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Memory Derailed: Vichy Memory in International Court Cases and Business Legislation against the French National Railway

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**Memory Derailed:
Vichy Memory in International Court Cases and Business Legislation against the French
National Railway**

Submitted in partial fulfillment of the requirements for the degree of

Bachelor of Arts with Honors in History

from The College of William and Mary

by

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I. Introduction

Pressing questions facing historians, politicians, and attorneys today are: How does one obtain justice through the transmission of history? What kind of justice can historical inquiry bring? How do different forums of memory produce different conceptions of past events and therefore different public reactions today?

History has always been molded, manipulated, and perverted for individual, national, and international agendas. It has been “instrumentalized” to support various causes. Scholars such as Gabriel Schoenfeld have denounced the act of calling upon history in the service of some cause, believing that it is a slippery road to the loss of all objectivity.¹ However, despite the fact that one does not support the manipulation of events, history cannot be restricted to academia. It has never been able to be trapped within the confines of a university. Furthermore, the university is not immune to the influx of biases. Therefore, the “instrumentalization” of history although somewhat flawed, is also uncontrollable. Memory will always take precedence over academic history. Therefore, one should study and determine which non-academic forums of history service both humanity and intellectual inquiry in the most proper manner.

In recent years historical analysis has been integral to the resolution of moral injustices that took place in the 20th century. Moreover, concerns about past moral injustice have in turn spurred reexamination of moments in history that had been purposefully or unintentionally neglected. This reexamination has come in the official forums of court cases, historical commissions, legislative measures and memorials. This reexamination has left open the wounds

¹ Gabriel Schoenfeld, “Holocaust Reparations—a Growing Scandal,” Commentary, September 2000, <http://www.commentarymagazine.com/article/holocaust-reparations-a-growing-scandal/>.

of past events. One of the greatest examples of a consistently reexamined time in history is that of the Occupation in France.

The liberation of France occurred almost 70 years ago and yet remnants of the injustices of the Vichy years continue to have a strong presence in society today. Recently, the French National Railway, SNCF has found itself under attack due to its actions during the Second World War. The Railway is responsible for the deportation of 76,000 Jews and other “undesirables” from 1942-1944. Nevertheless, SNCF has remained untouched by the evolving and growing Vichy memory until quite recently. Starting in the early 2000’s SNCF began receiving numerous reparations claims in France. However, these claims were dismissed and the company continued to operate without providing reparations to its victims. Their continued silence with regard to their complex wartime history came to end when their history was placed on an international stage. Starting in 2002 Holocaust survivors living in America who were transported on SNCF’s deportation trains sued the company in American courts. In 2008 the most politicized of the American suits against SNCF took place: Freund V. SNCF. This case, though unsuccessful in obtaining reparations for the victims triggered American business legislation against the company. SNCF, hoping to bid on the American land recently allocated for high-speed rail, has been blocked from the competition due to its lack of recognition and reconciliation efforts for its collaborationist past. Interest groups, primarily stemming from the plaintiffs of the Freund V. SNCF trial, are responsible for blocking the railway from the bidding competition.

The survivors involved in this controversy are attempting to resolve their memory and the injustices that they have endured through this judicial action and business legislation. The trials and business dealings serve as forums in which their memory can be heard.

II. Background of argument

The manner in which the Occupation years have been remembered in history has garnered a great deal of attention after Henry Rousso published his analysis of the Post-Vichy years of France, *The Vichy Syndrome: History and Memory in France since 1944*. In the book Rousso analyses how the French people came to understand the Vichy years and how that understanding changed with time. As the years passed different forums of memory produced different interpretations of the Occupation for the public to both imbibe and refute. One of the major points of his analysis was that history is not usually presented in its most accurate form. Rather, it flows through subjective fields of memory that alter the construction and meaning of the events in question. These fields or vectors are instruments that people use to make sense of the past. Though they may not create accurate memories of the events, they are necessary forums of resolution, especially for memories as painful as France under the Nazi regime. Making sense of an event can be obtaining justice, comprehension of the intricacies of the event, or establishing a clear and accepted representation of an event.

The Vichy years have often been characterized as “unresolved memory.” The long process that took place in France to face the complex truth of the Occupation supports this characterization. However, today it is understood that France has done a great deal to recognize the wrongdoings of the Vichy regime and to correct injustices with regard to the representation of France’s history in the 20th century. However, remnants of unresolved memory from this period continue to appear. This is much to the dismay of a great deal of French people, who have gone through an emotional upheaval of memory for almost 70 years. Furthermore, these remnants continually foster a battle between the memory of la Résistance and of French

collaboration. This difficulty to conceptualize collaborator and resister as intertwined has left certain questions unanswered and certain memories unresolved in France.

Jewish memory in France remained one of these unanswered questions and unresolved memories until quite recently. Though pieces of Jewish memory began to appear in the 1970's, it was not until Jacques Chirac spoke at the memorial of the Vel D'Hiv roundup that these memories were given official recognition by the state. The Vel D'Hiv roundup was the first roundup of Jews in Paris in which 13,000 Jews were placed in the Vélodrome D'Hiver stadium in inhumane conditions without food or water in July of 1942. From there they were sent to internment camps in France or death camps in Eastern Europe. Until 1995 no French president had ever spoke about the responsibility of the French with regard to this abhorrent event.² Jacques Chirac broke with his predecessors by assuming a sort of collective responsibility on behalf of France. After this declaration he created an expansive historical commission to study the spoliation of Jews and to recommend reparations for survivors and their families.

Despite these progressive steps on behalf of the Republic, unpaid moral and monetary debt still remains from the Vichy years. Furthermore, these progressive steps have not created effective forums for all survivors to discuss their memory and find peace and justice within it. It has been particularly difficult until quite recently for this history of the French Railway to be heard. Justice could not be found through the French judicial system and the diplomatic issues surrounding the American court cases have stifled the voices of these survivors.

III. Argument of the paper

² Eric Conan, and Rousso Henry, *Vichy: An Ever-Present Past*, (Hanover, NH: University Press of New England, 1998), 227.

The purpose of this paper is to assess the recent international forums of Vichy memory. This assessment will analyze the effectiveness and product of viewing the history of the French National Railway during the Occupation through international court cases and business legislation. The effectiveness of these vectors of memory will be judged by the results for the survivors involved in this controversy. Furthermore, the results for the French National Railway will also be analyzed in this paper. The intricacies of diplomacy, reparations programs, monetary interests, propaganda, and the juxtaposition of the Resistance and collaboration will be reviewed within the analysis of the historical products of these international vectors.

The first chapter will discuss the history of the vectors of Vichy memory and how they came about throughout the years following the liberation. In this chapter I will be analyzing the product of important vectors of memory in postwar France. This analysis will focus a great deal on Rousseau's theory of memory "sickness" or the "Vichy Syndrome." Next I will explain the emergence of the "age of apology" or the period in the late 1990's in which French companies and organizations with collaborationist pasts made formal apologies and reparations in order to continue functioning in a more globalized and morally centered world of business. Then I will discuss the foundations of international judicial vectors of memory. Finally, the chapter will end with an analysis of the early memory of SNCF during the Occupation and its reaction to the "age of apology."

The second chapter will focus on the history of claims against the company and the results of the judicial vector with regard to the memory of SNCF. The chapter will start with an analysis of the French judicial proceedings involving the National Railway. I will then discuss the inability to indict the company in France. Next I will analyze the movement of these claims to the United States. The cases in the United States will be discussed by juxtaposing the

Plaintiffs' evolving argument with the static argument of SNCF's defense. Within this analysis there will be an examination of the diplomatic issues thwarting the efforts of the plaintiffs. The intricacies of diplomatic immunity through the Foreign Sovereign Immunity Act and how that act shifted the argument of the plaintiffs from "crimes against humanity" to a primary argument of stolen property will be analyzed in this section. Finally, I will look at the appropriateness of these suits against SNCF in the American judicial system. To do this I will analyze reparations efforts in France, how those apply to the survivors involved in this case and the moral and pedagogical consequences of the immunity provisions in the American court system.

In the final chapter I will discuss business legislation as a vector of memory for the deportations. The chapter will start with a discussion of the origin of the high-speed rail contract dispute in the United States. This section will outline the nature of the high-speed rail bill as part of the National Recovery Act and how the controversy with regard to SNCF began. When speaking about the origin of the controversy I will discuss the creation of an interest group on behalf of the survivors. I will then analyze the American legislation against SNCF, the success of this legislation, and how the legislative hearings have become a viable forum for the survivors to express their memories, unlike the forum of the courtroom. The next section of the chapter will focus on SNCF's reaction to the legislation. This reaction came in the form of public apologies, erection of memorials, the establishment of a partnership with a French Holocaust memorial museum, the creation of an interest group, and a movement to foreground the resistance with regard to its wartime history. Finally, I will discuss the French Jewish response to the controversy, particularly focusing on the official Jewish organization tied to the state, The Representative Council of Jewish Organizations, or CRIF. The chapter will end with an analysis of the history transmitted through the various fields emanating from the business legislation.

Memories as painful and complex as the suffering of 76,000 people are often viewed through multiple forums, as a single vector will not address the entire history. The survivors of SNCF's deportations have searched for a proper medium to release their stifled and often unheard stories and to obtain the justice and recognition that they deserve. Their efforts to examine and release their memories have been thwarted by the judicial system both in France and in the United States. They then turned to the new forum of business legislation. This forum has proved to be more effective at communicating their stories and exacting justice. Though, flawed due to the obvious complications of monetary interests, the international vector of business has been successful with regard to at the very least opening up a more balanced dialogue about SNCF's complicity in the Nazi deportations. With this dialogue comes the promise of a resolution to this enduring injustice, a more equitable interpretation of SNCF's history and perhaps the hope to alleviate the pain of this unresolved memory.

Chapter I: Defining forums of memory

*“A nation’s memory, part of its common heritage, is shaped by signals emanating from many sources”*³ - Henry Rousso

I. The importance of forums of Vichy memory

The initial denial of the truth of the Occupation in France is not a new discussion for both the academic world and for the French public. After 1973 when the ground breaking account of the Vichy regime, *Vichy France: Old Guard, New Order* by Dr. Robert Paxton was published one sees an active attempt on behalf of historians to do away with the contrived conception of French history and publically present the former warped French sense of the Second World War. Paxton’s book clearly established that the Vichy government voluntarily collaborated with the German occupiers.⁴ What historians, the press, and government officials are now discussing is more the importance of the manner in which history is transmitted to the public and how that contributes to the enduring memory of the events.

Henry Rousso, famous for his portrayal of the post Vichy years as a time of sickness or “the Vichy syndrome,” was one of the first scholars to analyze the forums of transmission of the memory of the Occupation and how they have changed with time. These forums are seen within the framework of his prescribed “phases” of the sickness as France came to terms with the truth of the Occupation. The phases reflect how the French decided to move forward after the liberation. In the early stages France made use of denial and a limited conception of their history

³ Henry Rousso, *The Vichy Syndrome: History and Memory in France in 1944*, (Cambridge: Harvard University Press, 1991), 219.

⁴ Robert Paxton, *Vichy France, Old Guard and New Order, 1940-1944*, (New York City: Columbia University Press, 1972).

to pull the Republic out of the darkness of the Occupation. The later phases responded to a new need for clarity to help the country move past that which had been repressed. One of the most complicated aspects of the syndrome was addressing the persecution of French Jews during the Occupation. Within Rousso's phases one sees how different vectors begin to break down this silence with regard to the Jewish memory of World War II France.

In an increasingly globalized world forums of memory have become more complex. Starting in the late 1990's new vectors of memory have been created in part because of history's ability to impede a specific organization's progress. Organizations that supported inhumane treatment of people, particularly those that in some way supported anti-Semitic policies, were expected to answer for their actions 60 -70 years later. They could be now put on trial even when the suit originated from a country unrelated to the raised complaint. Therefore, the "age of apology," or the period of the late 1990's when organizations with inhumane pasts were pressured to apologize for their actions, met the new need to establish complete transparency to function in today's world. Historians have assessed the effectiveness and products of these vectors. New forums such as business dealings are now becoming more effective than the formerly most important vector of the courtroom.

II. The History of "memory sickness" in France, Defining the "Syndrome" and its resulting vectors

Rousso's syndrome is broken down into five phases: a mourning phase, a phase of the resistance myth, a phase in which the repressed returned, a phase of obsession, and finally a

phase of acceptance.⁵ Within these phases, Rousso describes the vectors in which the memory of the war was transmitted to the public. Vectors include official and unofficial carriers of memory. Official carriers can be political statements and speeches, monuments and court cases. Unofficial carriers of memory are often media related, in particular film and television.⁶ These vectors carry wartime memory in different manners; therefore they alter this memory. Rousso has shown that different vectors have produced different manifestations of memory at different times in postwar France.

With the emergence of each new phase of the Vichy sickness different forums of memory were favored or more effectively took hold of the attention of the French public. The “mourning phase” began in 1944 immediately following the war. During this phase the French people attempted to pick up the pieces of their country after experiencing the devastation of the Occupation. Within the mourning phase the French public reviewed their recent history through the purge, the amnesty laws, and various political statements made by both the French government and former resistance fighters. Trials of the most important Vichy figures such as Phillipe Pétain and Pierre Laval also took place alongside the purge.⁷ This period evolved into the “resistance period” in 1954, which fostered the factually repressive and emotionally soothing idea of “resistancialism.” This idea moved to minimize the importance of the Vichy regime by propping up the Resistance as a nationwide effort.⁸ The geographic location of the history of France from 1940-1944 was shifted from the continent to London and Algiers.⁹ These first two

⁵ Henry Rousso, *The Vichy Syndrome: History and Memory in France in 1944*, (Cambridge: Harvard University Press, 1991), 10.

⁶ *Ibid.*, 219.

⁷ *Ibid.*, 21.

⁸ *Ibid.*, 11.

⁹ *Ibid.*, 72.

periods were marked primarily by official carriers of memory, which were initiated by the government.

In 1971 the “return of the repressed” period emerged in France. Unofficial carriers of memory were characteristic of this phase. Film, press, and narratives spurred a reevaluation of the memory of Vichy France. 1974 began the period of “obsession” in which the Jewish memory was reawakened and the last official remnants of the Vichy regime began to be put on trial. There was also a negationist or revisionist reaction to the obsession, which was transmitted through the press and made by former Vichy officials and new politicians. The final phase of acceptance is technically the phase that France has recently entered into, nevertheless; it is still debated amongst scholars, including Rousso, whether France has truly entered this stage or if the Republic remains in the phase of obsession.

