

Jacques Vergès, Devil's Advocate
A Psychohistory of Vergès' Judicial Strategy

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Abstract

This study undertakes a psychohistory of French criminal defence lawyer Jacques Vergès' judicial strategy. His initial articulation of his judicial strategy in his book *De la stratégie judiciaire* in 1968 continues to inform his legal career, in which he has defended a number of controversial clients, most notably that of Gestapo officer Klaus Barbie in the 1987 trial. Vergès distinguished two types of judicial strategy in his 1968 book: rupture and connivence. Both strategies should be understood out of Vergès' Marxist influences. This study looks into the coherence of his career in light of his initial articulation of judicial strategy and explores the shift in emphasis of his strategy from the defence of a cause to that of a person. The study adopts a three-level approach. It considers, first, Vergès' discourse of his strategy, second, the world politics that shaped his discourse, and third, Vergès' biography.

First, Vergès' strategy grew out of the duality of rupture and connivence and transformed into what we call devil's advocacy, in which Vergès pits an accused (as an individual) against the justice system. Devil's advocacy culminated in his defence of Barbie. After his defence of Barbie, Vergès pitted himself against the justice system so that his own notoriety was reflected to his clients rather than the other way around.

Second, Vergès' major intellectual and political influence was Communism. Although he left the Communist Party of France in 1957, at the time when he began his legal defence of Algerian militants during the Algerian War of Independence, the ongoing political reorientations and resulting splits in the communist movement did not allow him to disavow communism altogether. The split that took place between the Soviet Union and the People's Republic of China in the early-1960's allowed him to align his political views with the Chinese interpretation of communism and he has not relinquished his affinity to Chinese communism since the 1960's. On the contrary, he has conformed to the dramatic changes that Chinese communism underwent since Mao's rule. The study argues that those changes shaped Vergès' psychological outlook, which entailed the development of a so-called African personality. It in turn provided the impetus for the further development of his judicial strategy beyond the initial duality of rupture and connivence.

Third, this study focuses on his childhood and youth in the French colonies, first in Indochina and then in the Island of Réunion. Vergès colonial background has informed his political choices, which in turn have informed his legal practice. His overarching commitment is anticolonialism, which has manifested itself in various forms since his childhood. In his youth, it took the form of Stalinism, and communism in general. His Stalinism intermingled with his loyalty to De Gaulle during the Second World War. After Stalin's death in 1953, he aligned himself with the Maoist objective of perpetuating revolutions in colonies. In the course of his defence of Barbie, his anticolonialism revolved around his comparison of the French colonial regime to Nazism.

Résumé

Cette étude est une psycho-histoire de la stratégie judiciaire du pénaliste français Jacques Vergès. La conceptualisation initiale de sa stratégie judiciaire *De la stratégie judiciaire* de l'année 1968 continue d'influencer sa carrière judiciaire, y inclut sa défense de plusieurs clients controversés, surtout l'officier de Gestapo Klaus Barbie au cours de son procès en 1987. Vergès distingue deux types de stratégie judiciaire dans son livre de 1968: la rupture et la connivence. Les deux stratégies doivent être comprises à la lumière des influences marxistes de Vergès. Cette étude examine la cohérence de sa carrière à la lumière de la conceptualisation initiale de la stratégie judiciaire et explore le ré-positionnement de sa stratégie de la défense d'une cause à celle d'une personne. Cette étude assume une approche à trois niveaux. Premièrement, elle examine le discours de Vergès concernant sa stratégie, deuxièmement, la politique mondiale qui a façonné son discours et, troisièmement, la biographie de Vergès.

Premièrement, la stratégie de Vergès a évolué de la dualité de la rupture et connivence et s'est transformé en ce que nous appelons la stratégie de l'avocat du diable, dans laquelle Vergès oppose l'accusé (comme individu) contre le système judiciaire. La stratégie de l'avocat du diable a atteint son sommet dans la défense de Barbie. Après sa défense de Barbie, Vergès s'est opposé lui-même contre le système judiciaire de sorte que sa notoriété a plutôt été reflétée à ses clients que le contraire.

Deuxièmement, Vergès a été influencé intellectuellement et politiquement par le communisme. Même s'il avait quitté le Parti Communiste de France en 1957, tandis qu'il commençait sa défense judiciaire de militants algériens pendant la Guerre d'Algérie, les réorientations politiques et les ruptures au sein du mouvement communiste ne lui ont pas permis de désavouer le communisme. La rupture qui s'est effectuée entre l'Union soviétique et la République populaire de Chine au début des années 1980 lui a permis d'aligner ses vues politiques avec l'interprétation chinoise du communisme et la République populaire de Chine. Au contraire, il s'est conformé aux changements dramatiques éprouvé par le communisme chinois depuis le règne de Mao. Cette étude avance l'argument que ces changements ont façonné la vision psychologique de Vergès, qui a entraîné le développement de la soi-disant personnalité africaine. À son tour, elle a propulsé le développement de sa stratégie judiciaire au-delà de sa dualité initiale entre la rupture et la connivence.

Troisièmement, cette étude examine son enfance et son adolescence dans les colonies françaises, premier en Indochine et puis à l'Île de Réunion. Le passé de colonisé de Vergès a influencé ses choix politiques, qui à son tour ont influencé sa pratique judiciaire. Son engagement primordial est l'anticolonialisme qui s'est manifesté sous formes diverses depuis son enfance. Dans son adolescence, l'anticolonialisme a pris la forme du stalinisme et du communisme en général. Son stalinisme a pénétré sa loyauté à De Gaulle pendant la Seconde guerre mondiale. Après la mort de Staline en 1953, il s'est aligné avec l'objectif maoïste de perpétuer des révolutions dans les colonies. Au cours de sa défense de Barbie, son anticolonialisme s'est axé sur sa comparaison entre le régime colonial français et le nazisme.

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Table of Contents

1. Introduction.....	7
1.1. De la stratégie judiciaire.....	9
1.2. The Importance Attached to Vergès' Strategy by Foucault and Derrida.....	15
1.2.1. Derrida and the Coherence of Vergès' Discourse.....	17
1.2.2. Foucault: Vergès' Discourse in Historical Context.....	20
1.3. Biographical Approach to Vergès' Strategy.....	22
1.3.1. Psychohistorical approach.....	22
1.3.2. The social psychology of connivence and rupture.....	27
1.4. Key Concepts in their Intellectual Historical Setting.....	31
1.4.1 Strategy versus tactics.....	31
1.4.2. Vergès' conceptualization of rupture and connivence.....	35
1.5. The key sources.....	38
1.6. Outline.....	41
2. Revolution: Vergès' Rupture Before His Legal Career (1924–55).....	47
2.1. Vergès in His Father's Shadow.....	48
2.2. Vergès' Politics Shaped by his Birth.....	60
2.3. Vergès' Political Peregrinations.....	62
2.3.1. The Communist pedigree of Vergès' judicial strategy.....	62
2.3.2. Agitation: the driving force of Vergès' strategy.....	69
2.3.3. Volatility of Vergès' communist loyalties.....	77
2.3.4. Vergès' Loyalty to De Gaulle.....	80
2.3.5. The depth of Vergès' loyalty to France.....	81
2.4. Vergès' Affinity with the Bourgeoisie.....	84
2.5. The Influence of the Pre-Algerian Period on Vergès' Strategy.....	96
3. The Origin of Vergès' Strategy of Rupture in Algeria (1957–61).....	98
3.1. Vergès' Account of the Discovery of the Strategy of Rupture.....	99
3.1.1. Rupture: between dialogue and principles.....	101
3.1.2. Escalation of legal defence into a political conflict.....	107
3.1.3. The vindication of Vergès' strategy of rupture in amnesty.....	116
3.1.4. Judicial error.....	121
3.2. The Reversal of Conventional Roles in Vergès' Judicial Strategy.....	125
3.3. Vergès' Affinity with the Bourgeoisie during the Algerian War.....	128
3.4. Limits of Rupture.....	134
4. Vergès' Articulation of Judicial Strategy: Connivence and Rupture (1962–70).....	136
4.1. Vergès' Political Promiscuity.....	137
4.2. Vergès' Multiple Connivences on the International Scene.....	141
4.2.1. The Sino-Soviet Split and connivence with China.....	142
4.2.2. Vergès' political setting: the Non-Aligned Movement.....	150
4.2.3. Vergès' loyalty to France.....	154
4.2.4. Vergès' implicit connivence with the United States.....	160
4.3. Connivence with Algerian Presidents.....	164
4.3.1. Connivence with Ben Bella.....	164
4.3.2. Connivence with Boumedienne.....	169
4.3.3. Exposing connivence with post-Stalin Soviet Union.....	170
4.3.4. Seizing on the defence of the Fedayeen.....	172
4.4. Dénouement of Connivence: Moïse Tshombe.....	178
5. Vergès' Break with Rupture: Clandestinity (1970–8) and Return (1978–82).....	191
5.1 Into Clandestinity and Back.....	194

5.3.	Surviving the Disillusionment with Great Narratives	198
5.4.	Vergès' Reconstitution of a Metanarrative around Africa	203
5.5.	Mitterrand: the Antagonist of Vergès' Narrative	214
5.5.1.	Vergès against Mitterrand's intelligence apparatus.....	218
5.5.2.	Communism versus socialism	221
5.5.3	Régis Debray: the link between Vergès and Mitterrand.....	223
6.	The Barbie Trial and Vergès Turn to Devil's Advocacy (1983–7)	227
6.1.	Vergès' Judicial Strategy in the Barbie Case	229
6.1.1.	Assailing the charge by denying the key evidence.....	232
6.1.2.	Vergès' adherence to legality in the Barbie case.....	234
6.1.3.	Indictment of the West	235
6.1.3.1.	France at variance with its laws	236
6.1.3.2.	France's projection of its crimes onto Barbie	241
6.1.3.3.	Accusing the United States by defending its protégé	243
6.2.	Barbie as Vergès' Antidote to Groupthink.....	248
6.3.	Vergès' Incorporation of Biography into his Judicial Strategy.....	252
7.	Vergès' Post-Barbie Turn to Retrospection as a Judicial Strategy (1987–)	258
7.1.	Collapse of the Soviet Union and Vergès' Career	261
7.2.	China's Rising Might	264
7.3.	Vergès' Thirdworldism	267
7.4.	Bourgeois Values in Vergès' Communist Discourse.....	273
7.4.1.	Bourgeois appropriation of chivalry.....	274
7.4.2.	Bourgeois appropriation of religion	276
7.4.3.	Bourgeois appropriation of humanism	279
7.5.	Vergès' Strategy of Ambiguity about his Objectives.....	284
8.	Conclusion	291
	Bibliography	297

1. INTRODUCTION

The French criminal defence lawyer Jacques Vergès¹ (born in 1924 or 1925) is a household name in France, but much less well-known outside France.² His fame in France is a mixture of celebrity and notoriety. His celebrity is most closely tied to his prominent role in the defence of members of the Algerian liberation organization *Front de la libération nationale* (FLN) during the Algerian War of Independence (1954-62). His notoriety derives from his defence of the Gestapo officer Klaus Barbie, who stood trial in Lyon, France, in 1987,³ and for which Vergès became known as the “devil’s advocate.” Vergès is also known for his work on judicial strategy and, more specifically, for his “strategy of rupture,” – a judicial strategy, inspired by Marxism, by which the accused’s lawyer turns the defence into an attack against the accusers – first articulated in his 1968 book *De la stratégie judiciaire*, just one of the many books he has authored. To the extent that Vergès is known in the English-speaking world, his fame is mainly of the notorious kind because it is mostly restricted to his defence of Barbie. To a limited extent, Vergès is also known in postcolonial studies thanks to *Monsters and Revolutionaries – Colonial Family Romance and Métissage* by his niece Françoise Vergès, who completed her graduate work and taught at universities in the English-

¹ Since the pronunciation of the name Vergès sometimes causes confusion, we should note that the final “s” is pronounced, as is typical of southwestern French dialects (the word “moins” is pronounced [mwɛ̃s] in the southwest). The name Vergès is common in the Pyrenees region. See Pierre-Gabriel Gonzalez, *Grand Dictionnaire des noms de famille* (Genève: Ambre, 2001) at 447. Vergès is most common in the region of Gasconne, in the southwestern part of France. See Albert Dauzat, *Dictionnaire étymologique des noms de famille et prénoms de France*, 3e ed revue et augmentée par Marie-Thérèse Morlet (Paris: Larousse, 1967) at 591. The name used by Jacques’ ancestors, who lived in the Pyrenees, was the Spanish, Barges. See Chantal Lauvernier, *Ban-Bai, Raymond Vergès, 1882–1957* (Paris: Chantal Lauvernier, 1994) at 22 [Lauvernier, *Ban-Bai*].

² Nevertheless, Vergès’ practice is distinguished by its international character. According to the *Annuaire* of the Bar of Paris, Vergès’ specialization is “contentieux et arbitrage international, droit pénal général.” See Barreau de Paris, *Annuaire* at <http://www.avocatparis.org/Eannuaire/Resultat2.aspx?cnbf=14610>

³ Other notorious figures one sees associated with Vergès include Carlos the Jackal, the world’s most wanted terrorist before Osama bin Laden got that honour, Yugoslav president Slobodan Milošević and Iraqi President Saddam Hussein.

speaking world.⁴ Whether in English or French, however, analysis of Vergès is lacking and serious research about him is generally buried under sensationalism.

That Derrida and Foucault, two of the best-known French intellectuals of the later 20th century, drew attention to Vergès' strategy of rupture signal the importance of inquiring into it. They raised – but did not necessarily answer – important questions about its coherence, its radical nature, and its relation to a specific *conjoncture historique*. Moreover, their comments suggest that Vergès' strategy is inseparable from his biography. For instance, Derrida referred to Vergès' public image and the general public's fascination with him. Indeed, while academic treatment of Vergès and his strategy of rupture is sparse, interest in Vergès' biography, which started with Bernard Violet's *Vergès, le Maître de l'ombre* in 2000, has kept Vergès' legend alive.⁵ Fortunately, the biographical interest in Vergès also has the capacity to deepen our understanding of his discourse on judicial strategy.

This study aims to lay out the relation between Vergès' discourse on judicial strategy and his biography in the first book-length treatment of Vergès in English. I will use Foucault and Derrida's comments on Vergès and his strategy as entry points into an analysis of the Marxist-Leninist background and inspiration of Vergès' legal thought and his reflections on his practice. I will also use their comments to situate Vergès' judicial strategy in the context of his life story. In doing so, I take my cue from Vergès. Vergès himself indicated that his strategy of rupture was intertwined with his biography: “Cette stratégie de la rupture est un aboutissement chez moi. C'est l'histoire de ma vie qui l'explique et qui permet de la

⁴ See Françoise Vergès, *Monsters and Revolutionaries: Colonial Family Romance and Métissage* (Durham: Duke University Press, 1999) [Françoise Vergès, *Monsters*]. She received a PhD in Political Science from Berkeley, University of California, and teaches at the University of London. She is the daughter of Vergès' younger brother Paul.

⁵ See Bernard Violet, *Vergès, le Maître de l'ombre* (Paris: Seuil, 2000) [Violet, *Vergès*].

comprendre.”⁶ This study elaborates on Vergès’ insight that his life story occupies a central place in explaining and understanding his judicial strategy.

1.1. De la stratégie judiciaire

Vergès’ central work on judicial strategy remains his 1968 book, *De la stratégie judiciaire* and it is from it that we derive the terminology with which we will operate. *De la stratégie judiciaire*, the centre piece of Vergès’ literary production, remains a challenging book even now, decades after its publication. Its challenge is due to the obscurity of its concepts and the intervening decades that have served to obliterate the background against which they made sense, namely communism.

Vergès wrote:

La distinction fondamentale qui détermine le style du procès pénal est l’attitude de l’accusé en face de l’ordre public. S’il l’accepte, le procès est possible, constitue un dialogue entre l’accusé qui s’explique et le juge dont les valeurs sont respectées. S’il le refuse, l’appareil judiciaire se désintègre, c’est le procès de rupture.⁷

The key cases which Vergès categorized as connivence were Dr. John Bodkins Adams,⁸

Malagasy parliamentarians charged with the Malagasy Uprising,⁹ General Maurice Challe,¹⁰

⁶ Philippe Karim Felissi, Jacques Vergès, *Jacques Vergès l’anticolonialiste: Entretiens avec Philippe Karim Felissi* (Paris: Félin, 2005) at 42 [Felissi, *Anticolonialiste*].

⁷ Jacques Vergès, *De la stratégie judiciaire*, 2d ed (Paris: Minuit, 1981) at 19 [Vergès, *Stratégie judiciaire*].

⁸ Adams was accused of having administered a fatal dose of morphine and heroine to his client Edith Alice Morrell. The Adams trial took place in London in 1957.

⁹ Joseph Ravoahangy, Joseph Raseta, and Jacques Rabemananjara were representatives of Madagascar in the National Assembly in Paris. They were also founders of the *Mouvement Démocratique pour la Renovation Malgache* (MDRM). When the 1947 uprising broke out, the colonial government called it a MDRM plot and imprisoned the three MDRM deputies. Despite their immense popularity, it is unknown whether the deputies had enough power over the secret societies to warrant that measure. See Jennifer Cole, *Forget Colonialism? Sacrifice and the Art of Memory in Madagascar* (Berkeley: University of California Press, 2001) at 229–231. The entry on Joseph Ravoahangy on the web site of the National Assembly confirmed Vergès’ point that the three parliamentarians were used as scapegoats by the French colonial regime: “Joseph Ravoahangy était-il coupable ? En fait, le pouvoir doutait bien de la valeur des preuves policières, mais il imputait au député la responsabilité du climat pré-insurrectionnel qui s’était instauré à Madagascar avant le 29 mars 1947. Au surplus, une condamnation politique exemplaire réaffirmait aux yeux des populations malgaches la volonté de la France de maintenir sa souveraineté sur Madagascar. Tout comme jadis la reine Ranaivalona III en 1896–1897, Joseph

the writers Stendhal¹¹ and Maurice Barrès,¹² and the fictional character of “K” in Kafka’s novel *The Trial*.¹³ The cases that represented the strategy of rupture were Socrates,¹⁴ Louis XVI,¹⁵ and the Leipzig trial of Georgi Dimitrov in 1933.¹⁶

Ravoahangy a payé l'utilisation que les insurgés ont faite de son nom.” See *Biographie des députés de la IV^e République*, Joseph Ravoahangy) at <http://www.assemblee-nationale.fr/histoire/biographies/IVRepublique/ravoahangy-joseph-28101893.asp>

¹⁰ Retired General Maurice Challe was one of the four leaders of the failed “Generals’ revolt” in April 1961, a French uprising against the authority of the French Government. Challe was reputedly the mastermind of the putsch, which was the third serious revolt in Algeria against the French Government. Challe worked together with three other retired generals: Raoul Salan, Edmond Jouhaud and André Zeller. The Foreign Legion was to act as the spearhead of the revolt. Legion paratroopers seized key buildings in the capital city of Algeria, Algiers, on April 22. Other troops joined them in the revolt. The so-far little known *Organisation Armée Secrète*, the OAS, was permitted to establish a headquarters in Algiers and was granted the exclusive authority to issue instructions to the civilian population. See Edgar O’Ballance, *The Algerian Insurrection, 1954–62* (Hamden: Archon Books, 1967) at 169–174 [O’Ballance, *Insurrection*]. Realizing that the coup had failed, Challe surrendered on April 26, 1961. Other leaders of the revolt went into hiding. Zeller surrendered on May 6. See *op. cit.* at 175–182. To deal with the rebels, the President of the Republic De Gaulle created the *Haut Tribunal militaire* on April 27, 1961. See Edmond Jouhaud [defendant], *Le procès d’Edmond Jouhaud: Compte rendu sténographique* (Paris: Albin Michel, 1962) at 7. Challe was also set free in late-1967. See Rémi Kauffer, *OAS: Histoire de la guerre franco-française* (Paris: Seuil, 2002) at 420.

¹¹ Stendhal used the story of a young seminarian called Antoine Berthet as the basis for his novel, in line with Stendhal’s tendency to use real *crimes passionnels* as material for his fiction. Berthet became Julien Sorel in Stendhal’s novel. See René Fonvieille, *Le véritable Julien Sorel* (Paris: Arthaud, 1971) at 11–2. What accentuates the social implications of that story is that Berthet was a revolutionary, an adept of the Bonapartist opposition. See *op. cit.* at 217. Although Vergès placed Stendhal under the heading “connivence,” Stendhal’s version of pleading is in line with rupture: “But even were I less guilty, what I see, here, is men who, not stopping to consider whatever pity my youth may merit, wish to punish – in me – and to discourage forever all young people born into an inferior class, and in one way or another oppressed by poverty, who wish for themselves the happiness of a good education, young people who might have the audacity to mingle among those who are labelled, by the arrogance of the rich, ‘society’. There is my crime, gentlemen, and it will be punished even more severely if, in truth, I am not judged by my peers. I do not see, on these jury benches, a single wealthy peasant, but only the angry and indignant bourgeoisie.” Stendhal, *The Red and the Black—A Chronicle of 1830*. Translated by Burton Raffel (New York: The Modern Library, 2003) at 461–2 (Chapter 41).

¹² The portrayal of Honoré Racadot by the French novelist Maurice Barrès (1862–1923) in the novel *Les déracinés* (“the uprooted,” not translated into English) was more in line with connivence than that of Sorel by Stendhal. Barrès was not sympathetic to those who yearned for change, let alone revolution. Vergès mentions Barrès got his inspiration from *The Insurrectionist (l’Insurgé)* written by Jules Vallès, which is a story of the rise and fall of the Paris Commune in 1871. See Vergès, *Stratégie judiciaire*, *supra* note 7 at 75. The connection between Vallès, who was a revolutionary, and Barrès, who is best-known to posterity because of his nationalist agenda, is unexpected but well-documented. For Barrès’ nationalism, see in general Robert Soucy, *Fascism in France: The Case of Maurice Barrès*. Berkeley: University of California Press, 1972. For the connection between Vallès and Barrès, see Gaston Gill, *Jules Vallès (1832–1885): Ses révoltes, sa maîtrise, son prestige* (Genève: Slatkine, 1981) at 569–577.

¹³ Vergès does not discuss Kafka’s work. Instead, he retraces the appearance of the adjective Kafkaesque in the French language, according to the Robert dictionary, to the cold war. He writes that the dictionary dates the appearance of the word in the French language back to 1950. To him, that year suggests that the word spread to the French language to describe Stalin’s Moscow trials. See Vergès, *Stratégie judiciaire*, *supra* note 7 at 77–81. If we accept Vergès’ challenge and turn our attention to the political fulfilments of the K trial, we note that Vergès’ chronology is problematic. The Moscow trials took place in 1936–8. There is thus a twelve-year gap between the word “Kafkaesque” and the Moscow trials. The Moscow-type trials that the word Kafkaesque reflects are more likely a reference to the so-called Prague trials in 1950. Vergès cannot have been ignorant of those trials because he was in Prague at the time of the Slánský trial. Rudolf Slánský, the principal accused of those trials, was hanged on November 3, 1952, by which time Vergès had been in Prague for more than a year. See Jacques Givet, *Le cas Vergès* (Paris: Lieu Commun, 1986) at 64–5 [Givet, *Le cas*].

Connivence shares the political goals of the justice system and the political power that it supposedly represents, while rupture advocates the political goals of the accused in defiance of the justice system. Those two approaches reflect the underlying agreement, or lack thereof, between the justice system and the accused: “Le procès a pour fonction de régler les contradictions entre individus et sociétés avec l’accord – ou tout au moins l’acquiescement – des accusés eux-mêmes.”¹⁷ Because the success of the trial is dependent on that acquiescence by the accused, Vergès argues, the accused can also say “no” to the authority of the justice system. Instead, what normally happens is that the accused, who does not realize that his acquiescence is needed, says “yes” against his will. Vergès calls that reluctant acquiescence “fausse connivence” and “rupture inavouée.”¹⁸

We can begin to come to grips with the strategies of rupture and connivence if we know the ideological background against which they were situated: communism. Rupture is the motor

¹⁴ Vergès produced in *De la stratégie judiciaire* a lengthy quotation from Socrates’ speech as recorded in Plato’s *Apology*. Vergès’ Socrates quote culminated in Socrates’ prophecy: “And I prophesy to you who are my murderers, that immediately after my death punishment far heavier than you have inflicted on me will surely await you.” Plato, “Apology,” in *The Works of Plato*, translated into English with analyses and introductions by Benjamin Jowett, Volume Three (New York: Tudor Publishing Company, [19–?]) at 130 (39c). Vergès quoted that passage in Vergès, *Stratégie judiciaire*, *supra* note 7 at 93. Socrates’ prophetic words got their ultimate fulfillment in the reprobation heaped on Socrates’ judges by later generations, which is a factor in Vergès’ inclusion of the trial of Socrates as a precursor of his strategy of rupture in *De la stratégie judiciaire*.

¹⁵ Vergès placed the Louis XVI trial under the strategy of rupture because of the strategy adopted by the accusers of Louis XVI, namely Robespierre and Saint-Just: “À l’occasion du débat de procédure, Saint-Just et Robespierre avaient prononcé le véritable réquisitoire. Qu’allait faire la défense? Le roi allait-il opposer la conception de la royauté de droit divin – à laquelle il croyait profondément – à l’idéal républicain? Allait-il opposer ses croyances religieuses à la politique des conventionnels? Allait-il simplement exiger le respect de la loi? Allait-il rompre le dialogue et en appeler au peuple comme Charles Ier? Il n’en fit rien. Face à une accusation de rupture, le roi déchu adopta une défense respectueuse.” Vergès, *Stratégie judiciaire*, *supra* note 7 at 99–100.

¹⁶ The German parliament building was set in flames at 9 p.m. on February 27, 1933. The Dutch citizen Marinus van der Lubbe was caught in the building. Ernst Torgler, a communist Member of Parliament, was seen to be among the last persons to leave the building. Van der Lubbe was a member of the Dutch Communist Party and thus suspect in the eyes of the Nazis. Torgler was an obvious suspect, because he was known to spend much time in the *Reichstag*. The three Bulgarians, who would end up on trial, Georgi Dimitrov, Blagoi Popov and Vasil Tanev, were turned in by an innkeeper, who told the police for the reward of 20,000 *Reichsmark* that he had often seen the three in company of Van der Lubbe. During the trials, Dimitrov had four co-accused: Van der Lubbe; Torgler; Popov; and, Tanev. The trial of the four accused began before the fourth Criminal Senate of the *Reichsgericht* (Court of the German Empire), the highest court of the German *Reich*, in Leipzig on September 21, 1933. Only Van der Lubbe was finally sentenced to death. Dimitrov and the other two accused were acquitted on December 24, 1933. See generally World Committee for the Victims of German Fascism. *Dimitroff contra Goering, Goering: Enthüllungen über die wahren Brandstifter* (Paris: Éditions du Carrefour, 1934) [*Dimitroff contra Goering*].

¹⁷ Vergès, *Stratégie judiciaire*, *supra* note 7 at 19.

¹⁸ *Ibid* at 18.

of communism.¹⁹ It drives Vergès' strategies beyond what he called the "strategy of rupture." The Marxist influence on Vergès' strategies is palpable. The only predecessor of Vergès' *De la stratégie judiciaire* in French legal scholarship is the Marxist lawyer Marcel Willard's *La défense accuse: de Babeuf à Dimitrov*. As its title suggests, Willard's book describes the defence strategies of great revolutionaries from François-Noël Babeuf to Georgi Dimitrov. Babeuf was one of the agitators of the French Revolution and a communist *avant la lettre*. Dimitrov was a communist who became the head of state of Bulgaria after the Second World War.

Vergès referred to Willard in *De la stratégie judiciaire*.²⁰ He later attributed much of his own development to Willard's book.²¹ In *La défense accuse*, Willard explained that his use of the word strategy was inspired by V.I. Lenin's letter of January 19, 1905 to the Central Committee on the conduct of a legal defense in the courts of the class enemy. Willard first paraphrased Lenin's question: "Comment un révolutionnaire doit-il se comporter, lorsqu'il tombe au pouvoir de l'ennemi de classe? Quelle doit être son attitude en présence de ses geôliers et de ses juges?"²² Willard then paraphrased Lenin's answer with a reference to strategy: "Autodéfense politique et, subsidiairement, juridique. Pas de défense personnelle. Cette stratégie exige autant de souplesse que de fermeté."²³

¹⁹ The Communist Party of Venezuela expressed the dichotomy between revolution and reformism as that between rupture and reformism: "La constitution du parti doit représenter la rupture définitive avec toute manifestation de réformisme et de collaboration de classes, avec des projets socio-démocratiques dissimulant un système d'injustice, qui proposent des changements mineurs qui laissent intact son essence exploiteur." Communist Party of Venezuela, *Contribution of the PCV at the International Communist Seminar*, From: Communist Party of Venezuela, Monday, May 14, 2007 at paragraph 24 at [http://www.icsbrussels.org/ICS/2007/Contributions to the Seminar/42_SCI2007_venezuela_PCV_ponencia_fr.htm](http://www.icsbrussels.org/ICS/2007/Contributions%20to%20the%20Seminar/42_SCI2007_venezuela_PCV_ponencia_fr.htm)

²⁰ Vergès, *Stratégie judiciaire*, *supra* note 7 at 105. He quoted several passages from Dimitrov's article in Pravda of March 4, 1934. *Ibid* at 104–114.

²¹ See Felissi, *Anticolonialiste*, *supra* note 6 at 100.

²² Marcel Willard, *La défense accuse : de Babeuf à Dimitrov* (Paris: Éditions Sociales Internationales, 1938) at ix [Willard, *Défense accuse*].

²³ *Ibid* at xxii.

Willard's and Vergès' books display many similarities. Those similarities are both formal and substantial. The order of cases discussed is chronological. In both books, the trial of Georgi Dimitrov in 1933 was central. Dimitrov was accused of setting the Reichstag on fire in 1933 but was acquitted thanks to his effective argumentation. Both books stress the political nature of the bourgeois justice system, which calls for a political defence. The differences between those books are minor. Whereas Willard focuses on cases that date from the French Revolution, Vergès goes back to Socrates and Oedipus. Whereas Willard's approach is unabashedly Marxist, Vergès is more oblique in his political statements, apart from an opening quotation from Chairman Mao and interspersed references to Willard, Fidel Castro, Lenin and Stalin.

That revolutionary background was palpable in Vergès' earlier literary production. Before *De la stratégie judiciaire*, Vergès conceptualized a political defence in *Défense politique* written by the Algerian *Front de la libération nationale* lawyers' collective, of which he was a member, in 1961. That political defence is reducible to three main points: revolutionary enthusiasm; appeal to public international law; and, appeal to public opinion.²⁴ The book was inspired by Willard: one of its appendices contains excerpts from Willard's observations about the Dimitrov trial.²⁵

Vergès would use Dimitrov as one of the key examples of the strategy of rupture in *De la stratégie judiciaire*.²⁶ The equation of "political trials" with rupture is also palpable in the overall structure of *De la stratégie judiciaire*. Its third chapter was devoted to "the technique of political trial," following immediately, and thus elaborating on, the second chapter, which presented the strategy of rupture. The cases that Vergès discussed in the third chapter, such as

²⁴ See Abdessamad Benabdallah et al., *Défense politique* (Paris: François Maspero, 1961) at 73 [Benabdallah, *Défense politique*].

²⁵ *Ibid* at 80–3.

²⁶ *Idem*. See also Vergès, *Stratégie judiciaire*, *supra* note 7 at 104–14.

those of Joan of Arc and his own cases from the Algerian War of Independence, suggest that he understood by a political trial a trial in which the defence could put forward the political agenda of the accused, which necessitated recourse to the strategy of rupture.

The distinction between the strategy of rupture and the rupture of connivence is not as clear as the straightforward structure of *De la stratégie judiciaire* suggests. The first chapter of that book is about the strategy of connivence and the second about the strategy of rupture. Instead of getting a clear answer to what makes them different from each other, we are left searching for clues. Vergès pointed to the social underpinnings of the strategy of connivence by sketching the following picture of the case of Dr. Adams, the first example of the strategy of connivence in *De la stratégie judiciaire*: “La victime et l’accusé sont tous deux Anglais, tous deux de bonne bourgeoisie. Ils appartiennent au même monde que leurs juges, revendiquent donc la même morale et la même ‘vérité’.”²⁷ The “truth” (in inverted commas) refers to ideology. Ideology means erroneous and prejudiced beliefs used by a social class to impose its authority on another social class, while the opposite of ideology is truth (without inverted commas).²⁸ The case of Dr. Adams (1957) was a murder prosecution. According to Vergès, its class nature resided in the background of those involved: the accused was a doctor and his victim, Mrs. Morrell, was a rich widow, whom the doctor had allegedly killed to inherit her wealth. Vergès did not believe in the innocence of Adams but attributed his acquittal to class prejudice which, in that case, worked in his favour because, in Vergès’ view, the doctor and the widow belonged to the same social class and thus, as F. Scott Fitzgerald would have said, “were rich together”.²⁹

²⁷ Vergès, *Stratégie judiciaire*, *supra* note 7 at 32–3.

²⁸ See Jean Servier, *L’Idéologie*, in the series “Que sais-je ?” (Paris: Presses Universitaires de France, 1982) at 5–6.

²⁹ Vergès, *Stratégie judiciaire*, *supra* note 7 at 31–44. The Fitzgerald quote is from the novel *The Great Gatsby*. Tom had enough financial resources “to drift here and there unrestfully wherever people played polo and were rich together”. Indeed, the judge in the Adams trial instructed the jury emphasizing the role of the presumption of innocence: “...the price of making sure that the innocent are not convicted must be that the guilty sometimes

1.2. The Importance Attached to Vergès' Strategy by Foucault and Derrida

The impetus for our analysis of Vergès' strategy comes, in part, from two of the greatest thinkers of the later twentieth century, Jacques Derrida and Michel Foucault, both of whom referred to *De la stratégie judiciaire* (explicitly in the case of Foucault and implicitly in that of Derrida). By the time that they drew attention to Vergès' judicial strategy, Vergès' discourse on judicial strategy had already begun to develop beyond rupture and connivence into a more comprehensive strategy that encompassed his biography.

Foucault met with Vergès on the occasion of the re-edition of Vergès' 1968 book *De la stratégie judiciaire*, in which Vergès introduced his strategies of rupture and connivence. Foucault and Vergès were members of *Défense libre*, a short-lived early-1980's forum for activists who fought for the right to legal defense of (those they viewed as) political prisoners.³⁰ When the second edition of *De la stratégie judiciaire* was released in 1981, its preface consisted of exchanges between Vergès and other interested parties, including

go free." Sibylle Bedford, *The Best We Can Do: An Account of the Trial of John Bodkin Adams* (London: Collins, 1958) at 224. Bedford's account put the emphasis on the defence lawyer's remarkable skill in cross-examining witnesses, without any hint of politics or class prejudice. Vergès may have seen political significance in the lawyer's high social standing because he mentioned that "Sir Geoffrey Lawrence" was former President of the International Military Tribunal at Nuremberg. See Vergès, *Stratégie judiciaire supra* note 7 at 35. However, Dr. Bodkins' lawyer was not the same person. The Nuremberg judge, to whom Vergès referred, was indeed an aristocrat, Geoffrey Lawrence, 3rd Baron Trevethin, 1st Baron Oaksey (and, as a baron, would not have been entitled to the honorific "Sir," which is reserved for knights). However, Dr. Bodkins' lawyer was Sir Frederic Geoffrey Lawrence, whose parents were either working class or petty bourgeoisie (a butcher and a singing teacher). He was knighted in 1963.

³⁰ Email of Jacques Vergès to Jonathan Widell of May 31, 2010. *Défense libre* was founded on May 26, 1980 "à la Sainte-Beaume," which refers to the town of Saint-Maximin-la-Sainte-Baume in the department of Var, near Marseille. Sainte-Beaume, as Vergès referred to that place, earned its name because of a legend according to which Mary Magdalene, the archetypal forgiven sinner, retired to a local cave – *bauma* in Provençal. See Vergès, *Stratégie judiciaire, supra* note 7 at 12. The mission of *Défense libre* was "the defense of the defense" and it rallied several other groups, such as *Comité d'Action Prison Justice* and *Comité du défense des prisonniers politiques*. See generally Jacques Vergès, Étienne Bloch, *La face cachée du procès Barbie: Compte-rendu des débats de Ligoure* (Paris: Samuel Tastet Éditeur, 1983) at 81–95 [Vergès, *Face cachée*]. There appears to be no record of *Défense libre* after its meeting in Ligoure (in the department of Haute-Vienne in the region of Limousin) in 1983.

Foucault.³¹ Those exchanges were also published in Foucault's *Dits et écrits*.³² Its question-and-answer format was the first in a long series of Vergès' literary output in that format, which has proved a workable formula for Vergès.

Derrida expressed his views about Vergès' strategy on two occasions, first in an interview he gave in the United States in 1987 and then in his well-known essay *The Force of Law* in 1990. Both Foucault and Derrida pointed to the central concept of strategy. Derrida specifically mentioned Vergès' "strategy of rupture," situating it in the broader context of two concepts, legitimacy and legality, which Vergès rarely uses but which Derrida correctly identified as central to an understanding of Vergès' strategy.

To be able to answer the questions raised about Vergès' strategy by Foucault and Derrida we place these questions on two different levels of analysis. Derrida's preoccupation was Vergès' discourse and its coherence whereas Foucault was interested in the historical context of that strategy. From Vergès himself, we add a third level. The third level was expressed by Vergès' when he mentioned that the strategy of rupture was his "aboutissement." We call this third level of analysis "biographical" in the strict sense of his personal history. So, this study operates on three levels: first, the discourse of strategy and its coherence; second, the historical and geo-political contexts of the discourse and its evolution; and, third, the relation of the discourse and its historical contexts to Vergès' own life story. This study is primarily biographical – but "biographical" in its broadest sense encompasses all those three levels.

³¹ Vergès' other conversation partners were introduced as follows: "Jean Lapeyrie, des comités d'action Prison-Justice, responsable du journal *Le Cap*, Dominique Nocaudie, des Boutiques de droit, Christian Revon, du réseau Défense libre." Vergès, *Stratégie judiciaire*, *supra* note 7 at 8.

³² See generally Michel Foucault, "Préface à la deuxième édition," in *Dits et écrits 1954–1988 IV: 1980–1988*, Édition établie sous la direction de Daniel Defert et François Ewald avec la collaboration de Jacques Lagrange (Paris, Gallimard, 1994), p. 130–4.

1.2.1. *Derrida and the Coherence of Vergès' Discourse*

Derrida's comments on Vergès date from the period when Vergès became known as Barbie's lawyer and the "devil's advocate." The notoriety of Barbie erased the memory of Algeria. A brief review of Derrida's remarks reveals allusions to the Barbie case.

In the spring of 1987, Derrida referred to Vergès in an interview he gave at the *Collège International de Philosophie*.³³ That interview was published as "Ethics and Politics Today" in 2002:

What would be interesting to analyze closely...is the strategy of Vergès, the discourse of Vergès, what he calls his strategy. The way he litigates. Its strategy of rupture [would also be interesting to analyze]. He negotiates, nonetheless, he presents himself as a lawyer, he does his job as a lawyer, he uses all of the resources of the law, while radically contesting the legitimacy of this law and all of its consequences: the politics and the cynicism and the political hypocrisy that demand the exercise of this law, within which, however, he places himself. Does he do this in the name of ethics, politics, or of some other law? This is a very difficult question that, in my opinion, we cannot treat without bringing everything back to the beginning again. But it would be interesting to analyze the quite fascinating – I find, very strong, very coherent – discourse of Vergès, however shocking it may appear...³⁴

The center of gravity in Derrida's two references to Vergès is the radical contestation of law.

In the passage above, he noted that Vergès "uses all of the resources of the law, while radically contesting the legitimacy of this law and all of its consequences." Derrida suggested that Vergès did not contest the legitimacy of the law only to be contrary. His observations were at variance with those made by the French investigative journalist Daniel Duroy, who summed up Vergès' character as follows: "I think he was born at war, born angry, born colonized. Once you've been colonized, the only attitude for a man or a woman, is to be

³³ Elizabeth Rottenberg's email to Jonathan Widell on August 6, 2010.

³⁴ Jacques Derrida, "Ethics and Politics Today," in Elizabeth Rottenberg, ed, *Negotiations – Interventions and Interviews, 1971–2001* (Stanford: Stanford University Press, 2002) at 308. The reason Derrida singled out Vergès among the many lawyers who were involved in left-wing causes in the early 1980's probably related to Derrida's Algerian background and his familiarity with Vergès' activities as a lawyer during the Algerian War of Independence.

against things. You can't go along with them, make compromises. So you're against things."³⁵ On the contrary, Derrida suggested that Vergès' contrariety was principled, i.e. that that Vergès engaged in radical contestation in the name of something, although he could pin down this something for which Vergès acted.

Derrida resumed his reflections about Vergès in his essay "Force of Law," published in the *Cardozo Law Review* in 1990. Derrida discussed Vergès in the second part of that essay, in which he invoked Walter Benjamin's figure of the 'great criminal,' a figure which exposes the violent nature of law.³⁶ That figure provided him with an opportunity to return to Vergès "radical contestation of the given order of the law," by which he referred to the strategy of rupture. He suggested that Vergès' strategy of rupture has the same function as the 'great criminal':

...the figure of the "great" criminal...is someone who, in defying the law, lays bare the violence of the legal system, the juridical order itself. One could explain in the same way the fascination exerted in France by a lawyer like Jacques Vergès [*sic*] who defends the most difficult causes, the most indefensible in the eyes of the majority, by practicing what he calls the "strategy of rupture," that is, the radical contestation of the given order of the law, of judicial authority and ultimately of the legitimate authority of the state that summons his clients to appear before the law.³⁷

³⁵ Barbet Schroeder [dir.], *Terror's Advocate* [DVD], Toronto, ON: Mongrel Media, [2008], Chapter 3 [Schroeder, *Terror's Advocate*].

³⁶ Walter Benjamin introduced the great criminal in his writings as follows: "...one reflects how often the figure of the 'great' criminal, however repellent his ends may have been, has aroused the secret admiration of the public. This can result not from his deed but only from the violence to which it bears witness. In this case, therefore, the violence that present-day law is seeking in all areas of activity to deny the individual appears really threatening, and arouses even in defeat the sympathy of the masses against the law." Walter Benjamin, "Critique of Violence," in Walter Benjamin, *Selected Writings, Volume 1: 1912–1926* (Cambridge: President and Fellows of Harvard College, 1996) at 239.

³⁷ Jacques Derrida, "Force of Law: The Mystical Foundation of Authority" translated by Mary Quaintance, in *Cardozo Law Review*, 1990, Vol. 11, p. 919–1045 at 987. In the film *Derrida* (2002), Derrida used an expression similar to "the contestation of ...authority" when describing his inner struggle during a deconstructive gesture: "You're crazy to contest such an authority, be it textual, institutional, or personal. And there is a sort of panic in my subconscious..."

Derrida's mention of the "given order of the law" refers to legality. In Max Weber's analysis, the "legitimate authority of the state" relies on that legality.³⁸ Vergès' strategy of rupture involved the radical contestation of that "given order of the law" (legality) and ultimately "the legitimate authority of the state," which relied on that legality. What does "radical contestation" mean? When we situate "radical contestation" in the context of *The Force of Law* as a whole, we may interpret it as legality and legitimacy changing places: legitimacy is on the side of the "great criminal," which allows his lawyer to contest legality.³⁹ That radical contestation divests the authority of the state of its legitimacy while vesting legitimacy in the criminal. Derrida's evocation of the "great criminal" reflects Vergès' emphasis on the figure of a criminal. He frequently uses the image of a criminal who is able to rally popular support. Vergès named in particular Mandrin, d'Artagnan, and Arsène Lupin, who in his view fought the establishment all by themselves, which corresponds to the action of what Benjamin called "great criminals": "Le Français moyen aime Mandrin, d'Artagnan, Arsène Lupin, celui qui est seul contre tous et surtout contre l'establishment."⁴⁰ He would also evoke historical

³⁸ Legality and legitimacy were distinguished by Max Weber, who described three pure types of legitimate domination: the validity of the claims to legitimacy can be based on rational grounds; on traditional grounds; or, on charisma. The rational grounds rest "on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands." Legality was for Weber one type of legitimacy. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, edited by Guenther Roth and Claus Wittich ; Translators: Ephraim Fischhoff ... [et al.] (Berkeley: University of California Press, 1978) at 215. See also Max Weber, "Politics as a Vocation," in *The Vocation Lectures*; edited and with an introduction by David Owen and Tracy B. Strong; translation by Rodney Livingstone (Indianapolis: Hackett Pub, 2004, p. 32–94) at 34 and Carl Schmitt, *Legality and Legitimacy*; translated and edited by Jeffrey Seitzer with an introduction by John P. McCormick (Durham [N.C.]: Duke University Press, 2004) at 97. A French dictionary juxtaposes the word *légal* to *légitime* as follows: "Légitime n'est synonyme de *légal* que dans certaines expressions plus rares de nos jours qu'autrefois. Légitime évoque l'idée d'un droit fondé sur la justice et l'équité, droit supérieur que le droit positif peut contredire. Dans ce cas, légitime, synonyme de juste, s'oppose à *légal*. Pour les légitimistes, Louis-Philippe n'était pas souverain légitime, bien qu'il fût légalement roi. Le gouvernement *légal* n'est pas légitime aux yeux de ses adversaires. Les définitions du gouvernement légitime sont forcément subjectives." *Le Grand Robert de la langue française*, deuxième édition, dirigée par Alain Rey du Dictionnaire alphabétique et analogique de la langue française de Paul Robert (Paris: Dictionnaires le Robert, 2001, Tome 4, 738, s.v. *Légitime*).

³⁹ In that setting of the strategy of rupture, legitimacy is represented by the defence attorney and legality by the prosecution. The exchange that takes place between them is personified by the exchange of the roles of the prosecutor and the defence attorney. Paradoxically, the possibility of that exchange is also a characteristic of dialogue. See Kojin Karatani, *Architecture as Metaphor: Language, Number, Money*, translated by Sabu Kohso, edited by Michael Speaks (Cambridge, Mass.: MIT Press, 1995) at 112.

⁴⁰ See Jacques Vergès, Alain de la Morandais, *Avocat du diable, avocat de Dieu* (Paris: Presses de la Renaissance, 2001) at 235 [Vergès, *Avocat*]. Louis Mandrin (1725–1755) was a French highwayman. d'Artagnan was the young daredevil musketeer in Alexandre Dumas' novel *The Three Musketeers*. Arsène

characters as great criminals. Joan of Arc was for him a sort of hybrid of a historical and a fictional character.⁴¹ Vergès even called Barbie “le prototype d’un héros tragique de notre temps.”⁴²

1.2.2. *Foucault: Vergès’ Discourse in Historical Context*

Foucault emphasized that relation of Vergès’ judicial strategy to its historical context, namely the War of Algeria. Vergès’ introduction of his strategy of rupture and of connivence reflected his personal experiences, which made those strategies expressions of their historical context. Without saying so himself, Foucault suggested that Algeria may play a disproportionately large role in Vergès’ life-long discourse on strategy.

Foucault suggested a project in which Vergès’ analysis of judicial strategy would be extricated from its original context. In his exchange with Vergès, Foucault was in search of what he called a ‘nouvelle stratégie judiciaire’ with the suggestion that Vergès’ strategy was too connected to its historical context, which curtailed its utility:

Votre livre a été élaboré et écrit dans une conjoncture historique déterminée et, même si dans son projet il débordait largement le cadre de la guerre d’Algérie, cet événement y est encore très présent et commande sans doute une part de vos analyses. Ne pensez-vous pas que le développement pratique d’une nouvelle stratégie judiciaire impliquerait un travail d’analyse et de critique globales du fonctionnement judiciaire actuel et comment pensez-vous que l’on pourrait mener collectivement ce travail?⁴³

Lupin was a fictional character who appeared in a book series of crime fiction novels written by Maurice Leblanc. The centrality of those comparisons in Vergès’ practice is suggested by the comparison that his former coworker Isabelle Coutant drew between a lawyer and famous outlaws, such as Robin Hood, Cartouche [pseudonym of the French highwayman Louis Dominique Bourguignon], Mandrin, Jean Valjean [chief protagonist of Victor Hugo’s novel *Les Misérables*], and the French anarchist Jules Bonnot (1876–1912). See Isabelle Coutant, *Épouser Carlos: Un amour sous haute tension* (Paris: L’Archipel, 2004) at 68–9 [Coutant, *Carlos*]. It is remarkable that neither of them mentioned their contemporary Jacques Mesrine (1936–1979), a bank robber and self-styled revolutionary, whose life inspired six films, including the *L’instinct de mort* and *L’Ennemi public n° 1* (2008). In those two films, Vincent Cassel portrayed him as a *bon vivant* who liked good food and beautiful women, yet had the capacity to resort to extreme violence when his pride was at stake.

⁴¹ See his discussion of the rehabilitation of Joan of Arc in Vergès, *Stratégie judiciaire supra* note 7 at 152–161.

⁴² Jacques Vergès, *La justice est un jeu* (Paris: A. Michel, 1992) at 45 [Vergès, *Jeu*].

⁴³ Vergès, *Stratégie judiciaire, supra* note 7 at 11–12.

With that remark, Foucault went beyond the text of *De la stratégie judiciaire*. Vergès relegated the Algerian trials to the last section of that book, immediately before the conclusion. Of course, Foucault could not have ignored the fact that the Algerian War and the book did not coincide in time. Although Foucault suggested that the historical conjuncture of that book was the Algerian War, he knew that the war had ended four years before the book's original release in 1968, thus alluding to the trace of that war in Vergès' thinking rather than the chronological simultaneity of the war and the book's release.

In view of the central role of "discourse" in Foucault's archeology, it is significant that he did not draw attention to Vergès' court cases but rather to his discourse about strategy, represented here by his reference to "votre livre." Even the "développement pratique," to which Foucault referred, implied an analysis and critique. In contrast, the lawyer members of the *Défense libre* were interested in concrete applications of Vergès' strategy of rupture. Foucault situated the discourse against the background of Vergès', represented in that passage, again metonymically, about the Algerian War.⁴⁴ The metonymical interpretation of Foucault's reference to the Algerian War is justifiable in light of the conjuncture at which Vergès wrote *De la stratégie judiciaire*. That book was released six years after the end of that war.

⁴⁴ In *L'archéologie du savoir*, Foucault emphasized that a book was a pointer to its larger context: "Mais surtout les unités qu'il faut mettre en suspens sont celles qui s'imposent de la façon la plus immédiate: celles du livre et de l'œuvre....Le livre a beau se donner comme un objet qu'on a sous la main...Dès qu'on l'interroge, elle [son unité] perd son évidence ; elle ne s'indique elle-même, elle ne se construit qu'à partir d'un champ complexe de discours." Michel Foucault, *L'archéologie du savoir* (Paris: Gallimard, 1969) at 35–6. That same work provided other examples of Foucault's diction, such as his characteristic use of the word "travail" in reference to a project or study, possibly a play on the meanings of œuvre (a work) ("Il y a d'abord à accomplir un travail négative") on page 33. Similarly, in his remarks about Vergès, Foucault spoke of a "*travail d'analyse et de critique globales du fonctionnement judiciaire actuel et comment pensez-vous que l'on pourrait mener collectivement ce travail.*"

1.3. *Biographical Approach to Vergès' Strategy*

The third level of this study is what we call biographical. That approach takes its cue from Vergès' statement that his life explains his strategy. We use the word "biographical" in a broad sense. The first characteristic of that broad biographical approach is that it intermingles with the two other levels, those of discourse and history. Its second characteristic is the psychohistorical dimension, which broadens – rather than narrows down – that biographical approach. Through psychohistory, our history also extends to intellectual history, which has a direct bearing on our understanding of Vergès' key concepts strategy, rupture and connivence.

1.3.1. *Psychohistorical approach*

The influential developmental psychologist Erik Erikson explained in 1975 what was still hyphenated as "psycho-historical approach" in terms of applying psychoanalytic theory to historical events. By historical events, he meant biographies and referred to his 1962 book *Young Man Luther*.⁴⁵ Erikson made two presumptions: psychohistory would combine biography and psychoanalysis. However, psychohistory has evolved since Erikson's day beyond psychoanalysis and has embraced such fields as social psychology, which informs this study.

Firstly, although the "forte of psychohistory is biography,"⁴⁶ it would be an error to suppose that psychohistory is coextensive with psychobiography.⁴⁷ The Colombian psychologist

⁴⁵ See Erik H. Erikson, *Life History and the Historical Moment* (New York: Norton, 1975) at 114–5. See also Erik H. Erikson, *Young Man Luther: a Study in Psychoanalysis and History* (New York: Norton, 1962).

⁴⁶ See Jacques Szaluta, *Psychohistory: Theory and Practice* (New York: P. Lang, 2001) at 171.

Rubén Ardila suggested that psychohistorical research should extend to six levels: persons, groups, organizations, institutions, socio-cultural systems, and international relations. He also suggests that the areas of psychology that are the most useful for psychohistory are social psychology, personality, developmental psychology, and the psychology of learning.⁴⁸

Secondly, it would also be too restrictive to associate psychohistory exclusively with psychoanalysis. Our approach veers towards social psychology. We widen the circle of social psychological interactions from an individual person to international relations, which Ardila suggested would be the outer limit of psychohistory.

We match biography and psychology through narratives. As Alexander Rofé noted, biography is a special sort of narrative:

A biography is a narrative account of the stages of a person's life, an account which aspires to authenticity and historical accuracy. It records the actions of a particular individual and his experiences in his struggle to achieve his goals and pursue his principles.⁴⁹

Narratives have far-reaching psychological implications, which have given rise to a field called “narrative psychology.” One’s self-story, or autobiography, not only reflects one’s life but also shapes it.⁵⁰ We focus on two psychological implications. A narrative is characterized by chronology and continuity. A narrative is a “chronological recapitulation of the successive events that comprise the reported personal experience.”⁵¹ However, that chronology does not merely chronicle events but is marked by continuity: “Continuity...is one form of coherence

⁴⁷ See e.g. Peter Loewenberg, *Decoding the Past: the Psychohistorical Approach* (New York: Knopf, 1982) at 25. See also Rubén Ardila, “Psicohistoria: La perspectiva psicológica,” in *Revista latinoamericana de psicología*, Volume 24, Nr. 3, 1992) at 339.

⁴⁸ *Ibid* at 339–40.

⁴⁹ Alexander Rofé, *The Prophetic Stories: the Narratives about the Prophets in the Hebrew Bible, their Literary Types and History* (Jerusalem: Magnes Press, Hebrew University, 1988) at 218.

⁵⁰ Annalie Pauw, “Narrative Psychology,” in Paul Avis, Annalie Pauw, Ilse van der Spuy, *Psychological Perspectives: An Introductory Workbook* (Cape Town: Pearson Education South Africa, 1999) p.169–186 at 170 [Pauw, *Narrative Psychology*].

⁵¹ Allyssa McCabe, Carole Peterson, *Developing narrative structure* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1991) at 41.

and the one that is specifically related to narrative, since it operates in time, time being a basic constituent of narrative. Continuity is a chronological linkage between three temporal dimensions: past, present, and future.”⁵² The psychological significance of continuity and thus narrative is its importance for how our ego works. Consequently, continuity is the cornerstone of ego identity and personhood.⁵³

The psychological aspects of narratives are relevant for social psychology because they have a social function: “Stories do not happen in isolation, they are embedded in a community of stories.”⁵⁴ Narratives have legitimating power. As John Fiske wrote, “the narratives continually reenact the right of those in control of ‘The Law’ to impose that law upon others.”⁵⁵ Because of that social aspect of narratives, it is only to be expected that narratives also have a hierarchy. A rudimentary hierarchy is that between narratives and metanarratives. Metanarratives do not have a fixed definition but a succinct description is that they are “ideas such as religion, science, art, modernism and Marxism which make absolute, universal and all-embracing claims to knowledge and truth.”⁵⁶ Metanarratives would thus be a narrative component of what we called ideology.⁵⁷

That narrative/metanarrative dichotomy does not necessarily capture the intricate relationships among narratives at different levels. Paula C. Rodríguez Rust clarified those

⁵² Shlomith Rimmon-Kenan, “The Story of ‘I’: Illness and Narrative Identity,” in *Narrative*, 2002 10:9–27 at 12–3.

⁵³ See James E. Côté, Charles G. Levine, *Identity Formation, Agency, and Culture: a Social Psychological Synthesis* (Mahwah, N.J.: L. Erlbaum Associates, 2002) at 88.

⁵⁴ Pauw, *Narrative Psychology*, *supra* note 50 at 172.

⁵⁵ John Fiske, *Television Culture* (London: Routledge, 1987) at 112.

⁵⁶ See Dominic Strinati, *An Introduction to Theories of Popular Culture*, 2d ed (London: Routledge, 2004) at 215.

⁵⁷ See Jean Servier, *L’Idéologie*, in the series “Que sais-je ?” (Paris: Presses Universitaire de France, 1982) at 5–6. The connection between metanarratives (*grands récits*) and ideology was laid down by Marc Angenot: “Convenons d’appeler *Grands récits*, les complexes idéologiques qui se sont chargés de procurer aux modernes une herméneutique historique totale, balayant les horizons du passé, du présent et de l’avenir...” Marc Angenot, *Les grands récits militants des XIXe et XXe siècles: religions de l’humanité et sciences de l’histoire* (Paris: L’Harmattan, 2000) at 7.

relationships by differentiating micronarratives and metanarratives and identified the social levels at which narratives function:

Narratives function at multiple social levels, including individual, social and historical levels. At the individual level, in a particular social context, one's personal micronarrative explains who one is in that context... This sense of internal consistency, or core self-identity, is the product of a personal metanarrative that encompasses situation-specific micronarratives. The metanarrative functions as the glue holding the micronarratives together by explaining differences between them to reconcile them with each other and with the metanarrative. The metanarrative is, in effect, a dialogue one has with oneself about the self. The product of this metanarrative is akin to the social interactionist concept of the *self-identity*, or the identity that one uses to describe the self to the self, as opposed to the presented identities one enacts for others as produced through context-dependent micronarratives.

Just as a whole is not the sum of its parts, but rather a system produced by its parts, social narratives are the product of individual narratives and historical narratives are the product of social narratives. Individual micronarratives and metanarratives form an individual's history, which in turn reflects and is part of larger social constructive processes of historical cultural change, that is, the process of historical narration. As individuals weave their micronarratives with each other in the context of a specific historical moment, the products they create alter that context, thereby creating historical change.⁵⁸

Just as Rodríguez Rust pointed to the interactions among narratives at different levels, we draw attention to the elementary interaction between the two constituent elements of any narrative, namely chronology and continuity. That interaction is particularly salient in a psychohistorical approach such as ours. "Chronology" then refers not only to the objective order in which events take place but also to a person's perception of that order. Our chronology is "mental chronology," which unfolds in "psychological time."⁵⁹ We are

⁵⁸ Paula C. Rodríguez Rust, "Bisexuality in a House of Mirrors: Multiple Reflections, Multiple Identifies," in Phillip L. Hammack and Bertram J. Cohler, ed, *The Story of Sexual Identity: Narrative Perspectives on the Gay and Lesbian* (Oxford: Oxford University Press, 2009) at 111 [Rodríguez Rust, *Bisexuality*].

⁵⁹ Those terms were used in Xiaobin Yang, *The Chinese Postmodern: Trauma and Irony in Chinese Avant-garde Fiction* (Ann Arbor [Mich.]: University of Michigan Press, 2002) at 41 [Yang, *Chinese*]. They have profound psychological implications. In psychology, "psychological time" is time that is subjectively estimated without the aid of clocks and other external factors. In the context of retrospection, the psychologically correct term would be "time perspective," which is the improved perspective when events are viewed from a certain distance in time. Time perspective is a personal way of viewing the world in terms of the past, present and future. It reflects one's position in society and one's own developmental history. See Jon E. Roenneklein, "History of Conceptions and Accounts of Time and Early Time Perception Research," in Simon Grondin, ed,

conversant with both of those concepts because we are familiar with how narrative fiction works. It often employs discrepancies between “story-order” (which, like life, necessarily flows chronologically) and “text-order” (in which the text advances), known as “flashbacks” or “retrospection” on one hand and “foreshadowing” or “anticipation” on the other.⁶⁰

However, in extreme cases, chronology becomes dispensable altogether. One author described psychological time as a conflation of the past and the present: “...my mental world does not contain any chaos because it does not even have a conception of temporality. Things which happened a long time ago exist along with those which happened yesterday.”⁶¹

That apparent anomaly of dispensing with time provides a key to the conflation of the past and the present which is not necessarily a marginal aspect as much as it is the essence of history. To underline the significance of the interplay between the past and the present in history, Robert Berkhofer went as far as to equate history with poetics.⁶² Insofar as time is scrambled both in historiography and poetics, it is fair to compare history to a poetic or creative creation stimulated by contemporary interests.⁶³

Vergès is not oblivious to the overlapping of time horizons in poetics, either. While on the subject of the secrecy of Chinese policy-making, he explained why poetry was important to him. His comments suggested that he was aware of the political dimension of poetics because it allowed one to resort to the scrambling of time:

Psychology of Time (Bingley, UK: Emerald, 2008) at 29–30. A well-known example of an altered time perspective is David Harvey’s “time-space compression” (accelerating experience of time and shrinking distances) in the capitalist world. See David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Cambridge, MA: Blackwell, 1990) at 147.

⁶⁰ See Shlomith Rimmon-Kenan, *Narrative Fiction: Contemporary Poetics* (London: Methuen, 1983) at 46.

⁶¹ Yu Hua’s novel *Wo de zhenshi*, quoted in Yang, *Chinese*, *supra* note 59 at 59.

⁶² See generally Robert Berkhofer, “The Challenge of Poetics to (Normal) Historical Practice,” in Keith Jenkins, *The Postmodern History Reader* (Abingdon, UK: Routledge, 1997) at 139–155. The word “normal” in the heading is a reference to Thomas Kuhn’s *The Structure of Scientific Revolutions*. Poetics has an intimate link with power, which suggests that one’s view of poetry reflects one’s relationship to power. For a practical combination of poetics and history, see Jane O. Newman, *Pastoral Conventions: Poetry, Language, and Thought in Seventeenth-Century Nuremberg* (Baltimore: Johns Hopkins University Press, 1990) at 174.

⁶³ See generally Edmund E. Jacobitti, *Composing Useful Pasts: History as Contemporary Politics* (Albany: State University of New York Press, 2000).

La poésie est l'expression de pulsions qui sont en nous et ne s'organisent pas par des parentés intellectuelles. Un beau poème, ce sont des images qui se succèdent, comme dans la musique se succèdent des sons. Ces images ne sont pas forcément cohérentes, elles peuvent être parentées, mais ne portent pas de discours.⁶⁴

Vergès' approach to the past constitutes a challenge when we try to separate fact from his presentation of those facts in his large autobiographical material. We encounter that challenge throughout this study, especially in our presentation of his childhood and youth.

1.3.2. *The social psychology of connivence and rupture*

Our three levels call for a definition of the field of psychology that we apply to them. Vergès' judicial strategy is informed by his interactions of different sizes, starting with his family, the relationship between himself and his client, the political movement, his country, his race, his ideology, and so on. Those relationships belong to social psychology, which is the psychological approach that we apply to our study.

We apply social psychology to strategy through two avenues. Firstly, we study the judicial strategy in the light of their group dynamics. Second, we narrow down that group dynamic approach to a study of *groupthink*. Firstly, Vergès' strategies lend themselves to a rudimentary psychological analysis of group dynamics. "Connivence" refers to affinities formed among individuals in a group. As the connotation of the word "connivence" suggests, Vergès views connivence in a negative light. Besides connivence, another approach to one's membership in a group is rupture. We apply "rupture" to situations where rivalry among subgroups leads to the destruction of the group.⁶⁵ Connivence and rupture refer to different ways of handling conflict in a group. The implication is not that groups are doomed. Rupture

⁶⁴ See Vergès, *Avocat*, *supra* note 40 at 107.

⁶⁵ See generally Didier Anzieu, Jacques-Yves Martin, *La dynamique des groupes restreints* (Paris: Presses Universitaires de France, 1973) at 117–8.

is never total. Even an individual who is apparently cut off from all contact with others, such as a hermit, is affected by his membership in a group.⁶⁶

The group dynamics of rupture and connivence are important to law in that they take place in conflicts. Accepting conflict can have the paradoxical effect of improving communication. Its vulnerability is to degenerate into an assertive “I win, you lose” approach. The component of cooperation is weak in that approach, which is called “competition.” When it does, the individual’s challenge is to turn it around to say “I win, you lose” to one’s antagonist.

Competition emphasizes “assertion” at the cost of the other main element of conflict management, namely cooperation. In contrast, the strategy of connivence prefers cooperation to “assertion.”⁶⁷ The more constructive method of conflict resolution, namely collaboration, which is strong on both cooperation and assertion, began to take shape in Vergès’ judicial strategy after he took on cases of men, such as Klaus Barbie, whose political agenda he did not share. He presents his contrariety as a mutually beneficial learning experience: “On dit qu’on banalise, mais c’est un travail propédeutique pour la société. Car, comment prévenir le crime, si, à propos d’un crime, on ne comprend pas la marche qui a amené quelqu’un qui n’était pas criminel à commettre ce crime?”⁶⁸

Second, connivence with a group is not necessarily a conscious choice but an involuntary impulse.⁶⁹ The problem is then not the quality of a group but one’s membership in a group

⁶⁶ See Wilfred Ruprecht Bion, *Experiences in Groups, and Other Papers* (New York: Basic Books, 1961) at 132.

⁶⁷ Assertion means attending to one’s self-interest. See generally Joseph P. Folger, Marshall Scott Poole, Randall K. Stutman, *Working Through Conflict: Strategies for Relationships, Groups, and Organizations* (Boston: Pearson Education, 2005) at 66.

⁶⁸ Vergès, *Avocat*, *supra* note 40 at 254.

⁶⁹ Those two different types of connivence correspond to two out of four possible combinations in the so-called Johari Window, which is a heuristic tool used in social psychology as a management training exercise. That Window categorizes a person’s behavior in terms of whether it is known or unknown to that person and others. Four different combinations are possible: “open” (unknown to oneself and to others), “blind” (unknown to oneself but known to others), “hidden” (known to oneself but unknown to others) or “unknown” (unknown to oneself and to others). The first type of connivence is “hidden” and the second “unknown” though the two other options are not excluded. See Raymond J. Corsini, *The Dictionary of Psychology* (Philadelphia: Brunner/Mazel, 1999) at 516.

tout court. That kind of “connivence” mentality was summed up by the American research psychologist Irving Janis, who coined the word *groupthink* to express what Vergès called connivence: “The members’ firm belief in the inherent morality of their group and their use of undifferentiated negative stereotypes of opponents enable them to minimize decision conflicts between ethical values and expediency, especially when they are inclined to resort to violence.”⁷⁰ Vergès is critical of connivence as *groupthink* because individuals are in danger of losing their individuality and appropriating uncritically the values of the group, with the consequence that the group is in their view invincible.⁷¹ For Vergès, “society” is the apex of *groupthink*. Vergès rejects *groupthink* by rejecting what we call (non-clinically) “God complex”: “Mais la société n’est pas Dieu. Je ne divinise pas la société.”⁷²

Given that spectacular nature of connivence in *groupthink*, an attempt to break with it evokes other religious images. In religious terms, Vergès’ role as a lawyer is comparable to that of a prophet. As one of his conversation partners, Fr. Alain de la Morandais, remarked in reference to him and his strategy of rupture: “Je définis la rupture de façon biblique – ce que j’appelle le prophétisme -, le prophète étant celui qui dénonce, renonce et annonce.”⁷³ The prophet’s calling is to make society see itself, its members see themselves. Society remains blind to its limits if its members remain blind to theirs. Vergès had experience with the

⁷⁰ Irving L. Janis, *Victims of Groupthink: a Psychological Study of Foreign-Policy Decisions and Fiascos* (Boston: Houghton, Mifflin, 1972) at 204 [Janis, *Groupthink*]. The object of Janis’ study was foreign-policy decisions in the United States, ranging in time from the Second World War to Vietnam War. For the application of Janis’ observations to the study of groups of any size in social psychology, see e.g. Joseph Anthony DeVito, Gilles Chassé, Carole Vezeau, *La communication interpersonnelle: Sophie, Martin, Paul et les autres*, 2e éd. (Saint-Laurent, ERPI, 2008) at 294.

⁷¹ The mindset of *groupthink* is that “we” are the good guys who will win in the end and our opponents are the bad guys who will lose. See Janis, *Groupthink*, *supra* note 70 at 37.

⁷² Vergès, *Avocat*, *supra* note 40 at 195. The background of Vergès’ remark about supposedly deifying society is his reputation as a defender of religious extremism, such as in his defence of members of the outlawed Algerian political party *Front Islamique du Salut* (FIS, Islamic Salvation Front). See generally Jacques Vergès, *Lettre ouverte à des amis algériens devenus tortionnaires* (Paris: Albin Michel, 1993). For an analysis of the FIS, see the study by Vergès’ daughter Meriem in Meriem Vergès, “Genesis of a Mobilization: The Young Activists of Algeria’s Islamic Salvation Front,” translated from French into English by Joel Beinin, in *Political Islam: Essays from Middle East Report*, edited by Joel Beinin and Joe Stork (Berkeley: University of California Press, 1997), p.292–303.

⁷³ Vergès objected by saying that he was too modest to call himself a prophet. Vergès, *Avocat*, *supra* note 40 at 74.

opening of his own eyes. As he said in reference to his birth in the colonies: “Ma naissance dans les colonies m'a guéri d'une confiance aveugle dans la justice.”⁷⁴ Vergès' rupture seeks to remedy that blindness. The experiences that Vergès shares with society are based on his own, which makes them prophetic.

To understand the nature of connivence, we must distinguish different types of blindness. There are two types of connivence because there are two types of blindness – willful and unwillful – and those two types may be matched by others' blindness, thus creating four combinations.⁷⁵ Vergès does not distinguish because those types because politically they would have the same end result (“silence is complicity”).⁷⁶

In that psychological reading of Vergès' strategies, an interpretation that is particularly relevant to the strategy of connivence presents itself. One may see the articulation of his two strategies as a psychological defence mechanism, notably as rationalization. Instead of facing the anxiety caused by his realization that he had to connive with the political power from about 1965 onward in Algeria, he presented the apparently rational justification that his connivence with the political power served strategic goals and constituted, therefore, the strategy of connivence. However, rational as that explanation may have appeared, it concealed his reasons for connivence.

⁷⁴ Jacques Vergès, *Dictionnaire amoureux de la justice* (Paris: Plon, 2002) at 473 [Vergès, *Dictionnaire amoureux*].

⁷⁵ Those four combinations are illustrated in the so-called Johari Window, which is a heuristic tool used in social psychology as a management training exercise. One's behavior in those different combinations is “open” “blind,” “hidden” or “unknown.” See Raymond J. Corsini, *The Dictionary of Psychology* (Philadelphia: Brunner/Mazel, 1999) at 516.

⁷⁶ Vergès' psychology is informed by politics, as had been the case in Georg Lukács's observations about the role of class interests in society, including the justice system: “...the rule of the bourgeoisie can only be the rule of a minority. Its hegemony is exercised not merely by a minority but *in the interest* of that minority, so the need to deceive other classes and to ensure that their class consciousness remains amorphous is inescapable for a bourgeois regime. (Consider here the theory of the state that stands ‘above’ class antagonisms, or the notion of an ‘impartial’ system of justice.) But the veil drawn over the nature of bourgeois society is indispensable to the bourgeoisie itself. For the insoluble internal contradictions of the system become revealed with increasing starkness and so confront its supporters with a choice. Either they must consciously ignore insights which become increasingly urgent or else they must suppress their own moral instincts in order to be able to support with a good conscience an economic system that serves only their own interests.” Georg Lukács, *History and Class Consciousness: Studies in Marxist Dialectics*, translated by Rodney Livingstone (Cambridge, Mass.: MIT Press, 1971) at 66.

1.4. Key Concepts in their Intellectual Historical Setting

As suggested by Gerald Izenburg in 1975, the psychohistorical approach also reaches to intellectual history.⁷⁷ It thus goes beyond the six levels identified by Ardila. The intellectual historical approach is well-suited to understanding Vergès' judicial strategy. When we focus on Vergès' judicial strategy, we cannot overlook the intellectual history behind its operative terms, such as strategy, rupture, and connivence. All of them point to a conflict. In Marxist legal thought, especially since Lenin, the courtroom is just another battleground.

Psychohistory enters the picture because Vergès appropriated those terms at a time in the late-1960's in an attempt to address issues that he was facing in his professional and personal life.

1.4.1 Strategy versus tactics

Despite their apparent antiquity, "strategy" and "tactics" constitute a fairly recent pair.

Although Vergès rarely use the word "tactic," the juxtaposition of those words helps us to understand the meaning of "strategy."⁷⁸ Strategy is a military concept. Its meaning in classical Greek is the art of the *stratēgos*, a general. Strategy is therefore, among other things, "generalship."⁷⁹ When we see the binary opposition with a related concept, tactics, we get a better sense of the meaning of the word strategy. The word *tactics* is ultimately derived from the Greek word that means arrange. *Taktika* (τακτικά) refers to matters "fit for ordering or

⁷⁷ Izenberg assumed that psychoanalysis would be the most appropriate application of psychology to history, which reflected the emphasis that predominated the early stages of the development of psychohistory. See generally Gerald Izenberg, "Psychohistory and Intellectual History," in *History and Theory*, Vol. 14, No. 2, May 1975, pp. 139–155.

⁷⁸ Vergès mentioned "leçons de tactique." See Jacques Vergès, *Agenda* (Paris: Jean-Claude Simoën, 1979) at 143 [Vergès, *Agenda*].

⁷⁹ See Henry George Liddell and Robert Scott, *A Greek-English Lexicon*, revised and augmented throughout by Sir Henry Stuart Jones, with the assistance of Roderick McKenzie and with the cooperation of many scholars (Oxford: Clarendon Press, 1996) at 1632 [Liddell, *Lexicon*].

arranging, especially in war.”⁸⁰ Simply put, strategy is the art of winning the war while tactics are the art of winning a battle.

However, these etymologies misrepresent the historical development of strategy and tactics. Although the words are Greek, strategy did not appear in military terminology until modern times, with Carl von Clausewitz giving it its current importance.⁸¹ Until the appearance of Alexander the Great, the word “strategy” was devoid of the idea of broad vision. Warfare in antiquity was characterized by lack of coordination, which does not correspond to our notion of strategy.⁸² It is therefore significant that Vergès wrote in his diary that he was studying Clausewitz.⁸³

It was only through the work of Marx and Engels that strategy developed to the point that it could encompass judicial strategy. Firstly, judicial strategy would hardly be thinkable without the military imagery inherent in Marxism. However, “strategy” is more than a metaphor in Marxism. On the contrary, the development of strategy inside Marxism had a spill-over effect on military thinking in general. For that reason, experts on military strategy include Marx and Engels in the “makers of modern strategy.” Since their stated objective was to change the world, Marx and Engels “gave unremitting attention to tactical problems and military considerations in all their writings.”⁸⁴ Engels developed the connections between economic, political and military phenomena, especially in his theory of violence in *Anti-Dühring*.⁸⁵

⁸⁰ See Liddell, *Lexicon*, *supra* note 79 at 1753.

