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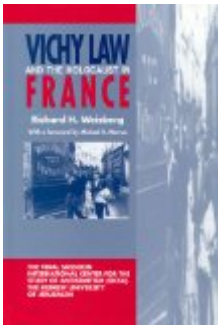
Richard H. Weisberg. *Vichy Law and the Holocaust in France.* New York: New York University Press, 1996. xxiii + 447 pp. $45.00 (cloth), ISBN 978-0-8147-9302-2.



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French Lawyers and the Vichy Regime

Extensive research is now being done in France on "collaboration" with the German occupants during World War II, and the issue elicits hot public debate, particularly fed by the last spate of trials involving some of the actors of the time.[2] After the Klaus Barbie trial, which shed light on direct Nazi coercion, and the Paul Touvier trial, with its emphasis on how "collaborationnists"–those French people who served the occupying forces–participated in their enterprise, there is now the Maurice Papon trial, which has just started in October 1997, focusing on State collaboration with the participation of French civil servants under allegiance to the Vichy government in the Nazi enterprise. The latter should normally have been preceded by the trial of one of the main actors in these events, Rene Bousquet, former Vichy chief of police, assassinated by a publicity-crazed mentally disturbed person a few weeks before his scheduled appearance at court. He had been cleared at the Liberation, had turned to the business world and had led a brilliant career there.

Although Papon was not as important a protagonist, the fact that he will be judged clearly illustrates the change in the French perception of the Vichy regime over the last twenty-five years. Papon was the former secretary general of the Gironde regional prefecture, and as such he organized convoys of deported Jews, after which he was not only cleared at the Liberation for services rendered to the Resistance, but actually led an outstanding career in the prefectoral administration[3] and was even named minister in the early 1970s. So the man who presently faces a jury trial in Bordeaux for crimes against humanity is in fact a prominent Fifth Republic official.

Today, then, the question of State collaboration is under the floodlights, but the responsibility of the nation in the doings of the "de facto authority known as the 'government of the French State,' " in the official legal terminology designating the regime that ran the country from 1940 to 1944, was not acknowledged by the highest authority until Jacques Chirac became president in 1995. Previous to that, in fact, the different chiefs of State, from De Gaulle to Mitterand, felt that the Republic was in no way accountable for the Vichy regime, whose juridical non-existence had been proclaimed by the August 8, 1944 *ordonnance.* For a long time, the conclusion drawn was that the Republic had no reason to commemorate the Great *Vel d'Hiv* round-up by the French police in July 1942, any more than Vichy's other antisemitic misdeeds, although all were committed in the name of France.[4]

This view of the Vichy regime as a "puppet State" serving the Nazis and devoid of any legitimacy of its own was not conducive to detailed analysis of how it functioned nor to any real thought on the continuity of both the institutions and the government personnel before, during, and after the war (clearly illustrated by the Papon case). This historiographic stance is now antiquated, thanks, to a large extent, to Robert Paxton and Michael Marrus,[5] who have stressed the autonomy enjoyed by the Petain regime with respect to Nazi Germany, and the indigenous character of its antisemitism. Recent writ-

ings on the functioning of the regime, many of which are particularly concerned with its legal and judicial institutions,[6] are in line with this view, which is now definitely the dominant paradigm.

The book written by R.H. Weisberg is clearly part of the same trend: it comes as a complement to the work published by the periodical *Le genre humain*,[7] the subject of which is also broached, although in a more limited perspective, in R. Badinter's recent work on the elimination of Jewish lawyers from the Bar.[8]

Weisberg's project is ambitious, in that it aims at drawing a complete picture of how antisemitic law was drafted and implemented in all domains by looking at the action of the government, the administration, the courts, civil servants, judges and other professionals involved in the judicial process. The result is a book teeming with information, one that delves into a number of previously relatively unexplored fields, but that would have been better served by a more solid construction.[9]

The leitmotif of this ten-chapter book is the idea that the participation of Vichy in the extermination of the Jews, viewed from a legal standpoint, is not reducible to the doings of a minority of collaborators, but actually involved the French legal system as a whole. Following the defeat, the latter, which had remained more or less intact, had no difficulty in absorbing the new racial and religious measures adopted by the regime without the slightest pressure from the Germans and had applied all of its technical proficiency to rationalising the premise on which they were predicated, which was that the Jews are, allegedly, intrinsically different. The author's point is, explicitly, to indict French jurists, guilty of having made very one-sided use of their talents, without questioning the legitimacy of the new law they were bent on establishing, analysing or implementing, at the very time when they were much more pugnacious in defending the principles of republican law in other fields.

