

H-France Review Vol. 7 (November 2007), No. 141

Bernard Durand, Jean-Pierre Le Crom, Alessandro Somma, Eds., *Le Droit sous Vichy*. Frankfurt am Main: Vittorio Klostermann, 2006. 498 pp. €89.00 ISBN 10 3-465-04013-9; 13 978-465-04013-2.

Review by Vivian Grosswald Curran, University of Pittsburgh.

The issue of whether Vichy France should be seen predominantly as continuity or as rupture with the past is replete with paradox, complexity and changing perception. Vichy proclaimed itself to be a rupture with the past, a revolution, a proud rejection of French republicanism and democracy, and yet it also took considerable care to emphasize that it was not changing fundamental legal concepts just when it engaged in its most anti-republican and revolutionary act: namely, the anti-Semitic legislation that reversed a century and a half of the most fundamental principles of French law and rule of law.

The façade and mimicry of law that Michael Stolleis has elucidated so well in the Nazi German legal system also characterized Vichy law.¹ Just as in Hitler's Germany, the vocabulary of law was scrupulously respected and remained comfortingly familiar in Vichy France, even if it now clothed a different species of concept. France's legal scholars and judges, the great majority unchanged from before the war, and the unchanged texts of such seminal documents as the French Constitution and *Code civil*, directly or indirectly, expressly or subliminally, all signaled Vichy's legitimacy.²

After the Second World War, de Gaulle and eminent French legal scholars such as the future Nobel laureate René Cassin viewed Vichy as a foreign-inspired phenomenon that never had been legal and never had been French. This view enabled the country to unify rather than to become fragmented along the fault line dividing former resisters from former collaborators. It also resulted in court decisions to the effect that the post-war Fourth and Fifth Republics bore no legal responsibility for acts committed by Vichy.

As time passed, however, and a new generation sought to understand more about the role of France during the war, perceptions evolved. Many influences were at play. In the international context, other countries had started to acknowledge responsibility for national complicity in crimes committed during the war; class action lawsuits were being brought in the United States against French private entities and the current French government for acts committed during the Vichy era; and the French criminal courts, after decades of tergiversation, finally began to hold trials of *French* (no longer just German) defendants for complicity in crimes against humanity committed in France during the Second World War.³ It was half a century after the war before a French President was to declare that the current Republic bore responsibility for the acts of Vichy, and only in the twenty-first century that the French high court of administrative law, the *Conseil d'État*, found the current government to have financial responsibility for acts committed in the name of Vichy.⁴

Le Droit sous Vichy takes the position that the laws of the Vichy era in the vast majority, with the principal exception of anti-Semitic legislation, marked continuity both with France's pre-war Third Republic (1875-1940) and with the law of the post-war Fourth and Fifth Republics. In offering a close study of numerous economic areas of the law, and, in particular, in analyzing the transitions in those areas during the Vichy period and afterwards, the book fills a gap in legal scholarship that has persisted until the present.

The essays are characterized by a thoroughness and depth of knowledge on the part of their authors such that the cumulative argument of continuity between Vichy law with its predecessor and successor regimes is made persuasively. Repeatedly, the authors explain with respect to varying legal areas that Vichy implemented reforms that the Third Republic had begun or that many of its prominent legal scholars had advocated without success, and that these legal reforms were maintained and sometimes even strengthened in the post-war Fourth and Fifth Republics. These areas of economic law were as far-ranging as the treatment of unclaimed property after the property owner's death to that of tenant farm leases.

France's Third Republic, much like Weimar Germany, famously had been mired in institutional blockage and frequent changes of government resulting from fragmenting Parliamentary party structures. The key to what numerous of the authors portray as Vichy's triumph as an effective law reformer in economic matters is attributed to its statism, which allowed Vichy to overcome the Third Republic's legislative paralysis.

Thus, Vichy profited from the absence of a legislature, with technocrats responsible for crafting the explosion of enactments that relentlessly billowed into the legal system. This aspect of Vichy evokes the heightened role of the non-governmental specialist in the formation of legal standards in today's highly complex and ever more disaggregated, transnationalizing world. The process has been criticized by some for allowing unelected persons to become movers and shakers of law today, just as it also has been praised by others for shifting control to specialists able to foresee legal problems and envisage solutions more efficiently than inexperienced legislators would be capable of doing.