⁸¹ Alessandro Traversi stressed the importance of Clausewitz and the Chinese strategist Sun Tzu to a correct understanding of the development of judicial strategy. See Alessandro Traversi, *La défense pénale: techniques de l'argumentation et de l'art oratoire* [Difesa penale. Tecnica argomentativa e oratoria], traduction Michèle Fantoli, 2^e édition (Bruxelles: Bruylant, 1999) at 32n13.

⁸² Lynn Montross, *War through the Ages*, revised and enlarged 3d ed, decorations by L. K. Hartzellat (New York: Harper, 1960) at 25. The word στρατηγία referred concretely to the “office of a general” and “generalship.” It came closest to the modern meaning of “strategy” in its meaning of “piece of strategy” in relation to “generalship.” See Liddell, *Lexicon*, *supra* note 79 at 1632.

⁸³ See Jacques Vergès, *Journal 2003–2004: « Rien de ce qui est humain ne m'est étranger »* (Paris: Plon, 2005) at 181 [Vergès, *Journal*].

⁸⁴ That quote refers to tactics in the undifferentiated sense of tactics being equal to strategy. See *Makers of Modern Strategy: Military Thought from Machiavelli to Hitler*, edited by Edward Mead Earle; with the

The leap from theory to practice followed when Lenin became the first head of state to apply Clausewitz's thought to political action.⁸⁶ His approach presaged the concept of "total war," which would first be articulated by Erich Ludendorff in 1935 in his pamphlet *Der totale Krieg*.⁸⁷ Ludendorff argued that the roots of that notion went back to Clausewitz. Total war consists of the mobilization of all national resources: human, economic, scientific, and so on. It targets not only an enemy's armed forces but also its economic, scientific and human resources (civilian population).⁸⁸

Strategy and tactics remained indistinct in Marx, Engels, and Lenin. In Engels and Lenin, strategy and tactics were interchangeable. Despite Engels' interest in Clausewitz, he did not adopt the latter's distinction between strategy and tactics. Yet, he called Clausewitz a pure genius.⁸⁹ The terminology of strategy as opposed to tactics remained diffuse even in Lenin's writings, in which he used "tactics" interchangeably with "strategy," as in *Two Tactics of Social-Democracy in the Democratic Revolution*.⁹⁰

The distinction between strategy and tactics began to take shape only during Stalin's reign. Contrary to Lenin, Stalin was critical of Clausewitz.⁹¹ Stalin's criticism was ironic in that he drew a distinction between strategy and tactics along the lines of the classical distinction made by Clausewitz. He also applied that distinction to his communist agenda. In a speech

collaboration of Gordon A. Craig and Felix Gilbert (Princeton: Princeton University Press, 1971) at 155–7. The same source mentions that it is not an exaggeration to call Marx and Engels "the fathers of modern total war." From a military perspective, "Engels deservedly gains in stature compared with the master theorist, Karl Marx." For that reason, he was jokingly called the 'general' by his friends "because he was by nature a soldier and warrior."

⁸⁵ See T. Derbent, *Clausewitz et la guerre populaire: suivi de deux textes inédits: Notes sur Clausewitz de Lénine et Conférences sur la petite guerre de Clausewitz* (Bruxelles: Aden, 2004) at 85 [Derbent, *Clausewitz*].

⁸⁶ *Ibid* at 90.

⁸⁷ Ludendorff meant by "total war" a war in which the civilian population played either a passive or an active role. He provided numerous references to Clausewitz to argue that Clausewitz had introduced the concept of total war. See Erich Ludendorff, *Der totale Krieg* (München: Ludendorff, 1940) at 3–7.

⁸⁸ See Derbent, *Clausewitz*, *supra* note 85 at 32.

⁸⁹ *Ibid* at 82.

⁹⁰ See generally VI Lenin, "Two Tactics of Social-Democracy in the Democratic Revolution," Written in June–July 1905, First published as a pamphlet in Geneva in July 1905, in VI Lenin, *Collected Works*, Translated from the Russian by Abraham Fineberg and by Julius Katzer, edited by George Hann, Moscow: Progress Publishers, 1962, Volume 9, p.15–140.

⁹¹ See Derbent, *Clausewitz*, *supra* note 85 at 105–10.

that he gave to students at the University of Sverdlovsk in April 1924, he explained that the objective of strategy is to bring about a revolution while the objective of tactics is to approach that objective step by step through smaller battles.⁹²

Stalin's dichotomy of strategy and tactics was the basis for later distinctions, which was echoed even in Vergès' judicial strategy. A definition of "strategy" as opposed to "tactics" in Marxist philosophy is provided by Lucien Sève: "La stratégie détermine l'orientation d'ensemble du combat de classe en fonction des objectifs essentiels et des données fondamentales de la situation objective ; la tactique détermine les luttes concrètes à mener dans le cadre de la stratégie en chaque conjoncture particulière."⁹³ In light of Sève's definition, one might surmise that Foucault was intent on elevating Vergès' strategy from tactic, which was limited to the historical conjuncture, to strategy.

⁹² See generally Joseph Staline, "Des principes du léninisme: Conférences faites à l'Université Sverdlov," in *Les questions du léninisme* (Pékin: Éditions en langues étrangères, 1977) p. 1–115 at 86–99 (Chapter VII, par. 4–5).

⁹³ Lucien Sève, *Une introduction à la philosophie marxiste: suivie d'un vocabulaire philosophique*, 2^e édition (Paris: Éditions sociales, Paris, 1980) at 711. See also *Trésor de la langue française: dictionnaire de la langue du XIXe et du XXe siècle (1789–1960)*, publié sous la direction de Paul Imbs (Paris: Editions du Centre national de la recherche scientifiques, Gallimard, 1992) at 15:969, s.v. *stratégie*.

1.4.2. Vergès' conceptualization of rupture and connivence

Vergès appropriated the historical pedigree of strategy as opposed to tactics. He reciprocated by adding elements of his own life to the ongoing development of the notion of strategy.⁹⁴ Those elements are rupture and connivence, which have alternated throughout his life, in particular his professional life. Vergès referred to the groundedness of those central terms in his own life when he mentioned that his life would allow us to understand his strategy of rupture.⁹⁵

In terms of simple semantics, Vergès' use of rupture and connivence is close to their ordinary sense. We therefore turn to external sources for terminological clarification. For example, the *Oxford English Dictionary* defines rupture as “a breach of harmony or friendly relations between two persons or parties.”⁹⁶ That definition is an apt description of the conflict between the accused and the justice system that is typical of the strategy of rupture, if by harmony we mean the defence shown by lawyers to the justice system. Connivence is “action of conniving.” To “connive” means “to shut one's eyes to a thing that one dislikes but cannot help, to pretend ignorance, to take no notice.”⁹⁷ It is striking that rupture and connivence

⁹⁴ As an intellectual influence, Vergès is comparable to “great men” who in solving their own problems were also solving the problems of the group. Compare Jacques Szaluta, *Psychohistory: Theory and Practice* (New York: P. Lang, 2001) at 188.

⁹⁵ Felissi, *Anticolonialiste*, *supra* note 6 at 42.

⁹⁶ *The Oxford English Dictionary*, 2d ed, Volume XIV (Oxford: Clarendon Press, 1989) at 283 [OED]. The word rupture, both in English and in French, comes from the Latin word *ruptura*, which is derived from the third root *rupt-* (cf. supine *ruptum*) of the verb *rumpō* (I break). The word *ruptura* had a concrete meaning of breaking of a limb, fracture and so on. See *Oxford Latin Dictionary*, edited by P.G.W. Glare (Oxford: Clarendon Press, 1982) at 1670 (s.v. *ruptūra*). The word *ruptūra* is homonymous with the feminine form of the future participle *ruptūrus*, -a, -um. The suffix -tūra forms in some instances abstract nouns, such as rupture. See Thomas Bellot, *Sanskrit Derivations of English Words* (London: Longman, Brown, Green, and Longmans, 1856) at 124.

⁹⁷ *OED*, *supra* note 96 at 748. According to the OED, connivence also has an alternative spelling, *connivance*, which has prevailed over the original spelling *connivence* since the early 18th century in English, thus obscuring its Latin and French derivation. W.W. Skeat preferred the “e” spelling in his etymological dictionary. See Walter W. Skeat, *An Etymological Dictionary of the English Language*, New edition, revised and enlarged (Oxford: Clarendon Press, 1910) at 130 (s.v. *connive*). The OED also prefers the original spelling, contrary to most other English dictionaries. In this study, we follow the OED. The English spelling *connivence* retains the vowel *e* of the second conjugation and is identical to the French spelling. The word ultimately originated from

revolve around antagonism. The difference between rupture and connivence is ultimately the nature of the confrontation: in rupture, it is overt; in connivence, it is covert. According to *Le Grand Robert*, the word “connivence” – which it regards as obsolete in French – means “complicité qui consiste à cacher la faute de [quelqu'un].”⁹⁸

The term “connivence” has a specific meaning in legal language in French and English. The legal meaning of connivence is significant. In French legal language, “connivence” means “accord exprès ou tacite entre l’auteur d’une infraction et celui qui avait mission d’empêcher celle-ci...”⁹⁹ In English legal language, it means “[t]he act of indulging or ignoring another’s wrongdoing, esp. when action should be taken to prevent it.”¹⁰⁰

Vergès developed those terms to refer to an accused’s relation to the justice system in general. We therefore situate rupture and connivence in the political contexts in which Vergès situated himself when articulating and appropriating these terms. In particular, they refer to the two senses in which a trial can be “political.” It can serve the political ends of the establishment, or it can serve the political goals of the defence and the cause for which the accused militates.

Firstly, Otto Kirchheimer noted that “[s]omething is called political if it is thought to relate in a particularly intensive way to the interests of the community.”¹⁰¹ He defined political justice by its aim: “The aim of political justice is to enlarge the area of political action by enlisting

the Latin word *connīveō* (the etymology of which is uncertain, possibly *cum* + *niveo*, which would mean “wink,” or *cum* + *νέω*, which would mean “incline together”), and refers to the closing of the eyes, also in the figurative sense. See e. g. Egidio Forcellini, *Lexicon totius latinitatis* ab Aegidio Forcellini [et] a Iosepho Furlanetto; emendatum et auctum nunc vero curantibus Francisco Corradini et Iosepho Perin (Patavii: Gregoriana, 1965) at I:792 (s.v. *conniveo*).

⁹⁸ *Le Grand Robert de la langue française* (Paris: Dictionnaires de Robert, 2001) at II: 460 (s.v. *connivence*). According to that dictionary, the verb “conniver” is also obsolete.

⁹⁹ *Vocabulaire juridique*, publié sous la direction de Gérard Cornu, 7e éd. rev. et augm. avec locutions latines (Paris: Quadrige / PUF, 2005) at 209 (s.v. *connivence*). The same entry adds the caveat: « à ne pas confondre avec la complicité, qui exige un acte matériel positif d’assistance. »

¹⁰⁰ *Black’s Law Dictionary*, Bryan A. Garner, editor in chief, 8th ed (St. Paul, MN: Thomson/West, 2004) at 322 (s.v. *connivance*).

¹⁰¹ Otto Kirchheimer, *Political Justice: the Use of Legal Procedure for Political Ends* (Princeton, N.J.: Princeton University Press, 1961) at 25.

the services of courts on behalf of political goals.”¹⁰² By those political goals he referred to the political goals of the establishment. That definition provides the baseline against which we analyze Vergès’ judicial strategy.

Secondly, for Vergès, the defense must never forget that courts are enlisted for political goals by those who have the political power. From Vergès’ point of view, Kirchheimer was right in arguing that the line between political and non-political trials was fluid. However, Vergès suggested that the justice system was inherently political because it served the interests of state power in the trial not only through the prosecution but also through the judges.

That distinction between those two meanings is captured in the word “politics” as opposed to “the political.” “Politics” refers to the practice within the institutional politics. “The political” refers to a more radical concept which could not be restricted to the realm of institutional politics. “The political” was in contradistinction to “politics.” “Politics” refers to the practice within the institutional politics.¹⁰³ Those two notions were distinguished by Chantal Mouffe:

by ‘the political’ I mean the dimension of antagonism which I take to be constitutive of human societies, while by ‘politics’ I mean the set of practices and institutions through which an order is created, organizing human coexistence in the context of conflictuality provided by the political.¹⁰⁴

The relevance of that distinction to Vergès’ judicial strategy is that “politics” is to “the political” as Vergès’ strategy of rupture is to his strategy of connivence. The subtlety of the distinction between them had the consequence that he held on the distinction between the *procès de droit commun* and the *procès politique*. However, he recognized that whatever difference there was between political and non-political trials was fuzzy enough to relegate it

¹⁰² *Ibid* at 419.

¹⁰³ Oliver Marchart traced the distinction between “the political” and “politics” to Carl Schmitt, who made that hitherto implicit distinction explicit in his preface to the 1972 Italian edition of his *Concept of the Political*. See Oliver Marchart, *Post-foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau* (Edinburgh: Edinburgh University Press, 2007) at 42.

¹⁰⁴ Chantal Mouffe, *On the Political* (Abingdon, UK: Routledge, 2005) at 9.

to a lower level than the distinction that he drew between his strategy of rupture and his strategy of connivence:

La vieille distinction entre procès de droit commun et procès politique est secondaire, même si les procès de droit commun sont souvent des procès de connivence et les procès politiques des procès de rupture, car les deux définitions ne se recouvrent pas.¹⁰⁵

Vergès expressed his view the symbiosis of law and “politics” by emphasizing the public order: “La société est une société de brutalités où certains dominant d’autres, et le droit est fait pour maintenir cette situation. C’est une question d’ordre public.”¹⁰⁶ Vergès indicated that he was also live to “the political”: the questions that were typical of trials that were steeped in “the political” should have been asked at the beginning of *every* trial: “Qui êtes-vous? Que représentez-vous? Quelle est votre raison d’être historique? demandait en 1925 l’accusé communiste Rakosi aux magistrats du régent Horthy. Ce sont les questions que juges, procureurs et accusés devraient se poser au seuil de tout procès.”¹⁰⁷ According to Vergès, the accused should expose the “politics” of the magistrates and counter their “politics” with “the political.”¹⁰⁸

1.5. The key sources

There is no dearth of written sources for our study of Vergès’ strategy although none of them is devoted primarily to his strategy. They provide insights into his life story which, according

¹⁰⁵ Vergès, *Stratégie judiciaire*, *supra* note 7 at 20–1.

¹⁰⁶ Vergès, *Avocat*, *supra* note 40 at 201.

¹⁰⁷ Vergès, *Stratégie judiciaire* *supra* note 7 at 27. Mátyás Rákosi [born Rosenfeld], the Secretary-General of the Hungarian Communist Party and self-styled disciple of Stalin, stood trial before the Fascist courts in 1925, 1926, and 1935. See generally Mátyás Rákosi [defendant], *The Imprisonment and Defence of Mátyás Rákosi: Records of the Trials of Mátyás Rákosi, Hungarian Communist, before the Fascist Courts in 1925, 1926 and 1935, his Imprisonment, and his Defence of the Communist Party and of the Hungarian Soviet* (London: Lawrence and Wishart, 1954).

¹⁰⁸ That distinction also corresponds to the distinction between “legitimate” and “legal,” see *supra* fn. 38. “The political” is animated by legitimate demands while “politics” refers to the “legal authority.”

to Vergès, explains his strategy of rupture. We draw primarily on three works: first, *Avocat du diable, avocat de Dieu*, a conversation with the Roman Catholic priest Alain de la Morandais and Vergès, published in 2001;¹⁰⁹ second, *Vergès et Vergès – de l'autre côté du miroir*, a conversation between Jacques and his brother Paul, on one hand, and, on the other, Thierry Jean-Pierre (1955-2005), a former judge and a politician from the Island of Réunion (like Jacques and Paul); and, third, *Jacques Vergès l'anticolonialiste*, a conversation between Vergès and the young Franco-Algerian lawyer Philippe Karim Felissi.¹¹⁰ These three works provide three different but complementary viewpoints on Vergès. The first is structured around the seven deadly sins, painting a picture of a “timeless” Vergès.¹¹¹ The second is a rigorously chronological account of Jacques’ life and of his brother Paul. Our approach is somewhat similar to the one adopted by Thierry Jean-Pierre’s in that it plots the development of his personages against the great turning points of world history, such as the Second World War and the rise of China. As a judge, Jean-Pierre is also remarkably well informed about Vergès’ legal career. A fundamental difference between Jean-Pierre and de la Morandais, who did not hide his reservations about Vergès, the self-styled devil’s advocate,¹¹² is Jean-

¹⁰⁹ See generally Vergès, *Avocat*, *supra* note 40. Alain de la Morandais was the first director (1993–1995) of *Service pastoral d’études politiques* (SPEP), founded by the then Archbishop of Paris, Jean-Marie Lustiger, to provide spiritual services to members of the National Assembly. See Philippe Clenché, “Aumônier des députés,” in *Témoignages chrétiens*, June 12, 2007. The text was posted on Alain de la Morandais’ blog at <http://morandais.over-blog.com/article-6796547.html>. He is also one of the three regular participants on the interfaith talk show *Enfants d’Abraham* together with representatives of the other Abrahamic religions: the Grand Rabbi Haïm Korsia and the Islam scholar Malek Chebel (whose accomplishments include a French Koran translation). The French national television channel *Direct 8* has been airing the programme since 2005.

¹¹⁰ Felissi, *Anticolonialiste*, *supra* note 6.

¹¹¹ Alain de la Morandais acknowledged the centrality the seven deadly sins in that book. Email to Jonathan Widell on December 21, 2008. Pride is the theme of chapter 7, envy of chapter 8, lust of chapter 9, sloth of chapter 11, wrath of chapter 12, gluttony of chapter 13, and avarice of chapter 14. See generally Vergès, *Avocat*, *supra* note 40. Deadly (or capital) sins are sins to which man’s fallen nature is inclined, thus leading to other faults. The term can also refer to tendencies to sin, in which case it would be better to speak of vices. See Francesco Roberti, *Dictionary of Moral Theology*, compiled under the direction of Francesco Cardinal Roberti ; edited under the direction of Pietro Palazzini ; translated from the 2d Italian edition under the direction of Henry J. Yannone (Westminster, Md.: Newman Press, 1962) at 1134–5 (s.v. sin (actual), sin (capital)).

¹¹² The task of Devil’s Advocate in the Roman Catholic was to uncover reasons for not canonizing a candidate for sainthood. Devil’s advocate’s functions are now exercised by the Promoter of the Faith whose focus is to scrutinize the religious significance and orthodoxy of the person to be canonized. See Phyllis G. Jestice, *Holy People of the World: a Cross-Cultural Encyclopedia* (Santa Barbara, Calif: ABC-CLIO, 2004) Volume 3 at 159 (s.v. Canonization). The Promoter of the Faith (*promotor fidei*) was Devil’s advocate’s adversary when the canonization process was adversarial. See Frank K. Flinn, J. Gordon Melton, *Encyclopedia of Catholicism* (New

Pierre's sympathy with the Vergès brothers. Jean-Pierre's work has even been faulted for being a "hagiography" which he denied it was in the introduction to his book.¹¹³

Three other main works that inform this study are Vergès' *De la stratégie judiciaire*, the biography of Jacques Vergès by Bernard Violet *Jacques Vergès – Le Maître de l'ombre* and the film documentary *Terror's Advocate* (2008) by the French director Barbet Schroeder. Violet's biography proved to be a turning point in Vergès' understanding of himself. He began to refer – and react – to it after its publication. An indication of its importance is that he refused to talk about it in the conversation between the Vergès brothers and Jean-Pierre. Vergès is explicit about his displeasure with that book though the exact reason for that displeasure remains a mystery.¹¹⁴ A positive result of that displeasure was the increase in Vergès' literary output with the aim of providing the reading audience with his side of the story. Despite Violet's cynicism about Vergès and Vergès' distaste of Violet's book, his biography is a fundamentally sympathetic account of the turning points in Vergès' life and, consequently, career. Violet did not question the overall justification of the Algerian War in which Vergès was involved. Neither did he take the Barbie trial as the key to uncovering the "real" Vergès but sought the answer in Vergès' career in Algeria and his youth before that.

Second, we draw on Vergès' book *De la stratégie judiciaire*. It is a historical landmark which allows us to see the extent to which Vergès' views have either changed or stayed the same

York: Infobase Publishing, 2007) at 122 (s.v. Canonization). The process was changed during John Paul II's papacy with a view to streamlining canonizations. See Phyllis G. Jestice *Encyclopedia of Irish Spirituality* (Santa Barbara, Calif: BC-CLIO, 2000) at 52.

¹¹³ See Robert Chaudenson, *Vergès père, frères & fils: Une saga réunionnaise* (Paris: L'Harmattan, 2007) at 16 [Chaudenson, *Vergès*]. See also Thierry Jean-Pierre, Jacques Vergès and Paul Vergès, *Vergès et Vergès: de l'autre côté du miroir* (Paris: Jean-Claude Lattès, 2000 [Jean-Pierre, *Miroir*])

¹¹⁴ To explain his displeasure, Vergès pointed to a number of inaccuracies in Violet's account. The inaccuracies on which he focuses are relatively minor. For example, he criticizes Violet for getting the facts about his childhood asthma wrong. See Jean-Pierre, *Miroir*, *supra* note 113 at 29. See also Chaudenson, *Vergès*, *supra* note 113 at 19. Those errors are so minor that one suspects that Vergès' distaste is due a more fundamental disagreement which he declines to spell out but which probably is due to Violet's sensationalism. Violet has authored biographies on the French actors Catherine Deneuve and Alain Delon, accusing Deneuve's father of collaborating with the Nazis and Delon of contacts with criminals and the far right. He has also written about the Moroccan leftist politician Ben Barka, who disappeared mysteriously in 1965. The subjects have tended to respond to Violet's works with litigation.

since its publication in 1968. It was the more or less explicit point of reference in Foucault's and Derrida's observations about Vergès.

Thirdly, Schroder's *Terror's Advocate* centers on Vergès' connections to international terrorism. The documentary has a large array of interviews with different experts on Vergès and related issues, such as the international terrorism expert Claude Moniquet. It touches on other points of interest in Vergès' life and career, such as the circumstances of his eight-year clandestinity from 1970 to 1978 in the wake of his interventions on behalf of Palestinian militants. That period has tantalized Vergès' biographers because Vergès refuses to shed light on it.

This study adds to those key sources with its psychohistorical approach. It also diverges from Violet's psychological interpretations as regards that clandestinity. Although Violet resorts to psychological themes in his biography, such as the effect of Vergès' childhood on his career, the impact made on Vergès by the death of his mother and so on, the properly psychobiographical content is limited to Vergès' inexplicable eight-year absence from the public eye and other periods on which only psychology appears to shed light. Violet did not integrate the instances on which we have more information, such as the changes in Vergès' political views, to his psychohistory.

1.6. Outline

The structure of this study flows from our biographical approach. Although Vergès says that every client is special to him, there are two clients in particular to whom he refers more often than any others, namely Vergès' first major client, the FLN fighter Djamila Bouhired, and Klaus Barbie. Those cases dissect the time line of Vergès' legal career into six distinct

periods: before, during and after the Bouhired trial 1957; and, before, during and after the Barbie trial of 1987, three decades later.

The pre-Bouhired period covered the years from his birth in 1924 (or 1925) to 1957. The Bouhired period lasted until the official end of the Algerian War in 1962. The post-Bouhired period covered years 1961-1970. The watershed between the post-Bouhired period and the incipient pre-Barbie period was the clandestine period of 1970–8. It was followed by the pre-Barbie period until 1983. The Barbie trial was followed by the post-Barbie period which began in 1987 and has continued ever since. In principle, there are seven periods but since Vergès continues to be secretive about his clandestinity, there is too little information on it for us to study it separately from his reemergence.

Chapter 1 is titled *Revolution: Vergès' Rupture Before His Legal Career (1924–55)*. It starts the chronological account of this study at the beginning of Vergès' life. Because of his father's ascent in the French Communist Party and his own ascent in the International Student Union, Vergès was steeped in rupture before he started his legal career. Chapter 2 elaborates on Vergès' political background, which was reflected in his later legal career. It identifies the key points in his early biography that shaped his subsequent legal career and played a part in the development of his strategy of rupture: his biracial background, his communist home, and his participation in General De Gaulle's forces to liberate France from Nazi occupation. It shows that Vergès' political engagements before his legal career were so strong that they inevitably impacted on his legal career and ultimately led him to conceive of 'judicial strategy' as an expression of his political activism. Our objective in this first chapter is to analyze the origin of his strategy. Although rupture is best known in connection with Vergès' strategy of rupture, rupture refers to an aspect of the political phenomenon of revolution: the negation of the current political power structure. This chapter relies primarily on Vergès' retrospective works which were written decades after those events, from around 2000

onward. They include the aforementioned *Vergès et Vergès – de l'autre côté du miroir* and Barbet Schroeder's documentary film *Terror's Advocate*.

Chapter 2 is titled *The Origin of Vergès' Strategy of Rupture in Algeria (1957–61)*. It shows the connection between Vergès' work during the period around the Bouhired trial (both in Algeria and in France) and the emergence of his strategy of rupture all but in name during the Algerian War. At that time, his approach was too intuitive to be called strategy, which was the term he adopted only in 1968. As that time gap suggests, Vergès' activities during the period of the Algerian War of Independence provided rich material for his later analyses.

While he took some distance from the concrete setting of Algeria in *De la stratégie judiciaire*, it was, as Foucault implied, very much present in it. However, the Algerian events did not translate into his later strategy without his experiences being filtered by the intervening years. Unfortunately, they also distorted his perception of the original events. To sift the plausible from the implausible, we contrast Vergès' version of those events with the prevalent version of the French Algerian side. There is a wealth of material on the period in question. Archives from the Algerian period have gradually become available for researchers, which has led to a substantial surge in academic research on that period from different angles, including a legal one. Our approach is to study Vergès' rupture from a viewpoint that is both critical of and sympathetic to his judicial strategy. The foremost critical author is General Maurice Faivre. The sympathetic evaluations include Sylvie Thénault's well-researched *Une drôle de justice – Les magistrats dans la guerre d'Algérie* from 2001. Some of the elements of his strategy were explained by Vergès in his later works, understandably from a sympathetic viewpoint, such as his *De la stratégie judiciaire* from 1968.

Chapter 3 is titled *Vergès' Articulation of Judicial Strategy: Connivence and Rupture (1962–70)*. It shows that although Vergès had already applied the strategy that he would call "rupture" in 1968, he elevated it into a strategy only after a break of four years from the legal

profession, during which time he worked as a journalist. He incorporated his “rupture” with his legal career into his legal career by articulating his strategy of rupture. The resumption of his legal career in 1965 would be marked by the articulation of the two strategies of rupture and connivence. Rupture negated the authority of the justice system, while connivence made at least a semblance of recognizing it. The thrust is to situate those two basic strategies against the biographical and historical background in light of Vergès’ two principal written works from this period, namely *De la stratégie judiciaire* from 1968 and *Pour les fdayine* from 1969. We study them in light of the political compromises that Vergès made with the Boumedienne regime. The irony of his two strategies was that despite the importance of rupture and connivence for Vergès’ later career, his chances of putting either of them to practice in the 1960’s were minimized by political realities and they remained mainly of literary interest for approximately ten years. Therefore, he would need to redefine the strategy of rupture, and the strategy of connivence with it, to keep them relevant in the face of his failure to put them into practice. The multitude of factors that prevented him from putting those fundamental strategies into practice also complicates the reading of the sources that originated during that period. Vergès has shed light on that vital period in some later comments but even they are riddled with inconsistencies, such as his comments on his intervention in 1967 on behalf of Moïse Tshombe, who was regarded as an imperialist pawn by his critics, notably by Patrice Lumumba, and thus incompatible with Vergès’ anticolonialist agenda.

Chapter 4 is titled *Vergès’ Break with Rupture: Clandestinity (1970–8) and Return (1978–82)*. It shows that Vergès found an exit from a deadlock in his career by taking another break from his legal career by going to clandestinity for eight years in 1970. That period proves a challenge because of our ignorance about his whereabouts, which he has refused to divulge. Because of our lack of information, we provide an explanation in light of what would “make

sense” psychologically. We take our cue from Violet, who speculated that Vergès spent those years in the Far East. We suggest that although his inspiration may have been the “new man” of Maoism, he translated it into a so-called African personality, which also suggests that he spent at least part of his clandestine years in Africa. Judging by how little Vergès has to say about this period, apart from his opinionated writings from this period, notably his 1983 book *Pour en finir avec Ponce Pilate*, this period has attracted the attention of both Bernard Violet and Barbet Schroeder.

Chapter 5 is titled *The Barbie Trial and Vergès Turn to Devil’s Advocacy (1982–7)*. The case that defined the period that followed Vergès’ return from clandestinity was his defence of Barbie. In the Barbie case, Vergès fulfilled his role as a defence lawyer punctiliously. By insisting on the principles and selected norms in force in the legal system, he practiced connivence. By insisting on the value of Barbie as a human being regardless of what he had done, he turned that connivence into rupture.¹¹⁵ His rupture was different from his former strategy of rupture in refusing to militate for the political agenda of the accused. He looked into the past instead of the future. Vergès defended a person who had believed in a cause in which Vergès had never believed to expose the hypocrisy of *groupthink*. This chapter uses material that was written by Vergès’ critics a couple of years before the Barbie trial, such as Erna Paris’ book on Barbie, and on Vergès’ own pleading in the Barbie case in *Je défends Barbie*.

Chapter 6 is titled *Vergès’ Post-Barbie Turn to Retrospection as a Judicial Strategy (1987-)*. The period after Vergès’ controversial defence of Barbie shifted the focus from his notorious client to himself and to his past. He did not need a devil like Barbie to unsettle the justice system any more. As a devil’s advocate, he could do so by drawing attention to himself. He

¹¹⁵ Laurent Ruquier referred to Vergès’ strategy in the Barbie trial as “rupture” without Vergès protesting against that qualification. See “On n’est pas couché” aired on May 3, 2008 on France 2) at http://www.dailymotion.com/video/x934ko_zemmour-face-a-jacques-verges_news [Ruquier, Zemmour].

presented himself as the towering figure who could confront the justice system on his own. He bet on the winning horse, which in his case was the People's Republic of China. Vergès had aligned himself with the People's Republic of China since early-1960's when the split between China and the Soviet Union became apparent. When the hardline Maoism of the 1960's changed into Deng Xiaoping's "socialism with Chinese characteristics" in the 1980's, Vergès was able to reinvent himself ideologically. Vergès' alignment with the profound changes in China has provided him at least with a semblance of coherence. Most of Vergès' literary production is situated in this retrospective period, including *Avocat du diable*, *avocat de Dieu* and *Vergès et Vergès – de l'autre côté du miroir*. We will rely heavily on that source material by reconstituting the story that Vergès presents of himself.

2. REVOLUTION: VERGÈS' RUPTURE BEFORE HIS LEGAL CAREER (1924–55)

The first period of Vergès' life ends with his defence of the accused militants of the *Front de la libération nationale* (FNL) in 1957. A study of this period is complex because it illustrates Gerald Izenberg's comment on the challenges faced by psychohistory:

One of the most serious objections...rests on the paucity of evidence about the early childhood of historical figures, with the result that psychohistorical explanations may become circular: hypotheses about early developments speculatively are deduced from adult events and then used to explain those events.¹¹⁶

However, the circularity to which Izenberg refers is not necessarily vicious. In our study it is virtuous because it pivots on Vergès' own reconstruction of his personal history, which is an object of our analysis to a greater extent than the elements to which that reconstruction refers. We use external sources to determine to what extent that version is his product.

Throughout the different stages of his life he has striven to make one point: he is unique, a nonconformist. His dilemma is that the standard of conformism and nonconformism varies over time. For instance, being a communist is today an oddity. After the Second World War, communism was a mass movement, and being a communist did not imply being as nonconformist as it does now. That discrepancy explains why he adhered to his communist image despite having left the Communist Party of France in 1957. It also accounts for his apparently anomalous defence of Klaus Barbie while claiming to hold on to the communist outlook of his youth: that defence would appear nonconformist for communists and noncommunists alike.

¹¹⁶ Gerald Izenberg, "Psychohistory and Intellectual History," in *History and Theory*, Vol. 14, No. 2, May 1975, pp. 139–155 at 139.

This chapter shows how Vergès reconstitutes his own life to make it congruent with his present. The circularity would ultimately result in the coherence of his discourse in general, to which Derrida referred. It is also a remnant of Vergès' communist past, whose influence we study in this chapter. Claude Delmas pointed to the circularity of communist discourse: "Le Communiste prévoit l'avenir tout en reconstruisant le passé."¹¹⁷

We look into the elements that accounted for the emergence of his strategies of rupture and connivence in the late-1960's, thus after the time period in question. Getting a full grasp of the significance of his early experience is only possible by keeping an eye on the significance that he would ascribe to those events later. Therefore, we frequently exit the time period that ends in 1957 to refer to *De la stratégie judiciaire* and ultimately his strategy in the Barbie case. The relevance of this approach is that the treatment he gives to his own life is also at work in his defence of other people. Just as his recounting of his personal history displays the circularity that we mentioned, his presentation of his clients and other people is similarly circular but in a way, he hopes, that is similarly virtuous and allows us to make sense of the lives of his clients.

2.1. *Vergès in His Father's Shadow*

Vergès was born, officially, in Oubône Raxathani (currently Ubon Ratchathani) in the independent kingdom of Siam (Thailand) on March 5, 1925.¹¹⁸ Vergès' father, Raymond Vergès, was French. His mother Phạm Thị Khang was Vietnamese. Raymond Vergès married Jacques' mother in the French consulate, one day after the official date of birth of both him

¹¹⁷ Claude Delmas, *La guerre révolutionnaire*, 3e éd. refondue, in series Que sais-je ? (Paris: Presses universitaires de France, 1972) at 109.

¹¹⁸ That was the date entered on the birth certificate by his father, Raymond Vergès, who was also the doctor who delivered Jacques. He entered the same date on the birth certificate of Jacques' brother Paul, who would then be his twin. However, there were rumours that Jacques was born about a year before Paul. See Lauvernier, *Ban-Bai*, *supra* note 1 at 150ff.

and his brother Paul, on March 6, 1925.¹¹⁹ The facts of Vergès' birth have assumed a fictional dimension. The exoticism of Vergès' birth in the tropics is reflected in the controversy that surrounds the correct birth date. According to Chantal Lauvernier, the biographer of his father, Raymond Vergès, there was always a rumour that Jacques had not been born on that date but almost a year earlier.¹²⁰

That rumour became quasi-official in a biography of Vergès, *Vergès, le Maître de l'ombre*, by the French investigative journalist Bernard Violet in 2000. Violet concluded that Jacques' date of birth was April 21, 1924 and that Jacques was not born in Ubon in Thailand but in Savannakhet, in French Indochina, in modern Laos.¹²¹ The possibility of an incorrect date of birth has two consequences: first, Jacques' father, who was at that time responsible for entering the correct data on the birth certificate as an official of the French government and as the physician in charge of the delivery, had made a false declaration; secondly, Jacques was not a twin brother of Paul: Paul was born on the official date of March 5, 1925 while Jacques was not.¹²² Violet read much into the discrepancy between the birth dates. He supposed that Vergès knew about it. He did not explain why. He concluded his biography of Vergès with the following words:

Pourquoi n'avoir jamais révélé son secret? Parce que « la vérité pose plus de problèmes que le mensonge », comme il le dit lui-même. Et comment aurait-il pu révéler la faute impardonnable d'un père dont il fut l' élu et le fils aimé ?¹²³

¹¹⁹ See Lauvernier, *Ban-Bai*, *supra* note 1 at 150. Khang Pham Thi, as Lauvernier writes Vergès' mother's name, should Phạm Thị Khang. The female middle name Thị should be in the middle. The female given name (though nowadays used more often for men), Khang, should be last.

¹²⁰ See Lauvernier, *Ban-Bai*, *supra* note 1 at 150ff.

¹²¹ See Violet, *Vergès*, *supra* note 5 at 39. Based on the discrepancy between the official and the hypothetical date, Violet concluded that Vergès' life was based on a lie. He attributed that lie to the fraud that his father committed in writing the birth certificate: "Pourquoi n'avoir jamais révélé son secret?" See Violet, *Vergès*, *supra* note 5 at 254.

¹²² An old photograph of Jacques with his mother suggests to Violet that Jacques was born before Paul. He asks: where is his brother Paul if he is his twin brother? See Violet, *Vergès*, *supra* note 5 at 254. That photograph is printed in Jean-Pierre, *Miroir*, *supra* note 113, photo inlay.

¹²³ Violet, *Vergès*, *supra* note 5 at 254.

Violet suggested that Vergès' possibly incorrect birth date casts a shadow on the overall credibility of his father Raymond. In the last paragraph of the Vergès biography, he suggested that the irregularities in the documents relating to Vergès' birth have cast a shadow on his relation to himself, the implication being that he ended up being a lawyer to address the moral problems raised by the circumstances under which he came into existence.¹²⁴

Supposing that Jacques was aware of that possible falsification, Violet also suggested that Vergès' legal career was compensation for the guilt he felt about his father's misdoing. Violet's reasoning is implausible. It is more plausible to take Jacques' word that he was not aware of a possible problem with his birth date because he insisted, after the release of Violet's book, that he was not aware of any discrepancy.¹²⁵ Vergès' explanation for the false statement that his father entered in the official birth record portrays his father as a guardian angel: "Une seule explication si cela est vrai: sa première femme étant morte en 1923, je serais un enfant adultérin, vrai enfant de l'amour, mais sans droits à cette époque. Et mon père a attendu la naissance de mon frère pour nous déclarer jumeaux, résolvant ainsi de la manière la plus simple la difficulté."¹²⁶

More important than the birth date is the content of his formative years. Communism was Vergès' formative ideology in his childhood and youth although he joined the Communist Party of France (CPF) fairly late, in 1946, when he was in his early twenties.¹²⁷ To be a communist in the post-war period meant to be a "Stalinist."¹²⁸ Virtually all communist parties yielded to Stalin's authority as long as he was alive. Stalin died in 1954. Vergès admitted outright that he admired Stalin: "J'avais une immense admiration pour lui" though he situated

¹²⁴ See Violet, *Vergès*, *supra* note 5 at 254.

¹²⁵ See Jean-Pierre, *Miroir*, *supra* note 113 at 23. However, those problems with Jacques' date of birth were already mentioned in Lauvernier, *Ban-Bai*, *supra* note 1.

¹²⁶ Vergès, *Journal*, *supra* note 83 at 78.

¹²⁷ See Jean-Pierre, *Miroir*, *supra* note 113 at 78.

¹²⁸ Jean-Pierre called Jacques Vergès and his brother Paul "jeunes stalinistes." See Jean-Pierre, *Miroir*, *supra* note 113 at 14.

his admiration for Stalin in his youth in the context of anticolonialism.¹²⁹ Admiration for Stalin was not an aberration among communists after the Second World War.¹³⁰ Other Western communists shared it.¹³¹ After Stalin's death, Vergès quit the party in 1957 when he joined the FLN lawyers' collective in Algeria at the beginning of his legal career.¹³²

Vergès has not broken completely with Stalinism although he has distanced himself from his Stalinist past in his statements in the twenty-first century. He has adhered to movements, such as Maoism, which purported to carry on Stalin's legacy.¹³³ Vergès does not deserve the label "retro-Bolshevism" hurled at him by his former friend Jacques Givet in his book *Le cas Vergès*.¹³⁴ Vergès has become increasingly eclectic in his political views. The rigidity that the word retro-Bolshevism suggests is conspicuous by its absence especially in his controversial selection of clients, such as Barbie. The charge of retro-Bolshevism would be a more fitting description of so-called hard-line communists, such as the Albanian communist leader Enver Hoxha, who remained steadfast in their political views throughout their careers.

The reason that we situate Vergès' biography in its political setting is to demonstrate that the style of defense that Vergès would exercise after becoming a lawyer in 1955 reflected the political engagements that had helped him to structure his world since his early childhood.

¹²⁹ *Ibid* at 89–90.

¹³⁰ *Idem*.

¹³¹ For instance, the British folk singer Ewan MacColl wrote *The Ballad of Stalin* in 1954, shortly after Stalin's death. In reference to that bygone era and changing values, the British singer Robert Wyatt recorded a cover version of an American wartime anthem, *Stalin Wasn't Stallin'* in 1980. Written in 1943 by Willie Johnson, it praised Stalin's stand against Hitler's invasion of the Soviet Union. That version by Wyatt was released as a single with Peter Blackman's poem *Stalingrad* on the B side.

¹³² See Violet, *Vergès*, *supra* note 5 at 91.

¹³³ See e.g. Ruquier, *Zemmour*, *supra* note 115, in which Vergès was interviewed by Michel Polac and Éric Zemmour about his book *Que mes guerres étaient belles!* Vergès explained that he had believed in certain ideals, with reference to Stalinism, which later proved unworkable, like many other persons in their youth.

¹³⁴ Givet credited the French journalist Jean-Paul Kauffmann with coining the term "retro-Bolshevism" in regard to Vergès. See Givet, *Le cas*, *supra* note 13 at 155. Kauffmann became a household name in France when he was taken hostage with three other Frenchmen in Beirut in 1985 (one year before the publication of Givet's book). He would be liberated in 1988 on the condition that France set free the Iranian terrorist Anis Naccache. Ironically, Naccache would be a client of Vergès. Compare Jean-Pierre, *Miroir*, *supra* note 113 at 216.

Law would become his podium, a substitute for more conventional political activism.¹³⁵

Finding his voice in political defense was a lengthy process. It was not his conscious choice at first though his earlier life experiences had made it the only approach to law that worked for him. Vergès would become conscious of his mixture of politics and law and of his own political setting only later, notably 1961, when he co-authored *Défense politique* with other lawyers who defended Algerian freedom fighters before French courts, and in 1968, when he wrote *De la stratégie judiciaire*.

Vergès' political training started in childhood under his father's firm guidance. Before the Second World War, Raymond Vergès was active in the trade union and other left-wing causes: he founded the *Parti républicain d'action démocratique et sociale* (PRADS),¹³⁶ the *Comité d'action républicaine démocratique et sociale* (CARDS),¹³⁷ and, after the Second World War, the *Comité républicain d'action démocratique et sociale* (CRADS). Raymond was elected mayor of the Réunion town of Salazie in 1935.¹³⁸ To keep his post, he swore allegiance to the Vichy regime during the Second World War. He explained that he made his decision after consulting with his comrades who did not want an "enemy" to be elected to the post if he stepped down.¹³⁹ Curiously enough, Raymond had to step down only when Vichy authorities found out that he was a Freemason.¹⁴⁰

Despite its arguable superficiality, Raymond's bond to the Vichy regime would haunt him and his son Jacques. Robert Chaundeson gave the heading "Francisque et/ou Croix de Lorraine" to the third chapter of his book on the Vergès family.¹⁴¹ The medal of the Forces of Free France was in the shape of the Lorraine Cross while the Francisque was the decoration

¹³⁵ Éric Zemmour said that Vergès was more an activist and a politician than a lawyer. According to Zemmour, the lawyer was only a mask. See Ruquier, *Zemmour*, *supra* note 115.

¹³⁶ See Lauvernier, *Ban-Bai*, *supra* note 1 at 229.

¹³⁷ *Ibid* at 231.

¹³⁸ *Ibid* at 241.

¹³⁹ *Ibid* at 272.

¹⁴⁰ *Ibid* at 275.

¹⁴¹ Chaudenson, *Vergès*, *supra* note 113 at 51.

awarded by the Vichy regime. Chaunderson thus suggested that divided loyalties have run in the Vergès family ever since Raymond kept his post under the Vichy regime.

Suggestions of political compromise have also marred Vergès' anticolonialism.¹⁴² His father's political activity on behalf of his native Island of Réunion translated communism into a battle for the rights of colonized peoples. In the first parliamentary elections after the Second World War, Jacques' father Raymond Vergès and Comrade Léon de Lépervanche were elected to the National Assembly in Paris from the list of the Communist Party of France. Once elected, they were far from marginal figures. They made a major contribution to the reorganization of the French Republic after the war by submitting a proposal for a law on departmentalization (making administrative units called *départements*) of the "Old Colonies" (Réunion, Martinique, and Guadeloupe) on February 12, 1946.¹⁴³ The project was to elevate Réunion to a *département d'outre-mer* (D.O.M.). The project was crowned with success by *Loi no 46-451* of March 19, 1946.¹⁴⁴ The project was also enshrined in the new French constitution. In the Constitution of October 27, 1946, the overseas departments became part of a new colonial arrangement, called the French Union (Title VIII), thus ushering in the so-called Fourth Republic.

Even if the French Union is now defunct, the Island of Réunion as well as the other former Old Colonies retained their administrative status of *département d'outre-mer* (D.O.M.).¹⁴⁵ This status is one of the lasting achievements of the Fourth Republic, which was otherwise vitiated by frequent changes of government and an overall sense of discontinuity.¹⁴⁶

Paradoxically, it is the longevity of the administrative structure that allows Raymond's

¹⁴² Jean-Pierre, *Miroir*, *supra* note 113 at 14.

¹⁴³ See Lauvernier, *Ban-Bai*, *supra* note 1 at 306–9.

¹⁴⁴ See Yvan Combeau, *Une décolonisation française : L'île de la Réunion 1942–1946* (Saint-André: Océan Éditions, 2006) at 106–118.

¹⁴⁵ Mayotte, a group of islands between Madagascar and mainland Africa, has been France's 101th department since March 31, 2011.

¹⁴⁶ See e.g. Simone Rozès, Paul Lombard, *Le juge et l'avocat: Dialogue sur la justice* (Paris: Éditions Robert Laffont, 1992) at 104 [Rozès, *Dialogue*].

granddaughter, also Paul's daughter, Françoise Vergès, to criticize the ambivalent position of the D.O.M., which her grandfather had helped to bring about: "Un sentiment d'inachevé hante les débats et explique en partie la fixation sur la question du statut dans les colonies post-esclavagistes françaises (les DOM)." ¹⁴⁷ For her, a more logical choice would have been full independence for those overseas departments: "Their demand for political assimilation rather than independence has generally situated them outside of the great narrative of decolonization." ¹⁴⁸

To account for the choice of the department status at the cost of independence, one must bear in mind that the situation in Réunion was not as dire as it was in the colonies that did become independent, such as Madagascar. Jacques Vergès elaborated on that difference between Réunion and Madagascar in his youth: "J'ai donc grandi et vécu à la Réunion, qui était à l'époque une vieille colonie. Durant cette enfance, j'ai eu l'occasion d'aller à Madagascar, où sévissait un régime colonial 'pur et dur', et je ressentais déjà lors de ces visites un grand sentiment de solidarité à l'égard des colonisés malgaches." ¹⁴⁹ Vergès also gave a vivid description of the reality of colonialism in Madagascar. In his memory, French settlers treated the indigenous population like animals:

Alors que nous étions justement à Madagascar, un couple était installé dans un pousse-pousse [*rickshaw*] tiré par un homme. Pour le faire arrêter, le passager donnait un coup de pied sur le brancard du pousse-pousse que le tireur prenait sur ses épaules. C'est une vision que je n'oublie pas, juste un coup de pied pour lui signifier de stopper à tel endroit, sans un mot, comme on le ferait avec un âne. ¹⁵⁰

¹⁴⁷ Françoise Vergès, *Abolir l'esclavage: Une utopie coloniale: Les ambiguïtés d'une politique humanitaire* (Paris: Albin Michel, 2001) at 15 [Françoise Vergès, *Abolir l'esclavage*]. However, the viability of those islands as independent states would have been questionable especially as they would have become independent a couple of decades before the large waves of decolonization from the late-1950's onward.

¹⁴⁸ Françoise Vergès, *Monsters*, *supra* note 4 at xiii.

¹⁴⁹ Felissi, *Anticolonialiste*, *supra* note 6 at 20.

¹⁵⁰ *Ibid* at 20. However, it would be possible to produce similar scenes in non-colonial societies from the work of western authors who are no imperialist sympathizers, for instance in the portrayal of Chinese society in Bertolt Brecht's *The Good Person of Szechwan*. See e.g. Bertolt Brecht, Fritz Umgelter [dir.], *Der gute Mensch von Sezuan*, music by Paul Dessau, Rolf Unkel, Georg Friedrich Händel, actors Nicole Heesters, Joachim Teege, Kurt Erhardt et al., Bonn: Lingua Video, 2008.

In contrast to those other French colonies that would become independent later,¹⁵¹ the “revolution” in Réunion was a peaceful non-revolution and, since it came about by the ballot box, did not have the stature of a real revolution, associated in the popular imagination with violence and bloodshed. The incongruity between the non-revolution in Réunion and Vergès’ later revolutionary career is striking and suggests that Vergès may have satiated his revolutionary appetite in his professional life. Françoise Vergès’ observation that the incorporation of Réunion into the administrative structure of France left the islanders with a “sentiment d’inachevé” may also have haunted Jacques Vergès. Even at the time of the departmentalization of the island, the larger project would have been a world revolution after Stalin’s model, not a change in the administrative status of a region: “Il était clair pour nous que Staline était le guide de la révolution mondiale...”¹⁵²

The changes introduced after Stalin’s death by Nikita Khrushchev in 1956 caused the old guard, such as Hoxha, to accuse the Khrushchev regime of revisionism.¹⁵³ Although Vergès did not indulge in those accusations, his alignment with the Chinese communism in the early 1960’s suggests that he shared the Chinese revolutionary agenda. Many communist-led one party states outside the Soviet Union, notably China, made the perceived Soviet apostasy from Stalin their bone of contention with the Soviet Union.¹⁵⁴ Stalinism also had and

¹⁵¹ For instance Morocco (which was not a colony but a protectorate) became independent on March 2, 1956 and Tunisia on March 20, 1956. See Bigeard, *Ma guerre*, *supra* note 151 at 135.

¹⁵² Jean-Pierre, *Miroir*, *supra* note 113 at 47. Stalin did not necessarily have the image of promoting world revolution because he had the reputation of building socialism in one country, namely the Soviet Union, for which reason he was criticized by Trotsky. However, “Stalin’s doctrine of ‘socialism in one country’ was not a repudiation of world revolution.” See Roy C. Macridis, Robert E. Ward, ed, *Modern Political Systems* (Englewood Cliffs, N. J.: Prentice-Hall, 1963) at 448.

¹⁵³ Leszek Kołakowski and Paul Stephen Falla noted: “The term ‘revisionism’ has never been precisely defined, but has been used in a wider or narrower sense according to circumstances. In present-day Communism it is no more than an arbitrary label affixed to any group or individual who in any way criticizes the policy, programme, or doctrine of a particular party; but at the turn of the century ‘revisionism’ existed as a specific phenomenon, though with fluid boundaries, in Eastern and Central European socialism.” They emphasize that revisionism in that strict sense was articulated by Édouard Bernstein in the later 1890s. See Leszek Kołakowski, Paul Stephen Falla, *Main Currents of Marxism: the Founders, the Golden Age, the Breakdown*, translated from Polish by P. S. Falla (New York: W.W. Norton & Company, 2005) at 433.

¹⁵⁴ The most consistent of hard line communists among political leaders after Stalin was the Albanian communist leader Enver Hoxha. Mao’s China, too, made a successful effort to step into the vacuum left by

continues to have a pronounced intellectual dimension. The French historian Annie Lacroix-Riz has written from the viewpoint of hard-line communism on, among other things, the position of communists in twentieth century French history.¹⁵⁵ Some pockets of Stalinism still persist, and to underline Vergès' political flexibility this study draws on them for its understanding of hard-line communism.¹⁵⁶

Stalin, though Hoxha grew increasingly critical of Mao by the 1980's. Vergès would later identify with Mao's line. In Russia, antirevisionism has remained strong. The Russian academic Nina Andreyeva's texts reject perestroika and have been translated to many languages, including English. Her text "I Cannot Forgo My Principles" was published in Alexander Dallin, Gail W. Lapidus, ed, *The Soviet System: From Crisis to Collapse*, revised edition, Boulder: Westview Press, 1995, p. 288–296.

¹⁵⁵ The word "intellectual" is an ambiguous concept especially in the context of Stalinism, which one tends to associate with anti-intellectualism. However, Stalin himself was an intellectual according to the British historian Simon Sebag Montefiore, who called Stalin "un authentique intellectuel, qui pouvait lire Platon dans le texte" in an interview published as "Les derniers secrets de Staline" in *Le Nouvel Observateur* of July 27, 2006) at <http://hebdo.nouvelobs.com/sommaire/dossier/066921/les-derniers-secrets-de-staline.html>. See also Montefiore's positive assessment of the young Stalin's poetry in Simon Sebag Montefiore, *Young Stalin* (London: Weidenfeld & Nicolson, 2007) at 49. Contemporary antirevisionist intellectuals in the west include the Belgian historian Ludo Martens, who also founded in 1968 what would become the Belgian Workers' Party. The French writer Vincent Gouysse has published three works: *Impérialisme et anti-impérialisme* (2007), *Crise du système impérialiste mondial — La décomposition finale de "l'industrie de bazar" et la naissance d'un nouvel ordre impérialiste mondial* » (2009), and *Le réveil du dragon* (2010). They were published online at <http://www.marxisme.fr>. The relatively sympathetic treatment of Stalin in *Socialism Betrayed* by Roger Keeran and Thomas Kenny also attracted accusations of not being critical enough of Stalin's legacy. See generally Roger Keeran and Thomas Kenny, *Socialism Betrayed: Behind the Collapse of the Soviet Union* (New York: International Publishers, 2004 [Keeran, *Socialism Betrayed*]). For the criticism of its leniency towards Stalinism, see the review by Roger Perkins in *the Spark!: Theoretical and Discussion Bulletin of the Communist Party of Canada*, Edition Nineteen, Spring 2007, p. 27–33. Stalinism's intellectual component has grown stronger over time in the face of political resistance to it. In an attenuated sense, the contemporary philosopher Slavoj Žižek is also a Stalinist. Although Slavoj Žižek admitted that it would be tasteless to call himself a Stalinist, he psychologised his reply: "When I appear to be sarcastic the point is not to take seriously. What is not to be taken seriously is the form is the very form of sarcasm. It's the form of the joke which masks the fact that I am serious." *Žižek!*, Zeitgeist Films, 2006, Chapter 7. In Canada, antirevisionists are grouped around the Canadian Friends of Soviet People and its organ North Star Compass, such Michael Lucas, Adélar Paquin and the late Ray Stevenson and Vic Ratsma. In a similarly loose sense, the label of "Stalinist" is also applicable to today's leading Italian Marxist philosopher, Domenico Losurdo, whose book on Stalin attracted criticism for its perceived attempt to rehabilitate Stalin. See generally Domenico Losurdo, *Stalin: storia e critica di una leggenda nera*, con un saggio di Luciano Canfora, Roma: Carocci, 2008. See the polemics in the Italian communist newspaper *Liberazione* at <http://letteresustalin.liberazione.it>.

¹⁵⁶ The Bulgarian military scholar Mikhail Kilev has written a number of books sympathetic with Stalin. Some of the texts of Albanian historians Vangjel Moisiu, Shyqri Ballvora and others have been translated into English and French, notably in *Études politiques et sociales (1984–1989)* affiliated with the Albanian Workers' Party. Institut des études marxistes-léniniste, *Études politiques et sociales (1984–1989)* at http://www.communisme-bolchevisme.net/etudes_politiques_et_sociales.htm. Instead of a direct reference to Stalin, a dismissive attitude to Krushchev and the 20th Congress of the Communist Party of the Soviet Union is enough. Greek pro-Stalin intellectuals include Eliseos Vagenas, connected with the Communist Party of Greece (KKE). Eliseos Vagenas expressed his sympathy with the Stalinist policies by criticizing the de-Stalinization of the Soviet leadership by referring to the mistakes made at the 20th party congress of the Communist Party of the Soviet Union in 1956: "The assessment of our party is that in the past, in the name of the 'peaceful coexistence' of the peoples, especially in the way this line was followed after the 20th congress of the CPSU, serious mistakes were made, which contributed to a negative change in the correlation of forces." Eliseos Vagenas, Speech of the KKE at the International Meeting of AKEL, group email of the Communist Party of Greece, Thursday, 25 November 2010.

Vergès palliated his own sense of “inachevé” of the peaceful revolution by overstating the revolution and the military component of the revolution. For him, Stalin represented revolution while De Gaulle represented military. As a veteran of De Gaulle’s army and as a communist, he wore a military outfit while distributing *Humanité*, the former organ of the CPF, on the street, in a display of his image as a “militant.”¹⁵⁷ Apart from such external displays of militancy, his double loyalty to De Gaulle and Stalin crippled or boosted, according to one’s viewpoint, his ideological development.¹⁵⁸

Because of the amalgamation of Stalin and De Gaulle, Vergès was called “infrared” by his comrades. While reminiscing about that period, Vergès says: “On m’appelait l’‘infrarouge’. Je tenais en effet aux non-communistes que je rencontrais des propos plutôt modérés, ‘infrarouges’. Mais ce surnom a un deuxième sens: l’infrarouge est plus fort que le rouge !”¹⁵⁹ Vergès claims that “infrared” is stronger than red.¹⁶⁰ He regards the infrared approach more loyal to the letter and spirit of Marxist doctrine, than the rigid party line toed by his comrades, even at the risk of contradicting *The Communist Manifesto*, which stresses: “The Communists disdain to conceal their views and aims.”¹⁶¹ Rather than reinforcing revolution, as Vergès suggests, his incessant infrared self-revolutionizing reinforces individualism – the driving force of capitalism.¹⁶²

¹⁵⁷ See Jean-Pierre, *Miroir*, *supra* note 113 at 76. *Humanité* was the central organ of the Communist Party of France until 1994.

¹⁵⁸ In a cryptic statement, Vergès suggested that his military service under De Gaulle was comparable to Stalin’s pact with Hitler, to whom he referred by way of Hitler’s Foreign Minister Joachim von Ribbentrop. Jean-Pierre, *Miroir*, *supra* note 113 at 47. Vergès alludes to the view Stalin needed the pact with Hitler to stave off an impending German attack on the Soviet Union. Compare Ludo Martens, *Un autre regard sur Staline* (Bruxelles: Éditions EPO, 1994) at 225–230 [Martens, *Staline*].

¹⁵⁹ Jean-Pierre, *Miroir*, *supra* note 113 at 88–9.

¹⁶⁰ In purely physical terms, the energy of infrared radiation is inferior to that of visible light. See e.g. Max M. Houck, Suzanne Bell, *Trace Evidence* (New York: Infobase Publishing, 2008) at 27.

¹⁶¹ Karl Marx, Friedrich Engels, Eric Hobsbawm, *The Communist Manifesto: a Modern Edition* (London: Verso, 1998) at 77 [Marx, *Communist Manifesto*].

¹⁶² Nietzsche mentioned the “multiplicity of subjects, whose interaction and struggle is the basis of our thought and our consciousness in general” in § 490 in *The Will to Power*. See Friedrich Nietzsche, *The Will to Power*, translated by Walter Kaufmann and R. J. Hollingdale (New York: Random House, 1967) at 270. Žižek’s quote from the Japanese literary critic Kojin Karatani captures the dynamism of self-revolutionization in capitalism,

Vergès' ready acceptance of the "infrared" moniker points to the deep-seated hybridization of his political views. His views are an unusual mixture of Stalin and De Gaulle, the first of whom personifies rebellion against France as a colonial power and the second of whom is a French patriot.¹⁶³ Vergès has expressed his loyalty to De Gaulle in no uncertain terms: "Je peux aimer de Gaulle. Je ne sais pas s'il m'aimait ou non. Il savait que je faisais partie de son armée."¹⁶⁴

The writer Éric Naulleau indicated that Vergès' military service under De Gaulle was an even more important factor for his legal career than Stalinism or communism. A second factor was his *métissage*, his being half-French, half-Vietnamese. Naulleau chose the three key themes – Gaullism, *métissage* and the legal career in Algeria – in his comments on Vergès' book

Journal – La passion de défendre: document:

J'ai lu pas mal de livres de Maître Vergès, notamment le précédent. Que mes guerres étaient belles, ce n'était pas très bien comme livre, celui-là est passionnant. J'ai vu L'Avocat de terreur, le document de Barbet Schroeder. Et moi, contrairement à tout ce qui ... les deux adjectifs qui vous collent à la peau, que vous seriez mystérieux et énigmatique, mais moi, je vous trouve au contraire, à force, très prévisible. Il y a trois choses que vous faites toujours, quel que soit le livre ou quand on vous interviewe. C'est: vous rappelez votre *métissage*. Là, vous l'avez faite à la date de 13 janvier, dès le début du livre. Vous la rappelez à chaque fois parce que cela inscrirait d'une manière génétique votre sensibilité au tiers-mondisme. Ce que vous faites toujours aussi, c'est que vous rappelez votre travail d'avocat du FLN pendant la Guerre d'Algérie. Ça, c'est à la date du 1er février, c'est-à-dire encore une fois au tout début du livre. Et vous rappelez aussi votre engagement dans les rangs des Forces française libres et votre gaullisme. Cela, aussi, c'est le 1er février.¹⁶⁵

which suggests that self-revolutionization is more proper to capitalism than to communism: "In short, the self-referential formal system is dynamic because of incessant internal slippage (self-differentiation). It cannot maintain a definitive meta-level or center that systematizes a system. Rather, like the 'multiplicity of subjects' that Nietzsche once proposed, it is multicentered." V. I. Lenin, Slavoj Žižek, *Revolution at the Gates: a Selection of Writings from February to October 1917* (London: Verso, 2002) at 280.

¹⁶³ Thierry Jean-Pierre noted Vergès' apparently contradictory intellectual and political pedigree and subsumed them under one denominator, anticolonialism. See Jean-Pierre, *Miroir*, *supra* note 113 at 14.

¹⁶⁴ See Vergès, *Avocat*, *supra* note 40 at 83.

¹⁶⁵ See Ruquier, *Zemmour*, *supra* note 115.

A reason that Vergès has stayed loyal to De Gaulle is that he and his brother Paul witnessed the landing of a warship of Free France, a destroyer called *Le Léopard*, in the port of Saint-Denis, the capital of Réunion, in late-1942. They participated in an overthrow of a regime first-hand when they had the chance to arrest the head of the guard of Marshal Pétain on Réunion. It was after that experience that they joined the Forces of Free France and, as both Jacques and Paul were minors, they needed their father's consent, promptly given, which suggests that their father also endorsed the fight led by De Gaulle.¹⁶⁶

In the military, Vergès could satisfy his sense of adventure. He was assigned to the artillery and got his basic training in the Algerian city of Cherchell. He was then sent to the Moroccan city of Fès and trained in Séfrou and el Hajeb.¹⁶⁷ He was promoted to sergeant and assigned to the 155 mm artillery regiment in 1944.¹⁶⁸ Vergès participated in the Italian Campaign, which lasted from 1943 until the end of the war, and later in the Allied invasion of southern France on August 15, 1944.¹⁶⁹ The troops advanced to Vosges¹⁷⁰ and finally arrived in Paris, where Vergès was assigned to the artillery in Vincennes. His unit participated in the bombing of the German-held Royan on the French west coast, and finally liberated the Island of Oleron off the west coast of France in Operation Jupiter.¹⁷¹

¹⁶⁶ See Jean-Pierre, *Miroir*, *supra* note 113 at 49–53.

¹⁶⁷ See Jacques Vergès, *La justice est un jeu*. Conférence du 5 mai 1997 à l'École des Mines de Nancy. at <http://eleves.mines.u-nancy.fr/~mconf/pgVergès.html> [Vergès, *Nancy*].

¹⁶⁸ See Jean-Pierre, *Miroir*, *supra* note 113 at 61. The 155 in the “régiment de 155 d'artillerie” refers to the calibre of the guns. Email of Jacques Vergès to Jonathan Widell of May 31, 2010. His regiment was the 65ème régiment d'artillerie d'Afrique, to which he was assigned on July 1, 1944. Email of Françoise Caperan (Vergès' secretary) to Jonathan Widell on June 4, 2010.

¹⁶⁹ See Vergès, *Nancy*, *supra* note 167. That operation is known by the name Dragoon in English.

¹⁷⁰ Vosges is situated in the northeastern part of France. It was the native region of Joan of Arc, whose symbol, the Lorrain Cross, was the symbol of the Forces of Free France. Somewhat disconcertingly perhaps, Joan of Arc became the symbol of right-wing causes in France, while Marianne, donning the red Phrygian cap, the symbol of the French revolution, remained the symbol of the left. See Eric Jennings, “Reinventing Joan of Arc: The Iconology of Joan of Arc in Vichy Schoolbooks, 1940–44,” in *Journal of Contemporary History* 29: 1994, p. 711–30.

¹⁷¹ See Jean-Pierre, *Miroir*, *supra* note 113 at 61–2. Vergès mentions that the island was held by the Italians. However, the Island of Oleron was one of the last pockets of German resistance during the Second World War and the Allied forces liberated it only about a week before the Armistice, on April 30 to May 1. See e.g. *L'opération "Jupiter" ou la libération de la poche de l'île d'Oléron* <http://www.cheminsdememoire.gouv.fr/page/affichepage.php?idLang=fr&idPage=2712>. That detail is worth

Vergès' wartime experience under De Gaulle would merge with his Stalinism after the war. The hybridization of his Stalinism and his loyalty to De Gaulle does not appear to pose a conundrum for him in the twenty-first century, although he considered it important enough to raise it in his conversation with Thierry Jean-Pierre, who interviewed the Vergès brothers.¹⁷² Vergès' explanation is smacks of rationalization because the reasoning seems precocious for a fifteen-year, as he would have been in 1940, which is the year to which he refers: "Cet engagement communiste, dont je ne renie rien, était un engagement de fond. Mais en 40, l'objectif immédiat était la libération de la France."¹⁷³ That rationalization is all the more striking because Vergès suggests that his "engagement communiste" was the reason he joined the military but did not join the Communist Party, the standard of a communist commitment *par excellence*, until 1946.¹⁷⁴

2.2. Vergès' Politics Shaped by his Birth

Naulleu pointed to third-worldism as one of the themes that recur in Vergès' increasingly biographical discourse, particularly in the books that he has written after the Barbie trial. Vergès' thirdworldism was based on his *métissage*, as Naulleau said: "Vous la rappelez à chaque fois parce que cela inscrirait d'une manière génétique votre sensibilité au tiers-

mentioning because Chaudenson adds a "(!)" when referring to Vergès' observation that the island was held by the Italians. See Chaudenson, *Vergès*, *supra* note 113 at 65.

¹⁷² Judge Thierry Jean-Pierre rose to national prominence during the so-called URBA affair. According to Vergès, Jean-Pierre was threatened with a law suit in this or some other affair, during which time he requested Vergès to act as his lawyer. See Jacques Vergès, *Journal: La passion de défendre: document* (Monaco: Éditions du Rocher, 2008) at 364 [Vergès, *Passion*]. URBA was a consultancy firm established in 1972 by the French Socialist Party to advise communes on infrastructure projects. Behind that façade, it accounted for a third of the income of the Socialist Party. For instance, URBA siphoned off 25 million French francs to François Mitterrand's presidential election campaign. In a controversial move, Mitterrand amnestied the Socialist representatives who were under investigation for infractions that were not crimes in 1988. The National Assembly, with its Socialist majority, subsequently changed the law to exculpate the Socialist representatives under investigation in 1989. In a glaring contradiction, the right-wing party *Rassemblement pour la République* did not benefit from such magnanimity for similar financing irregularities. See generally Antoine Gaudino, *L'enquête impossible* (Paris: Albin Michel, 1990).

¹⁷³ Jean-Pierre, *Miroir*, *supra* note 113 at 47.

¹⁷⁴ *Ibid* at 76.

mondisme.”¹⁷⁵ Naulleu is correct in identifying *métissage* as the centre-piece of Vergès’ conception of his identity. Vergès says that it was not a problem for him: “Souvent, des confrères ont dit de moi que j’étais un homme déchiré par ma naissance comme Eurasien.”¹⁷⁶ J’ai répondu: ‘Je ne suis pas déchiré. Je suis double.’ À la fois asiatique et européen.”¹⁷⁷ His childhood experiences would mould his political ideology when he got involved in the Algerian War as a lawyer: “...ma position idéologique à cette époque [de la Guerre d’Algérie] s’expliquait par ma vie, mon action militante et mon enfance.”¹⁷⁸

Métissage is not peripheral to Vergès’ political views either. The struggle for what he views as racial equality is its *leitmotif*.¹⁷⁹ In a possible attempt to set the record straight about his birth, Vergès constructs a narrative from the peculiarities of his life, starting with his birth and ending with his admission to the bar. He goes so far as to attribute the anticolonial stance of his legal career to his birth in the colonies: “Ma naissance dans les colonies m’a guéri d’une confiance aveugle dans la justice.”¹⁸⁰ Vergès creates a narrative from his own biracial origins to his career as a lawyer for the FLN during the Algerian War of Independence, which is the third recurring theme identified by Naulleau. He ascribes his first contacts with Algerian militants by way of a reference not only to his own background in the colonies but also to his racial makeup, which he calls his physique: “Ils m’ont accepté pour plusieurs raisons, peut-être à cause de mon physique et de mes origines.”¹⁸¹

¹⁷⁵ Éric Naulleu in Laurent Ruquier’s programme *On n’est pas couché*. See Ruquier, *Zemmour*, *supra* note 115.

¹⁷⁶ *Le Grand Robert* defines Eurasien as follows: “Métis (métisse) d’Européen ou d’Européenne et d’Asiatique.” The sample sentence corresponds to Vergès’ own Franco-Vietnamese situation: *Sa femme est une Eurasienne, fille d’un Vietnamien et d’une Française*.

¹⁷⁷ Vergès, *Avocat*, *supra* note 40 at 32.

¹⁷⁸ Felissi, *Anticolonialiste*, *supra* note 6 at 37.

¹⁷⁹ Vergès’ emphasis on race is at least partly influenced by his affinity with the Chinese Communist Party and he is also susceptible to the same criticisms. In Khrushchev’s criticism of the Communist Party of the People’s Republic of China, the pursuit of racial equality became a form of racism because it subordinated class struggle to racial struggle. See Jacques Ploncard d’Assac, *Coexistence pacifique et guerre révolutionnaire*, in the series *Voix de l’Occident* ; 9 (Lisbonne: Voix de l’Occident, 196–) at 67 [Ploncard, *Coexistence*].

¹⁸⁰ Vergès, *Dictionnaire amoureux*, *supra* note 74 at 473.

¹⁸¹ Felissi, *Anticolonialiste*, *supra* note 6 at 36.

2.3. Vergès' Political Peregrinations

Despite Vergès' self-portrayal as anticolonialist, he has not at any point indicated that he broke with communism. He told de la Morandais in their 2000 interview: "Je ne suis pas converti au capitalisme, je vis dans une société capitaliste."¹⁸² He seeks to form a coherent narrative of his life that integrates communism and anticolonialism. Vergès' problems with communism are practical. He dismisses communism's party discipline as too rigid to solve real-life problems. The foremost real-life problem for him is the injustice suffered by the third world. Vergès' account of the role played by his life experiences in the development of his strategy of rupture is an indirect reference to those historical developments. Those historical considerations shed light on the evolution of his judicial strategy.

2.3.1. *The Communist pedigree of Vergès' judicial strategy*

How direct is the link between Vergès' judicial strategy and communism? Although Vergès wrote *De la stratégie judiciaire* in 1968, the connection between communism and what would later become his judicial strategy started decades earlier. Ironically, it is his cultivation of the word strategy, which harks back to communism, that allowed him to be flexible in his communism later. Vergès assumes that he can afford being eclectic because he chose to call his approach a "strategy." Vergès breaks with his precursor Willard, who used the word "strategy" in a narrower sense, interchangeably with tactic, while preferring to use the concrete term "defense" for a defence lawyer's approach.¹⁸³

In view of Vergès' political volatility, which was in evidence already during his years in the Communist Party, a case like Barbie would be only a matter of time. Vergès' political

¹⁸² Vergès, *Avocat*, *supra* note 40 at 158.

¹⁸³ Willard, *Défense accuse*, *supra* note 22 at xxii.

latitude culminated in the Barbie trial of 1987, as his “infrared” revolution turned against his earlier leftist political commitments. During his defense of Barbie, he turned against his former revolutionary connections. Vergès’ defence of Barbie caused a great deal of friction in the circles close to him, including people who had projected him as a leftist revolutionary. An example of a group where it caused a lot of strain was *Défense libre*.¹⁸⁴ Vergès answered to the criticisms leveled at him by his former acquaintances: “Vous êtes des cons.”¹⁸⁵ However, his version of revolution had consequences that reached further than the petty squabbling with his comrades. He implies that he is a custodian of the socialist revolution. It is not his private revolution but an expression of his desire to keep the revolution alive by rebelling, if need be, even against a revolution that he had previously supported.¹⁸⁶ Because of what Vergès sees as the renewal of revolutionary energy, he does not see himself as a contrarian inside the proletarian revolution. He did not consider his function as causing the revolution to implode but, on the contrary, to invigorate it. A revolution that stagnates becomes part of the problem and, to remedy the problem, Vergès turns a dynamic conception of revolution, inspired by its Chinese prototype, to repel the danger of stagnation.¹⁸⁷ He says: “Quand j’entends aujourd’hui les attaques de la gauche bien-pensante contre les paras français à

¹⁸⁴ See generally Vergès, *Face cachée*, *supra* note 30.

¹⁸⁵ Vergès, *Avocat*, *supra* note 40 at 84.

¹⁸⁶ An example is the criticism that Vergès levelled at the leadership of Ben Bella, Algeria’s first President, in the FLN-financed periodical *Révolution africaine*. That criticism was not tolerated in Algeria’s increasingly repressive political culture, with the consequence that Vergès had to flee the country. Vergès’ criticism translated into an adherence to a concrete revolution when he returned to Algeria in the wake of the overthrow of Ben Bella by a fellow veteran of the FLN, Colonel Boumedienne, in 1965.

