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Filling the Silence:
A Study in Corporate Holocaust History and the Nature of Corporate Memory

In considering those who helped Jews during the Holocaust, Elie Wiesel said:

These few evoke our profound respect and wonder. They challenge us to ask ourselves questions. Above all—Why were there so few? Was it that perilous to oppose evil? Was it really impossible to help? Was it really impossible to resist organized, systematized, legalized cruelty and murder by showing concern for the victims, for one victim? Let us remember: What hurts the victim most is not the cruelty of the oppressor but the silence of the bystander.¹

The problem of silence is particularly profound for corporations.

Introduction

Ashley L. Greene

In 1938, 18 apprentices gathered around a train for a photograph at the Nîmes learning center in Southern France. They trained to become cheminots (the traditional French term for "railway workers") for the country’s new, national railway – the Société Nationale des Chemins de Fer Français (SNCF). Forged through the merger of five private regional companies, SNCF represented the idea of a united and more equitable France. Two years later, SNCF’s cheminots found themselves operating in a defeated, and subsequently occupied, country. These railway workers – and their company – were now central to the German war effort, including the Nazis’ plans to exterminate Europe’s Jews. Trains that had hitherto connected the country through networks for transportation now carried people to their deaths. The legacy of SNCF would never be the same.

 Corporations occupy a nebulous place in the commission of genocide and mass atrocity crimes. As with individuals, the choices they face emerge from the broader contexts of the nations, legal systems, and conflicts in which they are embedded. Like individuals, they can make decisions – sometimes constrained or under difficult circumstances – to resist, ignore, or profit from violence. Unlike humans, however, corporations are fictional “persons,” which are, in reality, comprised of hundreds or thousands of actors at any given time. As such, they often act through many people, and the law does not automatically ascribe the acts of any given agent to the corporation as a whole. Unlike humans, corporations are enduring, with no natural lifespan. They do not have a single or collective memory, nor do they have one mind, requiring legal systems to wrestle with the question of when a corporation “knows” something and when the knowledge of any corporate director or officer can be ascribed to the corporation itself.

Absent an independent mind or soul, corporations have no inherent moral ethos. They are designed to act within the law, as they find it, and executives are generally protected from liability for their reasonable business judgments (even if negligent or financially harmful). Hence, the law effectively encourages companies to take risks that individuals would avoid, an attribute that has perhaps kept businesses from engaging seriously with their culpability in advancing and/or profiting from human rights violations. If a company is not acting illegally by simply going about its business, it may see no reason to be anything other than a bystander – even though companies may exacerbate gross human rights violations by doing

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2 The French Parliament voted to nationalize its railways in 1937, and SNCF became operational in January 1938.
business with those who perpetrate atrocity crimes. Companies also may see no corporate motivation to remember and analyze their decision to stand by (or profit) in the event of mass violence – even though failing to do so may impede efforts to advance transitional justice and stop future atrocities. But companies are comprised of individuals and, as such, have the capacity to develop collective ethos and practical policies that situate them at the forefront of responding to and preventing their involvement in atrocity crimes. They can, in a word, be more than the law requires.

At the time of writing, the Uyghur Forced Labor Prevention Act is pending in the US Congress. If passed, the bill (H.R. 6210) would “prohibit the import of all goods, wares, articles, or merchandise mined, produced, or manufactured, wholly or in part, by forced labor” from the Xinjiang Uyghur Autonomous Region (XUAR) of China. For several years, the region has been the site of documented atrocity crimes committed by the state against Uyghur and other Muslim minority groups. These crimes include arbitrary arrests, torture, sterilization, the forcible removal of children from their families (a crime that, by itself, can constitute genocide), and forced labor. The authors of the bill estimate that, since 2017, the Chinese government has arbitrarily detained as many as 1.8 million people in a “system of extrajudicial mass internment camps.” At least 1,200 in number, these government internment camps are “designed to erase ethno-religious identities” and serve as sources of forced labor for state-subsidized factories in the XUAR.

If passed, the legislation would have legal and ethical implications for US companies producing an array of goods, from shoes and textiles to tea, hair products, and electronics. The bill would establish a rebuttable presumption that labor conducted in the XUAR, or anywhere in China, under “poverty alleviation” and other government programs, constitutes forced labor. This shifts the burden of proof to companies. Those whose supply chains intersect with China would have to provide “clear and convincing evidence” that imported goods were not made, wholly or in part, using forced labor. Evidence will likely have to include rigorous supply chain mapping, internal and third-party audits, as well as the ability to demonstrate the existence of established and measurable anti-forced labor policies, along with remediation plans for when those policies fail. Complicating all this is the reality that the due diligence processes necessary to ensure a slavery-free supply chain must take place within a state that is actively engaging in mass atrocity crimes.

5 Ibid., Sec. 2(1).
8 Companies would provide this evidence to US Customs and Border Protection. H.R. 6210, Sec. 4(b).
As the “Findings” section of the legislation highlights:

 Audits and efforts to vet products and supply chains in the Xinjiang Uyghur Autonomous Region are unreliable due to the extent forced labor has been integrated into the regional economy, the mixing of involuntary labor with voluntary labor, the inability of witnesses to speak freely about working conditions given government surveillance and coercion, and the incentive of government officials to conceal government-sponsored forced labor.  

The House of Representatives passed the Uyghur Forced Labor Prevention Act in September 2020. Should it pass the Senate and be signed by the President, companies most equipped to handle the repercussions will be those with robust risk-based atrocity prevention policies and those prepared to remove some or all of their supply chain from the XUAR.

No matter what happens with respect to this legislation, companies will face profound ethical questions. The bill has brought broad public attention to a situation that scholars and human rights activists have for some time decried as genocide. Even if the bill fails, companies will have to ask themselves whether maintaining supply chains with a potential XUAR nexus would render them participants or profiteers in mass atrocity crimes, and, if so, whether they have a moral responsibility to ensure that this is not the case. Historically, this has been a more complex and contested question than one might presume. With the notable exception of a limited number of corporate executives tried by the Nuremberg Military Tribunals, corporations (and corporate executives) have rarely faced liability for profiting from mass atrocity crimes.

This legal lacuna surrounding corporate responsibility has largely left it to individual corporations and their executives to find answers to questions like:

- Do corporations have some form of collective responsibility beyond generating profits?
- How should corporations balance moral responsibilities with responsibilities to employees, shareholders, and consumers?
- How much resistance (or sacrifice) is required in the face of atrocity crimes?
- How should corporations remember – and/or confront – histories tainted by atrocity crimes and engage with demands (whether from victims and their families or the general public) for accountability and acknowledgement?

As Sarah Federman notes, contemporary corporate executives usually grapple with these questions in isolation and with little guidance, leaving them to focus on public relations and legal strategies rather than real moral leadership.

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10 H.R. 6210, Sec. 2(4).
11 A question employees and customers of those companies might also ask.
The collection of articles that follows aims to explore a framework and best practices for corporations interested in more intentionally confronting their past and current involvement in atrocity crimes using the case study of the SNCF, whose trains have become synonymous with memories of the Holocaust following the conclusion of WWII.

The French national railway has spent decades grappling with its involvement in the deportation of 75,721 Jews and others targeted by the Nazis to concentration and death camps in the East. The company’s confrontations with its past have taken place in and outside courtrooms and have incorporated a diverse set of transitional justice mechanisms, including education initiatives, memorialization, historical inquiry, access to archives, and public dialogue. SNCF’s story highlights the complexity of corporate responsibility, as distinctions such as “secondary” perpetrator or “neutral agent of annihilation” have become meaningful, both for the railway’s conception of its WWII-era identity and for the victims and surviving family members who continue to pursue various forms of acknowledgement and reparation. As the authors demonstrate, the SNCF case study offers lessons – both positive and cautionary – for those who wish to think more deeply about the role of corporate actors in atrocity crimes. In particular, the authors highlight the ways in which corporations engage with transitional justice and atrocity prevention as they confront historical and ongoing legacies of mass violence. An emphasis is also placed on the roles – both good and bad – that litigation and legislative processes may play in framing corporate responses to atrocity crimes.

In the first article, Jean-Marc Dreyfus provides an historical review of scholarly knowledge pertaining to SNCF and its activities in German-occupied and Vichy France. He synthesizes key research findings and discusses the insights provided by survivor testimonies found in memoires and archival holdings such as the Visual History Archives of the USC Shoah Foundation. Dreyfus also confronts the silences and questions rendered by incomplete archives. The collection’s second article features Dreyfus dealing directly with SNCF’s efforts to confront its past and to develop its own politics of memory in response to French and US lawsuits. He frames SNCF’s initiatives within the field of transitional justice and weighs their successes and shortcomings when it comes to the company’s public image, its ongoing global business interests, and its interactions with victims and their families.

In the third and final piece of the collection, Owen Pell provides an analysis of how US litigation against SNCF and proposed US legislation – the Holocaust Rail Justice Act (HRJA) – framed a narrative of SNCF’s wartime activities at odds with the historical record. Pell illustrates the important role that judicial and legislative processes can play in shaping societal responses to genocide and other mass atrocity crimes, while also underscoring their problematic ability to skew historical understandings of events through their narrow framing of the past. He juxtaposes the historical narrative created by the HRJA with the contextual realities experienced by SNCF in exploring the question of organizational “independence” in the face of government action and direction – issues that often arise in the context of assessing corporate responsibility for mass atrocity crimes. Pell ends his article with a question resonant of the collection’s broader aim: How can we develop principals of historical responsibility and processes of transitional justice that help corporations better understand their responsibility to remember and to prevent atrocity crimes, and, in so doing, avoid becoming participants in genocide and mass violence?
The History of SNCF in the Holocaust: The State of the Research

Jean-Marc Dreyfus

Introduction

In 1945 and 1946, France’s main organization for deportees, the National Federation of Deportees and Interned Resistors and Patriots (FNDIRP), put on a touring exhibition of German concentration camps. The communist-leaning Federation was a massive organization, with tens of thousands of members, survivors, and relatives. Jews and resistance fighters joined the Federation, with no strict demarcations. The exhibition was original in the sense that it was circulated by train and displayed in train stations. Seventy-one stations in France and Belgium served as exhibition halls for artefacts and works of art made by camp inmates. Urns holding the ashes of murdered victims, as well as striped pyjamas and clogs, were on full display. The exhibition was one of many organized in France and Western Europe just after WWII with the purpose of documenting Nazi crimes, but the fact that it was by train must have had a powerful impact on those who experienced it. In addition to informing the public about the ordeal deportees endured, the exhibition sought to redeem the image of trains, which became closely associated with Nazi crimes and mass deportation in the aftermath of the war. While train stations could be seen as places of persecution, they also became places for testimony and justice.

In France, it was the Société Nationale des Chemins de Fer Français railway that made trains synonymous with deportation and death in the minds of many. Merely four and a half years after the left-leaning Popular Front government created the national railway in 1937, SNCF became an instrument of death in the Holocaust. Under German occupation, it provided the trains that transported 73 convoys of Jews to Germany and Poland. French railway workers operated the trains until they reached the border with Germany, where they were replaced by German staff. The trains brought Resistance fighters to

13 The Fédération nationale des déportés et internés résistants et patriotes.
concentration camps such as Buchenwald or Dachau, while Jews were sent to death camps: Auschwitz and Sobibor. To date, no evidence has emerged of refusals on the part of SNCF leadership.

Over the last 30 years, considerable research and scrutiny has focused on SNCF’s role in the Holocaust. That work remains far from complete today, with much that remains unknown. SNCF found itself positioned within a complex web of powers spun between various French and German agents. At one extreme were the all-powerful Reichssicherheitshauptamt (Central Reich Security Agency or RSHA), the German Army, the German Ministry of Transports, and the Transport Department of the Military Command in Paris (Hôtel Majestic), with the Vichy government, local authorities (préfectures), and the French Ministry of Transports at the other. The intent of SNCF managers was never genocidal, but the company played an instrumental role in making the large-scale deportation of Jews possible.

This paper presents the state of the research and a synthesis of current knowledge about the role of SNCF in the Holocaust. The paper mainly considers the deportation of Jews, but transports of resistance fighters will also be mentioned, as these operations were organized by a parallel chain of command and reflected a similar pattern to the convoys of Jewish victims. The paper begins with a review of existing literature and a discussion of available archives. It then addresses eight thematic areas: the place of SNCF in the global assessment of European railways during the Holocaust; SNCF leadership during the Vichy regime; the organization of deportation convoys; the issue of coercion; finances and the payment circuit (the theme we have the least knowledge about); the role of SNCF workers in deportations and their attitudes towards them; resistance to the Vichy government, the Nazi occupation, and the persecution of Jews; and, finally, the perspective of Jews transported in freight cars from France to their deaths in Poland.

The State of the Research

The most detailed, existing academic research on SNCF during WWII was commissioned by the railway itself in 1993. Presented three years after its inception in 1996, the study was written by Christian Bachelier and conducted under the supervision of historian Henry Rousso at the French research center Institut d’Histoire du Temps Présent (Institute for the History of Contemporary Times or IHTP, for its French initials) in Paris. The research is significant and remains the most detailed to date on the general structure of SNCF in the times of war and occupation, as well as on the French-German negotiations regarding railways. The question of deportation is addressed but is not central to the work of 914 pages, which includes 684 pages of annex. Although the report was never published as a book, it is now available online, and remains indispensable to the study of SNCF and its role and responsibilities during in the Holocaust.

Serge Klarsfeld’s work is also seminal to understanding the organization of convoys, even though Klarsfeld, like many historians of the Holocaust in France, is more focused on the arrests of Jews than on the politics and the power dynamics behind the use of trains for deportations. Ahlrich Meyer considers the issue of payment for deportations from France in a short, but important, chapter on “Transport and flight” in his


book *Täter in Verhör* (available only in German). Meyer is the only researcher to confront the archives with the interrogations and depositions of German perpetrators of the Holocaust in France, including some who were in charge of transports.

More recently, Ludivine Broch has analysed the constraints of SNCF during WWII, with a specific focus on deportations. Her book brings a nuanced appraisal of the company and primarily covers the attitudes of “ordinary railway men.” She describes SNCF leadership’s strict collaboration with Vichy and the German occupiers, as well as the many positions and attitudes represented by the more than 400,000 SNCF employees. A minority of those employees embraced the new French regime and its arch-conservative values (“Work, Family, Homeland”), while another minority participated in active resistance. A significant change that occurred during the war was the increased presence of communists within SNCF. Communist railway workers were few to be identified as such before the war and, if they were, would face persecution and often termination. Over the course of the war, communist and union leaders saw their influence grow with massive recruitment of new members within the clandestine Party, benefitting from the prestige accrued by communist Resistance forces fighting the occupiers.

The general policy of SNCF in wartime and occupation is known in detail, as are the higher-level negotiations with the Vichy government and SNCF’s German counterpart: the *Reichsbahn*. Christian Bachelier’s 2001 report is seminal for this analysis. Bachelier illuminates the thin margin for maneuvering the SNCF leadership had, as it was caught between Vichy policy and German demand. His report describes the power play and negotiations between SNCF leadership, the Vichy government and the various German agencies (details on the latter also appear in a seminal article by French historian Michel Margairaz).

The policy of SNCF towards its employees is also known, with an early identification (and denunciation) of communists in its ranks and a protective, paternalist policy towards the global workforce. Some research has been done on the implementation of antisemitic legislation within SNCF itself, mostly by Ludivine Broch. Broch has also pioneered the study of the implementation of Vichy anti-Jewish measures on Jewish employees of SNCF. The biographies of many SNCF leaders, however, have yet to be written. For example, one knows very little about Robert Le Besnerais (General Director of SNCF from 1938 to 1946), on whom there is not even a Wikipedia page. The biography of one of the railway’s Jewish directors, Henri Lang (written by Nathalie Bibas), is an exception. Lang was arrested for being Jewish early in the occupation period and deported to Auschwitz, where he was murdered. While these studies lend insight into the upper levels of SNCF’s wartime leadership, even less has been written about the lower echelons of power and their role and reaction to deportations.

An extensive assessment of the Resistance within SNCF still needs to be written. Paul Durand’s 1968 book on the topic is an interesting collection of stories and testimonies (all anonymous) but fails to describe the very structure of the Resistance within the national company. Georges Ribeill provides an account of the creation of the long-lived *Résistance Fer*, the official network of the Resistance within SNCF. This loose network was made official only after the liberation of France, with the creation of an association of former Resistance fighters. Christian Chevandier has also written about railwaymen who fought the Nazis and about the memory of this specific Resistance.

The politics of memory surrounding SNCF, from the building of a heroic myth to the many controversies about its past, are described in a thorough and critical way by Sarah Federman in her a recent book based
on her Ph.D. dissertation, published by University Press of Wisconsin. Additionally, Charlotte Pouly has described the expulsions of suspected workers in the Vichy period and the post-liberation purges of railwaymen charged with collaboration.

The existing literature, though important, appears rather limited considering the importance of the history of SNCF in WWII and, more specifically, its role in the Holocaust. A relative wealth of research exists on the history of French firms in general during this period, as well as on France’s history of economic collaboration. However, a similar corpus of research on the “business history” of France during WWII and the Third Reich, including monographs on specific companies, does not exist (although it has been tremendously developed in Germany). Similarly, while there are several books on the history of Germany’s national railway, the Reichsbahn, a comprehensive history of SNCF under Vichy has not been written.

The Archives

SNCF archives are now sorted and freely accessible online and to visitors of the archival center in Le Mans, France. Over 1.3 million individual pages are available, originating from 900 deliveries, which is exceptional, even for a public company. The inventory of WWII archives is detailed and spans 1,068 pages. Those documents have been produced by the central services of SNCF. They deal mainly with senior-level management, covering themes such as the board of administrators, external relations, general organization, finances, and workforce (including purges of communists and, later, of collaborators).

The archives are sorted into five geographical divisions, the same divisions used to organize the national company in 1937 through the merger of the five historical French railway networks. The collection covers the requisition of materials and workforce by the German occupation authorities and the extensive damages caused to stations, railways, and trains in 1940 and from 1944-1945. Many personnel files have been kept, including some of Jewish employees who were victims of antisemitic French legislation.

In 1940, SNCF leadership created a new secretariat, “Secrétariat W,” which was responsible for centralizing and archiving all correspondence with German authorities. Because of this, it is possible to finely reconstruct the negotiations held between SNCF and the German military command of France (headquartered at the Hôtel Majestic, avenue Kléber in Paris) and with the French government – whether with the Deputy President of the Cabinet (Pierre Laval) or with the Ministry of Transport (Jean Berthelot, then Robert Guibrat) and the Ministry of Industry (Jean Bichelonne).

22 The five original railway networks were: Compagnie du Nord, Paris-Lyon-Méditerranée (PLM), Paris-Orléans, Compagnie du Midi, and Compagnie de l’Est.
23 Bachelier, La SNCF sous l’occupation allemande, 6.
Although these documents provide a wealth of information, significant gaps exist. The five geographical divisions of SNCF archives pertain only to central services; close to zero documents from the établissements – the big or small train stations themselves – have been found. Archives related to local SNCF movements were destroyed in the 1960s and 1970s in order to save space in the archival holdings. Because SNCF is not a body of public administration, France's law regarding the preservation of public archives does not apply to the railway company. As a consequence, we do not have, for example, the archives of the Gare d'Austerlitz in Paris, where many trains carrying Jews arrived from the Southern Zone, and from where many convoys departed loaded with furniture looted from Jewish residences.

While the archive contains a few generic documents on the organization of Jewish convoys, no documents pertaining to the details of the convoys have been found. Neither the archives documenting the liaison between SNCF and the German Army Transport Directorate or Wehrmachtverkehrsdirektion (WVD) – in charge of all train transportation in France, located at 29 rue de Berry – nor the liaison between SNCF and the 9th Bureau of the National Police – in charge of transport of Jews between French camps and Paris-Austerlitz, followed by bus transports to Drancy – are available to researchers. The archives of the 9th Bureau, if they existed, have not been recovered either.24 Also missing (or at least not yet identified amidst the mass of documentation) are the documents regarding MER, the Mitteleuropäische Reisebureau of the Reichsbahn, to which payments for Jewish convoys were made.

Collections held by the French National Archives help to supplement SNCF's records. French-German negotiations also took place within the framework of the Armistice Commission in Wiesbaden. The question of railways was addressed on many occasions, even though the special convoys of Resistance fighters and Jewish victims were not specifically discussed. These archives are important for understanding the complex power dynamic in which SNCF found itself. Documents of the French delegation to the Armistice Commission are kept in the French National Archives (AJ 40). One can also read select archives of the Ministry of Transports (Secrétariat d'État aux Communications) in the National Archives series F l4.

The organization of deportations can also be reconstructed using other sources. The most important are the archives of the Sipo-SD (Gestapo) in France. They are kept at the Shoah Memorial in Paris.25 Some documents of the Jewish central organization UGIF (Union générale des Israélites de France) – forcefully created under pressure from the Sipo-SD – describe the limited role of the Union in organizing convoys through the provision of clothes and food requested by the Gestapo, at least for the convoys leaving from the Southern Zone. Archives of the UGIF reside at the Institute for Jewish Research (YIVO) in New York. Microfilms of the same materials are available in Paris at the Shoah Memorial.

The “Resistance Fer” Association has donated significant archival materials to the French National Archives (available under the reference 72 AJ, 2280-2297). In the same series, a small collection of documents gathered by Resistance fighter, camp survivor, and ethnologist Germaine Tillion provide information about the deportations. One finds rare material in this collection, such as telegrams sent to train stations alerting them to the transit of convoys to Auschwitz.26

24 Klarsfeld, "L'acheminement des Juifs de province vers Drancy et les déportations" 146-147.
Deportations themselves cannot be studied without survivors’ testimonies. A wide range of them exist, both published and unpublished. They describe the long journeys to the camps, the terrible conditions in overcrowded cars, the brutality of German guards, and prisoners’ attempts to keep their spirits high and retain their humanity. The seminal literary work on transports is the 1963 book by Resistance fighter Jorge Semprun, The Long Journey (Le grand voyage), in which Semprun describes the five days of his journey from Compiègne to Buchenwald.27

Millions of pages are available on French and German railways during WWII and on their collaboration with the Nazis. However, only a handful of them that pertain specifically to the organization of deportations have been found and sorted. This can be explained by the fact that those convoys represented a minuscule fraction of all transports through France and to Germany in those fatal years. Suspicions remain in relation to accusatory documents that may have been hidden or destroyed. But in administrative archives, even destruction leaves traces and those traces have yet to be found. If such destruction took place, it must have been in the post-war years, during the time of the purges.28 According to Alain Leray, those archives were destroyed about ten years after 1945, following the company’s normal practice concerning its administrative documentation.

The Role of the Railways in the Holocaust: the perspective of Raul Hilberg

In a famous speech given at his post-war trial, Austrian-born Schutzstaffel (SS) officer Franz Novak, who was in charge of transports across Europe, stated: “Auschwitz was for me only a train station.”29 For the roughly three million Jewish people who were killed at camps like Auschwitz during the Holocaust, there was nothing banal about train stations. As renowned Holocaust historian Raul Hilberg has argued, trains, train stations, and railways were an integral part of the totalitarian project in Germany. Far from being a neutral instrument, the German Reichsbahn railway company eagerly contributed to the Nazi project by transporting soldiers, prisoners of war, political opponents, forced laborers, Nazi dignitaries, and of course Jews, to their deaths. The following section examines the role that railways played in the Holocaust using the work of Raul Hilberg.

In his seminal, 1961 book on the Holocaust, The Destruction of European Jews,30 Hilberg describes the decision process that culminated in the plan to annihilate Europe’s Jewish population. Hilberg dedicates many pages to the role of railways and to the organization of the transports that carried Jews to death camps. He describes the centralization of the decision to organize the trains from Western Europe – they were ordered from Berlin, from the office of Adolf Eichmann himself (office IV-B-4 or the Reich Main Security Office). Those orders were then implemented by Franz Novak, who organized the transports according to Eichmann’s decisions regarding deportations, which were derived from the “availability” of Jews in Western Europe. His office closely managed the population of Jews who had been arrested and interned in camps, ghettos, and prisons around occupied Europe, as they would have managed raw

28 In 1976, historian Raul Hilberg described the same gaps in the archives of the German Reichsbahn: Raul Hilberg, “German Railroads/Jewish Souls,” Society (Nov.-Dec. 1976): 60–73, 61. He advised the use of archives pertaining to the prosecution and trials of perpetrators and found some original documents in those files.
material to be transported to production sites: in this case the production of death.

After the *Reichsbahn* received the initial order for the convoys, it then dispatched the orders to its local branches within the Reich for the deportation of German, Austrian and Czech Jews, as well as Jews from occupied or satellite countries. In France, the order was given to the *Wehrmachtverkehrsdirektion*, which was in charge of operating national railways, including SNCF. Contrary to what has been written for many years, the convoys, which were all civilian and never military in character, had no traffic priority over other trains. For several periods of time, sometimes even months, the *Reichsbahn* had to interrupt trains from France. For example, from December 15, 1942 to January 15, 1943, a general shutdown halted all deportations of Jews in the General Government of Poland and also from the West. Convoys were organised from January 15 on, and traffic resumed on January 20, 1943.

Jewish victims were never transported in regular trains. While the first Resistance fighters to be deported were transported in passenger wagons that were added to regular trains, deportations were rapidly made into special convoys. This change occurred for several reasons. The first was the standardisation of convoys, organized and regulated from Eichmann’s office in Berlin. The second reason was the growing number of people to be deported, which made the idea of transporting them in regular trains increasingly problematic. Thirdly, a certain secrecy was to be maintained around those trains, whether for “Night and Fog” deportees (a special status for Resistance fighters who were to “disappear” in camps with no information given to their families) or for Jews. The terrible conditions of the special transports (see below) so clearly foreshadowed the fate of Jews upon arrival – one of systematic killing – that they needed to be hidden from public view. Special convoys were also more cost-effective, which lent itself to the orchestrators’ obsession with making persecution and annihilation as cost effective as possible. Finally, special convoys were organized because they were easier to guard, with heavily armed policemen assigned to watch the convoys. As a result, transports of Jews were so unique that the railway companies and workers involved knew the convoys were suspicious and that these convoys were part of a larger plan. In addition, one must assume that the mistreatment of passengers and the horrendous conditions in which they were transported would have raised awareness among members of senior management, as it did for many lower-level railway workers.