III. Political and Judicial vectors of memory in Postwar France

Official carriers of memory in France throughout the post-Vichy period came in the forms of court cases, laws, and political statement and movements. In the early post-war period memory was transmitted through political forums such as the purge and the amnesty laws. The first political transmission came from Prime Minister and later President Charles De Gaulle immediately following the liberation of Paris when he absolved the French people of any collaborationist activity by asserting that France was the resistance, thus every French citizen was a resistor.¹⁰ With this statement the reality of the anti-Semitic policies of Vichy was swept away. Immediately after De Gaulle’s speech the new French government began the purge of certain Vichy officials. The purge was not looked upon favorably as it compromised certain

¹⁰ Ibid., 72.

traditional values of France in order to “root out fascism.”¹¹ Later, various amnesty laws swept away the reality of French collaboration in order to repair the country after it had been wounded both physically and emotionally during the war. This set of laws, put in place in 1951, gave amnesty to those who had committed crimes, which had resulted in a loss of their civil rights coupled with a sentence of less than 15 years. Therefore, the prisoners of the purge were released to create “national unity.”¹² This was an effort to push France away from the pain that it had suffered thereby starting their narrative anew or picking up where it left off before the complexity of the Occupation cast its enduring shadows. The amnesty laws, De Gaulle’s speech, and the purge attempted to release France from the memory of Vichy. Thus, these vectors created a stifled and warped memory for the French public to imbibe.

As France moved into the “return of the repressed” and continued into the “obsession” and “acceptance” stages, political statements appeared again as generators of memory. The most influential statements made by French presidents after the truth of Vichy came to light were those made by François Mitterrand and Jacques Chirac. Mitterrand continued the tradition of distancing the modern Republic of France from Vichy France. When pressed to recognize France’s responsibility in the deportations he replied, “I will not apologize in the name of France. The Republic has nothing to do with that. I believe that France is not responsible.”¹³ Mitterrand attempted to establish a memory in which France and Vichy were never truly connected; therefore the persecution of the Jewish people was not the responsibility of France. Mitterrand’s memory of France remained untarnished by the immense suffering felt during the Vichy years.

¹¹ Ibid., 21.

¹² Ibid., 51.

¹³ Julie Fette, "Apology and the Past in Contemporary France," *French Politics, Culture & Society*, 26, no. 2 (2008), 81.

When Jacques Chirac entered office he ended this period of historical exclusion. He finally recognized Vichy France as a part of French history and ended the “separatist” theory. He made a very progressive speech at the Vél d’Hiv ceremony, which commemorated the first roundup of 13,000 Jewish citizens in Paris in 1942 that were subsequently put in abhorrent conditions in the Vélodrome D’Hiver, a bicycle stadium. These victims were later deported to french internment camps or Nazi death and work camps. Chirac acknowledged the state’s role in this affair: “France, land of the Enlightenment and of Human Rights, land of hospitality and asylum, France on that day, committed an irreparable act. It failed to keep its word and delivered those it was protecting to their executioners.”¹⁴ The memory, which he projected, established “collective sin” in France.

Scholars such as Julie Fette have identified that part of the reluctance on behalf of President Mitterrand to recognize France’s hand in the deportations was due to his compromised personal history. While Jacques Chirac was only 7 during the Second World War, Mitterrand was very involved in France during the Occupation.¹⁵ Until 1943 he supported Marshal Pétain and was very regularly found on the wrong side of conflicts during the Vichy years despite later declaring himself a resistor. Political statements therefore were and continue to be extremely important to the transmission of Vichy memory, but are also an unstable manner of expressing memory as the sentiments of various politicians can manipulate their opinion. Therefore, the voice of the people can easily shift dramatically.

¹⁴ Jacques Chirac, “Speech made by Jacques Chirac, President of the Republic at the Ceremonies to Commemorate the ‘Great Roundup’ of July 16 and 17, 1942,” SNCF America: Historical Documents (July 16, 1995), <http://www.sncfhighspeedrail.com/wp-content/uploads/2010/10/Chirac1995.pdf>, 1.

¹⁵ Julie Fette, “Apology and the Past in Contemporary France,” *French Politics, Culture & Society*, 26, no. 2 (2008), 82.

In 1974 the obsession phase featured official carriers of memory in the form of judicial review and legislative measures. The statute of limitations was revoked for any case that had any relation to the Final Solution or crimes against humanity. The first time that this suspension was applied to a French citizen was the trial of Jean Leguay.¹⁶ Although he died before being officially charged, it was conclusively determined that he committed crimes against humanity and helped orchestrate the Vél D'Hiv round up that initiated the massive deportation of French Jews in 1942. The revoking of the statute of limitations produced memory in itself, establishing that the Vichy years were riddled with far too much complexity to go unexamined in modern France. Finally, in 1990 the French government enacted the Loi Gaysott, which defined Holocaust denial as a legal offense.¹⁷ This law continues to be debated today and has been recently applied to other genocides. This law reflects an attempt to correct the past and establish a new or renewed humanitarian image of France by punishing those who question an atrocity that at one time was perpetuated and accepted by the French government and many of its citizens.

III. Unofficial forums

At the end of the mourning period one sees the emergence of unofficial forums of memory. First, film, began to address the nature of the Vichy Regime. In 1969 one of the most famous French World War II films was produced, *Le Chagrin et La Pitié*. This film represents the changes that were occurring in French Occupation memory at the time. In the film both collaborators and resistance fighters were interviewed. The range of characters attempted to do

¹⁶ Henry Rousso, *The Vichy Syndrome: History and Memory in France in 1944*, (Cambridge: Harvard University Press, 1991), 150.

¹⁷ Eric Conan, and Rousso Henry, *Vichy: An Ever-Present Past*, (Hanover, NH: University Press of New England, 1998), 215.

away with the narrow one-sided depiction of the Vichy years and show the diversity of French sentiments and actions during the Occupation.¹⁸ Therefore, new memories began to appear in the public sphere of France.

In 1971 France witnessed the “return of the repressed.” The truth of the Vichy regime began to seep into the conscience of the country in the form of books, films, and other media outlets. It was at this time that Robert Paxton’s famous book; *Vichy France: Old Guard New Order* captured the attention of the French people. Furthermore, as each new development pertaining to the Vichy years came about, particularly in the form of trials, the Press began to produce memory of its own. Therefore, unofficial carriers spurred a reexamination of the Occupation years.

While France entered the “obsession phase” some French citizens opposed the emerging trend with regard to the reawakened Jewish memory of the Occupation. At this time Jewish communities in France began to share their stories of the anti-Semitic persecution during the Vichy years. In response, negationism appeared in French society. Some French researchers and politicians began to make arguments against the existence of the Holocaust and especially against the French connection and participation in the perpetuation of the Holocaust.¹⁹ The Press that followed these trends began to produce new memory in France. The memory was confrontational, defensive, and of course anti-Semitic. The leader behind this movement was Louis Darquier de Pellepoix, former commissioner for Jewish Affairs during Occupation.²⁰ Responsible for massive Jewish deportations from France, Darquier was sentenced to death in 1947. At this time he had already fled to Spain where he was protected under the authoritarian

¹⁸ Henry Rousso, *The Vichy Syndrome: History and Memory in France in 1944*, (Cambridge: Harvard University Press, 1991), 105.

¹⁹ *Ibid.*, 152-153.

²⁰ *Ibid.*, 149.

regime of Francisco Franco. In the late 1970's a French journalist interviewed him and Darquier infamously declared that the gas chambers of World War II were used to kill lice and that the Holocaust itself was a myth created by the Jewish people.²¹ This spurred other anti-Semitic politicians to express their own negationist views through the forum of the press.

Negationism was met with equally strong reactions in the French academic community. The vector of academia, often slow to permeate through the masses' psyche, grabbed the attention of the French people when the professors of the College de France, the Centre National de la Recherche Scientifique, and the Ecole des Hautes Etudes en Sciences Sociales signed a petition that designated how the Holocaust could be analyzed in the academic and intellectual spheres of France. Actions such as these clearly defined a particular approach to remembering certain aspects of the Occupation years. However, these types of actions also resulted in questions of freedom of the press and freedom of intellectual inquiry.²² This petition said that people had the right to interpret Hitler's genocide, but that its existence could not be debated.²³ Similar to the Loi Gayssot, this petition defined how France would approach the study of genocide in the future, thereby producing a certain memory of France's connection to genocide in the past. This and the Loi Gayssot communicate memory by clearly demonstrating that France's connection to the Holocaust merited these academic and legislative measures.

IV. Assessing the forum of Court Cases with regard to Vichy: in France

Despite the fact that all of these forums were important to the development of French Vichy memory, Rousso highlighted judicial forums as particularly effective throughout the "Syndrome." When speaking about the most influential and conclusive forum, the courtroom

²¹ Ibid., 139.

²² Ibid., 154.

²³ Ibid., 154.

Rousso wrote that “the suspension of the statute of limitations like the operation of memory itself abolished time. There was however one crucial difference: memory is by definition selective, unfaithful, and changeable. Justice is not.”²⁴ The courtroom has been instrumental in historical discussion and articulating memory for many contentious and painful past events. However, justice ended wandering memory and therefore closed off certain areas of history still riddled with unresolved memory.

The court cases connected to the Vichy regime were often characterized as a means of putting the Vichy regime “on trial.” After the purge, the primary culprits were thought to have been either executed or given life sentences in prison. However, some officials with significant attachment to the Vichy regime remained free and unscathed. Others, who were given significant prison sentences, were released under the amnesty laws. Therefore as memory reawakened and France entered the obsession phase, unresolved memory began to manifest itself within the courtroom. The most famous individuals who were targeted for judicial review were René Bousquet, Maurice Papon, Paul Touvier, and Klaus Barbie. All of these officials were charged with “crimes against humanity” for supporting the Final Solution. The most important trials were those of Paul Touvier and Maurice Papon. Both of these men were high ranked civil servants in the Vichy regime and more importantly French citizens. Some considered these trials a relief of tension for some citizens struggling with the reality of events long past and “gave such memories a legitimate reason for existing in the present.”²⁵ Others, especially for the later trials, felt that the facts were now too far away from the original context to judge fairly. With regard to Jewish persecution, the courts suspended the statute of limitations if the case was at all connected to the

²⁴ Ibid., 160

²⁵ Ibid., 160.

Final Solution.²⁶ In these trials historians such as Henry Rousso and Robert Paxton were asked to serve as “experts” during the trial. Therefore, these high profile trials attempted to articulate historical reality as well as moral sentiment. The trials of Touvier, Papon and other Vichy officials resulted in a judgment that would define the memory of these men. Nevertheless, while most of the Vichy officials were eventually put on trial in some capacity, this is not true for the majority of French organizations that supported Vichy’s inhumane and discriminatory policies. Therefore, the singularity of the memory did not convey the far-reaching nature of the consequences of anti-Semitic policy in Vichy France.

V. “Age of Apology”

As France moved into the 21st century it entered a new phase in which the forums of remembrance developed within specific organizations whose past impeded their ability to function in the present. This period in history has been characterized as “the age of apology.”²⁷ Starting in the late 1990’s France saw a dramatic increase in public apologies made on behalf of both state and private organizations that either supported or profited off of the anti-Semitic policies of the Vichy Regime.

With the emergence of President Chirac’s idea of “collective fault,” the Vichy regime could no longer be viewed through a parenthesis scope in which the Occupation years were seen as exceptional.²⁸ This sentiment spurred the creation of historical commissions and therefore access to wartime records.²⁹ As new information was made available French fingerprints at a local level

²⁶ Ibid., 205.

²⁷ Julie Fette, "Apology and the Past in Contemporary France," *French Politics, Culture & Society*, 26, no. 2 (2008), 78.

²⁸ Ibid., 79.

²⁹ Ibid., 80.

were found on a variety of Vichy related policies. The state effort to create reparations resulted in a “series of national scandals” involving a surprising number of French organizations.³⁰ These organizations therefore began to produce memory through apologies, new historical commissions, and attempts at rebranding. The motivations behind the “age of apology” were pragmatic as much as they were moral. Historians Elazar Barkan and Alexander Karn wrote, “the age of apology is distinguished by its unparalleled commitment to remove the past as an obstacle to productive and peaceful intergroup relations.”³¹

The first organizations to step forward during the age of apology were the Paris law bar and the French Catholic Church. Later the state police and the Council of Doctors followed. Apologies came in the form of reparations, historical commissions, archival openings, press releases, and donations given to French Holocaust and Jewish Studies museums. It was discovered that the Paris Bar eagerly supported the exclusionary policies of the Vichy regime with regard to the percentage of Jewish attorneys allowed to practice.³² The apology for supporting this policy came in April 1997. This apology may have been a result of the new pressure felt by the Papon trial currently taking place in France. At this time Maurice Papon, former prefect of Bordeaux and instrumental force in the Vichy regime, was being put on trial for crimes against humanity. Papon was responsible for the deportation of 1,600 Jews during the Occupation. Therefore the law bar attempted to preempt a possibly problematic situation before it occurred.³³ Furthermore, the contemporary mission of the Paris bar focuses more on moral legal issues such as immigration rights therefore; its past contradicted this philosophy.³⁴

³⁰ Ibid., 84.

³¹ Ibid., 78.

³² Ibid., 85.

³³ Ibid., 86.

³⁴ Ibid., 86.

The Catholic Church then followed in December 1997, apologizing for remaining silent with regard to the Vichy anti-Semitic measures. The modern social activist bent of the Church required it to reexamine its inaction during the Occupation.³⁵ This new stance communicated a desire to learn from Vichy and apply those human rights lessons in the future. Bishop Berranger commented on the apology saying, “if we repent for what happened under Vichy, it is also in order to think, for example, about what is currently happening in Algeria, in East Africa, about everything that, in the West, can lead to denials of the conscience. The Church must speak out. No matter what the situation.”³⁶ However, when the Church made this apology, one of the most important issues of this “age” came to light. The issue with regard to these apologies was how to balance the memory of the Resistance efforts of these specific organizations with the collaborationist activities of these same organizations. In the case of the Catholic Church, many felt that the Church’s apology might overshadow the rescue efforts that were made on behalf of the Catholic Church during the Occupation.³⁷

The apology from one unit of the national police was also controversial. This apology offered “eternal regret” during a ceremony at the memorial of the “Unknown Jewish Martyr” in Paris. This apology was particularly important as the French police was directly connected to the deportations and inhumane treatment of Jews and other “undesirables” during the Occupation. Furthermore, Chirac’s Vél d’Hiv apology technically addressed the police as he apologized on behalf of the state and the police are a part of the state; therefore, they were not expected to make a statement of their own.³⁸ However, the rest of the French police force did not echo this apology. The syndicate general of the police angrily responded to this gesture: “It is stupid and

³⁵ Ibid., 88.

