above, representative Jules-Julien came to the same conclusion as Coste-Floret, de Menthon and Cassin.[57] The fact that the political pillars of the Fourth Republic, the government – now headed by Robert Schuman as Prime Minister - and the legislature, when facing this conflict, sided with retribution over republican principles was a constituent element of the age of retribution. The National Assembly voted unanimously for the bill and sent it to the upper chamber - the Conseil de la République.[58]

The subsequent discussion of the National Assembly's amended bill in the Conseil de la République, on June 15, 1948, was influenced by yet another

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[56] In the Committee, the Alsatian representative (MRP) Wasmer had pushed for it as a way to exempt Alsatian conscripts from prosecution. See Moisel, *Frankreich und die deutschen Kriegsverbrecher*, p. 120.
[57] While blunting the impact of the bill, the edits made by Jules-Julien to the government's draft changed nothing about the fact that the law introduced a form of collective guilt into French penal law.
[58] Services des Procès-Verbaux et des Archives, *Assemblée National, Premiere Législature, Tables Générales des documents et débats parlementaires, 28 Novembre 1946 – 4 Juillet 1951*, Tome II (Paris: Imprimerie de l'Assemblée Nationale, 1954), p. 982.

anniversary commemoration of the massacre at Oradour-sur-Glane five days earlier – this first one which broke down along partisan lines. Socialists (SFIO) and communists (PCF) competed for the support of the victims and each claimed to be crusaders for justice and against "the German *révanchards*."[59] However, it became painfully obvious that after four years there was still very little progress in terms of bringing the perpetrators to justice.

Five days later, the upper chamber debated the bill in an intense session. The rapporteur Victor Sablé (Socialistes Radicaux) expressed his agreement with Jules-Julien's dissent about the government's discourse on the presumption of culpability based on the IMT's declaration of criminality, stating "we must not confuse, on the one hand, the crime of membership in an organization punished in France under the title "participation in a criminal enterprise" by forced labor and, on the other hand, the effective participation in collective murders which is punished by the death penalty."[60]

Furthermore, he attacked the governments "presumption of culpability" head on: "It appears] undesirable because it is contrary to the traditions of French criminal law"[61] in addition to contradicting the Nuremberg judgments. He also expressed opposition to any collective sanction. Therefore, he argued that the government's proposal to only exculpate those who can "prove by their conduct that they were

[59] Fouché, p. 103.
[60] *JO Débats*, Conseil de la République, année 1948, séance du 15 Juin 1948, pp. 1498-1502; "Il ne faut pas confondre, d'une part, le crime d'appartenance à une organisation puni en France, sous le chef d'association des malfaiteurs, des travaux forcés et, d'autre part, la participation effective à un assassinat collectif, qui est puni de la peine du mort."
[61] Ibid.; "[It appears] indésirable parce qu'elle est contraire aux traditions du droit pénal français."

opposed to the perpetration of these crimes […] meant to render [...] the presumption of guilt irrefragable."[62]

However, he still regarded the National Assembly's amended bill as insufficient, mainly because the clause which made forced conscription a reason for exculpation: "The proof of forced conscription would become the great temptation or leitmotiv of all those who, after committing heinous acts of barbarity, seek to make it appear that they have joined these organizations only under duress and by force."[63] Victor Sablé therefore proposed to replace the "incorporés de force"[64]-clause with "proof of non-participation at the crime"[65] which would exculpate members of criminal units based on their behavior, not based on whether they were drafted or not. He finished his address to the Upper Chamber of Parliament with an appeal to reconciliation:

> The French public conscience needs to be liberated from all the psychoses of vengeance and revenge borne from the war and the liberation and which unfortunately are being prolonged by the slow pace of justice and the vicissitudes of the state authorities. In trying the accused with righteousness and speed, the courts will bring peace to the minds. This would be a first step towards national reconciliation.[66]

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[62] Ibid. ; "qu'ils se sont opposés par leurs actes à l'accomplissement de ces crimes" are exculpated "c'est donner […] à la présomption de culpabilité un caractère irréfragable."
[63] Ibid.; "La preuve de l'incorporation forcée deviendrait la grande tentation ou le leitmotiv de tous ceux qui, après avoir commis des actes de barbarie innommables, chercheraient la faire croire qu' ils n'ont adhéré à ces organisations que contraints et forcés."
[64] The term literally means "forced conscript."
[65] *JO Débats*, Conseil de la République, année 1948, séance du 15 Juin 1948, pp. 1498-1502; "preuve de leur non-participation au crime."
[66] Ibid.; "La conscience publique française a besoin d'être libérée de toutes les psychoses de vengeance et de revanche issues de la guerre et de la libération et qu'entretiennent malheureusement les lenteurs de la justice et les tergiversations des pouvoirs publics. En jugeant les accusés avec rectitude et célérité, les tribunaux ramèneront la paix dans les esprits. Ce serait déjà un premier pas vers la réconciliation nationale."

The rapporteur's address was then followed by the words of Gaston Charlet.[67] Charlet had been a member of the resistance and after the war he became a Senator (SFIO) for a district which included the town of Oradour. As a practicing attorney, he also supported the families of the victims by serving as a counsel to the ANFMO.[68] Charlet defended Sablés discourse, in fact he had been one of the driving forces behind the Conseil's bill drafted in the committee.[69] Charlet pointed out that the AN's incorporation of "incorperé de force" as an exculpatory reason would lead to outrageous acquittals, because it "must be applicable to real Germans as well [as opposed to Alsaciens][...]," warning that if the clause would enter the force of law "the prosecution of 80 percent [of the more than 1000 cases] would have to be aborted." [70] He pleaded with his colleagues to not allow for such a "duperie" or "open the door to blind clemency." He reminded his colleagues of the moral responsibility each deputy assumed before the victims and demanded "from parliament to allow for justice to take its course!" [71]

Charlet's speech was greeted with unanimous applause from all sides. Before the upper chamber adopted the bill unanimously, the communist group represented by

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[67] During the war, Charlet had joined the resistance and was arrested by the Sipo in 1943. The German occupiers deported him first to Compiegne, then Mauthausen. He was liberated in 1945 in Yugoslavia. See *Dictionnaire des parlementaires français, 1940-1958*, available online at http://www.senat.fr/senateur-4eme-republique/charlet_gaston0143r4.html#1940-1958 , last accessed October 8, 2018.

[68] Association Nationale des Familles des Martyrs d'Oradour-sur-Glane.

[69] Fouché, p. 108.

[70] *JO Débats*, Conseil de la République, année 1948, séance du 15 Juin 1948, pp. 1498-1502; Charlet argued that "forced conscription" as an exculpatory justification "doit s'appliquer même aux Allemands authentiques [resulting in] les poursuites avorteraient à concurrence de 80 p. 100" of the more than 1000 cases which were ongoing at the time.

[71] Ibid.; Charlet argued that if such an exculpatory clause was included, the law would "ouvrir la porte à une aveugle clémence," reminding his colleagues of the "responsabilité morale que l'Assemblée nationale encourrait [...] devant les victimes[...]," calling "au Parlement de permettre que la justice puisse exercer!"

the Senator from the Limousin, René Mammonat, asked for the right to speak. Mammonat went on to ask the government, in a preview of what would become Communist staple arguments in the next decade, for its actions in regards to the search for the commander of the S.S. Division das Reich, Heinz Lammerding, as well as if it thought it appropriate that three years after the liberation,

> [t]he representatives of Germany, with the London agreements, can sit at the same table as the representatives of France with the same rights. What supreme shame the Government would inflict on the martyrs of Oradour, on all those who suffered to liberate France, if we could see the assassin and the victim sitting at the same table, if we could see Germany rebuilt before Oradour-sur-Glane, before France.[72]

Mammonat described the communist attitude toward the prosecution of war criminals and Germany in general. The victims were ignored while Germany not only received monetary support which allowed for its reconstruction but was also reintegrated into the international community. His argument also consisted of a clear association of French as victims and Germans as murderers. After he injected these arguments into the debate, he announced that the communists would vote, with these reservations in mind, for the law, and demanded that all the verdicts who will be passed by the military tribunals be executed, that "no pardons will be pronounced and that the criminals of Oradour will be tried on the very spot of their crimes."[73]

After Mammonat's memory-political speech, the Conseil voted unanimously for the bill amended by Sablé and Charlet. The bill was thus sent back to the National

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[72] Ibid.; "les représentants de l'Allemagne, avec les accords des Londres, puissent s'asseoir à la même table que les représentants de la France avec les mêmes droits. Quelle suprême honte le Gouvernement infligerait aux martyrs d'Oradour, à tous ceux qui ont souffert pour libérer la France, si l'on pouvait voir assis à la même table l'assassin et la victime, si l'on pouvait voir l'Allemagne reconstruite avant Oradour-sur-Glane, avant la France."

[73] Ibid.; Mammonat demanded that "il y ait aucune grâce et que les criminels d'Oradour soient châtiés sur les lieux mêmes de leurs crimes."

Assembly for a renewed debate, review and approval. In the legislative commission of the Assembly, the Alsatian representative Joseph Wasmer opposed the Conseil's bill vehemently, while the communist representatives wanted to approve it without changes. Alfred Jules-Julien, the rapporteur, attempted to find a compromise between the factions by adding the Conseil's amendment to the bill which the National Assembly had already passed, thus incorporating both bills into a new bill which ended the first Article with "unless they produce proof of their forced incorporation and non-participation in the crime."[74] Joseph Wasmer and the conservative MRP agreed, the communists disagreed, marking the end of unanimity in terms of war crimes legislation.[75] This marked the beginning of a conflict over the prosecution of war crimes. The conflict manifested itself in two ways: first, ideologically by pitting communists against conservatives, and second, geographically by antagonizing the Limousin and Alsace. The bill passed the commission without support from communists and was submitted to the floor of the Assembly for debate and approval.

The debate on the floor of the Assembly, on August 26, 1948, became heated and fractious with personal attacks between the supporters and opponents of the bill. The communist representative Alphonse Denis argued that the proposal meant that 80% of the suspects would be acquitted "because the testimonials [of forced conscription] and evidence would be easy to obtain in a Germany that has not been de-nazified."[76] If the law was adopted as proposed, Denis argued, the French justice

[74] Fouché, p. 108. "à moins qu'ils n'apportent la preuve de leur incorporation forcée et de leur non-participation au crime."
[75] Moisel, *Frankreich und die deutschen Kriegsverbrecher*, p. 123.
[76] *JO Débats*, Assemblee Nationale, année 1948, séance du 26 août 1948, p. 6317. Mass acquittals of German suspects would be expected "car les témoignages et les preuves seraient faciles à obtenir dans une Allemagne non dénazifiée."

vis-à-vis war criminals would soon look like the one practiced by the U.S.A. in Germany: "inequitable sentences were made in their occupation [zone] [...]. They white-washed notorious war criminals. Thus, they created a dangerous dispensation of justice. Therefore, we are justified to take extra precautions."[77] The rapporteur Jules-Julien was accused of harboring more favorable feelings for Philippe Pétain[78] and the perpetrators than for the victims of Oradour.[79] After Denis' proposal to adopt the unchanged bill from the Conseil was rejected, the Alsatian representative Wasmer walked up to the dais and thus became the first Alsatian to participate in a floor debate after the war. He proposed to change the word "and" to "or" making forced conscription a sufficient reason for exculpation, because "I do not want that we add the infamy of having to prove their innocence to the infamy inflicted on them by the Germans."[80] The Assembly voted Wasmer's proposal down as well.[81]

Nonetheless, the same day, after more than three years of deliberations and with the prospect of potentially politically devastating *non-lieux* in some nationally known trials, such as the Oradour Trial, the National Assembly passed the "*Loi du 15 September 1948 complètent l'ordonnance du 28 Aout relative à la répression des crimes de guerre*" unanimously - at the end neither the communists nor the Alsatians

[77] Ibid.; "des jugements iniques ont été prononcés dans leur zone d'occupation […]. Ils ont blanchiment de criminels de guerre notoires. Une jurisprudence dangereuse s'est créée de la sorte. C'est pourquoi nous sommes fondés à prendre une précaution supplémentaire."
[78] In 1948, the 92-year old Pétain had been imprisoned for life on an island off the coast of Brittany. With his health in rapid decline, the petitions for clemency found more and more supporters, including, by March of 1949, General de Gaulle. See "Le président du R.P.F. évoque également la question allemande, l'Indochine et le cas de l'ex-maréchal Pétain," in: *Le Monde*, March 31, 1949.
[79] *JO Débats*, Assemblée Nationale, année 1948, séance du 26 août 1948, p. 6317.
[80] Ibid.; "je ne voudrais pas qu'on ajoute à l'infamie que leur ont fait subir les Allemands l'infamie de devoir démontrer leur non-culpabilité."
[81] *JO Débats*, Assemblée Nationale, année 1948, séance du 26 août 1948, p. 6319.

dared to be on the record against a law which was designed to bring justice to the victims of Nazi war crimes. The most important article of this law enshrined the aforementioned principle of collective responsibility into the French law. Article 1 of the law stated: "When one of the crimes provided for by the [Ordinance] of August 28, 1944, is attributable to the collective action of a formation or a unit belonging to an organization which the International Military Tribunal based on declaration of August 8, 1945, declared criminal, all individuals belonging to that formation or unit may be considered co-authors of the crime, unless they provide evidence for their forced conscription and abstention in the crime."[82] Voilà, the compromise.

This facilitated the prosecution of crimes such as the Oradour massacre, because the prosecution only needed to proof that an individual had belonged to the Waffen S.S. division "Das Reich" which perpetrated the massacre in order to trigger a guilty verdict. The burden of proof, of non-participation, was on the accused.

The second important revision to the Ordinance from 1944 had been article 3, which allowed for the prosecution of "individuals not referred to in Article 1 of the Ordinance of ... 1944 [...]"[83] This meant that now French citizens could be prosecuted as war criminals as well, a fact specifically excluded by the ordinance from 1944. This article reflected that reality investigations had revealed that some of the most

[82] *JO Lois et Decréts*, Loi Nr. 48-1416 du 15 Septembre 1948 modifiant et complétant l'ordonnance du 28 Août 1944 relative à la répression des crimes de guerre; "Lorsqu'un des crimes prévus par l'ordonnance du 28 aout 1944 sur la répression des crimes de guerre est imputable à l'action collective d'une formation ou d'un groupe faisant partie d'une organisation déclarée criminelle par le tribunal militaire international agissant en vertu de l'acte du 8 août 1945, tous les individus appartenant à cette formation ou à ce groupe peuvent être considérés comme co-auteurs, à moins qu'ils n'apportent la preuve de leur incorporation forcé et de leur non-participation au crime."
[83] Ibid.; "les individus non visés à l'article 1er d'ordonnance du 28 août 1944 […]."

notorious war crimes in France, for instance Oradour, had also been committed by French citizens.[84]

While the framers of the Law of 1948 relied on the Nuremberg precedent and based the organizational guilt clause on the organizations which the Nuremberg Tribunal declared criminal, the French law departed significantly from the Nuremberg precedent. Cassin and the Justice ministry were mistaken by their claim that Jackson's legal principle of declaring certain Nazi organizations joint criminal enterprises went much further than what the French lawmakers envisioned. In fact, the Nuremberg Judgment was explicit in rejecting any notion of collective guilt: "[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced,"[85] and that the tribunal based its conclusions one of the most important legal principles: "criminal guilt is personal, and [...] mass punishments should be avoided."[86] Individual accountability was thus a key reconciliatory mechanism of the Nuremberg Trials, designed to educate[87] German society about the crimes committed by the Nazi leadership while "reducing the

[84] In fact, the majority of persons indicted in the Oradour case had been French nationals. The persons in question were Alsatians who were drafted into the German forces after the *de facto* annexation by Nazi Germany in 1940. After the liberation of Alsace on 1944, Alsatians exercised their French citizenship again. It was the official policy in postwar France, that these Alsatians never lost their French citizenship, regardless of Nazi Germany's practice.

[85] International Military Tribunal, "Judgment," in: International Military Tribunal, *Trial of the Major War Criminals Before the International Military Tribunal*, *Nuremberg, 14 November 1945-1 October 1946* (Nuremberg, Germany: Government Publishing Office, 1947), 171, 223.

[86] Ibid., 256.

[87] U.S. Chief Prosecutor Robert Jackson's goal of providing Germans and the world with "undeniable proofs of incredible events" became a corner stone of all transitional justice trials designed to foster peace. After all, the trial provided proof that "[t]he German, no less than the non-German world, has accounts to settle with these defendants." See Robert Jackson, "Opening Statement," in: International Military Tribunal, *Trial of the Major War Criminals Before the International Military Tribunal*, *Nuremberg, 14 November 1945-1 October 1946: Proceedings,* Volume 2*,* (Nuremberg, Germany: Government Publishing Office, 1947), p. 98 and 102.

prospect of future violations by breaking the collective cycle of guilt that frequently fuels conflicts that result in mass atrocity."[88]

The French war crimes trials based on the Law of 1948 were untethered from the constraints of personal responsibility and partially reversed the burden of proof. According to legal scholar Frédéric Mégret, the law constituted a "particular tenuous and opportunistic construct from the point of view of criminal law, which would certainly appear shocking even by today's imperfectly liberal standards."[89] The French lawmakers passed the law which transgressed the boundaries of the French legal tradition because of the exceptional circumstances of the crimes. According to the authors, chiefly among them René Cassin, the law was necessary to avoid mass acquittals in trials of crimes like Oradour[90] or Ascq, where the perpetrators left no or very few survivors and had ample time to obscure the evidence. Certainly, as opposed to the Nuremberg principles, both the ordinance of 1944 and the law of 1948 were not designed to foster reconciliation between the victors and the vanquished. On the contrary, it opened the doors for accusations that French justice operated on the principle of collective German guilt.[91] Therefore, especially the law of 1948

[88] Allison Marston Danner, Jenny S. Martinez, "Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law," in: *California Law Review*, Vol. 93, No. 1 (Jan. 2005), p. 93.
[89] See Frédéric Mégret, "The Bordeaux-Trial, Prosecuting the Oradour-sur-Glane massacre, " in: Kevin Heller, Gerry Simpson (eds.), *The Hidden Histories of War Crimes Trials* (Oxford: Oxford University Press, 2013), p. 148.
[90] The law's obvious connection to the Oradour massacre earned it the alternative name "Lex Oradour." It was predominantly by the circles opposing the law. See Ursula Schwinge Stumpf (ed.), *Erich Schwinge - Ein Juristenleben im 20. Jahrhundert* (Frankfurt/Main: Societätsverlag, 1997), p. 199.
[91] Mégret oberserved that "as long as only Germans were involved, the French legal world had lived quite well with the presumptions [of collective guilt], which conformed to a sense of German willing participation in both the war effort and some of the crimes that ensued." Mégret, p. 148.

accomplished the opposite of reconciliation: it incited German public opinion and provided evidence for claims of victor's justice.

Despite its problematic relationship with core republican principles, the law of 1948 was permissible at the time because it constituted the culmination of the age of retributive justice, when the desire to seek justice outweighed even considerations of the French legal tradition, let alone reconciliatory considerations. Because of these shortcomings, the law was ultimately doomed and destined to fail. Moreover, since these shortcomings supported a narrative which discredited French justice as a whole, the law indirectly facilitated the premature release of all German war criminals. After the foundation of the Federal Republic and the Schuman-Plan, the law galvanized the opposition against French justice and helped legitimize even the extreme voices which regarded the war criminals as victims of a harsh and unjust French justice, of law of exception that targeted Germans unfairly.

Furthermore, the law of 1948 as the climax of the age of retribution also exemplified the importance France attached to the judicial reckoning with the Nazi past. This becomes apparent when comparing France's efforts with the evolution, and non-simultaneity of related efforts in France itself and in other countries. First, the French war crimes trial program was out-of-sync with the evolution of the prosecution of war crimes of the other Western Allies. After the Nuremberg Trial and the successor trials, including dozens of executions, the dawning of the Cold War in 1947 marked a turning point. Extraditions were severely limited and the turning over of denazification to German authorities effectively marked an end of any serious effort. Second, internally, the reckoning with the Vichy regime had entered the phase

of reconciliation with the age of amnesty laws. Public opinion shifted swiftly against the *épuration* between 1946 and 1948, and by 1949, the overwhelming majority of polled French citizens supported sweeping amnesty laws which reintegrated collaborators into French political, societal and economic life. [92] French lawmakers reacted, and in three successive amnesty laws, from 1947, to 1951 and 1953, the National Assembly freed and restored the rights of the collaborators who had been sentenced to "dégradation nationale," "indignation nationale" and prison sentences during the *épuration*.[93]

The French reckoning with war crimes committed by the Nazis defied these evolutions. When other efforts at home and abroad were fading, the retributive justice towards the German suspects of war crimes intensified with the passing of the law of 1948. However, after the law became widely known in 1949 when the first French citizens were arraigned and set to appear alongside German defendants in war crimes trials, it ultimately helped to galvanize an opposition against French justice on a broad transnational basis. In the subsequent section, I present the contemporary criticism of the legal foundation and show how the law supported the emergence of the narrative of the inversion of justice. It became a centripetal force and facilitated a coherent movement, which would later advocate for inversion of justice as an answer to French

[92] Rouquet and Virgili give two dates as turning points of the Epuration. First in the summer of 1945, when public opinion began to turn against the extra-legal epuration and when the French state began to criminalize all extra-legal action. Second, public opinion moved beyond the end of the *épuration* towards a general amnesty between 1946 and 1948. By 1949 60% of the French voiced their support for an amnesty of the collaborators. François Rouquet, Fabrice Virgili, *Les Françaises, les Français et l'Épuration, 1940 à nos jours* (Paris: Éditions Gallimard, 2018), pp. 369, 420.
[93] Fouché, p. 99.

security concerns, Franco-German reconciliation and the so-called "war criminals problem."

Contemporary Criticism of the Legal Foundation of the War Crimes Trials.

"This is the renouncement of two thousand years of civilization"[94] declared the papal nuncio in France, Cardinale Angelo Roncalli who would become Pope John XXIII in 1958, to Geouffre Raymond de la Pradelle,[95] the scion of a prestigious Parisian family of lawyers, army generals and politicians dating back to the *ancien régime*. The nuncio did not have the Nazi regime in mind when he referred to what in his mind essentially amounted to a break with civilization, but the legal foundation of French war crimes trials, and specifically the law of 1948. Equally outraged by the law, Gabriel Marcel, in *La France Catholique*, compared it with the justice of the Nazi era in his article entitled "Une loi qui a contaminé l'époque hitlérienne."[96]

This section addresses the extraordinary criticism the legal foundation elicited from within France and from West Germany. The opposition to the law created unexpected allies, since it integrated dissenters from the left and the right, victims of Nazi persecution in France, such as Joseph Breitbach, and French resistance fighters

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[94] De la Pradelle reported this exchange in his memoires. See *Aux Frontières de la Injustice* (Paris: A. Michel, 1979), p. 63.

[95] De la Pradelle's father, Albert, had been the founding director of the Institute for Advanced International Studies (Institut des hautes études internationales) at the Sorbonne. He had also served as a counselor for multiple French governments in the interwar period concerning questions of international law and jurisprudence and served as the French government's rapporteur at the Committee of Jurists in The Hague in 1920, which drafted the statute of the Permanent Court of International Justice attached to the League of Nations. See Charles Rousseau, "Nécrologie – Albert Geouffre de la Pradelle," in: *Revue internationale de droit comparé*, (Vol. 7 N°2), April-June 1955, p. 383f.

[96] Gabriel Marcel, "Une loi qui a contaminé l'époque hitlérienne." In: *La France catholique*, 7. July 1950.

such as Henry Frenay, with Nazis or defenders of the Nazi record, such as Friedrich Grimm and Erich Schwinge.[97]

Henri Frenay, who had been one of the signatories of the ordinance of August 28, 1944, began to view the war crimes trials differently in the light Franco-German rapprochement in the late 1940s. The radiant promise of a new peaceful Europe based on reconciliation between France and Germany turned some of the erstwhile most ardent supports of a severe justice into advocates for an amnesty and amnesia. Henri Frenay was advocating for the end of the war crimes trials program, not as he put it, because he believed that the war criminals in question were innocent, but because the war crimes trials "have succeeded in nothing but sowing discord between two countries, which are required to reconcile or risk another conflagration."[98] He hence became a leading, prominent practitioner of the inversion of justice. Frenay and Pierre Bossier, the former lead delegate of the International Committee of the Red Cross in France, criticized the ordinance of 1944 and the law of 1948 as "special laws," which "breached the core elements of penal law [...]" and discriminated against German defendants.[99]

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[97] Friedrich Grimm, a prominent Nazi intellectual, Holocaust denier and defense lawyer in war crimes trials in Germany, who campaigned for a general amnesty in West Germany, was also following, to a lesser extent, war crimes trials in France. He argued that the French "special laws" were violating international law. See BA Koblenz, B305/307, Friedrich Grimm to ZRS Bonn, dated August 6, 1952.

[98] Henri Frenay, a leading Gaullist resistance fighter, founder of the influential newspaper *Le Combat*, lobbied for an end to the war criminals in the 1950s. On 13 September 1954, he wrote a letter to French President Coty:
"Je suis de ceux qui pensent que le problème des criminels de guerre, quelles que soient leur nationalité, aurait du être régler de la manière la plus radicale dans les trois ou quatre années qui ont suivi le conflit. Dans l'espoir illusoire de donner à la justice tous ses droits on n'a réussi qu'à entretenir et à développer des éléments de discords entre deux pays qui, sous peine d'un nouveau suicide, doivent s'entendre. Que les crimes aient été ou non commis, qu'ils soient les raisons invoquées, que 10 ans après la libération ce problème n'ait pas été définitivement liquidé." AN Pierrefiette, 4AG/338, Letter of Henri Frenay to President Coty, dated 13. September 1954.

[99] Frenay and Boissier continued: „Diese Feststellung der Ungleichheit der Behandlung hat auf deutscher Seite den Eindruck erweckt, dass man in Wirklichkeit gar nicht die Absicht hatte, gewisse

The fact that with Frenay one of the leading voices of the former resistance was espousing these ideas of an inversion of justice, that postwar French justice was committing an injustice towards German defendants in war crimes trials, was utilized by Nazi apologists and Holocaust deniers like Friedrich Grimm to legitimize their campaign for a general amnesty. Friedrich Grimm, in his 1953 manifesto against postwar justice, entitled *Politische Justiz. Die Krankheit unserer Zeit*, quotes multiple passages from an article Frenay co-authored with Pierre Boissier. By quoting Frenay and Boissier, he suggested that the "special laws" in France were incubators for hatred and revenge:

> Lawful punishment is impossible without a law that tells the judge what is a crime and what is not. Otherwise, it is not justice, but revenge or retaliation, and the 'avengers' cannot claim to be the guardians of the law [...]. From a political point of view, the mode of prosecuting war crimes was a definite mistake, because instead of pacifying - which is the most important task of justice - it nourished, if not rekindled, antagonisms in society as a whole.[100]

Handlungen für verbrecherisch zu erklären und dann alle ihre Urheber ohne Unterschied der Uniform zu verfolgen, daß heißt wahre Gerechtigkeit zu üben. Dadurch wurde ein Gefühl der Unaufrichtigkeit, der Einseitigkeit erzeugt; hinzu kam, daß allem Anschein nach das Recht des Stärkeren missbraucht wurde; so wurde die Bedeutung der Bestrafung der Kriegsverbrechen erheblich beeinträchtigt." Furthermore, Frenay and Bossier take offense with the French ordinance of 1944, which discriminates German defendants by barring them from referring to Article 327 – citing superior orders of a lawful authority as exculpatory reasons - of the French penal code, an avenue which was open to French defendants [Frenay and Boissier fail to acknowledge that this is not true for Alsatians who served in the German armed forces]. They opined that it was not surprising that the person accused of war crimes "perceives – will always perceive – the trial, in which he is playing the accused as an abuse of law, or hypocrisy." "der Prozess aber, in dem er den Angeklagten spielt, erscheint ihm – und wird ihm immer erscheinen – als Rechtsmissbrauch und Heuchelei." See Pierre Boisser, Henri Frenay, *Auf dass Gerechtigkeit werde* (Göppingen: Verl. "Der Heimkehrer", 1956*),* pp. 12f, 16.

[100] Friedrich Grimm, *Politische Justiz. Die Krankheit unserer Zeit* (Bonn: Scheur, 1953), p.175ff; "Strafe im Rahmen der Justiz ist unmöglich ohne ein Gesetz, das dem Richter sagt, was ein Verbrechen ist und was nicht. Andernfalls handelt es sich nicht um Justiz, sondern um Rache oder Vergeltung, und die ‚Rächer' können keinen Anspruch darauf erheben, die Hüter des Rechts zu sein. [...] Politisch gesehen war der Modus der Bestrafung der Kriegsverbrechen ein ausgesprochener Fehler, denn anstatt zu befrieden — worin die vornehmste Aufgabe der Justiz besteht — ist durch ihn ein der Gesellschaft in ihrer Gesamtheit abträglicher Antagonismus genährt, wenn nicht gar aufs neue entfacht worden."

Without question, having Frenay, one of the signers of the 1944 ordinance and a giant of the resistance movement, on the record against postwar French justice legitimized the amnesty lobby. However, the most effective discursive weapon in the hands of the extreme right would be the intervention of another French giant of justice. The French principal judge at Nuremberg, Henri Donnedieu de Vabres himself. This intervention turned Donnedieu de Vabres into a veritable character witness of Nazi sympathizers, like Erich Schwinge, who repeatedly utilized Donnedieu to legitimize his opinion on French justice *in toto*.[101]

Donnedieu's activism in favor of the amnesty campaign and against the law of 1948 had been solicited by Pradelle, the aforementioned scion of a prominent Catholic Parisian family of lawyers. Pradelle had been approached by nuncio Roncalli in 1947, in the name of Pope Pius XII., to take up the unpopular role of defending Germans accused of war crimes. The pope, according to Roncalli, was under pressure from German bishops, Cardinal Frings in particular,[102] to intervene in favor of the Germans detained in France. According to Pradelle's recollection of the encounter with Roncalli, the latter opined about the law of 1948: "[Despite the renouncement of a 2000 year old legal tradition], the Holy See is powerless, since it could not intervene in an internal affair of a state. It is your job, as a French lawyer, a Catholic,

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[101] As cited above, Schwinge, in a sworn affidavit provided to the Munich *Spruchkammer* in 1953, claimed that Donnedieu had declared to him that the IMT verdict on Jodl had been an injustice, boosting the defense and ultimately contributing to the posthumous exoneration of Jodl in the trial. Eugene Davidson, *The Trial of the Germans: An Account of the Twenty-Two Defendants Before the International Military Tribunal at Nuremberg* (Columbia, Mo.: University of Missouri Press, 1977), p.363.

[102] The pressure on the Pope came not only from within the Church. In 1951, West German chancellor Adenauer addressed a letter to the Holy See, asking him for his support for the release of the war criminals. This letter will be discussed below.
See BA Koblenz, B141/9576, letter from Adenauer to Pope Pius XII., dated April 10, 1951.

and foremost a respected figure in the world of jurisprudence, hailing from a French family steeped in tradition, to occupy yourself with this business."[103] De la Pradelle accepted the task on one condition. Given the delicate nature of the task, which had the potential to ruin his professional reputation, de la Pradelle asked for an official approbation in writing. Hence, Roncalli wrote to de la Pradelle on February 7, 1949, and informing him, that "a direct intervention of the Holy See had been solicited many times in favor of the German detainees in France," and that he therefore "would very much appreciate if these delicate cases could be handled by Frenchmen who are conscious of their responsibility and know how to proceed strictly based on human rights and without passion, because the honor of France and a humane justice in general depend on it."[104]

Raymond de la Pradelle became the most prominent lawyer defending German war criminals in France. He even took on the role of coordinating the defense of German war criminals and received a monthly retainer for these services from the ZRS.[105] He defended the SS members at the trial of the Ascq massacre in 1949 and the concentration camp functionaries and guards at the Natzweiler-Struthof trial in

[103] Geoffre Raymond de la Pradelle, *Aux Frontieres de la Injustice*, p. 63.
[104] Ibid., p. 64.
[105] Geouffre Raymond de la Pradelle, the scion of a prominent Parisian family of lawyers and judges, had originally been approached by the Apostolic Nuntius in France, Angelo Roncalli (later Pope John XXIII), to take on the defense of German war criminals. In the late 1940s, he cooperated closely with the Zentrale Koordinationsstelle für Rechtschutzfragen bei den Deutschen Ländern, the predecessor of the ZRS. Beginning in 1949, he worked with the ZRS. Although not all financial receipts are extant, for the last three months of 1950, he received a monthly retainer of 300,000 French Francs for his services (Letter from Brandl, Federal Justice Ministry to German Diplomatic Mission in Paris, dated November 8, 1950, entitled "Honorare für de la Pradelle, Pascal und Baumann," in BA Koblenz, B305/360). In 1956, Hans Gawlik, the head of the ZRS, recommended de la Pradelle for a *Bundesverdienstkreuz*, the highest civilian honor of the Federal Republic, which he received the same year (ZRS memo, dated February 4, 1959, BA Koblenz, B305/313). De la Pradelle became an important link between the German and French supporters of amnesty and release of the war criminals.

1955. In 1948, he reached out to his colleague Donnedieu de Vabres and asked him to give his legal opinion on the legal foundation of French war crimes trials, which included both the ordinance from 1944 as well as the law from 15. September 1948. Donnedieu's judgment on the latter could hardly been any more catastrophic. He argued that "[h]owever devastatingly such a statement may be for French honor, we cannot fail to conclude that the law of 15 September 1948 is not the expression of a just law. It's a type of legal 'genocide' […]."[106]

Donnedieu's opinion on the law served as a powerful legitimizing vehicle for those attempting to liberate German war criminals. In fact, it could not have hoped for a better gift. Donnedieu, the French judge at the IMT at Nuremberg, called this second pillar of French justice vis-à-vis the German war criminals "legal genocide." To ensure that this judgment would be widely known, Pradelle sent the opinion to the French counsels of the German war criminals, and Hans Gawlik, head of the Central Legal Protection Office (ZRS),[107] had Donnedieu legal opinion translated into German and circulated it widely among the lawyers and institutions within the network of the amnesty campaign. In the fall and winter of 1949 and 1950, he sent copies to the *Evangelisches Hilfswerk*, the Caritas Foundation, the German Red Cross, lawyers Erich Schwinge and Walther and the Association of German lawyers in the British Zone of Occupation, adding fuel to the flames of the amnesty campaign

[106] Henri Donnedieu de Vabres, "Rechtsgutachten," dated June 25, 1949, in PA AA, B10/2119. „Wie betrüblich auch immer für die französische Ehre eine derartige Feststellung sein mag, so können wir doch nicht umhin zu schließen, dass das Gesetz vom 15. September 1948 nicht der Ausdruck eines gerechten Rechts ist. Es ist eine Art legaler ‚Völkermord' (génocide legale) [...]."

[107] The Central Legal Protection Office (ZRS) was an admistrative department, first wihtin the Federal Justice Department in Bonn, and starting in 1955 in the Foreign Office, which was tasked to organize and support the defense of the Germans accused of war crimes in foreign countries.

which perceived the treatment of the German war criminals by France as a grave injustice.[108] After the end of the last war crimes trial in 1956, de la Pradelle received the *Bundesverdienstkreuz* for his activities in support of Franco-German reconciliation. [109]

Donnedieu's eviscerate criticism of the French war crimes trials program may have come as a tremendous surprise to contemporary observes, especially given his prominent position as one of the leading voices of justice for Nazi crimes as France's principal judge at the IMT Nuremberg. However, since then scholars have discovered evidence that already at Nuremberg, Donnedieu had proven himself to be the most lenient of all the judges on the IMT, and even then he showed vocal opposition to forms of collective responsibility. Therefore, his opposition to large parts of the legal foundation of French war crimes trials was a logical conclusion of the ideas he had espoused at Nuremberg already. However, this fails to explain terminology such as "legal genocide," which seems to be dangerously close to equating French justice with the Holocaust.

The unintended consequence of the law, its flaws and imperfections which were rooted in the desire to lend justice to the victims of the German occupation, was a connecting bridge between Erich Schwinge, the Wehrmacht military prosecutor and

[108] BA Koblenz, 305/295, Translation of Donnedieu's legal opinion from 25.6.1949, including a list of recipients. Donnedieu de Vabres' devastating legal opinion had been widely publicized in the West German press as well. In die Zeit on July 6, 1950, Joseph Breitbach, under the pseudonym Jean Saleck, wrote extensively about Donnedieu's opinion on the law and expressed the hope that with the opinion from this "der ersten Fachautorität Frankreichs" about the „ungeheuerliche Gesetz" das weit über die in Nürnberg geübte Praxis hinausgeht [...].Nach dem positiven Echo, das dieser Artikel fand, darf man hoffen, daß die aufgerüttelte öffentliche Meinung die Abschaffung des Gesetzes erzwingen wird." Jean Saleck, *Die Zeit*, dated July 6, 1950.

[109] See BA Koblenz, B305/313, Frankreich - Berichte 1957-59, p. 30 (note dated February 4, 1959).

judge who was responsible for multiple death sentences,[110] Donnedieu de Vabres, the French judge at the International Military Tribunal at Nuremberg and de la Pradelle, the scion of a prestigious Parisian family of lawyers. Schwinge was an outspoken and active member of a campaign which tried to rehabilitate the actions of the German Wehrmacht.[111] While these opinions attracted considerable support in West Germany, they were taboo in France. However, the law of September 15, 1948, offered

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[110] See for instance Stephan Baier, „Das Todesurteil des Kriegsgerichtsrats Dr. Schwinge," in: *Kritische Justiz. Vierteljahresschrift für Recht und Politik* (1988), pp. 340-356. In 1991, Norbert Haase concluded that Schwinge had been the "Chief ideologist in support of a rigorous deterrent justice, who made himself a name as the author of the leading commentary on the military justice law in the Nazi era." See Norbert Haase, " 'Weisse Flecken' in der historischen Aufarbeitung der NS-Zeit: Forschungen zur Geschichte des Reichskriegsgerichts" in: *Vierteljahreshefte für Zeitgeschichte, Jg*. 39 (1991), Heft 3, p. 380.

[111] Schwinge denied or relativized even the most egregious crimes committed by the Nazi occupiers in France. Remarkably, he went through the list of indictments and one by one refuted and exculpated the German occupiers, by either blaming the resistance, by utilizing the "tu quoque" strategy or discrediting the legal basis for the trials. At times, he even went a step further and claimed that some of Nazi Germany's policies which the French prosecution prosecuted German war criminals for, and indeed almost the entire French public reproached Germany for, actually helped save French lives: the infamous "*Nacht-und-Nebel-Erlass*."
The *Nacht-und-Nebel-Erlass* of December 7, 1941, targeted real or suspected members of the French resistance who would be deported to prisons and concentration camps (first Natzweiler and then many other camps in the Reich), without ever informing their relatives of their whereabouts or fates. Many of the deportees died while imprisoned or they were executed. The "Nacht-und-Nebel-Erlass" was prosecuted as a war crime at the IMT Nuremberg. Schwinge, however, defended the N-N-E as an improvement over the then-current treatment of resistance fighters by the Nazi occupants: "[This decree] sidestepped death sentences , which due to the egregious nature of the crime committed would have undoubtedly been issued…This decree saved the lives of many Frenchmen, because it delayed or discontinued the legal proceedings against them." Ursula Schwinge Stumpf (ed.), *Erich Schwinge - Ein Juristenleben im 20. Jahrhundert* (Frankfurt/Main: Societätsverlag, 1997), p. 190.
To describe the deportation of thousands of people - without court order and frequently solely based on suspicion, without any chance to appeal, without any contact to next of kin let alone defense counsels, and subsequent imprisonment and torture under starvation conditions which led to a slow and painful death - as an advantageous situation to those affected by it can only be described as a desperate attempt to defend the indefensible. The French lawmakers, through Article 2 of the Ordinance of 1944, established "illegal deportations" – that is without prior lawful conviction by a court - as a war crime.When Schwinge discussed the topic of deportations in his autobiography, he focused exclusively on those deportations who were carried out as result of the Nacht-und-Nebel-Erlass. However, deportations in connection with the so-called Final Solution of the Jewish Problem were far more numerous, yet Schwinge fails to mention them. However, as a sign of his campaign to rehabilitate the Wehrmacht, he did not fail to mention *tu-quoque* cases of deportations of Algerians by French forces during the Algerian war. He utilized the "disparitions forcées" during the Algerian War to legitimize and normalize the deportations by Nazi Germany in France. See Ursula Schwinge Stumpf (ed.), *Erich Schwinge - Ein Juristenleben im 20. Jahrhundert* (Frankfurt/Main: Societätsverlag, 1997), p. 192.

Schwinge the opportunity to break out of the extreme-right wing circles. As evidence for the acceptance of his own opinion of the unjust nature of French war crimes trials, he cited the inner-French critiques of the law of 1948, the so-called "Lex Oradour," who were outraged by the notion of collective rather than individual guilt contained in the law. This law, and the public discourse which evolved around the law, greatly supported the cause of judicial revisionism, because, as Schwinge's case evinced, it legitimized and normalized the arguments of judicial revisionism. Although Schwinge and other advocates of judicial revisionism made a much larger argument calling the entire French retributive justice towards Germans profoundly unfair and unjust, while at the same time rehabilitating the German occupation of France, the law of 1948 helped to de-marginalize calls for judicial revisionism in France and legitimize it in the nascent West Germany. If Schwinge had been able to quote Donnedieu, a member of the highest echelon of French society and with his role at the IMT a symbol of the legal reckoning with Nazi Germany, as a supporter of judicial revisionism (if only in the case of the "Lex Oradour"), the image of judicial revisionists as right-wing extremists could be softened significantly. Schwinge simply cited Donnedieu's legal opinion and those of other French lawmakers, lawyers, and journalists alike who called the law "a complete break with a century old tradition of French law" or "scandalous" and "a monstrosity of a law."[112]

The law of 1948 also incited opposition from Alsace and Lorraine since the law enabled the prosecution of Alsatians and Lorrainians for war crimes. The

[112] Ibid., p. 199.

criticism about the law of 1948 in the Alsatian press was visceral.[113] Once again, Alsace served as the nexus between France and Germany, and given its history as a bone of contention between France and Germany, many Alsatians and Lorrainians were personally interested in a permanent reconciliation between the two countries. When the Alsatian reaction to the law's consequences in the Oradour Trial put France on the brink of a secession, it made a wider French public painfully aware of "how exorbitant such a provision was."[114]

One such outspoken Lorrainian detractor of the law, who also connected the justice question with that of reconciliation, had been the prominent lawyer from Metz Albert Eiselé. In the mid-1940s, Eiselé was one of the first French lawyers to take on the defense of German war criminals. Unlike many of defenders of war criminals in Germany,[115] he did not deny the criminal responsibility of the Nazi regime, [116] and unlike most of the West German advocates for the release of the war criminals, he strongly endorsed French jurisdiction over the prosecution of Germans, rejecting the argument that "German soldiers need to be tried in Germany according to German laws":

> While over 1800 persons had been accused of war crimes after World War I, a mere six were sentenced by the *Reichsgericht* – a massive, unjustifiable disproportion. Furthermore, Germany is disqualified from judging its own war

[113] Jean-Laurent Vonau, in *Le Procès de Bordeaux: Les Malgré-Nous et le Drame d'Oradour* (Strasbourg: Editions Du Rhin, 2003) provided a detailed description of the war crimes issue from the Alsatian point-of-view. His work relies on an analysis of the reporting of the Alsatian newspaper Dernières Nouvelles d'Alsace (DNA).
[114] Mégret, p. 148.
[115] Friedrich Grimm, for instance. Cited above.
[116] For instance, he attributes "a fundamental nihilism" to the Nazi regime, of which "Adolf Hitler's suicide is a dramatic symbol." Furthermore, he declared that "it must be humanly almost impossible to forget the recent past, France's suffering from 1940 to 1944, and all the turbulences it provoked," finally pointing out that the "[German] occupant deliberately broke human rights and attacked international morality." Albert Eiselé, "Réflexions sur les procès de criminels de guerre en France" in 3/1951 (31st year) of the *Revue de Droit Pénal et de Criminologie* (Bruxelles), pp. 305, 307, 309.

criminals because it committed the egregious mistake of supporting National Socialism. [117]

However, he doubted whether the means employed by France were indeed in line with the French legal tradition. He was critical of the legal foundation of French war crimes trials, the ordinance of August 1944 signed into law by the government in exile in Algiers. He questioned whether the French state "possessed, on August 28, 1944, in the middle of the war, the serenity to promulgate a law which ought to be the product of a deep and serious reflection so that it can be part of a valuable [postwar] judicial construction?"[118] The main piece of evidence he utilized to support this accusation of partisanship was a provision of the ordonnance, which prescribed that a majority of the judges on the tribunal must hail from the former resistance movement. Eiselé asked the rhetorical question: "Is it certain that the resistance fighters, by definition the most committed, can achieve with ease the calm impartiality which is the duty of all judges and their raison d'être?"[119] He concluded, that "the legislative initiative of 1944 may one day be qualified as 'legislative reprisal' and at may be wrongly attributed to our entire country. I would prefer if world public opinion concluded that France, which entered the war in support of the freedom of the world and for the defense of human rights, remained true to these principles at the moment of its victory. Helas!"[120]

He predicted grave consequences for the future of French republicanism if society failed to act: "Our failure would be severe, if we allowed justice to turn away

[117] Ibid., p. 307.
[118] Ibid., 309.
[119] Ibid., 308.
[120] Ibid., 309f.

from its universal function and fashion it into an instrument of our passions, indeed our interest […]. We are weakening the peace which we are directly interested in. The peace forms a whole, one cannot get away with impunity by disturbing a part of it; peace, civilization and the law are linked intimately: an attack on one part, even if minimal, puts the whole construct in danger, and risks to put the world on the precipice of barbary, even annihilation." [121]

Eiselé believed that the war crimes trials themselves, independent from the question of guilt, posed a grave danger to Franco-German reconciliation. This opinion evidences a forceful, oftentimes hyperbolic reflection of an increasingly popular belief in French political circles, which regarded French justice as act of vengeance, a perception the West German side worked hard to foster in France. [122]

The legal foundation also elicited strong criticism from another French citizen of Alsatian background: Jean Schlumberger. The quintessential French *homme de lettres*, writer of poetry, plays and novels, founder of the literary review *La Nouvelle Revue Française*, and influential columnist at *Le Figaro*, was born in 1877 in the Alsatian town of Guebwiller, and therefore a natural-born German citizen. The scion of a prominent Alsatian manufacturing family was connected, through his mother's side, Henriette Guizot de Witt,[123] to the highest echelons of the French Third Republic. Cognizant that Jean Schlumberger was required to register with the German Military administration at age 15 and subsequently serve in the German military,[124]

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[121] Ibid., 317.
[122] Brunner, *Frankreich-Komplex*, p. 16.
[123] Jean Schlumberger's great-grandfather, François Guizot, served as King Louis-Philippe's last prime minister in 1848.
[124] Every able male citizen of the German empire, between the age 20 and 28, had to serve seven years in the Reichswehr, three years on active duty and four years in the reserve. See Article 6 of the

the family sent him to live with his mother's relatives in Normandy and Paris in 1892. He subsequently became a French citizen. However, he remained deeply connected to Alsace as a bridge between France and Germany, and became an advocate for Franco-German rapprochement almost immediately after the war, at a time when the French public overwhelmingly harbored anti-German sentiments.[125] He frequently utilized his weekly columns on the front page of *Le Figaro* to call for Franco-German reconciliation and together with his friend and confidant Joseph Breitbach, a German writer who emigrated to Paris in 1931 and subsequently became an anti-Nazi,[126] became an important bridge-head for Wilhelm Hausenstein,[127] the first West German

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"Gesetz, betreffend die Verpflichtung zum Kriegsdienste" published *in Bundesgesetzblatt des Norddeutschen Bundes, Band 1867, Nr. 10*, November 13, 1867, pp. 131-136.
Article 6: "Die Verpflichtung zum Dienst im stehenden Heere, beziehungsweise in der Flotte, beginnt mit dem 1. Januar und zwar in der Regel desjenigen Kalenderjahres, in welchem der Wehrpflichtige das 20. Lebensjahr vollendet, und dauert sieben Jahre. Während dieser sieben Jahre sind die Mannschaften die ersten drei Jahre zum ununterbrochenen aktiven Dienst verpflichtet."

[125] He also utilized his columns in *Le Figaro* to draw the attention of the "French of the interior ["Les Français de l'Intérieur" is an Alsatian expression and juxtaposed to "Les Français de l'Extérieur," or the Alsatians themselves] to the special nature of Alsace's history during the occupation. In 1953, during the outcry in Alsace over the death sentence and long prison sentences of the 13 Alsatians tried for the Oradour massacre, Schlumberger published an article in Le Figaro Entitled "L'Émotion en Alsace" which detailed why Alsatian felt they had been abandoned by France twice over in recent history. This triggered widespread support for Schlumberger in Alsace, including an article in the Alsatian bilingual newspaper *Le Nouveau Rhin Français*, entitled "Merci, M. Schlumberger," in which the author praised Schlumberger for "reestablishing for the readers of Le Figaro the truth about the events in Alsace, the truth about what Alsace has endured and still endures, the truth about its pain and sorrow[...]." See Albert Thumann, "Merci, M. Schlumberger," in: *Le Nouveau Rhin Français*, 17. February 1953, page 1.

[126] Breitbach became stateless in 1937 and a French citizen in 1945. His books were prohibited by the Nazis in 1933, and he, with the aid of Jean Schlumberger and his connections, lived in hiding during the German occupation of France. Before the French surrender in 1940, he worked for the French Military Intelligence Service in Switzerland. See Joseph Breitbach, Jean Schlumberger, *Man hätte es von allen Dächern rufen sollen: Briefwechsel zwischen Joseph Breitbach und Jean Schlumberger*, edited by Wolfgang Mettmann, Alexandra Plettenberg (Berlin: Matthes & Seitz Berlin, 2018).

[127] Wilhelm Hausenstein and Schlumberger/Breitbach shared a love for French and German literature and philosophy. Hausenstein, in many ways, was the German equivalent of Schlumberger. Not only was Hausenstein an accomplished *Literat*, but he also published and commented in German newspapers on contemporary affairs. General Hans Speidel, who utilized Schlumberger and Breitbach as interlocutors for his lobbying efforts for German rearmament in France, also benefitted from an intellectual bond forged with Schlumberger and Breitbach. Speidel held a doctorate in history from Tübingen University. See Nicolaus Sombart, *Pariser Lehrjahre, 1951-1954* (Hamburg: Hoffmann und Campe, 1994), p. 245.

chargé d'affaires in Paris after the war. Schlumberger and Breitbach, with their connections to the Foreign Ministry as well as the Elysée,[128] opened many doors for the Hausenstein mission at a time when any official German presence in Paris was watched with suspicion.

In the late 1940 and the early 1950s, Schlumberger also utilized the power of his pen to draw the attention of the readers of Le Figaro to the significance of French war crimes trials. He framed the war crimes trials as obstacles to French republican principles as well as to Franco-German reconciliation. In an 1952 article entitled "Prisoners of [our] Principles" he referred to those French republican values, foremost the Declaration of the Rights of Man and Citizen, which empowered France "several times in history, we have been able to speak in the name of humanity as a whole and there is no reason for us to cede this role to those who are trying to seize it by counterfeiting it.[..] if the proclamation of general principles confers influence and prestige on those who take this initiative, it also creates obligations of which they are now prisoners. And no initiative has been as venerable as the Declaration of the Rights of Man and Citizen." Schlumberger continued, that "as a nation championing the rule of law," France attracted the hopes and dreams of those who fought for "the

[128] Schlumberger's nephew François Seydoux de Clausonne served as the Director of the French Foreign Ministry's West European Department in 1949 and subsequently became French ambassador to West Germany in 1965. In the late 1950s and early 1960s, Seydoux and his counterpart in the West German Foreign Office, State Secretary Carl Carstens (who later ascended to the West German presidency in 1979) became important facilitators of Franco-German reconciliation. After the successful state visit of de Gaulle in West German, Carstens thanked Seydoux for his "years-long efforts in support of Franco-German friendship, which have been met with extraordinary success." See letter by Staatssekretär Carstens to Botschafter a.D. François Seydoux de Clausonne, dated 6. September 1962, in PA AA, B2/75; "Während des Staatsbesuchs des französischen Staatspräsidenten, der in seinem bisherigen Verlauf den Höhepunkt der freundschaftlichen Beziehungen unserer beiden Länder darstellt, gedenke ich Ihres langjährigen, von außerordentlichen Erfolg gekrönten Wirkens für die deutsch-französische Freundschaft."

future of a better humanity" and against oppression throughout the world. However, "after having proclaimed the equality of men so high before the law, we could not, to take an example, allow ourselves without scandal our order of August 28, 1944, which declares an inhumane act committed based on superior orders by a foreign soldier punishable, while under the same conditions, the French soldier is not inconvenienced [by legal proceedings]. [...] And we had fewer excuses, four years later, to defy legal honesty by the law of 15 September 1945 [sic] on collective guilt." He finished his article with a passionate plea to adhere to the noble French republican traditions: "[...] we must understand that we are emptying these absolute [principles] of all meaning and our role of all its former dignity if we are the first to turn on our principles when they inconvenience us, and if we utilize them as others brandish their propaganda slogans."[129]

Jean Schlumberger followed a tactic which attacked the war crimes trials program without ever questioning the horrendous nature of the crimes. Instead, he

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[129] Jean Schlumberger, 'Prisonniers des Principes' in: *Le Figaro*, July 8, 1952.
"Plus d'une fois dans l'Histoire, nous avons su parler au nom de l'humanité entière et il n'y a pas de raison pour que nous cédions ce rôle a ceux qui essaient aujourd'hui de s'en emparer en le contrefaisant. Mais comprenons que, si la proclamation de principes généraux confère de l'influence et du prestige à ceux qui en prennent l'initiative, elle leur crée des obligations dont ils sont désormais les prisonniers. Rien de plus honorable pour nous que la déclaration des Droits de l'Homme et du Citoyen. Elle a, pendant un siècle, attiré vers la France les espoirs presque mystiques de tout ce qu'il y avait opprimés dans le monde, de tout ce qui luttait pour l'avènement d'une humanité meilleure. [and after the Dreyfus affaire, when the error had been corrected nous avons vraiment fait figure de nation championne du Droit] Mais plus cette mission nous a valu de rayonnement et d'amitiés, plus, si nous y manquons, nous provoquons de déceptions ou des colères. C'est ainsi qu'après avoir proclamé si haut l'égalité des hommes devant la justice, nous ne pouvions, pour prendre un exemple, nous permettre sans scandale notre ordonnance du 28 aout 1944, laquelle déclare punissable le soldat étranger qui accomplit un acte inhumain sur l'ordre de ses chefs, alors que, dans les mêmes conditions, le soldat français n'est pas iniquité – ordonnance qui pousse le paradoxe jusqu'à exiger l'étranger qu'il se mutine plutôt que de manquer aux lois de l'humanité, tandis que le Français peut y manquer innocemment, couvert par la discipline. Et nous avions encore moins d'excuses, quatre ans plus tard, à défier toute honnêteté juridique par la loi du 15 Septembre 1945 [sic] sur la culpabilité collective. [...] Mais comprenons que nous vidons cet absolu de toute portée et notre rôle de toute son ancienne dignité si nous sommes les premiers à tourner nos principes quand ils nous gênent, et si nous les utilisons comme d'autres brandissent leurs slogans de propagande."

appealed to the French republican traditions, especially equality of all persons before the law and the principle of individual rather than collective responsibility, which he claims have been violated by the legal foundation of the war crimes trials program. He alluded to the use of the French republican principles in the Soviet Union as mere propaganda slogans and warned that the same would happen to France's prestige if the country continued to go down the path of postwar justice. Schlumberger's line of attack against the legal foundation was therefore similar to Eiselé's.

However, during the Oradour Trial at Bordeaux in 1953, Schlumberger went even further. He attempted to relativize the guilt of the defendants by attempting to paint them as hapless victims of the Nazi machinery. He argued that the Nazi state succeeded, through indoctrination, in reducing these men to the "state of machines"[130] who lost all capacity for independent reasoning.[131] "They were no longer young sportsmen like those who composed the German army at the time of the invasion. Instead, they were boys with a gray complexion, with an empty gaze, who were kept apart so that no contact with the outside world could spoil them. They were even forbidden to exchange a word with the soldiers of the Wehrmacht. As soon as the drill stopped, the instructors of the Hitlerian catechism snatched them up. When they had to be given a break, they were forced to belt out their patriotic songs. In this way, it was certain that they did not have a moment left for a personal thought. One must have seen these expressionless faces, entirely emptied of any soul, to explain the passivity with which the slaughterers of Oradour accomplished what they were

[130] Ibid.
[131] Ibid.

commanded to do." The last sentence constituted his core argument: The perpetrators of Oradour who stood trial at Bordeaux were turned into machines by the Nazi apparatus and were so devoid of reason or any sense of independence that they simply executed what they had been ordered. His arguments amount to the "diminished responsibility" line of defense often utilized by the defense in court to achieve a mild sentence. Schlumberger concluded that "the judges of Bordeaux had to pass a verdict without having the real culprits before them. They judged, so to speak, the blades of the knives and not the hands that had held the handle."[132] With his analysis of guilt and innocence of those who stood trial at Bordeaux for the massacre at Oradour, Schlumberger reinforced, albeit more eloquently, a common theme in the circles which demanded an end to war crimes trials. The soldiers who stood trial were only following orders, the "real culprits" were the party bosses in Berlin or the generals in the field headquarters.

Jean Schlumberger believed in the inversion of justice, that the French war crimes trials program would not strengthen French security vis-à-vis Germany, but weaken it. As one of the founders of the *Comité français d'échanges avec l'Allemagne nouvelle*, he believed in Adenauer's *Westintegration* and saw in the release of the war criminals an important step towards achieving that goal. He published an article in Figaro on June 20, 1950, entitled "A law which makes one doubt our good faith"[133] in which he insinuated that the law of 1948 was born out of revenge and prevented a rapprochement as envisioned by Robert Schuman a month

[132] Jean Schlumberger, "Crimes de Guerre et Refus d'Obéissance - Le Devoir de désobéissance, " in: *Le Figaro*, March 4, 1953.
[133] Jean Schlumberger, "Une loi qui fait douter notre bonne foi," in: *Le Figaro*, June 20, 1950.

prior on May 9, 1950. Schlumberger openly equated the law of 1948 with Nazi jurisprudence and argued that it will be used by the enemies of France to undermine its influence, particularly in West Germany. He wrote:

> [W]e are not going to throw the French jurisprudence out the window and stand up to the opinion of the whole world to prevent some suspects from being acquitted for lack of evidence. Our honor is at stake here. We must deplore the fact that a Nazi brute remains unpunished, but first and foremost we need to worry about not punishing him based on a Nazi-style law which will lead to the execution of hostages. How can one not understand what suspicion of hypocrisy a procedure like that of the Ascq trial throws on the efforts of France to support, in Germany, the opponents of an impertinent Nazism? Is the rule of law which our country constantly refers to limited to showy professions of faith or does it effectively represent a justice system superior to that of the police regimes? What an opportunity for the opponents of the West to exploit and amplify any doubt on this matter.[134]

In this fiery op-ed, Schlumberger attacked the law by claiming that it would result in nothing but a Nazi jurisprudence. He claimed that verdicts based on the law would have been akin to the shooting of hostages by the Nazis. The law of 1948, he argued, contradicted the French legal tradition, and would face stiff opposition in the court of public opinion across the globe, and crucially in Germany, where it would support France's enemies and undermine its allies. The *raison d'être* of the law, ensuring that Nazi criminals receive a punishment in the wake of sparse evidence, was not commensurate with the egregious damage it inflicted on the rule of law and

[134] Ibid.; "nous n'allons pas jeter par terre la législation française et braver l'opinion du monde entier pour empêcher que quelques suspects ne soient acquittés faute de preuves. Notre bonheur est ici en jeu. Nous devons déplorer qu'une brute nazie [sic] reste impunie, mais ce qui doit nous préoccuper tout d'abord, c'est que nous ne la punissions pas au nom d'une loi qu'on dirait nazie et qui se ramène à faire fusiller des otages. Comment ne pas comprendre quel soupçon d'hypocrisie une procédure comme celle du procès d'Ascq jette sur les efforts de la France pour soutenir, en Allemagne, les adversaires d'un nazisme impertinent? La légalité dont notre pays se réclame sans cesse se borne-t-elle à des professions de foi spectaculaires ou représente-t-elle effectivement un ordre de justice supérieur à celui des régimes policiers? Quelle aubaine pour la politique anti-occidentale que de pouvoir exploiter, amplifier n'importe quel doute sur ce point!"