The planning and management of those special convoys required a high level of coordination between numerous police and transport agencies. Schedules demanded constant and clever readjustment. Trains rarely lagged and when their travel was suspended, they quickly resumed operations in order to cover the “backlog” of Jewish people to be deported. Only in rare cases, and at the very end of the war, were some Jews saved for lack of transportation. For example, Jews from Budapest were marched on foot to Mauthausen in Austria. The last convoy from Drancy could not be organized because of the general disorganization of transport caused by Allied bombings and by the general strike of French railwaymen.

Of the six million Jewish people killed in the Holocaust, at least half of them were transported to their deaths, with the German *Reichsbahn* playing an instrumental role in that effort. From its base in the centre of Europe, the *Reichsbahn* gave orders to other national railway companies in German-occupied countries. Having taken full control of the Polish national railway company, the *Reichsbahn* organized all the transports to death camps in occupied Poland, even though deportation trains within the General

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Government were controlled by a subdivision called Deutsche Ostbahn. The Deutsche Ostbahn collaborated with Eichmann's office. In addition to transporting people, the company delivered building material to camp sites and moved goods stolen from Jews across the continent. From Western Europe alone, the railway devoted 735 trains to the transport of looted furniture and properties confiscated from Jewish victims. The Reichsbahn also employed many forced labourers, including Jews, in dire conditions (although not in France).

The Reichsbahn made every effort to serve the German war economy, and this required extraordinary organization across Europe. In the East, the Reichsbahn extended its reach almost as far as the Wehrmacht, to the Caucasus and the suburbs of Moscow. Operations incorporated a vast network of businesses and employees, with the company commissioning companies across Europe to organize special convoys. Many European railway companies, from Italy to Belgium, cooperated with the Reichsbahn and the Eichmann office to co-organize deportations. Not one refused. In the East, the incorporation of railways into the Reichsbahn resulted in dramatic expansion during the war years. By 1942, the German national company employed 1.3 million people.

The Reichsbahn benefitted greatly from its participation in the Holocaust; it received 1,576 carloads of furniture and looted objects to distribute to its employees, mostly taken from Jewish residences in Western Europe, with Paris and Amsterdam being the most significant cities in this “Furniture Operation.”

In 1976, Raul Hilberg returned to the theme of railways and their role in the Holocaust in the article “German Railroads/Jewish Souls.” By that time, trains had become central to memory and representations of the Holocaust, with deportation trains seen as a symbol of the genocide’s modernity. However, this is not entirely accurate, as European trains in the 1930s were not so dissimilar from those of the 19th century. In 1939, the electrification of trains had not yet begun in earnest – many idle engineers worked on its planning during WWII – and most of the tracks had already been built in the 19th century. The sheer scale of the mass transportation of people during WWII may appear new to history, but the first massive transports of troops had occurred as early as the US Civil War. Yet images of the trains and the transportation of Jewish victims remain vivid in memories and representations of the Holocaust. The transport of three million victims to their deaths is, of course, unique in the history of mass violence and genocide.

More than the technology of trains, it is the precise organization of convoys throughout the Holocaust, the logistical “achievement,” that is the most striking and that remains unparalleled today. When asked about the theory of Hannah Arendt on the “banality of evil,” Hilberg contradicted the political scientist, stating that what Eichmann achieved was far from banal. He concludes:

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34 On this operation, see: Dreyfus and Gensburger, Nazi Labour Camps in Paris.

35 Hilberg, “German Railroads/Jewish Souls.” For more recent writing, see: Raul Hilberg, Peter Hayes, and Christopher Browning, German Railroads, Jewish Souls: The Reichsbahn, Bureaucracy, and the Final Solution (United Kingdom: Berghahn Books, 2019).

In a word, the role of the German Railroads in the destruction of the Jews opens profound questions about the substance and ramification of the entire Nazi Reich. Through the years the railroads have not been considered a significant component of a political structure; yet they were an indispensable part of the destructive machine. They were not assumed to have beliefs, but they were capable of making drastic decisions.\(^{37}\)

**SNCF Leadership: Technocrats and Vichyists**

The French Government created SNCF in 1937 after the country’s five main railway networks suffered from constant deficits the previous year. SNCF kept the legal form of a public company, of which the state was a majority shareholder. This meant that SNCF was never integrated into the state as part of the French administrative apparatus. Instead, the business was officially considered to have the quality of an économie mixte (mixed economy), which means that it was a mixture of a public service and a private firm, controlled by the state. The French state owned 51% percent of company shares. The rest stayed in the hands of private owners, small stake holders, or historical families like the French branch of the Rothschilds.\(^{38}\)

The Rothschilds had pioneered the railways in France, even financing the first ever French route from Paris to Le Pecq in 1837. In late 1940, the French state began confiscating the Rothschilds’ properties, including their SNCF stock. At this point, the SNCF Board of Administrators had 33 members. Twenty-one of those members were appointed by the state, which meant the cabinet had some degree of autonomy, although state control was enforced on a daily basis by the Ministry of Transport. Employees were afforded a certain degree of status with privileges such as job protection. Directors were often high-level civil servants who had been transferred to SNCF. Several of them came from the Banque de France, others from the magistracy, replacing the traditional recruitment of engineers trained in France’s most prestigious institutions of higher education such as the École Polytechnique. This complex legal situation notwithstanding, SNCF was controlled and operated by the French state very much like a national railway. State control became even tighter in September of 1939, with preparations for war and then war itself.

In 1939, the president of SNCF was a magistrate by the name of Pierre Guinand. In September of 1940, following France’s defeat, the Vichy government removed Guinand and replaced him with Pierre-Eugène Fournier. Fournier had been Vice-Director of the Bank of France. He also accepted a second appointment, a month later, as President of a newly created French administration, the Service du Contrôle des Administrateurs Provisoires (SCAP). This small organization was in charge of appointing and controlling provisory administrators to Jewish-owned companies in the occupied zone, a mode of control it extended to the non-occupied zone in late July 1941. The creation of the SCAP was a French reaction to the first German measures against Jews, measures that aimed to expel Jewish administrators from their economic positions. These differed from Vichy measures, which dealt with Jews in the public sphere, in politics, and in civil service.

\(^{37}\) Hilberg, “German Railroads/Jewish Souls,” 170.

As the head of SCAP, Fournier rapidly and efficiently put in place the new French policy of “Aryanisation,” which led to state control of 52,000 Jewish-owned firms in France. Very early in his new assignment, Fournier had to implement the new “double” antisemitic policy – both French and German at the same time. This was new to the French political and administrative traditions; officials first had to accept, understand and implement the definition of a Jew given by the French Jewish Statute of October 3, 1940, and then that of the first German anti-Jewish ordinance. Deciding who was and was not Jewish was difficult, particularly given the high percentage of intermarriage in pre-war France that raised questions like “How many Jewish grandparents are necessary to make someone a Jew?” Once these questions had been resolved, Fournier then had to implement the German anti-Jewish ordinance, which defined a “Jewish company” according to the number of Jewish administrators, the percentage of Jewish-owned stock, etc. In that sense, the experienced administrator Fournier was inventing – along with other French civil servants – a new policy against the Jews, which then became French policy.39

Fournier quit the SCAP in March 1941. Officially, this was because he was shocked to see two German officers in his Paris office, indicating that he did not want his work to be controlled or influenced by the German occupiers. It is possible that he had, at that point, understood that the policy he put in place was leading to the full dispossession of French Jews. Fournier was a devout Catholic and is not known to have been an antisemite. At the same time, he had to implement equivalent antisemitic policies within SNCF, including the expulsion of Jewish employees. His policy was to avoid any interference with the Germans in order to keep the autonomy of the national company as plain as possible. This led him to abide by the demands of various German authorities.

The Vichy regime was a composite of men from the extreme-right – for whom antisemitism was at the heart of their worldview – but also of high-level administrators who had built a program for a more powerful executive within the state and for a more planned, modernized, and controlled economy throughout the 1930s. Those men belonged to the same circles and had gone through the same path of higher education (via the École Polytechnique). For the most part, they shared the same technocratic ideals and technical endeavours.

Robert Le Besnerais was one such man, and the first General Director of SNCF. He led the company’s daily operations from 1937 until his removal in 1946, two years after France was liberated. Although the heads of most other administrations and public companies were purged and replaced during the occupation, Le Besnerais was a focused engineer, not known for taking an interest in politics. His apolitical stance seems to have benefitted him; his only concern was to run and protect the national company. However, SNCF was also controlled by the Ministry of Transport and there was some personnel circulation between the two entities. The Deputy General Director of SNCF, Jean Berthelot, was appointed minister of Transports and Communications in September 1940. He was also an engineer but not entirely apolitical as a staunch admirer of Marshall Pétain and a promoter of the “values” of the new regime: anti-communism, order, and

family, and hierarchy. Both men shared the technocratic leaning of the new regime.

From September 1940, the Vichy government’s control over SNCF tightened. The men in charge of the company easily adapted to the new regime after the shock of the worst defeat France had faced in its modern history. At the same time, Vichy replaced seven SNCF administrators, which probably served to discipline the more senior administrators who remained. For those men, the priority was to rebuild the company and the badly damaged railways – 108 reconstruction sites existed as early as the end of August 1940 – and to restart normal functions, which they achieved by the end of 1940.

SNCF’s ability to bargain with German authorities varied depending on the men who occupied leadership positions. In April 1942, with the change in the cabinet and Pierre Laval back in power (under German pressure), Berthelot was replaced as Deputy General Director by Robert Gibrat, also an engineer trained at the École Polytechnique. For his part, Gibrat proved weaker in negotiations between SNCF and the Germans. He resigned in November 1942, not to oppose Pétain but because of the German occupation of the Southern Zone. Jean Bichelonne, the Minister of Industry, took over his duties. Bichelonne is described as the arch-technocrat, eager to work with the Germans to run the economy in a time of war and restrictions. He worked closely with Albert Speer, Hitler’s Minister of Armament. In fact, the two became friends. Under Bichelonne’s supervision, SNCF had smaller and smaller margins for maneuvering.

The ideological dimension offers limited help for understanding why these well-trained men collaborated so closely with German occupying forces. Some of them welcomed the “National Revolution” of Marshall Pétain but they were mostly obsessed with the preservation of SNCF and with rebuilding and maintaining the company after France’s 1940 defeat. This, however, necessitated close collaboration with the Vichy government and the occupation authorities, in which the fate of Jews and Resistance fighters appeared a mere cost.

**Coercion**

How much margin for maneuver did SNCF have in its negotiations over its general operations? The margin existed, at least until the tightening of control during the winter of 1943. More often than not, however, SNCF capitulated to German demands. As mentioned earlier, the company’s leadership rarely (if ever) opposed Germany’s plans for the Jewish population in France. SNCF’s top priority was to restart its activities, sometimes at any cost, and in the name of service to the French population.

SNCF was badly damaged by the violent six-week period of combat in May-June 1940: the German Blitzkrieg saw the collapse of France and much destruction. Railway infrastructure and stations were destroyed, 30,000 train cars were taken by the Reichsbahn, and 35,000 SNCF employees were made prisoners of war in Germany. At the end of 1940, SNCF had lost one third of its transport material and

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the prospects of rebuilding rapidly waned as the French economy pivoted to meet German needs.\textsuperscript{44} The railway networks of Alsace and Moselle were separated and confiscated as the two regions were \textit{de facto} – but never legally – annexed by the \textit{Reichsbahn}. Moreover, the railways in the two most northern French administrative departments – Nord and Pas-de-Calais – were attached to the Military Command of Belgium in Brussels. SNCF's many losses made its leadership even more apt to accept new demands. In a very "Vichyist" choice, they opted to negotiate and sacrifice a bit, hoping to save the essential.

In fact, SNCF found itself tangled in a web of constraints and controls. From the German side, its main contacts were with the \textit{Wehrmachtverkehrsdirektion}, a division of the Economic Command within the German High Military Command.\textsuperscript{45} In June 1942, the WVD was made into a civilian authority and renamed the \textit{Hauptverkehrsdirektion} (HVD). The HVD was divided into five regional divisions, replicating the five regions of SNCF. This channel was the main conduit through which SNCF received its orders, including orders to organize military and other special convoys. Among these were the IATP convoys, which stood for "Israélites, Allemands, Tchèques, Polonais," or "Jews, Germans, Czechs, and Poles."\textsuperscript{46}

The second channel used by the German occupation authorities was the official Armistice Commission in Wiesbaden, in charge of implementing the Armistice treaty. The Commission set up a delegation for the economy, with a specific bureau for "communications" (read "transports"). The so-called Communications Bureau was led by Lieutenant-Colonel Theilacker on the German side and by Colonel Paquin on the French side. The Bureau was quickly moved to Paris in order to shorten the circuit of decisions. Paquin represented the French Government, but orders were sometimes transmitted directly to SNCF to save time.

Much of the debate over SNCF's ability and will to resist demands from the German occupation authorities has centered on the June 1940 Armistice Convention. The Convention, by which all French administrations – and SNCF – had to abide, was signed in the train car of Rethondes, near Compiègne, the same car in which the Armistice of November 1918 had been imposed. After the signing of the 1940 Convention, Hitler had the train car transported to Berlin as a war trophy. In Article 13, the Armistice Convention stated that all French transport material should remain intact and that “the French Government would make sure that, in the occupied territory, necessary specialised workforce and transport material of railways and other means of communication will be made available in the normal conditions of peace time.”\textsuperscript{47}

While Article 13 has led to many interpretations, I argue that it does not mean SNCF lacked a minimal margin for maneuver within the strict framework of state collaboration and coercion imposed by the German apparatus. To the contrary, SNCF gave priority to German military and civilian transports without visible coercion. These German transports represented one fifth of all transport in France in 1941 and nine tenths of transports on the eve of liberation.\textsuperscript{48} SNCF, like the French Government, made the choice to remain "legalist," and thus to act within the framework of the Armistice Convention, perhaps believing

\textsuperscript{44} Broch, \textit{Ordinary Workers}, 74.
\textsuperscript{46} Bachelier, \textit{La SNCF sous l'occupation allemande}, 392.
\textsuperscript{47} The translation is mine.
\textsuperscript{48} Bachelier, \textit{La SNCF sous l'occupation allemande}, 772-774.
that they would have equal footing in subsequent negotiations. Events rapidly proved this was not the case, as German negotiators had the upper hand.

This use of SNCF capacity reflected the general German occupation policy in France: it represented a semi-direct approach to administration that has been defined as a “surveillance occupation.” Hitler wanted to preserve the German workforce and military forces to conduct the ongoing war against Britain and to prepare for his attack against the Soviet Union. He needed the French economy to remain functional and the government to remain politically docile.

This does not mean that violence was non-existent. From early on, even as the occupation appeared relatively lenient compared to the situation in Poland, there were threats, arrests, and, shortly after, executions of anyone who opposed the occupiers. In August 1943, several high-level French civil servants were arrested and sent into forced residency in Germany. Among them were Wilfrid Baumgartner, the President of the Bank of France, and André François-Poncet, the former French Ambassador to Berlin. Their arrests served as a warning to all high-level administrators. In June 1944, the leadership of SNCF was arrested but released soon after. Those men were too useful to German military transportation, such as when troops were to be sent to the Normandy battlefield. While the occupation began with threats to deprive SNCF of its material, it progressed to pressuring SNCF personnel - including its higher ranks. The time for negotiations was over.

Another way to pressure SNCF was through control of the coal supply. German occupation authorities carefully managed the supply of French coal that came from the North and from Lorraine. This supply was not sufficient to support the French economy as a whole. Railway material remained insufficient for French and German needs throughout the occupation. In fact, the Reichsbahn began renting engines and train cars from SNCF. The risk for the French company was that the material would not be repatriated to France. As a result, SNCF entered into constant negotiations over the return of material and the rent to be paid. SNCF leadership continuously fought to maintain the company’s material and workforce, not only for its own self-preservation but also in the name of the service the company rendered to the nation. These goals led the company to abide by German rule.  

Finally, a comparison with the Reichsbahn suggests that an internalised norm of compliance, rather than adherence to Nazi ideology, motivated SNCF to collaborate with occupying authorities. Historians of the German railway company describe an “internalised antisemitism” at all levels of the Reichsbahn. This expression does not mean that each Reichsbahn employee was fanatically abiding by Nazi ideology but rather that, within a slow and escalating process, anti-Jewish measures became a legitimate part of daily policy and corporate functioning after 1933. Nine and a half years passed between the first antisemitic measures (the expulsion of Jews from the Reichsbahn payroll) and the first deportation from Germany to the East in October 1941.

This process was different in France. While no significant opposition was raised to the first anti-Jewish measures of October 1940, the general French population – of which SNCF employees were a part – expressed its discontent with the mass arrests of Summer 1942. In response, the French government somewhat diminished the intensity of its persecution against the Jewish population in its country. If, in

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49 The Bachelier Report gives numerous examples of such negotiations between SNCF leadership and various German authorities. See an example, among many others, on pages 193-250.
France, submission to Vichy and the German occupying authorities was internalized, the “Final Solution” itself was not. Traditional obedience to authority, especially in a time of crisis, provides a more compelling explanation for why SNCF provided such minimal resistance to the organization of convoys than does the presence of genocidal intent.

SNCF eagerly sought to preserve its autonomy in the complex climate of occupied France. Its top managers were always cognizant of the risk of being fully integrated into the Reichsbahn, as had happened to the Polish railway company and others in Eastern Europe. In the name of public service and the French nation's need for railways in a time of war, SNCF made conscious choices to sacrifice its values. Among those choices, providing transport of Jews to the East was the most blatant.

Organizing the Transports

Before starting our analysis, it is important to note that the transports from France to Auschwitz and Sobibor were the most distant ones – which does not mean the most difficult to organize by the various authorities in charge. Auschwitz is 2,300 km away from Bordeaux by train and 1,700 km away from Paris. Only Athens and the Greek Islands were as distant departure points for deportation as were France and Paris.

SNCF’s role in organizing convoys of Jews and Resistance fighters to the Nazi camps remains blurred even today. Of course, SNCF had to have taken part in this organization, as the trains ran on French tracks and were operated by French drivers, at least until November – the last station in French territory on the journey to the East. Only in the earliest months of deportations were prisoners transported in third class cars added to regular trains, and only ever for a handful of Resistance fighters. From March 1942 on, with the first convoys carrying Jews, special trains were organized. The first convoy left France on March 27, 1942.

Two types of convoys existed. Most of them left from suburban stations of Paris – first from Le Bourget then, from July 1943, from Bobigny. This change was likely made because this latter station was more isolated, and the loading of convoys could be made in a more discreet way. Most of these convoys journeyed to Auschwitz or Sobibor. Serge Klarsfeld has counted 73 such convoys; 68 went to Auschwitz-Birkenau and four were destined for Sobibor and Maidanek. One convoy, number 73 – which left Drancy on May 15, 1944 for Kaunas, Lithuania and then Reval, Estonia – carried only men on board. A deportation train with Jews left Lyon on August 11, 1944 to reach Auschwitz, and a wagon of 51 deportees was added to a final convoy of Resistance fighters to Germany on August 17, 1944; the 51 Jewish deportees arrived at Buchenwald. There was also a small convoy of Jewish women whose husbands were French prisoners of war in Germany; they were deported with their children to Bergen Belsen in early July 1944.

The second type of convoys were transports from French camps, some in the Northern Occupied Zone but most from the Southern Zone, to Paris-Austerlitz, followed by bus transports to Drancy. It is not known if these trains were organized from Berlin or if they were organized solely by French administrations. Serge Klarsfeld, Le calendrier de la persécution des Juifs en France, Les Fils et filles des déportés juifs de France (Paris; New York: the Beate Klarsfeld Foundation, 1993), 1122-1124.

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Klarsfeld, again, has listed those trains.51

The organization of convoys was in itself both remarkable and banal. All military convoys, including trains transporting liberated prisoners of war and trains for military materials, were special convoys. The convoys of Jews were remarkable because they were heavily guarded (more so than those carrying prisoners of war). They were also relatively secret and discreet. Convoys were commissioned by the Sipo-SD and the services of Eichmann in France (not by the French government and even less by SNCF itself). It is commonly written that trains were ordered from Berlin (by Novak) but, in fact, the decision to organize and commission those convoys was the result of many back-and-forth communications between Paris and Berlin. Of course, maintaining an effective convoy schedule also required communication with the camps themselves. Coordinating the trains arriving at Auschwitz was necessary, as they were coming from all over Europe.

Before trains could be organized, the perpetrators needed Jews to deport. According to the now-extensive literature on the persecution of French Jews, there was never a lack of transportation capacity to deport Jewish victims. The main problem for the occupation, however, was the lack of an available workforce to arrest them (and to locate them, following the dispersion of Jews throughout the many small villages of France).52 In reality, there were periods of time during which the Reichsbahn and the German Ministry of Transport let the Sipo-SD in Paris know that no trains were available for this use (in Autumn 1942, for example). No document has been found among SNCF records indicating a time when the national company refused to organize a train because it lacked materials. But we should remember that SNCF was obligated by the Armistice Convention to prioritize the operation of German convoys on the French railway network.

Considering the documents that have been made available and the body of existing research, it is possible to roughly describe the organization of convoys, but only to a point. The role of SNCF in this organization appears limited, especially in the decision-making process. After Jews were arrested, Eichmann’s envoy in Paris announced their detention to Berlin. Before leaving Paris, in August 1942, Theodor Dannecker organized the first convoys. After that, the chain of command and organization of transports remained the same until the end of the occupation. Heinz Röthke, the head of the Gestapo in France, became Eichmann’s correspondent after Dannecker’s departure until the arrival of Alois Brunner in May 1943. It is only when all of this was decided that SNCF acted, with the material organization of the convoys. Once the decision to organize a convoy was made, however, SNCF provided the cars and organized the trains up to the French-German border, which meant alerting each train station to the convoy’s transit.

Some of the precise instructions regarding the convoys given by the RSHA, and more precisely by the IV–B–4 office headed by Adolf Eichmann, have survived in the documentation of the Gestapo. The first set of


instructions is dated March 12, 1942. They were detailed, ordering which categories of Jews should be included in the trains and also the percentage of men and women (only 5% of people in the first six trains to leave France were women). The small percentage of women in the initial convoys may be explained by the fact that those deportees were doomed to forced labor in Auschwitz in lieu of immediate execution. However, selections for the gas chambers were conducted at Auschwitz beginning in July 1942. From this point, instructions regarding women rapidly changed.

Instructions stipulated that prisoners were to be sent with clothing and other materials, such as spoons and shovels. In some convoys, these materials were dispatched in the many wagons. In others, a special car was added to transport them. At the beginning, 14 days of food rations were requested for each deportee. This was later reduced to three days. These materials were to be provided by Jewish organizations, but the already mentioned UGIF had inherited the assets and properties of all French Jewish charities. The UGIF was also financed through a tax on Jewish looted assets (5%). The materials transported on deportation trains were thus paid for by the Jewish victims themselves. Clothes and instruments were to be used by Jews in forced labor in Auschwitz. From July 6, 1942, Jews from the West went through the infamous selection process upon arriving at the camps. Two-thirds were sent directly to the gas chambers. The requested materials, then, were another way of looting Jewish property, but also part of the general cover-up of what deportation really meant (murder, rather than forced labor).

The Gestapo was central in organizing the convoys. Although the first six were set at the initiative of the German military high command – in the framework of its policy of taking hostages to counter the first attacks by the French Resistance – the Sipo-SD rapidly took over. The second set of instructions was transmitted on 12 June 1942. It reached the local commands of the Sipo-SD. To organize the convoys and decide on timetables, the Sipo-SD in Paris and the Hauptverkehrsdirektion, headed by Münzer, developed a smooth and cooperative relationship. The HVD then turned to SNCF for the provision of cars and engines.

This does not mean that SNCF had no involvement in the planning and organization of convoys. A member of an SNCF delegation in Vichy attended at least one meeting to organize the second set of convoys, the ones triggered by the main round-up of Jews (known as the Vel’ d’Hiv’ round-up) on July 16-17, 1942. Those two days were seminal in the development of the Holocaust in France (in 1992, France made July 16 its Holocaust Memorial Day). Obeying instructions given in Berlin, the head of the Sipo-SD lobbied the French government to organize the mass arrest of Jews. Three roundups had already taken place prior to this point, with arrests only targeting Jewish men. The German authorities lacked the police force to arrest tens of thousands of Jews at the same time, so they turned to the French police for help. The Vichy Government entered into (now infamous) negotiations during which they agreed to arrest and “deliver” 50,000 Jews to the Gestapo, provided that only foreign Jews would be caught. Those Jews were to be arrested all over France, including in the non-occupied zone. The main operation of mass arrest, the

54 The delivery of this material led to numerous contacts between various French and German agencies, including the ministries of Industry, the economic division of the SS, and Rudolph Höss himself, the commander of Auschwitz. See: Meyer, Täter in Verhör, 219-220.
56 See the most up to date analysis in: Joly, Vichy contre les Juifs, 76-85.
Vel’ d’Hiv’ round-up, took place over two days and was only partially successful, even with all of the Paris police and gendarmerie contributing. The target for this operation was 25,000 Jews. The Paris police forces managed to arrest only 13,152 Jews (including 4,500 children). Though an immense number, it fell short of the intended 25,000 who were supposed to be taken. Nearly all of the men, women, and children captured were immediately deported to Auschwitz. SNCF organized 33 convoys in three months (Convoys numbered 6 through 39) to take them there.