³⁶ Ibid., 88.

³⁷ Ibid., 88.

³⁸ Ibid., 90.

borderline dangerous to equate collaborators with resisters and traitors with patriots by assuming collective responsibility of the ‘police institution.’”³⁹ Therefore the entire national police did not wish to project the collaborationist memory produced by the apology from one of the police units.

The Order of Doctors, who, similar to the Paris Law Bar, had implemented exclusionary practices during the Occupation, also experienced a divide over apologizing in 1997. The Order did issue a “declaration of regret” for their policies during the Vichy regime and promised transparency with regard to its history by opening its archives.⁴⁰ One doctor from Versailles responded to this apology with indignation saying he “had enough of these mediatized-epileptic tremors over the Second World War. I was not there. I did not do anything. So leave me alone... Collective responsibility does not exist.”⁴¹ People did not wish to take part in the responsibility and guilt of the new memory projected by these apologies. Moreover, some have argued that these apologies are too late and that judging these people now is too far away from the context of their actions.⁴² This inconsistency of sentiment during the age of apology continues to appear today. The age also continued to grow tiresome for many French people who felt that they could not escape the wrongdoings of their country, which took place over 60 years ago. Moreover, these apologies came consecutively and thus established a routine nature to reparation and recognition of the collaboration.⁴³

The tension between the memory of the resistance and collaboration and the routine of continual guilt has created some resentment. One citizen epitomized this sentiment saying, “I

³⁹ Ibid., 90.

⁴⁰ Ibid., 90.

⁴¹ Ibid., 92.

⁴² Ibid., 92.

⁴³ Ibid., 80.

repent, we repent...It is currently the most common verb in the French language. The churches, the doctors, and the police parade and contrive. We are now waiting for the postmen, the train conductors, and the truck drivers to join the great self-flagellating movement...me, too, I ask for forgiveness. Forgiveness for not wanting to repent.”⁴⁴

VI. The emergence of international vectors of World War II memory: Court Cases and resulting historical commissions

As was seen in the “age of apology,” the late 20th century saw the emergence of an international focus on morality. With this focus came a movement in the legal profession toward Civil rights. This movement was then expressed in a judicial “tying up of loose ends” with regard to World War II and the Holocaust. The United States was particularly involved in World War II cases following the fall of the Third Reich, initially to aid the rebuilding of the European economy and to protect market interests. Both American immigrants and foreign victims of Nazi Germany or Nazi occupied countries began to file various suits following the war.⁴⁵

Furthermore, American attorneys became a strong force in other countries’ suits dealing with wartime matters. This was only possible because of the unique nature of the American judicial system. Obtaining jurisdiction over defendants in the United States is notably easier than in other countries.⁴⁶ In the American court system foreign citizens can sue for human rights violations committed in other countries. Moreover, foreign defendants can be sued if they do business in America.⁴⁷ This along with other acts such as the Alien Torts Statute have encouraged claimants to take their case to America as there it is more likely that their claim will obtain jurisdiction and

⁴⁴ Ibid., 95-96.

⁴⁵ Michael J. Bazylar, "The Holocaust Restitution Movement in Comparative Perspective," *Berkley Journal of International Law*, 20, no. I (2002), 12.

⁴⁶ Ibid., 12.

⁴⁷ Sarah Willig, "Politics as Usual? The Political Question Doctrine in Holocaust Restitution Litigation," *Cardozo Law Review*, 725.

a great deal of consideration. The most famous case and model for future international cases involving World War II memory was the Swiss Banks' case of the 1990's.

In 1995 the World Jewish Congress filed a suit against the Swiss banks in New York, California and the District of Columbia for the illegal retention of deposits made by Jewish victims of the Nazi regime that were not returned to the survivors following the end of the war. United States Undersecretary of Commerce, Stuart Eizenstat, led the investigation into American archives that held information about the banks' activities during the war.⁴⁸ The "banks scandal of the 1990's" reevaluated the supposed "Swiss neutrality" during the war and Switzerland's true relationship with the German state.⁴⁹ The case resulted in the creation of two historical commissions on behalf of Switzerland and a settlement of \$1.25 billion.⁵⁰ The Swiss banks case became the foundation of future suits against public and private entities of foreign countries in the United States. It also spurred the creation of more historical commissions in European countries that were entangled with the Nazi regime. Today twenty-one countries have established twenty-eight historical commissions to examine their role in World War II and research the possible Nazi assets formerly or presently existing in the state.⁵¹ Nevertheless, the case also saw a strain in Swiss-American relations.

⁴⁸ Michael J. Bazylar, "The Holocaust Restitution Movement in Comparative Perspective," *Berkeley Journal of International Law*, 20, no. I (2002), 15.

⁴⁹ Michael J. Berenbaum, "Confronting History: Restitution and the Historians," *Holocaust Restitution: Perspectives on the Litigation and Its Legacy*, ed. Michael J. Bazylar and Roger P. Alford (New York City: New York University Press, 2006), 45.

⁵⁰ Michael J. Bazylar, "The Holocaust Restitution Movement in Comparative Perspective," *Berkeley Journal of International Law*, 20, no. I (2002), 15.

⁵¹ Michael J. Berenbaum, "Confronting History: Restitution and the Historians," *Holocaust Restitution: Perspectives on the Litigation and Its Legacy*, ed. Michael J. Bazylar and Roger P. Alford (New York City: New York University Press, 2006), 45.

Many private companies followed suit and issued reports in order to free their name from the Nazi regime and continue to do business internationally, especially in the United States. Volkswagen, Daimler-Chrysler, and Degussa all commissioned methodical reports of their history with the Third Reich.⁵² Insurance companies, especially those that take part in international business, such as the German company Allianz, also looked into their past and were required to either pay reparations or be taken to court. This trend eventually turned around to even face American companies that had aided the Nazis such as IBM and Henry Ford Motors.⁵³

VII. The early memory of SNCF during World War II

The French National Railway was rarely seen in the postwar memory of France until quite recently. Most of the postwar memory of the company emerged through a variety of vectors much later in France. When one considers the great upheaval of memory in France taking place in the postwar period it is no surprise that organizations such as the National Railway were neglected with regard to the evolving national memory of the Occupation. The railway went unnoticed in the face of controversy dealing with famous politicians and government employees. Furthermore, SNCF was notably left almost untouched by the purge.⁵⁴ However, there were a few instances of transmission of the wartime memory of the railway in the immediate aftermath of the war or the beginning stages of Rousso's "syndrome."

In the spirit of the early memory sickness of France, the resistancialist film *La Bataille du Rail*, directed by René Clément, was produced in 1946. This film depicted the heroic struggle

⁵² Ibid., 46-47.

⁵³ Michael J. Bazylar, "The Holocaust Restitution Movement in Comparative Perspective," *Berkeley Journal of International Law*, 20, no. 1 (2002), 43.

⁵⁴ Christian Bachelier, "The SNCF Under German Occupation" (1995): 1-27, http://www.sncfhighspeedrail.com/wp-content/uploads/2010/12/Bachelier-Report_Executive-Summary.pdf, 24-25.

of the French resistance fighters who worked for the railway during the Occupation. In the film the railways are depicted as the savior of France as they maintained a connection between the two zones and were the device with which France could speak to the outside world.⁵⁵ The focus of the film is the “Resistance-fer” or the SNCF workers who resisted the German occupiers at the end of the war, particularly after 1943. These men sabotaged communication lines, rail lines, and the trains themselves in order to slow the German forces. This film depicts their efforts to slow the German reinforcements headed toward Normandy to meet the allied forces. The punishment for sabotaging the occupiers was grave and ultimately resulted in the execution of 800 SNCF workers and the deportation of 1,200 SNCF workers to Nazi work and death camps. This heroic and resistancialist memory of the railway remained the only depiction of the company throughout the 20th century. Therefore, the memory of SNCF did not move through the phases of the syndrome, but rather remained quietly hidden in the “period of the resistance” until the late 1990’s.

SNCF weathered the storm of the “age of apology” in France without discussing their actual culpability with regard to the deportations. It did not make any grand gestures similar to those of other French public and private organizations with sullied pasts. SNCF continued to be represented as an exemplary company, defined exclusively by the resistance actions of railway workers at the end of the war. Nevertheless, it was impossible for the company to disregard the necessity and pressure to take a closer look at its history. Therefore, to appease any possible questions directed at SNCF, the French Railway commissioned Christian Bachelier, a French historian, to create a detailed report concerning the company’s actions during the German Occupation. This was the first time that SNCF opened its archives to a member of the public. In

⁵⁵ René Clément, "La Bataille du Rail," compact disc.

1996 Bachelier finished the 900-page report on the history of the company, *The SNCF Under German Occupation, 1940-1944*. This official report was the first representation of the wartime memory of the company since 1946.

This report led to the 2000 conference, *Une Entreprise Publique dans la Guerre*. This conference brought together the most notable French World War II historians of the 20th century to discuss and debate the wartime history of the French Railway. It was noted at the beginning of the conference by former President Louis Gallois that there are two images of SNCF, that of the heroic resistance and that of deportation trains to death camps.⁵⁶ There is a sense of conflicting objectives in the record of this conference. Most of the participants attempt to avoid the subject of the deportation trains and instead talk in length about the brave actions of the cheminots or railway workers. There are only a few historians such as Kurt Schaechter who throughout the conference pushed the subject of the deportations. Schaechter's parents were Jewish deportees from France during World War II and ultimately died in the death camps. In the conference he revealed that he gained access to the archives and stole an invoice from the records: "what did I find? In the state archives, I found bills from SNCF for the deportation with Republic of France stamps."⁵⁷ This invoice demonstrated that SNCF did in fact receive payments for the deportations and continued to pursue payment after France was liberated.⁵⁸ This discovery became an important element of the judicial actions against SNCF and later the business legislation concerning SNCF. Despite the rather stifled nature of this conference, debate over the memory of the company had started and could no longer be held back.

⁵⁶ First Association pour l'histoire des chemins de fer en France, *Entreprise Publique Dans La Guerre: La SnCF, 1939-1945: Actes Du Viiiie Colloque de L'Association Pour L'Histoire Des Chemins de Fer En France*, (Paris: Assemblée Nationale, 2001), 8.

⁵⁷ *Ibid*, 29.

⁵⁸ *Ibid*, 29.

Following this conference the SNCF archives in Le Mans, France were opened to the public for research and academic purposes. It should be noted that although SNCF officially declares that their archives were open in the late 1990's, scholars have said that accessing the archives for research remained very difficult at that time. Moreover, only in the early 2000's did SNCF begin to catalogue its archives, thereby making it possible to find relevant documents. Furthermore, recently it has again announced opening its archives. There is a great deal of confusion over the nature of these "open archives" and when they were opened. In an article in The Telegraph in 2010 entitled, "SNCF to open war archives to California," Chairman Guillaume Pepy said, "Twenty years ago we opened all our archives... we are going to open all that to the Americans."⁵⁹ What exactly that meant for the state of the archives throughout the 1990's and the 2000's is unclear.

However, once the archives were opened French historians such as Raphael Delpard were able to access the necessary documents to research SNCF's actions during the war, and they published books that specifically addressed the deportation trains. Delpard, an acclaimed historian, filmmaker, and journalist in France wrote one of the most famous books on SNCF's deportation history, *Les Convois de la Honte: Enquête sur la SNCF et la déportation* in 2005. This book was later transformed into a film, which has recently received support from Holocaust survivors involved in the recent American controversy. The books that resulted from this archival opening discussed the actions of the administration and the railway workers as well as the specific instructions and limitations of the company under Nazi authority.

⁵⁹ Samuel, Henry. "SNCF to open war archives to California." The Telegraph, August 30, 2010. <http://www.telegraph.co.uk/news/worldnews/europe/france/7971894/SNCF-to-open-war-archives-to-California.html> (accessed March 15, 2012).

With the sudden access to information about the National French Railway during World War II judicial inquiries began to surface. Therefore, the memory of the railway was then thrust into the vector of the courtroom both on a national and international level.

Chapter II: Judicial Proceedings against SNCF

*“We aren’t gonna go in and reach a settlement where you can pay Leo because you took his book—that’s not a settlement, settlement is you took people for money to Auschwitz, face it and pay reparations.”*⁶⁰ – Harriet Tamen, Plaintiff Attorney Freund V. SNCF

I. Judicial proceedings in France: Lipietz V. SNCF

The first time that the wartime memory of SNCF appeared in a courtroom was in the case of Lipietz V. SNCF. In France in 2000 Georges Lipietz filed a suit against SNCF for crimes against humanity. Lipietz was a French Jewish deportee who in 1943 was taken via SNCF railway to the Drancy internment camp. From there he was to be sent to Auschwitz. The camp was liberated just before he would have been deported. Lipietz argued that SNCF was complicit with the deportations and profited off of the deportations by charging the deportees 3rd class tickets and transporting them in cattle cars. The condition of the cars was noted as unnecessarily cruel and supporting the idea that SNCF’s administration was “notoriously anti-Semitic.”⁶¹ The Administrative Court of Toulouse ruled in favor of Lipietz in 2006 and held both SNCF and the French state responsible for the deportations and awarded the Lipietz family 61,000 Euros. However, in 2007 SNCF appealed the ruling in Bordeaux and the court ruled in favor of the National French Railway determining that SNCF was under the control of the administrative police, which was the sole responsibility of the state, therefore any action taken by the company was completely directed by the state.⁶² The court recognized the wrongdoings of the company

⁶⁰ Harriet Tamen, (*Freund V. SNCF* court case), interview by Diana Ohanian, Record, July 29, 2011.

⁶¹ *Lipietz et al. v. Préfet de la Haute-Garonne and SNCF*, n° 0104248 (Toulouse. 2006), 1.

⁶² *Lipietz et al. v. Préfet de la Haute-Garonne and SNCF*, 06BX01570 (Bordeaux. 2007), 23.

but the Bordeaux court decided that indicting this company was unfair as SNCF employees, according to the court, had little ability to object to the atrocities taking place.⁶³ This “margin of maneuverability” as Rousso calls it has been debated upon in the French courts, in the conferences and books, and in business legislation dealing with SNCF’s culpability during the Second World War (which will be discussed in a later chapter.) This decision made it nearly impossible to bring any other wartime related claims against SNCF in France. Thus, this case not only affected the Lipietz family but all those who wished to sue SNCF in the future.

This trial demonstrated that the French judicial system was no longer a viable forum for suits against the National Railway. Nevertheless, the decision in Toulouse and the increased interest in SNCF’s wartime history resulted in the National Railway receiving 1,800 compensation requests. Consequently, these requests had to be heard in a different setting. The unique judicial system of the United States made it a suitable environment to hear these claims. Nevertheless, trying a case in a third party country such as the United States is not without its complications for the plaintiffs.