This was the case, for instance, in the Riom trial (February-April 1942), through which Petain intended to highlight the responsibilities of the main officials of the Third Republic, and which Weisberg chose as the opening piece for his book. He views this trial, and especially the way it dealt with Leon Blum, as exemplary of the contradictions of the regime and of the ambiguities of some jurists: its goal is actually the symbolic eviction from the French community of the person (Blum) who represents everything the regime abhors (parliamentary democracy, socialism, Judaism). And yet, the trial, held before a special court, remains respectful of the law, by and large, and antisemitism only surfaces occasionally (p. 15). Above all, he points out that it was feasible, even under those circumstances, to defend a case on political grounds, without making any ideological concessions to the regime, and nonetheless without exposing oneself to retaliation. And when Petain, exasperated by the turn the trial is taking, attempts to short-circuit the court, we see Jacques Charpentier, the president of the French Bar, intervene forcibly, he who had accepted the antisemitic measures affecting the Bar without a murmur (p. 22).

The following chapters are devoted to a presentation of the antisemitic laws (Chapter Two) and to their implementation against Jewish lawyers, judges and other legal professionals. Specifically, Weisberg describes the differences of interpretation between the ministry of Justice, the courts and the General Commissariat for Jewish Questions (CGQJ) (Chapter Three). Chapter Four is devoted to the personality of Joseph Bartelemy, second minister of Justice under Vichy, whose past history as a liberal jurist under the Third Republic did not seem to predispose him for the position.

Chapters Five to Seven contain a detailed analysis of the technical difficulties encountered in implementing the antisemitic legislation: Chapter Five dwells on the burden of proof for establishing jewishness, and on disagreements between the CGQJ and the courts as to the competence of the various types of courts; Chapter Six deals with the difficulties in implementing the legal criteria for jewishness; Chapter Seven examines the property problems arising from the antisemitic laws, and especially, the questions tied to the aryanization of property.

These chapters devoted to the implementation of the antisemitic laws raise complex technical questions that are clearly explained by the author; they are particularly interesting in that, rather than confining themselves to the published jurisprudence, as is the case for their counterparts among the contributions to *Le droit antisemite de Vichy*, they are based on a study of the archives. They also show how this new corpus of law produced intense juridical and court activity, and how profoundly legalistic all of that activity was: exclusion and spoliation, yes indeed, but in proper form! They also highlight the in-fighting between the different branches of the State apparatus–the CGQJ, judiciary and administrative courts–for the control of this corpus of law. Further research should concentrate specifically on the comparison of the two sources so that, in each field, the reality of the caseload may be compared with that portion of the lat-

ter which, through some circuitous process, became the object of learned comment and was published, thus necessarily having repercussions on how other cases were judged.

Chapter Eight contains a detailed study of the situation of lawyers. Weisberg's analysis of the eviction of Jewish lawyers and of the role played by the Bar and its officials, nominally, in that enterprise is corroborated by Badinter, which is not surprising since their sources[10] are the same, but here too, Weisberg innovates. This is also true in the third part of the chapter, devoted to how non-Jewish lawyers handled cases involving the antisemitic laws, which definitely should be looked into in depth, using a larger documentation [11].

Chapter Nine is somewhat of a catch-all, with its discussion of the CGQJ's vain attempts, in 1943, to have the scope of denaturalizations extended so that more people could be deported; a second section deals with various judiciary reforms, irrespective of whether they were successful, and in particular with the "sections speciales," which questions are only marginally relevant to the subject of the book; the third section addresses the special case of children born out of wedlock, who were protected from investigation of their jewishness since French law of the time outlawed any investigation whatsoever of affiliation.