Deportation convoys, though made out of freight cars, were considered special voyagers’ trains and organized by the Reichsbahn and SNCF divisions in charge of them. The chain of command to organize the convoys of Jews from France was as follows: after receiving messages from the Sipo-SD in Paris that a sufficient number of Jews were “available” for deportation, Eichmann transferred the information to his “Transport Officer,” Franz Novak. Novak then contacted the Ministry of Transport in Berlin. His contact was Otto Strange, an obscure administrator whose superior was Director Paul Schnell in the Department of Railways. Strange liaised with his Paris correspondent within the WVD on the availability of transport. It is unknown whether SNCF was consulted by the WVD at this point in the process or if the French national company had to intervene only later, when the convoy was decided with certainty.

As the WVD did not have any transport materials itself, it had to rely on SNCF to prepare the trains. Next, the time and itinerary were set, perhaps in coordination with SNCF, although it is unclear whether this required their active involvement or merely their acquiescence. Nothing is known about this coordination or cooperation between the WVD in Paris and SNCF.

What was SNCF’s margin for negotiation? What is certain is that trains for Jews were considered distinct from the very beginning and were given the code name IATP (Jews, Germans, Czech and Poles). No protest on the part of SNCF is known regarding the commission of those convoys. The role of SNCF was to make the cars and engines available and to provide drivers from France to the border of Germany, where they were replaced by German drivers. The first train to Auschwitz was also changed to German operations in Metz, with the Jewish victims transferred from French wagons to German ones. We know also that the cars were checked by the Sipo-SD before departure. SNCF tended to make older train materials available for these convoys out of fear that those trains would not be returned to France. The Sipo-SD was reluctant to accept such cars, concerned that their poor condition might allow Jews to make holes or breaches in an attempt to escape. This difference in opinion signifies that SNCF was acting in its best interest – saving the best material for its own use – but never tried to alleviate the fate of the deportees.

Five deportation trains from France stopped in Silesia before their arrival at Auschwitz, where a rapid selection of men for forced labor occurred. Those selected were sent to satellite labor camps of the Auschwitz concentration archipelago. While they never entered any of the three main camps at Auschwitz, most of them died in the following weeks from hardship and mistreatment.

Transports were coordinated throughout Europe and organized in similar ways. If SNCF met the demands received from the Hauptverkehrsdi rektion (HVD), the abnormalities of those trains – people being transported in dire, dangerous conditions and armed guards with orders to shoot in case of attempted

57 Bachelier, La SNCF sous l’occupation allemande, 387-388.
58 Meyer, Täter im Verhör, 230.
59 Ibid. 224-225.
flight – could not have been missed by French railwaymen. The clear instruction that all transported Jews would be definitively severed from any French social service, which was clearly stated in the instructions from the Sipo-SD, indicated that those passengers would not return to France.

What was the level of coercion placed on SNCF managers and employees? This is difficult to assess, as so few disobeyed or refused their orders. Disobedience existed and was severely punished. But what about the refusal to help deport Jews? Historian Alfred Mierzejewski describes two German mid-level Reichsbahn employees who refused to participate in the Jewish transports and asked to be transferred. They were not punished. But those men were also employed in Poland, closer to the death facilities, and had precise information about the Jews’ fate (which was not the case for SNCF employees and managers). No similar case of refusal is known in France.

**Financing the Transports**

How were transports from France to the death camps financed? This important question has not been fully answered by historians. What is known is that they were not paid for by the Jews themselves, as was the case in other countries and in Germany. In Slovakia, the trains to Auschwitz were billed to the Slovak government (a satellite of the Reich), which paid using assets looted from Jews. As Jews in France had been despoiled of most of their assets and deprived of their livelihoods by French administrations, no money was available for the Sipo-SD to pay SNCF’s bills. As part of its domestic antisemitic policy, the French government endeavored to “Aryanize” the economy, blocking most Jewish assets and properties. These blocked assets were thus unavailable to German agents, with the exception of one billion francs imposed as a collective levy on the French Jewish community in December 1942. It is possible that part of this sum, at the disposal of the German military high command, was used to pay for the transports to Auschwitz.

Another Germany agency, the Dienstelle Westen (a branch of the German Ministry of Eastern Territories), organized the looting of furniture. The Dienstelle used the money obtained from sales that made up part of the booty to German municipalities to pay for the trains transporting stolen furniture and objects from France to Germany. In the case of those specific convoys, the looting of Jewish properties directly financed the transports of plundered wealth to Germany. But those trains were peculiar, and it is difficult to reconstruct the financial circuits that paid for deportation convoys in a similar manner.

Raul Hilberg describes the rising costs of Jewish transports from Western Europe and how it created a problem for the military command in Paris. He has found a decision made by the Reichsbahn dated July 14, 1942, which authorises a group tariff for transports from France, Belgium, and the Netherlands. The group tariff (same as for an excursion) was applied to each deportee: half the price of a third-class ticket from Drancy to Auschwitz. Hilberg has also found mention of the transports’ cost: the first 18 trains from France cost 76,000 Reichsmark from Drancy to the German border and 439,000 Reichsmark from the border to Auschwitz (the equivalent of about $304,000 USD and $1,756,000 USD at the time, respectively). The exchange rate between the Reichsmark and the Franc was fixed at 1 to 20. After negotiations between the Reichsbahn, the Sipo-SD, and the Ministry of Finances, it was decided that

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60 Mierzejewski, The Most Valuable Asset of the Reich, 125-126.


the military high command in Paris would pay for the transport to the border using the French Francs available thanks to the occupation levy. The rest of the trip to Auschwitz was paid for by the Sipo-SD. It is not known if this agreement was implemented and, if so, if it continued until the end of the war.

There is a strong suspicion that SNCF billed the Mitteleuropäische Reisebureau (MER) for transports of Jewish victims from Le Bourget/Bobigny to the German border, with the MER then billing the German military high command. The bills were paid from a Bank of France account in which huge sums of money from the occupation levy were available (400 million francs per day from the end of 1942). The deportation of Jews from France was thus partly paid for by the French people themselves.\(^\text{63}\)

The financial aspects of transports from French camps to Paris-Austerlitz and, via buses, to Drancy, remain even more obscure. The infamous “Schaechter invoice” states that on August 12, 1944, the central financial service of SNCF billed the French Ministry of the Interior 210,385 Francs for “transport from internment camps, surveyed sojourn centres, internees, expelled, etc.”\(^\text{64}\) The circuit of money is even less clear in this case. Were the transfers from the French camps paid for by the French state? Or did the Ministry of Interior claim the money for the authorizing authority, in this case the WVD? Was the Schaechter invoice ever paid to SNCF?

Did SNCF benefit from transporting Jews to their deaths? In the absence of a detailed analytical account of the financing of deportations, it is impossible to say. As mentioned before, we have a strong suspicion that the transports to the border, on the convoys’ way to Auschwitz and other camps, were billed by SNCF. It is not that SNCF sought this “business,” but the payments are important to show that those abnormal transports were part of a business-as-usual functioning of the national company. On a moral level, would not the provision of free transportation have been even worse, making SNCF an even more willing accomplice of genocide?

**The Railwaymen**

Employees of SNCF emerged from the occupation as heroes. A cult devoted to them was carefully developed, both by the French Communist Party and by the Gaullist power. We know for certain that among the 400,000 SNCF employees, only a small minority of them entered active Resistance groups. This, however, does not mean that they all approved of the policy set by SNCF leadership. Ludivine Broch has brought attention to the fact that a minority of SNCF workers aligned with the ideology of the Vichy regime; the “values” of the new order met their requirement for a family-oriented, authoritarian and orderly society.\(^\text{65}\)

Before the war, SNCF was not known for its labor disputes. The five regional railways that were later merged to create SNCF remained calm in 1936, when massive strikes swept France. In 1938, a communist-led strike attempt failed. The relatively high number of railway men and women who joined the Resistance represent, in that sense, a significant change in the political and social culture of the national company. This can be explained by the successes of the French Communist Party in recruiting – clandestinely –

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\(^{63}\) Meyer, Täter im Verhör, 232.


\(^{65}\) Broch, *Ordinary Workers*, 80-86.
new members in the very time of occupation. Railwaymen were subjected to stricter control during the occupation. Men suspected of communist leanings were identified and expelled, with SNCF administration initiating those purges. From 1942 on, many railway workers supported the Resistance, even though they did not directly participate. Many of them (but not all) were communists.

We know of only one case in which an SNCF railwayman – a driver named Léon Bronchart – openly disobeyed a deportation order, and this involved a convoy of (non-Jewish) prisoners of war. Bronchart was granted the title of "Righteous Among the Nations" in 1995 by Yad Vashem, not for this incident but for his rescue of at least two Jews outside of his work at SNCF. For his activities in the Résistance, he was deported to the Dora concentration camp, which he survived.

Among the cheminots it was probably indifference towards the fate of Jews that reigned, as was the case among the mainstream French population. There is no testimony of overt approval for deportation among SNCF workers but there is evidence of many small gestures of sympathy and discreet help. There are also no examples of an attack on, or sabotage of, a convoy; the only such case in Western Europe took place in Belgium. Thanks to a modest and courageous act by three Resistance fighters, 241 Jews escaped the 20th convoy to leave the Malines camp (the Belgian equivalent of Drancy). Ultimately, 118 of the 241 escapees survived the war.

Many cheminots tried to give water to Jews locked in the trains but even this was dangerous. Trains were heavily guarded by armed SS personnel and by German policemen. Railwaymen did, however, collect letters and little notes thrown from the trains. Those notes were subsequently posted to families and became the last sign of life from thousands of victims. Some railwaymen also helped the few known escapees from their trains. In the first convoy to Auschwitz (March 27, 1942), one deportee managed to escape. But the number of escapees – successful or not – grew from 1943 on.

Although no more information about the systematic killing in Auschwitz was made available, it is probable that the absence of any news from the former deportees raised anxiety among Jews. The terrible uncertainty about their fate upon arrival must have incited more and more Jews to attempt the dangerous move of jumping from the trains. They clearly had the necessity of jumping before the train reached Germany in mind as they knew their chances of being helped after escape were greater in France than in the Third Reich. When the transport from February 13, 1943 crossed the border at Novéant, guards noted that eight Jews were missing. They had managed to break a hole in the wagon between Bar-le-Duc and Lérouville. It seems that escape attempts occurred in most transports from February 1943 on. Few were successful. Many Jews were shot while jumping.

Jews who did manage to jump from the trains needed the support of ordinary French men and women living or working near the railway if they were to survive their escape. This group included policemen, workers, housewives – people of various backgrounds and occupations who sheltered Jewish children and helped Jews go into hiding. Some railway workers helped too, such as Gabriel Philbert, who lived with his wife Simone in the village of Nançois-sur-Ornain (Meuse). The couple sheltered Félix Goldschmidt,

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67 On the escapes from trains, the best analysis is: Aldrich Mayer. *Täter in Verhör*, 251-263.

68 Ibid., 254.
a Jew who had jumped from convoy number 62. About 150 Jews attempted to escape a deportation convoy, half of them successfully.

Altogether 55 SNCF workers were declared “righteous gentiles” by Yad Vashem, the last one in 2020. Those men and women sheltered Jewish children and helped Jews go into hiding. It may well be that more SNCF employees behaved heroically to save Jews. Again, no complete survey of those actions exists. For example, a discreet testimony written by the son and daughter of Jews who were saved tells the story of the cheminot Marcel Hoffman, who on September 11, 1942, helped several Jews escape the train from Lens (north of France) to Lille-Fives, where they were to be transferred to a convoy to Auschwitz.

SNCF recently commissioned a survey of the 2,229 railwaymen who were murdered in WWII, whether deported to Nazi concentration camps (1293), shot in France (484), or killed by torture (57). Half of them were killed for being Resistance fighters. The others were taken hostage by German forces – mostly the Wehrmacht and the Gestapo – for attacks they took no part in and were shot. Finally, in August 1944, SNCF workers joined the general insurgency strike against German occupiers. SNCF contributed to the liberation of Paris by the Resistance a few days before French troops of General Leclerc entered the capital city. It also prevented the last convos of Jews from departing to the East, saving the last internees of Drancy. The general strike was called by the various unions active within SNCF, primarily the communist unions. This was a general call to Parisians during the time of the Paris uprising against German occupiers and in no way a demand from SNCF leadership. However, it is remarkable that the railway workers followed it so massively, maybe as a last-minute attempt to collectively resist the occupation authorities. The same move could be seen within the Paris Police. It greatly helped to refurbish the global image of the national company and to build the myth of an SNCF made entirely of Resistance fighters, from early on in the occupation.

The Long Journey of the Victims

The history of convos to the East should also be written from the standpoint of victims. Out of the 75,721 Jews deported from France, only 4,000 returned. Many of them have described the horrendous conditions of their transport. First, the journey was extremely long. Timetables were not always kept, and trains stopped for hours in stations or in the middle of fields.

One survivor, Leo Bretholz (who jumped from convoy number 42), gave oral testimony of his deportation from Drancy:

69 View the file of the Righteous among Nations at https://righteous.yadvashem.org/?searchType=righteous_only&language=en&itemId=5745341&ind=NaN.
The dehumanization started in the cattle car. It started for real. Because in the middle of the car, there was a bucket, it was for your need, to release yourself. And one bucket, the one you use at home, time and often that it filled up in very short time, it was kneeling and standing and basically in human waste and all modesty has disappeared. For women and children and everyone.\textsuperscript{74}

Conditions were so horrendous that historian Simone Gigliotti, who has published the only complete analysis of the journey, writes:

Testimonies of deportation transit reveal an intimate, disturbing, and taboo-breaking episode in the history of victims' suffering during the Holocaust. The terrorizing impact on deportees of compressed space and indeterminate journeying was not unknown to the bureaucrats. Their job was to actively and knowingly collude in the production of false truths and destinations, and to present these transports in records and to the victims as resettlement.\textsuperscript{75}

Historians writing about the transports show that, far from being an interim period between arrest and arrival to the concentration and death camps, the train journey was an integral part of victims’ persecution. It was a moment when uncertainty about one’s fate (“Where are we being transported?”) became the certainty of hardship and extermination. People who are supposed to go to work would not be transported in such dire conditions. Worsening conditions on SNCF trains from 1943 on provoked a rising number of escape attempts.\textsuperscript{76} Acting on the orders of the Sipo-SD, SNCF workers blocked the trains’ small windows, restricting the already minimal airflow and making it increasingly difficult for Jews to see outside their wagon. One had to be raised to the level of the tiny openings to see the names of the train stations as the train passed through.

The journey was an experience of collapse: the collapse of modesty, with no ability to isolate or relieve oneself in private, and the collapse of intimacy for the many families who were deported together. Transported Jews suffered immediately of thirst and exposure to the elements. Train cars were terribly overheated in summer and horrendously cold in winter. Inmates did what they could to organize themselves during the journey, taking turns for a quick breath of fresh air or a glance through the small openings. Children were crying, elderly and sick people fainted. In some trains Jews even perished, foreshadowing the death waiting for all upon arrival. Gigliotti writes:

Deportation testimonies are rebuttals to the image of resettlement. The initial push into the carriage, the rush for sitting and standing space, the train’s unconfirmed destination, the compression of bodies, and the violation of social boundaries were nothing compared to the overpowering assault of excrement, urine, and vomit, and the dearth of water and food.\textsuperscript{77}

\textsuperscript{74} USC Shoah Foundation, Visual History archives, Interview Number 8503, November 9, 1995 (interviewer: Joan Jacobs, Baltimore, Maryland, segment 69).


\textsuperscript{76} Meyer, \textit{Täter in Verhör}, 228.

\textsuperscript{77} Gigliotti, \textit{The Train Journey}, 4.
She maintains that “survivor testimonies of this experience provide a portal to a hidden Holocaust inside trains.” The dire conditions of transports, which SNCF facilitated, can thus be described as part of the genocidal project. Trains became a part of the destruction process. Jews realised that during their journey. Railway workers must have realised it too. But what about the SNCF bureaucrats in their offices?

Conclusion

The answers to be found in archives regarding the role of SNCF in the Holocaust are limited and uneven. If the general policy of SNCF towards its different and various authorities of control and comptrollers is known even in part, the documents needed to describe and analyse the exact role of the national company in organizing deportations to the East have yet to be found and studied. SNCF’s responsibility in the Holocaust can, though, be assessed, especially when considering the global role of railway companies throughout Europe in transporting three million Jews to their death. In that sense, SNCF did not act differently than other Western European companies (the situation was, of course, very dissimilar in Germany and in the East). SNCF did not take the initiative to organize transports but, based on information we have up to now from archival sources, it also did not protest or attempt to avoid them either.

Only 25% of Jews in France were deported (which is one of the lowest rates in Europe, comparable only to Italy and Denmark). This amounted to precisely 75,721 persons. The relatively low rate (compared with 75% of Jews deported from the Netherlands, for example) can be explained by many factors, including the late reluctance of the French collaborationist government to fully assist with arresting Jews. However, it cannot be explained by any resistance from SNCF. Once commissioned by Eichmann’s office in Berlin, with orders transmitted to the German military command and the Paris branch of the Reichsbahn, SNCF fully complied. The only signs of disapproval were isolated gestures by individual workers. The leadership of SNCF did not want to take any risks for the company they were in charge of.

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78 Ibid., 7.
79 Klarsfeld, Le Calendrier de la déportation de la persécution des Juifs en France, 1126.
SNCF, its Litigations, and its Politics of Memory

Jean-Marc Dreyfus

Introduction: SNCF and its unique efforts to face its past

As the national railway company of France, SNCF holds a unique status. It is simultaneously a public company, a symbol of the state’s pre-eminence in the creation of social fabrics, and a symbol of public service. The leftist-coalition government of the *Front Populaire* (Popular Front) created the railway in 1937 by nationalizing and unifying France’s existing private regional companies. The legal status of SNCF is complex and changing, that of a public company that is not formally a government administration. The French state considers the railway to be a tool for controlling the nation’s territory and for living up to demands for equal treatment from its various regions and communities. In this sense, the company is a means for unifying the country’s various regions, following the ideas of the French Revolution. Its very name expresses those demands and complexities: SNCF translates directly to “national society of French railways.”

The role of SNCF is remembered as even more important during the period of 1940-1944, when metropolitan France was occupied by German authorities and when a shortage of petrol severely limited transportation. In 1944 and 1945, SNCF emerged as a symbol of the French Resistance. The company as a whole – and this was a unique occurrence in France – was granted several medals for its bravery in resisting both the Vichy regime, including its policy of collaboration, and the occupying forces. The *cheminots* were revered as a united community of Resistance fighters.

In the late 1980s, this image started to unravel. A few activists endeavored to undo this carefully constructed representation of a difficult past and to question SNCF’s role in Holocaust, in particular the deportation of Jews. These activists were all Holocaust survivors or children of Holocaust survivors who worked individually, sometimes seeking the help of established historians. They did not form a coherent or organized movement, but their attempts had significant consequences, especially through a mobilization of public opinion via the press. This opened the door to numerous legal claims in France and in the United States, one of which is still ongoing.
Forced to react, SNCF built a complex policy to oppose these attacks. The legal challenges escalated with the mobilization of a small segment of the public in the United States, which subsequently increased the danger of being banned from bidding on business contracts in the United States. SNCF has a clear policy of development abroad, trying to sell its information and technology in high-speed trains and light rails (trams) to US states and municipalities. The threat was serious. Several US states passed three bills in an attempt to entice SNCF to clarify its position and its relationship to the past (for example, by creating an inventory of its archives). At the time of publication, the SNCF defense is ongoing. This confrontation with its past has continued for over 35 years, making it a unique example among major companies.

The questions that have been raised by this story are numerous:

- Why has SNCF – and only SNCF – been targeted and obliged to develop its original politics of the past?
- Who are the agents of this multi-layered power play?
- Have the politics of the past chosen by SNCF proven adequate?
- What does this case tell us about the globalization of human rights litigation?
- What does it tell us about French-US relations?
- Why are these questions still pending more than 75 years after the end of WWII and how could the past be put to rest?
- Finally, what is the role of historians, or of history writing, in the process of coming to terms with a big company's past?

I will not analyze the legal aspects of litigation against SNCF in detail in this paper. They are complex and a purely legal approach deserves further research in and of itself. Instead, this paper will describe litigation as a trigger for confrontations and initiatives. Cases will be addressed merely as they raise the question of how historical knowledge – but also ignorance and distortion – has been used and misused in courts.

In the remainder of this article, I describe and analyze the politics of memory that SNCF has developed to help it face those extraordinary confrontations. I take a comparative approach in considering how other big companies have had to face their past actions during WWII and the Holocaust. I evaluate the specific path chosen by SNCF, but also present some potential alternative decisions. I end the article with two addenda – a list of memory actions initiated or supported by the railway company, and some recommendations for the future.

I place my analysis of SNCF within the theoretical framework of transitional justice. Research on transitional justice has only been developed in the past several decades. The field achieved much of its start from observations of post-Apartheid South Africa and from studies of democratic transitions in countries recently emerging from authoritarian rule and dictatorships. The concept of transitional justice is complex. It encapsulates regime change, a transition to an appeased, democratic society in the
aftermath of mass violence and genocide. The regime change should be accompanied by judicial and extra-judicial procedures that enable a society to confront the past. Kora Andrieu states that, ideally, “transitional justice provides a stage to represent the event, a space in which victims and perpetrators are dramatically united in a kind of collective catharsis.”

Transitional justice can be delayed, occurring decades after the crimes that it responds to, as demands for justice can last over several generations. This can be seen in the activism of descendants of Armenian survivors of genocide in the Ottoman Empire or the activism of descendants of victims of the Trans-Atlantic Slave Trade in the US. There is no statute of limitations for crimes against humanity and crimes of genocide.

Transitional justice incorporates the concept of “restorative justice,” which is more focused on victims than on perpetrators, even though transitional justice also has a punitive aspect (and litigators against SNCF also intend to “punish” the company). Restorative justice should be a “healing” process, should restore social equilibrium, and give a voice to victims. It is a complex web of judicial and extra-judicial procedures, involving NGOs, activists of memory, psychologists, journalists, self-support groups (inclusive of second-generation victims), and communities.

In the case of SNCF, the controversies developed in democratic societies, namely France and the United States. But the debates over the past closely reflected many of the tenets of transitional justice: reparations, individual compensations, reconciliation, punishment of perpetrators, acknowledgement of guilt, public forums in which victims and their descendants share their suffering, historical writing, and memorialization; each of these themes appear in the controversies over SNCF’s role in the Holocaust.

The Past, the Litigations, and SNCF’s Changing Reputation

SNCF emerged from the occupation as a collective of heroes. The role played by the sabotage of trains and railways in the summer of 1944 was widely remembered. After Allied Forces landed in Normandy in 1944, Wehrmacht battalions were transported to the front from all over France. Resistance networks were ordered to prevent the trains from arriving, or at least to slow them down. They did so quite successfully, blowing up railways and even detaining some trains. Fighters – from both within and outside the company – contributed to this effort. But it was not the company leadership that initiated those actions. As early as autumn 1941, leadership had begun fighting opposition and resistance within SNCF – mostly among communist cheminots – going so far as to denounce them to the police. The famous Résistance Fer network was, in reality, created in October 1944 (two months after the liberation of Paris) to unify the various isolated fighters who had sabotaged railways and transports. Communist workers within SNCF were overrepresented in the Resistance, but only a small minority of cheminots were active fighters.

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80 On transitional justice, I used the following books, among others: Andrieu Kora, La justice transitionnelle (Paris: Gallimard, folio essais, 2012); Nanci Adler, eds., Understanding the Age of Transitional Justice: Crime, Courts, Commissions and Chronicling (New Brunswick, Rutgers University Press, 2018).

81 Andrieu, La justice transitionnelle, 37.


83 See the memoirs of one organizer of the sabotage, who was not a railwayman and who survived Buchenwald: Max Heilbron and Max Varin, Galeries Lafayette-Buchenwald... Galeries Lafayette ... (Paris: Economica, 1989).
As early as 1945, SNCF used the sacrifice of those men and women (many were arrested, imprisoned, or deported to concentration camps) to whitewash the company’s complex history during the occupation. In 1944 (and continuing into 1945), some of the company’s senior management had been purged for collaborating with the Vichy regime. During the war, senior leadership had obeyed orders from the Vichy government, as well as those given by German occupiers. The railway was an important tool in French-German collaboration, sending French materials and products to Germany, transporting French prisoners of war to German camps, and sending French forced laborers to German farms and factories. The company transported dozens of convoys full of Resistance fighters, including their own cheminots, to concentration camps, as well as 75,721 Jews to the Auschwitz and Sobibor death camps.

The myth of SNCF as a global actor in the Resistance was conveyed and fortified by a famous movie, *The Battle of the Rails*. The film was commissioned by a communist-leaning cooperative production company. It was directed by the documentarian René Clément and produced and filmed with the direct support of SNCF. The film was released in France in February 1946. Inspired by Italian neo-realism, it shows the glorious acts of ordinary railway workers in their fight against National-Socialism. The film received several prizes at the 1946 Cannes Film Festival and solidly shaped the memory of the period.

The persistence of the myth of SNCF heroism is illustrated by the 1968 publication of an academic book written by Paul Durand. Durand – the son and the grandson of railway workers – was one of the pioneering historians on the history of France in WWII. Two prefaces open the volume: one by André Ségalat, who was the president of SNCF at the time of the book’s publishing and one by Louis Armand. Armand had been a Senior Manager of the company and the organizer of an internal resistance network (NAP-Fer) that took charge of the company when France was liberated. He had served as president of SNCF from 1955 to 1958. Armand praises Durand for “very exhaustively telling the resistance of SNCF as a corporation (*personne morale*).” The Resistance, he writes, “was part of a quasi-consensus among the company, with its 400,000 employees.” He adds that SNCF was like a “maquis.” The book is based on many interviews and questionnaires filled out by fighters themselves.