¹⁸⁷ One sees the influence of Maoism in Vergès’ dynamic view of revolution. Until Mao’s death in 1976, China advocated “continual revolution” (jixu geming), or “revolution within revolution.” See Hsiao-peng Lu, Sheldon H. Lu, *China, Transnational Visuality, Global Postmodernity* (Stanford: Stanford University Press, 2001) at 52. “Mao established the doctrine of ‘continuing the revolution under the dictatorship of the proletariat’ (wuchanjieji zhuanzhengxiade jixu geming) and broadening the scope of class struggle (jieji douzheng kuodahua).” Henry Yuhuai He, *Dictionary of the Political Thought of the People’s Republic of China* (New York, M.E. Sharpe, 2001) at 199. Claude Delmas noted with irony Mao’s sly appropriation of Trotskyist permanent revolution: “Les Chinois, qui se défont de tout trotskysme, n’en ont pas moins développé le second aspect défini par Trotsky: la révolution socialiste est permanente tant que la société n’a pas atteint l’‘équilibre’; la révolution socialiste est permanente jusqu’au communisme.” Claude Delmas, *La guerre révolutionnaire*, in the series *Que sais-je?* 826, 3e éd. refondue (Paris: Presses universitaires de France, 1972) at 113.

propos de la torture en Algérie, je m'étrangle!”¹⁸⁸ He explains that the movements (he means Social-Democrats) that are outraged by torture in Algeria were responsible for torture during the Algerian War. Vergès resorted to similar reasoning in one of the answers he gave to Foucault in 1981 about a new piece of French legislation, *Sécurité-Liberté*, in the introduction of the second edition of *De la stratégie judiciaire*. He stressed that many of those who now condemn that legislation used in Algeria were in reality responsible for it during the Algerian War, suggesting that resistance to the legislation was insignificant in light of what those supposed resisters were able to condone decades earlier.¹⁸⁹ Vergès made an indirect reference to the Social Democrats, who held key positions in the repressive regime of French Algeria. As he explained, Guy Mollet, whose *Front républicain* passed the “pouvoirs spéciaux,”¹⁹⁰ and the minister resident for Algeria Robert Lacoste, were both Social Democrats.¹⁹¹

Let us admit that Vergès is right about the counterrevolutionary background of the leftists, such as Social Democrats, who palmed themselves off as revolutionaries in the 1980's. We see that Vergès himself turned his judicial strategy against the revolution in his legal cases. That tendency grew stronger over his career. His defense of Barbie is most glaringly inconsistent with his revolutionary past. The Barbie trial was a revolution only in the attenuated sense that it was a provocation. Vergès probably refers to the Barbie case when he says: “Je suis provocateur. Je provoque la réflexion.”¹⁹² Before the Barbie trial he

¹⁸⁸ Bernard Debré, Jacques Vergès & Éric Branca, *Le suicide de la France* (Paris: Éditions Olbia, 2002) at 87 [Debré, *Suicide*].

¹⁸⁹ Vergès, *Stratégie judiciaire*, *supra* note 7 at 10.

¹⁹⁰ When the French parliament passed the law called the *pouvoirs spéciaux* on March 16, 1956, its stated objective was the economic and social development of Algeria. However, according to Article 5 of that law, the Government could take all extraordinary measures to restore order, protect people and goods, and to defend the integrity of the state territory. Subsequent decrees overstepped the initial specifications of the *état d'urgence* and became a *carte blanche* for the French security forces. See Fabian Klose, “‘Source of Embarrassment’: Human Rights, State of Emergency, and the Wars of Decolonization,” in Stefan-Ludwig Hoffmann, ed., *Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press, 2010) p. 237–257 at 253.

¹⁹¹ See Felissi, *Anticolonialiste*, *supra* note 6 at 110.

¹⁹² Vergès, *Avocat*, *supra* note 40 at 147.

acknowledged that his interest in it was based on its destabilizing potential.¹⁹³ Instead of pursuing a consistent Marxist revolutionary strategy in which material conditions would determine the intellectual superstructure, he inverted that relationship so that reflection supposedly brings about a change in one's material circumstances. That view was advanced by Mao.¹⁹⁴ Vergès' view of the revolutionary potential of the Barbie trial was already attenuated, and that attenuation culminated in his recognition in 2002: "La seule révolution à faire est dans les esprits."¹⁹⁵

Despite the flexibility of Vergès' judicial strategy, the provenance of the strategy is communist, in particular Bolshevik, through the Marxist lawyer Marcel Willard. Willard's book centered on the legal defence of the Bulgarian communist leader Georgi Dimitrov, who was accused of setting the German *Reichstag* on fire. Willard was one of the legal counsel that Dimitrov used, even if Dimitrov defended himself during the trial. The trial of the four accused began before the fourth Criminal Senate of the *Reichsgericht* (Court of the German Empire), the highest court of the German *Reich*, in Leipzig on September 21, 1933.¹⁹⁶ Thanks to his energetic defense, Dimitrov and the other two accused were acquitted on December 24, 1933.¹⁹⁷

¹⁹³ See Erna Paris, *Unhealed Wounds: France and the Barbie Affair* (Toronto: Methuen, 1985) at 185 [Paris, *Unhealed Wounds*].

¹⁹⁴ The view that the intellectual superstructure was disconnected from the material conditions motivated the Cultural Revolution in China in the late-1960's: "La contribution de Mao dans la grande avancée théorique consistait en la reconnaissance que la persistance du contrôle privé dans le domaine des idées – culturelles, artistiques, techniques, professionnelles parmi les gestionnaires politiques du gouvernement révolutionnaire – constituait la principale base à partir de laquelle la contre-révolution et la restauration capitaliste pourraient surgir après ce qui semblait avoir été une victoire du socialisme." See Robert Weil, "Contributions et leçons de la Grande révolution prolétarienne culturelle et la lutte contre la contre-révolution globale," a contribution to a congress held in The Hague, the Netherlands, on April 1, 2007, translated from English to Greek and from Greek to French, in *Northstar Compass*, Édition française, Vol 1 #4, juillet–août 2008, p. 10–15 at 10.

¹⁹⁵ Vergès explained that it is human to err, thus implying that the justice system was subject to the limitations of the people who constitute it. It was at the individual level that change would have to take place instead of a bringing about a wholesale revolution of the justice system. However, Vergès' formulation "revolution in spirit" also alludes to the French tradition of revolution and the need to recapture its true spirit. See Jacques Vergès, *Les erreurs judiciaires* (Paris: Presses Universitaires de France, 2002) at 120 [Vergès, *Erreurs*].

¹⁹⁶ See *Dimitroff contra Goering*, *supra* note 16 at 126.

¹⁹⁷ *Ibid* at 287.

As Vergès noted in *De la stratégie judiciaire*, “Dimitrov, comme son avocat et ami Marcel Willard, avait tendance à s’exprimer en termes de combat militaires.”¹⁹⁸ Even if ‘strategy’ was not one of the terms that Willard used to describe the political defense, it was in line with the military terminology that Dimitrov and Willard used. Willard’s inspiration was Lenin’s letter of January 19, 1905 to Elena Stasova and other imprisoned comrades in Moscow.¹⁹⁹

In that letter, Lenin did not use the word “strategy.” Instead, he used the related concept of “tactics,” which was a word that he used regularly, for example in the title of his *Two Tactics of Social-Democracy in the Democratic Revolution*, which he wrote in Geneva, in June-July 1905. His letter to Stasova was an attempt to explain “the tactics to be pursued in court”:

Absolute writes of two points of view. The note speaks of three groups; perhaps it has in mind three shades of opinion, which I shall attempt to reconstruct as follows: (1) To refuse to recognise the court and to boycott it outright. (2) To refuse to recognise the court and not to participate in the court proceedings; to employ a lawyer only with the understanding that he speak exclusively about the court’s lack of jurisdiction from the point of view of abstract law; in the concluding speech for the defence to make a *profession de foi* and to demand a trial by jury. (3) The same applies to the defendant’s last statement. To use the trial as a means of agitation and, for this purpose, to take part in the court proceedings with the aid of legal counsel; to show up the unlawfulness of the trial and even to call witnesses (to prove alibis, etc.).²⁰⁰

Lenin says he cannot give a clear-cut answer to the question what strategy one should adopt in the courts of the class enemy. Willard summarized Lenin’s letter to the following points: if the trial provided a platform for airing one’s political views, defendants should turn the trial into an occasion for publicizing their political views, but if not, they should boycott the trial by refusing to adhere to the rules that governed the trial. The political battle in which the

¹⁹⁸ Vergès, *Stratégie judiciaire*, *supra* note 7 at 105.

¹⁹⁹ Willard, *Défense accuse*, *supra* note 22 at XVI–XVII.

²⁰⁰ V.I. Lenin, *A Letter to Y. D. Stasova and to the Other Comrades in Prison in Moscow*, First published in 1924 in the magazine *Proletarskaya Revolutsia*, No. 7 (30). Published according to the manuscript. “Marxists Internet Archive” at <http://marxists.catbull.com/archive/lenin/works/1905/jan/19.htm> [Lenin, *Stasova*]. Lenin’s letter is among the first hints in Marxism-Leninism of a judicial strategy. When Marx used the word “strategy” in *Capital*, he referred to the capital’s strategy of alienation of labour from nature. Marx’s writing on law did not focus on strategy. See generally Karl Marx, *Critique du droit politique hégélien* (Paris: Éditions sociales, 1975). See also Friedrich Engels, “Le procès des communistes à Cologne,” in Karl Marx, Friedrich Engels, *Œuvres choisies en trois volumes*, Tome premier (Moscow: Éditions du progrès, 1970) at 404–9.

defense engaged was primary while the legal defence of the accused was secondary. In concrete terms, it was less important to ensure the acquittal of the defendant who was accused of communism than to make his communist views known. That reversed priority prefigured Vergès' strategy of rupture.

Lenin's cynicism was a mirror image of that of lawyers who took the established order seriously. In his view, those lawyers ignored the plight of people who were brought to justice. Lenin derided his lawyer colleagues. He expanded his criticism to the entire justice system. His critical distance from the authority claimed by the justice system opened the door to promoting one's political views. Refusing to recognize a court's authority was tantamount to promoting one's political views in so far as that refusal was motivated by the court's real or perceived class character. A lawyer's utility for the communist cause depended on his willingness to repudiate the court's jurisdiction. Even if Lenin was a lawyer by education, he did not mince words about the risks that were involved in choosing a lawyer. His advice was to evaluate lawyers in terms of their political allegiance and utility. He uses strong language to convey his views:

Lawyers should be kept well in hand and made to toe the line, for there is no telling what dirty tricks this intellectualist scum will be up to. They should be warned in advance: Look here, you confounded rascal, if you permit yourself the slightest impropriety *or political opportunism* (if you speak of socialism as something immature or wrong-headed, or as an infatuation, or if you say that *the Social-Democrats reject the use of force*, speak of their teachings and their movement as peaceful, etc., or anything of the sort), then I, the defendant, will pull you up publicly, right then and there, call you a scoundrel, declare that I reject such a defence, etc.²⁰¹

Vergès reflected in *De la stratégie judiciaire* Lenin's view of the legal profession in his own observation: "J'ai contre cette profession les plus grandes préventions. Je vois des bavards, des rhéteurs, des malhonnêtes, prêts à biseauter un contrat pour spolier la veuve ou l'orphelin,

²⁰¹ Lenin, *Stasova*, *supra* note 200.

pour plaire aux plus riches et aux puissants...”²⁰² Vergès’ cynicism toward the legal profession reflected Lenin’s views, though he did not deny the good that lawyers can do.²⁰³ In *De la stratégie judiciaire*, Vergès referred directly to Lenin’s low opinion of lawyers. Vergès quoted Lenin’s view that lawyers were the most reactionary of people:

La justice, telle que l’entendent les juristes, ‘ces gens les plus réactionnaires du monde’, selon Lénine, la justice telle qu’elle est une justice de connivence, pour cette simple raison que toute société qui organise des tribunaux le fait afin de juger selon ses normes des atteintes à sa légalité.²⁰⁴

Vergès would make common cause with Lenin in juxtaposing connivence and, by implication, rupture with Lenin’s views. In particular, he would align his strategy of connivence with “legality,” i.e. bourgeois legality, which Lenin criticized repeatedly.²⁰⁵ Lenin expressed that distrust of bourgeois lawyers in the same letter to Stasova when he wrote: “The lawyers, as Bebel, I believe, said, are the most reactionary of people.”²⁰⁶ Nobody would accuse Vergès of saying “that *the Social-Democrats* [or his other clients]

²⁰² Jacques Vergès, *Le salaud lumineux: Conversations avec Jean-Louis Remilleux* (Paris: Édition no 1: Michel Lafon, 1990) at 139–140 [Vergès, *Salaud*].

²⁰³ That subservience to the powerful among lawyers made the backbone of *grands avocats* all the more salient. Vergès defined the greatness of Jacques Isorni and Jean-Louis Tixier-Vignancour, which usually count among the *grands avocats*, as their ability to resist group pressure: “l’attitude de nos confrères Isorni et Tixier-Vignancour qui, quoique nos adversaires, avaient refusé de s’y associer et n’avaient pas confondu délicatesse et lâcheté.” Vergès, *Journal*, *supra* note 83 at 102.

²⁰⁴ Vergès, *Stratégie judiciaire*, *supra* note 7 at 44.

²⁰⁵ See Pierce Beirne and Alan Hunt, “Law and the Constitution of Soviet Society: The Case of Comrade Lenin,” in Piers Beirne, ed., *Revolution in Law: Contributions to the Development of Soviet Legal Theory, 1917–1938* (Armonk, N.Y.: M.E. Sharpe, 1990) at 65. According to Andrey Vyshinsky, the state prosecutor in Stalin’s Moscow Trials, “bourgeois legality” secured the order that was created after the victory of the bourgeoisie while “revolutionary legality” promotes social development. See Andrey Vyshinsky, “Revolutionary Legality in the Present Period of Socialist Construction” in *Sovetskaya Yustitsiya*, June 1932, No. 16, p. 4, Quoted and translated in *The Organs of Soviet Administration of Justice: Their History and Operation*, foreword by John N. Hazard (Leiden: E.J. Brill, 1970) at 661. Lenin referred to bourgeois legality by such expressions as “narrow horizon of bourgeois law.” See VI Lenin, “The State and Revolution,” in VI Lenin, *Collected Works*, Vol. 25, June–September 1917 (Moscow: Progress Publishers, 1964) p. 381–492 at 469 (V:4).

²⁰⁶ Lenin, *Stasova*, *supra* note 200. Lenin had the deepest respect for August Bebel, of which an indication is the tribute to Bebel at his death: “With the death of Bebel we lost not only the German Social-Democratic leader who had the greatest influence among the working class, and was most popular with the masses; in the course of his development and his political activity, Bebel was the embodiment of a whole historical period in the life of international as well as German Social-Democracy.” VI Lenin, *August Bebel*, Published: *Severnaya Pravda* No. 6, August 8, 1913. Signed: V. I.. Published according to the *Severnaya Pravda* text. in VI Lenin, *Collected Works*, 4th English ed, Progress Publishers (Moscow, 1968, Vol. 19), p. 295–301 at 295.

reject the use of force, speak of their teachings and their movement as peaceful, etc., or anything of the sort,” as Lenin warned his comrades that lawyers might do.²⁰⁷

When Vergès introduced his concept of strategy in *De la stratégie judiciaire*, it would reflect Lenin’s and Willard’s conception of judicial strategy in various respects. Both Lenin and Willard conceived of the trial of a comrade in terms of its political value and thought the courtroom should be used as a platform to propagate the political views not only of the accused but also of the Communist Party. Vergès would adopt Lenin’s and Willard’s view that a trial should serve political ends, though he would not endorse their view that it should serve the Communist Party, which he had quit eleven years earlier. Vergès’ indebtedness to Willard would be of long duration. His choice of the word “strategy” to describe his approach to justice system would be in line with Willard’s use of it. However, in Vergès’ 1961 book *Défense politique*, his references to Willard were to predate the articulation of his judicial strategy. A political defence would anticipate his judicial strategy in its three main points: revolutionary enthusiasm; appeal to public international law; and, appeal to public opinion.²⁰⁸ Appeal to public opinion was the equivalent of what Willard had called “agitation.” Vergès had adopted the two other components, namely revolutionary enthusiasm and appeal to international public law, in his defence of the Algerian insurgents during the Algerian War of Independence.

2.3.2. *Agitation: the driving force of Vergès’ strategy*

As stated earlier, the objective of this chapter is to identify the ways in which Vergès’ pre-law experiences would shape his strategy. Agitation was to be one of those profound experiences. Vergès practiced agitation in his communist past by distributing *Humanité* in his

²⁰⁷ Lenin, *Stasova*, *supra* note 200 at 68.

²⁰⁸ See Benabdallah, *Défense politique*, *supra* note 24 at 73.

military outfit. The word “agitation” is firmly rooted in communist vocabulary and has a specific meaning. Whereas propaganda is education directed at enlightened workers, agitation addresses the masses by using some recent event to mobilize them.²⁰⁹

Lenin mentioned the word ‘agitation’ four times in his letter to Stasova. Although the principles of propaganda and agitation would remain the same across the decades, their methods would be radically different in the 1930’s, when Willard wrote, than in the 1950’s, when Vergès was to begin to resort to them, notably with the introduction of mass media, especially audiovisual media. As Vergès would say later, he soon understood that instead of using complicated arguments he should use “images très simples.”²¹⁰

Appeal to public opinion would become the heart of Vergès’ judicial strategy and would remain so into the twenty-first century. The “public opinion” would refer to “international public opinion.” He would discuss his judicial strategy during the Algerian War of Independence in the following terms:

Je savais la condamnation programme dans le cadre étroit du procès, mais ce rapport de force pouvait changer devant l’opinion publique internationale. J’ai donc considéré le prétoire comme un champ de bataille qui devait devenir public, afin que je puisse me battre à égalité contre les juges.²¹¹

²⁰⁹ See *Histoire du Parti Communiste Bolchevik de l’URSS*, précis rédigé par une commission du Comité Central du P.C.(b) de l’U.R.S.S., approuvé par le Comité Central du P.C. (b) de l’U.R.S.S., 1938, Moscou: Éditions en langues étrangères, 1949, Fax-similé (Paris: Éditions Norman Béthune, 1971) at 20 (Chapter 1, Section 3) [CPSU, *Histoire*]. The distinction between propaganda and agitation has a checkered history. In Chapter III of *What is to be Done?* Lenin quoted a certain Lomonosov-Martynov, who in turn quoted Georgi Plekhanov, who wrote in *Tasks of the Socialists in the Fight Against the Famine in Russia*: “A propagandist presents many ideas to one or a few persons; an agitator presents only one or a few ideas, but he presents them to a mass of people.” VI Lenin, *What is To be Done?: Burning questions of our movement*, translated from the Russian (Peking: Foreign Languages Press, 1975) at 81–2 (Chapter III, Section B).

²¹⁰ Felissi, *Anticolonialiste*, *supra* note 6 at 49. Vergès’ observation is in line with Marshall McLuhan’s observations about the dramatic change on culture brought about by the emergence of electric media: “The visual world has the properties of being a sort of contiguous and connected, homogeneous, rational, logical, private, individualistic, civilized world. Electric media obsolesces the visual, the connected, the logical, the rational.” See the interview in Kevin McMahon [dir.], *McLuhan’s Wake* [DVD], Primitive Entertainment in co-production with the National Film Board of Canada and in association with TVOntario; a National Film Board of Canada release, [Montréal]: National Film Board of Canada, 2003.

²¹¹ Felissi, *Anticolonialiste*, *supra* note 6 at 46.

Vergès' agitation consisted of the mobilization of public opinion (*la rue*) outside the courtroom (*prétoire*).²¹² In *De la stratégie judiciaire*, he would trace the dynamic between the street and the *prétoire* to Émile Zola's intervention in the Dreyfus affair: "La défense transportait ainsi dans la rue le débat étouffé dans le prétoire."²¹³

Despite numerous parallels with Lenin and Willard, Vergès' judicial strategy would be far from the political activism in which Willard had expected lawyers to engage during a trial. In his legal practice, Vergès would not consider himself bound by politics in the defense of his clients. After the Barbie trial, he admitted openly: "J'ai défendu des personnes qui sont très différentes de moi et dont je n'épouse absolument pas la cause."²¹⁴ Barbie, of course, would remain the best example of a client whose cause he would not have defended as a communist, though agitation was at work in that case, too.²¹⁵

Vergès' experiences of violence in the colonies during the Second World War and witnesses physical abuse against natives in Madagascar, in particular, would contribute to his readiness to defend the violence used by his clients for political purposes would be in danger of degenerating into a defence of violence for its own sake. When Jean-Pierre asked Vergès: "Avez-vous jamais prêté la main à des actes de terrorisme?," Vergès answered: "Votre question – et c'est probablement volontaire – est ambiguë. Que signifie 'prêter la main' ? Je n'ai jamais posé de bombes moi-même mais j'ai défendu ceux qui les fabriquaient et les

²¹² Prétoire means courtroom. *Le Grand Robert* defines it as "*salle d'audience d'un tribunal*." Both *prétoire* and courtroom are metonymies for the justice system.

²¹³ See Vergès, *Stratégie judiciaire*, *supra* note 7 at 169. The Dreyfus affair involved the conviction for treason of Alfred Dreyfus, a French artillery captain, in 1894. High-ranking officials suppressed persuasive evidence that the real culprit was another officer, Ferdinand Esterhazy. The arguments that public opinion expressed against and in favour of Dreyfus soon revolved around Dreyfus' Jewish background. The Dreyfus affair was to become one of the most important events in turning Zionism into a political force. Vergès refers to the Dreyfus affair often, for instance in his *Les erreurs judiciaires*. See Vergès, *Erreurs*, *supra* 195 at 10–7.

²¹⁴ Felissi, *Anticolonialiste*, *supra* note 6 at 73.

²¹⁵ Vergès also had to admit that the importance of the trial flattered him: "In Lyon they put on a real show. They turned the main hall into a courtroom, to seat 700 people. A raised courtroom with stairs leading up to it. The French government built the set. Then it was up to us, within their set, to improvise our play...It was exhilarating. There's 39 lawyers on the other side and I'm all alone. It means each of them is only worth a fortieth of me...I ask you, and you don't have to answer, tell me the name of one of those legal eagles." Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 10.

faisaient exploser.” Rather than evoke any political motive to justify terrorism, he explained it was a reaction to torture and the atomic bomb used by the imperialist powers, France and the United States.²¹⁶

The objective of that violence was not necessarily in line with the purpose envisaged by Willard in his *La défense accuse*. Whereas Willard, like Lenin, endorsed revolution with a view to establishing a dictatorship of the proletariat, Vergès would be open to other revolutions. For instance, the Algerian Revolution was not the proletarian revolution envisaged by Lenin. Vergès’ view of the means of bringing about a revolution would be akin to so-called *revolutionary spontaneism*, which Lenin condemned it in *What is to be done?*. Lenin’s view was that the Communist Party should play a key role as the vanguard of a revolution. Spontaneism, in contrast, meant that people would be able to bring about revolution without guidance from a vanguard party. Vergès’ obscurity about the position of the vanguard party in revolution would become even more pronounced since the collapse of the Soviet Union. Vergès would express his faith in a coming revolution in Messianic terms: “La révolution arrivera à nouveau, j’en suis persuadé, mais nous n’en connaissons ni le jour ni l’heure....”²¹⁷ It is significant that Vergès would portray the revolution as something in which one must believe. He would even model his declaration of faith in the revolution after the pattern of Jesus’ words: “Therefore be alert, because you don't know either the day or the hour.”²¹⁸ Could that statement be a vestige of his Stalinism? Vergès may have fallen prey to the much-feared “personality cult” of Stalin when Stalin was alive. In *De la stratégie judiciaire*, he would continue to be conciliatory towards Stalin and suggest that Stalin’s political goal of getting rid of big land owners (the so-called *kulaks*) who exploited the peasants overrode legal safeguards, which in turn – he suggested – reflected his own political

²¹⁶ See Jean-Pierre, *Miroir*, *supra* note 113 at 135–6.

²¹⁷ Vergès, *Avocat*, *supra* note 40 at 167.

²¹⁸ The Gospel According to Saint Matthew, 25:13, *Holman Christian Standard Bible*.

persuasion: “La persécution pour des motifs politiques ne pouvait-elle pas être invoquée contre la destruction des koulaks en tant que classe et en tant que dix millions d’individus par le gouvernement soviétique ?”²¹⁹ He put Stalin’s “crimes” in quotation marks: “La dénonciation des ‘crimes’ de Staline n’échappe pas non plus à une confusion volontaire...L’effet de telles indignations sans analyses est de faire porter à la seule ‘personnalité’ de Staline le poids des fautes commises par la bureaucratie soviétique...”²²⁰

After the political upheavals following Stalin’s death, Vergès would become more critical of though still apologetic for the repression that occurred during Stalin’s reign. His apologetic attitude would primarily be directed towards exonerating Stalin. In essence, Vergès would argue that he did not know about repression during Stalin’s reign and he would not enter into details about the extent or nature of that repression.²²¹

Vergès’ refusal to recant does not prove that he is consistent in his political affiliations. Although Vergès’ refusal to recant Stalinism may project an image of an inveterate, hard-line communist, a crack appears in that image once he describes his relationship to the so-called classics of Marxism-Leninism (Marx, Engels, Lenin, and sometimes Stalin) during his membership in the CPF. He says that when he was in Prague in the early-1950’s as secretary of the International Union of Students, he did not read Marx’s *Capital* but Nietzsche’s *Zarathustra*.²²²

²¹⁹ Vergès, *Stratégie judiciaire*, *supra* note 7 at 130.

²²⁰ *Ibid* at 204–5.

²²¹ See Jean-Pierre, *Miroir*, *supra* note 113 at 89–90.

²²² See Vergès, *Avocat*, *supra* note 40 at 68. See also Jean-Pierre, *Miroir*, *supra* note 113, 109. Although the International Union of Students was not linked directly to the Communist Party, it was close to it as is “On November 17th, 1939, the resistance of Czech students in the streets of Prague against Nazi occupation inspired the establishment of an anti-Nazi student coalition. Then, in 1941, November 17 was officially declared International Students’ Day by the International Students Council in London, which became the starting point of the founding of the International Union of Students.” See “Fidel Castro Sends Message to Cuban Students” in the email newsletter from Prensa Latina, ACN Nov 17, 2010 in celebration of the International Students’ Day. The IUS was founded in 1946 in Prague but was expelled from the Czech Republic in 1991 due to its association with the Communist era.

On the surface, Vergès' statement is an example of his urge to rebel even against rebellion, in that case the proletarian revolution advocated by Marx. Vergès would be attuned to the profound change in French culture during the late-1960's when the focus shifted from Marx to Nietzsche. For example, Foucault's reference to the death of Marx in 1983 would then speak to the neglect of Marx.²²³ Vergès would reflect that shift by emphasizing Nietzsche in his account of his own life. When Marx fell out of favour with French intellectuals in the 1970's, Nietzsche would take his place: "[Nietzsche] seemed to provide a framework within which the ideas of May 1968 could survive the pessimism that attended their defeat."²²⁴ Since then, a reinstatement of Marx has been underway. In 2000, when Vergès had the conversation with de la Morandais, David Harvey observed that "we do not read Marx (no matter whether he is relevant or not) because his work lies in a category that we are supposed to be 'post' ... Cutting ourselves off from Marx is to cut off our investigative noses to satisfy the superficial face of contemporary intellectual fashion."²²⁵

Vergès would be able to resist those vicissitudes in the fate of communism to some extent by staying loyal to the person who headed it in his youth. Stalin even became for Vergès a

²²³ "Il est certain que Marx, même si on admet que Marx va disparaître maintenant, réapparaîtra un jour. Ce que je souhaite... c'est la libération de Marx par rapport à la dogmatique de parti... La phrase « Marx est mort », on peut lui donner un sens conjonctuel, dire que c'est vrai relativement..." Michel Foucault, "Structuralisme et poststructuralisme," in Michel Foucault, *Dits et écrits 1954–1988 IV: 1980–1988*, Édition établie sous la direction de Daniel Defert et François Ewald avec la collaboration de Jacques Lagrange (Paris, Gallimard, 1994) p. 431–457 at 457.

²²⁴ Gilles Deleuze acted as the spearhead of Nietzscheanism in France. See Geoff Waite, *Nietzsche's Corps/e: Aesthetics, Politics, Prophecy, or, The Spectacular Technoculture of Everyday Life* (Durham: Duke University Press, 1996) at 508. To some, Marx and Nietzsche need not be mutually exclusive cultural reference points: "The likely return of Marx need not push antipolitical Nietzscheanism into the grave. This side of Nietzsche might even be an ally of Marxism and critical social theory, combating repetition of the moral and political excesses of totalizing forms of theory and politics." Robert J. Antonio, "Nietzsche: Social Theory in the Twilight of the Millennium," in George Ritzer and Barry Smart, ed, *Handbook of Social Theory* (London: SAGE, 2001), p. 163–178 at 175.

²²⁵ David Harvey, *Spaces of Hope* (Berkeley: University of California Press, 2000) at 12.

person to “defend.” The posthumous political demise of Stalin and other statesmen may have ignited what he calls his defining “passion de défendre.”²²⁶

How about Vergès’ understanding of Marxist doctrine? Let us take an example. An indication of his tendency to attenuate Marxist doctrine is his explanation of the materialism of Marxism in his conversation with de la Morandais: “Le matérialisme de Marx est un matérialisme historique. Ce n’est pas un matérialisme métaphysique; c’est l’évolution de la société qu’on explique par son substrat matériel.”²²⁷ It is doubtful that a Marxist would limit materialism to the process of human history to the point where it could embrace metaphysics.²²⁸ In fact, the “material substrate,” to which Vergès referred, meant the material basis of diverse properties of an object, the material basis of the unity and homogeneity of diverse objects.²²⁹ One of the intellectual influences on Marx was Ludwig Feuerbach, whose materialism crystallized in his well-known quip that “man is what he eats” (a literal translation of the German pun *Der Mensch ist, was er ißt*) from the title of his book *Das Geheimnis des Opfers oder Der Mensch ist, was er ißt*. Rather than criticizing Feuerbach for reducing man metaphysically to matter, Marx criticized him for indulging in idealism in his understanding of sensuousness (Marx does not even call it ‘mind’) in his first thesis on Feuerbach:

The chief defect of all hitherto existing materialism (that of Feuerbach included) is that the thing, reality, sensuousness, is conceived only in the form of the object or of contemplation, but not as sensuous human activity, practice, not subjectively. Hence,

²²⁶ Vergès included an entry on ‘passion de défendre’ in his *Dictionnaire amoureux de la justice*. See Vergès, *Dictionnaire amoureux*, *supra* note 74 at 453–490. He was inspired in that passion by the principle *Les défendre tous* of another grand avocat, Albert Naud. See *op. cit.* at 456. See also Albert Naud, *Les défendre tous* (Paris: Laffont, 1973).

²²⁷ Vergès, *Avocat*, *supra* note 40 at 66.

²²⁸ However, according to a Soviet-era philosophical dictionary it was impossible to subsume materialism within metaphysics: “La démarche métaphysique a été battue en brèche par le matérialisme dialectique, dont les fondateurs sont Marx et Engels, et par le progrès des sciences de la nature.” M. Rosenthal et P. Ioudine (sous la direction de), *Petit dictionnaire philosophique* (Paris: Éditions Eugène Varlin, 1955) at 393 (s.v. Métaphysique) [Rosenthal, *Dictionnaire*]. According to Lucien Sève, the Marxist use of the word “metaphysics” refers to a way of thinking in which essence is represented abstractly. Metaphysics is, consequently, the opposite of dialectics. See Lucien Sève, *Une introduction à la philosophie marxiste: suivie d’un vocabulaire philosophique*, 2^e édition (Paris: Éditions sociales, Paris, 1980) at 692 [Sève, *Introduction*].

²²⁹ See Rosenthal, *Dictionnaire*, *supra* note 228 at 587 (s.v. Substrat).

in contradistinction to materialism, the active side was developed abstractly by idealism – which, of course, does not know real, sensuous activity as such.²³⁰

Although Vergès would pose as an authority on Marxism, his views on materialism would reflect the shallowness of his conception of theoretical Marxism, which would in turn reflect the discrepancies between the perception of him as a communist and his conviction. We may concede Vergès' view that Marxism's focus is on social processes. Indeed, Marx's *Theses on Feuerbach*, ends in the famous dictum: "The philosophers have only interpreted the world, in various ways; the point is to change it." Marx's interest was in revolution. Vergès was an ardent Marxist in that respect. The problem was that his revolution would not be reducible to the installation of the dictatorship of the proletariat, as it was for Marx. In his conversation with Roman Catholic priest, he would even avoid the word 'revolution' and use the expression 'évolution de la société' instead, which contradicts especially the Chinese views of the incompatibility of evolution and revolution, to which Vergès said he adhered.²³¹ At best, it is reconcilable with Lenin's distinction between the evolutionary pre-revolutionary agenda (so-called *minimum programme*) and the revolutionary agenda (the so-called *maximum programme*).²³²

²³⁰ Karl Marx, "Theses on Feuerbach," in Karl Marx, *Selected Writings*, edited by David McLellan (Oxford: Oxford University Press, 2000, p. 171–3) at 171.

²³¹ See CPSU, *Histoire*, *supra* note 209 at 145. The same opposition persisted in subsequent Chinese criticisms of Soviet revisionism, notably in the phrase "peaceful evolution," which was connected with revisionism: "[Socialist countries] will be able to prevent this kind of 'peaceful evolution' as well as crush the enemy's armed attacks. Thus, the victory of the world proletarian revolution will be more certain." Editorial Departments of *Rénmín Ribào* (People's Daily) and *Hóngqí* (Red Flag), "The Origin and Development of the Differences between the Leadership of the CPSU and Ourselves: Comment on the Open Letter of the Central Committee of the CPSU, "On Khrushchov's Phoney Communism and Its Historical Lessons for the World" – Ninth Comment on the Open Letter of the Central Committee of the CPSU," in *The Polemic on the General Line of the International Communist Movement*, Peking: Foreign Languages Press, 1965), p. 415–480 at 469 [People's Daily, "Origin"].

²³² See Lars T. Lih, *Lenin Rediscovered: What Is to Be Done? in Context* (Leiden: Brill, 2006) at 97.

On the other hand, we should note that his criticism of metaphysics was the heart of Lenin's work *Materialism and Empirico-Criticism*.²³³ It is difficult to reconcile Lenin's materialism with Vergès' claim that Marxism "n'est pas un matérialisme métaphysique," by which he means that Marxism is not materialistic in a reductionist sense but only as an explanation of the development of society.²³⁴

2.3.3. *Volatility of Vergès' communist loyalties*

Vergès regards his love of the third world, or of colonized people(s), as the reason he had a conflict with "orthodox" members of the Communist Party of France in the 1950's.²³⁵ He identified it as a source of conflict very early on in his membership in the Communist Party and named Annie Kriegel, who wrote the first doctoral dissertation on the Communist Party

²³³ In a strictly technical sense, metaphysics would cover materialism because it is a certain kind of ontology. Marx and Lenin rejected the possibility of classifying materialism as a sort of metaphysics. The reason is that Marx associated metaphysics with ideology in his appropriately titled *The German Ideology*, which made materialism incompatible with metaphysics by definition. "In direct contrast to German philosophy which descends from heaven to earth, here we ascend from earth to heaven...Morality, religion, metaphysics, all the rest of ideology and their corresponding forms of consciousness, thus no longer retain the semblance of independence." Karl Marx, "The German Ideology," in Karl Marx, *Selected Writings*, edited by David McLellan (Oxford: Oxford University Press, 2000) p. 175–208 at 180. Lenin adhered to Marx's rejection of metaphysics in *Materialism and Empirio-Criticism*: "By metaphysics and transcendental realism, Friedlander...means materialism. Defending one of the varieties of idealism, he is in full agreement with the disciples of Mach and Kant that materialism is metaphysics..." VI Lenin, "Materialism and Empirio-Criticism: Critical Notes Concerning a Reactionary Philosophy," in *Collected Works of V. I. Lenin*, Completely revised, edited and annotated (New York: International Publishers, 1927) at 51.

²³⁴ Vergès resorts to the same reasoning as Paul Tillich did in his 1960 essay *Christianity and Marxism* to demonstrate the mutual compatibility of religion and Marxist materialism: "Marxist materialism is not metaphysical materialism. In his *Theses against Feuerbach*, Marx expressly opposed metaphysical materialism. Otherwise it would not have been possible for him to call his materialism 'dialectical'...But dialectic was not a clanking mechanism for Marx; it was a method of describing social powers, conflicts, and tendencies. Like Hegel, though, he was aware that without the passion of human activity nothing can be realized in history – and hence his passionately expressed appeals to the proletariat and his equally passionate declaration of war on the bourgeoisie." Paul Tillich, "Christianity and Marxism," in Paul Tillich, *Political Expectation* (New York: Harper & Row, 1971), p. 89–96 at 94–5. However, Tillich's argument that Marxist materialism and religion are mutually compatible would therefore appear to be an argument from silence. As Donnelly argues, "Marx's materialist stance is not without ambiguity nor is it a clearly argued position." See Brian Donnelly, *The Socialist Émigré: Marxism and the Later Tillich*, Macon, Ga.: Mercer University Press, 2003 at 210. There is evidence that Engels rejected reductionist materialism. See Manfred B. Steger, Terrell Carver, *Engels After Marx* (University Park, Pa.: Pennsylvania State University Press, 1999) at 124. However, Tillich was able to align Christianity and Marxism only by denouncing Stalinism: "Christianity affirms and Stalinism negates the value and dignity of personhood." See Paul Tillich, *op. cit.* at 89. Vergès answers criticisms of Stalin's incompatibility with communist ideals obliquely by attributing them to his Christian seminary education: "Il a été déformé dans un séminaire." Vergès, *Avocat*, *supra* note 40 at 78.

in France, as his main antagonist on the point of anticolonialism.²³⁶ Indeed, Vergès could not subscribe to the narrow vision of the Party on the revolution: “Je considérais que l’anticolonialisme était un combat universel ouvert à toutes les bonnes volontés. Les dirigeants du PC français estimaient quant à eux que la lutte contre le colonialisme devait rester exclusivement communiste. Ce qui était une sombre bêtise.”²³⁷ The “proletarian revolution” was distinguished from the “bourgeois revolution”²³⁸ even in the *Communist Manifesto*, though it conceded: “In short, the Communists everywhere support every revolutionary movement against the existing social and political order of things.”²³⁹ Stalin had identified five characteristics that distinguished the proletarian revolution from the bourgeois revolution, such as the temporary character of the latter, whereas in respect of the proletarian revolution, the revolutionary act itself was only the beginning.²⁴⁰ Even if communists can and must support any revolution, they should not settle for the ensuing “dictatorship of the bourgeoisie” without introducing a dictatorship of the proletariat.²⁴¹

²³⁵ See Bernard Debré, Jacques Vergès, Eric Branca, *De la mauvaise conscience en général et de l’Afrique en particulier* (Paris: Jean-Claude Lattès, 2003) at 47 [Debré, *Mauvaise conscience*].

²³⁶ Annie Kriegel’s doctoral thesis has been recognized as the starting point of academic research into the communist movement in France. See e.g. Roman Ducolombier, “Congrès de Tours,” in *L’Histoire*, nr. 359, December 2010, p. 42. Ducolombier wrote that “la thèse d’Annie Kriegel est fondatrice: elle invente l’historiographie du communisme, qui devient un objet de recherche universitaire à part entière.”

²³⁷ Jean-Pierre, *Miroir*, *supra* note 113 at 88.

²³⁸ Bourgeois revolution is a revolution that is not strictly proletarian in character. The expression comes from Section IV of *The Communist Manifesto*: “...the bourgeois revolution...will be but the prelude to an immediately following proletarian revolution.” Marx, *Communist Manifesto*, *supra* note 161 at 77. The distinction is of paramount importance to a genuine Marxist analysis of revolution. See Andre Gunder Frank and S.A. Shah, “Class, Politics, and Debray” in Leo Huberman and Paul M. Sweezy, ed, *Régis Debray and the Latin American Revolution* (New York: Monthly Review Press, 1968, p. 12–17.

²³⁹ Marx, *Communist Manifesto*, *supra* note 161 at 77.

²⁴⁰ See Joseph Stalin, *Les questions du léninisme* (Pékin: Édition en langues étrangères, 1977) at 170–1.

²⁴¹ “Outline of Views on the Question of Peaceful Transition, November 10, 1957,” in *The Polemic on the General Line of the International Communist Movement* (Peking: Foreign Languages Press, 1965), p. 105–8 at 107 [*Polemic*]. In hardline communism, the “dictatorship of the bourgeoisie” is not hyperbole. The Belgian anti-revisionist Ludo Martens illustrated it with the following example: “Maybe there are intellectuals who will say: ‘economic dictatorship of the capital, that does not mean anything, those are phrases’. But when the factory bosses perform a reorganization and increase the rhythm or prolong the working time and introduce night shifts or introduce other forms of growing exploitation, can the worker say ‘no’? Yes, one can say ‘no’ but one is then fired. There is thus no discussion but dictatorship.” Ludo Martens, Conference of Ludo Martens in Bredene on August 14, 1994 at <http://vimeo.com/17469590> at 5:34, translation from Dutch [Flemish] into English by Jonathan Widell.

Vergès would become one of those people of whom Bolsheviks of old could say: “De la doctrine de Marx, ils rejetaient l’essentiel: la doctrine de la révolution prolétarienne, de la dictature du prolétariat.”²⁴² Marx had expressed his views about the necessity of revolution in his *Critique of the Programme of Gotha*, on which Lenin commented in his *The State and Revolution*. Later, Stalin considered the revolution and the dictatorship of the proletariat as central tenets of orthodox Leninism.²⁴³

In other words, Vergès was in danger of engaging in revolution for the sake of revolution, regardless of the objective pursued.²⁴⁴ Vergès emphasizes the journey rather than the destination, which risks downplaying the importance of the construction of a post-revolutionary society. He thus lacks a standard by which to evaluate the consequences of revolutions.

Vergès broke with the party in the late-1950’s because of interpersonal friction within it: “De plus, le PCF était embringué dans d’insupportables querelles internes qui m’exaspèrent. Mme Kriegel me jugeait incontrôlable. Elle disait de moi: ‘Avec Jacques, il n’est pas possible de parler. Il dit toujours ‘oui’ et n’en fait qu’à sa tête.’”²⁴⁵ Vergès’ cynicism about Kriegel would be related to her later denunciation of communism, which led her to work, among other jobs, as a columnist for the French conservative newspaper *Le Figaro*.

²⁴² That conciliatory approach is called “legal Marxism” because it operated within the laws of the State. See CPSU, *Histoire*, *supra* note 209 at 22 (Chapter 4).

²⁴³ Joseph Stalin, *Les questions du léninisme* (Pékin: Édition en langues étrangères, 1977) at 162.

²⁴⁴ Similarly, revolutionary euphoria overtook some communists in the wake of the Tunisian and Egyptian uprisings in February 2011. As Vincent Gouysse reminded his readers: “En Tunisie et en Egypte, les présidents vacillent certes sous le coup de la fronde engendrée par les révoltes populaires, mais cela n’est pas suffisant pour parler de révolution, car ni la classe dominante (la bourgeoisie compradore), ni ses donneurs d’ordre étrangers n’ont encore été visés. Surtout, il est évident que faute de direction d’un Parti Communiste marxiste-léniniste, le mode de production en place et le pouvoir bourgeois-compradore vont rester intacts, quitte pour les exploités à lâcher du lest en accordant quelques libertés formelles.” Group email from North Star Compass on February 10, 2011. The word “compradore” means, according to *Le Grand Robert*, “commerçant (national ou étranger) servant les intérêts d’occupants coloniaux ou néocolonialistes dans un pays soumis à ces intérêts.”

²⁴⁵ Jean-Pierre, *Miroir*, *supra* note 113 at 88.

In sum, Vergès' loyalty to the third world was more solid than his loyalty to communism:

“Mes amitiés sont dans les milieux du tiers monde.”²⁴⁶ From some of his later statements, we can see that he would not break entirely with communist ideology even after leaving the party. Even decades later, he would be at pains to reconcile his thirdworldism with Marxist doctrine, which he reduces to its universalism and emancipation: “Cet universalisme veut la libération des gens, qu'ils soient blancs, noirs ou jaunes.”²⁴⁷

Vergès' decision to leave the party did not rid him of the communist credentials of his family. On the contrary, his political approach to legal practice was sealed when he began his career as a trainee in the activist legal practice of Jules Borker, a French lawyer who was known for his political activism. The reputation of Jacques' father and the election of Jacques' brother Paul to the National Assembly on January 19, 1965 as the communist representative from the Island of Reunion reassured Borker of Jacques' political reliability and usefulness.²⁴⁸

2.3.4. Vergès' Loyalty to De Gaulle

As open-ended as was Vergès' loyalty to communism was his unwavering loyalty to De Gaulle. An important theme to which Vergès would revert in his recent writings, such as his 2007 book *Que mes guerres étaient belles !*, was his military service under General Charles De Gaulle in the Forces of Free France during the Second World War. As Naulleau again correctly noted: “Et vous rappelez aussi votre engagement dans les rangs des Forces française libres et votre gaullisme.”²⁴⁹ Vergès would be explicit about the lasting effect his military experience had had on his career as a lawyer: “Je reste fidèle à la France libre, même engagé dans d'autres batailles.”²⁵⁰ Vergès would describe his legal career in terms of battles, and he portrays his military service in the Forces of Free France as the paradigm to which his

²⁴⁶ Jacques Vergès quoted in Givet, *Le cas*, *supra* note 13 at 49.

²⁴⁷ Vergès, *Avocat*, *supra* note 40 at 67.

²⁴⁸ See Violet, *Vergès*, *supra* note 5 at 71–3.

subsequent battles conform. He also portrays his contribution to the war effort as the justification for his later battles that have met with considerably more resistance.

Vergès would use, in particular during his defence of Barbie, his part in the fight against the Nazi occupation of France, which few would criticize, as a justification for his defence of Algerian insurgents, which met with considerable resistance from French authorities, and, paradoxically, of his defence of Barbie himself, who was the enemy during the Second World War. Vergès would push the war analogy even further and compare the Barbie trial to war. He referred to death threats that he received during his two major cases: “Dans les deux cas que je vous ai cités [the FLN fighter Djamila Bouhired, Barbie], j'affrontais la mort pour un travail de justice.”²⁵¹

2.3.5. *The depth of Vergès' loyalty to France*

In addition to tracing the pedigree of Vergès' judicial strategy to Willard and communism, it is just as plausible to regard it as a vestige of his past in the Forces of Free France. Vergès attached great importance to the death sentence that the Vichy regime imposed on De Gaulle. Fighting under a general who had been condemned to death made the fight not only a military but also, secondarily, a judicial campaign. De Gaulle was condemned to death by a regime that he was to overthrow.²⁵²

De Gaulle was himself a sort of hybrid. Despite his own high bourgeois background, De Gaulle was a rebel. His rebel status earned him an entry in *Le siècle rebelle – Dictionnaire de*

²⁴⁹ Éric Naulleau in Ruquier, *Zemmour*, *supra* note 115.

²⁵⁰ Jacques Vergès, *Que mes guerres étaient belles !* (Monaco: Éditions du Rocher, 2007) at 10 [Vergès, *Belles*].

²⁵¹ Vergès, *Avocat*, *supra* note 40 at 119.

²⁵² Felissi, *Anticolonialiste*, *supra* note 6 at 26. De Gaulle was condemned to death in August 1940 for treason against the Vichy regime. The reason that Vergès emphasizes that aspect of De Gaulle's military victory is that it was the earliest concrete demonstration to him that law is contingent on political power. After De Gaulle took power, it was the leader of the Vichy regime, Marshal Petain, who was sentenced to death. De Gaulle, who was President of the Provisional Government, commuted his death sentence to a life sentence in August 1945. Partial pardon would also be a feature of Vergès' judicial strategy in Algeria, starting from the first case, that of Djamila Bouhired in 1957.

la contestation au XXe siècle. His support for the independence of Algeria was one of the dimensions of his rebel image. De Gaulle's character was shaped by his own inner contradictions between conservatism and rebellion. He went on to embrace the cause of the most disadvantaged peoples, especially in colonized countries. As historical dictionary put it, De Gaulle was a "rebelle en puissance ...[qui] rompt avec les règles et les principes qui constituent une part de lui-même."²⁵³

Vergès would emphasize throughout his career that he has stayed loyal to France and to the French people. As he explained in *Pour Djamil Bouhired* in 1957, the fight for the freedom of Algeria was not incompatible with the French tradition, by which he presumably referred to the French revolution: "À vingt-deux ans, Djamil Bouhired a tout abandonné pour être fidèle à la tradition d'Abd-el-Kader."²⁵⁴ CE N'EST PAS NON PLUS UNE TRADITION ANTI-FRANÇAISE."²⁵⁵ Half a century later, he would suggest that the French tradition even required that Algeria be liberated: "To me, France isn't the settlers, it's Montaigne, it's Diderot, the French Revolution. For France to disappear was intolerable to me."²⁵⁶ In comments Vergès would make in conversation with de la Morandais in 2001, he would affirm that political divergences within the French nation are secondary to its unity. By refusing to allow the dichotomy between the left and the right to supersede a more fundamental national unity, he refused to identify with one more than the other. Vergès portrays the 'French people' as the principle that subordinates narrow political divisions into left and right:

²⁵³ See Jean-Luc Barré, "Gaulle (Charles de)" in Emmanuel de Waresquiel, ed, *Le siècle rebelle: Dictionnaire de la contestation au XXe siècle* (Paris: Larousse, 1999) at 236–238.

²⁵⁴ Abd al-Qadir al-Jaza'iri led the resistance of Algerian tribes against the French in North Africa in the mid-nineteenth century.

²⁵⁵ Georges Arnaud, Jacques Vergès, *Pour Djamil Bouhired* (Paris: Les Éditions de Minuit, 1957) at 94 [Arnaud, *Djamil*]. That revolutionary tradition was presumably in evidence in the May 1968 uprising. For instance, in his book about that uprising, Jean-Luc Hees wrote: "La France est un pays de violence. Que nul ne l'oublie! La Révolution s'est faite, pendant des années, dans une absolue violence. Ce qui inquiétera tous les gouvernants qui ont succédé à Napoléon." Jean-Luc Hees, *Le roman de mai 1968* (Monaco: Éditions du Rocher, 2008) at 99.

²⁵⁶ See Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 1.

Je n'aime pas l'expression « peuple de gauche », pas plus que je n'aimerais celle du « peuple de droite ». Il n'y a pas deux peuples en France. Il y a le peuple français. Ce peuple français est à la fois Clovis, effectivement, et Robespierre. Les deux sont inséparables. C'est la Commune [de Paris], mais ce sont aussi les cathédrales; c'est Vichy [du maréchal Pétain], mais aussi la France libre [du Général de Gaulle].²⁵⁷

By rejecting the capacity of both left and right to capture the being of the French people, Vergès achieved distance from both of them and thus refuses to identify with either of them, in particular in light of his eulogy of France. As de la Morandais noted, Vergès has something similar to a religious experience in his relationship to France. Vergès confirmed that impression not only by referring to cathedrals in our quote but also by advising de la Morandais to read Giraudoux's *Prière sur la tour Eiffel*.²⁵⁸

The quasi-religious nature of Vergès' identification with France is undoubtedly due to his personification of France in De Gaulle. De Gaulle reinforced Vergès' view that France is a mirror of humanity. De Gaulle wrote to Vergès after reading *Pour Djamila Bouhired* that every French drama was a world at large of human dramas (an oblique reference to the French Revolution):

Je tiens à vous dire que j'ai lu avec intérêt et non sans émotion votre petit livre Pour Djamila Bouhired. Je sais – dirai-je « par expérience »? – que tout drame français est un monde de drames humains. Inutile de les cacher ou de les défigurer. A ce point de vue, tout au moins, votre éloquente sincérité ne peut laisser personne indifférent.²⁵⁹

²⁵⁷ Vergès, *Avocat*, *supra* note 40 at 244.

²⁵⁸ See Vergès, *Avocat*, *supra* note 40 at 242. A passage which Vergès may mean has the following Scriptural references: "Il y eut un soir, au sud de Laghouat [a small town in Algeria], où personne ne put parler que moi, c'est que nous étions campés sur l'affleurement d'un terrain non condamné par Jéhovah, c'est que tous étaient heureux. Cela m'est arrivé aussi une fois, dans une réunion d'amis, près d'un bois à Argenteuil [a Paris suburb]: je suis le sourcier de l'Eden !...» Jean Giraudoux, *La prière sur la Tour Eiffel* (Paris: Chez Émile-Paul Frères, 1923) at 36. In general, Giraudoux believed in the idea of eternal France, which for him assumed religious dimensions. See Christian B. Allègre, *Le sourcier de l'Éden: l'esthétique de l'idylle dans l'œuvre romanesque de Jean Giraudoux*, Thèse présentée à la Faculté des études supérieures en vue de l'obtention du grade de Philosophiæ Doctor (Ph.D.) en études françaises (Université de Montréal, Christian Allègre, 1998) at 17, 163 at <http://www.theses.umontreal.ca/theses/pilote/allegre/these.pdf>

²⁵⁹ Quoted in Violet, *Vergès*, *supra* note 5 at 85–6.

Vergès would mention that the same letter was supplemented by De Gaulle's personal note of loyalty: "Avec pour vous, Vergès, mon fidèle souvenir."²⁶⁰ De Gaulle could not have meant that he was loyal to Vergès any more than Vergès was loyal to him but he portrayed both himself and Vergès as loyal to the idea of France that superseded political divisions, such as those that could have separated Vergès and De Gaulle. Vergès would even say that he supported the "exception française," which refers to the idea that France has not only the right but the duty to stand up for the French and, by implication, for any other cultural heritage.²⁶¹ Vergès loved De Gaulle and France. De Gaulle expressed it in his note, and Vergès would profess his faith in that exception explicitly in 2001 when looking back on his life: "Je vis en France, et ma responsabilité est de défendre l'exception française."²⁶²

2.4. Vergès' Affinity with the Bourgeoisie

Our scepticism of Vergès' communist commitment finds its confirmation in his stated affinity with the bourgeoisie. Though Vergès' intellectual development is tied to the history of the international communist movement, situating him in communist orthodoxy is problematic because, on close inspection, his statements do not measure up to some of the fundamental communist criteria, such as the pursuit of a revolution that is at least predominantly led by the proletariat. In general, it is difficult to discern signs of class consciousness in Vergès'

²⁶⁰ *Ibid* at 85–6.

²⁶¹ "Exception française" has an undercurrent of protest against, notably, American cultural imports, such as American audiovisual products. The expression did not appear in French until the early 1980's or, according to historian Philipper Poirrier, the early 1990's at which time it was used by the French Ministry of Foreign Affairs to define French cultural policy on the international scene. See Philipper Poirrier, *L'État et la culture en France au XXe siècle* (Paris: Librairie générale française, 2000) at 9. See also Gerbault Loïc, *La diplomatie culturelle française: La culture face à de nouveaux enjeux ?* Mémoire de recherche (Institut d'études politiques de Toulouse, 2008) at 19–20. URL <http://www.interarts.net/descargas/interarts700.pdf>. However, that *leitmotif* had deeper roots in French history: "Influencer culturellement et politiquement le monde a toujours été une constante de France." Nassurdine Ali Mhoumadi, *Un métis nommé Senghor* (Paris: Harmattan, 2010) at 21. Paradoxically, that noble *mission civilisatrice* and similar projects in other countries only deepened the ills of colonialism, as Françoise Vergès argued in her book on what she called "colonial utopia." See Françoise Vergès, *Abolir l'esclavage*, *supra* note 147 at 60.

²⁶² Vergès, *Avocat*, *supra* note 40 at 245.

discussion of his past as a communist. Instead, his discourse veers towards anticolonial battles, which in turn are an outlet for his fight against racism. Although the fight against racism and colonialism is by no means antagonistic to class struggle – and Vergès is careful to point to their many similarities – the communist content of those fights is problematic when there is an overemphasis on the battle against racism to the detriment of class struggle, which is the fight against the class enemy.

In terms of class struggle, Vergès faces a challenge. It is true that he derided the bourgeoisie and bourgeois morality: “[M]orale bourgeoise est conformisme sans morale.”²⁶³ Yet, similar statements had been made by non-proletarian, more or less overtly bourgeois, thinkers, such as Søren Kierkegaard and – particularly relevant in the case of Vergès – Friedrich Nietzsche.²⁶⁴ Identifying Kierkegaard’s revolt as a revolt against so-called bourgeois morality was to a large extent the work of Marxist commentators, notably the Marxist intellectual György Lukács.²⁶⁵

Vergès is open about the bourgeois background of his own family: “Mon père appartient à une vieille famille créole bourgeoise, mais ruinée.”²⁶⁶ Similarly, his former co-worker Isabelle Coutant, who worked with him on the Carlos case and later married Carlos the Jackal, the most wanted terrorist of his day, was even more direct about her own bourgeois background. The first sentence of her autobiography contains the following admission: “Contrairement à d’autres qui s’inventent des biographies où ils cultivent le syndrome du ‘fils

²⁶³ Jacques Vergès, *Intelligence avec l’ennemi: conversations avec Jean-Louis Remilleux* (Paris: Michel Lafon, 1994) at 80 [Vergès, *Intelligence*].

²⁶⁴ Nietzsche would have expressed his contempt of bourgeoisie by using the word *Bildungsphilister* (cultivated Philistine), which to him meant the same as *Bildungsbürger* (cultivated bourgeois). See e.g. Timo Hoyer, *Nietzsche und die Pädagogik: Werk, Biografie und Rezeption*, Würzburg: Königshausen & Neumann, 2002, at 331–2. Kierkegaard almost always used the word “bourgeois” in conjunction with the word “philistine,” for instance when he wrote in his journals: “No, pastor canonized philistinism, the bourgeois mentality!” See *Søren Kierkegaard’s Journals and Papers: A – E, Volume 1*, edited and translated by Howard V. Hong and Edna H. Hong, Assisted by Gregor Malantschuk (Bloomington: Indiana University Press, 1967) at 92–3.

²⁶⁵ See e.g. Alastair Hannay, *Kierkegaard: A Biography* (Cambridge: Cambridge University Press, 2001) at 428–36.

²⁶⁶ Vergès, *Avocat*, *supra* note 40 at 151.

du peuple', je n'ai aucune honte de mes origines bourgeoises."²⁶⁷ That frankness may be disarming, but it does not detract from the pertinence of the admission. The interview between Jean-Louis Remilleux and Vergès, which was published as the book *Salaud lumineux*, took place in the lavish surroundings of the mansion of Cliveden in Buckinghamshire, England. Their conversation opens with reflections about the apparent discrepancy between love of luxury and revolution, which Vergès attempts to downplay by arguing that depriving oneself of luxury does not bring the revolution any closer.²⁶⁸ However, the outward show of luxury only replaced the outward show of militancy. Outward signs count for Vergès. While he was still in the Communist Party of France, he conveyed militancy by the outward sign of wearing a military outfit.

In short, Vergès has difficulty making a convincing impression of being a hard-line communist. His attempted solution is to affirm his communism by negation. To that end, he adopted the same enemies as the hard-line communists, notably the Trotskyists and the Social Democrats. We should note that Vergès has been careful to cultivate the image of an orthodox communist throughout his life. As a sign of his commitment to the communist cause, he identifies with precision his ideological adversaries. He reminds us that he despised the Trotskyists, who hardliners like him called Fascists and Nazis.²⁶⁹ The reasoning behind those pejorative terms was the Stalinist version of history, according to which Trotsky waited for the German invasion of the Soviet Union to topple the Stalinist regime, which would allow him to take power. That rhetoric made him a collaborator of the Nazis in the eyes of the Stalinists.²⁷⁰

²⁶⁷ Coutant, *Carlos*, *supra* note 40 at 23.

²⁶⁸ See Vergès, *Salaud*, *supra* note 202.

²⁶⁹ See Jean-Pierre, *Miroir*, *supra* note 113 at 76.

²⁷⁰ The inveterate Stalinist Ludo Martens pointed to a specific historical reason that communists are on bad terms with Trotskyists: "Trotsky projette son 'insurrection'...lorsque les hitlériens auront agressé l'Union soviétique! Il écrit: 'L'impulsion pour le mouvement révolutionnaire des ouvriers soviétiques sera donnée, vraisemblablement, par des événements extérieurs.'" Martens, *Staline*, *supra* note 158 at 224.

Besides Trotskyists, the Social Democrats have been another target of Vergès' attacks throughout his life. His hostility toward them goes so far as to expose himself to censure. He describes how he broke with his supervisor while he was writing his Master's thesis in history at the Sorbonne over the supervisor's social democratic leanings, thus depriving him of the chance to submit his thesis.²⁷¹ Jean Galland, a long-time communist, recapped the communists' negative perception of social democrats as follows: "Le Parti Socialiste est une agence de la bourgeoisie dans les rangs de la classe ouvrière."²⁷² Vergès draws an equally sharp line between communists and socialists in talking about the time during which his father made the decision to join the party:

Le socialiste, c'est le tiède. Le communiste, à l'époque, c'est l'homme entier. Le socialiste, c'est celui qui prend des assurances sur l'avenir. Le communiste, celui qui franchit le Rubicon. Le socialiste se ménage une porte de sortie. Le communiste fait sauter les ponts derrière lui.²⁷³

In spite of the opprobrium that Vergès heaps on Trotskyists and Social Democrats, whom he dismisses as agents of the bourgeoisie, Vergès does not deny his bourgeois background, as we have already seen. Of course, having a bourgeois family background does not necessarily make one conscious of being a member of the bourgeoisie any more than being of the working class necessarily makes one conscious of being a member of the working class. A communist is expected to develop class consciousness. The reason that a communist's

²⁷¹ Jean-Pierre, *Miroir*, *supra* note 113 at 80.

²⁷² Jean Galland, *La tête ici, le cœur là-bas: guerre d'Algérie, 1954–1962*; préf. de Sadeq Hadjeres (Paris: Éd. Tirésias, 2002) at 119 [Galland, *Tête*]. Jean Galland, a member of the Communist Party of Algeria, was the first Frenchman expelled from Algeria in April 1955. See Jean-Pierre Combe, *Algérie: qui la vérité dérange-t-elle? La colonisation: savoir de quoi on parle !* December 30, 2005 at http://amidelegalite.free.fr/article.php3?id_article=29&var_recherche=Alg%E9rie

²⁷³ Vergès, *Salaud*, *supra* note 202 at 31. The qualifier "à l'époque" reflects Vergès' belief that his father joined the Communist Party in 1934 or 1935, some time before the formation of the Popular Front, which united Communists and Social Democrats (*Section Française de l'Internationale Ouvrière*, SFIO). See Jean-Pierre, *Miroir*, *supra* note 113 at 38.

bourgeois background is problematic is that class consciousness refers primarily to the working class.²⁷⁴

Even being openly antibourgeois and protesting against bourgeois morality does not necessarily mean that one does not espouse bourgeois values.²⁷⁵ Vergès is conscious of the danger posed by the bourgeoisie to communism. For instance, he would impute the distorted political agenda of the bourgeoisie for the failed May 1968 revolution to the background of its proponents, whom he dismissed as “fils de bourgeois qui jouaient à la révolution.”²⁷⁶ By so doing, he dismissed his own revolutionary credentials, not only because of his bourgeois background but also, even more tellingly, because the war waged by the Fedayeen in Palestine, in which he was involved as a lawyer, recruited great numbers of militants from the

²⁷⁴ “Class consciousness” was introduced to Marxism by Georg Lukács, who argued that the proletariat needed class consciousness to become a historical force. See Georg Lukács, *History and Class Consciousness: Studies in Marxist Dialectics*, translated by Rodney Livingstone (Cambridge, Mass.: MIT Press, 1971) at 178. For someone who is conscious of being from the bourgeoisie, class consciousness can assume exaggerate and even self-destructive forms, as it did in the case of Ulrike Meinhof, one of the leaders of the Red Army Fraction, who deprecated herself as “a hog from the ruling class” in notes that she wrote before her suicide. See Stefan Aust and Helmar Büchel, “Der letzte Akt der Rebellion,” in *Der Spiegel*, 10.9.2007 at 57–8.

²⁷⁵ Vergès recognized that possibility when he dismissed the May 1968 student uprising with its pronouncedly antibourgeois agenda as an attempt at revolution by bourgeois kids. See Jean-Pierre, *Miroir*, *supra* note 113 at 187. Few illustrate that paradox of antibourgeois bourgeoisie as strikingly as Jean-Paul Sartre. Hoxha dismissed him as a pseudo-Communist. Though Hoxha did not pinpoint the reason for his disapproval in his *L'eurocommunisme, c'est de l'anticommunisme*, it is plausible to trace it to class. Even Sartre's longtime partner Simone de Beauvoir said of him: “He's an antibourgeois writer who is read by the bourgeoisie and admired by it as one of its products. The bourgeoisie has a monopoly on culture and thinks that it gave birth to Sartre. At the same time, it hates him because he attacks it.” Simone de Beauvoir, “The Art of Fiction No. 35,” Interviewed by Madeleine Gobeil, translated by Bernard Frechtman, in *The Paris Review*, Spring–Summer 1965, No. 34 at URL <http://www.theparisreview.org/interviews/4444/the-art-of-fiction-no-35-simone-de-beauvoir>.

²⁷⁶ Jean-Pierre, *Miroir*, *supra* note 113 at 187. The May 1968 uprising in France started as a student protest at the University of Paris at Nanterre (with Daniel Bédit-Cohn establishing himself as the face of the movement) but grew into a general strike, which involved eleven million workers for two weeks and brought the country to a standstill. Although it did not attain its political goal of overturning the bourgeoisie and, more concretely, De Gaulle, it left an indelible mark on French culture with its witty slogans and its poster art of consummate force and simplicity produced anonymously by *Atelier populaire*. Some of the best-known slogans are testimony to the revolt's intellectual bias, such as *Il est interdit d'interdire* and *Soyez réalistes, demandez l'impossible*. That intellectualism was, however, coloured by quasi-pubertal discontent, to which Vergès referred in his characterization: *Nous ne voulons pas d'un monde où la certitude de ne pas mourir de faim s'échange contre le risque de mourir d'ennui*. Anti-Stalinism was palpable in *À bas la charogne stalinienne ! À bas les groupuscules récupérateurs !* On the other hand, Trotskyism was in evidence in the reference to the “permanent revolution” in *Un seul week-end non révolutionnaire est infiniment plus sanglant qu'un mois de révolution permanente*. Defiance of the Communist Party, which appeared too conciliatory towards De Gaulle, found an expression in *Veillez laisser le Parti communiste aussi net en sortant que vous voudriez le trouver en y entrant*.

student movements of 1968, to which Vergès referred by his dismissal of the “bourgeois kids.”²⁷⁷

Vergès’ own infrared revolution was a form of anarchy, which communists have tended to associate with capitalism.²⁷⁸ It is plausible that Vergès insisted on his charges against the Trotskyists and Social Democrats in an attempt to divert attention from his own bourgeois background and anarchy. Even when denying the charge of being an anarchist (without implying that anybody had called him an anarchist), the way in which he expresses that denial of anarchy is far from the way a Bolshevik would put it: “Vous savez, je ne suis pas un anarchiste de droite, ni de gauche, et je pense que l’ordre public est nécessaire dans toute société. Cet ordre public est toujours injuste, mais il est nécessaire.”²⁷⁹

The danger of crossing the line to the side of the class enemy is real in view of Vergès’ emphasis on his intellectualism. Reminiscing about Vergès during the Algerian War, his friend, the caricaturist Siné (pseudonym of Maurice Sinet), calls him an “egghead.”²⁸⁰ The denunciation of intellectualism or individualism is typical of hard-liners, with whom Vergès aligned himself politically. When he was in the military, his discourse, laced with references to Nietzsche, earned him the nickname Zara among his comrades.²⁸¹ From the hard-line viewpoint, Vergès’ emphasis on intellectualism drove a wedge between him and any pretension he might have had to identification with the working class.²⁸²

²⁷⁷ Claude Moniquet’s statement in See Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 6.

²⁷⁸ Anarchism is associated with capitalism despite their apparent contradiction: “Even though the very definition of ‘bourgeois society’ relies on the cooperation of capital and the state, as capitalism developed, the relationship between market and government changed in ways that allowed for a more anarchic environment for both commodity and cultural production.” David Weir, *Anarchy & Culture: the Aesthetic Politics of Modernism* (Amherst: University of Massachusetts Press, 1997) at 263.

²⁷⁹ Felissi, *Anticolonialiste*, *supra* note 6 at 28. Significantly, Vergès motivated his rejection of anarchy with a reference to Nietzsche, not to Marx. See Vergès, *Avocat*, *supra* note 40 at 220.

²⁸⁰ See Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 6.

²⁸¹ See Jean-Pierre, *Miroir*, *supra* note 113 at 62. Zara referred to Nietzsche’s *Thus Spoke Zarathustra*, which Vergès has been studying since his schooldays.

²⁸² Denunciation of intellectualism was strong in the labour movement. For instance, the Belgian trade-unionist Jan Cap said that he rejected intellectuals in his youth and realized only late in life that knowledge could serve

Intellectualism becomes a threat to communism when it translates into individualism because it is difficult to control and can lead to subversion of the authority of the communist party.

Although Vergès would most probably deny being a counterrevolutionary, he would not deny being an individualist. In a view of communism that diverges from that of so-called hard-liners, individualism is not contrary to Marxism. As the anti-Stalinist theoretician Lucien Sève noted, Marx, Engels and Lenin were individualists within their parties, too.²⁸³ Hard-liners would allow the luxury of individualism only to those exceptional individual.²⁸⁴

Vergès' individualism has not been in doubt among the people who know him at any time.

He admitted to his narcissism: "Je suis assez narcissique, je ne le cache pas."²⁸⁵ His

individualism manifested itself as identifying himself with a different political group than the group to which he belonged at a given time. Although Vergès did not justify his

individualism by appealing to Marx but to the French writer Alfred de Vigny, his

the interests of the working class. Although he portrayed that resistance as part of his own character, he stressed that an individual's knowledge was a product of society and should be put to use for the benefit of the working class, not for individual benefit. See Jan Cap, *In naam van mijn klasse*, Conference with Jan Cap at <http://vimeo.com/16493921> at 3:15, 22:40 and 35:00. In Soviet practice, that anti-intellectualism manifested itself in the destruction of the intelligentsia in Russia under Lenin. See generally Stéphane Courtois, *Communisme et totalitarisme* (Paris: Perrin, 2009) at 131–139. On the other hand, the ultraconservative writer Jacques Ploncard d'Assac wrote that the enlistment of the so-called rural intelligentsia, such as teachers, under Khrushchev to boost morale in the countryside was an admission of the bankruptcy of communist values. See Ploncard, *Coexistence*, *supra* note 179 at 98–9.

²⁸³ Lucien Sève identified that individualism in Marx, Engels and Lenin: "À diverses reprises Marx et Engels, solidaires mais aussi solitaires, se démarquent publiquement de leur parti à la ligne encore incertaine. À un moment décisif d'octobre 1917, Lénine, voyant avec désespoir le sien tergiverser devant l'insurrection, offre sa démission de membre du Comité central." Sève, *Introduction*, *supra* note 228 at 150. Sève was particularly critical of Stalin's view that revolution depends on the development of productive forces more than on class struggle. See *op. cit.* at 183.

²⁸⁴ Sève in effect allows for that view in his remark that Marx said that he was not a Marxist. *Ibid* at 232. In comparison, Lenin's view was that communists were exceptional individuals. He emphasized that the force of communism was not in the quantity but the quality of its militants. A handful of good militants outweighed a numerically far superior enemy. See Vladimir Ilich Lenin, "How Vera Zasulich demolishes liquidationism," in VI Lenin, *Collected Works*, Volume 19, March–December 1913, Moscow: Progress Publishers, 1968, p. 394–416.

²⁸⁵ See Vergès, *Avocat*, *supra* note 40 at 32. Vergès appropriated a slur of narcissism levelled at him by Violet, among others. Compare Violet, *Vergès*, *supra* note 5 at 253. However, he attenuates the sense of narcissism: "Le narcissisme n'est pas en contradiction avec l'amour du genre humain, puisque je suis semblable aux autres." Vergès, *Avocat*, *supra* note 40 at 77. Qualifying his self-love as narcissism in the clinical sense of a personality disorder would be forced. His acceptance of the slur of narcissism suggests would be hard to reconcile with it. He does not meet several signs of narcissism according to DSM-IV-TR 301.81, such as lack of empathy (willingness to recognize or identify with the feelings and needs of others) or envy. For instance, he says: "... je n'éprouve jamais d'envie, je n'envie jamais personne" Vergès, *Avocat*, *supra* note 40 at 83.

individualism was in line with that of the early communists. Vergès quoted de Vigny as saying: “Les dindons vont en troupe; le lion est seul dans le désert.”²⁸⁶

Individualism also would draw Vergès to ‘try on’ different ideologies. That tendency would appear in statements such as the one that he made in conversation with de la Morandais:

Mais j’étais à part dans Forces françaises libres, puisque j’étais un « rouge » dans des unités où les « rouges » n’étaient pas la majorité. J’étais « gaulliste » dans l’armée d’Afrique. Et je me suis toujours plu dans cette situation qui me donne de la distance par rapport aux gens, pourvu qu’on ne m’emmerde pas et que je fasse ce que je veux.²⁸⁷

Vergès meant that, even in De Gaulle’s forces, his individualism presented a problem.²⁸⁸ He drew attention to his insubordination. In his quote, Vergès portrayed his insubordination as a harmless way of showing that he was a revolutionary at heart. In that quote, his logic works. But when we transpose his playful individualism to a revolutionary group, it undermines the overall impact of revolution by eroding the cohesion of the group.²⁸⁹ There is thus no reason

²⁸⁶ Vergès quoted de Vigny from memory. de Vigny’s exact words were: “Les animaux lâches vont en troupes. Le lion marche seul dans le désert. Qu’ainsi marche toujours le poète.” Alfred de Vigny, *Le Journal d’un poète* – recueilli et publié sur les notes intimes d’Alfred de Vigny par Louis Ratisbonne (Paris: Lévy, 1882) at 175 (among the first entries for year 1844)..

²⁸⁷ See Vergès, *Salaud*, *supra* note 202 at 48–9. Vergès’ behaviour accentuated a trait that is common. One defines oneself in a group by emphasizing one’s differences with others. See W.J. McGuire, C.V. McGuire, “Content and process in the experience of self” in L. Berkowitz (dir.), *Advances in Experimental Social Psychology* (New York: Academic Press, 1988) at 21:97–144.

²⁸⁸ Vergès’ approach is not a sign of abnormality. The psychological mechanism of projecting what one knows now onto one’s past is a normal way of protecting one’s self-esteem. See generally Paul Slovic, Baruch Fischhoff, “On the Psychology of Experimental Surprises,” in *Journal of Experimental Psychology: Human Perception and Performance*, 1977, Vol. 3, p. 544–551. Vergès acknowledged his preoccupation with himself: “Je suis assez narcissique, je ne le cache pas. Mais je ne pense pas que ce soit un défaut.” See Vergès, *Avocat*, *supra* note 40 at 32. Some psychologists have concluded that a balanced individual needs to have a slightly exaggerated view of his capacities, achievements and difference from others. See generally Shelley E. Taylor and Jonathon D. Brown, “Illusion and Well-Being: A Social Psychological Perspective on Mental Health,” in *Psychological Bulletin*, 1988, Vol. 103, No. 2, p. 193–210. For instance, Vergès’ pursuit of coherence by rewriting his personal history to reflect his actual ideas, beliefs and attitudes to avoid incoherence between one’s past self and current self is not exceptional. See generally Michael Ross, Cathy McFarland, Garth J.O. Fletcher, “The Effect of Attitude on the Recall of Personal Histories,” in *Journal of Personality and Social Psychology*, 1981, Vol. 40, p. 635–642.

²⁸⁹ From the viewpoint of group dynamics, a person’s individualism may manifest itself as a negative role in a group, such as blocker, recognition seeker, self-confessor, disrupter/playboy or playgirl, dominator, or special interest pleader. See generally K. Benne and P. Sheats, “Functional Roles of Group Members,” in *Journal of Sociological Issues*, 1948, Vol. IV, No. 2, p. 41–50.

to suppose that the slurs about Vergès' infrared approach were misplaced. Vergès is able to play down possible clashes with communist revolutionaries by discussing his general tendency to insubordination in the context of his military career, which allows him to play it down by assimilating it into military humour. For instance, Vergès' transfer from the military school in Cherchell in Algeria to another camp in Séfrou in Morocco in late-1942 had been due to his lack of discipline. Jacques explained: "Nous étions si indisciplinés que nous avons été dirigés vers un autre camp à Séfrou."²⁹⁰

It is therefore no surprise that Vergès had a problem with party discipline. He even boasted that it made him uncooperative in the Communist Party, too, as his disagreements with Annie Kriegel suggested. Vergès pointed to the *Histoire du Parti communiste français* by Philippe Robrieux, which referred to Vergès as a violent and uncontrollable element.²⁹¹ Vergès would treat his insubordination in the party with the same nonchalance with which he treated his insubordination in the military – and he alluded to Kriegel's later defection to the antirevolutionary side as evidence that he had been right in those disputes.