French foreign policy interests. According to Schlumberger, it would have been painful to see a Nazi perpetrator go unpunished, but it was a small price in exchange for France's democratic and Western legal system. Schlumberger formulated the idea of inversion of justice in unmistaken terms: The French war crimes trials program did not make France safer from Nazism, on the contrary, it undermined French allies in Germany and strengthened its opponents. Furthermore, he argued that the French war crimes trials and its legal foundation bolstered the opponents of the West. Schlumberger, like Robert Schuman, saw in Adenauer and his government the once-in-a generation opportunity to transform Franco-German relations profoundly for the better. He believed that the French war crimes trials assumed a counter-productive quality in this effort. Throughout the 1950s, Schlumberger continued to use his editorial page in *Le Figaro* to attack the French war crimes trials, which earned him a special thank you note from the West German mission in Paris in 1951.[135]

The law of 1948 therefore became a fundamental piece of evidence in the campaign which inverted the goals of justice: if the French state was truly interested in a fair dispensation of justice, it must revoke the law and release the war criminals which have been punished according to the law. The Schuman-Plan and the emerging discourse on reconciliation added the reconciliatory concern to the agenda. Since the law of 1948 had ignored external reconciliatory concerns, the debate in the 1950s centered around the law's divisive nature.[136]

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[135] Breitbach, Schlumberger, *Man hätte es von allen Dächern rufen sollen*, p. 197.
[136] In an internal memo from September 1950, the Zentrale Rechtsschutzstelle voiced concerns that the law of 1948, if applied in future trials of members of the Waffen-SS, would be seen as an "instrument of retaliation" in the eyes of the German public. Therefore, the West German diplomats hoped to "appeal to the spirit of traditional French justice [...] in order to prevent that Franco-German relations are clouded once again."

The criticism of the Law of September 15, 1948, had been instrumental in discrediting French war crimes trials as a whole and supported the West German amnesty lobby's core claim that French justice was based on revenge and retribution and was therefore untimely in the age of reconciliation between the two countries. When Cassin in the summer of 1945 estimated that the French principle of collective responsibility – which considered the individuals who belonged to a unit proven to have committed atrocities as co-authors or accessories - lenient compared to Robert Jackson's principle, he completely and maybe naively underestimated the storm of outrage which ensued after 1948.[137] The outrage came from predictable directions, such as West Germany's amnesty lobby, some of whom called the legal construct "a

"Mit Sorge erfüllt sieht daher die deutsche Öffentlichkeit mehr denn je der Gefahr entgegen, dass die Kollektivhaftung, wie bereits im Falle Ascq, auch auf die Gesamtheit der zufällig aufgegriffenen Angehörigen der Division "Das Reich" angewandt werden könnte. Würde das Eintreten, so würde die deutsche Öffentlichkeit das Gesetz von 1948 in der Tat mehr oder weniger lediglich als ein Instrument politischer Vergeltung ansehen. [...] Es wird daher angesichts der der Division vorgeworfenen verabscheuungswürdigen Verbrechen mit aller Mäßigung, aber nicht minder Ernst, an dem Geist der traditionellen französischen Gerechtigkeit, die sich in Frankreich durch die Jahrhunderte hindurch stark erhalten hat, appelliert, diese etwaige neue Trübung für die deutsch-französischen Beziehungen zu verhindern."
PA AA, NL Hausenstein, Band 4, – Frau Dr. Bitter, "Information zur Frage der deutschen Kriegsgefangenen in Frankreich" dated 15. September 1950.

[137] This assumption may have rested on the fact that the French prosecution had to prove two facts before assuring a guilty verdict: first, it had to prove in detail that the unit in question committed a mass atrocity, second it had to prove that the individual belonged to the unit in question. Only then did the burden of proof shift to the indicted individual. Cassin may have believed that this form of "collective responsibility" was much more restricted than Jackson's, which criminalized membership in a number of Nazi organizations.

Nazi law" [138] or evidence for the insinuation that the individuals who stood trial were in fact not the target of the French prosecution but Germany as a whole.[139]

The West German government's judgement about the law, made in an internal memo about the state of French war crimes trials, was extremely negative as well. Margarete Bitter, acting head of the ZRS, argued that: "according to the German point of view, this law violates three fundamental principles of the western legal tradition: The principle that criminal responsibility always pertains to individuals, and not a collective; moreover, that the accused has to be proven guilty, and not vice-versa; and finally that a law cannot have retroactive power."[140] Moreover, the memo also positioned the law within the traditional interpretation of Franco-German relations as an "arch-enmity:" "[If the law was applied widely] the German public would more or less interpret the law as an instrument of political revenge."[141] The

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[138] In an article in *Die Welt*, January 10, 1953, entitled "Belated Atonement for Oradour," journalist Gert v. Paczensky called the so-called Lex-Oradour "a Nazi law;" While being more measured, Marion-Gräfin Dönhoff in an article *Die Zeit* from January 8, 1953, entitled "the Curse of Oradour" called it "certainly not satisfactory legal solution." The discourse surrounding the "Lex Oradour" is particularly interesting, since there is evidence that the military tribunals never made use of its provisions: "Le Commandant Garat [Minsitry of Defense - Military Justice Administration] emphasizes, after a question from M. Collona-Cesary [Ministry of Foreign Affairs], that "not a single sentence has been pronounced based on the decree of September 1948 about the collective guilt." AN, BB/18/7222, undated, "Compte-Rendu de la Réunion du 9 Janvier [1952] sur la Question des Prisonniers de Guerre et Criminels de Guerre."

[139] The *Ost-West-Kurier*, a weekly newspaper published in Bremen which called itself "the independent *heimat*-newspaper of the expellees ["die grosse, unabhängige Heimatzeitung der Vertriebenen"] from January 1953 saw in the debate to exempt French suspects of war crimes from the "Lex-Oradour" evidence that "Germany is in the dock at Bordeaux." See article entitled "Es gab nicht nur ein Oradour! Es gab auch ein Dresden ! Während im Europapalast über eine europäische Verfassung verhandelt wird, soll Deutschland in Bordeaux erneut auf der Anklagebank sitzen!" *Ost-West-Kurier,* issue 2, January 1953.

[140] "Dieses Gesetz verstößt nach deutscher Auffassung gegen drei Grundsätze des abendländischen Rechtskreises, nämlich gegen die Grundsätze, dass seine Strafbarkeit nur individuell, nicht kollektiv sein kann, weiterhin, dass die Schuld dem Beschuldigten nachzuweisen ist – nicht umgekehrt – und endlich, dass ein Strafgesetz keine rückwirkende Kraft haben kann." BA Koblenz, B305/360, 1. June 1950, memo by Margerete Bitter, entitled "Information zur Frage der deutschen Kriegsgefangenen in Frankreich."

[141] Ibid.; "Würde das Eintreten, so würde die deutsche Öffentlichkeit das Gesetz von 1948 in der Tat mehr oder weniger lediglich als ein Instrument politischer Vergeltung ansehen."

West German government official also reiterated a common theme of the amnesty lobby: that one does not deny that "real war crimes" need to be punished accordingly: "The German side accepts without reservation […] that a real war crime must be punished accordingly. At the same, the aforementioned provisions suggest the danger, that sentences carry within them traces of revenge, […] which are in individual cases not warranted.[142]" This carefully worded statement represents an important part of West German sentiment: *de jure* arguing that yes indeed, the real war criminals need to be punished, but *de facto* very few Germans, if any, committed "real war crimes," meaning that most German war criminals were victims of French revenge for Nazi Germany's victory over France of 1940.

Apart from these predictable opponents of French justice vis-à-vis the German war criminals, the law also drew the ire from less obvious directions. First and foremost, the International Committee of the Red Cross (ICRC) had been lodging stern protests with French lawmakers and members of the government. The ICRC was appalled by Art. 1 of the Law of September 15, 1948, which stated that "if a crime defined by the Ordinance of 28 August 1944 … had been perpetrated by a unit or group or association which the IMT had declared as criminal [...], all members of this organization or group can be considered co-perpetrators if they are unable to prove their non-participation at the crime or that they had been forced into service." The ICRC felt compelled to protest vigorously with the French Justice and Foreign

[142] Ibid.; "So rückhaltlos von deutscher Seite, wie bereits eingangs gesagt, anerkannt wird, dass ein wirkliches Kriegsverbrechen die erforderliche Sühne finden muss, ebenso sehr liegt angesichts der obigen Bestimmungen die Gefahr nahe, dass Urteile, wie sie vielfach von deutschen Betroffenen auch gewertet werden, die Spuren eines im Einzelfall ungerechtfertigten Wunsches nach Vergeltung tragen."

Ministries about what it considered a reversal of the presumption of innocence. The rhetorical question it asked itself was: "How could a humanitarian institution assist with this reversal of the burden of proof, which could lead to the punishment of the innocent, and which puts the accused into an impossible situation, without raising the most solemn protestations?"[143]

In conclusion, the legal foundation of the prosecution of German war crimes, the ordinance of 1944 and the law of 1948, bear the hallmarks of post-conflict society grappling with the transition from dictatorship to democracy. On the one hand, the lawmakers wanted to ensure that the French justice system had its disposal the tools to adequately prosecute the extraordinary criminal activity of the Nazi occupation in France. On the other hand, the French republican legal tradition, with its emphasis on the rule of law and equality before the law, imposed limits on the permissible tools. The discourse which ensued especially after 1949 focused on French republican values and the question whether or not justice vis-à-vis the German war criminals violated these values. Principles like "*ex post facto law*," "partial reversal of the presumption of innocence," "limited collective responsibility," had been inserted into the French laws to confront the extraordinary task of a judicial reckoning with the Nazi occupation of France, to punish the perpetrators and lend justice to the victims. However, the very same principles incited comparisons to Nazi laws, even genocide, and became discursive weapons utilized not only in the name of French republican traditions and Franco-German reconciliation, but also by the enemies of

[143] ACICR, D EUR FRANCE1-0810 Activité CICR en faveur des anciens militaires allemands objets poursuites judiciaires en France, 1946-1950, dated September 1950, p. 60.

aforementioned transitional justice in an effort to undermine or even reverse the prosecution of German war criminals in France. The amnesty lobby found in the idea of inversion of justice a powerful legitimizing tool to call for the release of the "victims of French justice."

Even West German chancellor Adenauer came to believe in the idea of inversion of justice. When he solicited the support of Pope Pius XII. for the release of German war criminals, he explained that their continued prosecution and imprisonment "prevented a pacification between France and West Germany like no other [question]." Utilizing the same discursive weapon as the amnesty lobby, he argued "[t]he manner by which the war crimes trials had been conducted in Western Europe, based on special laws, has led in many cases to legally unsound verdicts and punishments. These can only be called too harsh. The impression exists not only in Germany, that these verdicts had been passed under the influence of politics rather than the wish to serve justice."[144]

The next chapter will discuss the inner-French tensions these so-called special laws caused when prosecuting war crimes. The case of the first prosecuted perpetrator of the Oradour massacre provides insights into the relationship between justice and

[144] "Unter den Problemen, die als Folgeerscheinungen des Krieges die Beziehungen zwischen den Völkern noch immer ernstlich beeinträchtigen, ist die Frage der wegen Kriegsverbrechen verfolgten oder verurteilten Deutschen eine der brennendsten. Gerade dieses steht einer Befriedung insbesondere zwischen Deutschland und Frankreich am meisten im Wege.
Die Art und Weise, wie die Kriegsverbrecherprozesse in Westeuropa aufgrund von Sondergesetzen durchgeführt worden sind, hat in vielen Fällen zu rechtlich nicht haltbaren Urteilen und zu Strafen geführt, die als zu hart bezeichnet werden müssen. Nicht nur in Deutschland besteht der Eindruck, dass politische Gesichtspunkte weit mehr für diese Prozesse bestimmend waren als der Wunsch, dem Recht zu dienen." Letter from Federal Chancellor Adenauer to Pope Pius XII., dated April 10, 1951, in: BA Koblenz, B141/9576.

reconciliation, and reveals the impact of the Gaullist myth on both French and German suspects of war crimes.

CHAPTER 3 The Gaullist Myth and the Prosecution of War Crimes: The Case of the First Convicted Oradour-Perpetrator, 1944-1949

Before the Germans detained for war crimes in France became a political liability for European integration and Franco-German reconciliation, the issue of Alsatian, and therefore French, members of the German armed forces emerged as a multifaceted legal and political French domestic problem which found its crescendo in the well-known political crisis of 1953 as a consequence of the judgement at Bordeaux. However, even before the Oradour Trial triggered mass protests and strikes in Alsace which only abated after the National Assembly passed a highly controversial amnesty law, the question of the Alsatian suspects of war crimes demonstrated how the proximity between politics and justice benefitted the suspects. This chapter shows how the Gaullist myth inhibited the prosecution of war crimes by promoting a point of view which presented the recent past in strictly binary terms: the martyred and resisting France versus the perpetrating Germany. When this myth was proven to be false after the arraignment of a dozen Alsatians at Bordeaux for crimes committed at Oradour, and French justice vis-à-vis war crimes was under attack from inner-French critics and ultimately brought to an end by a political solution, the door opened wide for a re-evaluation of the "German war criminals problem" along similar lines. This chapter presents the postwar prosecution of the Waffen-SS member Paul Graff as a bridge between the age of retribution and the age of reconciliation.

Paul Graff , an Alsatian who had been considered a German citizen by Nazi Germany, and who had been conscripted into the Waffen S.S., committed atrocities at Oradour, and who was considered French by French judicial authorities after 1944,

became the very first suspect who faced criminal proceedings in France's most high-profile war crimes case, the Oradour massacre. The Graff case shows the tensions, conflicts and quarrels over jurisdictions which derived from the fact that the French government in exile, in line with the Gaullist myth, excluded French citizens from prosecution for war crimes when passing the legal foundation in 1944. After 1944 and before the law of 1948 came into effect, the nationality of the accused determined the jurisdiction: Enemy combatants suspected of having committed war crimes were to be tried by military tribunals. French citizens, on the other hand, were to be tried in front of civilian courts, and not for war crimes, but for "*collaboration avec l'ennemi*."[1] Graff's case showed that while there had been legal mechanism under French law to convict a perpetrator who confessed to the killing of a civilian, the French judicial authorities under direction from the Justice Ministry treated Graff with the utmost benevolence in its discretion – putting Graff at the verge of a premature release as late as 1949.

While the previous chapter showed the consequences of the Gaullist myth for the legal framework of war crimes trials, this chapter analyzes the impact on the prosecution of a specific war criminal: the Oradour-perpetrator Paul Graff. I argue that the Gaullist myth resulted in the construction of binary categories and associated citizenship with each of the categories, resulting in the binary pair victim/French, perpetrator/German. Paul Graff, a French citizen, violated this paradigm – a fact known to French judicial authorities since 1945. Instead of discarding the binary categories, the Gaullist myth was so deeply ingrained that the Ministry of Justice

[1] Jean-Jacques Fouché, *Politique et Justice*, pp. 70f.

prepared for the premature release of Graff as late as 1949. Thus, the case of Paul Graff provides evidence for the unequal prosecution of war crimes shortly after the war, depending on the citizenship of the suspects: German suspects were pursued aggressively as part of the transitional justice from dictatorship to democracy, while French suspects were either willfully ignored or attempts made to end their prosecution because they did not fit into the imagined categories of perpetrators and victims and constituted a threat to French unity. Moreover, in this chapter I argue that the impact of the Gaullist myth on the prosecution of Nazi crimes in France went beyond the legal restrictions imposed by the ordinance of 1944.

The Gaullist myth, I argue, impeded the prosecution of Nazi crimes in two additional ways. First, by shaping the views of actors within the French judicial authorities themselves: in the view of the director of the criminal affairs division in the Justice Ministry, Graff was more of a victim than a perpetrator, while the German defendants standing trial at Bordeaux were the *real* perpetrators. Second, the Gaullist myth also impacted the judicial authorities indirectly. The leading French myth of the postwar years was simply a force too powerful to ignore, even for the Justice Ministry. Therefore, the justice ministry attempted to mold the prosecution of war crimes in way to make it compatible with the Gaullist myth, or to avoid that it openly collided with it.

The following chapter shows that the both the Justice Ministry as well as the prosecutorial authorities at courts which held jurisdiction over the Graff case at various points during prosecution from 1945 to 1949 utilized the legal means at their disposal to avoid that a French citizen became the public face of the Oradour-

massacre – because of the poor optics in light of the Gaullist myth *and* because the Gaullist myth, when put forth by the supporters of Graff, resonated with them. The persuasiveness of the Gaullist myth reached into the Justice Ministry, convincing some of its leading bureaucrats that Graff deserved to be freed because of his perceived victimhood. The implications of these development for the prosecution of war crimes in France were critical. In arguably the most important phase of the prosecution, the first years following the perpetration of the crimes, the attempt to seek justice was actively impeded by the prosecutorial authorities themselves. Four years passed before Graff's prosecution was actively pursued again in 1949, but the window for justice for the victims of the Oradour massacre was closing at a fast pace.[2]

Shortly after the liberation of France in the summer of 1944, the War Crimes Research Service (SRCGE)[3] identified dozens of Alsatians, and therefore French

[2] The Graff case prior to Oradour has not received the attention it deserves. Jean-Jacques Fouché, in *Oradour: La Politique et la Justice* (Saint-Paul: Souny, 2004), p.70- 83, remains the only one who provides an account. While he detailed the vacillation of the prosecution of Paul Graff between different military and civilian jurisdictions, evidencing how "the jurisdictions [have] for several years shifted responsibility back and forth" ["les juridictions vont, plusieurs années durant, se renvoyer 'la balle,'" Fouché, p. 88], and while he cited some of the reports of the judicial authorities at length, which detail the legal and political difficulty of prosecuting Graff, he did so from an inner-French perspective as a precursor to the Bordeaux Trial and its implications to French unity, in effect previewing the conflict between Limousin and Alsace and between French communists and French conservatives (mainly MRP) which would become center stage in the Oradour Trial. I am the first to present the memory politics revealed by the French prosecutorial and judicial authorities and which amount to the construction of the binary categories as part of the Gaullist myth. Sarah Farmer's *Martyred Village* did not discuss the Graff case in front of French courts. She mentioned his name only once in connection with the Bordeaux Trial in 1953; see Farmer, *Martyred Village*, p. 157. Claudia Moisel, in *Frankreich und die deutschen Kriegsverbrecher,* took a similar approach. She mentioned the Paul Graff case in one short paragraph on page 152. Bernhard Brunner's *Der Frankreichkomplex* did not address Graff at all. I am the first provide a full account of the Graff case and present it as an example of the impact of the Gaullist myth on the prosecution of war crimes.

[3] Service de Recherche de Crimes de Guerre Ennemis.

citizens, who participated in committing massacres on French soil while being members of the German armed forces during World War II. This is not surprising, given that both the suspects and the witnesses as well as all the evidence was easily accessible in France, while collecting evidence and locating the suspects in the German occupation zones or in POW camps was a time-consuming and, after Great Britain and the U.S.A. made extradition increasingly hard beginning in 1947, laborious and with little chance for success.[4] One of the first trials for war crimes opened on October 19, 1945, against a suspect named Paul Graff, "of Alsatian origin, who had been forcibly conscripted into the Wehrmacht and assigned to the Waffen SS division 'Das Reich.' He belonged to the unit which was implicated by the massacre of Oradour-sur-Glane."[5]

Graff was born in July of 1926 in Strasbourg. Since his mother was unmarried and his father unknown, he was raised by his maternal grandparents, who were farmers in Ebersheim, a village situated half-way along a major thoroughfare connecting Strasbourg with Colmar. In January of 1944, he was conscripted into the

[4] For instance, in January of 1947, according to a report which is attributed to the Alsatian member of the National Assembly Jacques Fonlupt Espéraber, the pre-trial investigation of those 120 suspects who were accused of perpetrating the Oradour massacre, chiefly among them Captain Kahn, was well advanced. However, not a single suspect had been in French custody. Presumably this was because the whereabouts of the 100 German suspects were unknown or because their extradition was still pending. However, the French authorities were well informed, with one exception, about the identity and domicile of the 20 Alsatian suspects. According to the Alsatian member of the National Assembly, the government failed to arraign these suspects because "it may appear to France and even the entire world (given the amount of attention the Oradour massacre had attracted), that the crimes had been perpetuated by Alsatians alone, if exclusively Alsatians were to be sitting in the box of the defendants." "[I]l pourrait apparaître à la face de la France et même du monde (eu égard à la publicité dont les massacres d'Oradour ont fait l'objet) que ces crimes ont été perpétrés par des Alsaciens uniquement, puisque des Alsaciens et des Alsaciens seulement prendront place dans le box des accusés." See document entitled "Note" and dated 11. January 1947, in: AN Pierrefitte, BB 18/3575. The preceding document attributes it to Jacques Fonlupt Espéraber, his name appears hand-written in the top right corner of the first page.

[5] Letter of Le Procureur Général du Cour d'Appel de Limoges to M. le Garde des Sceaux, dated January 2, 1947, in AN Pierrefitte, BB 18/3575.

Waffen-SS [6] "because of his height and his blue eyes (the nordic type)."[7] After participating in the massacre on June 10, 1944, Graff and his Waffen-SS unit were engaging the Allied forces in Normandy, were Graff was subsequently wounded[8] and taken prisoner, but soon released based on his French citizenship. Graff returned to Strasbourg, where he served as mail carrier in the French Postal Service. After two survivors of the massacre recognized him, [9] he was apprehended in September or October of 1945, and in the first interviews to the authorities provided extensive confessions to his role during the massacre.[10] He was then transferred to Limoges (Limousin) and charged with murder and "*intelligence avec l'ennemie*," and sentenced to death on March 12, 1946. The Limoges Appeals Court, however, annulled the verdict a mere ten days later, because, the court ruled: "the fact that [Graff] belonged to the German military means that the Military Tribunal, not the Court of Justice has jurisdiction over the case."[11]

The question of how to prosecute Alsatians who were suspected of having committed war crimes constituted a challenge both from a legal and a political point

[6] See "Note" dated 11. January 1947, in: AN Pierrefitte, BB 18/3575; this note is attributed to Fonlupt Esperaber, member of the National Assembly for the MRP.
[7] See "Note pour Monsieur le Garde des Sceaux," dated 6. May 1949, AN Pierrefitte, BB 18/3575.
[8] His right eye was torn off by a shrapnel. See "Note pour Monsieur le Garde des Sceaux," dated 6. May 1949, AN Pierrefitte, BB 18/3575.
[9] See Procureur Général près la Cour de Cassation to Ministre de la Justice, dated 11. August 1947, in AN Pierrefitte, BB 18/3575.
[10] The fact that Graff became a suspect of war crimes because he was identified by two survivors of the Oradour massacre is critical. This coincidental circumstance meant that the French judicial authorities had no choice but to open an investigation. The seeming inevitability of a full-fledged judicial reckoning with the crimes at Oradour was then quickly solidified by Graff himself when, in the early stages of the investigation, he confessed to murder. These two circumstances forced the hand of the judicial authorities. As opposed to the other Alsatian participants of the massacre, who were treated merely as witnesses by the judicial authorities, they could not easily escape the consequences of these two circumstances.
[11] Letter of Le Procureur Général du Cour d'Appel de Limoges to M. le Garde des Sceaux, dated January 2, 1947, in AN Pierrefitte, BB 18/3575.

of view. The investigating magistrate at the Military Tribunal at Bordeaux[12], Captain Lesieur, explained in October 1946 in great detail that 20 or more suspects of the massacre were of Alsatian origin, and that some had actively participated in the massacre, while all but one of the Alsatians were "forcibly conscripted"[13] into the Waffen SS unit. He asked his superior, the *Commissaire du Gouvernement*:

> Regarding the question whether the Alsatians ... should be prosecuted or excluded....[...] It does not appear to me that the question can be solved from a legal point-of-view. One cannot fail to see that two years after the deeds, a prosecution against young people who had been peacefully at home and many of whom had become NCOs in the French army, would have a profound impact in the Alsatian departments. Therefore, this is a question of political opportunity which only the Minister is in the position to address. This is why I have the honor to submit the question to him and will leave, in the absence of further instructions from his part, things as they are.[14]

The magistrate responsible for the investigation of the crime and the arraignment of suspects claimed that the two years which had passed since the crime in 1944 constituted a significant obstacle for the prosecution, given that the suspects had been peacefully domiciled in Alsace for over two years. Expecting pushback from the Alsatian community, he wondered whether it would be feasible to prosecute

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[12] The Bordeaux Military Tribunal had jurisdiction over the German suspects of the Oradour massacre.
[13] "Incorporé de force" has been the term utilized in contemporary documents as well as by present day historians (e.g. Fouché, p. 83). I translated that with "forcibly conscripted."
[14] Letter of Captain Lesieur to the *Commissaire du Gouvernement* at the Bordeaux Military Tribunal, dated 10. October 1946, in: AN Pierrefitte, BB 18/3575. The letter is also quoted in Fouché, p.89ff.; The investigating magistrate at the Military Tribunal at Bordeaux, which had jurisdiction over the German suspects of the Oradour massacre, explained in October 1946 in great detail that 20 or more suspects of the massacre had been Alsatians, and that some had actively participated in the massacre, while all but one of the Alsatians were forcibly incorporated into the Waffen S.S. unit. He asked his superior, the *Commissaire du Gouvernement* how to proceed given that the prosecution of French citizens for war crimes alongside German suspects was legally and politically perilous. "La question de savoir si les Alsaciens ... doivent être poursuivis ou laissés hors de cause....." He continued: "Il ne m'apparait pas que la question puisse être résolus sur le plan juridique. On ne peut manquer de voir que des poursuites engagées deux ans après les faits contre des jeunes gens restées depuis paisiblement à leur domicile et dont plusieurs sont devenues sous-officiers dans l'armée française, auraient un retentissement profond dans les départements alsaciens. Il y a là une question d'opportunité que seul le Ministre ma parait susceptible de trancher et c'est pourquoi j'ai l'honneur de lui soumettre la question et sauf, instructions contraires de sa part, de laisser les choses en l'état."

at all.[15] If you did not believe in the criminal responsibility of the defendants, any time would have been too late for a trial, and indeed the critics of postwar justice made this argument throughout the period under investigation for the purpose of delegitimizing the prosecution of war crimes.[16] What all these arguments had in common: the amount of time that had passed since the crimes had no bearing on the argument. It did not matter whether twenty, seven or two years had passed. In their view, any period of time would be too long.

Understandably, however, the argument carries much more weight when not coming from the proponents of amnesty in circles apologetic of Nazi crimes, but from French prosecutorial authorities themselves. It provided evidence for the unequal prosecution of war crimes shortly after the war, depending on the citizenship of the suspects: German suspects were pursued aggressively as part of the transitional

[15] Of course, from a judicial point-of-view, Lesieur's argument was unfounded at the time, the statute-of-limitation for murder was 20 years, let alone from today's perspective, where crimes of war and against humanity can be prosecuted even many decades after the fact. See Siegmar Schmidt et al., "Einige Thesen zur Signifikanz des Umgangs mit der Vergangenheit," in Siegmar Schmidt et.al. (eds.): *Amnesie, Amnestie oder Aufarbeitung? Zum Umgang mit autoritären Vergangenheiten und Menschenrechtsverletzungen* (Wiesbaden: VS Verlag, 2009), p. 7.

[16] For instance the high-ranking West German diplomate Heinz von Trützschler, who was the vice-director of the *Politische Abteilung* in the Foreign Office, told Robert Schuman's Chief of Staff Henri Beyer in 1952 in regards to "finding a resolution to the war criminals problem" ["Bereinigung des Kriegsverbrecherproblems]:" "The French side should be asked to be appreciative of the fact that so many years after the end of the hostilities, and at a time when both countries are preparing to work together in the European Defense Community, the demands from the German public to liquidate this problem become ever more urgent." ["Die französische Seite müsse um Verständnis gebeten werden, dass so lange Jahre nach dem Ende der Feindseligkeiten und in einem Zeitpunkt, in dem beide Länder sich vorbereiten, in der Europäischen Verteidigungsgemeinschaft zusammenzuarbeiten, in der deutschen Öffentlichkeit das Verlangen nach einer Liquidierung dieser Frage immer dringender werde."] See Memo from Edgar Weinhold, entitled "Aufzeichnung über die deutsch-französische Besprechung in Bonn am 10. bis 11. Dezember 1952 betr. das Kriegsverbrecherproblem in Frankreich," dated 11. December 1952, in: PA AA, B 10/ 2130. Helmut Knochen, the former BdS in Frankreich, made a similar argument: "Seven long years should really suffice to prove that we suffered long enough for events during the war that we could not change." ["Sieben lange Jahre sollten nun wirklich genügen, um zu beweisen, dass wir lange genug gelitten haben für Ereignisse im Kriegsgeschehen, deren Ablauf wir nicht haben ändern können."] See letter from Helmut Knochen to Prinzessin Elisabeth von Isenburg, dated 18. April 1952, BA Koblenz, B305/307.

justice from dictatorship to democracy, while French suspects were either willfully ignored or attempts made to end their prosecution because they did not fit into the imagined categories of perpetrators and victims and constituted a threat to French unity.[17]

The French magistrate Lesieur had the foresight, however, to opine that the prosecution of Alsatian suspects was primarily a political and not just a judicial problem. As events in 1953 proved, he could not have been more accurate. His statement, doubting whether it would be feasible to prosecute the Alsatians now that many of the "suspects had been living for more than two years peacefully at home and some of them even attained NCO-ranks in the French army," alluded already in 1946 to the difficulties the French state would have with the prosecution of French war criminals. As legal scholar Frédéric Mégrét aptly concluded, the French lawmakers had not thought about the possibility of French war criminals,[18] and when confronted with the reality, a chaotic reckoning began which struck at the core of French postwar identity. Therefore, Magistrate Lesieur, back in 1946, decided that the best strategy for the time being was to do absolutely nothing regarding the prosecution of French citizens for war crimes, until he was told otherwise by his superiors.[19]

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[17] Fouché observed a similar bias: "Just as one could not imagine other victims than French, one could not conceive that there could be French citizens in this German troop." ["Pas plus qu'on aurait pu imaginer d'autres victimes que françaises, on ne pouvait concevoir qu'il puisse y avoir des Français dans cette troupe allemande."] Fouché, *Politique et Justice*, p. 81.

[18] Mégrét, "The Bordeaux Trial," p. 146.

[19] Captain Lesieur, Juge d'Instruction auprès le Tribunal Militaire de Bordeaux to Commissaire du Gouvernement, dated 10. October 1946, in AN Pierrefitte, BB 18/3575. Lesieur only put the prosecution of the "incorperés de force" [those Alsatian recruits of the Waffen SS and Wehrmacht which were forcibly incorporated – the vast majority of them] on halt. The one Alsatian, George Boos, who voluntarily joined the German forces and who was, as one of the 20 Alsatians, implicated at Oradour, was prosecuted because "[h]e cannot therefore invoke any excuse and must unquestionably

When Colonel Turpault, the Director of the Military Justice Administration in the Ministry of the Army and Lesieur's superior, received his letter, he sounded more alarmed about the prospect of being unable to prosecute the French perpetrators of Oradour given that, in his opinion, "the provisions of the ordinance of August 28, 1944 relating to the repression of war crimes are not applicable to Alsatians because they have not ceased to be French and Article 1 of this text only refers foreigners."[20]

Colonel Turpault's analysis of the legal situation of the French suspects of war crimes pointed out the legal contradictions the French state had to reckon with in the aftermath of the German occupation of France and the annexation of Alsace. France officially never ceased to consider Alsatians-Lorrainians French citizens. However, Article 1 of the Ordinance of 1944 defined war crimes as acts committed by enemy nationals only. The French provisional government in exile simply did not reckon with the fact that French citizens themselves could be implicated by war crimes in their own country against their compatriots. War crimes, in the spirit of the 1944 ordinance, remained a category reserved for enemy combatants, mostly but not exclusively Germans. Mégrét argued that the lawmakers of the 1944 ordinance was rooted in the "fiction that war crimes could not be committed by French nationals in

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be prosecuted." ["Il ne peut donc invoquer aucune excuse et doit incontestablement être poursuivi."] Lesieur noted in the aforementioned letter, dated 10. October 1946, that Boos was prosecuted at Strasbourg Court of Justice for "collaboration, treason and intelligence with the enemy." The Bordeaux military tribunal showed interest in having Boos transferred from Strasbourg to Bordeaux, as indicated by Lesieur, to have him prosecuted alongside the German suspects, however, he concluded that "I do not believe that the competence of the Military Tribunal of Bordeaux concerning Boos can be ascertained." ["[L]a compétence du Tribunal Militaire de Bordeaux à l'égard de Boos ne me parait pas pouvoir constatée."], ibid.

[20] Le Directeur de la Justice Militaire, Ministère de l'Armée, to Direction des Affaires Criminelles, Ministère de la Justice, dated 7. November 1946, AN Pierrefitte, BB 18/3575; "les dispositions de l'ordonnance du 28 août 1944 relative à la répression des crimes de guerre ne sont pas applicables aux Alsaciens parce que ceux-ci n'ont pas cessé d'être français et que l'article 1er de ce texte ne vise que les étrangers."

occupied France."[21] This meant that the French justice system maneuvered itself into a corner after the war. France would never accept Alsatians serving in the Wehrmacht as "enemy combatants," precluding the option of prosecuting them under the Ordinance of 1944. Therefore, Turpault faced two choices – to decline the prosecution of Alsatians, or to initiate a "Projet de loi" – to draft a bill - allowing for "all foreign and French individuals, responsible of having committed the same deed likely to be declared a war crime, to be included in the same suit and to be subject to the same court. That is why I took the initiative of a bill [...]."[22]

The grave legal and political implications of this choice, that infractions committed by French serving in the German forces are not to be considered war crimes, spurned the Justice and Army ministries to provide the French law makers with a bill. Otherwise, the French legal tradition would be under attack, given that French and German citizens, for the same acts, would be judged according to two completely different laws in two different legal jurisdictions, with potentially wildly different verdicts. Therefore, the French practice of prosecuting suspects of war crimes potentially collided with one of the founding principles of the French republic, equality before the law.

[21] Mégrét, "The Bordeaux Trial," p. 146.
[22] Le Directeur de la Justice Militaire, Ministère de l'Armée, to Direction des Affaires Criminelles, Ministère de la Justice, dated 7. November 1946, AN Pierrefitte, BB 18/3575. The letter went on to describe that instead of being prosecuted for war crimes in front of Military tribunals, the Alsatians would have to be prosecuted in common courts according to "droit commun." "Tous les individus étrangères et français, responsables d'un même fait susceptible d'être réputé crime de guerre, soient impliqués dans la même poursuite et déférés à la même juridiction. C'est pourquoi j'ai pris l'initiative d'un projet de loi [...]. " However, if "telle disposition n'aura pas adoptée par le législateur, les infractions commises par des Français dans les rangs de l'Armée allemande ne sauraient pas, à mon avis, être considérées comme des crimes de guerre [...]."

In his reply to Turpault and in a note to the Justice Minister, the director of the Direction des Affaires Criminelles agreed, that "from the point of view of a good administration of justice"[23] and in light of "law and equity" it would be unthinkable to "decline the prosecution of the Alsatians-Lorrainers who participated in the [massacre] at Oradour-sur-Glane."[24] A new law was necessary to allow for the prosecution of French citizens before Military tribunals.

While the aforementioned opinions seemed to indicate that the prosecution of Alsatians for war crimes would be the one and only option conforming with French republican legal principles and therefore, these plans were in fact met with forceful resistance. Early on it became clear that revising the legal foundation to allow for the prosecution of French Alsatians would have serious implications for French unity. In February of 1947, the Alsatian representative (MRP)[25] in the National Assembly, Jacques Fonlupt-Espéraber,[26] raised the question whether or not the "prosecutions of

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[23] Direction Criminelle, Ministère de la Justice, to Direction de la Justice Militaire, Ministère de la Guerre, letter dated 14. February 1947, AN Pierrefitte, BB 18/3575; "du point de vue d'une bonne administration de la justice."

[24] Direction des Affaires Criminelles et des Grâces, Note pour M. LE GARDE DES SCEAUX, undated, AN Pierrefitte, BB 18/3575; "droit et en équité"; "renoncer à poursuivre les Alsaciens-Lorrains qui ont participé à l'affaire d'Oradour-sur-Glane [...]."

[25] Mouvement Républicaine Populaire – the major French Christian democratic party and a leading force in the Fourth Republic.

[26] Fonlupt-Espéraber, in addition to his influence in his own right as a member of Parliament, also possessed important family connections to the highest echelons of power. His son-in-law was Pierre-Henri Teitgen, who as Justice Minister in 1945/46 spearheaded the *épuration* in its crucial retributive phase. In 1947 and 1948, Teitgen served as the Vice Prime Minister, the second most important cabinet post, and as Minister of the Armed Forces. In this position, he would have overseen the prosecution of Graff if he had been declared subject to the jurisdiction of the military justice system. In addition to Fonlupt-Esperaber, the defenders of Graff also sought support from two other influential Alsatian members of the National Assembly: Robert Schuman and Pierre Pflimlin. However, only Esperaber's intervention in the case is recorded. See Le Procureur Général près la Cour d'Appel de Toulouse à M. Le Garde des Sceaux, dated 17. December 1948, in: AN Pierrefitte, BB 18/3575. Pierre Pflimlin, during his tenure as Minister for Agriculture in René Pleven's cabinet, pushed for separating the trial of the Alsatian-French members of the S.S. from the ones of the German S.S. members. See Lettre du Ministre de l'Agriculture, Pierre Pflimlin, to M. le Garde des Sceaux, René Pleven, dated December 1, 1949, in AN Pierrefitte, 363AP/15.

the Alsatian-Lorrainers who took part in the Oradour-sur-Glane massacre will have an adverse impact on public opinion"[27] At the time of Fonlupt-Espéraber's intervention, the Military Tribunal in Bordeaux which possessed jurisdiction over Oradour, was aware of the whereabouts of the Alsatian French suspects only. If the French government had decided to arraign these suspects, Fonlupt-Espéraber opined, "It could appear to the French public and even to the world (considering the tremendous attention the massacre of Oradour had attracted) that these crimes were perpetrated by Alsatians only, since Alsatians and Alsatians only will sit in the box of the accused."[28]

In the meantime, in the absence of a law enabling the prosecution of French citizens for war crimes, and given the decision of the Court of Limoges from March 22, 1946, which rejected jurisdiction in the case of the former Waffen-SS member Paul Graff, the prosecution of the 20 French citizens implicated at the Oradour massacre was suspended. The Prosecutor General at the Court of Cassation, France's

[27] "[P]oursuites des Alsaciens-Lorrains ayant participé à l'affaire d'Oradour-sur-Glane ne risquent pas d'avoir des répercussions fâcheuses sur l'opinion." See "Note" and dated 11. January 1947, in: AN Pierrefitte, BB 18/3575. In 1947, Fonlupt-Esperaber alluded already to the conflict between France's two regions: the Limousin and Alsace, over the crime at Oradour. He reported: "The National Association of Families of the Martyrs of Oradour [...] sought to explain the role played by the Alsatians and Lorrainers in Oradour, as the manifestation of a spirit of revenge, whose cause would find its source in the fact that refugees from Alsace-Lorraine who had fled to this region at the beginning of the war had been poorly received." ["L'Associations Nationale des Familles des Martyrs d'Oradour signale M. Fonlupt Esperaber aurait cherché à expliquer le rôle joué par les Alsaciens Lorrains à Oradour, comme la manifestation d'un esprit de vengeance, dont la cause trouverait sa source dans le fait que des réfugiés Alsaciens-Lorrains repliés dans cette région au début de la guerre y auraient été mal reçus." Fonlupt-Esperaber's comments were quoted in: Direction des Affaires Criminelles et des Grâces, Note pour M. LE GARDE DES SCEAUX, undated, AN Pierrefitte, BB 18/3575.

[28] See document entitled "Note" and dated 11. January 1947, in: AN Pierrefitte, BB 18/3575. The preceding document attributes it to Jacques Fonlupt Esperaber, his name appears hand-written in the top right corner of the first page. "il pourrait apparaître à la face de la France et même du monde (eu égard à la publicité dont les massacres d'Oradour ont fait l'objet) que ces crimes ont été perpétrés par des Alsaciens uniquement, puisque des Alsaciens et des Alsaciens seulement prendront place dans le box des accusés."

highest court, attempted to have the Limoges Court of Appeals decision from March 22, 1946, annulled by France's supreme court.[29] He did so in order to "avoid any later difficulties [...], in the interest of the law and the convict[30], whose legal situation cannot be left in suspense [...]."[31] The Prosecutor General had planned to ask the Court of Cassation to annul the Limoges Court of Appeals' ruling, essentially clearing the way for the prosecution of Graff, and other French suspects, by French civil courts. He scheduled a hearing at the Court of Cassation for October 30, 1947.

However, ten days prior to the scheduled hearing, the justice ministry intervened and instructed[32] the Prosecutor General not to pursue the annulation, because a plain annulment would consequently mean that the prior verdict of the "Court of Justice [Limoges] of March 12, 1946 which condemned GRAFF to the death penalty [would be reinstated, meaning that Graff] would change status from a mere defendant to a death row inmate pending appeal, with all the legal perils which result from this change." The execution of the death sentence could be immanent, "It would deprive him of his chances of acquittal, disqualification or extenuating circumstances."[33]

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[29]On March 22, 1946, the Limoges appeals court had invalidated the death sentence passed by the lower court ten days prior.

[30] The term "convict" was used erroneously here. Paul Graff had only been a suspect at the time, since the Limoges verdict had been thrown out by the Court of Appeals.

[31] See Procureur Général près la Cour de Cassation to Ministre de la Justice, dated 11. August 1947, in AN Pierrefitte, BB 18/3575.

[32] The procureur general was subject to instructions from the director of the criminal affairs division in the justice ministry.

[33] Direction Criminelle, Ministère de la Justice, "Note Pour Monsieur LE GARDE DES SCEAUX," dated 29. September 1947, AN Pierrefitte, BB 18/3575; "Cour de Justice [Limoges] du 12 Mars 1946 qui a condamné GRAFF à la peine de mort et ferait ainsi passer ce dernier de sa position actuelle d'inculpé dans celle d'un condamné à mort en instance de pourvoi avec tous les risques qui en résulteraient sur le plan juridique. […] elle lui ôterait ses chances d'acquittement, de disqualification ou de circonstances atténuantes."

Given all the legal question marks surrounding the prosecution of French citizens for crimes committed at Oradour, the Justice Minister did not want Graff to be executed. Instead, the justice ministry instructed the government official at the Court of Cassation to ask the court to determine, in light of the fact that both the civil courts and the military tribunals had declared themselves incompetent, which court was to be declared competent – a so called "requête en règlement de juges." This had the advantage that none of the previous declarations of incompetency would be annulled, meaning that Graff's death sentence from the Limoges court would not be reinstated. Instead, a new trial would have to be convened. The Justice Minister argued, that the court will find that the delay caused be a wholly new trial was just another delay in the "course of justice which has already been interrupted time and again."[34]

Hence, on December 24, 1947, the Cour de Cassation ruled that

> Whereas, […], by judgment of March 22, 1946, […] the Court of Appeals of Limoges, ... annulled the aforementioned judgment of the Court of Justice on the ground that his membership in the armed forces rendered GRAFF justiciable at the Military Tribunal; and whereas by ordinance of March 16, 1947, the examining magistrate of the Bordeaux Military Tribunal declared itself incompetent based on the fact the GRAFF had been a minor of 18 years; Whereas the two aforementioned decisions [...] result in a negative conflict of jurisdiction which interrupts the course of justice and which must be stopped; [We] refer the case and the parties [..] to the Commissaire du Gouvernement at the Toulouse Court.[35]

[34] Ibid.; "il y a donc d'ores et déjà interruption au cours de la justice."
[35] Verdict of the Cour de Cassation, Chambre Criminelle, presided by Président Battestini, affaire "Cre [criminelle] et Mre [militaire] Bordeaux c/ Graff," dated 24. December 1947. AN Pierrefitte, BB 18/3575; "Attendu que, ..., par arrêt du 22 mars 1946, ...la Cour d'Appel de Limoges, ... a annulé l'arrêt susvisé de la Cour de Justice par le motif que la qualité de militaire rendait GRAFF justiciable du Tribunal Militaire; Attendue que par ordonnance du 16 mars 1947 le juge d'instruction militaire permanent de Bordeaux s'est déclaré incompétent par le motif qu'à la date des faits GRAFF était mineur de 18 ans; Attendu que des deux dernières décisions précitées, passées en force de chose jugée et contradictoires entre elles, résulte, un conflit négatif de juridiction qui interrompt le cours de la justice et qu'il importe de faire cesser; [We rule to] renvoi la cause et les parties [..] devant le Commissaire du Gouvernement près la Cour de Justice de Toulouse […]."

The Justice Ministry's intervention was designed to prevent the execution of the death penalty. By intervening with the Prosecutor General and instructing him to ask the supreme court for a "requête en règlement des juges," the justice ministry steered the course of the prosecution of Paul Graff towards a dispensation of justice which was most benevolent to the perpetrator – a direction which also ensured that the Graff case would not violate the boundaries of the Gaullist myth and not threaten French unity.[36] These were only the first steps in that direction taken by the Justice authorities in the courts of the next several years.

When in early 1948, the Court of Justice of Toulouse began a third pre-trial investigation (following the Bordeaux Military Tribunal's in 1945, and the Court of Limoges' in 1946) of Paul Graff, almost four years after the massacre at Oradour, he remained the only Oradour-suspect with an ongoing trial, despite the fact that French authorities knew about the whereabouts of the approximately 20 other Alsatians implicated in the massacre. Therefore, Graff's defense counsel Jehan Burguburu[37] sent a note to the Justice Minister, protesting that the "political aspects" of his client's case had still not been fully examined. He declared that Graff's case was no different than the cases of the other approximately 20 Alsatians: "Is it necessary to maintain

[36] An execution of Graff for the crimes he committed at Oradour might have been lethal to Gaullist myth and threatened the foundation of the internal reconciliation process.
[37] While is name was of Basque origin, Burguburu was of Alsatian descent. His family had lived in Strasbourg for five generations, which is where he himself had practiced law before the German invasion forced him to Paris in 1940. After the war, Burguburu became a proponent of the thesis of Alsatian victimhood. Thus, his interpretation of the Graff case was that not Graff alone was standing trial, but the entire Alsace: "[...] cette affaire dans laquelle GRAFF n'est pas seul en cause puisque le bon renom de l 'Alsace elle-même est en jeu." Letter dated 20. January 1948 – Burguburu to M. le Bâtonnier Puntous [Avocat près de la Cour d'Appel de Toulouse] re: "Aff. GRAFF Paul," AN Pierrefitte, BB 18/3575.

GRAFF as the only defendant in this case when it is proven that about 20 known and identified Alsatians, who were also forcibly incorporated into the Waffen-SS, were present at Oradour, where they occupied an identical position to the one of GRAFF?" He continued: "Maintaining GRAFF alone in this trial would be clearly an unfair solution by holding a child, who was then seventeen years of age, accountable for the wrongdoing ordered and committed by others. To blame the other Alsatians, as innocent as Graff for the massacres at Oradour, would be to blame Alsace - and Alsace alone - for a historically unprecedented crime of which Alsace is innocent."[38]

As Burguburu's letter revealed, by early 1948, the political aspects of the Alsatian suspects of Nazi massacres remained unresolved. In addition, a solution to the juridical problem of the prosecution of war crimes committed by French citizens also had not been found – while Captain Lesieur had pointed out the legal vacuum the French suspects where in, and while the Prosecutor General at the Bordeaux Tribunal initiated a law project in 1946, the reform was still pending in early 1948.

[38] Jehan Burguburu, Avocat à la Cour d'Appel de Paris, to M. le Garde des Sceaux, dated 12. January 1948, AN Pierrefitte BB, 18/3575. Burguburu's argument that Alsace as a whole was on trial would also play an important role in the West German amnesty campaign, which argued that the real defendant in the French war crimes trials was Germany as a whole. While Burguburu argued to French judicial authorities that Graff must be released if France was truly interested in French unity, the West German amnesty campaign argued half a decade later to the same French authorities that they most work towards the release of German war criminals (or prisoners of war as they called them), if they were truly interested in Franco-German reconciliation. "Faut-il maintenir GRAFF seul dans cette poursuite alors qu'il est avéré qu'une vingtaine d'Alsaciens nommément connus et identifiés, comme lui mobilisés de force dans les Waffen-SS, et présents à Oradour, y ont tenu une place identique à celle de GRAFF?" "Maintenir GRAFF seul dans cette poursuite serait – de toute évidence – une solution inique tendant à faire supporter à un enfant, qui était âgé alors de 17 ans, une responsabilité pour des actes voulus et commis d'autres. Inculper les autres Alsaciens, aussi innocents que Graff aux massacres d'Oradour, serait imputer à l'Alsace – et à l'Alsace seule – un crime que d'aucune prétendent historique et dont l'Alsace est innocente."

Burguburu's protest highlighted the urgency of the project of amending the ordinance from 1944 to allow for the prosecution of French citizens as suspected war criminals. By February of 1948, the *Division Criminelle* within the Justice Ministry circulated its proposal for the new law "*complètant et modifiant l'ordinnance du 28 août 1944 sur les crimes de guerre.*" The legal project had to integrate two different new mechanisms which were motivated by the limitations of the prosecution of war crimes thus far: First, the aforementioned inclusion of French citizens under the jurisdiction of Military Tribunals responsible for the prosecution of war crimes, second providing these tribunals with the appropriate legal tools to prosecute systematically perpetrated massacres by entire units where the evidentiary basis for individual guilt was scant. One of the reasons for why it took the parties involved in this legal reform project was the apparent implications of combining these two motivations into one law. The Ministry of Justice grappled with the fact that the new law would partially infringe on the presumption of innocence of French citizens. If the law had exclusively pertained to "enemy combatants," therefore mostly Germans, the reversal of the burden of proof would have been much less controversial. Therefore, in a draft communicated in February of 1948, the legal experts in the Justice Ministry simply excluded French citizens from the controversial articles:

> I. - Articles 1 and 2 of the bill establish a legal presumption of guilt for membership in a formation which [has committed war crimes].
> This presumption can only pertain to enemy persons who do not have French nationality.
> II. - Article 3 refers to the case of the French citizens (Alsatians for example) who were able to participate for one reason or another in the deeds of a formation [which has committed war crimes].

> The presumption of responsibility does not apply to them and they can only be prosecuted for those crimes, for which the evidence establishes [individual responsibility].[39]

This note to the Justice Minister detailed the tensions French justice had to grapple with after the Nazi Occupation and the Vichy Regime. When the French provisional government in exile laid the foundation for the prosecution of war crimes, it specifically excluded the possibility of French co-authorship of such crimes. The lawmakers intrinsically assigned German or perhaps Austrian citizenship to suspects of war crimes, but not French. However, this assumption was quickly contradicted by the existence of Alsatian suspects in 1945 already. Still, it took another three years for the law project to include the possibility for a prosecution of French citizens for war crimes.

The bill above evidenced the tense dynamics which shaped the judicial reckoning with the Nazi past in France. First, demands by survivors and victims' groups, such as the National Association of the Families of Martyrs of Oradour (ANFMO[40]) called for a swift prosecution of the perpetrators, and the French government was prepared to expedite this prosecution by lifting fundamental safeguards which protected the rights of the accused. Furthermore, however, the 1948 bill was still unable to fully deviate from the assumption which had defined French

[39] Direction Criminelle, 1er Bureau, "Note pour le M. le Garde des Sceaux," dated February 2, 1948; "I. – Les articles 1 et 2 du projet instituent une présomption légale de culpabilité du fait de l'appartenance à une formation considérée comme criminelle de guerre.
Cette présomption ne peut porter que sur des personnes ennemies n'ayant pas la nationalité française.
2. – L'article 3 vise le cas des Français (Alsaciens par exemple) qui ont pu participer pour une raison ou pour une autre à l'action d'une formation semblable.
La présomption de responsabilité ne joue pas en ce qui les concerne et ils ne peuvent être poursuivis que pour les crimes dont la preuve est rapportée contre eux."
[40] *Association Nationale des Familles des Martyrs d'Oradour.*

justice since 1944: "enemy persons," meaning mostly Germans, and not the French, had been responsible for the war crimes. The bill demonstrated the uneasiness with which the French government allowed for the prosecution of French citizens for war crimes. While the law would have allowed for the prosecution of Alsatians alongside the German members of the same Wehrmacht or Waffen-SS unit, it attempted to exclude them from the provisions designed to facilitate a speedy prosecution.

The bill evidenced the central paradigm of French justice at the time: a severe retributive justice was permissible only if directed at "enemy persons" which in practice meant German perpetrators. While pushback against this interpretation of justice which discriminated against non-French suspects existed pre-1948, it was limited and received very little attention.[41] The conjuncture of the inner-French conflicts over the law of 1948, the foundation of the West Germany in 1949 and the advent of Franco-German reconciliation with Schuman's speech in 1950 which also brought the transnational effects of French justice into prominent view, created a broad spectrum of critics of French justice. By then, the inner French conflict over French justice served as a blueprint for both the critics as well as for the resolution of the tension.

[41] The Franco-German intellectuals Jean Schlumberger and Joseph Breitbach began to create a network of critics of French justice towards the German war criminals. Jean Schlumberger utilized his connection ins French society and politics (for instance, he was related with the diplomate and later head of European desk in the French Foreign Ministry François Seydoux de Clausonne – who would become ambassador to West Germany in 1965) and as early as 1945 demanded that Germans were treated more leniently. On December 12, 1946, Breitbach visited the Foreign Ministry to convince the MAE's second in command, the secretary general Jean Chauvel, that France's treatment of the "German prisoners" would hurt its foreign policy goals in Germany. Chauvel agreed but apparently offered no remedies. See extract from Breitbach's diary in: Breitbach, Schlumberger, *Man hätte es von allen Dächern rufen sollen,* p. 114.

The case of the country's first - and for the longest time only - tried and convicted perpetrator of the Oradour massacre had been the first instance which revealed the centrifugal forces which the war crimes issue was able to unleash. In a first step, Graff and the case of the Alsatian suspects and later convicted war criminals opened inner French fault lines which culminated in 1953 during the Bordeaux trial of the Oradour massacre with the general strike in Alsace in protest of the trial and in support of the Alsatian suspects. This dynamic would later, in a second step, find a reflection on a transnational Franco-German level.

Beginning in 1949 with the formation of the Federal Republic, a Franco-German fault line which pitted the French understanding of justice for war crimes, which was primarily directed towards Germans, against the West German "amnesty hysteria" which defined war crimes trials as political acts of a vengeful peace dictated by the victors over the vanquished. I will address this dynamic in a subsequent chapter.

As Burguburu's letter as well as the Alsatian protest in 1953 showed, the popular opinion in Alsace and of Alsatians in other parts of France regarded the war crimes trials not as an attempt to prosecute the perpetrators and lend justice to the victims but as a political trial of Alsace as a whole – in this understanding, the Graff case or the Bordeaux Trial showed, provided evidence, how "*la France de l'interieur*" abandoned Alsace yet again – a return to the dark days of 1870 and 1940.[42] In order to counteract the grave wounds these trials inflicted on the "mutual

[42] In 1953, a few days after the verdict of the Oradour-Trial had precipitated a general strike in Alsace, the Alsatian Newspaper *Le Nouveau Rhin français* opened its Tuesday issue with a reprint of the 1871 "Elle attend" [she is waiting] image of a young girl dressed in a black traditional Alsatian dress under

effort of understanding of both the Alsatian population and the government of the Republic in order to solve the problem of a complete fusion of Alsace into French unity" [43]the French government took steps to contain the conflict.

The case of the Bordeaux trial is well known. During the trial, because of the outcry in Alsace, the French lawmakers intervened in on ongoing trial by abolishing the Law of 1948.[44] But even the virtually unknown case of Paul Graff provides evidence for the length the French government was willing to go to prevent the case from becoming a new Dreyfus Affaire.

After Burguburu had complained to Robert Schuman, at the time Prime Minister, and other powerful Alsatian members of government and parliament[45] about what he thought was an unfair trial and prosecution which turned his client into a scapegoat for France's failure to retain Alsace for the second time in 70 years,[46] the officials in the Justice Ministry, namely the director of the office for criminal affaires,

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the headline "Wir wurden noch nie kontraktbrüchig" [we have never broken the terms of the contract."] See *Le Nouveau Rhin français*, February 17, 1953.

[43] Le Procureur Général près la Cour d'Appel de Toulouse à M. Le Garde des Sceaux, dated 17. December 1948, in: AN Pierrefitte, BB 18/3575;
"effort réciproque de compréhension des populations alsaciennes et du gouvernement de la République en vue de résoudre les problèmes de la complète fusion de l'Alsace dans l'unité française"

[44] See Henning Meyer, *Der Wandel der französischen. 'Erinnerungskultur' des Zweiten Weltkriegs am Beispiel der 'Erinnerungsorte': Bordeaux, Caen und Oradour sur Glane* (PhD diss, Augsburg 2006), p 334.

[45] A government report also mentioned Minister for Agriculture Pflimlin as well as the influential member of parliament (MRP) Fonlupt-Ésperaber. See 17. December 1948 – Le Procureur Général près la Cour d'Appel de Toulouse à M. Le Garde des Sceaux , Summary of "État de la procédure" of "affaire GRAFF," AN Pierrefitte, BB 18/3575; Fonlupt, as discussed above, also sent letters to the Justice Ministry about the poor optics of the Graff case, claiming that it sent a message that "ces crimes ont été perpétrés par des Alsaciens uniquement."

[46] A report by the Direction Criminelle in the Justice Ministry from May 1949 described this widespread notion in Alsace the following way: "Il faut tenir compte du désarroi des jeunes Alsaciens incorporés dans l'Armée allemande, qui avaient le sentiment d'être abandonnées par certains Français prêts à renoncer une seconde fois à l'Alsace pour obtenir des allemands une paix 'honorable et confortable.'" See Direction des Affaires Criminelles et des Grâces "Note pour M. le GARDE des SCEAUX," dated 6. May 1949, in AN Pierrefitte, BB 18/3575.

M. Turguey, and the prosecutor general [and hence the government's representative at the court] at the Toulouse court were engaged in a conversation about a potential resolution of the Graff case which would be both satisfactory to the victims, namely the ANFMO, and French Alsatians.

The primary obstacle for a resolution which would satisfy both sides had been from the very beginning Graff's role in the Oradour massacre. He confessed to the murder of an unarmed woman and to preparing for the blaze of the church by collecting and carrying firewood into the church, where 247 women and 205 children were burnt alive.[47] These grave crimes led to his conviction and death sentence pronounced by the Court of Limoges in March of 1946 (later for procedural reasons annulled).

On the other hand, the report under point 4. entitled "Appreciation de la role morale" also listed four attenuating circumstances: his minority – he was 17 years old at the time - the forced incorporation into the Waffen-SS, several factors which were not conducive to appreciating the true role of Graff at Oradour, among them the uncertain legal foundation which led to multiple investigations and pre-trial procedures vacillating between multiple military and civilian jurisdictions, and the fact that he had been tried without his co-perpetrators. The last one, letter d) of the attenuating circumstances, is entitled with "because of the impact of the painful massacre of Oradour on the public opinion."[48] The report questioned whether the court's jury could have come to a fair verdict given that Graff had been the only

[47] Among the 205 children, 55 had been below the age of 5. See Fouché, *Politique et Justice*, p. 77.
[48] Report of Le Procureur Général près la Cour d'Appel de Toulouse à M. Le Garde des Sceaux, dated 17. December 1948, AN Pierrefitte, BB 18/3575; "EN raison du retentissement dans l'opinion du douloureux massacre d'Oradour."

perpetrator on trial, which would have been conducive to "provoking the victims' as well as their relatives' and friends' legitimate aspirations for an exemplary justice for the massacre."[49] Moreover, the report listed under point 5 entitled "Incidences Nationales" the national implications of a confirmation of the guilty verdict. French unity was at stake: The fact that

> many Alsatians-Lorrainers were conscripted automatically into ranks of the German army and into French cantonments, but none, so far, have been prosecuted in the French courts because of their obligatory participation in the military operations carried out by the German occupation troops on our soil. This precedent would be likely to seriously disturb the mutual effort of understanding of both the Alsatian population and the government of the Republic in order to solve the problem of a complete fusion of Alsace into French unity.[50]

It is remarkable that the prosecutor general succeeded in interpreting both the outrage in the Limousin about the massacre as well as the outrage in Alsace about the prosecution of one of the perpetrators as factors which favored leniency for Graff. These two diametrically opposed phenomena usually lead to mutually exclusive conclusions.