Interestingly, Durand dedicates several pages of his book to the Armistice Treaty signed between defeated France and the Third Reich on June 22, 1940. In articles 13 to 15 of this treaty, the French government (not yet the Vichy regime) agreed to deliver stocks, raw materials, and means of transport of all natures, as well as railway material. He also details some early negotiations SNCF had with the Wehrmacht and with the various German services in charge of public transports in occupied France. The aim of SNCF was, from the very beginning of this new period, to reinstall its normal service – covering all of France (including through the demarcation line). But the Treaty also stated that SNCF accepted its subjection to the German authorities. This short development on the Armistice Treaty is important; many of the controversies to come, including many of the legal arguments in French and US courts, have discussed the
margin for maneuver and chain of command within the framework set by the Treaty.

The vision of a unified SNCF fighting in the Resistance slowly unravelled in the 1990s, together with the myth of France as a nation of Resistance fighters as a whole. The shock of May 1968 in France also led some activists to question this official memory. May ‘68 refers to a revolt against Gaullist power and the myth of a France united behind de Gaulle. The unified, sometimes nationalist, account of WWII was challenged as communal memories of the period emerged, including an outspoken Jewish memory. In 1969, The Battle of the Rails was once more broadcast on one of France’s two television channels. Resistance fighters and former managers of SNCF proved unable to answer the questions asked over the phone by an anonymous French person: did French cheminots drive deportation trains? And did the Resistance try to derail them? The massive tide of Holocaust memory reached France in 1978, making it central to French self-representations and to French cultural and political life. This remains true today.

A survivor, Kurt Schaechter, whose parents were killed in Auschwitz and who himself was interned in a French camp, started to research the role of SNCF. He legally accessed the local archives of Haute-Garonne in Toulouse (les Archives départementales) and illegally copied thousands of documents related to internment and the deportations from the southwest of France. Schaechter sent copies of the documents to French and international newspapers, and many articles were published about the inaccessible archives. While most assertions were fraudulent, Kurt Schaechter played an important role in the rising controversy towards SNCF. He had copied and disseminated an invoice sent after the liberation by the local division of SNCF to the local prefecture administration for the cost of a deportation train to Austerlitz, followed by bus transports to Drancy. Schaechter systematically attacked SNCF and the French administration as a whole, accusing them of genocidal intent.

The Schaechter affair greatly contributed to raising suspicion towards SNCF’s past and its responsibility for deporting French Jews. But public attention was distracted in the late 1990s by huge debates on Holocaust-era assets, mostly related to bank accounts and looted gold. These controversies went global, spreading across Europe to the United States and to South America. Banks and financial institutions had to uncover their WWII pasts, open their archives, and contribute to national funds set up to compensate victims and promote Holocaust education.

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90 On the process of reconsidering the memory of WWII in France, see the standard work: Henry Rousso, The Vichy syndrome: History and Memory in France since 1944 (Cambridge: Harvard University Press, 1994). For the transition in the 1970s to a defiant memory and the rise of Holocaust memory, see 212ff; On memory politics of WWII in France in general, see: Olivier Wieviorka, La mémoire désunie. Le souvenir politique des années sombres, de la Libération à nos jours (Paris: Le Seuil, 2010).

91 This very telling moment is shown in the recent documentary on SNCF and the Holocaust: Bernstein Catherine, La SNCF sous l’Occupation, Zadig (Nov. 2019, France: Production-Les films de l’Aqueduc). The film gives a nuanced view of the question and dedicates its final minutes to memory and litigations.

92 Eric Conan and Henry Rousso, Vichy, un passé qui ne passe pas (Paris: Fayard, 1994), 86-88. The access to WWII archives became a matter of controversy and public debates.

93 Archives of Kurt Schaechter are located in the Hoover Institute at Stanford University: https://oac.cdlib.org/findaid/ark:/13030/kt6s20280p/entire_text.
France was at the forefront of this fight. It set up several commissions – among them a national-level body known as the Mattéoli Commission. Much of the work done by French institutions was triggered by class actions started in New York, inaugurating transatlantic litigations. In those years, SNCF was spared any further claims. In France, banks and insurance companies settled in 2000 and paid about 600 million US dollars endowed to the large Paris-based Foundation for the Memory of the Shoah, and claims for individual compensations for looted properties were opened. These claims are still receivable today.

But one US lawyer who had initiated the claims against French banks, Harriet Tamen, proved dissatisfied with the outcomes of the negotiations. She continued her fight for victims and their families and lodged a claim in New York against SNCF in 2001. She joined forces with the French lawyer Corinne Hershkovitch, the latter lodging several claims in France against SNCF. At this point in time, a claim had already been lodged in 1998 by Jean-Jacques Fraenkel.

A total of eight legal cases were considered by French and US courts (five in France and three in the USA). Kurt Schaechter filed a complaint in 2004. One case is still pending: a suit started in Chicago in 2015. None of the claims have been allowed to proceed, generally due to the sovereign immunity of SNCF under US law. A French court also judged that France had already compensated victims of deportation and of confiscation of properties, and that this compensation should encompass any demands made of SNCF. It is not unusual for compensation claims to be settled out of court. This was the case in the major litigation regarding looted assets in the 1990s.

In 1988, the year the first litigation was filed, SNCF offered a train freight car to the city of Drancy in order for it to be added to a new deportation memorial. The internal motivations within SNCF are not known but the symbol was strong, as the monument was placed in the center of the tenement that had been used as a transit camp for Jewish victims on their way to Auschwitz. SNCF had made a first gesture of support for rising Holocaust memory but, at the same time, helped to make trains central to the imagery and the representation of the genocide. This change in the representation of persecution ironically turned against the railway company. Rapidly, from the late 1970s on, “the ramp”, referring to the unloading rail within the camp of Auschwitz II – Birkenau, became the ultimate railway icon. Seen in 1945 as a major actor of French Resistance, SNCF was seen in the 1990s as one of the Holocaust’s main perpetrators. The senior management of SNCF offered an early reaction to those changes.

**SNCF: reaction and defense**

Remarkably early on, SNCF tried to deal with questions about its role in the Holocaust. In 1992, an historical report was commissioned that is known today as the “Bachelier Report.” Christian Bachelier was a young historian, recruited at the time by the foremost research centre on Vichy France, the Institut d’histoire du temps présent. The IHTP was the successor of the official Committee for the History of WWII, which was created by the French government in 1945. It was a public body, financed by the National Research Centre (CNRS). Its director, Henry Rousso, supervised Christian Bachelier’s work. Rousso in particular,

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97 In fact, there were many more cases, as the French judicial system does not permit class actions as the US system does. French lawyers filed one claim for each of their claimants.
and the IHTP in general, had wide media visibility, as controversies over the Holocaust in France were numerous. SNCF’s decision to commission an historical report was a unique initiative in France at the time.

The Bachelier Report was published in 1996. It spans 914 pages, covering the history of the railway company from 1939 to 1945. The report deals not only with deportations of Jews but also with the collaboration and the Resistance. It is based on extensive archival research (conducted in SNCF archives). Although the quality of the research is sound, lawyers and activists have long held suspicions about the report.

So why this controversial reputation? First, the report was initially not published and made available to everyone. Second, Christian Bachelier did not have a public media presence. He did not encounter the actors behind the growing attacks towards SNCF nor did he enter into discussion with them.98 The report is also difficult to read. While it does acknowledge what the researcher failed to find in the archives – namely the detailed organization of convoys – it does not answer questions asked by survivors and activists. In particular, survivors and activists felt that the report failed to provide satisfactory answers to numerous questions about the transports, the attitudes of the SNCF leadership, and various actors’ responsibilities in the deportation. To compound matters, the archives Bachelier used were not immediately made fully accessible to other researchers, mostly because the official company archive was not yet fully organized and the documents were still being processed by archivists.99

The Bachelier Report gives a global description of SNCF during WWII and of the leadership's collaboration with the Vichy regime and the Germans. The main findings regarding the Holocaust are the description of the order given at the highest level of SNCF to implement – discreetly – the transports of Jews. The way those orders were disseminated within the company itself – to the level of each train station that the convoys had to pass through – is not explained. The report does not clarify the division of responsibilities among various actors for deportations, especially between French and German decision-makers. Above all, it does not deal with the issue of payment for the deportation trains that transported victims to death camps.

In the end, the Bachlier Report proved unhelpful, even detrimental, to SNCF’s efforts. Its summary of the findings is too long and too nuanced to be easily used by journalists. For example, on the transport of Jewish deportees, it states:

Not only, and this goes without saying, were the transfer and internment of Jews not carried out without the knowledge of SNCF but, during the summer of 1942, representatives of SNCF were involved in working out the technical conditions of railway transportation on the occasion of the Vél’ d’Hiv roundup and for the transport of Jews

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98 Interview with Harriet Tamen, by phone, February 14, 2020. Ms Tamen said: “Have you ever met Mr Bachelier? I have not.”

from the Southern Zone to the German authorities in the Northern Zone.\textsuperscript{100}

In short, the report did not prove to be an efficient tool for dealing with the past or with public relations, nor for communicating with the various groups involved in the controversy. More ironically, some chapters and quotes from the report would be used by litigators and prosecutors to further accuse SNCF of complicity in the Holocaust.

The first litigation against SNCF was launched a mere few months after the Bachelier Report was delivered. It was started in September 1998 by Jean-Jacques Fraenkel (mentioned above), whose parents had been deported to Auschwitz. The complaint, for crimes against humanity, was later dismissed by the court for lack of evidence.

It was only with the first case in a US court, in 2001, that SNCF began to take the issue seriously. This complaint was filed by Harriet Tamen, who had been one of the main litigators against French banks and had negotiated significant compensation to individuals for lost properties.\textsuperscript{101} Twelve victims started a class action lawsuit from the United States claiming that SNCF violated international customary law and the Law of Nations when it participated in the deportations. A few years later, the District Court for the Eastern District of New York dismissed the complaint, saying SNCF had immunity because of the Foreign Sovereign Immunities Act (FSIA).

From the outset of litigation, SNCF’s policy has been firm. The national company refused to acknowledge responsibility in the Holocaust, refused to negotiate with the claimants and their lawyers, and declined to pay any compensation. This attitude is understandable as SNCF cannot (and does not want to) be considered a perpetrator of the killing. Its role in the killing process was important, but SNCF never took initiative in the persecution of the Jews, and surely not in their murder. Its role as a ‘neutral’ agent in the annihilation process or as a secondary perpetrator should have been discussed (and still needs to be addressed), but this was not possible within the context of judicial processes, where history is only an instrument of defense.\textsuperscript{102}

SNCF’s response to the litigation was not only a strong refusal to acknowledge responsibility or to pay compensation. A politics of memory was concomitantly developed that supported numerous memorial and educational projects, including those focusing on SNCF in the Holocaust. The national company would become one of the major financers of memorial projects on the Holocaust in France.

Denis Douté, Bernard Emsellem, and Alain Leray (the latter was appointed as head of SNCF America in 2012) took the historical aspect of the case against SNCF seriously. They also took into account the necessary politics of memory and contact with survivors, activists, and Jewish leaders. Managing the past

\textsuperscript{100} The Vel’ d’Hiv’ roundup was the main operation of mass arrest in France. It took place on July 16-17, 1942. 13,152 foreign Jews were arrested. It was ordered by the Sipo-SD in Paris and organized and conducted by the French police. Since 1992, July 16 has represented the official memorial day of the Holocaust in France. See: Christian Bachelier, \textit{The SNCF Under German Occupation 1940-1944}, available at https://silo.tips/download/christian-bachelier-the-sncf-under-german-occupation, 16.

\textsuperscript{101} Abrams v. Société Nationale des Chemins de Fer Français, 175 F. Supp. 2d 423.

\textsuperscript{102} But even this idea should be nuanced. At the trial of Maurice Papon in Bordeaux, the jury decided that the accused should be condemned only to 10 years of prison for organizing four convoys to Auschwitz. It refused to see the General Secretary of the prefecture as an initiator of the killings and a direct murderer.
progressively became a significant share of their workload, even more so as SNCF became interested in selling its successful and iconic high-speed railway technology in the US market.\footnote{See: Noémie Rosner, “Aux Etats-Unis, la SNCF en fait trop ou pas assez sur la Shoah,” L’Obs, November 16, 2016.}

Those men, and other senior managers of SNCF, were not shy in talking to journalists or in publicly defending the national company’s stance. However, they chose not to speak directly to claimants, either before or after litigation. While in the US, the parties are not allowed to speak without a counsel, this is not the case in France. The men and women in charge at SNCF engaged in dialogue with numerous activists, historians, and survivors but, again, not with the claimants.\footnote{Corinne Hershkovitch, Hariett Tamen and Richard Weisberg all stressed this fact in the interviews I conducted with each of them. Interview with Prof. Richard H. Weisberg, by phone, December 5, 2019.}

Two Directors within SNCF became involved. The first was Denis Douté, who was President of SNCF America, the branch of the company in charge of US market operations with an office in Bethesda, Maryland. Monsieur Douté passed away and was succeeded in 2012 by Alain Leray, who worked in car manufacturing (and was not trained in public relations).\footnote{Interview with Alain Leray, Saint-Denis, October 4, 2019.} Bernard Emsellem was appointed to lead communications for SNCF and largely worked on this issue with the French actors related to the case. He took his new assignment in September 2002. They both dealt with the issue at hand – the need for SNCF to face its past – over many years. They not only became experts, but also the public faces of SNCF on this matter, both in France and in the United States.

Douté, Leray, and Emsellem immediately entered into contact with historians and activists for Holocaust memory in France. For example, they worked with Serge Klarsfeld. Klarsfeld and his wife Beate were at this time already famous “Nazi hunters.” Klarsfeld asked SNCF to permit his NGO, the active and highly respected Fils et Filles des Déportés Juifs de France (Sons and Daughters of Jewish Deportees from France), to install its own exhibition on the Holocaust in France and on deportations in the halls of some of their train stations. SNCF helped with the installation, with the storage of the posters, and with security (it did not intervene in the content of the exhibition). This action proved efficient for promoting Holocaust education and stirring the memory of persecution.\footnote{I have, myself, seen the exhibition at the Gare du Nord in 2005 and remember the many people who stopped by, before taking a train, arriving to the station, or picking someone up. The confrontation between, on one hand, the very site of the station and the trains themselves, and on the other, descriptions of victims and of the convoys on the panels, was very striking.}

The number of visitors, by definition impossible to assess, was enormous considering the traffic in French train stations.

SNCF also made alliances with Auschwitz survivor groups (there were several of them). Two such allies were Henry Bulawko and Raphaël Esrail, who each served for a period of time as president of the Union of Auschwitz Deportees. Esrail publicly expressed his opposition to the litigation against SNCF. This opposition was also clear among Holocaust historians, who believed France had done its share to promote reparations and memory, and also feared that history would be written in the courtroom and not in universities.\footnote{I published an editorial in the daily publication Libération, not in support of the litigation, but to criticize the politics of memory developed by SNCF: Jean-Marc Dreyfus, “La SNCF rate le train de l’histoire”, Libération, 8 September 2008. Available at https://www.liberation.fr/tribune/2006/09/08/la-sncf-rate-le-train-de-l-histoire_50653.}
For a time, it appeared as though SNCF had little to fear from courtroom challenges. In 2006, a Toulouse tribunal decided against SNCF in a claim started by Georges and Alain Lipietz (father and son). The company, however, successfully appealed the decision. In early 2007, the French lawyer Corinne Hershkovitch filed around 250 claims against SNCF on behalf of survivors. They were all dismissed following a 2009 decision by the Conseil d’Etat (the highest administrative court in France) that compensations paid to victims by the French state should cover what was due to victims or their heirs.

But the issue escalated again in 2008 when Harriet Tamen lodged a new case in New York, this time claiming that SNCF had stolen property from Jewish deportees. The procedures and confrontations produced an even more intimate merger of history-writing, public disputes, and diverging perceptions of how to deal with the past. They also took on a transatlantic dimension, revealing profound divergences between France and the United States.

US suspicions, French reactions

The SNCF case, among many others, revealed changing perceptions of France among segments of Jewry in the United States. A brief examination of this shift is necessary to explain why, among European railway companies, SNCF alone was under attack in the US for its role in the Holocaust. Relations on many levels – political, religious, etc. – between French and US Jews deserve thorough historical examination. Such research does not exist. After the Holocaust, Jewish organizations in the US greatly helped to rebuild Jewish organizations in France, donating huge sums of money to the only significant Jewish community that still existed in Europe; seventy-five percent of Jews in France survived the Holocaust and as early as 1945, France became a country of immigration for Jewish survivors from Eastern Europe. This financial assistance was so important that in 1949 some French Jewish leaders called it a “Jewish Marshall Plan.”

Jews in the United States could still see France as a model of emancipation and equality for Jews, the same way they considered their own many achievements in the US political system and society.

Mirroring these representations, French Jews could see in the United States a country in which Jewish communities command respect, power, and influence. It paralleled France-US bilateral relations based on the memory of French support for the United States Revolutionary War and the close relations developed between the two countries beginning in the 19th century. Both countries prided themselves on being the first democratic republics of modern times, the first countries to fully emancipate their Jewish citizens.

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111 A claim was lodged later by various US law firms and Prof. Weisberg against the Hungarian State Railways. The case was dismissed in July 2011 because of the state immunity of the Hungarian company. See: https://casetext.com/case/victims-of-hungarian-holocaust-v-hung-state-railways.
But this positive representation of France and of the situation of French Jews was violently thrown into question in 2001 with the start of the Second Intifada in the Palestinian territories and Gaza and the subsequent rise of antisemitism in France. Jews in the US deeply felt and resented the changing situation of French Jews. The Jewish press in the United States and the mainstream press also closely followed the developments, including the rising isolation of Jews in underserved banlieues (neighborhoods) in France and the visibility of French Jews immigrating to Israel in search of refuge. For US Jews, in just a few short years France had turned into the most antisemitic country in Europe, perhaps even the world.  

This change in perception is striking and can be explained in multiple ways. The role of the media, and foremost that of Jewish media, has been important. A strong alignment of the majority of US Jews to Israeli politics is also an explanation: Israeli Prime Minister Benjamin Netanyahu has frequently called French Jews to move to Israel, most recently after the January 2015 Paris attacks. Since the turn of the century, Jews have been killed in France by terror attacks, for example at the Ozer Hatorah Jewish school in Toulouse or the assault on the Kosher supermarket Hyper Casher. Until recently, when an attempted killing occurred in the German city of Halle, France was the only country in Europe where such murders took place. Since 2011, the killing of Jews in France, whether via crimes against individuals (Ilan Halimi, Sarah Halimi, Mireille Knoll) or in terror attacks (Hozar Hatorah school and Hyper Casher supermarket), has worked to confirm the dark representations of the country among US Jews, who often fail to acknowledge that the French state fights strongly against antisemitism and tries to protect its citizens of Jewish faith. The United States has also experienced such traumatic events.

The strong suspicion towards France among Jews in the United States is based on reality, even if all opinion polls show stronger prejudice among Jews in other European countries, mostly in Eastern Europe. This suspicion can be explained in two ways. First, Jews in the United States aligned with their government’s policy of the early 21st century when France refused to join the US-led coalition against Iraq. The surge of Francophobia that followed in the country at large was sustained among US Jews, as if they wanted to be “plus royalistes que le roi.” Second: accusations towards France could reflect US Jews’ growing feeling of unease and insecurity in their own country. France was considered, together with Britain and the United States, a haven for Jews. If the situation of Jews in France is endangered, it means the same could happen in the United States.

Interestingly enough, this accusation towards France is closely linked to the assessment of the Holocaust in France and also to Holocaust memory. France is often considered to be the epicenter of the Holocaust (together with Poland). France is accused of collaboration with the Nazis and of betrayal of its Jews even more vehemently than contemporary Germany is, and this representation is prevalent among mainstream medias and tabloids, leftist newspapers, and Fox News (though not for the same reasons). There is no gradation in responsibility, as if the arrest and delivery of Jews to the Gestapo was the same as organizing the genocide and constructing the death camps. This representation also goes along with a denial of any  

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115 See, for example, the contentious report: David, Ben Hooren, “WJC’s Lauder disavows Report on French Anti-Semitism Conducted by NYPD’s Ray Kelly,” The Jewish Voice (19 February 2020), available at http://thejewishvoice.com/2020/02/wjcs-lauder-disavows-report-on-french-anti-semitism-conducted-by-nypds-ray-kelly/. The article states: “Kelly’s report was two years in the making and concluded that ‘the threat to the 450,000 Jews in France, the world’s third-largest community (after Israel and the United States), is the most ‘acute’”.”


117 I thank Mr. Owen Pell for this interesting idea.
French efforts to remember, commemorate, and compensate victims.  

Those entrenched representations explain the laws passed by the state legislatures of California and Maryland, with similar legislation having been considered but not passed in Florida. These laws prevented railway companies from bidding for public contracts if they had not addressed their past. Although the wording of the laws varied, they all represented an important escalation in the attacks towards SNCF. California’s legislation was vetoed by Governor Arnold Schwarzenegger. The proposed laws were not supported by any major Jewish or Holocaust organizations in the United States. Notably, the World Jewish Congress (WJC) did not take part in the attacks. The WJC, under the chairmanship of Ronald S. Lauder, had been instrumental in launching the 1990s controversies of the “Holocaust-era assets” and in negotiating the many settlements.

What is interesting in the legal efforts against SNCF, compared to those against European banks and insurance companies, is that the three laws were passed as only a small group of victims and local Jewish organizations mobilized. In the 1990s cases against European financial institutions, the WJC, US State Department, and New York State Comptroller, etc. united to pressure companies. In the early 2010’s, small groups of survivors, together with lawyers, managed to have legislation passed. They likely did so by building on the support of local Jewish communities, whose members embraced the idea of SNCF’s clear guilt in the Holocaust. Those elderly survivors, many of them orphaned by the Holocaust in France, were seen as the ideal victims pitted against an all-powerful foreign company that was trying to gain ground in their country of immigration and refuge. SNCF was not the French state but it was a public company and could be used as a symbol of France itself. Scholar Sarah Federman, who has closely studied SNCF litigation, ironically labelled the railway company as “the ideal perpetrator.”  

SNCF took the legislation in California, Florida, and Maryland seriously, adding to its already solid politics of memory. SNCF America hired lobbyists and lawyers to counter the bills, which could prevent the otherwise promising development of its business in the United States. President Guillaume Pepy chaired  

118 The accusation of such a denial (the silence about the Holocaust in France) can be found in many articles and books. See, for example: Jeremy Mack, Phantoms of the Hotel Meurice. A guide to the Holocaust in Paris (New York: International Psychoanalytic Books, 2018); and Adam, Nossiter, The Algeria Hotel: France, Memory and the Second World War (London: Methuen, 2001). Those books are not written by historians. US historians of the Holocaust in France and of French politics of memory do not convey this idea of denial, even though they can be critical of the way France has faced its past. Among many reference works, see, for example: Richard J. Golsan, ed., The Papon Affair. Memory and Justice on Trial (New York: Routledge, 2000); Vichy’s Afterlife: History and Counterhistory in Postwar France (Omaha: University of Nebraska Press, 2000); Joan B. Wolf, Harnessing the Holocaust (Stanford: Stanford University Press, 2004); and Peter Carrier, Holocaust Monuments and National Memory: France and Germany since 1989 (New York: Berghahn Books, 2005).


121 Ibid.

122 The total amount paid by SNCF America to lobbyists is not public, but several million US dollars were spent. See: www.opensecrets.org (Centre for Responsive Politics).
a public “ceremony of regrets,” symbolically organized at the Bobigny train station, where most convoys left for Auschwitz and Sobibor. SNCF continued to spend money on Holocaust education, supporting the construction of new memorials and contributing to established ones.

Some of these SNCF projects backfired. Survivors involved in the US campaign said publicly that the company was acting cynically and attempting to whitewash its responsibility for the deportations. While the Simon Wiesenthal Center accepted money from SNCF America to open a new exhibition in Boca Raton, the press reported that the State of Florida refused an additional $80,000 from the company to help its already existing Holocaust education program. It was said that SNCF might try to influence the program content (which was untrue).123

SNCF multiplied and strengthened its ties with Holocaust organizations but continued to refuse any discussions with claimants on the question of compensation. While some compensations were paid to US survivors, they were paid directly by the French state and not by national companies.

**Paying Compensation**

One of the main components of transitional justice is the payment of various forms of compensation to the victims or their families. Reparations can also be paid to states or communities. The best-known example here is the September 1952 Luxembourg agreement signed between the Federal Republic of Germany, the state of Israel, and the Claims Conference in New York. The latter represented Jewish survivors living outside of Israel.

More generally, one of the many specific features of the Holocaust is that it is the only genocide for which such a significant array of reparations, compensation, politics of returning looted properties, etc. has taken place to such an extent and over such a long period of time. The seminal historian of the Holocaust, Raul Hilberg, stressed this fact as early as 1964.124 But the distribution of reparations has been extraordinarily unequal, depending on the nationality of survivors and their country of residence. German Jews received the most, including pensions. West European survivors received a lump sum in the 1960s. In the 1990s, money was granted by post-reunification Germany to former slave laborers, Jewish or not. Reparations policies have been multiple, complex, and bureaucratic.125

Western European countries developed their own compensation policies for deportees and their families. The “status of the deportees” was voted on by the French Parliament in 1948. Survivors of deportations received pensions, as did their wives. Orphans received some benefits too. In France, Holocaust survivors and families received small state pensions that were lower than the ones received by Resistance fighters who had been deported and to their families. Only in 1969 were all pensions ultimately aligned. In 2000, following the recommendations of the Mattéoli Commission on Looted Assets, pensions were offered to persons who had lost one or both of their parents in the Holocaust.

125 For a global view on German reparations, see: Constantin Goschler, *Schuld und Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte* (Göttingen: Wallstein, 2005).
Following the controversies on Holocaust-era assets, and to put an end to the manifold litigation against banks and insurance companies, decisions were made to reopen the claims that were closed in France in 1953; Jews could ask for compensation for properties that had been taken from them and not returned or for which they had not been given appropriate compensation. The system put in place did not formally request French companies to directly compensate the claimants. The money has since come from the state budget. However, private companies have endowed the Foundation for the Memory of the Shoah with 600 million Euros, doing so “willingly.” The compensations they provided were indirect, as the companies did not deal directly with survivors or their families.