Vergès provided a more balanced view of his erratic career in the party when he contrasted himself with the late Amokrane Ould Aoudia,²⁹² who had been a loyal member of the party and did not have the problem with discipline that Vergès had. Vergès mentioned that Ould Auodia had hated him, and did not deny that Ould Aoudia might have been right in his

²⁹⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 61. See also Chaudenson, *Vergès*, *supra* note 113 at 65. Chaudenson refers to Felissi, *Anticolonialiste*, *supra* note 6 at 27. A careful reading of Robrieux's work does not provide certainty as to what passage Vergès had in mind. Compare Philippe Robrieux, *Histoire intérieure du Parti communiste*, Volume II (Paris: Fayard, 1981 [Robrieux, *Parti communiste*]).

²⁹¹ See Vergès, *Avocat*, *supra* note 40..

²⁹² Ould Aoudia (ولد عودية) is a North African patronym, literally "son of Aouldia," which is used as a surname. In the North African dialect, *ould* (pronounced "weld") means "son" (cf. *walad* for "boy" in standard Arabic), like the more common prefixes *bin* and *ibn*. It is therefore necessary to refer to him as Ould Aoudia instead of Aoudia.

criticism. He discussed Ould Aoudia's criticisms with the same sympathy that he had for Ould Aoudia himself, using Ould Aoudia as the voice for his own remorse.²⁹³

Bolshevik historiography treated the question of discipline from the perspective of class struggle. Historiographers of the party used Lenin's work *One Step Forward, Two Steps Back* to argue that workers were not afraid of discipline and organization, whereas intellectuals, who belonged predominantly to the bourgeoisie, were incapable of discipline and organization and thus undermined organization, which was the only political weapon the proletariat had at its disposal to win power. Ideological union was not enough for victory; the victory of the proletariat demanded organizational unity.²⁹⁴ That requirement played a role in Vergès' formative years in a negative way: he rebelled against the discipline that was necessary to attain organizational unity.²⁹⁵

Although Vergès would portray himself in his conversation with Jean-Pierre as a Stalinist, to give credence to the hard-line credentials of his judicial strategy, his insubordination in the party would be irreconcilable with the discipline demanded by the Soviet Bolshevik Party and, in its wake, other communist parties of the world. Vergès' homage to Stalin was more likely calculated to sow discord in whatever circles he finds himself. He would redeem his Stalinist image by his continued anticolonialism. Even if the challenges in the fight against colonialism and racism were as daunting as those involved in class struggle, we are reminded of Naulleau's statement that *métissage* provided Vergès with the conviction of the rightness of the cause of anticolonialism, with the consequence that he could ultimately dispense with

²⁹³ See Vergès, *Belles*, *supra* note 250 at 12.

²⁹⁴ See CPSU, *Histoire*, *supra* note 209 at 53.

²⁹⁵ Those class-specific remarks were grounded in sociological facts. Middle-class and working-class values form the following contrast: "Middle-class values include achievement and ambition, independence, and manners, while working-class values include collectivism, staying home, and 'not putting on airs.'" Barry Glassner, Jonathan A. Freedman, *Clinical Sociology* (New York: Longman, 1979) at 93. Others have identified anti-intellectualism as one of the working-class traits, which include clearly differentiated gender roles, traditional education, anti-intellectualism, gadgets, sports, physical expression, and physical power. Mollie S. Smart & Russell C. Smart, *Children: Development and Relationships*, 2d ed (New York: Macmillan, 1972). See also Frank Riessman, *The Culturally Deprived Child* (New York: Harper & Row, 1962) at 25–35.

class consciousness altogether.²⁹⁶ Since being conscious of oneself as a member of a colonized people does not require the same degree of mental discipline as seeing oneself as a member of a social class, one cannot speak of colonial-consciousness as one does of class consciousness. Its closest equivalent is race consciousness: “Class-consciousness must be learned, but race-consciousness is inborn and cannot be wholly unlearned.”²⁹⁷ By making anti-colonialism the pillar of his identity, Vergès would allowe himself to dispense with discipline in the sense in which communists understand it. In Vergès’ particular setting, Stalinism would become reduced to the anticolonial battle. As Jacques’ brother Paul, who has remained a notable in the Communist Party to this day, would reminisce, Stalin was the protagonist for those who strove to shed the colonial yoke. His remark shows that Paul and Jacques were drawn to Stalin because of his anticolonial agenda:

Au lendemain de la guerre, le communisme était à son apogée. Staline avait battu Hitler sur le front de l’Est et les communistes français avaient largement contribué à la victoire des alliés. Lorsque la Chine bascule à son tour, en 1949, dans le camp socialiste, tous les pays du tiers-monde veulent secouer le joug colonial. Nous avions tous conscience de la formidable bataille qui était en train de se jouer. Nous voulions en être les acteurs et il n’avait pas de place dans notre combat pour de quelconques attermoiements.²⁹⁸

²⁹⁶ Éric Naulleau in Ruquier, *Zemmour*, *supra* note 115. Naulleu addressed Vergès with reference to *Journal: La passion de défendre*: “...vous rappelez votre métissage. Là, vous l’avez faite à la date de 13 janvier, dès le début du livre. Vous la rappelez à chaque fois parce que cela inscrirait d’une manière génétique votre sensibilité au tiers-mondisme.” The passage to which Naulleau referred was the following entry: “De mon métissage évident, je n’ai retire qu’un sentiment de singularité. De là résulte mon comportement dans la vie: je n’obéis pas aux lois de la tribu, mais seulement aux caprices de mon cœur, je n’aspire à aucun poste dépendant des autres.” Vergès, *Passion*, *supra* note 172 at 16.

²⁹⁷ That controversial statement was made by the American Socialist Party, quoted in Jeffrey Babcock Perry, *Hubert Harrison: the Voice of Harlem Radicalism, 1883–1918* (New York: Columbia University Press, 2009) at 187. Its motivation was that “[r]ace feeling is not so much a result of social as of biological evolution. It does not change essentially with changes of economic systems. It is deeper than any class feeling and will outlast the capitalist system.” *Idem*. According to what appears to be the prevalent view, race consciousness may serve as an impediment to the development of class consciousness, partly because developing class consciousness is a complicated process whereas race consciousness is relatively simple. See Melvin M. Leiman, *Political economy of racism* (London: Pluto Press, 1993) at 319. That issue was primordial to Marxism, as Fredric Jameson wrote: “More orthodox Marxists will agree with the most radical post- or anti-Marxist positions in at least this, that Marxism as a coherent philosophy (or better still, a ‘unity of theory and praxis’) stands or falls with the matter of social class.” Fredric Jameson, “Foreword” in Jean-François Lyotard, *The Postmodern Condition: a Report on Knowledge*; translation from the French by Geoff Bennington and Brian Massumi, foreword by Fredric Jameson (Minneapolis: University of Minnesota Press, 1984) at xiv [Lyotard, *Postmodern Condition*].

²⁹⁸ See Jean-Pierre, *Miroir*, *supra* note 113 at 78.

Vergès' identification with hard-line communists would not be exclusively negative, but would assume a positive dimension in the anticolonial fight. The anticolonial fight had a prominent place in Stalin's politics. It was particularly prominent because it was part of Stalin's agenda soon after Lenin had to step aside. Stalin's agenda was also detailed:

The imperialist war and the mighty revolutionary movement which arose in connection with it in the colonies only provided new corroboration of the correctness of the decisions adopted by the party on the national question. These decisions consists of (a) vigorous repudiation of all and every form of compulsion in relation to the nationalities; (b) the recognition of the equal and sovereign right of the peoples to determine their own destinies; (c) the recognition of the thesis that a durable amalgamation of peoples can be accomplished only on a basis of collaboration and voluntary consent; (d) the proclamation of the truth that such an amalgamation is possible only as a result of the overthrow of the power of capital.²⁹⁹

A further complication is introduced by Vergès' loyalty to De Gaulle. At the time of De Gaulle's military campaigns during the Second World War, the convergence of Stalinism and Gaullism was relatively unproblematic. Whatever convergence there was between the CPF and De Gaulle during the Second World War could be due to flagging revolutionary spirit in the CPF. The Albanian communist leader Enver Hoxha observed in his book on Eurocommunism about Western communists' willingness to collude with the bourgeoisie.³⁰⁰ De Gaulle's tendency to rebel against the values that had shaped his own formative years became more pronounced when he was elected President of the Republic in 1958 and the constitution of the Fifth Republic gave him extensive powers to solve the Algerian crisis.³⁰¹

²⁹⁹ Joseph Stalin, "Theses on National Factors in Party and State," in *Joseph Stalin, Marxism and the National Question: Selected Writings and Speeches* (New York: International Publishers, 1942, p. 126–136) at 128, Quoted in Jean-Pierre, *Miroir*, *supra* note 113 at 72. The text was first published on May 23, 1923. The phrase "amalgamation of peoples" (Объединение народов, *obyedinénie naródo*v) is in other translations more aptly "union of peoples."

³⁰⁰ See e.g. Enver Hoxha, *L'eurocommunisme, c'est de l'anticommunisme* (Tirana: Éditions "8 Nëntori," 1980) at 202 [Hoxha, *Eurocommunisme*].

³⁰¹ According to the Constitution of October 4, 1958, the President can, among other things, appoint the Prime Minister and terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government (Art. 8). The President can also dissolve the National Assembly (Art. 12), and take measures required when the integrity of the territory of the French Republic or the fulfilment of its international commitments are under serious and immediate threat (Art. 16). De Gaulle reformed the legal system during the

2.5. The Influence of the Pre-Algerian Period on Vergès' Strategy

In sum, the ideological context of Vergès' judicial strategies of rupture and connivence was communism. The term "strategy" points to its communist legacy. We have viewed those two strategies from the perspective of hard-line communism in our project of identifying the ideological changes that Vergès has gone through during his legal career. His mechanism for coping with those changes has matured into a judicial strategy that accommodates his original political views and any other political view that departs from them, including his later political choices that have not been in line with communism. Vergès makes at least an implicit claim to continue the revolutionary strategy that entered the legal arena through Lenin and Willard. As we have seen, his connection to communist ideology has become increasingly tenuous, starting with his involvement in the Algerian Revolution in 1957. He even has a tendency to turn his rhetorical skills against those who would refer to that weak or missing connection and blame him for defecting to the bourgeoisie.

Vergès can use such a strategy of diversion to great effect in light of his communist credentials. His father was a prominent figure in the Communist Party of France and his brother Paul has continued to dominate the politics of the Island of Réunion as a communist through the decades. Vergès has taken another road and, in a way, inverted the revolution against that discipline. As we have seen, that inversion earned him the label "infrared" in the party, while his memories of military service appear to be a series of incidents of rebellion

Algerian War by eliminating some tribunals and creating others, the system became more tied to executive power. Lombard also pointed out that the relative stability of the government under De Gaulle and the entire Fifth Republic entailed an erosion of the independence of judicial power. See Rozès, *Dialogue*, *supra* note 146 at 72, 104. In professional life, Lombard and Vergès worked on the case of Omar Raddad though their relationship was not easy. See Jacques Vergès, Jean-Louis Remilleux, *Intelligence avec l'ennemi: conversations avec Jean-Louis Remilleux* (Paris: Michel Lafon, 1994) at 162. Among the judicial institutions that were abolished at the beginning of the Fifth Republic were justices of the peace (*juge de paix*), which De Gaulle's Prime Minister Michel Debré regarded as contradictory to his project of streamlining the justice system. See Françoise Banat-Berger, "La réforme de 1958 – la suppression des justices de paix," in Jacques-Guy Petit [sous la direction de], *Une justice de proximité: la justice de paix, 1790–1958* (Paris: Presses universitaires de France, 2003) at 225–6.

against authority. Vergès suggests that such inverted rebellion made him a staunch revolutionary, while the disciplinarians could retort that the effect of that insubordination was the opposite. His judicial strategy was not only an element in the revolution.

Those oppositions suggest that the revolutionary terminology that Vergès would cultivate in his “strategy” and “rupture” did not constitute an organic development of the Marxism-Leninism from which they had originated. Vergès’ supposedly revolutionary activities were limited to his participation in the military campaigns led by De Gaulle during the Second World War, though the contribution that De Gaulle’s victory made to the communist revolution is undermined by the uncomfortable reality that there was no communist revolution, which the Albanian communist leader Enver Hoxha had the brutal honesty to say.

Vergès cannot have been oblivious to the disappointment of communist hopes after the Second World War and the role that cooperation with De Gaulle’s forces may have played in that disappointment. The next stage in his autobiography was to portray De Gaulle as the rebel and the Communist Party as the reactionary force during the Algerian War, which started in 1954 and in which Vergès was involved as a lawyer after 1957.

3. THE ORIGIN OF VERGÈS' STRATEGY OF RUPTURE IN ALGERIA (1957–61)

The Algerian War has a special significance in Vergès' career, in his discourse on strategy and in his understanding of himself. As Foucault noted, it left an indelible mark on *De la stratégie judiciaire*. Vergès' detractors portray his attachment to Algeria as an obsession.³⁰²

The formative years that shaped Vergès' political outlook would also shape his incipient legal career during the Algerian War of Independence that broke out in November 1954 and ended with the independence of Algeria in 1962. Algeria got its first president when Ahmed Ben Bella, one of the leaders *Front de la libération nationale* (FLN), was elected in September 1963.

In retrospect, Vergès set the Algerian wartime cases clearly apart from some of his other cases by explaining that he shared the objectives of the Algerian War but not those of some of his later clients: “J’ai défendu des personnes qui sont très différentes de moi et dont je n’épouse absolument pas la cause. Je ne parle pas ici de la guerre d’Algérie. Je pense aux affaires dont je m’occupe depuis.”³⁰³ A clear indication of the importance of Vergès' defense of the fighters of the FLN accused of terrorism to the development of his judicial strategy is the inclusion of the FLN trials towards the end of *De la stratégie judiciaire*. Though he had worked on a number of other cases since the independence of Algeria, the FLN trials were his only cases to which he referred in that book.³⁰⁴

Due to the importance of the FLN cases and the period of the Algerian War for the gestation of his judicial strategy, this chapter focuses on Vergès' own account of the relation of the

³⁰² For instance, Vergès mentioned in his diary that a TV viewer had written him a letter that pointed to a televised panel discussion in which “une péronnelle vous a reproché de parler ‘toujours’ de la guerre d’Algérie.” Vergès, *Journal*, *supra* note 83 at 243.

³⁰³ Felissi, *Anticolonialiste*, *supra* note 6 at 73.

³⁰⁴ See generally Vergès, *Stratégie judiciaire*, *supra* note 7 at 182–199.

Algerian War to his judicial strategy. Vergès does not explain clearly his judicial strategy in either of the FLN cases. Instead, he merely provides examples of the strategy of rupture and connivence, none of which relate to Algeria. Vergès' account dates from approximately ten years after the events, with the consequence that his preoccupations at the time of writing may have coloured his account (such as the widening gap between his everyday legal practice and his involvement in the revolutionary struggle in Palestine).

Vergès' judicial strategy is a bridge between his membership in the legal profession and his revolutionary activities. A challenge is that lawyers are by nature reactionary, as his Lenin quote in *De la stratégie judiciaire* suggested.³⁰⁵ Vergès' judicial strategy is a balancing act between the "politics" of being a member of the judicial institution and "the political" aspiration of overturning that institution.

In his summary of the FLN judicial strategy in *De la stratégie judiciaire*, Vergès referred to the importance of commitment to one's cause. How did that affect the lawyer's position? His clients did not calculate the price of victory, because they fought for their cause, not for themselves. A lawyer's position remained ambiguous, because a lawyer for revolutionaries had to fight for those who did not fight for themselves but for the cause of independence. They were prepared to sacrifice their lives for that cause. Their lawyer's mission was to keep them alive. As Vergès said later: "Je sauve des gens."³⁰⁶ On occasion, his vocation of saving his clients contradicted more or less openly their wishes.

3.1. Vergès' Account of the Discovery of the Strategy of Rupture

Vergès considers the beginning of his legal career during the Algerian War of Independence as the defining period for the development of his judicial strategy. Although he did not set

³⁰⁵ Vergès, *Stratégie judiciaire*, *supra* note 7 at 44.

³⁰⁶ Vergès, *Avocat*, *supra* note 40 at 92.

that judicial strategy down in writing until 1968, about eleven years after he got involved in the Algerian War as a lawyer, he attributed his discovery of the strategy of rupture to his experiences while defending his first client, Djamila Bouhired. In an interview in 2000 he would say: “J’ai compris, après le procès de Djamila, qu’il ne servait à rien, dans un tel contexte, de jouer la connivence. J’ai donc adopté, pour tous les procès qui ont suivi, un style de défense qui était en franche rupture avec l’ordre établi.”³⁰⁷

Vergès chose the terms “connivence” and “rupture” of his strategies in hindsight. He described the politically charged context of his discovery of rupture in another interview: Jean-Baptiste Biaggi, who sided politically with French Algeria, came to warn Jacques that the *ultras* (French Algerian nationalists) had made a pact fifteen days before the trial with minister-resident, Robert Lacoste, that Djamila would be executed.³⁰⁸ Vergès understood after the Djamila case that there were two different strategies, one of rupture and another of connivance. The difference between them was their approach to the “established order.”

For clues about how to tackle the established order, Vergès drew on his communist past. The situation in Algeria lent itself to a communist analysis.³⁰⁹ To rectify the disadvantage faced by the accused, dramatic measures, such as rupture, were needed. Vergès’ view was reminiscent of that of the Soviet legal specialist Evgeny B. Pashukanis: “Criminal justice in

³⁰⁷ Jean-Pierre, *Miroir*, *supra* note 113 at 142.

³⁰⁸ See Felissi, *Anticolonialiste*, *supra* note 6 at 51–2. Vergès mentioned that Biaggi was a *Secrétaire de la Conférence*, like him, and both attended the same get-togethers, which allowed them to continue to keep in touch despite their political divergences. Biaggi was a lawyer for the French nationalist party *Front National*. See Vergès, *Journal*, *supra* note 83.

³⁰⁹ In a communist analysis, Algeria’s problem was not only colonialism but the “Ben Bella had rightly seen that a new stage in the path to socialism had arrived, in which the sacred union of all classes within the nation which existed during the war of liberation could no longer subsist. It was essential to attack the landlords and capitalists and all who had an interest in the maintenance of a system of exploitation.” Henri Alleg, “Algeria: Behind the Silence,” in *The African Communist*, No. 25, Second Quarter 1966, p. 58–67.

the bourgeois state is organised class terror, which differs only in degree from the so-called emergency measures taken in civil war.”³¹⁰

3.1.1. Rupture: between dialogue and principles

Vergès’ explanation of his strategy of rupture – and strategy in general – is elusive. He has continued to contrast the strategy of rupture with the strategy of connivence. Even in his answers to questions about the strategy of rupture, Vergès does not offer a precise definition. Instead, he is content with describing the setting in which he opts for the strategy of rupture rather than the strategy of connivence. “Dialogue” and “principles” are his keywords: “Le procès de rupture survient quand le dialogue est impossible, on n’est plus d’accord sur les mêmes principes.”³¹¹ He implies that a dialogue is not possible if partners do not share the same principles and, further, that one cannot adhere to one’s principles without bringing about a rupture in the dialogue. One thus has to choose between dialogue and principles.

Vergès describes rupture as a rupture with “established order.” He describes his rupture as “un style de défense qui était en franche rupture avec l’ordre établi.”³¹² His choice of words suggests that the “established order” has the upper hand in a confrontation but he is ready to take up the challenge and consummate the rupture.

However, in light of Vergès’ explanations, he sets excessively ambitious goals for his strategy of rupture. What principles exactly does he cast overboard? To what extent exactly can a lawyer break with the established order? The answers to those questions must be more measured than Vergès suggests. Consequently, the distinction between rupture and connivence is not as sharp as their juxtaposition in *De la stratégie judiciaire* suggests. An

³¹⁰ Evgeny Bronislavovich Pashukanis, *Law and Marxism: A General Theory: Towards a Critique of the Fundamental Juridical Concepts*, Translated by Barbara Einhorn (London: Pluto Pres, 1978) at 173.

analysis of what he means by principles bears out that the distinction between rupture and connivence consists of shades of grey.

Contrary to what Vergès says, he is not referring to a disagreement on principles *per se* but rather to a disagreement on their correct application. Speaking of a “public order” (instead of an “established order”), he suggested that injustice is inherent in any given legal order: “Cet ordre public est toujours injuste, mais il est nécessaire.”³¹³ That “injustice” points to a violation of one’s own principles.³¹⁴ The three fundamental principles to which a just legal order needs adhere are *legal equality*, *legal unity*, and *legal certainty*.³¹⁵ Simply put, if justice is selective, it is not justice at all.

Vergès makes the claim that the legitimacy which he advocates conforms better to those principles than the legality of the “established order.” His discourse is therefore, by implication, more coherent than that of the established order. By claiming to reject a consensus on the principles, the strategy of rupture brings into the open the dictatorial nature of their selective application by the established order. Vergès does not advocate a different set of principles but rather a consistent application of the existing ones.³¹⁶

At least on the surface, Vergès’ explanation of rupture corresponds to Jean-François Lyotard’s explanation of a *différend*. The similarity between those two concepts is more than apparent. The comparison between rupture and connivence on the one hand and *différend* and

³¹¹ Vergès, *Avocat*, *supra* note 40 at 90.

³¹² Jean-Pierre, *Miroir*, *supra* note 113 at 142.

³¹³ Felissi, *Anticolonialiste*, *supra* note 6 at 28. Significantly, Vergès motivated his rejection of anarchy with a reference to Nietzsche, not to Marx. See Vergès, *Avocat*, *supra* note 40 at 220.

³¹⁴ Thomas Simon observed of Arthur Douglas Woosley’s theory of justice: “[A]n injustice is a violation of a principle of justice, known and justified before the analysis of the injustice.” Thomas W. Simon, *Democracy and Social Injustice: Law, Politics, and Philosophy* (Lanham, Maryland: Rowman and Littlefield, 1995) at 12.

³¹⁵ Those three principles are the fundament of rule of law. See e.g. Thomas Giegerich, *Europäische Verfassung und deutsche Verfassung im transnationalen Konstitutionalisierungsprozess: wechselseitige Rezeption, konstitutionelle Evolution und föderale Verflechtung*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (Berlin: Springer Verlag, 2003) at 726.

³¹⁶ Vergès suggested in 2002 that the adherence to existent laws was sufficient: “Le remède existe: il consiste à appliquer la loi à tous les échelons, depuis l’enquête préliminaire jusqu’au pourvoi en cassation, voire au recours en révision.” Vergès, *Erreurs*, *supra* 195 at 120.

litige on the other hand is helpful because it shows that the rejection of principles in the strategy of rupture cannot be complete. Lyotard explained his *différend* in terms reminiscent of Vergès' explanation of his strategy of rupture: "As distinguished from a litigation, a differend [*différend*] would be a case of conflict, between (at least) two parties, that cannot be equitably resolved for lack of a rule of judgment applicable to both arguments." Lyotard went on to state: "One side's legitimacy does not imply the other's lack of legitimacy."³¹⁷

In light of the possibility of two legitimacies existing side by side, how compatible is the strategy of rupture as *différend* with Derrida's view of Vergès' strategy of rupture? As we have seen, Derrida identified the radical contestation of the legitimate authority of the state as the hallmark of Vergès' strategy. Lyotard's *différend* seems to allow two legitimacies to coexist while Vergès' strategy of rupture apparently delegitimizes the original legitimacy. Consequently, Vergès' strategy of rupture would seem to be more radical than Lyotard's *différend*.

There are two reasons why Lyotard's and Vergès' views are not incompatible. First, they are not referring to the exactly same situation. Lyotard presents a setting with two legitimacies, while Vergès describes a way to choose one. Secondly, Derrida's view of the contestation of the legitimate authority of the state overstates the depth of rupture. As we saw, Vergès did not deny the necessity of the established order: "Cet ordre public est toujours injuste, mais il est nécessaire."³¹⁸ If the public order is "necessary," it is, by implication, legitimate because it is necessary to some (unspecified) purpose which legitimizes it. While not denying the legitimacy of that established order, Vergès undertakes a "franche rupture" with it. Two legitimacies therefore seem to be coexistent, as Lyotard's *différend* also allows.

³¹⁷ See Jean-François Lyotard, *The Differend: Phrases in Dispute*, Translated by Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988) at xi. Presumably, Lyotard made the concession that two legal orders were able to coexist because he still assumed the viewpoint of the established order while sympathizing with those who rebelled against it.

³¹⁸ Felissi, *Anticolonialiste*, *supra* note 6 at 28. Significantly, Vergès motivated his rejection of anarchy with a reference to Nietzsche, not to Marx. See Vergès, *Avocat*, *supra* note 40 at 220.

Vergès' claim that the strategy of rupture ensues when a dialogue is impossible because there is not disagreement on principles is true only in the context of his strategy. He chooses to make the dialogue impossible by appealing to the principles, on which he says there is no disagreement. A careful analysis shows that he does not deny that the established order has as valid a claim to legitimacy as the rival legitimacy that he propounds. It is therefore necessary to separate his fiery rhetoric from his legal theory.

An example of principles common to the defence and the rest of the justice system can be found in the Jeanson Network trial in 1960, the last great FLN trial that took place in Paris. In that trial, Vergès called into question the impartiality of some of the judges. The initiative came from his colleague Oussedik, who found that two of the judges had been in the company of Pierre Sidos, who was the leader of the small Fascist group *Jeune Nation*. Vergès pointed out that the judges should be arrested because there was an arrest warrant against one of the Sidos brothers. He also pointed out that they had been intoxicated, “abreuvé.”³¹⁹ The following day, even the most conservative newspapers expressed their consternation at the conduct of the judges in question.³²⁰ There was thus no disagreement about the applicable principles.

The most likely meaning of principles in Vergès' statement, however, is refusal to give in on key demands: in his view, when one refuses to moderate one's key demands, a rupture of dialogue is inevitable, if the other party does not share those key demands. What those principles are depends on the context. However, the formulation of those demands elicits their rejection by the other party. For instance, when the key demand is a break with the colonial power, the latter may be disinclined to share that objective. Vergès refers to the Algerian War, which is a sort of stencil for other contexts in which rupture might be

³¹⁹ See Hervé Hamon, Patrick Rotman, *Les porteurs de valises: La résistance française à la guerre d'Algérie* (Paris: Albin Michel, 1979) at 295.

³²⁰ *Ibid* at 296.

applicable. From what he says of principles in the following anecdote, we gather that he means political principles.³²¹

Vergès illustrates his strategy of rupture with an anecdote. Whether it is real or imaginary, he has repeated that anecdote so many times that it has taken on a life of its own:

Lorsqu'un combattant du FLN défendu par nos soins comparait devant un tribunal militaire, c'était une toute autre histoire. Dès l'interrogatoire d'identité, le conflit éclatait. « Nationalité? », demandait le président. « Algérienne », répondait l'accusé. « Non, française », rétorquait le président. Et cela continuait:

« le président: Vous comparez devant ce tribunal pour des actes de terrorisme commis...

L'accusé: Je ne suis pas un terroriste mais un résistant!

Le président: Vous êtes accusé de meurtre!

L'accusé: Je me suis contenté d'obéir aux ordres.

Le président: Ces ordres sont illégitimes.

L'accusé: Ce sont les ordres que je reçois qui sont légitimes et non ceux donnés aux soldats français! »³²²

Vergès thus reinforces the defence's adherence to principles by adopting an uncompromising position. He uses that anecdote to illustrate the impossibility of a dialogue between the judge, who represents the justice system, and the accused, who makes a conscious choice to stay outside the system: "Le dialogue devenait vite impossible du fait de la contestation par les accusés de la légitimité même du tribunal." ³²³

Vergès' description of rupture bears the vestiges of the anticolonial battle which was the origin of his judicial strategy. Despite the conflict that erupted between the two sides, the defence on one hand and the prosecution and, by extension, the entire justice system on the other, it was conflict that ultimately drew them closer together. That paradoxical effect is

³²¹ Vergès' attitude to authority mirrors the rigidity, dogmatism and ethnocentrism of those in power. Compare John W. McDavid, Herbert Harari, *Psychology and Social Behavior* (New York: Harper & Row, 1974) at 179. However, it may also be psychological defence mechanism, such as a projection, rationalization, and denial of Vergès' own rigidity.

³²² Jean-Pierre, *Miroir*, *supra* note 113 at 144–5. One of the most striking instances in which Vergès recounts that anecdote is the film by Barbet Schroeder.

³²³ *Ibid* at 145.

noticeable in the context of the Algerian War of Independence. As psychoanalyst Alice Cherki observes in an interview in the film *Black Skin, White Mask*, there are situations in which language cannot function to maintain the “social contract” and, for things to change, it may be necessary to turn to violence to re-open a space for dialogue.³²⁴

The colonized people’s achievement of autonomy was also reflected in the term “anticolonialism,” which Vergès cultivates in reference to himself.³²⁵ The word “anticolonialism” reflects confrontation with a colonial power. It differs from decolonialization, which was

...the term used when the colonial power gave [power] away. Fanon was interested in independence which is the seizure of liberty by the oppressed people. He thought that there was something liberating about that very act of armed seizure, of defeating the enemy and the self-respect that would arise from an autonomous struggle of that kind.³²⁶

Self-respect and gaining the respect of the colonizer are the building blocks of a sound dialogue. Self-respect invites the respect of others as the colonized people prove capable of constructing their own cultural code instead of imitating the cultural code of the colonizer.³²⁷ The necessity of a violent break with the colonial masters was the view of many protagonists of Algerian independence, including the Martinican doctor Frantz Fanon.³²⁸ Decolonization suggested that the colony would be devoid of any status at all, including that of a colony, and would have to define itself in negative terms to become independent. The word “decolonization” had a long historical development behind it. It was in the course of the

³²⁴ See Frantz Fanon [DVD]: *Black Skin, White Mask* / a film from California Newsreel (San Francisco, CA: California Newsreel, 1996, c1995) at Chapter 7 [Fanon, *Black Skin*].

³²⁵ See e.g. interview of Jacques Vergès in Ruquier, *Zemmour*, *supra* note 115. His self-identification as an anticolonialist is also reflected by the title of Felissi, *Anticolonialiste*, *supra* note 6.

³²⁶ Interview of Stuart Hall, in Fanon, *Black Skin*, *supra* note 324 Chapter 8.

³²⁷ The term “cultural code” harks back to Roland Barthes’ five different codes (proairetic, hermeneutic, cultural, connotative, symbolic) and refers to authoritative cultural forms and accepted knowledge. See Mohit Kumar Ray, *Studies in ELT, Linguistics and Applied Linguistics* (New Delhi: Atlantic Publishers & Distributors, 2004) at 218.

³²⁸ Fanon was a psychiatrist, originally from Martinique. He was confronted with the traumas of torture victims at the psychiatric hospital in Blida, Algeria, and became a militant for the Algerian cause.

Algerian War of Independence that the word decolonization, which had been coined in 1836, gained new currency.³²⁹ Anticolonialism was the concrete setting in which Vergès developed his strategy of rupture. Anticolonialism appeared as a radical variety of decolonization instead of being its logical complement. Anticolonialism was to decolonization as rupture was to connivence. Rupture is not necessarily the opposite of connivence, as anticolonialism is not necessarily the opposite of decolonization. Both of those pairs described the choices faced during the Algerian War of Independence. In that concrete setting, the idea of decolonization soon gave way to anticolonialism: “L'indépendance ne s'offre pas, elle s'arrache.”³³⁰ Vergès expressed that insight with a reference to Nietzsche: “Ce sont les moyens qui sanctifient le but, pas le but qui sanctifie les moyens.”³³¹

There is no objective criterion to determine when the lack of agreement on principles justifies the exposure of disagreement at the risk of letting dialogue collapse. Vergès says that when he decides to resort to the strategy of rupture, that decision is preceded by long reflection: “Lorsque je trouve cette solution, qui demande une réflexion assez longue...”³³²

3.1.2. *Escalation of legal defence into a political conflict*

To expose the political nature of the justice system, Vergès seeks to create a “rupture,” which suggests that the disagreement is not only political but also legal, because the justice system is not impervious to political pressure. The political nature of the justice system is exposed by

³²⁹ Decolonization originally referred to the dismantling of the arrangement by which France annexed Algeria in 1930. See Todd Shepard, *The Invention of Decolonization: The Algerian War and the Remaking of France* (Ithaca: Cornell University Press, 2006) at 55–6.

³³⁰ See Yves Courrière, Philippe Monnier [dir.], *La guerre d'Algérie: un film*; prod.: Jacques Perrin et Jacques Barratier, Originally released in 1972, [Paris]: Editions Montparnasse, 2004, Disc 1, Chapter 131 [Courrière, *Guerre d'Algérie*].

³³¹ Vergès, *Avocat*, *supra* note 40 at 219–220. Vergès refers to *Thus Spoke Zarathustra*, Chapter “War and Warriors,” in which Zarathustra says: “Ye say it is the good cause which halloweth even war? I say unto you: it is the good war which halloweth every good cause.” (Ihr sagt, die gute Sache sei es, die sogar den Krieg heilige? Ich sage euch: der gute Krieg ist es, der jede Sache heiligt.) Friedrich Nietzsche, *Thus Spoke Zarathustra: A Book for All and None*, translated by Thomas Common (Forgotten Books, 2008) at 47.

³³² Vergès, *Avocat*, *supra* note 40 at 91.

the force that is necessary to uphold law and order. To escalate a legal conflict into a political one, Vergès turns that use of force against the justice system by emphasizing the discrepancy he sees in its recourse to violence and its claim to maintain order.

Vergès speaks from personal experience. He was banned by the *Tribunal permanent des forces armées d'Alger* in October 1957.³³³ He received a warning from the *Tribunal permanent des forces armées d'Alger* in the case of an assassination attempt against Jacques Soustelle in February 1959.³³⁴ Vergès was expelled from Algeria on August 14, 1959.³³⁵ The authorities motivated that expulsion by pointing to an impertinent letter in a case involving Algerian students that contained (unspecified) procedural errors.³³⁶

Vergès' legal troubles did not abate in France. When the National Assembly extended its special powers to the fight against FLN lawyers not only in Algeria but also in mainland France, the executive branch got a *carte blanche* to quell the resistance to the French colonial regime. The secret service arrested Mourad Oussedik and Abdessamad Benabdallah, Vergès' colleagues from the FLN lawyers' collective, as threats to state security and sent them to a detention centre in southwest France. After hearing of their fate, Vergès fled to Switzerland with two of his colleagues, Michel Zavrian and Maurice Courrégé. During their stay in Switzerland, the three of them conducted a public relations campaign from their hotel in Geneva. Vergès also worked together with Jérôme Lindon and Nils Andersson on the book *Les disparus*.³³⁷ That book was a continuation of a project that Vergès had begun in Algeria.

³³³ See Maurice Faivre, *Conflits d'autorités durant la guerre d'Algérie: Nouveaux inédits* (Paris: L'Harmattan, 2004) at 120 [Faivre, *Conflits*].

³³⁴ Report of May 2, 1960, « Objet: Information judiciaire suivie contre Me Vergès et tous autres », quoted in Jacques Vergès, *Les crimes d'État: La comédie judiciaire* (Paris: Plon, 2004) at 170 [Vergès, *Crimes*].

³³⁵ See Jacques Vergès, Michel Zavrian, Maurice Courrégé. *Les Disparus: Le cahier vert*. Postface de Pierre Vidal-Naquet ... Le cahier vert expliqué, etc. (Lausanne: La Cité Éditeur, 1959) at 89 [Vergès, *Disparus*].

³³⁶ See Faivre, *Conflits*, *supra* note 333 at 119.

³³⁷ See Violet, *Vergès*, *supra* note 5 at 106–7.

He had been collecting testimonials from the families of missing persons for a supplement to a book that was later published as *Les disparus – Le cahier vert*.³³⁸

Vergès challenged Commander Girard, who was *Commissaire du gouvernement* at the *Tribunal militaire de Paris*, to a duel on January 15, 1960 (that duel did not take place).³³⁹

Girard requested the suspension of Vergès in September 1960 during the Jeanson Network trial on account of unspecified statements that he had made.³⁴⁰ What complicated Vergès' work was his defiance of his expulsion order. He travelled to Sétif in Algeria in 1960 despite the fact that the expulsion order was not lifted. He mentions that he was expelled from that city *manu militari*. Vergès also accused the police of assaulting his young colleague Nicole Rein in Sétif.³⁴¹ The *Conseil de l'ordre* of lawyers at the *Cour d'Appel de Paris* prohibited Vergès from practising law in January 8, 1961.³⁴² In February 1961, Maurice Papon, the head of the Parisian police, charged Vergès with defamation for remarks he had made about Prime Minister Michel Debré.³⁴³ Vergès had accused Debré of complicity in the assassinations in

³³⁸ See Vergès, *Disparus*, *supra* note 334 at 89.

³³⁹ See Givet, *Le cas*, *supra* note 13 at 15.

³⁴⁰ See Faivre, *Conflits*, *supra* note 333 at 121.

³⁴¹ See Felissi, *Anticolonialiste*, *supra* note 6 at 93. See also Faivre, *Conflits*, *supra* note 333 at 121. Vergès does not refer to his defiance of the expulsion order but he admits that the year was 1960. Email of Jacques Vergès to Jonathan Widell of May 31, 2010.

³⁴² See Sylvie Thénault, *Une drôle de justice – Les magistrats dans la guerre d'Algérie*, *Préface de Jean-Jacques Becker, postface de Pierre Vidal-Naquet* (Paris: Éditions la Découverte, 2001) at 227 [Thénault, *Drôle de justice*].

³⁴³ See Violet, *Vergès*, *supra* note 5 at 130–1. Papon was head of *Préfecture de police*, the Paris Police Department, from March 15, 1958 to December 27, 1966 and was notorious for his heavy-handed approach. See Michel Auboin, "Préfecture de police", in *Histoire et dictionnaire de la police: du Moyen Âge à nos jours*, Sous la direction de Michel Auboin, Arnaud Teyssier et Jean Tulard (Paris: Robert Laffont, 2005, p. 830–2 [Auboin, *Histoire*]. See also Édouard Ébel, "Préfets de police (liste des)," in *op. cit.*, p. 834–5. Papon was responsible for violent repressions of the three manifestations that took place on October 17, 1962, December 19, 1962, and February 8, 1962. The first of them was organized by Algerians in protest against the curfew imposed on the North African population in Paris on October 5, 1962. Its repression led to casualties, the number of which is a hotly debated topic, ranging from more than 200 Algerians to a more recent estimate of a few dozens, both of which extremes are above Maurice Papon's exaggeratedly small figure of three. Papon resigned in 1966 after the Ben Barka affair, which involved two policemen in the kidnapping of the Moroccan leftist leader Ben Barka. Papon was later condemned for his activities during the Occupation and imprisoned in 1999. See Philippe Nivet, "PAPON Maurice," in *op. cit.*, p. 802–6 at 804–5.

Algeria. As a result of Papon's machinations, Vergès was sentenced on February 14, 1961 to a fifteen-day prison sentence.³⁴⁴

Vergès has to choose on whose side he was fighting? As a lawyer, he was part of the establishment. However, as the lawyer of his clients, he was against the establishment. As we saw, he said: “Le Français moyen aime Mandrin, d’Artagnan, Arsène Lupin, celui qui est seul contre tous et surtout contre l’establishment.”³⁴⁵ To accentuate his own rupture with the establishment, he relished the disciplinary measures he incurred over the years as a lawyer of rupture. Vergès’ legal troubles play a considerable role in his reminiscences. He refers to them often because the disciplinary measures to which he was subjected were in his eyes what elevated him to the level of one of the French ‘grands avocats,’ such as Jacques Isorni: “...j’étais suspendu un an et partis pour le Maroc qui m’offrait l’asile. Un an plus tard, Isorni était suspendu trois ans.” Clashes with the justice system allowed Vergès to make a political statement about the relativity of judicial decision. He illustrated that point paradoxically by way of his rapport with Jacques Isorni, who represented the opposite cause, that of French Algeria, during the Algerian War of Independence. Isorni’s most famous client was Marshal Pétain. Vergès describes in detail the 1961 encounter he had with Isorni after he had to appear before the *Conseil de l’Ordre* in Paris:

Sortant de la salle du Conseil, je croisai, devant le vestiaire, les accusés de l’Algérie française accompagnés de leurs avocats, et parmi ceux-ci Me Isorni. Se détachant de leur groupe, il pressa le pas pour me rejoindre avant que je n’ouvre la porte du vestiaire et me serra longuement la main.

³⁴⁴ See Faivre, *Conflits*, *supra* note 333 at 121.

³⁴⁵ See Vergès, *Avocat*, *supra* note 40 at 235. Louis Mandrin (1725–1755) was a French highwayman. d’Artagnan was the young daredevil mousketeer in Alexandre Dumas’ novel *The Three Musketeers*. Arsène Lupin is a fictional gentleman thief who appears in a book series written by Maurice Leblanc. The centrality of that comparison to Vergès is suggested by the comparison that his former coworker Isabelle Coutant drew between a lawyer and famous outlaws, such as Robin Hood, Cartouche [pseudonym of the French highwayman Louis Dominique Bourguignon], Mandrin, Jean Valjean [chief protagonist of Victor Hugo’s novel *Les Misérables*], and the French anarchist Jules Bonnot (1876–1912). See Coutant, *Carlos*, *supra* note 40 at 68–9. It is remarkable that neither of them mentioned their contemporary Jacques Mesrine (1936–1979), a bank robber and self-styled revolutionary, whose life inspired six films, including the *L’instinct de mort* and *L’Ennemi public n° 1* (2008). In those films, Vincent Cassel portrayed Mesrine as a *bon vivant* who liked good food and beautiful women, yet had the capacity to resort to extreme violence when his pride was at stake.

- Où en êtes-vous? me demanda-t-il.
- Je me suis défendu, lui dis-je. L'affaire est en délibéré à quinzaine mais je pense que je n'éviterai pas une suspension d'un an.
- Mon fils (c'est ainsi que les premiers secrétaires s'interpellent dans les circonstances graves et il avait été premier secrétaire de la Conférence avant moi), tenez bon, ne cédez pas. L'honneur du barreau, c'est vous, aujourd'hui, et je m'évertue à dire à mes amis, qui en ce moment nous foudroient du regard, qu'ils auraient tort de se réjouir de ce qui vous arrive. Nous paierions ce précédent au triple.³⁴⁶

Isorni told Vergès, despite their major political differences, that Vergès was the honour of the Bar. Isorni's choice of words, such as honour, reflects the virtues that adversaries shared in wartime. Vergès also stresses Isorni's prudence (one of the four cardinal virtues).³⁴⁷ Isorni told Vergès that he expected to be subject to the same sanctions as Vergès, only three times more of them. Vergès points out that Isorni was, indeed, suspended for three years while he was suspended for one year.

There is no mistaking the relish with which Vergès refers to those conflicts with the judicial establishment. "Je n'ai eu qu'une suspension d'un an, que je porte d'ailleurs comme une cravate"³⁴⁸ – le conseil de l'ordre qui m'a infligé cette n'en a pas été plus fier –, cette sanction ayant été demandée par Michel Debré contre moi parce qu'on n'était pas parvenu à me tuer."³⁴⁹ In that remark, Vergès implicitly criticizes the way that a body of the Bar, the

³⁴⁶ Vergès, *Dictionnaire amoureux*, *supra* note 74 at 483–4. Vergès provides a very similar account of the event in Felissi, *Anticolonialiste*, *supra* note 6 at 91–2.

³⁴⁷ In Plato's *Republic*, the four cardinal virtues were wisdom, courage, moderation, and justice. See Plato, *The Republic*; edited by G.R.F. Ferrari; translated by Tom Griffith (Cambridge: Cambridge University Press, 2000) at 120–9 (428b–434d). See also Julia Annas, *An Introduction to Plato's Republic* (Oxford: Clarendon Press, 1981) at 112–9. In the Middle Ages, the four cardinal virtues identified by the Roman Catholic Church, namely prudence, justice, fortitude, and temperance, were also read back into Aristotle's *Nicomachean Ethics*, which includes them among the virtues but did not ascribe them a privileged position. See István P. Bejczy, "The Cardinal Virtues in Medieval Commentaries on the *Nicomachean Ethics*, 1250–1350," in *Virtue Ethics in the Middle Ages: Commentaries on Aristotle's Nicomachean Ethics, 1200–1500*, edited by István P. Bejczy (Leiden: Brill, 2008) at 200.

³⁴⁸ Vergès told the Conseil de l'Ordre that his punishment was a cravat, not a cilice. See Vergès, *Intelligence*, *supra* note 263 at 198.

³⁴⁹ Vergès, *Avocat*, *supra* note 40 at 233.

Conseil de l'ordre,³⁵⁰ had let itself be influenced by the executive branch: Prime Minister Debré had asked the Conseil to take disciplinary measures against him.

Vergès could back up his belief that he was a victim of a plot to kill him with a passage from the memoirs of Colonel Muelle³⁵¹:

Les avocats du collectif FLN – Oussedik, Vergès, Ben Abdallah, Courrégé, Beauvillard, Radziewski, Zavrian – conclut le colonel [Raymond] Muelle, firent savoir qu'ils avaient reçu, le 13 mai, des lettres de menaces de mort. Ould Aoudia avait reçu la même lettre rédigée en caractère d'imprimerie, déposée chez le concierge du Palais de justice. Elle disait: « Tu vas mourir. » Le 26 mai, les sept avocats reçurent encore une fois une lettre anonyme qui ne contenait que deux mots: « Toi aussi! » Elles étaient numérotées de 2 à 8.³⁵²

The reason that Vergès stressed the possible assassination attempt and tied the disciplinary and legal measures against him to that attempt is to expose the political nature of the justice system. His confrontational attitude also provided his erratic career with coherence, to which Derrida referred in the face of the controversy or “fascination.” He shows that the line between the justice system and executive power, including the police, the army, and more intriguingly the secret services, is fine or practically non-existent.³⁵³ Vergès evokes all of

³⁵⁰ The “order” in the name of the *Conseil de l'Ordre* refers not only to “order” in the sense of discipline but, more importantly, to the Order in the sense of professional association. The name used to be *Conseil de discipline*, which overemphasized the disciplinary function. The Order has several other responsibilities besides disciplining its members, such as the preservation of the heritage of the Order, representation of the Order, regulation of the admission of lawyers, and so on. The Order is thus simply a synonym of the Bar. See generally Fernand Payen (ed.), *Les règles de la profession d'avocat et les usages du Barreau de Paris*, nouvelle édition par Jean Lemaire (Paris: Librairie générale de droit et de jurisprudence, 1966) at 61–74.

³⁵¹ Bernard Violet placed responsibility for the assassination squarely on the French intelligence agency, the *Services de Documentation Extérieure et de Contre-Espionage* (SDECE), and its special unit *11e Choc* which was under the direct leadership of Colonel Raymond Muelle. See Violet, *Vergès*, *supra* note 5 at 104.

³⁵² Raymond Muelle, *7 ans de guerre en France 1954–1962: Quand le FLN frappait en Métropole* (Monaco: Éditions de Patrimoine, 2001) at 146.

³⁵³ We will elaborate on Vergès' view on the line between law and politics below. However, those views are not exceptional among French lawyers. One of Vergès' younger colleagues, Paul Lombard drew attention to the separation of powers in the French legal system, and has attributed some of the compromises that were made related to that separation to De Gaulle's policy in Algeria. Lombard mentions that when De Gaulle reformed the legal system during the Algerian War of Independence by eliminating some tribunals and creating others, the system drew closer to the executive power. He also faults De Gaulle with reducing judicial power to a role in which he expected it to serve the interests of France, not of Frenchmen. Lombard also notes that the relative stability of the government under De Gaulle and the entire Fifth Republic, which came into being under De Gaulle, has entailed an erosion of the independence of judicial power. It is Lombard's conversation partner, Judge Simone Rozès, who mentions that “judicial power” became merely “judicial authority” in the text of the

those repressive measures against him to underline the fundamentally political functioning of the justice system. In his view, the criticism that he leveled at the state led the state to react against him but only succeeded in vindicating his point that it would resort to force to silence dissident views.³⁵⁴ The fundamental disagreement about the nature of the justice system, which according to him was political, was the disagreement about “principles” to which he referred in his explanation of the strategy of rupture. Our perception of those principles is conditioned by socio-cultural factors. Vergès’ project of exposing the political character of law and the justice system, which resides in his formulation of the strategy of rupture and the strategy of connivence, is the motivation for his recourse to military formulas in describing his legal career:

Si loin que je me souviene, la justice ne m’est jamais apparue comme une calme pesée d’âmes faite par des juges assis et sacrés, mais comme l’enjeu bien terrestre d’un combat entre le maître d’aujourd’hui et celui de demain. Son symbole pour moi n’a jamais été la balance du marchand mais la sagaie du guerrier.³⁵⁵

As the fluidity of the concepts that Vergès uses demonstrates, his interest in law is neither “technical” nor “practical” but “emancipatory,” to use Jürgen Habermas’ terms.³⁵⁶ Vergès’ reference to disagreements about principles is a question about emancipation. He

Constitution of 1958, which is the founding document of the Fifth Republic. See Rozès, *Dialogue*, *supra* note 146 at 72, 88, 104, 66.

³⁵⁴ Vergès’ point about law corresponds to Oliver Marchart’s point about politics: “...true politics always triggers operations of repression by the state and brings to light the state’s excessive power.” Oliver Marchart, *Post-foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau* (Edinburgh: Edinburgh University Press, 2007) at 121.

³⁵⁵ Jacques Vergès, *Beauté du crime* (Paris: Plon, 1988) at 9.

³⁵⁶ Habermas distinguished *technical* cognitive interest, *practical* cognitive interest and *emancipatory* cognitive interest. He also grouped different sciences according to which interest was most prominent in them: *empirical-analytic* sciences are dominated by the technical interest; the *historical-hermeneutical* sciences by the practical interest; and, *the sciences of social action* by emancipatory interest. The first group is governed by observation, the second by interpretation, and the third by self-reflection. See Jürgen Habermas, *Knowledge and Human Interests*, Translated by Jeremy J. Shapiro (Boston: Beacon Press, 1968) at 308–311 [Section V of the Appendix]

deemphasizes legal technique and puts the emphasis on “art” instead: “...avant d'être un technicien, l'avocat doit être un artiste.”³⁵⁷

By exposing the fundamentally political nature of law he also seeks emancipation.³⁵⁸ In support of his argument that law is an instrument of class oppression and hence a political institution, in *De la stratégie judiciaire*, Vergès did not quote lawyers but instead made reference to Chairman Mao. Vergès indicated his view of the inherently political nature of the justice system and the close link between executive and judicial power and the service they both render to the “State” in his quotation of Mao at the beginning of *De la stratégie judiciaire*: “L'appareil d'État, qui comprend armée, police et justice, est l'instrument avec lequel une classe en opprime une autre.”³⁵⁹ Vergès' quotation indicates his belief in the interlinkage of politics, its class character, and the key branches of government, notably the executive branch (the army and the police) as well as the justice system. He would express that same idea decades later in general terms: “...il y a toujours des dominant et des dominés. La justice est là pour mettre de l'huile dans les rouages d'une société où il y a des gens qui en dominant d'autres.”³⁶⁰

The generality of those observations indicates that Vergès had come to realize the limits of revolution. He said that there would always be rulers and those who would be ruled, which

³⁵⁷ Vergès, *Journal*, *supra* note 83 at 208.

³⁵⁸ That emancipation by politics was expressed by Oliver Marchart: “...true politics always triggers operations of repression by the state and brings to light the state's excessive power. In this sense, one can say that politics has a provocative function. This kind of thesis implies that the essence of politics is emancipatory. In other words, if true politics is directed against the state by definition, then there is no politics worth the name which is not emancipatory.” Oliver Marchart, *Post-foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau* (Edinburgh: Edinburgh University Press, 2007) at 121.

³⁵⁹ Vergès, *Stratégie judiciaire*, *supra* note 7 at 4. The English translation is “Such state apparatus as the army, the police and the courts are instruments with which one class oppresses another.” Vergès identified the quote as coming from Mao's speech *The Situation and Our Policy After the Victory in the War of Resistance Against Japan*, although those words did not occur in that speech. They are from another speech by Mao, *On People's Democratic Dictatorship: written in Commemoration of the 28th Anniversary of the Chinese Communist Party, July 1, 1949*.

³⁶⁰ Vergès, *Avocat*, *supra* note 40 at 203.

in contrast with Chapter II of the Communist Manifesto:

In proportion as the exploitation of one individual by another will also be put an end to, the exploitation of one nation by another will also be put an end to. In proportion as the antagonism between classes within the nation vanishes, the hostility of one nation to another will come to an end.

When Vergès says that there would always be the ruled, he expresses his disillusionment with one of the basic tenets of communism. Presumably, he was talking from personal experience after the revolutionary cycles in Algeria when one revolution toppled the regime put in place by another. A revolution would not abolish domination but would instead substitute one set of rulers for another.

3.1.3. The vindication of Vergès' strategy of rupture in amnesty

Vergès' appeal to the predominance of politics has technical implications. Vergès' success as a lawyer pivoted on the institution of amnesty or pardon (*amnistie* or *grâce* in French).³⁶¹

The best-known form of pardon is the presidential pardon, which allows the President of the Republic to annul a sentence passed down by a court. A pardon can be total or partial. In the latter case, the President modifies the sentence, in the former case, he annuls it. A special characteristic of the pardon in France is the capacity to administer a collective pardon, a capacity the President of the Republic inherited from the French monarchy. In the Republican tradition, the timing of the collective pardon was July 14, the French national holiday.³⁶²

Pardon was part of the Évian Accords between France and Algeria that led to the independence of Algeria. The accords were signed on March 18, 1962, and the ceasefire between the FLN and the French authorities became effective the following day. A referendum on the Évian Accords was held in Algeria on July 1, 1962 and Algeria became

³⁶¹ Amnesty and pardon are so-called institutions of clemency, the third being the statute of limitations (*prescription*). Although amnesty and pardon are today practically interchangeable, their historical distinction is the degree to which the crime is forgotten and the perpetrator is forgiven. Amnesty is "l'oubli opportun and rétroactif." Pardon is limited to the punishment: "l'oublie discrétionnaire de la peine." In contrast, the *prescription* is "l'oubli automatique." See generally Mathilde Philip-Gay, "France," in *La clémence saisie par le droit: amnistie, prescription et grâce en droit international et comparé*, sous la direction de Hélène Ruiz Fabri ... [et al.] (Paris: Société de législation comparée, 2007, p. 407–454).

³⁶² July 14 has been celebrated as a national day in France only since 1880. It commemorates the Fête de la Fédération in 1790, which was celebrated on the first anniversary of the storming of the Bastille, which in turn marked the end of absolute monarchy in France (for which reason it is called Bastille Day in English). The Fête de la Fédération celebrated the establishment of the constitutional monarchy in the presence of Louis XVI, who was guillotined two and a half years later in 1793.

independent when the results were made public on July 3, 1962 with six million in favour and fewer than 20,000 against.³⁶³ The Évian Accords granted a mutual amnesty to combatants on both sides, as provided in paragraph k of their first chapter: “L’amnistie sera immédiatement proclamée. Les personnes détenues seront libérées.”³⁶⁴ That general provision was followed by two special laws: *amnistie des infractions commises au titre de l’insurrection algérienne* of March 22, 1962 and *amnistie générale de toutes infractions commises en relation avec les événements d’Algérie* of July 31, 1968.³⁶⁵ As a sign of the pronounced political character of amnesty, the militants on the side of French Algeria, notably the imprisoned members of the Organisation de l’armée secrète (OAS), did not benefit from the amnesty granted by the Évian Accords.³⁶⁶ They benefited from an amnesty that occurred due to political manoeuvring that followed the chaos in the wake of the May 1968 uprising.³⁶⁷ Vergès’ track-record of having no clients executed during his career is mainly a function of the collective pardons effected by the Évian Accords.³⁶⁸

Vergès is clear about the effectiveness of rupture in terms of human lives: “La défense de rupture a été extraordinairement économe en vies humaines.”³⁶⁹ Vergès explains further that

³⁶³ See Benjamin Stora, *Algeria, 1830–2000: A Short History*, translated by Jane Marie Todd, foreword by William B. Quandt (Ithaca, N.Y.: Cornell University Press, 2001) at 104 [Stora, *Algeria*]. See also the *Journal officiel de l’État algérien* of July 6, 1962 at <http://www.joradp.dz/JO6283/1962/001/FP3.pdf>.

³⁶⁴ See *Les accords d’Évian du 18 mars 1962* at http://www.tlfq.ulaval.ca/axl/afrique/algerie-accords_d%27Evian.htm. The entire text of the accords was published in *El Moudjahid* on March 19 and *Le Monde* on March 20, with some differences between the two versions, notably as regards the party that signed the treaty with France. For the meaning of *amnistie*, see *supra* fn. 363.

³⁶⁵ See Givet, *Le cas*, *supra* note 13 at 75.

³⁶⁶ See Christian Plume, Pierre Démaret, *Target de Gaulle: the Thirty-one Attempts to Assassinate the General*; translated from the French by Richard Barry (London: Secker and Warburg, 1974) at xiii.

³⁶⁷ See Capitaine Paul Barril, *L’Enquête explosive* (Paris: Flammarion, 2000) at 263 [Barril, *Enquête*]. Barril is not explicit about his reference to the manoeuvring but he suggests that the former OAS sympathizers had remained loyal to the establishment during the May 1968 uprising and expected an appreciative gesture from the government.

³⁶⁸ On occasion, Vergès criticizes the amnesties of crimes committed during the Algerian War when he considers himself a victim. For instance, in his reconstruction of events, Colonel Raymond Muelle was ordered to assassinate him. Muelle admitted that order. See Raymond Muelle, *7 ans de guerre en France 1954–1962: Quand le FLN frappait en Métropole* (Monaco: Éditions de Patrimoine, 2001) at 146. Vergès criticizes the amnesty in Muelle’s case: “Les juges n’ont rien trouvé et les aveux du colonel Muelle concernent un crime amnistié.” Jacques Vergès, *Les crimes d’État: La comédie judiciaire* (Paris: Plon, 2004, Vergès, *Crimes* at 167–8.

³⁶⁹ Jean-Pierre, *Miroir*, *supra* note 113 at 145.

he means that none of his clients has been executed: “Je n’ai jamais eu de client exécuté.”³⁷⁰

Vergès says that he had 300 cases during the Algerian War of Independence and, although a hundred of his clients were condemned to death, none of them was executed.³⁷¹

Amnesty points to the importance of politics in Vergès’ practice. Once he has bypassed the judiciary, he establishes a dialogue between himself and the executive branch of government. That bypassing of the judiciary had started during the Algerian War.³⁷² Vergès’ principle that “Un procès n’est jamais terminé” reflects his belief that the closure that justice seeks camouflages its political underpinnings.³⁷³ He says: “Je déteste rien tant que les résignés. Le procès terminé, la condamnation prononcée, le jeu continue. Le temps est galant homme pour ceux qui le méritent.”³⁷⁴ Vergès’ clients benefited from amnesty in the Évian Accords and the abolition of the death penalty, through Vergès’ resolute pursuit of the cause of his client. In the case of Djamila Bouhired, thanks to Vergès’ energetic media campaign, the *Conseil* had been flooded by thousands of telegrams from around the world pleading for a pardon for Bouhired. The French President Coty granted a partial pardon, and commuted the death sentence to forced labour for Bouhired and the two other convicts.³⁷⁵ Part of Vergès’ campaign was his publication of *Pour Djamila Bouhired* in November 1957, which elicited a response from De Gaulle, who would be elected president about a year later. In that letter, dated December 8, 1957, De Gaulle congratulated Arnaud and Vergès on *Pour Djamila Bouhired*.³⁷⁶

³⁷⁰ Vergès, *Avocat*, *supra* note 40 at 117. See also Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 3.

³⁷¹ Vergès, *Nancy*, *supra* note 167.

³⁷² He referred to that bypassing generally in his statement “J’ai donc considéré le prétoire comme un champ de bataille qui devait devenir public, afin que je puisse me battre à égalité contre les juges.” Felissi, *Anticolonialiste*, *supra* note 6 at 46.

³⁷³ Barril, *Enquête*, *supra* note 367 at 362.

³⁷⁴ Vergès, *Jeu*, *supra* note 42 at 144.

³⁷⁵ See Violet, *Vergès*, *supra* note 5 at 86.

³⁷⁶ Quoted in Violet, *Vergès*, *supra* note 5 at 85–6.

To give De Gaulle's letter extra weight, Jacques notes that De Gaulle's family released it in the collection *Lettres, notes et carnets*, published by Plon.³⁷⁷ Unfortunately, the letter remained apocryphal: the collection does not contain it.³⁷⁸ However, the anecdote illustrates that it is worthwhile to keep fighting for one's clients. De Gaulle's letter became the source of particular pride to Vergès when De Gaulle became President in January 1959.

By his tenacity, Vergès contributed to a much broader change in the political perception of the Algerian conflict. He was able to accomplish that broad change with his skilful manipulation of the media. However, "manipulation" does not capture the scope and depth of the role that Vergès played in the broader political change: Before French intellectuals, such as Jean-Paul Sartre and Pierre Bourdieu, started to shape public opinion to be more sympathetic to the Algerians' struggle, it was lawyers, such Pierre Stibbe, Yves Dechézelles and Vergès, who were in closest contact with the independence movement, and who encouraged the articulation of its aspirations in a way that made them understandable to Europeans.³⁷⁹

Vergès' first clients belonged to demographic groups to which public opinion responded. Public opinion in Europe responded to the fate of women, communists, and Europeans. Only six women were sentenced to death in Algeria, and all of them were amnestied. Of the Europeans, Fernand Iveton was finally the only one to be executed.³⁸⁰ The word "Europe" meant mainland France and the "Europeans" meant Frenchmen, which implies that the outrage caused by those death sentences was also restricted to France. However, the outrage caused by those death sentences was not limited to France. Vergès would stress the role of

³⁷⁷ See Felissi, *Anticolonialiste*, *supra* note 6 at 49–50.

³⁷⁸ See Charles De Gaulle, *Lettres, notes et carnets*: Juin 1951–Mai 1958 (Paris: Plon, 1985) at 337. The only letter written in December 1957 is addressed to Admiral Thierry d'Argenlieu. In his email to Jonathan Widell on March 7, 2010, Robert Chaudenson indicated that he did not doubt the existence of the letter although he had not tried to locate it in the collection nor seen a copy of it.

³⁷⁹ See Marco Ferro, *Colonization: A Global History*, translated from the French by K.D. Prithipaul (Quebec: World Heritage Press, 1997) at 180.

³⁸⁰ See Thénault, *Drôle de justice*, *supra* note 342 at 88–9.

the “pression internationale,” which was an oblique reference to the growing weight of the Third World on the international scene and, in particular, some of its leading members, such as China.³⁸¹

Designed to stir up political passions, the strategy of rupture was not original in its argumentation. Argumentation played a secondary role. Its function was to prolong the legal proceedings enough for a major change in politics to intervene for the benefit of his client in the form of a pardon. Striking images contributed to that tactic of stalling. Vergès singles out the use of images as one of his major discoveries during the Algerian War of Independence: “...je sentais qu’il fallait toucher l’opinion métropolitaine et internationale non par des considérations compliquées, mais par des images très simples.”³⁸² His use of images fell into the category of agitation, which, as we have seen, addressed the masses by using some recent events to mobilize them. Vergès put agitation, which he had borrowed from communism, to non-communist use. He described the process as follows: “C’est seulement lorsque l’opinion publique était alertée par le scandale d’un procès sans concession que le gouvernement reculait devant l’exécution des condamnés à mort.”³⁸³ The media played a central role in the success of that agitation. Vergès stresses the importance of all the modern media in his description of the FLN:

Ils ont su utiliser toutes les armes modernes d’information: édition, presses, radiodiffusion-télévision, cinéma. Des livres traduits en une dizaine de langues, un film diffusé devant des millions de spectateurs, une presse spéciale tirant à des dizaines de milliers d’exemplaires ont contribué à populariser par le truchement des procès la lutte du peuple algérien aux quatre coins du monde.³⁸⁴

³⁸¹ See Serge Michel, Michel Beuret, *La Chinafrique: Pékin à la conquête du continent noir*, photographies de Paolo Woods (Paris: Bernard Grasset, 2008) at 34 [Michel, *Chinafrique*].

³⁸² Felissi, *Anticolonialiste*, *supra* note 6 at 49.

³⁸³ Vergès, *Stratégie judiciaire*, *supra* note 7 at 194.

³⁸⁴ *Ibid* at 198.

The agitation described by Vergès depended on the fighters' wholehearted commitment to their cause. In *De la stratégie judiciaire*, Vergès listed nine factors that accounted for the success of FLN fighters in their legal battles. Firstly, the fighters had faith in their cause. Second, they did not pay attention to the price of achieving victory. Third, in the legal proceedings, they fought for their cause, not for themselves. Fourth, they refused dialogue with the prosecution, not expecting concessions from the justice system, which they considered antagonistic. Fifth, they knew how to bring order out of chaos, arguing that if maintaining order meant slavery and oppression, disorder would be preferable to order because it would usher in justice and freedom. Sixth, they knew how to turn defense into accusation. Seventh, they internationalized the debate instead of keeping it national. Eighth, they used all the modern media. Ninth, their willingness to sacrifice themselves for their cause had the paradoxical effect of saving their lives because their staunch resistance made them too dangerous for the authorities to execute.³⁸⁵

3.1.4. *Judicial error*

The gap between the judicial and the executive branches of government points to the prevalence attributed by Vergès to judicial error. To Vergès, pardon is where political expediency undercuts the claims of justice to be absolute. After noting that “[l]e temps est galant homme pour ceux qui le méritent,” he emphasized the absolute nature of pardon: “Le droit de grâce est un droit régalien. Il vient des rois, oints du Seigneur. Il est absolu.”³⁸⁶

Since Vergès was in a wartime setting in Algeria, his contribution as a lawyer to the FLN effort was to exploit the ambiguity of the legal status of the Algerian War of Independence. He drew attention to the legal ambiguities surrounding the way the French administration had

³⁸⁵ See Vergès, *Stratégie judiciaire*, *supra* note 7 at 196–9.

³⁸⁶ Vergès, *Jeu*, *supra* note 42 at 144–5.

organized repression in Algeria. Those ambiguities were crystallized in the terminology surrounding the Algerian conflict. His question was which normative framework governed the armed conflict in Algeria: the criminal law, the state of emergency, or public international law? To answer that question in *Les crimes d'État* in 2004, Vergès provided an almost verbatim quote drawn from *Défense politique*, itself published in 1961³⁸⁷

- ou bien les prisonniers algériens sont des malfaiteurs, il convient alors de leur réserver toutes les garanties légales accordées aux malfaiteurs à part entière. La répression devient alors impossible;
- ou bien le gouvernement français fait appliquer aux Algériens une législation d'exception raciste, mais par cela même, il nie la thèse d'une simple opération de police dirigée contre les nationaux sur laquelle, pourtant, il fonde la compétence de ses tribunaux;
- ou bien le pouvoir exécutif et le Parlement, reconnaissant qu'il existe un conflit armé en Algérie et que l'Algérie n'est pas la France, ils doivent alors abroger tous les textes d'exception au lieu de les étendre, et reconnaître aux prisonniers algériens le statut de combattants, au lieu de les traiter en moins-que-des-droits-communs.³⁸⁸

Vergès reviewed those legal characterizations of the Algerian conflict and showed their mutual incompatibility. Rather than appealing to legal principles with a view to correcting the course of judicial proceedings, Vergès subverted the justice system from within. He turned the ambiguities of the legal characterization of the Algerian conflict against the authority of the justice system whose task it was to apply the law despite the ambiguities that Vergès had identified. The trilemma that he created among its different legal qualifications exposed the indeterminacy of law.³⁸⁹ Vergès thus deprived politics of a legal “fig leaf” behind which to hide, and forced observers to let facts speak for themselves.³⁹⁰

³⁸⁷ See Benabdallah, *Défense politique*, *supra* note 24 at 51–2.

³⁸⁸ Vergès, *Crimes*, *supra* 334 at 166.

³⁸⁹ Vergès wrote: “la justice est une entreprise aléatoire.” See Vergès, *Dictionnaire amoureux*, *supra* note 74 at 297.

³⁹⁰ General Maurice Faivre provided a more nuanced picture of the Algerian conflict, suggesting that it consisted of a number of small conflicts of varying intensity. The military on the field fought the rebels in a civil war. The state of war remained implicit because France was reluctant to subject Algerian territory to martial law. Instead, France imposed a state of emergency, deployed special powers, and merged civilians and the military in the most troubled regions. The military assumed the powers of the police only when the police proved unable to control the situation. See Faivre, *Conflits*, *supra* note 333 at 21–23.

The Algerian War showed how closely-linked politics were to a special vocabulary of ‘officialese.’ Officialese camouflaged the politics behind repressive measures. It was that vocabulary to which Vergès referred with his observations about the nature of the conflict. Mourad Oussedik, one of the lawyers for the FLN lawyers’ collective, explained that their objective was to replace the official lexicon with its anti-establishment counterpart. If the FLN was to recognize the conflict as war, it did not need to wait for France to do so. The alternative vocabulary was consciously inversionary and iconoclastic:

‘War’ rather than ‘pacification’ and ‘police operation’, ‘kidnappings’, ‘disappearances’, ‘prisoners of war’, ‘solidarity’, ‘common combat with the French’; for the French ‘the defence of the principles of 1789’, ‘anti-torture aid’, ‘anti-colonialism aid’, ‘a show of solidarity to enable Algeria to achieve independence’ and ‘the honour of France’. These were the keywords.³⁹¹

The authorities made use of the double mystification of resorting to law and using euphemistic language inside the framework of law.³⁹² As a lawyer, Vergès sought to push back against the mystification and expose it as a smokescreen for political machinations.

In an effort to make his strategy of rupture pertinent to our perception of the justice system in general, Vergès has endeavoured to show the prevalence of judicial error in the justice system. The example that he used in *Les erreurs judiciaires* was a much later case, that of Omar Raddad in the early-1990’s.³⁹³ By drawing attention to judicial error, he alluded to one

³⁹¹ Interview with Mourad Oussedik, Paris, 9 November 1989, quoted in Martin Evans, *The Memory of Resistance: French Opposition to the Algerian War (1954–1962)* (Oxford: Berg, 1997) at 182. Oussedik’s observations are reminiscent of George Orwell’s well-known essay *Politics and the English Language* from 1946.

³⁹² Law and euphemisms can act in concert to the same dehumanizing effect of repositioning people in a limbo state of literal and metaphorical incarceration. See David Kelleher, Gerard Leavey, *Identity and Health* (New York: Routledge, 2004) at 42.

³⁹³ See Vergès, *Erreurs*, *supra* 195 at 102–6. Raddad was a Moroccan gardener who was accused of killing his employer, Ghislaine Marchal, a rich widow at her villa *La Chamade* in the village of Mougins. Mrs Marchal was murdered on June 23, 1991. See François Foucart, *L’affaire Omar Raddad: le dossier pour servir la vérité* (Paris: F.-X. de Guibert, 1998) at 11. The trial opened on January 24, 1994. See *op. cit.* at 140. The last hearing was on February 2, 1994. See *op. cit.* at 180. Raddad was sentenced to imprisonment for 18 years whereas the maximum would have been 20 years. See *op. cit.* at 192. Vergès launched a large-scale media campaign to draw the public’s attention to Raddad’s plight. Vergès’ media campaign included publishing a book, *Omar m’a tué*.

aspect of his practice, namely pardon. Vergès did not identify pardon as a key factor in success in *De la stratégie judiciaire*. Instead, he would point to that outcome only later, for instance in his discussion with Thierry Jean-Pierre:

TJP – Comment s’est terminée l’affaire Omar Raddad?

JV– Par une grâce, comme souvent en cas d’erreur judiciaire.³⁹⁴

Contrary to the role of the pardon, on which Vergès does not elaborate beyond fleeting references to it (such as the one to the pardon of Omar Raddad), the concept of judicial error is elementary in his judicial strategy. The justice system does not deny that judicial errors happen. However, it would not agree with Vergès’ portrayal of judicial error. Vergès makes his point in evocative terms, comparing the self-perception of the justice system to a God complex. The thrust of Vergès’ judicial strategy is that the justice system is fallible, arguing that fallibility is not an exception but the rule in the justice system. He contrasted the fallibility of that system with the infallibility of God, which it implicitly claimed to possess. “Ce sont les excès de la justice: elle se prend pour Dieu, mais elle n’est pas Dieu.”³⁹⁵ Vergès argued that by denying its human quality and thus its fallibility, the justice system only aggravated its failures: “L’excès permanent de la justice est de prétendre être absolue. C’est de ne pas comprendre qu’elle est une œuvre humaine, et spécialement imparfaite.”³⁹⁶ He turned the tables on the justice system by depicting his clients as human. The problem that he addressed was the dehumanization of his clients. Vergès said of his work for the benefit of his clients, with a clear allusion to Barbie: “Bien sûr, je banalise, puisque j’essaie de mettre à notre échelle humaine des actes que vous excluez de notre humanité. Vous en faites un

See Jacques Vergès, *"Omar m'a tuer": histoire d'un crime* (Paris: Michel Lafon, 1994). The title of the book refers to one of the defence’s central arguments: a well-educated lady like Madame Marchal could not have made a grammatical error when writing the name of her murderer with her blood on the wall. The grammatically correct expression would have been “Omar m’a tuée.” Both *tuer* and *tuée* are pronounced the same way but French speakers tend to regard that type of mistake as too gross for an educated person like Marchal to make. Raddad was pardoned by President Jacques Chirac in 1996 and was set free in 1998.

³⁹⁴ Jean-Pierre, *Miroir*, *supra* note 113 at 223.

³⁹⁵ Vergès, *Avocat*, *supra* note 40 at 231.

³⁹⁶ *Ibid* at 230.

Diable, or c'est un être humain, comme vous et moi.”³⁹⁷ Vergès pointed dehumanization as well as demonization of his clients, in particular Barbie.³⁹⁸ By defending a demonized person, he ended up pitting the devil against God. The demonization of some of Vergès' clients was, for him, an indication that the system thought it was God and thus perfect. By cultivating an aura of infallibility, the justice system closed its eyes to its own failings. Lawyers could choose to close their eyes too, which was the original meaning of the verb “connive,” or open their eyes in rupture.

The reason that Vergès did not refer to pardon when he said “Je n'ai jamais eu de client exécuté” may have had to do with his desire to emphasize his own abilities of persuasion, rather than any intervening political changes. Another reason may have been his rejection of the idea that his clients were in need of a pardon (or grace, as the French version would have it) because that choice of words implied they were guilty. By emphasizing the relationship between pardon and judicial error, Vergès shifted the blame for wrongful convictions to the justice system. The pardon amounted to an admission of guilt on the part of the state: it involved the President, as the head of the executive branch, atoning for the mistakes made by the judicial branch.