II. Attempting to indict SNCF in the United States: Plaintiffs argument, Limitations of the court, Diplomatic Issues

The survivors’ or plaintiffs’ argument in the United States evolved over time with regard to diplomatic concerns, limitations of the court, and developments within SNCF. Analysis of these cases reveals that historical fact is not the major point of contention but rather international relations concerns that have no connection to the historical events that have spurred these trials.

⁶³ Ibid., 23.

The increasing complexity of these issues of diplomacy has lessened the historical, pedagogical, and humanitarian objectives of the plaintiffs.

After World War II the United States put in place immunity acts and provisions to manage wartime related claims and maintain peaceful relations with other countries. These provisions were also created to protect the United States from similar claims in these immune countries. These acts outline what can and cannot be heard in American courts and if there is another branch of the government that is better suited to manage a specific case. Immunity acts have been a part of the American government since its inception. Moreover, the number of participating countries and intricacies of these acts have grown throughout the 20th and 21st centuries. The provisions relating to the trials against SNCF are the Political Question Doctrine, International Comity, and most importantly the Foreign Sovereign Immunity Act. The approach of the plaintiffs' of *Abrams V. SNCF* and *Freund V. SNCF* had to change as the implementation of these acts and doctrines continued to undermine and complicate the survivors' efforts in court.

The first trial against SNCF in the United States was *Abrams V. SNCF*, filed in 2001. In this case, Raymond Abrams and other SNCF deportee survivors argued that the National French Railway violated international law and committed crimes against humanity by knowingly transporting tens of thousands of French citizens to Nazi death and slave labor camps.⁶⁴ The plaintiffs' argument was founded upon the Alien Tort Statute (1789), which gives district courts the right to have jurisdiction over any civil action committed by an alien.⁶⁵ The modern conception of ATS was defined by the *Filartiga V. Peña-Irala* case in 1979. The suit charged

⁶⁴ *Abrams V. SNCF*, 175 F. Supp. 2d 423 (U.S. Dist. New York, 2001), 1.

⁶⁵ *Ibid*, 1.

Paraguayan official Americo Peña-Iral with the wrongful death of Juelita Filartiga.⁶⁶ The court found in favor of the plaintiff and consequently the scope of ATS grew. Today, the ATS “gives foreign nationals the right to sue for wrongful actions that violate international law” even for actions which occurred abroad, as long as the court has “personal jurisdiction over the defendant.”⁶⁷ This decision set a precedent for claims “involving an increased number of internationally recognized rights, including freedom from torture, slavery, genocide and cruel and inhumane treatment.”⁶⁸ It has become the foundation of many human rights cases tried in the United States. Nevertheless, corporate liability under the Alien Tort Statute has remained unclear. The *Kiobel V. Royal Dutch Petroleum* case (2010) initially established that corporations could not be held liable under this act but in appeals the judge accepted the statute for the trial.⁶⁹ Therefore, attempting to integrate corporations into the scope of this statute has remained controversial.

Thus, despite the nature of ATS, the limited scope of the statute forced the judge in the *Abrams* case to deem that ATS did not give the court proper jurisdiction. SNCF then moved to dismiss the claim for lack of jurisdiction under the Foreign Sovereign Immunity Act (1976.) FSIA simply states that there are many restrictions with regard to suing a sovereign nation in American courts.⁷⁰ Sovereign states are immune from the American court system except in

⁶⁶ *Filártiga v. Peña-Irala*, (New York: Center for Constitutional Rights,) <http://ccrjustice.org/ourcases/past-cases/filártiga-v.-peñ-irala>.

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ Alien Tort Statute of 1789, 28 U.S.C. § 1350

⁷⁰ “The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the Jurisdiction of such courts would serve the interests Of Justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the Jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction Of Judgments rendered against them in connection with their commercial activities. Claims Of foreign states to immunity should henceforth be decided by courts Of the

exceptional circumstances. This immunity is also granted for “instrumentalities” and “agents” of the sovereign state. In this case SNCF was deemed to be an instrumentality of the state, as the Republic of France owns the majority of its shares.⁷¹ The “instrumentality” status of the SNCF is mentioned repeatedly in the court records to emphasize the plaintiffs’ inability to demonstrate that SNCF should be excluded from “the principles of grace and comity.”⁷² The plaintiffs countered that FSIA does not apply to conduct occurring prior to the initial establishment of FSIA in 1952.⁷³ They cross-moved for discovery, attempting to obtain evidence to demonstrate that dismissal would not be an appropriate use of FSIA.⁷⁴ Nevertheless, the judge ruled that the FSIA applied retroactively, therefore the case was dismissed. In this case the plaintiffs did not attempt to operate under FSIA. If they had operated under FSIA they would have had to prove that this particular case could fall under one of the exceptions to FSIA, which would deny the state or instrumentality immunity.

The plaintiffs contested the use of FSIA retroactively and the case was appealed in 2002. The judge deemed that FSIA should not be applied retroactively and agreed to hear the case. The defense continued to argue that the case should not be heard because of the immunity provisions laid out in FSIA. The plaintiffs countered by debating the ownership of SNCF prior to the end of World War II.⁷⁵ Despite this effort on behalf of the plaintiffs the court deemed the question of

United States and of the States in conformity with the principles set forth in this chapter.” 96th congress, Public Law 94-583

⁷¹ *Abrams V. SNCF*, 175 F. Supp. 2d 423 (U.S. Dist New York. 2001), 8.

⁷² *Abrams V. SNCF*, 32 F.3d 173; 2003 (U.S. App New York. 2004), 2.

⁷³ *Abrams V. SNCF*, 175 F. Supp. 2d 423 (U.S. Dist New York. 2001), 5.

⁷⁴ *Ibid*, 1.

⁷⁵ *Abrams V. SNCF*, 32 F.3d 173; 2003 (U.S. App New York. 2004), 3.

ownership during the German Occupation was irrelevant to this modern day case.⁷⁶ This effort argued over the history of the ownership of SNCF rather than the history of the deportations. The actual culpability of the company was barely touched upon, as it could not be discussed without proper jurisdiction.

Finally, an unrelated case at the time upheld FSIA's retroactive application; thus the court was forced to conclude that SNCF had retroactive immunity. The court stated with sadness that "the evil actions of the French national railroad's former private masters in knowingly transporting thousands to death camps during World War II are not susceptible to legal redress in federal court today.... Nonetheless, the railroad's conduct at the time lives on in infamy."⁷⁷

These questions of immunity defined the plaintiffs' approach in the *Freund V. SNCF* case. In 2008 Mathilde Freund and 600 other SNCF deportee survivors and family members filed a suit against the National French Railway in the Southern District Court of New York for damages for property taken in violation of international law.⁷⁸ In this suit the plaintiff attorney, Harriet Tamen aimed to function within FSIA instead of denying its presence in the trial. When interviewed she still contends that SNCF should not be treated as a foreign instrumentality as it has represented itself differently over the years, both as a public and private organization, in order to evade prosecution.⁷⁹ Nevertheless, she has committed to operate under FSIA in order to obtain subject matter jurisdiction. She is attempting to use the exceptions to FSIA to break down the immunity of the French National Railway. In order to employ the exception of "commercial activities" in violation of international law the plaintiff must demonstrate "1) the rights of property are at issue 2) that property was taken 3) that the taking of this property was in violation

⁷⁶ Ibid, 3.

⁷⁷ Ibid, 3.

⁷⁸ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York. 2008), 1.

⁷⁹ Harriet Tamen, (*Freund V. SNCF* court case), interview by Diana Ohanian, Record, July 29, 2011

of international law 4) a- that the property is present in the United States and is in connection with a commercial activity, or b-that property is owned and operated by an agency or instrumentality of the foreign state and that the agency or instrumentality is engaged in commercial activity in the United States.’’⁸⁰ There was no doubt that criteria 1, 2, and 3 of the exception were met. The only parts of the exception that were in question were 4a and 4b. The court record states that it is clear that SNCF took valuables from the deportees such as suitcases, jewelry, money, etc. and told them that all of this material would be returned to them with no intention of actually doing so.⁸¹ Furthermore, the plaintiffs discussed the Drancy internment camp, its function as a stop before the deportees were taken to Auschwitz and cited the camp’s records of property acquisition from the deportees. Nevertheless, the court doubted that there was any connection to the United States with regard to the property and the present commercial activity of SNCF, which would address 4a and 4b of the exception.

Tamen addressed these issues by claiming that SNCF converted the property into profit and still owns this profit today. She then observed that the French Railway has offices in New York City where it does business with the United States everyday namely through the sale of Eurorail passes to American tourists.⁸² Nevertheless this commercial activity was deemed insufficient and too “indirect” to obtain subject matter jurisdiction for the trial.⁸³ The court cited *Garb V. The Republic of Poland* (2002) as a similar case, which attempted to use the exceptions to FSIA without proper justification. In this case Polish Jewish Holocaust survivors brought a suit against the Republic of Poland and the Ministry of the Treasury of Poland for the expropriation of property from Jews during World War II. The court decided that Poland’s

⁸⁰ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York. 2008),13.

⁸¹ *ibid*, 1

⁸² *ibid*, 19

⁸³ *ibid*, 19

confiscation of property within its borders couldn't be construed as a commercial act.

Furthermore, the treatment and conversion of this property was not sufficient to be judged as "in connection with" commercial activity. Finally, the plaintiffs failed to demonstrate that any of this "activity" had a direct effect on the United States.⁸⁴ This case determined the strict interpretation of the exceptions to FSIA in American courts; therefore the judge of *Freund V. SNCF* had little choice with regard to hearing this case.

Additionally, the court stated that even if proper jurisdiction existed, the court would have serious concerns with the case based on the Political Question Doctrine and the principles of International Comity.⁸⁵ The Political Question Doctrine states that courts should defer cases with impact upon foreign policy to the executive branch. Moreover, under the principles of International Comity United States courts often refuse to judge acts of other governments and defer the proceedings to the foreign country.⁸⁶ The court also stated that the plaintiffs had failed to mention the forms of reparations available in France and how these forms were not sufficient or did not address their claim. Specifically the court was referring to the Mattéoli Commission, the research and restoration initiative of France for the spoliation of Jews during World War II. The official decision was that "France was entitled to sovereign immunity under FSIA because the allegedly expropriated property was not present in the United States, and plaintiffs had not demonstrated that an agency or instrumentality of France was engaged in conduct that would justify stripping France of sovereign immunity."⁸⁷

In 2010 Tamen took the case to the Second Circuit Court of Appeals in New York. She again aimed at using the exceptions to FSIA to gain the necessary jurisdiction to hear the case.

⁸⁴ *Garb V. Republic of Poland*, 207 F.Supp.2d 16 (U.S. Dist. New York. 2002), 41-42.

⁸⁵ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York. 2008), 1

⁸⁶ *Ibid*, 5

⁸⁷ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York. 2008), 32.

Nevertheless, the court affirmed the decision of the district court and dismissed the case again. One sees that the argument in this trial deals with the history of the property and the implications of that stolen property in relation to the United States. Therefore, again the actual culpability of the company with regard to the deportations is not the primary focus of these court proceedings. Despite this setback Tamen has stated that she plans to appeal the court's decision again and take the case to the United States Supreme Court. She believes that "sovereign immunity was never meant to protect the commission of war crimes" and thus will continue to appeal the court's decision until the case is heard.⁸⁸ She has over 600 claimants and therefore she can continue filing this suit for an indefinite period of time.⁸⁹

III. The Defense of SNCF in the United States: exclusively immunity based

Conversely, the National French Railways' defense in court has changed very little throughout these proceedings in the United States. The admittance to any sort of culpability in court has remained at a stalemate over the past 10 years. Their defense is carefully worded and intricate. The Defense has remarked briefly upon the complexity of the German Occupation but did not admit or address the culpability of the company in the trials in the United States. Consequently, their argument in court aims at proving that the United States is an inappropriate setting for this claim, thus terminating the case before it can be heard. Their argument is based primarily on the retroactive use of FSIA and the principles of International Comity.

In the Abrams case, as was discussed earlier, the National Railways' status as an instrumentality was not in question in the 21st century but its status during World War II remained somewhat unclear. The American defense attorney for SNCF, Andreas Lowenfeld, has

⁸⁸ Harriet Tamen, (*Freund V. SNCF* court case), interview by Diana Ohanian, Record, July 29, 2011

⁸⁹ *ibid*

consistently stated the SNCF has no private ownership and cannot be construed as anything but state owned.⁹⁰ Therefore, beyond this short-lived dispute over ownership the railway was clearly within its rights to demand immunity according to American law. The Defense cited many cases in which FSIA was applied retroactively such as *Princz v. Federal Republic of Germany* (1995) and *Sampson v. Federal Republic of Germany* (1997). In both of these cases Holocaust survivors, Hugo Princz and Jacob Sampson respectively, sued Germany for damages for enslavement by the Nazi Regime.⁹¹ In both cases the courts ruled that despite the fact that the German state during World War II violated international laws the country was still entitled to immunity. Furthermore, the courts had to recognize the agreement between the United States and Germany with regard to the Foundation 'Remembrance, Responsibility and the Future,' a German organization which allocated funds to Holocaust survivors. The United States agreed to defer all German Holocaust related claims to this foundation even if it appeared as though the German Government was unjustly denying some claimants.⁹² These cases became the foundation of FSIA's retroactive use and the American deferral to the French Holocaust Fund, the Mattéoli Commission.

FSIA remained the foundation of the defense in the *Freund V. SNCF* case. SNCF moved again to dismiss the case based on their instrumentality status and the plaintiffs' weak argument pertaining to "commercial activity." Furthering the defense's efforts were the doctrines and principles of the American judicial system that would prohibit the court from hearing certain types of trials due to sensitive international relations issues, namely the Political Question

⁹⁰ Andreas Lowenfeld, (*Freund V. SNCF*, Defense), interview by Diana Ohanian

⁹¹ *Sampson V. Federal Republic of Germany*, 975 F.Supp. 1108 (N.D. Illinois. 1997), 2.

⁹² *Ibid*, 22-23.

Doctrine and the principles of International Comity. Despite the fact that these doctrines were not a part of SNCF's defense, they did aid the company's efforts to end the proceedings.

This type of defense in trial demonstrates SNCF's general attitude toward its muddled past, which is not one of concealment but rather of denial until proven guilty. The diplomatic concerns of these trials have aided SNCF in evading speaking to its actual culpability during World War II. SNCF's innate immunity approach in court in the United States aims at characterizing these trials as inappropriate.