Each of these chapters is interesting in its own right, but the whole looks more like a hastily put-together collection of articles than like a rationally constructed work, and this shortcoming obscures the author's point. The same questions are discussed repeatedly, sometimes in very different chapters, for no apparent reason, making for a highly repetitious text, full of references to other parts of the book, in which it is difficult to achieve an overview of the subjects broached. Antisemitic legislation is presented in Chapter Two, but its precursor, the September 1940 law against aliens, is not mentioned until Chapter Eight. Questions pertaining to civil status, which one would like to see discussed in a single section, are dealt with in Chapters Two, Five, Six and Nine.[12] Property is discussed in Chapters Six (D), Seven and Eight (C). The fate of the legal professions, and the numerous clauses for Jewish lawyers in particular, first comes up in Chapter Three, then again in Chapter Eight. The ideological facets of the question, with the importance of the Christian bias against Judaism in particular, are dealt with in Chapters One, Four and Ten.

The reader is assumed to have a very good knowledge of the history of the period, then, as well as familiarity with the structure of the court system and of the various legal professions; a short preliminary presentation of all of these subjects would perhaps have been in order.

At bottom, Weisberg's general conclusion hardly differs from Lochak's 1989 findings: by acting as pure technicians of the law, albeit antisemitic law, the majority of jurists helped to make discrimination, exclusion and spoliation commonplace, unreal and finally, legitimate. It is in his explanation of this attitude that Weisberg departs from Lochak, who viewed this as an outcome of the legal positivism with which jurists are imbued, and he suggests another interpretation in Chapter Ten. His thesis may be grossly summarized as follows:

The existence of discriminatory laws does not suffice to explain why Vichy's juridical establishment treated Jews as it did, since the existence of similar laws, in Italy, for example, did not entail their enforcement.

The decisive factor is what the author terms the Vichy hermeneutics, which rapidly impregnated all of legal practice, and resulted in the exclusion of Jews from the legal protection afforded "true French people." This hermeneutics consists of a frame of analysis for legal situations characterized by the flexible interpretation of what remained of the old constitutional principles (such as the concept of equality), combined with a strict, purely technical interpretation of the new laws (p. 389).

There is a combination of the rereading of the constitutional principles (along lines suggestive of the deconstructionist theses of French inspiration so popular in the United States nowadays [according to the author, p. 388] and above all reminiscent of the original Christian rereading of the Old Testament) and of a shortsighted Cartesianism that pushes the antisemitic legislation to its most extreme consequences instead of using the resources offered by legal technique and rhetoric to combat that legislation (p. 389).

In the last analysis, according to the author, it is a way of thinking peculiar to French Catholicism that made the legal culture open to the Vichy ideology, to which it should in theory have been recalcitrant (p. 389). This explains why the legal comments on the antisemitic laws are more religious than racial in their views, and leads the author to speak of religious laws rather than racial laws governing the status of Jews. French jurists seem to have been predominantly influenced by the old Christian antijudaism, more so than by Nazi racism. They read the law very much like traditional Catholics read the Old Testament, which reading led to the eviction of the Jews

from the Bible.

There is no doubt that France had its own antisemitic tradition, distinct from the biological racism of the Nazis: one that was strongly tinged with Catholic antijudaism. In fact, Xavier Vallat did not hesitate to point this out to Dannecker, and thus lost his seat on the CSQJ.[13] It is also a known fact that the Catholic Church welcomed the arrival of the new regime as a "divine surprise." But Weisberg's assertion that this collective failure of jurists–now universally admitted, and which did not exclude honorable individual action, as mentioned repeatedly throughout the work–was due to the fact that the French legal mentality was imbued with an anti-Jewish Catholic tradition is not convincing.

It is not within our province to discuss Weisberg's interpretation of the Catholic exegesis of the Pentateuch, but we may point out that his parallel is partially based on a misconception: while it is true that in the first case, the Catholic exegesis, the goal is to read the Jews out of the Bible, the same certainly does not hold for Vichy law, all to the contrary! As shown by the regime's frenzied law-making (168 discriminatory texts on Jews in four years[14]), the idea was to inject the Jews, so to speak, into every branch of a legal system grounded in a republican tradition that absolutely refused to recognize such an entity. From then on, the word "Jew" cropped up, so to speak, in every paragraph of the law; not only is it impossible to overlook this new legal category when interpreting the law, but the latter must be entirely reread in this new light. Whence the proliferation of litigations, sometimes particularly absurd, in unexpected fields, such as the discussion of whether some sect or another is Jewish, or of whether children of unknown parentage are Jewish. Or again, the intense efforts of jurists to make new problems square with the familiar legal framework, thus concealing the hateful character and tragic consequences of that legislation.[15]