In the French case, the state stepped in (as is typical in France, with a strong tradition of public service and state intervention). Public companies delegated their negotiations over the past to French administrations and the executive branch of power (negotiations were handled by the Prime Minister’s office). No discussions were allowed in the National Assembly. No vote was believed necessary. Today, the various French cases of compensation represent a rather complex web. Many survivors find it difficult to navigate the legislation that exists. Attuned to those difficulties, SNCF financially supports a page to guide the claimants on the website of the Shoah Memorial.

The history of compensation given by private companies to Holocaust victims has not been written in detail. It seems that such cases have been very limited, as most compensation policies have been state-led. One can reference the specific case of forced laborers in Auschwitz who sued IG Farben – the German and heavily nazified chemistry trust – for compensation, as they had worked for some subsidiaries of the trust. A German survivor of Auschwitz III – Monowitz, Norbert Wollheim, sued IG Farben in liquidation in 1950 and won his case. Thousands of survivors received a lump sum payment from this private company. In Germany in the 1990s, about 6,500 private companies voluntarily contributed to a sizeable fund to compensate forced laborers in Eastern Europe. This foundation, named “Remembrance, Responsibility and Future”, also spends money on tolerance and human rights education.

The three laws passed by US state legislatures in 2010 threatened SNCF’s development in US markets. But SNCF continuously refused to compensate claimants. In 2014, however, the State Department announced that a bilateral agreement was to be signed between the United States and France to set up a fund to “compensate some victims of deportation.” The agreement, which was signed in Washington on December 8, 2014, received some publicity in the media and was clearly understood as linked to the difficulties SNCF was facing in the United States. French diplomats in charge of the agreement clearly expressed the position that SNCF was not responsible for the deportations to death camps. The

126 See the website of the commission in charge of processing the claims, the Commission pour l’indemnisation des victimes de spoliation (CIVS) at http://www.civs.gouv.fr/home. 
128 On the Wollheim case, see the complete description and analysis in: Joachim Rumpf, Der Fall Wollheim gegen die I.G. Farbenindustrie in Liquidation. Die erste Musterklage eines ehemaligen Zwangsarbeiters in der Bundesrepublik Deutschland – Prozess, Politik und Press (Frankfurt am Main; New York: P. Lang, 2010). 
129 In German, “Erinnerung, Verantwortung und Zukunft (EVZ)”. For more, see their website: www.stiftung-evz.de. 
130 See: the website of the EVZ Foundation. 
company was an instrument of deportation and it was up to the French state to bear responsibility and to compensate victims.133

The bilateral agreement was not without its controversies. While the State Department did not have to request approval from Congress, the French Parliament had to vote on it. This led to a debate over wording. Some Senators refused the term “Vichy Government.” The text was amended and the words “de facto authority” were used instead, as they had been in the immediate post-liberation period. The money was provided by the French state but the US State Department was put in charge of implementing the agreement and of distributing the allowances. Conditions were strict: only survivors or direct descendants could claim compensation for deportation, and only if they had not benefited from the French pension system.

In exchange for this compensation, France and French companies were provided with guaranteed legal peace, based on the agreement between the US and French governments. This was the same mechanism that had worked in 2000 after the signing of the French-US agreement on looted assets in France. Few claimants stepped in and even fewer were declared eligible. It seems that among those willing to benefit from the SNCF case, few ever received any money from the French state budget, to the point that not all the money from the 60 million dollars was spent. Instead, a second round of payments was made to the beneficiaries. The number of beneficiaries and the amount of money received by each of them was not made public. It is certain that each beneficiary received at least 100,000 dollars.

The compensation arranged by the bilateral agreement was nonetheless considered unsatisfactory by many. First, it was paid for by the French state, not by SNCF. The company thus avoided direct, legal recognition of its responsibility in the Holocaust. Second, many claimants against SNCF were not eligible as they had received previous payments from the French state. And third, the sum of money received by the few beneficiaries was considered disproportionate – and unfair – in comparison with the small pensions granted by the French state.134 It also seems as though not every claimant against SNCF was informed of the compensation plan by their lawyers.135 As a consequence, they did not apply – or at least did not apply in time – for compensation.

Notwithstanding the agreement between the US and French governments, US lawyers for the claimants have continued to try and advance claims against SNCF. In April 2015 a new complaint was lodged, this time in a federal court in Chicago, accusing SNCF of looting the property of victims. The claim is still pending. The main claimant is Karen Scalin, whose grandparents were deported from France to Auschwitz with no return. Other claimants are Josiane Piquard and Roland Cherrier, both living in France.136

To this day, only the Dutch railway (Nederlandse Spoorwegen, NS) has compensated victims and survivors for deportation. The public company began financing educational and memorial activities in 2005, but at the time refused to pay compensations. The change in its policy was due to the activism of one man, Salo

133 “Pour le rôle de la SNCF dans la Shoah, Paris va verser 100 000 euros à chaque déporté américain,” Le Monde, December 5, 2014.
134 Interview with Harriet Tamen.
135 Interview with Michel Jeruchim, Silver Spring, Maryland, January 4, 2020.
Muller, who lobbied to obtain compensation for the deportation of his parents.\textsuperscript{137} When Muller tells his story, he recalls his recurring dreams in which he sees his parents during their journey to Auschwitz in an NS train car. Muller also says that his fight has been inspired by claimants’ success in winning compensation claims against SNCF.\textsuperscript{138}

No judicial procedures took place, only a media campaign and the threat of a trial.\textsuperscript{139} The first public report on compensation was made public in early March 2020. The closure of the funds was expected in July 2020. Living survivors of deportation have been granted 15,000 Euros (about $16,171 USD). A widow or widower is to receive 7,500 Euros ($8,085 USD). If there is no widow or widower, children receive 7,500 Euros (to share amongst themselves) if the oldest of the kids was born before May 8, 1945, and 5,000 Euros ($5,390 USD) if the oldest was born after May 8, 1945.\textsuperscript{140} A commission headed by the former Mayor of Amsterdam, Job Cohen, assesses the claims and distributes the money. Other members of the commission include a lawyer and an historian.

In a carefully designed policy, SNCF and the French state agreed that the state would pay compensation to US survivors and orphans who had suffered in France. Accompanying each step and each measure, SNCF managed to never fully recognize its responsibility or to pay direct compensation. But financial compensation was not the only challenge SNCF faced. The national company also dealt with the complex issue of public acknowledgement of guilt.

**Public Acknowledgement of Responsibility**

Public apologies for past wrongdoings are a recent phenomenon. The Catholic Church is a primary example. The Church has apologized publicly for many of its past misdeeds, including the condemnation of Galileo. On September 30, 1997, the French Conference of Bishops organized a public ceremony on the site of the Drancy camp.\textsuperscript{141} Those public apologies can be considered a part of transitional justice. They are both demanded and criticized. How can a few words, even carefully crafted, change perceptions of a traumatic past? Public apologies can, however, be considered symbolic reparations. They can also be interpreted as a sign of the diminished sovereignty and legitimacy of the modern state, which is facing globalization, communitarianism, and a global demand for new civic moral norms.\textsuperscript{142} They can be interpreted as a new


\textsuperscript{138} Ibid.


\textsuperscript{141} See the analysis of the event by one of the bishops: Olivier de Berranger, “Genèse de la ‘Déclaration de repentance des évêques de France’ (30 September 1997),” *Revue d'Histoire de la Shoah*, volume 192, issue 1 (2010), 447-459.

form of – or demand for – international dialogue regarding important events in history.\textsuperscript{143}

SNCF made a public statement at a public ceremony regarding its past and its responsibility in the Holocaust. Again, it is the only major European company to have done so in such a formal and symbolic setting. The ceremony took place on January 25, 2011 in Bobigny, at the retired train station from which convoys to Auschwitz departed between 1942 and 1944. SNCF also symbolically donated the train station to the municipality of Bobigny so that it could build a memorial and small museum.\textsuperscript{144} SNCF had planned for years before this to turn the site into a memorial but the ceremony accelerated these existing efforts.

The ceremony at Bobigny was carefully organized. The speech delivered by President Pepy was carefully written.\textsuperscript{145} In it, he repeated that SNCF had been “requisitioned” by the German occupation forces and was “ordered” to organize the trains: “Forced, our company nonetheless drove those trains to the border. It did it.” He insisted that SNCF had to face its past: “To face this past, to know it, to understand it. To perpetuate the memory. To draw lessons for life. We have been doing that for the last 20 years.” But the President did not formally apologize, saying “In the name of the SNCF, I bow down before the victims, the survivors, the children of those deported, and before the suffering that still lives.”\textsuperscript{146}

The ceremony was attended by witnesses of the deportations and a few survivors. Simone Veil was present. Ms. Veil was herself an Auschwitz survivor and a beloved French politician (she created the national law guaranteeing abortion rights to women in 1975). Veil addressed the audience too. A short documentary film had been prepared, with testimonies from survivors. The ceremony was well covered by French and US media. Many journalists described the speech as a “public apology,” which it was not. But many claimants and litigators pointed to the absence of a formal apology. Harriet Tamen said: “They did not acknowledge responsibility. Pepy said, ‘we regret the result.’ He did not say, ‘we are sorry we put you on the trains.’” She added: “SNCF is trying everything it can to get good press, except doing something for the victims.”\textsuperscript{147}

Guillaume Pepy expressed regrets, not apologies. The moment was important, solemn, and symbolic, and it opened even more avenues for history writing and memorial projects. It can be considered part of an ongoing dialogue SNCF is conducting with different civil society actors, from diplomats to Holocaust memorial institutions. The ceremony was generally well received, but not by the US claimants and litigators.


\textsuperscript{145} See the complete text (in French): http://garedeportation.bobigny.fr/63/une-reconnaissance-entantquelieu-dememoire.htm.

\textsuperscript{146} Ibid.

\textsuperscript{147} Interview with Harriet Tamen.
Public Forums

Kora Andrieu explains that transitional justice grants a significant space for emotions.\textsuperscript{148} She analyses how the “truth” is – or should be – an opportunity for catharsis if properly constructed. It is simultaneously a moral, ethical, and pragmatic enterprise. The material aspects of recognition, among them compensation and measures to avoid the repetition of crimes, are seminal but they do not suffice to appease victims’ anxiety and reconstruct social fabrics. For the process of transitional justice to be effective and also acknowledged, there is a need for public forums, not only in courtrooms but in new spaces.

It could be said that those forums provide space for “talk therapy.”\textsuperscript{149} The voice of the victims should be heard, and possibly confronted with the voices of perpetrators. The spaces should go beyond a dispositive that would serve for practical conflict resolution only and instead enable survivors and witnesses to enter into dialogue. It goes beyond what some historians have described as the “era of the witness.”\textsuperscript{150} The Truth and Reconciliation Commission in post-Apartheid South Africa is a model of such a forum, in which families of the disappeared, historians, and forensic experts were given the stage to make public declarations (and to hold discussions) which were recorded and often televised. Participants frequently demonstrated public displays of emotion, such as crying, reflecting a heavy influence of the public display of feelings in today’s television programs.

In SNCF affairs, public forums were not utilized. In fact, they were only rarely held, if at all. Harriet Tamen, a lawyer who has litigated for years against SNCF, is very conscious of the demand for this type of space. She told me that had SNCF agreed to compensate individuals, she would have organized a public forum with SNCF Directors and grateful victims: “Journalists would have been invited,” she told me.

People in charge of the case at SNCF had many individual contacts with survivors and orphans. Exchanges and dialogue were initiated informally with some of them, but this dialogue was not made public. Lawyers frequently overstepped their role in talking to their claimants. “I have been impressed by the stories of the claimants I met in my office. They told me some parts of their personal stories that I had never heard before, that they probably had never told anyone before,” said Corinne Hershkovitch.\textsuperscript{151} Hershkovitch represented about 250 clients in the various claims she filed against SNCF.

The need to talk and tell their stories was present in most of the aging (and sometimes very old) survivors and orphans. Michel Jeruchim, who was a client of Corinne Hershkovitch, felt isolated in Philadelphia, where he had lived for several decades. He did have contacts with local Holocaust organizations, mostly the local chapter of the American Jewish Congress.\textsuperscript{152} Mr. Jeruchim, his sister, and his brother had survived in three different foster homes in Normandy, sheltered by gentile families. Their parents were arrested when crossing the demarcation line and deported to Auschwitz in an early convoy.\textsuperscript{153} Simon

\textsuperscript{148} Andrieu, La justice transitionnelle, 38.
\textsuperscript{149} Ibid., 376-381.
\textsuperscript{151} Interview with Corrine Hershkovitch.
\textsuperscript{152} Interview with Michel Jeruchim.
\textsuperscript{153} Michel Jeruchim’s older brother wrote a fascinating memoir of his survival and arrival to the United States in 1947: Simon Jeruchim, Hidden in France; A Boy’s Journey under the Nazi Occupation (McKinleyville, California: Daniel and Daniel, 2012).
Jeruchim could not talk about his time in France, his scarce memory (he was five years old in 1942), or his complex relationship with France, which was simultaneously the country that delivered his parents to death convoys and the country of his rescue. In his search for a way to express his anxiety and the desire to clarify his past, he “stumbled across an advertisement published in the New York Times seeking some claimants for a lawsuit against SNCF.” He entered into contact with Harriet Tamen, who directed him to Corrine Hershkovitch. When asked why he had lodged a claim against SNCF, he said: “It is a reaction. The closest thing I can think is “revenge.” They took my parents; I want to harm them. They were colluding.”

In his interview with me, Mr. Jeruchim also mentioned a book he was constantly referring to by the US historian Susan Zuccotti on the Holocaust in France. Michel Jeruchim, like many of the interviewees I talked to, pointed to the absence of a document, a book, a report, on SNCF in WWII and the Holocaust. Many German companies facing their past in WWII have commissioned a book about their history during the period of National Socialism. As already stated, the Bachelier Report proved of little use to claimants and lawyers. For Simon Jeruchim, Michel’s older brother, the claim was only a chapter in the long journey to his past. In 1991, he had attended a big gathering of Holocaust survivors in New York with his siblings. For the first time the three could openly talk about their own story. He ended up writing a memoir in which he frankly describes his troubled relation to France.

Two events in the already long history of litigation against SNCF could possibly be considered public forums in which the company faced Holocaust victims. The first was the academic conference organized in 2000 and entitled: “A public company in war. SNCF 1939-1945.” The conference was public, organized by Rails et Histoire (Rails and History, the official Association for the History of French Railway), and commissioned by SNCF itself. The very organization of this conference, which was open to the public, proved complicated. Struggles occurred to get a seat at the tribune. The conference took place in an annex of the French National Assembly in Paris. The scientific committee also included prominent historians and high-level civil servants, with, for example, Mr. Philippe Belaval, who was the Director of the French National Archives at the time. Their purpose was to signal the importance of the conference and certify that the presentations would be rigorous. But the presence of so many high-ranking officials also raised suspicions and was interpreted by some as sanctioning an official history.

Claimants and dissident voices on the history of SNCF were able to attend the conference. Debates were lively, often bitter. Survivors and claimants did not have their place at the panel but spoke from the floor. Debates were recorded and it is to be noted that they have been transcribed and made available in the conference proceedings. For example, Kurt Werner Schaechter addressed the archivists about the accessibility of archives. He claimed that the archives were still closed or had been intentionally destroyed (which was not true, most archives being accessible at that time). In response, Philippe Belaval explained in detail the specifics of the 1979 law on archives. The law had significantly improved access to

154 Interview with Michel Jeruchim.
156 Michel Jeruchim, Out of the Shadows. Survival in Nazi-Occupied France and Making a Life in America (Stockton, NY: Tree of Life Books, 2019). When I met him, just after his book was published, he told me: “I have no anger anymore.”
158 Interview with Marie-Noëlle Polino, February 21, 2020.
159 Une entreprise publique dans la guerre. La SNCF 1939-1945, 28ff.
WWII archives, including the ones still closed because of the 60-year rule. Exemptions to the rule were easily granted to researchers and families but Belaval stated that, according to him, the law should be further reformed. The debate proved clearly impossible, all the more so when Schaechter made some strange, unfounded declarations, for example that SNCF had continued to organize deportation convoys after France was liberated.

Federman, who has studied the conflicts around SNCF’s past in detail, has written a good analysis of the 2000 conference in terms of conflict resolution.\textsuperscript{160} Using scholarship on conflict resolution (including in the domain of commercial disputes), Federman is keen at employing “narrative analysis.” Narrative analysis entails attentiveness to wording and to the exchange of ideas, as well as to the progression towards a shared narrative, if not an agreement. It also permits one to see how marginalized voices can find a place within a given public forum. She writes: “Narrative analysis makes this moral work visible – amplified voices can be acknowledged and shifted to make room for marginalized voices and previously delegitimized ways of speaking.”\textsuperscript{161} In the conclusion to her study of the dynamics that took place at SNCF conference, Sarah Federman writes:

While this historical process was done in the name of advancing French society, the post-structural analysis [which Federman conducted herself] demonstrated how the limited inclusion of survivor participants and the control of their voices restricted work that could be done.\textsuperscript{162}

Federman’s thoughtful analysis is demonstrated by numerous examples taken from transcripts of the debates. One such example – among many that could be taken from the published proceedings – is the following: after a long presentation by historian Michel Margairaz on the power dynamics between various top French and German agencies regarding the management of SNCF in occupied France, an individual in the audience said, “I came here to learn the history of SNCF and I must say I am surprised by what I have just heard. When Mr. Margairaz told us that SNCF neither collaborated, nor resisted, I consider for my part that it did both (…) I do not want to think that this conference is an alibi.”\textsuperscript{163}

Dialogue proved impossible, even when Auschwitz survivors intervened in the debate, the technicality of which prevented a clear exchange.\textsuperscript{164} The positions of the various speakers were so blurred that Jean-Jacque Fraenkel said: “We have heard this morning things about SNCF but where is SNCF on the tribune? Who represents the company?” The moderator, famous historian René Rémond, answered: “Why would you like SNCF to be represented?”\textsuperscript{165} While exchanges such as this support Federman’s argument about the event’s limitations, the fact that those very debates were transcribed in the conference proceedings is exceptional and could show that SNCF intended to give those voices a place in the conversation (and perhaps succeeded in doing so). Participants were also encouraged to fill out a form with their specific


\textsuperscript{161} Ibid., 45.

\textsuperscript{162} Ibid., 62.

\textsuperscript{163} Ibid., 129.

\textsuperscript{164} See, for example, the testimony of Nadine Heflter, from the conference floor: Ibid., 170.

\textsuperscript{165} Ibid., 171.
testimony and demands.\textsuperscript{166}

A second event can be analyzed as a public, dialogue-based forum on the past of SNCF. It did not prove more constructive, even if it took place much later than the Paris conference. The setting was also different: two separate hearings organized in March 2014 by the Maryland State Legislature in Annapolis. The hearings were set to prepare the vote for a second bill against SNCF in Maryland (the first one had passed in 2011, asking SNCF to clarify its past in WWII).\textsuperscript{167} This second bill was to request compensation. One hearing took place in the Maryland House and one in the Senate. Lawmakers, representatives of Holocaust organizations in the US, and the few activists who were also survivors confronted lobbyists and representatives of SNCF.

The lead activist and “spokesperson” on the case was going to be Leo Bretholz. A few years before the litigation he had published a memoir of his life and survival in France.\textsuperscript{168} Born in Vienna, Bretholz had fled to Luxembourg, then Belgium, was interned in France, unsuccessfully tried to reach Switzerland, and was arrested and sent to Drancy. One of the very few to manage it, he escaped from the train to Auschwitz, jumping through the small window of the train car after tearing down the iron bars. With a comrade, he reached a nearby village and was helped by two priests, one of whom gave him a train ticket to Paris.\textsuperscript{169} He had multiple legitimacies in the eyes of the US public: a survivor, a hero, a Resistance fighter, and a true American. It seems that in Maryland (and in Maryland only), public mobilization against SNCF reached a wide audience, as shown by a petition signed by almost 100,000 people in favor of the bill.

The hearings could have been an opportunity for public exchange but tensions ran too high and the issue was presented in too divisive of a manner. SNCF had brought lobbyists but also one Holocaust survivor to speak in its favor. Bretholz’s voice was not audible, as he spoke too softly. The hearings took an even more dramatic turn when Leo Bretholz suddenly died the day before the second hearing at the state Senate. Taken together, these events and dynamics symbolized the impossibility of reconciliation despite the many efforts conducted by the national railway company, the many initiatives it took to develop a politics of memory, and the considerable initiatives SNCF launched in the field of Holocaust memory and education.

\section*{The Politics of Memory Conducted by SNCF}

After the signing of the 2014 bilateral agreement in Washington, the President of SNCF America, Alain Leray, informally agreed with the US chief negotiator, Stuart Eizenstat, to pursue the work of memory and education.\textsuperscript{170} SNCF then spent a great deal of money outside the framework of the compensation agreement.

\textsuperscript{166} Une entreprise publique dans la guerre. La SNCF 1939-1945, 130.


\textsuperscript{168} Leo Bretholz and Michael Olesker, \textit{Leap into Darkness. Seven Years on the Run in Wartime Europe} (London: Constable, 1999), 169-183.

\textsuperscript{169} Ibid., 169-183.

\textsuperscript{170} Interview with Alain Leray.
Considering the extent of SNCF properties across French territory, memorial plaques in train stations and SNCF buildings represent the most extensive politics of memory. In 1945, instructions were given to all divisions of the company to display plaques for the *cheminots* who had been killed by German occupiers, mostly for their activities in the Resistance.\(^{171}\) Sixteen hundred plaques were installed, mostly within office buildings and places not accessible to the public. Interestingly, while the company promoted a public memory of SNCF as a major Resistance network, this specific memory initiative was designed to be internal.\(^{172}\) It seems that the memory of SNCF in the Resistance also had an important internal function: to recreate a self-perception or collective identity within an organization that was fractured by divergent political leanings – as was French society in the post-war years.

Initially there was no archival material that listed SNCF plaques, which shows how late the company endeavored to constitute its own archives. In the 1990s, initiatives to register those plaques surged; the plaques were then considered precious from the past. Volunteers from within the SNCF were sent to photograph them with digital cameras beginning in the early 2000s.\(^{173}\) As the plaques were internal the company buildings, only *cheminots* (or retired ones), could access them. SNCF could then determine the number of plaques (1,600) and control and preserve this specific heritage. The company safeguarded the plaques, especially when a building was modified or destroyed.

From the 1990s on, new demands for plaques related to the Holocaust emerged. SNCF favorably answered all demands and there are now 13 such plaques around French train stations. They are all visible to the public, passers-by, and travelers. For example, there is one in the Nîmes train station (in the Department of Gard) dedicated to the memory of deported children. The plaque is in the entrance hall, on the western wall.\(^{174}\) There is a plaque in Angers, and one in Lille-Fives that commemorates the Rosh Hashanah round-up. One should also add the particularly significant plaque in the *Gare de l’Est* (Eastern Station) in Paris for the memory of survivors who arrived at that very site. Train stations are also memorial places of return, which can be read in the many survivors’ memoirs.

In almost 30 years of debate, SNCF has developed numerous memory initiatives and approaches. It has also supported and held exchanges with dozens of Holocaust organizations and memorials. This is one of the many paradoxes of this unique case in memory studies. Some of the initiatives were proactive, like the commission of the Bachelier Report, or the public ceremony at Bobigny. Money generously given to the Shoah Memorial in Paris and to many others also represented a voluntary contribution, as did the donation to the CERCIL (a small but very active research and memorial center in Orléans) which was specifically dedicated to the two camps in the Loiret department – Pithiviers and Beaune-la-Rolande. Numerous convoys departed the two camps, either to reach Drancy or to travel directly to Auschwitz.\(^{175}\)

\(^{171}\) Interviews with Marie-Noëlle Polino.

\(^{172}\) See an analysis of those plaques in: Nicolas Fasseur, “Les discours de la commémoration et ses jalons monumentaux de l’entreprise : le cas de la SNCF,” *Metropolis*, “Flux”, volume 4, issue 82 (2010): 34-42, available at https://www.cairn.info/revue-flux1-2010-4-page-34.htm. A rare example of documentation has been found for La Folie train station, showing that on 7 and 8 October 1945, round-mails were sent to each division to explain how to apply for a plaque.

\(^{173}\) Interview with Marie-Noëlle Polino.

\(^{174}\) I thank Marie-Hélène Polino for providing the list and description of those plaques.

But many initiatives were only reactive, actions taken in order to tame protests or respond to some a particular criticism. For example, the “ceremony of regrets” at Bobigny in January 2011 and the donations made to Holocaust organizations in Florida when the bill was presented to the Florida State Senate. These reactive actions were perceived as such, to the point that a second donation offered for Holocaust education in Florida was turned down.

On the other hand, SNCF made the decision to continue its support for education even after the 2014 agreement on compensation was signed in Washington. This has included engagement with dozens of Holocaust organizations. The company has financed most of the existing organizations in France, for example helping with the development of Les Milles, a memorial at a former internment camp near Marseilles.\textsuperscript{176} SNCF offers train tickets to the memorial for groups and students coming from Marseilles, which is an original way of supporting its activities.

SNCF donations come with no strings attached for the memorials. The company directs neither the activities nor the educational syllabi these memorials offer. Beneficiaries have the complete freedom to conduct their work as they wish. But SNCF is often present at ceremonies. As SNCF remains discreet – sometimes very discreet – about its donations and is publicity and often shy about its achievements, the physical presence of its representatives is of importance. In this sense, SNCF “speaks” to the memory activists, to representatives of victims, and to victims themselves. It can discreetly shift the perception the public may have of the very politics of memory deployed by the national company. One recent appearance was that of Ms. Marie-Noëlle Polino, SNCF Policy Officer for Historical and Memorial Issues, at the inauguration of the Wall of Names at the Compiègne-Royallieu memorial. Royallieu was the main transit camp for Resistance fighters (the counterpart of Drancy). A wall of names already existed, but the inauguration celebrated its recreation and completion. On February 14, 2020, it was officially inaugurated. SNCF donated 20,000 Euros to support this project.\textsuperscript{177}

Beyond the project in Bobigny, SNCF also contributes to the creation of other memorials. The most recent is the transformation of the abandoned Pithiviers train station into a memorial space.\textsuperscript{178} Six convoys left the Pithiviers station and 16,000 Jews in total transited through this station and through that of Beaune-la-Rolande. The memorial space will span 400 square meters and is due to open in the near future. SNCF has also supported smaller and less visible projects, such as the writing of Henri Lang’s biography. Henri Lang was a senior manager of the pre-war SNCF. He was deported as a Jew after being arrested in the third roundup of Jews in Paris, in December 1941, and deported in the first convoy to Auschwitz-Birkenau on March 27, 1942, where he was killed. It is likely that he died two months after his arrival at Auschwitz.\textsuperscript{179} SNCF has also financed some small theater projects linked to Holocaust memory and education.