IV. The "appropriateness" of suits against SNCF in America: Immunity, Reparations efforts in France, and motivation of the Plaintiffs

Assessing the "appropriateness" of the judicial proceedings against the French National Railway in the United States is complex. One must look at the limits of American law with regard to international affairs, the reparations systems in France, and how these issues play into the specifics of the American claims against SNCF. The role of the Executive Branch in the United States regarding international judicial issues, the effects of the Mattéoli Commission, and the relative "adequacy" of French funds for Holocaust survivors are all part of assessing if placing this case in the United States is necessary and can address the Plaintiffs claims.

Under both the Political Question Doctrine and the principles of International Comity it is suggested that when American courts are faced with a case with international implications the court should defer to the Executive branch.⁹³ In the *Freund V. SNCF* case the court clearly states that "the Executive Branch is the sole organ of federal government in the field on international relations." Furthermore, in the final decision the court stated, "Federal courts do not have a

⁹³ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York. 2008), 5.

greater ability to compensate Holocaust victims than France or the Executive Branch.”⁹⁴ The “ability” of the court is a concept repeated throughout these cases. This lack of “ability” is linked to the reparations efforts of France over the past 17 years and issues of American immunity in other countries. The principles of International Comity were created in part to insure that the United States would be treated in a similar manner in other countries when faced with lawsuits.⁹⁵ Therefore, the United States wants to avoid opening itself up to claims from around the world. Furthermore, if American courts agreed to hear this trial it would indicate that the United States believed that the system of the reparations and recognition for the Holocaust in France was not sufficient and fair. Therefore, it would appear to be an American attack on the moral and just behavior of the French government.

The French government has put forth adequate efforts to create reparations funds over the past 17 years. In 1997 President Jacques Chirac created the Mattéoli Commission, a study on the spoliation of Jews in France during World War II. This report came swiftly after Chirac’s groundbreaking speech at the Vél D’Hiv Holocaust Memorial ceremony on July 16th, 1995; where for the first time a French President recognized France’s role in the Holocaust. The Mattéoli report continued Chirac’s effort to break down the “Vichy was not France” concept, which had been consistently advanced by President Charles De Gaulle and President Mitterrand. President Chirac wanted this commission to move France to pay its debt and recognize its role in the anti-Jewish policy of the Vichy Regime.⁹⁶ He characterized the commission as the nation’s great cause or “la grande cause nationale.”⁹⁷ The Commission recognizes that although the

⁹⁴ *ibid*, 31

⁹⁵ *Abrams V. SNCF*, 32 F.3d 173; 2003 (U.S. App. New York. 2004), 2.

⁹⁶ “Mattéoli Commission”, 1999, Washington D.C., Archive Press Release, United States House of Representatives, 1-2.

⁹⁷ *Ibid*, 1.

Germans instigated the spoliations, the Vichy Regime executed them.⁹⁸ The objectives of the Mattéoli report were to study the conditions under which spoliations occurred, evaluate the extent of spoliation, discover what happened to these assets, and make proposals to French government as to how to deliver reparations to the victims.⁹⁹ The mission studies four areas where spoliation occurred: spoliation in internment camps, particularly in Drancy, aryanization of businesses, pillaging of apartments, and appropriation of cultural assets.¹⁰⁰ The Commission also addresses the immaterial spoliation from Jewish authors and composers who did not receive their copyright benefits. The French government put together a team of highly skilled researchers to assess this spoliation and recommend reparations “with the knowledge that what was committed is irreparable. The human drama of the plunderer's victims must be taken into account.”¹⁰¹ Former French Prime Minister Lionel Jospin declared that with this commission, “No unclaimed despoiled funds will remain in any private or public institution but rather shall go towards the cause of the victims.”¹⁰²

The Mattéoli Commission created the Commission for the Compensation of the Victims of Acts of Despoilment Committed Pursuant to Anti-Semitic Laws in Force During the Occupation also known as CIVS. It is an independent administrative body, which makes reparations recommendations to the French government. CIVS compensation is only directed toward material and financial spoliations. If a survivor wishes to receive reparations they must explain the circumstances of the spoliation and the nature of the assets. The nature of the assets refers to the former location and the value of the assets, and if previous claims were made about

⁹⁸ Ibid, 2.

⁹⁹ Ibid, 11.

¹⁰⁰ Ibid, 11.

¹⁰¹ Ibid, 12.

¹⁰² Ibid, 12.

these assets either in France or in Germany.¹⁰³ CIVS also says that it employs a “relaxed standard of proof,” indicating that a great deal of documentation of the spoliation is not necessary to receive reparations.¹⁰⁴ Once the National War Veterans office or ONAC has received the recommendation, payment is usually released in 6-8 months.

Furthermore, in 2000 the French government developed the Shoah Memorial Fund. This organization deals with unclaimed assets and facilitates “the Fund” or Le Fonds. The Fund is an account created by the French government with 2.4 billion francs to aid needy Shoah victims and those whose claims were not accepted by CIVS. The Fund gives a lump sum of 1,500 Euros to all Shoah survivors and victims of anti-Semitic legislation who have not yet received reparations.¹⁰⁵

In addition to the primary forms of reparation in France other more specific organizations exist to address certain victims’ cases. These organizations include the Jewish Orphan fund, the Political Internee Statute, The National Museum of Recuperation, and The Council of Private Inheritance of the City of Paris relating to Spoliations.¹⁰⁶

World War II reparations therefore are dealt with in a serious, sensitive and detailed manner in France. Nevertheless, one must analyze whether these forms of reparations are applicable to the deportee survivors and if their compensation is ‘adequate.’ There is technically, as Harriet Tamen pointed out in an interview, no form of compensation directed at victims of SNCF. The allocated funds that might address the claims of these survivors would be those for interned victims, particularly in Drancy. One could also argue that those who might not be

¹⁰³ CIVS questionnaire, <http://www.civs.gouv.fr/>

¹⁰⁴ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York. 2008), 10.

¹⁰⁵ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York. 2008), 10.

¹⁰⁶ United States Holocaust Museum: “France,” January, 06, 2011

covered in this fund can always look toward the Shoah Memorial Fund. However, although the Shoah Memorial Funds are distributed with ease they are also quite limited. Furthermore, Tamen has asserted that the French government “gives as little as possible with as much ill will as possible” to these survivors in reparations hearings.¹⁰⁷ Therefore, Tamen believes that the French government both gives inadequate reparations and does so in a manner that is disrespectful to the pain that these survivors have endured. With regard to the non-Jewish victims of the deportation the court recognized that their compensation in France remains unclear. The Mattéoli Commission states that it is directed toward the study of spoliation of Jews, not of all victims of the Vichy Regime. Moreover, CIVS also states that its compensation is for victims of “anti-Semitic legislation.”¹⁰⁸

Finally, many questions remain as to the manner in which the French state has dealt with SNCF with regard to its own reparations programs. If SNCF converted the property of the deportees into profit, why should the company be allowed to retain that profit which could be construed as “unclaimed funds?” According to the Mattéoli Commission these funds would therefore be allocated to “the cause of the victims.”¹⁰⁹ Furthermore, if the French government were responsible for SNCF it would be reasonable to assume that they would facilitate a deportee fund for survivors whose claims do not fall under the aforementioned funds.

One can see that there are acute difficulties for some survivors to receive reparations in France. It therefore appears as though the limitations of the American judicial systems should not stop them from pursuing justice. The limitations of ATS and the provisions of FSIA should not

¹⁰⁷ Harriet Tamen, (*Freund V. SNCF* court case), interview by Diana Ohanian, Record, July 29, 2011.

¹⁰⁸ *Freund V. SNCF*, 592 F. Supp. 2d (U.S. Dist. New York, 2008), 22.

¹⁰⁹ “Mattéoli Commission”, 1999, Washington D.C., Archive Press Release, United States House of Representatives, 12.

protect countries or instrumentalities of those countries from returning the property that rightfully belongs to Holocaust survivors and their families. However, these provisions also demonstrate that the United States is not the ideal setting for these suits as diplomatic concerns have altered the focus of these claims. Instead of filing a suit pertaining to the atrocities that SNCF committed, the survivors must now sue under an exception in which interests of the United States must be at stake as well. The crimes against humanity committed by SNCF are not the focus on these trials but rather issues of diplomacy between France and the United States. Therefore, the human experience has assumed a subordinate position in order to obtain jurisdiction in pursuit of justice. The attorneys and the nature of the American Judicial system have reduced these claims to issues of theft and diplomacy.

Despite the necessitated “commercial activity” strategy of the plaintiffs in the *Freund V. SNCF* case, their true goal still remains morality oriented. Tamen has stated that she will not settle this case as a case of stolen property but rather as a “crimes against humanity” case: “We aren’t gonna go in and reach a settlement where you can pay Leo because you took his book—that’s not a settlement; settlement is you took people for money to Auschwitz, face it and pay reparations.”¹¹⁰ The motivation of the plaintiffs is not only to receive reparations but for the company to recognize its major role in the deportations. Therefore, as the French National Railway Company attempted to bid in the United States on the land for a future high-speed railway, the plaintiffs’ cries grew even louder. Furthermore, as it became clear that bidding in the United States would remain complicated due to the survivors’ judicial efforts and later legislative efforts, SNCF began to change its response to questions about its actions during the Occupation. Justice for the plaintiffs is not just a monetary settlement but also a completely different

¹¹⁰ Harriet Tamen, (*Freund V. SNCF* court case), interview by Diana Ohanian, Record, July 29, 2011.

conception of SNCF in France's historical narrative. They are fighting both for justice today and just judgment of the company in the enduring memory of France during World War II.

However, for the purposes of transmitting the memory of the company and obtaining justice this vector has remained unsuccessful. The restrictions of the American court system and issues of diplomacy have completely halted any discussion of the culpability of SNCF. The plaintiffs wish to examine the history of the company rather than the rights to immunity. It is clear, however that this cannot be accomplished in this forum. Arguments over diplomacy, immunity, reparation programs, and past claims will always take precedence and cloud the true goals of the survivors.

Chapter III: Business Legislation against SNCF

*“Some will call it tardy, but for us, what is important is that it has been initiated. And it is initiated with determination and responsibility, this is the meaning of the convention we have signed today.”*¹¹¹ –Eric de Rothschild, President of the Shoah Memorial Museum in Paris

I. Origin of High Speed Rail Contract dispute

The judicial actions taken against SNCF in the United States affected the progression of American legislation with regard to High Speed Rail contracts. SNCF’s presence in the bidding competition has triggered the creation of anti-SNCF interest groups such as the Coalition for Holocaust Rail Justice, which is primarily composed of the plaintiffs of *Freund V. SNCF*. Therefore, recently it has become clear to the company that doing large-scale business in the United States would be nearly impossible without addressing SNCF’s history. Thus, discussions of culpability finally arose after the future prospects of the company appeared to be in jeopardy. SNCF has responded to the accusations and condemnation of these interest groups by developing its own interest group, “SNCF America,” to defend the company’s heritage and actions during and after World War II. Leaders from SNCF, politicians, attorneys, and French Jewish organizations have now gotten involved in SNCF’s business dealings in the United States. These business interests necessitated a discussion of the actual events that took place in World War II. Unlike the judicial vector, the forum of business legislation allows for a freer discussion of history without having to adjust the argument based on issues of diplomacy. These vectors of memory have strung together survivor testimony, political involvement, the memory of the

¹¹¹ SNCF Press Release, “Partnership Between the Shoah Memorial (Paris) and SNCF for the Development of Educational Activities and Historical Research, 13 December 2010,” SNCF America: World War II disclosure, 2.

Resistance, the nature of an apology, and the hierarchy of guilt. All of these pieces have become even more inflamed when money and reputation are mixed into the narrative.

In 2009 the United States Congress passed the National Recovery Act to respond to the economic crisis facing the country. The goals of the act were to create new employment opportunities, spur economic growth, and make government spending more transparent.¹¹² One of the grander proposals of this act was the High Speed Rail initiative. The United States Department of Transportation has allocated 8 billion dollars in federal grants to state transportation agencies to develop a high-speed intercity rail service. These funds will support 83 projects and connect 18 high-speed rail corridors over 24 states.¹¹³ The states, that accepted these federal funds, have put aside land for the tracks to be built on. This land will then be sold in a bidding competition, which includes European and Asian railway services that have experience with high-speed rail construction. The competition's most notable bidders include Shinkansen of Japan, Deutsche Bahn of Germany, Renfe of Spain, and SNCF of France. Each state will review these bids and then accept the most suitable and experienced company. State legislators reserve the right to remove bidders from the competition and accept or deny any bid as they see fit. In the House of Representatives subcommittee hearing of the Committee on Transportation and Infrastructure in 2009, the United States Senate reviewed all of the companies that wished to enter the bidding competition in order to make recommendations to individual states. In this meeting the Senate analyzed the debt, ownership, and nature of the railway lines for each

¹¹² "The Recovery Act," Recoveryact.gov: Track the Money, http://www.recovery.gov/About/Pages/The_Act.aspx (accessed: 1 Feb. 2012).

¹¹³ "Recover funds nation's first high-speed rail service," Recoveryact.gov: Featured Stories 5/16/2011, <http://www.recovery.gov/News/featured/Pages/High-Speed-Rail.aspx> (accessed 1 Feb. 2012)

prospective bidder.¹¹⁴ According to this hearing the Senate deduced that “SNCF is currently adequately funded by the [French] government.”¹¹⁵ Therefore, the final word on SNCF in this hearing was encouraging for the business prospects of the National Railway.

II. American Reaction to SNCF’s presence in the High Speed Rail Contract Competition

SNCF’s strong presence in the bidding competition resulted in the formation of anti-SNCF interest groups and lobbyists. The flagship of this movement is the “Coalition for Holocaust Rail Justice.” Its website reads, “In the 66 years since the end of World War II, SNCF has refused to acknowledge adequately its role in the Holocaust, has avoided taking any financial responsibility for its role, and now wishes to enter the high speed rail market in the United States.”¹¹⁶ The Coalition’s mission is to “bring long-awaited justice to the victims of SNCF.”¹¹⁷ It states that their group consists of victims, family members, community leaders, volunteers, and historians.¹¹⁸ The Coalition has cited the writings of the distinguished French Scholar Raphael Delpard and Vivian Grosswald Curran of University of Pittsburgh to give historical legitimacy to their fight for justice and recognition from SNCF. Furthermore, the site has a description and pictures of the recent documentary adaptation of Delpard’s book, *Les Convois de la Honte: Enquête sur la SNCF et la Déportation*. Moreover, their website makes available a detailed description of the suits brought against SNCF in the past, the World War II history of the

¹¹⁴ House of Representatives’ Committee on Transportation and Infrastructure, Hearing before the Subcommittee on Railroads, Pipelines, and Hazardous Materials, (Washington D.C, 2007), 1-2.