3.2. The Reversal of Conventional Roles in Vergès' Judicial Strategy

In the spirit of Williard's *La défense accuse*, Vergès accuses the accusers. The last line of his inverted defence is the elevation of the case from a national to an international level.

Although Vergès developed the terminological opposition between rupture and connivence only in 1968, he situated the fundamental opposition between the two approaches to legal

³⁹⁷ *Ibid* at 29.

³⁹⁸ Dehumanization means the belief that “other people inherently lack qualities fundamental to being fully human in the sense of deserving moral respect, rights, and protection” while demonization means the belief that the people are “literally or figuratively, demonic, morally evil.” See Daniel Jonah Goldhagen, *Worse than War: Genocide, Eliminationism, and the Ongoing Assault on Humanity* (New York: PublicAffairs, 2009) at 319.

defence in the context of the Algerian War. He also described that opposition in terms of two political viewpoints, the revolutionary and the leftist:

Le dialogue est devenu impossible. Et je me suis dit que c'est là où gît le désaccord avec mes confrères de la gauche française. Eux, appartenant à des partis français, situaient le débat sur le plan de la Constitution française. Leurs arguments étaient: « Si on avait appliqué le statut de l'Algérie, tout cela ne serait pas arrivé. On a fait des élections frauduleuses.³⁹⁹ On a violé la loi. » Je leur répondais: « On n'a pas violé la loi. Depuis 1830, c'est une situation injuste qui est créée. Et c'est seulement aujourd'hui que les choses sont arrivées à maturité, que la lutte pourra déboucher sur l'indépendance. » Il n'y avait plus de dialogue possible. D'où venait la rupture? Les avocats de la gauche française plaidaient la *connivence*, ils plaidaient l'ordre public *français*, la loi française, tandis que nous plaidions le droit des gens, le droit public *international*.⁴⁰⁰

Vergès stressed the importance of appealing to “the law of nations, public international law.”

As a lawyer, in order to preserve his own effectiveness, he could not break with legality altogether. Instead of breaking with legality, Vergès changed the venue from national to international bodies and concepts. A break with legality on the national level reinforced legality at the international level.

As Vergès' remark “nous plaidions le droit des gens, le droit public international” suggested, revolution thus did not mark a complete break with legality. The question was more fundamental than the specific context of the Algerian War, and instead pointed to the paradoxical relationship between law and revolution. In the opinion of Auguste Comte, the founder of modern sociology, law assumed its full significance at the time of “revolutionary transition,” the illusion of “equality of rights” reinforcing the disintegrating and anarchical character of the epoch.⁴⁰¹ Comte's view demonstrated that law and revolution are not mutually exclusive but rather presuppose each other. A lawyer could stoke the fires of

³⁹⁹ See O'Ballance, *Insurrection*, *supra* note 10 at 34–5.

⁴⁰⁰ Vergès, *Avocat*, *supra* note 40 at 91. (Emphasis added.)

⁴⁰¹ Quoted in Georges Gurvitch, *Sociology of Law* (London: Routledge & Kegan, 1947) at 12.

revolution by adhering to the law. As one novelist put it, "...everything could be brought to a standstill far more speedily by the strictest observance of all the official regulations than by the most ruthless anarchy."⁴⁰² The difference was that Comte claimed that "anarchy" and the law were not two separate but mutually complementary phenomena.

The reversal of the roles of the defense and the prosecution (which was item number six in Vergès' enumeration of the key factors of FLN successes in *De la stratégie judiciaire*) may ultimately have reinforced the hold of the new emerging legal order on the Algerian revolution. The reversal of roles only reversed one legal order and installed another one. The regime that came to power was not necessarily less ruthless after the *de facto* mass expulsion of Frenchmen.⁴⁰³ The revolt that Vergès staged in his strategy of rupture at the time of the Algerian War may have played into the hands of the judicial order that was established in its wake. For instance, in 1960 Vergès made the flamboyant claim that the defence was the *maîtresse du jeu*: "Au terme de ces trios jours de débat, la prévue est faite que la défense peut, car elle est maîtresse du jeu, ordonner ce procès comme elle l'entendra, le faire durer six mois."⁴⁰⁴

⁴⁰² Robert Musil, *The Man Without Qualities*; translated from the German by Sophie Wilkins, Burton Pike (New York: A.A. Knopf: Distributed by Random House, 1995) at 487–8 (Chapter 98). Musil was describing the passive resistance during "the first strike ever of the Imperial and Royal Telegraph" in Austria-Hungary.

⁴⁰³ A gripping first-hand account of the new legal order in post-independence Algeria from the viewpoint of a former Algerian Frenchman is provided in Jean Monneret, *Mourir à Alger: été 1962* (Paris: Harmattan, 2003 [Monneret, *Mourir*]).

⁴⁰⁴ That trial was the Jeanson network trial. Violet, *Vergès*, *supra* note 5 at 117. That preposterous claim makes a mockery of the French doctrine according to which "le juge...doit être le 'patron' de l'enquête." Charles Villeneuve, Jean-Pierre Péret, *Histoire secrète du terrorisme: les juges de l'impossible* (Paris: Plon, 1987) at 23 [Villeneuve, *Terrorism*]. The expression *maîtresse du jeu* is a distortion of the principal according to which the lawyer is a *dominus litis*, the "owner" of the lawsuit after receiving authorization from his client, the principal (*dominus*). See Alexander M. Burrill, *A Law Dictionary and Glossary: Containing Full Definitions of the Principal Terms of the Common and Civil Law ...: Compiled on the Basis of Spelman's Glossary, and Adapted to the Jurisprudence of the United States*, 2d ed, Reprint (New York: Baker, Voorhis, 1867; Littleton, Colo.: F.B. Rothman, 1987) at 163 s.v. *Litis dominium*.

3.3. Vergès' Affinity with the Bourgeoisie during the Algerian War

Regardless of the sense of personal accomplishment that Vergès may have derived from the revolutions in which he was involved, they fell short of the proletarian revolution. The clear distinction between the proletariat revolution and the bourgeois revolution, on which Lenin elaborated in *Two Tactics of Social-Democracy in the Democratic Revolution*, is mitigated in the case of the Algerian Revolution because it was a compromise between proletarian and bourgeois revolutions. As Vergès indicated, he was from a bourgeois family. Similarly, the principal female characters of the revolution who became the face of the Algerian struggle in Europe also had a bourgeois background. Djamila Bouhired's father was an Algerian businessman of some means. The members of her family were French citizens, and she attended a French vocational school. Zohra Drif, who was an associate of Yacef Saâdi during the Battle of Algiers (1956-8), was also a member of the new middle class. She was the daughter of a *cadi* (a Muslim magistrate who fulfils judicial and religious duties) and a law student. A later female hero, Djamila Boupacha, also came from a middle-class background. Gisèle Halimi and Simone de Beauvoir described her torture at the hands of French authorities in *Djamila Boupacha*, which was published in 1962.⁴⁰⁵ While not from the proletariat, these women had the motivation to commit violent acts, notably exploding bombs, to upset the existing political order. The background of their self-sacrifice was their “‘relative deprivation’ as Algerian women in the comparatively egalitarian culture of the lycée and university.”⁴⁰⁶

⁴⁰⁵ See generally Simone de Beauvoir and Gisèle Halimi, *Djamila Boupacha: The Story of a Young Algerian Girl which Shocked Liberal French Opinion*, Translated from the French by Peter Green (New York: MacMillan, 1962). The Algerian War of Independence had just ended when that book came out, which dulled much of its edge.

⁴⁰⁶ Peter R. Knauss, *The Persistence of Patriarchy: Class, Gender, and Ideology in Twentieth Century Algeria* (New York: Praeger, 1987) at 80–1.

The factor that ultimately subverted the role of communists in the Algerian War of Independence was Islam as the unifying force of otherwise disparate Algerian groups.⁴⁰⁷ After quitting the communist party, Islam played a role in Vergès' personal life, too. After marrying Djamila Bouhired, in order to put her family at ease, Jacques converted to Islam and adopted the Arabic name Mansour, which was his former *nom de guerre*.⁴⁰⁸

The waning communist influence was reflected in the marginalization of the Algerian Communist Party, which represented itself as the vanguard of the proletarian revolution, in the course of the Algerian Revolution. Individual members of the *Parti communiste de l'Algérie* (PCA) had joined the FLN on July 1, 1956.⁴⁰⁹ The PCA had been dissolved on September 13, 1955.⁴¹⁰ Like the FLN, the PCA had believed in armed struggle. It had organized an armed unit to fight for independence, *Combattants de la liberté* (CDL).⁴¹¹ That unit provided Yacef Saâdi, responsible for the so-called autonomous zone (the capital Algiers) during the Battle of Algiers (1956-7), with his best experts in explosives.⁴¹² A cynical view had it that the FLN got rid of the remnants of the party by using them for suicide missions to eliminate communist elements from the FLN.⁴¹³

⁴⁰⁷ An evaluation of the role of Islam as a constitutive force of Algerian nationalism is subject to the political vicissitudes of the moment. According to Benjamin Stora, current Algerian school books exaggerate the importance of the Islamic views propounded especially by Abdelhamid Ben Badis (1889–1940) in the constitution of Algerian nationalism. See Stora, *Algeria*, *supra* note 363 at 233 (Conclusion).

⁴⁰⁸ See Violet, *Vergès*, *supra* note 5 at 145–6.

⁴⁰⁹ See Hafid Khatib, *1er juillet 1956: L'accord FLN-PCA et l'intégration des "Combattants de la libération" dans l'Armée de Libération Nationale en Algérie* (Alger: Office des publications universitaires, 1984) at 109.

⁴¹⁰ See Colette et Francis Jeanson, *L'Algérie hors la loi*, deuxième édition revue et mise à jour (Paris: Éditions du Seuil, 1955) at 220.

⁴¹¹ Little information on that unit is available. See Galland, *Tête*, *supra* note 272 at 148.

⁴¹² See Rémi Kauffer, "Communisme et terrorisme," in Stéphane Courtois ... [et al.], *Le livre noir du communisme: crimes, terreur et répression*, avec la collaboration de Rémi Kauffer ... [et al.] (Paris: R. Laffont, 1997, p. 497–506) at 498.

⁴¹³ That cynical view implies that grouping disparate elements in Algerian society under the flag of Islam excluded the accommodation of communists, who were stigmatized because of their atheism. That view is advocated in O'Ballance, *Insurrection*, *supra* note 10 at 214.

In the bourgeois atmosphere that surrounded the FLN trials, Vergès' style of defence conformed to the bourgeois mentality of the defendants.⁴¹⁴ Notably, his strategy was intent on saving the lives of the persons whom he defended, which cast a shadow on the intransigence of some of the elements Vergès had identified in the FLN strategy in *De la stratégie judiciaire*, notably the first point that Vergès mentions in his summary of the key factors of succes, namely faith in one's cause.⁴¹⁵ Vergès had argued consistently in *Pour Djamila Bouhired* that she did not belong to the FLN. Instead, he insisted that she had not joined the FLN until four months before her arrest, which suggested she had joined at approximately the same time as the first bomb explosions of January 26, 1957, with which she was charged.⁴¹⁶ Towards the end of his book, Vergès went on to emphasize the charitable nature of the FLN by focusing on three young women who helped that organization, without explaining clearly that he was not talking about Djamila. Vergès used the statements supposedly made by an anonymous nurse who joined the FLN to find a way to help people: "Mon seul crime, infirmière, est d'avoir soigné les combattants blessés...J'ai librement décidé de rejoindre le F.L.N. parce que je ne pouvais plus supporter de vivre dans le mépris et dans la honte..."⁴¹⁷ The closest that Vergès' portrayal of Djamila came to admitting membership in the FLN was her acknowledgment that she approved of its struggle: "La vérité est que j'aime mon pays, que je veux le voir libre, et que pour cela j'approuve la lutte du Front to Libération Nationale...."⁴¹⁸ With Vergès denying her acts, confirmation of Bouhired's role in the attacks came from an unexpected source. The Italian director Gillo Pontecorvo's film *The Battle of Algiers* (1966) described Djamila placing the bomb in the Milk-Bar, Zohra in the Maurétania,

⁴¹⁴ What Vergès would call the strategy of rupture would therefore have its bourgeois underpinnings in common with the strategy of connivence. Vergès emphasized the bourgeois mentality that animated the strategy of connivence in his discussion of the case of Dr. Adams in Vergès, *Stratégie judiciaire*, *supra* note 7.

⁴¹⁵ See Vergès, *Stratégie judiciaire*, *supra* note 7 at 196.

⁴¹⁶ See Arnaud, *Djamila*, *supra* note 255 at 92–3.

⁴¹⁷ *Idem*.

⁴¹⁸ *Ibid* at 101–2.

and Hassiba in the Caf  t  ria.⁴¹⁹ The film was produced by Sa  di and could thus claim to be an authentic portrayal of the events of September 26, 1956. Sa  di was Djamila's immediate superior during the Battle of Algiers. Verg  s' assurances both during and after the trial of Djamila contradicted Sa  di's first-hand account which identified Djamila as the culprit.

The Bouhired trial was memorable because of the attention it received in the media that Verg  s mentioned, such as cinema. Verg  s' favourite cinematic reference in relation to Bouhired was Youssef Chahine's film *Gamila el-Gazaeriya (Djamila l'Alg  rienne)* (1958).⁴²⁰ It is remarkable that Verg  s did not make reference to Pontecorvo's *The Battle of Algiers* in his enumeration of media attention. The reason may be that whereas both films portrayed Djamila as the heroine of the Algerian War of Independence, Pontecorvo's film drew on reliable sources in its depiction of Djamila as one of those responsible for placing the bombs.

Through the media, Bouhired's case made a lasting impact on public opinion. Its impact has continued to evolve over the years. Public opinion has grown more accepting of the arguments that Verg  s presented at the time of the Algerian War. The focal point of those arguments was that the French Army, notably the paratroopers, used torture while interrogating Algerian detainees. Apart from the relatively long-term goal of mobilizing public opinion, Verg  s focused on torture in his legal arguments to achieve the more immediate goal of getting his clients out of harm's way. As he has said of the trials during the Algerian War: "In every trial, we'd say torture was used" and he mentions the resistance provoked by that approach among French leftist lawyers.⁴²¹ In Verg  s' view, when one tortures one's prisoners, one loses the right to judge them.⁴²² Verg  s' judicial strategy in the

⁴¹⁹ See the complete scenario in Franco Solinas, *Gillo Pontecorvo's The Battle of Algiers: A Film Written by Franco Solinas*. PierNico Solinas, editor (New York: Scribner, 1973) at 76–8.

⁴²⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 142.

⁴²¹ See Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 3.

⁴²² See Jacques Verg  s, *Pour en finir avec Ponce Pilate* (Paris: Le Pr   aux Clercs, 1983) at 115. Although Verg  s does not elaborate on his argument, its power ultimately resides in its resonance with Immanuel Kant's categorical imperative: "Act in such a way that you treat humanity, whether in your own person or in any other

Bouhired case was clear: to prevent the confessions that the interrogators obtained from the detainees from being used against the accused.⁴²³

Because it is possible to get to know Vergès' version so well, it is also relatively easy to check his claims against facts available through additional research. Even though no source is completely free of error, discrepancies between Vergès' version and other sources are worth noting. In particular, General Maurice Faivre, one of the French veterans of the Algerian War of Independence remembered for his close ties with the Algerian Muslim population, has little patience with Vergès' story about how Bouhired was tortured. He says that Vergès invented the torture episode. Bouhired was under the protection of the Service de Santé at the military hospital of Maillot. If her wounds had been enlarged with a knife, as Vergès insisted, she would not have been able to get well in seven days. To Goddard's report that Djamila had complications related to tuberculosis, Faivre answers that the surgeons' report did not mention any tuberculosis fistula.⁴²⁴ Faivre also refers to an official document that addresses Vergès' claims. In 1959, the legal advisor to the Commander-in-Chief produced a document that analyzed the arguments of *Pour Djamila Bouhired*. It was called *Étude critique de la plaquette de Georges ARNAUD et Maître VERGÈS, intitulée Pour Djemila BOUHIRED*. It identified so many errors in the description of events in *Pour Djamila Bouhired* that we get a synopsis of that book by studying the refutation, as we can see by addressing them point by point. First, there were not three bombs, as Vergès' book claimed, but two on September 30, 1956 and three on January 2, 1957, killing four and injuring eighty-eight. The *Étude* allowed that the trial was a comedy, but pointed to the premeditated plan concocted by the two accused to disrupt it. Vergès' description of the examining magistrate's behaviour was said to

person, always at the same time as an end, never merely as a means to an end." (known as the second formulation) Immanuel Kant, *Groundwork for the Metaphysics of Morals*; translated by Arnulf Zweig and edited by Thomas E. Hill, Jr. and Arnulf Zweig (Oxford: Oxford University Press, 2002) at 230 (4:429, § 32.)

⁴²³ Vergès did not elaborate on evidentiary rules. However, torture was prohibited in the Geneva Convention and in the European Convention on Human Rights.

⁴²⁴ Maurice Faivre's email to Jonathan Widell on March 2, 2010.

have been fictional. The dossier of the affair was not empty but contained the following documents: the papers that Djamila was carrying at the time of her arrest; the thirteen bombs, revolvers and grenades in the stash whose location she had divulged to the interrogators; Taleb's confession; Bouhired's confession; and, the fingerprints of Marsali, who manufactured the bombs. The original confessions were not false; they were forwarded to the *Conseil Supérieur de la Magistrature*, a supervisory organ monitoring judicial activities. The document also explained that there were no parachutists in the courtroom, but military personnel consisting of armed guards, and Vergès was free to communicate with his client throughout the hearing.⁴²⁵

Despite the difficulty in establishing what really happened, some details are a matter of public record. The discrepancy between the book and other sources is incontrovertible with respect to the number of attacks. On September 30, 1956, a time bomb went off in the *Milk-Bar* on place d'Isly at the corner of place Bugeaud in Algiers that was part of a series of bomb attacks that took place between 6.30 p.m. and 7 p.m.⁴²⁶ Two other time bombs went off in Algiers on that same day: in *Cafétéria* on rue Michelet; and, in the corridor of the building at 2, boulevard Amiral-Pierre on the Algiers waterfront. The latter explosion had no victims.⁴²⁷ On Saturday, January 26, 1957, time bombs went off at about 5.30 p.m. in Algiers at a 100-meter distance from each other at three different locations: the bar *L'Otomatic* on rue Michelet⁴²⁸; the milk bar of the *Cafétéria* across the street on rue Michelet; and, the bar *Coq Hardi* on the corner of rue Charles Péguy and rue Monge. Those almost simultaneous attacks

⁴²⁵ Maurice Faivre quotes a private source. See Faivre, *Conflits*, *supra* note 333 at 151.

⁴²⁶ See the article of *Écho d'Alger* of September 30, 1956 on http://nice.algerianiste.free.fr/pages/milk_bar/Journal_milk.html. Rue d'Isly has been renamed Ben M'hidi after Ben M'hidi, who authorized Yacef Saâdi to carry out the Milk-Bar attack, and place Bugeaud has been renamed place Emir-Abdelkader (the historical characters of Bugeaud and Abdelkader had been each other's adversaries in the mid-19th century). The Milk Bar still exists in the same location at 40 rue Larbi ben M'Hidi.

⁴²⁷ *Idem*.

⁴²⁸ See *Algéroisement.....vôtre* at <http://jf.vinaccio.free.fr/site1000/alger05/alger029.html>

left four people dead and forty wounded.⁴²⁹ There is thus a discrepancy between Vergès' and Arnaud's book on one hand, and reliable contemporaneous sources on the other. According to newspapers, the death toll was even higher than Faivre's source had suggested. To those four victims in January, we must also add the victims of September 1956: the combined effect of the *Milk-Bar* and *Cafétéria* attacks on that day was three dead and sixty-two wounded.⁴³⁰

3.4. *Limits of Rupture*

Vergès claims that his strategy of rupture breaks off the dialogue with the established order and rejects its principles. However, we must be careful with that generalization. The objective of the break is to establish a genuine dialogue. Although the break with the judicial system may be profound, the break makes it possible to establish a dialogue with the executive branch. A close look at Vergès' arguments in the Bouhired case, which is the prototype of his strategy of rupture, shows that he operated within bourgeois legality by presenting his version of the facts. Despite his claim that the Bouhired case constituted rupture, we have seen above that his reasoning is not very different from the approach of a lawyer who would make less exuberant claims about his originality. The difference resides in Vergès' *sang-froid*, as he said: "...lorsque l'on mène des procès de rupture, il est nécessaire de garder son sang-froid."⁴³¹ The radical contestation of the given legal order accrues from the disciplinary measures that truncated Vergès' legal career. He was originally a passive party in that radical

⁴²⁹ See *Le Journal d'Alger* of January 27, 1957 at http://journauxalgerie.iframe.com/journauxalgerie/24/27-28_01_1957_journal.html. See the street names at http://www.babelouedstory.com/voix_du_bled/bombe_cafeteria/cafeteria.html

⁴³⁰ See *Interview de Guy Mollet* at <http://www.ina.fr/histoire-et-conflits/guerre-d-algerie/dossier/143/la-bataille-d-alger.20090331.fr.html>

⁴³¹ Felissi, *Anticolonialiste*, *supra* note 6 at 72. However, Vergès was clearly agitated in front of the protesting crowd when he lost the Barbie case. Marcel Ophuls, *Hotel Terminus [videorecording]: the Life and Times of Barbie*. [Los Angeles, CA?]: Samuel Goldwyn Home Entertainment; Troy, Mich.: Video Treasures, c1995. His *sang-froid* is more appropriately a reference to his refusal to retreat under any circumstances than to his emotional detachment.

contestation, and he may have turned necessity into a virtue by taking a proactive part in the contestation after the Algerian War when he articulated his two strategies in *De la stratégie judiciaire*.

4. VERGÈS' ARTICULATION OF JUDICIAL STRATEGY: CONNIVENCE AND RUPTURE (1962–70)

The coupling of Vergès' legal profession with his political activism showed major cracks toward the end of the Algerian War of Independence. It proved increasingly difficult to combine the roles of a lawyer and a revolutionary in the post-revolutionary society. Why did Derrida call his discourse three decades later "coherent"? Vergès turned his incoherence into coherence by developing his discourse of judicial strategy, when he articulated the strategy of rupture and the strategy of connivence in *De la stratégie judiciaire* in 1968.

Vergès would admit that a lawyer's role was first and foremost to be an "artisan de conciliation et de paix."⁴³² If so, how could a lawyer be a revolutionary?⁴³³ Vergès was not conciliatory. As we have seen, Vergès' revolutionary pursuits in the course of his professional activities elicited disciplinary measures, which culminated in his disbarment in mainland France in 1961. He had to switch careers and become a journalist. Vergès resumed his legal career only when the former FLN colonel Hourri Boumedienne overthrew Ahmed Ben Bella, the first president of independent Algeria, in 1965.

The union of legal profession and political activism proved challenging in the face of an increasingly complex political map, which made political allegiances especially at the left

⁴³² Vergès, *Avocat*, *supra* note 40 at 254.

⁴³³ Vergès' formulation was more revolutionary than the word "peace" suggested. The expression "artisan de conciliation et de paix" evoked Napoleon's dismissal of lawyers as "artisans de crime et de trahison." The syntactical structure is the same in both expressions: "artisan de ... et de ..." See Vergès, *Dictionnaire amoureux*, *supra* note 74 at 51. Napoleon refused to sign the decree re-establishing the French Bar in 1810 and wrote about lawyers: "Ce sont des factieux, des artisans de crimes et de trahison; tant que j'aurai l'épée au côté, je ne signerai jamais un pareil décret. Je veux qu'on puisse couper la langue à celui qui s'en sert contre le gouvernement." *Foreign Quarterly Review*, Volume 33 (London: Chapman and Hall, 1844) at 354. It is significant that Vergès used that expression in a conversation with a Roman Catholic priest: "artisans de la paix" is used in the French version of the Beatitudes, "blessed are the peacemakers," though that French expression does not appear in French Bible translations.

end of the political spectrum hard to pin down. For a politically committed legal practice, such as that of Vergès, the fluidity of the political map proved crippling.⁴³⁴

It was under those circumstances that Vergès articulated his strategy of rupture and connivence in *De la stratégie judiciaire*. The year was 1968, which is remembered for its political tumult.⁴³⁵ As we shall see, Vergès turned the necessity of making compromising to virtue by accommodating it as one of his two strategies, namely the strategy of connivence. Vergès wrote his *De la stratégie judiciaire*, during that period in 1968 when he was increasingly steeped in the power politics of the independent Algeria. The cases that he took on at this time blotted his politically committed image. The emblematic case of that tendency was his intervention on behalf of Moïse Tshombe, the President of the self-proclaimed Republic of Katanga.

4.1. Vergès' Political Promiscuity

Vergès wrote *De la stratégie judiciaire* in 1968, a few years after the events of the Algerian War. The writing and the publication of that text therefore belongs to the period following the Algerian War of Independence, which we shall study in this chapter. It is noticeable how

⁴³⁴ Vergès' commitment to the Algerian independence is in evidence in the passage which we quoted above: "J'ai défendu des personnes qui sont très différentes de moi et dont je n'épouse absolument pas la cause. Je ne parle pas ici de la guerre d'Algérie. Je pense aux affaires dont je m'occupe depuis." Felissi, *Anticolonialiste*, *supra* note 6 at 73. That crippling effect was to a considerable extent due to the break between Vergès and the Communist Party of France, which left him without political bearings.

⁴³⁵ The Revolutionary Communist Party in Quebec summed up the revolutionary spirit of the later-1960's as follows: "L'effervescence militante de ces années, qui alimentait l'imaginaire politique et galvanisait l'espoir, c'est la résistance vietnamienne à l'impérialisme américain, la grève générale et les barricades du Mai 68 français, les guérillas d'Amérique latine, la résistance des fedayins palestiniens, l'organisation des masses afro-américaines des ghettos par les Black Panthers, la Révolution culturelle en Chine, d'innombrables luttes de libération nationale et éruptions de la lutte des classes. Rappelons qu'au Québec, c'était également l'activisme révolutionnaire du FLQ et la diffusion rapide des idées marxistes et socialistes." 8 octobre 2008: 40e anniversaire du début des occupations étudiantes au Québec, Drapeau Rouge-express N°183, 6 juillet 2008 at URL: <http://ledrapeaurouge.ca/node/60> That "militant effervescence" also manifested itself in forms that denounced revisionism. Communists even added the following stanza to The Internationale to that end: *Ouvre bien tes yeux camarades, et vois où sont les renégats, sors du brouillard de cette rade, rejoins tes frères de combat, Crie à bas le révisionnisme, à bas les mystificateurs, vive le marxisme-léninisme, notre idéal libérateur!* Jean-Philippe Warren, *Ils voulaient changer le monde: le militantisme marxiste-léniniste au Québec* (Montréal: VLB Éditeurs, 2007) at 11.

often Vergès made reference in *De la stratégie judiciaire* to the great figures of communism, such as Georgi Dimitrov, Fidel Castro, Chairman Mao, and V.I. Lenin. As we know, the first chapter of *The Communist Manifesto* proclaimed the proletariat to be “the revolutionary class, the class that holds the future in its hands.” The *Manifesto* then stated the reason for its optimism: “Of all the classes that stand face to face with the bourgeoisie today, the proletariat alone is a really revolutionary class. The other classes decay and finally disappear in the face of modern industry; the proletariat is its special and essential product.”⁴³⁶ The superiority of the proletariat would find its expression in its “dictatorship,” which Marx mentioned in a letter to Joseph Weydemeyer of March 5, 1852.⁴³⁷ He elaborated on that dictatorship in his *Critique of the Gotha Programme*.⁴³⁸

Vergès transposed his revolutionary aura from class to race and limited the utility of the proletariat to the achievement of equality of races. He made a reference to his own situation: “le prolétaire peut être... jaune...”⁴³⁹ Admittedly, both class struggle and racism were hot topics for anticolonialism, to which Vergès subscribed:

ALM – Plusieurs fois vous avez pris comme comparaison: Barbie et le colonialisme.
JV – Barbie était officier d’une armée d’occupation.⁴⁴⁰

Neither was the connection between class struggle and racism absent from communism, since Lenin recognized imperialism as the highest stage of capitalism.⁴⁴¹ However, anti-imperialism spread outside the communist camp, for instance to the Non-Aligned Movement.

⁴³⁶ Marx, *Communist Manifesto*, *supra* note 161 at 47.

⁴³⁷ See “Karl Marx to Joseph Weydemeyer, in New York,” 5 March 1852, in Karl Marx, Friedrich Engels, *Collected Works*, Volume 39, Marx and Engels 1852–55 (New York: International Publishers, 1975–) p. 60–6 at 62, 65. The online version of that text credits Weydemeyer with introducing the “dictatorship of the proletariat”: “On January 1, 1852, Weydemeyer had published an article in *The New York Turn-Zeitung* entitled ‘Dictatorship of the Proletariat.’” Karl Marx to Joseph Weydemeyer, in New York at http://www.marxists.org/archive/marx/works/1852/letters/52_03_05-ab.htm

⁴³⁸ See generally Karl Marx, *Critique of the Gotha Programme* (Peking: Foreign Languages Press, 1972) at 28.

⁴³⁹ Vergès, *Avocat*, *supra* note 40 at 66–7.

⁴⁴⁰ *Ibid* at 40.

⁴⁴¹ See generally VI Lenin, *Imperialism, the Highest Stage of Capitalism: a Popular Outline* (New York: International Publishers, 1969).

Vergès drew close to the Non-Aligned Movement, which struggled with the same political oppositions between the East and the West as he did. The Non-Aligned Movement was headed by Yugoslavia, Egypt and India, and it became a major influence on Vergès' political choices. Newly independent colonies, such as Algeria, were shaped to a considerable extent by that bloc-formation and by the interplay of opposing blocs on the international scene.

Vergès' personal life was also shaped by what happened in Algeria, which was his home country from 1962 to 1963 and again from 1965 to 1970. Changes in politics affected his career choices. After the Independence of Algeria, he stopped working as a lawyer from 1961 to 1965. When he resumed his legal practice in Algeria in 1965, his career was shaped by major international developments that were beyond his control. Vergès' writing career then became a means for him to stay in control of his own identity. As we shall see, those events coloured his perception of trials in which he had been involved earlier and famous trials that had taken place before his time. To that end, we will compare the change of perspective in his references to the same events at different points in time. The watershed events are the publication of *De la stratégie judiciaire* in 1968 and the Barbie trial. Looking back from 1968 allowed Vergès to structure his material in *De la stratégie judiciaire* in a rough chronological order and to divide that material into two groups, rupture and connivence. The earliest case he discussed in that book was also an extreme case of retrospection on a historical scale, that of Socrates. Vergès classified Socrates' defence of himself before his accusers as rupture.⁴⁴²

We show that the period after Algerian independence was a period of connivence in Vergès' career. It manifested itself in multiple connivences, to which we now turn. Decolonization had introduced a fundamental sense of disorientation into international relations, with the consequence that it was increasingly difficult to tell friend from foe. Instead of making sharp

⁴⁴² Vergès, *Stratégie judiciaire*, *supra* note 7 at 85–94.

distinctions that might prove fateful later on, the safe bet was to be on good terms with a maximum number of powers.

Vergès did not recognize that multiple connivence as a strategy until he faced it by articulating it in *De la stratégie judiciaire*. The gradual awakening to connivence behind the book accounts for the gradation in the meanings of connivence. Connivence can be unconscious or conscious. If one chooses connivence as opposed to rupture consciously, it merits the name strategy of connivence.⁴⁴³

⁴⁴³ For “strategic” as opposed to “authentic,” see e.g. Joseph Anthony DeVito, Gilles Chassé, Carole Vezeau, *La communication interpersonnelle: Sophie, Martin, Paul et les autres*, 2e éd. (Saint-Laurent, ERPI, 2008) at 144.

4.2. *Vergès' Multiple Connivences on the International Scene*

The five major players in international politics that dominated the world scene after Algerian independence – which was a defining moment of decolonization – from Vergès' point of view were the People's Republic of China, the Soviet Union, the Non-Aligned Movement, France, and the United States. The complexity of that period proved daunting to Vergès, who was involved with all the major players in one form or another, except the United States. He attempted a balancing act in the midst of ever-changing alliances among the Great Powers after China and the Soviet Union parted ways, and the rest of the communist world and the newly decolonized countries defined their relationships to both of them. That balancing act manifested itself as multiple connivences: as a communist, Vergès got sucked into the Sino-Soviet split, Algeria drew him close to the Non-Aligned Movement, and he had fought for the liberation of France. When Vergès later took a retrospective look at his past, he portrayed the United States as the enemy of all his causes, which was in line with his overall approach of pursuing coherence by negation. For example, Vergès said that he learned his anti-Americanism in good schools: those of De Gaulle and Stalin.⁴⁴⁴

The balance of power among those players was not stable. The 1960's was a decade marked by political splits. The unstable nature of international relations affected Vergès both personally and professionally. His fondness for political ambivalence threatened him with mortal danger: Vergès had to leave Algeria after a relatively short stay following the independence because of political machinations he feared Algeria's first president Ben Bella had directed against him.

⁴⁴⁴ See Jean-Pierre, *Miroir*, *supra* note 113 at 103.

4.2.1. *The Sino-Soviet Split and connivence with China*

Until the death of Stalin in 1953, the communist world was relatively unified except for the conflicts that dated from the beginning of the twentieth century when the Bolsheviks opposed both the Trotskyists and Social Democrats. Ultimately, the victory of the Soviet Union over the invading Germans during the Second World War contributed to the prestige of Stalin.

Jacques' brother Paul observed:

Au lendemain de la guerre, le communisme était à son apogée. Staline avait battu Hitler sur le front de l'Est et les communistes français avaient largement contribué à la victoire des alliés. Lorsque la Chine bascule à son tour, en 1949, dans le camp socialiste, tous les pays du tiers-monde veulent secouer le joug colonial. Nous avons tous conscience de la formidable bataille qui était en train de se jouer. Nous voulions en être les acteurs et il n'avait pas de place dans notre combat pour quelques atermoiements.⁴⁴⁵

Paul's reference to the revolution in China in 1949 referred to Mao Tse-Tung's victory in China. In contrast to the later development of Sino-Soviet relations, which ended in a break in the early-1960's, the success of the Chinese revolution was Stalin's contribution to revolution outside the Soviet Union. Consequently, Stalin got credit for creating the coalition against Hitler, the liberation of a great number of European nations from fascism, as well as the liberation of the Chinese people from occupation by Japan and the formation of the People's Republic of China.⁴⁴⁶

The strain in Sino-Soviet relations came to a head in 1961 after the split between Albania and the Soviet Union when Albania started accusing the Soviet Union of revisionism.⁴⁴⁷ The

⁴⁴⁵ Jean-Pierre, *Miroir*, *supra* note 113 at 78.

⁴⁴⁶ See generally Mikhaïl Kilev, *Khrouchtchev et la désagrégation de l'URSS*, Edition électronique réalisée par Vincent Gouysse à partir de la 3ème édition revue et corrigée de l'ouvrage publié en 2005 à Sofia. Traduit du bulgare par Pétia Candéva en collaboration avec Ludmil Kostadinov at 33.

⁴⁴⁷ That Albanian quixotism was a reaction to the Soviet criticisms of Albania, which the Soviet Union used as a backdoor to engage its formidable rival, China. See Ploncard, *Coexistence*, *supra* note 282 at 65–5. The waywardness of certain countries in the communist camp was due to the history of their liberation during the Second World War. The greatest resistance to Soviet hegemony in Europe came from Albania and Yugoslavia,

Albanian leader Enver Hoxha's doubts became more vocal in 1962. He voiced his doubts to the Chinese leadership and finally managed to convince them with his observations and created the background for the alliance of Albania and China against the Soviet Union.⁴⁴⁸ The relationship between the Soviet Union and the People's Republic of China had already begun to show cracks when China had opted for the Great Leap Forward in the late-1950's, in contrast to the Soviet policy of industrializing with agricultural profits. The Great Leap Forward was an economic failure and, in a country as populous as China, a humanitarian disaster of untold proportions.

In particular, the Chinese leadership traced the Sino-Soviet schism to the Twentieth Congress of the Communist Party of the Soviet Union, which was held on February 14-25, 1956. On that occasion, Nikita Khrushchev, the First Secretary of the Party, had introduced changes to official Soviet policy, notably the dismantling of the "cult of personality," which he justified by reference to the necessity of breaking with Stalin's legacy in light of its negative elements, notably forced labour. However, in addition to dismissing de-Stalinization as a distortion of the great Marxist-Leninist leader's achievements, the Chinese leadership criticized the new Soviet policy compromising central tenets of Marxist-Leninist doctrine, such as the dictatorship of the proletariat. In their view, the Soviet Union compromised the Leninist principle of "peaceful coexistence" between socialist and capitalist regimes by transforming it from a necessary evil to virtue.⁴⁴⁹ Unwilling to break with "fraternal parties," which was a recurrent phrase in the documents issued by the Communist Party of China at the time of the

which had turned communist without the help of the Red army. See generally Gerrit Parmele Judd, *A History of Civilization* (New York: Macmillan, 1966) at 797.

⁴⁴⁸ See generally Enver Hoxha, *Réflexions sur la Chine: 1962–1972: extraits du journal politique* (Tirana: Nëntori, 1979) [Hoxha, *Réflexions*].

⁴⁴⁹ The Chinese view identified a number of divergences between Lenin's policy of peaceful coexistence and its contemporary Soviet reinterpretation. The first of them was the following: "Lenin's policy of peaceful coexistence is one followed by a socialist country in its relations with countries having different social systems, whereas Khrushchov describes peaceful coexistence as the supreme principle governing the life of modern society." Editorial Departments of *Rénmín Rìbào* (*People's Daily*) and *Hóng Qí* (*Red Flag*), "Peaceful Coexistence: Two Diametrically Opposite Policies: Sixth Comment on the Open Letter of the Central Committee of the CPSU" (December 12, 1963) in *Polemic*, *supra* note 241 at 277.

split in 1963, China initially remained conciliatory. The Soviet Union and China agreed on their interpretations of Marxism-Leninism in the Declaration of the 1957 Moscow Meeting of fraternal parties. Its most significant conclusion was that the United States was the enemy of both the Soviet Union and China.⁴⁵⁰ Consequently, China was disappointed to find that Khrushchev fraternized with and even admired President Dwight Eisenhower, to which China responded with the document “Long Live Leninism!” in April 1960.⁴⁵¹ China then agreed with the Soviet Union on the Statement of the 1960 Moscow Meeting of Communist and Workers’ Parties, which reaffirmed the conclusions of the 1957 Moscow Declaration.⁴⁵² The Declaration and the Statement centred on the condemnation of imperialism:

Workers of all countries, unite; workers of the world, unite with the oppressed peoples and oppressed nations; oppose imperialism and reaction in all countries; strive for world peace, national liberation, people's democracy and socialism; consolidate and expand the socialist camp; bring the proletarian world revolution step by step to complete victory; and established a new world without imperialism, without capitalism and without the exploitation of man by man.⁴⁵³

China was not satisfied that the Soviet Union’s adhered to the Declaration and the Statement.⁴⁵⁴ The Sino-Soviet split was the result. Ever since, Khrushchev’s introduction of de-Stalinization policies and revisionism has been identified by anti-revisionists as the fundamental reason for multiple problems that bedevil the Soviet Union and for its ultimate

⁴⁵⁰ See People’s Daily, “Origin”, *supra* note 231 at 70–74.

⁴⁵¹ *Ibid* at 75–9.

⁴⁵² *Ibid* at 83–9.

⁴⁵³ See The Central Committee of the Communist Party of China, “A Proposal Concerning the General Line of the International Communist Movement: The Letter of the Central Committee of the Communist Party of China in Reply to the Letter of the Central Committee of the Communist Party of the Soviet Union of March 30, 1963,” in *Polemic*, *supra* note 241 at 5.

⁴⁵⁴ The Communist Party of China was particularly unhappy about the rapprochement between the Soviet Union and the United States: “In complete disregard of the common conclusion of the 1957 Declaration that U.S. imperialism is the enemy of all the people of the world, the leadership of the CPSU passionately sought collaboration with U.S. imperialism and the settlement of world problems by the heads of the Soviet Union and the United States. Particularly around the time of the Camp David Talks in September 1959, Khrushchov lauded Eisenhower to the skies, hailing him as a man who ‘enjoys the absolute confidence of his people’ and who ‘also worries about ensuring peace just as we do’.” People’s Daily, “Origin”, *supra* note 231 at 75.

collapse.⁴⁵⁵ For instance, American communist Martin Nicolaus traced problems in the Soviet system to its departure from its earlier Stalinism approximately fifteen years before the collapse of the Soviet Union.⁴⁵⁶ Other observers have been more measured in pinning the blame on Khrushchev specifically. They ascribe malfunctions in the Soviet system to the introduction of capitalism throughout the 20th century though there is a clear demarcation between the “good” communism before that Twentieth Party Congress and the “bad” communism after it under Khrushchev.⁴⁵⁷ In spite of themselves, those observers have tended to reaffirm the accuracy of the Chinese analysis of the Soviet Union.

While the Sino-Soviet gap widened, Vergès chose the Chinese side. In light of the statements he would make in 2000, he would continue to be a firm believer in the future of China even if Mao is dead and his legacy has come under the same scrutiny as did Stalin’s after his death. In recounting his visit to China in the 1960’s, Vergès would declare that China would be the superpower of tomorrow: “La Chine, demain, sera de loin la première puissance mondiale.”⁴⁵⁸ His optimism about China, which spans half a century of Vergès’ thought, is striking. Vergès continues to believe in China despite radical changes in Chinese policy and politics over the years. His adherence to what one might call the Chinese cause has been based on different grounds over time. He had left the Communist Party of France in 1957 because of its reservations about Algerian independence. Later, the Communist Party of China would have a falling out largely over the Soviet Union’s supposedly conciliatory position on decolonization years later in 1963. Vergès would associate that position with the Soviet policy of peaceful coexistence: “You sense that the Chinese don’t agree with the

⁴⁵⁵ Central Committee of the KKE, *Thèses du CC du KKE sur le socialisme*, 18^e Congrès du Parti communiste de Grèce, 19 octobre 2008, 18–22 février 2009 at 14 (§11).

⁴⁵⁶ See generally Martin Nicolaus, *Restoration of Capitalism in the USSR*, Chicago: Liberator Press, 1975.

⁴⁵⁷ See generally Keeran, *Socialism Betrayed*, *supra* note 155.

⁴⁵⁸ See Jean-Pierre, *Miroir*, *supra* note 113 at 157. The future of the rising China was a French preoccupation as early as the 1970’s across political boundaries. The French writer and politician Alain Peyrefitte, a confidant of De Gaulle, set that trend in France in his 1973 book *Quand la Chine s’éveillera ... le monde tremblera: regards sur la voie chinoise*, [Paris]: Fayard, [1973].

Russians about 'peaceful co-existence'. They're more committed to the struggle in colonial countries. On that point, I side with them."⁴⁵⁹ Vergès criticized the first Algerian government, led by Ben Bella, for dreaming of a Soviet-style revolution, which we may interpret as a criticism of Algeria's rapprochement with the Soviet Union. He still believes that by so doing Ben Bella made a political mistake from which Algeria has not recovered.⁴⁶⁰

Vergès thought that he had no choice but to rally behind China if he wanted a communism with an anticolonial emphasis. The Communist Party of France had declined to take an active part in Algeria's struggle for independence because it would have compromised a united front against the US, which was supposedly the main enemy of the French people, in relation to which any other battle was secondary, including the Algerian battle against the French regime in Algeria.⁴⁶¹ The PCF thus followed the Soviet line, which did not initially favour the FLN. The Soviet Union had not supported the FLN overtly but continued to recognize French sovereignty in Algeria until 1958, when the FLN sent a delegation to the People's Republic of China.⁴⁶² Vergès referred to that Soviet recalcitrance in *De la stratégie judiciaire*: "...le chef de l'État soviétique déclarait au secrétaire général du parti socialiste français que la question algérienne était une affaire purement française..."⁴⁶³ However, some older members of the Communist Party of France, such as Jean Galland, defended that party by reminding us that the CPF continued to protest against the war, unlike any other group in France. Galland also denied that party members had been fooled by Prime Minister Guy Mollet's rhetoric

⁴⁵⁹ Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 4.

⁴⁶⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 156–7. Ben Bella clarified his position on China, the counterpole of the Soviet Union for Vergès, by saying that although he was not a Marxist he was sympathetic with the Chinese Cultural Revolution and the Chinese policy after Mao. His viewpoint concurred with Vergès. He stressed that China had never established colonialism during its long history. See Ahmed Ben Bella, *Mr le Président Ben Bella parle de l'Afrique et du Congo*, interview with Ludo Martens in Brussels in 2003 <http://vimeo.com/15193775> at 52:22.

⁴⁶¹ See Danièle Joly, *The French Communist Party and the Algerian War* (Basingstoke: Macmillan, 1991) at 61.

⁴⁶² See Hartmut Elsenhans, *La guerre d'Algérie 1954–1962. La transition d'une France à une autre. Le passage de la IV^e à la V^e République*, préface de Gilbert Meynier; [traduction par Vincent Groupy] (Paris: Publisud, 1999) at 125–130.

⁴⁶³ Vergès, *Stratégie judiciaire*, *supra* note 7 at 196.

about “pacification,” which they knew to be a euphemism for increased repression and violence. He attributed confusion on that subject to the party's leader, Maurice Thorez, but denied it reached the party rank-and-file.⁴⁶⁴

The conciliatory position of the Communist Party of France towards the French government at the time of the Algerian War was apparently discredited by Algerian Independence in 1962. Algerian Independence also appeared to discredit the Soviet line of peaceful coexistence because it showed that the self-determination of peoples could be realized by armed struggle as well as by peaceful coexistence. Beyond the tumultuous 1960's, the collapse of the Soviet Union appeared to discredit the revisionism which it regarded as being at the heart of the new Soviet policy. In an implicit reference to those momentous events, Vergès could conclude in 2000: “...l’histoire m’a donné raison...”⁴⁶⁵

Vergès’ view that he had been vindicated by history ignored the bankruptcy of his politics in Algeria. As he admitted in his *Lettre ouverte à des amis algériens devenus tortionnaires* in 1993, the Algerian government acted against the Islamic Salvation Front (FIS) in the 1990's as the French regime in Algeria had done during the War of Independence.⁴⁶⁶ Hard-liners just made it difficult for others to see developments from the Soviet perspective. The result was the hard-liners’ facile dismissal of Soviet international politics as “revisionism.”⁴⁶⁷ On the other hand, one should not forget the common position that the Soviet Union and China had

⁴⁶⁴ Jean Galland’s unpublished letter to *Le Monde*, signed November 28, 2005, Quoted in full in Jean-Pierre Combe, *Algérie: qui la vérité dérange-t-elle? La colonisation: savoir de quoi on parle !* (December 30, 2005) at http://amidelegalite.free.fr/article.php3?id_article=29&var_recherche=Alg%E9rie

⁴⁶⁵ Jean-Pierre, *Miroir*, *supra* note 113 at 156.

⁴⁶⁶ At the beginning of his open letter to Algerian torturers, Vergès admitted that he might have been too naive. See Jacques Vergès, *Lettre ouverte à des amis algériens devenus tortionnaires* (Paris: Albin Michel, 1993).

⁴⁶⁷ The Soviet position was not necessarily as unreasoned as the hardliners suggested. What was revisionism for the hardliners was a break with dogmatism in Soviet doctrine: “Lenin held that no existing theory, conclusion or proposition was final. Time and again he cited the statement of Marx and Engels that Marxism was not a dogma but a guide to action. Revolutionary theory studying the laws of social progress and the experience of the class struggle cannot help but advance together with the development of society itself. ...More, Lenin never regarded his own theoretical conclusions as being a totality of immutable, eternal truths.” N.V. Tropkin, “Further Development of the Marxist-Leninist Theory of Socialist Revolution” in *Development of Revolutionary Theory by the CPSU*, Translated from Russian by David Skvirsky (Moscow: Progress Publishers, 1971, p. 152–167) at 152.

adopted on the United States. The United States was the implacable enemy of communism and thus the most important adversary of both the Soviet Union and China. Divergences between the Soviet Union and China appeared when they could not agree on which course of action to adopt. There was a certain naiveté in the Chinese approach, which supposed that wrenching the former colonies from their European masters through an armed struggle would undermine the influence of the United States in the world. That position was oblivious to the longstanding American policy of colonial independence.⁴⁶⁸

By ascribing the newly-found conciliatory approach of the Soviet Union to doctrinal errors and revisionism, China ignored the rift that it had caused in the Sino-Soviet front against the United States by attacking the Soviet Union. Ultimately, China went as far as to support revisionism in the form of Eurocommunism. Hoxha dismissed it as the low point of revisionism, in an attempt to undermine the hegemony of the Soviet Union in the world.⁴⁶⁹ China's power-political manoeuvring, at the risk of turning away from its stated adherence to Communist orthodoxy and the attendant fight against revisionism, was out in the open after the Soviet invasion of Czechoslovakia in 1968. In a bid to damage Soviet credibility in the eyes of the rest of the communist world, China supported the European communist parties, whose revisionist tendencies and resistance to Moscow earned the name of Eurocommunism.⁴⁷⁰

⁴⁶⁸ China supported the apartheid regime in South Africa in its bid to counter Soviet influence in Africa. See Michel, *Chinafrique*, *supra* note 381 at 41. Hoxha wrote in 1978 that China coordinated its policies in Africa with those of the United States. See Enver Hoxha, *Les superpuissances, 1959–1984: extraits du journal politique* (Tirana: 8 Nëntori, 1986) at 482 [Hoxha, *Superpuissances*].

⁴⁶⁹ Hoxha refers to China's longstanding support for the Spanish Eurocommunist leader Santiago Carrillo. See Hoxha, *Eurocommunisme*, *supra* note 300 at 197.

⁴⁷⁰ See Hoxha, *Eurocommunisme*, *supra* note 300 at 197.

However positive China's resurgence may have appeared to Vergès, it did not spare him from further dilemmas because the Sino-Soviet Split had repercussions for the preoccupation that he presented as most important to him, namely anticolonial struggle. The bipolar world of the Cold War broke into so-called triangular diplomacy in 1969, with China approaching the United States and undermining the Soviet influence.⁴⁷¹ The Sino-Soviet split would then undermine the battles against colonial powers in colonies, notably in Africa, as the anticolonial front disintegrated into rival and mutually antagonistic groups with some of them being backed by the Soviet Union and others by China. For instance, in Angola, UNITA had the reputation of being Peking-oriented while the *Movimento Popular de Libertação de Angola* (MPLA) was Moscow-oriented (a third organization, GREA, was backed by the United States until the United States turned to the first one, UNITA).⁴⁷² The Sino-Soviet split had begun to make itself felt already in Third World liberation movements after 1968.⁴⁷³ Significantly, that was the year the Soviet Union invaded Czechoslovakia.⁴⁷⁴ Tellingly, 1968 was also the year that saw the publication of *De la stratégie judiciaire*. It is both plausible and fruitful to interpret the dichotomy of rupture and connivence in terms of that split, with connivence/reform characterizing, from Vergès' pro-Chinese perspective, Soviet revisionism and rupture/revolution typifying Chinese orthodoxy.

⁴⁷¹ See generally Raymond L. Garthoff, *Détente and Confrontation: American-Soviet Relations from Nixon to Reagan* (Washington, D.C.: Brookings Institution, 1985) at 199ff [Garthoff, *Détente*].

⁴⁷² MPLA's field commander Daniel Chipenda referred to that split at the time. While dismissing the rivalry among liberation movements along the lines of the Sino-Soviet split, he admitted that even a perception of such a split among those movements played into the hands of the imperialists (which is a reason that we should be skeptical of his assurances that there was no split): "When people say that the ideology of the MPLA is Moscow-oriented and the ideology of UNITA is Peking-oriented, they not only help the imperialists, they are simply wrong. The divisions which have emerged within the Angolan liberation struggle have not come about because of the split between China and Russia. These divisions started in 1960, and in 1961 the MPLA was supported by both China and Russia." Don Barnett and Roy Harvey, *The Revolution in Angola; MPLA, Life Histories and Documents* (Indianapolis: Bobbs-Merrill, 1972) at 258.

⁴⁷³ See Richard A. Lobban, Jr., *Cape Verde: Crioulo Colony to Independent Nation* (Boulder: Westview Press, 1995) at 95.

⁴⁷⁴ See generally Garthoff, *Détente*, *supra* note 471 at 200–1.

4.2.2. *Vergès' political setting: the Non-Aligned Movement*

The political complexities of the 1960's were embodied in the Non-Aligned Movement (NAM), which aspired to a middle position between the two blocs, the East and the West. However, that movement was a set of contradictions. Two political orientations that were of relevance to Vergès' struggle to find his own political identity were represented by Tito's revisionist Yugoslavia and the People's Republic of China, which would acquire the profile of adhering to hard-line communism in the 1960's as opposed to the Soviet Union. Both of those orientations were relevant to Vergès because the movement as a whole advocated the interests of the Third World. However, he would later adhere to China's hard-line communism, because, in his view, China stood for the Third World. Although Vergès portrays his choices as flowing from anti-revisionism, his attachment to the cause of the Third World cut both ways. It could reflect as much revisionism as anti-revisionism. Vergès' attachment to the Third World made him a revisionist, because Yugoslavia stood for the Third World, too.⁴⁷⁵ Hoxha explicitly dismissed the NAM as a platform for Tito's revisionist policies in the world at large.⁴⁷⁶

The emergence of the Non-Aligned Movement contributed to the falling out between the Soviet Union and China. As its name indicated, NAM sought to step aside from the conflict between the Soviet Union and the United States. In effect, it aggravated the split between China and the Soviet Union because China was historically closer to the NAM. After the collapse of the Soviet Union, NAM lost its *raison d'être* and continued to attract relatively

⁴⁷⁵ China was one of the principal actors at the 1955 Bandung Conference, which gave the Third World a presence on the international scene. See e.g. Michel, *Chinafrique*, *supra* note 381 at 34. That Conference was a predecessor of the Non-Aligned Movement.

⁴⁷⁶ Hoxha, *Superpuissances*, *supra* note 468. Hoxha was of the view that the NAM was financed by the United States and sold to the world by Tito. See *op. cit.* at 561.

little attention.⁴⁷⁷ However, the role of the NAM in complicating rather than easing tensions in the world, especially within the Communist world, is too important to be left unmentioned. The influence of the NAM also played a role in many of the political quandaries that Vergès faced in the 1960's.

“Peaceful coexistence,” in its supposedly “revisionist” sense of making compromises with the class enemy, did not originate with Khrushchev, though it was convenient for supposedly anti-revisionist posturing to suggest that it did.⁴⁷⁸ Its sudden revival in the Communist Party of the Soviet Union harked back to the Afro-Asiatic Conference that was held in Bandung in Indonesia in 1955. That Conference would eventually evolve into the Non-Aligned Movement. The Bandung Conference had, in turn, borrowed it from the Treaty between India and China about the Tibetan border region in 1954.⁴⁷⁹ Peaceful coexistence was one of the Five Pillars of Peaceful Coexistence, or *Pancha Sila*.⁴⁸⁰ China's antagonism to the use of the

⁴⁷⁷ Since the collapse of the bipolar world characterized by the antagonism (or peaceful coexistence) of the capitalist and the socialist system, the NAM cannot refer to the same poles to which it chooses not to be aligned. The principal support for NAM comes from the remaining vestiges of the Cold War, such as North Korea. North Korea's hope for a stronger NAM was expressed in the following statement: “Only when the non-aligned movement is strengthened at present is it possible to put the brake on the imperialists' attempt to enlarge their military blocs for aggression.” Korean Central News Agency Nov 19, 2010, “Intensified Struggle against Imperialism Called for.”

⁴⁷⁸ The Soviet policy of “peaceful coexistence” under Khrushchev was laid under Stalin. A. Leontyev launched the concept of “peaceful coexistence” in 1950 in his article in Pravda. See generally A. Leontyev, “Answers to Readers' Questions: ON PEACEFUL COEXISTENCE OF THE TWO SYSTEMS,” *The Current Digest of the Post-Soviet Press*, No. 13, Vol.2, May 13, 1950, p. 15–16 at <http://dlib.eastview.com/browse/doc/13685974>. See also M. B. Crowe, “Coexistence: The Other Side” in *Studies: An Irish Quarterly Review*, Vol. 49, No. 193 (Spring, 1960), p. 17–29.

⁴⁷⁹ See Ivan Kovalenko, Rais Tuzmukhamedov, *The Non-Aligned Movement: the Soviet View* (New Delhi: Sterling Publishers, 1987) at 33–4 [Kovalenko, *Non-Aligned Movement*].

⁴⁸⁰ The *Pancha Sila* or Five Precepts are traceable to the Indonesian leader Sukarno and ultimately to Buddha. Whereas Buddha had applied them to the moral life of an individual and Sukarno in 1945 for the life of a nation, “Prime Minister Sri Jawaharlal Nehru of India, with the support of Chou En-Lai of China, announced his Pancha-Sila as a code for International Behaviour.” See Suniti Kumar Chatterji, “The African Personality,” in Suniti Kumar Chatterji, *Africanism: the African Personality*, foreword by Sarvepalli Radhakrishnan (Calcutta: Bengal Publishers Private, 1960), p. 10–75 at 61. The *Pancha Sila* was laid down in the Chinese-Indian joint declaration Pancha Sila of April 29, 1954. The five principles of that declaration were later applied by the Soviet Union to a small number of Western countries, such as Finland. See Wladyslaw W. Kulski, *Peaceful Co-existence: An Analysis of Soviet Foreign Policy*, Chicago: Henry Regnery, 1959) at 301–2.

concept “peaceful coexistence” was probably partly attributable to the animosity between India and China and India's subsequent ascendancy in the Non-Aligned Movement.⁴⁸¹

Algeria had also been actively involved in the NAM, which it joined in 1961, even before its independence.⁴⁸² The bond between the FLN and the Bandung Conference went even further back. The Afro-Asiatic Conference designated the FLN as the sole representative of the Algerian independence movements.⁴⁸³ Non-alignment also grew out of that conference.⁴⁸⁴ Algeria's influence in the movement was at its zenith in 1972 when the Conference of Algiers was held. Algeria proposed new dimensions to non-alignment, notably the institutionalization of the movement and the introduction of the idea of the need for a new economic order.⁴⁸⁵

Another factor in Vergès' conflicting allegiances was the disproportionately large influence exercised by Yugoslavia in the NAM. Yugoslavia was the archetype of opportunism to those, like the Chinese and Albanian leadership, who attributed the redefinition of Soviet foreign policy after the 20th Party Congress of the Soviet Union to opportunism. When China denounced the new political line of the Soviet Union, it also issued a condemnation of Yugoslavia with the suggestive title “Is Yugoslavia a Socialist Country?”⁴⁸⁶ Vergès, who subscribed to the Chinese condemnation of the Soviet interpretation of peaceful coexistence, had little choice but to adopt a condemnatory approach not only to Yugoslavia but also to the NAM. In practice, such an attitude would have meant a break with Jawaharlal Nehru, the

⁴⁸¹ The Chinese leadership acknowledged the importance of its border incident with India but accused Khrushchev and the “Indian reactionaries” of taking advantage of it. See People's Daily, “Origin”, *supra* note 231 at 77.

⁴⁸² Kovalenko, *Non-Aligned Movement*, *supra* note 479 at 173.

⁴⁸³ See generally Courrière, *Guerre d'Algérie*, *supra* note 330.

⁴⁸⁴ See generally Felix R.D. Bandaranaike, “History of Non-alignment as a Force for Peace and Stability in a Divided World,” in U.S. Bajpai, *Non-alignment, Perspectives and Prospects*, New Delhi: Lancers Publishers, 1983) at 18.

⁴⁸⁵ *Ibid* at 24.

⁴⁸⁶ See generally Editorial Departments of *Rénmín Ribào* (People's Daily) and *Hóng Qí* (Red Flag), “Is Yugoslavia a Socialist Country?: Third Comment on the Open Letter of the Central Committee of the CPSU,” in *Polemic*, *supra* note 241 at 139–186.

President of India, another major force in the NAM. However, Nehru had pleaded for Bouhired while she was in prison.⁴⁸⁷ A condemnatory approach would also have meant a break with Vergès' role as the secretary of the International Students' Union, which took him to India when Nehru was that country's Prime Minister.⁴⁸⁸

Vergès' solution to discordant political loyalties was to compromise instead of to choose between them. The central place of Algeria in the NAM, especially its close ties to Yugoslavia, posed a problem for Vergès. He solved it, or created the illusion of solving it, by juxtaposing Ben Bella's supposed backsliding on socialist revolution with his own commitment to that revolution (though Vergès did not spell out those divergences or the views to which he objected).⁴⁸⁹ Instead, Vergès continues to remain vague. Despite his endorsement of Ben Bella's thirdworldism, Vergès denounces his regime as Soviet-oriented and his aspirations in relation to the Third World as too ambitious. By that, Vergès means that he preferred a Chinese-orientated style that would leave the dominant position to China. Ben Bella had already been interested in becoming the leader of the Third World in the NAM, which only heightened the resistance that his autocratic leadership inspired in Algeria. Vergès said, in 2000, that he also disapproved of Ben Bella's inner circle of Trotskyist advisers, headed by Michel Raptis.⁴⁹⁰ In effect, Vergès leveled the same criticisms at Ben Bella as motivated Boumedienne's overthrow and imprisonment of him, which suggests that Vergès sided with Boumedienne's vision.⁴⁹¹ However, Boumedienne appears not to have been more than an enemy of his enemy, which did not make him a friend. Hence, Vergès' situation in Algeria after Boumedienne's coup reflected his tendency to pursue coherence in his political engagements by negation rather than by affirmation.

⁴⁸⁷ See Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 2.

⁴⁸⁸ See generally Vergès, *Avocat*, *supra* note 40 at 153.

⁴⁸⁹ Ben Bella said that he was not a Marxist. See generally Ahmed Ben Bella, *Mr le Président Ben Bella parle de l'Afrique et du Congo*, interview with Ludo Martens in Brussels in 2003 <http://vimeo.com/15193775> at 52:22.

⁴⁹⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 156–7.

⁴⁹¹ See Martin Evans and John Phillips, *Algeria: Anger of the Dispossessed* (New Haven: Yale University Press, 2007) at 80 [Evans, *Anger*].

4.2.3. Vergès' loyalty to France

In the face of disintegrating colonial empires, France remained for Vergès the bulwark of stability in the face of major upheavals in the world at large. That characteristic of France was due to France's long history of revolutions, which had shaped the French national character. France's revolutionary past made it also possible for Vergès to appropriate the French character although he acknowledged that he was not entirely French:

Le Française est profondément sceptique et en même temps passionné. Ce sont deux qualités que l'on voit rarement réunies.

ALM – Sceptique signifie qu'il n'y croit pas trop, mais en même temps il y croit.

JV – Il croit dans de grandes idées. On peut le mobiliser à ce sujet. Mais, sur les hommes, il est sceptique. Je lui ressemble un peu, sans être un Français à cent pour cent.⁴⁹²

His admiration for the French people amounted to a deification of France, which for him was personified in the figure of Joan of Arc. He has referred to her as the incarnation of French patriotism at least since *De la stratégie judiciaire*.⁴⁹³

Vergès' loyalty to France was also personified in De Gaulle.⁴⁹⁴ Yet, Vergès also emphasized his loyalty to communism, and in particular to the Soviet Union, at the risk of subverting his country. When de la Morandais observed in his 2001 conversation with Vergès: "Cependant, vous pouviez être accusé, autrefois, comme militant communiste, d'être plus soviétique que français," Vergès answered: "Cette accusation n'était pas totalement infondée. On peut aimer un pays étranger et être accusé d'en être un agent, de placer l'intérêt de ce pays-là avant l'intérêt national."⁴⁹⁵

Vergès in effect reverted to the Soviet position that France was an important ally against the growing hegemony of the United States, although he had left the CPF in protest over that

⁴⁹² Vergès, *Avocat*, *supra* note 40 at 241–2.

⁴⁹³ See Vergès, *Jeu*, *supra* note 42 at 53. See also Vergès, *Stratégie judiciaire* *supra* note 7 at 152– 161.

⁴⁹⁴ See Vergès, *Avocat*, *supra* note 40 at 83.

⁴⁹⁵ *Ibid* at 228.

position insofar as it had consequences for Algeria. To palliate the strain under which his loyalty came in the face of ever-changing alliances among former enemies, Vergès evoked the United States as the common enemy of all the causes for which he fought, seeking cohesion in negation instead of affirmation, for example, in his quip that he learned his anti-Americanism in good schools: those of De Gaulle and Stalin.⁴⁹⁶ Vergès thus implied that whatever animosity there was between De Gaulle and Stalin was secondary to their animosity towards America.⁴⁹⁷ Stalin had not been unreserved in his support for De Gaulle and at the Yalta conference in 1945 he observed that the participants' first duty was to give independence to peoples of the former colonial empires and noted that the French colonies should not be given back to France. He said: "I don't see why the Allies should shed blood to restore Indochina to France..."⁴⁹⁸ However, those divergences were eclipsed by De Gaulle's clashes with the United States after the Second World War, which culminated in his resignation on January 20, 1946.⁴⁹⁹

Even before, the Communist Party of France lacked revolutionary zeal. Hoxha criticized it for missing out on the communist revolution in his summary of French history of the 20th century. It had introduced the idea of the Popular Front in its Congress of Nantes in 1935, but did not take full advantage of its possibilities of bringing about a revolution, which in Hoxha's view were not dissimilar to those that ignited the Spanish Civil War (1936-9).⁵⁰⁰ The Popular Front won the 1936 legislative elections, which resulted in the formation of a

⁴⁹⁶ See Jean-Pierre, *Miroir*, *supra* note 113 at 103.

⁴⁹⁷ Convergence of interests between De Gaulle and Stalin led to an alliance between Gaullists and Communists in France. Both wished to avoid American domination. De Gaulle allowed the Communist Party of France tactical freedom (*Insurrection nationale*) while the Communist Party of France talked of "National Unity" and recognized De Gaulle's leadership. See Steve Cushion, *Post War Reconstruction in Europe* on the web site of London Metropolitan University at <http://learning.londonmet.ac.uk/languages/pwr/ww2.htm>.

⁴⁹⁸ Quoted in Jean-Pierre, *Miroir*, *supra* note 113 at 73. See also Susan Butler, Arthur Meier Schlesinger Jr. *My Dear Mr. Stalin: The Complete Correspondence of Franklin D. Roosevelt and Joseph V. Stalin* (New Haven: Yale University Press, 2005) at 188.

⁴⁹⁹ See Annie Lacroix-Riz, *Le choix de Marianne: Les relations franco-américaines 1944-1948* (Paris: Messidor/Éditions sociales, 1985) at 78 [Lacroix-Riz, *Marianne*].

⁵⁰⁰ The Popular Front was an alliance of left-wing movements, notably the French Section of the Workers' International (SFIO), Radical and Socialist Party, and the French Communist Party. The Communists did not take part in Blum's government.

coalition government led by Léon Blum of the French Section of the Workers' International, SFIO. In Hoxha's judgement, Prime Minister Blum turned the Popular Front into a parody by serving the interests of the bourgeoisie.⁵⁰¹ While not criticizing the CPF for its policies before Algeria, Vergès' judged Blum as harshly Hoxha did: "...Léon Blum... déclarait que les peuples supérieurs ont des droits sur les peuples inférieurs! Pour l'instant, c'est du Hitler, mais Léon Blum n'était pas Hitler, et il a ajouté 'et des devoirs aussi'." ⁵⁰²

In Hoxha's view, the failure to move towards the communist revolution was characteristic of the French communist movement throughout the twentieth century. During the Second World War, the communists told De Gaulle, in Hoxha's sarcastic paraphrase: "Monsieur de Gaulle, je vous en supplie, admettez-moi aussi dans votre comité" while, at the same time, the bourgeoisie prepared for the Anglo-American landings in France.⁵⁰³ That subservience to the bourgeoisie carried over from the Fourth to the Fifth Republic. Although Communists had not participated in the elaboration of De Gaulle's constitution, and voted against it, they did not protest against it in practice. ⁵⁰⁴

However, despite the failure of the Communist Party of France to bring about a communist revolution, De Gaulle did bring about the Algerian revolution. Whether he designed his anticolonial policy to appeal to communists is doubtful, but it had the effect of accommodating the wishes of the communists and others who had supported Algerian independence. General Maurice Faivre, who is critical of De Gaulle's more or less unexpected softening to Algerian demands, presented De Gaulle's changing position on Algeria in light of some key dates. In March 1959, De Gaulle agreed that the army would stay and he would not deal with the FLN. In September, he anticipated "hecatombs" if France

⁵⁰¹ See Hoxha, *Eurocommunisme*, *supra* note 300 at 68–76.

⁵⁰² Felissi, *Anticolonialiste*, *supra* note 6 at 23.

⁵⁰³ See Hoxha, *Eurocommunisme*, *supra* note 300 at 68–76. A more charitable view would be that the bourgeoisie prepared for those landings to avoid the imminent communist takeover in France.

⁵⁰⁴ *Ibid* at 202.

abandoned Algeria. In October, he repeated that the army would stay and that he would fight for French Algeria. In January 1960, he said he would opt for the “most French” solution. A slight change in tone came in March when De Gaulle alluded to the possibility of an Algerian Algeria, which would remain tied to France. In November 1960, he spoke of an Algerian republic. On November 8, 1960, he said that he did not want to see the FLN win. In March 1961, De Gaulle said that the French Army would stay in Algeria to guarantee the rights of Europeans. In April, he admitted that Algeria would cease to belong to its sphere of influence. In November, De Gaulle concluded that the FLN was supported by a near totality of Algerian Muslims.⁵⁰⁵

While De Gaulle towers in Vergès’ quest for coherence, it is clear that, as Hoxha’s comments show, Vergès’ allegiance to De Gaulle did not boost his communist credentials. It is also questionable how much weight De Gaulle carried in his anti-American posturing. France had lost much of its international standing despite De Gaulle’s reputation as one of the victors of the Second World War. De Gaulle was not invited to the Yalta conference with Stalin, Roosevelt, and Churchill because the United States was displeased with the rise of communism in France. France could only regain some of its former stature with American help, which inevitably meant keeping the communists in check and ultimately “evicting” communists from the French government in 1947.⁵⁰⁶

Vergès’ portrayal of De Gaulle as an anti-American hero proves equally problematic as we consider the repercussions of the French-American relationship outside Europe. Struggling to let Algeria to have more room on the international stage, De Gaulle inadvertently opened the door to American influence in Africa and spent the following decades trying to preserve

⁵⁰⁵ Maurice Faivre, *Archives inédites de la politique algérienne: 1958–1962* (Paris: L’Harmattan, 2000) at 89.

⁵⁰⁶ See generally Lacroix-Riz, *Marianne*, *supra* note 499 at 14–5 and 120–2. In the works of Lacroix-Riz the French and American postwar anticommunist policies form a continuum with the French and German anticommunist policies before the war and during the Vichy regime. See generally Annie Lacroix-Riz, *De Munich à Vichy: L’assassinat de la Troisième République 1938–1940* (Paris: Armand Colin, 2008).

France's spheres of influence on that continent. Vergès continued to portray French influence after decolonization as a beneficial force: from the Arab world to Black Africa there was no "ressentiment envers la France, une fois refermé le chapitre de la colonisation..."⁵⁰⁷ He argued that what happened when France gave in to the United States in Africa culminated in the Rwandan genocide.⁵⁰⁸

Rather than providing an antidote to growing American hegemony, Vergès' commitment to recapturing France's stature in the world may have been in step with the rising American influence in the world at large. For one, the Sino-Soviet split fragmented anti-American forces, notably in the former colonies. Although Vergès portrays himself as someone who has matured into taking distance from ideological battles and has shifted his focus to preserving French influence in the world and in particular in its former colonies, his noncommittal attitude to the political divergences has an almost surreal air about it in the three books that he coauthored with Bernard Debré.⁵⁰⁹ Vergès' and Debré's views on Africa are so congruent that they are almost able to finish each other's sentences. That congruity is remarkable given their opposing political allegiances. Vergès did not denounce communism. On the other hand, Debré is a Gaullist. Together, their testimony is a powerful plea for Africa, which centres, quite uncharacteristically for Vergès, on the denunciation of a guilty conscience stoked

⁵⁰⁷ See Debré, *Mauvaise conscience*, *supra* note 235 at 53.

⁵⁰⁸ Vergès' discussions with Debré reflect the view that in an attempt to ward off the Islamic threat in Africa, the US supported militarily the Tutsi refugees in Uganda. When the plane of the Hutu President of Rwanda, Juvénal Habyarimana, was shot down, the Hutus revenged his death on the Tutsis. Vergès' conversation partner Debré also blamed Mitterrand for giving in to American pressure that allowed the Tutsis to grab power in spite of the grave doubts Mitterrand had about the outcome of such a regime change. See Debré, *Mauvaise conscience*, *supra* note 235 at 89–94. Vergès' and Debré's analysis does not answer the question how the American aid to the Tutsis furthered the war on terror. The Rwandan connection to the war on terror appeared to be a plausible trail to follow until Christopher Black, Lead Counsel for the former Hutu General Augustin Ndindiliyimana at the International Criminal Tribunal for Rwanda, discovered a letter of August 10, 1994 from General Paul Kagame, the new President of Rwanda, to fellow Tutsi Jean Baptiste Bagaza, President of Burundi. According to Black, the discovery of that letter exposed a US-backed Tutsi plan to put an end to the anti-American Hutu rule in Rwanda with a view to creating a gateway through Rwanda to Congo and to its vast natural resources with the backing of not only the US but also Great Britain and Congo's former colonial ruler Belgium. See Christopher Black, "Who was Behind the Rwandan Genocide? The Rwandan Patriotic Front's Bloody Record and the History of UN Cover-Ups" on Global Research web site at <http://www.globalresearch.ca/index.php?context=va&aid=21030>

⁵⁰⁹ Quoted in Chaudenson, *Vergès*, *supra* note 113 at 253.

among the French in regard to the evils of France's colonial past.⁵¹⁰ Their agreement is particularly surreal in light of the role that Vergès continues to play in reminding the French of their country's colonial past and the role played by the animosity between Debré's father and Vergès. Bernard Debré's father was Michel Debré, the Prime Minister of France during the Algerian War, who, according to Vergès, had considered the possibility of assassinating him. Bernard Debré was a staunch Gaullist and his agreement with Vergès on a wide range of issues Vergès belies to some Vergès' self-portrayal as a leftist.⁵¹¹ That self-portrayal is discernible in his remarks, such as "Je ne suis pas converti au capitalisme, je vis dans une société capitaliste."⁵¹² Vergès had to admit, in effect, that his hopes for seeing France assume its postwar role of counterforce to the United States had come to nothing when France and the United States acted in concert in their interference in the internal affairs of Côte d'Ivoire, especially in the aftermath of the presidential elections of late-2010.⁵¹³

⁵¹⁰ Those books were *Le suicide de la France. Entretiens* (2002); *Une révolution pour l'Afrique* (2003); and, *De la mauvaise conscience en général et de l'Afrique en particulier*. By *Mauvaise conscience* Vergès meant the postcolonial bad conscience that Europeans and especially the French have for the past colonization of Africa, which led to their abandonment of Africa. See Debré, *Mauvaise conscience*, *supra* note 235 at 74 and 84. For Debré's and Vergès' ability to finish each other's sentences, see *op. cit.* at 115–6.