Hence, in light of the "painful effects that these debates can cause" the prosecutor general suggested "that GRAFF by decree be granted amnesty."[51] The

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[49] Ibid.; " 'cristalliser' contre lui les légitimes aspirations à une exemplaire répression des victimes du massacre et de leurs parents et amis."

[50] Ibid.; "de très nombreux Alsaciens-Lorrains, incorporés d'office dans les rangs de l'armée allemande et dans des cantonnements français, mais qu'aucun, jusqu'à ce jour, n'a été poursuivi devant les juridictions françaises en raison de sa participation obligatoire aux opérations accomplies par les troupes d'occupation allemande sur notre sol. Ce précèdent serait de nature à troubler gravement l'effort réciproque de compréhension des populations alsaciennes et du gouvernement de la République en vue de résoudre les problèmes de la complète fusion de l'Alsace dans l'unité française."

[51] Report of Le Procureur Général près la Cour d'Appel de Toulouse à M. Le Garde des Sceaux, dated 17. December 1948, AN Pierrefitte, BB 18/3575. The amnesty law which the prosecutor general raised in his report had been the "Loi d'amnistie du 16 Août 1947." Fouché cited the letter of the procureur

Prosecutor General announced that the solution to the political and judicial quagmire of the Graff case should be amnesty. While he showed great concern for potential unrest in Alsace in case of a severe verdict, he showed no such concern for potential outrage in the Limousin region, where Oradour is situated, in case the perpetrator of the Oradour massacre, whom a French court once had sentenced to death for these crimes, was amnestied and released into freedom.[52]

The immediate superior of the Procureur Général of the Toulouse Appeals Court, the director of the Criminal Affairs department in the Justice Ministry, informed the Justice Minister himself about the recommendation of granting amnesty to Graff. He had been more cautious, conscious of the message which an amnesty for an Oradour perpetrator would send to the victims' families. He did not recommend disputing the decision to amnesty Graff, but rather recommended to time the announcement of amnesty strategically:

> The debates which will take place before the military court [referring to the Oradour Trial at Bordeaux] are indeed likely to bring new elements. The condemnations that could be pronounced would be more likely ~~to calm~~ [sic; the following words in italic were penciled in:] *to appease, to a certain extent*, the emotion created by this case and to mitigate the possible impact on the families of victims provoked by the eventual granting of Graff's amnesty.[53]

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general at length, Fouché, p. 94ff.; "les incidences douloureuses que les débats peuvent entraîner", "que GRAFF, soit par décret admis au bénéfice de l'amnistie."

[52] The lack of concern of the Procureur Général for the views of those French citizens who were sympathetic with the victims of the crimes is striking – especially when contrasted with his concern for the views of those French sympathetic with the Alsatian perpetrator. Is it because he reasoned, based on *realpolitik*, that the persuasiveness of the Gaullist myth ensured that enough French would view Graff as a victim rather than a perpetrator rendering the Alsatian dissent to a Graff conviction much more dangerous than the dissent to the proposed amnesty for him?

[53] Direction des Affaires Criminelles, Ministère de la Justice, "Note pour M. le Garde des Sceaux", dated 3. February 1949, AN Pierrefitte, BB 18/3575. A letter from the Justice Ministry to the Prosecutor General in Toulouse from March 1, 1949, relayed the message to delay the amnesty procedure until further instructions from the Justice Ministry. See Direction Criminelle (1er Bureau) "Note pour M. le Garde des Sceaux," dated March 1, 1949, AN Pierrefitte, BB 18/3575 ; "Les débats qui se dérouleront devant le tribunal militaire sont en effet de nature de à apporter des éléments nouveaux. Les condamnations qui pourraient être prononcées seraient de plus susceptibles ~~de calmer~~ [sic; the following words in italic were penciled in:] *d'apaiser, dans une certaine mesure,* l'émotion

The director of the criminal affairs division proposed to utilize the anticipated guilty verdicts, which he believed would be passed soon, for the German suspects in the Oradour massacre as a cover for the release of Graff. The guilty Germans would then appease the "families of the victims" so that an amnesty for Graff would be politically feasible. Apart from the appalling *realpolitik* disrespectful of the emotions of the victims, this statement of the director of the criminal affairs division provides also evidence for the thesis that the judicial reckoning for war crimes was directed at Germans while French suspects or perpetrators were considered a political liability – a threat to the social peace and French unity. In the case of Graff, the government was eagerly awaiting guilty verdicts for the German suspects in the Bordeaux trial because this would conform to the preconceived notions of German perpetrator/French victim in the eyes of the general public. Before 1950, guilty verdicts for German war criminals were not a political liability but actively sought by the government.
The solution to delay the amnesty for Graff's until a verdict at Bordeaux had been reached depended heavily on the assumption that the military tribunal would open the trial against the German suspects in the near future. The government had been pressured by Graff's defense counsel, Jehan Burguburu, to grant the amnesty as soon as possible.[54]

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créée par cette affaire et d'atténuer les répercussions que pourrait avoir à l'égard des familles des victimes l'admission éventuelle de Graff au bénéfice de l'amnistie." Therefore, he asked the Justice Minister to "surseoir jusqu'à la date du jugement du tribunal militaire pour faire procéder par le 2éme Bureau de la Direction criminelle à l'examen de la requête présentée en faveur de Graff."

[54] Burguburu, for instance, wrote a letter on March 24, 1949, to Paul Janvier, the Chief of Staff of the Justice Minister, to ask for a decision. Jehan Burguburu to Paul Janvier, Directeur du Cabinet de M. le Garde des Sceaux, dated 24. March 1949, AN Pierrefitte, BB 18/3575.

The Justice Ministry therefore faced a conflict between a request for expeditious granting of amnesty and a delay until after the verdict at the Bordeaux trial had been passed. A few weeks later, a report from the Criminal Affairs Division in the Justice Ministry, which laid the groundwork for an eventual amnesty by compiling a detailed report for the Director of Pardons (*Directeur des Graces*), also provided a solution for the conflict between release and delay. The report listed all the crimes that had been committed by Graff, concluding that "The crimes Graff is accused of having committed are extremely serious. They resulted in his condemnation to death by the Court of Justice of Limoges on March 12, 1946 (verdict annulled)."[55] Despite these serious allegations, the report attempted to sway the Justice Minister to support amnesty by listing a number of factors which tipped the scale in favor of amnesty, chiefly among them was the following motivation:

> We must take into account the distress of young Alsatians conscripted into the German Army, who felt that they were being abandoned by certain French ready to give up Alsace a second time to obtain an 'honorable and comfortable' peace from the Germans. [...] Humanitarian considerations, despite the horrors of the crime, raise the question of clemency, and are amplified by considerations of political expediency. If we want Alsace to forget the attitude of certain French regarding the armistice, we must give them the example of a certain generosity.[56]

[55] Direction des Affaires Criminelles et des Grâces, 1er Bureau, "Note pour le 2eme Bureau,"dated 12. April 1949, AN Pierrefitte, BB 18/3575; "Les faits reprochés à Graff sont d'une extrême gravité. Ils sont motivés sa condamnation à mort par la cour de Justice de Limoges le 12 Mars 1946 (arrêt cassé)."
[56] Ibid.; "Il faut tenir compte du désarroi des jeunes Alsaciens incorporés dans l'Armée allemande, qui avaient le sentiment d'être abandonnées par certains Français prêts à renoncer une seconde fois à l'Alsace pour obtenir des allemands une paix 'honorable et confortable.' [...] Les considérations d'humanité, qui, malgré l'horreur du crime, incitent à l'indulgence, sont doublées de considérations d'opportunité politique. Si l'on veut que l'Alsace oublie l'attitude de certains Français à l'armistice, il faut lui donner l'exemple d'une certaine générosité."

In the final section, however, the Director of the Criminal Affaires Division again argued that it would have been inopportune to grant amnesty prior to the verdict at Bordeaux for the known reasons. In order to avoid the conflict between Burguburu and a larger Alsatian protest movement, the report recommended that "to suggest to the Minister of Justice to provoke his provisional release."[57]

The solution to the tension between delay and release, in the eyes of the Director of the Criminal Affaires Division, had been provisional liberty, which allowed a suspect who is expected to receive a minor sentence or a prison sentence not exceeding the time-served in pre-trial detention to remain at home while reporting periodically to the local police station. As the term "*liberté provisoire*" suggested, it could be revoked at any time, yet for the suspect it essentially meant exchanging a dire prison regime with the comforts of the personal home. In essence, what the Director of the Criminal Affaires Division suggested, was to set Graff free while the government was awaiting the verdict at Oradour, which would then provide the cover for the announcement of the definitive amnesty.

The Justice Minister Robert Lecourt did not decide for or against this proposition by Turguey, because two developments intervened. First, in July of 1949, two additional Alsatian suspects of the Oradour massacre, Louis Hoelinger and Alfred Spaeth, had been located in French Indochina by *the Forces Terrestres en Extrême-Orient*.[58] This effectively meant that the opening of the trial would have to

[57] Direction des Affaires Criminelles et des Grâces, 1er Bureau, "Note pour le 2eme Bureau,"dated 12. April 1949, AN Pierrefitte, BB 18/3575; "Les faits reprochés à Graff sont d'une extrême gravité. Ils sont motivés sa condamnation à mort par la cour de Justice de Limoges le 12 Mars 1946 (arrêt cassé)." à suggérer à Monsieur le Garde des Sceaux de provoquer sa mise en liberté provisoire."

[58] I suspect they actually served in the French Army in Indochina. I have no definitive proof, however.

be pushed back even further without knowing the exact opening date.[59] This left open the possibility, given the additional delays of the Bordeaux trial as well as the concerns of the department about announcing the amnesty before the verdict at Bordeaux had been passed, of releasing Graff into provisional liberty. The director of the criminal affairs division still seemed to lean towards this option when he declared to the Justice Minister in late July that "[m]eanwhile, because of the prolongation of the proceedings at the military tribunal [at Bordeaux] it is necessary to ask if Graff must be kept in custody until a final decision against the Germans has been reached."[60] But this time, and this is the first instance were such concerns were raised: "It is obvious that the release of Graff, who has already been sentenced to death by a court of justice (verdict annulled) would risk, if it were ordered, to provoke an outburst of violent emotions in certain parts of public opinion."[61] For the first time, the Justice Ministry concluded that the provisional liberty could have similar adverse effects in the Limousin and with the victims' associations as amnesty itself.

The amnesty/provisional liberty dilemma was subsequently put into question once again when the Prosecutor General at Toulouse informed the Justice Ministry about

[59] Ministre de la Défense Nationale, Directeur de la Justice Militaire et de la Gendarmerie à Monsieur le Garde des Sceaux, dated 4. July 1949, AN Pierrefitte, BB 18/3575.

[60] This is another instance which highlights the Justice Ministry's preconceived notion of who the 'true' perpetrators were. The majority of the accused in the Bordeaux trial at that time were in fact French, and not German. See Direction des Affaires Criminelles et des Grâces "Note pour Monsieur le Garde des Sceaux," dated 21. July 1949, AN Pierrefitte, BB 18/3575; "Toutefois en raison de la prolongation de la procédure militaire il y a lieu de se demander si le nommé Graff doit être maintenu en détention préventive jusqu'à décision définitive à l'égard des allemands."

[61] Ibid.; "Il est évident que la mise en liberté provisoire du nommé Graff déjà condamné à mort par une cour de Justice (arrêt cassé) risquerait si elle était ordonnée de provoquer une violente émotion dans certaines parties de l'opinion publique."

the new law from September 15, 1948, which allowed for the prosecution of French citizens for war crimes according to the ordinance of 1944 under the jurisdiction of the military justice system. The Prosecutor General recommended that the Toulouse Appeals Court "declared its relinquishment of the case in favor of the Military Tribunal of Bordeaux [...] [in the interest of an] equitable administration of justice, restoring a unified prosecution which had been broken up by legal contingencies which respected the rigor of the principles, but not the requirements of equity."[62]

Turguey, the director of the Criminal Affairs Division, was not convinced about the validity of the transferal of Graff to the Bordeaux Military Tribunal where he would be tried as a suspect of war crimes with the German defendants and also 12 other Alsatian-Lorrainians. He wrote to the Justice Minister on August 23: "Because of the Alsatian origin of Graff, it seems inappropriate to use this authority in this case, especially since an amnesty decision is susceptible to intervene in his favor."[63]

He advised of the following two steps:

> 1.Invite the Procureur General of the Court of Appeals of Toulouse not to request the divestiture for the benefit of the Military Tribunal, and to let this high magistrate know that the Court of Justice is competent to rule on an application for provisional release, which Graff will or has already submitted.

[62] The Procureur Général, Cour d'Appel de Toulouse, to Garde des Sceaux, dated 9. August 1949, AN Pierrefitte, BB 18/3575; "prononcer son dessaisissement au profit du Tribunal militaire de Bordeaux [...]" in the interest of a "une saine administration de la justice, en rétablissant une unité de poursuites rompue par des contingences juridiques respectant la rigueur des principes, mais non les exigences de l'équité."

[63] Direction des Affaires Criminelles et des Grâces "Note pour M. le GARDE des SCEAUX" dated 23. August 1949, "Objet: Poursuites contre GRAFF, mineur de 18 ans, ayant fait partie de la division 'Das Reich', Affaire Oradour-sur-Glane," AN Pierrefitte, BB 18/3575; "en raison de l'origine alsacienne de Graff, il parait inopportun d'utiliser en l'espèce cette faculté, d'autant plus qu'une décision d'amnistie est susceptible d'intervenir en sa faveur."

2. to await the judgment of the German members of the military[64] before deciding on Graff's possible amnesty. [65]

This time, however, Robert Lecourt, the Justice Minister himself, disagreed. In his own handwriting, on August 30, 1949, he wrote on Turguey's note:

> The fact that Graff is French (Alsatian) does not, in my opinion, justify the dismissal of the competence of the military judges [...]. It seems to me that the opinion of the Procureur Général must be followed. [66]

Six weeks later, a relatively quick time frame precipitated by the fact that "public opinion pressed for a long time for a settlement,"[67] the Toulouse Court of Appeals declared, in accordance with the law of September 15, 1948, article 3, "has declared itself incompetent in favor of the military authority."[68] Graff, the first perpetrator who had been prosecuted for the crimes committed at Oradour, was transferred to Bordeaux where he would be standing trial with the other suspects in January and February 1953. The President of the Bordeaux Military Tribunal, Nussy Saint-Saëns, sentenced Graff to five years in prison for his crimes committed at Oradour, a sentence considerably milder than the death sentence from 1946.

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[64] The Justice Ministry once more focused exclusively on the "judgment of the German members of the military" who stood trial in Bordeaux, without referencing the Alsatians.
[65] Direction des Affaires Criminelles et des Grâces "Note pour M. le GARDE des SCEAUX" dated 23. August 1949, "Objet: Poursuites contre GRAFF, mineur de 18 ans, ayant fait partie de la division 'Das Reich', Affaire Oradour-sur-Glane." AN Pierrefitte, BB 18/3575; "1.inviter le procureur général près la Cour d'Appel de Toulouse à ne pas requérir le dessaisissement qu'il envisageait au profit du Tribunal Militaire, et de faire observera ce haut magistrat que la Cour de Justice est compétente pour statuer sur une demande de mise en liberté provisoire, éventuelle ou déjà formé par Graff. d'attendre le jugement des Militaires Allemands pour statuer sur l'amnistie éventuelle de Graff."
[66] Ibid; "La qualité de français (alsacien) de Graff ne me parait pas de nature à écarter la compétence des juges militaires [...]. L'avis du Procureur General me parait devoir être suivis- 30/8.49 [Signature]".
[67] 19 Sept 1949 Ministre de la Défense Nationale to Justice Minister, AN Pierrefitte, BB 18/3575; "l'opinion publique réclame depuis longtemps le règlement."
[68] 18.10.49 Procureur General Toulouse an Garde des Sceaux, dated 18. October 1949, AN Pierrefitte, BB 18/3575; "s'est dessaisie au profit de l'autorité militaire."

Immediately afterwards, the National Assembly, swayed by the massive wave of protest in Alsace, passed a decree which amnestied Graff and the other twelve Alsatians who had been conscripted into the Waffen-SS. Only one Alsatian remained imprisoned: George Boos, who had voluntarily joined the Waffen-SS. He and the other seven German war criminals remained in prison until President Coty pardoned them in 1959.

The case of Paul Graff, the first Oradour perpetrator who had been prosecuted, exemplified the tension in the age of retribution. Graff, born a French citizen in 1926, drafted into the Waffen-SS in 1944 as a seventeen year-old *Volksdeutscher* after Nazi Germany *de facto* annexed Alsace, did not easily fit into the perpetrator category which the framers of France's legal foundation of the war crimes trials program had in mind in 1944. However, a swift prosecution failed not only because Alsatians were left outside of the legal framework, but also because the French government was filled with unease about the prospect of making a French citizen the face of the crimes committed at Oradour.

As Captain Lesieur's remarks showed, the government had a very limited interest in prosecuting Alsatians for war crimes in 1946 and 1947. With the exception of Graff, who admitted to having killed a woman (and remained the only one who ever admitted to having killed at Oradour), and George Boos, who joined the Waffen-SS voluntarily, all other Alsatians who were members of the SS unit of "Das Reich" and participated in the massacre were treated as witnesses and released, as the case of

the two POWs in Britain in 1944 showed, and it seemed unlikely that they would ever face prosecution.[69]

One of the turning points may have been President Auriol's visit to the village martyr on 10 June 1947 on the occasion of the third anniversary of the massacre,[70] where Marguerite Rouffanche, the sole survivor of the burning of the church, informed him about the crime. After the Mayor of Oradour addressed the President directly, reminding him that "the survivors and the families of the victims ask you, in the name of the Republican ideal that you represent here, for the punishment of the perpetrators, of all the perpetrators,"[71] the secretary of the ANFMO, Madame Laurence, pleaded with the assembled state representatives, foremost the Justice Minister: "it is here, on the very scene of the crime itself, that all the grieving and mourning families address you with their prayer. With great insistence, we ask [...] that no opportunity is missed to arrest the guilty, and that, as soon as they are captured, they will be judged and punished here. In the name of our dead, let justice be done!"[72]

A visibly moved Auriol promised the survivors to prosecute the perpetrators regardless of their citizenship by a considering new legislation "aimed specifically at

[69] See Farmer, *Martyred Village*, p. 141.
[70] This is supported by Mégrét, p. 146, and Farmer, *Martyred Village,* p.141.
[71] Discours de M. Faugeras, maire d'Oradour-sur-Glane, 10. June 1947, AN Pierrefitte, 4AG/278; les survivants, les familles de fusillés vous demandent, au nom de l'idéal Républicain que vous représentez ici, le châtiment des coupables, de tous les coupables,"
[72] Untitled document written by Monsieur Brouillaud, President of ANFMO and delivered by Madame Laurence, secretary general of the association, on June 10, 1944. Brouillaud had undergone surgery and was instead represented by his secretary general. See AN Pierrefitte, 4AG/278; "c'est là, sur les lieux même du crime, que toutes les familles endeuillées et éplorées vous adressent leur prière. Avec beaucoup d'insistance, nous vous demandons que vos services [...] mettent en œuvre, que rien ne soit négligé pour arrêter les coupables, et pour que, dès leur capture, ils soient jugés et châtiés ici même. Au nom de nos morts, que Justice soit faite!"

the authors of this odious crime that we commemorate today."[73] This announcement solicited the most intense reaction from the audience. The same evening, he wrote in his diary: "The heart is broken" and "Nothing is more tragic, more horrible, because nothing is as horrible and unforgivable as this crime. We must never forget so this can never happen again. Alas! This has already been said in 1918."[74]

However, even two years later, Graff's French nationality still mattered in the eyes of the Justice Ministry. The justice officials were advancing his application for amnesty and his request for release into freedom because citizenship mattered a great deal in postwar France. The fact that he had been considered a French citizen most likely saved his life, otherwise the death sentence which was hanging over his head in 1946 would have been carried out. A justice ministry report from May of 1949 remarked that, according to unanimous testimony of the mayor of Graff's hometown, the priest and other officials, Graff had always showed sincere pro-French sentiments and never joined Nazi-party organizations despite intense pressures from Gauleiter Robert Wagner on the Alsatian youth.[75] Graff's membership in the French community put him at the brink of a premature release in 1948/1949, when the Director of the Criminal Affairs and Pardons Division recommended Graff's release. For many in the justice ministry, membership in the French community, which had become *victim* of Nazi German aggression, weighed more than the criminal acts he

[73] See Voyage du Président Auriol à Oradour, Discours du Président de la République, 10. June 1947, in AN Pierrefitte, 4AG/278, cited and translated by Sarah Farmer, *Martyred Village*, p.142.
[74] Auriol *Journal de Septennat, Volume 1*, p. 262; "La cœur est serré"; "rien n'est plus tragique, plus horrible, car rien n'est aussi horrible et impardonnable que ce crime. Il faudra ne pas oublier pour que ça ne puisse plus exister. Hélas! On l'avait dit aussi en 1918."
[75] See "Note pour Monsieur le Garde des Sceaux," dated 6. May 1949, AN Pierrefitte, BB 18/3575.

was accused of having committed by eye witnesses and he confessed to. If it had not been for the intervention from the Justice Minister Robert Lecourt personally, Paul Graff may have benefitted from a premature release before his trial at Bordeaux in 1953.

The Graff case highlighted the limits of equitable justice when it collided with political expediency. The Justice Ministry itself, the guardian of the republican legal tradition,[76] and the French republic were willing to a certain extent prioritize political goals over goals of justice for the victims of the crimes. In the calculation of the Justice Department, a release of Graff immediately following an eventual verdict on the German defendants standing trial at Bordeaux for the Oradour massacre would have solved multiple problems at once. It would have prevented a regional insurrection in Alsace over the prosecution of a French citizen for war crimes,[77] since releasing Graff from prison would have satisfied Alsatian public opinion. Simultaneously, the victims of the massacre and those in favor of bringing the culprits to justice would have been distracted from Graff's release from prison by the, presumably, guilty verdicts for the German defendants.

The Gaullist myth also played into the hands of this scenario, since large parts of the public were led to believe that the Germans alone were responsible for the crime while the French were either resisting to or victim martyrs of German crimes. In the end, the Justice Department's Criminal Affairs Division failed to secure Graff's

[76] The Justice Minister was, and still is today, called the Garde des Sceaux, the Keeper of the Seals, underlining the importance of the Justice Minister to watching over France's legal tradition.
[77] Given that Alsace regarded itself as a collective victim of German aggression and French neglect, the French government was sensitive to the fact that a verdict on Graff would have reinforced the feeling of collective victimhood, strengthening separatist currents in Alsace.

release in 1949 because the National Assembly had changed the legal foundation to enable the prosecution of French citizens for war crime. It is remarkable that despite this legislation becoming the law of the land in September 1948, the justice ministry continued to consider the release of Graff for another twelve months.[78]

The political pressure from the Alsatian representatives, such as Fonlupt-Espéraber and Burguburu alone is insufficient to explain that French justice authorities worked to secure his release despite his involvement in one of the most notorious crimes committed in France during the war. The Alsatian political pressure fell on fertile ground because it was compatible with the ideas which I call the Gaullist myth. Turguey continued to push for the release of Graff, despite the law of 1948 allowing for his prosecution in front of the Bordeaux Military Tribunal, because, so he argued, "of the Alsatian origin of Graff, it seems inappropriate to use this authority in this case."[79] His recommended plan was to grant Graff provisional liberty and a announce the permanent amnesty simultaneous verdict on the German defendants standing trial at Oradour. In this opinion voiced by Turguey in August of 1949, the binary categories constructed by the Gaullist myth became evident. Graff, according to Turguey, was to be released, despite the law of 1948 allowing for his

[78] The law of collective responsibility, which provided the legal basis for the prosecution of French citizens for war crimes, was passed on September 15, 1948. It is remarkable that as late as August 23, 1949, almost a full year after the French legislators had passed the law of 1948, senior justice ministry officials, including Turguey, the director of the criminal affairs division, were pushing for the liberation of Graff on grounds of his French citizenship. The law of 1948 was finally enforced in the Graff case only because Justice Minister Robert Lecourt himself intervened. I argue that the pervasiveness of the Gaullist myth was partly responsible.

[79] Direction des Affaires Criminelles et des Grâces "Note pour M. le GARDE des SCEAUX" dated 23. August 1949, "Objet: Poursuites contre GRAFF, mineur de 18 ans, ayant fait partie de la division 'Das Reich', Affaire Oradour-sur-Glane." AN Pierrefitte, BB 18/3575.

prosecution, because his French citizenship gave him victim-status,[80] while he deemed the German defendants in the Oradour-Trial guilty.[81] The German *militaires* were the *real* perpetrators of Oradour.

Furthermore, the Gaullist myth had a second, indirect impact on the decisions of the French justice authorities. The Gaullist myth responded to a need of large swaths of a society which was still reeling from a civil war continuing long past the liberation in 1944 what Henry Rousso called 'la guerre franco-française.'[82] The Gaullist myth promised a divided society reconciliation by providing the country with a national identity, based on a highly selective, mythical interpretation of the recent past, which had the power to integrate the biographies of both résistants and collaborators.[83] It attempted to bridge the gap between *résistant* and *collabo* by creating the myth of 'l'autre France.'[84] This myth, however, created a highly fragile reconciliation which was constantly challenged by stubborn facts. The case of Paul Graff was such a threat to reconciliation based on the Gaullist myth. So how did the Justice Ministry and prosecutorial authorities react? Cognizant of the meaning of the

[80] Turgeuy, in his memo from April of 1949 assigned victim-status to the Oradour perpetrator by drawing attention to "the distress of young Alsatians conscripted into the German Army," and calling for clemency based on "humanitarian considerations despite the horrors of the crime." Direction des Affaires Criminelles et des Grâces, 1er Bureau, "Note pour le 2eme Bureau,"dated 12. April 1949, AN Pierrefitte, BB 18/3575.

[81] He anticipated a guilty verdict for the German members of the Waffen-S.S. who were standing trial at Bordeaux.

[82] Rousso, *Vichy Syndrome*, p. 29.

[83] Ibid., p. 304f.

[84] 'L'autre France' was meant to incorporate the millions of small collaborators into the 'veritable' France led by de Gaulle. See Brunner, p. 89. The culmination of this was reinterpretation of Pétain and de Gaulle as the sword and shield of France. The nation, according to this interpretation, required both in the struggle to resist Hitler. For instance, Robert Aron in his 1954 *Histoire de Vichy* wrote that "For the Marshal, the armistice was not and could not be anything more than a pause, allowing to subsist France temporarily […]." Robert Aron, *Histoire de Vichy*, p.309; also cited in Rousso, *Vichy Syndrome*, p. 246.

Gaullist myth to the French identity after the liberation,[85] the judicial authorities attempted to shape the prosecution of Graff in order to ensure that it did not violate the boundaries set by the myth. As Fonlupt-Estérhaber argued in 1947, an Alsatian-French as the only defendant in France's most high-profile war crimes trial would have made him the face of the crimes committed by the occupant, both in the eyes of the French as well as the eyes of the world.[86]

The Graff case threatened both the domestic and international implications of the Gaullist myth. Domestically, in the eyes of the justice authorities it undermined the fragile internal peace. Internationally, it had the potential to diminish France's moral capital as a victor over Nazi Germany.

When the politics of Franco-German reconciliation opened channels of influence for West Germany on French justice, a similar dynamic emerged and the circuits of the politics of justice which were already operating in Graff's case, were utilized to secure the release of the German war criminals. As we will see in the next chapter, the analogies to Graff's case were striking. In the 1950s, Colonel Belin, the head of the military justice administration, and therefore responsible for the German war criminals serving prison sentences, sometimes in close cooperation with Edgar Weinhold, the West German diplomat whose mission was to secure the release of the

[85] The Gaullist myth was the attempt to provide the country, which was still reeling from a civil war continuing long past the liberation in 1944 (what Rousso called 'la guerre franco-française'; see Rousso, *Vichy Syndrome*) with a national myth which had the power to integrate the biographies of both *résistants* and collaborators. As such, the Gaullist myth responded to a need, the need of large swaths of society for reconciliation.

[86] "[It] may appear to France and even the entire world (given the amount of attention the Oradour massacre had attracted), that the crimes had been perpetuated by Alsatians alone, if exclusively Alsatians were to be sitting in the box of the defendants." See document entitled "Note" and dated 11. January 1947, in: AN Pierrefitte, BB 18/3575. The preceding document attributes it to Jacques Fonlupt Esperaber, his name appears hand-written in the top right corner of the first page.

German war criminals, explored ways in which a release of German war criminals would be palatable. In this quest, just like in the case of Graff, the French authorities were willing to bend the rules to the maximum extent.

This chapter discussed the inner-French tensions which were revealed by the war crimes trials when it collided with the Gaullist myth of *la France Martyr*. Deep inner-French fault lines opened up between the Limousin and Alsace. Citizenship determined the treatment of the suspects of war crimes, more than one French government official was eager to free Graff based on his French citizenship. While the above chapter focused on the inner-French tensions when it came to the reckoning with the Nazi past, the next chapter discusses the transnational fault-lines between France and West Germany which were revealed by the tension between justice and reconciliation.

PART II – THE AGE OF RECONCILIATION

The age of reconciliation is defined by the emergence of a reconciliation trajectory between West Germany and France, inaugurated by Robert Schuman's announcement of European integration based on Franco-German reconciliation on May 9, 1950, and culminating in the conclusion of the Franco-German Friendship-Treaty between Charles de Gaulle and Konrad Adenauer in 1963. In the subsequent chapters, I show that French war crimes justice was increasingly portrayed as antithetical to the political reconciliation between France and West Germany while the premature release of the convicts and the cessation of trials were framed by the supporters of rapprochement as a support or even fulfillment of the goals of reconciliation.

CHAPTER 4 Preventing the "Murdering of Reconciliation"1 - The Oradour Trial and Aftermath

Nine years after the Oradour massacre, in January and February of 1953, the trial and judgment of the perpetrators at Bordeaux brought anything but closure. On the contrary, far from an apolitical dispensation of justice for the victims, the trial precipitated a political crisis in France and turned the attention away from the victims of the massacre towards the perpetrators, who themselves were bestowed with the status of victims by significant parts of public opinion[2]. The crisis threatened French unity and was superficially resolved with an active intervention by the lawmakers in an ongoing trial, culminating with the complete amnesty of the 13 Alsatian perpetrators[3] immediately after the judgments were rendered. This "second drama of Oradour"[4] has been well documented in scholarship and has since become part of the

[1] This quote is taken from an article in the *Frankfurter Allgemeine Zeitung* (FAZ), West Germany's leading (center-right) newspaper. See Adelbert Weisstein, "Ein Schlag gegen die Verständigung," in *FAZ*, August 12, 1953.

[2] This development is especially apparent in Alsace, but also in parts of Parisian intellectual circles. The victimhood that the Alsatian public opinion bestowed upon the "malgré nous" was based on various justifications: either victims of a vengeful French justice, victims of the French defeat of 1940, victims of being sacrificed by France, victims of "French interior" accusations of being unpatriotic or unfrench.

[3] By an act of the National Assembly, 13 of the 14 French-Alsatian perpetrators were released immediately from prison despite the guilty verdicts rendered by the Bordeaux Tribunal. The only French-Alsatian not liberated had been George Boos, who had joined the SS voluntarily, a fact that he did not dispute in court, and was therefore not considered a "malgré-nous." The verdict and subsequent treatment of George Boos constituted an interesting reflection of the French politics of justice. George Boos belonged to an Alsatian minority which identified as *Volksdeutsch* and supported the *de facto* annexation of Alsace to the Reich. He joined the SS voluntarily, and even after the defeat failed to exhibit pro-French sentiments which might have swayed French political opinion in his favor. Sentenced to death by the Bordeaux Tribunal, he was excluded from amnesty despite his French nationality based on the fact that he voluntarily joined the S.S.. There is very little scholarship on the Boos case, but evidence points towards the fact that had been regarded and treated as "German." In 1957, he was pardoned and released conjointly with his German counterpart Karl Lenz. After his release, Boos moved to West Germany and died in Völklingen in 2015.

[4] "La deuxieme drame d'Oradour" is the subtitle of a book by Guillaume Javerliat which focuses exclusively on the internal French crisis and controversy caused by the verdict of the Bordeaux Tribunal in 1953 and the subsequent amnesty of the "malgré-nous." Javerliat suggests that apart from

French canon of postwar history. However, the trial its aftermath also precipitated a controversy which received very little attention from scholars. This chapter sheds light on this little-known aspect of the Bordeaux Trial: the controversy regarding the fate of those seven Oradour perpetrators, convicted to sentences ranging from time in prison to the death penalty, who did not benefit from an amnesty and who remained in prison. One of them, Karl Lenz, was scheduled to be executed. In addition, the Oradour Trial also precipitated deliberations and controversies regarding three other Oradour-suspects, Heinz Lammerding, Otto Kahn and Adolf Heinrich, who resided in West Germany and were sought by France in connection with the war crimes committed at Oradour.

The Oradour Trial constituted an anomaly. It remains the only French war crimes trial in which the lawmaker actively intervened.[5] Because of the high profile

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the massacre itself, the 1953 trial and amnesty caused a second trauma with which the survivors, victims' families and France as a whole had to grapple. See Guillaume Javerliat, *Bordeaux 1953: le deuxième drame d'Oradour entre histoire, mémoire et politique* (Limoges: Pulim, 2009*).* Other recent publications on the subject include Jean-Paul Picaper, *Les ombres d'Oradour, 10 juin 1944. Vérités et mensonges sur un crime inexpié* (Paris: L'Archipel, 2014*)* Jean-Laurent Vonau, *Le Procès de Bordeaux. Les malgré-nous et le drame d'Oradour* (Strasbourg: Editions Du Rhin, 2003); Guy Penaud, *Oradour-sur-Glane. Un jour de juin 1944 en enfer* (Paris: Geste-Editions, 2014). Picaper, the former Berlin-correspondent of *Le Figaro*, wrote a book with the core mission to reveal the lies of the Oradour-deniers and -apologists. The book also presents the Bordeaux-Trial, but he heavily relies on the work of Vonau. Vonau's work focused almost entirely on the Alsatian perspective of the Bordeaux Trial and thus had next to nothing to say about the German convicts or suspects. Penaud has written a book which meticulously reconstructs the events of June 10, 1944, including its runup and aftermath. The former police detective listed in what at times reads like a memorial book all the names of the victims of the Das Reich at Oradour. His section on the Bordeaux Trial, which also provides the verdicts, has no new information to add.

[5] Because severe punishments were looming for the Alsatian suspects even in absence of evidence for individual guilt, the National Assembly abrogated the Law of collective responsibility during the trial. Furthermore, the National Assembly passed a law which required the physical separation of the French and German suspects in the dock of the accused in attempt to appease Alsatian sentiments. Thus, after the bill was ratified, the French-Alsatian and German defendants were physically separated and put into different boxes symbolically. In the future, the abrogation of Article 2 of the Law of 1948 meant that war crimes trials with French defendants had to be tried in front of separate military tribunals than their non-French co-suspects. See Hans-Heinrich Jeschek "Zum Oradour-Prozess" in: *Juristenzeitung, 8. Jahrgang., Nr. 5* (5 März 1953), pp.156-57.

of the Oradour trial and the overtly political nature of the amnesty, the French justice system was exposed to criticism of victor's justice or vengeful justice at a critical time when the transition from the age of retribution to the age of reconciliation was well under way. The Oradour trial and its aftermath hence symbolized the discordant power of the reckoning of the past. In addition to the internal French repercussions of the Oradour Trial, it had important foreign policy implications as well, since the optics of a "dual justice,"[6] one for French and the other for German citizens, clashed with the age of reconciliation and was indeed perceived as an attack on the Franco-German relationship.

In this chapter, I argue that the 1953 Oradour trial and its aftermath heightened the pressure on French authorities to find a solution to the "German war criminals problem." While the trial and surrounding events constituted an absolute anomaly in the French reckoning with the crimes committed by the Nazi occupation, it had the potential to become the symbol for the French judicial efforts as a whole and it seemed to confirm long standing West German sentiments about the nature of French justice vis-à-vis German citizens. The Oradour trial showed that justice dispensed according to the laws and customs of the immediate postwar years, what I call the age of retribution, constituted an existential threat, not only to internal French unity, but also to the Franco-German foundation of the European postwar order. While the trial concluded with the judgment and the premature release of all French

[6] Since the amnesty pertained exclusively to French convicts, while the prisoners whose sentences were left untouched were all German citizens – with one important exception - the French government was wary of accusations of a dual justice, one for French and one for German perpetrators. The French government was keenly aware of the danger of this perception. See next paragraph.

"*malgré-nous*" perpetrators[7] and with the imprisonment of all German ones, the abrogation of the law of collective responsibility, the subsequent pardon of all German suspects as well as the international efforts to prevent Lammerding, Kahn and Heinrich from standing trial for their crimes committed at Oradour served as an example of the complete transition between the age of retribution and the age of reconciliation.[8]

The Oradour Trial and the German Perpetrators

After more than eight years of investigation and the implementation of a law which was specifically designed to ease the prosecution of the crimes committed at Oradour, the trial of the massacre opened on January 12, 1953, at the Bordeaux Military Tribunal. Only 21 of the approximately 200 perpetrators faced the judges in person, and 14 of these suspects held French nationality.

The "Alsatian question" began to dominate the proceedings from the start. The defense counsel for the "malgré-nous" requested that the trial of their clients be separated from those of the Germans. When the presiding judge, Nussy-Saint-Saëns, rejected the motion, the quest for justice began to be eclipsed almost completely by the crisis in Franco-French relations. Considerable protests in Alsace prompted an intervention by the National Assembly. In an unprecedented move, on January 27,

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[7] Exception: George Boos – who mad no claim to malgré-nous status and was thus seen as having himself placed outside of the French community.

[8] Even the creators of an unyielding justice vis-à-vis German war criminals now argued for an amnesty. The head of the legal department in the Foreign Ministry, André Gros, who as the French representative at the UN War Crimes Commission in London in 1944 and 1945, had pushed hard for the adoption of "presumption of guilt" and "collective responsibility" clauses in the UNWCC's statutes, citing massacres such as Oradour as the primary justification, were now advocating for leniency and pardons. For Gros' position in 1944, see Moisel, *Frankreich und die deutschen Kriegsverbrecher*, pp. 59, 60; for Gros' position in 1953, see 22.4.1953 – MAE – "Jurisconsulte" "Note pour le Président" re: "Condamnés allemands dans l'affaire d'Oradour," in AN Pierrefitte, 457 AP/47.

1953, the French parliament intervened in an ongoing trial and declared the articles regarding collective guilt and the presumption of guilt for abrogated, thus depriving the military tribunal at Bordeaux of one of the legal pillars for the trial. Second, in an apparent attempt to appease Alsatian public opinion, the National Assembly declared that French citizens cannot be tried alongside non-citizen suspects of war crimes.[9]

The trial ended on 11 February with guilty verdicts for 20 of the 21 defendants. These sentences triggered mass protests in Alsace which threatened the unity of the French state. Church towers sounded the tocsin and the following statement was displayed at mass protests across the region:

> We will not accept [the verdict.] All of Alsace shows solidarity with its thirteen children who have been wrongfully convicted at Bordeaux, and with the 130 000 who had been forcedly drafted [into the German armed forces]. [...] French Alsace vehemently protests against the incomprehension of which its sons have become the unfortunate victims.[10]

These mass protests in turn spurned a law of amnesty by the National Assembly, which liberated and amnestied all 13 French[11] – but none of the German war criminals.

Immediately after the amnesty had been granted, the unequal treatment of the German war criminals became a focal point at the *Quai d'Orsay.* The *Service Juridique* headed by André Gros wrote an extensive aide-memoire for the Minister of

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[9] See *JO AN Débats*, 3eme séance du 27 Janvier 1953, p. 538 (discussion of amendments); p. 586; amendments passed the AN with the following vote count: 364 to 188.

[10] Farmer, Martyred Village, p. 159. "Nous n'acceptons pas. Toute l'Alsace se déclare solidaire avec ses treize enfants condamnés à tort à Bordeaux et avec les 130 000 incorporés de force. [...] L'Alsace française s'élève avec véhémence contre l'incompréhension dont ses fils sont les malheureuses victimes."

[11] The only exception was George Boos, who held French citizenship, and who had been convicted for treason because he had joined the SS voluntarily.

Foreign Affairs, in which it argued that only one conclusion can be drawn from the distinction between the French perpetrators, who were amnestied, and the German perpetrators, who remained in prison: "the conclusion that the Germans are guilty because they are Germans and that they must be denied any exculpatory justification."[12] The report from the Justice Ministry's *Service Juridique i*n remarkably blunt words summed up the legacy of the age of retribution which broke through once more during the Oradour Trial. The prosecution of German and French war criminals based on different legal grounds had been contrary to French republican values from the beginning, but it had been accepted because the distinction rested on a notion of enmity rooted in the violent occupation of France by Nazi Germany as a justification for the discrimination. By 1953, this enmity was in the process of giving way to amity, and the legacy of the war crimes trials discriminatory nature became baggage which undermined the process:

> Once again, the whole problem concerning the distinction between [French] and enemy citizens where war crimes are concerned will be on display before the international public opinion, and it will be on display at a time and under conditions as untimely as possible.[13]

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[12] MAE -Service Juridique – "Note pour le Secretaire General" dated 17.2.1953, in: AN Pierrefitte, 457 AP/47; "la conclusion que les Allemands sont coupables parce qu'Allemands et que toute excuse absolutoire doit leur être refusée. On aura ainsi posé une fois de plus devant l'opinion publique internationale tout le problème de la distinction entre nationaux et les ennemis en matière de crime de guerre et on l'aura posé à une époque et dans des conditions aussi inopportunes que possible."

[13] Ibid; While the specifics of what the report alluded to by mentioning the "conditions as untimely as possible" remain are not know, it is clear that Franco-German relations were rocked by several developments at the time: The Naumann-Affair reawakened French fears of a renazification of West Germany, and the negotiations for the European Defense Community, which included West German rearmament, increased the pressure on France to end the war crimes trials and liberate the prisoners. For instance, an envoy from the French High Commission interviewed Heinz Guderian, the Chief of the General Staff of the Wehrmacht in the last phase of World War II, who had been influential in Wehrmacht veterans' circles, to inquire about his position on German rearmament and Franco-German reconciliation. According to the transcript of the interview, Guderian professed that "l'a.b.c. de toute politique allemande est dans un rapprochement entre la France et l'Allemagne. Il y a peu d'espoir de réaliser quoi que ce soit par les politiciens. Aussi essayons-nous de rapprocher, d'abord, les peuples et, en premier lieu, comme premier objectif, les anciens combattants de nos deux pays." However, a serious impediment to this reconciliation and especially to the rearmament of West Germany within

The report exposed the fundamental problem in the dynamics of the Oradour-Trial, the verdict and its aftermath. It revealed the discriminatory nature of French justice vis-à-vis war criminals. Between 1948, when French lawmakers, according to the French government, "wanted to reserve the application of the principle of collective responsibility exclusively for the Germans"[14] and 1953, however, the justification for the discrimination had become anachronistic. No longer could the old enemy status of the Germans serve as an acceptable motivation for laws which violated fundamental republican legal principles, especially since the old enemies had in the meantime become "ex-enemies."[15]

The French government, in particular the Foreign Ministry, therefore faced a complicated legal, political and diplomatic situation. The discrimination between the French and German convicts, of those who were set free and those who remained imprisoned, because it was justified by the former enemy status of the Germans, opened itself up for criticism of vengeful justice or victor's justice. The French Protestant newspaper *Réforme*, for instance, argued in an article published on February 7, 1953, that the decision of the National Assembly to disjoint the proceedings against French defendants in war crimes trials from those of "the Germans [...] confirm[s] the partisan character of our prosecution of war crimes. We

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the EDC would have been "[un] refus d'amnistie générale des criminels de guerre" because "[n]os soldats ne pourront "vorbeimarschieren" sous les murs de LANDSBERG au sens pénal du mot." See 5 February 1953 - L'Ambassadeur de France – Haut-Commissaire de la République en Allemagne à son excellence M. Georges Bidault, Ministre des AE, in: AN Pierrefitte, 457 AP/47.

[14] MAE -Service Juridique – "Note pour le Secrétaire General" dated 17.2.1953, in: AN Pierrefitte, 457 AP/47; "ait voulu réserver aux seuls allemands d'application du principe de la responsabilité collective"

[15] The report spoke about the "les poursuites engagées contre les accusés ex-ennemis." MAE -Service Juridique – "Note pour le Secrétaire General" dated 17.2.1953, in: AN Pierrefitte, 457 AP/47.

practice victor's justice [...]." [16] Albert Béguin, the editer-in-chief of the newspaper *l'Esprit* drew the same conclusion in *Le Combat*: "The whole affair was initiated on a principle that would justify a morality of vengeance and not an ethics of justice."[17] The center-left journal *Franc-Tireur*,[18] mouthpiece of the former resistance movement, reminded its readers of the ideas the French resistance fought for during the war:

> This war has been fought to put an end to the reign of collectivities and of collective responsibilities and to reestablish the reign of individuals instead. [...] It is not the citizenship that determines the guilt of a man.

The article continued with a chilling contrast of the noble legacy of the resistance with the then-current dispensation of justice:

> People gave their lives during this war so that one can no longer say: he is only a Slav, he is only a Communist, he is only a Jew, but also that one may not say: he is only a German.[19]

The allegation that the jurisprudence practiced at the Oradour-Trial in particular and war crimes trials in general resembled Nazi jurisprudence was designed

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[16] The French Protestant newspaper *Réforme*, for instance, did just that. In an article published on February 7, 1953, it criticized the decision of the National Assembly to disjoint the proceedings against French defendants in war crimes trials from those of "the Germans [because] we [thereby] confirm the partisan character of our prosecution of war crimes. We are practice a victor's justice [...]." "Car le crime n'a pas de patrie et la justice non plus. Et malheureusement [...] le nouvel Article 3, sous son imperméable charabia juridique, affirme le contraire. En disjoignant, dans les poursuites ultérieures, le sort des Français du sort des Allemands, nous confirmons le caractère partisan de notre répression des crimes de guerre. Nous pratiquons une justice de vainqueurs [...]" See *Réforme*, February 7, 1953.

[17] *Le Combat*, article from Albert Béguin, from January 8, 1953; "toute l'affaire a été engagée sur un principe que justifierait une morale de la vengeance et non une étique de la justice."

[18] Dominique Veillon, *Le Franc-Tireur. Un journal clandestin, un mouvement de Résistance, 1940-44* (Paris: Flammarion, 1977).

[19] *Franc-Tireur*, Article by M. de Guardia, dated January 14, 1953. "Cette guerre a été faite pour que cesse le règne des collectivités et des responsabilités collectives et pour que recommence le règne des individus. [...] Ce n'est pas la nationalité qui détermine la culpabilité d'un homme. […] Des gens sont morts durant cette guerre pour qu'on [ne] puisse plus dire: ce n'est qu'un Slave, ce n'est qu'un Communiste, ce n'est qu'un juif, mais aussi pour qu'on ne puisse pas dire ce n'est qu'un Allemand."

to appeal to French republican values, which are removed from the pressures of current affairs. However, some opinion makers argued that the Oradour verdict also threatened French foreign policy in a more direct way. The Alsatian magazine *Honneur et Patrie*[20] succinctly summed up the paradox: "the six Germans [...] are judged according to other principles than our own nationals? And you wish that that the Germans hold out their hands for a trusting and loyal cooperation afterwards? And you expect that the same parliament that passed the law of September 15, 1948, will now reverse itself, while yet again with the same reproach trample on the principles of law and of humanity, but only when it comes to the rights of the former enemy?"[21]

These comments echoed and hence validated the West German view: The dispensation of justice as practiced at the 1953 Oradour trial was rooted in a sense of vengeance. As such, it had become anachronistic or out-of-sync with the evolution of Franco-German relations, perhaps even an outright attack on reconciliation. In 1953, European integration offered West Germany the chance to exert political influence on France which allowed it to challenge French justice and mold it according to its understanding of the recent past.

Immediately after the verdict at Bordeaux and the subsequent amnesty for the French convicts, intervention from the highest echelons of the government in Bonn

[20] A weekly magazine entitled: *Honneur et Patrie: le messager du Rhin* published in Strasbourg since 1945.
[21] M. Eber, "Oradour ou la foule et la justice," in : *Honneur et Patrie* (Strasbourg), January 9, 1953; "les six allemands [...] soient jugés d'après d'autres principes que nos propres nationaux? Et vous voudriez qu'après cela les Allemands nous tendent la main pour une confiante et loyale collaboration. Et vous vous attendez à ce que le parlement qui a voté la loi du 15 Septembre 1948 défasse maintenant ce qu'il a fait et encore ainsi le plein fouet le reproche de fouler aux pieds, uniquement pour les anciens ennemis, les principes du droit et de l'humanité ?"

followed. West German Justice Minister Thomas Dehler (FDP) went on record to criticize the discrimination inherent in the Oradour amnesty, because it exclusively pertained to the French convicts. He argued, when prosecuting "a crime [...] the legal status of a convicted person is the same, whether he was drafted as a German or non-German into military service. [...] The difference in treatment for the same criminal responsibility [disregards] the principle of equality before the law."[22] Dehler therefore demanded that the German convicts benefitted from the same amnesty as their French former comrades in arms.[23]

Indeed, the verdict at Bordeaux and the one-sided amnesty of the convicts based on nationality also led to forceful condemnations within France which closely echoed Dehler's comments. The French Protestant Church and its publication *Réforme* criticized the amnesty decision for its inequities. The French state, in the name of "the one and indivisible Republic" abandoned the republican principle of equality of justice:

> 'what a wonderful justice, which ends at the banks of a river, even if it is the Rhine.' There is only one single justice. It is a truth beyond temporal reproach, which is more serious, more meaningful and more important to humanity than the unity of the Fourth Republic. Justice needs to show the same face to Germans and French alike.[24]

[22] Hessische Nachrichten, article from February 20, 1953, entitled „Doppeltes Recht in Frankreich," cited in Lars Elliger, *Das Massaker von Oradour. Die deutsche Rezeption des Prozesses in Bordeaux 1953* (Staatsexamensarbeit - Hamburg: Diplomica, 2012), 41. "schuldhaftes Verhalten [...] ist die Rechtslage eines Verurteilten die gleiche, einerlei ob er als Deutscher oder Nichtdeutscher zum Waffendienst geholt wurde. [...] Die unterschiedliche Behandlung bei gleicher strafrechtlicher Schuld [missachte] den Grundsatz der Gleichheit vor dem Recht."
[23] See memo from the German Mission Paris to the Foreign Office Bonn, dated February 24, 1953, signed by a "Kuhna." In BA Koblenz, B141/21886.
[24] See Fédération protestante de France, "La Justice est une" in: *Réforme* 9 (1953), Nr. 415, 28.2.1953.

Because of these conclusion, *Réforme* petitioned President Auriol to pardon the German convicts.

The center-right publication *Le Figaro* echoed the condemnations published in *Réforme*. On the eve of the amnesty vote in the National Assembly, it argued that "If the amnesty law passed tomorrow, France would have made a distinction between the nationality of the defendants," because the amnesty law would *de facto* ensure that the nationality of the convicts decided about freedom and incarceration. The *Figaro* article concluded with an appeal to French republican values: "We must preserve the sense of equity which is the basis of the prestige of France."[25] Cognizant of the highly controversial amnesty, the French government immediately began to explore avenues which would lead to the premature release of the Germans, and hence restore the equality between the French and the German convicts. It did so especially because interventions from the West German side, as foreshadowed by Dehler's remarks, were expected.

West German diplomats in Bonn and Paris indeed immediately realized the opportunity the amnesty of the Alsatian convicts offered to West German interests. Ironically, Bonn regarded the 1953 judicial reckoning of the massacre at Oradour, whose name represented the brutality of the German occupation of France as a whole, as a window of opportunity, a moment which was "psychologically convenient"[26] to

[25] *Le Figaro*, February 19, 1953; "si demain l'amnistie était votée, la France aurait fait une distinction entre les nationalité des accusés," "Nous devons conserver le sens de l'équité qui a fait l'honneur de la France."

[26] The head of the *Politische Abteilung* in the Foreign Office Heinz von Trützschler argued that the aftermath of the Oradour trial was a "psychologically convenient" moment to push for the release of

push for the release of the German Oradour convicts, as Thomas Dehler had publicly demanded earlier.

The West German discussions for an intervention led to a demarche by the diplomatic mission in Paris, on March 5, 1953, which utilized the discrimination of the German convicts vis-à-vis their French counterparts to push for the release of the former. The memo argued: "It is certain that the liberation granted to convicts of Alsatian origin, who were amnestied by vote of Parliament, establish a discrimination between the accused which is not justified by the law[...]."[27] The West German mission's Chargé d'Affairs, von Walther, proposed that the Minister of Defense, René Pleven,[28] use his authority to suspend the sentence of the convicts.[29]

The French Foreign Ministry's head of legal department, André Gros, who had previously been one of the preeminent minds behind the development of the French war crimes trials program, laid out the options which were at the governments disposal to remedy the discrimination and appease West Germany. André Gros' remarkable report represented in itself evidence for the completed transition from the age of retribution to the age of reconciliation. One of the intellectual authors of the

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the German war criminals. See Jörg Echtenkamp, *Soldaten im Nachkrieg: Historische Deutungskonflikte und westdeutsche Demokratisierung* (München: Oldenburg, 2014), p. 308.

[27] 28.4.1953 – Le Ministre (presumably: des Affaires Étrangères Georges Bidault) to René Mayer Président du Conseil, AN Pierrefitte, 457 AP/47; "Il est certain que les mesures de libération adoptées en faveur des condamnés d'origine alsacienne, amnistiées à la suite d'un vote du Parlement, établissent, entre les accusés, une discrimination injustifiable en droit[...]."

[28] René Pleven had also been the author of the Pleven-Plan, which made him the intellectual parent of the European Defense Community. This gave the question of amnesty for the German war criminals another interesting link with the EDC discussions, since many pro-EDC advocates where sensitive of the optics of war crimes trials and imprisoned war criminals in light of the discussion of West German rearmament.

[29] According to Article 112 of the Military Justice Code, the Defense Minister can suspend the sentence of prisoners convicted within the military justice system. However, only the president of the republic can pardon prisoners convicted to death.

Ordinance of 1944 and, as the French representative at the UNWCC in London until 1948, a proponent of the principle of collective guilt, in 1953 he was looking for ways to liberate the only imprisoned perpetrators in one of the most infamous war crimes in France.

Gros knew that precisely because the Oradour massacre symbolized the infamy of the Nazi rule in France and because the trial attracted attention like no other in postwar France, any discussion of pardons or amnesties were a politically delicate. Five of the six German convicts received time sentences or forced labor, while the tribunal sentenced the sixth, Karl Lenz, to death. Karl Lenz's case was especially delicate, because politically, "[i]t is difficult to imagine the complete pardon of a death row inmate" while a commutation of the death sentence into "a sentence of hard labor in perpetuity" which would have been the standard procedure for a commutation of a death sentence, "will keep alive the controversy with the Germans, who will continue to present the prisoner as a victim." André Gros suggested a solution which would have disguised the government's expressed wish to liberate the convict as quickly as possible. He proposed "a sentence of hard labor corresponding to approximately the years of time served by the convicted person, with a margin of one or two years of prison time to be served before his release; or, in the event that the person sentenced to death would have his sentence commuted to forced labor, a second measure of clemency could be granted after a certain period of time."[30]

[30] 22.4.1953 – MAE – "Jurisconsulte" "Note pour le President" re: "Condamnés allemands dans l'affaire d'Oradour," in AN Pierrefitte, 457 AP/47. "Il est cependant difficile d'imaginer la grâce complète du condamné à mort"; "une peine de travaux forcés à perpétuité," "laissera [...] la controverse ouverte avec les Allemands qui continueront à présenter le prisonnier comme une victime." "une

André Gros pointed out a basic problem the French authorities faced: A mere reduction of the sentence would fail to change the fact that large parts of German society and politics viewed the German prisoners as victims. Only a complete premature release of all German prisoners appeased this sentiment. On the other hand, large parts of the French public opinion, especially the victims' associations such as the ANFMO,[31] understandably, refused to accept the premature release of the perpetrators and mobilized against it – especially with the support of the French Communist Party (PCF), which regarded the Federal Republic of Germany as a fascist state. Gros suggested a solution in the case of Karl Lenz: First, commute the death sentence to life in prison, and after a certain delay, when public opinion had calmed down, issue a second commutation which reduced the prison sentence to time served plus one or two years, so that he could be released. This would be the solution that took the back lash from both sides into consideration, but still heavily appeased the German side by essentially liberating the German perpetrators as quickly as politically possible.

A political risk-benefit calculation had been made in the corridors of power in Paris: on the one side stood the morally and ethically decision to honor the legitimate need to serve justice for the victims of the massacre, which was supported by large parts of the Limousin. On the other hand, a premature release of the war criminals, while seemingly morally reprehensible, would help, so the argument went, to

peine de travaux forcés correspondant à peu près aux années de prison préventive effectuée par le condamné, avec une marge d'un an ou deux ans de prison à faire avant sa libération; ou bien, dans l'hypothèse où le condamné à mort verrait sa peine commuée en travaux forcés, une seconde mesure de clémence pourrait être prise après un certain délai."

[31] Association Nationale des Familles des Martyrs d'Oradour-sur-Glane.

legitimize the policies of European integration by Konrad Adenauer, the most pro-French German chancellor in modern history, who offered like very few politicians before him the opportunity of a true reconciliation between the two countries.[32] Apart from the moral component of the argument, there was also an economic and geopolitical calculation: Having to choose between the impoverished, largely agricultural region of the central French region of the Limousin, which posed no political threat to the unity of France (unlike Alsace), and the vastly more powerful neighbor across the Rhine, whose rapidly growing industrial sector reawakened traditional French security concerns, the French government chose to alienate the former and appease the latter.[33]

French Foreign Minister Georges Bidault, six days later, summed up André Gros' recommendations in a letter to Prime Minister René Mayer and suggested to add the "measures of appeasement" to the agenda of the upcoming cabinet meeting.[34] However, the fall from power of Mayer's government in May of 1953 interrupted

[32] This political aspect of the premature release of the war criminals as a means to support Adenauer served as one of the key justifications for the controversial measure. The Quai d'Orsay understood that Adenauer's administration was without alternative in terms of European integration and Franco-German reconciliation [Kurt Schumacher and his successors in the SPD in the first half of the 1950s did not support Western integration but argued for neutrality as a means to win Soviet support for a reunification]. As the French historian of French foreign policy Georges-Henri Soutou argued, the Quai d'Orsay was not at all enthusiastic about reconciliation with West Germany, but viewed it as a *realpolitical* strategy to exert influence over the FRG and thus solve one of the most enduring concerns of French foreign policy: security vis-à-vis Germany. See Georges-Henri Soutou, "La diplomatie française et les diplomates français entre tradition et réforme," in: Reiner Marcowitz, *Nationale Identität und transnationale Einflüsse. Amerikanisierung, Europäisierung und Globalisierung in Frankreich nach dem Zweiten Weltkrieg* (Munich: Oldenbourg, 2007), pp. 107-121.

[33] Sarah Farmer made a similar argument regarding two internal French regions. She concluded that the National Assembly, when it voted for the amnesty of the Alsatian Oradour perpetrators in 1953, chose to alienate the impoverished and rural Limousin and appease the densely populated and economically significant Alsace, which also posed a significant threat to French unity. See Sarah Farmer, *Oradour, Arrêt sur mémoire*, (Paris: Calmann-Lévy, 1994), p. 172.