Although SNCF has not supported a significant historical project since the Bachelier Report was made public, its treatment of the company archives has been significant. Under constant suspicion of hiding

\textsuperscript{176} http://www.campdesmilles.org/home2.html.

\textsuperscript{177} Fanny Dollé, “Mémorial de Royallieu à Compiègne : 4700 patronymes manquants ajoutés sur le Mur des noms,” Le Courrier picard, February 14, 2020. The donation by SNCF is mentioned in this article of the local press but not on the website of the Royallieu Memorial.

\textsuperscript{178} http://www.memorialdelashoah.org/le-memorial-de-la-shoah-et-la-sncf-lancent-les-travaux-pour-la-creation-dun-nouveau-lieu-de-memoire-au-sein-de-lancienne-gare-de-voyageurs-de-pithiviers-loiret.

information and not granting access to its archives, the national company was forced to speed up the
construction of its archival center in Le Mans. The 2011 bill passed by the legislature of Maryland required
the archives to be fully inventoried and accessible. Even further, it required SNCF to digitize the entirety
of its WWII archival holdings. This is a unique case of digitization, all the more so because this material
has been made available online. SNCF recruited the noted Holocaust historian Michael M. Marrus of the
University of Toronto to ensure that this work was properly conducted. A US historian has also been
asked by the Maryland legislature to oversee the archival work. SNCF is probably the only major company
to have made the entirety of its WWII archives freely available online.\textsuperscript{180} Digital copies of those archives
have been given to the Shoah Memorial in Paris, to the national Israeli Holocaust Memorial Yad Vashem,
and to the United States Holocaust Memorial Museum in Washington D.C.

Even though the documents are not often used, making those 1.4 million documents available contributes
to an important aspect of transitional justice: the right to truth.\textsuperscript{181} In the absence of perpetrator trials, the
judiciary can use its procedures to establish the truth and to tell the story of hidden victims. This right
was foremost developed in Argentina, beginning in 2011. Trials were organized with no accused, only the
presence of victims and/or their families, and the rendering of past events.\textsuperscript{182} SNCF’s policy towards its
archives is unique, remarkable, and could be completed by fostering the use of this material by historians.

SNCF has also started to finance organizations fighting for the prevention of atrocities in general, such as
the New York City, Oświęcim, Buenos Aires, Kampala, and Bucharest-based Auschwitz Institute for the
Prevention of Genocide and Mass Atrocities. The railway company has become an important stakeholder
in Holocaust memorial projects and education. It has spent over 12 million Euros on various initiatives to
this end. While the many projects SNCF has been supporting do not seem to constitute a clear strategy,
they are responsive to the needs of educators and of memorials. Meeting specific, ad hoc demands can be
seen as an interesting and non-prescriptive way of supporting memory and history.\textsuperscript{183}

**Recommendations:**

SNCF could further its politics of memory in several ways:

- Commissioning historical research that goes beyond the findings of the Bachelier Report on its role in the deportations, particularly on unresolved topics such as chains of command within the company for the organization of convoys, payments for transports, knowledge about the final destinations of convoys, the role of prefectures and of French administrations, and the role of Jewish organizations in providing food rations and other supplies for the journey.

- Should SNCF decide to further support educational projects, creating a small fund to accompany the publication of a call for projects. A small

\textsuperscript{180} https://www.sncf.com/fr/groupe/patrimoine/archives-de-sncf.

\textsuperscript{181} Interview with Agnès d’Angio-Barros.


\textsuperscript{183} Interview with Sarah Federman.
committee comprised of an historian, a representative of victims, and a representative of SNCF could evaluate the applications.

- Directing more publicity to SNCF’s memory activities. For example, a list of projects should be made available on SNCF history webpages.
- Commissioning an exhaustive legal analysis of the various litigation and procedures against SNCF. This would favourably contribute to the growing corpus of studies on transitional justice and human rights law.

**Conclusion**

The “scandal” over Holocaust-era assets started timidly in 1994. By 2000, most of the claims and litigation had been settled by dozens of bilateral agreements, international conferences – such as the International Stockholm Forum on the Holocaust – and the creation of multiple foundations for research and education. Claims against SNCF started as early as 1992 and are still pending. Although the national company has engaged in numerous initiatives, lobbying, and educational and historical projects, and confronted many aspects of its troubled history, those who remember its involvement in the deportation of Jews and Resistance fighters are still not appeased.

SNCF’s confrontation with its layered history is multifaceted. It conducted an impressive and coherent politics of memory over several decades. The national company has become a major player in the field of Holocaust memory but has remained hesitant to see its own history written beyond the Bachelier Report (which does not mean it has prevented the work of outside researchers). Its strict position on a partial acknowledgment of its responsibilities in the Holocaust and its decision not to consider ways to provide further redress to survivors and their families beyond compensation paid by the French state were accompanied by generous donations to Holocaust institutions in both France and the United States.

As time passes and controversies that were started almost 40 years ago fade, points of contention appear less stringent. While one lawsuit is still pending, future claims are unlikely. The last remaining Holocaust survivors are passing away and so are those who were orphaned by the Holocaust. This does not mean that the legacies of SNCF and of its role in deportations will not be considered in the future, though, as claims for reparations, memorialization, and recognition related to even older crimes against humanity have appeared, such as those for the Transatlantic Slave Trade.

The case study of SNCF’s past and ongoing efforts to deal with its Holocaust history informs a broad range of specialized and non-specialized audiences about best practices for corporate actors in developing approaches to deal with the past. It is an extraordinary case of transitional justice, of how difficult it is to confront memory. The transatlantic dimension of the case, the long timespan, and the contrast between the company’s many efforts and measures for transparency with the anger that still runs high all contribute to making it exceptional. The SNCF case opens in new ways questions of territoriality, of immunity, of reconciliation, of memory, and of corporate responsibility.

In the end, SNCF’s politics of memory have only partly dissipated suspicions towards the railway company. Donations have been suspected of buying appeasement, as their distributions and choice of beneficiaries were not conducted through a transparent and open process. Lessons may be drawn from that regarding a fundamental necessity of transitional justice: direct and public conversations with communities of
survivors must be at the heart of attempts to reconcile with the violent past.

List of Interviews:

- Agnès d’Angio-Barros (October 18, 2018, Saint-Denis)
- Catherine Bernstein (October 6, 2018, by phone)
- David Barnouw (February 15, 2020, Amsterdam)
- Ludivine Broch (September 6, 2019, by phone)
- François Croquette (January 13, 2020, by phone)
- Laurent Douzou; Bernard Emsellem (November 12, 2019, Paris)
- Sarah Federman (November 14, 2019, Washington D.C.)
- Jacques Fredj (November 27, 2019, by phone)
- Corinne Hershkovitch (February 12, 2020, by phone)
- Simon Jeruchim (January 4, 2020, Silver Springs, Maryland)
- Serge Klarsfeld (September 6, 2019, by phone)
- Alain Leray (October 15, 2018, Saint-Denis)
- Deborah Lipstadt (January 12, 2020, Washington D.C.)
- Michael M. Marrus (September 4, 2019, by phone)
- Owen Pell (November 5, 2019, New York)
- Marie-Hélène Polino (February 21, 2020, by Skype)
- Harriet Tamen (February 14, 2020, by phone)
- Richard H. Weisberg (December 5, 2019, by phone)
When Litigation and Proposed Legislation Frame Memories of the Holocaust: An Historical Perspective on SNCF and the Historical Narratives Used in the Proposed United States Holocaust Rail Justice Act

Owen C. Pell

Introduction

Between 2009 and 2011, a series of bills were proposed in the United States House of Representatives and Senate aimed at allowing private US lawsuits to proceed against SNCF for its role in transporting Jews from France to Nazi German concentration and death camps during the Holocaust. Collectively, this legislation was known as the Holocaust Rail Justice Act. The HRJA was premised on so-called legislative “Findings” relating to SNCF’s alleged conduct during and after World War II. Although the HRJA was not enacted, the Findings are important because they highlight the tensions that can arise with respect to history and assessments of responsibility when historical narratives are framed for purposes of litigation or legislation.

Prior to World War II, SNCF was a company controlled and wholly operated by the French state. After France was conquered by Germany, SNCF (an agency within the Vichy government) was placed under Nazi control within the German Army’s Transportation Department. As discussed below, however, the Findings portray SNCF as an independent, for profit, corporate entity – a narrative that is at odds with the historical record. This paper traces the history of US litigation relating to the Holocaust in France, how that litigation eventually focused on SNCF, and how challenges surrounding the litigation against SNCF resulted in efforts to enact the Holocaust Rail Justice Act. Specifically, the Findings presented in the HRJA reflected three events that preceded the HRJA. First, from 1995-2001, private plaintiffs pursued US civil litigation seeking billions of dollars in damages from French financial institutions for collaborating with German and Vichy authorities in expropriating assets from their Jewish customers and for failing to make restitution for those expropriations after World War II. Neither the French state nor SNCF were sued in these lawsuits, in part because the plaintiffs knew that issues of foreign sovereign immunity under US law...
would greatly complicate or frustrate their litigation against French banks.

Second, in 2001, the French Holocaust litigation was settled through an agreement between the United States and France that provided for a fund of almost $500 million and was intended to provide (i) “full disgorgement” by French banks (including La Poste, a French government agency) with respect to bank assets seized from Jews in France during World War II; and (ii) compensation for other assets seized from Jews by French government entities during World War II. Given the nature of the litigation claims being settled (i.e., claims against banks), the US-France settlement did not address the pain and suffering experienced by those deported from France during the Holocaust, including those who were deported from France by train. Although these personal injury claims were eligible for compensation from a separate €10 billion settlement fund established under an agreement between the United States and Germany, the US-German settlement did not address France’s responsibility in the deportation of Jews from France.

Third, separate civil litigation against the French state and SNCF had been dismissed by US courts under the US Foreign Sovereign Immunities Act (28 USC. §§ 1602-1611), and lawsuits in France against SNCF also had failed to advance. Hence, the HRJA was designed to address perceived gaps in the various Holocaust settlements with respect to victims of the Holocaust in France by removing the FSIA as a jurisdictional bar to US claims against SNCF – i.e., plaintiffs still would have had to litigate and prove their claims regarding SNCF’s alleged role in the Holocaust.

But, in attempting to clear the way for litigation against SNCF, the HRJA and its proposed Findings raised serious historical issues, including with respect to how France responded to the Holocaust over time. By the time of the HRJA, France had acknowledged the role of the Vichy French regime in the Holocaust and commissioned broad research into French Holocaust history, including with respect to assets stolen from Jews in France. As noted above, France had agreed to pay various forms of reparations for wrongs committed during the Holocaust in France but left certain claims, including with respect to the pain and suffering experienced by deportees, to Germany, as the ultimate and principal state responsible for the Holocaust. The litigation directed at SNCF was intended to ignore this broader historical context and extract additional reparations from France by treating SNCF as an entity “independent” from the French state that thereby bore some separate portion of France’s liability to Holocaust victims.

Given that litigation and/or legislative processes often play important roles in framing how societies address genocide and other mass atrocity crimes, it is important to understand how these processes can affect the way in which history is presented. The SNCF case frames important issues relating to organizational “independence” in the face of government action and direction – issues that often arise in the context of assessing corporate responsibility for genocide or other mass atrocity crimes. Understanding how litigation positions or proposed legislation have the potential to complicate efforts at historical understanding also may inform how transitional justice processes should approach corporate responsibility as part of our efforts to foster long-term genocide prevention.
Overview and Organization

With regard to SNCF, the various HRJA bills contained Findings asserting that:

- During World War II, over 76,000 Jews and “thousands of other persons” were deported from France to German concentration or death camps like Auschwitz-Birkenau and Buchenwald on trains owned and operated by SNCF; and that thousands of other persons were transported between holding camps within France on SNCF trains, including US citizens and residents, or their relatives, and US airmen shot down over France.

- SNCF was an independent corporate entity that remained independent during World War II and operated the deportation trains for a profit, as ordinary commercial transactions; and that SNCF remained under French civilian control throughout World War II and allegedly collaborated willingly with the Nazi regime.

- Attempts had been made to sue SNCF for its role in the Holocaust. Among other things, those lawsuits alleged that:
  
  o SNCF provided the necessary rolling stock, scheduled the train departures, supplied the employees to operate the trains bound for concentration or holding camps, and charged an ordinary passenger fare for the deportations – calculating per person and per kilometer fees which applied to sick, elderly, pregnant women, babies, and young children forced on to the trains.
  
  o SNCF cleaned and disinfected the train cars after each trip, and that SNCF knew that the conditions on the deportation trains were inhumane and often fatal.
  
  o SNCF had not made its full records regarding the deportations available to the plaintiffs (or the public).
  
  o SNCF had not disgorged the money that it was paid for the deportations or otherwise compensated the deportees or their heirs for its actions during the Holocaust.
  
  o SNCF’s conduct with respect to the deportation trains violated principles of international law, including under the Nuremberg Charter, the rulings of the Nuremberg Tribunal, and the Hague Convention of 1907.

- Those lawsuits had been dismissed because, as an entity owned by the French government, SNCF was immune from the jurisdiction of US courts under the FSIA.

- In addition, French courts would not consider claims against SNCF with respect to these claims.
• No treaties or executive agreements between the United States and France provide reparations and/or restitution for personal injury or death relating to SNCF’s transportation or deportation activities between June 22, 1940 and December 31, 1944.184

This paper will discuss why these Findings were framed as they were, contextualize the claims against SNCF within the broader context of attempts by private plaintiffs to recover Holocaust reparations from France in the United States, and consider how the Findings relate to the historical record. Specifically, this paper will review:

• The French Bank Holocaust Litigation in the US courts.
• Settlement of those cases in the 2001 US-France Executive Agreement.
• Post-settlement attempts to sue SNCF in US courts.
• Proposed legislation in US states targeting SNCF.
• Proposed HRJA legislation regarding SNCF.
• The historical issues related to SNCF, as raised by the proposed Findings in the HRJA.
• The US-France Agreement to resolve Holocaust-related issues relating to SNCF.
• Conclusions that can be drawn from the HRJA process and how we resolve tensions between legal and historical responsibility, particularly as they may relate to corporations.

The French Bank Holocaust Litigation

In 1997, claimants representing a purported class of Holocaust survivors and their families sued, in US federal court, a group of French, British, and US banks and financial institutions (“banks”) that had done business in France during World War II. The cases were consolidated before US District Judge Sterling Johnson under the headings Bodner v. Banque Paribas, 97 Civ. 7433 (E.D.N.Y.) and Benisti v. Banque Paribas, 98 Civ. 7851 (E.D.N.Y.) (the “French Bank Holocaust Litigation”). In addition to the largest French banks (e.g., Crédit Lyonnais, Crédit Agricole, Société Générale, Banque Paribas, and Crédit Commercial de France), claims were asserted against Barclays Bank, J.P. Morgan & Co., and Chase Manhattan Bank. The plaintiffs alleged that the defendant-banks had acted prematurely in assisting the Vichy and German authorities in their efforts to freeze and then seize the property of Jews in France, including assets on deposit in the banks. The plaintiffs asserted that the banks had gone beyond what Vichy or German laws and regulations required, or had begun enforcing those laws or regulations prior to applicable commencement dates, and that these actions by the banks, among other things, undermined the ability of Jews in France to escape the Holocaust.185 Nothing in the French Bank Holocaust Litigation mentioned SNCF, nor did the case seek

damages for the pain and suffering that deportees suffered in being transported by rail to detention or concentration/death camps or that other persons (like US airmen) suffered in being transported to Nazi camps on SNCF trains.

The theory of recovery in the French Bank Holocaust Litigation was designed to avoid the plaintiffs having to sue either France or Germany for the losses of French Jews in the Holocaust. As with other Holocaust-related cases then pending, the plaintiffs understood that suing foreign states in US courts was unworkable based on the FSIA and the limits it places on the jurisdiction of US courts, especially with respect to tortious behavior. Under the FSIA, a foreign state (or state-owned entity) is presumed immune from claims in US courts unless the plaintiff can establish that one of the exceptions to immunity enumerated in the FSIA applies. With regard to tortious acts, no US jurisdiction is available unless the entire tort (i.e., the act and injury) occurs in the United States.186 Given that the Holocaust occurred in Europe, it was not feasible to sue Germany or Austria directly for the tortious acts of the Third Reich, or France for the tortious acts of Vichy. As such, in the French Bank Holocaust Litigation, plaintiffs had to allege that the defendant-banks collaborated with the Germans and Vichy French so that they could be liable for aiding the crimes committed by those states, but also that the banks acted independently so that the banks could be liable for the harms then suffered by Jews in the Holocaust. In August 2000, Judge Johnson denied the defendants’ motions to dismiss the French Bank Holocaust Litigation.187 At the same time, however, the Clinton Administration began organized efforts, under the leadership of Deputy Secretary of Treasury Stuart Eizenstat, to settle the various pending Holocaust-related litigation with respect to German companies and banks, French banks, Austrian banks, Swiss banks, and international insurance companies that had issued insurance products to European Jews. These settlements were completed in 2000 and early 2001.

2001 US-France Executive Agreement Settling Holocaust Litigation

On January 18, 2001, the United States and France entered into an Executive Agreement to resolve claims relating to property spoliation (i.e., the plundering or looting of property) with respect to Jews in France during the Holocaust.188 An executive agreement was used so that no Senate ratification would be needed to give effect to the agreement. As an expression of the foreign affairs power of the US Executive Branch, an executive agreement is entitled to great weight from US courts, although it does not have the same preclusive weight as a ratified treaty, which is like an enacted statute.189

The US-France Executive Agreement (the “Agreement”) recognized that the French state had taken responsibility for its actions with respect to the Holocaust in France. The Agreement also recognized that (i) France had enacted legislation after World War II (indeed, after the liberation of France in late 1944) providing restitution to banking customers who had suffered spoliation of their banking assets and to Jews who also had suffered property spoliation by certain entities of the French state (including La Poste, and municipalities), and providing certain other benefits for those persecuted by the Germans

186 See: 28 USC. § 1605(a)(5), which limits tort claims against foreign states to money damage claims “for personal injury or death, or damage to or loss of property, occurring in the United States . . . .”
or Vichy; and (ii) French archival records (and the records of French banks) confirmed that many Jewish customers had applied for and received some restitution under these French laws. The Agreement also recognized that France had established a special fund for the orphans of French Holocaust victims and a foundation to disburse funds relating to property and other assets spoliated from Jews in France during the Holocaust period.

Under the Agreement, the defendant-banks in the French Bank Holocaust Litigation and the French state made almost $500 million available to the newly created French fund and foundation. The focus of the claims process was bank and other discrete assets (e.g., apartment leases, other immovable property, and home furnishings in seized residences). Funds were to be disbursed to Holocaust victims and their heirs, based on a claims process that would allow a victim's claims to be supplemented based on research done by a team of archivists who would seek records about additional property spoliation that may have been suffered by a victim or their family, including property losses attributable to La Poste (which also served as a widely-used savings bank) and other French government entities (including local governments that seized leases and homes). As stated by the Agreement, the purpose of this process was:

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\text{to accomplish full disgorgement by the French Government, the Banks, and other private and public institutions of any unjust enrichment based on assets left with such institutions and never restituted to their former owners, as well as a substantial contribution in recognition of the suffering of Holocaust victims in France.}
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On the basis of this Agreement, the United States agreed to seek full and final dismissal of the French Bank Holocaust Litigation (and any subsequent similar litigation), arguing that the Agreement represented the important foreign policy interests of the United States with respect to its longstanding relationship with France. The US also argued that the Agreement provided the best available means for providing compensation to victims of the Holocaust in France (especially when compared to the risks inherent in the pending litigation, including the risk that the claims would fail or result in judgments that could not be enforced in France or elsewhere).

Notably, the US-France Agreement did not address the pain and suffering of French Jews deported to German camps, ghettos, or killing sites during the Holocaust. The reason for this is two-fold. First, nothing in the French Holocaust Bank Litigation related to these types of claims. Second, it was broadly understood that those types of tort-based reparation claims were expressly covered by the July 2000 US-Germany Agreement Concerning the Foundation “Remembrance, Responsibility and the Future” (the “US-Germany Agreement”). Under the US-Germany Agreement, the United States agreed to provide Germany, as well as German banks and companies, with the same kind of legal peace provided under the US-France Agreement. In return, Germany, as part of reaffirming its ultimate and principal responsibility for the Holocaust, agreed to establish and administer a €10 billion fund, which included contributions of almost €5 billion from German banks and companies (with the remainder coming from the German state).\(^{190}\) This fund would, among other things, pay reparations to any Holocaust survivor or their heirs for their pain and suffering with respect to deportation and slave or forced labor during the Holocaust. These reparations were made in addition to any other social welfare benefits or reparations that otherwise might have been paid under other German or other national reparation laws.

Even though the US-Germany Agreement was designed to resolve litigation involving German banks and companies, the actual settlement was drafted more broadly. Specifically, the governing principles established under the US-German Agreement provided that the purpose of the fund was to “make payments . . . to those who suffered as private and public sector forced or slave laborers and those who suffered at the hands of German companies during the National Socialist era.” In addition, the US-German Agreement expressly covered deportees from other nations, allowing claims by “persons who were held in concentration camps . . . or in another place of confinement or ghetto under comparable conditions and were subject to forced labor” and by “persons who were deported from their homelands into the territory of the 1937 borders of the German Reich or to a German-occupied area, and were held in prison-like or extremely harsh living conditions . . .”

Thus, the class of people deported on SNCF trains were eligible for reparations under the US-Germany Agreement, and there is good reason to believe that many of these victims and their heirs applied for reparations. Interestingly, neither France nor SNCF sought to link any amounts paid under the US-France Agreement to compliment reparations to be paid under the US-Germany Agreement. Accordingly, as noted above, nothing in the US-France Agreement addressed non-property Holocaust reparation claims relating to France. This gap set the stage for the US litigation and eventual proposed US legislation relating to SNCF.

**Post-Settlement Attempts to Sue SNCF in US Courts**

As the US-France Agreement was being negotiated, a new lawsuit had commenced in US courts, this time against SNCF. In Abrams v. Société Nationale des Chemins de Fer Français, 00-CV-5326 (E.D.N.Y.), the plaintiffs sued SNCF on behalf of all those deported from France on SNCF trains to Nazi concentration or death camps. The plaintiffs claimed that the FSIA did not apply to the case (and that US courts therefore could exercise jurisdiction over the case) because SNCF’s actions had occurred during World War II, well before the FSIA was enacted. Ultimately, this position was rejected by the US Supreme Court, which held that the FSIA applied to a current claim brought against SNCF.

Plaintiffs then started a new lawsuit, suing not only SNCF but also the Republic of France and its state-owned fisc, the Caisse des Dépôts et Consignations (the “CDC”). Intent on avoiding the requirements of the FSIA tort exception, the plaintiffs’ lawyers focused on another of the exceptions to sovereign immunity under the FSIA by alleging that France, the CDC, and SNCF had stolen the property of Jewish deportees and either retained that property or profits derived from that property, including through commercial

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192 Ibid., Art. 4.
193 Indeed, the Abrams case commenced in late 2000, before the US-France Agreement. Hence, there was a time period when France (or SNCF) could have attempted to cover this litigation or these types of claims under the settlement it was negotiating with the United States. This did not happen.
contacts with the United States. In 2008, that lawsuit was dismissed, including on the grounds that the plaintiffs had presented no credible evidence that any of the defendants still retained any property of the plaintiffs. The claims against the French state and CDC were dismissed on the grounds of the US-France Agreement. Thus, as of 2008-09, US litigation claims against SNCF looked to hold little prospect of success.

Proposed Legislation in Various US States Targeting SNCF

Beginning in 2003-04, bills began to be introduced in the US Congress aimed at overturning the result in Abrams (and, ultimately, Freund). The proposed bills took two forms. Most simply attempted to block application of the FSIA to claims relating to any railway-related entity that might claim sovereign immunity with respect to claims premised on Holocaust-related deportations from France. None of these bills advanced.

In 2009, as part of its response to the 2007-2008 Financial Crisis, the US Congress passed the American Recovery and Reinvestment Act, which contained an array of programs to further employment opportunities and economic growth. One proposal under this legislation was the High-Speed Rail Initiative, an $8 billion initiative under the auspices of the US Department of Transportation. Under this program, the Transportation Department ultimately designated a group of eligible high-speed rail corridors, and Congress assessed a group of companies that could be considered to bid to develop high-speed mass transit. That list included SNCF.

In response, the plaintiffs from the unsuccessful US litigation against SNCF began lobbying for US states to prevent or hamper SNCF’s ability to bid on high-speed rail contracts. In 2010, California Assembly Bill 619 would have required the disclosure of any bidder’s “direct involvement” in the deportation of individuals to Nazi camps and any records of restitution efforts made on behalf of that bidder. “Direct involvement” was defined as “ownership or operation of the trains on which persons were deported to extermination camps, work camps, concentration camps, prisoner of war camps, or any similar camps during the period from January 1, 1942 through December 31, 1944.” The bill cleared the California legislature before being vetoed by California Governor Arnold Schwarzenegger. A similar bill was passed in Maryland.