⁵¹¹ Chaudenson found the congruity of Debré's and Vergès' views suspicious. He attributed their close cooperation to apolitical causes, suggesting, for instance, that Vergès' friendship with Bernard Debré, a well-known urologist, may have been due to Vergès' prostate problems. See Chaudenson, *Vergès*, *supra* note 113 at 249. Vergès and Debré describe their meeting taking place at the invitation of President Eyadema of Togo and they both described their initial unease in view of their differing viewpoints. See Debré, *Suicide*, *supra* note 188 at 21. Debré described the same meeting in Debré, *Mauvaise conscience*, *supra* note 235 at 40.

⁵¹² Vergès, *Avocat*, *supra* note 40 at 158.

⁵¹³ Vergès sketched the role of France in Africa with savage realism: "Une agression militaire est préparée par la France et les Etats-Unis afin de placer un gouvernement fantoche en Côte d'Ivoire comme dans tant d'autres pays où des gouvernements de tirailleurs servent les intérêts français et américains sans mot dire." In his fight for the restitution of France as a geopolitical counterpoise to the United States in Africa, Vergès went to Abidjan together with his lawyer colleague Roland Dumas to denounce new colonialism and to support the new Africa, which would not yield to outside pressure. See Chloé Leprince, "Vergès à Abidjan: 'La France préparait une agression'," *Rue89*, December 31, 2010 at <http://www.rue89.com/2010/12/31/verges-a-abidjan-la-france-preparait-une-agression-183100>. Dumas and Vergès had been invited by President Laurent Gbagbo, although Gbagbo's political adversary Ouattara had been Vergès' client. See Jean-Pierre, *Miroir*, *supra* note 113 at 224–5. That conciliatory atmosphere extended to the rapprochement between Dumas and Vergès, which is remarkable in view of Dumas' high position in the Socialist Party of France: he was the French Foreign Minister under Mitterrand from 1984 to 1986. Even though Vergès' decision to team up with him was in shrill contrast with his overall denunciation of Mitterrand and the Socialist Party in general, the mitigating factor was that Vergès had worked together with Dumas in the Jeanson Network trial in 1960. See Violet, *Vergès*, *supra* note 5 114–5. See also Hervé Hamon, Patrick Rotman, *Les porteurs de valises: La résistance française à la guerre d'Algérie* (Paris: Albin Michel, 1979) at 284.

4.2.4. Vergès' implicit connivence with the United States

When leaving the Communist Party of France in protest over its conciliatory position on French colonialism, Vergès dismissed its argument that France was too precious in the fight against the United States for communists to meddle in its internal affairs. Those internal affairs included Algeria. The danger of the American manipulation of the Algerian independence movement to further American interests was real. The United States supported the FLN. As an outward expression of that support, FLN delegations were received in the United States in the 1950's. In light of the image of the United States as the neo-colonial imperialist, the hospitality addressed to the FLN by the United States may appear incongruous. Faivre attributed it implicitly to the American policy of divide and rule and explained that the American objective was to erode the European colonial powers and to reintegrate the colonies under American influence and, more importantly, integrate them with the American economy.⁵¹⁴

Although the United States had been involved in the Algerian crisis in the period after the Second World War with a view to safeguarding its interests as a superpower, historians also point to its long history of conflict with the North African States. Significantly, the economic interests of the United States in relation to Algeria went back to the early-19th century.⁵¹⁵ Its vessels were attacked by pirates, for which North Africa, or Barbary, was notorious.⁵¹⁶ As

⁵¹⁴ See generally Maurice Faivre, *Le renseignement dans la Guerre d'Algérie: Préface de l'Amiral (c.r.) Pierre Lacoste* (Panazol, France: Lavauzelle, 2006) at 242.

⁵¹⁵ See generally Frederick C. Leiner, *The End of Barbary Terror: America's 1815 War Against the Pirates of North Africa* (Oxford: Oxford University Press, 2006).

⁵¹⁶ In the 19th century, the North African states were known as the Barbary States (*États barbaresques*): "Barbary, properly speaking, constitutes the whole of North-Western Africa, and extends from the frontier of Barca and the Gulf of Sidra [both in modern Libya] on the east, to Cape Nun [Cape Chaunar in southern Morocco] on the west. This vast territory, which includes the regencies of Tripoli and Tunis, the French vice-royalty of Algeria, and the empire of Morocco, corresponds to ancient Carthage, Numidia, the two Mauritanias, and Gætulia." John Reynell Morell, *Algeria: the Topography and History, Political, Social, and Natural, of French Africa* (London: Nathaniel Cooke, 1854) at 23. Its land area comprised approximately the region known as Maghreb. Maghreb المَغْرِب means "land of the setting sun," i.e. the West. According to the *Oxford English Dictionary*, it comprises Morocco, Algeria and Tunisia, all of which have had ties to France. Le *Grand*

Fedor Martens, one of the pioneers of international law, observed: “*L’Algérie était autrefois un repaire de pirates.*”⁵¹⁷ The first Americans were taken captive in Algeria in 1785.⁵¹⁸ The focal point of the conflict was Algiers, “the seat of a pirate republic governed by a junta of Ottoman soldiers and corsair captains who preyed on Mediterranean shipping more or less at will.”⁵¹⁹ The Barbary conflict coincided with the formative years of the new republic: it followed American independence by about two decades and predated the American Civil War (1861–1865) by more than half a century and was instrumental in bringing into existence such American institutions as the Navy.⁵²⁰ The end to the activities of the pirates resulted from unilateral action by France, which conquered Algeria in 1830. Barbary pirates had extended their activities to the Adriatic Sea in the Mediterranean and beyond the Mediterranean to the Azores and the coast of Holland as far as Newfoundland. After observing that the French freed Europe from the scourge of the pirates, Rozet and Carette added presciently: “Qui sait si, dans l’oubli de ces vieilles injures, on ne viendrait pas quelque jour lui reprocher la conquête de l’Algérie comme une atteinte à l’équilibre européen!”⁵²¹ In light of such comments by observers who were alive at the time of those events, Vergès’ habit of presenting Algerian history in a way that stresses the almost idyllic nature of pre-colonial Algeria is untenable.

Rozet’s and Carette’s observation anticipated future developments, especially during and after the Second World War. The difference between Rozet’s and Carette’s prescience and their predictions’ fulfillment was that European equilibrium included the United States as a

Robert reflects the broader, mainly Arabic, usage and includes Mauritania and Libya (sometimes designated as *Le Grand Maghreb*). The Arabic usage also includes the disputed territory of the Western Sahara.

⁵¹⁷ Fedor Fedorovich Martens, *Traité de droit international*; traduit du russe par Alfred Léo (Paris: Chevalier-Marescq, 1883–1887) at 342.

⁵¹⁸ Richard B. Parker, *Uncle Sam in Barbary: a Diplomatic History* (Gainesville: University Press of Florida, 2004) at 208.

⁵¹⁹ *Ibid* at 1.

⁵²⁰ See generally Glenn Tucker, *Dawn Like Thunder: the Barbary Wars and the Birth of the U. S. Navy* maps by Dorothy Thomas Tucker, Indianapolis, Bobbs-Merrill, 1963.

⁵²¹ See Claude Antoine Rozet, Antoine-Ernest-Hippolyte Carette, *Algérie*, 2d ed (Paris: Firmin Diddot, 1862) at 148.

major player. The French colonies became an object of contestation with the difference that the United States, the main adversary of France, used liberation from colonialism as a pretext for taking the place and the markets of the colonial powers, France and Great Britain.⁵²² The independence motive found a number of expressions in American political theory and practice, notably in President Woodrow Wilson's speech before Congress on January 8, 1918, known as the Fourteen Points. One of the Fourteen Points (Point 5) proposed to settle colonial claims: "A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined." All the Points from 5 onward addressed issues of self-determination, especially in Europe. When the League of Nations was established in 1919, Wilson's Fourteen Points were reflected in its Covenant. It is ironic that the United States, which was to become the epitome of imperialism in the anti-Americanism of the Soviet Union and China originally shared an anticolonial agenda and remained loyal to it, at least ostensibly, while continuing to expand its own hegemony.

After the Second World War, American sympathy with the Algerian cause was in inverse proportion to its animosity toward France, which came to a head at the time of the French-British expedition to the Suez Canal in November 1956. The Suez Canal crisis had broken out in October 1956 and forced the United States to cooperate with the Soviet Union in the United Nations to solve it.⁵²³ The crisis was ultimately behind the American supply of arms

⁵²² See generally Lacroix-Riz, *Marianne*, *supra* note 499 at 28.

⁵²³ The Suez Crisis broke out when Israel defied the Egyptian blockade of Israeli and Israel-bound vessels in the Suez Canal and invaded Sinai on October 29, 1956. The triggering event was an Egyptian search of a Greek vessel transporting building materials to Israel on September 12. Israel acted in concert with Great Britain and France, whose economic and geopolitical interests were at stake because Egypt had nationalized the Suez Canal on July 26. British and French bombers attacked Egypt on October 31. Apprehensive of alienating Egypt, the United States was successful in acting together with the Soviet Union in the United Nations to solve the crisis. See generally Avraham G. Mezerik, *The Suez Canal 1956 Crisis–1967 War: 1968–9 Fighting, UN Observers (UNTSO), Action in United Nations; Positions of Combatants, Big Four & Others, Straits of Aqaba–Casus Belli* (New York: International Review Services, 1969) at 5, 11–3. Vincent Gouysse suggested that the overthrow of

to FLN fighters in Tunisia (followed rather incongruously by Great Britain, turning against France after having fought alongside France during the Suez Crisis). The United States demanded that France demobilize 150,000 men and reduce its budgetary deficit by forty percent to receive economic aid in January 1958.⁵²⁴

Throughout his discourse, Vergès has consistently shirked off any hint that Algeria was in the American sphere of influence. However, his remarks on another subject, namely Iraq, may reveal indirectly that he knew more than he said. He showed that he was aware of the role played by safe navigation in the old imperialist rivalry between the United States and France. At the beginning of his book on the US occupation of Iraq after 2001 he said that freedom of navigation was a pretext for expanding imperialism in Algeria.⁵²⁵ Although Vergès' primary reference was the French conquest of Algeria, against the background of the theme of that book, its secondary, and implicit, reference was the long history of American military campaigns in Muslim countries.⁵²⁶ Even more revealing is Vergès' implicit reference to the interpenetration of the French and American historical presences in Africa in general. Whether France really conquered Algeria in the name of European (and American) solidarity, as Rozet and Carette claimed, the United States ultimately managed to turn that conquest to its own advantage. When we study Vergès' brief remarks against the background of the

the Mubarak regime in Egypt in early-2011 was motivated by the control over the Suez Canal. See Vincent Gouysse, "Éditorial," in *Northstar Compass*, Vol. 9, No. 1, Jan.–Février 2011 at 3.

⁵²⁴ See Guy Pervillé, *Pour une histoire de la Guerre d'Algérie 1954–1962* (Paris: Picard, 2002) at 180.

⁵²⁵ See Jacques Vergès, *La démocratie à visage obscur: Le vrai catéchisme de George W. Bush* (Paris: La Table Ronde, 2004) at 11

⁵²⁶ Vergès was not the only one to see a parallel between the Barbary War and the invasion of Iraq. Joseph Keenan noted the parallels from the perspective of contemporary American policy: "While the Barbary War resembles today's war on terror tactically and strategically, it resonates most deeply in its assertion of free trade, human rights, and freedom from tyranny and terror...In 1801 as in 2001, there was never any question that the reasons for fighting were worth the price. The United States did not hesitate to go to war for its closely held beliefs, as America's enemies have come to learn since 1775." Joseph Wheelan, *Jefferson's War: America's First War on Terror 1801–1805* (New York, Carroll & Graf Publishers, 2003) at xxv–xxvi. Those arguments penetrated political discourse and assumed populist overtones. The American martial arts star and conservative commentator Chuck Norris drew four diplomatic lessons from the Barbary Powers Conflict for the war on terror. See Chuck Norris, *Black Belt Patriotism: How to Awaken America* (Washington: Regnery Publishing, 2008) at 53–5. That topical historiography omits the countless instances in which the United States supported the *mujahedin*, notably in Afghanistan against the Soviet Union and in Algeria against France.

historical account, on which he did not elaborate, a subtle analysis points to his disillusionment with the *exception française*, which may serve American interests regardless of its stated purpose of consolidating the position of France in the world.

4.3. Connivence with Algerian Presidents

Because the association of rupture with Algeria is strong in Vergès' discourse, it comes as a surprise that his relationships to political power in Algeria after independence were emblematic of connivence. That connivence defined his relationships to the country's first president Ahmed Ben Bella and his successor Houari Boumedienne. Boumedienne overthrew and imprisoned Ben Bella in 1965. Changes of political course were inevitable. As a fledgling state, Algeria was to some extent at the mercy of international power politics. The alliances that Algeria was compelled to forge shifted with the power transfer from Ben Bella to Boumedienne. However, that shift was not as dramatic as Vergès suggests. In general, and contrary to what he suggests, Algeria's political orientation under Ben Bella was reinforced under Boumedienne. The imprecision in Vergès' presentation of the Algerian foreign-policy decisions under those two presidents is conceivably due to his attempt to downplay his connivence with both Algerian administrations.

4.3.1. Connivence with Ben Bella

Vergès' relation to Algeria was also more complicated than he would suggest in his reminiscences decades later. His vision of a socialist revolution in Algeria, as he spelled it out in 1962, did not materialize.⁵²⁷ Vergès stayed in Algeria for only about a year from 1962 to 1963. When the Algerian Foreign Minister Mohamed Khemisti was assassinated on April 11,

⁵²⁷ Vergès had advocated a socialist revolution in Cercle Taleb-Moumié, *Fidel Castro ou Tshombé?: La voie algérienne vers le socialisme* (Paris: F. Maspero, 1962).

1963, Vergès escaped to Paris through a secret route not known to the Algerian police.⁵²⁸

This was attributable to Vergès' editorial policy, which, according to him, the Algerian premier Ben Bella found too pro-Chinese.⁵²⁹ Vergès says that Ben Bella dreamed of a Soviet style system while *Révolution africaine* ran articles like "Une exclusivité mondiale: Mao vous parle" and "En Chine l'université passe par l'usine." In his article titled "L'infinie patience de sept cents millions d'hommes," Vergès wrote: "Ce qui frappe en Chine...c'est ce sentiment bouleversant...de libération non seulement collective mais individuelle."⁵³⁰

However, Vergès' statement that he clashed with Ben Bella over the political orientation of the periodical is problematic. Ben Bella's personal counselor Michel Pablo was a Trotskyist who dismissed both the Soviet and the Chinese-style revolution, and whose manoeuvres led to the discrediting of Vergès in Algeria and ultimately put his life in danger.⁵³¹ Vergès' erstwhile friend and caricaturist Siné provided a more plausible explanation of Vergès' disenchantment in light of his own experiences. Siné was told by Ben Bella not to touch on subjects that could have offended Muslim sensitivities, such as alcohol and sex, as a caricaturist. Siné dismissed the general atmosphere as excessively restrictive.⁵³² Whatever the reason for the clash between Ben Bella and Vergès, Vergès fled the country in 1963.⁵³³

Back in Europe, Vergès continued his journalistic activities and founded the successor to *Révolution africaine*, called *Révolution*. Based in Paris, *Révolution* had the support of

⁵²⁸ See generally Violet, *Vergès*, *supra* note 5 at 148–150.

⁵²⁹ Ahmed Ben Bella was Algeria's *de facto* leader since its independence in 1962. He was elected as premier in September 1962. Algeria had no president until he was elected president in September 1963. At that point, Vergès had already fled the country.

⁵³⁰ Jean-Pierre, *Miroir*, *supra* note 113 at 156–7.

⁵³¹ See generally Violet, *Vergès*, *supra* note 5 at 148–150. Michel Pablo was the pseudonym of Pablo Raptis, who was of Greek origin (*Μιχάλης Ν. Ράπτης*). He was became the leader of the Trotskyist Fourth International after the Second World War but caused a rift in the Trotskyist movement by advocating so-called entryism, which meant that Trotskyists should infiltrate other left-wing organizations, such as the Communist Party.

⁵³² See generally Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 4. A gripping first-hand description of the stifling atmosphere in post-independence Algeria from a European perspective is provided in Monneret, *Mourir*, *supra* note 403.

⁵³³ See Violet, *Vergès*, *supra* note 5 at 148–150.

Chinese officials and Che Guevara.⁵³⁴ However, the *coups d'état* in Indonesia and Ghana in the mid-1960's brought about the demise of *Révolution* because, as Vergès explained, he had expected to expand his activities in those countries: "...nous comptons assurer notre diffusion au Ghana – pays qui menait une politique panafricaine, avec [le Président Kwame] Nkrumah – et en Indonésie... Les deux premiers coups d'État étant négatifs pour moi, j'arrête *Révolution*."⁵³⁵ Vergès ran the magazine until the Ben Bella government was overthrown by Colonel Houari Boumedienne in 1965. Vergès sees a similarity in the three coups. Instead of admitting political inconsistency in accepting Boumedienne's invitation, he reduces his viewpoint to his personal interests: "Les deux premiers coups d'État étant négatifs pour moi, j'arrête *Révolution*. Le troisième m'étant bénéfique, je retourne à Alger comme avocat. J'exerce ma profession sous Boumediene."⁵³⁶ Although indirectly admitting to political inconsistency, Vergès suggested that his legal comeback under Boumedienne was in some way facilitated by his communism. He situated his relation to the Boumedienne coup against the background of the massacre of about half a million Communists in Indonesia. The quote above is telling of his mindset. In it, he completely overlooked the parallels between Boumedienne's military coup and General Mohamed Suharto's military coup in Indonesia in 1966, which deposed the country's first President Sukarno.⁵³⁷

⁵³⁴ See Jean-Pierre, *Miroir*, *supra* note 113 at 158. Vergès opened the office of the *Nouvelles Éditions internationales*, which published *Révolution*, on 40 rue François-Ier in the upscale neighbourhood of Champs-Élysées. See Violet, *Vergès*, *supra* note 5 at 151–2.

⁵³⁵ Vergès, *Avocat*, *supra* note 40 at 154. However, Violet called Vergès' publication *Révolution* his Maoist adventure and noted that it stopped appearing in January 1965 after it became clear to Vergès that pro-Maoist revolution could not be brought about in Europe. See Violet, *Vergès*, *supra* note 5 at 160. From that perspective, it would be ironic that the French periodical *L'Express* became aware of Maoism in France only in early-1965 when Vergès had folded up his publication. See generally Robert J. Alexander, *Maoism in the Developed World* (Westport, Connecticut: Praeger, 2001) at 67 [Alexander, *Developed World*].

⁵³⁶ See Vergès, *Avocat*, *supra* note 40 at 154.

⁵³⁷ *Ibid* at 154. The coup by a group of Javanese junior officers led by Lt. Col. Untung took place on September 30, 1963. General Suharto suppressed the coup in a day and gradually stripped President Sukarno's power. The suppression left hundreds of thousands of Communists dead. See Baladas Goshal, *Role of the Military in Indonesia* ([Madras]: University of Madras, 1980) at 39–40. See also Harold Crouch, *The Army and Politics in Indonesia* (Ithaca, N.Y.: Cornell University Press, 1978) at 135. Those sources minimize the massacre as an aberration. However, a communist magazine still deplored in 1969: "This monstrous, bloody terror has been raging now for three years, tens of thousands of people have been killed, or have died under torture; hundreds of

Vergès' exile from Algeria had begun in neighbouring Morocco a few months before Algeria became independent. Algeria's two neighbours had become independent in 1956: Morocco on March 2, 1956 and Tunisia on March 20, 1956.⁵³⁸ Vergès arrived in the Moroccan capital Rabat in January 1962 after he had been disbarred in France after a long series of skirmishes with the French judicial establishment. In Morocco, he accepted a post as counsel to the Minister of African Affairs, Dr. Abdelkrim El Khatib, who was one of the founders of the Army of National Liberation that fought against the French. Vergès' activities included liaising between the countries of the Maghreb (Morocco, Algeria, and Tunisia) and the nationalist movements of Black Africa. In that capacity, he met many of the principal figures of the African liberation movements, including Nelson Mandela, who had been forced to leave South Africa after local authorities had banned his party, the *African National Congress* (ANC). Thanks to Vergès' activities, the liberation movements of the Portuguese colonies moved to Rabat. They were the Liberation Front of Mozambique (*Frente de Libertação de Moçambique*, FRELIMO), the Angolan Popular Movement for the Liberation of Angola – Party of Labour (MPLA), as well as African Party for the Independence of Guinea and Cape Verde (*Partido Africano para a Independência da Guiné e Cabo Verde*, PAICG).⁵³⁹

During Vergès' stay in Morocco, those organizations were part of the broader African independence movement, which allowed him to reconcile his support for the FLN with the independence struggle in the Portuguese colonies. The liberation movements in the Portuguese colonies had special prestige because they were fighting against “the oldest [500-year-old] and most rapacious colonial regime on the African continent.”⁵⁴⁰ The FLN had a

thousands are suffering and perishing in prisons and concentration camps.” See “Indonesia,” in *The African Communist*, No. 36, First Quarter, 1969 at 95.

⁵³⁸ See generally Bigeard, *Ma guerre*, *supra* note 151 at 135.

⁵³⁹ See generally Violet, *Vergès*, *supra* note 5 at 133–5. Vergès recounted his experiences in Morocco: “Nous recevons Mandela, des leaders révolutionnaires du Mozambique, de l’île de Principe, de Guinée-Bissau.” Vergès, *Avocat*, *supra* note 40 at 154.

⁵⁴⁰ See Don Barnett and Roy Harvey, *The Revolution in Angola; MPLA, Life Histories and Documents* (Indianapolis: Bobbs-Merrill, 1972) at 1.

longstanding presence in Morocco through its military wing, *Armée de Libération Nationale* (ALN). The FLN had also carried out military action under its name since the start of insurrection.⁵⁴¹ The ALN had to flee to Morocco in the late-1950's because of the severity of French repression in Algeria.⁵⁴² Because of their relatively diffuse political agendas (that converged on the point of anticolonialism), the ALN could coexist with the FRELIMO and MPLA in Morocco.⁵⁴³

According to Jacques Givet, a friend of Vergès since the Algerian War, Vergès' activities had a more sinister aspect: he transferred funds, false documents, and weapons to African revolutionaries.⁵⁴⁴ Violet, who credited Givet simply with being an "ex fonctionnaire de l'ONU," built on Givet's revelations, which he presumably considered trustworthy on account of Givet's UN background.⁵⁴⁵ According to Violet, Vergès had set up a small network of contacts in Switzerland to provide him with light weapons that would be transferred to Africa through friends using African diplomatic passports. In his attempt to emphasize the connection between Vergès and the Swiss banker François Genoud, whose reputation rests on his activities as a financier of the Nazis during the Second World War, Violet observed that the money went through the Arab Commercial Bank, which was headed by Genoud.⁵⁴⁶

⁵⁴¹ See generally O'Ballance, *Insurrection*, *supra* note 10 at 38–42.

⁵⁴² See generally Juliette Minces, *L'Algérie de Boumediène* ([Paris]: Presses de la Cité, 1978) at 6–16.

⁵⁴³ For instance, MPLA's first manifesto of 1961 referred generally to "revolutionary struggle." Although the FRELIMO and MPLA are today known for their Marxist-Leninist agenda, they did not adopt Marxism-Leninism as their ideology until late in the 1970's. See generally Don Barnett and Roy Harvey, *The Revolution in Angola; MPLA, Life Histories and Documents* (Indianapolis: Bobbs-Merrill Co., 1972) at 2.

⁵⁴⁴ See Givet, *Le cas*, *supra* note 13 at 16.

⁵⁴⁵ See Violet, *Vergès*, *supra* note 5 at 135.

⁵⁴⁶ *Ibid* at 136.

Vergès changed location as soon as Algerian Independence was achieved. After returning to Algeria from Morocco in 1962, Ben Bella, who was the first president of independent Algeria, consulted a number of *pied-rouges* and Vergès was among them.⁵⁴⁷ Vergès became head of the African department at the Ministry of External Affairs under Minister Mohamed Khemisti, one of his clients during the Algerian War of Independence. Even if Vergès' geographic location had changed, Violet stated that his activities were the same as they had been in Morocco. Later, Vergès expanded his activities to include journalism. President Ben Bella promised financing to Vergès' new journal, *Révolution africaine*, which first appeared on February 2, 1963. It was an instant success, with articles written by prominent leftist intellectuals and politicians such as the Vietnamese Communist leader Ho Chi Minh and the President of Guinea, Sékou Touré.⁵⁴⁸

Vergès implicitly discounted the possibility that Boumedienne's coup might have produced the kind of mayhem in Algeria as the other coups produced in Ghana and Indonesia. Instead, he pointed to the mismanagement of the country under Boumedienne's predecessor, Ben Bella. As we saw, Vergès denounced Ben Bella's rule as too Soviet-oriented while implying – though not stating – that Boumedienne's views were closer to those of his own pro-Chinese sympathies. On an objective analysis, Boumedienne incorporated all the vices with which Vergès had faulted his predecessor Ben Bella. Even though Boumedienne's coup was anti-communist, for which reason Algerian communists refused to endorse it, after his visit to the Soviet Union, Boumedienne drew even closer to the Soviet Union than had Ben Bella.

Boumedienne's ambitions to become the leader of the Third World surpassed those of Ben

⁵⁴⁷ The non-Algerians who arrived in Algeria after independence were facetiously called *pied-rouges*, which is an allusion to the *pieds-noirs* (French settlers who had fled Algeria *en masse*), and also to the leftist political leanings (*rouge*) of the remaining or arriving non-Algerian population.

⁵⁴⁸ See generally Violet, Vergès, *supra* note 5 at 145–8.

Bella, whom Vergès dismissed as a person with an excess of ambition. Boumedienne's ambitions met with success when the NAM conference was held in Algiers in 1972 when Boumedienne had the opportunity to present his plans for a New Economic Order. Boumedienne's aggressive industrialization of Algeria was also reminiscent of Stalin's and Lenin's campaigns in the Soviet Union and, as in the Stalinist period, the population of the Soviet Union was generally content with the sacrifices that it had to make to get the economy on its feet.⁵⁴⁹

Considering the profound impact Boumedienne's coup had on Vergès' resumption of his legal career after a break of more than three years, it is revealing to read Vergès' *De la stratégie judiciaire* as an implicit apology for his support of Boumedienne's iron rule and for Vergès' own "connivence" with Boumedienne. There is no indication that he shared Boumedienne's agenda. He only connived with it. In contrast, Vergès did not indicate that Ben Bella even had an agenda. Instead, he portrayed his own role in the wake of Boumedienne's coup in exclusively pragmatic terms: "...[le coup] m'étant bénéfique, je retourne à Alger comme avocat." As Vergès admitted, that coup was "bénéfique" in material terms, "sur ma vie matérielle."⁵⁵⁰

4.3.3. *Exposing connivence with post-Stalin Soviet Union*

The above concrete background of connivence informs Vergès' judicial strategy. *De la stratégie judiciaire* contains more or less oblique references to Stalin and subtle denouncements of Khrushchev, who broke with Stalin's legacy. As the Soviet Union and the West drew closer to each other, the Socialist world came to share the problems of the West. If that were all that Vergès was trying to say, it would be hard to see the relevance of his

⁵⁴⁹ See generally Evans, *Anger*, *supra* note 491 at 67–101.

⁵⁵⁰ Vergès, *Avocat*, *supra* note 40 at 154.

remarks. For instance, Vergès presented the Western view of Soviet justice, especially under Stalin, as a projection of the West's own deficiencies. To that end, he enlisted the support of the prominent French writer André Gide to point to the shortcomings of the French justice system and suggested that the Western view of the Soviet system as Kafkaesque was not only a projection but also an accurate description of the Soviet justice not under Stalin but under Khrushchev. As he wrote: "L'expérience normande⁵⁵¹ d'André Gide vaut bien celle de Moscou...En réalité, l'univers de K n'est pas, quoi qu'on dise, celui de nazisme ou de l'U.R.S.S., c'est celui de la rue Saint-Jules."⁵⁵² Equating Khrushchev with the sense of terror characteristic of Kafka's works is also suggested by his use of the name "K," the principle character in Kafka's novel *The Trial*. "K" was a code name for Khrushchev in the French Communist Party.⁵⁵³

Vergès' veiled dismissal of Khrushchev was a veiled tribute to Stalin.⁵⁵⁴ According to Vergès' logic, the Soviet Union was only a shadow of its former glory under Stalin. Considering the political circumstances of the publication of *De la stratégie judiciaire* under Boumedienne, the oblique tribute to Stalin was a denouncement of Algeria's policy of approaching the post-Stalin Soviet Union. In light of what Vergès revealed of his troubled relationship with the Algerian leadership, that denouncement of the Soviet Union was also a salute to China.

⁵⁵¹ Rouen was the historical capital of the province of Normandy. The inhabitants of Normandy had a reputation for their penchant for litigation: "Pouvoir dire, 'j'allons à l'audience' ou bien 'j'venons de chez maître un tel' était le *nec plus ultra* du bonheur." See Émile Tessier, *Guide du touriste en Normandie*, 3^e édition revue et augmentée (Paris; Counol: Lanée, 1864) at XVIII at <http://www.normannia.info/pdf/tessier1864.pdf>. René Floriot alluded to the procedural savvy of the inhabitants of that province in Vergès, *Erreurs*, *supra* 195 at 45.

⁵⁵² Vergès, *Stratégie judiciaire*, *supra* note 7 at 77, 80. « Rue Saint-Jules » is not a physical location but means "rue banale." Jacques Vergès' email to Jonathan Widell on May 31, 2010.

⁵⁵³ See Robrieux, *Parti communiste*, *supra* note 290 at 508.

⁵⁵⁴ Khrushchev was responsible for some of Stalin's terror, notably the murderous purges in Ukraine. See generally Ploncard, *Coexistence*, *supra* note 179.

Vergès' dependence on Boumedienne for his political cases, such as Moïse Tshombe and the Palestinian fighters, the Fedayeen, provided him with the occasion to put his newly formulated strategy of rupture into practice. Vergès is as silent about his personal view of Boumedienne as he is vocal about his hostility toward his predecessor Ben Bella.

Ideologically, Boumedienne appears to have been further from Vergès than Ben Bella had been. Vergès' dependence on Boumedienne was one of the backgrounds of his discovery of connivence. He alleviated the stigma of connivence by bringing connivence out into the open in *De la stratégie judiciaire* and elevating it to a "strategy" which was subjugated to the loftier strategy of rupture.⁵⁵⁵

The process of Vergès' integration into Boumedienne's policies began when the Foreign Minister of Algeria, Abdelaziz Bouteflika, approached Vergès several times with requests to provide legal assistance to the Palestinians. Algeria was intent on finding a lawyer with a non-Algerian nationality and hence a non-Algerian passport because using an Algerian passport to enter Israel could have been construed as recognition of the State of Israel by Algeria.⁵⁵⁶ Vergès' view of the Palestinian question was consistent with the official line of Algeria at that time. Bachir Boumaza explained: "A Palestinian is yesterday's Algerian. To us Israel is basically a colonial phenomenon."⁵⁵⁷ From Vergès' point of view, the political case of the Fedayeen, as the Palestinian freedom fighters were called, was a welcome change. He mentioned sarcastically the daily grind of working as a lawyer before taking the defence

⁵⁵⁵ One could identify several psychological defence mechanisms in his articulation of those two strategies, such as splitting and rationalization.

⁵⁵⁶ See generally Jean-Pierre, *Miroir*, *supra* note 113 at 187.

⁵⁵⁷ Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 4. That sense of a common cause was reciprocal. In *Pour les fidayine*, Vergès quoted a PLO document of December 10, 1967 which mentioned that the Palestinian battle was comparable to the Vietnamese resistance to the United States and the Algerian resistance to France. See Jacques Vergès, *Pour les fidayine*, Préface Jérôme Lindon (Paris: Éditions de Minuit, 1969) at 125–9 [Vergès, *Fidayine*].

of the Fedayeen: “My last case was the son of a fisherman from Dellys, a small Algerian port. Or really his father: the son had been run over by a car, and I sued the insurance company.”⁵⁵⁸

“Fedayeen” meant, in Vergès’ case, two organizations that had been responsible for three attacks that his Palestinian clients had committed. The multiplicity of Palestinian militant groups translated into as many causes among which it was increasingly difficult to find a common denominator. As a rule, the Palestinian militant groups joined the Palestinian Liberation Organization, though rivalry among the groups continued in the PLO. The first group was *Al-Asifa* (Storm), which was responsible for the first Fatah attack carried out by Mahmoud Hejazi in 1965 and was Fatah’s primary militant group.⁵⁵⁹ Fatah was founded by a group of Palestinian exiles in the late-1950’s, and it became the principal component of the Palestinian Liberation Organization, which was established in May 1964.⁵⁶⁰

Mahmoud Hejazi was Vergès’ client. Vergès flew to Israel to meet him in September 1965. Hejazi had been sentenced to death in Israel on June 12, 1965 but the sentence was overturned because of a procedural error. Vergès was assigned to the case to forestall another death sentence in the second trial that was beginning in 1966.⁵⁶¹ He was able to take on that defence because of his Jewish friend Jacques Givet, who arranged authorization for Vergès to go to Israel. Vergès argued that he would be working for peace in the Middle East. Givet felt betrayed by Vergès’ vitriol against the Israeli justice system during his campaign for

⁵⁵⁸ Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 5.

⁵⁵⁹ See generally Yonah Alexander, *Palestinian Secular Terrorism: Profiles of Fatah, Popular Front for the Liberation of Palestine, Popular Front for the Liberation of Palestine-General Command, and Democratic Front for the Liberation of Palestine* (Ardsley, NY: Transnational Publishers, 2003) at 7 [Alexander, *Secular Terrorism*].

⁵⁶⁰ See generally Benny Morris, *Righteous Victims: a History of the Zionist-Arab Conflict, 1881–1999* (New York: Knopf, 1999) at 303.

⁵⁶¹ See Terror’s Advocate website http://www.terrorsadvocate.com/Vergès_affaires.html. Jacques Givet reminds his readers that the death sentence of Hejazi, who was the first person to have been condemned to death in Israel since Adolf Eichmann, was overturned because of a procedural error, which necessitated a new trial. He suggested that Vergès’ first Fedayeen client would not have been alive but for the meticulousness of the Israeli justice system. See Givet, *Le cas*, *supra* note 13 at 17.

Hejazi.⁵⁶² When the Hejazi trial started, Vergès was not notified in advance, in an apparent attempt to sidetrack the defence. While in France, he was waiting with his wife Djamila for a film to begin, as he read in *Le Monde* that the trial would commence the next day.⁵⁶³ Jacques flew in haste to Tel Aviv after learning that news. However, he was a *persona non grata* in Israel. Israeli authorities put him on a Swissair plane to Zurich the following day (March 10, 1966). Despite that setback, Jacques went down in history as the lawyer of the first Palestinian combatant judged by Israel.⁵⁶⁴

Vergès' second and third Fedayeen cases involved fighters of another group, the Popular Front for the Liberation of Palestine (PFLP), which was responsible for the two failed or aborted attacks on El Al airplanes in December 1968 and February 1969.⁵⁶⁵ The PFLP had been established after the Palestinian defeat in the Six-Day War in 1967. Its founder was George Habash, a Christian Arab. In 1968, the PFLP joined the PLO and became its second largest member group after Yasser Arafat's Fatah.⁵⁶⁶

The first of those cases centred on the attack by two Palestinians, Mohamed Mahmoud and Souleiman Maher, on an El Al plane in Athens on December 26, 1968.⁵⁶⁷ According to Vergès, the objective of the attack was to damage the plane only when it was empty. Hence, the attack killed one of the passengers, Leon Sirdan, because the attackers supposedly did not know that there were passengers on board.⁵⁶⁸ Mahab Suleimani (as Souleiman Maher is also known) of the PFLP provided a different version. He said that the PFLP planned to sabotage an El Al plane in the Athens airport, but the project was aborted at the last minute. He said that he changed his mind when he saw forty Greek schoolchildren boarding the plane. In the

⁵⁶² See Givet, *Le cas*, *supra* note 13 at 17.

⁵⁶³ See Jean-Pierre, *Miroir*, *supra* note 113 at 188.

⁵⁶⁴ See generally Violet, *Vergès*, *supra* note 5 at 164.

⁵⁶⁵ See generally Paris, *Unhealed Wounds*, *supra* note 193 at 172–3.

⁵⁶⁶ See generally Alexander, *Secular Terrorism*, *supra* note 559 at 33–4.

⁵⁶⁷ See Vergès, *Fidayine*, *supra* note 557 at 24–5.

⁵⁶⁸ *Ibid* at 14–45.

ensuing exchange of fire, one Major-General was killed. The matter was sorted out “politically,” as Suleimani put it, and the accused were released after thirteen days.⁵⁶⁹

Vergès’ third Fedayeen case was the trial of PFLP terrorists in Winterthur, Switzerland. Four Palestinians, Abdel Monen Hassan,⁵⁷⁰ Youcef Ibrahim Tewfik, Abu El Heiga,⁵⁷¹ and Amina Dahbor, attacked an El Al plane at the airport of Zürich-Kloten on February 18, 1969.⁵⁷² Perez, who according to Vergès was a “supernumerary” (which means “exceeding what is necessary, required, or desired”) pilot, was killed in the attack. The Israeli secret agent Mordechai Rachamin, who was on the plane, killed one of the attackers, Abdel Monen Hassan, to which incident Vergès referred one-sidedly as the “murder in Zurich.”⁵⁷³

Of the three “Fedayeen” cases in which Vergès was involved in the late-1960’s, only the last one, the so-called Winterthur case, ever went to trial. The lawyer in charge of the defence during that trial, Brahimi of the French Human Rights League, said that the defence resorted to Vergès’ strategy of rupture, which according to him meant that the defence refused to be part of the trial; it refused, in other words, to cooperate with the administration of justice.⁵⁷⁴

The strategy of rupture was applied for the first time by that name., but without Vergès.

Vergès was denied permission to participate in the trial: instead, he worked from Switzerland as an “advisor” or, to use another term, as an agitator.⁵⁷⁵ It is questionable whether the strategy of rupture was true to Vergès’ original vision. As Jean Chevais of the *Cour d'appel*

⁵⁶⁹ See Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 5.

⁵⁷⁰ He was also called Abdel Mohsen. See Vergès, *Fidayine*, *supra* note 557 at 125.

⁵⁷¹ Also spelled [Mohammed] Abu el Haja. See *The Lewiston Daily Sun*, February 18, 1969 at 12, in Google News

<http://news.google.com/newspapers?nid=1928&dat=19690218&id=4VsgAAAAIBAJ&sjid=UGQFAAAAIBAJ&pg=1060,5748851>

⁵⁷² Vergès, *Fidayine*, *supra* note 557 at 46.

⁵⁷³ *Ibid* at 61.

⁵⁷⁴ See Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 5.

⁵⁷⁵ See Paris, *Unhealed Wounds*, *supra* note 193 at 173–4.

*de Paris*⁵⁷⁶ explained to Violet: “Le système Vergès, c'est l'obstruction, le déplacement du procès, mais en aucun cas la politique de la chaise vide.”⁵⁷⁷

We have seen that *De la stratégie judiciaire* was Vergès' attempt to impose a narrative, albeit a loose one, on his legal career and, to compensate for its gaps and discontinuities, to situate it in an even greater narrative, the strategy of rupture, from Socrates to the time of his writing. Vergès quoted Socrates in *De la stratégie judiciaire*: “And I prophesy to you who are my murderers, that immediately after my death punishment far heavier than you have inflicted on me will surely await you.”⁵⁷⁸ That greater narrative was the individual's fight against pressure to conform, which Vergès called rupture. We have characterized that fight as an individual's strife with *groupthink*, which Vergès could use to impose retrospectively coherence on his otherwise incoherent legal career. Vergès' legal career was interlaced with his career as a journalist but he tied those two strands together into a coherent whole by making his literary, quasi-journalistic activity part of his legal career.

Vergès' narrative approach became the mainstay of his legal career by becoming the mainstay of his literary career. He chose to portray his clients as characters in a story, using books as his medium to get their story to the general public. Vergès often compares his defence of a client to film-making:

C'est comme un monteur de cinéma avec des rushes. Il va apprendre les faits, il va les classer, il va raconter une histoire basée sur des éléments vrais... À partir de là, le procureur va raconter une histoire. À partir des mêmes rushes, la défense va faire un

⁵⁷⁶ Jean Chevais works at the Cour d'appel de Paris and is the author of *L'innocence profanée* (Paris: Éditions n° 1, 2003), which discusses the paedophile cases in the Roman Catholic Church.

⁵⁷⁷ Violet, *Vergès*, *supra* note 5 at 166. The “chaise vide” alludes to De Gaulle's policy of boycotting some international meetings to draw attention to France's wishes. Chevais echoed the interpretation of Vergès' political defense, which was not yet called strategy, by an unnamed commentator at the time of the FLN trials: “Provoquant des incidents, pratiquant l'obstruction, ils plaident de longues heures durant, déposent conclusions sur conclusions et tentent d'exploiter à l'extrême, les contradictions de droit qui fourmillent dans la procédure appliquée aux Algériens.” Benabdallah, *Défense politique*, *supra* note 24 at 56.

⁵⁷⁸ Vergès quoted that passage in Vergès, *Stratégie judiciaire*, *supra* note 7 at 93. Plato, “Apology,” in *The Works of Plato*, translated into English with analyses and introductions by Benjamin Jowett, Volume Three (New York: Tudor Publishing Company, [19–?]) p. 101–134 at 130 (39c).

autre montage qui va raconter une histoire totalement différente – à partir des mêmes éléments vrais.⁵⁷⁹

Both film making and preparing a case arrange the raw material at one's disposal into a coherent narrative. To illustrate the process, Vergès referred to the reshuffling of the elements in Akira Kurosawa's film *Rashomon*.⁵⁸⁰

Vergès approach had stayed with him from the beginning, ever since he published *Pour Djamila Bouhired* with the novelist Georges Arnaud in 1957. It became more detached from the concrete courtroom setting in his book *Pour les fidayine*, which Vergès wrote to alert the readers to the historical background of the attacks and the personal stories of the accused.

Still, Vergès faced challenges in imposing uniformity on his narrative, such as the disintegration of the Palestinian liberation movement, to which he referred by mentioning in *Pour les fidayine* that the major Palestinian military groups were brought under joint command to unite the Palestinian resistance. The joint command consisted of the above-mentioned *Al-Asifa*, the Palestinian Liberation Organization (PLO), “Es-Sahika,”⁵⁸¹ the Democratic Front for the Liberation of Palestine (DFLP), and its near-namesake the Popular Front for the Liberation of Palestine (PFLP). It is possible to read the book as a manifesto for the coalition when one considers that the PFLP joined the joint command in October 1969.⁵⁸² The trust that Vergès placed in that coalition soon proved misplaced as its inability to bring about the revolution for which Vergès militated in the aftermath of the 1967 Six-Day War showed. The rupture that he in effect advocated in *Pour les fidayine* did not achieve the success that it had in Algeria in 1962.

⁵⁷⁹ Vergès, *Avocat*, *supra* note 40 at 36–7.

⁵⁸⁰ Vergès did not mention *Rashomon* by name. Instead, he identified it by its well-known storyline. See Vergès, *Nancy*, *supra* note 167.

⁵⁸¹ The Syrian-backed Es-Sa'iqa (“thunder and lightning”), set up in September 1967, was the second-largest organization in the PLO after Fatah. See Benny Morris, *Righteous Victims: a History of the Zionist-Arab Conflict, 1881-1999* (New York: Knopf, 1999) at 367.

⁵⁸² See Vergès, *Fidayine*, *supra* note 557 at 128.

4.4. *Dénouement of Connivence: Moïse Tshombe*

Vergès' efforts to present the disorganized Palestinian militant groups as a united front concealed another, more problematic episode in his career, his intervention on behalf of Moïse Tshombe, the head of the secessionist Congolese province of Katanga in 1967. Despite Vergès' efforts to situate the Tshombe episode in his logic of rupture, he acted on that occasion against his anticolonialist convictions. Although Vergès portrays himself as a free agent who chose to intervene on Tshombe's behalf, it is more likely that he was constrained to do so, either by financial exigencies, as Violet suggests,⁵⁸³ or by political pressure from Algerian President Boumedienne. Boumedienne himself faced a difficult choice between the United States and African revolution on that occasion. Cooperating with the United States to deliver Tshombe to the Congolese President Mobutu, who had the reputation of being an American lackey, would have made him, too, look like an American lackey.⁵⁸⁴ Mobutu's utility for American ambitions for Africa has not been made secret even by American policy-makers, for whom he was one of the so-called Friendly Tyrants.⁵⁸⁵

Whether Tshombe himself was a lackey was a more significant question for Boumedienne than it was to Vergès. Refusing to deliver Tshombe to Mobutu would have signalled Boumedienne's approval of the secession of Katanga, which had taken place in 1961 when Katanga rose against the leftist policies of Patrice Lumumba. Observers would have construed that refusal as a concession to any imperialist manipulators who might have been behind Tshombe. It is therefore suspiciously convenient that Tshombe died in detention in Algiers. Violet pointed a finger at Vergès and offered two scenarios, which were, however,

⁵⁸³ See Violet, *Vergès*, *supra* note 5 at 191–3.

⁵⁸⁴ See generally Ian Colvin, *The Rise and Fall of Moïse Tshombe* (London: Leslie Frewin, 1968) at 235–6.

⁵⁸⁵ See generally Michael G. Schatzberg, *Mobutu or Chaos: the United States and Zaire, 1960–1990* (Lanham, Md.: University Press of America, 1991) at 1. The United States had created a military aid mission in Kinshasa in 1963. Mobutu had kept in close contact with the CIA station chief Lawrence Devlin since 1963 and continued to have close links with the US after coming to power in 1965. See *op. cit.* at 61–2.

mutually exclusive. According to the first scenario, the Tshombe family had paid Vergès a few million Belgian francs to persuade Algerian military authorities to help Tshombe escape. Vergès did not fulfil his end of the deal, but kept the money. To avoid reprisals by the Tshombe family, according to Violet's theory, Vergès disappeared for a few years.⁵⁸⁶ However, Violet also advanced an alternative thesis: Vergès may have killed Tshombe in prison in Algeria.⁵⁸⁷ Regardless of Vergès' involvement in Tshombe's death, he appeared to have discredited his anticolonialist leanings and ended up sharing Boumedienne's predicament of serving imperialist interests irrespective of how he approached the case of Tshombe.

It is no surprise that Tshombe's political career was a story of a meteoric rise and fall. Tshombe used the confusion that followed the independence of Congo to declare Katanga independent on July 11, 1960 and declared himself Head of State on July 28.⁵⁸⁸ The central government of Congo staged Operation Morthor in September 1961 with the objective of destroying the mercenaries defending Katanga and achieving the surrender of Tshombe.⁵⁸⁹ Tshombe escaped to Bancroft in Rhodesia (today's Chililabombwe in Zambia).⁵⁹⁰ Tshombe left Congo for Europe, where he remained until he was kidnapped and taken to Algiers in 1967.⁵⁹¹

The contradictions that beleaguered Vergès as a lawyer in the changing international political climate came to a head in his defence of Tshombe. Vergès explained that he was instructed by Tshombe's family to intervene with Algerian President Boumedienne on behalf of

⁵⁸⁶ See Violet, *Vergès*, *supra* note 5 at 191.

⁵⁸⁷ *Ibid* at 193.

⁵⁸⁸ Colonel Trinquier, Jacques Duchemin, Jacques Le Bailly, *Notre guerre au Katanga* (Paris: Éditions de la Pensée Moderne, 1963) at 17 [Trinquier, *Katanga*].

⁵⁸⁹ *Ibid* at 108.

⁵⁹⁰ *Ibid* at 120–4.

⁵⁹¹ See generally Ian Colvin, *The Rise and Fall of Moïse Tshombe* (London: Leslie Frewin, 1968) at 235–6. A more recent account of Tshombe's checkered political career is provided by Jeanne M. Haskin. See generally Jeanne M. Haskin, *The Tragic State of the Congo: from Decolonization to Dictatorship* (New York: Algora Publishing, 2005 [Haskin, *Tragic State*]).

Tshombe.⁵⁹² However, Benabdallah, a former colleague of Vergès from his FLN days, was the only lawyer who pleaded before Algerian authorities in Tshombe's extradition case on July 14, 1967. Tshombe lost that case, but President Boumedienne refused to sign the extradition order. Was Tshombe's death not too convenient politically? Vergès argued that Tshombe, who suffered from heart disease, was deprived of his medication to make his death appear natural so that Boumedienne did not have to make the politically sensitive decision to extradite him to Congo. The extradition would have made him appear a lackey of the United States and thus share the reputation of Congolese President Mobutu, who had requested the extradition of Tshombe.⁵⁹³

Vergès tackled those political contradictions by explaining that his Belgian colleague Jules Chomé, a former lawyer of Patrice Lumumba, let him know that the Americans had arranged the kidnapping of Tshombe from Europe to please Mobutu⁵⁹⁴ and expected in return to supplant France as a dominant power in Africa.⁵⁹⁵ Vergès appealed to his own patriotism and explained that Mobutu was pro-American while Tshombe was pro-French – it was therefore his duty to defend Tshombe.⁵⁹⁶

The view that Tshombe was anti-American and pro-French was a later perspective, which pivoted on Vergès' bogeyman, the United States. Ironically, Vergès' periodical *Révolution* had attributed Tshombe's rule in Léopoldville to US military support only two years before he intervened on Tshombe's behalf.⁵⁹⁷ The Marxist *Conseil national de la liberation* (CNL)

⁵⁹² See Jean-Pierre, *Miroir*, *supra* note 113 at 159–161.

⁵⁹³ See Violet, *Vergès*, *supra* note 5 at 185–190.

⁵⁹⁴ Mobutu became President of the Congo in 1965. In his so-called Authenticity Programme, he renamed the country Zaire in 1971. He also renamed himself Mobutu Sese Seko Kuku Ngbendu Wa Za Banga ("the all-powerful warrior who, because of his endurance and inflexible will to win, will go from conquest leaving fire in his wake") in 1972. See Haskin, *Tragic State*, *supra* note 591 at 44–5. The country readopted the old name when Mobutu fled in May 1997 (to die in exile that same year). See Peta Ikambana, *Mobutu's Totalitarian Political System: an Afrocentric Analysis* (New York: Routledge, 2007) at xi.

⁵⁹⁵ See Debré, *Mauvaise conscience*, *supra* note 235 at 58–9.

⁵⁹⁶ See Jean-Pierre, *Miroir*, *supra* note 113 at 161–2.

⁵⁹⁷ *Révolution* December 1964–January 1965, quoted in Givet, *Le cas*, *supra* note 13 at 26.

also ascribed Tshombe's secession to "l'impérialisme dirigé par les USA" in the preamble of its programme of April 15, 1964.⁵⁹⁸ In terms of anticolonialism, Mobutu was entirely consistent in dismissing Tshombe, who had been paid by the *Union minière du Haut-Katanga* the sum of 550.6 million Belgian francs to finance the military struggle of Katanga and South Kasai against the country's central government between 1960 and 1963.⁵⁹⁹ Mobutu added a racial component to the Katanga independence movement: the most fervent fighters for the independence of Katanga were the settlers, who were, of course, predominantly white.⁶⁰⁰

In order to support Tshombe, Vergès had to abandon the memory of Patrice Lumumba, whose assassination he had protested in Paris in 1961. His protest was captured in a well-known photo where Vergès' face was bleeding and he was held back by two Congolese, one of whom was – according to Givet – Lumumba's son. Vergès' loyalties were divided: on one hand he protested against the assassination of Lumumba, in whose death Tshombe possibly played a part; on the other, he intervened on Tshombe's behalf to stop his extradition to the Congo, where Tshombe's enemy Mobutu would probably have killed him. The assassination of Lumumba may have merited Vergès' anti-Mobutu sentiment in a show of honouring Lumumba's memory: Mobutu had started accusing Lumumba of communism and ultimately delivered him to Katanga for assassination. However, it is incongruous for Vergès to sympathize with Tshombe, who was the president of Katanga at the time. According to the established view, Tshombe attended the execution of Lumumba by Belgian officers in Katanga in January 1961.⁶⁰¹ A further indication that Tshombe was not advocating French

⁵⁹⁸ See Ludo Martens, *Pierre Mulele: ou la seconde vie de Patrice Lumumba* (Berchem (Antwerp): Éditions EPO, 1985) at 162–3 [Martens, *Mulele*].

⁵⁹⁹ See generally Mobutu Sese Seko, *Dignité pour l'Afrique: Entretiens avec Jean-Louis Remilleux* (Paris, Albin Michel, 1989) at 139–40, 195 [Mobutu, *Dignité*].

⁶⁰⁰ *Ibid* at 80. Mike Hoare, one of the best-known mercenaries hired by Tshombe, was more balanced: "Tshombe was the exceptional man who is able to understand the African and the European mind at one and the same time." Mike Hoare, *Congo Mercenary* (London: Robert Hale, 1987) at 28.

⁶⁰¹ See generally Leo Zeilig, *Patrice Lumumba, Africa's Lost Leader* (London: House Publishing, 2008) at 124.

interests, as Vergès suggested, came from Che Guevara, who was present in Congo until 1966. He was quick to dismiss Tshombe as a puppet of American imperialism.⁶⁰²

There was thus so little difference between Tshombe and Mobutu that it does not account for Vergès' support for one and denunciation of the other. American and Belgian interests were looked after in Léopoldville equally by Tshombe and later by Mobutu.⁶⁰³ Mobutu made a show of subscribing to "open revolution," the fight against neo-colonialism, and "African socialism" but his motive for doing so was the winning over of the less radical wing of the CNL, which was led by Christophe Gbenye, in 1964 to consolidate his own power.⁶⁰⁴ As a sign of his softening resistance, Gbenye later requested that Che Guevara leave Congo, which he did in 1966.⁶⁰⁵

A fact that further detracted from Tshombe's anticolonialist credibility was that he was also protected by the colonial power Portugal of neighbouring Angola. Tshombe's 10,000 mercenaries were protected by the Portuguese "fascists," as Ludo Martens called them, in Angola in 1964, which made Tshombe attractive enough for the US and Belgium to make him Prime Minister of Congo on July 10, 1964.⁶⁰⁶ The dilemma for Vergès was that those "fascists" were also fighting the MPLA while protecting Tshombe. The MPLA was one of

⁶⁰² Guevara wrote: "I therefore suggested that training should take place not in our faraway Cuba but in the nearby Congo, where the struggle was not against some puppet like Tshombe but against North American imperialism, which, in its neo-colonial form, was threatening the newly acquired independence of nearly every African people or helping to keep the colonies in subjection." Ernesto 'Che' Guevara, *The African Dream: The Diaries of the Revolutionary War in the Congo*, Translated from the Spanish by Patrick Camiller with an Introduction by Richard Gott and a Foreword by Aleida Guevara March (New York: Grove Press, 2000) at 7.

⁶⁰³ See generally Martens, *Mulele*, *supra* note 598 at 305.

⁶⁰⁴ Martens, *Mulele*, *supra* note 598 at 309.

⁶⁰⁵ *Ibid* at 293.

⁶⁰⁶ *Ibid* at 310. The qualification "Fascist" to describe the Portuguese colonial regime was not unique. See e.g. P. Dias, "Fascist Portugal Must Quit Africa," in *The African Communist*, No. 6, July 1961, p. 11–18. Portuguese "Fascism" refers to the anti-communist politics of António de Oliveira Salazar's *Estado Novo*. Portuguese colonialism was supported by the Americans, South Africans, and West Germans. See generally Don Barnett and Roy Harvey, *The Revolution in Angola; MPLA, Life Histories and Documents* (Indianapolis: Bobbs-Merrill, 1972) at 39.

the three liberation movements that Vergès persuaded to move to Morocco in early 1962 when he was working for the Moroccan government.⁶⁰⁷

More troubling in respect of Vergès' support for Tshombe was that his view of the beneficial influence of France in Congo was remarkably close to that of Colonel Roger Trinquier.

Trinquier was not an anticolonialist. On the contrary, he was one of the prominent French officers during the Algerian War of Independence. Consequently, Vergès could not have equated French interests with Trinquier's mission of fighting against the Congolese forces. Trinquier even talked openly about the use of torture in Algeria in a conversation with Yacef Saâdi.⁶⁰⁸ Trinquier was hired by Tshombe to defend Katanga, but his project of putting into practice the doctrines of "revolutionary action" that he discovered in the prison camps of Indochina was far from Vergès' anticolonial battle. He also enlisted French mercenaries Yves La Bourdonnaye, Labourdigue and, perhaps the best-known French mercenary of all times, Bob Denard.⁶⁰⁹ On the other hand, it is true that his project was French. Even if the majority of the cadre remained Belgian, the French associated with Trinquier benefited from twenty years of war experience.⁶¹⁰

The involvement of the French government in the Tshombe affair, which Vergès suggested was his motive for defending Tshombe, was, however, minimal. Insofar as France was involved in the Tshombe affair, it was carried out by people who had been Vergès' enemies during the Algerian War. French Foreign Affairs also disapproved of Trinquier's mission. For that reason, Trinquier, who had received an invitation from Tshombe on January 5, 1961, had to retire conditionally to be able to maintain contact with the French government.⁶¹¹ The

⁶⁰⁷ See Violet, *Vergès*, *supra* note 5 at 133–5.

⁶⁰⁸ Yacef Saâdi and Colonel Roger Trinquier (1970) 1 at <http://www.youtube.com/watch?v=bIaloFJuIXM&feature=related>

⁶⁰⁹ See generally Michel Honorin, *La fin des mercenaires: Bukavu, novembre 1967* (Paris: Robert Laffont, 1968) at 14–5.

⁶¹⁰ See Trinquier, *Katanga*, *supra* note 588 at 82.

⁶¹¹ *Ibid* at 53, 56.

defence of French influence in Africa, which was the reason Vergès advanced for defending Tshombe, probably conceals another motive, such as money, just as Violet suggested.

It seems that the only support for Vergès' statement that Tshombe represented France's interests comes from the rumour that Trinquier worked for Jacques Foccart, both De Gaulle's and Pompidou's chief of staff for African matters from 1960 to 1974.⁶¹² However, rather than solving the mystery of Vergès' reference to the supposed role of France in supporting Tshombe, the possibility of evoking Foccart would only deepen it. If we were to believe Violet, in particular, Foccart was literally on murderous terms with Vergès. Foccart reputedly tried to have Vergès assassinated. Vergès would probably not have identified his cherished French interests with Foccart. On the other hand, most of the speculation of Foccart's involvement in any assassination plan against Vergès, for which Violet argued, was based on a fictionalized account by Constantin Melnik, who was Michel Debré's cabinet chief, in his book *La mort était leur mission*. Its historical accuracy is questionable. According to Melnik's account, Debré was ready to assassinate Vergès but De Gaulle intervened on his behalf, which gave rise to the speculation that Foccart had suggested liquidating Vergès.⁶¹³ The first problem with that speculation is that, as General Paul Grossin, who was director of the French intelligence agency, the *Services de Documentation Extérieure et de Contre-Espionage* (SDECE), refused to assassinate a Frenchman, especially when that Frenchman was a former soldier in the Forces of Free France, so that the plan came to nothing.⁶¹⁴ Secondly, Foccart discredited Melnik's story which he attributed to Melnik's imagination. Foccart pointed out that Melnik had prefaced his autobiography with an admission of folly:

⁶¹² See generally Colonel Jean Schramme, *Le bataillon Léopard: souvenirs d'un Africain blanc* (Paris: Robert Laffont, 1969) at 71. Jacques Foccart was also the founder and leader of a militant Gaullist organization *Service d'Action Civique*, which soon got the reputation of acting like a parallel police. Despite its virulent anti-communism, SAC was an improbable threat to Vergès after De Gaulle became favourable to the independence of Algeria.

⁶¹³ See Constantin Melnik, *La mort était leur mission* (Paris: Plon, 1996) at 150–1.

⁶¹⁴ See generally Violet, *Vergès*, *supra* note 5 at 105. See also Rémi Kauffer; Roger Faligot; Jean Guisnel, éd. *Histoire secrète de la Ve République* (Paris: La Découverte, 2007) at 54 [Kauffer, *Ve République*].

“Peut-être, ajoute-t-il, suis-je, moi-même, un peu fou.” Foccart attributed Melnik’s account to jealousy: “Pour tout vous dire, j’ai le sentiment que Melnik éprouve à mon égard une espèce de jalousie perverse: il essaie de se composer un personnage assez proche de celui qu’on avait inventé pour moi...”⁶¹⁵ Vergès holds no grudge Foccart, which would seem to strengthen his story about fighting for French influence in Africa. In Vergès’ words, Foccart telephoned him before dying and told him that he was not involved in any plot against him. The reason was that “il s’agissait d’une histoire de Matignon⁶¹⁶ et non pas de l’Élysée.”⁶¹⁷ That information exonerated De Gaulle while implicating Debré, with whom Vergès was never on friendly terms.

Regardless of the role that Foccart may have played in the life of Trinquier or Vergès, Trinquier presented his mission in a way that could have placated his anticolonial critics, such as Vergès, though he limited his view to the settlers, merchants, and junior officers who detested the Belgians of Belgium (called *belgicaines*⁶¹⁸). Trinquier said that the population of Katanga admired France for its policy of partitioning its possessions in Black Africa into separate and independent states, in contrast to the Belgian policy of keeping Congo united.⁶¹⁹

Furthermore, those sympathetic to Tshombe, including Trinquier, presented the secession as a practical matter, not an ideological issue. Tshombe was, purportedly, nobody’s fool and was not a puppet for imperialism. If he was serving anybody’s interests, they were those of his own ethnic group, the Lundas, and thus he was not anyone else’s servant. The feeling of superiority of the inhabitants of Katanga as opposed to their compatriots in the capital Léopoldville was supposedly not racially motivated. Inhabitants of Katanga of all colours

⁶¹⁵ Jacques Foccart, *Foccart parle: entretiens avec Philippe Gaillard*, Fayard/Jeune Afrique, 1995 at 360–2.

⁶¹⁶ Hôtel Matignon is the official residence of the French Prime Minister. The Élysée Palace is the official residence of the French President. Foccart meant that the plots were hatched by Prime Minister Michel Debré, who was Melnik’s superior.

⁶¹⁷ See Felissi, *Anticolonialiste*, *supra* note 6 at 90–1.

⁶¹⁸ That word is also a pejorative term used to describe people who support the unity of Belgium and thus oppose both Flemish and Walloon separatism.

⁶¹⁹ See Trinquier, *Katanga*, *supra* note 588 at 68–9.

held the central government in contempt. Their motto was: “you make paper,⁶²⁰ we make copper.”⁶²¹ Why would Katanga, with a million and a half inhabitants, pay two-thirds of the budget of Congo with its fifteen million inhabitants?⁶²² The supersession of political allegiances by financial considerations was illustrated concretely for Tshombe’s sympathizers in the neighbouring province of South Kasai, which Lumumba’s right-hand man Albert Kalonji declared independent. That province was responsible for three-quarters of the world’s production of industrial diamonds.⁶²³

Although Vergès’ anticolonialism may not have been compromised by his indirect association with Trinquier and Foccart, Tshombe himself was reportedly in contact with “Fascists”. Tshombe’s connections to “Fascists” were more substantial than his contacts with Trinquier and Foccart. That view was put forward by none other than the Special Representative to Dag Hammarskjöld, the Secretary-General of the United Nations, Conar Cruise O’Brien. The context was that the serene character of Tshombe’s rule was unsettled by the death of Hammarskjöld, in 1961. This was the second high-profile death related more or less directly to Tshombe. Hammarskjöld was flying to meet Tshombe in Bancroft, Rhodesia and got shot down *en route* on September 18, 1961.⁶²⁴ O’Brien did not accuse Tshombe of murder. What he did suggest was even more damning for Vergès’ view of a benevolent French influence in Katanga. O’Brien blamed the French troops in Katanga for the Secretary-General’s death and called them fascists:

⁶²⁰ The pun plays on the double meaning of “paper.” It refers to the paper pulp production in Congo’s capital (called Léopoldville until 1966, now Kinshasa) and also to the capital’s sluggish bureaucracy which was out of touch with the realities of the provinces such as Katanga.

⁶²¹ Charles D’Ydewalle, *L’Union Minière du Haut Katanga: De l’âge colonial à l’indépendance* (Paris: Plon, 1960) at 149. The secession of Katanga undoubtedly catered to Lunda nationalism but it is debatable to what extent Tshombe regarded himself as a spearhead of any nationalism. See Edouard Bustin, *Lunda under Belgian Rule: the Politics of Ethnicity* (Cambridge: Harvard University Press, 1975) at 237.

⁶²² Katanga produced 8% of the world’s copper, 60% of the West’s uranium, 73% of its cobalt, and so on. See Trinquier, *Katanga*, *supra* note 588 at 16.

⁶²³ *Ibid* at 38.

⁶²⁴ *Ibid* at 120–4.

...It was not, however, Tshombe who was waging war in Katanga. Tshombe had always one foot, and often two, in the Rhodesian sanctuary [i.e. Northern Rhodesia, today's Zambia]. The warrior was [the second man of Tshombe's party CONAKAT, Godefroid] Munongo. Munongo's was the one group in Katanga which would have been capable of such an act...The men principally concerned were the OAS officers – Lasimone's 'fascists'. They were, and are, fascists, and they had scores other than the Congo to settle with Hammarskjöld: Algeria, Suez, Tunisia. There is no doubt that they had eyes and ears and hands in Brazzaville [capital of the French Congo] and Leopoldville [capital of the former Belgian Congo], as well as control over the air-strip at Kolwezi: they almost certainly also had friends at Ndola. There is no doubt that they were experienced in political assassination and that they would have regarded the murder of Hammarskjöld a virtuous act.⁶²⁵

Captain Lasimone, to whom O'Brien referred, was a French mercenary. O'Brien's denunciation of him and his subordinates denigrated French mercenaries in general as fascists. Tshombe's French connection, to which Vergès referred, consisted of those mercenaries. Significantly, Godefroid Munongo, who was also mentioned by O'Brien, was reputedly behind the other high-profile murder that shadowed Tshombe's rule, namely that of the leftist leader Lumumba.⁶²⁶

Vergès' explanation for his defence of Tshombe with an appeal to French interests is thus stretched. However, Vergès is right in suggesting that France had a stake in the Congo. Rather than limiting Vergès' contribution to strengthening France's role in Africa to his intervention on behalf of Tshombe, as Vergès' account would have it, we see the importance of the Congo to France when we observe the development of the relationships between those two countries over time. It then becomes plausible that Vergès referred to France's role anachronistically, imputing France's actions that took place at approximately the time of his conversation with Jean-Pierre, to the past that to which he was referring.

⁶²⁵ See generally Conor Cruise O'Brien, *To Katanga and Back, a UN Case History* (London: Hutchinson, 1962) at 286–7.

⁶²⁶ *Ibid* at 104.

Firstly, Vergès may have evoked a leftist leaning in his account of Katanga's secession anachronistically. The Congolese People's Armed Forces (FAPC) invaded Kolwezi on May 13, 1978 and fought for the independence of Katanga. The Tigers, as the FAPC was called, were supported by Angola's Marxist-Leninist MPLA. However, instead of supporting the rebellion, as Vergès' version would require, France supported Mobutu and dealt the Tigers a decisive defeat to keep Zaire, as Mobutu's Congo was called, in the French sphere of influence in Africa.⁶²⁷

Secondly, the more plausible interpretation is that, in his conversation with Jean-Pierre, Vergès made an anachronistic reference to heavy French involvement in Rwanda in the 1990's. France intervened in the civil war in Rwanda to protect the interests of the French-speaking world and thus to protect itself against the incursions made into Rwanda by Tutsi refugees from English-speaking Uganda. French protection of Hutus against the Tutsis appeared to amount to condoning genocide by the Hutus of the Tutsis who were in the country and to protecting (or even aiding and abetting) war criminals.⁶²⁸ That setting was also more in line with Vergès' tendency from the 1990's onward to defend high-profile political figures accused of genocide, such as the Yugoslav President Milošević and one of the leaders of the Khmer Rouge, Khieu Samphan.

From Tshombe's alleged Fascist connections, we conclude that France was not involved in Tshombe's campaign to an extent that would have justified Vergès' intervention on his behalf

⁶²⁷ A vivid personal account of the battle between the Tigers and the Foreign Legion, which started on May 19, 1978, with a presentation of the political context, has been published by a member of the 2nd Foreign Parachute Regiment, *caporal chef* Kyösti Pietiläinen. See generally Kyösti Pietiläinen, Juhan-Ville Kaarnakari, *Legioonain isku Kolweziin*, Helsinki: Tammi, 2008. An unglamorous account of that same campaign is to be found in Roger Rousseau, *Légion, je t'accuse! La face cachée de Kolwezi* (Le Bourg: Éditions Roxy, 2006) at 133: "Notre mission était d'ailleurs assez claire, nous étions là pour tuer des noirs. Alors pourquoi ne pas les voler et violer au passage?"

⁶²⁸ See generally Petri ja Kyösti Pietiläinen, *Legioonalainen Peters: Suomalaisen palkkasoturin muistelmät*, Tammen äänikirjat, Helsinki: Kustannusyhtiö Tammi, 2006, Tracks 10–12, Disc 11/12. Kyösti Pietiläinen was assigned to the 2nd combat detachment of the 3rd combat company of the 13th Demi-Brigade of the Foreign Legion to participate in the *Operation Turquoise* in Rwanda in summer 1994.

in the name of French interests. Trinquier and Foccart did not represent the France in which he believed. Vergès conceals his reasons for intervening to stop the extradition of Tshombe from Algeria to Congo, where he would probably have been executed on the orders of his enemy Mobutu. His secretiveness suggests that Vergès has something to hide because it does not accord with the image he portrays. His intervention on behalf of Tshombe is either devoid of political motivations, or it was an expression of right-wing sympathies. Either of those two interpretations is detrimental to Vergès' image as an anticolonialist. He precludes the first option, which would potentially be less detrimental, by explaining that he defended the interests of France by intervening on Tshombe's behalf. We have seen that Vergès' explanation is unconvincing. It is more probable that he acted against his own preferences in that case, possibly because of financial considerations. That act of compromise in turn gave rise to his strategy of connivence.

In our biographical approach to Vergès' discourse on judicial strategy, the Tshombe case appears as a major latent influence in his articulation of the strategy of connivence in *De la stratégie judiciaire*, albeit in the negative sense of inviting the strategy of rupture, and the subsequent overemphasis on the strategy of rupture, as its counterpart. Whatever happened during the following period in Vergès' life, which in our chronology begins with his so-called disappearance in 1970, probably has to do with his attempt to live down the Tshombe affair. Whether or not Vergès' financial connections to Tshombe were as strong as Violet suggested, the Tshombe affair continued to weigh heavily on Vergès. According to journalists Lionel Duroy and Patricia Tourancheau, Vergès continued to refer to the Tshombe affair as an explanation for the large sums of money that he carried with him. Although both of them

admitted that Vergès could have been joking, his references pointed to the indelible mark that that possibly pedestrian affair left on him.⁶²⁹

⁶²⁹ According to Duroy, “Jacques Vergès had, in the last years of his ‘disappearance’ in 1977 and 1978 made many trips on airlines to the Far East. One company claimed he owed a fortune. The last time that Vergès came back to France to stay, he had a suitcase full of small banknotes, and said to [his lawyer friend] Cain: ‘Pay the airline with that... Cain asked him who it came from, maybe he was kidding, he answered: ‘From Moïse Tshombe’. Tourancheau continues: “He also repaid Jérôme Lindon at the Éditions de Minuit with a suitcase full of money and said: ‘It came from Tshombe’.” See the interviews of Lionel Duroy and Patricia Tourancheau in Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 7.

5. VERGÈS' BREAK WITH RUPTURE: CLANDESTINITY (1970–8) AND RETURN (1978–82)

This chapter analyzes the reasons for and the consequences of Vergès' notorious eight-year clandestinity from 1970 to 1978, in respect of which he has not divulged any details. The uncertainty about Vergès' life during that time has fed the "fascination exerted in France by Vergès," to which Derrida referred. When Jean-Pierre posed questions about it, Vergès answered: "Vous savez bien que je ne répons pas aux questions sur cette période." Jean-Pierre answered: "Je ne le sais que trop."⁶³⁰ The enigma surrounding that period has fascinated observers such as Violet, who suggested that Vergès' clandestinity was a sequel to the imbroglio of the Tshombe affair. According to Violet, Vergès spent his clandestine years in the Far East.

Contrary to Violet, we argue that Vergès spent his clandestinity predominantly in Africa, not in Indochina. As in the case of chronology, which we turned into psychological chronology, the physical location is less important than his psychological location. After this re-emergence from that clandestinity, he defined himself as an African person.⁶³¹

Vergès' new self-identity entailed a new way of looking at identity in general. Defining a "psychological location" was one of those new ways. Psychological location has an important position in the Afrocentric view. As the African-American historian and philosopher Molefi Asante explained:

The Afrocentrist argues that one's analysis is more often than not related to where a person's mind is located. For example, you can normally tell if an African is located in a culturally centered position vis-à-vis the African world by how that person relates

⁶³⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 190.

⁶³¹ See generally Bennie A. Khoapa, "The African Personality," in Carlos A. Mallmann and Oscar Nudler, ed, *Human Development in its Social Context: a Collective Exploratio* (London: Hodder and Stoughton in association with the United Nations University, 1986) p. 213–232 at 213.

to African information. If he or she speaks of Africans as the ‘other’ then you have an idea that the person views the African as other than herself or himself.⁶³²

Because of the importance of where a person’s mind is located, it is not irrelevant to draw attention to where Vergès might have resided physically during his clandestinity. The speculation about Vergès’ whereabouts in which Bernard Violet and Barbet Schroeder indulge does more than cater to our curiosity. The continuity of his personal narrative, which was apparently disrupted by his clandestinity, provides a key to how he defined himself as a person and, by implication, how he defined his strategy. It would have been incongruous for him to adopt an Afrocentric view if he did not stay in Africa at least part of his clandestinity. Once we understand his new self-identity, we understand the changes in his general outlook and therefore the development that his strategy underwent in the 1970’s.

The African personhood affected Vergès in two profound ways. First, Africans supposedly experience time in a certain way, which is important because African paradigms of living are narrative by nature.⁶³³ John S. Mbiti described the African experience of time as follows:

What is taking place now no doubt unfolds the future, but once an event has taken place, it is no longer in the future but in the present and the past. *Actual time* is therefore what is present and what is past. It moves ‘backward’ rather than ‘forward’; and people set their minds not on future things, but chiefly in what has taken place.⁶³⁴

Second, as Mbiti went on to explain, that experience of time also affected the way in which persons saw themselves in relation to others and, ultimately, to a collective. Because the past

⁶³² Molefi Kete Asante, *An Afrocentric Manifesto: Toward an African Renaissance* (Cambridge: Polity, 2007) at 42. According to Asante, psychological location is the first of the five characteristics of an Afrocentric project. The others are “the African subject place,” the defense of African cultural elements, a commitment to lexical refinement, and a commitment to correct the “dislocations” in the history of Africa. See *op. cit.* at 41.