[34] 28.4.1953 – Le Ministre (presumably: des Affaires Étrangères – Bidault) to René Mayer Président du Conseil; "mésures d'apaisement". In AN Pierrefitte, 457 AP/47.

these plans.[35] After the new government had formed under Joseph Laniel, the Foreign Ministry launched another attempt to bring the case of the German convicts to the attention of the cabinet. On July 28, 1953, the Political Affairs division asked Foreign Minister Bidault in light of the "repeated demarches of the German diplomatic mission"[36] to submit the question to the Prime Minister for review in the council of ministers given that " we have every reason to believe that the German diplomatic mission will not fail to intervene soon to inquire about [our] response to its previous demarches."[37] In the meantime, the Chief of Staff of the Foreign Minister reached out to the Defense Ministry in order to find out about its plans. The answer it received was, that the Defense Minister followed the recommendations of the Foreign Minister, which meant "commutation of the sentences."[38]

In the absence of any word from the Prime Minister's office, Bidault wrote again to Laniel because the West German mission had increased the pressure on the French side in order to force a decision. Bidault wrote: "The German diplomatic

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[35] As this episode shows, the political instability of the Fourth Republic had also an impact on the negotiations concerning the war criminals. In the mid-1950s, French governments lasted no longer than four to six months on average before they were forced to resign by a vote of no-confidence in the National Assembly. While the mid- to lower level staff in the Justice ministry remained unchanged, cabinet level decisions were sometimes delayed because of the rapid and constant change in personnel.

[36] Direction Générale des Affaires Politiques – Europe- s/direction d'Europe Centrale "Note pour le Président, A/s. Condamnés allemands dans l'Affaire d'Oradour" AN Pierrefitte, 457 AP/47; a date is penciled in: 28.7.1953 ; "démarches répétées de la Mission Diplomatiques Allemande."

[37] "Projet de lettre à M. le Président du Conseil au sujet des Allemands condamnés dans l'Affaire d'Oradour," AN Pierrefitte, 457 AP/47. "il y a tout lieu de penser que la Mission Diplomatique allemande ne manquera pas d'intervenir prochainement pour connaitre la suite réservée par le Gouvernement à ses précédentes démarches."

[38] 14.8.53 MAE – Cabinet du Ministre -and now handwritten:] [to:] M. D. [or P.?] L. Falaise re: Condamnés Allemands de Bordeaux (Oradour), AN Pierrefitte, 457 AP/47. On August 14, 1953, M. Falaise telephoned General Ganeval, René Pleven's Chief of Staff, to inquire about their intentions. He received the following reply from Ganeval:
"suivre la suggestion indiquée dans la lettre du Ministre du A.F.e. au Président du Conseil en date du 28 Avril 1953: c'est à dire commutation des peines."

mission has just intervened again in favor of its nationals. M. von Walther told M. de la Tournelle that the German Government had recently pressured the press to prevent a campaign on the matter, which still attracted the attention of many circles."[39] The West German government insinuated that the lack of an amnesty measure for the German convicts stirred a dangerous sentiment in public opinion which had the potential to undermine the future of reconciliation. While the West German government successfully prevented the campaign from erupting, there was no guarantee, so the subtext of the message, that this would be the same case in the future. Thus, a government intervention in favor of the Oradour convicts was necessary.

While George Bidault's Foreign Ministry negotiated with the Prime Minister and the Defense Minister to secure a timely pardoning of the German war criminals, it also negotiated with the West German Foreign Office in an apparent effort to appease the West German side. By May of 1953, the French Foreign Ministry had discreetly assured Bonn that all German Oradour convicts would be pardoned in principle, without committing to a timeline.[40]

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[39] 25.09.1953 - MAE – Direction Général des Affaires Politiques "Note pour le Président Bidault," AN Pierrefitte, 457 AP/47. This had been a common tactic of the Foreign Office in Bonn. In order to sway French policy makers, it made references to the German public opinion or what it called a press campaign which it could hardly contain any longer without any signs of good will from France. "La mission diplomatique allemande vient d'intervenir de nouveau en faveur de ses ressortissants. M. Von Walther a indiqué à M. de la Tournelle que le Gouvernement allemand avait fait pression dernièrement sur la Presse afin de prévenir une campagne sur cette affaire, qui continuait cependant de retenir l'attention de nombreux milieux."

[40] Meyer, Bundesjustizministerium, memorandum entitled "Vermerk," dated 26. May 1953, in: BA Koblenz B141/21886; "DR. Born [Auswärtiges Amt] teilte mit, dass Verhandlungen mit dem französischen Aussenministerium wegen Begnadigung der Oradour- Verurteilten bereits grundsätzlich zugesagt. Französische Regierung legt aber Wert auf strikte Diskretion, ohne Öffentlichkeit."

The pressure from West Germany continued to increase in the following weeks and months, especially since the Federal government was in the middle of a re-election campaign in the summer and fall of 1953. Adenauer himself publicly underlined the importance of the "war criminals' problem" to his government by visiting convicted war criminals who served their sentences in Werl Prison – among them the Waffen SS-General Kurt Meyer.[41]

Adenauer's visit to the war criminals had not gone unnoticed in Paris. Hans Speidel, then the FRG-government's principle representative in the negotiations for the EDC based in Paris, reported to the Chancellor's office that "the visit of the [chancellor] to Werl prison left a profound impression not only on the old soldiers at home, but also on the many people of goodwill abroad. It has thus become clear that the solution to the so-called 'war crimes question' is not a political expediency, but rather a genuine matter very close to our heart."[42]

The fate of the Oradour-convicts was closely followed by West German public opinion. After the French Supreme Court rejected the appeal of the convicts in August of 1953, the Frankfurter Allgemeine Zeitung called the decision a "blow against reconciliation," and argued that if the death penalty was going to be carried out, it would be considered akin to "murdering reconciliation."[43] The local Youth

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[41] See article in *Die Welt* from June 29, 1953, entitled "Kanzler besucht Werl-Häftlinge."

[42] "Besuch des Bundeskanzlers in der Haftanstalt Werl hat tiefen Eindruck, nicht nur bei den alten Soldaten i.d. Heimat, sondern auch bei den vielen Menschen guten Willens im Ausland gemacht. Es ist damit offenbar geworden, dass die Lösung der sogenannten "Kriegsverbrecherfrage" nicht etwa eine politische Zweckmäßigkeit, sondern vielmehr eine echte Angelegenheit des Herzens ist. Auch aus Werl und Landsberg drangen schon entsprechende Stimmen zu mir."
Letter of Hans Speidel (Chief Military Delegate of the German delegation at the provisional EDC committee, Paris) to Mister Kilb (chancellor Adenauer's personal secretary), dated 8. July 1953, in BA Koblenz, B136/1882.

[43] See Adelbert Weisstein in *FAZ* from August 12, 1953, entitled "Ein Schlag gegen die Verständigung."

Organization of the FDP in Gießen/Hesse declared the "double standard" amnesty law of the National Assembly "a perversion of justice" which "not only committed a disservice to European project, but also harmed international understanding [Völkerverständigung]."[44] Thus, the appeasement of German public opinion became a matter of urgency, especially in the case of Karl Lenz who was awaiting the execution of the death sentence.

On March 15, 1954, the *Conseil Superieur de la Magistrature* (CSM), which advised the French president in judicial matters, including the pardoning of convicts who had been sentenced to death, unanimously voted to commute the death sentence of Karl Lenz, because "he, having obeyed the orders of his superiors, does not appear to be more guilty than the Alsatians, who were drafted, and who have been granted an amnesty." Finally, the "commission draws attention to the fact that if Major Dickmann [sic] seems to have been killed during the fighting in Normandy, Captain KAHN is alive today and did not appear in front of the Bordeaux Military Tribunal."[45] President Coty concurred with the opinion of the presidential pardoning

[44] The FDP Gießen's youth organization declared that the Bordeaux verdict amounted to "zweierlei Rechtsprechung," and concluded that "ein derartiges Verhalten der französischen Nationalversammlung keineswegs der Sache Europas diene, sondern der Völkerverständigung im höchsten Maße schade." See Deutsche Jungdemokraten (FDP) Kreisverband Gießen an Dr. Erich Mende (MdB), dated March 2, 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

[45] File number 61-PM-53, dated March 15, 1954, documents of the CSM / Commission de Grâce, in AN Pierrefitte, 4 AG 672; "[Lenz], ayant obéi aux ordres de ses supérieurs, ne parait pas plus coupable que les Alsaciens engagés de forces ont bénéficié d'une amnistie." Furthermore, the commission concluded that "La commission attire en plus l'attention sur le fait que si le Major Dickmann semble bien avoir été tué lors des combats de Normandie, le Capitaine KAHN est aujourd'hui vivant et n'a pas comparu devant le Tribunal Militaire de Bordeaux."

commission and commuted the death penalty of Lenz.[46] All of the Oradour convicts were liberated by 1957.[47]

The justification of the pardoning commission's unanimous decision to commute the death sentence of Karl Lenz rested heavily on the fact that Otto Kahn, Lenz's superior at Oradour, remained in freedom. This justification is particularly worth investigating, since Kahn owed his freedom in part to the West German judiciary, which was ordered to remain inactive precisely to ensure the premature release of Lenz and his co-perpetrators.

Justice for the "victims" of French War Crimes Justice: The Non-Prosecution of Otto Kahn

Otto Kahn was the highest-ranking surviving perpetrator who actively participated in the massacre.[48] Kahn served as the commanding officer of the 3rd company, comprising approximately 200 Waffen-SS members, which committed the massacre on June 6, 1944. The 3rd company had been part of the 1st battalion under the command of Adolf Diekmann, which in turn was part of the 4th Regiment "Der Führer," commanded by Obersturmbannführer Sylvester Stadler. Finally, the "Der Führer" regiment was part of the Waffen-SS-Division "Das Reich" under General Heinz or Heinrich Lammerding.[49] Since the opening of the investigation revealed the

[46] The final decision by the president Coty had been taken some time in July, yet it had been announced only in September of 1954. See Pétition pour grâce, subfolder "Critique Oradour Sur Glane – recours en grâce de Boos et Lenz, 14 Septembre – 30 Octobre 1954," in AN Pierrefitte, 4AG/153.
[47] Karl Lenz was released in April of 1957. See cable by German Embassy in Paris (Jansen) to Foreign Office (ZRS) dated April 8, 1957, entitled "Kriegsverbrecherproblem in Frankreich; hier: Entlassung der zu Zeitstrafen verurteilten Gefangenen," in: BA Koblenz, B305/311.
[48] The commander of Waffen S.S. division "Das Reich" Heinz Lammerding also survived the war, but he had not been physically present at Oradour. More about Lammerding below.
[49] The highest-ranking person directly implicated by the massacre was Waffen-S.S. Gruppenführer (major general) Heinz Lammerding, who commanded the Waffen-S.S. division "Das Reich," and who

death of Diekmann, Kahn, together with Lammerding, served as the most important suspect.[50] The indictment issued by the Procureur General of the Cour d'Appel de Bordeaux [which was tasked to prosecute the Oradour massacre at the Bordeaux Military Tribunal] on November 21, 1949, listed him as suspect number one:

> 'Indictment – concerning the proceedings at the Permanent Military Tribunal of Bordeaux against:
> I. – KAHN OTTO, captain and commanding officer of the 3rd company of the regiment 'Der Fuehrer,' domiciled in Brussoww [sic] (Germany) – ON THE RUN.[51]

The indictment accused Kahn of initiating the massacre. First men, women and children had been separated, and then "suddenly, after Kahn [...] gave the signal by firing salvoes from his machine gun, the massacre of the population of ORADOUR began."[52]

While the indictment charged Diekmann, who was killed in Normandy in late June of 1944, with ordering the atrocity, the Bordeaux prosecutors also emphasized the outsize role Kahn played in the murder of the over 642 children, women and men

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as commanding officer of the division, would have been responsible for the actions of his inferiors according to the Ordinance of 1944 and the law of 1948. The same applied to Sylvester Stadler, who as commanding officer of the 4th Regiment "Der Führer" had been Diekmann's immediate superior (Stadler claimed to have Diekmann court martialed for the orders which led to the massacre – after the war however, Stadler attempted to justify the massacre with partisan activity at Oradour). However, neither Lammerding nor Stadler had been physically present at Oradour.

[50] Heinz Lammerding, despite his role as commanding general of the Waffen-S.S. division "Das Reich," was never included in the indictment of the Oradour massacre. It is most likely that the Bordeaux tribunal, as many historians have done to this day, believed the defense strategy to pin the order to perpetrate the massacre entirely on Adolf Diekmann.

[51] See Cour d'Appel de Bordeaux- Le Procureur General, 'Réquisitoire', dated 21. November 1949. In AN BB/18/3575/2, Dossier 5/3 – Poursuites exercées devant le Tribunal Militaire de Bordeaux contre les responsables des Massacres Oradour sur Glane – Responsables Allemands et Français;
"Réquisitoire – Vu la procédure instruite au tribunal Militaire permanent de BORDEAUX contre les nommés
I – KAHN OTTO, Capitaine commandant la 3ieme Cie du régiment "Der Fuehrer " domicilié à Brussoww [sic] (Allemagne)
EN FUITE." The "on the run" was underlined and in all caps.

[52] Ibid.

at Oradour: “In fact, it is [...] Dickmann [sic] .... who took the initiative of this action of revenge by choosing at random the locality [ORADOUR] and by ordering its destruction and the extermination of its inhabitants, [...] and he entrusted the execution [of his orders] to the 3rd Company as a whole and to its leader Captain KAHN Otto.”[53] While Diekmann made the overall decision to commit atrocities in Oradour, the prosecution accused Kahn of being responsible for the detailed execution of the massacre, including giving the “orders regarding the executions and the blazes.” [54] All the suspects imprisoned at Bordeaux had testified that Kahn had been behind the execution of the massacre.

Kahn’s absence in the trial contributed to the understanding of the Oradour Trial as a trial of minor suspects while the real culprits were living in freedom.[55] For instance, Jean Schlumberger wrote in Le Combat on January 8 ,1953, that “The trial only involves subalterns [while] those who ordered [the massacre] are either dead or on the run.”[56]

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[53]Ibid.; “En réalité, c’est [...] Dickmann [sic] .... qui a pris l’initiative de cette action de vengeance en choisissant au hasard, pour la détruire et en exterminer les habitants, la localité [ORADOUR]... et il en a confié l’exécution à la 3eme Cie toute entière et à son chef le Capitaine KAHN Otto.”

[54] See Cour d’Appel de Bordeaux- Le Procureur General, ‘Réquisitoire’, dated 21. November 1949, in AN Pierrefitte, BB/18/3575/2, Dossier 5/3 – Poursuites exercées devant le Tribunal Militaire de Bordeaux contre les responsables des Massacres Oradour sur Glane – Responsables Allemands et Français.

[55] The other individual whose absence contributed to this understanding was Heinz Lammerding. His case will be discussed below.

[56] Two examples may suffice to substantiate the argument: Jean Schlumberger argued in *Le Combat* on January 8 ,1953, that “Le procès ne met en cause que des sous-ordres[... while] [c]eux qui l’ont commandé sont morts ou en fuite.” See *Le Combat*, “Les malgré-nous d’Oradour-sur-Glane,“ dated January 8, 1953, front page; M. de Guardia concluded in *L’Aurore* on February 6, 1953, that “les gouvernements [français] se sont révélés incapables d’obtenir que soient livrés les chefs responsables du massacre, le capitaine Kahn notamment, et les autres. Alors voilà sept lampistes allemands qui n’avaient pas tous 18ans au moment des faits et à qui l’on demande de porter tout le poids d’un crime monstrueux dont ils ont peut-être les exécutants, ce qui n’est pas démontré [...].”

However, I argue that Kahn owed his freedom at least as much to high-ranking West German politicians, among them the West German Justice Minister Dehler himself, as to his ability to disappear and lead a life in the shadows.

In January of 1953, the Oradour Trial captured not only the attention of the French and West German public, but also gave rise to concerns that it would generate serious repercussions for Franco-German reconciliation in West German diplomatic circles. In the dock at Bordeaux, the absence of the main suspect Otto Kahn who had been suspected to be living freely in West Germany, was felt as a blow to justice for the victims and spurred the hope that, while he could according to West German law, not be extradited, be brought to justice in West Germany.

In February of 1953, the Justice Minister Thomas Dehler received a letter from a concerned West German citizen, who, as a lecturer at a university in Western France (Poitiers), was concerned about the impact of the Oradour Trial on Franco-German reconciliation. He argued, while the Oradour massacre stirred French resentments against Germany, and thus constituted an obstacle to reconciliation, the trial of the perpetrators could also be seized as a chance by West Germany to counter the deep seated mistrust by "trying the responsible suspects, who live within the borders of the Federal Republic, in front of a German court and according to the same indictment as in Bordeaux."[57]

The German defense attorneys of the German suspects and convicts at Bordeaux, such as the attorney of Karl Lenz, Dr. Walthers, desired the prosecution of

[57] See letter by Dr. Rüdiger Hoffmann to Federal Justice Minister, dated February 11, 1953. In BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

Kahn as well, although motivated by the hope that it would diminish the responsibility of those sitting in the dock at Bordeaux.[58]

Walter Hausenstein, the West German mission chief in Paris, attempted to dissuade these efforts, because this "creates either precedent and thus more cases in Germany or, if Kahn could not be located - allegations in the French press that Germany would not try hard enough."[59]

What ensued was a discussion between the Justice Ministry and the Foreign Office. Given the role Kahn had played at Oradour according to the French indictment, Dehler's Justice Ministry wanted to prosecute him but was swayed by the Foreign Office which saw the foreign policy goals of the Federal Republic under threat by an investigation into Kahn's crimes at Oradour.

At first, Dehler seemed to ignore the concerns from the Foreign Office. After publicly demanding the release of the German war criminals in February of 1953, he had become the object of intense criticism from French published opinion. For instance, the Alsatian newspaper *Le Nouvel Alsacien* published an article on February 24, 1953, entitled "Germany does not have the right to meddle in our affairs" which criticized Dehler directly:

> Neither the German press nor the Bonn government ministers have the right to meddle in our affairs! [...] has the Minister of Justice, Mr. Dehler, who demands amnesties for the German convicts, advocated for the extradition of the leaders [who were responsible for the massacre], including Lammerding and Kahn, who live in Germany, and whose address was exactly known, so that they can be subject to French justice and be held accountable for their

[58] Wilhelm Hausenstein to Auswärtiges Amt, dated 28. January 1953, in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
[59] Ibid.; A West German investigation of Kahn "schafft entweder Präzedenzfall und damit weitere Fälle in Deutschland oder, bei nicht Auffinden von Kahn – Vorwürfe der französischen Presse, Deutschland würde es nicht versuchen."

> crimes? The new Germany could thus have shown that it condemned the crimes of Hitler's Germany [...].[60]

It is likely that Dehler's attention was drawn to this article, and that the call to prosecute Kahn as proof of the "new Germany's" intentions to emancipate itself from the Nazi past was not lost on him, because the following day, Dehler made a sweeping decision. Despite the warning by Hausenstein from Paris, on February 25, 1953, he himself ordered that "a German penal investigation is to be opened against Kahn."[61] Since the crime scene had been beyond German jurisdiction in France, Dehler ordered the Federal Prosecutor to petition the Federal Supreme Court to declare the Bonn district court responsible for the case. Thus, Kahn's case would have triggered an intervention from West Germany's highest judicial authorities: the Justice minister, the Federal Prosecutor as well as the Federal Supreme Court, underlining the determination with which the Justice Ministry was willing to prosecute Kahn. However, repeated intervention as well as ostentatious non-cooperation from the Foreign Office prevented the case from moving forward.

After the decision had been made to open proceedings against Kahn, Dehler's ministry asked the Foreign Office to demand from the German mission in Paris that it

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[60] This newspaper article, entitled "L'Allemagne n'a pas le droit de se mêler de nos affaires" was forwarded to the Justice Ministry by the German mission Paris via the Foreign Office. It is therefore possible that Dehler's attention had been drawn to it. See Diplomatische Vertretung der BRD, Paris, to Auswärtiges Amt, dated February 24, 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
"Ni la presse allemande ni les ministres du gouvernement de Bonn n'ont pas le droit de se mêler de nos affaires! [...] le ministre de la justice, M. Dehler, qui demande l'amnistie pour les condamnés allemands, ont-ils fait campagne pour que les chefs responsables, Lammerding et Kahn notamment, qui vivent en Allemagne, et dont l'adresse était exactement connue des autorités, soient livrés à la justice française pour répondre de leurs crimes? Le nouvelle Allemagne aurait ainsi pu montrer qu'elle réprouvait les crimes de l'Allemagne hitlérienne [...]."

[61] See Der Bundesminister der Justiz, „Vfg.", dated March 7, 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

acquire evidence from the French judicial authorities. This evidence, which the Paris mission of the Federal republic as well as the ZRS in the Foreign Office had access to, would have been helpful to establish probable cause for a trial.[62]

However, the German mission and the ZRS had already concluded that any judicial activity in Germany against Kahn would impede their efforts concerning the pardoning and premature release of the German war criminals, which it had discussed extensively with the French Foreign Ministry. According to the Foreign Office, the French Foreign Ministry had already agreed to the pardons of the Oradour convicts in principle but insisted that "these negotiations will not be known to the public."[63]

The Foreign Office in Bonn was not only convinced that the French government had no interest in a prosecution of Kahn in West Germany, but that in fact it sought a "rapid liquidation of the entire problem"[64] – which meant ending the war crimes trials and pardoning the convicts. However, the pardoning of the war criminals could be imperiled by hostile public opinion, so went the argument of the Foreign Office, and a prosecution of Kahn in Germany might just have whipped up

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[62] Ibid.;. The Justice Minister asked the W*ehrmachtsauskunftstelle* (WAST), which kept a roster of members of the German armed forces, for identifying information on Kahn. The WAST replied on February 23, 1953, with a possible match. A certain Otto Kahn, born on March 4, 1908, in Berlin-Borsigwalde, had been a member of the Waffen-S.S. Division "Das Reich" in 1943 in the rank of S.S.-*Obersturmführer*. We know today that this had indeed been the Otto Kahn in question – even in 1953 evidence pointed strongly towards a positive match. The WAST even supplied a home address: Loecknitzer Chaussee in Bruessow, district of Prenzlau (then part of East Germany). This information was gathered within 24 hours after Dehler gave the order to investigate Kahn. It is not hard to imagine, that the German authorities would have found Kahn, who was living a quiet life near Münster in Westfalen, if the search had continued with the same zealousness as in the first hours. See cable by "Bundjustiz Bonn, Bundeshaus Bln" to Bundsminister der Justiz, dated February 23, 1953. BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

[63] Der Bundesminister der Justiz „Vermerk", dated 26. May 1953, in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "diese Verhandlungen nicht der Öffentlichkeit bekannt werden."

[64] Hausenstein to Auswärtiges Amt, dated 28. January 1953, in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour. According to the same memo, the French government never asked for a prosecution of Kahn or other German war criminals in West Germany.

public interest in the Oradour case enough to prevent the president from proceeding with the pardons which had been promised in principle.

The German Mission in Paris and the Foreign Office also feared that an opening of an investigation against Kahn would have created an uncomfortable precedence, potentially opening the flood gates for demands of similar investigations of other individuals suspected in Germany, with unknown "repercussions for domestic politics."[65] Therefore, the Foreign Office informed the Justice Ministry that the government must consider "the possibility of jeopardizing the pardons of those convicted in the Oradour Trial when initiating proceedings against Kahn. [Furthermore] there is little chance [...] to bring the proceedings to a successful conclusion [because] Kahn's whereabouts are unknown. Therefore, [the Foreign Office] requests another evaluation regarding the necessity to initiate proceedings against Kahn."[66]

Moreover, the Foreign Office also forced the hand of the Justice Ministry by essentially foreclosing any chance that an investigation against Kahn could rely on material from the French investigation or on any information that the ZRS might possess on Kahn: „Neither the [ZRS] nor the [German Mission in Paris] are in the position to provide material which evidences Kahn's participation in the atrocities at Oradour. In fact, if material were made available, there would be a risk that the

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[65] Ibid.

[66] Meyer, Bundesjustizministerium, "Vermerk," dated 26. May 1953, in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "bei Einleitung des Verfahrens gegen Kahn die Möglichkeit, dass die Begnadigung der im Oradour-Prozess [V]erurteilten […] gefährdet wird. …[Außerdem] bestehe wenig Aussicht [...] das Verfahren erfolgreich zum Abschluss zu bringen [weil] der Aufenthalt Kahns unbekannt sei. [...] AA bittet daher um nochmalige Überprüfung, ob die Einleitung eines Verfahrens gegen Kahn erforderlich ist."

confidence of German nationals prosecuted for war crimes abroad in the [ZRS] and [German Mission in Paris] would be destroyed [...]. "[67]

The refusal of the Foreign Office and the ZRS to cooperate in the prosecution of Kahn in West Germany evidenced their understanding of its mission in France. Seeking the release of the Oradour perpetrators, or the "victims" of French justice, had precedence over rendering justice for the victims of the massacre. West Germany's goal of securing the release of the Oradour convicts amounted to a foreign policy interest, which conflicted with the Justice Ministry's goal to seek justice for the crimes committed at Oradour by prosecuting the main suspect, Otto Kahn. In this conflict, the Foreign Office argued that Kahn had to be shielded from justice in order to protect the foreign policy interests of the FRG. While it argued that the shielding would only be temporary until the Oradour perpetrators received their anticipated pardons from the French president, in practice, their refusal to cooperate in the acquisition of evidence prevented the case from moving forward. The German mission in Paris and the ZRS possessed extensive evidence on the participation of Kahn in the massacre, including the aforementioned indictment by the Prosecutor General at the Bordeaux Military Tribunal. Without this evidence, the prosecution initiated by Dehler would be all but doomed, because the case against Kahn would not possess the evidentiary basis necessary before a trial could be opened. Consequently, the foreign policy interests of the Federal Republic amounted to a *de*

[67] Ibid.; "Weder die [ZRS] noch die [German Mission in Paris] könnten im übrigen Material zur Verfügung stellen, aus dem sich eine Beteiligung Kahns an den Greueltaten von Oradour ergibt. Falls nämlich Material zur Verfügung gestellt würde, wurde die Gefahr bestehen, dass das Vertrauen der wegen Kriegsverbrechen im Ausland verfolgten deutschen Staatsbürgern zu der [ZRS] und der [German Mission] Paris erschüttert wird."

facto shielding from justice of a major war criminal. In July of 1953, Justice Minister Dehler followed Foreign Office's recommendations and ordered that a prosecution of Kahn was to be postponed until after the Oradour perpetrators had been pardoned. [68] Only in 1956 did the foreign office give the Justice ministry the green light for an investigation into Otto Kahn.[69]

By 1956, Kahn benefitted from the same *de facto* immunity due to the pro-perpetrator interpretation of the Article 3 Settlement Agreement (*Überleitungsvertrag)* and the *Grundgesetz* (basic law) prohibition of extraditions of German citizens (Article 16). The window of opportunity for a prosecution had closed during the time the Foreign Office kept demanding for delays of the investigation in order to secure the pardoning and release of the seven German Oradour convicts.

The Foreign Office's strategy to manipulate the dispensation of justice in West Germany in order to secure the release of Lenz and his co-convicts from French imprisonment was highly successful as the aforementioned excerpt from the French presidential pardoning commission's discussion of Lenz's case shows. [70] The commission decided that it was an injustice that Lenz was to pay the ultimate price while his superior Kahn was living in freedom in West Germany. Whether or not the

[68] Meyer, Bundesjustizministerium, "Vermerk," dated 18. July 1953, in: BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "[Dehler] hat angeordnet, dass in Sachen Kahn erst das Gnadenverfahren Oradour abgewartet werden soll, und danach neu entschieden werden würde."
[69] Auswärtiges Amt to Bundesjustizministerium, March1956, in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour. "Es geht keine Gefahr mehr auf Oradour-Gnadenverfahren von Ermittlungsverfahren gegen Kahn und Heinrich aus."
[70] Meeting protocol of the presidential pardoning commission on 15 March 1954 "Affaire Boos/Lenz – Conclusions concernant les deux condamnés," file number 61-PM-53, in: AN Pierrefitte, 4 AG 672 (Conseil Supérieur de la Magistrature - Commission de Grâce).

French government was informed about the fact that the West German government ensured through deliberate and repeated intervention that Kahn was not investigated or indicted remains unclear. After the West German judicial practice almost guaranteed impunity, Kahn settled near Münster in Westphalia and died in 1977 without ever having to stand trial for his actions in Oradour.[71]

An Obstacle to West German Foreign Policy: An Oradour Perpetrator Surrenders Himself

Only a few days after Dehler's decision to suspend the prosecution of Kahn in 1953, the sudden turn of heart of an Oradour suspect, who had been sentenced to death in absentia by the Bordeaux Tribunal in February, threatened to undermine the agreement between the Foreign Office and the Federal Justice Ministry. On July 22, Adolf Heinrich, a resident in the Franconian-Bavarian district of Wunsiedel, presented himself at the U.S. army unit stationed in nearby Arzberg and reported to the resident Military Intelligence Officer that he had participated in the "activity of the Waffen-SS at Oradour."[72] Heinrich's fate is symptomatic for the tremendous lapses, both intentional and accidental as well as on the Allied and the German side, in the prosecution of war crimes. Despite being a member of the Waffen-SS unit which had perpetrated the massacre at Oradour,[73] he had only briefly been detained as

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[71] See Douglas Hawes, *Oradour, the Final Verdict: The Anatomy and Aftermath of a Massacre.* Bloomington, IN, 2007 [kindle edition, location 3659]. The Foreign Office speculated in January of 1953 that Otto Kahn sought refuge in Spain or South America. However, there was no need for him to leave the Federal Republic of Germany, since hiding was just as easily possible inside Germany than in other countries. See Der Bundesminister der Justiz "Vfg. Sofort!" dated 21.2.1953 in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

[72] Der Oberstaatsanwalt (Hess) bei dem Landgericht Hof-Saale an den Generalstaatsanwalt bei dem Oberlandesgericht Bamberg, dated 23. July 1953. BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

[73] Waffen-SS-Division "Das Reich," 4th Regiment "Der Führer," 1st battalion, 3rd company.

a POW in U.S. custody. After his release in December of 1945, he lived at his parents' house unbothered by authorities in Bavaria and took a range of different jobs as an unskilled day laborer. While he continued to build himself an existence after the war, he was plagued by the trepidation that he would eventually be held accountable for his participation in the massacre. Eventually, he buckled under the "constant fear" which climaxed in the wake of the Oradour Trial at Bordeaux. His name had been widely publicized in the press as one of the participants who had been sentenced to death in absentia,[74] so Heinrich must have been terrified that any neighbor, co-worker or acquaintance could have had him arrested.[75]

After Heinrich reported to the U.S. military base, the U.S. Military Intelligence Service escorted him to the Bavarian District Prosecutor in nearby Hof, before returning him to the U.S. base to keep him in U.S. custody overnight awaiting further instructions from the regional U.S. army intelligence headquarters in Regensburg. Those instructions came the next day. According to the district prosecutor, the U.S. Military Intelligence Service had ordered that Heinrich was to be "released home and [that U.S. authorities] do not intend to initiate any procedure for the purpose of extraditing Heinrich to the French government."[76] U.S. authorities decided against an investigation of Heinrich's declarations and released him instead. While we have no information for the specific reasons of this refusal to prosecute, it

[74] On the indictment of the Oradour suspects issued by the Bordeaux prosecutor general in November of 1949, Heinrich appears as suspect No. 40. However, only a last name and rank was provided in the indictment. See Cour d'Appel de Bordeaux- Le Procureur General, 'Réquisitoire', dated 21.11.49. In AN BB/18/3575/2, "Dossier 5/3 – Poursuites exercées devant le Tribunal Militaire de Bordeaux contre les responsables des Massacres Oradour sur Glane – Responsables Allemands et Français."
[75] Der Oberstaatsanwalt (Hess) bei dem Landgericht Hof-Saale an den Generalstaatsanwalt bei dem Oberlandesgericht Bamberg, dated 23. July 1953. BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
[76] Ibid.

had been U.S. policy in other cases to prevent any additional war crimes cases from moving forward as they were regarded as a potential road block to U.S. foreign interests in Western Europe. After Heinrich returned home after a single night in U.S. custody, the books on his case could have been closed without any further trace.

The night before, however, when the U.S. Military Intelligence Officer briefly presented Heinrich to the Bavarian district prosecutor on July 22, the former Waffen-SS soldier had voluntarily divulged incriminating information, admitting to "having participated with his company at the well-known reprisals at Oradour." Furthermore, he admitted in the presence of the district prosecutor that he "at the time indeed had to participate in the shooting of hostages at Oradour."[77] This wording obfuscates the deed and it is not known whether these words were chosen by Heinrich himself or by the district prosecutor when putting together the report for his superior, the prosecutor general in Bamberg. However, the true meaning of this confession must have been clear to the district prosecutor, that Heinrich was referring to the murder of civilians.[78] Thus, this confession made Heinrich only the second suspect who confessed to killing at Oradour on June 10, 1944. Only Paul Graff had earlier on confessed to murdering a civilian– all other suspects, including all 13 French and all 7 German convicts at the Bordeaux trial denied any participation in the killing of the 642 victims of the massacre.

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[77] Ibid.

[78] It is clear that the prosecutor classified Heinrich's action at Oradour as "Totschlag," which could be either 2nd degree murder or manslaughter. A memo by the Federal Justice Ministry from April of 1954 revealed that the Hof prosecutor had intended to open an "Ermittlungsverfahren [...]gegen Adolf Heinrich wegen Totschlags." See, Der Bundesminister der Justiz, "Ermittlungsverfahren des Oberstaatsanwalts in Hof gegen Adolf Heinrich wegen Totschlags", dated 30. April 1954, in: BA Koblenz B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

Initially, given that Heinrich surrendered himself to U.S. and not German authorities, the Hof district prosecutor decided not to take any action.[79] However, when the U.S. army authorities resolved to release Heinrich after only one night in custody, the Bavarian judicial authorities were confronted with the fact that a citizen subject to their jurisdiction was living in freedom within their district while they possessed knowledge of - at minimum - accessory to murder or murder at Oradour. However, the opening of a pre-trial investigation by the state prosecution against a confessed participant in a war crime was, in 1953 West Germany, not a self-evident decision. Instead of acting swiftly and decisively, the case was moved up the chain of command. It reached the Bavarian Justice Ministry in early August, which in turn informed the Federal Justice Ministry on August 7 of its intention to order an investigation of Heinrich.[80] The Federal Justice Ministry, while itself not contesting the opening of an investigation, forwarded the case to the Foreign Office on August 14.[81] Dr. Born, the *Ministerialdirigent* in the Foreign Office, delivered the reply to the Federal Justice Ministry in a phone call on September 12:

> it would be undesirable if a trial was to be opened against Heinrich. In this case, we expect not only a French extradition request to the American occupation authorities, but we also expect that it could interfere with the pardoning procedure of [Karl] LENZ in France.[82]

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[79] Der Oberstaatsanwalt (Hess) bei dem Landgericht Hof-Saale an den Generalstaatsanwalt bei dem Oberlandesgericht Bamberg, dated 23. July 1953. BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
[80] Bayer. Staatsministerium der Justiz [Ministerialrat Rösele?] an Bundesminister der Justiz, dated August 7, 1953. BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
[81] Der Bundesminister der Justiz "Vfg.," dated August 14, 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
[82] Der Bundesminister der Justiz "Vfg.," dated September 15, 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "es sei unerwünscht, wenn ein Prozess gegen Heinrich durchgeführt werde, da dann möglicherweise nicht nur mit einem französischem Auslieferungsersuchen an die amerikanischen Besatzungsbehörden zu rechnen sei, sondern unter Umständen auch störende Rückwirkungen über das Gnadenverfahren LENZ in Frankreich zu erwarten seien."

While the Foreign Office's reaction was not surprising, given its policy in regards to Kahn, it is no less shocking, especially since Heinrich's confession revealed that he participated in killings at Oradour. Furthermore, unlike in the Kahn case, Heinrich's place of residence had been known to authorities and an arrest could have been executed immediately. Moreover, the Foreign Office, including the West German mission in Paris, were in possession of the Bordeaux indictment and court proceedings which detail Heinrich's name as one of the perpetrators at Oradour. Despite this abundance of incriminating evidence meeting the criteria necessary for the opening of an investigation which in all likelihood would have led to a trial, the Foreign Office requested that the Bavarian judicial authorities did not proceed because of the impact on Franco-German relations. The Foreign Office revealed once more its vision of a Franco-German reconciliation based on two principles: First, the production of amnesia vis-à-vis the recent shared past, and second, the privileging of perpetrators over the victims of the crimes of Nazism.

As opposed to the case of Kahn, the Foreign Office had not been able to argue that an investigation would in all likelihood be fruitless due to the lack of information about the whereabouts. Yet, the Foreign Office attempted to block an investigation purely on political grounds to foster its foreign policy goals based on the production of amnesia and privileging of perpetrators. In this mindset of the Foreign Office, justice for the crimes committed at Oradour threatened the Federal Republic's progress made with France. Clearly, the Foreign Office measured progress in Franco-German reconciliation not only in terms of milestones achieved in the process of

European integration, such as the foundation of the European Community for Coal and Steel, but also in the number of German war criminals which had been liberated from French custody. In the minds of the diplomats in Paris and Bonn, the diminishing numbers of the Germans in French custody[83] also served as numerical proof for the ever-deepening reconciliation between the two countries. Thus, every name crossed off the list inched the two countries closer to Franco-German friendship. If this was the yardstick, however, true reconciliation or friendship could not have been achieved if there were still German prisoners in French custody. True reconciliation or friendship depended on the release of even the last war criminal in French justice. And indeed, the Elysée-Treaty in Janurary of 1963, which marked a milestone in Franco-German reconciliation, was preceded by the pardon and release of the last three German war criminals in November of 1962. In the case of Heinrich, the Foreign Office attempted to prevent an investigation and trial in the Federal Republic so that the achievements towards reconciliation, in its own interpretation, were not in jeopardy.

The Justice Ministry relayed the Foreign Office's opinion on the Heinrich investigation swiftly to Munich. After it had not heard from the Federal Justice Ministry regarding the Heinrich case in three weeks, it checked back on October 5, inquiring about "the progress of the matter [...].[84]

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[83] See for instance the status report entitled "Inhaftierte in Frankreich," dated June 4, 1959. It listed the nine German war criminals who remained imprisoned in France and gave the following information on each prisoner: date when detention began, original sentence, past sentence reductions, date when prisoner was expected to be released without further sentence reductions. See report entitled "Inhaftierte in Frankreich," dated June 4, 1959, BA Koblenz, B305/316.

[84] Born, Auswärtiges Amt an Bundesminister der Justiz, dated 5. October 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "den Fortgang der Angelegenheit [...]."

Dehler's Justice Ministry followed up with its counterpart in Munich and informed the Foreign that "only a few preliminary investigations have been conducted, and these have been treated strictly confidentially according to the special instruction of the chief prosecutor. The proceedings cannot currently be opened, since it is necessary to have access to the French records which we expect will not be available. The assumption that the U.S. authorities would intervene was without merit."[85]

The Judicial Authorities utilized the argument given to them previously by the Foreign Office, that the investigation cannot commence because of a lack of access to the "French files." This argument only a thin veneer designed to conceal to utter lack of enthusiasm for a German war crimes investigation. Especially in the case of Heinrich, who had already confessed to participation, an investigation hardly required French participation initially. Furthermore, the ZRS and the West German mission in Paris had access to a vast trove of documents about the investigation and trial of the Oradour massacre given to them by the Military Tribunal in Bordeaux – which the French authorities shared with West Germany's representation in France because the West German state had become the protecting power of Germans in 1951.[86] As part of its role as protecting power, West German authorities had access to all court

[85] Der Bundesminister der Justiz "Vfg.," dated October 12, 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "nur wenige Ermittlungen durchgeführt worden seien, die auf besondere Weisung des Oberstaatsanwalts streng vertraulich behandelt worden seien. Das Verfahren könne z.Zt. nicht durchgeführt werden, da vorher die Einsicht in die französischen Akten erforderlich sei, mit deren Hinzuziehung kaum gerechnet werden könne. Auch die Annahme, dass die amerikanischen Dienststellen sich einschalten würden, sei nicht gerechtfertigt."

[86] Before 1951, in absence of sovereign German statehood, the International Committee of the Red Cross acted as the protecting power of German POWs and detainées. When the ICRC transferred the role to the West German state, it also passed on all files of pending cases. Thus, the West German mission in Paris as well as the ZRS were in possession of all French court documents concerning the Oradour case.

records, including the indictment, evidence submitted by the prosecution to the tribunal, as well as the verdict. Beyond these official French documents, the ZRS also collected information on its own, albeit almost exclusively defense evidence. Nonetheless, the Hof prosecutor did not need to contact the French authorities in order to receive official documentation and evidence on the Oradour massacre, it was readily available in West Germany. However, the access was blocked by the ZRS and the Foreign Office because an investigation into Heinrich, just as in the case of Kahn, undermined the Franco-German reconciliation based on the production of amnesia and the privileging of perpetrators over justice for war crimes. This was the main reason why the investigation into Heinrich had to cease immediately.

Following the Federal government's advice, the Bavarian justice ministry order the Hof prosecutor to delay[87] the investigation, due to the fact that "pardoning procedures are currently underway in France" which "we fear could be threatened by investigations into the present case."[88] The Hof prosecutor also intended "to instruct Heinrich [...] that he may refrain from contacting any authorities regarding the matter."[89]

This letter by the Hof prosecutor to his superior in Bamberg exposed the foundation of the relationship of West German authorities with justice for war crimes in a truly exceptional case. In all but the Heinrich case, suspects attempted to avoid

[87] Der Oberstaatsanwalt (Hess) bei dem Landgericht Hof-Saale an den Generalstaatsanwalt bei dem Oberlandesgericht Bamberg, dated 21. October 1953. BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "verzögerlich behandeln."
[88] Ibid.; "in Frankreich zur Zeit Gnadenverfahren laufen"; "da sonst zu befürchten sei, dass durch Ermittlungen in der vorliegenden Sache unter Umständen diese Gnadenverfahren gestört werden könnten."
[89] Ibid.; "Heinrich [...] dahingehend belehren zu lassen. Dass er mit irgendwelchen Dienststellen in der gegenständlichen Angelegenheit Verhandlungen unterlassen möge."

prosecution at all costs and therefore constituted willing cooperators with the official policy of the production of amnesia. When West German prosecutorial authorities were confronted with a suspect who did not conform with the expected behavior and whose forthcoming nature threatened the production of amnesia, they reached out to him in order to inform that he was to remain silent. They worried that Heinrich's guilty conscience in combination with the inactivity of the West German judicial authorities could lead him to approach "any authorities" and inform them about the crimes he committed at Oradour, thus upending the amnesic approach of the West German state. Heinrich's case emphasized the extraordinary fragility of the Franco-German reconciliation based on amnesia, depending on the cooperation or even conspiracy of all institutions and individuals involved. If a single link in the chain, stretching from the Foreign Office, the Federal Justice Ministry, the Bavarian Justice Ministry, the Bamberg and Hof judicial authorities down to the individual suspect himself, failed to join the conspiracy, the attempt to produce amnesia would have broken down. Undoubtedly, the amnesic conspiracy rested in part on coercion or at least the authority in a chain of command. For instance, Dehler had "ordered" to halt the investigation into Kahn. Furthermore, the Hof prosecutor had been "angewiesen" (instructed/ordered/directed) by the Bavarian Justice Ministry to delay the investigation into Heinrich. The prosecutor in return attempted to "belehren" (instruct) Heinrich that he should remain silent. Without these varying levels of

orders and coercion, the conspiracy to produce amnesia, given its fragility, would have been unlikely to hold.[90]

In the case of the Hof prosecutor who attempted to instruct Heinrich to remain silent to other authorities regarding his crimes, the prosecutor Hess was unsuccessful to do so, because Heinrich in the meantime had left the Hof area for work in the district of Bergzabern in Rhineland-Palatinate.[91] This seemed to serve the prosecutor well since he concluded that "I intend, if not instructed otherwise, not to do anything about this case at the present time."[92]

Many months went by without any investigation into Heinrich's actions at Oradour. A year later, in December of 1954, the Federal Justice Ministry inquired at the Foreign Office about the latest status of the pardoning procedure regarding the German convicts. Officials in the Justice Ministry had read in the press that Karl Lenz, the main convict at the Bordeaux Trial who had been sentenced to death, had in the meantime received a presidential pardon commuting his death sentence to a life in

[90] To this conspiracy to produce an amnesia, one must add the effort by the Federal government to influence the press in order to avoid that certain reporting might threaten to upend the amnesic conspiracy. In 1953, the Federal Government requested that the West German press refrained from publishing the names of those Germans who had been sentenced *in absentia* by French authorities. This was an obvious effort to prevent readers from reporting the whereabouts of these in absence convicted war criminals to French authorities. The French High Commissioner François-Poncet reported to Paris: "the DPA press agency has already honored the request and decided that the names of those condemned in absentia will not be published in its news reports. Furthermore, the majority of newspapers will also be asking their editors to conform to the request by the [ZRS]." See L'ambassadeur de France – Haut-Commissaire de la République en Allemagne à M. Georges Bidault – Ministre des Affaires Étrangères, 22. March 1953, AN Pierrefitte, BB/18/7222.
[91] Der Oberstaatsanwalt (Hess) bei dem Landgericht Hof-Saale an den Generalstaatsanwalt bei dem Oberlandesgericht Bamberg, dated 21. October 1953, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
[92] Ibid.

prison.[93] Thus, the Federal Justice Ministry inferred that in both the Kahn and Heinrich cases "it should no longer be necessary to delay the proceedings [...]."[94]

However, the second in charge of the *Politische Abteilung* at the Foreign Office, Heinz von Trützschler, disagreed with the Justice Ministries conclusions regarding the presidential pardon for Karl Lenz. Trützschler cabled back to the Federal Justice Ministry that while the Justice Ministry had been correctly informed about the commutation of Lenz's death penalty, the German Oradour convicts remained in prison despite the fact that the "Alsatians, sentenced to time penalties in the same trial, have been released after brief detention on the basis of a special French law." Therefore, Trützschler informed the Justice Ministry, "the West German diplomatic mission remained in ongoing negotiations with French authorities for the release of the German prisoners convicted in the Oradour trial."[95] He promised to check with the mission in Paris and asked the Justice Ministry to refrain from any action in the absence of the opinion from Paris.

Thus, in this letter, Trützschler indicated that the Foreign Office's conditions for the opening of an investigation in Kahn's and Heinrich's cases had not been met, despite the commutation of the death penalty of Karl Lenz. Trützschler's letter

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[93] Bundesjustizministerium, "Vermerk," dated 15. December 1954, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

[94] Ibid.; "dürfte es nicht mehr erforderlich sein, das Verfahren gegen Heinrich herauszuzögern [...]. Das Bayer. Justizministerium fragt an, ob weiterhin dem Ermittlungsverfahren gegen Heinrich Gründe entgegenstehen."

[95] Auswärtiges Amt (Heinz von Trützschler) an Bundesminister der Justiz, dated 5. Januar 1955, "Betreff: Strafverfahren des Oberstaatsanwalts in München I gegen Karl-Heinz Wilhelmi, alias Barth; "[d]ie diplomatische Vertretung der Bundesrepublik Deutschland in Paris ist jedoch noch darum bemüht, die Freilassung der im Oradour-Prozess in Frankreich zu zeitlichen Freiheitsstrafen verurteilten deutschen Gefangenen zu erwirken. Die im gleichen Prozeß zu Zeitstrafen verurteilten Elsässer sind bekanntlich auf Grund eines französischen Sondergesetzes nach kurzer Inhaftierung freigelassen worden."

revealed that the production of amnesia had never been about preventing the execution of a death penalty, it had primarily about returning the war criminals to West Germany in freedom. The fact that Lenz's death penalty had been commuted to life in prison was considered insufficient for the opening of an investigation into the killings Heinrich had already confessed to in July of 1953. Both Heinrich and Kahn were *de facto* granted a temporary reprieve from prosecution for their participation in the killings at Oradour as long as their co-perpetrators were serving their sentence in French prisons.

A few weeks later, Trützschler relayed the point-of-view of the Paris mission. In this message Trützschler attempted to refocus the attention of the German judicial authorities away from Lenz's case towards the case of all the German Oradour convicts: „In addition to the German national Lenz [...], five other German prisoners convicted in the Oradour trial to time in prison are still in French detention. Efforts to secure the release of these prisoners have so far proved unsuccessful, as the French judicial authorities have been treading particularly cautiously in this case due the furor that the Oradour matter provoked in France."[96]

After refocusing the attention of the West German Justice authorities away from Lenz, the most prominent case, to all the Oradour perpetrators still imprisoned, von Trützschler continued: „However, it is quite unsatisfactory that the German

[96] Heinz von Trützschler (Auswärtiges Amt) an Bundesjustizministerium, "Deutsche Strafverfahren im Zusammenhang mit dem Vorfall ‚Oradour,' dated February 3, 1955, in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour;
"Außer dem im Oradour-Prozess zum Tode inzwischen zu lebenslänglicher Freiheitsstrafe begnadigten deutschen Staatsangehörigen Lenz befinden sich noch fünf weitere im Oradour-Prozess zu zeitlichen Strafen verurteilte deutsche Gefangene in französischer Haft. Die Bemühungen, eine Freilassung dieser Gefangenen zu erreichen, sind bisher offenbar deshalb ohne Erfolg geblieben, weil die französischen Gnadenstellen wegen des Aufsehens, das die Angelegenheit Oradour in Frankreich stets erregt hat, in diesem Fall besonders vorsichtig verfahren."

prisoners sentenced to time sentences in the Oradour trial are still imprisoned, while the Alsatians involved in the incident[97] have been amnestied on the basis of a French special law and have only been in custody for a short time."[98]

It is remarkable that von Trützschler attempted to appeal to his counterpart's sense of justice by pointing to what he perceived as the *de facto* injustice, that German prisoners were detained while their French counterparts had been amnestied, all the while he remained completely ignorant of the grave injustice he asked the German judicial authorities to commit in order to remedy the former: to delay or potentially prevent altogether the dispensation of justice for the mass murder of Oradour committed by two suspects living in West Germany. Ultimately, for the Foreign Office, the „unsatisfactory" situation at the time had not been the fact that two suspects of mass murder were shielded from justice and living in freedom in

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[97] Von Trützschler repeatedly used the word "Vorfall" (incident) when referring to the Oradour massacre. While I cannot be certain that von Trützschler consciously attempted to marginalize the massacre of 642 children, women and men, I must assume that it would be unlikely that the person who, according to an investigation by a Bundestag committee, had been responsible for shaping the language of the propaganda disseminated by Nazi Germany's diplomatic missions during World War II, did not consciously choose the word "Vorfall." It is more likely that his choice of the word "Vorfall" stood in continuity with the Nazi era propaganda which minimized, normalized or outright denied the crimes committed by the German forces across Europe.
The aforementioned 1952 Bundestag report found that Trützschler "während des ganzen Krieges die „Sprachregelungen", deren sich die deutschen diplomatischen Missionen bedienen sollten, im Auswärtigen Amt gemacht hat bzw. an ihrer Abfassung beteiligt gewesen ist," and concluded that „[e]ine Verwendung des Mannes, der während des ganzen Krieges in der Politischen Abteilung „sprachregelnd" an der Gestaltung der Kriegspropaganda beteiligt gewesen ist, im Ausland würde das Ansehen der Bundesrepublik schädigen." See Deutscher Bundestag, 1. Wahlperiode, 1949, *Schriftlicher Bericht des Untersuchungsausschusses (47. Ausschuß) gemäß Antrag der Fraktion der SPD betreffend Prüfung, ob durch die Personalpolitik Mißstände im Auswärtigen Amt eingetreten sind*, *Drucksache Nr. 3465* (Bonn: Bonner Universitätsdruckerei, 1952), p. 34.

[98] Heinz von Trützschler (Auswärtiges Amt) an Bundesjustizministerium, "Deutsche Strafverfahren im Zusammenhang mit dem Vorfall ‚Oradour,' dated February 3, 1955, in BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "Es ist jedoch durchaus unbefriedigend, dass die im Oradour-Prozess zu zeitlichen Freiheitsstrafen verurteilten deutschen Gefangenen sich immer noch in Haft befinden, während die an dem Vorfall beteiligten Elsässer auf Grund eines Französischen Sondergesetzes amnestiert wurden sind und sich nur kurze Zeit in Untersuchungshaft befunden haben."

West Germany, but that half a dozen convicted German mass murderers were imprisoned in France while their French counterparts had been amnestied.

The Foreign Office feared that an investigation and subsequent trial of Heinrich and Kahn in West Germany was going to ruin its efforts to "liberate" the German Oradour-convicts, at a time when "recent political development is more likely to lead to pardons for these prisoners."[99]

> However, as the diplomatic mission in Paris reports, the French Justice Ministry and the competent pardoning commission would in all likelihood be ordered to postpone further processing of the requests for pardons pending the completion of the proceedings in the Federal Republic if the opening of German investigations into the Oradour case would be known. Since the solution to the question of prisoners and thus the release of the prisoners sentenced in the Oradour process is not only in their interest, but also highly desirable for foreign policy reasons, I strongly recommend that [...] no further steps are to be taken by the senior prosecutor in Hof against Adolf Heinrich, which could result in a publicity. I would also advise against a preliminary investigation against Kahn since publicity would be difficult to prevent.[100]

After the Federal Justice Ministry "asked" the Bavarian authorities to comply with the Foreign Office's request,[101] the Bavarian Justice Ministry ordered the

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[99] Ibid.; "die letzte politische Entwicklung eine Begnadigung dieser Gefangenen eher als bisher erhoffen lässt."

[100] Ibid.; "Wie die diplomatische Vertretung Paris berichtet, würden das französische Justizministerium und die zuständige Gnadenkommission jedoch aller Voraussicht veranlasst werden, die weitere Bearbeitung der Gnadengesuche bis zum Abschluss der in der Bundesrepublik anhängigen Verfahren zurückzustellen, wenn die Einleitung deutscher Ermittlungsverfahren wegen des Falles Oradour bekannt würde. Da die Lösung der Gefangenenfrage und somit auch die Freilassung der im Oradour-Prozess verurteilten deutschen Gefangenen nicht nur in deren Interesse liegt, sondern auch aus außenpolitischen Gründen sehr wünschenswert ist, möchte ich daher dringend empfehlen, darauf hinzuwirken, dass [...] in dem Ermittlungsverfahren des Oberstaatsanwalts in Hof gegen Adolf Heinrich zunächst keine weiteren Schritte unternommen werden, die eine Publizität zur Folge haben könnten. Ferner möchte ich davon abraten. Ein Ermittlungsverfahren gegen Kahn einzuleiten, dessen publizistische Auswertung kaum zu verhindern sein würde."

[101] Der BMdJ [Federal Justice Ministry] an Bayer. Staatsministerium der Justiz, dated 9. February 1955, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.

superior authority of the Hof prosecutor to suspend the investigation against Heinrich.[102]

The exchange of cables between West Germany's Justice Ministry and the Foreign Office evidenced the lack of judicial independence in the 1950s Federal Republic. Furthermore, von Trützschler, who during World War II had been responsible for crafting the propaganda terms describing the German war efforts for the German missions abroad, advised the Justice Ministry that securing the release of the German convicts constituted a foreign policy goal of the Federal Republic and that the investigation into war crimes committed by suspects living in West Germany threatened these foreign policy goals. Von Trützschler's request to the Justice Ministry revealed that Franco-German reconciliation rested on amnesia of the crimes committed by the Nazis, and an investigation into these crimes would disturb or jeopardize the process of amnesia. Thus, von Trützschler pushed again for shielding the West German suspects from prosecution in an effort to support the production of amnesia in France, which in the understanding of the foreign policy of the Federal republic enabled Franco-German reconciliation.

In this understanding of Franco-German relations, a prosecution of West German suspects in West Germany for war crimes committed in France was only possible if these crimes ceased to be a factor in French public opinion. A year later, the Foreign Office informed the Justice Ministry that after the pardon and release of all but one Oradour perpetrator from French prison, and after "the interest of the

[102] Bayer. Staatsministerium der Justiz an Bundesminister der Justiz, dated 23. February 1955, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "[ich] habe den Generalstaatsanwalt in Bamberg [...] mit der Weisung [kontaktiert], das Ermittlungsverfahren gegen Heinrich zunächst nicht weiterzubetreiben."

French public in the incidents in Oradour has declined so far that a threat to foreign policy interests by the opening of preliminary proceedings in the cases of Adolf Heinrich and Kahn can hardly be assumed. However, a prerequisite would be that any publicity in the proceedings is avoided as far as possible."[103]

The Foreign Office had concluded that in 1956, the production of amnesia had been successful removing the threat that an investigation into German war crimes suspects in West Germany once posed to Franco-German reconciliation. With the path of reconciliation securely rooted in amnesia, an investigation would in all likelihood not refresh the memory. After years of an active campaign to forget – by preventing investigations into war crimes, drawing attention away from the crimes and towards the alleged injustices of the postwar trials and by discouraging press coverage – actual forgetting had set in.[104]

After the Foreign Office gave the green light, the prosecution of Kahn and Heinrich could have commenced. However, due to legal changes which had occurred in the meantime, their continued existence in freedom had been all but secured. In 1955, the Federal Government negotiated a law in the Settlement Agreement (*Überleitungsvertrag)* with the Allies, which stipulated that German war criminals

[103] Bundesminister der Justiz an Bayer. Staatsministerium der Justiz, dated 15. March 1956, BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour; "das Interesse der französischen Öffentlichkeit an den Vorfällen in Oradour soweit zurückgegangen [ist], dass eine Gefährdung außenpolitischer Interessen durch eine Fortführung der Ermittlungsverfahren in den Fällen Adolf Heinrich und Kahn kaum mehr zu besorgen ist. Voraussetzung wäre allerdings, dass jegliche Publizität bei den Verfahren möglichst vermieden wird."

[104] I borrowed the concept of a transition from an amnesia campaign to actual forgetting from Stephen Greenblatt's *The Swerve*, although he refers to the amnesia campaign of the medieval Catholic Church regarding the knowledge of ancient Greek and Roman philosophy: "What had begun as an active campaign to forget – a pious attack on pagan ideas – had evolved into actual forgetting." See Stephen Greenblatt, *The Swerve, How the World became Modern.* E-book (New York: W.W. Norton, 2011), location 607.

could not be charged again in Germany for crimes they had been sentenced for by the Allies.[105] Kahn and Heinrich had been sentenced to death by French courts in 1953, albeit in absentia. This expansive interpretation of the clause in the *Überleitungsvertrag* and the fact that the Federal Republic rejected all extradition claims for its own citizens based on a prohibition in the *Grundgesetz*[106] secured that they could live out their lives in freedom in West Germany, shielded from prosecution, depriving the victims of their crimes from justice. The West German understanding of Franco-German reconciliation based on an amnesia of the Nazi past which privileged the perpetrators had prevented the dispensation of justice in the case of Kahn and Heinrich.

Heinrich's case was also an example of a binational effort to produce amnesia. While it is not known if the French were interested in having Heinrich extradited, or whether French authorities were even aware of the whereabouts of Heinrich, the U.S. authorities refused to take action even after Heinrich had confessed to killing at Oradour. Instead of informing their French allies and initiating extradition procedures, the U.S. Military Intelligence Service in Regensburg ordered the local branch near Hof to release Heinrich after only one night in custody. The U.S. authorities were well aware of the threat which renewed attention to German war criminals would pose to its postwar agenda of integrating West Germany into Western Europe, economically and militarily, to which Franco-German reconciliation

[105] The Allies pushed for this provision in an attempt to prevent a revision of Allied verdicts in war crimes trials by German courts. The West German interpretation, which included verdicts passed in absentia, violated the spirit of the Allies' intentions.
[106] The refusal to extradite was based on the Basic Law of the Federal Republic of Germany -Article 16, Sentence 2: "Kein Deutscher darf an das Ausland ausgeliefert werden."

constituted an essential backbone. The next part, the case of Heinz Lammerding, evidences this keen awareness of war crimes trials as a threat and highlights the role of U.S. (and British) interventions in the production of amnesia for the purpose of supporting a Franco-German reconciliation based on the privileging of the perpetrators.