There is also the question of how jurists as a group, who received their training in a political context marked by a persistent conflict with the Church, would have incorporated that Catholic tradition. At the very least, one would have to distinguish between the various types of legal professionals, which Weisberg tends to amalgamate under the designation of "lawyers." Attorneys, judges, jurists working within the administration, members of the Conseil d'Etat and law school professors have neither the same social origins, nor the same interests, professional traditions (especially in their relations with the State) or, most probably, the same ideas, even if we postulate that these professional categories are homogeneous. In the same vein, any judgement on the way in which members of each of these categories did or did not participate in the Vichy enterprise should consider the constraints specific to each profession: judges should be assessed on the basis of the judgements they passed, inasmuch as they did not resign and were obliged to pronounce judgements; one cannot accuse lawyers with engaging a battle of wits with the prevailing law, inasmuch as they were requested to do so by their persecuted clients; as for professors of law, they were under no obligation to be accomplices to that law.[16]

Perhaps there is no need to go so far back to account for the indifference of jurists: the period immediately preceding the war had definitely laid the ground, and prepared people mentally for xenophobia and antisemitism. Strangely, Weisberg hardly refers to that period, as opposed to Marrus and Paxton, who stressed the deep underlying continuity between the 1930s and Vichy.[17] He does not even mention the July 19, 1934 law, enacted with no discussion, through which the Bar succeeded in closing the profession of lawyer to aliens and people who had gained citizenship within the last ten years.[18] According to Badinter, the Paris Bar, the largest in France, was traditionally antisemitic and made sure that Jewish lawyers would not be given any honorific position or responsibility within it.[19]

In the last analysis, the question of the participation of the legal professions in the Vichy regime probably should not be formulated in very different terms from those regarding other categories of the population, the majority of whom did not regret the Third Republic, at least at first, and did not care much about the antisemitic legislation. One would certainly have liked to see people in the "Homeland of Human Rights" take a better stance, and the retrospective disappointment with this dismal reality, common to people who have in one way or another devoted their life to law, is clearly visible in Weisberg's book (the same being true of Badinter's work).

These remarks do not in any way diminish the value of the work done by Richard H. Weisberg, and his book makes a substantial, stimulating contribution to a now thriving field of research.

Notes:

[1]. Translation by Helen Arnold.

[2]. For the controversies around the Vichy regime, see Rousso (H.), *Le syndrÙme de Vichy de 1944 ý nos jours*,

Paris: Seuil, 1990 (1st ed. 1987; English language edition: *The Vichy syndrome: History and Memory in France since 1944*, Cambridge, Mass.: Harvard, 1991); Conan (E.), Rousso (H.), *Vichy, un passe qui ne passe pas*, Paris: Fayard, 1994; Azema (J.P.), Bedarida (F.), eds., *Vichy et les franÁais*, Paris: Fayard, 1992. A recent bibliography on the period may be found in Farcy (J.C.), Rousso (H.), *Justice, repression et persecution en France (fin des annees 1930–debut des annees 1950).* Essai bibliographique, les Cahiers de l'IHTP, 1993, n. 24.

[3]. He was, in particular, prefect of police for Paris, one of the highest positions in the French administration, at a particularly difficult, troubled time: the close of the Algerian war. As such he was responsible for the massacre perpetrated on October 17, 1961 by the Paris police on Algerian demonstrators favoring independence for Algeria; the number of victims is presently estimated at two hundred, but at the time the official figure was less than ten, and no charges were brought for those acts (On these events, see Einaudi (J.L.), *La bataille de Paris, 17 octobre 1961*, Paris: Seuil, 1991; Levine (M.), *Les ratonnades d'octobre, un meurtre collectif y Paris en 1961*, Paris: Ramsay, 1985).