⁶³³ Pauw, *Narrative Psychology*, *supra* note 50 at 190.

⁶³⁴ John S. Mbiti, *African Religions & Philosophy*, 2d ed (New York: Praeger, 1990) at 17. A somewhat similar view was expressed in the chapter with the heading “The Future as Forward Movement into the Past” in Messay Kebede, *Africa’s Quest for a Philosophy of Decolonization* (Amsterdam: Rodopi, 2004) at 129–153.

dominated that time concept, an individual was tied to the collective by sharing the past of that collective.

We see the reversal of temporality in Vergès' life in the circularity that adheres to his construction of a narrative about his youth. We will also encounter it in studying his incorporation of retrospection into his judicial strategy. That reversal of the orientation in time also entailed a change in how Vergès conceived of what was his and what was others'. After his reappearance, he did not consider his judicial strategy as exclusively "his." For instance, after his clandestinity he not only relinquished a claim to it but expressed his satisfaction with its applicability to a wide variety of seemingly non-political contexts: "Ce qui distingue la rupture, aujourd'hui, c'est qu'elle n'est plus le fait d'un petit nombre dans des circonstances exceptionnelles, mais d'un grand nombre à travers les mille et un problèmes de la vie quotidienne."⁶³⁵

Those changes in Vergès' general outlook were of course a result of many factors but we lay the emphasis on the factors that provide his story with continuity. Vergès' professional setbacks in the 1960's would probably have been an insufficient reason for him to go into hiding. We do not know enough to pinpoint his exact reasons for disappearing but we do know that he considers the great changes to his life as coherent.⁶³⁶

One clue is that we know that Vergès considered himself a Maoist "plus que jamais" in 1970.⁶³⁷ As Alain Peyrefitte explained, Maoists fell into two distinct groups in the late-1960's: those who wanted to save Marxism as an ideology and those who chose to pursue the ideal of the so-called "new man" – the internalization of the objectives of a socialist society.

⁶³⁵ Vergès, *Stratégie judiciaire*, *supra* note 7 at 12.

⁶³⁶ Jean-Pierre, *Miroir*, *supra* note 113 at 194.

⁶³⁷ See Jean-Pierre, *Miroir*, *supra* note 113 at 191.

The former were Maoists by politics, the latter by morality.⁶³⁸ The new man would recapture the old man without the trappings of society that had exploited the old man.⁶³⁹ There is little doubt that Vergès belonged to the latter group, as is demonstrated by the statement that he would make about 30 years later: a revolution in spirit was all that was needed to remedy the ills of the justice system.⁶⁴⁰

Vergès' approach to constituting the new man was to create a hole in his personal narrative which allowed him to realign his past with his present and with his future.⁶⁴¹ In the process, Vergès patterned his own quest after the model of the African personality, which continues to be an evolving project not only for Vergès but also to others who embarked on it.⁶⁴²

5.1 Into Clandestinity and Back

Vergès' secretiveness about his intervention on behalf of Tshombe deepened in 1970 when he retired from publicity and returned eight years later. He has not agreed to shed any light on his whereabouts or his reasons for "disappearing." It is plausible to regard his eight-year clandestinity as the prolongation of the Tshombe affair and to attribute both of them to the same factors, as Bernard Violet did in his biography of Vergès, by suggesting that Vergès ran

⁶³⁸ Alain Peyrefitte, *La Chine s'est éveillée: carnets de route de l'ère Deng Xiaoping* (Paris: Fayard, 1996) at 64–5 [Peyrefitte, *Chine*].

⁶³⁹ See Jean Lacroix, *Marxisme, existentialisme, personnalisme* (Paris: Presses universitaires de France, 1950) at 26 [Lacroix, *Marxisme*]. Despite its unmistakable communist overtones, the new man was anchored in Chinese culture before the communist takeover: "Debates concerning the Chinese 'moral order' and even democracy have focused very strongly on the 'improvement' and 'quality' of the human material. The focus has been on human engineering by socialization and evaluation. Everyone could be a sage and achieve this highest ideal state of morality. Self-sacrifice and moral self-evaluation constituted the core of the Confucian *junzi* as well as the Maoist 'new man' (*xinren*). Børge Bakken, "Principled and Unprincipled Democracy: The Chinese Approach to Evaluation and Election," in Hans Antlöv, Tak-Wing Ngo, ed, *The Cultural Construction of Politics in Asia*, p. 107–130 at 107.

⁶⁴⁰ See Vergès, *Erreurs*, *supra* 195 at 120.

⁶⁴¹ A similar hole could also be caused by illness which disrupts a person's narrative and necessitates corrective measures to ensure ego identity, such as the realignment of the past with the present and of the present with the future. See generally Shlomith Rimmon-Kenan, "The Story of 'I': Illness and Narrative Identity," in *Narrative*, 2002, 10:9–27.

⁶⁴² The reversal of the time orientation to which Mbiti pointed was at least in part motivated by a need to turn to the past for clues on how to carry on the project of not only constituting but also defining the African personality. That project of constitution purported to be reconstitution.

with the money he had been paid by Tshombe's family and stayed in hiding for eight years.⁶⁴³ Without sharing Violet's contradictory views about the money, we note the role the Tshombe affair played in the further development of Vergès' judicial strategy. The Tshombe case presents itself as a key to understanding the mystery of his disappearance. Our approach is to interpret Vergès' reluctance to talk about Tshombe and his clandestinity as an indication that those two events are interconnected.

We have advanced the thesis that the background of Vergès' two strategies was the discrepancy between his connivence and his rupture. His identification of those strategies was informed by Marxism. He continued to see himself as a lawyer of rupture whereas his practice tended towards connivence. As we have seen, the Tshombe affair became the defining moment of his strategy of connivence.⁶⁴⁴ As the journalist Patricia Tourancheau observed: "...defending Tshombe for him, though it tarnished his ideals a bit, was a way to make money."⁶⁴⁵ However, Vergès' entire period in Algeria appears to have been much to his disliking. As Lionel Duroy noted:

...he'd become a small-time divorce lawyer: that's all Algeria gave him. It had let him be the husband of Djamila Bouhired...who's as famous there as [the legendary resistance fighter] Jean Moulin is [in France]...and I think he was bored. Those were terrible years for him. He left to be done with it.⁶⁴⁶

⁶⁴³ See Violet, *Vergès*, *supra* note 5 at 191. Violet's thesis suffers from a fundamental contradiction in that he provides two contrary explanations for Vergès' disappearance: either Tshombe's family paid Vergès to save Tshombe or Tshombe's enemy Mobutu paid him to kill him. See *op. cit.* at 193.

⁶⁴⁴ Vergès addresses the Tshombe affair in his reminiscences only when his conversation partners bring up that subject. Vergès does not mention it as an example of the strategy of connivence. One of the few instances which he says he practices connivence is his defence of the widow of Judge Filippi: "Moi, que l'on présente comme un maniaque de la rupture, ai joué, dans cette affaire, la connivence. Il y avait une impossibilité matérielle à ce que les Filippi aient pu donner l'ordre de tuer le juge d'instruction. J'ai axé toute ma défense sur cette impossibilité." Jean-Pierre, *Miroir*, *supra* note 113 at 212–3. Madame Filippi was accused in connection with the murder of judge Pierre Michelet. Judge Michelet, who was the magistrate investigating a heroine smuggling ring in Marseilles, was shot to death in Marseille on October 21, 1981 when driving home on his motorbike. He had dismantled six transformation laboratories and ordered a number of smugglers to be arrested. Gaetan Zampa, a Marseilles Mafioso, whose meeting with Michel was scheduled for October 23, was imprisoned for the murder. The police later identified the shooter. The murder was commissioned by François Girard and Homère "the Chemist" Filippi of Zampa's inner circle. They were condemned to *réclusion à perpétuité*. See *L'assassinat du juge Michel*, France Soir 2 October 21, 1981 at <http://www.ina.fr/fresques/reperes-mediterraneens/notice/Repmed00243/l-assassinat-du-juge-michel>

⁶⁴⁵ Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 7.

⁶⁴⁶ *Ibid* at Chapter 5.

The impracticality of the strategy of rupture led to Vergès 'internalizing' it. The internalization of rupture also flowed from Vergès' discontent with connivance even though the articulation of the strategy of connivance and its positioning opposite to the strategy of rupture could not palliate his discontent with connivance. The strategy of rupture remained without major successes whereas the strategy of connivance became the hallmark of his practice in the late-1960's. The Fedayeen cases would have been an opportunity to put rupture into practice, but Vergès' activities as a lawyer were curtailed by international pressures, such as Israel's declaration that he was a *persona non grata*.

Vergès' re-emergence from his eight-year clandestinity marked another break in his life story. He made a renewed effort to militate for leftist causes, such as the treatment of imprisoned extreme-left terrorists in an apparent effort to return to rupture. However, his eight-year absence had cut him off from his leftist colleagues. Vergès had become too much of a loner to be able to persuade his leftist colleagues that his intentions were good. For instance, his interventions on behalf of Klaus Croissant, the lawyer for the German terrorist group the Red Army Fraction or Baader-Meinhof Group, as it was called, in the late-1970's were not appreciated by Croissant, who wrote to Vergès on May 24, 1982: "Tu préfères ton isolement splendide et ton rôle de lutteur solitaire au travail en collectif ou à une coopération étroite entre avocats."⁶⁴⁷

Despite that negative commentary, the Croissant case provided Vergès with a mirror image of the Tshombe affair. Both were extradition cases though they were opposite politically: Tshombe was arguably a pawn of the imperialists, whereas Croissant was an extreme-left lawyer. Because of Croissant's status as an icon of the extreme European left, his extradition

⁶⁴⁷ Quoted in Givet, *Le cas*, *supra* note 13 at 37.

from France to Germany became a *cause célèbre* among the French intelligentsia.⁶⁴⁸ The CINEL (*Centre d'initiatives pour de nouveaux espaces libres*), founded by Gilles Deleuze and Félix Gattari in 1977, organized an event in support of Croissant in 1977, together with the League for Human Rights. The event brought together 6,000 people. One of the members of the League for Human Rights was Michel Foucault.⁶⁴⁹

Vergès' urge to "belong" after his clandestinity is striking whereas his pre-clandestinity years present a more mixed picture. Although he denied being attached to the events of May 1968, he had at least one point in common with that movement, namely his Maoism. Vergès considered himself a Maoist in 1970.⁶⁵⁰ However, his relationships with French Maoists remained tenuous because his conception of Maoism was 'internal.' To him, Maoism meant, in practice, self-criticism.⁶⁵¹ After the failed May 1968 uprising, French Maoists in general started to engage in "severe self-criticism."⁶⁵² Thus on one level, Vergès was detached from the May 1968 movement, as he said: "...pour moi, mai 68 était un grand 'happening' de fils de bourgeois qui jouaient à la révolution."⁶⁵³ On another level, he had his own reasons to practice self-criticism after the failure of his own "revolution" through his strategy of rupture. Vergès thus found himself in the same boat as Maoists in general. The self-criticism in Maoist circles culminated in the publication of *Éléments d'autocritique* by the philosopher

⁶⁴⁸ In Germany, the Croissant was no less of a phenomenon. For instance, Peter O. Chotjewitz, who was a regular contributor to the extreme left monthly *Konkret*, dedicated the novel *Mein Freund Klaus: Roman* (My Friend Klaus: Novel) to him. He mentioned that Croissant's ancestors were Huguenots from Bressoncourt (roughly halfway between Reims and Strasbourg) and that Croissant was in regular contact with East Germany. See Peter O. Chotjewitz, *Mein Freund Klaus: Roman* (Berlin: Verbrecher Verlag, 2007) at 68–71, 452–3.

⁶⁴⁹ See François Dosse, *Gilles Deleuze & Félix Guattari: Intersecting Lives*; translated by Deborah Glassman (New York: Columbia University Press, 2010) at 294–5.

⁶⁵⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 191.

⁶⁵¹ "Self-criticism," though not unknown in Lenin's thought, became a hallmark of Maoism. For instance, Mao's so-called *Little Red Book* contained the following advice: "Conscientious practice of self-criticism is still another hallmark distinguishing our Party from all other political parties. As we say, dust will accumulate if a room is not cleaned regularly, our faces will get dirty if they are not washed regularly. Our comrades' minds and our Party's work may also collect dust, and also need sweeping and washing." Chapter XXVII, "On Coalition Government" (April 24, 1945), *Selected Works*, Vol. III, pp. 316–17, quoted in Mao Tse-Tung, *Quotations from Chairman Mao Tse-Tung* [also known as the Little Red Book] (Toronto: Bantam Books, 1967) at 148.

⁶⁵² Alexander, *Developed World*, *supra* note 535 at 73.

⁶⁵³ Jean-Pierre, *Miroir*, *supra* note 113 at 187.

Louis Althusser, whose students formed the nucleus of a Maoist group called the *Union of Communist Youth, Marxist-Leninist*, in December 1966.⁶⁵⁴ Althusser's book on self-criticism was published in the 1970's, when Vergès was in clandestinity.⁶⁵⁵ In Vergès' case, then, his clandestinity was presumably his own way to practice self-criticism. Vergès thus became one of the so-called *soixante-huitards* in spite of himself two years after the fact.⁶⁵⁶

5.3. *Surviving the Disillusionment with Great Narratives*

Regardless of whether Vergès was as detached from the May 1968 uprising as he said he was in 2000,⁶⁵⁷ his disillusionment with revolutions was in line with the failed revolution of 1968.⁶⁵⁸ Although he was not involved in the May 1968 uprising, Vergès got sucked into the general post-1968 disillusionment. His break with the strategy of rupture presaged what Lyotard would call a break with metanarrative. Lyotard elaborated on the concept of "metanarrative" in *The Postmodern Condition: A Report on Knowledge*, which was released in 1979, about a year after Vergès re-emerged from clandestinity. Lyotard went as far as to give that general disillusionment with metanarratives as the definition of postmodernism in his introduction to *The Postmodern Condition*: "Simplifying to the extreme, I define postmodern as incredulity toward metanarratives."⁶⁵⁹

Lyotard was not detached from the momentous events that were taking place in French history. He had been an instigator of protests at the University of Paris at Nanterre just before

⁶⁵⁴ For Althusser and "severe self-criticism," see Alexander, *Developed World*, *supra* note 535 at 73.

⁶⁵⁵ See Louis Althusser, *Éléments d'autocritique* (Paris: Hachette littérature, 1974). Althusser presented his self-criticism instead of giving advice to others on how to practice self-criticism.

⁶⁵⁶ An indication of the profound influence of the May 1968 uprising is that the period between May 1968 and the election of Mitterand in May 1981 is called "les années soixante-huit" or even "between the two Mays." See Julian Bourg, *From Revolution to Ethics: May 1968 and Contemporary French Thought* (Montreal: McGill-Queen's University Press, 2007) at 4 [Bourg, *Ethics*].

⁶⁵⁷ Jean-Pierre, *Miroir*, *supra* note 113 at 187.

⁶⁵⁸ According to Peter Starr, the failed revolution of 1968 taught the French academia the original meaning of the word "revolution," which referred to returning to square one. See Peter Starr, *Logics of Failed Revolt: French Theory after May '68* (Stanford, Calif.: Stanford University Press, 1995) at 2.

⁶⁵⁹ Lyotard, *Postmodern Condition*, *supra* note 297 at xxiv.

May 1968, and he was also a member of *Socialisme ou barbarie*, in which he specialized in the Algerian problem.⁶⁶⁰ Lyotard was thus one of the French intellectuals whose thought had been shaped by the Algerian War. As the British expert on postcolonialism Robert J.C.

Young observed:

If so-called 'so-called poststructuralism' is the product of a single historical moment, then that moment is probably not May 1968 but rather the Algerian War of Independence – no doubt itself both a symptom and a product. In this respect, it is significant that Sartre, Althusser, Derrida and Lyotard, among others, were all either born in Algeria or personally involved with the events of the war.⁶⁶¹

Young put his finger on the overvaluation of May 1968 as the defining moment for new intellectual trends in France and drew attention to the old crisis of the Algerian War. The relative weight of those two turning points in French history varied from one individual to another. In Vergès' case, the Algerian War clearly dominated. In some other cases, such as that of Derrida, the Algerian War and May 1968 were two sides of the same revolutionary dynamic.⁶⁶² Because of the interconnectedness of those two momentous episodes, Vergès was a kindred spirit of the *soixante-huitards*.

Young put the emphasis on the same Algerian background of contemporary intellectual trends more unequivocally eleven years later:

The poststructuralism associated with these names [Frantz Fanon, Albert Memmi, Pierre Bourdieu, Louis Althusser, Jean-François Lyotard, Jacques Derrida, Hélène Cixous] could better be characterized therefore as Franco-Maghrebian theory, for its theoretical interventions have been actively concerned with the task of undoing the ideological heritage of French colonialism and with rethinking the premises, assumptions and protocols of its centrist, imperialist culture.⁶⁶³

⁶⁶⁰ See generally Gary Gutting, *French Philosophy in the Twentieth Century* (Cambridge: Cambridge University Press, 2001) at 320.

⁶⁶¹ Robert J.C. Young, *White Mythologies: Writing History and the West* (London: Routledge, 1990) at 1.

⁶⁶² An example of how those two turning points went together is Jacques Derrida. According to Alain Badiou, who was a veteran of the May 1968 uprising, both the tumultuous period following the independence of Algeria and preceding the student protests of May 1968 prepared the ground for Derrida's thought. See Alain Badiou, *Pocket Pantheon: Figures of Postwar Philosophy*, Translated by David Macey (London: Verso, 2009) at 125.

⁶⁶³ Robert J.C. Young, *Postcolonialism: An Historical Introduction* (Oxford: Blackwell Publishing, 2001) at 414. Jean-Luc Nancy, who is Derrida's former student, traced one of Derrida's key concepts, *différance*, to his

Because the Algerian War was the shared background, Vergès' preoccupations would also resonate with those of that group despite his detachment from the events of 1968. What merged those two events was the deepening disintegration of metanarratives,⁶⁶⁴ to borrow Lyotard's term. That disintegration of metanarratives captures the intellectual current that has been called "postmodernism" since Lyotard (and which Young called more narrowly "post-structuralism"). Although Vergès said he had been detached from the events of May 1968 unlike the bulk of the French intelligentsia, those events appeared to have been a flashback for him to the Algerian War.⁶⁶⁵

As Lyotard pointed out in *The Postmodern Condition*, the chief example of a metanarrative was, tellingly in Vergès' case, the Marxist metanarrative. Lyotard mentioned "metanarrative" twice in his book. One of those two occurrences referred to Marxism: "In Stalinism, the sciences only figure as citations from the metanarrative of the march towards socialism..." He also presented another version of Marxism in that same passage: "But on the other hand, Marxism can...develop into a form of critical knowledge for declaring that socialism nothing other than the constitution of the autonomous subject..."⁶⁶⁶ As we know, Vergès' break with the metanarrative of Marxism, had started in 1957 when he left the Communist Party.

Algerian background. See Jean-Luc Nancy, « L'indépendance de l'Algérie, l'indépendance de Derrida », in *Derrida à Alger: Essais: un regard sur le monde* (Paris: Actes Sud/[Barzakh], 2008, p. 19–25) at 20.

⁶⁶⁴ We have seen a definition of metanarrative in the introduction to this study. It focused on the scope of the metanarrative. Now that we align metanarratives with Lyotard's view of those metanarratives, we should note that Lyotard did not criticize their scope but their truth claims. See James K. A. Smith, *Who's Afraid of Postmodernism?: taking Derrida, Lyotard, and Foucault to Church* (Grand Rapids, Mich: Baker Academic, 2006) at 64–5. We should also note that much of the thinking on metanarratives comes from Christian sources that are defensive about their metanarrative.

⁶⁶⁵ For instance, the united front of students, teachers and workers that was active during the Algerian War re-emerged during the May 1968 uprising. See Michael M. Seidman, *The Imaginary Revolution: Parisian Students and Workers in 1968* (New York: Berghahn Books, 2004) at 33.

⁶⁶⁶ The sentence in its entirety concerned the Marxist understanding of the sciences as opposed to party loyalty, as in Stalinism: "But on the other hand Marxism can, in conformity to the second version, develop into a form of critical knowledge by declaring that socialism is nothing other than the constitution of the autonomous subject and that the only justification for the sciences is if they give the empirical subject (the proletariat) the means to emancipate itself from alienation and repression: this was, briefly, the position of the Frankfurt School." Lyotard, *Postmodern Condition*, *supra* note 297 at 37.

Vergès' missing years allowed him to take a look at himself without the trappings of his legal career. He has continued to refuse to shed light on that period, thus having the possibility of keeping several years of his life strictly to himself without fear of public scrutiny.

Paradoxically, he built his subsequent narrative around those missing years and, by so doing, learned to conceive of other people's "truth" in light of their narratives, too.

This new conceptualization of truth would affect Vergès' practice. Starting from himself, Vergès could then couch his clients' cases in narratives. In his view, the story that captivates the collective imagination is not the one that is true objectively, such as the crime, but the one that gauges the personal tragedy of the one who commits the crime and is, in that sense, not only "true" but beautiful. As Vergès said in the early-1990's: the version of events that a court will favour is not "la plus vraie mais la plus belle."⁶⁶⁷ Vergès constructs somebody's "truth" to supersede what others would be too quick to dismiss as a lie. He would hold up that ability to foreground the truth as the hallmark of a lawyer by qualifying truth as *someone's* truth:

Où est la vérité d'un homme qui tue la femme qu'il aime? Qui peut connaître la vérité d'une femme qui, après une vie vertueuse, s'en va tout à coup avec un gigolo qu'elle méprise? Quelle est la vérité d'un caissier honnête, modèle et modeste qui, après vingt ans, vingt-cinq ans de bons et loyaux services, un soir, ouvre la caisse, prend l'argent et va tout perdre au casino? Qui peut connaître leur vérité?⁶⁶⁸

Vergès spoke of "truth" in a way that suggested that he did not mean an absolute or a "higher truth". How should we understand the opposite of a higher truth and how should we understand its opposite in a way that would capture Vergès' point? We provide three answers. The first answer is Nietzsche's view that a "higher truth" is an Apollonian perfection which contrasts with the incompletely intelligible everyday world and provides a

⁶⁶⁷ Vergès, *Jeu*, *supra* note 42 at 45.

⁶⁶⁸ Vergès, *Dictionnaire amoureux*, *supra* note 74 at 43–44.

relief from its fragmentariness.⁶⁶⁹ Its opposite would then be a Dionysian truth or a Dionysian reality. However, insofar as a Dionysian “truth” can be truth, it has to be adulterated with the Apollonian truth. A result of that adulteration is “the truth of tragedy.”⁶⁷⁰ Vergès evoked that Nietzschean understanding of “tragedy” in his observation: “Tout procès est une tragédie qui me fascine...”⁶⁷¹ The idea of legal proceedings as a tragedy was also palpable in his statement that Barbie was a tragic hero.⁶⁷² Vergès’ statements about the criminals’ truth in general reflect his view that his clients are tragic heroes.

The second answer is related to ethics. Recognizing a person’s motivation as that person’s “truth” invites an ethical response. Alexandre Lupin called ethics of that sort “ethics of singularity” with an appeal to a passage from Jean-Françoise Lacan:

This truth that we are seeking in a concrete experience is not that of a superior law. If the truth that we are seeking is a truth that frees it is a truth that we will look for in a hiding place in our subject. It is a particular truth.⁶⁷³

The third answer aligns itself with François Mauriac’s view that “l’artiste est menteur, mais l’art est vérité !” If the law, like art, captures the truth, a lawyer, like an artist, can be flexible with it.⁶⁷⁴ Vergès answered his own rhetorical question “Qui peut connaître leur vérité?” by

⁶⁶⁹ John Sallis, *Double Truth*, Albany: State University of New York Press, 1995) at 180.

⁶⁷⁰ *Ibid* at 161–3.

⁶⁷¹ Vergès, *Journal*, *supra* note 83 at 164.

⁶⁷² Vergès, *Jeu*, *supra* note 42 at 45. The interpretation of that comment depends on how extensively one understands Vergès’ reference to “our time.” He is probably referring to *deindividuation*, which means that a group can be so powerful that it can transform anyone regardless of personal characteristics. See e.g. Philip G. Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (New York: Random House, 2007) at 367. In that book, Zimbardo evoked his theory of deindividuation in the current setting of the war in Iraq: “The anonymity of person and place... can create an altered state of mind, which, when combined with diffused responsibility for one’s actions, induces deindividuation. Actors become immersed in their high-intensity physical actions without rational planning or regard for consequences.” Vergès’ reference to Barbie’s “heroism” was probably due to another process of deindividuation to which he was subjected in the hands of the justice system.

⁶⁷³ Jacques Lacan, *The Ethics of Psychoanalysis, 1959–1960*, translated with notes by Dennis Porter (New York: Norton, 1992) at 24. Alexandre Lupin referred to that passage as a summary of Lacan’s “ethics of singularity.” See Alexandre Leupin, *Lacan Today: Psychoanalysis, Science, Religion* (New York: Other Press, 2004) at 65.

⁶⁷⁴ Rollo May quotes Edgar Degas to the same effect: “an artist approaches the creative process in the same way that a criminal approaches the crime.” See Rollo May, *The Courage to Create* (New York: Norton, 1975) at 27.

dismissing the judge and comparing the lawyer to a novelist: “Rarement le juge qui porte les verres teintés de l’ordre public. Plus souvent l’avocat, s’il a – et il devrait l’avoir – une âme de romancier...”⁶⁷⁵ He compared a lawyer more generally to an artist: “...l’avocat doit être un artiste, un créateur de personnages destinés à hanter notre univers.”⁶⁷⁶ He consequently called his professional activities *art judiciaire*.⁶⁷⁷

5.4. Vergès’ Reconstitution of a Metanarrative around Africa

When we arrange any narratives in a hierarchical order, the topmost narrative is a metanarrative in relation to the lower-level narratives. It is therefore impossible not to have a metanarrative. In Vergès’ case, finding a metanarrative was problematic because he had distanced himself from the Marxist metanarrative when he quit the communist party and tried to keep up with the changes taking place in Chinese communism, to which he adhered in the 1960’s. “Revolution” in general would not be a valid metanarrative. Vergès’ confusion about metanarratives also undermined the continuity of his own narrative and thus his identity. The collapse of metanarratives left a vacuum. To have an identity, a person cannot live without a metanarrative which not only tells the story of that person but gives him the sense of being part of some larger context. Paula C. Rodríguez Rust identified three narrative levels – individual, social and historical – and explained metanarratives, also at the individual level, as interrelationships among situation-specific “micronarratives.”⁶⁷⁸ Vergès searched for a narrative that would allow him to be part of a larger narrative in which he would “make sense.” We suggest that his new metanarrative revolved around a geographical location,

⁶⁷⁵ Vergès, *Dictionnaire amoureux*, *supra* note 74 at 43–44.

⁶⁷⁶ Vergès, *Journal*, *supra* note 83 at 208. Equating law with art suggests a self-identification as an artist in the sense of “someone possessing capacities of creativity and freedom...The artist is...someone who ‘creates’ foremost with his intellectual or spiritual capabilities, not basically with manual skills.” See generally Davor Džalto, *The Role of the Artist in Self-Referent Art*, Inaugural-Dissertation zur Erlangung der Doktorwürde der Philosophischen Fakultät der Albert-Ludwigs-Universität Freiburg i. Br. (Berlin: dissertation.de – Verlag im Internet GmbH, 2007) at 27.

⁶⁷⁷ See Vergès, *Stratégie judiciaire*, *supra* note 7 at 212.

⁶⁷⁸ Rodríguez Rust explained the metanarratives at the individual level as building blocks of self-identity. See Rodríguez Rust, *Bisexuality*, *supra* note 58 at 111.

Africa, which allowed him to redefine himself as an African personality. An African has “his own conception of existential reality, his own view of his collective being or existence.”⁶⁷⁹

Vergès’ answers to questions about his clandestinity, insofar as he has provided any, eventually raise more questions than they answer. For instance, he explained that someone was after him and he therefore had to cut ties with his wife and children without giving them any notice.⁶⁸⁰ In interviews, Vergès called this period his “grandes vacances” and mentioned that he returned “aguerri,” which is another example of his answers raising questions. He answered Jean-Pierre’s question about that term “aguerri” by admitting that his use of it was intentionally ambiguous: “Le terme ‘aguerri’ a plusieurs significations. Elles sont toutes valables. Je suis revenu transformé de mes voyages, plus serein, plus fort aussi mais sans pour autant qu’il y ait une rupture dans mon engagement. Tout cela est finalement très cohérent.”⁶⁸¹

Vergès denied that he broke with what he called his commitment, “engagement.” Instead, he pointed to the coherence of that commitment, which presumably translated into the coherence of his life story. He affirmed that coherence by stretching the words he used. Apart from “rupture” and “coherence,” the word “aguerri” was a clear example of the flexibility of his vocabulary. As Vergès indicated, the word “aguerri” had many meanings, all of which were correct. The elasticity of that concept was not merely cosmetic. Its elasticity went to the heart of his coherence.

⁶⁷⁹ See Bennie A. Khoapa, “The African Personality,” in Carlos A. Mallmann and Oscar Nudler, ed, *Human Development in its Social Context: a Collective Exploration* (London: Hodder and Stoughton in association with the United Nations University, 1986) at 213. Khoapa identified solidarity as an important aspect of that African personality: “The true African socialist does not look on one class of men as his brethren and another as his natural enemy. He does not form an alliance with the brethren for the extermination of the ‘non-brethren’.” See *op. cit.* 230. Vergès provided an example of that aspect of the African personality when he mentioned that he was invited to a lunch by a prominent African politician even if he defended his political opponent. See Jacques Vergès, *Intelligence avec l’ennemi: conversations avec Jean-Louis Remilleux* (Paris: Michel Lafon, 1994) at 199.

⁶⁸⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 192.

⁶⁸¹ *Ibid* at 194.

What was fairly minor flexibility in the case of “aguerri” would assume wider consequences in his flexibility in the use of the term “strategy.” Originally, the strategy of rupture was one of Vergès’ two alternative strategies. As we saw, he used it to describe his engagement in the Algerian War of Independence, after which rupture would have been in need of redefinition. Although Vergès took no steps to redefine rupture, he continued to adhere to that word regardless of context. It is his adherence to it that provided his career with at least a semblance of coherence. Consequently, Vergès could say that he had stayed true to his commitment. It is significant that he did not clarify the nature of his commitment.

Vergès has provided only one clue to his clandestinity. It is his first and, so far, only novel, *Agenda*, which he wrote during those years and published after his re-emergence.⁶⁸² Its information value is questionable. As the former judge Thierry Jean-Pierre noted in his published interview with the Vergès brothers, “À son retour de clandestinité, Jacques Vergès publie un petit livre prétendument à clé, *Agenda*. Écrit comme un ‘nouveau roman’, il est totalement incompréhensible. Seuls quelques personnages et quelques situations bien connues se laissent identifier. Avec ses soixante et onze poèmes, c’est tout en pan de sa vie, parsemé de violences, d’amour et de morts, qui s’éclaire.”⁶⁸³

Against the background of Vergès’ deliberate obfuscation about his whereabouts, it is significant that Jean-Pierre is not quite left empty-handed on that matter as a result of his conversation with Vergès. Vergès’ answers to his questions on that subject touch on the Sino-Soviet split. He referred to the Chinese perception of Soviet revisionism, which echoes the Chinese rhetoric at the time of the Sino-Soviet Split in the early-1960’s: “...le socialisme soviétique avait été confisqué par la nomenclature. Seule la Chine avait alors encore valeur

⁶⁸² See Vergès, *Agenda*, *supra* note 78.

⁶⁸³ Jean-Pierre, *Miroir*, *supra* note 113 at 195–6.

de modèle pour le tiers-monde.”⁶⁸⁴ In light of that exclusion of the Soviet Union and Vergès’ open sympathy with Chinese policy in the 1960’s, Jean-Pierre tended towards the thesis that Vergès was in the Far East.⁶⁸⁵ Additional support for that viewpoint was of course provided by Vergès’ statement that he was a Maoist “plus que jamais” in 1970. Vergès thus situated himself on the side of Chinese Marxist-Leninist orthodoxy as opposed to Russian opportunism after the 20th Party Congress and notably Khrushchev’s de-Stalinization. Although he did not discuss the Sino-Soviet split in his answers to Jean-Pierre, his references to it were so clear that Jean-Pierre excluded the possibility that Vergès was in the Soviet Union or worked for the Soviet Union during his eight-year clandestinity.⁶⁸⁶

Although we should distance ourselves from the Far Eastern thesis to advance our Far Eastern thesis, one cannot escape the role psychology in support for either of them. The reason that Jean-Pierre settled relatively quickly on the Far Eastern thesis is that Vergès’ biographer Bernard Violet had suggested that Vergès had spent those years in Vietnam, which was not only the home country of his mother but, at the time of his birth, also part of French Indochina (as was Laos, where Vergès was born according to Violet’s biography). The fancifulness of Violet’s thesis should have been a reason to be skeptical of it: Violet’s views were based more on quasi-Jungian psychology than on hard evidence. For instance, the river Mekong assumed mythological proportions in his account.⁶⁸⁷ Violet would compare the Mekong to the river Styx, which no-one but the mythological Orpheus had crossed. Violet compared Raymond to Jupiter or Zeus. He compared Jacques and Paul to Castor and Pollux.

⁶⁸⁴ Jean-Pierre, *Miroir*, *supra* note 113 at 191. Vergès’ remark echoed the Chinese rhetoric of 1963 in its polemic with the Communist Party of the Soviet Union (CPSU): “Appreciating highly the selfless struggle of the working class headed by the Communists in the capitalist countries, the CPSU considers it its duty to render them every kind of aid and support. Our Party regards the national-liberation movement as an integral part of the world revolutionary process, as a mighty force destroying the front of imperialism.” “Open Letter of the Central Committee of the Communist Party of the Soviet Union to all Party Organizations, to all Communists of the Soviet Union, July 14, 1963” in *Polemic*, *supra* note 241 at 511.

⁶⁸⁵ See Jean-Pierre, *Miroir*, *supra* note 113 at 193–4.

⁶⁸⁶ *Ibidat* 191.

⁶⁸⁷ The Mekong river forms most of the border between Laos and Thailand (or Siam, as it was called at the time of Vergès’ birth) and flows to the sea through its delta in southern Vietnam.

Pollux was the son of Zeus while Castor was either Pollux's half-brother or his full-brother, depending on the legend, which also pointed to the uncertainty about the nature of the relationship between Paul and Jacques Vergès. Against that mythological background, Violet offered the explanation that when Vergès disappeared in 1970 he went back to Indochina in search of a memory of his dead mother (which for Violet must evoke the legend of Orpheus, who crossed the river Styx in search of his dead wife Eurydice).⁶⁸⁸

Although Violet's psychological approach seems stretched, it had the merit of adopting a psychohistorical approach to Vergès which also animates this study. Violet restricted that approach to the period of life that lent itself to that approach for want of others, namely Vergès' clandestinity and his silence about it. Far from being an insignificant period in Vergès' life, his clandestinity paradoxically became the centrepiece of his personal narrative. It even affected the methodological choices that his biographies, including this one, make.

Violet's view that Vergès spent his invisible years in the Far East became the predominant account for those missing years.⁶⁸⁹ A reason for its predominance may be simple: Vergès' Asiatic appearance. It is tempting to locate Vergès somewhere in the Far East during his clandestinity because of his appearance, though that speculation tends to disregard the profound rifts between countries in the Far East, notably Soviet-backed countries such as Vietnam, and Chinese-backed countries such as Cambodia. Nevertheless, as Barbet Schroeder's documentary on Vergès noted, "77% of people who knew him, think he was in

⁶⁸⁸ See Violet, *Vergès*, *supra* note 5 at 197. For Jupiter in Jung's theory, see Carl Gustav Jung, "15 June 1932," in Carl Gustav Jung, *Visions: Notes of the Seminar Given in 1930–1934 by C.G. Jung*, edited by Claire Douglas (Princeton, N.J.: Princeton University Press, 1997) Volume 2, at 739. For Castor and Pollux in Jung's theory, see Carl Gustav Jung, "11 March 1931," in *supra*, Volume 1 at 277. For the river Styx in Jung's theory, see e.g. Sherry Salman, "Creative Psyche: Jung's Major Contributions," in Polly Young-Eisendrath, Terence Dawson, *The Cambridge Companion to Jung* (Cambridge: Cambridge University Press, 2008,) at 71.

⁶⁸⁹ The other possibilities were discussed at length on the *Terror's Advocate* website that was set up after the release of the film at http://www.terrorsadvocate.com/Vergès_affaires.html. It included locations in different parts of the world. The web site is no longer available.

Cambodia.”⁶⁹⁰ Politically, Chinese-backed Cambodia was a more probable location than Vietnam for a declared Maoist like Vergès, although one suspects that the Far Eastern thesis as a whole rested on Violet’s speculation that Vergès was in Vietnam.

Vergès is careful to present his disappearance in the context of his overall narrative of his life. As we saw above, he denied that the disappearance marked a rupture with his “engagements.” Those “engagements” therefore shed light on the period of his life that interests us. One explanation for Vergès’ disappearance was his desire to be consistent in his own way to his own strategy of rupture. We remember that he did not have the opportunity to put his strategy of rupture to practice in the late-1960’s. Instead, external constraints had forced him to favour the strategy of connivence.

However, from the viewpoint of Vergès’ strategy, it is more significant how that clandestinity shifted the focus to *his* commitments. Coherence adhered to him as a person. It did not adhere to a cause for which he militated. Coherence was thus reducible to continuity. It is true that there was continuity between Vergès’ clandestinity and the period that preceded it. Symmetry would suggest that there would also be continuity between it and the period that followed it. As we saw, Vergès indicated that there was continuity between his clandestinity and the period that preceded it when he said: “Tout cela est finalement très cohérent.”⁶⁹¹ Although we identified Vergès’ Maoism as the thread that ran through those years, it is not necessary to place Vergès in the Far East during those years, especially when we remember that he had started to evangelize for Maoism in Algeria in 1963 in *Révolution africaine*, which suggests that he might have been somewhere in the Third World still fighting for independence. As the name of his publication suggested, Vergès had coupled his Maoism with that “revolution in Africa” in the early-1960’s.

⁶⁹⁰ Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 4.

⁶⁹¹ Jean-Pierre, *Miroir*, *supra* note 113 at 194.

When sketching Vergès' personal history over a period about which we know little, it is also plausible that Vergès was serving revolution in some form. His break with the past brought about a revolution in his personal life and could reflect his commitment to a larger revolutionary cause. As Vergès said in one of his first interviews after the Barbie trial, "Si je voulais me fixer un modèle dans ce domaine, je dirais que je suis comme Don Juan. J'aime les révolutions comme lui aimait les femmes. J'aime passer de l'une à l'autre, et j'aime les révolutions quand elles sont jeunes. Quand elles vieillissent, je m'éloigne vers une autre, plus jeune."⁶⁹² He also provided a geographical hint that is helpful in our efforts to locate him: "Mes amitiés sont dans les milieux du tiers monde."⁶⁹³ The revolutions that took place in the third world during Vergès' clandestinity were in Portuguese colonies, such as Angola and Mozambique.

On the other hand, it is unnecessary to suppose that Vergès stayed in only one place during that time, which would also be denied by his reference to his "voyages" in the plural, as in the statement we quoted above: "Je suis revenu transformé de mes voyages..." Vergès' use of a broad term such as the "Third World" made it also unlikely that he would have stayed in one place for eight years. When we match the chronology of the independence struggles with the geography of the countries that became independent in the 1970's, we see that independence movements were concentrated in the Portuguese colonies: Angola, Cap Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe, which became independent in 1975 or a couple of years earlier. The connection between those Portuguese colonies and Vergès was traceable back to his service to the liberation movements in Portuguese colonies when he was in Morocco in the early-1960's. After the Sino-Soviet Split, the independence movements split between Chinese-backed and Soviet-backed groups.

⁶⁹² Vergès, *Salaud*, *supra* note 202 at 62–3.

⁶⁹³ Givet, *Le cas*, *supra* note 13 at 49.

All of these Portuguese colonies were in Africa. Were we to discard the thesis of Portuguese colonies, one would still have to allow for the possibility that Vergès was in Africa. As he was struggling to maintain his equilibrium in the midst of the great political disarray of the 1960's and the 1970's, we could reconstitute his commitment as shifting from adherence to a particular political cause to espousing the interests of a specific geographical location, namely Africa. Politics, to which Vergès had anchored his legal career since 1957, had proved as volatile as his legal career would have been without politics. Deepening political disorientation deepened his identification with Africa – a concrete geographical location, which he regarded as his home. It provided an affirmation from which Vergès would develop his coherence. Even the political turmoil of that continent could become a metaphor for his chequered political past.

Vergès' references are of course subtle, because he makes a point of not divulging his location, but Africa provided the missing piece that would fill the hole he had left in his biography. His references to his period of clandestinity as “grandes vacances” suggest a warm place for the simple reason that the French expression means the two- or three-month-long summer vacation. Vergès described his appearance on his arrival in Paris in terms that could lend support to the African thesis (as well as the Far Eastern thesis): “I got back thin, with a tanned and hardened complexion [*aguerri*].”⁶⁹⁴

A more cogent reason to believe that Vergès was in Africa is related to the anachronisms that he offered on the subject of Tshombe, for instance when he said that Tshombe was backed by France and not by Americans, as we saw in the previous chapter. In reality, Tshombe was backed by Americans. Vergès may confuse Tshombe, innocently or not, with the Katangan independence fight of the 1970's, when Marxist groups fought for the secession of Katanga from Congo and made incursions into Congo's province of Katanga (called Shaba between

⁶⁹⁴ Reproduced in Schroeder, *Terror's Advocate*, *supra* note 35 Chapter 7.

1971 and 1997) from Angola, the adjacent part of which was populated by the Lundas, who were also the major population group in Katanga. The Marxist groups were dealt a decisive defeat by France at that time, which sent its Foreign Legion to that theatre of war.

Vergès' probable stay in Africa would also account for the "coherence" that he attributed to that period in terms of the periods that preceded and followed it. He had propagated "African revolution," as the name of his publication suggested, first as a Moroccan official and then as the editor of the publication by that name, since the early-1960's.

In 2000, Africa would figure among the three categories of cases that Vergès identified in his legal career: political cases; African and overseas cases; and, cases related to finances.

Although Vergès referred to the second category as African and overseas, the examples that he gave were exclusively from Africa: the cases of President Omar Bongo of Gabon, President Abdoulaye Wade of Senegal, the unnamed former mayor of Abidjan,⁶⁹⁵ Prime Minister Alassane Ouattara of Côte d'Ivoire, and Éric Boyer, the senator for the Island of Réunion. Even the cases of the third group, which Vergès identified as "des dossiers qui ne sont pas médiatiques mais à connotation financière," were related to Africa.⁶⁹⁶ The cases relating to the African politicians just mentioned were often financial in character, which made the role of Vergès, a criminal lawyer, unexpected.⁶⁹⁷

Of Vergès' relations with African statesmen, his connection with Omar Bongo, President of Gabon (former French Equatorial Africa), is particularly revealing because it allows us to match geography with chronology in a way that points to a long-standing friendship that may have started or at least continued during his clandestine years. Bongo would also fit Vergès'

⁶⁹⁵ The former mayor is probably Emmanuel Dioulo, Deputy Mayor of Abidjan, who was accused of attempting to kill the Pope John Paul II and Houphouët-Boigny, the Head of State of Côte d'Ivoire. Jacques Vergès reconciled Dioulo and Houphouët-Boigny with each other in 1985. See Barril, *Enquête*, *supra* note 367 at 35–7. Vergès refers to him with the initials ED. See Vergès, *Journal*, *supra* note 83 at 203.

⁶⁹⁶ See Jean-Pierre, *Miroir*, *supra* note 113 at 224–5.

⁶⁹⁷ See Chaudenson, *Vergès*, *supra* note 113 at 258.

description of an African statesman working for the interests of France, which Vergès unconvincingly applied to Tshombe and to the Katangan liberation movement in the 1970's. Although we cannot be sure when Vergès' relationship with Bongo had started, it is significant that Gabon, Bongo's country, figured in Vergès' *Agenda*. Admittedly, the reference to Gabon was far from obvious. It was a reference to Albert Schweitzer, who is called "vermin."⁶⁹⁸ It is unlikely that anyone other than a Gabonese would use such strong language in describing Schweitzer. Schweitzer's connection to Gabon had been profound because he had founded a mission station and a world-famous hospital in Lambaréné, Gabon (then French Equatorial Africa) in 1913.

Admittedly, Vergès did not present Africa as a unifying factor in his career until after the Barbie trial, several years after his reemergence. That delay is inconsequential. If anything, it pointed to the lasting impression of the events that had preceded it. Africa had appeared as the theatre of the struggle that Vergès had internalized during his formative years as a communist. At the helm of *Révolution africaine*, he was based in Algeria, in Africa, with some intermissions throughout the 1960's. He was arguably based somewhere in Africa through most of the 1970's, and even in the 1980's, when he became involved in the Barbie case. Significantly, he saw a connection with overseas areas and Barbie: "...la défense de Barbie n'a choqué aucun de mes amis outre-mer."⁶⁹⁹ The broad concept of "overseas" referred primarily to Africa as was demonstrated by his choice of colleagues during the last week of the Barbie trial, which had lasted for seven weeks. Vergès asked two colleagues to assist him and he chose two Africans, a Congolese and an Algerian colleague, for their publicity value.⁷⁰⁰ "Ils m'ont demandé: 'Qu'allons-nous dire? Nous ne connaissons pas le

⁶⁹⁸ Vergès, *Agenda*, *supra* note 78 at 118.

⁶⁹⁹ Vergès, *Journal*, *supra* note 83 at 242.

⁷⁰⁰ Alain de la Morandais told Vergès: "Vous avez comparé le Congo et la situation de Barbie" (Vergès, *Avocat*, *supra* note 40 at 40). The pairing of a Congolese and an Algerian lawyer echoes Vergès' intervention in the Tshombe case in Algeria. However, the Congolese lawyer in the Barbie trial was from Brazzaville, the capital of

dossier.’ – Je ne souhaite rien d’autre que votre présence muette. En face, il y a trente-neuf petits Blancs; nous, c’est l’humanité sous toutes ses couleurs pour défendre cet ‘affreux’.”⁷⁰¹

Further, we can see the opposition between whites and others with Vergès identifying himself in the latter group. The choice of a Congolese and an Algerian underlined his previous comments about the support he received from colleagues in Africa and Arab countries.⁷⁰²

Africa also allowed Vergès to mend his relationships with people who were connected to his former enemies. For instance, after the Barbie trial, Vergès co-authored books with Bernard Debré, one of the sons of Michel Debré, the French Prime Minister (1959-62), who had been his archenemy during the Algerian War of Independence.⁷⁰³ Vergès was convinced that Debré had given the French secret service the order to assassinate him: “Je n’ai eu qu’une suspension d’un an, que je porte d’ailleurs comme une cravate – le conseil de l’ordre qui m’a infligé cette sanction n’en a pas été plus fier –, cette sanction ayant été demandée par Michel Debré contre moi parce qu’on n’était pas parvenu à me tuer.”⁷⁰⁴ However, Vergès buried the hatchet with Debré’s son Bernard. In their case, Africa was the unifying element. The books that they co-authored focused on their observations about Africa and Africa’s special relationship to France.⁷⁰⁵

the Republic of the Congo (part of former French Congo), not Zaire (former Belgian Congo, nowadays Democratic Republic of the Congo).

⁷⁰¹ Vergès, *Avocat*, *supra* note 40 at 34–5.

⁷⁰² Vergès, *Face cachée*, *supra* note 30 at 30.

⁷⁰³ Vergès quotes Debré as saying that the FLN lawyers’ collective was more dangerous than a division of soldiers, which he says was a compliment. See Felissi, *Anticolonialiste*, *supra* note 6 at 90.

⁷⁰⁴ Vergès, *Avocat*, *supra* note 40 at 233. It is not clear on what Vergès bases his view that Michel Debré had tried to kill him. However, he said that Jacques Foccart, De Gaulle’s chief advisor for African policy, had told him in a telephone conversation shortly before his death that Matignon (the French Prime Minister’s official residence being a metonym for Debré) had tried to organize the assassination of Vergès. See Felissi, *Anticolonialiste*, *supra* note 6 at 90–1.

⁷⁰⁵ Quoted in Chaudenson, *Vergès*, *supra* note 113 at 253.

5.5. Mitterrand: the Antagonist of Vergès' Narrative

Vergès' metanarrative of constituting the African personality, like any story, required a protagonist and an antagonist.⁷⁰⁶ Vergès' new metanarrative found its protagonist in Africa. Of course, it also needed an antagonist. We suggest that Mitterrand was the antagonist it required.

After Vergès resumed his legal career in the late-1970's François Mitterrand represented a rival political movement, Social Democracy, which had remained relatively unscathed compared to communism. After his election in 1981, Mitterrand became not only a political rival but also assumed the proportions of a symbolic antagonist for Vergès. That antagonism intensified as Vergès' relations with the extreme left also soured. Mitterrand's presidency revived Vergès' memories of the repression of which Mitterrand was part during the Algerian War of Independence, first as Minister of the Interior in 1954-5 and then as Minister of Justice in 1956-7.⁷⁰⁷ What happened between De Gaulle's presidency and Mitterrand's presidency is an issue on which Vergès barely touches. De Gaulle, Vergès' wartime leader, lost a referendum in 1969 and stepped down in the midst of growing criticism of his handling of the May 1968 uprising. His successor was Gaullist Georges Pompidou, who was in turn succeeded by the centre-right Valérie Giscard d'Estaing in 1974. Vergès' interest in the French President was revived only when François Mitterrand was elected President in 1980. However, his reaction to Mitterrand was different from his reaction to De Gaulle.

⁷⁰⁶ "Plot concerns the *series of events* that take place in the narrative and the *resolution* of the conflict between protagonist and antagonist." Lewis Turco, *The Book of Literary Terms: the Genres of Fiction, Drama, Nonfiction, Literary Criticism, and Scholarship* (Hanover, NH: University Press of New England, 1999) at 40.

⁷⁰⁷ Thierry Jean-Pierre wrote that the "maladresses du plan de réformes administratives proposées par François Mitterrand," who he mentions was Minister of the Interior, aggravated the situation in Algeria, possibly implying that those "maladresses" accounted for Vergès' later hostility to Vergès. Jean-Pierre, *Miroir*, *supra* note 113 at 128.

Mitterrand represented to Vergès the evil that others saw in Barbie. The parallels were less contrived than they might seem. Vergès could focus his accusations on the concrete collaboration of which Mitterrand was guilty during his youth. Vergès reminded his critics that, unlike him, President Mitterrand had a *francisque*.⁷⁰⁸ A francisque was a decoration that the Vichy regime, the Nazi-run puppet regime in France during the Second World War, awarded to people who had served it well.

Ironically, Vergès' family was vulnerable to the same criticisms because, as we mentioned, Robert Chaudenson gave the heading "Francisque et/ou Croix de Lorraine" to the third chapter of his book on the Vergès family.⁷⁰⁹ Chaudenson had juxtaposed the metonymies of the two opposing regimes. The medal of the Forces of Free France was in the shape of the Lorraine Cross while the francisque stood for the Vichy régime. Chaudenson suggested that divided loyalties had run in the Vergès family ever since Raymond kept his post under the Vichy regime. He alluded to Raymond's incipient political career in Réunion. Raymond was elected mayor of Salazie in 1935.⁷¹⁰ To keep his post, Raymond swore allegiance to the Vichy regime, which was in power in France under Marshal Pétain from 1940 to 1944. As we have seen, he made that decision after consulting with his comrades.⁷¹¹

Mitterrand's francisque provided Vergès with an occasion to lash out: "Les porteurs de francisque n'ont pas de leçon de patriotisme à donner à quelqu'un qui, de dix-sept à vingt ans, était chez le Général de Gaulle."⁷¹² In reference to Mitterrand's Vichy years, Vergès could present Mitterrand as comparable to Barbie. In retrospect in 1994, a year before the end of Mitterrand's Presidency, Vergès insinuated that Mitterrand had not pardoned Barbie because of something Mitterrand had to hide about his involvement in the Vichy regime –

⁷⁰⁸ See Vergès, *Intelligence*, *supra* note 263 at 94.

⁷⁰⁹ See Chaudenson, *Vergès*, *supra* note 113 at 51.

⁷¹⁰ See Lauvernier, *Ban-Bai*, *supra* note 1 at 241.

⁷¹¹ *Ibid* at 272.

⁷¹² Vergès, *Intelligence*, *supra* note 263 at 257.

and presumably feared a smear campaign.⁷¹³ Significantly, Vergès was not alone in expressing his concerns of Mitterrand's Vichy past.⁷¹⁴

Why, then, would Vergès be willing to defend Barbie? One of the reasons was Vergès' animosity toward Mitterrand.⁷¹⁵ It would be a mistake to attribute Vergès' legal defence of Barbie to indeterminate Nazi sympathies running in the Vergès family, as Chaudenson suggested. Politically, Vergès' attention to the Vichy connections of Mitterrand, who was a socialist, reflected the communist view of socialists as fascists. That apparently anomalous thesis was formulated in forceful terms by Stalin as early as 1924: "Fascism is the bourgeoisie's fighting organisation that relies on the active support of Social Democracy. Social Democracy is objectively the moderate wing of Fascism."⁷¹⁶

In practice, the sinisterity of Mitterrand's presidency was manifested in a ballooning of the French secret services and numerous wiretapping scandals. That ballooning spoke to the paranoia among the French left after Mitterrand won the presidential election. The inspiration for that paranoia was the fate of Chile's socialist president Salvador Allende, who was overthrown by Augusto Pinochet's military on September 11, 1973 and reportedly committed

⁷¹³ *Ibid* at 101.

⁷¹⁴ For instance, Sally Baumann-Reynolds referred to "Mitterrand's continued personal association with or emotional loyalty to several individuals who dishonored themselves during the Vichy years, in particular René Bousquet (secretary-general of the police who was largely responsible for the deportation of thousands of Jews, including children) and his Vichy entourage (which Mitterrand employed in his Interior Ministry in the 1950s), Jean Bouvier and Pétain himself, on whose grave Mitterrand has had a wreath placed annually since his death." Sally Baumann-Reynolds, *François Mitterrand: the Making of a Socialist Prince in Republican France* (Westport, Conn.: Praeger, 1995) at 15. Baumann's description of Mitterrand's policy in Algeria also concurs with Vergès' negative vision. See generally *op. cit.* 30–71.

⁷¹⁵ A reservation comes from Vergès himself when he told Felissi: "Je me suis rendu à Alger en avril 1957, au nom de tous les avocats français qui plaident en Algérie quels qu'ils fussent, socialistes de gauche, communistes et même trotskystes." Felissi, *Anticolonialiste*, *supra* note 6 at 45.

⁷¹⁶ Joseph Stalin, "The Period of Bourgeois-Democratic Pacifism," in David Beetham, ed, *Marxists in Face of Fascism: Writings by Marxists on Fascism from the Inter-War Period* (Manchester: Manchester University Press, 1983, p. 153–4) at 153. Those accusations of Fascism were mirrored by Leon Trotsky, who compared Stalinism to Fascism: "In the last analysis, Soviet Bonapartism owes its birth to the belatedness of the world revolution. But in the capitalist countries the same cause gave rise to Fascism. Stalinism and Fascism, in spite of a deep difference in social foundations, are symmetrical phenomena. In many of their features they show a deadly similarity." Leon Trotsky, *The Revolution Betrayed: What is the Soviet Union and Where is it Going?* Translation by Max Eastman, 5th ed (New York: Pathfinder Press, 1972) at 278.

suicide so as not to be taken by his enemies alive.⁷¹⁷ Mitterrand's entourage was obsessed with the possibility of a similar scenario possibly taking place in France and, to avert it, started to strengthen the intelligence community. That paranoia was called the "Allende syndrome."⁷¹⁸ Thus, in the period from August 1982 to March 1986, the Élysée listened to the telephone conversations of 150 persons and recorded 3,000 conversations. The targets included journalists, writers, and lawyers. Even lawyers, including Antoine Comte and Vergès, were wiretapped.⁷¹⁹

At the level of principle, the Mitterrand years, 1981–1995, were pivotal for the development of Vergès' judicial strategy. It would be easy to downplay Mitterrand's role in that development now that has disappeared from the scene, after his death in 1996, while Vergès continues to be present. The role played by Mitterrand as Vergès' antagonist was a negative one and coaxed Vergès to develop his pursuit of coherence by negation further. Whenever Vergès mentioned Mitterrand, as he did with striking frequency especially while Mitterrand was alive, he always referred to him in negative terms.

The reason that Mitterrand was obnoxious to Vergès is difficult to gauge. We offer two explanations, on which the following sections will elaborate. The first reason was that Vergès had been one of the targets of the vast intelligence apparatus that Mitterrand had mounted to

⁷¹⁷ Suicide as the cause of death is contested by Allende's supporters. In January 2011, a Chilean judge ordered an inquiry into Allende's death. See Pascale Bonnefoy, "Chilean Judge Orders Investigation Into Allende's Death," *The New York Times*, January 27, 2011 at http://www.nytimes.com/2011/01/28/world/americas/28chile.html?_r=1

⁷¹⁸ See Kauffer, *Ve République*, *supra* note 614 at 441–2. See also Capitaine Paul Barril, *Les archives secrètes de Mitterrand* (Paris: Albin Michel, 2001) at 194 [Barril, *Archives*]. Barril identified the Minister of the Interior Gaston Defferre as the prime mover of the Allende syndrome. See Capitaine Paul Barril, *Guerres secrètes à l'Élysée (1981–1995)* (Paris: Albin Michel, 1996) at 22 [Barril, *Guerres*].

⁷¹⁹ Comte, whose telephone was tapped, defended the Irish terror suspects Mary Reid, Stephen King and Michael Plunkett, who were arrested in Vincennes near Paris in 1982. See Kauffer, *Ve République*, *supra* note 614 at 445. Vergès' telephone was also tapped. See e.g. See Daniel Burdan, Jean-Charles Deniau, *DST: neuf ans à la division antiterroriste* (Paris: R. Laffont, 1990) at 380–4 [Burdan, *DST*]. Comte was not on the best of terms with Vergès: "Il a perverti sa fonction en la transformant en une aventure personnelle." See Violet, *Vergès*, *supra* note 5 at 252. A possible explanation for that negative opinion was that Vergès defended Captain Paul Barril, who was in charge of the arrest of the Irish terror suspects, Comte's clients. See Barril, *Guerres*, *supra* note 718 at 57–8, 67–8. Antoine Comte was also Carlos the Jackal's lead counsel after Carlos broke with Vergès and before Isabelle Coutant became lead counsel in 1997. See Coutant, *Carlos*, *supra* note 40 at 99–100.

eliminate internal threats. The second reason was that Mitterrand was a socialist while Vergès continued to identify himself as a communist, albeit an “infrared” one. Vergès’ animosity to Mitterrand reflected the hatred that communists in general harboured for social democrats.⁷²⁰

5.5.1. *Vergès against Mitterrand’s intelligence apparatus*

Vergès’ response to the Allende syndrome was to turn Mitterrand’s intelligence network against itself. He went on the attack against that apparatus by defending former intelligence staff who had gotten into trouble with their employers. In so doing, Vergès engaged the intelligence community in combat in the legal arena and became privy to some of its most closely kept secrets. Vergès opened another front in his fight against Mitterrand by defending Klaus Barbie. Whether the fight against Mitterrand was the only reason Vergès defended Barbie during that same period is in doubt, though we must not discount the depth of his animosity toward Mitterrand among the factors behind his decision to defend Barbie. The Barbie case was one of the monumental events that defined Mitterrand’s presidency as well as Vergès’ legal career. Due to the political implications of the trial, Vergès’ role was more profound than his official position as Barbie’s lawyer would have suggested. He attempted to deflect the opprobrium aimed at Barbie to Mitterrand. In Vergès’ conversations with Jean-Louis Remilleux,⁷²¹ which were published in two books that were released within a four-year interval (the first was *Intelligences avec l’ennemi*⁷²² and the second *Le salaud lumineux*⁷²³),

⁷²⁰ Jean Galland expressed that animosity succinctly: “Le Parti Socialiste est une agence de la bourgeoisie dans les rangs de la classe ouvrière.” Galland, *Tête*, *supra* note 272 at 119.

⁷²¹ Remilleux is a former reporter for the prestigious Parisian daily, *Figaro*, founder and CEO of the JLR-Productions, and founder of the Société européenne de production. See *Qui est qui en France [Who’s Who in France]*, 40e édition, 2009 (Paris: J. Lafitte, 2009) at 1845. One of Remilleux’s interviews, *Dignity for Africa* with President Mobutu, President of Zaire (now the Democratic Republic of Congo), has been cited in the literature review of another academic study, Peta Ikambana, *Mobutu’s Totalitarian Political System: an Afrocentric Analysis* (New York: Routledge, 2007) at 11. The adjective “afrocentric” also describes Remilleux’s approach, which he demonstrated when he asked Mobutu about Zairean art. See Mobutu, *Dignité*, *supra* note 599 at 152–8.

⁷²² Vergès, *Salaud*, *supra* note 202. The book was published in hard-cover and paperback versions with different page numbers.

⁷²³ Vergès, *Intelligence*, *supra* note 263.

one can sense the exasperation that Vergès developed with Mitterrand after Mitterrand's election to the French Presidency in 1980.

We should note that in his principled scepticism of any claims that Vergès makes, Robert Chaudenson, a biographer of the Vergès family, expressed doubts about whether those agents supposedly employed by the intelligence community even existed as separate persons.⁷²⁴ His scepticism is misplaced. The evidence in support of Vergès' claims is overwhelming. One need only read the books authored by the agents in question. Captain Paul Barril of the *Groupe d'intervention de la Gendarmerie nationale* (GIGN) mentioned "his lawyer" Vergès in three of the four books, specifying that Vergès became his lawyer in 1983.⁷²⁵ The Barril case thus dates from the period when Barbie became Vergès' client, which is the period we are discussing now. It is somewhat less clear how far back Vergès' relationship with the other agents went, but there is no doubt that those relationships did exist. Daniel Burdan, an agent of the *Direction de la surveillance du territoire* (DST), described his experiences before the 13th correctional chamber of the *Cour d'appel de Paris* on December 6, 1989 with Vergès by his side.⁷²⁶ The introduction to the book by the third agent Jean-Marc

⁷²⁴ See Chaudenson, *Vergès*, *supra* note 113 at 203.

⁷²⁵ Initially, Barril's lawyer was Maître Dohet, who was followed by Francis Szpiner. See Capitaine Paul Barril, *Missions très spéciales* (Paris: Presses de la Cité, 1984) at 137 and 209 [Barril, *Missions*]. Barril explains that he changed his lawyer Francis Szpiner to Jacques Vergès in 1983. See Barril, *Guerres*, *supra* note 718 at 76, 88. Barril called Vergès "mon avocat" in Barril, *Enquête*, *supra* note 367 at 97. He described Vergès' morning conviviality in his next book. See Barril, *Archives*, *supra* note 718 at 9–15. Barril was the number-two man of the Élysée's antiterrorist cell GIGN (*Groupe d'intervention de la Gendarmerie nationale*). GIGN was founded in 1982 due to the socialist paranoia called the Allende Syndrom. See Kauffer, *Ve République*, *supra* note 614 at 443. See also Barril, *Guerres*, *supra* note 367 at 11. The number-one man of GIGN was Christian Prouteau. See Barril, "Missions" at 28. GIGN belonged to the *Gendarmerie nationale*, which is a military institution unlike the *Police nationale*, which is a civilian institution. Heir of the *maréchaussées* of the *Ancien régime*, the *gendarmerie* counts today as one of France's oldest institutions. Traditionally associated with maintaining order in the countryside, the *gendarmerie* is responsible for the public safety on approximately 95 % of French territory. See generally François Dieu, "Gendarmerie," in Auboin, *Histoire*, *supra* note 343, p. 696–9. Contrary to what one might suppose, the relationship between the *gendarmerie* and the police is complex enough to have merited the description "guerre gendarmerie-police." See e.g. Gilles Perrault, *L'ombre de Christian Ranucci* (Paris: Fayard, 2006) at 65. That war goes back to the rivalry between Anne Jean Marie René Savary's *gendarmerie* and Joseph Fouché's police in the early nineteenth century. See Jean Tulard, « 1800–1815 », in Auboin, *Histoire*, *supra* note 343, p. 268–305 at 291.

⁷²⁶ Burdan, *DST*, *supra* note 719 at 383. Burdan was an agent of the DST. The main difference between the DST and the other major intelligence agency, the *Services de Documentation Extérieure et de Contre-Espionage* (SDECE), was that DST was responsible for internal security (thus a rough equivalent of the FBI) while SDECE

Dufourg of the *Groupe d'études et de recherches* (GER) was written by Vergès.⁷²⁷ The story of the fourth agent Dominique Loiseau of the *Brigades de recherche et d'intervention* (BRI) was told by Michel Naudy and Loiseau himself in *L'affaire Loiseau*, in which they mentioned Vergès, one of Loiseau's three lawyers, twice.⁷²⁸ The Loiseau trial began before the *Cour d'assises de Paris* on October 2, 1991.⁷²⁹

All of them had a somewhat similar story. They argued that they had been set up by their hierarchy as decoys to divert attention from delicate political problems. Vergès' clients from the intelligence community were more than symbols of Mitterrand's police state. In practical terms, those clients were privy to political machinations in general and against Vergès in particular. Barril mentioned that Vergès' telephone had been tapped on Mitterrand's orders.⁷³⁰ Burdan explained that he had been under orders to tap Vergès' telephone, which

was responsible for gathering intelligence on foreign threats (thus a rough equivalent of the CIA). See generally Douglas Porch, *The French Secret Services: From the Dreyfus Affair to the Gulf War* (New York: Farrar, Straus and Giroux, 1995) at 422. SDECE is today DGSE (*Direction Générale de la Sécurité Extérieure*).

⁷²⁷ See Jacques Vergès' introduction to Jean-Marc Dufourg, *Section Manipulation: de l'antiterrorisme à l'affaire Doucé* (Paris: M. Lafon, 1991) at 9 [Dufourg, *Manipulation*]. Dufourg worked for *Groupe d'études et de recherches* (GER), which was part of RG. GER was created in 1967 by Jacques Hartstrich, director of the *Bureau de liaison*, but the official recognition of its existence had to wait until 1982. Its specialty was the investigation of politically delicate cases, hence the more common reading of the acronym: *Groupe des enquêtes réservées*. Hierarchically, it was under the *Préfecture de police de Paris*. See Bernard Violet, *Mort d'un pasteur: l'affaire Doucé* (Paris: Fayard, 1994) at 122–3. Under Jacques Fournet's directorship in 1988–1990, the GER specialized in wiretapping. See Bernard Violet, *Mort d'un pasteur: l'affaire Doucé* (Paris: Fayard, 1994) at 281–2. RG was founded in 1907 and went through multiple mutations during its history. Édouard Ébel, "Renseignements généraux", in Auboin, *Histoire*, *supra* note 343 at 844–6. The RG of the *Préfecture de police de Paris* remained autonomous under its new name of *Direction du Renseignement de la préfecture de police de Paris* (DRPP) when the *Direction Centrale des Renseignements Généraux*, which was the intelligence service of the *police nationale*, merged with the other intelligence service of the *police nationale*, namely the DST, to form the *Direction centrale du renseignement intérieur* (DCRI) in 2008. See *Arrêté du 27 juin 2008 relatif à la direction du renseignement de la préfecture de police et modifiant l'arrêté du 6 juin 2006 portant règlement général d'emploi de la police nationale*, JORF n°0152 du 1 juillet 2008 page texte n° 9 at <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019103315>.

⁷²⁸ Loiseau's other lawyers were Guy Nicolas and René Hayot. See Michel Naudy, Dominique Loiseau, *Le dossier noir de la police des polices: L'affaire Loiseau* (Paris: Plon, 1994) at 206–7, 213 [Naudy, *Dossier noir*]. Loiseau was an agent of the *Brigades de recherche et d'intervention* (BRI). Loiseau's story gained wide national and ultimately international fame because it inspired the film *36, rue des Orfèvres*, starring two of France's best-known actors, Daniel Auteuil and Gérard Depardieu. The theme of the film is the professional and personal rivalry between their role characters, who head two rival services, BRI and BRB, respectively, and the thin line that separates law enforcement from the criminal underworld. That film does not refer to Vergès. See generally Olivier Marchal [dir.], Dominique Loiseau [script], et al., *36 quai des Orfèvres*, [DVD] Montréal: Films Séville, c2006.

⁷²⁹ See generally Naudy, *Dossier noir*, *supra* note 728 at 205.

⁷³⁰ See Barril, *Archives*, *supra* note 718 at 9–15.

allowed him to catch some of his clients.⁷³¹ Dufourg wrote in his book that Vergès' telephone was tapped by the *Renseignements généraux*.⁷³² Of these clients, Barril, who worked for an elite unit of the French gendarmerie, became Vergès' biggest "catch" in the intelligence community. However, Vergès' defence of Barril exacerbated his conflict with leftist lawyers. The principal reason was that Barril's unit had been in charge of an operation against Irish terrorists, whose lawyer was Antoine Comte, one of the lawyers wiretapped under Mitterrand.⁷³³

5.5.2. Communism versus socialism

To understand Vergès' apparently anomalous defence of Barbie, a Gestapo officer, we analyze his relationship to Mitterrand in terms of ideological differences. Protests about the repression that the Mitterrand government initiated suggest that the Barbie case became a vehicle for Vergès to vent his rancour towards Mitterrand, which was palpable in his two interviews with Remilleux, and date from a time when Mitterrand was still in power. Vergès' memories of Mitterrand's role in Algeria in turn account for the link that manifested itself in the arguments to which Vergès resorted in the Barbie case, emphasizing the parallels between Barbie's activities in France during the Second World War and French repression in Algeria, of which Mitterrand was part before Algerian independence. Vergès' antipathy to Mitterrand was reinforced by his general communist enmity with the Social Democrats. It is significant that during the Mitterrand years Vergès made the following observation in *Le salaud lumineux* about the differences between communists and Social Democrats: "Le socialiste,

⁷³¹ See Burdan, *DST*, *supra* note 719 at 380–4.

⁷³² See Dufourg, *Manipulation*, *supra* note 727 at 244.

⁷³³ The Irish terror suspects Mary Reid, Stephen King and Michael Plunkett were arrested in 1982 in Vincennes near Paris. Barril argued in his second book that he was a victim of character assassination and drew attention to the fact that those three suspects belonged to the Irish National Liberation Army (INLA), an extremely violent splinter group of the Irish Republican Army, the IRA. The group had been blacklisted by the British Special Air Service (SAS). He also mentions he was congratulated for the operation by Margaret Thatcher years later. He stresses that the terrorists were set free because of a formal error during the house search committed by the police and was thus not responsible for it. See Barril, *Guerres*, *supra* note 718 at 57–8, 67–8.

c'est celui qui prend des assurances sur l'avenir. Le communiste, celui qui franchit le Rubicon. Le socialiste se ménage une porte de sortie. Le communiste fait sauter les ponts derrière lui.”⁷³⁴ That book came out in 1990, nine years after the election of Mitterrand.

If we lose sight of that deep-seated animosity, we also lose sight of the coherence of Vergès' career, which supersedes his apparent change of political allegiance when he took on the Barbie case. At first, soon after his clandestinity, Vergès was almost exaggeratedly active in defense of the political left, including the extreme left.⁷³⁵ Vergès accentuated his leftist profile not only as a lawyer but also in his former role as a journalist. In 1983, Vergès edited a new journal called *Correspondances Internationales*, in whose opening issue he merged those two roles of his and greeted “the imprisoned comrades who have succeeded in communicating from the depths of the cells in which they have been buried by the bourgeoisie.” Vergès was addressing the Italian-based terrorist organization, the Red Brigades.⁷³⁶ As a lawyer, he intervened on behalf of Klaus Croissant, the lawyer of the Baader-Meinhof gang. He also defended Magdalena Kopp and Bruno Bréguet, who were “friends” of Carlos the Jackal, the most wanted international terrorist of his time.⁷³⁷ Vergès' legal arguments were similar to those of the lawyers who represented the German terrorists.

⁷³⁴ Vergès, *Salaud*, *supra* note 202 at 31.

⁷³⁵ For instance, Vergès defended two members of the French terrorist group *Action directe*, Mohand Hamami and Frédéric Oriach, in 1983. They were accused of breaking into an arsenal that was under police surveillance. Oriach was the editor of the review *Subversion*, which was a successor to Vergès's *Révolution*. See Paris, *Unhealed Wounds*, *supra* note 193 at 180.

⁷³⁶ Paris, *Unhealed Wounds*, *supra* note 193 at 180–1.

⁷³⁷ Carlos was alleged to have been involved in the massacre at the Munich Olympics in 1972 though that allegation proved false. Carlos began his terrorist career in the Popular Front for the Liberation (PFLP), on behalf of whose members Vergès intervened in the late-1960's. Bassam Abu-Sharif, a recruiter for the Popular Front for the Liberation (PFLP), tells how Ilich, still in his teens, came to his office in the late-1960's with a desire to drop out of the Patrice Lumumba University in Moscow (today: Peoples' Friendship University of Russia) and join the PFLP. Abu-Sharif also explains that it was him who gave Ilich the code name Carlos, which was, in his view, a Spanish corruption of the Arabic name Khalil خليل (“friend”), which in turn referred to the patriarch Abraham, the Beloved of God. See Bassam Abu-Sharif and Uzi Mahnaimi, *Best of Enemies* (Boston: Little, Brown and Company, 1995) at 69–72. However, the name Carlos is derived from the Germanic word *karlaz*, which means “man.” See Guido Gómez de Silva, *Elsevier's Concise Spanish Etymological Dictionary: containing 10,000 entries, 1,300 word families* (Amsterdam: Elsevier, 1985) at 105. Carlos had the eerie habit of calling his partners “friends.” See Jacques Givet, *Le cas Vergès* (Paris: Lieu Commun, 1986). Others have observed that terrorists use the word “friend” in the “Middle Eastern” meaning of term: a sure ally “avec qui la confiance totale est réciproque.” See Villeneuve, *Terrorism*, *supra* note 404 at 42.

His arguments also focused on the use of torture on prisoners, as was the tendency among leftist lawyers.⁷³⁸

On the other hand, Vergès' political connections made him an interesting figure for the secret service to follow. Because a lawyer's communications with his client were privileged, he had little difficulty convincing his sympathizers that the state had overstepped its authority by listening to telephone communications. That overstepping of competence consolidated the parallels among Algeria, Nazi-Germany, and Mitterrand's rule that Vergès used in his defence of Barbie.

How did Vergès keep his career together and make it appear coherent? A central characteristic of Vergès' biography is coherence that is not undermined but consolidated by negation instead of affirmation, which we illustrate with the clashes between Vergès and Mitterrand.