The Lammerding Affair: A Transnational Effort to Prevent the Extradition of "The War Criminal Number One:" [107]

In 1953, the Oradour Trial also thrusted the U.S. and British authorities into the midst of "the war criminals problem" between France and West Germany. The aforementioned Heinrich case showed the unwillingness of the U.S.A. to pursue justice. Instead, U.S. authorities quickly dismissed and ignored the case. The low profile of the Heinrich case made such actions inconsequential, especially since French authorities were completely unaware that Heinrich had been, albeit briefly, in U.S. custody. While in the case of Heinrich, U.S. intentions can only be inferred by judging its actions, they became apparent in the case of former SS-General Heinz Lammerding, who in June and July of 1944 lead the Waffen-SS-Division "Das Reich" on its veritable killing spree through France with over 4000 victims,[108]

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[107] Memorandum of conversation between US Embassy London official Holmes and UK Foreign Office official about a French extradition request, February 2, 1953, in: NARA RG 466 HICOG, Office of US High Commissioner for Germany, Security Segregated Documents, 1953-1955, Entry 10B, Call Number RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

[108] See Peter Lieb, "Répression et massacres, l'occupant allemand face à la résistance française, 1943-1944," in: Gaël Eismann et al., *Occupation et répression militaire allemandes* (Paris: Autrement, 2007), p. 181. The number of 4000 victims of Lammerding's division "Das Reich" came from the Oberbefehlshaber West who estimated that the S.S. Division "das Reich" alone had been responsible for 4000 of the 7900 "resistants" who were killed in June up to the beginning of July. In reality, many if not the majority of the victims, as the massacres of Oradour and Tulle showed, would have been civilians. Original archival reference: BA-MA, RH 19 IV/134. OB West. Ic. KTB. Tägliche Kurznotizen 6.6.-30.6.44.

chiefly among them the massacres at Tulle and Oradour-sur-Glane. U.S. diplomats were concerned that the trial's inevitable effect would be the refocusing of the French public on the two countries' troubled past and away from the present and future of European integration and reconciliation. However, as opposed to the Oradour-Trial, which U.S. diplomats and politicians followed merely as observers, or the Heinrich case, during which U.S. involvement had been limited to a few hours, the subsequent quest for Lammerding's extradition turned the U.S.A. into an active participant in the production of amnesia.

Heinz or Heinrich Bernhard Lammerding,[109] born August 27, 1905, in Dortmund, joined the SS in 1935 and quickly moved up the ranks. In 1943, Erich von dem Bach-Zelewski, as HSSPF in "*Russland Mitte*" one of the principle authors of the genocide of millions of Jews and Soviet POWs on the killing fields in Nazi occupied Soviet territory, appointed Lammerding as his chief-of-staff. As Bach-Zelewski's right hand, Lammerding planned and oversaw the "cleansing operations" in the Pripet Marshes which claimed the lives of more than 15,000 Soviet Partisans and of an unknown number of civilians in indiscriminate shootings. As Himmler had been pleased with Lammerding's "murderous achievements," he rewarded him with command over the Waffen-S.S. division "Das Reich"[110] in the rank of a *Gruppenführer* [equivalent of Generalleutnant in the Wehrmacht].

Conversation with major Leo, 4 July 1944.

[109] His full name was Heinz Bernhard Lammerding. Press reports referred to him sometimes as Heinrich, or Bernhard.

[110] John A. English, *Surrender Invites Death. Fighting the Waffen SS in Normandy* (Mechanicsburg, PA: Stackpole Books, 2011), p. 124.

On June 5, 1944, on the eve of the Allied landing in Normandy, Lammerding issued a memorandum to General Blaskowitz of Wehrmacht Group G, in which he demanded a more aggressive campaign against partisans in the Cahors-Aurillac-Tulle area of central France. The memorandum argued that the deportation of 5000 Frenchmen to Germany and the hanging of three French for every wounded and ten for every German soldier killed by partisans was necessary to erode the support of the general population for the resistance and convince it of the lost cause of the partisans.[111]

A day later, on June 6, as an immediate reaction to the Allied landing, "Das Reich" under Lammerding's command moved through the central French regions of Limousin and Corrèze on its way to the battle fields in Normandy. Within 48 hours of the landing, "Das Reich" was called to fight the French communist resistance FTP,[112] which on June 7 and 8, had successfully conquered the city of Tulle from the Wehrmacht.[113] After "Das Reich" reconquered the Tulle on June 9, Lammerding gave the orders to perpetrate a massacre.[114][115] The Waffen-SS selected 120 male residents of Tulle,[116] of which 99 were publicly hanged in the city on lampposts and balconies

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[111] Ibid., 125.
[112] *Franc Tireurs et Partisans*.
[113] The Wehrmacht claimed that the maquis had killed 120 of its soldiers during the attack.
[114] Despite Lammerding's steadfast denial, it has been proven beyond reasonable doubt that Lammerding had been present the day of the massacre at Tulle, June 9, 1944, meaning that the massacre was carried out while he was physically present. Thus, Lammerding's responsibility for the massacre has been ascertained since it is absolutely out of the question – given the chain of command in the Waffen-S.S. – that Waffen-S.S. troops would have acted without orders of their general while he was present. See Jacques Delarue, *Trafics et crimes sous l'occupation* (Paris: Le Livre De Poche, 1971), pp. 368-377.
[115] Lammerding's Waffen-S.S. called the massacre a "reprisal" for the actions of the maquis. However, the crimes committed went far beyond a reprisal and were designed to instill terror and fear in the civilian population.
[116] French Vichy government officials were present at the selection and had some influence over who was to be killed.

for everyone to see.[117] An additional 149 male residents were rounded up and deported to Dachau Concentration Camp. 101 of them perished in the concentration camp system, bringing the total death toll for which Lammerding was chiefly responsible to 200.

The next day, parts of Lammerding's division "Das Reich" perpetrated the Oradour massacre with 642 victims, the majority women and children. Lammerding steadfastly denied any involvement with the Oradour massacre putting the blame squarely on his subordinate Adolf Diekmann.[118] This argument remains highly improbable, especially since Diekmann made for a convenient scapegoat given his death in action only a few weeks after the massacre. However, it constituted indeed a highly successful defense strategy, especially since all surviving officers followed the same line of arguments. With the lack of written documentation, and with all witnesses, besides Lammerding himself, Sylvester Stadler and Otto Weidinger, blaming the deceased Diekmann in a conspiratorial fashion, Lammerding successfully evaded an indictment for Oradour both in Germany and France.

The evidence suggests however, that Lammerding bore a significant share of the responsibility for the massacre at Oradour and that the "Diekmann as the rogue

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[117] He justified it as a lawful reprisal for the attack of the maquis. This would have been manifestly untrue. The massacre constituted a violation of the laws and customs of war, or a war crime. While the taking of hostages under certain circumstances had been allowed by international law before the ratification of the Geneva Convention of 1949, the killing of hostages clearly violated the Hague Convention of 1907, which stated in Article 50 that "no general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." Hence, the collective hanging of persons whose individual guilt had not been established, therefore merely as a reprisal, would have constituted murder.

[118] Moisel, Fouché and Farmer place the burden of the responsibility for the massacre on Adolf Diekmann. However, this does not absolve Lammerding. His elevated position as commander of the Waffen-S.S.-Division which perpetrated the massacre would have more than merited his appearance in front of the Bordeaux-Tribunal.

subordinate" argument was highly improbable. First, given the chain of command in the Waffen-SS, a massacre on the scale of Oradour could only have been ordered by a someone high up in the chain of command – Lammerding or Stadler - and not a mid-level battalion commander like Diekmann. Furthermore, while Lammerding claimed he initiated the court-martialing of Diekmann because of the massacre, which then expired because of the latter's death only three weeks later, the general's actions did not substantiate that claim: He did not relief Diekmann of his command over the 1st battalion of the 4th regiment "Der Führer." Diekmann continued to command the battalion without restrictions until he was killed in action on June 29, 1944. If he was as appalled by Diekmann as a "rogue subordinate" having ordered the massacre on his own initiative, the general would not have in all likelihood kept him on without any repercussions. Second, and this constituted the most important piece of evidence, the history of Lammerding's command of "Das Reich" evidenced that Oradour had not been an isolated incident but part of a well-established pattern of conduct imported to France from the Eastern Front, which just one day prior to Oradour, Lammerding implemented at the Tulle massacre. It is probable that Lammerding gave Diekmann orders to, in the terminology of the Third Reich, commit a reprisal for the abduction of Wehrmacht officer Kämpfe, annihilate a village to avenge past and deter future actions by the resistance as part of its brutal passage on the way to Normandy.[119]

After the defeat of the Third Reich, Heinz Lammerding was taken prisoner and detained in a Bavarian POW by the U.S. army. While he gave U.S. authorities his

[119] See Ahlrich Meyer.

proper name, he concealed his rank. He was released from detention after a few months, returned to his native region and began a successful business career in West Germany's booming postwar construction industry.[120]

While Lammerding was hiding in plain sight, in 1951, French authorities sentenced him to death in absentia for ordering the massacre at Tulle in 1944 – but not for Oradour.[121] Given that the whereabouts of Lammerding were unknown to them, the French authorities had not requested Lammerding's extradition, but they inscribed his name on all editions of the Central Registry of War Criminals and Security Suspects (CROWCASS), which the Western Allies used to identify and arrest suspects of war crimes, and on the French governments own *"Liste de criminels de guerre etablie par la Ministère de la Justice*" which it submitted to the British and U.S. authorities.[122] The U.S. authorities had conducted an unsuccessful search for Lammerding in Garmisch/Bavaria in 1947.[123]

The interest in Lammerding had subsequently been muted until he informed French prosecutors, apparently entirely convinced of his *de facto* immunity, of his place of residence. During the Oradour Trial at Bordeaux, Lammerding submitted a written testimonial to the military tribunal in an effort to disassociate himself from the massacre and to shift the blame to Adolf Diekmann[124]. In the letter, Lammerding

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[120] See affidavit given by Heinz Lammerding in the 1962 investigation at Dortmund.
[121] Moisel, *Frankreich und die deutschen Kriegsverbrecher*, p. 190. Lammerding's name does not appear on the indictment of the Bordeaux prosecutor. See Cour d'Appel de Bordeaux- Le Procureur General, 'Réquisitoire', dated 21.11.49. In AN BB/18/3575/2, "Dossier 5/3 – Poursuites exercées devant le Tribunal Militaire de Bordeaux contre les responsables des Massacres Oradour sur Glane – Responsables Allemands et Français."
[122] "Note a l'Attention de Monsieur Le Chef des Services de la Justice," dated 30. January1953, AMAE La Courneuve, 1AJ/3629.
[123] Ibid.
[124] *Le Monde* reported on January 19, 1953: "Enfin une lettre serait parvenue au tribunal émanant de l'ancien général SS Lammerding, actuellement ingénieur à Dusseldorf. Ancien condamné à mort par

revealed his proper address and occupation to French authorities: he lived in Düsseldorf in the British Zone of Occupation and worked as a construction engineer.[125] Subsequent investigations by French journalists from *Le Monde*, *Paris-Presse* and *France-Dimanche* revealed that the former Waffen-SS General, who had been sought by France for mass murder since 1945, was living not holed up in a remote place under a different name and in difficult circumstances, but openly, peacefully and prosperously under his proper name with his wife and children, directing a flourishing construction business, "a respected member of society," who had two phone numbers under his name in the Dusseldorf phone directory.[126] As Jean Montalat, a Socialist Deputy in the National Assembly, concluded "[f]or the war criminal number one, this is a quiet bourgeois existence and not the one of a hunted man."[127]

The Lammerding letter, as well as its coverage in the press[128] and in debates on the floor of the National Assembly, catapulted Lammerding out of obscurity into the center of the war criminals debate, inserting his case into the tension between

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contumace, il écrit aujourd'hui qu'il s'est toujours désolidarisé des exécutants du massacre d'Oradour, que des sanctions devaient être prises et que le major Dickmann, qui en donna l'ordre, devait être jugé par ses supérieurs. Mais il fut tué, avant que la cour puisse siéger, sur le front de Normandie." See Jean-Marc Théolleyre, "L'interrogatoire des premiers accusés allemands permet seulement de préciser quelques points de détail," in: *Le Monde,* 19. January 1953.

[125] Mr. Hagan, Office of the General Counsel at Bonn to Knox Lamp, Director of General Counsel Office Bonn, "Re: Visit of General Lammerding's Representative in my Office," dated March 30, 1953, NARA, RG 466 HICOG, Office of U.S. High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

[126] Lammerding appeared as Heinrich Bernh. Lammerding in the 1955 Dusseldorf Telephone and Address Book, his address was listed as Sperlingsweg 6, his occupation was given as "Bauunternehmer." See *Adressbuch der Landeshauptstadt Düsseldorf 1955* (Dusseldorf: Adressbuchverlag Schwann, 1955), Namenteil, p. 387.

[127] Speech by Jean Montalat, *AN JO*, 2e seance du 20.3.1953, page 2095; "Pour le Criminel de guerre numéro un, c'est là une existence de bourgeoise tranquille et non pas celle d'un homme traqué."

[128] The Lammerding letter also made headlines in West Germany. For instance, the VVN [Verband der Verfolgten des Naziregimes] newspaper *Die Tat* reported on January 24: "Oradour Befehlshaber in Düsseldorf!" See *Die Tat*, "Oradour Befehlshaber in Düsseldorf!" dated 24 January 1953.

justice and reconciliation, between France on the one hand and Britain, the U.S.A. and West Germany on the other hand. A few days after the *Le Monde* report, Lammerding became the subject of a debate in France's National Assembly. On January 27, the communist representative from Corrèze (near Tulle and Oradour), Jean Goudoux, introduced a motion to insert Lammerding's extradition into the debate of the day. The Defense Minister himself, René Pleven, provided the rebuttal to Goudoux's request, stating that the "French [government] had for years demanded General Lammerding."[129] He then went on to explain why these efforts had been unsuccessful: "In the British Zone, the extradition tribunal, composed exclusively of British members, before examining extradition requests, requires proof of acts of murder by several testimonies that must be included in the arrest warrants. Since 1950 the British authorities have refused to examine all the requests for extradition of war criminals that have been presented to them. Until the end of 1948 the American authorities were less intransigent than the British authorities, but since then no request has been accepted."[130]

While Pleven's defense of the French government's supposedly bona fide efforts to bring Lammerding and other war criminals to justice achieved its immediate goal, Goudoux's motion was defeated by 416 to 100 votes, the public exposure on the floor of the National Assembly of the Western Allies intransigence regarding the

[129] André Ballet, "La loi sur la responsabilité collective est abrogée par l'Assemblée nationale," in*: Le Monde*, 29. January 1953; "Le général Lammerding a été réclamé depuis des années par les autorités françaises[.]"

[130]Ibid.; "Dans la zone britannique le tribunal d'extradition, exclusivement composé de Britanniques, exigea pour instruire les demandes qu'il s'agît de faits de meurtres et que plusieurs témoignages à charge fussent joints aux mandats d'arrêt. Depuis 1950 les autorités britanniques ont refusé d'instruire toutes les demandes de livraison de criminels de guerre qui leur ont été présentées. Jusqu'à la fin de 1948 les autorités américaines se sont montrées moins intransigeantes que les autorités britanniques, mais depuis lors aucune suite n'a été donnée aux demandes."

extradition of war criminals triggered a flurry of activity at the Quai d'Orsay, the Foreign Office in London, the Allied High Commissions in Bonn and the State Department in Washington.

After Pleven seemed to indicate on the floor of the National Assembly that British and U.S. authorities had rejected French extradition requests for suspects in French war crimes trials, like Lammerding, in the past, a journalist from the British newspaper Daily Mirror inquired with the French High Commission in Bonn "whether any extradition demands regarding Oradour have been submitted and if they have been accepted or rejected and what had been the motives for the refusal."[131] While the Foreign Ministry instructed the French High Commission to refer the request to the press office of the Quai d'Orsay, the internal investigation that ensued revealed that in fact France had never requested the extradition of Lammerding, or any other Oradour suspect known to have resided in the BZO or AZO in West Germany.[132]

After Lammerding had revealed his place of residence to the Bordeaux Tribunal and the press reported extensively about it, the public pressure increased on the French government to, in the words of the *Comité d'Action de la Résistance*, ensure that the "impossible is being done for the extradition of General

[131] "Note a l'attention de Monsieur Le Chef des Services de la Justice," dated 30. January 1953, AMAE La Courneuve, 1AJ/3629.
[132] The French judicial authorities had been able to find the whereabouts of two Oradour suspects, suspect Lange in Bremen and suspect Jansen in the BZO. However, they did not file for extraditions because the evidence did not meet the requirements. Ibid.

Lammerding."[133] Inscribing Lammerding on lists with thousands of other suspects was no longer sufficient.

After Pleven's comments in the National Assembly, the French government was the target of criticisms from two sides. First, as aforementioned, the government faced pressure to finally demand Lammerding's extradition. In an attempt to blunt these criticisms, on January 31, 1953, French authorities submitted an official request for extradition of Lammerding to the British High Commission.[134] Second, the British Foreign Office submitted its protests to the Quai d'Orsay regarding Pleven's public attack of the lack of cooperation in France's quest for justice and the insinuation that it failed to comply with French request for extradition. The British spokesperson at the Foreign Office, according to internal documentation of the Quai d'Orsay, claimed "that no extradition request has been submitted to the Allied High Commission for two years."[135] In an effort to contradict the British claims and support Pleven's remarks in the National Assembly, the Quai d'Orsay compiled a list of extraditions which France submitted to British and U.S. authorities: As of July 1950, France had 34 extradition requests pending with British authorities, with 11 additional request between 1950 and 1953. Only a single one of these requests had been approved by British authorities (Peter Landen). Similarly, it provided statistics for its requests to U.S. authorities: The U.S. extradited 61suspects in 1948, 4 in 1949,

[133] See article entitled "Une motion du Comité action de la Résistance," in: *Le Monde*, 17. February 1953; "impossible soit fait pour l'extradition du général Lammerding."
[134] See article entitled "La France demande l'extradition du Général Lammerding" in: *Le Monde*, 31. January 1953 and "Note a l'attention de Monsieur Le Chef des Services de la Justice," dated 30. January 1953 in AMAE La Courneuve, 1AJ/3629.
[135] "Note a l'attention de Monsieur Le Chef des Services de la Justice," dated 30. January 1953 in AMAE La Courneuve, 1AJ/3629; "prétendant qu'aucune demande d'extradition n'a été adressée à la Haute Commission Alliée depuis 2 ans."

6 in 1950 and 1 in 1951.[136] Therefore, while Pleven's insinuation that the French had requested the extradition of Lammerding was wrong, the spirit of his remarks was correct: British and U.S. authorities raised the evidentiary basis required for the approval of extradition requests to a level which *de facto* prevented extraditions completely, which led the French judicial authorities in the French Zone of Occupation to the conclusion that "[i]t is therefore safe to say that war criminals who have not yet been arrested, are now at risk of living in safety in the other zones."[137]

Whether or not the French government had requested Lammerding's extradition was immaterial, since the British would not have acquiesced to it. Pleven's statements were fundamentally accurate, although he did attempt to mislead the French public about the fact that France never formally requested Lammerding's extradition. The evidentiary burden that was put in place was only a veneer designed to concealed the Western Allies political opinion that war crimes trials, after the foundation of the Federal Republic in 1949, undermined the foreign policy goals of Great Britain and the U.S.A., namely the integration of the F.R.G. into the Western Alliance. The French extradition request for Lammerding in 1953 showed, as I will argue in the subsequent paragraphs, that if the evidentiary burden proved insufficient to prevent the extradition of a suspect, even if the individual had been a high-ranking Waffen-SS general sought by France for the mass atrocities of Tulle and Oradour,

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[136] Ibid.

[137] "[Nos alliées] ont depuis 1947 institué une véritable procédure d'extradition qui a eu pour résultat de gêner considérablement, en pratique, la livraison des criminels de guerre refugiés dans leur zone. Ils exigent en effet, qu'à l'appui de toute demande un dossier complet de culpabilité soit fourni, ce qui est impossible dans de très nombreux cas. [...] Il est donc permis de dire que des criminels de guerre qui n'ont pas encore été arrêtés, risquent désormais de vivre en sécurité dans les autres Zones." French High Commission, Baden-Baden, "Note sur le Service de Recherche des Crimes de Guerre," dated 20. October 1952, in: AMAE La Courneuve, 1AJ/3629.

Great Britain and the U.S.A. resorted to obstruction in different forms and means in order to prevent a high-profile war crimes case from threatening their foreign policy goal: mobilizing West German resources for the defense of the Western Alliance against the Soviet Union.

The letter of Lammerding to the Bordeaux Tribunal which presided over France's most high-profile war crimes trial set a chain reaction in motion. The publicity of the trial all but guaranteed that actors were forced to take actions, even if they would have avoided doing so under less public scrutiny. However, once the national press, as evidenced by *Le Monde*, reported on the Lammerding letter, the French government was forced to prepare Lammerding's extradition request or risk losing face in front of large swaths of the population [the government had defended itself against one of the main arguments of the critics of French war crimes trials who criticized that mostly subalterns were prosecuted, that all efforts were made to find the main culprits so that they face justice in France]. It was not surprising then, that François-Poncet, the French High Commissioner in Bonn, handed his British counterpart the extradition request for Lammerding within days of the letter revealing his exact address in Dusseldorf.[138] A the same time, the French Foreign Ministry informed its counterparts in London and Washington that France would seek the extradition of Lammerding to France so that he could be tried at Bordeaux.[139]

[138] "Note a l'attention de Monsieur Le Chef des Services de la Justice," dated 30. January 1953 in AMAE La Courneuve, 1AJ/3629.
[139] Cable from U.S. HICOG to State Department, dated January 31, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

British and American authorities were not amused about the extradition request, and an unnamed diplomat of the British Foreign Office was outspokenly undiplomatic about its opinion about the French request in a conversation with U.S. Resident Minister Julius Holmes in London, stating "[w]e cannot have that sort of thing at this late date" and expressing his hope that "in any event, [Lammerding] has probably gone to the ground by now."[140]

The British diplomat was expressing the hope that the publicity surrounding Lammerding gave him ample warning and time to go into hiding, eluding his capture, making it easy for the British authorities to claim their inability to extradite given Lammerding's disappearance. While this is shocking enough, the episode turns even more bizarre after Lammerding became a subject of a discussion between the highest diplomats of Britain and France.

After French Foreign Minister Bidault made the extradition request a topic of his discussion with his British counterpart Anthony Eden, the latter claimed coldly that "he had never heard anything about Lammerding up to now" and expressed his frustration about the fact that the French had not concluded the war crimes trials eight years after the end of the war.[141] In correspondence with U.S. diplomats, the British representative summed up the Bidault-Eden meeting even more bluntly: "In referring to Bidault's representations to British about extradition [of] General Lammerding at recent meeting in London, [UK] Foreign Office Representative expressed satisfaction that necessary legal procedures allow Lammerding plenty of time to disappear. He

[140] Cable from U.S. Embassy in London to State Department, dated February 2, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.
[141] See Moisel, *Frankreich und die Kriegsverbrecher*, p. 190.

stated that Eden made no commitment to Bidault except to consider the matter further. Embassy believes [,] British [are] reluctant to give French request flat turndown and will follow [the] line that with best will in the world towards French, there is really nothing they can do about it."[142] This is especially noteworthy, since this non-public discussion of the Lammerding case contradicted with the public announcement of the British Foreign Office, which the French public hope that the British Occupation authorities would assent to the French request, leading *Le Monde* to publish an article entitled : "London plans on granting the extradition of General Lammerding."[143]

The British authorities, however, did not have to make that call, because, as it turned out, the hopes and whishes expressed by the British in non-public messages came true. On February 2, *Le Monde* reported that Lammerding "has disappeared from his home for several days."[144] The employees of the construction company the former Waffen-SS general directed in Dusseldorf claimed that he was "away to inspect one of his construction sites"[145] while refusing to provide more details. *Le Monde* reported at the same time, that Lammerding's wife had also left for an unknown destination,[146] while the newspaper of the VVN (West) *Die Tat* wrote that

[142] Holmes (U.S. HICOG, Bonn) to State Department, February 18, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.
[143] Article entitled "Londres envisagerait d'accorder l'extradition du Général Lammerding," in *Le Monde,* February 6, 1953.
[144] Article entitled "LE GENERAL LAMMERDING, ancien chef de la division SS Das Reich a disparu de son domicile," *Le Monde*, 2. February 1953; "a disparu de son domicile depuis plusieurs jours."
[145] Ibid.; "absent pour inspecter un de ses chantiers."
[146] Ibid.

the S.S. general "has now vanished into the West German paradise for war criminals."[147]

Lammerding gratefully accepted the gift offered to him by the British authorities. While British officials were conveniently hiding behind red tape as long as possible in order to give Lammerding plenty of time to elude the execution of the extradition request,[148] he had enough time to inform his business associates and employees and escaped with his wife to an unknown location. All the while the West German government announced that it would be unable to extradite him due to Article 16 of the Basic Law, which provided convenient diplomatic cover rightfully exposed by *Le Monde* as such.[149]."

While Lammerding ceased to be the proverbial nightmare for the British, he became one for the American occupation authorities. By mid-to-late February, British intelligence sources were confident that Lammerding had left the BZO for the AZO, possibly Wiesbaden[150] or Mittenwald/Bavaria.[151] In late February, France discreetly

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[147] Article entitled "SS-Lammerding 'verschwunden'," *Die Tat,* 7. February 1953; "ist jetzt im westdeutschen Kriegsverbrecherparadies untergetaucht."

[148] The amount of red tape the extradition papers were subjected to was a case in point. After René Pleven, for the French government, submitted the extradition request to the British High Commission, it was examined in Bonn. After the formal examination, the dossier was then transferred to the Foreign Office in London, which ultimately had to decide on the fate of the extradition. See *Le Monde*, "Le gouvernement allemand ne peut accorder l'extradition du général SS Lammerding affirme Bonn," dated February 3, 1953.

[149] *Le Monde* wrote on February 5, 1953: "[t]hey seem to want to take refuge behind the [Basic Law]; See *Le Monde*," À la recherde du Général Lammerding," dated 5. February 1953; "elles paraissent vouloir se réfugier derrière la Constitution fédérale."

[150] *Le Monde*, "Le général Lammerding se cacherait en zone américaine," dated 20 February 1953.

[151] Letter of U.S. High Commissioner Conant to French High Commissioner François-Poncet, dated March 23, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

submitted its extradition request to U.S. authorities in West Germany,[152] putting the ball now squarely into the field of the U.S. government. Albeit both sides expressed the wish that this remained secret, the information was leaked to the press.

Immediate reactions from the U.S. High Commission in Bonn (HICOG) evidenced a heightened awareness of the conundrum, which a confirmed presence of Lammerding in the AZO would put the US. Authorities in. In an extensive analysis by HICOG's general counsel Knox Lamb, HICOG recommended to Washington that the U.S. issued an arrest warrant for Lammerding provided that it be delayed "until after consideration of the contractual agreements by the Bundestag" and "that we adhere to the policy which we have been following for two years, namely of not carrying out the extradition of war criminals, even if extradition of war criminals has been approved on local grounds by our own board."[153]

The U.S. HICOG came to this conclusion even by weighing "the effect on the public opinion in Germany of the extradition of the war criminal under the present circumstances, and the effect on public opinion in the Allied countries and in Germany of the refusal to extradite such a notorious person as Lammerding."

Lamb's conclusions merit an extensive quote:

> There is much evidence of German hypersensitivity to everything that touches on war guilt. Both in the general refusal to accept collective responsibility for the acts of war criminals, as well as in isolated expressions of abject assumption of guilt by certain pacifists and religious leaders there is manifest a strong subterranean current of intense feeling on this subject. Discussion of

[152] See cable from the U.S. HICOG in Bonn to State Department, dated March 12, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.
[153] Cable by Knox Lamb, General Counsel, HICOG to State Department, dated March 16, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

> acts committed by the military is particularly apt to lead to a violent rejection of any idea of guilt. The soldier's oath and the discipline of obedience are absolution for all acts committed under orders. This exoneration of the military is in contrast to the general condemnations by Germans of the crimes against the Jews and the excesses of the concentration camps.
> In the Lammerding case, which concerns the shooting of hostages, a large part of the German public may be expected to condone such action on grounds of military necessity and to charge that other armies do the same (including the Americans in Korea).
> The Lammerding case, as concerning the S.S. in France, is bound to be associated in the public mind with the Oradour trials, the French amnesty of the condemned Alsatians, and the feeling that there is one law for Frenchmen, another for Germans.
> Extradition in this case, and even arrest, might have a deleterious effect on ratification of the treaties, for all political parties, particularly the FDP, are conscious of the war criminal issue, which they are apt to exploit to their advantage. At present, however, ratification by Germany seems more certain than by France.
> The effect, which a refusal to extradite Lammerding would have in France and in other Allied countries cannot be judged from Bonn. It is likely that, however, to increase uneasiness of those who fear revival of aggressive German military power and who feel that the U.S. exhibits favoritism for Germany. In France in particular it will be grist for the De Gaullists' mill.
>
> Within Germany, a refusal to extradite will assist in the rehabilitation of the military and to their own return to positions of influence. Although this result could probably help in securing a German military contribution to Western defense, a gain of this type of support in Germany may be offset by a corresponding loss of confidence and a sharpened sense of isolation in France, which may eventually require compensation through other than financial aid.

After the extensive analysis which focused on repercussions in West Germany, the U.S. embassy in Paris intervened with its own conclusions regarding the impact on French public and political opinion, and it argued that HICOG's recommendation not to extradite Lammerding even if the U.S. own extradition board recommended it, "is unlikely to afford a satisfactory solution to the problem. If Lammerding is found, arrested and his extradition demanded by the French government, it may be necessary to change the policy, after carefully weighing the

damage that would be done in Germany or France by action or failure to act on the part of US authorities in Germany." The U.S. ambassador in Paris, Douglas Dillon, expected that, should Lammerding "unfortunately be located in the US Zone of Germany […] the storm that would be raised in France over the question of his extradition would in the Embassy's view be of very major proportions and certain to have an immediate and important bearing on the EDC ratification situation." Dillon hoped, as many of his British and U.S. diplomatic colleagues had in the past, that the U.S. authorities were spared such a difficult and perilous decision: "the question of his extradition is mercifully not before us at this time."[154]

The situation turned even more complicated, when in late March, Lammerding sent his legal counsel to the U.S. HICOG in Bonn to ask the U.S. authorities to inform the counsel of the impending issuance of an arrest warrant for Lammerding. Apparently, the former Waffen-S.S.-General-turned-construction-business-owner was confident that the U.S. authorities had no interest in effecting his extradition and would support his attempt to elude his arrest even more aggressively than they did already.[155] During the meeting, Lammerding's legal counsel disclosed that Lammerding indeed resided within the AZO, without providing the actual location.

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[154] U.S. Embassy in Paris to State Department [cc'ed U.S. HICOG Bonn and U.S. Embassy London] entitled "French Request Extradition Lammerding," dated March 23, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

[155] Mr. Hagan, Office of the General Counsel at HICOG Bonn to Knox Lamb Director of General Counsel at HICOG Bonn, "Visit of General Lammerding's Representative in my Office." The U.S. representative declined to assent to Lammerding's request.

In late March, the Lammerding case was once again subject to public debate in the French National Assembly. The Socialist Deputy Jean Montalat, whose district included Tulle, directed his probing questions to the Secretary of State for Foreign Affairs, Maurice Schumann, regarding the French government's activities in support of Lammerding's extradition. While Montalat accused the British and U.S. intelligence services of scandalously allowing Lammerding to escape justice continuously and repeatedly since 1945, he also put the blame on the French government for having acted too slowly. He finished his speech with a dire prediction he heard from colleagues in Bonn: "probably, [Lammerding] will never be arrested, never extradited, never tried. The drama will continue."[156]

This dire prediction would come true. Lammerding was never to appear in front of a court, never extradited and never sentenced for the crimes he committed. In 1971, he died peacefully and comfortably during his retirement in Bad Tölz near the Bavarian Alps.[157]

While Montalat's accusation against the U.S. and British authorities turned out to be an understatement [of course Montalat had not the benefit of access to the archives as this researcher had], his reproach against the French government was

[156] Speech by Jean Montalat, *Assemblée National Journal Officiel*, 2e séance du 20.3.1953, page 2095; "probablement, [Lammerding] ne sera jamais arreté, jamais extradé, jamais jugé. C'est la comedie qui continue."

[157] The legal correspondent of *Le Monde* in the 1950s and 1960s, Jean-Marc Théolleyre, wrote that "[Lammerding] devait mourir dans sans lit, dans son pays, assez habile pour bénéficier des protections nécessaires jusqu'à l'heure de la prescription, c'est à dire de l'impunité." As this chapter shows, Lammerding not only benefitted from his cleverness, but also benefitted from the *de facto* protection of the British, American and West German governments which was tacitly supported by the French government as well. See Jean-Marc Théolleyre, *Procès d'après-guerre: "Je suis partout", René Hardy, Oradour-sur-Glane, Oberg et Knochen* (Paris: La Découverte et Le Monde, 1985), p. 39.

rooted in political polemics. France took the Lammerding case very serious, whether genuinely or due to public pressure. French politicians raised the issue at the highest level of government: Foreign Minister Georges Bidault discussed Lammerding with Foreign Secretary Anthony Eden and Prime Minister René Mayer discussed it with his counterpart Winston Churchill.[158] Time and again, the French authorities reminded their British and U.S. counterparts about the "emotion aroused in France by this affair" and "the importance which the French public opinion attaches to the extradition of former SS General Lammerding." French diplomats dispensed with diplomatic niceties and "insist[ed] that your [U.S.] services accord France all the assistance which is in their power and that particular efforts will be made to bring to a successful conclusion the investigations undertaken to find the former General."[159]

A month later, after there was still no trace of Lammerding, U.S. Secretary of State John Foster Dulles telegraphed to his mission in Bonn that regarding the French extradition request for Lammerding, "no further action should be taken present time, but matter allowed [to] rest [...]."[160] The hopes of U.S. and British diplomats had been realized: after the disappearance of Lammerding, they were eager to let the

[158]U.S. Embassy in Paris to State Department [cc'ed U.S. HICOG Bonn and U.S. Embassy London] entitled "French Request Extradition Lammerding," dated March 23, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.
[159] Bourely [legal counsel at the French High Commission] to Knox Lamb [legal counsel at U.S. HICOG], letter dated March 23, 1953, in: NARA, RG 466 HICOG, Office of US High Commissioner for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.
[160] Classified telegram from State Department to Bonn [HICOG], dated April 21, 1953, signed by Dulles. in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

extradition request "rest" based on the all to convenient fact that they had been unable to ascertain Lammerding's whereabouts.

In the following months and years, the strategy followed by the British and U.S. indeed achieved the results they had hoped for. The French public's interest in Lammerding died down significantly.[161]

Lammerding's flight – his successful attempt to escape justice for his preeminent role in atrocities with hundreds, if not thousands of victims in France – constituted the preferred option in all internal or non-public discussions of British and U.S. diplomats because it spared them a difficult decision regarding the French extradition request. However, British and U.S. authorities did more than just "hope" for Lammerding's disappearance. They assisted and abated the Waffen-SS general's flight by insisting on the "proper procedure," or by moving the extradition request along as slowly as possible in an attempt to provide Lammerding ample time to go into hiding. Finally, once the extradition request had made its way through the bureaucratic pipeline, the British informed the French that they would "arrest [Lammerding] if they could find him but that their means for a search were small."[162] The British strategy was all too transparent. The British Foreign Office attempted to

[161] While the Oradour and Tulle survivors as well as the communist press (*L'Humanité*) continued to remind the French public about the injustice symbolized by Lammerding's liberty, the case never received the attention again as in the year 1953. For instance, the French Associations of Deportees continued to demand that the French government pressed for the extradition of Lammerding from West Germany. In late spring of 1960, the representatives of the major associations [FNDIRP, FNDIR, Unadif, Anfrom, Adir, Fildir] met with Raynond Triboulet, the Minister of Veterans Affairs (Ancièns Combattants) to discuss the Lammerding extradition. See Jean-Marc Dreyfus, *L'Impossible Réparation*, p. 218.

[162] Cable by Knox Lamb, General Counsel, HICOG to State Department, dated March 16, 1953, in: NARA, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165.

hide behind a lack of resources which it claimed prevented them from conducting an effective search for the former SS general, whose successful disappearance they had abated in the first place by utilizing the administrative tools at its discretion to prolong the processing of the extradition request.

Besides the U.S. and British authorities, there was a third co-conspirator who enabled the successful evasion of Lammerding from French prosecution: the West German state. Not only did the Federal Government conveniently hide behind *Grundgesetz* Article 16 which prohibited the extradition of a German citizen, and not only did it made no effort to support the Allied governments in the search for the SS general, evidence suggests that the FRG authorities concealed the whereabouts of Lammerding and actively supported his evasion of the French extradition request.

First, before Lammerding had even revealed himself to French authorities by brazenly including his home address on a letter to the Bordeaux tribunal, the whereabouts of Lammerding were almost certainly known to local and state, if not federal authorities, since Lammerding had in fact not been hiding but registered his residence and business in his proper name, including multiple entries in the annual Dusseldorf phone book. His address was available for anyone who wanted to find him. After he disappeared in January of 1953, the Allies were also unable to rely on the German police to support their search for Lammerding. As a HICOG cable revealed, the German police had ceased to cooperate since at least November of 1952, because "the names of Germans sought as war criminals are no longer included in the 'wanted' lists issued to the police by the Ministry of Interior."[163]

[163] Ibid.

This was in line with the widely-held attitude of the Federal bureaucracy which regarded the war criminals as political prisoners and war crimes trials as political trials, refusing to cooperate in the execution of these 'sham trials.'[164] After Lammerding disappeared from his suburban single family home in Dusseldorf, there is evidence that the Federal Bureaucracy lend him support in his quest for immunity from prosecution for war crimes. The newspaper *Die Tat* reported on February 7 that Lammerding had been to the Federal capital over the weekend to meet "with the responsible authorities in Bonn."[165] He was assigned a defense attorney, Dr. Walthers.[166] What Lammerding discussed when meeting with representatives of the Federal government, most likely the ZRS, is not known. However, the fact that the Federal Government did not alert the French High Commission, which was headquartered nearby, when a suspect of war crimes for which the French government had submitted an extradition request was on its premises was the clearest sign of the active role the FRG played in concealing Lammerding and preventing his prosecution. The meeting with Lammerding took place at a time when France had already submitted the extradition request, but Britain in an attempt to enable the flight

[164] More about this understanding in the following chapter on the Natzweiler trial.
[165] Article entitled "Bonn schützt Lammerding," *Die Tat*, 7. February 1953, p. 9. *Die Tat* quoted a report by the Associated Press as the source for the claim that Lammerding had been sighted in Bonn. While I have been unable to independently verify this claim, I believe it to be credible. We know for sure that Lammerding reached out to U.S. occupation authorities to negotiate for a *de facto* immunity, and we know that Lammerding was brazen enough to live openly in Dusseldorf and submit a testimonial to the Bordeaux-tribunal which included his proper address. On the other side, this dissertation has shown the attitude of the Federal Republic's bureaucracy regarding war criminals. The ZRS in particular, which would have been Lammerding's point-of-contact in Bonn, saw as its mission to liberate all Germans imprisoned abroad and prevent new cases in the future. These considerations make the AP report as referenced by *Die Tat* of a Lammerding meeting with a ZRS representative in Bonn very credible; "mit den zuständigen Stellen in Bonn."
[166] Dr. Walthers (Hamburg) had been one of the lead attorneys paid by the Federal government's ZRS to defend suspects of war crimes in French courts.

of Lammerding, had not yet assented to it. Thus, an arrest warrant had not been issued for Lammerding, making the meeting of the ZRS with "le criminel de guerre numero un"[167] perfectly legal albeit morally reprehensible.

The prevailing attitude in West Germany towards the Nazi past continued to secure Lammerding's *de facto* immunity from French prosecution. From 1955 on, a legal opinion began to prevail, which utilized a clause in the Settlement Agreement between the Western Allies and West Germany from 1955 to prevent the prosecution of war crimes in front of West German courts. In 1955, mindful of the dangers of a revision of Allied sentences and verdicts in regards to war criminals by West German courts, the Western Allies insisted on Article 3 in the Settlement Agreement which stated that the Allied courts transferred jurisdiction to West German courts in regards to "criminal proceedings against natural persons, unless investigation of the alleged offence was finally completed by the prosecuting authorities of the Power or Powers[.]"[168] In the following years, West German courts and judicial authorities developed an interpretation of the clause in Article 3 which ensured that German war criminals could not be prosecuted again by a different jurisdiction, meaning that those war criminals who had been sentenced by Allied courts and subsequently amnestied, would not face prosecution again in German courts. The West German judiciary, contrary to the spirit of this clause in the settlement agreements, also applied this provision to those sentences which had been passed in absentia,[169] meaning that Lammerding was safe from prosecution in West Germany due the 1951 verdict in

[167] Speech by Jean Montalat, AN JO, 2e seance du 20.3.1953, page 2095.
[168] See Convention on the Settlement of Matters Arising Out of the War and the Occupation (Bonn, 26 May 1952), Article 3.
[169] See Bernhard Brunner*, Der Frankreichkomplex*, pp. 206-221.

absentia, and safe from extradition to France due to Article 16 of the *Grundgesetz*. Lammerding henceforth enjoyed *de facto* immunity and returned to his Dusseldorf home in 1955.[170] This was the environment which allowed for the "Criminel de guerre numero un" to evade justice.

The fourth party who was at least partly responsible for the successful evasion of Lammerding was France itself – although it undoubtedly bore less responsibility than West Germany, the United States and Great Britain. The French government's undivided attention regarding Lammerding's extradition was only limited to periods of intense public focus, as in the first months of 1953. Outside of these times, it did not aggressively pursue Lammerding's extradition, *de facto* enabling the British and American strategy of producing amnesia by refusing cooperation and allowing Lammerding to disappear into obscurity. Even occasional scrutiny changed nothing about the fundamentals of this trajectory of amnesia. For instance, when in 1960 reports surfaced that Lammerding had participated at multiple Waffen-SS veterans meetings in West Germany,[171] half a dozen of municipal town councils of the Corrèze department of central France (where Tulle is located) passed the following resolution in special town hall meetings: "given that [Lammerding], from the Federal Republic of Germany, directs the international activity of the former

[170] See memo by Bundesjustizministerium, ORR Götz, dated January 12, 1961, in: BA Koblenz, B141/21886 Deutsche Strafverfahren im Zusammenhang mit Oradour.
[171] The French government had records of the following HIAG meetings Lammerding attended: Dusseldorf in November of 1956; Hildesheim in January of 1958; Arolsen in April of 1959; Hameln in September of 1959; on 21 and 22 of November of 1959, Lammerding also participated in a meeting of the editors of the HIAG journal "*Der Freiwillige."* See Annex "Hans Lammerding," attached to letter of French Ambassador to the Federal Republic of Germany, Bonn, to M. Maurice Couve de Murville, Foreign Minister, Paris, dated 4. August 1960, in: AMAE, 178QO/1267.

Waffen SS with impunity, and given that his home and activities are public and known to all, the city of [e.g. Saint-Frejoux] expresses its desire that the President of the Republic and the French Government renew the request for extradition."[172] After the deputy in the National Assembly for Corrèze, the socialist Montalat, also directed a question to the government about its activities regarding Lammerding's extradition became a subject of a question in the National Assembly,[173] the French government predictably blamed its foreign counterparts for the failure to extradite Lammerding: "despite the insistence of the French Government, especially with the British Government, [...]the research undertaken by the British and American services had been unable, at the time, to locate [Lammerding]." Since the West German government had "never deviated from the rule in international relations not to extradite its own citizens,"[174] the report concluded that an extradition would be impossible to achieve. Outside of calls for a West German prosecution of Lammerding, nothing happened in the case.

Two years later, the fate of the extradition resurfaced again, within weeks of the Adenauer-de Gaulle meeting at Reims which "sealed Franco-German reconciliation"[175] when de Gaulle visited Oradour and paid his respects to the victims

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[172] Resolution of the Mairie de Saint-Fréjoux (Corrèze), dated September 1 1960, in: AMAE, 178QO/1267. **"**constatant qu'[Lammerding] dirige impunément de la République Fédérale Allemande l'activité internationale des anciens Waffen S.S., que son domicile et ses activités sont publiques et connues de tous, émet le vœu, que le Président de la République et le gouvernement français renouvelle la demande d'extradition."

[173] *JO AN*, Question écrite Numéro 6298, June 28, 1960.

[174] "Projet de réponse à la question écrite No 6278" dated 2 August 1960, AMAE La Courneuve, 178QO/1267 ; "[...] malgré l'insistance du Gouvernement français, notamment auprès du Gouvernement britannique, [...]les recherches entreprises par les services britanniques et américains n'ont pas, à l'époque, de retrouver l'intéressé."

[175] De Gaulle announced the following when he and Adenauer entered the Reims Cathedral: "The German Chancellor and I have come here today to seal the reconciliation between German and France." These words are today set in stone in front of the cathedral.

of the Nazi crimes. According to the West German embassy report by Weinhold,[176] the mayor of Oradour had pressed de Gaulle during the visit to continue to pursue the punishment of those responsible for the massacre, including the extradition of Lammerding. De Gaulle replied evasively with a reference "to the obstacles set by international law [presumably a reference to insufficient evidence for Lammerding's extradition according to international law] but assured him that the case would be pursued. However, as Weinhold remarked in the memo, the West German government had never received an application for an extradition of Lammerding. In fact, the request made by the mayor of Oradour to de Gaulle constituted a potential attack on the Adenauer-de Gaulle brand of reconciliation which included a rehabilitation of the German past. De Gaulle's reply served as an attempt to silence this "attack" by blaming the inactivity on obscure international laws and promising to pursue the extradition, while knowing that this promise would not be fulfilled. We know that this tactic had been well-received by the West German observers and we have evidence that the evasion worked with local observers as well. *Le Monde* reported on May 22, the day after his visit that his reception at Oradour "by the

[176] Memo from Edgar Weinhold, Foreign Office in Bonn, to Foreign Minister Schröder, entitled "Aufzeichnung - Besuch General de Gaulles in dem 1944 von der SS zerstörten Dorf Oradour," dated May 25, 1962, BA Koblenz B305/315. German original: "[De Gaulle] war sichtlich bewegt. Er hielt eine kurze, überaus würdige und staatsmännische Ansprache, in der die Bedeutung des Denkmals für Frankreich und die Welt hinwies. Dabei vermied er jede Äußerung, die die deutsch-französischen Beziehungen hätte belasten können. Die Worte "Deutschland" oder "deutsch" kamen in der Ansprache nicht vor. […]
Durch sein gemessenes Auftreten am Ort einer der größten Missetaten des nationalsozialistischen Regimes, kurz vor dem Staatsbesuch des Herrn Bundeskanzlers in F vom 2.-8. Juli 1962, hat General de Gaulle sichtlich dartun wollen, dass das verwüstete Dorf für ihn kein die Beziehungen des heutigen Frankreich zur Bundesrepublik belastendes Mahnmal ist, dass dem schrecklichen Geschehen vielmehr eine allgemein menschliche Bedeutung zukommt. Er hat damit in vorsichtiger Weise, ohne französische Gefühle zu verletzen, einen Schlußtrich unter dieses düstere Kapitel deutschen Auftretens auf französischem Boden gezogen, soweit es bisher noch ein Hindernis auf dem Weg zur Verständigung zwischen beiden Völkern bildete."

people, in majority women and children, had been warm and with rapturous applause."[177]

De Gaulle's visit to Oradour in 1962 and the corresponding memo on the visit written by the West German embassy highlighted that France, despite the ostentatious efforts of its government regarding Lammerding in 1953, constituted the fourth co-conspirator in the quest to prevent an extradition of Lammerding. In 1962, on the eve of the conclusion of the Franco-German Friendship Treaty, as in 1953, during the debate of the EDC, war crimes trials constituted a "cancer in Franco-German relations."[178] The French government's default position regarding Lammerding was to support the production of amnesia as long as public opinion allowed it. Only when the Lammerding case made front page news and became subject in debates on the national assembly, as in 1953, the French government mounted a serious effort for Lammerding's extradition. After the public outcry died down, the efforts of the French government were simultaneously allowed to expire only to be revitalized after another period of public scrutiny.[179]

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[177] *Le Monde*, May 22, 1962, entitled: "Limoges a réservé au chef de l'État un accueil chaleureux" Original: "L'accueil de la population, où femmes et enfants étaient en majorité, fut sympathique et bruyant. Le maire, dans son discours, réclama " le châtiment des criminels et l'extradition du général Lammerding, le " bourreau d'Oradour. Le général le remerciant de sa franchise, invoque " les barrières juridiques internationales ", mais ajoute : " L'affaire se poursuit."

[178] This is a quote from a U.S. diplomatic cable about the war crimes trial of Robert Ernst. However, the quote also characterizes the sentiment about war crimes trials in general. See cable by U.S.HICOG/Bonn to U.S. State Department, dated April 17, 1954, RG 466 HICOG, Office of US High Commission for Germany, Security Segregated Documents, 1953-1955 Entry 10B RG 466 Stack Area 250 Row 68 Compartment 16, Shelf 1, box 165, folder "Robert Ernst."

[179] Another example for the interdependence of public scrutiny and French governmental action regarding Lammerding is evidenced by the year 1968. After the former criminal police detective Delarue had published a book entitled *Trafics et crimes sous l'occupation* proving the personal responsibility of Lammerding for the Tulle massacre and claiming that he knew of the Oradour massacre and failed to stop it, the attention of the public was yet again drawn to the SS general living openly in freedom in Dusseldorf. Lammerding subsequently received phone calls day and night from French citizens who shouted "murderer" into the phone before hanging up. Subsequently, the aforementioned SFIO deputy Montalat made Lammerding subject of a debate in the National

The Franco-German consensus throughout the 1950s and early 1960s was that only the production of amnesia supported Franco-German reconciliation. This consensus began to change in the second half of the 1960s. By 1968, the West German authorities discovered that a prosecution of war crimes would be advantageous to West German prestige in France and the rest of the world.[180] Thus, it was not France, but the FRG's Foreign Office which reached out to the Quai d'Orsay at the behest of the Cologne State Prosecutor Kepper, to begin the negotiation with France to allow for the prosecution of crimes committed by the Nazis in France in front of West German courts.[181]

The Foreign Office's strategy to manipulate the dispensation of justice in West Germany in order to secure the release of Lenz and his co-convicts from French imprisonment was highly successful. In its effort, the Federal government could rely on the supporting actions from the British and U.S. governments. Furthermore, the French government, while not working actively to shield German war criminals from justice, it worked towards the same goal: producing public amnesia which enabled the release of the West German war criminals and ensuring that public attention was not redrawn to the war crimes committed by Germans in France. A public investigation

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Assembly, where he demanded to know the French government's efforts regarding the prosecution of the latter. The French government, apparently embarrassed about the lack of progress, claimed to have initiated negotiations with West Germany for the abrogation or amendment of Article 3 in the settlement agreements ("Überleitungsvertrag") which would have allowed West German courts to prosecute Nazi criminals which had been sentenced by Allied courts already, including Lammerding. In reality, it had been the West German government which had initiated these negotiations. See Bernhard Brunner, p. 268f. See also article entitled „Telephon aus Tulle" 25.11.1968, in *Der Spiegel 48/1968*, p. 67.

[180] In February of 1968, the Federal Justice Ministry, doubtful about the impact of war crimes trials on Franco-German relations, asked the West German embassy in Paris about its opinion on the matter. The embassy replied that the prosecution of war crimes would undoubtedly have "a positive effect" on Franco-German relations. See Claudia Moisel, *Frankreich und die deutschen Kriegsverbrecher*, p. 217.

[181] Jean-Marc Dreyfus, *L'impossible reparation*, p. 247.

and trial of Kahn, Heinrich or Lammerding would have disturbed the climate of amnesia and would have been against French foreign policy interests. France wanted to release the Oradour convicts in order to prevent "the conclusion that the Germans are guilty because they are Germans" at a "time and in conditions as inconvenient as possible."[182] Indeed, we have ample evidence for a widespread perception in West Germany which associated the continuing French war crimes trials program with an attack on reconciliation, sowing doubt in its willingness to continue rapprochment with West Germany. The *Comité français des Échanges avec l'Allemagne Nouvelle* in particular received confrontational letters from its German readers in the wake of prominent war crimes trials such as the Oradour, Oberg-Knochen and Ernst trials. One reader saw in the Ernst verdict proof "that the French in reality attempt nothing to normalize their relationship with Germany" stating that "the French who have been favorably inclined towards us for awhile now could have proclaimed a long time ago, that one finally renounces the politics of revenge."[183] Another letter of an industrial from Germany concluded that "a majority of the French people do not at all want to live in peace with us other Germans."[184] The director of a German *Volkshochschule* who had organized conferences in France designed to foster reconciliation and mutual understanding called the editors of "Allemagne" and

[182] "que les Allemands sont coupables parce qu'Allemands"; "époque et dans des conditions aussi inopportunes que possible;" MAE -Service Juridique – "Note pour le Secrétaire General" dated 17.2.1953, in: AN Pierrefitte 457 AP/47.
[183] *Allemagne* (Issue 29), February/March 1954, article entitled "L'Affaire Ernst et l'opinion allemande." "[L]es Français ne tiennent en réalité nullement à normaliser leurs relations avec l'Allemagne, sinon les Français qui sont favorablement disposés à notre égard auraient déjà pu depuis longtemps, dans ce cas et dans d'autres, proclamer ouvertement qu'on renonce enfin à la politique de vengeance."
[184] Ibid.; "[…] nous devrions en conclure que la majorité du peuple français ne veut pas du tout être en paix avec nous autre Allemands."

explained that the war crimes trial "had an extremely discouraging impact on the milieu in which the university operates. Even with the best intentions, it will be difficult to carry out conferences designed to facilitate Franco-German rapprochement from now on. "[185]

The public outrage in Germany regarding war crimes trials combined with the FRG's memory politics made French stakeholders in reconciliation with Germany decide that the price for a common, peaceful and prosperous future would be silence over the past crimes of Germany.

This chapter showed how the trial of the Oradour massacre precipitated the transition from the age of retribution to the age of reconciliation. The trial exposed in front of the eyes of the world press the weaknesses of French justice, namely the law of collective responsibility's discrimination between German and French suspects, followed by the overtly political nature of the amnesty for the French-Alsatian convicts only. These fatal weaknesses enabled the detractors of postwar justice vis-à-vis Nazi Germany's crimes to draw the attention away from the crimes and the suffering of the victims towards the perpetrators themselves, who were portrayed as victims of a discriminatory French justice. The Oradour Trial and its aftermath validated the discursive weapon of West Germany's amnesty lobby, victor's justice or vengeful justice, like no other French trial and widened its adherents to include even members of French circles. As opposed to the age of retribution, the Oradour trial and its aftermath as a whole hence seemed to evidence that the reckoning with the Nazi

[185]Ibid.; "a eu un effet très décourageant dans les milieux touchés par l'Université. Avec la meilleure volonté, il sera désormais difficile de mettre au programme des conférences allant dans le sens d'un rapprochement franco-allemands."

past was highly divisive both from a Franco-French as well as from a Franco-German perspective. Justice for Oradour was a grand failure which showed nothing but the discordant power of the reckoning with the past. And the optics of a "dual justice," one for French and the other for German citizens, was perceived as an attack on the Franco-German relationship, even an existential threat to the Franco-German foundation of the European postwar order.

Thus, the Oradour trial opened a window of opportunity for West Germany to expand its efforts to redefine the French reckoning with the Nazi past, enhance the production of amnesia and liberate the "victims" of French postwar justice.

In this quest, West Germany cooperated, even conspired with the British and U.S. occupation authorities to prevent that Oradour resurfaced as an attack on reconciliation by ensuring that no additional Oradour perpetrators were extradited to France. The Oradour-Trial and its aftermath, the controversy evolving around Lammerding, Heinrich and Kahn showed that the process of Franco-German reconciliation in the 1950s entailed the privileging of perpetrators over the victims of the crimes of Nazism in France. The 1953 trial and its aftermath therefore served as the symbol for the peak of the inversion of justice, which dictated that if the murderers and assassins of the massacre at Oradour were not released, the murder victim would have been reconciliation between Germany and France.
The next chapter will follow the trail of this process of reconciliation until its conclusion in January of 1963 at the Elysée-Palace.

CHAPTER 5 Justice as the Price for Reconciliation – Franco-German Diplomacy between the Schuman-Plan and the Elysée-Treaty, 1950-1963

> "In the end, this [war criminals] problem depends on the progress of Franco-German relations."[1] Konrad Adenauer, Chancellor of West Germany, February 4, 1950

> "[T]he rapprochement between France and Germany can only be achieved if, on the one hand, France, for the sake of rapprochement, wants to forget the pain Germany has caused her, and, on the other hand, if the Germans do not forget what they did and especially do not show solidarity with those who committed abominable crimes in France."[2] Vincent Auriol, President of France, February 2, 1951

This chapter examines how the trajectory of European integration and Franco-German became a vehicle for a revision o French judicial reckoning with crimes committed by Germans in France during World War II.

The Emergence of a Reconciliation Narrative: Justice as a Threat to Reconciliation

The formation of the West German state in the second half of 1949 had a tremendous impact, not just on French foreign policy, but also on the French administration of justice. On September 15, 1949, the very day of the accession of Konrad Adenauer to the office of Federal Chancellor, the French Foreign Minister Robert Schuman wrote to his colleague René Pleven, the Minister of Defense:

> It is undeniable, indeed, that we will from now on have greater difficulties to explain the judgments of war criminals to a German opinion which we will be forced to consider – in any case – ever more frequently because of international circumstances.[3]

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[1] Letter of chancellor Adenauer to Karl Arnold (minister president of North Rhine-Westphalia), dated February 4, 1950, BA Koblenz, B305/304.
[2] Vincent Auriol, *Journal du Septennat, 1947-1954, Volume V, 1951* (Paris: A. Colin, 1975), p. 63; diary entry from February 2, 1951.
[3] "Il est indéniable, en effet, que nous aurons désormais, avec le temps, des difficultés accrues pour faire admettre les jugements des criminels de guerre à une opinion allemande dont la conjoncture

Schuman correctly predicted the consequences of developments across the Rhine. The democratization of Western Germany spearheaded by the western Allies created the unintended consequence that German public opinion, even if it disagreed with Allied principles, would have to be taken into consideration especially if "international circumstances" required German cooperation. Schuman astutely predicted this in 1949, precisely on the day of Adenauer's election as West German chancellor, because he realized that Adenauer's election as the head of a democratic West German government signaled the beginning of a change in Franco-German relations which threatened the French reckoning with the Nazi crimes. This shift occurred only a few months later and was initiated by Schuman himself.

In the declaration which carries his name, the French foreign minister, on May 9, 1950, laid out the design for future peaceful, prosperous and unified Europe beginning with the integration of the coal and steel industries. The construction of this "unified Europe" according to Schuman required "the elimination of the age-old opposition of France and Germany. Any action taken must in the first place concern these two countries."[4] Thus, Schuman worked to realize his own prophecy from September of 1949, because his vision of a unified Europe based on Franco-German reconciliation offered the young Federal Republic precisely the window of

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internationale – en toute hypothèse – nous obligera à tenir compte de plus en plus." Le Ministre des Affaires Étrangères à M. le Ministre de la Défense Nationale, entitled "situation des ex-prisonniers de guerre allemands détenus par la justice française," dated September 15, 1949, in: AN Pierrefitte, BB/18/3693/2, dossier 31.

[4] Robert Schuman, *déclaration du 9 mai 1950*, reprinted in: Raymond Poidevin, *Robert Schuman, Homme d'état, 1886-1963*, p. 261 ; "l'opposition séculaire de la France et de l'Allemagne soit éliminée. L'action entreprise doit toucher au premier chef la France et l'Allemagne."

opportunity to influence French justice according to its own agenda of "drawing a line under the past."[5]

The promise engendered in Schuman's declaration to end the so-called "arch enmity" between France and Germany immediately raised expectations in West Germany that if Schuman and the French government were serious about reconciliation, current French judicial policy regarding war crimes trials had to be amended to reflect the change in the political atmosphere. In the minds of large parts of West German public opinion, the war crimes trials in France were precisely the kind of reiteration of the long history of enmity between the two countries which the Schuman-Plan sought to eradicate. The West German government seized this notion and developed the argument that French justice must be synchronized with the Schuman-Plan's intentions of reconciliation. The multilateral Schuman-Plan negotiations became thus the ideal launch-pad for the West German campaign in support of a revision of policy vis-à-vis those Germans convicted of war crimes. The unfolding discussion for a review of sentences thus involved another revered founder, even the "arch-saint"[6] of the European Union: Jean Monnet.