¹¹⁵ *Ibid.*, 5.

¹¹⁶ Coalition for Holocaust Rail Justice, “SNCF After the War,” Coalition for Holocaust Rail Justice, <http://holocaustrailvictims.org/learn-the-issues/sncf-after-the-war/> (Accessed 4 Feb. 2012)

¹¹⁷ Coalition for Holocaust Rail Justice, “About the Coalition,” Coalition for Holocaust Rail Justice, <http://holocaustrailvictims.org/about-us/> (Accessed 4 Feb. 2012)

¹¹⁸ *ibid.*

company according to the Coalition, and the initiatives of this Coalition to block SNCF from bidding on the tracks until due justice is given to the victims of the company.

It should be noted that their characterization of the court cases although not factually wrong is biased. On the website the coalition addresses the “misconceptions” about SNCF’s actions with regard to its culpability after the end of World War II. They portray its conciliatory efforts as “calculated gesture[s]” and writes that “if SNCF’s regret is sincere, it must reach out to victims and their families and provide reparations.”¹¹⁹ The interest group is just that, an interest group; therefore it cannot be a complete picture of the history of the company. However, its website is notably well cited and draws upon many scholars and testimonies.

These victims and families’ stories are also available to read and hear on the Coalition’s site. The site has 44 testimonies available either in print or in video in which survivors describe their experiences both on the deportation trains and what followed in Eastern Europe as a result of their deportation.

In the video testimony Mathilde Freund describes how her husband was taken to Buchenwald. Originally from Vienna, Mathilde’s family fled to France after the Nazis invaded Austria. Her husband volunteered to fight with the French army upon their arrival. After the French were defeated they went into hiding, moving throughout the forests, finding shelter wherever they could. One day Mathilde’s husband had to go into the city to find food to bring back to his starving family. There, he was arrested by French authorities and sent to Buchenwald via SNCF trains. On the day that he was to be deported Mathilde sneaked behind the train station to see if her husband was there and witnessed the inhumanity committed by Frenchmen and

¹¹⁹ Ibid.

Germans alike: “What I saw I will never forget...I saw the French employees in their blue uniforms pushing all the men into carts like animals...I saw suitcases on the ground, I saw bodies and blood all over...and the screaming, you cannot describe it in words.”¹²⁰ She and her mother were discovered there and were later sent to Castle Formolieux, where they were tortured. In 1945 her husband was killed in Buchenwald, a few weeks before the camp was liberated. This is just one of the many testimonies available on this site that could not be present in the court cases against the company, but can be used in the campaign against SNCF’s presence and business success on American soil.

The Coalition has also made information available about the steps that have been taken to block SNCF from bidding in the United States. Statements, Bills, and letters from legislators from California, Maryland, New York, and Florida are all available through the Coalition’s network site. These actions on behalf of state legislators have in part been due to the rallying efforts of the Coalition.

III. American Legislation against SNCF

With the advent of this Coalition, legislators of the states which the high-speed rail bill would immediately apply had to consider how to proceed with regard to the impending bidding competition. In the legislative hearings the culpability of SNCF was more explicitly discussed than in the trials against the company. Invoices, letters, and other sources from the National Railway’s wartime years found in SNCF’s archives were given consideration with regard to the Railway’s right to enter the bidding competition. The constraints within the judicial arena were no longer present in the legislative hearings. American legislation, although not always

¹²⁰ Mathilde Freund, Interview by Coalition for Holocaust Rail Justice, 2011, <http://holocaustrailvictims.org/2011/01/mathilde-testimony/#more-1308> (Coalition for Holocaust Rail Justice).

successful, aimed at addressing the history of the company, creating an official forum for survivors to discuss their experiences and deciding how to proceed with these contracts in light of this new information about the potential bidders.

The first piece of legislation introduced was S. 28/HR 4237 of the 111th congress on January 7th 2009. The purpose of this legislation was to create an impartial forum for survivors to bring claims against SNCF, thereby giving them as close to “a day in court” as possible.¹²¹ This bill, like the many proposed bills of this nature that follow, provides a history of the judicial proceedings against the National Railway and explains why they failed. This bill would give United States courts jurisdiction over the railway. In this legislation the claimants were allowed to discuss the history that has necessitated such a bill: “The complaint alleges that SNCF provided the necessary rolling stock, scheduled the departures, and supplied the employees to operate the trains bound for the concentration camps.”¹²² It goes on to discuss the ticketing of deportees and the manner in which the cars were stocked and kept. The complaint also alleges that SNCF employees cleaned the cars after each deportation trip and removed the corpses of those victims who died on the journey to Eastern Europe.¹²³ Finally Congress recognized that SNCF’s records of the deportations have remained inaccessible to the general public to this day and demanded that this be rectified. The bill’s status has remained undecided for the past 3 years. Recently, the bill S. 634 H.R. 1193 has been introduced into the House of Representatives. This bill is similar to S. 28 H.R. 4237, creating a forum for survivors to bring claims against SNCF.

¹²¹ *S. 28/H. R. 4237*, 111th Cong. (2009), 1.

¹²² *Ibid.*, 3.

¹²³ *Ibid.*, 3.

This bill too speaks about the details of SNCF's involvement in the deportations according to the claimants and the inaccessibility of the records of the deportation trains.¹²⁴

The next piece of legislation, which attempted to address the issue of SNCF's presence in the bidding competition, was the Holocaust Accountability and Corporate Responsibility Act of 2010. This act would make certain entities ineligible to obtain contracts to build High Speed Rails with federal funding. It would require entities that have documented involvement in the deportation of any people during World War II to certify this involvement.¹²⁵ Furthermore, this legislation would bar any institution that failed to make restitution from pursuing the contracts for high-speed rails. This legislation is also pending in the House of Representatives.¹²⁶

The most famous attempted piece of legislation pertaining to SNCF's presence in the bidding competition was the California Assembly Bill 619. This bill would require the disclosure of information pertaining to the bidder's "direct involvement" in the deportations of individuals to Nazi run camps and the records of any restitution efforts made on behalf of the company.¹²⁷ "Direct involvement" was defined as ownership or operation of the trains on which people were deported from January 1, 1942 to December 31, 1944.¹²⁸ The bill was sponsored by Assembly member Bob Blumenfield and won overwhelming support in the Assembly (56-12) and in the Senate (32-1).¹²⁹ However, Governor Arnold Schwarzenegger vetoed the bill.

¹²⁴ *S. 634 / H.R. 1193*, 112th Cong. (2011), 1.

¹²⁵ *Holocaust Accountability and Corporate Responsibility Act of 2010*, H.R.6347, 111th Cong. (2010), 4-7.

¹²⁶ *Ibid.*, 1.

¹²⁷ *California Assembly Bill 619*, California Legislative Assembly (2010), 1-2.

¹²⁸ *Ibid.*, 5.

¹²⁹ *Ibid.*, 1.

The Maryland Senate Bill 479/House Bill 250 successfully created legislative provisions that address the issues of deportation. The bill was introduced on February 7, 2011 and outlined that any entity that submits a bid or proposal to the MARC Train Service to build High Speed Rails in the greater Baltimore-Washington Metropolitan region must provide “a certain statement concerning deportation activity in which the entity may have engaged.”¹³⁰ Therefore, the company must create a detailed description of the deportation history of the company and if it has participated in any restitution programs. The bill was quickly passed and therefore the French National Railway must respond to its provisions in order to obtain the Maryland Rail Contracts.

III. SNCF’s reaction to the legislation: traditional defense of “lack of control” and resistance heritage

Once SNCF’s business interests and reputation were in jeopardy the company immediately attempted to vindicate itself and rework its international image. It has done this through addressing its culpability, making public apologies and alliances with specific foundations, and establishing a website which discusses its wartime history for the United States.

With regard to addressing its culpability SNCF has primarily spoken through the channels of legislation hearings, its American website, and recent public statements in France. Throughout these channels the repeated word is “coercion.” The company has consistently argued that it was controlled entirely by the German occupiers and was not able to contest any of the parameters that the Germans created for the railway. SNCF cites certain documents to support this idea such as Order 35 and Order 36 handed down by the German authority. The

¹³⁰ *Senate Bill 479/House Bill 520*, Maryland Senate, (2011), 1.

details of the requisition are explained in these documents and are readily available on the “SNCF America” website. In order no. 35 the German Colonel Goeritz wrote that the railways and all of its networks were to be at the “full and entire disposal of the German Transport Chief.”¹³¹ Furthermore, he demanded the cooperation of all SNCF employees and declared that with this requisition, “all SNCF civil servants, staff and workers [were] therefore subject to German laws of war.”¹³² The Chief Executive R. Le Besenerais then outlined the obligations of this agreement in Order 36. These obligations included everything from the types of wagons that should be used for certain types of transports to the expected behavior of a French employee when dealing with German superiors. The final lines of this order read, “any member of staff who infringes the above-mentioned stipulations will leave themselves open not only to administrative sanctions but to proceedings initiated by the German authorities which could have serious consequences for the individual concerned.”¹³³

The “consequences” mentioned in this order are the foundation for the coercion argument. SNCF claims that its employees would have lost their lives had they objected to direct orders from the Germans. The company argues that given the circumstances it had no choice but to fulfill the Germans orders which included the rounding up and deportation of Jews and other “undesirables” living in France. The major piece of evidence that supports this claim is the recorded punishment of cheminot workers who resisted their German superiors. Still, this resistance was never directed at aiding the deportation victims.

The company consistently attempts to vindicate itself by recounting the cost of SNCF’s legendary Resistance. At the beginning of the war when the company was first requisitioned

¹³¹ Wehrmacht Verkehrsdirektion, *Ordre du Jour No. 35*: Colonel Goeritz, (Paris 1940), 1.

¹³² *Idib.*, 1.

¹³³ Wehrmacht Verkehrsdirektion, *Ordre du Jour No. 36*: Directeur General Besnerais, (Paris 1940), 1.

there was little recorded opposition to the German authority.¹³⁴ Many of the railway workers were communist therefore as long as Stalin remained allied with Hitler the cheminots remained loyal to the Germans. It was not until Hitler invaded Russia that some of the SNCF employees began to question their German superiors.¹³⁵ Still, it was not until 1943 that any significant resistance activities on the part of railway workers took place. In 1943 it appeared as though the Allied forces could defeat the Axis powers; therefore, French railway workers began to sabotage the railways and trains to aid the British and American forces in northern France.¹³⁶ The German occupying power punished this sabotage. SNCF continually calls attention to the 800 cheminots who were executed by firing squad and the 1,200 cheminots who were sent to Nazi death camps due to their resistance activities.¹³⁷ The suffering and death of “their own” is often cited as evidence of their lack of control and ultimately of their innocence. SNCF’s resistance identity has become legendary in France and has been represented in literature and film. The most famous representation was the aforementioned film, *La Bataille du Rail* (1946) a film by René Clément that depicted the cheminot’s daring efforts to sabotage the railways to Normandy to aid the allied forces.¹³⁸ Therefore, the French railway is often seen as “SNCF le résistant”: a shining example of how the ideals of the Republic of France survived during the Occupation.

¹³⁴ Christian Bachelier, “The SNCF Under German Occupation” (1995): 1-27, http://www.sncfhighspeedrail.com/wp-content/uploads/2010/12/Bachelier-Report_Executive-Summary.pdf. 11-12.

¹³⁵ Ibid., 11.

¹³⁶ Ibid., 21-22.

¹³⁷ Ibid., 23.

¹³⁸ Internet Movie Database, “The Battle of the Rails (La Bataille du Rail)”, <http://www.imdb.com/title/tt0038334/> (accessed 8 Feb. 2012).

The Resistance is never absent from public statements by the National Railway and characterizations of SNCF. The French Railroad Union, which has continued to be a strong force in the shaping of the memory of the Railway during World War II, also supported its strong presence. The Resistance is present in the language of official statements, and apologies.

III. SNCF's new defense, apologies, and alliances

When faced with legitimate claims of culpability in legislative hearings, SNCF has adjusted its counter-argument and responses over time. One of the major documents which demonstrated SNCF's culpability with regard to the deportations is the Invoice No.45,313 and the Letter to the Prefect of Haute-Garonne. The Letter to the Prefect from the Chief of the subdivision on Revenue deals with the transports for Haute-Garonne during the 1st trimester of 1944.¹³⁹ The letter is dated August 14th, 1944, only a few days before the liberation of France. Furthermore, the Invoice that followed the letter, which details the type of transport and the cost of each transport, was dated October 24th 1944. In this Invoice under "Description of Services" the document describes transportation to and from "internment camps, surveillance centers, inmates, deportations, etc."¹⁴⁰ Finally, in a letter dated November 30, 1944 the Chief of the camp at Noé, Etienne Raufast, sent to the Prefect of Haute Garonne a letter in which he attempted to facilitate payment for the transport. Raufast states, "I have the honor of sending you the bills for the transportation of the interned persons to the Camp of Noé during the first quarter of 1944 presented by SNCF."¹⁴¹ These letters and invoices were discovered and smuggled out of the archives of SNCF by Kurt Schaechter. The National Railway's response to these discovered

¹³⁹ *Letter to the Prefect of Haute Garonne from Chief of Subdivision of Revenue Control, Expense Accounting for Transportation* (Paris: 1944), 1.

¹⁴⁰ *Invoice No. 45, 313*, "camps d'internment, centres de séjour surveillé, internés, expulsés, etc."

¹⁴¹ *Chief of Camp Letter*, "J'ai l'honneur de vous retourner par le recommandé et dûment revêtu de ma signature, le Relevé et Ier Trimestre 1944 présentés par la S.N.C.F."

documents has evolved. In the Abrams trial SNCF refused to admit it had received any money for the deportations. However, after these documents were found, the railway could no longer deny it had received money for the deportations. In its official response it claimed that it had been only paid once and it still contends that it did not continue to pursue payment after the war ended.¹⁴² However, on SNCF's website the company did change the wording of its response from "we were never paid for the deportation trains," to "we never profited from deporting Jews."¹⁴³ Therefore, it was forced to change its statements as new information became available.

This new information has recently led the company to make multiple public apologies and official alliances with Holocaust memorial related institutions. The first apology came on November 4th, 2010 in California on behalf of Guillaume Pepy, the current Chairman of SNCF. Earlier, the former President of SNCF, Louis Gallois made a speech at the conference, "A State-Owned Company during the War" in 2000, which addressed the importance of transparency and gently touched upon the issue of the deportations but did not discuss any of the details of the deportations. Mr. Pepy's statement was a direct response to the questions raised by the California state legislature regarding SNCF's role in World War II. The tone of this statement is apologetic; however it also creates a certain amount of distance between collaborators and "the Frenchman." Pepy states, "The Nazis and their French (Vichy) collaborators directed these terrible actions, determining the composition of the trains, the types of wagons, and even the train schedules."¹⁴⁴ He goes on to state that the company does "embrace" the words of Jacques Chirac in his speech

¹⁴² SNCF America, "Myth & Facts," <http://www.sncfhighspeedrail.com/heritage/myths-facts/> (accessed 8 Feb. 2012).