195 Freund v. Société Nationale des Chemins de Fer Français, 06 Civ. 1637 (S.D.N.Y.). Under 28 USC. § 1605(a)(3), the FSIA allows claims against sovereigns based on claims for the taking of property in violation of international law, if that property or property relating to that property has some connection to the United States. Plaintiffs also argued that they could not sue SNCF in France because the French courts had rejected claims against SNCF based on the ultimate responsibility of the Vichy and German governments for the Holocaust in France. See: Lipietz v. Prefect of Haute-Garonne and SNCF, 06BX01570 (Bordeaux Admin. Ct. 2007). See also the discussion in: Michael R. Marrus, “French Railways and the Deportation of Jews in 1944,” in David Bankier and Dan Michman eds., Holocaust and Justice (Yad Vashem, 2010).


197 Generally, identical versions of the bills were introduced in the US House of Representatives and Senate. See, e.g.; H.R. 4237 and S. 28 (111th Cong.); H.R. 3713 and S. 3462 (110th Cong.); H.R. 474 (109th Cong.); H.R. 2954 (108th Cong.).


200 AB-619 Transportation projects: high-speed rail, Sec. 2 (Cal. 2010).
but then was preempted by the US-France settlement as to SNCF, discussed below.\textsuperscript{201}

What these early bills had in common was requiring disclosure by SNCF about its activities in France during the Holocaust, and its approach to reparations or restitution. The laws did not prevent SNCF from otherwise bidding, nor did the state laws open SNCF up to US lawsuits relating to their activities during World War II. Rather, these bills were aimed at drawing negative attention to SNCF, and at raising the risk that inadequate disclosure either could be used as an independent basis for liability or for disqualifying any SNCF high-speed rail bid. Ultimately, a similar type of bill was proposed in the US House of Representatives.\textsuperscript{202}

But, as time progressed, the focus of the proposed legislation relating to SNCF switched back to opening the way for US litigation. The focus of the victims’ lawyers was on replicating the success of the French Bank Holocaust Litigation and this required the threat of US litigation. Reopening US courts to claims against SNCF thus became the focus of Congressional efforts in 2009-2011, which culminated in public hearings in November 2011.\textsuperscript{203} All the legislation proposed at this time, however, shared a flaw that ultimately weakened the lobbying efforts for these bills.

\textbf{Proposed Federal Legislation Regarding SNCF}

As noted above, the federal bills on which hearings were held in late 2011 relating to SNCF’s role in the Holocaust contained specific Findings about SNCF’s alleged actions during the Holocaust and the unsuccessful efforts by Holocaust survivors and their heirs to sue SNCF in the United States for its role in transporting Jews from France. Significantly, although the Findings did mention France and SNCF, the operative sections of all the Congressional bills did not limit the reach of the proposed laws to SNCF (or “French-government controlled or owned entities”). This was significant because the preamble or findings attendant to legislation generally are not binding and, absent express reference in the operative sections of legislation, also do not then limit the scope of the legislation (there was no limitation by express reference in the SNCF-related bills). Moreover, generally, US state and federal legislation cannot single out one entity for legislative sanction, as these types of legislative acts may be attacked as unconstitutional (as prohibited “bills of attainder”).

Thus, the Congressional bills relating to SNCF were drafted broadly and generally – indeed, they did not restrict claims to deportees from France. But, allowing any railroad in Europe to be sued for Holocaust-related deportations implicated all European national railroads in nations ultimately controlled by

\textsuperscript{201} SB 479 Transportation – Procurement for MARC Service (Md. May 19, 2011).

\textsuperscript{202} See: H.R. 6347 (111\textsuperscript{th} Cong.).

\textsuperscript{203} The SNCF-related legislation moved in parallel with other proposed legislation that focused on another perceived shortfall in the Holocaust settlements: insurance claims relating to Holocaust victims. Insurance-related Holocaust litigation had been the subject of a settlement negotiated by Secretary Eizenstat, under which over $300 million was distributed by the International Commission on Holocaust Era Insurance Claims (“ICHEIC”). Almost immediately, however, claimants were unhappy with the ICHEIC process, including for an alleged lack of transparency. This led to a series of proposed bills, all of which demanded more accountability from ICHEIC, absent which, Congress might demand greater regulation of insurance companies with Holocaust-related claims or allow some claims relating to Holocaust-era insurance to be reopened. See, e.g.: H.R. 890 and S. 466 (112\textsuperscript{th} Cong.); H.R. 4596 and S. 4033 (111\textsuperscript{th} Cong.); H.R. 1746 (110\textsuperscript{th} Cong.); H.R. 743 (109\textsuperscript{th} Cong.); H.R. 1210, 1905, 3129 and S. 972 (108\textsuperscript{th} Cong.). The November 2011 hearings relating to SNCF were combined with hearings relating to ICHEIC issues.
Germany. This drafting decision directly implicated at least one other approved high-speed rail bidder: Deutsche Bahn – the German national railway, which was a successor entity to the Deutsche Reichsbahn that transported Jews to Nazi concentration camps from around Europe. However, Deutsche Bahn had contributed to, and was expressly protected by, the €10 billion US-Germany Agreement. This drafting flaw, and the unwillingness of victims’ lawyers to embrace amendments limiting the scope of the proposed legislation to French entities, ultimately drew attention to other historical issues raised by the Findings – which created serious questions about whether these bills could, or should, proceed.

The Issues Raised by the Proposed Legislative Findings

By 2011, the victims’ lawyers seeking legislation directed at SNCF had focused on a particular historical narrative. This narrative was driven by their litigation need to separate SNCF from prior settlements – and US foreign policy interests in those prior Holocaust settlements. This narrative was set forth in the Findings used in H.R. 1193 and S. 634. The historical issues created by the Findings broke down into several categories, and ultimately raised serious issues for both Congressional and Executive Branch leaders considering the bills.

The Availability of Historical Data on SNCF’s Wartime Actions

The Findings state that SNCF hid its wartime conduct prior to US lawsuits against SNCF. This was not true. Although scholars could debate how accessible SNCF’s archives may have been – especially with regard to the records relating to demands for payment regarding the deportations – facts relating to SNCF’s wartime activities had been investigated and made public before the US-France Agreement or SNCF litigation. SNCF began a historical examination in 1992. In 1996, a 914-page two-volume report on its World War II activities was published, which included an appendix of historical documents. As of 1996, SNCF’s archives were open and SNCF had issued an executive summary in English of its historical report (the “SNCF Summary Report”).

SNCF’s Alleged Corporate Independence

In order to work around the US-France Agreement and the US-Germany Agreement, the victims’ lawyers lobbying for the HRJA had to create an historical narrative that SNCF operated independently. Under this approach: (i) SNCF’s conduct was “French” conduct – so as not to be fully accounted for by Germany’s settlement of Holocaust claims; and (ii) was not “Vichy” conduct – so as not to be fully accounted for by the settlement of French state spoliation under the US-France Agreement. Accordingly, the Findings

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204 This issue is beyond the scope of this paper, but could have affected national railways in the Netherlands, Belgium, Italy, Greece, Bulgaria, Austria, the Czech and Slovak Republics, Hungary, and Romania. It is unclear whether those lobbying for the HRJA were attempting to open a new chapter in Holocaust-related litigation. There were then pending deportation-related claims against Hungary’s national railway, a case that continues to this day. See: Simon v. Republic of Hungary, No. 17-7146 (D.C. Cir. 2018).

205 It had been a hallmark of US Holocaust litigation to argue that companies which had participated in the Holocaust had hidden their actions, which also allowed plaintiffs’ lawyers to argue that normal statutes of limitation should not apply to their claims because the defendants had hidden their conduct. This had been a particularly effective argument in the Holocaust litigation against the Swiss banks.


stated that SNCF was an independent corporate entity that remained independent during World War II, operated deportation trains for profit just like any independent business, and remained under French civilian control throughout World War II so as to be collaborating freely and willingly with the Third Reich.

While there is absolutely no doubt that the Vichy regime collaborated willingly in the Holocaust and sought to aid Germany’s plans to round-up and deport Jews, that is different from establishing that SNCF had the ability to act independently of Vichy, including in providing trains to deport Jews from France. Issues around this point further undermined the bills and complicated efforts to pass them.

Upon the conquest of France, SNCF expressly came under the control of the German Army and the Vichy state. Article 13 of the Franco-German Armistice Agreement required that the national railway system in Occupied France be made available to Germany. Although SNCF owned its equipment, “all French railroad operations, routes, and inland waterways in the occupied territory [were] at the full and complete disposal of the German Head of Transportation.” This was significant, especially considering that two-thirds of SNCF’s tracks were within Occupied France and not Vichy. The German Head of Transportation in France was the Wehrmachtverkehrsdirektion (the German Army Transport Directorate or WVD). A German general was the commander of the railway transport department in Paris. He oversaw the Deutsche Reichsbahn officials who oversaw SNCF. That German general reported to a general in Germany who reported to the German Army High Command. The German commanders of the WVD issued direct orders to SNCF making clear that SNCF and all its rail networks were to be at the “full and entire disposal of the German Transport Chief.” A second general order issued by SNCF and based on those German orders stated that “all SNCF civil servants, staff and workers [were] subject to German laws of war.” That general order listed obligations owed to the German authorities, including the types of rolling stock to be used for certain types of transports and the expected behavior owed by SNCF employees to the Germans. The order ended with the statement that “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.”

In addition, SNCF’s corporate structure was changed by German and Vichy authorities. In 1940, SNCF’s Board was reduced from 33 to 12, and the Management Committee was eliminated so as to tighten Vichy control. The WVD could, and did, replace SNCF officials at will. Hence, the idea that SNCF was an independent corporate entity, under “civilian control” and free to do what it wanted, is not well-supported.

The historical record also shows that German authorities were willing to kill SNCF employees for attempting to resist the Germans. While there does not appear to be evidence of SNCF employees being punished for attempting to assist or save Jews, there is ample evidence to support the idea that resisting the Germans carried serious consequences. This was particularly true after November 1942

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209 SNCF Report, 4.
210 Ibid.
211 SNCF Report, 7-8.
212 See: Wehrmacht Verkehrsdirektion, Ordre du Jour Nos. 35 and 36 (Paris, 1940).
213 SNCF Report, 7.
214 Ibid., 5.
when, following the Allied invasion of North Africa, Germany occupied the remainder of France (and sped up the pace of deportations). Thereafter, Germany increasingly took SNCF employees hostage in connection with Resistance activity in France, and summarily executed SNCF employees. As Resistance activity involving SNCF employees increased, so did German reprisals against SNCF personnel.\textsuperscript{215} Again, while this evidence in no way absolves SNCF from its participation in the deportation of Jews, it casts the idea of SNCF’s independence, civilian control, and “collaboration” in a different light because any SNCF employee had to confront the real risk that resisting the Germans could have mortal consequences.

Any measure of corporate independence also involves a business controlling its assets and their use. The historical record shows that SNCF had little effective control over its assets. Germany expropriated and “rented” (on demand) SNCF equipment to meet German war needs – which grew dramatically as the war progressed. By late 1943, 30% of SNCF’s locomotives, 52% of its freight cars, and 36% of its passenger cars had been taken for German use.\textsuperscript{216} Germany’s use of rolling stock from railroads across conquered Europe was part of a plan devised by Albert Speer which envisioned centralized rolling stock management coordinated for German industrial needs.\textsuperscript{217} This was strong evidence that SNCF was not capable of controlling its own assets or how they were used.

\textbf{Did SNCF Play an Independent Role in the Deportations?}

The Findings state that SNCF provided the necessary rolling stock, scheduled the train departures, and supplied the employees to operate the trains bound for concentration or holding camps – again, consistent with the idea that SNCF was acting voluntarily, independently, and willingly. But the fact that SNCF provided equipment and personnel are, in and of themselves, proof of little, given that those actions by themselves do not prove independence from Germany or Vichy. The more serious allegation is that SNCF “scheduled” the train departures. Once again, this appears at odds with the historical record.

There does not appear to be evidence showing that SNCF initiated deportations or deportation transports. Rather, French deportations were initiated and coordinated by the Reich Security Office overseen by Adolf Eichmann. The Reich administrators dictated what types of train cars would be used and how local police authorities were to load and order the trains. The fact of this standardization not only is well-known but was a hallmark of Reich administrators like Eichmann. Orders then were passed down through the German authorities, with the WVD – which oversaw SNCF – ultimately setting the conditions and schedules for each deportation convoy.\textsuperscript{218} Further evidence of SNCF’s lack of independence is that early deportation trains probably used German rolling stock because it was a German priority to get German rolling stock moving back toward Germany or to the Eastern Front. German engines also were substituted for SNCF engines at the French frontier (the Germans generally allowed only German engineers to drive trains into German concentration camps). Finally, SNCF rolling stock used in deportations generally remained in Germany.\textsuperscript{219} Thus, it is not clear on what basis the Findings state that after the deportations

\textsuperscript{215} SNCF Report, 16-18, 19-21, 22-23; see also: Michael R. Marrus, “French Railways and the Deportation of Jews in 1944,” in David Bankier & Dan Michman eds., \textit{Holocaust and Justice} (Yad Vashem, 2010), 258. Almost 1,700 SNCF employees were killed by the end of 1944.

\textsuperscript{216} SNCF Report, 5-6, 10, 13-14, 20.

\textsuperscript{217} Ibid., 14.

\textsuperscript{218} Ibid., 14-16.

\textsuperscript{219} Ibid., 15-16.
SNCF employees cleaned the trains and knew the horrors experienced on them.

What would seem more likely from the historical record is that SNCF employees cleaned trains used for internal transport of Jews to detention camps around France, which must have shown the deplorable conditions and hardships suffered by deportees, and that SNCF employees must have known how Jews were crammed into the trains under inhuman conditions.

This distinction is raised because it goes to the nature (and narrative) of SNCF’s alleged collaboration. In one narrative, as pressed by the victims’ lawyers, SNCF was a willing and independent actor joining with the Germans in mistreating Jews being deported – the same narrative that had worked in the French Bank Holocaust Litigation. In the other narrative, SNCF was being directed by the Germans, and was not resisting – including because they were aware of the consequences if resistance was offered. The latter undoubtedly carries with it responsibilities and a need for historical openness and reconciliation but is nonetheless very different from being a willing and independent participant in genocide.220

Again, none of this is intended to excuse the collaboration of the Vichy French government, of which SNCF was a major and important part. However, there is a distinct historical difference between SNCF following German orders as a government department within a conquered state, and SNCF initiating the deportation of Jews from France to assist the Germans in carrying out the Holocaust. The Findings could be read to suggest the latter, but the historical record does not appear to support that.

**The Idea That SNCF Profited from Jewish Deportations**

The Findings state that SNCF profited from the deportations and then failed to disgorge those profits. This relates to SNCF’s alleged independent business status, willing collaboration, and failure to do justice to Holocaust victims. Also, there is the implicit claim here that the “profit” was significant, such that SNCF has furthered its business interests via the suffering of Jews during the Holocaust, and that the current appreciated value of this “profit” is a way of measuring the reparations owed (again, a narrative used in the French Bank Holocaust Litigation).

There are documents showing that SNCF issued invoices in 1944 for at least some of the deportation transports, that payment was sought on these invoices, and that payment continued to be sought even after France was liberated.221 But the fact that payment was sought, and even that some payment may have been received (although it is unclear whether there is evidence of payment on invoices relating to deportation trains), does not necessarily support either the historical fact of Holocaust-related profit or of a profit so great that it has helped SNCF to this day.

It is axiomatic that business profit cannot be derived from one transaction. Rather, profit requires an understanding of a business’ operating expenses (i.e., its costs of doing business) and its actual receipt

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220 The Findings also misstate international law and the Nuremberg Tribunal rulings after World War II. No companies were indicted, prosecuted, or convicted in the Nuremberg proceedings. Corporate principals were prosecuted, typically for use of slave and forced labor, and, in particular, for how they treated laborers once the companies had control of them.

221 See, e.g.: “Letter to the Prefect of Haute-Garonne from Chief of Subdivision of Revenue Control” (Expense Accounting) (1944); “Invoice No. 45,313 (camps d’internement, centres de séjour surveillée, internes, expulzés, etc.)” (1944); “Chief of Camp Letter (J’ai l’honneur de vous retourner par le recommandé et dument revêtu de ma signature, le Relevé et 1er Trimestre 1944 présentes par la S.N.C.F.).”
of funds from all the different transactions in which it engages. For a business like SNCF, which delivers services day-after-day, profit is measured cumulatively, not on a transaction-by-transaction basis. Thus, even if a business knows that its standard rate allows it to be profitable, that is true only if that standard rate actually is achieved enough times to cover the ongoing costs of the business – including the times when the standard rate is not achieved or the times when unplanned losses or costs are incurred. To the extent profits are made, there must then be an assessment of whether profits were retained/saved and reinvested in the business. The Findings do not address these issues.

In a broad sense, it is hard to see how SNCF, as a department of the Vichy French government, profited from deportations when the Vichy French government suffered massive financial losses from the German occupation, including through reparations imposed on France by the Third Reich after France was conquered. Article 18 of the Franco-German Armistice mandated that France pay Germany for the costs of German occupation. Those costs were set unilaterally by Germany at RM 20 million per day, which equaled FF 400 million per day at the artificial exchange rate imposed by Germany upon France (which at FF 20:1 was at least double the pre-war exchange rate). The German reparations were so large that Vichy officials asked Germany to reduce the daily reparation, and the daily fine imposed by Germany was almost equal to the annual revenue of the French state. Moreover, with specific regard to SNCF’s pricing for its services, there is no evidence that SNCF could increase its billing rates to the Germans to account for the change in exchange rates, and available evidence suggests that no adjustments would have been permitted because it was Germany’s intent to make French goods and services cheaper for the Reich to purchase. Absent a mark-up to account for the change in exchange rates, SNCF’s billing rate would not have covered the discounted Francs it was receiving in payment, leaving the billing unprofitable, and increasingly unprofitable over time.

As also noted above, Germany expropriated significant portions of SNCF’s equipment – sometimes agreeing after the fact to treat that equipment as “rented” but then not agreeing to the terms of the rental. Although SNCF did submit invoices for this equipment, and for SNCF services provided to the Reich, Germany never fully paid SNCF the amounts invoiced. SNCF sustained monthly deficits of FF 200 million on rentals alone. By comparison, the total number of SNCF rail cars used for deportations, if aggregated, equaled roughly 15% of only one day’s rolling stock use – meaning that any alleged profits on deportations trains would have to have been enormous to overcome these other huge losses – further undermining any deportation profit claim.

What this shows is that SNCF was not routinely paid for what it invoiced. An independent business would not do business on those terms – but SNCF did not have the ability to refuse Germany’s business. Moreover, even if SNCF had been paid fully for rolling stock used in deportations (which has not been shown), it is hard to see how that amount could have covered the overall losses sustained by SNCF based

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223 See: documents located at www.avalon.law.yale.edu.
226 Ibid., 19-20.
227 Ibid., 15-16.
on Germany’s ongoing expropriation of SNCF’s equipment. Accordingly, there is no real support for either the concept of profit being made on the deportations, or for the idea that retained profits have been part of SNCF to this day.

Finally, there is the allegation that SNCF looted the property of deportees, and then kept that property. This allegation, however, had been tested and has failed in two contexts. First, in Freund the US courts considered and rejected this bald allegation as unsupported by anything other than conjecture. Second, in any event, the detailed archival research report commissioned by the French government and carried-out by the Working Party on the Spoliation of Jews in France (also known as the Matteoli Mission) spent years researching the conditions under which Holocaust-related spoliation occurred in France, evaluating the extent of the spoliation, and discovering what happened to the property and assets spoliated. In its work, the Matteoli Mission specifically included the spoliation that occurred in, or as Jews exited, French internment camps. The Matteoli Mission research showed that looting at the camps resulted in the Vichy French government – not SNCF – appropriating property from Holocaust victims.228 The testimony of a deportation survivor at the November 2011 hearings did not contradict or challenge the conclusions of the Matteoli Mission.229

Thus, the historical evidence does not establish that SNCF was independent or that it necessarily profited from deporting Jews. Also, the historical record does not appear to show that SNCF was in a position to refuse to do business with the Germans – as an independent business could do. SNCF unquestionably bears the responsibility (and guilt) of the Vichy government of which it was a part – and France attempted to address that responsibility in, among other things, the US-France Agreement. But, at bottom, the responsibility of national rail systems like SNCF must lie (both legally and logically) with the governments that oversaw their operations and decided to perpetrate the Holocaust. Any corporate veil that might have existed as to entities like SNCF was pierced by the German and Vichy French governments which determined how and when SNCF’s trains would be used, including within the mechanics of the Holocaust.

The narrative offered in the Findings deviated from the historical record. It turned out to be a litigation narrative – one that had already failed – which was being used to drive potential legislation that would have allowed that unsuccessful litigation to be resuscitated.

December 2011 US-France Agreement that resolved SNCF Holocaust-related issues

In response to the 2011 Congressional hearings, and the prospect that US states might reject SNCF’s high-speed rail contract bids over Holocaust-related issues, the French government entered into discussions with former Secretary Eizenstat, who had been asked by the US government to assist in resolving the issues raised by the Findings and the proposed legislation.

In December 2011, the United States and France reached a resolution, which ultimately was documented some years later. The new US-France Agreement on Compensation for Certain Victims of Holocaust-Related Deportation from France Who Are Not Covered by French Programs filled the gap left by the 2001 US-France Agreement. The new agreement was designed to allow Holocaust deportees (and certain

228 See: Matteoli Mission Reports available at www.civs.gouv.fr. Separate reports were issued in 2000 on spoliation at the main internment camps (“Les Biens Des Internes Des Camps de Drancy, Pithiviers et Beaune-la-Rolande”) and at other camps in other French provinces (“La Spoliation dans les camps de province”).

229 See: Testimony of Leo Bretholz before the US House of Representatives Committee on Foreign Affairs (Nov. 16, 2011), 3.
other deportees) not previously eligible for benefits to receive money under French compensation and reparation programs.\textsuperscript{230} Under the new agreement, which went into effect in 2015, France established a $60 million fund to be administered and distributed by the United States, which would make payments to survivors and their families who were not entitled to make claims under existing French programs relating to the Holocaust. Survivors generally would receive approximately $400,000 each, while spouses of survivors could receive up to $100,000.\textsuperscript{231} In return, the United States agreed to ensure “an enduring legal peace” for France with regard to Holocaust deportation claims in the United States.

This agreement, as supplemented several times since 2014, brought to an end all but one US court case against SNCF, and legislative efforts to block SNCF from federal or state business because of its role in Holocaust deportations from France.\textsuperscript{232}

**Conclusions: Resolving Tensions Between Legal and Historical Responsibility**

The Findings included in the text of the HRJA were driven by an historical narrative intended to support an amendment to the FSIA that would bring SNCF within the jurisdiction of US courts. This narrative sought to establish two types of separation. First, separating SNCF from any other Holocaust settlements, particularly those pertaining to Germany. Second, separating SNCF from the French (or German) state with respect to the Holocaust in France. It is important to note that the Findings do not relate to historical responsibility, especially in terms of placing SNCF’s actions within the broader context of Vichy’s active participation in the Holocaust. The Findings were designed only to support a legal theory of jurisdiction, but they end up complicating efforts to accurately frame and contextualize the facts relating to SNCF’s historical responsibility for the Holocaust.

**Establishing SNCF as an Entity “Independent” of France or Germany**

As discussed above, the various Holocaust litigation settlements negotiated by the United States in 2000-01 were designed to foreclose further legal disputes over Holocaust-related claims covered by those agreements. As stated repeatedly by the United States, the premise for these settlements, and the billions of dollars in reparations paid under them, was enduring “legal peace.” At the same time, however, it was clear that the US-France Agreement did not cover every action taken by France during the Holocaust. Rather, the focus of the US-France Agreement was on bank and other “hard” assets (e.g., apartment leases, other immovable property, and home furnishings in seized residences). Hence, to the narrow extent the Findings state that there were no treaties or executive agreements between the United States and France providing for “reparations and/or restitution for personal injury or death relating to SNCF’s transportation or deportation activities between June 22, 1940 and December 31, 1944,” the Findings were correct.

But the Findings also were reaching beyond France. The US-Germany Agreement was unquestionably the only Holocaust litigation settlement to address pain and suffering claims as well as claims specifically


relating to deportation – no matter where in Europe a deportation occurred. Based on this, and the negotiating history of the US-Germany Agreement, there is a strong argument that this agreement represented Germany’s recognition that it bore ultimate and principal historical and legal responsibility for the Holocaust – including for the pain and suffering of Jews deported from anywhere within Europe.\footnote{See generally: Stuart E. Eizenstat, Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II (Perseus 2003).}

It was imperative that those trying to sue SNCF distinguish their claims from those otherwise covered by the US-Germany Agreement so as not to see those claims in any way foreclosed. Hence, the Findings do not refer to the US-Germany Agreement, but do attempt to carve SNCF out from any other Holocaust settlement by asserting that SNCF acted independently (i.e., of France or Germany) in deporting Jews from France.