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[5] Adenauer understood the Schuman-Plan precisely as the chance to "draw a line under the past." During the signature ceremony of the European Community of Steel and Coal in April of 1951, he declared that the signing of the ECSC-Treaty symbolized the "drawing of a solemn and irrevocable line under the past Franco-German relationship." See article in *Quick. Die Aktuelle Illustrierte Nr. 17, Jahrgang 4, 29*. April 1951, p. 531; in: AN Pierrefitte, 462AP/28 (archives privées François-Poncet). "ein feierlicher und unwiderruflicher Schlußstrich unter das vergangene deutsch-französische Verhältnis."

[6] Alan Milward sarcastically called the now widely revered pioneers of the European Union, chiefly among them Schuman, Monnet, Spaak, Adenauer and de Gasperi, the "European Saints," with Monnet occupying the central position as Europe's "archsaint." See Alan Milward, *The European Rescue of the Nation-State*, (London: Routledge, 2000), p. 318.

As the leader of the French delegation, Monnet was contacted in April of 1951 by his West German counterpart Carl Friedrich Ophüls.[7] Ophüls utilized the opportunity during the multilateral negotiations for the European Coal and Steal Community (ECSC) to request a bilateral Franco-German meeting about "actions in support of the German prisoners of war in France on the occasion of the Schuman-Plan."[8] On the sidelines of the ECSC negotiations in Paris, Ophüls informed Monnet

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[7] Carl Friedrich Ophüls was born in 1895 in Essen. A legal scholar by training, Ophüls received an appointment as lecturer at the heavily nazified law school at the University of Frankfurt/Main in 1934. All evidence points to a membership of Ophüls in the Nazi Party (membership number 2,399,061). See Michael Stolleis, *A History of Public Law in Germany, 1914-1945* (Oxford: Oxford University Press, 2008), p. 276. Carl Ophüls is not related to the French filmmaker Marcel Ophüls (born in 1927 in Frankfurt/Main). Marcel Ophüls is the son of Max Ophüls who was born in St. Johann (today part of Saarbrücken) in 1902 as Max Oppenheimer. Max changed his last name in 1920 from Oppenheimer to Ophüls. He and his family emigrated to France after the Nazis came to power in 1933.

[8] Memorandum by Carl Friedrich Ophüls, entitled "Vermerk, Betr: Massnahmen zu Gunsten der deutschen Kriegsgefangenen in Frankreich aus Anlass des Schumanplans," dated May 8, 1951, in: PA AA, B10/2119. Note that the date on the memo is most likely a typo. It was most likely written on April 8, 1951 (comments on the margins are dated April 1951);"Ich habe am Sonnabend und heute mit M. M o n n e t [Monnet] über die Möglichkeit gesprochen, aus Anlass des Schumanplans für die noch in Frankreich zurückgehaltenen deutschen Kriegsgefangenen, die verurteilt sind oder für die ein Verfahren noch bevorsteht, entscheidende Erleichterungen zu erreichen. [...] Ich habe M. Monnet gesagt, dass man zwei Gruppen von Maßnahmen, die ineinander übergingen, ins Auge fassen müsse. Einerseits müsse man sachlich die Erleichterungen herbeiführen, um diejenigen Ungerechtigkeiten zu beheben, welche mit dem angestrebten neuen Verhältnis zwischen Deutschland und Frankreich unvereinbar seien. Andererseits müsse man auch daran denken, einige dieser Maßnahmen so zu gestalten, dass die deutsche Öffentlichkeit, die durch das Geschehen vielfach stark beunruhigt sei, den überzeugenden Eindruck von einer Wendung in der Behandlung erhalte. Dass diese letzten Maßnahmen nicht zur Folge haben dürften, in Frankreich wiederum Ressentiments zu erzeugen, sei selbstverständlich. Es würde jedoch möglich sein, hierfür ausreichende Formeln zu finden.
[...]
M. Monnet war zunächst in den Fragen völlig unorientiert, nahm aber am Sonnabend die ihm gemachten Vorstellungen willig auf. Über das Wochenende hat er sich anscheinend weiter unterrichtet und dabei offenbar den Eindruck gewonnen, dass aus politischen Gründen auf französischer Seite nur sehr vorsichtig gehandelt werden könne. Er fürchtet, wie er sagte, dass, wenn man die Aktion zu Gunsten der deutschen Gefangenen zu offensichtlich mit dem Schumanplan in Verbindung bringe, dies sehr leicht nicht der Aktion nutzen, sondern dem Schumanplan schaden werde, weil dadurch politische Ressentiments bei der Resistance wachgerufen würden. Andererseits erkannte er an, dass der gegenwärtige Zustand der Dinge mit dem Verhältnis zwischen Deutschland und Frankreich, das der Schumanplan herbeiführen wolle, nicht verträglich sei. Er erkannte weiter an, dass zur Bereinigung sehr bald etwas geschehen müsse, damit bei den Diskussionen über die Maßnahmen des Schumanplans in Deutschland darauf hingewiesen werden könne, dass auch im Punkt der Kriegsgefangenen eine Wendung eingetreten sei.
[...]
1. Die französische Aktion wird nicht schon während der Unterzeichnung angekündigt, wird aber sobald wie möglich nach der Unterzeichnung in Angriff genommen und so gefördert, dass sie etwa in einem Monat zu greifbaren Ergebnissen führt.

that "one has to remedy the injustices which are not in accordance with the desired new relationship between Germany and France [...] and one has to design these remedies in such a way, that the German public, who is deeply concerned about [the injustices], can be convinced about the change in attitude." According to Ophüls' memorandum, Monnet was initially "completely disoriented," but after subsequent consultations, "he agreed that the current state of affairs does not correspond to the relationship, which the Schuman-Plan is envisioning between Germany and France."

The Ophüls-Monnet meeting at the margins of the ECSC negotiations showed the successful efforts of the Federal Republic to fuse reconciliation with a revision of French the policy concerning the German war criminals. Ophüls succeeded in convincing Monnet and the French government that the French war crimes trial program, the prosecution, incarceration and execution of German war criminals threatened to undermine Franco-German reconciliation because "the West German public [...] was very disturbed by [French justice]."[9] He insinuated that West Germany and the West German public perceived French war crimes trials as an "injustice" thus establishing a narrative which branded justice as a threat or even an attack on reconciliation.[10]

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2. Sie wird in Frankreich nicht als das Ergebnis einer deutschen Initiative, sondern als das Ergebnis der Initiative der französischen Regierung, welche die bestehende Ungerechtigkeiten zu beseitigen wünscht, aufgezogen.
3. Sie wird, soweit möglich, nicht auf eine politische sondern auf eine juristische Basis gestellt.

Die Erörterung ist jedoch noch im Fluss. Ich werde demnächst weiter berichten. Gez. (im Original) Prof. Ophüls."

[9] Ibid.; "die deutsche Öffentlichkeit [ist durch] das Geschehen [die Kriegsverbrecherproblematik in Frankreich] vielfach stark beunruhigt."

[10] Norbert Frei showed that the West German public opinion only fleetingly, in 1945/1946, accepted the Nuremberg proceedings as an equitable justice: "vier Jahre später hielt fast ein Drittel aller Befragten 'Nürnberg' und die Nachfolgeprozesse für ungerecht," and that despite a press which had

According to Ophüls memo, Monnet largely agreed with this assessment. His concerns were limited to the potential impact of a revision of judicial policy on French public opinion and the Schuman Plan itself. He did not dispute the fundamentals of Ophüls' interpretation of justice as a threat to reconciliation, but only argued that the French side must proceed carefully, because the topic was destined to reignite negative sentiments of the resistance which could damage the Schuman-Plan.

The meeting itself and subsequent discussions were remarkable considering that the FRG, a country that had been utterly militarily and morally defeated just six years prior, was pursuing favorable treatment for some of the very same people who had been charged with or convicted of war crimes. Further, while not employing a "tandem measure" *per se,* Ophüls nonetheless clearly linked reconciliation with a revision of French justice in favor of German war criminals at a summit which set the stage for the FRG's re-integration into the (western) concert of states. By referring to the war criminals as "prisoners of war" and by failing to acknowledge the egregious nature of the crimes that many of the war criminals committed, Ophüls suggested that the war criminals were in fact victims.

Ophüls and Monnet worked out a solution on how to conceal the true intentions, that is a revision of judicial policy toward lenience toward those Germans convicted of war crimes from the French public. First, the French government would not announce the release of war criminals before the signing of the European Coal and Steel Community Treaty,[11] but would wait for a few months. Second, Monnet

still been tightly controlled in terms of its anti-Nazi opinion by the Western allies. See Frei, *Vergangenheitspolitik*, p. 136.

[11] The ECSC-Treaty was signed on April 18, 1951.

and the French government would not reveal that the release was the result of an initiative by the FRG-government, but rather characterize it as an ad-hoc initiative of the French government to eliminate injustices. Third, the French government would explore how these releases could be characterized as originating in judicial rather than executive branch.[12]

In his regular meetings with the Allied High Commissioners in Bonn, Chancellor Adenauer followed a similar line of arguments when he attempted to impress the West German view on French war crimes trials on the French High Commissioner André François-Poncet. Adenauer asked Poncet to end extraditions of Germans accused of war criminals to France because "the German public, understandably, does not comprehend why a full five years after the conclusion of the war people are still being arrested and extradited to France [...]." François-Poncet, who himself was persecuted and imprisoned by Nazi Germany, defended the French position energetically: "Herr *Bundeskanzler* has said that the public opinion was united in rejecting extradition. That is because public opinion assumes, or one led them to believe, that these people are choirboys, who became victims of the malignity of the French. In reality, these people were only arrested because they have committed the most egregious crimes, blood and thunder. Someone must remind [the Germans] from time to time, that unfortunately, war crimes are not a fabrication." [13]

Despite François-Poncet's forceful rebuttal, the strategy of the West German government to cite the public opinion proved effective. For example, the French

[12] In July of 1951, three months after the signing of the ECSC-Treaty, over 200 German war criminals were released from French prisons

[13] Minutes of the meetings between Adenauer and the Allied High Commissioners, 16 November 1950, PA AA, B2/184.

Foreign Ministry, informed by the French High Commission, was alarmed about the increasing intensity of the public discourse on French policy toward Germans who had been suspects or convicted of war crimes. Schuman convinced his colleague René Mayer, the Minister of Justice, that the West German "press campaign is erupting, pushing for a transfer of the trials from French to German tribunals." Schuman concluded, "only a rapid conclusion of the trials might prevent that the [press] campaign [against French justice] would be received with sympathy by the American and British occupation authorities, who are interested in announcing an end to the prosecution of war crimes as soon as possible."[14]

For Schuman, as his memo to Pleven indicated in September of 1949 already, the price for reconciliation with West Germany was a change of French war crimes justice as practiced prior to the foundation of the Federal Republic and his famous declaration of May 9, 1950. For Schuman, the reversal from a victim-centered retributive policy of justice to a perpetrator-centered reconciliatory policy of justice arose naturally from the redefined relationship between France and West Germany. Schuman understood that the traditional path towards a reconciliation between former enemies had been the famous Westphalian "blessed act of oblivion,"[15] and he realized early on that his policy of European integration based on Franco-German reconciliation would essentially force France to revert course and adopt the traditional

[14] Ministre des Affaires Étrangères to Garde des Sceaux, dated 19. January 1951, in: AN Pierrefitte, BB/18/7222; The Justice Ministry forwarded Schuman's letter to the Minister of Defense, commenting that "this campaign appears to impress the American authorities." See M. Turquey to M. le Ministre de la Défense, dated 22. January 1951, ibid.

[15] Winston Churchill referred to this traditional solution to conflicts in his 1947 Zurich Speech. See Marco Duranti " 'A Blessed Act of Oblivion' – Human Rights, European Unity and Postwar Reconciliation," in: Birgit Schwelling (ed.), *Reconciliation, Civil Society, and the Politics of Memory. Transnational Initiatives in the 20th and 21st Century* (Bielefeld: Transcript Verlag, 2012), p. 116.

amnesia and amnesty approach to past crimes committed by the former enemy. What he did not take into account was the fundamentally different nature of the crimes, which caused a wholly different set of principles to arise, such as the concept of crime against humanity.

Furthermore, François-Poncet reported from Bonn that the West German government actively sought to hamper the efforts of his country to bring those suspected of having committed crimes to trial in France. In a circular to his government, he reported that the Central Legal Protection Office (ZRS) in the FRG Foreign Office asked the major media outlets to refrain from mentioning by name those Germans who had been sentenced in absentia, an obvious effort to prevent readers from reporting the whereabouts of these in absence convicted war criminals to French authorities. In an internal memo, the French Justice Ministry reflected that François-Poncet's report "provides evidence for the intent of the Germans to shield their citizens from justice for war crimes in France."[16]

The disconnect between the notions of justice was profound. What the French called "shielding Germans from justice for war crimes," the West German government considered protecting their citizens from a "political justice" in France. To further understand these competing notions of justice, the next section will focus on a controversy generated by the Natzweiler-Struthof trial in 1954.

[16] Memorandum by G. Chevalier (Ministère de la Justice), dated 3. July 1953, in: AN Pierrefitte, BB/18/7222.

The Trial of the Natzweiler Perpetrators in France - A Franco-German Controversy

The Natzweiler-Struthof Concentration Camp, apart from being the only Nazi-run[17] Concentration Camp with a working gas chamber on French soil,[18] assumed symbolic status for the French resistance because most of its members who were arrested under the infamous *Nacht und Nebel Befehl* were deported to Natzweiler-Struthof. The Foreign Office in Bonn had been well aware of the optics of a trial where exclusively German perpetrators faced mainly French victim-witnesses, many of them former members of the resistance. The German Mission in Paris, which sent Dr. Gutmann as its official observer to the tribunal, warned the Foreign Office in Bonn about the impact on the French perception on West Germany: "the detailed reporting on the [trial in Metz] in the Parisian press […] left a perception which is not beneficial to [the foreign policy of] Germany, even though the reporting remains accurate, generally speaking."[19] The Foreign Office thus concluded that the Natzweiler Trial "assumed a special, burdensome significance for Franco-German relations[...]."[20] Yet again, the trial coincided with a critical phase of European integration. In the summer of 1954, the French National Assembly debated the ratification of the Treaty on the

[17] Natzweiler was overseen by the S.S.- Main Economic and Administrative Office or SS-WVHA (*SS-Wirtschaftsverwaltungshauptamt*).
[18] Natzweiler is located in Lorraine. From 1940-1945, it was *de-facto* annexed by Nazi Germany. The annexation was not part of the Franco-German armistice agreement from June 22, 1940. The Vichy government protested the annexation and never formally agreed to it, thus explaining the postwar French attitude that it never ceased to be part of France. See Lothar Kettenacker, "L'attitude du gouvernement de Vichy face à l'annexion de fait de l'Alsace-Lorraine durant la Seconde Guerre mondiale," in: *Revue d'Alsace* 132 (2006), p. 319-335.
[19] See cable from German Mission in Paris to Foreign Office Bonn, entitled "Presse-Bericht für die Zeit vom 23. Juni bis 6. Juli 1954," dated July 7, 1954, in: BA Koblenz, B305/363.
[20] Dr. Born, Auswärtiges Amt: "diesem Prozess [kommt] eine besondere, das deutsch-französische Verhältnis belastende Bedeutung zu [...]." See letter from Dr. Born (Abteilung 2/20, Foreign Office Bonn) to Herr Dr. Brückner, entitled "Aufzeichnung Betr.: Ladung der deutschen Staatsangehörigen Anton Golewe und Josef Thielen (beide aus Aachen) vor das Militärgericht in Metz," dated 25. June 1954, in: BA Koblenz, B305/363 (Prozess Struthof Akte 1).

European Defense Community. In fact, the Foreign Office warned the West German delegation at the Interim Committee of the EDC[21] about the opening of the Natzweiler Trial and its potential impact on French public opinion.[22]

However, the Natzweiler Trial also went far and beyond the mere refocusing of the attention of the French public on the horrendous crimes committed by the Nazis on French soil. It also exposed the profound rejection of French judicial reckoning by high-ranking members of the West German government, who shared the view of large parts of the West German public in the era of "amnesty hysteria" that it was an example of vengeance and political justice, not the proper rule of law. The open conflict precipitated by the West German rejection of French policy escalated to a diplomatic crisis which could only be tempered by an intervention from Adenauer himself.

The Natzweiler-Struthof Concentration Camp had been established in 1941 on a north slope at an elevation of 750 meters in the Vosges-mountains in the de-facto annexed territory of Alsace-Lorraine. It was under the control of the *Inspektor der Konzentrationslager* and therefore constituted the only Nazi-run concentration camp on French soil.[23] Until its evacuation in September of 1944, approximately 52 000

[21] The Interim Committee of the EDC was set up in June of 1952, after the signing of the EDC Treaty but before the ratification by all member states [the French National Assembly rejected ratification on August 30, 1954], to proceed with the organizational planning for a European Army so that it could be set up quickly after the ratification of the treaty by all member states. See Florian Seiller, *Rüstungsintegration. Frankreich, die Bundesrepublik und die Europäische Verteidigungsgemeinschaft 1950-1954* (Berlin: De Gruyter Oldenbourg, 2015), 423ff.

[22] Letter from Foreign Office Bonn to "Deutsche Delegation beim Interimsausschuss für die Organisation der Europäischen Verteidigungsgemeinschaft -Paris," dated 25. May 1954, in: BA Koblenz B305/363 (Prozess Struthof Akte 1).

[23] While camp Vorbruck-Schirmeck was also situated on French soil, it was never a concentration camp run by the SS-WVHA. Furthermore Natzweiler-Struthof and Vorbruck-Schirmeck were not only administratively different. While Vorbruck-Schirmeck almost exclusively served as a place of

prisoners had been incarcerated at Natzweiler, and between 19 000 to 20 000 died in the camp and its subcamps.[24] The SS-guards under the leadership of the commandant carried out a wide range of atrocities, including mass hangings and mass shootings, and gassings in the camp's gas chamber. Frequent punishments including the pillorying at the camp gate, the withholding of food, transferal to the punishment battalion, public whipping, and imprisonment in the bunker. [25]

Among the most infamous crimes committed at Natzweiler ranks the murder of 142 members of the French resistance in the night from September 1st to the 2nd, 1944, immediately preceding the evacuation of the camp. The camp had also been the site of lethal medical experiments conducted by scientists affiliated with the "Reichsuniversität Straßburg," including the infamous gassing of 82 Jews for the purpose of serving as specimens for Professor August Hirt's "skeleton collection of foreign races."[26]

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incarceration for Alsatians and Lorrainians, they only comprised a small fraction of the inmates at Natzweiler. Out of Natzweiler's 52,000 prisoners, only 230 came from Alsace and 810 from Lorraine.

[24] Robert Steegmann – "Natzweiler – Stammlager" in Wolfgang Benz and Barbara Distel (eds.), *Der Ort des Terrors. Geschichte der nationalsozialistischen Konzentrationslager* (Munich: C. H. Beck, 2007), p. 43. While French nationals made up the largest national group, they only accounted for 43% of the prisoner population (including Alsatians and Lorrainers), followed by 14% Poles, 12% Soviets, and 7% Reich-Germans. A total of 20% of the prisoners at Natzweiler were Jewish. A significant percentage of the prisoners, approximately 24%, had been detained under the infamous "Nacht-und-Nebel" decree [NN]. Natzweiler served as the main place of incarceration for NN-prisoners, since an order from September 1943 issued by the Reich Security Main Office stipulated that all NN prisoners were to be detained at Natzweiler.

Durin its three years of existence before its evacuation in September 1944, the camp was directed by four commanders: the SS-officers Hans Hüttig (May 1941 to January 1942), Egon Zill (February 1942 to October 1942), Josef Kramer (November 192 to May 1944), Fritz Hartjenstein (May 1944 – February 1945). The "Kommandant des Konzentrationslagers" was in charge of approximately 200 SS-troops who served as camp guards.

[25] Ibid., p. 37.

[26] August Hirt, unbeknownst to the French prosecution until the late 1950s, committed suicide shortly after the end of the war. He was tried *in absentia* in a trial separate from the Natzweiler-Struthof trials, as were the crimes of Strasbourg-University professors Bickenbach and Haagen. See the 1994 study of the department of medicine at the former *Reichsuniversität Strassburg*: Patrick Wechsler, *La Faculté de Medecine de la "Reichsuniversität Straßburg" (1941–1945) a l'heure nationale-socialiste* (Strasbourg: Dissertation, Université de Strasbourg, 1991).

In September of 1944, as the front drew closer, the SS evacuated the camp, although a few prisoners remained at the camp until November 22, 1944. On November 23, 1944, the U.S. Army entered the camp grounds which were then totally void of any living human beings, making Natzweiler the first concentration camp liberated by any of the Western Allies.

The French Research Service for Enemy War Crimes (SRCGE) began investigating those responsible for the crimes committed at Natzweiler shortly after the liberation of the camp. Yet more than a decade elapsed before the culprits came face to face to their judges when the trial opened in June of 1954 in front of the Metz military tribunal.[27]

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[27] Why did it take such a long time before the victims of the crimes received a chance for justice? First, for reasons external to the French justice system, and second, due to the nature of the administration of justice in France.
Regarding first point, the nature of the crime precipitated a complex and lengthy investigation requiring the cooperation of numerous domestic and foreign entities. The over 200 camp guards and camp functionaries had to be identified and located, and since all of those 86 former concentration camp officials whose identification was successful had been of "Reich-German" citizenship, they needed to be located across the Rhine among millions of POWs in Allied custody and the French justice required the cooperation of the three Allied Occupation authorities in Germany. The French justice administration had to initiate extradition procedures, gather evidence to substantiate the accusations, locate witnesses and record their testimonies. Altogether, to substantiate the crimes committed by the 86 accused, the French prosecution heard 2000 witnesses from various countries, including France, Germany, Yugoslavia, Czechoslovakia, Norway, Belgium, Luxembourg and the Netherlands – a reflection of the diverse national origins of the camp's prisoner population. After more than five years of preliminary investigations, on March 6, 1950, the French prosecution asked for the opening of a trial of the Natzweiler perpetrators. However, it took another half-decade before the judges finally opened the first trial days – and this for reasons intrinsic to the French judicial system. The length of time the German war criminals spent in French court system, from pre-trial investigation, through the multiple levels of jurisdictions until a final verdict had exceeded in many cases a decade, and exposed the French justice system to criticism. The ICRC delegate in France complained in 1950 already that "I know that the justice system in general operates slowly, but it appears to me that the French judges are way ahead of the pack in this contest."
While the ICRC-delegate placed the onus for the delays squarely on the French judges, the case of the Natzweiler perpetrators showed a more complex reality. The unprecedented nature of the crimes in combination with a country in transition from dictatorship to democracy precipitated a quest for justice prone to logistical, institutional legal and even financial challenges. Furthermore, the fact that French lawmakers crafted two laws specifically for the purpose of prosecuting Nazi war crimes in France exposed the prosecution to legal challenges since the application of these laws in court led invariable to inconsistencies and errors which had to be reviewed by superior courts. Moreover, the defense of the German suspects as well as the convicted war criminals had been well financed, first by the ICRC and

The Metz tribunal consisted of six judges in the ranks of two generals and four colonels and was presided by *Conseillier* Franck. On the first day of the trial, June 15, 1954, the prosecution read out loud the indictment of 100 pages, "a long and horrible list of thousands of inhuman acts perpetrated at this death camp, where in the midst of the savage sites, the chimney of the crematory for three full years launched its column of black smoke into the sky."[28] The court was scheduled to meet six days a week for three weeks. The questioning of defendants commenced immediately after the reading of the indictment, beginning with the two commandants Hans Hüttig and

later by the West German government with millions of French Francs. And since time always worked in favor of the defendants, they had very little incentive to accept a lower court ruling but utilized all tools available for a delay. The Natzweiler trial, for instance, was delayed for years because the defense attorneys employed the most common delay tactic: they challenged the jurisdiction of the court. In March 1950, the prosecution asked the Colmar Court of Appeals to open trial proceedings against the accused. However, in June of 1951, after examining the case, the Colmar court transferred authority over to the Metz Military Tribunal, which was responsible for judging war crimes committed in its military district – including Natzweiler. According to the *Code de la Justice Militaire*, crimes which had been committed in a specific place were to be judged at the seat of the Military Tribunal which held constituency over the place. Only in cases where a crime could not be tied to a specific location, or when the crime had been committed in multiple locations across France, the case would be tried in front of the Parisian Military Tribunal. The defense attorneys referred to the latter exception when appealing the Colmar decision to transfer the case to the Metz Military Tribunal in order to have the Paris Military Tribunal try their case. The motivation is presumably twofold: the defense knew that delaying the case would work in their favor. The defense rightly hoped that the budding Franco-German reconciliation would also prove to be beneficial to the defendants. Second, moving the trial away from Metz to Paris was also connected with the hope to receive a less passionate audience, which then would translate into a more lenient sentence since the judges would not be swayed by the hostile audience. Metz, in its relative proximity to the place of the crime, would almost certainly guarantee a passionate crowd hostile to the defendants.
The Cour d'Appel annulled its earlier decision on July 3, 1952, and threw the question where the case was to be tried to the Supreme Court in Paris. The latter court ruled a year later, on July 30, 1953, that the Metz Military Tribunal was indeed competent for crimes committed at Natzweiler. The defendants tried to appeal this decision yet again, which France's highest court rejected in January of 1954, paving the way for the opening of the trial at Metz on June 15, 1954, almost a decade after the evacuation of the camp. See Jean-Laurent Vonau, *Profession Bourreau. Struthof Schirmeck. Les Gardiens face à leurs juges*, p.21; Letter of Jean-Pierre Maunoir to Jacques Vernet, dated November 13, 1950, ACICR D EUR France1-0725. In this particular instance, Maunoir complained that there were delays exceeding a year before French magistrates examined petitions for pardons. He inquired with Vernet to find out about the delays in Switzerland.

[28] *Dernières Nouvelles d'Alsace*, 16. June 1954.

Franz Hartjenstein. 120 witnesses had been summoned to testify in front of the court.[29]

The summoning of two of these 120 witnesses served as a lightning rod for the resentments in the West German administration concerning French policy regarding Nazi crimes. Since two witnesses resided in Aachen in West Germany, the French authorities requested support from the local state administration in summoning the witnesses to testify at the trial in Metz.[30] The authorities in North Rhine-Westphalia asked the German Federal Justice Ministry for their opinion, which turned to the Central Legal Protection Office (ZRS) at the Foreign Office for advice. On May 20, 1954, a month before the opening of the trial at Metz, the Federal Justice Ministry argued

> [s]ince the trial for which legal assistance was requested is pending before the military tribunal in Metz, there is a likelihood that the subject-matter of the proceedings will constitute a political offense or an offense connected with a political offense. For political criminal cases, however, we do not offer currently any legal assistance[...][31]

The essence of this assessment was a bombshell. The FRG government regarded the Metz trial of the crimes committed at Natzweiler a political trial.

[29] Jean-Marc Théolleyre, "Le procès des gardiens du camp du Struthof s'ouvrira mardi devant les juges militaires de Metz," in *Le Monde*, 12. June 1954.
[30] The two witnesses were Anton Golewe and Joseph Thielen, both from Aachen.
[31] Memorandum by Dr. Grützner, Federal Ministry of Justice, to Hans Gawlik, director of ZRS in the Foreign Office, dated May 20, 1954, in: BA Koblenz, B305/363; "Da das Verfahren, in dem um Rechtshilfe gebeten wird, vor dem Militärgericht in Metz anhängig ist, besteht die Wahrscheinlichkeit, dass Gegenstand des Verfahrens eine politische Straftat oder eine mit einer politischen Straftat im Zusammenhang stehende Tat bildet. Für politische Strafsachen wird jedoch z.Zt. noch keine Rechtshilfe geleistet[...]."

Therefore, it concluded, letters rogatory[32] could not be executed in support of a 'political trial.'

However, the responsible undersecretary [Ministerialrat] in the Justice Ministry, Dr. Heinrich Grützner, argued that an exception from this rule could be made if " the testimony of the witnesses Golewe and Thielen [in Metz] can serve the exculpation of the [...] accused."[33] In this case, "we should find a way to inform the witnesses about the date of the trial and call upon them to comply with the request."[34] The Federal Justice Ministry was thus willing to bend the rules, which prohibited the execution of letters rogatory in support of what it thought to be a political trial, if the witnesses were supporting the defense of the concentration camp personnel, among them two former commandants and the head of the execution unit. The Federal government, the Foreign Office and the Justice Ministry had been made aware of the nature of the crimes which the suspects were standing trial for at Metz. A report shared with the Foreign Office weeks before the trial stated that the suspects were accused of having "systematically killed by shooting, hanging and gassing" and having committed "ongoing systematic abuse in numerous cases." [35] Gawlik warned his superior, Dr. Born [the head of „Referat 204" which was responsible for France

[32] Letters rogatory are a formal request for judicial assistance in support of a foreign trial or investigation.
[33] Ibid.; an exception could be made only if "die Vernehmung der Zeugen Golewe und Thielen in der Hauptverhandlung des Militärgerichts am 25.6.1954 zur Entlastung der bisher noch nicht bekannten Angeklagten dienen kann."
[34] Ibid.; if the witnesses were to support the defense of the suspects "[m]üsste ein Weg gefunden werden, den Zeugen Kenntnis von dem Hauptverhandlungstermin zu geben und sie aufzufordern, dem Ersuchen [...]nachzukommen."
[35] On April 9, 1954, the Central Legal Protection Office informed the Foreign Office about the upcoming trial proceedings at Metz and provided a complete list of the suspects including their role at Natzweiler [e.g. "Franz Ehrmannstraut [sic], SS-Unterscharführer, Blockführer und Hundeführer [dog handler]." See memorandum by Hans Gawlik to Foreign Office Referat 204, dated April 9, 1954, in: BA Koblenz B305/363.

and the Benelux countries] in the Foreign Office that "In the trial, [...] all the atrocities committed in the concentration camps will come up once again before the court." Dr. Born forwarded the warnings all the way to the top of the Foreign Office to Blankenhorn and Walter Hallstein.[36] This was the trial the West German Justice Ministry (Bundesministerium für Justiz) called "political" and for which it was only prepared to execute the summons if the witnesses were to testify in favor of the suspects.

After an internal review of all documentation regarding defense witness, the Central Legal Protection Office (ZRS) declared that the two residents of Aachen "were summoned as witnesses for the prosecution" and that the office was therefore unable "to inform the witnesses of the trial date and to ask them to comply with the request to appear for the trial."[37] The ZRS again showed evidence that the constituent element of its raison d'être was the shielding from justice of West Germans suspected of having committed war crimes. Moreover, the Justice Ministry estimated that the defendants in the Natzweiler Trial in front of the Metz Military Tribunal were to be tried for a "political crime or an act related to a political crime."[38] These two

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[36] See memorandum of Dr. Born to Botschafter Blankenhorn and Staatssekretär Walter Hallstein, entitled "Kriegsverbrecherfragen in Frankreich; hier: Prozess gegen frühere Angehörige des Lagerpersonals der Konzentrationslagergruppe Struthof/Natzweiler," dated May 18, 1954, in: BA Koblenz B305/363. Since Adenauer himself held the office of Foreign Minister in personal union with the office of chancellor, Walter Hallstein as Staatssekretär was according to Thomas Maullucci the *de facto* Foreign Minister in all but name. See Thomas Maullucci, *Adenauer's Foreign Office: West German Diplomacy in the Shadow of the Third Reich* (DeKalb,IL: Northern Illinois University Press, 2012), p. 208.

[37] Letter from Dr. Gawlik (ZRS) to Bundesminister der Justiz, entitled "Ladung der deutschen Staatsangehörigen Anton Golewe und Joseph Thielen, beide aus Aachen, vor das Militärgericht in METZ," dated May 22, 1954, in BA Koblenz, B305/363; "den Zeugen Kenntnis von dem Hauptverhandlungstermin zu geben und sie aufzufordern, dem Ersuchen, zur Hauptverhandlung zu erscheinen, nachzukommen."

[38] Memorandum by Dr. Grützner, Federal Ministry of Justice, to Hans Gawlik, director of ZRS in the Foreign Office, dated May 20, 1954, in: BA Koblenz, B305/363.

elements, the fact that the witnesses in question were supporting the prosecution and not the defense, and the fact that the defendants at the Natzweiler Trial were supposedly charged for a "political crime," motivated the Foreign Office to deny the French request to assist in the summons of the witnesses.

The Foreign Office announced the denial in a letter to the French High Commission in Bonn: "The Federal government is not in the position to execute the letters rogatory, because […] the charge is based on political crime or an act related to a political crime."[39] This determination reflects the conclusion that the FRG government regarded this particular trial, and by extension French war crimes trials as a whole, as political. This determination is even more remarkable because the trial in question did not involve soldiers "obeying orders", the characterization of the war crimes trials that the German public saw as victor's justice. Rather, the defendants were SS officers running a concentration camp where an estimated 22.000 inmates were killed.

In what the Foreign Office described as a "harsh letter" which he personally handed to Adenauer,[40] the French High Commissioner Francois-Poncet ignored diplomatic niceties and vigorously protested against the position of the FRG. Addressing Adenauer directly, Poncet stated:

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[39] Letter from Foreign Office to French High Commission, dated June 18, 1954, in: BA Koblenz, B305/363.

[40] The responsible officer von Trützschler explained in a letter to Walter Hallstein that "[b]ei einem Zusammentreffen mit dem Herrn Bundeskanzler übergab der französische Hohe Kommissar François-Poncet Anfang der Woche eine recht scharf gehaltene Note [...]," in: letter from Heinz von Trützschler to Staatssekretär [Walter Hallstein], entitled "Aufzeichung, Ladung der deutschen Staatsangehörigen Anton Golewe und Josef Thieleb, beide aus Aachen, vor das Militärgericht in Metz," dated June 25, 1954, in: BA Koblenz, B305/363.

> I cannot hide my amazement that the office responsible for the foreign policy of the Federal Republic could issue such a judgment regarding the conduct of the leaders of Struthof concentration camp…. When this position will have been communicated to my government and to the French public, it will surely give the impression that, by calling the crimes, which have been condemned by the consciousness of humanity, political acts, the officials of the Foreign Office are working to exonerate their perpetrators.

Poncet's statement also includes a defense of the French notion of justice:

> The beatings, the killings, the almost unbelievable torture, which caused the indignation of the whole world, are punishable under the category of common penal law. It is for this reason that the Struthof camp torturers are to be held accountable before a regular court, to be judged fairly based on all the information at its disposal.[41]

The understanding of French justice put forward here by Poncet captures the concept of postwar allied justice since Nuremberg: holding the perpetrators accountable for the most horrendous crimes imaginable. His condemnation of the decision of the Foreign Office suggests the limits of tolerance that French officials had for the German redrawing of postwar justice.[42]

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[41] Letter of French High Commissioner François-Poncet to Federal Chancellor Adenauer, dated June 22, 1954, in: BA Koblenz, B305/363;
"Je ne puis vous cacher ma stupéfaction qu'un service responsable de la politique étrangère de la République Fédérale puisse porter un pareil jugement sur la conduite des chefs du camp de concentration du Struthof. Les brutalités, les exécutions, les tortures presque incroyables, dont ceux-ci se sont rendus coupables et qui ont soulevé l'indignation du monde entier, relèvent de la catégorie des crimes de droit commun. C'est à ce titre que les tortionnaires du camp du Struthof ont à en rendre compte devant un Tribunal régulier, jugeant en toute équité, et qui s'entoure de tous les éléments d'information dont il peut disposer. La réponse de l'Office des Affaires Étrangères, lorsqu'elle sera connue de mon gouvernement et de l'opinion française, produira, à coup sûr, l'effet le plus regrettable. Elle ne manquera pas d'éveiller l'impression qu'en qualifiant d'actes politiques des crimes réprouvés pas la conscience universelle, les fonctionnaires de l'Office des Affaires Étrangères s'emploient à disculper leurs auteurs et s'efforcent de contribuer à assurer leur impunité."

[42] This exchange between Poncet and Adenauer has not been published. While Poncet's role as a constant critic of West German memory politics has been discussed in scholarship (see for instance Hans Manfred Bock, "Andre Francois-Poncet, Des vieux démons et vertus de l'Allemagne," in: *Magazine Litteraire* (Numero 359), Novembre 1997, p. 51.) the role of Poncet as a mediator of German expectations regarding a French revision of justice policy has not been brought to light. Poncet

Adenauer recognized the sensitivity of the issue immediately. Especially Poncet's threat[43] to communicate the content of the letter to the French public could, if not destroy the reconciliation efforts of his entire chancellorship, derail them significantly. He spoke with Poncet the very same day and agreed to have his government assist the French government in summoning the witnesses, which ocurred on June 24, within 48 hours of Poncet's letter. [44] In order to blunt any efforts to publish the letter, he asked Poncet to "consider [the letter of the Foreign Office] unwritten."[45] The French press did indeed receive information about the attempt of the West German government to prevent the witnesses from testifying. During the Natzweiler Trial, *Libération*[46] reported that the West German government "held back German witnesses, which had become a threat to the defendants in the trial." The

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showed enormous leniency when it came to pardons and the premature release of war criminals held by France in West Germany, yet he was very concerned about the implication of the release and drew a firm line when it came to amnesty. Brochhagen, in passing, mentioned Poncet's protest concerning the conviction of Robert Ernst for war crimes, yet he did not describe Poncet as an important facilitator of Franco-German rapprochement who showed Adenauer and the West German government the limits of French willingness to revise justice policy. Brochhagen provided the following letter of Poncet to Adenauer: "Ich finde es ebenso wünschenswert wie Sie, Dinge aus der Welt zu schaffen, die uns an eine Epoche erinnern, die wir alle zu vergessen hoffen.[...] Das Bedürfnis einen Strich unter die Vergangenheit zu ziehen, darf uns darüber hinaus nicht veranlassen, den Urhebern strafbarer Handlungen, die bis heute die deutsch- französischen Beziehungen noch aufs schwerste Belasten, Absolution zu erteilen, ohne dass die Justiz ihren Lauf nimmt." See Ulrich Brochhagen*, Nach Nürnberg*, p. 147.

[43] The Foreign Office indeed characterized this as a threat and took it seriously. In a letter to Hallstein, von Trützschler proposed language in a draft of a planned response by Adenauer which would prevent Poncet from publishing the Foreign Office's opinion on the Metz trial as a "political act."See letter from Heinz von Trützschler to Staatsekretär [Walter Hallstein], entitled "Vermerk, dated June 25, 1954, in: BA Koblenz, B305/363.

[44] Memorandum (Foreign Office), dated June 25,1954, in: BA Koblenz, B305/363.

[45] Letter from Chancellor Adenauer to French High Commissioner François-Poncet, dated June 28, 1954, in: BA Koblenz, B305/363; The French press did indeed receive information about the case in general terms. During the Natzweiler Trial, *Libération* reported that the West German government "held back German witnesses, which had become a threat to the defendants in the trial."

[46] *Libération* was a newspaper founded clandestinely by Communist-leaning ("fellow traveler") Emmanuel d'Astier de La Vigerie in 1941. After reaching the peak of over 200,000 in the late 1940s, it entered a phase of long decline and ceased publication in 1963. In 1973, Jean-Paul Sartre and Serge July named their newly founded newspaper *Libération* to claim the tradition of d'Astier's 1941 publication.

West German government's press office (*Informations- und Pressedienst*) simply discredited the report by pointing out that the newspaper was "communist."[47]

However, even after Poncet's forceful intervention and Adenauer's conciliatory response, internal correspondence of the Justice Department and Foreign Office revealed that they continued to believe in their decision to refuse to assist the French government in summoning the witnesses and that they concurred only because "of the special, burdensome meaning of the trial for Franco-German relations."[48] After Poncet's letter to Adenauer, representatives from the Federal Justice Ministry and the Foreign Office met and discussed the incident and concluded that "in light of the political importance of the trial, we regret the explanation for the rejection [...] of the request."[49] However, the Federal Justice Ministry especially continued to doubt the legality of the West German assistance in enforcing the French the summons[50] and the Foreign Office tirelessly reminded Walter Hallstein, the *de facto* Foreign Minister, that "we certainly could state well founded legal arguments for the point-of-view originally held by the Justice Ministry."[51]

Finally, the Foreign Office's solution to the crisis precipitated by the summons of the Natzweiler witnesses also speaks volumes about the attitude of the

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[47] See Informations- und Pressedienst, "Inf. 88/54," dated August 6, 1954, in BAK 305/363.
[48] Memorandum written by Heinz von Trützschler to Staatssekretär [Walter Hallstein], entitled "Aufzeichnung: Ladung der deutschen Staatsangehörigen Anton Golewe und Josef Thielen, beide aus Aachen, vor das Militärgericht in Metz," dated June 25, 1954, in: BA Koblenz B305/363; "diesem Prozess [kommt] eine besondere, das deutsch-französische Verhältnis belastende Bedeutung zu."
[49] Ibid.; "im Hinblick auf die politische Bedeutung des Verfahrens wurde die Begründung der in der Note non Abteilung 5 an die französische Hohe Kommission übermittelten Ablehnung des Zustellungsersuchens bedauert."
[50] Ibid.; "Dr. Grützner vom Bundesjustizministerium [hat] gewisse rechtliche Bedenken wegen der Zustellung geltend gemacht."
[51] Heinz von Trützschler to Walter Hallstein, "Vermerk," dated June 25, 1954, BA Koblenz B305/363; "sich gewiss gute juristische Argumente für die ursprünglich eingenommene Haltung des Justizministeriums angeben lassen würden."

upper echelons in the West German bureaucracy regarding French war crimes policies. The Foreign Office encouraged the authority which executed the summons to "inform the witnesses in a confidential conversation [...] 'dutifully' that they will not be prosecuted if they missed the court appointment [in Metz.]"[52] The results of this "dutiful" conversation with the two witnesses have also been recorded: only one of the two witnesses was willing to travel to Metz and attend the tribunal.[53] All this occurred simultaneously while the Foreign Ministry drafted a note to assure François-Poncet that West Germany agreed with his position that "everything should be done to support the establishment of the truth about crimes against life and crimes against humanity."[54] Despite this assurance, the Federal Justice Ministry and the Foreign Office continued to obstruct this "establishment of the truth" at every turn.[55]

In conclusion, despite the fact that the Natzweiler-Struthof-Trial sought the establishment of the truth regarding those responsible for the murder of at least 22000 persons, the discourse and actions of the Foreign Office and the Federal Justice Ministry impeded French efforts to conduct a trial about the crimes committed at the Natzweiler camp.

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[52] Memorandum written by Heinz von Trützschler to Legationsrat Brückner, entitled "Aufzeichnung: Ladung der deutschen Staatsangehörigen Anton Golewe und Josef Thielen, beide aus Aachen, vor das Militärgericht in Metz," dated June 25, 1954, BA Koblenz, B305/363.

[53] Anton Golewe told West German authorities that he was not planning to attend as a witness. See memorandum written by Berger (Abteilung 5 - Rechtsabteilung) to Staatsekretär (Hallstein), entitled "Aufzeichnung betr. Note des Französischen Botschafters bezüglich der Zeugenladung für das Strafverfahren in Metz gegen ehemaliges Personal des Konzentrationslagers Struthof," dated June 23, 1954, in: BA Koblenz, B305/363.

[54] Memorandum written by Heinz von Trützschler and presented to Staatsekretär Hallstein, entitled "Vermerk," dated June 25, 1954; BA Koblenz, B305/363. The final version of the Adenauer letter to Poncet did not include this passage; "alles geschehen sollte, um die Wahrheitsfindung bei Verbrechen gegen das Leben und die Menschlichkeit zu erleichtern."

[55] The affair stretches from March to July of 1954.

The first important conclusion from the affair was the apparent double-standard of the West German government which became obvious in the process. Initially, the Federal Justice Ministry showed itself prepared to assist the French summons in case the witnesses supported the defense of concentration camp personnel. The bureaucracy only began to oppose the French request when the ZRS informed the justice ministry that Golewe and Thielen, who was incarcerated at Natzweiler,[56] were called as witnesses of the prosecution.

Second, the internal correspondence within the government revealed that even in the wake of a French intervention on the highest level of government, with the chancellor himself, the government did not cease the obstruction completely. In many ways, the Federal government carried out the orders to assist the French summons in bad faith. While the Federal justice ministry executed the summons, it ensured that the witnesses had little incentive to obey the order. The third conclusion from this case which stretched from March through June of 1954, was the general attitude of the Federal government towards the French war crimes trials based on the ordinance of 1944. The Justice Ministry justification for the denial of the request based on the sole fact that the Natzweiler-Struthof trial was to be held at a military tribunal and that it was therefore likely that the suspects were charged with a "political crime" was evidence that the West German government was denying the legitimacy of French justice vis-à-vis the Nazi criminals *in toto*, since the ordinance of 1944 stipulated that

[56] Josef Thielen appears in the prisoner registry of Natzweiler concentration camp. He was deported to Natzweiler on March 14, 1942, and received prisoner number 918. The camp personnel recorded his status as "Schutzhäftling" (protective custody prisoner), which provides very little information about the actual reason for his incarceration. Thielen was also said to be willing to travel to Metz and serve as a witness for the prosecution, while Golewe was said to refuse to cooperate in the prosecution. I have found no other information about Anton Golewe.

all French trials of Germans accused of having committed war crimes fell under the jurisdiction of the military tribunals.

Finally, the case emphasized that for many in the Federal government, the improvement of Franco-German relation was motivated just as much by the desire to secure the release of the Germans war criminals in France as by genuine support to end the "arch-enmity." For instance, the second in command at the *Politische Abteilung* in the Foreign Office, Heinz von Trützschler,[57] who was ex-officio interested to calm the French anger, not because of a concern for Franco-German reconciliation, but primarily because "we expect that in the Struthof trial death sentences will be handed down again; we will then have to endeavor to prevent the execution of death sentences. In addition, in the next few months, the French President has to decide on requests for commutations in other cases where the death sentences have already become final."[58]

Von Trützschler also epitomized the revisionist agenda prevalent in the Federal bureaucracy in the 1950s – a bureaucracy with deep personal ties to the Nazi

[57] Heinz von Trützschler had deep roots in the Nazi bureaucracy. He had already been working for the *Politische Abteilung* in Ribbentrop's Foreign Office, where had been an editor for the "Weissbücher" which were disseminated by Nazi Germany's foreign missions across Europe in order to justify the Nazi warfare. See Eckart Conze, Norbert Frei, Peter Hayes, Moshe Zimmermann, *Das Amt und die Vergangenheit. Deutsche Diplomaten im Dritten Reich und in der Bundesrepublik* (München: Karl Blessing Verlag, 2010), p. 627.

[58] Memorandum written by Heinz von Trützschler and presented to Staatsekretär Hallstein, entitled "Vermerk," dated June 25, 1954; BA Koblenz, B305/363; "es ist damit zu rechnen, dass im Struthof-Prozess wieder Todesurteile gefällt werden; wir werden dann bemüht sein müssen, eine Vollstreckung der Todesurteile zu verhindern. Außerdem hat der französische Staatspräsident in den nächsten Monaten über Begnadigungsanträge in einigen anderen Fällen von bereits rechtskräftig gewordenen Todesurteilen zu entscheiden. Schließlich hat Botschafter François-Poncet persönlich die endgültige Entscheidung über die vom deutsch-französischen Gnadenausschuss ausgesprochenen Empfehlungen für Begnadigungen von Gefangenen in Wittlich zu treffen. Gerade in diesen Tagen werden François-Poncet wieder – wie ich vertraulich erfahren habe – fünf derartige Freilassungsanträge vorgelegt werden."

past.[59] Von Trützschler worked quietly behind the scenes to rectify the "wrongs" of the Nuremberg interregnum, by which he had been personally effected. After the unconditional surrender, the diplomat was arrested and subsequently interrogated by Robert Kempner in connection with the Wilhelmstrasse Trial, one of the Nuremberg successor trials. During his interrogation, von Trützschler denied having had any knowledge of the final solution, of Auschwitz[60] and he refused to accept evidence presented to him regarding the Foreign Office's role in the genocide, claiming that neither he nor the Foreign Office wanted "the unleashing of a war or the things with the Jews."[61] After Kempner interjected to ask him who was driving the unleashing of the war and genocide, von Trützschler put the blame squarely on "Hitler and his clique"[62] which was one of the most common defense tactics of the surviving Nazis.

After von Trützschler was acquitted via a 1948 S*pruchkammerverfahren* in Wiesbaden,[63] he rejoined the Foreign Service. When in 1954, the Natzweiler Trial and the ensuing affair regarding the "political" trial reached his desk in Bonn, Trützschler as someone who denied any knowledge of, let alone accept any personal

[59] Historian Manfred Görtemaker and legal scholar Christop Safferling revealed the extent of the continuity between the Nazi and postwar period in the Federal Justice Ministry. Of the 170 jurists in leading positions at the *Bundesjustizministerium* between 1949 and 1973, 90 had been members of the Nazi party and 34 card carrying members of the stormtroopers. 27 or 16% of the postwar personnel in leading positions had previously been working at the Reich Justice Ministry in the Nazi era. See Manfred Görtemaker, Christop Safferling, *Die Akte Rosenburg. Das Bundesministerium der Justiz und die NS-Zeit* (Munich: CH. Beck, 2016), p. 37ff.

[60] Von Trützschler told Kempner that „Ich weiss nicht, ob damals ueberhaupt diese Toetungen durchgeführt sind [...]. Ich muss sagen, dass diese Arten, dass ich von Auschwitz erst nach dem Kriege gehoert habe." See "Vernehmung des Herrn Heinz, Julius, Hugo von Truetzschler am 29. August 1947 durch Dr. R. M. W. Kempner," p. 3, in: Institut für Zeitgeschichte München, ZS 784.

[61] Ibid.; "das Heranführen eines Krieges oder Judendinge."

[62] Ibid., p. 11.

[63] See entry "Heinz Trützschler von Falkenstein" in Internationales Biographisches Archiv 35/1971 vom 23. August 1971n Munzinger Online/Personen - Internationales Biographisches Archiv, URL: http://www.munzinger.de/document/00000006524 (abgerufen von Freie Universität Berlin Universitätsbibliothek am 27.8.2019).

responsibility for the crimes committed by the Nazi regime, seized the chance offered by Franco-German reconciliation and European integration to rehabilitate the German past by working towards the release of the German war criminals in France. Trützschler claimed that only Hitler and his inner circle bore any responsibility, and all others, according to his testimony in 1947, "you got into these things, you know what the atmosphere was like and many things were started in the best faith an then led to coercion. It would have required heroism which not all humans are capable of."[64]

This exculpation of all but the highest echelons of the Nazi leadership captured the sentiment with which von Trützschler and his colleagues at the Foreign Office simultaneously worked towards Franco-German reconciliation and the release of the German war criminals in France, for even the concentration camp personnel who stood trial at Metz, in the minds of Heinz von Trützschler, Edgar Weinhold,[65] and Hans Gawlik[66] were part of the community of victims of Hitler and his clique and deserved to be liberated from French prosecution.

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[64] See "Vernehmung des Herrn Heinz, Julius, Hugo von Truetzschler am 29. August 1947 durch Dr. R. M. W. Kempner," p. 12, in: Institut für Zeitgeschichte München, ZS 784; "sind in diese Dinge hineingekommen, Sie wissen, wie die Atmosphäre war, und viele Dinge wurden im besten Glauben angefangen, die in Zwangssituationen geführt haben. Sie hätten Heroismus erfordert, den nicht alle Menschen besitzen."

[65] The Consular Officer at the German Mission in Paris who was in charge of organizing the legal defense of the German tried for war crimes in France.

[66] Hans Gawlik played an outsize-role in the relationship of West Germany to Allied postwar justice. As the head of the Central Legal Protection Office (ZRS), he presided over a well-founded state-run organization whose goal it was to secure the freedom of all Germans imprisoned for war crimes in foreign custody and to prevent new cases from going to trial. In this course, his organization amassed a veritable treasure trove of an archive about the suspects, the crimes, the indictments, the victims and witnesses which Gawlik refused to share with any prosecutorial agency. Gawlik himself was also deeply implicated by his career in Nazi Germany. Having joined the Nazi part in 1933, he became state prosecutor at the Special Tribunal Breslau where he was charged with prosecuting the political enemies of the Third Reich. See Görtemaker, Christoph Safferling, *Die Akte Rosenburg*, pp. 211ff.

Von Trützschler's 1947 testimony and his subsequent action also evidenced the deeply personnel connection between the premature release of the Nazi war criminals and the rehabilitation of the German past. For Trützschler, Gawlik, and Weinhold, who had all been members of the Nazi bureaucracy, the rehabilitation of the German past in connection which was pursued simultaneously with Franco-German reconciliation also constituted a rehabilitation of their personal professional biographies. In these personal terms, every German war criminal which was liberated from a French prison and returned to a life in freedom in the Federal Republic also meant a confirmation and validation of Trützschler's own biography and his own understanding that everyone except "Hitler's clique" sleepwalked into the Nazi dictatorship, the war, even the genocide, and was therefore not responsible for the crimes they had been accused of after the war.

Franco-German reconciliation was therefore not exclusively a cold-war necessity or an idealistic breakthrough to end the rivalry of two neighbors which caused the death of millions, but also a vehicle which allowed for a partial revision of what Trützschler saw as an injustice: the Allied war crimes trial program. This explained the recalcitrance of the Federal bureaucracy when it came to the execution of the request to serve the summons to the two witnesses Golewe and Thiele, and it also provided the context of the decision to label the Natzweiler-Struthof Trial a trial of a political act. The Justice Ministry and its leadership with deep roots into the Nazi era simply regarded the Germans tried in French courts for war crimes as victims of a political justice.

After the controversy regarding the summons of the two witnesses resolved with the half-hearted execution of the summons to the witnesses and the non-apology by Adenauer to Poncet, the Natzweiler Trial proceedings opened at Metz in June of 1954. Of the 83 persons who were listed in the indictment, the French justice administration could only locate and extradite 21 persons who appeared in front of the court on June 15, 1954. The defense team consisted of 10 French attorneys, among the Albert Eiselé, and four German attorneys. The defense was completely paid for by the Federal government.[67] The German mission in Paris sent consular officer Dr. Guttmann, who had been persecuted by the Nazis,[68] as the official observer of the Federal government. Guttmann reported to Bonn about the trial and recorded the extraordinary contentious atmosphere in the trial, which included a fist

[67] The fees for 5 of the 10 attorneys for just the trial days in Metz amounted to 500.000 French Francs (100.000 FF per attorney). They were also paid a flat fee of 250.000 Francs per attorney for the defense prior to the trial, bringing the total cost for 5 of the 10 attorneys [for which records are extent] to 1.750.000 Francs (this corresponds to approximately 40.000 Euros in 2019 according to the website http://france-inflation.com which takes the two currency conversions which occurred since 1954 into account as well as inflation). Moreover, since the trial had been appealed to the supreme court which ordered a retrial, additional fees were paid for by the Federal Government. According to the extent records, Bonn paid for an additional FF 2.683.530 in attorney fees and expenses, bringing the total amount covered by the Federal Republic for the defense of the Natzweiler Concentration Camp personnel up to 101.144 in 2019 Euros. The Federal Government paid these fees in full. See Letter by Edgar Weinhold, West German Diplomatic Mission in Paris, to Foreign Office in Bonn, entitled "Rechtsschutzsache Gruppenprozess KZ-Struthof, dated January 21, 1955, and letter by Edgar Weinhold, West German Diplomatic Mission in Paris, to Foreign Office in Bonn, entitled "Rechtsschutzsache Gruppenprozess KZ-Struthof, dated July 23, 1954, in: BA Koblenz, 305/363. This apparently caused consternation by the French judges, who were shocked to hear that the Federal Government paid for the defense of infamous perpetrators like Ehrmanntraut. See letter of Walter Hausenstein, head of the German diplomatic mission in Paris, to the Foreign Office in Bonn, entitled "Rechtsschutzsache Gruppenprozess KZ Struthof," dated July 7, 1954; in BA Koblenz, 305/363; also see Edgar Weinhold, "Rechtsschutzsache Gruppenprozess KZ-Struthof-Natzweiler," dated April 19, 1955, in BAK 305/363.

[68] The West German government's press office (Presse- und Informationsdienst) wrote that Dr. Guttmann had been imprisoned by the Nazis in a concentration camp and that FRG authorities officially recognized him as victim of the Nazis ("ein annerkannter Verfolgter des Naziregimes"). See Informations- und Pressedienst, Inf. 88/54, dated August 6, 1954, in BA Koblenz, 305/363.

fight between a witness of the defense, a former inmate, and an a defendant.[69] Dr. Guttmann also reported how the presiding judge, an officer named Franck, received him in his chambers and conducted a warm and lengthy exchange with him, the West German representative, explaining certain actions the tribunal had taken at length. On July 2, 1954, the tribunal handed down the verdict and sentenced six former concentration camp officials to death, [70] the former camp Kommandant Hans Hüttig to forced labor in perpetuity and thirteen other former camp officials to time in prison. Two defendants were acquitted by the tribunal.

The victims of the Natzweiler perpetrators had been anticipating the pronouncement of the verdict in hopes for justice and a sense of closure. However, these hopes were immediately dashed. After the judge pronounced the verdict, the six prisoners who were sentenced to death appealed the verdict and five months later, on December 3, 1954, France's Supreme Court annulled the Metz verdict and ordered a re-trial in front of the Paris Military Tribunal.[71]

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[69] Letter of Walter Hausenstein, head of the German diplomatic mission in Paris, to the Foreign Office in Bonn, entitled "Rechtsschutzsache Gruppenprozess KZ Struthof," dated July 7, 1954; in BA Koblenz, 305/363.

[70] Fritz Hartjenstein, Wolfgang Seuss, Robert Nitsch, Herbert Oehler, Albert Fuchs, Franz Ehrmanntraut. See

[71] The *Cour de Cassation* ruled that the composition of the Metz panel had been not according to the law. The Metz Tribunal applied the procedures of international law when trying POWs for war crimes. To accommodate the rank of Fritz Hartjenstein, who had held the rank of SS-Obersturmbannführer (equivalent of lieutenant colonel), the panel was composed of 4 generals and two colonels. However, the Supreme Court ruled that Hartjenstein was not considered a POW (and neither the indictment for the Metz verdict referred to him as such), and that therefore the Metz panel was wrong to grant him the procedures and privileges of being tried as a former military person. Instead, he should have been tried as a civilian. See Walter Hausenstein, head of the German mission in Paris, to the Foreign Office, dated December 3, 1954, in: BA Koblenz, 305/363.

The beginning of re-trial after the French Supreme Court had annulled the judgment of Metz had originally been scheduled for February 14, 1955, in front of the Parisian Military Tribunal. However, the court rescheduled the trial at the last minute for April 18, 1955.[72] What at first glance looked like a minor footnote for a case that already stretched over a decade reveals itself as a major turning point in the long struggle over the meaning of French justice vis-à-vis the German war criminals .