¹⁴³ Ibid.

¹⁴⁴ Guillaume Pepy, "Statement by Guillaume Pepy, Chairman of SNCF, Regarding SNCF'S Role in World War II, 4 November, 2010," SNCF America: World War II disclosure, 1.

at the Vél d'Hiv commemoration of 1995 in which he stated, "...Yes, the criminal madness of the occupier was seconded by French people, by the French State."¹⁴⁵ The chairman ends his statement by saying that "a critical part of this dialogue is SNCF's wish to convey its profound sorrow and regret for the consequences of its acts."¹⁴⁶ The language of this statement is ambiguous. In this remark, the French National Railway is not apologizing for the deportation of 76,000 Jews, but instead is apologizing for the consequences of deporting them, namely the horrific reality of the work and death camps that awaited the victims of the deportations. In this statement Pepy is implying that SNCF was not aware of this reality and that the company is not apologizing for the inhumane conditions of the railcars.

SNCF also recently established a partnership with the Shoah Memorial in Paris "For the Development of Education Activities and Historical Research." SNCF has showcased this partnership throughout the business dealings in the United States. This partnership launched a new historical research program in which grants will be given to French and international students to study the state knowledge of the reality of the deportations during World War II, specifically if the state understood that the railways were servicing the Hitler's Final Solution. The President of the Shoah Memorial was very happy about this new partnership and at the signing of the agreement spoke about SNCF's conciliatory actions, "some will call it tardy, but for us, what is important is that it has been initiated. And it is initiated with determination and responsibility, this is the meaning of the convention we have signed today."¹⁴⁷ Therefore, the President of the Shoah Memorial has congratulated the company for this significant step. The

¹⁴⁵ Ibid., 3.

¹⁴⁶ Ibid., 3.

¹⁴⁷ SNCF Press Release, "Partnership Between the Shoah Memorial (Paris) and SNCF for the Development of Educational Activities and Historical Research, 13 December 2010," SNCF America: World War II disclosure, 2.

press release ends with statements from Chairman Pepy who manages to add a reference to the resistance: “Today we act in three different directions: First, transparency and clarity about our past through new efforts of recognition and understanding of our situation and our actions during World War II...Second, duty of remembrance about what happened during this period, without forgetting the heroism of many railroad workers. And above all, now turning to the future, the obligation to teaching and educating the younger generations.”¹⁴⁸ The language throughout all of SNCF’s press releases appears to be of the same ambiguous nature. Pepy uses phrases like “understanding our situation” to address the deportation trains while also consistently lauding the valiant efforts of the rebel railway workers.

This type of phrasing and characterization can be seen again in the grandest gesture of the National Railway, the Bobigny Memorial. The Bobigny Memorial was established January 25, 2011 in the city of Bobigny, about a half hour outside of Paris. SNCF created this memorial on the outskirts of Paris because it was the site of a great number of the deportations during the Second World War. On this site the historic rail station will be transformed into a memorial to all the victims who were sent from this site to work and death camps. Upon signing the agreement between the Mayor of Bobigny, Catherine Peyge and Pepy, the Chairman addressed those who had come to witness the consecration of the memorial. The audience included dignitaries and Holocaust survivors. The Chairman began the speech by echoing “SNCF’s deep sadness and regret for the consequences of the acts of the SNCF of that era.”¹⁴⁹ In this statement he has both repeated the “consequences” idea and distanced the SNCF of today from “the SNCF of that era.” He then goes on to speak about the nature of the railway while requisitioned by the

¹⁴⁸ Ibid., 1.

¹⁴⁹ Guillaume Pepy, Speech by Guillaume Pepy on “Bobigny Memorial,” 25 January 2011, SNCF America: Bobigny Memorial.

Germans saying, “as in all of Europe under the Nazi heel, the rails and trains were put to use in their war effort. And the deportations. And the Holocaust.”¹⁵⁰

Immediately following that statement Pepy described the toll that this requisition took on the SNCF employees who were deported initially in 1941 and then again in 1943. He then returned to the subject of the Holocaust placing the responsibility entirely on the German occupiers: “It was ordered to transfer Jews arrested in the French provinces to Drancy; it was ordered to operate trains that the Nazi Ministry of Transport had made available to the Gestapo. Their composition, the choice of wagons, the times and routes were imposed by the occupier.”¹⁵¹ However, he recognized that despite the fact that the company did all of this “under duress” it did follow the German orders nonetheless. The chairman goes on to recall all of the initiatives taken by SNCF since the end of the World War II. These include research initiatives and the partnership with the Shoah Memorial.¹⁵² The Chairman does address the possible idea that this memorial could be construed as a reaction to the business issues in the United States: “But let there be no mistake, our answers are not dictated by our circumstances, but by our convictions. And this is nothing new.”¹⁵³ He then returns to the resistance and the honor that must be bestowed upon those who resisted. Pepy ends his speech by consecrating the land as a commitment of remembrance. This speech, like the history of SNCF, is complex. It still focuses on the resistance, distances the company from the German occupiers, and discusses the utter inability of SNCF to act any differently. However, the speech does make a step closer toward the spirit of Jacques Chirac’s speech at the Vél D’Hiv by the very consecration of a memorial and by some of the final words of the Chairman: “along with the memorial near Drancy, it will bear

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

witness to the madness that once seized mankind.”¹⁵⁴ Still, most of the language is still cloaked with indefiniteness and the timing of the creation of the memorial is suspect due to the recent increasing American pressure on the company.

IV. SNCF America Website

SNCF has continued to use very specific language to present itself in its American website, “SNCF AMERICA.” It should be noted that this site is only available in English and that there is no French version. Therefore, the account of the company’s “heritage” is not intended for French readers. The creation of the website was not to simply address its history but rather to address American concerns about the company’s history. Underneath the section “heritage” one finds a detailed description of the history of SNCF, primarily focusing on the Occupation years. The first page reads, “because we are new to America, many people are not yet familiar with SNCF. It is understandable that they may have questions about us and our history. In particular, questions have been raised recently about the company during the World War II era, when Nazi Germany invaded and occupied France.”¹⁵⁵ There is a small section that gives a general history of the company and then almost immediately the site adopts a defensive tone with regard to its wartime history. The section under “World War II” highlights the differences between “institutional policy” and the actions of the railway workers.¹⁵⁶ SNCF also goes on to prove that the company had an utter lack of control and that this “institutional policy”

¹⁵⁴ Ibid.

¹⁵⁵ SNCF America, “Heritage,” <http://www.sncfhighspeedrail.com/heritage> (accessed 8 Feb. 2012).

¹⁵⁶ SNCF America, “World War II,” <http://www.sncfhighspeedrail.com/heritage/world-war-ii/> (accessed 8 Feb. 2012).

was completely out of its hands. It has attached links to Article 13, of the Armistice Agreement and, Order 35 and Order 36, which describe the details of the requisition. Furthermore, SNCF emphasizes that the sheer number of railway workers killed or deported serves as proof of its lack of control.¹⁵⁷ This section also characterizes the deportations as “The Tragic Times of War” and then immediately after that part of the section concludes the page by speaking about the railway resistance.¹⁵⁸

The next section entitled “Shedding light on facts” discusses the recent research endeavors of the French National Railway. The title itself is reactionary and clearly defensive. This section speaks about the Bachelier report, which is available in French in its entirety on the site but is still only in a summary form in the English translation. SNCF also has listed “Initial Independent Conclusions” presumably from researchers or historians, though does not cite where these conclusions are coming from. These conclusions recognize the resistance and emphasize the responsibility of the German Occupiers, and the inability of the company to resist direct Nazi orders.¹⁵⁹ There is also a general tone of establishing innocence in large numbers: “As everywhere in occupied Europe, the use of trains as an instrument of deportation to Nazi death camps is a proven fact.”¹⁶⁰

The next section, “Keeping Memory Alive,” is devoted to the recognition and remembrance programs that SNCF has implemented. This section details the nature of the partnership between the Railway Company and the Shoah Memorial Museum and other smaller research and remembrance initiatives of SNCF. In this section SNCF says that these programs

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ SNCF America, “Shedding the Light on Facts,” <http://www.sncfhighspeedrail.com/heritage/shedding-the-light-on-facts/> (accessed 8 Feb. 2012).

¹⁶⁰ Ibid.

are part of a greater wish to research the “complex history” of the company.¹⁶¹ This terminology is frequently repeated with regard to SNCF’s World War II history. The “complex history” or history of both the resistance and the deportations is therefore linked with modern day conciliatory actions of the company. It appears as though SNCF hopes that the company’s ambiguous efforts to appease those who question its “heritage” will serve as a remedy for its actions during World War II and its inaction after the liberation.

One of the most poignant sections of “SNCF America” is entitled “Myth and Facts.” One is struck immediately by the defensive and frustrated tone of the title. The “myths” concentrate entirely on the company’s role in the Holocaust. Perhaps the most interesting “myth” addressed in this section is that “SNCF profited from sending Jews to Concentration Camps.”¹⁶² This statement is a response to the Invoice discovered in SNCF’s archives that demonstrated that the company had received payments for the deportation of Jews. Now instead of claiming that the company received no money for the deportation trains, the company explained that it never “profited” from the deportation trains. Therefore, this statement affirms that the company did in fact receive payments and that it only did not receive enough money to turn a profit from the deportations. The company then goes on to explain that the war ruined the company financially.¹⁶³ Including this information under this particular myth seems like an attempt to solicit sympathy for the “financially devastated” company rather than question the fact that the company accepted any payment for the deportations.

¹⁶¹ SNCF America, “Keeping Memory Alive,” <http://www.sncfhighspeedrail.com/heritage/keeping-the-memory-alive/> (accessed 8 Feb. 2012).

¹⁶² SNCF America, “Myth & Facts,” <http://www.sncfhighspeedrail.com/heritage/myths-facts/> (accessed 8 Feb. 2012).

¹⁶³ Ibid.

On this site the company also addresses World War II disclosure, the Bobigny Memorial, reparations programs, and new initiatives taken by SNCF. The disclosure section repeats the initiatives listed in other sections such as the Shoah Memorial Partnership, the Bachelier Report summary, the statement made by Chairman Pepy, and SNCF's response to the California legislature.¹⁶⁴ The company also explains the Bobigny Memorial and has a link to the speech given at the memorial. In this link SNCF has had famous Nazi hunter, Serge Klarsfeld, comment on the building of the memorial. He speaks to the complexity of the requisition and places the blame for the deportations on the high Vichy officials: "Petain, Laval, Bousquet and the prefects are to be held responsible."¹⁶⁵ Therefore, the company used this famous Nazi hunter to essentially absolve SNCF. Then in the section on reparations the company directs all of the responsibility for giving reparations to the Republic of France because of the ownership status of the company.¹⁶⁶ Finally, the company has recently added a new section to the site called "SNCF sponsors courage to remember exhibit." This Holocaust remembrance exhibit is touring California universities, libraries and community centers.¹⁶⁷ In this section there is a quote from the California State Senator, Alan Lowenthal, "I really want to applaud SNCF for acknowledging what took place, for saying that that's not who we are, that – for stepping forward to educate people on what the Holocaust was all about, for being here for this exhibit, it's really a wonderful tribute to a company. And I think it really reflects what we're here about:

¹⁶⁴ SNCF America, "World War II disclosure," <http://www.sncfhighspeedrail.com/wwii-disclosure> (accessed 8 Feb. 2012).

¹⁶⁵ Serge Klarsfeld, Interview of Serge Klarsfeld, Speech by Guillaume Pepy on "Bobigny Memorial," 25 January 2011, SNCF America: Bobigny Memorial.

¹⁶⁶ SNCF America, "Reparations Programs," <http://www.sncfhighspeedrail.com/reparations-programs/> (accessed 8 Feb. 2012).

¹⁶⁷ SNCF America, "SNCF sponsors Courage to Remember Exhibit," <http://www.sncfhighspeedrail.com/sncf-sponsors-courage-to-remember-exhibit/> (accessed 8 Feb. 2012).

to remember. To remember and to grow from it.”¹⁶⁸ It should be noted that this quote was taken out of context of a California Senate Transportation and Housing Committee Hearing in which the Senator is trying to reach a compromise on making amendment to the California Assembly Bill 619, which will still demand disclosure from the company with regard to its wartime history. This recent addition and manipulation of the senator’s positive statement is evidence of the company’s continuing effort to secure its position in the bidding competition in the United States and appease public opinion across the ocean.

IV. French Jewish Response

The Representative Council of Jewish organizations in France or CRIF has indirectly furthered the efforts of SNCF. In November of 2011 it issued a statement to the United States House of Representatives, which addressed the subject of reparations on behalf of the French National Railway. The Council is an umbrella organization for French Jewish organizations and often represents the Jewish population of France in official and government settings. Richard Prasquier, the president of CRIF issued this statement in light of the exceedingly hostile situation between the deportation survivors in America, their representatives and SNCF. The statement lists the statistics of the deportation and recognizes that SNCF is responsible for these deaths and the horrific conditions of the trains, which it operated. However, Prasquier also states that CRIF believes that “the actions of SNCF cannot be qualified as ‘crimes against humanity.’”¹⁶⁹ He

¹⁶⁸ Alan Lowenthal, California Senate Transportation and Housing Committee Hearing 2010, quoted by SNCF America, “SNCF sponsors Courage to Remember Exhibit,” <http://www.sncfhighspeedrail.com/sncf-sponsors-courage-to-remember-exhibit/> (accessed 8 Feb. 2012).