Le Droit sous Vichy is not a layperson's book inasmuch as many of its essays deal with legal subjects at a highly specialized and technical level. Occasionally its focus on seamless legal continuity may appear to aim to exculpate and destigmatize Vichy, yet, lest one wonder if it would not be more relevant to focus on Vichy's legal rupture with its democratic past, it may be useful to consider the following. By focusing on popular frustration with the Third Republic due to specific problems and anachronisms in everyday law, and by showing Vichy's remedies, the book offers a *tranche de vie* of the Vichy era that previously had been missing, a goal valuable in and of itself. In addition, such an analysis helps to explain why Vichy was accepted as legal and legitimate by so many for as long as it was, despite the well-documented reasons for which it should have been rejected as illegal and illegitimate.⁵

LIST OF ESSAYS

- Michel Margairaz, L'histoire de l'économie, de la politique et du droit de et sous Vichy

- Anna De Vita, Proprietà e persona nella strategia dell'esclusione. Rimeditare Vichy: tutto in ordine niente a posto
 - Bernard Durand, La loi du 20 novembre 1940 sur les successions vacantes et non réclamées
 - Laurence Montazel, La filiation sous le régime de Vichy: un droit en manque d'unité
 - Claudia Amodio, Lo statuto giuridico della donna nel periodo di Vichy
 - Jean-Louis Bilon, Le statut du fermage, œuvre oubliée de la corporation paysanne
 - Vincente Fortier, Les sociétés commerciales sous Vichy
 - Raffaele Volante, Progetti a lungo termine e disciplina delle necessità di guerra. La regolamentazione del mercato dei capitali nella Repubblica di Vichy
 - Philippe-Jean Hesse et Olivier Ménard, Contrôle des prix et rationnement: l'action du gouvernement de Vichy en matière de régulation de l'offre et de la demande
 - Nathalie Mallet-Poujol, Le droit de la presse sous Vichy
 - Catherine Fillon, Les projets de réforme des gardes des sceaux de Vichy, ou les rêveries judiciaires du régime de Vichy
 - Clément Millon, L'application des règles dites «lois» de Vichy dans la zone rattachée: la souveraineté en question
 - Yvon Le Gall, Travail, Famille, Patrie, à l'épreuve de la peine
 - Marc Boninchi, Ordre moral et protection de la famille sous le régime de Vichy
 - Éric de Mari, Mesurer le pouvoir du juge: les justices spéciales dans les départements de l'Hérault et du Gard sous Vichy
 - Martine Fabre, La doctrine sous Vichy. Analyse systématique des revues de droit privé de juin 1940 à juin 1944
 - Jean-Pierre Royer, La pratique judiciaire sous Vichy
 - Grégoire Bigot, Vichy dans l'œil de la Revue de Droit Public
 - Alessandro Somma, I giuristi francesi e il diritto della «grande trasformazione»
 - Jean-Pierre Le Crom, L'avenir des lois de Vichy
-

NOTES

¹ Michael Stolleis, *The Law Under the Swastika: Studies on Legal History in Nazi Germany*, tr. Thomas Dunlap (Chicago: University of Chicago Press, 1998).

² See Richard Weisberg, *Vichy Law and the Holocaust in France* (New York: New York University Press, 1996); Danièle Lochak, "La Doctrine sous Vichy ou les mésaventures du positivisme," in Danièle Lochak, ed., *Les Usages sociaux du droit* (Paris: PUF, 1989); Vivian Grosswald Curran, "The Legalization of Racism in a Constitutional State: Democracy's Suicide in Vichy France" *Hastings Law Journal*, 50 (1998): 1-96.

³ Vivian Grosswald Curran, "Globalization, Legal Transnationalization and Crimes Against Humanity: The Lipietz Case," *American Journal of Comparative Law* (forthcoming).

⁴ M. Papon, Conseil d'État no. 238689, April 12, 2002, available at http://www.conseil-etat.fr/ce/jurisprd/index_ac_Id0205.shtml (last visited July 23, 2007).

⁵ Pierre Laborie, *L'Opinion française sous Vichy* (Paris: Seuil, 1990).

Vivian Curran
University of Pittsburg
vcurran@pitt.edu

HTML version of this review on the H-France web site:
<http://h-france.net/vol7reviews/curran.html>