The court was forced to reschedule the trial because a few days prior France's highest court made a consequential decision regarding the legal status of the accused. After more than a decade of legal arguments in which the French justice system argued that the German defendants accused of crimes against humanity were not in fact prisoners of war, but non-combatant enemy aliens. The defendants in close cooperation with the Red Cross and the West German government sued for recognition of their status as prisoners of war, which would have afforded them the rights and protections guaranteed by the 1929 Geneva Convention. However, this legal battle was far more consequential than what this quarrel over titles and definitions indicates. What was at stake here was the normalization of the Nazi criminals and *génocidaires* as ordinary combatants entitled to protections and privileges of prisoners of war enforced by international agreements designed "to alleviate the condition of prisoners of war."[73] The Geneva Convention of 1929 laid out protections for soldiers and officers who were taken prisoner by an enemy country to ensure that their previous effort on the battlefield against their current

[72] See report from *Agence France-Presse*, No. 107, Paris, February 15, 1955, in: in BA Koblenz, 305/363.
[73] Preamble of the "Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929" (the 1929 Geneva Convention).

country of captivity does not lead to an unfairly harsh treatment. The idea of the Geneva Convention of 1929 was to erect safeguards against undue punishment for combat-related activities. It was not created to protect high-ranking government officials and *génocidaires* and afford them with, as Article 3 of the convention decreed, "respect for their persons and honour."[74] In the particular case which led to the change of status of the Natzweiler defendants, the former head of the SS in German-occupied France, Carl Oberg, who oversaw the implementation and execution of the Final Solution in France, a *génocidaire* par-excellence, who was denied POW status by the French government in the past and tried as a civilian, prevailed on February 10, 1955, in front of the *cour de cassation* and was granted protection under the 1929 Geneva Convention. This was the culmination of a period of revision, which altered the standard set at the Nuremberg Trials (which created new legal categories, such as crimes against humanity, to confront the unprecedented nature of the crimes) to the point where mass murderers were re-classified as POWs, in fact normalizing the crimes they committed as acts that fell within war and combat related activities.[75]

The immediate impact on the Natzweiler defendants was that articles 60 and 63 of the Geneva Convention of 1929 had been declared applicable, meaning that the West German government became officially the protecting power over the defendants and had to be notified weeks in advance of any trial, or before any sentence could be

[74] Article 3 of the 1929 Geneva Convention.
[75] Ibid.; cable of German Diplomatic Mission Paris to Foreign Office Bonn, dated February 15, 1955. Also see Agence France-Presse, cable nr. 107, dated February 24, 1955; in BA Koblenz, 305/363.

carried out. In order to accommodate the notification period, the French Justice Administration rescheduled the Natzweiler trial yet again.[76]

Although the decision by France's Supreme Court to acknowledge the application of the Geneva Convention of 1929 to Carl Oberg seems like a mere technicality, it in fact marked an extraordinary victory for the Federal Government which had been pursuing this decision for years. When the *cour de cassation* decreed on February 10, 1955, that Carl Oberg, the former *HSSPF* in France, and Helmut Knochen, the former *BdS* Paris, were to be treated as POWs and therefore received the rights and privileges under the Geneva Convention of 1929, the Federal Republic's "*Kriegsverbrecherlobby*"[77] succeeded in revising French policy by normalizing the crimes committed by the Nazi criminals. The French government and its justice administration had lost its battle to differentiate between POWs and war criminals (or defendants in war crimes trials). According to the French judicial point of view, all German POWs had been repatriated by the end of 1949. By that time, only war criminals or those accused of having committed war crimes remained in

[76] The whether or not the defendants were to be considered POWs was p by the courts delayed a final verdict in the war crimes trials for years. The Natzweiler case in particular had been affected by the legal uncertainty. First, the Supreme Court threw out the Metz verdict because Fritz Hartjenstein, who had been commandant of Auschwitz II (Birkenau) from November of 1943 to May of 1944 before he became commandant of KZ Natzweiler in 1944 and 1945, had been wrongfully given the rights and privileges of a POW while he should have been tried as a civilian. After this intervention from the Supreme Court, the trial was rescheduled yet again because the Supreme Court had decided in a different case, that of Carl Oberg, former HSSPF in France, that the courts had been wrong to deny him the status of a POW. Given these verdicts, the Parisian Military Tribunal which was given jurisdiction over the Natzweiler case, decided that it was best to consider the Geneva Convention of 1929 applicable to the Natzweiler defendants or risk that the trial will be thrown out again by the Supreme Court. Therefore, it delayed the opening of the trial by three months in order to give the Federal Republic as the protecting power of the defendants official notice as required by article 60 of the Geneva Convention of 1929 (see letter from German Mission in Paris to Foreign Office, entitled "Gruppenprozess KZ-Struthof," dated February 16, 1955; in BA Koblenz, 305/363.

[77] Felix Bohr called the support lent by the Federal Government to the war criminals the result of intensive lobbying by the "war criminals lobby." See Felix Bohr, *Die Kriegsverbrecherlobby*, p. 17.

French custody for whom the protections of the Geneva Convention of 1929 did not apply.[78] In 1949, when two German suspects of war crimes appealed to the Supreme Court in order to receive the protections under the 1929 Geneva Convention, France's highest court ruled against them, confirming the legality of depriving defendants in war crimes trials of their POW status.[79]

Adenauer himself contested this French interpretation of justice in a memo to François-Poncet, in which he asked the French government to intervene with French jurisprudence which "seems likely to jeopardize the application [of the articles of the Geneva Convention]. The Court of Cassation considered that former members of the Wehrmacht who were handed over to the French authorities as suspects of war crimes, should be considered civilian detainees and treated accordingly."[80] The French Foreign Ministry, driven by "incessant interpellations" from Bonn,[81] lobbied the Justice Minister for "an extensive interpretation of the Geneva Convention"[82]

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[78] For instance on January 15, 1950, during a visit to the FRG, Robert Schuman clarified in a press conference in Bad Godesberg that "les anciens prisonniers de guerre allemands qui sont détenus à l'heure actuelle en France et qui seront traduits devant tribunaux ne sont pas considérés du point de vue juridique comme des 'prisonniers de guerre' mais comme des prévenus." See "Extrait du bulletin des écoutes radiotélégraphiques et radiophoniques, numéro 3689," dated January 16, 1950, in: AMAE La Courneuve, 1AJ/3629.

[79] The court decisions in the appeals formed by German suspects Bruno Hans and Heinrich Schwartz et al. were announced on May 5 (Schwartz et al.) and June 15, 1949 (Bruno). See Letter of Garde des Sceaux, Ministre de la Justice, to Ministre des Affaires Étrangères, dated May 8, 1950, in: AN Pierrefitte, BB/18/3693/2.

[80] Letter of Chancellor Konrad Adenauer to High Commissioner François-Poncet, dated March 27, 1950, in: AN Pierrefitte, BB/18/3693/2; "semblent de nature à compromettre l'application [des articles de la Convention de Genève]. La Cour de Cassation estimerait, en particulier, que les anciens membres de la Wehrmacht, livrés aux autorités françaises sous l'inculpation de crime de guerre, devraient être considérés comme de détenus civils et être traités en conséquence."

[81] For instance, on June 12, 1950, a memo for the French Justice Minister stated that "le Département des Affaires Étrangères est l'objet de démarches incessantes à cet égard, non seulement du Gouvernement de Bonn, mais aussi du C.I.C.R., des autorités diplomatiques des U.S.A. et récemment du Gouvernement Sarrois." See "Note pour M. le Garde des Sceaux" written by "Direction des Affaires Criminelles et des Grâces," dated June 12, 1950, in: AN Pierrefitte, BB/18/3693/2.

[82] Lettre du M. des Affaires Étrangères, Robert Schuman, to Garde des Sceaux, dated October 11, 1949, in: AN Pierrefitte, BB/18/3693/2; "l'interprétation extensive de la convention de Genève."

which included suspects in war crimes trials. However, jurisprudence did not change fundamentally before 1955. The verdict in 1955 reversed this position and gave the Federal Republic, now as the official protective power as mandated by the Geneva Convention of 1929, even more influence over French justice than it already possessed. As the remainder of the Natzweiler trial and the subsequent pardoning procedure of the convicts showed, Bonn utilized the newly acquired rights effectively to prevent the immanent execution of a death sentence and to achieve the release of all the convicts in France's only concentration camp trial.

The retrial of the Natzweiler accused ended on May 17, 1955, with a more lenient verdict for some of the defendants. While the Metz Tribunal had sentenced all five suspects to death, the Paris tribunal reduced two of the five sentences to forced labor.[83] Six months later, on November 10, 1955, after the *Cour de Cassation* rejected the appeal of the convicts, more than ten years after the liberation of the camp, the verdict of the Natzweiler perpetrators had become final. However, the race to liberate the former concentration camp overseers by way of presidential pardons had just begun.

[83] Wolfgang Seuss, Fritz Ehrmanntraut and Albert Fuchs received the death sentence. Herbert Oehler was sentenced to forced labor in perpetuity and Robert Nitsch to 15 years of forced labor. See memo by Edgar Weinhold, entitled "Rechtsschutzsache KZ Struthof," dated May 18, 1955, in: BA Koblenz, B305/363.

Towards the Franco-German Friendship Treaty: The Premature Release of the Final Eight War Criminals, 1956-1963

By 1956, only five of originally 2345 cases remained pending. The FRG government, therefore, shifted its attention away from asking for accelerated trials to inquiring about potential avenues for release of those who were still imprisoned. On the priority list of the West German Embassy in Paris in 1958, the pardoning of the remaining inmates of death row ranked the highest.[84] This section will therefore provide insight into how West Germany orchestrated the pardoning of the remaining prisoners in the second half of the 1950s.

Although no German war criminal had been executed since June of 1951, by the mid-1950s the West German embassy in Paris received word through informal channels that the execution of a German war criminal was imminent. In 1956, shortly after the French Court of Appeals confirmed the death sentences of the Natzweiler-Struthof trial, the death row contained only 8 prisoners. These 8 prisoners were the most notorious German war criminals in France, among them Klaus Barbie's former associates from the Sipo Lyon, the SS and SD leaders Oberg and Knochen and three SS-officers from Natzweiler-Struthof Concentration Camp: Wolfgang Seuss, Franz Ehrmanntraut and Albert Fuchs. French President René Coty found himself in an impossible position. If he denied the pardons and hence allowed for justice to take its course with the execution of the death penalties, an onslaught of disapproval from across the Rhine was to be expected. On the other hand, if he had pardoned all eight

[84] Memo entitled "Aufzeichnung, Betreff: Rechtsschutz in Frankreich," dated June 10, 1958, in: BA Koblenz, B305/314.

high profile prisoners, French public opinion would have turned against him, an undesirable outcome given the domestic political situation in France. In November 1955, the newspaper *Liberation* concluded an article on the Natzweiler trial with the words: "Pardons for those [war criminals] will never stop to appear to us as a betrayal of the murdered martyrs."[85] The French public seemed particularly uncompromising in regards to the Struthof-Natzweiler perpetrators, and among the three main defendants still alive, Wolfgang Seuss emerged as the most notorious.[86]

In May of 1955, the Military Tribunal in Paris sentenced Seuss alongside two other men to death based on accounts of multiple murders at Natzweiler-Struthof among other charges.[87] In the summer of 1957, the German Embassy in Paris received reliable information that the president had decided upon the execution of Seuss while pardoning the other seven. [88] The West Germans gathered from different

[85] *Libération*, November 11, 1955; "La grâce pour ces gens-là ne cessera jamais de nous apparaitre comme une trahison envers les martyrs assassinés."
[86] The former *SS-Hauptscharführer* Seuss held high positions at the Natzweiler-Struthof Concentration Camp. As *Rapportführer* in the final months of the concentration camp, he was charged with maintaining order, assigning prisoners to outside work details, organizing roll calls, and conducting selections of the unfit to work. In September of 1944, he also organized the evacuation and death marches to other concentration camps further east.
[87] AN Pierrefitte, 4AG/619.
[88] See undated and unsigned "Aufzeichnung, Betreff: Wolfgang SEUSS, geboren am 4.3.1907 in Nürnberg, zur Zeit in Haft in Frankreich," attached to a letter from Hans Gawlik, ZRS, to Bundesminister der Justiz, dated October 7, 1957, in: BA Koblenz, B141/21886 (Band 2). It seems that the information regarding President Coty's decision to refuse a pardon for Seuss and thus allow for his execution was leaked from within the *Conseil Supérieur de la Magistrature* (CSM), the body which advised the French president on judicial matters, to one of the defense attorneys, who then informed one of her former clients, Robert Ernst. Ernst, an Alsatian separatist, had been the mayor of Strasbourg during the Nazi occupation. He had been convicted for war crimes by the same Metz Tribunal as Wolfgang Seuss and the other Natzweiler perpetrators. Furthermore, he was imprisoned at Metz Prison at the same time as Seuss in the late 1940s and early 1950s, which means he most likely knew Seuss personally (see note from Dr. iur. Erich Stuible to Koordinierungsstelle für Kriegsverbrecherfragen Stuttgart, dated October 3, 1949; in: BA Koblenz, B305/295). Extremely well-connected to high-ranking West German officials, Ernst informed the ZRS in the Foreign Office as early as September of 1956 about the opinion in the CSM that President Coty was determined to deny Seuss the pardon. See Hergt, ZRS (Foreign Office), "Aufzeichnung," dated September 12, 1956, in BA Koblenz, B305/363. Hergt from the ZRS noted that "Heute suchte mich Herr Dr. Ernst auf und teilte mir mit, dass er von seiner früheren französischen Anwältin die alarmierende Nachricht erhalten habe, die in Frankreich

sources that President Coty planned to announce the pardoning simultaneously with the announcement of the execution. The Foreign Office estimated that Coty had designed this plan to appease the victims' and resistance associations which were expected to voice their vehement opposition after the pardons for Oberg, Knochen and the remaining prisoners were announced.[89] And indeed, the records of the presidential pardoning commission show that Coty had decided on July 29, 1957, precisely the trade-off described by the Foreign Offices' sources: The meeting minutes of the commission record "execute" behind Seuss' name in red letters, while "commutation en TFP" – forced labor for life – appeared behind the names of the remaining seven inmates of death row. The decision to deny Seuss's pardon was thus taken on July 29, meaning that an execution was immanent – it was most likely scheduled for the week of August 12 to the 16.[90] The Federal government, which was not officially informed, reacted immediately and launched a veritable campaign

Verurteilten seien neuerdings stark gefährdet [...]. Besonders gefährdet erscheine Seuss." The ZRS immediately cabled Edgar Weinhold at the German Embassy in Paris and informed him about the intelligence it had received.

[89] See internal message of Federal Justice Ministry, Division II 9 (Dr. von der Linden) to Federal Justice Minister Hans-Joachim von Merkatz, entitled "Franz. Strafverfahren gegen Wolfgang Seuss, ehem. Schutzhaftlagerführer des Konzentrationslagers Struthof-Natzweiler," dated October 7, 1957, in BA Koblenz, B141/21886 (Band 2). The West German diplomate Edgar Weinhold, who oversaw the defense of the Germans accused of war crimes from the Embassy in Paris, believed that Coty was going to announce the execution of Seuss simultaneously with the announcement of the pardons for the seven others. See letter from Pastor Theodor Friedrich to Bishop Hans Stempel, dated November 10, 1957, entitled "Besuch der Gefangenen in Frankreich vom 18.10.57- 4.11.57" in: BA Koblenz, B305/314.

"Dr. Weinhold ist der Meinung, dass man französischerseits den Gedanken habe, an demselben Tage, an welchem der französischen Öffentlichkeit die Begnadigung von Oberg, Knochen, etc. bekanntgegeben wird, gleichzeitig mit dieser Meldung auch die Erschießung Seuss zu publizieren."

[90] Records from the French Foreign Ministry, dated August 12, 1957, indicate that Seuss' execution had been scheduled for the same week [week of Monday, August 12 to Friday, August 16], but was postponed because of the intervention from Bonn. "une exécution qui aurait dû avoir lieu cette semaine." See Ministère des Affaires Étrangères, Direction Générale des Affaires Politiques – Europe – Service d'Europe centrale "Note pour le Président du Conseil," dated August 12, 1957; in: AMAE La Courneuve, 178QO/1231.

for the commutation of Seuss' death sentence, including support from the churches and the Red Cross.

First, it handed the French government a *note verbale* on August 5, 1957, which argued that the French government was bound by the Geneva Convention of 1949.[91] The memorandum was drafted with the help by the former head delegate of the French delegation of the International Committee of the Red Cross, Paul Boissier.[92] The West German government argued that based on the Geneva Convention the executions cannot be carried out for period of six months beginning with the day the protecting power has been officially notified of the denied pardon.[93] In this case, the aforementioned French acceptance of the applicability of the Geneva Convention proved itself a crucial tool in the FRG's arsenal.

Second, the next day, August 6, Adenauer appealed to his French counterpart[94] directly and asked the French Prime minister to prevent the execution.

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[91] See Botschaft der Bundesrepublik Deutschland, Paris, an Ministère des Affaires Etrangères, Paris, dated August 5, 1957, in: BA Koblenz, B305/314. The note stated "Die Botschaft glaubt zu wissen, dass der Herr Präsident der französischen Republik [….] in aller nächster Zeit über das Schicksal dieser acht Männer entscheiden wird. Da eine ungünstige Entscheidung nicht ausgeschlossen ist, erlaubt sich die Botschaft, unter Bezugnahme auf Artikel 75 der Genfer Konvention vom 8. August 1949 über den Schutz von Zivilpersonen in Kriegszeiten [...] darauf hinzuweisen, dass [...] kein Todesurteil vor Ablauf einer Frist von mindestens 6 Monaten vollstreckt wird; diese Frist beginnt mit dem Zeitpunkt, in dem die Schutzmacht die Mitteilung über das rechtskräftige Urteil, das die Todesstrafe bestätigt, oder über den Entscheid, mit dem das Gnadengesuch abgelehnt wird, erhält. [...] Die Bundesregierung, die die Funktion der Schutzmacht ausübt, hofft daher, dass keine Hinrichtung durchgeführt wird [vor Ablauf der 6 Monatsfrist]."

[92] The German Embassy in Paris wanted to pay the equivalent of DM 1,000 to the former ICRC-delegate Boissier as a reward for his support in drafting the memorandum, but was unable to get approval from the Foreign Office. BA Koblenz, B/305/314, letter from Jansen (German Embassy in Paris) to Foreign Office, Bonn, dated October 16, 1957, in: BA Koblenz, 305/314.

[93] After the West German Embassy had sent the memo to the French Foreign Ministry, it realized that the French side may reject the retroactive application of the 1949 Geneva Convention to Seuss' case. Therefore, it sent a second memo, in which it made the case that at the very least, France ought to accept the applicability of the 1929 Geneva Convention, which demanded a 3 months (not 6 months as the 1949 Geneva Convention) interval between the notification of the protection power and the execution. See memorandum of the Botschaft der Bundesrepublik Deutschland to the Ministerium für Auswärtige Angelegenheiten, Paris, dated September 14, 1957, in BA Koblenz, B305/314.

[94] Maurice Bourgès-Maunoury served as French Prime Minister at the time.

Adenauer communicated his fear that his government, faced with the upcoming Bundestag elections, would be weakened if the execution was carried out. By commuting the capital punishment of all war criminals, Adenauer argued, the French government would support his policy of Franco-German reconciliation. He wrote that while he was "completely understanding that these cases [the war crimes] still open painful wounds with the French people, I ask only for your understanding that the German public will first see the fact that 12 years have passed since the end of the war and that we have abolished the death penalty [...] An execution at the present time would undoubtedly be utilized as a propaganda tool in the German election campaign in order to discredit the policy of the Federal Government, which, as you know, has always advocated for a productive cooperation between our nations."[95]

This proved to be a successful strategy in past: to remind the French counterpart that a consequential justice vis-à-vis the German war criminals undermined the Federal government and thus threatened the pro-French course of West Germany. The proximity of the elections to the *Bundestag*, scheduled for September 15, 1957, am mere 6 weeks away, lend Adenauer's request an additional sense of urgency and emphasized the stakes of French justice to rapprochement. Adenauer's letter insinuated that an execution of Seuss severely undermined his

[95] Chancellor Adenauer to Prime Minister Bourgès-Maunoury, dated August 6, 1957, in: AN Pierrefitte, 19870278/15; "[Ich habe] volles Verständnis dafür, dass diese Fälle [the war crimes] im französischen Volke immer noch schmerzende Wunden berühren. Ich bitte Sie lediglich um Ihr Verständnis dafür, dass die deutsche Öffentlichkeit zunächst die Tatsache sehen wird, dass seit dem Kriegsende 12 Jahre verstrichen sind und dass man bei uns die Todesstrafe abgeschafft hat [...]. Eine Vollstreckung im gegenwärtigen Zeitpunkt würde zweifellos propagandistisch in den deutschen Wahlkampf gezogen werden um die Politik der Bundesregierung , die sich, wie Sie wissen, stets nachdrücklich für eine fruchtbare Zusammenarbeit zwischen unseren Nationen eingesetzt hat, zu diskreditieren."

government and could potentially bring it down and take Franco-German reconciliation with it.

The Adenauer message essentially urged the French government to reconsider the execution of Seuss for political reasons. In combination with the memo of the German embassy to the French Foreign Ministry the day before, which made the case for delaying the Seuss execution for legal reasons, the message fell on fertile ground in the halls of the Quai d'Orsay.

In a memorandum to Prime Minister Maurice Bourgès-Maunoury**,** the Foreign Ministry laid out the options at the Prime Minister's disposal when devising a response to Adenauer.[96] The memo argued that the problem was "essentially a political question"[97] since the President's decision to deny Seuss a pardon was valid and could hardly be challenged from a legal point of view. A denial of Adenauer's request to postpone the execution until after the *Bundestag* election could be accompanied with the explication that "at the same time that the appeal for pardon of SEUSS was rejected, seven other similar appeals were the subject of a favorable decision by the President of the Republic."[98] However, the memo pushed for another solution: "But it is up to the French Government, and in particular the Prime Minister, to assess whether for political reasons which he explained, it is not appropriate to meet Chancellor ADENAUER's request."[99] The memo proceeded to provide the

[96] See MAE, Direction Générale des Affaires Politiques – Europe – Service d'Europe centrale, "Note pour le Président du Conseil," dated August 12, 1957, in: AMAE La Courneuve, 178QO/1231.
[97] Ibid.; "a question essentiellement politique[…]."
[98] Ibid.; "nous pouvons certes alléguer que dans le même temps ou le recours en grâce de SEUSS était rejeté, 7 autres recours analogues ont fait l'objet d'une décision favorable du Président de la République."
[99] Ibid.; "Mais il appartient au Gouvernement français, et notamment au Président du Conseil d'apprécier si sur le plan de la raison d'état, il ne convient pas de satisfaire à la demande du Chancelier ADENAUER pour les raisons politique générale que celui-ci a mises en avant."

Prime Minister with an elegant way to bridge the gap between the non-existent legal mechanisms for a delay and the political expediency to do so. The Foreign Ministry argued that, "even if it is more likely that an examination of the request from German Embassy will reveal that it cannot be substantiated, the extensive legal scrutiny may be motivated by the necessity to win the couple of weeks we need."[100]

The Ministère des Affaires Étrangères (MAE) suggested that the German mission's request to apply the Geneva Convention of 1949 to Seuss case could be utilized as a convenient mechanism to delay the execution until after the Bundestag elections which would satisfy Adenauer's request, even though it lacked legal merit. Of course, the West German demarche was not merely the attempt to postpone the execution of Seuss until after the Bundestag elections,[101] this was only seized upon as an argument to heighten the sense of urgency and to increase the bargaining power of the Federal Republic. Neither was it only the opening salvo in an attempt to stop the execution of Seuss completely. On the contrary, it was merely a step along the path to the premature release of Seuss and all his co-convicts.

The French Prime Minister replied to Adenauer a month later. His reply reflected the advice he had been given by the Quai d'Orsay. While "it is impossible to reverse the decision of the President of the Republic"[102] in the interest of "the spirit of

[100] Ibid.; "même probable qu'à l'examen la demande de l'Ambassade d'Allemagne ne se révèle pas comme fondée réellement, mais son examen approfondi sur le plan juridique pourrait être un motif de gagner les quelques semaines dont nous avons besoin."
[101] I do not doubt that Adenauer believed what he communicated to Bourgès-Maunoury. He was probably right, the war criminals lobby would have benefitted enormously from an execution so close to the Bundestag elections. However, the trajectory of the West German negotiations regarding the release of the war criminals showed that the objective of freeing all war criminals was completely independent from the political calendar of events.
[102] Letter of Président du Conseil Bourgès-Maunoury au Chancelier Adenauer 10.9.57, in: AMAE La Courneuve, 178QO/1231; "il est impossible de revenir sur la décision du Président de la République."

the close cooperation that you have kindly mentioned"[103] and which France has demonstrated in the past concerning the release of war criminals, "I have asked my government to thoroughly examine the arguments presented in the Ambassador's note. I shall use all my influence so that the quite exceptional step may be taken to the effect that the judgment will not be executed until this examination is completed."[104] The West German strategy secured a convincing victory by halting the execution of Seuss, if only for a couple of weeks.

In October of 1957, and therefore well after the Bundestag elections which Adenauer and his CDU/CSU won resoundingly,[105] the French Foreign Ministry announced that it maintained its position that the Geneva Conventions were not applicable to war criminals.[106] However, the Quai d'Orsay agreed "to benevolently take into account the requests submitted by the Embassy of the Federal Republic of Germany" for a temporary stay of the execution of Seuss.[107] Internally, the French government had already decided to accept the three months notification period between the final decision of regarding the refusal of the pardon and the execution.[108]

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[103] Ibid.; "dans l'esprit de l'étroite collaboration que vous avez bien voulu mentionner."
[104] Ibid.; "J'ai demandé à mes services de se livrer à une étude approfondis des arguments présentés par la note de l 'Ambassadeur et userai de toute mon influence pour qu'à titre tout à fait exceptionnel, le jugement ne soit pas exécuté avant que cette étude soit terminée."
[105] Adenauer's CDU/CSU received an astounding 50.2% of the vote. It remains today the only election to the *Bundestag* where any party received an absolute majority of the vote. The convincing victory at the elections marked the peak of Adenauer's power and influence.
[106] Note by the Ministère des Affaires Étrangères à l'Ambassade de la République Fédérale d'Allemagne, dated October 29, 1957, in: BA Koblenz, B305/314; "n'est applicable aux criminels de guerre."
[107] Ibid.; "en vue de tenir compte dans un esprit bienveillant des démarches effectués par l'Ambassade de la République Fédérale d'Allemagne."
[108] The French Foreign Minister wrote to the French Justice Minister on September 23, 1957: "à titre exceptionnel et sans que cela puisse constituer un précédent, mon Département est prêt à admettre qu'un délai de trois mois soit observé dans l'exécution du jugement." See AMAE La Courneuve, 178QO/1231.

Officials from the West German embassy, among them Edgar Weinhold, went to discuss the Seuss case in early November with the head of the German desk at the Quai d'Orsay Jean-Daniel Jurgensen.[109] During the meeting, Jurgensen revealed to his West German interlocutors that the Foreign Ministry worked on delaying the execution in the "sincere hope"[110] that Seuss would be pardoned eventually. Jurgensen discreetly informed the German diplomat that the French government would try to "obtain from Coty a revision of his [...] decision in favor of a pardon of Seuss."[111] As a sign of the remarkable increase in influence on the French government, the Quai d'Orsay effectively revealed that it collaborated with Bonn to undermine the presidential prerogative of the pardoning power.

In the event that the Coty would not revise his decision and issue a pardon for Seuss, the West German government was prepared to risk a very public confrontation. The Federal Minister of Justice von Merkatz proposed to Foreign Minister von Brentano to accuse France of violating the Geneva Conventions by invoking Article 132 of the "Convention (III) relative to the Treatment of Prisoners of War" from 1949.[112] This article allowed for an inquiry into the alleged violation led by a neutral

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[109] Jurgensen's title was "Chef du service des affaires allemands." The West German diplomate von Matlzan wrote a memorandum about the meeting with Jurgensen. See von Maltzan an Auswärtiges Amt Bonn, entitled "Anwendbarkeit der Genfer Konvention von 1949 und 1929 auf noch in französischer Hand befindliche Kriegsgefangene," dated November 5, 1957, in BA Koblenz, B305/314.

[110] Ibid.; "espoir sérieux."

[111] Ibid.; "es müsse versucht werden, von Präsident [Coty] eine Änderung seiner bisherigen Entscheidung zu Gunsten einer Begnadigung von Seuss zu erreichen."

[112] Article 132 stated: "At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.
If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.
Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay." See Article 132 of the Convention (III) relative to the Treatment of Prisoners of War from August 12, 1949."

"umpire," for which the Federal Justice Minister had the International Committee of the Red Cross in mind.[113]

The draft of von Merkatz' letter to von Brentano also serves as a window into the state of mind of the Federal government regarding French justice of Nazi criminals.[114] While von Merkatz voiced concerns that accusing France of violating the Geneva Conventions would "put a temporary strain on Franco-German relations,"[115] he argued that "the execution of the judgment would have more serious and more lasting consequences."[116] In a draft of the letter to Brentano, von Merkatz even equated the verdict of Seuss with a crime against humanity: the fact that Seuss had been forced to "wait for two years in chains for his death"[117] constituted "in itself almost a crime against humanity"[118] concluding that "Seuss may well have suffered enough."[119] Furthermore, von Merkatz argued that "Seuss is to be denied the pardon only because one believes that one must satisfy the demands – imagined or real - for a sacrifice of a portion of the French people who are unwilling to reconcile."[120]

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[113] The ICRC was of course nothing but neutral. The Federal Justice Minister was probably well aware that the ICRC would have sided with the FRG-government.
[114] See Bundesministerium der Justiz, Ref. II 9, LGR Dr. von der Linden, draft of "Schreiben an den Herrn Bundesminister des Auswärtigen Dr. v. Brentano, Bonn, Betrifft: Französische Strafverfahren gegen den deutschen Staatsangehörigen Wolfgang Seuss, ehem. Schutzhaftlagerführer des Konzentrationslagers Struthof-Natzweiler," dated October 11, 1957, in: BA Koblenz B141/21886 (Band 2). While von Linden's draft was edited by von Merkatz in a few places, the tenor of the letter remained unchanged: Seuss was a victim of French justice and had suffered enough already, his life was going to be sacrificed because of strongly held feelings for revenge in the French populace, and finally, France was violating the Geneva Convention. The difference between the draft and the final letter only concerned the most inflammatory words – e.g. the accusation towards France of committing a crime against humanity by continuing to imprison Seuss on death row.
[115] Ibid.; "vorübergehenden Belastung des deutsch-französischen Verhältnisses führen."
[116] Ibid.; "die Urteilsvollstreckung schwerwiegendere und nachhaltigere Folgen haben würde."
[117] Ibid.; "zwei Jahre in Ketten gefesselt auf den Tod warten zu lassen."
[118] Ibid.; "an sich schon nahezu ein Verbrechen gegen die Menschlichkeit."
[119] Ibid.; "Seuss dürfte daher mit seiner Todesfurcht und durch die langjährige Haft bereits genug gebüsst haben."
[120] Ibid.; "Seuss nur deshalb Gnade versagt werden soll, weil man glaubt, dem - vermeintlichen oder wirklichen – Bedürfnis des nicht verständigungsbereiten Teils des französischen Volkes nach einem Opfer Rechnung tragen zu müssen."

The remarkable letter from the West German Justice Ministry stressed the importance of Seuss's case to the meaning of Franco-German reconciliation. As von Merkatz's draft revealed, the substantial parts of the upper echelons of the Federal bureaucracy equated French calls for justice for the victims of Seuss with a resistance to Franco-German rapprochement. Essentially, von Merkatz's draft echoed the sentiment that a consequential postwar judicial reckoning for the crimes committed by the Nazis in France and a reconciliation between the former enemies could not cohabite in one house. In these interpretations, Franco-German reconciliation must be underwritten by a rehabilitation of the German past and the release of the war criminals. Demands for justice were regarded as evidence of an anti-reconciliation sentiment.[121] Merkatz's draft evidenced the prism through which the West German government viewed Franco-German reconciliation and postwar justice of the Nazi crimes. When von Merkatz accused France of committing a crime against humanity by imprisoning Seuss - an ardent anti-Semite who had been sentenced to death after witnesses testified at Metz how he felt pleasure for torturing Jews to death as the head of Natzweiler's *Schutzhaftlager* - he revealed the memory politics in the Federal Justice Ministry. The immediate postwar years were seen by millions of ex-Nazis as a

[121] Of course, this had been the party-line of the PCF which repeatedly utilized the French war crimes trials to stir up anti-German sentiments in the French public. The PCF, just like the East German SED, equated West Germany with Fascism. However, there existed a much broader movement for justice which had no intention to discredit the Federal Republic like the PCF. Even more importantly, there were genuinely pro-West German and pro-Franco-German reconciliation currents which at the same time insisted on a consequential justice for the Nazi crimes. For example, the makers of one of the outstanding rapprochement publications, the *Bulletin de Comité français pour l'Échange avec l'Allemagne nouvelle* defended a consequential justice as one of the stepping stones for a true break with the arch-enmity between France and Germany.

period of grave injustices which were committed at the expense of Germany.[122] Franco-German reconciliation offered a path to correct these injustices.

President Coty might have decided to deny Wolfgang Seuss a pardon and allow for his execution because he had hoped that his deeds were so reprehensible, his behavior so abhorrent, his guilt so undeniable, that the West German side could not dare to defend his execution. And as opposed to Oberg and Knochen, who also remained on death row in 1957 and who had been vastly more powerful than Seuss and who had arguably committed crimes on a much greater scale, Seuss's had not orchestrated mass murder from his desk in Paris or Berlin, but personally tortured and killed people in a concentration camp. In other words, Seuss' crimes were direct and personal and Coty might have hoped that the West German public might have been more willing to stomach the ultimate punishment for a sadist mass murderer than for the refined desk criminal Helmut Knochen, who held a Ph.D. in English literature from the University of Göttingen[123] and who had a vast network of supporters in France and West Germany.

However, if this had been Coty's motivation for settling on Seuss as the sole person whose pardon he rejected, he was thoroughly mistaken. Seuss, the rabid anti-Semite who personally committed murders was considered a victim by the West German side like all of the other prisoners. His case revealed that the nature of the crimes, despite the assurances of Adenauer and others to allow for justice to take its

[122] This was especially true for the Allied denazification efforts, which was downright hated by the legions of former Nazis. See Norbert Frei, *Vergangenheitspolitik. Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: DTV, 1999), p. 397.

[123] See Bernhard Brunner, p. 35.

full course concerning the "real criminals,"[124] had no impact on the determination of the Federal government to liberate all war criminals in French custody. Driven by the "war criminals lobby," the horrendous nature of the crimes made no difference. The crimes were eclipsed by the desire of the large parts of the German public and the Federal government to undo the "trauma" of the immediate postwar years.

After Jean-Daniel Jurgensen[125] had communicated the hope that President Coty could be influenced to change his mind concerning Seuss' pardon at the meeting at the Quai d'Orsay, Edgar Weinhold and the West German mission mobilized its network. Weinhold asked the German Protestant[126] and Catholic Church[127] to submit letters of support to Coty, Second, consular officer Weinhold mobilized the German protestant prisoner chaplain Friedrich who met with the director of the presidential pardoning commission Ricalens and asked him to work towards the pardoning of all 8

[124] In 1952, for instance, Adenauer had asked the foreign ministers of France, the United Kingdom and the U.S.A., Schuman, Eden and Acheson, for a generous act of clemency in connection with the ratification of the Bonn Contractuals [which came effective in 1955]. He was, however, claiming that he was not having any pardons for „real criminals" in mind. "[Ich] denke dabei nicht an Begnadigung wirklicher Verbrecher." See "Protokoll der Bonner Konferenz der Außenminister am 24/25.5.1952 (zur abschließenden Beratung der Bonner Verträge/des Generalvertrags), in: PA AA, B 2/186. Adenauer's justification for the demand for amnesty also offered a window into the West German memory politics of the time. He argued that the amnesty was necessary in order to break with the past. However, he did not refer to the Nazi past, but to the immediate postwar years which were perceived as traumatic by the West German public. Without a generous act of clemency, Adenauer claimed, the contractual agreements would not be perceived as "real progress" because "too much of the past remained" (referring to the postwar period marked by war crimes trials, Allied occupation and German impotence). "Aber die Atmosphäre, in der die Kriegsverbrecherurteile nach 1945 ausgesprochen worden seien, beschäftigte die deutsche Öffentlichkeit ganz außerordentlich. Früher sei die Geburt eines Königs Anlass zu Gnadenankten gewesen. Wenn die Geburt des Generalvertrages unter den gleichen Zeichen stünde, würde die öffentliche Meinung in Deutschland in Bezug auf ihn sicherlich positiver reagieren. Man werde einen echten Fortschritt in dem vorliegenden Vertragswerk sehen, andernfalls sicherlich nicht, da zu viel aus der Vergangenheit bestehen bleibe." Ibid.

[125] Jurgensen was head of the German desk at the MAE.

[126] See letter from Pastor Theodor Friedrich to Bishop Hans Stempel, dated November 10, 1957, entitled "Besuch der Gefangenen in Frankreich vom 18.10.57- 4.11.57" in: BA Koblenz, B305/314.

[127] Cardinal Frings from Cologne intervened with President Coty. See MAE - Direction Politiques – Europe [LALOY] à – Secretaire général de la Présidence de la République [M. Merveilleux du VIGNAUX], dated 24. September 1957, in: AMAE La Courneuve,178QO/1231.

prisoners.[128] Furthermore, the *Verband der Heimkehrer* (VdH), West Germany's largest veterans association, also sent a letter requesting an act of clemency by Coty for Seuss in "the name of Franco-German friendship"[129] reminding the President that "[e]xecuting a death sentence which originated in the chaos and horrors of war in the thirteenth year of the postwar era would provoke feelings of indignation in Germany and elsewhere."[130] The VdH appealed to Coty as "former prisoners of war as well as friends of France and as Europeans."[131]

The constituent elements in this petition of the VdH, one of the foremost institutions of the war criminals lobby, was almost identical to the official justification of the Federal government for its policy to seek the premature release of the war criminals: first a reminder that without intervention, the unchecked French justice was bound to undermine Franco-German friendship, because, second, the German public would interpret justice as revenge "so long after the end of the war," and third a more or less veiled allusion to the perceived victimhood of the perpetrators.[132]

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[128] See letter from Pastor Theodor Friedrich to Bishop Hans Stempel, dated November 10, 1957, entitled "Besuch der Gefangenen in Frankreich vom 18.10.57- 4.11.57" in: BAK 305/314.
[129] See undated letter by Monsieur Kiessling (VdH), in: AMAE La Courneuve, 178QO/1231; "au nom de l'amitié franco-allemande."
[130] Ibid.; "Exécuter dans la treizième année de l'après-guerre une condamnation à mort qui prend ses origines dans le chaos et les horreurs de la guerre susciterait en Allemagne et ailleurs des sentiments d'indignation."
[131] Ibid.; "anciens prisonniers de guerre comme amis de la France et comme Européens."
[132] Kiessling's reference insinuated that the perpetrators were victims of the war, possibly playing with the trope that everyone was a victim of Hitler. Another popular allusion was the claim that the convicts had been victims of the "harsh and unjust sentences" of the immediate postwar years.

In January of 1958, Weinhold himself met with the director of the presidential pardoning commission, Ricalens, and asked him to consider the cases of Seuss et.al. from a "political point of view" rather than a judicial point of view.[133]

The embassy in Paris also encouraged the bishop of the Protestant Church of the Palatinate to meet with the relevant French authorities in Paris during his annual Christmas visit to the German war criminals. In December, bishop Hans Stempel met with the presidential pardoning commission and pleaded with its members to advance the pardons. According to Stempel, the president of the pardoning commission agreed to re-submit the application for a pardon of Seuss to the attention of the French president at the earliest convenience. When Weinhold met with the latter in January of 1958, the application had been accepted for review once again.

However, in March of 1958, urgent word reached Bonn that the re-application for a presidential pardon had been rejected once more. The news set a chain of events in motion which triggered a second intervention in support of Wolfgang Seuss from the head of the West German government. On March 13, Adenauer asked the French Ambassador Maurice Couve de Murville[134] to see him in the chancellery for an urgent visit. He wanted to plead in person with the French ambassador to prevent an execution of Seuss. His appeal to Murville echoed the same three constituent elements which numerous interlocutors who intervened on behalf of West Germany in favor of the German war criminals. Murville quoted Adenauer's extreme

[133] PA AA, NL Weinhold; BA Koblenz, B305/314.
[134] Maurice Couve de Murville had been French Ambassador in Bonn until he was appointed Foreign Minister by de Gaulle upon the latter aceeded to the presidency in 1959. Murville remained at the helm of the Quai d'Orsay for almost the entire de Gaulle presidency, and played a significant part in the liberation of the final three war criminals in French hands during de Gaulle's Bonn visit in 1962.

uneasiness regarding the impact of an execution of Seuss. He was "very concerned about the consequences that the execution of Seuss could have in Germany and its implications for Franco-German relations"[135] reminding the French diplomat about the "the price he personally attaches to the relations between our two countries, whose reconciliation and collaboration are one of the foundations of his policy."[136] The third and last trope of the justifications for the release had been the time elapsed since the end of the war and Adenauer did not fail to mention it: "Whatever the merits of the cause, nobody will understand that an execution of Seuss intervenes thirteen years after the end of the war."[137] He concluded with the plea to Murville "if it were possible for the Government to plead his case with [President Coty] on the basis of the political considerations which he has mentioned and which are dear to its heart."[138] Adenauer reiterated the core message of the war criminals lobby: French justice, in particular an execution would be perceived in West Germany as an act of vengeance designed to undermine Franco-German rapprochement.

With the renewed personal intervention from Adenauer himself at its disposal, the French Foreign Ministry led by Christian Pineau, which had already been sympathetic to Adenauer's agenda, began to devise a plan to prevent President Coty from exercising his power to deny Seuss the pardon. A detailed memo from the

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[135] Cable by Couve de Murville (French Ambassador in Bonn) to MAE Paris, dated 14. March 1958, in: AMAE La Courneuve 178QO/1231; [Adenauer said he was] "très vivement préoccupe des conséquences que l'exécution de Seuss pourrait avoir en Allemagne et de ses incidences sur les relations Franco-Allemandes."
[136] Ibid.; [Adenauer said that the"prix qu'il attache personnellement aux rapports entre nos deux pays, dont la réconciliation et la collaboration sont un des fondements de sa politique."
[137] Ibid.; [Adenauer did not fail to mention] "d'autant plus que, quels que soient les mérites de la cause, personne ne comprendra qu'une exécution intervienne treize ans après la fin de la guerre."
[138] Ibid.; [Adenauer pleaded] "s'il était possible au gouvernement de se faire son interprète auprès de M. le Président de la République, en se fondant sur les considérations politiques qu'il a exposés et qui lui tiennent à cœur."

Foreign Ministry which may have been designed to present the opinion of the France's chief diplomate to be submitted to the *Conseil Supérieur de la Magistrature* (CSM) upon the review of Seuss' case laid out five reasons why Seuss should be pardoned by Coty. The first reason echoed almost verbatim Adenauer's and Kiessling's (the president of the VdH) interventions: "The German public opinion would not understand that SEUSS would be executed thirteen years after the end of the war."[139]

The last reason, listed as bullet point number 5, succinctly analyzed how West Germany connected and intertwined the two distinct and independent areas of justice vis-à-vis the German war criminals on the one hand and Franco-German reconciliation on the other: "Given that public opinion in Germany currently questions the direction of French policy, an execution of SEUSS risks being interpreted as a deliberate measure on our part aimed at poisoning the relations between the France and Germany."[140]

Despite the pressure from within his government, even from within his own advisory commission, the *Conseil Supérieur de la Magistrature* (CSM), President Coty could not bring himself to issue a pardon for Seuss, even though he was unable to see the execution through. On April 15, 1958, Coty finally agreed to announce the commutation of the death sentences of the seven other death row prisoners – a

[139] MAE Direction générale des Affaires Politiques – Europe – Service d'Europe Centrale, "Note pour le Cabinet du Ministre, a.s. du criminel de guerre Seuss," dated 25. June1958, in: AMAE La Courneuve, 178QO/1231; "L'opinion publique allemande ne comprendrait pas que, treize ans après la fin de la guerre, l'on procède encore à l'exécution de SEUSS. "

[140] Ibid.; "Dans l'état actuel de l'opinion en Allemagne qui s'interroge sur l'orientation de la politique française, l'exécution de SEUSS risquerait d'être interprétée comme une mesure délibérée de notre part visant à envenimer les rapports entre la France et l'Allemagne."

decision he had made in July of 1957 already.[141] With the announcement that Oberg, Knochen, Ehrmanntraut and four other high profile Nazi criminals were spared the capital punishment, while not simultaneously executing Seuss, Coty had already broken the premises of his July 1957 decision to utilize the Seuss execution as an attempt to assuage public fervor over the Oberg-Knochen pardons. Seuss remained on death row, but an execution became ever more unlikely.

A month later, the putsch in Algiers and the state of emergency ushered in the return of General de Gaulle and marked the transition of the Fourth to the Fifth Republic. During the political turmoil in 1958 and early 1959, the French authorities, including President Coty, were preoccupied with preventing a complete collapse of public order. The execution of Seuss therefore became ever less likely, since it only would have added to the disruption and turmoil at a time when France was ever more in need of stability. When de Gaulle took over at the helm of the Republic on January 8, 1959, Seuss application for a pardon was thus still pending. Barely a week later, on January 17, 1959, the newly minted president issued the pardon, presumably as a gesture of goodwill towards the Federal Republic of Germany on the occasion of his accession to the presidency.[142] Seuss was released to West Germany in 1960 and subsequently tried in Munich for the crimes he committed at Dachau.

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[141] Letter of Justice Minister Edmond Michelet to the Secretary General of the French Presidency Geoffroy Chodron de Courcel, dated February 9, 1959, in: AN Pierrefitte, AG/5 (1)/2114.

[142] Ibid.; The power to pardon criminals had been a vestige of the royal prerogative now vested in the French president. It had been the tradition that the birth of an heir to throne or the coronation itself be accompanied by the generous use of the royal prerogative to pardon criminals. Adenauer had already alluded to such an act of clemency in 1952, when he told French Foreign Minister Schuman: “Früher sei die Geburt eines Königs Anlass zu Gnadenankten gewesen.” It is therefore very likely that the West German side expected de Gaulle in 1959 to make use of his prerogative in order to send a signal of goodwill upon his accession to the presidency. De Gaulle did not disappoint. See “Protokoll der

In retrospect, preventing the immediate execution of Seuss after the appeal for a presidential pardon had been denied was equal to a pardon. The stay of execution gave the West German side more time to organize the support for a commutation. This episode showed that an execution of a German war criminal was only possible if it was carried out quickly after the denial of the appeal for a pardon. Once the German side was in the position to launch a campaign, the political pressure limited the French justice system's ability to act independently.

After de Gaulle released Seuss and three other prisoners[143] in 1960, his government continued along this trajectory of utilizing the premature release of remaining war criminals as steppingstones towards reconciliation between the two countries. In the summer of 1962, just before Adenauer was scheduled to meet de Gaulle in Reims for what was to be a highly symbolical mass designed to "seal reconciliation" [144] at the cathedral, the French president ordered that the last three remaining war criminals in French custody, Oberg, Knochen and Ehrmanntraut, are to be moved from Caen prison[145] in Normandy to Mulhouse in Alsace, just a few miles from the West German border to facilitate their release. Simultaneously, as de

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Bonner Konferenz der Außenminister am 24/25.5.1952 (zur abschließenden Beratung der Bonner Verträge/des Generalvertrags)," in: PA AA, B 2/186.

[143] Harry Stengritt (Sipo Lyon), for whom President Heuss pleaded personally before leaving office in September of 1959 [Heuss was led to believe by Hans Stempel and others in the war criminals lobby that Stengritt's identity had been confused by the French authorities, meaning that they had imprisoned an innocent man – see letter of Theodor Heuss to Charles de Gaulle, dated July 23, 1959, in: AN Pierrefitte, AG/5 (1)/2114], Ernst Floreck (Sipo Lyon), Albert Fuchs (KZ Natzweiler), and Paul Heimann (Sipo Lyon) were released in 1960 by de Gaulle.

[144] "Sealing reconciliation" was the term de Gaulle utilized when he met the Archbishop Marty of Reims at the steps of the Cathedral on July 8, 1962: "Excellence, Chancellor Adenauer and I have come to your cathedral to seal reconciliation between France and Germany." "Excellence, le Chancelier Adenauer et moi-même venons dans votre cathédrale sceller la réconciliation de la France et de l'Allemagne." Gesa Bluhm, "Vertrauensarbeit. Deutsch-Französische Beziehungen nach 1945" in: Ute Frevert (ed.), *Vertrauen. Historische Annäherungen* (Göttingen: Vandenhoeck & Ruprecht, 2003), p. 384.

[145] The prisoners had been incarcerated at the Maison Centrale de Caen since at least 1955.

Gaulle's visit to Adenauer in Bonn approached, he discreetly signaled to Adenauer that he was ready to release Oberg and Knochen.[146] And indeed, on November 28, 1962, Oberg and Knochen had been "released and repatriated with the utmost discretion."[147]

With the last of the originally over 2000 German war criminals in French custody liberated, de Gaulle yielded to a West German request dating back almost two decades. The former leader of the French resistance to Nazi Germany's occupation of France had been uniquely positioned to bestow upon West Germany the gift of amnesia about the recent past as a foundation for Franco-German reconciliation. De Gaulle was well aware of the symbolism of this dynamic. He told associates in 1962 "Only I can reconcile France with Germany, because only I can lift Germany up from its shame."[148] While this statement contained elements of typical Gaullian hyperbole, it cannot be dismissed entirely. De Gaulle possessed unique qualities which his predecessor, René Coty, or even the erstwhile supporter of leniency towards the German war criminals, Robert Schuman, lacked: his opposition to both Vichy and Nazi Germany was unquestionable. On July 10, 1940, Coty had

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[146] On August 31, 1962, five days prior to the state visit, West German Foreign Minister Gerhard Schröder wrote to Adenauer, that he received word from the chef-de-mission at the French embassy in Bonn, de Courson, "that, if you bring up the question of […] pardons for German war criminals, [de Gaulle] would be able to address the issue." See Memo from Foreign Minister Schröder to Chancellor Adenauer, dated 31.08.1962, in : PA AA B2/75. "Er habe jedoch zu erkennen, dass, wenn Sie ihn auf die Frage der Fremdenlegionäre deutscher Herkunft und die Gnadenerweise für deutsche Kriegsverbrecher ansprechen würden, er Ihnen hierzu etwas sagen könne."

[147] "[…] avec le maximum de discrétion, à la libération et au rapatriement des trois derniers criminels de guerre incarcérés en France." [The third war criminal had been Franz Ehrmanntraut, a former S.S. guard and S.S. officer at Natzweiler Concentration Camp]. See "Note par le Sous-Directeur de l'Application des Peines pour M. le Directeur du Cabinet de M. le Garde des Sceaux," dated 29. November 1962, in : AN Pierrefitte, 5AG(1)/2114.

[148] "Il n'y a que moi qui puisse réconcilier la France et l'Allemagne, puisqu'il n'y a que moi qui puisse relever l'Allemagne de sa déchéance." Alain Peyrefitte, *C'était De Gaulle: La France Redevient la France* (Paris: France Loisirs, 1995), p. 83.

voted for granting Petain extraordinary powers [as did Robert Schuman] as a member of the French Senate. Thus, he may have felt that his own past as someone who was deprived of his rights as a citizen because of his support for Petain required him to tread carefully. This was especially sensitive when it came to the pardoning of high-profile war criminals such as Oberg and Knochen, pardons which were destined to incite the former resistance movement. Perhaps this was one of the reasons why he decided to announce his decision to pardon Oberg and Knochen and five other war criminals simultaneously with the execution of Seuss.

De Gaulle's biography offered no such weakness. On the contrary, his biography strongly discouraged any attempts to equate the Franco-German relations of 1962 and with those of 1940 to which the release of the war criminals otherwise may have lend themselves. In this sense, de Gaulle's hyperbole contained strong elements of truth. He was indeed uniquely positioned to endow the reconciliation between France and West Germany with the enormous moral credibility of the leader of the French resistance to Nazism.

However, this effect of de Gaulle's association with Franco-German reconciliation also helped to obscure the fact that it was based on forgetting the realities of the crimes of the Nazi regime in occupied France and that it therefore helped to strengthen the ties between Nazi Germany and the Federal Republic. Furthermore, de Gaulle described the power dynamics of "lifting Germany up from its shame" as asymmetrically distributed. In his quote, he presented the power dynamics in easy to understand physical terms: he and France was in the superior position of being able to lift the inferior West Germany up. However, France's

position would only have been superior if it had the freedom to give or to withhold the act of "lifting West Germany up from its shame", in other words the asymmetrical power relationship depended on agency. However, the agency did not lie with de Gaulle or France, but with West Germany which relentlessly demanded from France its rehabilitation and implicitly tied it to the future of Franco-German relations. Thus, de Gaulle mischaracterized the reality of the Franco-German relationship in the late 1950s and early 1960s. West Germany's rapid ascendance as Europe's foremost economic power house, the Cold War, the deterioration of France's position as a colonial power and its military defeats in French Indochina and Algeria made France's political and economic future dependent on the European project whose bedrock was Franco-German reconciliation.

While de Gaulle was right about his unique role in endowing Franco-German reconciliation with the moral prestige as the foremost symbol of the French resistance to Nazi Germany, he was wrong about the second part. It had never been France's choice to lift West Germany up, that in fact the entire trajectory of the revision of French justice vis-à-vis the Nazi criminals ending in the early release of even the last Nazi criminal only weeks prior to the signing of the Franco-German Friendship treaty evidenced the locus of agency, even superiority, was situated in Bonn and not Paris. In many ways it was West Germany which utilized the prestige and moral superiority of de Gaulle's France as a veil which allowed for the reconstruction of a bridge between the Nazi past and the Federal Republic, a reconstruction of the ties damaged by the Nuremberg interregnum.

Thus, de Gaulle's release of Ehrmanntraut, Oberg and Knochen constituted the culmination of the construction of an amnesia which attempted to erase inconvenient elements of the past from the official narrative. De Gaulle and his predecessors Coty and Auriol pardoned and prematurely released all German war criminals after the last execution was carried out in June of 1951 because the West German government successfully linked reconciliation with freedom for the war criminals in French custody. The extensive pressure campaign from Bonn limited the freedom of action for the French government so severely, the French judicial authorities, including the French presidents, were forced to fulfill the longstanding demand from West Germany "Liberate our prisoners!"[149] or risk the precious progress which had been made in projects of a lifetime: European Integration and Franco-German reconciliation. The noble ends of the later justified the means of the latter.

There always had been influential voices who argued for an alternative path to reconciliation. Vincent Auriol, who as president from 1947 to 1954 was influential in shaping the turn from the age of retribution to the age of reconciliation, constituted an exemplary model of those influential politicians who deplored the equation of reconciliation with the rehabilitation of the Nazi German past. When Schuman and François-Poncet pressed him for commuting the death sentences of two members of the Gestapo/SD in Reims[150] who had been convicted for the murder of 26 persons and

[149] See Bishop Hans Stempel, "Rede von Kirchenpräsident Hans Stempel auf dem Kirchentag in Hamburg," dated 15. August 1953, EZA 6/159; „Gebt uns unsere Gefangenen frei!"

[150] The Gestapo/SD officials were Anton Stollreiter and Joseph Weissensee. Despite efforts from Schuman and Poncet as well as Defense Minister René Pleven to convince Auriol of the necessity to commute their death sentences to life in prison in the name of Franco-German reconciliation, Auriol refused and Stollreiter and Weissensee were executed on February 5, 1951. Auriol allowed for one

the deportation and subsequent deaths of 48 others, Auriol disagreed fundamentally with the Schuman-Adenauer premise of justice for the victims as a price for reconciliation.[151] When Schuman asked him "to take into account the new relationship between Germany and France," Auriol noted in his diary that a commutation would have had quite the opposite effect:

> Even though I would have liked, for my part, to agree to the request, knowledge of the numerous statements of all those who, in Reims in particular, were victims of these [perpetrators] would have sufficed to convince you that, far from supporting rapprochement between the two peoples, the commutation of the punishment for such dreadful crimes would have driven France further apart from Germany and would have served the cause of those who wish to divide them. [...] [T]he rapprochement between France and Germany can only be achieved if, on the one hand, France wants to forget, for the sake of rapprochement, the pain Germany has caused her, and on the other hand, if the Germans do not forget what they did and especially do not show solidarity with those who committed abominable crimes in France. This is […] about the rupture of solidarity between yesterday and today that the Germans must conduct in order to facilitate rapprochement. [152]

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additional execution, of Wehrmacht-Colonel Horst Kolrep, to take place in May of the same year. Weissensee, Stollreiter and Kolrep represented the last of over 60 executions since 1945. After Kolrep's execution, Auriol yielded to the pressure from West Germany and from his own government and began to acquiesce to the commutation requests. Apparently, the West German amnesty campaign began to have an impact on Auriol. In fact, the campaign for a death-row prisoner in 1951, perhaps even Kolrep, generated so many signatures, 30,000 to 50,000, that the Federal government in Bonn was worried that this "demonstration of mass support" would result in the opposite of what it intended. See Conseil Supérieur de la Magistrature (CSM), dossiers Stollreiter et Weissenssee 33.PM.50, dated 31. January 1951, and dossier Kolrep, Georges (sic) 17.CM.51, dated 23. May 1951, in: AN Pierrefitte, 4AG/601; See cable from Stein, Generalkonsulat Paris to Ministry of Justice via Foreign Office, dated 13. June 1951, in: BA Koblenz, B305/306, p. 134.

[151] In fact, Auriol was vehemently opposed to Schuman's policy towards West Germany, stating that "when it comes to foreign policy, he is trapped between Adenauer and the Americans." He hoped that Schuman would be replaced after a government reshuffle. See Auriol, "entretien avec René Pleven," dated 28. March 1952, in: Auriol, *Journal*, p. 246.

[152] Vincent Auriol, diary entry dated 2. February 1951, in: Auriol, *Journal*, p. 63, "J'aurais voulu, pour ma part, déférer au désir qui a été exprimé, mails il me suffirait par ailleurs de connaitre les déclarations mesurées de tous ceux qui, à Reims notamment, ont été victimes de ceux représentent la population de Reims pour vous convaincre que, loin de favoriser un rapprochement entre les deux peuples, l'inexécution de la peine pour des crimes aussi affreux aurait éloigné la France de l'Allemagne et servi la cause de ceux qui veulent les diviser. […].
Or le rapprochement de la France et de l'Allemagne ne peut se faire que si, d'un côté la France veut oublier, pour se rapprocher, ce que l'Allemagne lui a fait de mal, et de l'autre cote, que les Allemands n'oublient pas ce qu'ils ont fait et surtout ne se solidarisent pas avec les criminels qui se sont comportés de façon inhumaine.

Auriol had hoped that Franco-German reconciliation would help facilitate the "rupture of solidarity" between West Germany and the war criminals "who committed abominable crimes in France" which he saw as a symptom of a larger continuity between the Nazi era and the Federal Republic, a continuity which he watched with grave concerns. Auriol offered an alternative interpretation of the impact of French justice vis-à-vis the German war criminals on Franco-German reconciliation. As opposed to Adenauer, Merkatz, Dehler, Weinhold and Trützschler as well as many French pioneers of reconciliation, he argued that it was not French justice which undermined reconciliation efforts, on the contrary, it was its revision demanded by West Germany which stood in the way of a true reconciliation because it alienated the victims of Nazism and served those who sought to divide France and West Germany.[153] However, Auriol's plea to construct a Franco-German relationship

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Ce n'est point sur la solidarité des Allemands d'aujourd'hui et surtout de l'élite allemande, ou des militaires allemands avec ceux qui ont commis des crimes abominables en France, mais au contraire sur la rupture de solidarité entre hier et aujourd'hui, que les Allemands doivent compter pour faciliter le rapprochement."

[153] Auriol may have referred to PCF which utilized the solidarity of West Germany and many West Germans with the war criminals as proof for equating West Germany with Nazi Germany. The PCF also referred to the Franco-German reconciliation as a new collaboration alluding to Franco-German relations between Vichy and Nazi Germany. For instance, in September of 1954, after the French National Assembly rejected ratification of the Treaty for the European Defense Community, French Prime Minister Pierre Mendès-France sought to calm the fears of the international community by stressing French commitment for "the necessity to work towards a close European cooperation on the basis of Franco-German reconciliation." ["nécessité 'd'organiser une étroite coopération européenne sur la base d'une réconciliation franco-allemande".] The next day, the Communist newspaper *L'Humanité* commented on Mendès-France's speech, claiming that "a true Franco-German reconciliation can only be concluded with a Germany which is no longer controlled by a militarist and revanchist clique. It cannot be concluded with people who organize torchlight processions to welcome the liberated war criminals home [...] The great hope for Franco-German reconciliation which has inspired so many great and intelligent men between the two wars, should not be soiled again by the mystifications of [ambassador Otto] Abetz on behalf of Hitler. Hitler also loved France in his own way, a servile France, France as the 'Garden of Europe' and as an amusement park for the German Lords." In: *L'Humanité*, issue of September 21, 1954, front page; "De toute évidence, une véritable réconciliation franco-allemande ne peut se faire qu'avec une Allemagne qui ne sera plus aux mains de la clique militariste et revancharde. Elle ne peut pas se faire avec personnages qui organisent des

on the foundation of justice which satisfied the victims demands for justice and punished the perpetrators had been ignored. On the contrary, Franco-German reconciliation did not serve as a vehicle which impressed upon West Germany the need to disavow its problematic relationship with the Nazi past, quite the opposite, it served as a tool to pressure France to accept that the price for reconciliation with West Germany was a revision of justice which privileged the perpetrators and which reaffirmed, as Vincent Auriol had phrased it, the solidarity of West Germany with the Nazi past.