**SNCF as a Business vs. Governmental Entity**

The FSIA was a codification of a widely recognized doctrine under international law called the restrictive theory of sovereign immunity. This theory distinguished between a sovereign’s “public acts” \textit{(jus imperii)} and “private acts” \textit{(jus gestionis)}. Under the restrictive theory, sovereign immunity is recognized for the former, but not the latter, which focused particularly on sovereign entities engaged in routine commercial activities. The FSIA recognized that a foreign state should have a lower expectation of immunity from the jurisdiction of other national courts (i.e., other than its own) with regard to entities that act like private businesses, and also that the risk of a lawsuit raising sensitive diplomatic or foreign policy issues should be lower where the entity sued is acting like a private business.\footnote{Until the mid-1800s, the classical rule of international law which provided for virtually absolute sovereign immunity. But, in 1952, the United States issued the so-called Tate Letter, which announced that the United States would join the majority of other countries by adopting the restrictive theory. The FSIA was meant to codify the restrictive theory, including by providing rules by which federal courts, rather than the Executive Branch, decide whether foreign sovereigns (or their agencies and instrumentalities) may be sued in US courts. See: Letter from Jack B. Tate, Acting Legal Adviser, US Dept. of State, to Acting US Attorney General Philip B. Perlman (May 19, 1952), reprinted in 26 Dept. State Bull. 984-985 (1952); Permanent Mission of India to the UN v. City of New York, 551 US 193, 199 (2007).}

As observed by the US Supreme Court, when a foreign state participates in the marketplace in the manner of a private person or corporation it does not exercise powers peculiar to sovereigns.\footnote{Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 US 682, 698-705 (1976). Understanding that state-owned entities have expanded into the commercial sphere, the FSIA provides that the “commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.” 28 USC. § 1603 (d) (emphasis added). Hence, under the FSIA, conducting an activity that any business could undertake is commercial, even if the purpose of the activity relates to sovereign interests.}

If the HRJA could be seen as consistent with the restrictive theory of immunity, it was much more likely to be enacted. Accordingly, the proposed legislation is careful to focus on railroads – which seem very commercial – as distinct from the foreign states that own them. Consistent with the idea that it is not objectionable to hold a state-owned entity liable for commercial activities, the Findings also portray SNCF as a business willing to deport Jews for a profit – as opposed to a French government agency following directions from the Third Reich, the German Army, or Vichy. Finally, it should be noted that to the extent a foreign state entity is not immune from jurisdiction, the FSIA provides that it “shall be liable in the same
manner and to the same extent as a private individual under like circumstances.” Thus, under the HRJA, SNCF would have been opened to liability akin to that faced by private persons.

Interestingly, this FSIA-driven result is at odds with legal responsibility under international law, which represents the source of the alleged claims against SNCF. International law has wrestled with the nature of government entities versus private entities, and, under international law, companies have not been considered “persons” that may be held liable for crimes under international law. Indeed, a draft provision in what became the convention governing the International Criminal Court that would have extended the jurisdiction of the court to corporate entities did not garner sufficient state support – confirming that this is not yet an accepted norm under international law. Thus, to the extent that SNCF was subject to FSIA jurisdiction, and thereby deemed to be as liable as a “private individual,” it might have faced claims in US courts premised on international law (i.e., for torts relating to the crime of genocide, war crimes, or crimes against humanity), which normally would not have applied to a private company.

**Independence and Legal vs. Historical Responsibility**

Likening SNCF to a private company may have made sense from a US litigation perspective, but it raises serious historical issues because it seeks to ignore SNCF’s status as a government entity subject to German and Vichy control. Just because private companies can operate railroads for profit does not mean that a state-owned railroad operating during a war is free to operate like a typical commercial enterprise. In particular, even if legally there is no distinction between a corporate and state-owned railroad, this begs the question of historical responsibility as between a private and sovereign enterprise. With respect to SNCF’s historical responsibility in the Holocaust, taking SNCF out of its actual historical context means potentially ignoring how, as a French government entity, it may have operated very differently from any private company. In some ways this may make SNCF more historically responsible and, in some ways, less. The point is that legal perspectives may cloud an analysis of historical responsibility because legal analysis compartmentalizes facts to see whether precise elements of a crime or claim can be satisfied,

236 28 USC. § 1606. The FSIA, however, states that punitive damages may not be imposed on a foreign state, as opposed to its agencies or instrumentalities. Ibid. The FSIA also sometimes makes distinctions between foreign states and their agencies or instrumentalities, by making it easier to establish jurisdiction as to certain claims with respect to an agency or instrumentality.

237 See: Jesner v. Arab Bank, PLC, 584 US ___, 138 S. Ct. 1386, 1399-1401 (2018) (noting also that no corporations were charged or held liable by the Nuremberg Tribunal). Although under the so-called Alien Tort Statute (28 USC. § 1350) civil damage claims premised on crimes under international may be pursued in US federal courts, under Jesner, a non-US company may not be sued for crimes under international law.

238 International law does allow a government entity to be designated a criminal “organization,” but this is not for purposes of punishing the organization – it is to make it easier to hold members of the organization criminally liable by making it easier to prove intent. At Nuremberg, governmental groups within the Reich were designated criminal organizations (e.g., the SS, Gestapo, SD, and General Staff), such that there was a presumption of intent with respect to crimes committed by members of those organizations. But prosecutors still had to prove facts linking individuals to a given criminal incident. Under both international and national law, claims against states generally are made against specific government agencies – often in addition to the state itself – because of the need to “locate” the wrong in a person or persons who committed the actus reus (i.e., the legally operative act) with mens rea (i.e., the required state of mind). States generally are liable for the acts of state-owned entities, which is different from the rule relating to companies, under which parent companies generally are not liable automatically for the wrongs of their subsidiaries. Hence, it is also anomalous to argue for the “independence” of a government entity because a claimant suing a state typically would not want to apply doctrines of corporate separateness that are used to limit how liability is spread from one corporate entity to another. Claimants generally want to sue an entity with greater financial resources, and states (like parent companies) generally have more money than state agencies or state-owned entities (like subsidiaries).
while historical analysis casts a different and broader net.

Under law, a company owes duties to its shareholders – not the public at large. Those duties include acting in the company’s best economic interests in pursuit of profit. State agencies, on the other hand, are not required to pursue a profit. They owe duties to the state – which often may operate at a deficit – and must carry out their duties even if uneconomic (unless the state has specifically dictated otherwise). Companies also are not generally legally responsible for every wrong committed by the state in which they operate, while state entities may have broader exposure to the wrongs committed by their governments. Companies also do not become accomplices of the state simply by contracting to provide a service or product.

For example, at Nuremberg, a tribunal made up of US federal judges refused to impose liability for aiding and abetting war crimes and crimes against humanity on a Dresdner bank officer (Rasche) who made a loan financing a concentration camp knowing the crimes being committed there. The same tribunal, however, convicted the deputy to the Reichsbank president (Puhl) on the same charge because Puhl knowingly took part in disposing of gold, including gold teeth and crowns and other valuables he knew had been looted from Holocaust victims. The distinguishing factor was that one defendant exhibited a purpose to aid and abet Nazi crimes that went beyond simple knowledge of what the Nazis were doing. Rasche’s activities in approving a loan never went beyond the routine duties of a banker. By contrast, Puhl engaged in activities beyond routine banking duties in order to assist primary criminal perpetrators in disposing of looted Holocaust gold. In contrast, from the perspective of historical responsibility, both Rasche and Puhl (and their institutions) bear responsibility for assisting the machinery of the Holocaust, and that historical responsibility is crucial to our understanding of the Holocaust and our efforts to use transitional justice processes to prevent future genocides or mass atrocity crimes. That same tension is evident with SNCF.

As shown in Part VI, above, the historical context surrounding SNCF is far more complicated than that offered by the Findings. In particular, SNCF’s independence becomes more problematic the more its railroad operations are examined in the historical context of a state-owned railroad operating in a conquered country. For example, consider the following questions:

**Was SNCF free to operate independently and to whom was it responsible?**

An independent company owes duties to its shareholders and can make day-to-day operational decisions without shareholder approval. It is not clear whether that was true for SNCF.

- Following the Fall of France, SNCF came under the express control of the German Army and the Vichy state. Although SNCF owned its equipment, all railroad operations (i.e., SNCF’s equipment and tracks) in Occupied France were “at the full and complete disposal of the German Head of Transportation.” Two-thirds of SNCF’s tracks were in Occupied France.

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240 Ibid., 620-622.
• After France fell, SNCF’s Board was reduced from 33 to 12, and the Management Committee was eliminated so as to tighten Vichy control. The German Army Transport Directorate (WVD) could and did replace SNCF officials at will.
  ○ The WVD reported to German Army High Command, and the German commanders issued direct orders to SNCF.
  ○ German general orders made all SNCF employees subject to German control, and SNCF orders based on those German orders warned of “serious consequences” for disobeying German orders.
  ○ The Germans did kill SNCF employees for attempting to resist. While there does not appear to be evidence of SNCF employees being punished for attempting to assist or save Jews, there is ample evidence of SNCF employees being taken hostage and subject to summary executions, particularly after November 1942 when Germany occupied all of France (and sped up the pace of deportations).

Was SNCF free to deploy its assets so as to maximize profit?

An essential attribute of any commercial enterprise is that it controls its assets and is free to deploy those assets to maximize profits. It is not clear whether SNCF could do this. Moreover, any assessment of SNCF’s alleged profit motives must take account of the value of SNCF assets appropriated by the Germans – both as to the value of the equipment itself, plus the lost usage value of assets that SNCF could no longer deploy at any billed rate.

• Germany expropriated and “rented” (on demand) SNCF equipment to meet German war needs. By late 1943, 30% of SNCF’s locomotives, 52% of its freight cars, and 36% of its passenger cars had been taken for German use.
• When SNCF submitted invoices to the Germans for “rented” equipment and services, Germany never fully paid SNCF. SNCF sustained monthly deficits of FF 200 million on rentals of its equipment alone. By comparison, the total number of SNCF rail cars used for deportations (which would relate to revenue generated), if aggregated, would have equaled only to about 15% of one day’s rolling stock use.
  ○ Documents show that SNCF issued invoices in 1944 for at least some deportation transports, and that payment was sought even after France was liberated. But even if discrete payments were sought and received, this does not demonstrate that any profits were made on deportations.
• Upon invading France, Germany reset the exchange rates by devaluing the franc by over 50%. There is no evidence that SNCF was allowed to increase its billing rates to the Germans to account for this change, but available research suggests that no adjustments would have been allowed because
it was Germany’s intent to make French goods and services cheaper for Germany to purchase. Absent an increase, SNCF’s billing rates would have been increasingly unprofitable over time. Nonetheless, there also is no evidence that SNCF could withhold services from the Germans on the basis of profitability.

- Vichy, of which SNCF was a part, suffered massive financial losses from the German occupation, including through enormous reparations imposed on France, which averaged almost 40% of the annual French GDP. These reparations more than doubled France’s debt to GDP ratio as compared to pre-war levels.241

**Did SNCF independently initiate deportation transports?**

Generally, a commercial railroad decides when and how it will schedule its trains. With respect to Holocaust deportations, it is not clear that SNCF had this authority or control.

- It does not appear that SNCF initiated deportations or deportation transports. Rather, French deportations were initiated and coordinated by the Reich Security Office overseen by Adolf Eichmann, which also dictated what types of train cars were to be used and how local police authorities were to load and order the trains.

- To the extent SNCF rolling stock was used in deportations, it generally remained in Germany, making it unlikely that SNCF employees cleaned rolling stock used to deport Jews from France.

**Did SNCF engage in non-railroad activities to further the Holocaust?**

As with the Ministries Case, discussed above, understanding of SNCF’s independence and responsibility also would involve examining whether SNCF undertook activities that went beyond normal day-to-day commercial railroad activities so as to assist the primary perpetrators (i.e., the Germans or Vichy French) in deporting Jews. It does not appear that SNCF did this.

Allegations that SNCF looted the property of deportees and then kept that property have been tested and have failed.

In US litigation against SNCF, US courts considered and rejected this allegation as unsupported by anything other than conjecture.

A detailed archival research report commissioned by the French government showed that looting at French internment camps involved the Vichy French government – not SNCF – appropriating property from Holocaust victims.

241 See: supra at notes 223-224.
Based on the above, SNCF appears to have lacked key attributes of corporate personality, and it is not at all clear whether SNCF crossed the line of becoming an active aider and abettor like Puhl in the Ministries Case. SNCF did not control its own assets and had no ability to control or prevent German looting of its assets over time. By itself, this would be strong evidence as to who really controlled SNCF. SNCF also does not appear to have been free to make decisions that would maximize its economic performance, or profit. The historical record shows that the Germans routinely refused to pay SNCF invoices for appropriated rolling stock, and there does not appear to be evidence showing that SNCF could alter its billing rates to the Germans to make up for the ruinous exchange rates imposed by Germany – and SNCF was not in a position to refuse to do business with the Germans. Any assessment of SNCF’s alleged profits from the Holocaust must account for all these factors (and, perhaps, the overall financial losses imposed on Vichy France by German reparations).

SNCF also was not in a position to protect or fully manage its employees, who were subject to German orders and to being taken hostage or summarily executed. Placed in this context, it is not clear whether an SNCF employee who kept doing his job by billing for deportation trains and pursuing payment was “profiteering” or simply trying to stay invisible and alive. Finally, that there is no historical evidence that SNCF employees looted Holocaust victims suggests that SNCF never crossed the line of becoming a purposeful aider and abettor of German or Vichy French Holocaust crimes.

It also is worth noting that, unlike private companies, SNCF was not wholly free to ignore its past. Well before the 2001 US-France Agreement, France had taken responsibility for the role it played in the Holocaust and for the crimes of the Vichy regime. Based on France’s movement toward engaging with the historical record, SNCF also began addressing its past. As discussed above, SNCF’s wartime activities had been investigated and made public before the US-France Agreement or SNCF litigation. This was not the case with French companies generally.

Thus, were SNCF to be judged as a “private individual” – which is what the plaintiffs presumably intended in seeking to apply the FSIA to SNCF – it is not at all clear that legal responsibility would have been imposed upon SNCF or that SNCF would have been viewed as an independent corporate actor. This, in turn, highlights starkly the challenge of corporate engagement with respect to mass human rights violations.

**Historical Responsibility and the Holocaust Settlement Process**

Absent legal liability, companies are left to say, “there was nothing to be done.” Companies can argue that business has to go on, duties to shareholders must be met, employees must be kept working, and – depending on the industry – doing business with an evil government often is not an option, but a necessity. Indeed, once World War II began, German economic planning imposed strict quotas on many industrial sectors and mandated outputs and contract terms. SNCF was part of an essential war industry, deemed so important that it was placed under the control of the German Army. As highlighted by the Ministries Case, it takes a great deal more than “doing business” to make a company legally liable for the crimes of the state in which they are located.

But no matter how it is viewed, it also is true that the historical record in no way absolves SNCF from its responsibility for participating in the machinery of the Holocaust. SNCF was part of the Vichy regime, and the depth and willing participation of Vichy in the persecution of Jews in France was open and notorious. Yet, the historical record leaves open how willing or compelled SNCF’s collaboration may have been,
or how free SNCF may have been to delay or frustrate the deportation of Jews from France. It seems highly likely that SNCF employees would have understood the horrors facing Jews being deported, as SNCF employees presumably would have seen the inhumanity of deportation trains being loaded and would have cleaned trains used for internal transport of Jews among French detention camps. But again, knowing the horrors faced by Jews during the Holocaust is only one piece of the historical record, and must be balanced against facts that would appear to show that an SNCF employee might have been under greater German pressure because SNCF was an essential war industry subject to direct, daily German control and orders.

Interestingly, placing SNCF within the context of Vichy, and Vichy’s policies of joining in the German persecution of Jews, casts the 2014 US-France Agreement between the United States and France in a different light and, arguably, validates the logic behind Secretary Eizenstat’s approach toward Holocaust reparations. Secretary Eizenstat’s working assumption was that there is no perfect justice. As the US government made clear in its papers supporting the various Holocaust settlements, legal liability was far from guaranteed in the US Holocaust litigation (consistent with the discussion above relating to SNCF). But the historical record supported a case for actual and moral responsibility, which demanded a response to address the suffering inflicted. Secretary Eizenstat framed that response in two ways. First, there would be reparations that worked some form of “rough justice” while also evidencing acceptance of responsibility. Second, there would be factual openness in the form of historical reporting and the opening of archives, which again evidences responsibility and reduces the risk of future denial or revisionism.

The 2014 US-France Agreement fit this approach. It filled a gap in the existing French Holocaust settlements, which had not addressed the independent pain and suffering that Vichy had visited upon the Jews of France. The 2014 US-France Agreement also addressed issues of broader “corporate” liability beyond the banking industry, something the 2001 US-France Agreement did not do. In this sense, the 2014 US-France Agreement between the United States and France builds on the precedent of the US-Germany Agreement by having the state (i.e., France) take responsibility for industry and the role industry played in the human rights crimes committed at the behest of the state. Finally, the 2014 US-France Agreement recognized the prior historical research done by SNCF and the French government, which is already a part of the public record, and which fits within the broader research already produced by the French government relating to the Holocaust in France.

Secretary Eizenstat’s approach also fits squarely within transitional justice approaches endorsed by the United Nations. For example, the Holocaust settlements, including the 2014 US-France Agreement, builds on key transitional justice components:

- The Holocaust settlements build on the historical record surrounding the Holocaust, including extensive historical investigations conducted by government commissions, which then yielded voluminous public reports with respect to Germany, France, and Switzerland.
- The Holocaust settlements established a respect for the right to truth for victims, survivors, future generations, and society as a whole, as well as by opening archives, which facilitated a continuing examination of the Holocaust period.
The Holocaust settlements delivered reparations and/or restitution which were linked to acknowledgements of historical responsibility for the wrongs committed.

The Holocaust settlements were the product of national and societal engagement, processes that can be used to reduce the risk of recurrence.\textsuperscript{242}

As opposed to the questionable historical approach of the HRJA Findings, the value of Secretary Eizenstat’s approach – with respect to corporate responsibility – is that it recognized the principal and central role played by governments in the Holocaust. It is easy to say that the Holocaust could not have occurred without the participation of industry, but it also is easy to say that every member of society who did not act in the face of injustice bears equal responsibility for the crimes ultimately committed. This is not true legally, ethically, or morally. Rather, it is an incomplete approach because, as the law recognizes, not all forms of collaboration (or standing-by) are equal, or even equivalent. That is why collective guilt was rejected by Justice Robert Jackson at Nuremberg and why it does not serve the purpose of advancing long-term prevention, as it ignores historical context and the ways in which that context informs the question of responsibility.

Karl Jaspers, in a series of post-war lectures regarding Germany’s responsibility for the crimes of the Third Reich, posited four categories of responsibility: criminal guilt (the commitment of overt acts), political guilt (the degree of political acquiescence in the Nazi regime), moral guilt (a matter of private judgment among one’s friends), and metaphysical guilt (a universally shared responsibility of those who chose to remain alive rather than die in protest against Nazi atrocities).\textsuperscript{243} It is beyond the scope of this paper (and the qualifications of the author) to work through the implications of Jaspers’ responsibility model. However, Jaspers’ categories ably capture the challenge of placing corporate actions into the broader context of state-driven mass atrocity violence. Among other things, Jaspers’ model frames the difficult issue of how much resistance is required to lessen guilt. These types of issues come into play whenever the authority and power of the state are used to mobilize society toward mass violence. They are precisely the types of issues ignored by attempting to portray entities like SNCF as “independent” actors with unlimited free will.

There is a strong argument that SNCF’s role in the Holocaust was determined when France was conquered by Germany. SNCF unquestionably bears the responsibility (and guilt) of the Vichy government of which it was a part. But, at bottom, the responsibility of national rail systems like SNCF must lie (both legally and logically) with the governments that oversaw their operations and decided to aggressively participate in the Holocaust that Germany decreed, organized, and implemented. Any corporate veil that might have existed as to entities like SNCF was pierced by the German and the Vichy French governments which determined how and when SNCF’s trains would be used, including within the mechanics of the Holocaust. To the extent the HRJA Findings ignored this, they did not do justice to the historical record. As important, the Findings also did not further efforts to develop principals of historical responsibility that could help corporations better understand their responsibility to prevent genocide and mass atrocity violence \textit{and} how large organizations can avoid becoming participants in that kind of violence.

\textsuperscript{242} See, e.g.: Guidance Note of the Secretary General: United Nations Approach to Transitional Justice (March 2010), 7-9.

Annex: SNCF WWII Memory Initiatives

Compiled by Jean-Marc Dreyfus

Transparency

- Creation of historical archives (starting in 1989).
  - Centre des Archives Historiques de la SNCF in Le Mans (opened in 1995)
  - Digitization of all archives from the period 1939-1945, 1,350,000 pages (2011). Online access of all documents (2012).

- Oral archives
  - Interviews with 200 employees about WWII (2011). 400 hours of interviews and material objects have been collected.

History

- Research commissioned and supported by SNCF
  - Commissioned research to the Institut d’Histoire du Temps Présent, CNRS, 1992. The “Bachelier Report” was made available online in 1999.
  - Memorial Book “Cheminsots victimes de la Répression” (Railwaymen victims of repression), edited Thomas Fontaine, under the supervision of the l’AHICF (2017 – éditions Perrin).
  - Research commissioned to the Shoah Memorial, Paris on SNCF employees who were victims of antisemitic legislation (2020).
  - Research conducted by Yad Vashem (Jerusalem) “Transports to Extinction: Shoah Deportation Database.” The research on convoys from France has been supported by SNCF (2012).
  - Partnership with the Museum of National Resistance (Champigny, France): support to the research on cheminot victims of repression; creation of an online exhibition “Train stations in war” (2017).

244 I want to thank Bernard Emsellem for his help in establishing this list.
- Memorial of Royallieu Compiègne: support to the complete research on internees and deportees (2019) and creation of the new Wall of Names (2020).
- Research by the association Rails&histoire on the 54245 railwaymen who have been recognised as “Righteous Among the Nations” by Yad Vashem (2019).

- **Support granted to history and memorial books**

- **Documentary films and fictions**
  - “Drancy, dernière étape vers l’abîme.” “The Former Bobigny Station: Between Drancy and Auschwitz.” This fifteen-minute video, shot on the train tracks of Bobigny, includes interviews with several survivors and two sons of SNCF railway workers (DVD).
  - “Les combattants de l’ombre”: TV series (2011),
  - “Alias Caracalla” television (2013).
  - “La SNCF sous l’Occupation,” Catherine Bernstein, documentary movie, 66 minutes, free access to filming locations (2019).
  - “Sauvons les Enfants.” Catherine Bernstein, documentary movie 2021, financial support, free access to filming locations (2021).

\[245\] A 55th SNCF employee was recognised as Righteous Among the Nations in 2020.
• Webpages on “Compensation and Restitution for Holocaust Victims in France,” website of the Shoah Memorial (French, Hebrew, English) (2012)

**Memory**

• **Plaques and train cars**
  - Plaques in many train stations: Gare de Paris-Est, Gare de Paris-Austerlitz, Gare du Bourget, Noé (Longages); Chalon-sur-Saône, Vierzon, Nîmes, Saint-Priest, Lille-Fives, Valenciennes, Nice, etc.
  - Donation of train cars: Drancy (1988, renovated in 2008), Les Milles, train museum (Cité du Train) in Mulhouse, Voves, gare de Margny-Compiègne, memorial in Nanteuil-Saâcy, train station in Penne d’Agenais, etc.

• **Partnerships with memorials**
  - Camp de Drancy, restoration of the tunnel built by inmates for an attempted escape.
  - Bobigny train station
    * Donation to the train station to the municipality (2000).
    * Disposal of the site for the creation of a memorial (2009-2011); partnership with the municipality (2011-2012).
    * Participation to the committee in charge of defining the project (since 2005).
    * Ceremony in Bobigny with speech by Guillaume Pepy (January 2011).
    * Provisional panel set up on site (photos, maps, texts (2012).
    * Restoration of the warehouse into a visitors’ center and conference room (2015).
  - Monument of Portes-lès-Valence: memorial installation for the bombing of SNCF building by the Resistance in 1944 and German reprisals, which killed 30 people (2019).
  - Pithiviers train station: complete transformation into a memorial (agreement signed in 2017).
  - Memorial in Nice outside of the Jewish cemetery (2020).
  - The March of the Living; Fort Lauderdale (2015 - 2019).
  - Kennesaw State University: Kennesaw, Georgia: concerts in Australia and New Zealand on Holocaust themes (2017 - 2019).
Trip to Auschwitz of Guillaume Pepy with senior managers (January 2011).

Exhibitions
- This exhibition was then toured in 20 train stations then at SNCF headquarter (2002-2004), a million visitors. Guarding and storing of the panels.
- Exhibition of railway material on the Champs Elysées, Paris. A deportation car was shown (2003).
- “Cheminots in Resistance”: exhibition conceived by the Fondation de la Résistance, Musée Jean Moulin (2005) then toured in France.
- “The Return of Absents”: partnership with the Agence France Presse; French Senate (2015).
- Two exhibitions of the Shoah Memorial “Filming the camps” and ‘Hélène Berr’ shown in the United States: 20 exhibitions in 15 cities (Washington DC, New York, Fort Lauderdale, Atlanta, Dallas, Los Angeles, etc.).

Education

- Mémorial de la Shoah (Shoah Memorial Paris)
  - Partnership for educational activities signed in 2010. SNCF is the most important company pairing with the Memorial. Guillaume Pepy has personally been a board member of the Mémorial since 2010.
- Mémorial du Camp des Milles: free transport by train for students and educators (40,000 students every year).
- Support to the Foundation France-Israël for a trip to Israel for grandchildren of French Righteous, annually since 2011.
- Partnerships in the domain of education:
  - “Le Train de la Mémoire” (The train of memory): documentary on a pedagogical trip of 500 students to Auschwitz. DVD (2012).
  - “Le Convoi 77 vers Auschwitz”: documentary on research by high school students (2017-18).
- Experimental partnerships: “théâtre + pédagogie” (2012-13)
  - Theatre adaptation of the memoir by Francine Christophe: “Une petite fille privilégiée”.
  - Theatre piece by Charlotte Delbo “Qui rapportera ces paroles?".
○ Theatre piece, directed by Gérald Garutti: “Haïm, à la lumière du violon”.

- UNESCO: educational activities in French-speaking countries (since 2014)
- USHMM (Mandel Centre for Advanced Holocaust Research): support to the online Encyclopedia for Holocaust Digital Learning Center (2015-2021)
- Jewish Federation of Broward County, Florida: education (since 2012).
- Sciences Po Bordeaux, partnership for the creation of a professorship on mass violence and genocide, Dr. Alban Perrin (2011, three years, renewed).
- The Auschwitz Institute for the Prevention of Genocide and Mass Atrocities, a non-profit organization that educates, trains, and provides support for governments, public officials, and institutions working towards the prevention of atrocities around the world (2018-2020).