[4]. For the legal inconsistency of this conception, see Rousseau (D.), "Vichy a-t-il existe? " in *Juger sous Vichy*, Paris, Seuil (Le genre humain), 1994, pp. 97-106.

[5]. Paxton (R.O.), *Vichy France, Old Guard and New Order, 1940-1944*, New York: Columbia U.P., 1972; Marrus (M.R.), Paxton (R.O.), *Vichy France and the Jews*, New York: Basic Books, 1981.

[6]. On the Vichy administration, the reference work is now Baruch (M.O.), *Servir líEtat francais: L'administration en France de 1940 y 1944*, Paris: Fayard, 1997 (Unfortunately this book came out too late to be referred to in detail in this review). On Vichy law and the errings of jurists, see the invaluable articles by Daniele Lochak: Lochak (D.), "La doctrine sous Vichy ou les mesaventures du positivisme," in *Les usages sociaux du droit," Paris: PUF, 1989, pp. 252-285; see, too, the comments by Michel Troper, "La doctrine et le positivisme" (remarks on an article by Daniele Lochak), Ibid., pp. 286-292; and also, Lochak (D.), "Ecrire, se taire... Reflexions sur l'attitude de la doctrine francaise," in* Le droit antisemite de Vichy_, 1996, pp. 432-462.

[7]. *Juger sous Vichy*, Paris: Seuil (Le genre humain), 1994; *Le droit antisemite de Vichy*, Paris: Seuil (Le genre humain), 1996.

[8]. Badinter (R.), *Un antisemitisme ordinaire: Vichy et les avocats juifs (1940-1944)*, Paris: Fayard, 1997.

[9]. There are a few minor defects, that might have been corrected by close rereading. We mention them here, once and for all: Dominique Gros is referenced either as Gros (D.) or as Dominique-Gros (see p. 55, note 61 and p. 432); Henri Amouroux becomes Amoureux (pp. 371 and 431). The author does not hesitate to use some irritating cliches such as "almost Germanic sense of precision" (p. 304) or "a gritty Gallic perspicacity" (p. 313).

[10]. Badinter is occasionally more specific than Weisberg as to specific events; for instance, on how some antisemitic lawyers approached the Germans to obtain the release of some prominent Jewish lawyers detained in Drancy (see Badinter, p. 145 ff.; Weisberg, p. 92); conversely, Weisberg reveals the people's names, which Badinter omits.

[11]. Part of this chapter, devoted to the analysis of the archives of the famous lawyer Maurice Garaon, was published in *Le droit antisemite de Vichy*.

[12]. In Chapter Two, pp. 66 ff. deal with the same questions as sections A and B of Chapter Five. The question of children born out of wedlock, broached on pp. 150-152, comes up again on pp. 380-385.

[13]. Badinter (1997, 172).

[14]. Gros (D.), "Peut-on parler d'un droit antisemite"? in *Le droit antisemite de Vichy*, Paris: Seuil (Le genre humain),1996, p. 41, n. 37.

[15]. Lochak (1989), pp. 260-265.

[16]. On this point, see Lochak (D.), "Le juge doit-il appliquer une loi iniques? " in *Juger sous Vichy*, pp. 29-40; Lochak (D.) "Ecrire, se taire...," in *Le droit antisemite*, pp. 433-462 (especially n. 25, p. 460). On judges, see Bancaud (A.), "La magistrature et la repression politique de Vichy ou l'histoire d'un demi-echec," *Droit et Societe*, 1996, 34, pp. 557-574.

[17]. Marrus, Paxton (1981, p. 45).

[18]. The same text actually covered all civil servants and ministerial positions: Laval-Reviglio (M.C.), "Parlementaires xenophobes et antisemites sous la IIIe Republique," in *Le droit antisemite de Vichy*, pp. 85-114. Restrictive measures of the same type were enacted for the medical profession, as well as for trade and craftspeople. See, also, Bonnet (J.-Ch.), *Les pouvoirs publics francais et l'immigration dans l'entre-deux-guerres*, Lyon: Centre

d'histoire economique et sociale de la region lyonnaise, 1976.

[19]. Badinter (1997, pp. 20-21), who also points out that the Conseil de l'ordre of Paris lawyers applied the 1934 law retroactively (p. 29).

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