While de Gaulle embraced this notion, dissenters continued to criticize the official narrative of reconciliation . Alfred Grosser's French Committee of Exchanges with the New Germany (*Comité français d'échanges avec l'Allemagne nouvelle*) argued continuously that a rehabilitation of the Nazi German past constituted the actual attack on reconciliation. It published an article of his honorary president Rémy Roure[154] three days after de Gaulle and Adenauer solemnly codified Franco-German reconciliation at a ceremony at the Elysée-Palace in Paris. The title of the piece, "Eighteen years later" at first sight seems to refer to the signing of the Elysée-Treaty, which affirmed Franco-German friendship eighteen years after the end of World War

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retraites aux flambeaux pour accueillir les criminels de guerre libérés [...]. La grande espérance de la réconciliation franco-allemande qui a animé tant d'hommes généraux et lucides entre les deux guerres, ne doit pas être une fois de plus souillée et déçue par les mystifications dont un Abetz s'était fait le spécialiste pour le compte d'Hitler, qui lui aussi aimait la France à sa manière, la France servile, la France 'jardin de l'Europe' et Luna-Park des seigneurs allemands."

[154] From the perspective of the victims of Nazism, Roure's biography exemplified the feasibility of an alternative to the notion that a revision of war crimes justice was the price for reconciliation. Roure had been an active member of the resistance, captured by the Gestapo and then tortured in order to coerce him to reveal the identities of his fellow members of the resistance. He was deported to Auschwitz and subsequently Buchenwald, where he was liberated in April of 1945. His wife Hélène, who had also been in the resistance, did not survive her incarceration by the Nazis. She died at Ravensbrück concentration camp in March of 1945. Despite all these horrible deeds which he had been subjected to by the Nazis, he became a forceful supporter of Franco-German reconciliation.

II. However, the title refers to the other twin event: the premature release of Oberg and Knochen, who bore a major share of the responsibility for why Franco-German relations had reached their nadir in the mid-1940s. The title thus suggested a link between the two events and challenged the notion that the premature release of the two war criminals would in any way contribute to what the Elysée Treaty sought to accomplish. Roure had personally experienced and witnessed egregious Nazi crimes as a prisoner at Auschwitz and Buchenwald.

Despite or perhaps because of these experiences in the camps, he emerged as one of the most vocal supporters of reconciliation with West Germany, a reconciliation, however, which included justice for and memory of the victims of Nazism. On January 26, 1963, he wrote that "most [of those who are protesting the release of Oberg and Knochen] are not opposed to Franco-German reconciliation. But they do wonder how the return in freedom to the Federal Republic of these two men who are responsible for the death of over one hundred thousand French would serve [reconciliation]. […] Since 1945, I had the honor of being the honorary co-president of the "French Committee of Exchanges with the New Germany" founded by Emmanuel Mounier […] But in my mind, there is no place for Oberg or Knochen in this new Germany." [155]

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[155] Rémy Roure, "Dix-huit ans après," in: *Allemagne: Bulletin d'Information*, issue 77/78 (December 1962/March1963); Roure's piece first appeared in *Le Figaro* on January 26, 1963. "Beaucoup m'ont écrit: 'Qu'on pensez-vous?' Que leur répondre ? Non, certes, que la plupart soient opposés à la réconciliation franco-allemande, bien au contraire. Mais ils se demandent en quoi le libre retour en République fédérale de deux responsables de la mort de plus de cent milles Français pourrait bien la servir […].
Dans les nouvelles générations, beaucoup de jeunes Français ignorent ce que furent ces hommes sinistres. Karl Oberg, Rudolf Knochen [sic], qui est-ce? Mais eux, ceux dont la famille a été décimée, ceux qui ont perdu un être cher, parent ou ami, le savent et ne peuvent oublier. Ils ne peuvent oublier qu'Oberg et Knochen, grands maîtres de la Gestapo en France, furent les inlassables pourvoyeurs des camps de la mort, des poteaux d'exécution, des chambres de torture. Les voici libres. […]

Dès 1945, j'ai eu l'honneur d'être le co-président d'honneur du "Comité d'échanges avec l'Allemagne nouvelle" fondé par Emmanuel Mounier. […]
Mais, dans mon esprit, dans cette Allemagne nouvelle il n'y avait ni Oberg ni Knochen. Dix-huit ans ont passé. Oberg et Knochen ont été condamnés deux fois à mort […]. Le président René Coty a commué leur peine en celle d'une détention perpétuelle. Elle a duré quatre ans. C'est peu, et je comprends l'émotion de mes camarades. "

CONCLUSION

This dissertation expands our knowledge on the meanings of Franco-German reconciliation by viewing it through the lens of war crimes justice. It diverges from previous works of scholarship which have either explained the retreat from the goals of postwar French war crimes justice in the 1950s and early 1960s as part of a general trend or only vaguely referenced a connection to reconciliation.[1] This work revealed that the release of all German war criminals prior to the 1963 Franco-German Friendship Treaty was neither an accidental byproduct of reconciliation nor just part of the increasing leniency in Western Europe explained by Cold War geopolitical considerations. On the contrary, this dissertation introduces to historiography a

[1] For instance, the excellent work on Franco-German relations by two pre-eminent scholars on post-World-War II Franco-German history, Corine de Defrance and Ulrich Pfeil, argued that the leniency of French judicial authorities in the 1950s concerning the Germans accused of war crimes can be explained in the following way: "After the British and Americans already changed their policies considerably in the summer of 1947 concerning the perpetrators of the 'Third Reich,' the French government finally took into account the new priorities regarding Cold War and European reconstruction." "Die französische Regierung trug schließlich den neuen Prioritäten des Kalten Krieges und des europäischen Wiederaufbaus Rechnung, nachdem Briten und Amerikaner ihre Politik gegenüber Verbrechern des 'Dritten Reiches' bereits im Sommer 1947 merklich verändert hatten." See Corine Defrance, Ulrich Pfeil, *Deutsch-Französische Geschichte, 1945 bis 1963* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2011), p. 88. Furthermore, Claudia Moisel's excellent *Frankreich und die deutschen Kriegsverbrecher*, the first in-depth analysis on the French trials of German war criminals, only refers to a simultaneity between reconciliation and the termination of the war crimes trials and the release of the German war criminals: "When Konrad Adenauer und Charles de Gaulle signed the Franco-German Friendship Treaty in 1963, the [war crimes] trials had already ceased in France while the West German courts had still not begun to investigate in earnest. The rapprochement between the former arch-enemies was thus accompanied by the exclusion of the memory of the war-time, which was perceived as problematic." "Als Konrad Adenauer und Charles de Gaulle im Jahr 1963 den deutsch-französischen Freundschaftsvertrag unterzeichneten, wurde in Frankreich nicht mehr und vor bundesdeutschen Gerichten noch immer nicht ernsthaft ermittelt. Die Annäherung der ehemaligen Erbfeinde war somit von der Ausgrenzung der als problematisch empfundenen Erinnerung an die Kriegsjahre begleitet." See Moisel, *Frankreich und die deutschen Kriegsverbrecher,* p. 240.
Ulrich Brochhagen's pioneer work *Nach Nürnberg* on war crimes justice after the Nuremberg Trial referenced the Allied concessions concerning the release of German war criminals from Allied prisons in West Germany in connection to West German rearmament. While he remarked that France had been the most intransigent Western Ally, he did not make the connection that France's war crimes trials program lasted beyond the rearmament debate (which concluded with West Germany's admission to NATO on May of 1955). See Brochhagen, *Nach Nürnberg*, pp. 128-150.

Franco-German reconciliation which was intrinsically tied to the retreat from the goals of French war crimes justice in the 1950s and early 1960s.[2] The evidence this dissertation demonstrates that the detractors of war crimes justice successfully wielded Franco-German reconciliation as a weapon to delegitimize and dismantle the French war crimes trial program and make any future execution of sentences impossible – even if the highest French authorities were willing to "let justice run its course." This dissertation, more than previous scholarship on Franco-German reconciliation draws our attention to the fact that this process initiated and sustained a development which privileged, even empowered the perpetrators while disadvantaging the victims of the crimes committed by Nazi Germany in France.

The damage to judicial reckoning ought not be dismissed as a marginal phenomenon to reconciliation. On the contrary, the evidence presented by this dissertation demonstrates that the framers of Franco-German relations in the 1950s and early 1960s came to understand the cessation of trials and the release of all convicts as an essential, inseparable, even a constituent element of reconciliation without which it was deemed incomplete. Existing historiography has ignored that the architects of Franco-German rapprochement, first and foremost Adenauer, Schuman, Monnet and de Gaulle[3] viewed the war crimes justice question through the prism of

[2] Norbert Frei's *Vergangenheitspolitik* has been very influential to this dissertation. His description of the popular West German sentiment regarding the war criminals as "amnesty hysteria" is a pillar. However, Frei's work is focused on domestic West German war crimes affairs and largely ends in the year of 1955, when French war crimes tribunals were still sentencing German perpetrators to death. The Franco-German controversy lasted almost another decade and shows the pervasiveness of the issue beyond amnesty hysteria of the early 1950s as described by Frei.

[3] The list is not limited to these politicians and state-leaders. It also includes the architects behind the scenes, such as Carl Ophüls, Walter Hallstein, André François-Poncet, as well as government officials tasked with detailed bilateral negotiations such as Heinz Trützschler, Helmut Blankenhorn, Edgar Weinhold, Colonel Belin, François Seydoux de Clausonne and many more. They regarded the efforts

reconciliation. This explains why despite any feeling of disapproval for the individual war criminals and their crimes they may have had, all of them personally intervened in favor of even the most egregious war criminals.

My dissertation confirms Tony Judt's thesis that "[s]ilence over Europe's recent past was the necessary condition for the construction of a European future."[4] I have shown that reconciliation constituted the main motif for France's transition from Western Europe's staunchest proponent of a retributive justice for Nazi Germany's crimes towards leniency and the pardons and early release of all convicted war criminals by late 1962. Indeed, Adenauer, Schuman and de Gaulle practiced varying degrees of silence regarding the Nazi criminals held and tried in France, despite the fact that they were united in their hatred and rejection of Nazi Germany.

Jeffrey Herf[5] juxtaposed traditions of selective memory in the two Germanies regarding the crimes of the Nazis. I expand on Herf's thesis and I argue that through Franco-German reconciliation, these inner-German approaches to a selective remembrance of the Nazi past and the Holocaust collided with French memory of the German occupation, a collision that was temporarily resolved by excluding memory of the Nazi past from official reconciliation discourse.[6] In addition, this silence on the Nazi crimes in the official reconciliation efforts was also facilitated by an alignment in substance and time between the two countries' dominant memory politics

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to find a solution to the "war criminals problem" ("das Kriegsverbrecherproblem") as part of the task of building a new foundation for Franco-German relations.

[4] Tony Judt, *Postwar, A History of Europe since 1945* (London: Penguin Books, 2006), p. 10.

[5] See Jeffrey Herf, *Divided Memory*, p. 397.

[6] Herf also rightly pointed out that the German memory dynamics were independent of and preceded the Cold War.

regarding the recent past. The equivalent of *Vergangenheitspolitik*[7] in West Germany had been what Henry Rousso's described as the Vichy Syndrome's repression phase from 1954 on until the end of the era de Gaulle in the late 1960s. Rousso convincingly argued that "as early as the mid 1950s many French people clearly wished to lay controversy about the past to rest [...]."[8] Given that a common defense of German suspects in war crimes trials had been to expose the level of collaboration between Nazi German officials and their Vichyite counterparts,[9] a cessation of the trials of German crimes and premature release of the German convicts emerged as an extension of the Vichy Syndrome in the 1950s and 60s.

Robert Paxton's scholarship revealed that the dominant French discourse of the 1950s and 1960s, which argued that Vichy shielded France from worse crimes, constituted a myth and that furthermore many crimes, including the infamous *Statute de Juifs*, were genuinely French initiatives. Robert Paxton also observed that the myth about Vichy, its alleged "foreignness" or "non-Frenchness," served French Foreign Policy interests in the postwar era. Much of the positive image and prestige of France in the 1950s and 1960s rested on the idea of France as a country in resistance to Nazi

[7] See Norbert Frei, *Vergangenheitspolitik.*
[8] See Henry Rousso, *The Vichy Syndrome*, p. 97.
[9] For example, the Oberg-Knochen Trial put the collaboration of the Vichy functionaries on prominent display. René Bousquet, the head of the police in Vichy France who was chiefly responsible for the infamous round-up of the Jews of Paris at Vel-d'Hiv in 1942, testified for the defense and exposed the close collaboration between Vichy and the Nazi occupants of France. See for instance the report in *L'Humanité* on the Oberg-Knochen Trial by Alice Alcquir. Alcquir described in great detail how Bousquet framed the collaboration between Vichy and Nazi Germany as a victory for France, because it avoided more harm. Alice Alcquier, "Après la 'version Bousquet' des évènements - Oberg décerne à l'ex-policier de Vichy un brévet de 'patriotisme français'", in: *L'Humanité*, October 2, 1954. Also see Henry Rousso, sub-chapter entitled "The Oberg-Knochen-Trial," in which he makes a similar argument. See Henry Rousso, *The Vichy Syndrome*, p. 61f.

Germany.[10] Thus, a cessation of war crimes justice and a premature release of the Nazi war criminals left the positive image of "*La France résistante*" undisturbed by avoiding difficult questions about Vichy and the collaboration.

Sarah Farmer's had already exposed in her scholarship on justice and memory for the crimes committed at Oradour-sur-Glane that the French state was capable to forego justice for the victims in exchange for political ends – in her case study the maintenance of social and political order in Alsace.[11] My dissertation revealed similar dynamics when Franco-German reconciliation elevated this tension between justice and politics to the international stage.

However, "silence" regarding the Nazi crimes and the perpetrators does not fully capture the atmosphere of the 1950s and early 1960s – since it was only partially a project of amnesia. West Germans remembered the victims, their own, and thus engaged in a tradition of selective memory and forgetting. The fact that Adenauer, while on a state visit to Paris for the ceremonial signing of the treaty for the European Community for Steel and Coal, did not simultaneously meet with indicted suspects in war crimes trials and convicts on provisional release, despite the efforts of the Central Legal Protection Office (ZRS) to arrange such a meeting,[12] shows not only

[10] See Robert Paxton, "Foreword," in Eric Conan, Henry Rousso, *Vichy. An Everpresent Past* (Hanover: University Press of New England, 1998), p. ix-xiii.
[11] See Sarah Farmer, "Postwar Justice in France: Bordeaux 1953,"in István Deák, Jan Tomasz Gross, and Tony Judt. *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, N.J.: Princeton University Press, 2000), p.206.
[12] The ZRS proposed a meeting of Adenauer with three German inmates in French prisons while he was in Paris for the signing ceremony on April 18, 1951. These inmates were Oberst von Karmainsky, Rittmeister von Poll and Unteroffizier Gerhard Scholz. These inmates were chosen because they served as elected „spokesmen" of the German war criminals who were held on provisional release in Paris. One can only imagine how poorly this meeting would have been received in France, given that Oberst Otto von Karmainsky was charged with murder for the involvement of the shooting of several seminarians at the monastery La Brosse-Montceaux in July of 1944. See memo dated April 16, 1951,

Adenauer's excellent political instincts, but also the pressure within the West German administration to link European integration and reconciliation with a rehabilitation of the Nazi criminals, who were widely regarded as victims of French justice. While Adenauer did resist this attempt, he yielded to many others. Adenauer was both anti-Nazi and a shrewd politician. As Jeffrey Herf pointed out, Adenauer calculated that such actions would benefit him electorally based on his "somber view of German history and his awareness of the degree of popular support for the Nazi regime."[13] Adenauer emerged as the dominant political figure for over a decade-and-a-half for a reason: he was an astute politician who knew that the success of his policies of Western integration and Franco-German reconciliation depended on his ability to command the loyalties of the millions of former Nazis who had become citizens of West Germany – and his voters.

Political realism was only been part of the equation, albeit an important one. This dissertation rests on the integration of elements from both "idealist" and "realist" schools regarding European integration. William Hitchcock, together with Alan Milward a representative of the realist school, aptly illustrated the impetus of national French interests on the early European project as well as Franco-German reconciliation. Hitchcock rightly emphasized the security concerns of France which found a satisfactory solution in European integration.[14] The evidence and arguments

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in: BA Koblenz, B305/361; See "Les chefs du S.D. de Melun se pourvoient en cassation," in: *Le Monde,* dated February 17, 1953.

[13] Jeffrey Herf, *Divided Memory*, p. 379. Herf also demonstrated that Adenauer could afford to remain silent about the recent past and engage in the politics of integration and rehabilitation of the millions of ex-Nazis, because he knew the Western Allies would intervene to prevent a renazification of West Germany.

[14] See William Hitchcock, *France Restored*, *Cold War Diplomacy and the Quest for Leadership in Europe, 1944-1954* (Chapel Hill: University of North Carolina Press, 1998*).*

of this dissertation underscore the importance these security concerns played in the successful deployment of the West German amnesty campaign. However, the "idealist" impetus[15] forged by the shared European experiences of Nazism, war and occupation strongly influenced decisionmakers as well. [16] Schuman and Adenauer in particular shared strong religious and moral convictions which led them to a broad understanding of European integration based on reconciliation as the solution to the warring of Europe's nation states.[17] This dissertation has shown that the belief in the moral imperative of reconciliation as a lesson from Europe's war torn recent history also served to justify the sacrification of justice and memory for the victims of Nazism.

Thus, an important component of this dissertation is the reevaluation of reconciliation and their proponents. Robert Schumann's design for European integration and Franco-German reconciliation created the framework which allowed for a transition to a lenient war crimes justice. Adenauer's coalition government even utilized a Schuman Plan meeting as a venue to voice their demands concerning the release of suspected and convicted war criminals, as the memo of Carl Friedrich Ophüls' meeting with Jean Monnet in the spring of 1951 showed. Surely, Ophüls argued to Monnet, the French government would have to amend the administration of war crimes justice as part of the moral imperative of Franco-German reconciliation.

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[15] The "idealist" impetus on European integration was first revealed by Walter Lipgens' scholarship. Lipgens rightly points to the remarkable continuity in personnel between the resistance to Nazism and political advocates of European integration after World War II, such as Alcide De Gasperi, Robert Schuman, Jean Monnet, Albert Camus, René Coty, Carlo Schmid and Konrad Adenauer. See Walter Lipgens, *A History of European Integration: 1945-1947* (Oxford: Clarendon Press, 1982).

[16] Albert Camus has summed it up succinctly: "Das Unglück ist heute unser Vaterland." Cited in: Peter Sloterdijk, *Theorie der Nachkriegszeiten* (Frankfurt am Main: Suhrkamp, 2008), p. 47.

[17] Robert Schuman, in his memoires entitled "Pour L'Europe," called peace the leading motif of European integration, see Robert Schuman, *Pour L'Europe* (Paris: Nagel, 1963), p. 30.

In the pursuit of the transition to a lenient war crimes justice, the West German government cleverly deployed what I call inversion of war crimes justice. As a lesson drawn from the failed post-World-War I peace settlement, the architects of French war crimes justice regarded it as an important component of French security policy towards (West) Germany. I have shown that Adenauer and his emissaries inverted the goals of French war crimes justice by arguing that in fact only a transition to a lenient war crimes justice alleviated traditional French security concerns regarding its neighbor across the Rhine. Adenauer claimed that the continuation of a retributive French war crimes justice undermined his government's pro-French policies and even threatened his chancellorship as a whole. In essence, he convinced the French government that it must release the Nazis to prevent them from coming to power again in West Germany. While this became a successful political reality in hindsight,[18] Adenauer sacrificed a Franco-German reconciliation which honored the memory of the victims and which punished the perpetrators as a consequence of this inversion of justice.

However, in this dissertation I also argued that this trajectory was not pre-ordained or inevitable. As Remy Roure reminded his readers, an alternative to the existing memory politics of the Franco-German reconciliation was not hard to imagine. Roure explained that as a survivor of the Nazi concentration camps and at the same time ardent supporter of rapprochement with the "New Germany," he was in disbelief that reconciliation did not generate a Franco-German policy which generated sympathy with the victims and honored their memory, that is, a reconciliation which

[18] Adenauer was right: West Germany did neither re-nazify nor pose a security threat to France again.

combined truth, memory and judicial reckoning. Instead, he was stunned to observe that reconciliation strengthened the ties between the Nazi past and the present.

The fact that the alternative trajectory envisioned by Remy Roure, Alfred Grosser and Vincent Auriol did not come to fruition requires rethinking the meaning of reconciliation as a break with the past.[19] It was Franco-German reconciliation which validated the dominant and problematic memory politics in West Germany. The narrative "justice equals an attack on reconciliation," or even the "murder of reconciliation," became paramount and part of the reconciliation narrative. France enabled the strengthening of the ties to the Nazi German past in the name of reconciliation, thus allowing for the quasi sanctioning of a sanitized memory of the German occupation of France – despite the abundant evidence to the contrary. The most visible signs of the effects of this development were the torch light parades organized by the most extreme parts of public opinion in West Germany in order to celebrate triumphantly the return home in freedom from France of the war criminals. Part of the price for the cornerstone of European integration and the longest, most prosperous and most peaceful period in modern Western European history was a hero's welcome for some of the most egregious war criminals.

Furthermore, the more subtle consequence of this partial rehabilitation of the German occupation of France was that in its wake, the Vichy collaboration also experienced a reassessment.[20] The release of all German convicts in French custody

[19] Historiography generally agrees that Franco-German relations after World War II constituted a break with the past. Defrance and Pfeil have described this break as "paths, which Germans and French have taken in order to find a way out of the bellicose cycles and instead create a new normative and moral framework for the bilateral relations." See Defrance/Pfeil, *Deutsch-Französische Geschichte*, p. 9.
[20] The 1950s was the decade of the apologia for Vichy. Robert Aron published his then-seminal work *Histoire de Vichy* in which he postulated his "sword-and-shield-theory." According to Aron, de Gaulle

was also made possible because the two distinct memory politics of the two countries shared important features: *Vergangenheitspolitik* and the Vichy Syndrome both sought to rehabilitate and integrate the legions of ex-Nazis and ex-Vichyites into their respective societies. To bring this parallel between these two postwar traditions to the fore was a major contribution of this dissertation.

This dissertation divided the period under investigation into two distinct eras: what I call the age of retribution from 1944 to 1949, and the age of reconciliation from 1950 to 1963. In chapter I, I introduced the political and judicial dynamics of the age of retribution. I argue that justice for the Nazi war crimes amounted to cornerstone in the reestablishment of the political legitimacy of the Fourth Republic after the Vichy regime. I discussed France's role at the Nuremberg trials – a topic which has not received the attention it deserves. The Nuremberg Trial was especially meaningful to the later arc of French judicial reckoning with the crimes committed by the Nazis in France, because many of its protagonists also played important roles in Nuremberg. They included Donnedieu de Vabres, France's principal judge, Maurice de Menthon, its chief prosecutor, Edgar Faure, his assistant, and André Gros. Among the many objectives, the Nuremberg Trial was also of importance to French security concerns designed to ensure that the surviving leaders of Nazi Germany would be punished, their crimes revealed and their movement discredited and thus deprived of the chance to wage another war against France.

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had been France's sword while Pétain served as its shield – both were necessary for the survival of France during World War II. See Robert Aron, *Histoire de Vichy (*Paris: éd. Fayard, 1954).

However, I argue that the French strategy of the prosecution at Nuremberg also revealed another objective. The opening address of the French prosecution at Nuremberg in particular exemplified the importance of justice vis-à-vis the Nazi war criminals to the restored French Republic – what I call the Gaullist myth. De Menthon's indictment of the accused showed how war crimes trials served as externalization of France's own internal discord. By stressing Nazi German responsibilities for the evil which befell France, de Menthon's selective memory helped reunify a country torn apart by internal strife. In the presence of Robert Falco, France's alternate judge and a victim of Vichy's anti-Semitic persecution, de Menthon forged a French identity as either victims of or resistants to German crimes. De Menthon's indictment of the crimes committed by the major Nazi war criminals remains historically accurate, albeit incomplete.[21] Although his willful ignorance of historical facts such as the Vichy regime's level of collaboration in the crimes of the Nazi occupant or the existence of French nationals among the ranks of the perpetrators is understandable given the trial of Nazi Germany's major war criminals, de Menthon's indictment bore the hallmarks of French war crimes justice in the age of retribution in general, which in later trials and indictments resulted in a *de facto* separation of victims and perpetrators based on nationality – perpetrators were the Nazis (mostly but not exclusively German) and the victims were French.

De Menthon's view on Nazi Germany and its crime was heavily influenced by the historian and Germanist Edmond Vermeil. Vermeil's distinctly French version

[21] Most importantly, de Menthon's interpretation left little to no room for Jewish victimhood.

on the German *Sonderweg*[22] is instructive because it shaped the view of two French generations on Germany and prepared the stage for a link between Franco-German reconciliation and the end of war crimes justice. First, Vermeil and de Menthon, and with them the French prosecution at Nuremberg, viewed German history not from the vantage point of Auschwitz or the extermination camps, or even January 30, 1933, as many other Sonderweg historians have, but rather "Prussianism," in which the seminal catastrophe had been the war of 1870/71. Nazism in this view, had been the climax of the Prussian, illiberal, anti-Western, militaristic Germany whose principal antagonist was France. However, this view on Franco-German history as the struggle between the democratic-liberal, lawful and republican France and the autocratic, militarist and barbaric Germany supported the Adenauer-Schuman brand of Franco-German reconciliation. I argue that de Menthon's indictment of the "eternal Germany" at the Nuremberg Trial relativized the Nazi regime, exemplified by his failure to draw attention to the Holocaust. The fact that Vermeil and de Menthon put Nazi Germany, and World War II, into the perspective of World War I, and the Franco-German war of 1870/71, provided an opening for the proponents of an end to the French judicial reckoning with the Nazi crimes in the 1950s. First, this interpretation of the past as a *longue durée* dualism between French martyrdom and German criminality served as fertile ground for a distortion: that war crimes trials were primarily a perpetuation of this long conflict between France and Germany, a continuation of the conflict by judicial means, and not the legitimate effort to serve

[22] Vermeil was not a Sonderweg historian. His thesis predated the Sonderweg controversy by several decades. However, in hindsight, it does share many of the same features with the Sonderweg theses of historians like A.J.P. Taylor or Alan Shirer.

justice for the victims of the Nazi crimes. Second, I argue that it normalized the war criminals, some of them génocidaires extraordinaires, as participants in only another one of the three conflicts in the past three generations. And last, most importantly, it allowed Adenauer and the representatives of the FRG to make the case for the "New Germany," liberal, democratic and pro-French, which required French support against the "eternal Germany" in the form of a lenient French justice.

Finally, in chapter I, I introduced Donnedieu de Vabres, the French principal judge at Nuremberg, who, *in camera*, distinguished himself as the most lenient of the judges at Nuremberg, a fact that was not known until decades later. Given the knowledge we have today[23] on his extraordinary lenient judgements regarding the main war criminals in Nuremberg, his subsequent appearance as one of the main character witnesses of the West German amnesty lobby appears to be less of a surprise.

In chapter II, I argue that the Gaullist interpretation of recent history, what I call the Gaullist myth, found its translation in the two laws governing the prosecution of the war criminals in France. The Ordinance of August 1944, which remained the legal foundation for all French war crimes trials in France throughout the entire period of this inquiry, was written, with a clear perpetrator profile in mind: Reich German nationality. While it allowed for the prosecution of other citizens from axis powers, it specifically precluded the prosecution of French citizens for war crimes. Second, the Ordinance of August 28, 1944, and the Law of September 15, 1948,

[23] Robert Falco's memoir on his Nuremberg judgeship was only recently discovered and published in 2012. See Robert Falco, Jeanne Falco, and Guillaume Mouralis, *Juge à Nuremberg. Souvenirs Inédits du Procès des Criminels Nazis* (Nancy: Arbre Bleu Éd, 2012).

became important markers of the age of retribution, because they prioritized punishment for crimes committed by the Nazis over fundamental republican legal principles – such as equality before the law, the presumption of innocence and the principle of the individual rather than collective guilt. French lawmakers accepted the violation of these republican principles as the price for the prosecution and punishment of the perpetrators of some of the most egregious crimes committed in France, namely Oradour. However, these laws of exception also exposed the French war crimes justice to severe criticism. As I have shown, the law of 1948 in particular initiated a turning point. Critics like Jean Schlumberger began to build a bridge between the age of retribution and the age of reconciliation based on an end of the war crimes trials justice by imploring his readers in *Le Figaro* to stand for French republican principles even if it meant a lenient justice vis-à-vis the German war criminals. Furthermore, the law of 1948 served as a powerful tool in the arsenal of the extreme right-wing forces in West Germany, among them unrepentant Nazis like Friedrich Grimm and Nazi apologists like Erich Schwinge, in their effort to brand French justice as an act of vengeance rather than a legitimate and fair effort to serve justice.

The subsequent section, chapter III, provides an example for the impact of the Gaullist myth on the prosecution of a French perpetrator in one of the most infamous war crimes: the massacre at Oradour-sur-Glane. Paul Graff, as a French citizen, violated the binary pair victim/French, perpetrator/German paradigm – a fact known to French judicial authorities since 1945. The pervasiveness of the Gaullist fiction and its contribution to the legitimacy of the restored Republic encouraged prosecutorial

authorities to impede with judicial proceedings and undermined the efforts to bring the perpetrators to justice regardless of their citizenship. It also signaled the end of the phase of a French consensus on war crimes. Paul Graff showed that the war crimes issue, far from providing the Republic with internal cohesion, had the potential to divide the Fourth Republic. Paul Graff's case also served as the transition between the age of retribution, with its emphasis on justice for the crimes committed by the Nazi Germans, and the age of reconciliation, which prioritized reconciliation ahead of justice.

The logical conclusion of the unravelling of the Gaullist interpretation was on full display in front of the eyes of the world in the 1953 Bordeaux trial of the Oradour massacre – the subject of chapter IV. I argue that this unravelling of the Gaullist myth at the Oradour Trial consisted of two constituent elements. The first element pertained to the internal French impact and has been well documented in scholarship – in the name of a Franco-French reconciliation, the thirteen French convicts were immediately pardoned and released from prison. The second element has not received the attention it deserves. The Oradour Trial and aftermath evidenced a momentous change in the trajectory of the policy of the French government in these judicial matters. The convergence of the unravelling of the Gaullist myth, the amnesty for the French convicts and the early stages of Franco-German rapprochement had a profound impact on the prosecution of the German perpetrators. The French dispensation of justice for the Oradour massacre became a rallying-cry for the critics of French war crimes justice in general in their portrayal of war crimes trials as an

existential threat, not only to internal French unity, but also to the Franco-German foundation of the European postwar order in general.

Thus, paradoxically, trial and punishment for the massacre which had become the symbol for the brutality of the Nazi occupation of France, supported not only the revision of war crimes justice and the release of all German war criminals in French prisons, but also prevented the arrest, trial and conviction of suspects who remained in freedom in West Germany. The Oradour-suspects Heinrich Lammerding, Otto Kahn and Adolf Heinrich also benefitted from an international effort to protect European integration and Franco-German reconciliation from the resurfacing of the memory of Nazi Germany's occupation policies in France. British and U.S. authorities collaborated to prevent that Oradour resurfaced as an attack on reconciliation by ensuring that no additional Oradour perpetrators were extradited to France – while the West German government directed its judicial authorities to delay the prosecution of Oradour suspects in West Germany for the same reasons. The result of these efforts, ostensibly to protect Franco-German reconciliation, amounted to the privileging of perpetrators over the victims of the crimes of Nazism in France. The 1953 Oradour trial and its aftermath was a prime example, perhaps even the peak of the subordinate relationship of justice to reconciliation.

Chapter V shows how the aforementioned competing notions of justice versus reconciliation became the subject of negotiations at the highest levels of government in West Germany and France. As Ophüls-Monnet negotiations evidenced, the West German government utilized European integration and Franco-German rapprochement as an argument for the revision of French justice *per se*. I argue that

the West German government, moved by what Norbert Frei described as "amnesty hysteria"[24] of the West German public, expected France to revise justice in favor of the German war criminals. Adenauer and Ophüls as well as many other West German government officials argued that such a step would be perceived by the West German public as evidence for France's resolve to terminate the "arch-enmity" between the two countries – a veritable, authentic reconciliation between the French and the Germans. At the core of this argument stood the West German perception of French justice not as the attempt to punish the individual perpetrators of egregious crimes and serve justice for the victims of Nazism in France, but a political justice designed to punish *the Germans*. This argument was nourished by what I have described above as the Gaullist myth which manifested itself at the French indictment at Nuremberg, as well as in the war crimes legislation of 1944 and 1948, and in the prosecution of the Oradour perpetrators. However, as the Natzweiler controversy showed, the West German government utilized the flaws of French jurisprudence to discredit the war crimes justice *in toto* as political justice. When faced with French political outrage regarding this position about the trial of concentration camp commandants, SS officers and SS guards, Adenauer retreated, yet the behind the scenes his government continued to obstruct the trial while showing complete resolve to bend the rules in the defense of the suspects – some of the most egregious Nazi criminals in France.

The trajectory of war crimes justice until the release of the last three war criminals in November of 1962 confirms the view that for many West German government officials, Franco-German reconciliation was not limited to the noble

[24] Frei, *Vergangenheitspolitik*, p. 399.

effort to break with the past troubled relationship between the two countries. For many, like Hans-Joachim von Merkatz, Heinz von Trützschler, Edgar Weinhold and Hans Gawlik, the motif of reconciliation was rivaled by the goal to entrench the continuities between the Third Reich and the postwar era, a continuity which was broken by the unconditional surrender in 1945, the loss of German sovereignty and the war crimes trials. Reconciliation forced France to tacitly accept this partial revision of the postwar order as a corollary so that even attempts to compromise between West German desire to release all prisoners and the French victims' and resistance organizations' calls for justice failed. The commutation of the death sentence of the Natzweiler perpetrator Wolfgang Seuss, despite President Coty's resolve to let justice run its course, demonstrated the tremendous influence of the West German government over the trajectory of justice in France. Even the presidential prerogative to accept or deny applications for commutations of the death sentence was no match for the West German demands for the premature release of Seuss. The West German government mobilized its network in a multilayered and multifaceted campaign which included multiple interventions by Adenauer, to convince Coty that an execution would be perceived as an act of vengeance designed to undermine Franco-German rapprochement.

The seminal achievement of a lasting Franco-German reconciliation has rightfully become a source of pride in both Germany and France today. France and Germany have enjoyed the longest peaceful period in their mutual history. Both

countries have justly been described as the engine of an ever-closer European integration.[25]

However, Franco-German reconciliation was accompanied by the *de facto* revision of French war crimes justice. [26] Despite the hopes of many, including French President Vincent Auriol and the editor of *Le Figaro*, Rémy Roure, rapprochement with France did not lead to a West German denunciation of the war criminals and the crimes they had committed in France. It did not lead to an outpouring of support in West Germany for the victims of Nazism in France and their families. On the contrary, the evidence in this dissertation demonstrates that a West German campaign for the release of all German war criminals succeeded in extracting from the French government a price for reconciliation: a *de facto* revision of war crimes justice for the victims of Nazi crimes in France.

The beneficiaries of the milestone achievement which transformed hostile relations of two close neighbors into an exemplary peaceful and prosperous cooperation were the war criminals who stood for the continuity of the former hostile

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[25] See for instance Michèle Weinachter, "Franco-German Relations in the Giscard-Schmidt Era, 1974–81," in: Carine Germond, Henning Turk (eds.) , *A History of Franco-German Relations in Europe. From "Hereditary Enemies" to Partners* (New York: Palgrave Macmillan, 2008), pp. 223-233.

[26] The *de facto* revision of war crimes justice for the victims of Nazi crimes in France was the extensive use of lawful avenues with the sole intent to remove the political liability of the war criminals as a roadblock to Franco-German reconciliation. While these measures, such as presidential pardons, provisional and conditional releases, *de jure* left the original determination of guilt by the military tribunals untouched, they *de facto* undermined them and left many of the victims of the crimes with a sense of being deprived of justice. I utilize the term "revision of war crimes justice" intentionally to signify that the actions taken by French judicial authorities were not limited to certain individual war criminals. Rather, these actions affected all of the major war criminals who were still in French custody after 1951. After that year, very few prison sentences pronounced by the military tribunals were left standing, and these were usually very short prison terms of less than two years, too short to catch the attention of the relevant organizations and authorities in time to have an effect on the prison term. Thus, the term "revision of war crimes justice" is intended to signify that the actions taken by the French judicial authorities, in fulfilling the requests from the West German side, amounted to a reduction of almost all sentences pronounced of the military tribunals, thus *de facto* revising French war crimes jurisprudence in favor of the war criminals.

relationship. The outpouring of support in West Germany was not for the victims of the Nazi occupation, on the contrary, it was precisely for the very perpetrators whose deeds stood for the age of violence and of destruction and not for the age of reconciliation. This constituted the paradox of this Franco-German reconciliation which privileged the perpetrators of Nazi war crimes at the expense of justice for the victims.

This development is especially remarkable since France had constructed one of the most extensive Nazi war crimes trials programs in the Western world, including the United States. France investigated over 18,000 suspects for war crimes. The French War Crimes Research Service succeeded in identifying, locating, and in many cases extraditing, 1031 suspects who then appeared in person in front of the nine military tribunals across France in at least 50 trials (possibly many more), handing down more than 800 death sentences. An additional 1314 suspects were tried in absentia. In comparison, the U.S. tried a combined 209 suspects between 1945 and 1949.[27] It is equally so because rendering justice for the crimes committed by the

[27] The trial of the major war criminals at the International Military Tribunal in Nuremberg and the twelve so-called Nuremberg successor trials (these included the Wilhemstraßen-Trial, the Judges-Trial, the Doctors-Trial, the Concentration Camp Personnel Trial; as opposed to trial of the major war criminals, these were organized and carried out by the U.S.A. alone) combined 209 suspects (24 at the trial of the major war criminals at Nuremberg and 185 at the subsequent successor trials) between 1945 and 1949. These trials were dwarfed by the prosecution of Nazi war crimes in France both when measured in terms of numbers of defendants, the time frame and the number of trials. From 1944 to 1956, the French military justice system investigated over 18,765 suspects and indicted 2,345 suspects in trials across France. The French judicial authorities had been able to physically locate 1,031 of these suspects (either because they were POWs - in France or the FZO – or because the British and U.S. authorities extradited the suspects before extradition procedures came to a halt in 1947/48). These 1031 were tried in person in front of the nine military tribunals in France (Paris, Rennes, Lyon, Toulouse, Dijon, Bordeaux, Strasbourg, Marseille, Metz). While there has not been an account of the number of trials, I estimate that the military tribunals conducted more than 50 war crimes trials between 1944 and 1956 (the number of trials is hard to estimate, because the statistics which were drawn up by the judicial authority in charge of the war crimes – the *Administration de la Justice Militaire* – only provides the number of individual defendants and suspects, not the number of trials. I gathered from one of these lists, which breaks down the death sentences handed down by each one of

Nazis constituted a cornerstone for the legitimacy of the reestablished French republic.

The transition from a retributive justice towards a lenient war crimes justice concerning the German war criminals had been possible because Franco-German reconciliation offered the French republic an *ersatz.* By the early 1950s, French judicial reckoning with Nazi era crimes was by far eclipsed in its importance to French government interest in European integration and its constituent element: Franco-German reconciliation. Robert Schuman's vision for a unified Europe was not only based on economic considerations but contained an equally strong moral component as a peace project designed to pacify the war-torn continent.

Schumann's priorities created a window of opportunity which Adenauer's West German government seized, even manipulated. Adenauer's government

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the nine military tribunals per year from 1944 to 1949, that in this time frame alone at least 22 trials (potentially many more because the breakdown only included death sentences per calendar year – it is very possible that not all of the 16 death sentences pronounced by the Metz Military Tribunal in 1949 were handed down in one trial) were held. The most famous trials alone numbered 14: the trial of Robert Wagner, the trials of Otto Abetz, of Robert Ernst, of Oberg and Knochen, of the Oradour massacre, of the Tulle massacre, of the Ascq massacre, the Natzweiler-Struthof doctors trial (1952) and the trial of the Natzweiler concentration camp guards and SS-officers (1954), of the guards of Schirmeck-Camp, the major Security Police (Sipo) trials (Sipo Paris (without Kurt Lischka), Sipo Lyon (without Klaus Barbie), Sipo Marseille, Sipo Metz). In addition, the nine military tribunals conducted many more trials, many of them only with one individual suspect, as in the trial of Wehrmacht officer Horst Kolrep in 1950 in front of the Metz military tribunal (Kolrep was sentenced to death for murdering three civilians in the campaign against France in late May of 1940). The military tribunals eventually acquitted 377 of the 2345 defendants and sentenced 800 of them to death – albeit the majority in absentia. Only slightly more than 60 of the death sentences were actually carried out, the last one in June of 1951. See Ministère de la Défense Nationale, Direction de la Gendarmerie et de la Justice Militaire "Statistique (par Tribunal) des jugements contradictoire définitifs," dated January 1, 1950 [this statistic shows a breakdown of death sentences for each of the nine military tribunals by year, 1944-1949), in AN Pierrefitte, BB 18/7222; the final statistic from 1956 about the prosecution of Nazi war criminals provides a comprehensive picture regarding the French war crimes justice, however, it fails to provide the number of trials and a breakdown by tribunal: Ministère de la Défense National, Direction de la Gendarmerie et de la Justice Militaire, "État Statistique relatif à la répression des Crimes de Guerre établi à la date du 1er Janvier 1956," dated January 1, 1956, in: AN Pierrefitte, BB 18/7222. Some of these statistics also appear in Claudia Moisel, *Frankreich und die deutschen Kriegsverbrecher*, p. 8f.

communicated to Schuman, Jean Monnet, et al. that releasing the Germans convicted of war crimes was part of the moral imperative of Franco-German reconciliation, that in fact, "true" reconciliation required an end to French judicial reckoning with Germans accused or convicted of war crimes. Adenauer and the West German Foreign Office informed the French government that its insistence on the judicial reckoning with the Nazi past imperiled the peace project.

However, the West German requests for a release of those convicted of war crimes clashed with an important goal of French judicial policy for the crimes committed by the Nazis: securing the peace by ensuring that those Germans who had perpetrated war crimes during World War II would be unable to return to power and public life in the Federal Republic of Germany. Charles de Gaulle, René Cassin, André Gros and François de Menthon inspired by Edmond Vermeil also pushed for a judicial reckoning after World War II because of what they viewed as the failure after World War I to judicially reckon with the German Empire's responsibilities for the war. In their view, the absence of judicial reckoning in the 1920s had contributed to the rise of Nazism. The post-World-War-II French war crimes trials program became thus an important component of French security policy towards West Germany.

Adenauer and his CDU-led government utilized French security concerns as an argument against retributive French justice towards the German war criminals. In the West German interpretation of recent history, the West German government inverted the retributive justice equals peace paradigm of the immediate postwar years. It convinced its French counterpart not only that reconciliation had replaced war crimes justice as a guarantor of peace between the two neighbors, but also that war

crimes justice served as a threat to this peace. In this inversion of the goals of French war crimes justice, only the release of the convicted war criminals, as well as other measures of leniency, ensured the peace project's success. Adenauer and his emissaries argued successfully that large parts of the West German electorate, including many members of Adenauer's coalition government, would view a continuation of what they characterized a "harsh" or "retributive" war crimes justice as an attack on reconciliation and even attack on the Adenauer administration itself thus strengthening Adenauer's critics in West Germany potentially depriving Adenauer's government of crucial support.[28] Adenauer inserted this argument into critical junctures in the European integration and the Franco-German reconciliation process as well as within the West German election cycle. This was crucial to the success of Adenauer's argument: He specifically intervened at the highest level of French government, with his counterpart, the Prime Minister, to convince him that the release of the convicted German war criminals would first and foremost be perceived as a French concession to Adenauer's pro-French, pro-democratic, pro-Western and pro-reconciliatory course which constituted a fulfillment of the French security interests concerning the prevention of a renazification across the Rhine.

All evidence points to the assumption that Adenauer firmly believed in what he told French representatives when he lobbied for the release or pardons for some of the most egregious war criminals. He did not lobby for their release because he

[28] Adenauer feared that the millions of former Nazis "would constitute a reservoir for a postwar antidemocratic right." See Jeffrey Herf, *Divided Memory*, p. 389. His initiatives regarding German convicts of war crimes in France are thus an extension of his internal memory political agenda: by securing the release of the war criminals, he hoped to secure the support of the millions of ex-Nazis for Franco-German reconciliation and European integration.

believed in their innocence.[29] His arguments only pertained to the fact that a majority in West German public opinion did not support French war crimes justice and did not believe in their guilt. Thus, for Adenauer and for Schuman,[30] Coty and de Gaulle, releasing the war criminals was realpolitik. However, Adenauer also never mentioned, neither publicly or privately, that he believed in the validity of the French verdicts, thus pouring oil on the flames of those substantial parts of the West German public opinion who demonstrated their solidarity with the perpetrators. He firmly believed that the release of the war criminals would help him remain in power and keep the most extreme elements of the war criminals lobby in the Federal Republic in check. This was second part of the paradox. Adenauer sought release of convicted war criminals to keep the war criminals lobby from gaining more influence on the direction of West Germany. While this political gamble paid off, the price was that the beneficiaries of Franco-German reconciliation were the perpetrators at the expense of the victims.

French and West German public opinion diverged dramatically regarding justice for the crimes committed by the Nazis in France. A comparison of the arc of Franco-German reconciliation with the arc of French judicial policy toward continuation of trials for war crimes committed by Germans in France during World War II reveals that the West German public's demands for a partial rehabilitation of those convicted of war crimes stood in contrast to substantial portions of the French

[29] In fact, in an exchange with French Prime Minister Pierre Mendès-France in 1955, Adenauer told the Prime Minister that he was "more than welcome to keep some of [the most notorious German war criminals in French custody]." See Ulrich Brochhagen, *Nach Nürnberg*, p. 149

[30] Schuman particularly regarded the continued incarceration of German war criminals in France as a "strain on Franco-German relations" which ought to be taken care of as soon as possible. Brochhagen, ibid.

public opinion which instead called for justice for the victims of Nazi crimes in France. The resistance and victims associations, such as the *Union nationale des associations de déportés, internés et familles de disparus* (UNADIF) or the *Association Nationale des Familles des martyrs d"Oradour* (ANFMO), exerted substantial influence on the public opinion and rejected the idea that ending war crimes trials or "rehabilitating" those accused of war crimes would foster Franco-German reconciliation. The French concessions to the West German demand for an end of trials and the release of the Germans convicted of war crimes were contingent on a limited political impact of the resistance and victim's association on the French public at large. While the outrage by the resistance organizations increasingly in the wake of war crimes trials as well as in the immediate aftermath of high-profile amnesties, such as the 1963 announcement of the release of Oberg and Knochen from French prison, remained high and dominated the news. However, these sentiments increasingly failed to sustain permanent pressure on the administration of justice and became isolated events in an era were reconciliation and integration commanded the enthusiasm and energy of the public.

As episodes surrounding the Oradour Trial and the search for Waffen-SS general Lammerding in 1953 showed, if large parts of the French public mobilized for bringing those responsible for Nazi crimes in France to justice, the French government was compelled to pull multiple levers, including interventions at the highest levels of government, in order to comply with the French public opinion's demands for justice. In the same vein, the French government also attempted to moderate between the interests of the West German public for a reconciliation based

on a partial rehabilitation of the Nazi past and the French public opinion's desire for a judicial reckoning with the Nazi past. President René Coty's decision to execute Wolfgang Seuss while commuting the death sentences of the seven other remaining war criminals, was an attempt to balance the two sides. However, as the subsequent events showed, such a balance was impossible – with the result that in the name of Franco-German reconciliation, the West German public's thirst for amnesty was decisive. By the mid-1950s, the French Vichy-Syndrome and the *Vergangenheitspolitik* (memory politics) in West Germany aligned in a way which made the cessation of the war crimes trials and the release of the war criminals palatable even for a crucial part of French public opinion. Increasingly large parts of the French public had little interest in the risk that war crimes justice revealed the crimes of the collaboration and the Vichy Regime.

However, since the French resistance and victims' organizations as well as the French Communist Party remained vocally opposed to amnesty, both governments worked towards solutions which would ensure that the attention of the public would not be redrawn neither to the crimes nor the perpetrators. This is major conclusion of this dissertation: Both governments, in order to protect Franco-German reconciliation, engaged in attempts to influence the memory of the past. Not simply silence, but concealment of the perpetrators, obfuscation and redefinition of the crimes were deployed by both sides to prevent the resurfacing of painful memories of the crimes which were perceived as attacks on reconciliation.

The mechanisms were deployed in two distinct arenas: The first arena concerned the war criminals themselves. The West German government, in

agreement with the French authorities, influenced the press in an attempt to foster an amnesia in public perception. The West German government especially took extraordinary steps to prevent new cases from going to trial. During what historians refer to as the semi-sovereign period of West Germany before May of 1955, the Federal Republic received substantial support for the effort to end extradition of suspects to France and to prevent new cases from going to trial from the British and U.S. occupation authorities. The second part pertained to the crime scenes themselves. The ruins of the village of Oradour, one of the first and most visible French monuments commemorating a Nazi atrocity in France, had become a national symbol for the remembrance of World War II and the German occupation. The French communists utilized it frequently to discredit Franco-German reconciliation. De Gaulle's 1962 visit to the "village of the martyrs" at Oradour-sur-Glane constituted a remarkable attempt to refashion the memory of Oradour to prevent it from undermining the dominant narrative of Franco-German reconciliation which partially rehabilitated the Nazi German past.[31]

On May 19, 1962, during his goodwill tour of the center of France, de Gaulle paid his respects to the victims of the SS-massacre at Oradour-sur-Glane on June 10,

[31] Jay Winter has argued that "talking of the pasts presents the danger of a breakdown of the legitimacy or the authority of a regime. In one respect, silence then is the insurance policy people take to protect the given order, even at the cost of the truth. This is the motor force behind what we term political silence." I find this useful, since Adenauer and de Gaulle both believed that remembering the crimes the Germans committed in France undermined their reconciliation efforts. However, their response to this perceived threat was not mere silence, but as this episode of de Gaulle's 1962 Oradour visit showed, they supplanted the memory with another version which was more friendly to their narrative. See Jay Winter, "Thinking about Silence," in: Efrat Ben-Ze'ev, Ruth Ginio, Jay Winter, *Shadows of War. A Social History of Silence in the Twentieth Century* (New York: Cambridge University Press, 2010), p. 29.

1944. Given the impending visit of Adenauer and de Gaulle to the cathedral of Reims in July of 1962, which had been chosen as the location for the "mass for peace" symbolically sealing Franco-German reconciliation because Reims had served as the place of the signing of the Nazi German surrender on May 7, 1945, de Gaulle's visit to Oradour was a political balancing act. The visit was subject to scrutiny from both political observers across the Rhine as well as from resistance and victims' associations at home. The West German Embassy in Paris reported to Adenauer that de Gaulle had been

> visibly moved. He gave a brief, very dignified and statesmanlike speech, in which he underlined the meaning of the memorial to France and the world. In doing so, he avoided any expression which could have put a strain on Franco-German relations. The words "Germany" or "German" were not used in his speech […]. Shortly before the state visit of Mr. Chancellor to France from July 2 to 8, 1962, General de Gaulle mad the visible effort through his measured demeanor at the place of occurrence of one of the greatest misdeeds of the Nazi regime, to show that the destroyed village to him does not constitute a memorial which bedevils the relations of today's France with the Federal Republic, that in fact the horrific events assume a much broader human dimension. He has thus cautiously, without hurting French feelings, drawn a final line under this dark chapter of the German presence on French territory, as far as it hitherto constituted an obstacle on the road towards the reconciliation between the two peoples.[32]

[32] Memorandum from Edgar Weinhold, Foreign Office in Bonn, to Foreign Minister Gerhard Schröder, entitled "Aufzeichnung - Besuch General de Gaulles in dem 1944 von der SS zerstörten Dorf Oradour," dated May 25, 1962, in: BA Koblenz B305/315. "[De Gaulle] war sichtlich bewegt. Er hielt eine kurze, überaus würdige und staatsmännische Ansprache, in der die Bedeutung des Denkmals für Frankreich und die Welt hinwies. Dabei vermied er jede Äußerung, die die deutsch-französischen Beziehungen hätte belasten können. Die Worte ‚Deutschland' oder ‚deutsch' kamen in der Ansprache nicht vor. […]
Durch sein gemessenes Auftreten am Ort einer der größten Missetaten des nationalsozialistischen Regimes, kurz vor dem Staatsbesuch des Herrn Bundeskanzlers in Frankreich vom 2.-8. Juli 1962, hat General de Gaulle sichtlich dartun wollen, dass das verwüstete Dorf für ihn kein die Beziehungen des heutigen Frankreich zur Bundesrepublik belastendes Mahnmal ist, dass dem schrecklichen Geschehen vielmehr eine allgemein menschliche Bedeutung zukommt. Er hat damit in vorsichtiger Weise, ohne französische Gefühle zu verletzen, einen Schlußstrich unter dieses düstere Kapitel deutschen Auftretens auf französischem Boden gezogen, soweit es bisher noch ein Hindernis auf dem Weg zur Verständigung zwischen beiden Völkern bildete."

It is remarkable that the observer from the German embassy in Paris had been able to interpret the visit of one of the icons of the French resistance to Nazi Germany to one of the foremost symbols of the ruthlessness and criminality of Nazi Germany's occupation of France as a sign of the French willingness to grant Germany an absolution in regards to the crimes of the Nazi past. Furthermore, Weinhold stated outright his believe that de Gaulle's effort of shifting the significance of the "martyred village" away from a symbol for the heinous acts of Nazi Germany towards a memorial which indiscriminately exemplifies the crimes which "man is capable of committing unto man" had been engineered to remove the memory of Oradour as a stain on Franco-German relations. De Gaulle therefore utilized his visit to refashion the memory of Oradour so that it conforms to the age of reconciliation - a conformity which the West German government and society had pushed for and now enthusiastically embraced as evidenced by de Gaulle's triumphal visit through the Federal Republic in early September of the same year. When de Gaulle declared from the balcony of the townhall in Bonn to the crowds of thousands of spectators beneath him, in fluent German, that he believed in "your great people, yes indeed, the great German people,"[33] he publicly emphasized whose memory this Franco-German rapprochement was honoring. That it was not the one of the victims of the crimes of Nazism was one of the greatest failures of this otherwise great achievement on which the present European Union still rests.

[33] Gerhard Kiersch, "De Gaulle und die deutsche Identität," in: Wilfried Loth, Robert Picht (eds.), *De Gaulle, Deutschland und Europa* (Opladen: Leske+Budrich, 1991), p. 183.

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- 28/1 - Prisonniers de guerre
- 168 - Prisonniers de guerre
- 169 - Prisonniers de guerre

- 235 – 238 - Prisonniers de guerre, DPs, dénazification, 1950-1952
- 172/14 Procès Oradour-sur-Glane

Archives Nationales in Pierrefitte (AN Pierrefitte)

I) Fonds Privés:

- 552AP/35 – 41 - Fonds Privé de Vincent Auriol, 1944-1946
- 552AP/42-149 - Fonds Privé de Vincent Auriol, 1947-1954
- 457AP/60 – 68 - Archives de Georges Bidault
- 580AP/13 - Archives Christian Pineau
- 363AP/6 - 15 - Archives René Mayer
- 404AP/19-21 - Paul Devinat
- 462 AP/26-30 – Archives André François-Poncet
- 382 AP/74 – Archives René Cassin

II) 4AG - Archives of the Presidents (Auriol and Coty) of the 4th Republic:

- 663- Recours en grâce: Oberg, Knochen, Abetz, 1954-1958
- 338 - Dossier on trait aux criminels at prisonniers de guerre allemands avec un lettre de Edmond Michelet (Ancien Ministre, Current member of the Conseil de la République (Sénateur de la Seine) and then Président d'Amicale
- 153 - Pétitions pour grâce
- 158 - Protests against the pardoning of Oberg and Knochen
- 672 - Dossiers of convicts George Boos and Karl Lenz, 1951-54
- 674 - Dossiers of Oberg and Knochen
- 78 – Association Nationale des Familles des Martyrs d'Oradour à propos du procès, 1953, 1947-53
- 153 - Protests against the pardoning of Karl Lenz, Georges Boos, 1953
- 278 – President Auriol's visit to Oradour
- 663 - Direction Criminelles et des Grâces – Recours en Grace (Abetz, Oberg, Knochen etc.), 1948-1955
- 599 - Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces, 1949
- 600 - Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces, 1950
- 601 - Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces, 1951
- 603 - Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces, 1953

- 608 - Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces, 1955
- 612 - Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces, 1956
- 619, Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces, 1957
- 672 - Documents du Conseil Supérieur de la Magistrature/ Commission de Grâces

III) AG/5(01) - Archives of President De Gaulle 1959-1969:

- 2114 - Correspondence and notes on the pardoning and release of German war criminals, 1957-1965
- 396 - Visit of Adenauer to Ramboulliet, 1960
- 678 - Voyages officiels du General de Gaulle: 1962 – Allemagne

IV) Série BB - Ministère de la Justice

- BB 36/1 to 36/160 - Procès Röchling à Rastatt
- BB/18/3693/1 - 2 Correspondance Générale de la Direction des Affaires Criminelles et des Grâces
- BB/18/3573 - Dossiers, Procès de Bordeaux – Rapports du Procureur General de Colmar concernant la Presse Locale, 1944-1955
- BB/18/3575/2 - Dossiers de l'année 1944, dossier concernant le massacre d'Oradour-sur-Glane 1947-1955.
- BB/30/1785 to 1831 - Service de Recherche des Crimes de Guerre (SRCG), 1944-1949
- BB/18/7222 -7225 - SRCG: Correspondence with MAE, Garde des Sceaux, 1944-57

V) Other collections

- 19870278/15 - Criminels de guerre: Poursuites pénales, 1957
- 19890158/20 Direction des Services de Police Judiciaire (Ministère de l'Intérieur/Direction Générale de la Sureté Nationale)
- 9780074/264 - Cabinet Bourgès-Maunoury, de Juin à Octobre 1957
- F/60/3034 - Bureau Premier Ministre/ Affaires Allemandes-Comité Interministériel pour les Affaires Allemandes et Autrichiennes
- 19890158/20 Direction des Services de Police Judiciaire (Ministère de l'Intérieur/Direction Générale de la Sureté Nationale)

- F 60/2538 Conseil des Ministres 10.10.44
- F 60/2539 Conseils des Ministres 1944
- F 60/2572 Conseil des Ministres, 28.5.1947

Archives of the International Committee of the Red Cross in Geneva (ACICR)

- Cotes G. 7/ Cr.G. (criminels de guerre) Boxes 267, 268, 270, 274, 330
- Cotes G.8/51 (communications with the ICRC Delegation in France) boxes 325, 326, 328, 329, 330'
- **D EUR FRANCE1 - boxes 61, 462, 464, 499, 527, 570, 570.01, 570.02, 572, 594, 596, 612, 640, 724, 725.**

National Archives and Records Administration in College Park (NARA)

- RG 466 HICOG, Office of the Executive Director, General Records, 1947-52
- RG 466 HICOG, Office of the U.S. High Commissioner for Germany, Security Segregated Documents, 1953-1955, especially RG 466/250/68/16/1, box 165 (sub-folder "Lammerding")

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