¹⁶⁹ Richard Prasquier, November 15, 2011, *Version française de la lettre de Richard Prasquier envoyée aux USA à l’occasion des auditions tenues par le Comité des affaires étrangères à la Chambre des Représentants à propos des Réparations demandées auprès des entreprises ferroviaires*, 1. [http://www.crif.org/?page=articles_display/detail&aid=26913&artyd=70&stinfo=\\$\\$stinfo](http://www.crif.org/?page=articles_display/detail&aid=26913&artyd=70&stinfo=$$stinfo).

argues that the workers had a limited “degree of autonomy.”¹⁷⁰ Prasquier goes on to note all of the measures that SNCF has recently taken to recognize and study its wartime history such as President Pepy’s apology, the cataloguing of its archives, and their education efforts.¹⁷¹ The CRIF believes that these programs attack the greater issue of anti-Semitism where reparations at this point might be regarded with “suspicion and incomprehension.”¹⁷² Prasquier also mentions the valiant efforts of the railway workers who resisted the Nazi Occupiers. Finally he ends the statement by declaring that he believes that that pressing the issue of reparations any further would be a mistake because “we are more in a time of historians than in a time of judges.”¹⁷³

This sentiment of anti-confrontation is not an anomaly among French Jewish organizations. In an interview, Nobert Bikales, French Holocaust survivor and North American President of Oeuvres Secours Enfants, an Organization that protected Jewish Children in France during World War II commented on the controversy. Bikales told me “Many French Jewish organizations oppose this trial.”¹⁷⁴ The trial he was referring to was Freund V. SNCF and the subsequent actions taken by many survivors to oppose SNCF’s presence in the bidding competition for the Rail contracts. He did not refer to any organizations other than the CRIF but did imply that other French-Jewish organizations agreed with CRIF’s stance. When pressed if France had done enough to support Holocaust victims, he responded that it has created substantial programs but added, “Have the French done enough? There is no way you can ever do enough.”¹⁷⁵ Nevertheless, he stands by the programs currently available in France.

¹⁷⁰ Ibid., 1.

¹⁷¹ Ibid., 1.

¹⁷² Ibid., 1.

¹⁷³ Ibid., 1.

¹⁷⁴ Norbert Bikales, (Reparations in France), interview by Diana Ohanian, August 23, 2011.

¹⁷⁵ Ibid.

Therefore, one can see that SNCF's business dealings in the United States have developed or released new memory of SNCF's wartime history both in America and in France. The way in which this memory has been released or crafted resembles a routine of back and forth. This alternating action demonstrates how both parties, SNCF and the survivors and their representatives, are attempting to create a certain portrayal of the events. As another document comes to light or another legislator aligns with the survivors and their interest group SNCF gives a little ground with regard to admitting to its culpability during the war. That is not to say that SNCF has accepted the picture that the survivors have painted of the company. SNCF does not respond to accusations of culpability with acceptance. It still employs ambiguous wording, the coercion argument, and continually speaks of the valiant efforts and tragic fate of the railway resisters when addressing its culpability.

The sincerity of the SNCF apology and conciliatory efforts is also questionable. It seems as though every time there is an obstacle to the company obtaining permission to bid on the contracts it comes closer to admitting culpability. This attitude resembles that of many companies during the "age of apology" that seemed only to apologize in order to compete in the modern business place. Nevertheless, one must ask the question, does the motivation behind revealing the truth of SNCF during World War II matter? What is of more consequence is the manner in which this truth is revealed. As has been stated in various parts of this chapter, the vector of business is not a simple forum for the transmission of memory. It is riddled with the complexity of business interests, which provoke action on behalf of a variety of players, which are all molding and producing history of their own. However, this forum has also sped up the process of addressing this memory and the injustices committed. The restrictions found in the courtroom are not found in these proceedings; therefore the memories of SNCF's deportations

are at the very least given the opportunity to exist in a formal setting that has the potential of spurring action.

Conclusion

This paper has shown that the manner in which people attempt to transmit and resolve memory can result in different conceptions of the events in question. Moreover, different forums can also be ineffectual and completely neglect the crux of the memory. The resultant conceptions drive the action or inaction taken with regard to the implications of the rendered memory.

France as a country has had a very difficult time coming to terms with the nature of the Occupation years. It was difficult to bear the thought that not only did it forfeit its freedoms to foreign invaders but also when confronted with paralyzing insecurity and fear that it was capable of collaborating with an evil force. One of the most lauded characterizations of how the French people came to confront the reality of the Vichy years is Henry Rousso's *The Vichy Syndrome*. The stages of this process demonstrate that different forums are favored at different times of the syndrome. These forums produced different findings, narratives and therefore different consequences with regard to recognition. Recognition concerning anti-Semitic policy was particularly complicated and found release in later forums. These vectors helped the French people come to understand collaboration and resistance in many ways.

The courtroom forum often produced better results with regard to recognizing the depth of French collaboration during the Occupation and the consequences of the Vichy regime's anti-Semitic policies. Trials were seen as a more complete transmission of memory; historical and moral questions were officially decided upon and resolved. However, most of the trials of the major players of the Vichy regime did not take place until the memory of the persecution of French Jews was transmitted through unofficial vectors such as film, the press, and literature.

A new forum, residing in between the official and unofficial forums, appeared in the late 1990's. The "age of apology" was a period in which many French institutions examined their history and operating policies during World War II. This examination was a pragmatic effort to release these companies from the morally ambiguous shackles of the past. Historical commissions, reparations and apologies from these institutions began a new trend of remembrance, transmission, and in certain cases long awaited justice.

Concurrently, a new form of the judicial vector formed: international court cases. The field of law in the 1990's became increasingly focused on human rights claims. Therefore, some institutions that acted in an unjust manner during the Second World War were finally held accountable for their actions. Initially, the results of this new vector were very promising. Historical commissions were created, institutions were made to return what they had stolen, and certain historical questions were answered. However, this forum also spurred the establishment of diplomatic amnesty laws to protect certain entities from legal redress, especially in the United States, in which most of the international cases dealing with World War II took place.

The French National Railway emerged from the awakening of Vichy memory and the subsequent "age of apology" unscathed. For quite some time the company had only been remembered through the forum of film, which solely transmitted the memory of the resistance fighters working for SNCF. SNCF barely spoke during the "age of apology." Furthermore, later, when SNCF did make a minor response, the National Railway did not directly address the culpability of the company with regard to the deportations.

The postwar period of France demonstrated that some vectors were more effective with regard to recognition, reconciliation and action. Judicial action was clearly the most effective

forum. Furthermore, when domestic judicial action did not address unresolved memory and injustice the international judicial forum arose. This vector began to be ineffective once diplomatic concerns were introduced into the courtroom. Concurrently, the “age of apology” encouraged companies to step up themselves in part to avoid legal redress in France or elsewhere. SNCF’s reluctance to fully subscribe to the paradigm of the “age of apology” resulted in judicial review of the company.

Nevertheless, as evidenced by the *Liepietz V. SNCF* case legal redress against SNCF could not be found in French courts. Therefore, the case was brought to the United States. From the *Abrams V. SNCF* case the plaintiffs learned that the National Railway could not be charged with “crimes against humanity.” The force of the Foreign Sovereign Immunity Act thwarted the efforts of the plaintiffs. In order to have the case be heard the plaintiff attorney of *Freund V. SNCF* attempted to work within the exceptions of FSIA, thereby refocusing the case on the property that SNCF stole from the deportation victims. Furthermore, the plaintiffs had to highlight a direct connection between SNCF’s commercial activities and the United States. Therefore, arguments of property and profit took precedence over the narrative of the painful struggles that these survivors braved. Moreover, even after the plaintiffs shifted the focus of their argument issues of diplomacy could not be overcome.

Furthermore, the validity of this trial was questioned on the basis that many forms of reparations exist in France; therefore the appropriate forum to discuss these issues would naturally be in France. Despite the fact that this assertion can be debated when analyzing the scope of French reparations programs, the fact remains that an American judge cannot and will not question these programs. Finally, the aim of the plaintiffs is not only to receive reparations for the material possessions that they lost but also to establish an accurate representation of

SNCF during the Second World War. This representation would express elements of the wartime history of the company that had previously been ignored. This representation cannot be obtained through the French government's reparations programs that do not specifically address the trauma of the deportations.

As it became clear that the forum of international court cases was at least for the time being locked in a diplomacy battle, the plaintiffs turned toward business legislation to express their memories of the company. The presence of SNCF in a bidding competition to erect high-speed rails in the United States appeared to be a humiliating blow to the survivors' cause. Therefore, just as they had been thwarted in court, the plaintiffs established the "Coalition for Holocaust Rail Justice" interest group to impede the progress of the company by demanding business legislation against the National Railway. The Coalition itself provided a forum in which the survivors could tell their stories. Furthermore, in the hearings concerning SNCF's World War II history the survivors were given an opportunity to express their memory and discuss the culpability of the company. This was quite impossible within the forum of international judicial review.

The business legislation forced the company to discuss much more of its history than it ever had done in the past. Once its business interests were at stake the company began to open itself up more with regard to the culpability question. The National Railway established "SNCF America" to defend the company's heritage. In this forum it speaks about the wartime history of the company and slightly gives weight to the argument of the survivors. The legislation also spurred the creation of the Bobigny memorial and the Shoah Memorial Partnership. Still, SNCF has continued to use ambiguous language throughout this process. Within its statements the company does not exactly admit culpability with regard to the deportations. Many Jewish

newspapers and dignitaries have criticized the company for the manner in which it apologized. The plaintiff attorney for the *Freund V. SNCF* case characterized SNCF's conciliatory gestures as insincere and purely a "political move."¹⁷⁶

However, one must ask, is sincerity the most important aspect of these gestures with regard to effectively transmitting and resolving this memory? What appears to be of greater importance is if these gestures create opportunities for the survivors to speak about their memories of the deportations and of the French National Railway in general during the Second World War. Furthermore, it is clear that these gestures facilitate more discussion about the culpability of SNCF from both the company and the survivors.

Other negatives responses pertaining to this controversy have come from the French Jewish community. These responses have been directed toward the plaintiffs, survivors, and politicians involved in this affair. Nevertheless, the French Jewish organizations that have been vocal about this issue are organizations such as CRIF, which are in part tied to the French government. The main argument coming from these organizations is that this sort of action tarnishes and disrespects the reparation and reconciliation efforts that France has supported for the past 20 years. This reaction could also be somewhat linked to the French fatigue with regard to apologizing for the wrongdoings of the country from the Second World War.

Although this fatigue is comprehensible, Vichy France is by no means a closed chapter. The shocking and most important lesson learned from the French process of recognition or the "Vichy syndrome" was that collaboration with the Nazi regime was found in all areas of French life. Therefore, the consequences of the Vichy regime's anti-Semitic policies spread into many

¹⁷⁶ Harriet Tamen, (*Freund V. SNCF* court case), interview by Diana Ohanian, Record, July 29, 2011

locales. As a result, the chapter of Vichy France will be nearly impossible to close and fully resolve. Attempts, such as those of the survivors involved in this controversy to find new and evolving forums to make sense of the Vichy years will continue to appear. Forums will continue to evolve as the world becomes increasingly globalized.

Recently, in Chicago a group of Holocaust survivors tried to sue the Hungarian State Railways for reparations due to their complicity in the deportations. In this case the plaintiffs are actually attempting to charge the company with “complicity in genocide.”¹⁷⁷ Professor Peter Novick from the University of Chicago expressed his frustration with this case saying, “Where do you start and end? Anybody who was in Europe in the 1940’s had something to do with the Holocaust.”¹⁷⁸ Therefore, Dr. Novick is saying that because the anti-Semitic policies of the Nazi regime touched so much of Europe this venture might not be wise. However, one could just as easily say that the widespread nature of complicity in the anti-Semitic policy during World War II necessitates constant study and proactive efforts to address the injustices that can be addressed and make sure that they never happen again.

Unresolved memory can swallow a people. It can define how and if they move forward. It is impossible for these survivors to move forward without finding a proper forum to express their past. This forum must produce a more complete depiction of SNCF, Vichy France, and the Holocaust. Moreover, this memory needs to be resolved for the Republic of France as well. France as a country cannot entirely move forward while remnants of Vichy memory remain unsettled. Certain news outlets have characterized the recent murders in Toulouse committed by

¹⁷⁷ Ron Grossman, “Hungarian Holocaust victims sue nation’s railways,” Chicago Tribune, February 15, 2010, http://articles.chicagotribune.com/2010-02-15/news/ct-met-hungarian-holocaust-20100215_1_hungarian-jews-hungarian-holocaust-death-camps.

¹⁷⁸ Ibid., 2.

Mohammed Merah as a product of France's long history of anti-Semitism.¹⁷⁹ In one article the author, Rachael Levy, speaks both of the anti-Semitic nature of the Vichy regime and the long period of silence on behalf of the French people with regard to recognizing the persecution of French Jews during the Occupation as historical evidence for this assertion. She even mentions SNCF's late apology in her analysis. Of course this reasoning appears to be contrived and disregards the fact that Merah is a suspected jihadist and of Algerian descent. Nevertheless, without addressing this unresolved memory unfair characterizations like this will continue to appear. It is clear that the Vichy years continue to echo in the background of *la Marseillaise*. While French citizens hear the words "The day of glory has arrived, against us stands tyranny," others continue only to hear the exclusionary line "so that impure blood should water the furrows of our fields."¹⁸⁰

¹⁷⁹Rachael Levy, "Why You Can't Be Both French and Jewish," Slate, March 22, 2012, http://www.slate.com/articles/news_and_politics/foreigners/2012/03/french_anti_semitism_must_share_the_blame_for_the_murders_in_toulouse_.html (accessed March 22 2012).

¹⁸⁰ "Le jour de gloire est arrivé, contre nous de la tyrannie," "Marchons, marchons! Qu'un sang impur abreuve nos sillons."

Appendix: Source Analysis

I would like to give a brief explanation of the sources I used in my thesis. I employed two types of secondary sources. The first category of secondary sources I used was general historical background materials such as Paxton's book. These sources also included Delpard's book, which specifically addresses the deportations and was obtained through inter library loan. Furthermore, Rousso's books and Fette's article established the launching point for my discussion of vectors of memory and the "age of apology." The second type of secondary source I used were articles either found on JSTOR or in anthologies that described Holocaust justice history from a judicial perspective.

My primary sources also can be divided into several categories. The primary sources from the Occupation were found on French government websites, the website of the National Railway itself, the website of the Coalition for Holocaust Rail Justice, and within American hearings on SNCF's bidding. The speeches made by past presidents and other political figures in France were either found on SNCF's website or, if designated, in Rousso's books.

The primary source material from the trials both in France and in the United States were found through Lexisnexis. The primary source material on the business legislation in the United States and the High Speed Rail Bill itself was found through the United States government databases but can also be found in print. Furthermore, most of this material can be found on the Coalition for Holocaust Rail Justice Website.

As noted earlier the Bachelier report, one of the most important documents on SNCF's culpability, was commissioned by the French National Railway; therefore, it can be found on its

website. Information on their various gestures and partnerships on behalf of the company can also be found on its website.

Finally, I used many interviews for this thesis. I used interviews of Holocaust survivors, attorneys of the pertinent cases, and administrators of SNCF. As noted I conducted some of the interviews myself. Other interviews were found on the Coalition for Holocaust Rail Justice's website or SNCF's website.

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