5.5.3 *Régis Debray: the link between Vergès and Mitterrand*

The relationship between Mitterrand and Vergès was not only a matter of isms, such as communism versus socialism, or the historical context, namely the Algerian War. It was more personal. The personal link that connected Vergès and Mitterrand was Régis Debray who vacillated in his leftist politics between militant communism à la Che Guevara, which Vergès supported, and domesticated leftist social democracy à la Mitterrand. Debray was sent to Bolivia by Vergès' periodical *Révolution* to join Guevara.⁷³⁹ To show that the link between

⁷³⁸ When Vergès defended Barbie, he stressed that Barbie was a policeman (*flic*), thus seeing a parallel between Barbie and the mistreatment of prisoners in prisoners in the west.

⁷³⁹ See Vergès, *Avocat*, *supra* note 40 at 154. See also Tom Bower, *Klaus Barbie: The Butcher of Lyons* (New York: Pantheon Books, 1984) at 229 [Bower, *Butcher of Lyons*]. Vergès' chronology is not entirely solid. Vergès founded *Révolution* on his return to France from Algeria in 1963. He returned to Algeria after Boumedienne overthrew Ben Bella in 1965 to resume his legal career. It was only in that same year, 1965, that Debray left for Cuba and followed Che to Bolivia.

that periodical and Che was strong, Vergès indicated that *Révolution* had the support of Chinese officials and Guevara.⁷⁴⁰

Unfortunately, Debray's presence in Bolivia seemed to bring bad luck both for himself and Che. The story is well-known. Debray was arrested by Bolivian authorities on April 20, 1967, while Guevara was detained in a CIA-led ambush in Bolivia on October 8, 1967 and killed the following day.⁷⁴¹

About a year later, in *De la stratégie judiciaire*, Vergès drew attention to the contrast between the trial that was convened for Debray and the assassination of Che. Vergès' objective was to expose the political nature of the judicial system. He suggested that Che would have used a trial to propagate his political views, for which reason, according to Vergès, authorities preferred to sort out the problem by assassination. On the other hand, Debray's political views and personal presence were too insignificant to refuse him a trial but significant enough to give the authorities the opportunity to showcase their adherence to the law.⁷⁴²

Régis Debray later played a vital role in another chain of events with which Vergès would be closely associated in a remarkable turn of events. Debray had helped Serge and Beate Klarsfeld in their attempt to kidnap Barbie in Bolivia in 1972/3 and, in his capacity as one of the two special advisors to Mitterrand, facilitated the final transfer of Barbie to France in 1983.⁷⁴³ That activity in itself would probably not have been sufficient to wreck whatever was left of Debray's prestige in leftist circles after he became an associate of Mitterrand, who

⁷⁴⁰ See Jean-Pierre, *Miroir*, *supra* note 113 at 158.

⁷⁴¹ See generally Bernhard Gierds, „Che Guevara, Régis Debray und die Focustheorie,“ in Wolfgang Kraushaar, ed, *Die RAF und der linke Terrorismus* (Hamburg: Hamburger Edition, 2006) Band 1, p. 182–204 at 182. Debray was sentenced to thirty years' imprisonment for his guerrilla activities under Guevara's command but was set free in December 1970 after a change of government in Bolivia. See generally Hartmut Ramm, *The Marxism of Régis Debray: Between Lenin and Guevara* (Lawrence: The Regents Press of Kansas, 1978) at 134, 144.

⁷⁴² See Vergès, *Stratégie judiciaire*, *supra* note 7 at 85–6.

⁷⁴³ See generally Serge Klarsfeld, *The Children of Izieu: A Human Tragedy*, Translated by Kenneth Jacobson (New York: Harry N. Abrams, 1984) at 123 [Klarsfeld, *Izieu*].

was a socialist and thus a leftist. However, it was tempting to contrast Debray's liberation from the Bolivian prison with the assassination of his comrade Che. Indeed, there was speculation that Debray had helped the CIA track down Che. That speculation coloured the perception of Debray's role in the transfer of Barbie to France, too. The CIA and Mitterrand's France became two sides of the same coin in the popular imagination.⁷⁴⁴

Against the background of Debray's meteoric rise under Mitterrand's presidency, it appeared increasingly hypocritical of him to maintain his ties with extreme leftist groups. Those ties were longstanding. During his long detention in Bolivia, his apartment was inhabited by Andreas Baader, who was one of the leaders of the German group Red Army Fraction, called eponymously the Baader-Meinhof gang. Later, Debray's plan to capture Barbie had also included the idea of involving the French extreme-left terrorist group *Action directe*. That plan was abandoned when the Jewish quarter of Paris was hit in 1982 by an attack supposedly carried out by Abu Nidal's terrorist group, and *Action directe* refused to condemn the attack.⁷⁴⁵

Even if Vergès may not have been aware of the convoluted relationship between Mitterrand and the Barbie case when he took it on, it was clear from the outset that he intended to use it to expose the arch-socialist Mitterrand. In 1984, Vergès' later client Captain Barril, who had access to the secrets of the presidential palace, began to use his literary production to divulge

⁷⁴⁴ See generally Barril, *Archives*, *supra* note 718 at 185–194. Even though not a leftist himself, Barril also explained that the Ministry of Defence was careful to select the documents that would be transferred to the judge to minimize the issue of the death of the communist resistant fighter Jean Moulin in the hands of Klaus Barbie, on which Vergès had intended to shed light during the trial. See *op. cit.* at 198–202.

⁷⁴⁵ Barril admitted that Baader was living in Debray's apartment without his knowledge though his ignorance was not enough to dispel doubts about the depth of Debray's connections to terrorism. See generally Barril, *Archives*, *supra* note 718 at 185–194. Abu Nidal was PFLP's Wadi Haddad's best-known heir. See Burdan, *DST*, *supra* note 719 at 89. The attack in question took place on rue des Rosiers in the Jewish quarter of Paris on August 9, 1982. The killers shot six persons to death at random in the Goldenberg restaurant. Accounts diverge as to whether there were two or four killers. See Villeneuve, *Terrorism*, *supra* note 404 at 124–8. Barril is skeptical of Abu Nidal's role in that attack and observed that Abu Nidal never claimed responsibility for it, which was uncharacteristic of him, and years of research had provided no conclusive proof of Abu Nidal's role. See Barril, *Guerres*, *supra* note 718 at 38.

⁷⁴⁵ See generally Barril, *Archives*, *supra* note 718 at 185–194.

information to expose the sophistication with which the Mitterrand government manipulated information. In general, Vergès' later clients from the secret service had a connection to that period that confirmed in Vergès' mind his worst fears about the depravity of socialists and it is plausible to subsume those disparate cases within Vergès' longstanding hostility to Social Democrats and regard them as parts of his project of exposing them even at the risk of taking on cases that appeared inconsistent with his own communism.⁷⁴⁶ The incompatibility of the political allegiance of his clients and himself is an extreme demonstration of Vergès' characteristic "coherence by negation."

⁷⁴⁶ Vergès is particularly critical of the Socialist's attitude to torture during the Algerian War. In the preface to the 1981 edition of *De la stratégie judiciaire*, a couple of years before Barbie was flown to France, Vergès made an oblique reference to Mitterrand, the Keeper of the Seals (i.e. Minister of Justice) in 1956–7, to expose Mitterrand's prevarications on the issue of torture. See Vergès, *Stratégie judiciaire*, *supra* note 7 at 10. Vergès also emphasized that Guy Mollet, whose Republican Front accepted the legal statute for Algeria but passed the "pouvoirs spéciaux" nonetheless, and the minister resident for Algeria Robert Lacoste, were both Socialists. See Felissi, *Anticolonialiste*, *supra* note 6 at 110.

6. THE BARBIE TRIAL AND VERGÈS TURN TO DEVIL'S ADVOCACY (1983–7)

The next episode in Vergès' career was marked by his defence of Klaus Barbie, to which Derrida alluded in his essay *The Force of Law*.⁷⁴⁷ The repercussions that it had on his career became clear as soon as he took on that case in 1983. The Barbie trial consolidated Vergès' strategy which manifested itself in the garb of "devil's advocacy." Barbie was the devil and Vergès was devil's advocate (*avocat*). The new development in his judicial strategy was the juxtaposition of an individual, such as Barbie, not as a representative but as a person, and the judicial machinery that he faced. To achieve that juxtaposition, Vergès stepped out of his customary role of a defendant of his clients and also of leftist causes. Once he had done so, he portrayed the defence of Barbie as a heroic battle of an individual (and his lawyer) against the "system." Stripped of Barbie's wartime political connections, anyone could identify with a misunderstood individual. Vergès addressed the accusers, in reference to Barbie: "Vous en faites un Diable, or c'est un être humain, comme vous et moi."⁷⁴⁸ Of course, Vergès could not have illusions of winning the Barbie case but the probable defeat would only add to the aura of a misunderstood individual that Vergès had created around that individual. Vergès invoked the eternal viewpoint to make the case more plausible: "Il est un être humain pour l'éternité."⁷⁴⁹

This approach tied in with Vergès' own checkered political past. Disillusioned with his involvement in left-wing mass movements in the late-1970's and with the estrangement that

⁷⁴⁷ Although Derrida did not mention Barbie by name in that essay, Ranjana Khanna identified Barbie as being Derrida's reference in *The Force of Law*: "Vergès cut his teeth, as it were, during the Algerian war when he defended Djamila Bouhired. When he defended his most controversial client, Klaus Barbie, he references the contradictions in French law to confirm its imperial hypocrisy. If the French could put Barbie on trial for atrocities committed in the 1940s, why would they not speak to their own violations in Algeria and Indochina in the 1950s and 1960s?" See Ranjana Khanna, *Algeria Cuts: Women and Representation, 1830s to the Present* (Stanford: Stanford University Press, 2008) at 12.

⁷⁴⁸ Vergès, *Avocat*, *supra* note 40 at 29.

⁷⁴⁹ *Ibid* at 29.

set in between himself and his lawyer and political colleagues, Vergès took on the case of Klaus Barbie in 1983. It caused immediate consternation in the left-wing movements, such as *Défense libre*, possibly accounting for Vergès' continued provocation. In the long term, his strategy was at least seemingly in step with the approach of the political left. Vergès used the Barbie case to generate what some psychologists call a *rétrochoc culturel*, which means that one sees the negative side of one's own culture through the eyes of someone outside it.⁷⁵⁰ Vergès' overall approach in the Barbie case was to suggest that the Barbie case was a projection of France's own bad conscience.⁷⁵¹

Vergès' legal argument was that the legal rules from the period following the Second World War, especially those relating to crimes against humanity, were not applied equally to Barbie's Nazi past and France's own colonial history. Bringing French public opinion, and the French justice system, to accept Vergès' view would have necessitated a thorough national self-examination. As long as France was unwilling to face its past, it would not let Barbie go free. However, Vergès could turn that defeat into his and Barbie's favour by remarking that the Barbie conviction was the result of French national trauma. Vergès could undertake this approach without being hypocritical because he had done his self-criticism in his clandestinity before taking on the Barbie case.

⁷⁵⁰ "Selon le phénomène de rétrochoc culturel, le contact avec une personne de culture différente fait prendre conscience des aspects moins reluisants de sa propre culture et engendre certaines remises en question." Simon Grenier and Édith Boyer, a summary of a conference by Danielle Gratton, Société québécoise de psychologie du travail et des organisations, 21/02/2007 at 2,

http://www.sqpto.ca/Faits%20saillants/Gratton_Danielle_Faitssaillants_intercult.pdf

⁷⁵¹ A collective's bad conscience needs to find an outlet outside the group, as *groupthink* suggests. One can characterize that mechanism as "fight-flight," which was one of the three dysfunctional group dynamics identified by Wilfred Bion, namely "dependency," "pairing" and "fight-flight." "Dependency" means the idealization of leaders, "pairing" means Messianism, and "fight-flight" means the projection of fear from internal problems to an external enemy. The first two are different facets of society's God complex while the fight-flight refers to the demonization of an external enemy, such as Barbie. See generally Wilfred Ruprecht Bion, *Experiences in Groups, and Other Papers* (New York: Basic Books, 1961). See also Andrew Kakabadse, Nada Kakabadse, *Essence of Leadership* (London: Thomson Learning, 1999) at 202. Janis' *groupthink* drew on Bion's insights.

6.1. Vergès' Judicial Strategy in the Barbie Case

The Barbie case recaptured the spirit of the strategy of rupture under dramatically changed political circumstances. Whereas the strategy of rupture had juxtaposed the official French Algerian policy and the political aspirations of the indigenous population and portrayed the latter as having an equal or superior legitimacy, Vergès' defence of Barbie did not juxtapose two different political entities or even two different political outlooks. Instead, it pitted an individual against the "system." Vergès did not defend the system that Barbie represented but Barbie as an individual. The system that Barbie represented entered his reasoning only as a mirror in which the French state should have seen itself.

For Vergès, the battle for Barbie was not only one between Barbie and the French legal system but also between himself and Barbie's other lawyers who he may have perceived as colluding with the justice system. When Barbie arrived in Lyon in February 1983, his defence was taken up by Alain de la Servette, president of the Bar of Lyon. In 1954, de la Servette had defended two Frenchmen accused in the same trial as Barbie.⁷⁵² Before the trial, however, de la Servette came under pressure from such groups as the League Against Racism and Anti-Semitism (LICRA) and started receiving death threats. The scandal was heightened when de la Servette appointed the Jesuit Robert Boyer, priest-turned-lawyer, as his assistant. In the late-1960's, Boyer had fought for the retrial of a convicted child murderer, who was then found to be innocent. The Roman Catholic hierarchy in Lyon considered Boyer's role in the Barbie defence to be problematic because his presence on the team might have suggested that the Church was defending a Nazi. When Vergès joined the defence, de la Servette agreed

⁷⁵² See generally Bower, *Butcher of Lyons*, *supra* note 739 at 225.

to work with him, but reluctantly. However, on June 15, 1983 de la Servette considered himself, as he put it, relieved from the task that he had shared with Boyer.⁷⁵³

Barbie heard the full charges against him on February 24, 1983. He was indicted on eight counts, each of the charges falling under the broader category of crimes against humanity.⁷⁵⁴ The defence hinged on pleading ignorance, alibi, relatively low rank, the culpability of his subordinates, and his acting vicariously for specialists sent by Adolf Eichmann.⁷⁵⁵ In June 1983, Barbie changed lawyers and the defence was taken up by Vergès.⁷⁵⁶

Vergès' reasoning in defence of Barbie fell into three categories. Firstly, he protested against the shift of focus from Barbie's treatment of French resistance fighters, in particular the murder of the legendary resistance fighter Jean Moulin, to the deportation of Jewish children.⁷⁵⁷ The key charge had to do with the fate of the Children of Izieu: the deportation ordered by Barbie of forty-one Jewish children. Serge Klarsfeld, who had played a major role in getting Barbie to Lyon, provided the principal piece of evidence: a telex signed by Barbie confirming the transfer of the children to Drancy. Drancy was a camp constituted by a number of large concrete buildings that had been used to detain communists by the French, and it was later placed under control of the Gestapo.⁷⁵⁸

Secondly, Vergès protested the introduction of the charge of crimes against humanity. He disapproved of the way in which the prosecution brushed away the crimes against Moulin by using the special nature of crimes against humanity as a pretext. As Étienne Bloch, another member of *Défense libre*, argued – contrary to Vergès – the crimes against Moulin were

⁷⁵³ See generally Brendan Murphy, *The Butcher of Lyon: The Story of Infamous Nazi Klaus Barbie* (New York: Empire Books, 1983) at 133–9 and 310 [Murphy, *Butcher of Lyon*].

⁷⁵⁴ See Bower, *Butcher of Lyons*, *supra* note 739 at 226.

⁷⁵⁵ *Ibid* at 228.

⁷⁵⁶ *Ibid* at 229.

⁷⁵⁷ According to Vergès, Barbie was known in France as the killer of Jean Moulin and should have been tried for that crime. Vergès, *Face cachée*, *supra* note 30 at 54.

⁷⁵⁸ See Serge Klarsfeld, *1941 Les juifs en France: Préludes à la Solution finale* (New York: Beate Klarsfeld Foundation, 1991) at 66.

subject to the statute of limitations (*préscription*) because they were war crimes, whereas the crimes against the Jewish children were not, because they were crimes against humanity.⁷⁵⁹

Thirdly, Vergès protested against the procedural irregularities that occurred during the transfer of Barbie from Bolivia to France. That protestation sought to expose disregard for the letter of the law, which belied the self-portrayal of Bloch, among others, as guardians of the law.

Vergès' overall argument was that the political manoeuvring that was necessary to get Barbie to trial violated formal and substantive legal provisions concerning extradition that were applicable to his case. Vergès' objective was to demonstrate that by elevating politics over law the French legal system only projected its own shortcomings onto the Nazi system, which was on trial in the person of Klaus Barbie.⁷⁶⁰ On a more fundamental level, Vergès criticized the complacency of those who put Barbie on trial: belonging to one system rather than to another was no guarantee of justice. On the contrary, blind faith in the rightness of one's group had the effect that the individuals considered themselves liberated from personal responsibility.

For Vergès, the problem with the Barbie case was thus the *groupthink* which led the group members to think in stereotyped terms of other people and groups.⁷⁶¹ Vergès' rejection of the *groupthink* mentality provides the key to understanding why he was intent on the shock effect of the Barbie case. As Derrida implied, Vergès exposed the hypocrisy of strict observance of the law. Derrida's remarks about Vergès were about "radically contesting the legitimacy of this law and all of its consequences: the politics and the cynicism and the political hypocrisy

⁷⁵⁹ See Vergès, *Face cachée*, *supra* note 30 at 55.

⁷⁶⁰ Vergès' colleague in *Défense libre*, Frédéric Joyeux, expressed the reasoning shared in that group as follows: "le véritable courage politique consisterait à le défendre... vaincre Barbie c'est le libérer." He meant that the strict observance of law in the Barbie case would have put the Nazi legal system to shame but, instead, the French justice system sank to the level of the Nazi system. *Ibid* at 51.

⁷⁶¹ See Marc J. Wallace, Andrew D. Szilagyi, *Managing Behavior in Organizations* (Glenview, Ill.: Scott, Foresman, 1982) at 218.

that demand the exercise of this law, within which, however, he places himself.” *Groupthink* was so pervasive in the Barbie case – if we extrapolate from Vergès’ reasoning – that it illustrated better than any other case in Vergès’ career the central point of the strategy of rupture: the parties were not in agreement on the principles. Those principles were fundamental ones, such as the non-retroactivity of criminal provisions and the statute of limitations. Disagreement about fundamental principles accounted for the different characterizations of the crimes against Moulin and the Jewish children. The former were war crimes, which were subject to statute of limitations, whereas the latter were not subject to statute of limitations and were also retroactive. Vergès exposed that disagreement about principles by his own strict observance of the law.

6.1.1. Assailing the charge by denying the key evidence

As we saw, Serge Klarsfeld provided the principal piece of evidence. The telex was the following:

This morning a stop was put to the activities of the home for Jewish children 'colonie enfant' of Izieu, Ain. Forty-one children aged from three to thirteen years were arrested. In addition the entire Jewish staff, ten strong including five women, was arrested as well. Neither cash nor other valuables were found. Transport to Drancy will take place April 7, 1944.⁷⁶²

Vergès contests the authenticity of that telex to this day.⁷⁶³ He had maintained at trial that the telex was a fraud because all the prosecution had was a copy. The original was later found in

⁷⁶² English translation in Klarsfeld, *Izieu*, *supra* note 743 at 98–99.

⁷⁶³ For instance, he wrote in *La justice est un jeu*: “De nos jours, d'autres fabriquent de faux télex pour d'aussi bonnes causes mais ils n'avouent pas.” Vergès, *Jeu*, *supra* note 42 at 94.

the archives of the *Centre de documentation juive*.⁷⁶⁴ However, he would argue that no chemical analysis of the telex was performed to prove its authenticity.⁷⁶⁵

Vergès' insistence on falsification was part of a wider set of arguments that were intended to expose the political nature of the trial. His first argument was that the emphasis on Jewish children did not reflect Barbie's reputation as the torturer of French resistance fighters during the Second World War and he found that Barbie's crimes against Moulin should have been among the charges against him. In France, Barbie was known as the man who killed Moulin. Without that notoriety, Vergès implied, the public support for bringing Barbie to justice in France would not have reached the necessary critical mass.⁷⁶⁶ However, the proceedings against Barbie did not relate to Moulin but to Jewish children. Justice Minister Robert Badinter imposed a time limit on the proceedings with specific instructions to focus on the actions by the German police against the Jews.⁷⁶⁷ The full extent of the manoeuvring to which Vergès pointed during the Barbie trial was not known even to himself at the time, according to one of his clients, Captain Paul Barril, who would explain that the Ministry of Defence carefully selected the documents that would be transferred to the judge to minimize the issue of Moulin.⁷⁶⁸

The political manoeuvring left a trail of irregularities that Vergès identified in the procedure and the substance of the charges. His overall argument was that the central charge, crimes against humanity, served as a reason for violating procedural rules, such as the statute of limitations. During the trial, Vergès argued that the way in which the Klarsfelds and Debray had brought Barbie to justice and the role played by the French government in that transfer were against French law. Those arguments had been preceded by similar appeals to

⁷⁶⁴ See generally Paris, *Unhealed Wounds*, *supra* note 193 at 187–8.

⁷⁶⁵ See Vergès, *Avocat*, *supra* note 40 at 189.

⁷⁶⁶ Vergès was able to make his outrage appear genuine because of his own political orientation during the Second World War. As a communist, he might also have been tortured by Barbie.

⁷⁶⁷ See generally Barril, *Archives*, *supra* note 718 at 197.

⁷⁶⁸ *Ibid* at 198–202.

international law prior to the trial but since those appeals had not been able to halt the process, Vergès shifted the focus from international law to French law, on which the tribunal depended for its jurisdiction.

6.1.2. *Vergès' adherence to legality in the Barbie case*

Vergès was conscientious about abiding by the law in the Barbie case. He sought in vain common principles of *legal equality*, *legal unity*, and *legal certainty*.⁷⁶⁹ Vergès said that French President Pompidou had made a request to the Bolivian government for the extradition of Barbie in 1973. The Supreme Court of Bolivia turned down that request because Barbie was a Bolivian citizen with the new name of Klaus Altmann. Based on his presentation of the arrest of Barbie in Bolivia, Vergès reminded the jury that case law from the nineteenth century prohibited fraudulent arrests and that a circular from the nineteenth century prohibited contacts with foreign agents with a view to delivery of a fugitive. He characterized the preliminaries of the case as “*détournement de procédure sans précédent*” and denied that prosecution for crimes against humanity superseded procedural rules.⁷⁷⁰ In the Barbie trial, Vergès quoted *The Times* as saying that the procedure for getting Barbie to

⁷⁶⁹ As we saw, those three principles are the bedrock of the rule of law. His grudge presupposes a reasoning that we could express as follows: to be a victim of crimes against humanity, the victim did not have to be a soldier. The concession that the victim did not have to be a soldier did not mean that the victim could not be a soldier. Even if Jean Moulin was a soldier could he not be a victim of crimes against humanity? To paraphrase Vergès' general reasoning, legal equality was violated by characterizing the crimes against Moulin and the Jewish children differently, “war crimes” in the first case and “crimes against humanity” in the second. That divergence also broke the legal unity. Legal certainty was under attack by going back to crimes that, according to Vergès, had been looked over in the past.

⁷⁷⁰ Vergès' subsequent comments evoked Rudolf Jhering's phrase “form is the twin sister of liberty.” See e.g. Vergès, *Dictionnaire amoureux*, *supra* note 74 at 298. Form has been a key preoccupation of scholarship ever since Rudolf von Jhering's pithy statement: “Die Form ist die geschworene Feindin der Willkür, die Zwillingschwester der Freiheit” (Form is the sworn enemy of arbitrariness, the twin sister of freedom). Rudolf von Jhering, *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, Part II, 5th edition (Leipzig: von Breitkopf und Härtel, 1898) at 471. See also Peter Oestmann, “Die Zwillingschwester der Freiheit. Die Form im Recht als Problem der Rechtsgeschichte” in *Zwischen Formstrenge und Billigkeit: Forschungen zum vormodernen Zivilprozeß*, editor Peter Oestmann, Cologne: Böhlau Verlag, 2009, p. 1–54. In France, the *forme/fond* dichotomy has been more of a matter of legislative practice than an academic preoccupation, as it was in Germany. Napoleonic codification aspired to a balance between the form emphasized by the *ancien régime* and the complete lack of form of the French Revolution. See generally Alain Wijffels, “La forme emporte le fond – Temperate Formalism in the Pre-Enactment Discussions of the Napoleonic Code of Civil Procedure” in *Zwischen Formstrenge und Billigkeit: Forschungen zum vormodernen Zivilprozeß*, editor Peter Oestmann, Cologne: Böhlau Verlag, 2009, p. 267–291.

France was “highly irregular” because the expulsion of Barbie from Bolivia would technically have left him free to go to the country of his choice, which was not the case when he was flown to France. In his concluding statement in the Barbie case, Vergès delved into the charges and the extent to which they supposedly justified what he perceived to be procedural errors. His remarks highlighted procedural irregularities, the statute of limitations, and the retroactive character of prosecution for crimes against humanity. Vergès argued that the law by which crimes against humanity were not subject to the statute of limitations could not itself have the retroactive effect that was attributed to it. During the trial, he argued that prosecuting crimes against humanity retroactively constituted a violation of the principle of legality, which was enshrined in *The Declaration of Rights of Man and Citizen*: “Nul ne peut être puni qu’en vertu d’une loi établie et promulguée antérieurement au délit.”⁷⁷¹ To that remark, Étienne Bloch answered that the Nuremberg Statutes were retroactive when they were adopted.⁷⁷² Violations of that principle had taken place in France under the Vichy regime, which was a puppet of the Nazis. Vergès’ paradox was that the de-Nazification of the French justice system should have allowed for a Nazi criminal to go free.⁷⁷³

6.1.3. *Indictment of the West*

True to Willard’s maxim “the defence accuses,” taken to an extreme, Vergès accused the West in the Barbie case.⁷⁷⁴ He turned the tables on the accusers by undermining the key evidence against Barbie. However, he went beyond that reversal of roles and assumed a political role, too. He did so by elaborating on the liberties that France took with the rules it claimed to uphold. France represented the West in general in Vergès’ discourse. His

⁷⁷¹ *Nullum crimen, nulla poena sine praevia lege poenali* (Latin, “No crime, no punishment without a previous penal law”).

⁷⁷² See Vergès, *Face cachée*, *supra* note 30 at 55.

⁷⁷³ *Ibid* at 13.

⁷⁷⁴ The broad term “West” does not exclude communism, as his clashes with the political orientation of the Communist Party of France in the late-1950’s demonstrate.

reconstructed argument would be that France had the reputation of being the country of human rights.⁷⁷⁵ Yet, France was backsliding on its commitments by condemning Barbie against the rules. Although France, the self-styled paragon of human rights, was able to backslide on its commitments, it could not do away with the rights of defence completely, which gave Vergès the possibility of reminding the public of France's shortcomings. The "West" which he put on trial would ultimately include the United States, which played a key role, and not an uncomplicated one, in Barbie's postwar career. As in the case of France, he was able to indict the United States simply by doing his job. We suggest that Vergès ultimately accused the United States by defending Barbie, evoking implicitly the criminals from Nazi Germany who were protected by the United States through the so-called ratline.

6.1.3.1. France at variance with its laws

Vergès started his indictment of the West from France. Crimes against humanity were the main bone of contention because they did not fit the fundamental rules that he equated with the French legal system. His overall argument was that the violations of fundamental legal principles were, at least potentially, as serious as the crimes against humanity for which Barbie would be sentenced. Two wrongs would not make one right. The Barbie trial was for him a glaring example of how might makes right:

C'est dire que la poursuite et la répression des crimes contre l'humanité ne peut être envisagée qu'à la suite du renversement, le plus souvent par l'effet d'une guerre, de l'État au nom duquel les crimes ont été commis...⁷⁷⁶

Vergès was careful to draw a link from those technical considerations to political power: prosecution for crimes against humanity was therefore, according to him, always victor's

⁷⁷⁵ For that reputation, see e.g. Jeffrey N. Wasserstrom, *Human Rights and Revolutions* (Lanham, Md.: Rowman & Littlefield Publishers, 2007) at 127.

⁷⁷⁶ See Jacques Vergès, *Je défends Barbie* (Paris: Jean Picollec, 1988) at 25–44 [Vergès, *Barbie*].

justice. He substantiated that political argument with a legal technical reasoning. He argued that the Act of 1964 by which France incorporated international law regarding crimes against humanity into French law could not be applied retroactively to include a Nazi criminal.⁷⁷⁷

However, the European Court of Human Rights concluded that the Nuremberg law, which was at play in the Barbie case, had been deliberately written to transcend national law.⁷⁷⁸

While preparing for the Barbie trial in the mid-1980's, Vergès also accused the French legal system of inconsistency: "In 1952 and 1954, Barbie was tried [and convicted] in absentia for every possible crime one could hold against him. I don't understand how something that was doubtful in 1954 can become a certitude thirty years later."⁷⁷⁹ Vergès' argument appeared to be that Barbie was subject to double jeopardy. However, the criticisms of inconsistency that he levelled at the French justice system opened the door for his detractors to criticize him of inconsistency, too. Givet accused Vergès of contradicting himself: why would the accusers of Barbie, Givet argued, be precluded from having a Nuremberg for Barbie? After all, Vergès had demanded Nuremberg for Algeria during the Algerian War.⁷⁸⁰ He and his colleagues had even written a book in which they demanded "Nuremberg" for Algeria.⁷⁸¹ That argument implied that Vergès was selective in his denunciation of retroactive application of "Nuremberg".

As we have mentioned, another detractor of Vergès, Étienne Bloch, who was also member of *Défense libre*, pointed out that the Nuremberg statutes were retroactive when they were

⁷⁷⁷ The relevant provision of that Act of 26 December 1964 was as follows: "Crimes against humanity, such as are defined by the United Nations Resolution of 13 February 1946, taking note of the definition of crimes against humanity contained in the Charter of the international tribunal of 8 August 1945, are imprescriptible by nature" See Survey Response, Laws of France (Abigail Hansen and William Bourdon), 'Commerce, Crime and Conflict: A Survey of Sixteen Jurisdictions' Fafo AIS, [retrieved on January 15, 2011], 2006 at 14–15 at <http://www.fafo.no/liabilities/CCCSurveyFrance06Sep2006.pdf>

⁷⁷⁸ See Paris, *Unhealed Wounds*, *supra* note 193 at 188.

⁷⁷⁹ Quoted in Paris, *Unhealed Wounds*, *supra* note 193 at 191. Barbie was convicted in 1952 and 1954 in absentia. See Murphy, *Butcher of Lyon*, *supra* note 753 at 314.

⁷⁸⁰ See Givet, *Le cas*, *supra* note 13 at 132.

⁷⁸¹ See generally A. Benabdallah, M. Oussedik, J. Vergès, *Nuremberg pour l'Algérie! II* (Paris: F. Maspero, 1961).

adopted. Bloch's reasoning was that the Nuremberg statutes were the principal document governing the prosecution of crimes against humanity and, for that reason, whatever irregularities were apparent in their adoption would become normative. That reasoning allowed him to argue that crimes against humanity, unlike war crimes, were not subject to the statute of limitations, which supposedly accounted for the difference between the treatment of Barbie and that of Jean Moulin: Barbie was being charged with crimes against humanity (the deportation of Jewish children) while he was not being charged with war crimes against Jean Moulin.⁷⁸²

Vergès countered Bloch's argument that the Statute of Nuremberg was retroactive with a mixture of formal and substantive arguments. He said that despite its formal retroactivity, Nuremberg was oriented to the future to prevent similar acts from happening again. In Vergès' view, the Nuremberg trials fell short of their political aspiration and could thus not constitute a precedent. To demonstrate how dramatically the post-Nuremberg legal order had fallen short of its objectives, Vergès referred to the subsequent events in Algeria, which was the reason he frequently referred to Algeria. In his view, those events had demonstrated that the Nuremberg rules provided no disincentive for a state to recourse to torture, among other things. Torture can be a crime against humanity.⁷⁸³ Vergès implied that the legal aspects of the Nuremberg trials, such as retroactivity, were a pretext for a mistrial.⁷⁸⁴

⁷⁸² See Vergès, *Face cachée*, *supra* note 30 at 55.

⁷⁸³ Guy Horton produces the following definition of crimes against humanity from the Commentary on the Rome Statute: "These crimes are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings; they are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. However, murder, extermination, torture [underlining added], rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of meriting the stigma attaching to the category of crimes under discussion. On the other hand, an individual may be guilty of crimes against humanity even if he perpetrates one or two of the offences mentioned above, or engages in one such offence against only a few civilians, provided those offences are part of a consistent pattern of misbehavior by a number of persons linked to that offender (for example, because they engage in armed action on the same side or because they are parties

Vergès would mention that he had also learned of the existence of the Moscow Declaration, which stipulated that the victors of the Second World War would have the right to capture enemy war criminals even in violation of procedural rules. He admitted that De Gaulle signed the Moscow Declaration after the other signatories had already done so. Although Vergès further admitted that the Moscow Declaration might have appeared to be applicable to the Barbie case, he denied that the Declaration was the legal basis for trying him. He supported that argument by saying that the Declaration was applied in the later transfer of Carlos the Jackal from Sudan to France, while Carlos was not charged with anything he had done during the Second World War, which suggested that any reference to the Moscow Declaration was contrived.⁷⁸⁵ In the Barbie case, the prosecutor discussed the Declaration in the context of crimes against humanity.⁷⁸⁶ The Declaration was also referred to in the judgment of the *Cour de Cassation* of November 25, 1986 in the Barbie case.⁷⁸⁷

The provision of the Moscow Declaration (officially: Declaration of the Four Nations on General Security of October 30, 1943) that is closest to being relevant to the Barbie trial is the following:

Thus, the Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian, or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in the territories

to a common plan or for any similar reason.) Consequently when one or more individuals are not accused of planning or carrying out a policy of inhumanity, but simply of perpetrating specific atrocities or vicious acts, in order to determine whether the necessary threshold is met one should use the following test: one ought to look at these atrocities or acts in their context and verify whether they may be regarded as part of an overall policy or a consistent pattern of a inhumanity, or whether they instead constitute isolated or sporadic acts of cruelty and wickedness.” Quoted in Guy Horton, *Dying Alive: A Legal Assessment of Human Rights Violations in Burma*, April 2005, co-Funded by The Netherlands Ministry for Development Co-Operation at 201 (Section “12.52 Crimes against humanity”). He refers to RSICC/C, Vol. 1 p. 360 at <http://www.ibiblio.org/obl/docs3/Horton-2005.pdf>

⁷⁸⁴ See Vergès, *Face cachée*, *supra* note 30 at 64. Crimes committed by the French in Algeria were, in Vergès’ view, the reason the law did not enter into force until 1964 and could not therefore have retroactive effect. See *op. cit.* at 23. Vergès also argued that if the retroactivity had been genuine, the bombing of Hiroshima should have been condemned at Nuremberg. *Op. cit.* at 72.

⁷⁸⁵ See Vergès, *Intelligence*, *supra* note 263 at 32.

⁷⁸⁶ See generally Pierre Truche, “Le crime contre l’humanité,” in *Les cahiers de la Shoah*, no 1, 1994. ISSN 1262–0386 © Les Éditions Liana Levi, 1994 at <http://www.anti-rev.org/textes/Truche94a/>

⁷⁸⁷ See http://www.haguejusticeportal.net/Docs/NLP/France/Barbie_Cassation_Arret_25-11-86.pdf.

of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the people whom they have outraged."⁷⁸⁸

The London Agreement of 8 August 1945, which elaborated on that Declaration, stated:

“German Officers....may be judged and punished according to the laws of these liberated countries” and they would be punished “by the joint decision of the Governments of the Allies.”⁷⁸⁹ That condition was not met in the Barbie case. The evocation of the Moscow Declarations and the London Agreement are thus no panacea to the problems that Vergès identified.

However, Vergès spent relatively little time on the Moscow Declaration. Instead, he elaborated on the legal commitments that French undertook in the aftermath of the Second World War. He measured the reality of the Algerian War with those commitments. Did the Allied countries have the moral high ground to judge the losing countries and their soldiers when their postwar actions came under scrutiny? Did not crimes against humanity encompass all humanity?⁷⁹⁰

Dès lors, cette notion de “crimes contre l’humanité,” si elle n’étend pas son champ à toute la planète, devient arme de propagande par laquelle le vainqueur s’attribue toutes les valeurs humaines, les nie à son voisin, et s’efforce de prolonger à jamais dans les âmes le succès remporté par les armes, y compris cette arme par excellence que fut l’aviation de bombardement.⁷⁹¹

Those generalities point to the specific case of Jean Moulin. Vergès harbored a grudge against the French justice system because of the dismissal of the relevance of the murder of Moulin in the hands of Barbie. Even if Jean Moulin was a soldier could he not be a victim of

⁷⁸⁸ *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*, edited by George J. Annas, Michael A. Grodin (New York: Oxford University Press, 1992) at 8.

⁷⁸⁹ *Ibid* at 9.

⁷⁹⁰ The background of Vergès’ hyperbole is the frustration he encountered in his efforts to draw attention to Barbie’s reputation in France as the murderer of Jean Moulin.

⁷⁹¹ Vergès, *Barbie*, *supra* note 776 at 21–2.

crimes against humanity? The current definition of crimes against humanity suggests that he could.⁷⁹²

6.1.3.2. *France's projection of its crimes onto Barbie*

For Vergès, the question was and is: Why did France indict Barbie? His reasoning followed a logic that relied on the psychological device of projection. In his view, France projected its crimes onto Barbie so that it would not have to answer for them. In particular, Vergès called France hypocritical in condemning a relatively low-ranking Gestapo officer for crimes against humanity while denying the merits of the soldiers from the French colonies who had fought on the side of France against the Nazis. Vergès reminded his audience that more Algerian than French soldiers died during the Second World War, as attested by the unending rows of crescents in Italian cemeteries. He drew attention to the role played by Algerians and Moroccans in the liberation of the Rhône Valley, which was the territorial jurisdiction of the *Cour d'assises du Rhône*, where Barbie was being tried. France's ingratitude to its colonial population for its contribution to the war effort was fathomless, as became clear on Armistice Day (May 8, 1945), when the French colonial regime killed 15,000 to 40,000 Algerians for flying the Algerian flag to celebrate the Allied victory, including someone who carried a sign saying "Vive la victoire alliée."⁷⁹³ Perhaps the most dramatic, though indirect, accusation against France was Vergès' pleading for Barbie: "Les statistiques sont là: plus de morts

⁷⁹² *Ibid* fn. 780.

⁷⁹³ See Vergès, *Barbie*, *supra* note 776 at 17–9. Those numbers are contested. Roger Vétillard produces the entire range of numbers that have been suggested. The minimum is 202 Europeans and 900–1000 "Arabs." Those figures were advanced by Major Rice from the British general staff. The maximum is 100 000 advanced by the Arab publication *El Moujahid*. See Roger Vétillard, *Sétif, mai 1945 massacres en Algérie* (Versailles: Éditions de Paris, 2008) at 206–208 [Vétillard, *Sétif*].

algériens pour la France au cours de la Seconde Guerre mondiale que de résistant français recensées au cours de la même période.”⁷⁹⁴

Comparisons between the Nazis and the French colonial regime predictably met with criticism, which did not necessarily address Vergès’ central point that the French legal system was a slave to political expediency. For instance, to counter the comparisons between the Gestapo and the French army, Maurice Faivre quoted Edmond Michelet, who was Minister of Justice in 1959:

L’armée française en Algérie n’est pas une armée hitlérienne. C’est une armée qui cherche, sans l’avoir encore trouvée peut-être, la technique la plus humaine de réponse à une guerre de caractère insurrectionnel. Même si, pour les besoins de sa cause, le FLN fait état de pratiques inadmissibles commises par certains éléments de cette armée, la différence fondamentale qui existe et qu’il faut souligner entre ces éléments et les « Waffen SS », c’est que ces derniers faisaient partie d’un système alors que ceux-là ne constituent qu’un accident.⁷⁹⁵

Despite such protests, Vergès did not necessarily hijack the Barbie trial to divert attention to the Algerian War of Independence and its historical background, as film director Alexandre Arcady, among others, suggested.⁷⁹⁶ Instead, Vergès pointed to the selectivity of the legal principles that were established in the aftermath of the Second World War, which had a direct bearing on the Barbie case. The Algerian War was the example that he used to demonstrate

⁷⁹⁴ Vergès, *Barbie*, *supra* note 776 at 17. Vergès’ claims have met with scepticism. The alleged rhetorical impact of them diminishes slightly on closer historical inspection. We only have to look at the statistics to which Vergès refers. In 1940, 180,000 Maghrebis and 4.7 million Frenchmen “of European origin” were mobilized, of whom 5,400 Maghrebis and 115,000 French fell. In 1943–5, 233,000 Maghrebis and 700,000 Frenchmen were mobilized, of whom 18,300 and 40,000 Frenchmen lost their lives. Maurice Faivre’s email to Jonathan Widell on February 14, 2010. The Maghrebi losses were greater in relative terms, the ratios being 1:33 for Maghrebis and 1:40 for Frenchmen in 1940 and 1:12 for Maghrebis and 1:18 for Frenchmen in 1943–5. The difference is consistent but not dramatic, and the losses to Maghrebis were far fewer in absolute terms. The prevalence of that argument resides in its iconic significance, for instance in the case of Ben Bella, who fought in the French Army and later in the FLN: “Others, like the future President of Algeria, Ahmed Ben Bella, had fought in the French Army in Italy and helped liberate France. After the war, they did not understand why their own country was not given its independence by France...” Roger Faligot, “France, Sigint and the Cold War,” in Matthew M. Aid, Cees Wiebesat, ed, *Secrets of Signals Intelligence during the Cold War and Beyond*, with a foreword by Christopher Andrew (London: Frank Cass, 2001), 177 at 189.

⁷⁹⁵ Edmond Michelet, *Contre la guerre civile* (Paris: Plon, 1957) at 92.

⁷⁹⁶ See Ruquier, *Zemmour*, *supra* note 115.

that France did not adhere to the principles that it had helped to establish. His objective was to demonstrate that the legal rules that dated from the Second World War were not any freer from political pressure than other rules. Those rules reflected the political power relations of the time and, as Vergès would argue, in particular outside the Barbie trial, their application to that trial was a matter of political expediency. As we have already suggested, his main target was Mitterrand. The other groups whose censure he courted were subsidiary to the overriding goal of embarrassing Mitterrand. Mitterrand proved the general communist suspicion that socialists were agents of the ruling class in the working class. His decoration with the *francisque* by the Vichy regime was a case in point.

6.1.3.3. *Accusing the United States by defending its protégé*

As Barbie's lawyer, Vergès was in the line of fire as well. He described in vivid terms how the mob outside the courthouse shouted "death to Vergès" after the Barbie trial.⁷⁹⁷ Vergès was also the target of a more subtle attack. The files of the Eastern German secret police, STASI (*Staatssicherheit*) called him an accomplice of Carlos the Jackal and a CIA agent. Vergès made short work of the credibility of those files by arguing that he could not be both an accomplice of Carlos and a CIA agent (thus discounting the possibility that he was a double agent).⁷⁹⁸ That remark, which he made in relation to the Carlos trial in the early-1990's, is relevant to the Barbie trial. His defence of Barbie was more likely a source of entering Vergès in the STASI files as an agent of the CIA.

When we bear in mind the ambivalent position of Barbie as an undercover CIA agent and, on the other hand, as a Nazi war criminal, STASI's seemingly contradictory assessments of

⁷⁹⁷ See Vergès, *Avocat*, *supra* note 40 at 118.

⁷⁹⁸ As Vergès explained to Remilleux in the late-1990's, the STASI files sometimes identified him as an accomplice of the terrorist Carlos the Jackal (to whom the East German government was sympathetic) and sometimes as an agent of the CIA. Vergès assured Remilleux that those bits of information were more of a testament to the arcane East German officialese (in which defence lawyers tended to become accomplices) than even an approximation of his activities. See Vergès, *Intelligence*, *supra* note 263 at 44–6.

Vergès become understandable. We do not need to speculate about how Vergès would have appeared to the socialist justice system, which he suggested was a cure for the complacency of the western justice system. Vergès' own reference to STASI files already gave us a picture.

Vergès' possible collusion with the CIA is not as contrived as one might suppose. The United States effectively welcomed thousands of "Nazi war criminals" after the Second World War through its regular immigration process.⁷⁹⁹ Allan Ryan, who worked for the United States Department of Justice (Criminal Division), allowed that the US government did not actively aid the immigration of Nazis, the sole exception being case of Barbie: "No other case was found where a suspected Nazi war criminal was placed in the rat line [escape route for Nazi fugitives], or where the rat line was used to evacuate a person wanted by either the United States Government or any of its post-war allies."⁸⁰⁰ Mark Aarons and John Loftus rejected Ryan's assurances that Barbie was the sole exception.⁸⁰¹ CIA files that were declassified around 2000 confirmed their suspicions. Cases similar to that of Barbie included Eugen Fischer and Anton Mahler, two senior Gestapo officers in Munich and Augsburg.⁸⁰²

Regardless of the extent of the ratlines, it was hardly a trifle that the US Army considered employing Barbie as a special agent in 1965 but abandoned that idea when the Jewish US senator Jacob K. Javits asked the State Department about the use of Gestapo officers in the US in 1966. The Army provided a report about Barbie's background to the State Department,

⁷⁹⁹ See generally Allan A. Ryan, Jr., *Quiet Neighbors: Prosecuting Nazi War Criminals in America* (San Diego: Harcourt Brace Jovanovich, 1984) at 5.

⁸⁰⁰ Allan A. Ryan, *Klaus Barbie and the United States Government: A Report to the Attorney General of the United States* ([Washington, D.C.]: Criminal Division, United States Department of Justice;[Supt. of Docs., U.S. G.P.O., distributor], 1983) at 212.

⁸⁰¹ See Mark Aarons and John Loftus, *Ratlines: How the Vatican's Nazi Networks Betrayed Western Intelligence to the Soviets* (London: Heinemann, 1991) at 269–70, 351n11.

⁸⁰² See Richard Breitman and Norman J.W. Goda, *Hitler's Shadow: Nazi War Criminals, U.S. Intelligence, and the Cold War* (National Archives, 2010) at 43 at <http://www.archives.gov/iwg/reports/hitlers-shadow.pdf>. That report provides numerous instances in which the CIA protected suspected war criminals, not only in Germany but also in the Ukraine, as in the case of the Ukrainian nationalist leader Mykola Lebed (page 73ff.), and in the Middle East, as in the case of Haj Amin al-Husseini, the Grand Mufti of Jerusalem (page 21ff.).

but claimed untruthfully that an investigation into the German informant's past had been found to be inconclusive.⁸⁰³

Given that the collaboration between Barbie and the United State might imply hypothetical connections between Vergès and the CIA, did not Vergès run the risk of indicting himself insofar as he indicted the West? From the viewpoint of the socialist countries, he may have at least connived with the West.⁸⁰⁴ Vergès' involvement in the Barbie case would make it natural for East German intelligence to classify him as working for the CIA and the political context of the Barbie case was convoluted enough to give rise to that assessment. It is striking that Vergès made no reference to the US connection in the Barbie case and instead attempted to allocate blame for Barbie's actions to the French government, which his argument held guilty of similar deeds in Algeria. It might have been impractical to implicate the US before a French court. It would have been unworkable to put the French legal system on trial before the French legal system. It would consequently be a poignant reminder of Vergès' ambiguous position that he was tagged as a CIA agent in STASI files.⁸⁰⁵

Although Vergès only touched on the references to him in the STASI files, we can reconstruct his reasoning in response to the speculation to which those references were bound to lead. Although he might have connived with the West, he could answer that his connivance was more benign than Western *groupthink*, which was blind to the faults of the group to

⁸⁰³ See Allan A. Ryan, United States Department of Justice, Criminal Division, *Klaus Barbie and the United States Government: a Report to the Attorney General of the United States* ([Washington, D.C.]: Criminal Division, United States Department of Justice; [Supt. of Docs., U.S. G.P.O., distributor], 1983) at 172. See also Bower, *Butcher of Lyons*, *supra* note 739 at 188–9.

⁸⁰⁴ Countries that were called “communist” in the West called themselves “socialist.” See Vladimir Kartashkin, “Human Rights and Human Rights,” in Peter H. Juviler, Bertram Myron Gross, ed, *Human Rights for the 21st Century, Foundations for Responsible Hope: a U.S.–Post-Soviet Dialogue* (Armonk, NY: M.E. Sharpe, 1993, p. 207–216) at 210.

⁸⁰⁵ Another indication that STASI was up to date about Barbie's postwar connections is that STASI appears to have been privy to the information that Barbie had been hired by West Germany's foreign intelligence agency, the Bundesnachrichtendienst (BND), as an agent in 1965. The danger that STASI would expose Barbie was real enough for the BND to end that relationship in 1966. See Georg Bönisch and Klaus Wiegrefe, “From Nazi Criminal to Postwar Spy: German Intelligence Hired Klaus Barbie as Agent,” in *Spiegel Online*, 01/20/2011 at <http://www.spiegel.de/international/germany/0,1518,740393,00.html#ref=nlint>

which one belonged. The West, on the contrary, was steeped in *groupthink*, as was illustrated by the equation “Nazism = Bolshevism,” which was more indicative of Western *groupthink* than any existing similarities between Nazism and Bolshevism. As Irving Lester Janis explained, in *groupthink* members were not inclined to raise ethical issues that implied that the group, with its humanitarianism and its high-minded principles, was capable of adopting a course of action that was inhumane and immoral.⁸⁰⁶ The cohesion of the group increased when the group was under pressure from external sources, so why not consolidate the group with two enemies?⁸⁰⁷

Vergès’ project was to heal that self-inflicted blindness.⁸⁰⁸ His approach was to make the West, including France, see itself as Nazis. He did so by taking up the defence of Barbie despite the profound political divergences between himself and Barbie. He addressed the error of equating Nazism and Bolshevism in conversation with the Roman Catholic priest Alain de la Morandais (ALM):

JV – ... Actuellement il y a ceux qui disent: « nazisme = bolchevisme ou communisme ». Il y a aussi ceux qui disent: « la lutte des classes ou la lutte des races aboutit au même massacre ». Il y a une différence. Le nazisme, c’est l’exaltation d’une race ou prétendue telle.

ALM – Le communisme, c’est l’exaltation du prolétaire.

JV – Oui, mais le prolétaire peut être blanc, noir, jaune ou rouge. Le communisme a une vision universaliste que le fascisme ou le nazisme n’a pas. Il y a dans le fascisme, et surtout dans le nazisme, cette vision d’exclusion, de mépris pour les autres qui ne sont pas semblables.⁸⁰⁹

Vergès found the perception of similarities between communism and Nazism too absurd to merit an argument that would describe their differences.⁸¹⁰ He trusted that his political past

⁸⁰⁶ See Janis, *Groupthink*, *supra* note 70 at 12.

⁸⁰⁷ *Ibid* at 114.

⁸⁰⁸ Vergès said that his childhood in the colonies had healed his blind trust in the justice system. See Vergès, *Dictionnaire amoureux*, *supra* note 74 at 473.

⁸⁰⁹ Vergès, *Avocat*, *supra* note 40 at 66–7.

⁸¹⁰ That equation had a long history, though Vergès suggested in his statement that it was a recent phenomenon. He probably referred to *Le livre noir du communisme: crimes, terreur et répression* by Stéphane Courtois and others, which came out in 1997 and caused lively debates in the French National Assembly. Courtois recounted

on the left was known well enough to break the suspension of disbelief to which one's identification with a spectacle, whether a piece of theatre or a spectacle of justice, had lulled the spectator.⁸¹¹ Once Vergès broke the spell of the spectacle and exposed the political left as left and the political right as right, he forced the West to see itself as being no further from Nazism than communism was and therefore to realize that it was as eligible a candidate to be a modern equivalent to Nazism as communism had been. Vergès considered "a tremendous compliment" to be called a destabilizer.⁸¹²

Vergès flippantly compared that delicate process of societal self-discovery to homeopathy. He could take the western equation of "Nazism = Bolshevism" as a starting point. His implicit reasoning was that if the west equated Nazism and Bolshevism, what would spare the west from being equated with either Nazism or Bolshevism? Vergès brought about the desired self-discovery of the West through political provocation, which he compared to homeopathy:

C'est un traitement homéopathique. On guérit le semblable par le semblable. Le type se rend compte, à la fin, qu'il est ridicule. Lorsque des gens sont en colère après moi, ça m'amuse. Mais c'est plus fort que moi. C'est un spectacle comique. Si quelqu'un se met en colère et qu'on n'est pas soi-même en colère, c'est une situation comique.⁸¹³

The danger of that homeopathic method is that it might not work. In that case, the consequence is that society would take Vergès to be a Nazi sympathizer. A further and more profound consequence was that Vergès contributed to the confusion between political left and

with amusement the publicity generated for that book by the wrangling in the National Assembly between the political left and the political right. Conference with Stéphane Courtois and Jacques Lévesque at the Université du Québec à Montréal on November 20, 2010. According the Stalinist historian Ludo Martens, the phrase "Stalinism is Fascism" was used for the first time on November 20, 1936 among the pro-British conspirators in the Red Army. See Martens, *Staline*, *supra* note 158 at 200. That comparison became something of a trademark for Trotsky, *Ibid* at 215.

⁸¹¹ The similarity between law and theatre was based on the suspension of disbelief: "As theatre producers and theatre spectators in the legal arena, we also rely on a tacit agreement between ourselves and other theatre-goers/producers, thereby enabling the legal spectacle to continue." Maria Aristodemou, *Law and Literature: Journeys from Her to Eternity* (Oxford: Oxford University Press, 2000) at 80.

⁸¹² See Paris, *Unhealed Wounds*, *supra* note 193 at 185.

⁸¹³ Vergès, *Avocat*, *supra* note 40 at 139.

right, which it was his project to avert. That danger became more likely to materialize since the collapse of the Soviet Bloc, which left Vergès without the bipolarity between the capitalist world and the socialist world that provided the coordinates for international politics during the Cold War and for his legal career in particular.

6.2. *Barbie as Vergès' Antidote to Groupthink*

Was Vergès wasting his time? Had he not connived with both France and the United States? Why then did he turn against them? The answer to those questions helps us to answer the more fundamental one: Why was Vergès defending a case that was *prima facie* indefensible, as Derrida suggested he was wont to do?⁸¹⁴ Whence his seemingly immature desire to shock?

We study Vergès' reasons for taking on the Barbie case in terms of the psychological phenomenon of *groupthink*. We suggest that his desire to shock works like shock therapy against the insidious effects of *groupthink*. To compound that effect, an ambiguity attached to Vergès' image. When Alain de la Morandais asked Vergès: "Pourquoi avez-vous accepté le titre 'avocat du Diable'?" Pourquoi vous plaît-il?," he answered that he enjoyed its ambiguity:

L'avocat du diable est une expression très ambiguë puisque, en fait, dans les procès de canonisation, l'avocat du Diable représente la société, l'institution. J'aime bien l'ambiguïté qui réside dans ce surnom: d'une part les incultes, les illettrés pensent que l'avocat du Diable est le harki du Diable, alors que les plus avertis pensent, au contraire, qu'il est le serviteur de Dieu.⁸¹⁵

That ambiguity reflected the ambivalence of the position of the devil's advocate, who was both "inside the justice system" and "outside the justice system." Instead of the justice system, Vergès referred to God in that passage. He said that the devil's advocate served God and, by implication, the Church. The reason that he referred to God was to criticize the God

⁸¹⁴ Vergès wrote in his diary that the question that he is asked most often in conferences is how can one defend the indefensible? See Vergès, *Journal*, *supra* note 83 at 82.

⁸¹⁵ Vergès, *Avocat*, *supra* note 40 at 27.

complex of society, in particular the justice system. Those who considered themselves to be inside it saw a sharp distinction between insiders and outsiders. Such self-deification was an extreme form of *groupthink*. In *groupthink*, the members of a group considered loyalty to the group the highest form of morality.⁸¹⁶ In contrast, Vergès claimed that a person outside the group could attain to higher and more genuine forms of morality.

In Vergès' approach to Barbie, *groupthink* manifested itself as the complacency of the West. Although Vergès denied that Barbie was the devil, he portrayed himself as the devil's advocate. By doing so, he implied that the devil that he worked for was not Barbie but the justice system, drawing a parallel between himself and the *advocatus diaboli* who, in fact, worked for the Church. His overarching reasoning was that democracies that prided themselves on their justice systems were as susceptible to political pressure as their counterparts in Nazi Germany. Barbie became a symbol of its secret police but could be a symbol of the secret police of any country, including France. Vergès provided a concrete example of fingerpointing by citing the case of Admiral Karl Dönitz, who was accused at Nuremberg. Dönitz answered the charge that he had given an order not to save shipwrecked enemy soldiers by producing a similar order by American Admiral Chester Nimitz: "Doenitz ne contesta pas les documents; il soumit au tribunal un ordre similaire signé Chester Nimitz, chef de la flotte américaine du Pacifique concernant les naufragés japonais."⁸¹⁷ Vergès might have shared the opprobrium of the justice system of Nazi Germany (though it did acquit Georgi Dimitrov at the end of the Leipzig trials in the 1930's). Let us interpret Vergès' unusual reasoning as a veiled apology for the irregularities not of the Nazi justice system but of the Soviet justice system, which was (and is) compared to the Nazi system by critics of the

⁸¹⁶ See Janis, *Groupthink*, *supra* note 70 at 12.

⁸¹⁷ Vergès, *Stratégie judiciaire*, *supra* note 7 at 128–9. Vergès' choice of Dönitz as an example almost two decades before the Barbie trial is understandable in light of Dönitz' unusual position in Germany. Dönitz never joined the Nazi party, yet Hitler designated him as his successor in his will. In addition, Dönitz' counterpart in the America's Pacific Fleet, Nimitz, had a German surname, which made it easy to portray them as each other's mirror images. Nimitz's grandparents were from the German port town of Bremen.

Soviet Union. He then went on the attack by comparing the political pressure on the French legal system negatively with political pressure that the West decried in the Soviet legal system. Vergès made provocative statements to the effect that the French legal system was on a par with the Nazi system, because it was subject to the same degree of political pressure as the Nazi justice system that it condemned in respect of Barbie. However, his ultimate comparison was between the socialist justice system and the French justice system, with the French justice system unduly condemning the socialist justice system. As he would say in conversation with de la Morandais, “Pour torturer les gens il n’est pas besoin de régime totalitaire, ni de parti unique. Dans un régime démocratique, avec la pluralité des médias, la pluralité des parties, on peut très bien torturer les gens.”⁸¹⁸

By turning the equation “nazisme = bolchévisme ou communisme” against the western self-styled democracies, Vergès pursued *de-groupthinking*. Vergès took distance from a too literal interpretation of his argument by making it relational: “On est toujours le Nazi de quelqu’un.”⁸¹⁹ He suggested in *De la stratégie judiciaire* that the countries that condemned Germany at Nuremberg were guilty of the same crimes even outside the context of war: had the Soviet Union, one of the victors of the Second World War, not destroyed the kulaks, the rich land owners, as a class and had the British not destroyed the Tasmanians as a nation in Australia?⁸²⁰ Yet, Vergès adopted a pro-Soviet viewpoint, which was equidistant from the Western and the Nazi justice system. The West was equally ill-positioned to condemn the

⁸¹⁸ Vergès, *Avocat*, *supra* note 40 at 23. Eli Sagan pointed to that same conclusion: “Democratic society... though a psychological and sociological miracle, is no proof against the most barbaric kind of human behavior: imperialism, slavery, genocide, insane warfare, and abject poverty within society.” Eli Sagan, “Democracy and the Paranoid Position,” in *The Journal of Psychohistory* 24 (3) Winter 1997, p. 252–272) at 263.

⁸¹⁹ *Double jeu* on September 21, 1991. See the interview at <http://www.ina.fr/ardisson/double-jeu/video/I08137637/interview-de-jacques-verges.fr.html>. Vergès alludes to the “salami tactics” and suggested it was in use in the public discourse in the West. “Salami tactics” was the invention of the Hungarian communist leader Mátyás Rákosi, who would team up with non-communists and then turn against them by accusing them of being Fascist or Fascist sympathizers, “demanding a little more each day, like cutting up a salami, thin slice after thin slice.” See “HUNGARY: Salami Tactics,” in *Time*, Monday, Apr. 14, 1952 at URL <http://www.time.com/time/magazine/article/0,9171,857130,00.html>.

⁸²⁰ Vergès, *Stratégie judiciaire*, *supra* note 7 at 130.

Soviet Union as to condemn the Nazi system. Vergès performed that triangulation by comparing the western justice system unfavourably with the Soviet system in *De la stratégie judiciaire* and then equating western justice directly with Nazism in the Barbie case.⁸²¹ He had equated western justice with Nazism by mentioning the fate of the Tasmanians under British rule. From that point of view, there was no discontinuity between the Barbie case and the introduction of the strategy of rupture and the strategy of connivence in *De la stratégie judiciaire*. It was, in effect, an apology for the Soviet system of justice.

Vergès intended to use the Barbie trial as a mirror to be held up to the justice system. As he said in 1983: “The Barbie trial is a mirror. It reflects all the ambiguities of the Occupation.” He linked that mirror approach to his eight-year absence, which he also explained in terms of going through a mirror: “I went beyond the looking glass, where I served an apprenticeship.”⁸²² The mirror is a reference to self-awakening which, in Vergès’ view, could be achieved in the justice system. As Vergès said, “L’homme seul se reconnaît dans un miroir.”⁸²³ As he also said, “L’homme est le seul animal qui éprouve de la compassion pour son semblable, un sentiment profond pour quelqu’un qu’on ne connaît pas, mais qui est un semblable.”⁸²⁴ Vergès continued to use that mirror image to convey the idea of reflecting ourselves as persons in another person, when, for instance, he said: “L’autre est un peu notre miroir.”⁸²⁵ He expressed his view of his own calling as a lawyer by using that same image: “Plus souvent l’avocat, s’il a – et il devrait l’avoir - une âme romancier, curieuse des gouffres, capable de se regarder dans le criminel comme dans un miroir.”⁸²⁶ Similarly, he said: “En

⁸²¹ See Vergès, *Avocat*, *supra* note 40 at 66.

⁸²² Quoted in Paris, *Unhealed Wounds*, *supra* note 193 at 184.

⁸²³ Vergès, *Journal*, *supra* note 83 at 251. The Lacanian overtones of that statement are striking. According to Jacques Lacan, persons become aware of their selfhood by recognizing themselves in the mirror.

⁸²⁴ Vergès, *Avocat*, *supra* note 40 at 53.

⁸²⁵ *Ibid* at 53–54.

⁸²⁶ Vergès, *Dictionnaire amoureux*, *supra* note 74 at 44. To interpret Vergès’ view that one sees oneself in the criminal as in a mirror, it is significant that his father Raymond was a physician. He compares himself to a psychiatrist, for instance in his opprobrium of the psychoanalyst Gérard Miller, who refused to appear in public with Vergès, in Ruquier, *Zemmour*, *supra* note 115. The mirror effect (or chameleon effect) means that

fait, ce qui nous appelle à regarder le criminel en face, c'est la fascination, parce qu'il est notre image."⁸²⁷ That image corresponded to Jean-Paul Sartre's use of the image of a mirror in his description of Jean Genet, a criminal who had become a writer, in his essay *Saint Genet*: "Genet holds the mirror up to us: we must look at it and see ourselves."⁸²⁸ The overall logic in those observations was that persons who refused to identify themselves with criminals resorted to at least two psychological defence mechanisms to avert their anxiety, namely projection and denial. Anyone who did so was not an entire and truthful person.⁸²⁹

6.3. Vergès' Incorporation of Biography into his Judicial Strategy

Regardless of how subtle and well thought out Vergès' judicial strategy in the Barbie case was, it did not work the way he presumably intended in light of our reconstruction of his political views in the 1980's. The problem with Vergès' approach in the Barbie case was its contradictory nature. According to him, a lawyer who defended a criminal is not evil. Rather, his goodness was in inverse relationship to the criminal's guilt.⁸³⁰ However, Vergès was

empathetic people imitate unconsciously the postures, mannerisms and facial expressions of other people. See Tom Williamson, "Les influences sociales qui façonnent la construction et l'obtention des témoignages," in Michel St-Yves, Michel Tanguay [sous la direction de], *Psychologie de l'enquête criminelle: la recherche de la vérité* (Cowansville, Québec: Éditions Y. Blais, 2007) p. 107 at 113. See also Tanya L. Chartrand, John A. Bargh, "The chameleon effect: The perception-behavior link and social interaction," in *Journal of Personality and Social Psychology*, Vol. 76, 1999, p. 893–910.

⁸²⁷ Vergès, *Jeu*, *supra* note 42 at 154.

⁸²⁸ Jean-Paul Sartre, *Saint Genet: Actor and Martyr*, translated by Bernard Frechtman (New York: George Braziller, 1963) at 599. Although Sartre's title "Saint Genet" was a hyperbole, Vergès would provide a real criminal-to-saint story in *Dictionnaire amoureux*. His colleague Paul Baudet, a member of the *Conseil de l'Ordre*, defended Jacques Fesch "vers la sainteté," as Vergès put it. Fesch was sentenced for killing Jean Vergne, a police officer who was chasing him. While in prison, Fesch became a devout Roman Catholic in the footsteps of his lawyer Baudet and gained a reputation for being a model of redemption through faith. Jean-Marie Lustiger, the archbishop of Paris, said he hoped the Roman Catholic Church would canonize Fesch one day. See the reference to Baudet in Vergès, *Dictionnaire amoureux*, *supra* note 74 at 455.

⁸²⁹ That view may take a certain religious conviction to be endorsed. As I John 1:8 says: "If we say, 'We have no sin,' we are deceiving ourselves, and the truth is not in us" (HCSB). It is no surprise that the Mexican poet Octavio Paz considered Sartre's book on Genet "a very Christian apologia for abjection as a way to salvation" and presented it as indicative of Sartre's "penitential Christianity of a man who has ceased to believe in God but not in sin." See Octavio Paz, *On Poets and Others*, translated by Michael Schmidt (New York: Seaver Books, 1986) at 43, 45.

⁸³⁰ Vergès' reasoning is reminiscent of Dostoyevsky's oft-quoted observation in *The House of the Dead*: "The degree of civilization in a society can be judged by entering its prisons." In the same vein, Nietzsche referred to Dostoyevsky, who wrote that the inmates of the Siberian prisons formed the strongest and most valuable part of the Russian people. See Friedrich Nietzsche, *The Will to Power*, translated by Walter Kaufmann and R. J. Hollingdale (New York: Random House, 1967) at 392–3 (§740).

enough of a realist to realize that the justice system did not necessarily function according to the defence lawyer's wishes:

Un avocat tente – en vain, souvent – de faire comprendre à l'opinion que le criminel, qui est en train d'être jugé - dans le cas où la preuve du crime est reconnue -, qui a commis ces choses abominables, est tout de même un être humain.⁸³¹

Vergès said he provoked the press to malign him to bring out that paradox: "Si j'ai un service à vous demander, c'est de publier tous les jours ma photographie sur l'écran et de dire que je suis un voyou, un salaud. Les Français ne sont pas stupides: ils diront que si l'on s'acharne autant sur moi, c'est que je suis quelqu'un de bien."⁸³² His goodness was then supposedly reflected in his client. As we saw, Vergès even called Barbie, cryptically, "le prototype d'un héros tragique de notre temps."⁸³³ The pitfall in Vergès' explanation of how he accepted to be called devil's advocate was that in the causes of canonization in the Roman Catholic Church, the *advocatus diaboli* did not defend the accused but rather accused the person who was to be canonized (that is, declared a saint). Vergès' challenge was not to accuse Barbie. His reply to the criticism voiced by some of his lawyer colleagues who feared that he might accuse his client during the trial was that he would not accuse Barbie but use him as a mirror of the system that accused him.⁸³⁴ The 'system' was using Barbie's trial to sanctify, canonize itself. Therefore, Vergès' role was to accuse it. As precarious as Vergès' argument appeared, it echoed developments in the Roman Catholic Church in 1983, the same year as Vergès took

⁸³¹ Vergès, *Avocat*, *supra* note 40 at 253–4

⁸³² Jacques Vergès, Alain de la Morandais, *Avocat du diable, avocat de Dieu* (Paris: Presses de la Renaissance, 2001), at 73.

⁸³³ Vergès, *Jeu*, *supra* note 42 at 45. The interpretation of that comment depends on how extensively one understands Vergès' reference to "our time." He is probably referring to *deindividuation*, which means that a group can be so powerful that it can transform anyone regardless of personal characteristics. See e.g. Philip G. Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (New York: Random House, 2007) at 367. In that book, Zimbardo evoked his theory of deindividuation in the current setting of the war in Iraq: "The anonymity of person and place...can create an altered state of mind, which, when combined with diffused responsibility for one's actions, induces deindividuation. Actors become immersed in their high-intensity physical actions without rational planning or regard for consequences." Vergès' reference to Barbie's "heroism" was probably due to another process of deindividuation to which he was subjected in the hands of the justice system.

⁸³⁴ Vergès, *Face cachée*, *supra* note 30 at 46.

on the defence of Barbie, which was the year when Pope Paul II abolished the office of devil's advocate. Although the motivation for that decision remained obscure, the desire to make the Church less accusatory certainly played a part. It was consistent with Vergès' logic according to which he who accused the other accused himself: accusation was a denial of that "evil" in oneself.⁸³⁵ However, Vergès was happy to play the part of the devil's advocate because it allowed him to put the justice system, which provided him with a stage, implicitly on trial just by doing his part. Contrary to his cases in Algeria, he did not argue for the innocence of the accused but turned the crime committed by the accused into an example of the crimes committed by the French government.

It was in his post-Barbie period that Vergès renewed his interest in Friedrich Nietzsche's *Thus Spoke Zarathustra* and absorbed his study of it into his public persona. An expression of how his new emphasis on Nietzsche marked a shift of focus to his own person was his frequent references to the "three metamorphoses of the spirit," the camel, the lion, and the child, to which Vergès referred to explain his spiritual development. Vergès referred to the following passage in *Thus Spoke Zarathustra*:

I name you three metamorphoses of the spirit: how the spirit shall become a camel, and the camel a lion, and the lion at last a child... What is heavy? thus asks the weight-bearing spirit, thus it kneels down like the camel and wants to be well laden. ..The weight-bearing spirit takes upon itself all these heaviest things: like a camel hurrying laden into the desert, thus it hurries into its desert. But in the loneliest desert the second metamorphosis occurs: the spirit here becomes a lion; it wants to capture

⁸³⁵ Vergès uses the image of the shadow often, for instance in his admission "ce sont les ténèbres qui m'interpellent." Vergès, *Avocat*, *supra* note 40 at 47. It is plausible that he borrowed it from C.G. Jung, to whom he referred approvingly. See *op. cit.* at 229. Jung was aware of the connection of the shadow and the criminal: "...in the region of the pénombre... things have two sides, the sun side and the moon side... So when someone speaks of crime or the criminal on the lower level, he is conscious of crime or the criminal on the lower level, he is conscious of crime from such an aspect; it is a twilight concept, and only people who have experienced the shadow can really understand what he is talking about. But if he makes the mistake of coming out into the daylight... of course people will read him as they read the newspaper... And they will be horrified." C. G. Jung, *Nietzsche's Zarathustra: Notes of the seminar given in 1934–1939*, Edited by James L. Jarrett (Princeton: Princeton University Press, 1988) Vol. 1 at 481. The image of the shadow also assumed an organized form in the French resistance movement under Nazi occupation. A number of cineastic works referring to that period use the word shadow, such as Jean-Pierre Melville's 1969 film *L'armée des ombres* and Jean-Paul Salomé's 2008 film *Les Femmes de l'ombre*. The conflation of psychiatry and resistance underlie Derrida's reference to Vergès' in his discussion of Walter Benjamin's "Great Criminal" in *The Force of Law*.

freedom and be lord in its own desert. It seeks here its ultimate lord: it will be an enemy to him and to its ultimate God, it will struggle for victory with the great dragon... To create new values – even the lion is incapable of that: but to create itself freedom for new creation – that the might of the lion can do. To create freedom for itself and a sacred No even to duty: the lion is needed for that, my brothers... But tell me, my brothers, what can the child do that even the lion cannot? Why must the preying lion still become a child? The child is innocence and forgetfulness, a new beginning, a sport, a self-propelling wheel, a first motion, a sacred Yes. Yes, a sacred Yes is needed, my brothers, for the sport of creation: the spirit now wills *its own* will, the spirit sundered from the world now wins *its own* world.⁸³⁶

Referring to Zarathustra's child-player, which was the last stage of man's development, Vergès said: "Je suis devenu un joueur."⁸³⁷ That simple statement suggested that he had gone through the first two stages. That three-step process described not only Vergès' personal development but, more particularly, his personal development as a reflection of his professional development. It was significant that in his conversation with Remilleux, he mentioned his antipathy towards Mitterrand. Vergès then suggested that he had reached the third stage when he got over his resistance to Mitterrand (that reconciliation being, of course, accelerated by Mitterrand's death):

Jouer n'est pas rire forcément. Nietzsche, dans Zarathoustra, disait que l'homme passe par trois stades. Le premier, c'est le stade du chameau, l'animal obéissant: on lui met n'importe quel colis sur le dos, les œuvres complètes de tel penseur moderne, les discours de Me Jouffa,⁸³⁸ les promesses de M. Mitterrand, toutes sortes de tables de la loi et il accepte tout. Le deuxième stade, c'est le lion rugissant. L'homme n'accepte plus d'être traité comme une bête de trait, il se révolte contre tout. Et le troisième stade; c'est celui de l'enfant qui joue. Il n'est même plus révolté, il a tout jeté par-dessus bord, il s'amuse de tout dans la plus parfaite innocence. Je suis un innocent.⁸³⁹

Nietzsche appeared in Vergès' discourse with increasing frequency after the Barbie trial, partly because of Nietzsche's demonic image, especially thanks to writings such as *The*

⁸³⁶ Friedrich Nietzsche, *Thus Spoke Zarathustra*, Translated by R. J. Hollingdale (London: Penguin Books, 2003) at 54–5.

⁸³⁷ See Jean-Pierre, *Miroir*, *supra* note 113 at 109

⁸³⁸ Yves Jouffa was the chairman of the League of Human Rights. He was a prosecution witness in the Barbie trial.

⁸³⁹ Vergès, *Salaud*, *supra* note 202. at 122.

Antichrist. In Nietzsche's philosophy, the Overman was just as much subhuman as superhuman. A "better" man was also a "worse" man. In other words, the Overman embraced the celestial as well as the demonic spheres.⁸⁴⁰ The demonic, too, was for Vergès an aspect of the divine in the human being. Man's divinity was not divorced from the inherent evil in human nature, as the following brief exchange between de la Morandais and Vergès demonstrated:

ALM – Ce divin l'homme, qui est dans la vie...de quoi est-il fait? D'ombre et de lumière?
JV – Oui.⁸⁴¹

Vergès turned to another major influence of his, namely Dostoyesky, to illustrate the cohabitation of good and evil in man:

Dostoïevski croit en Dieu, mais il est obsédé par ceux qui transgressent la loi. Il en va de même pour Mauriac, Julien Green, Graham Greene. Ces écrivains sont tous chrétiens. Ils croient en Dieu, mais c'est le crime qui les fascine. Précisément parce qu'ils croient en Dieu.⁸⁴²

⁸⁴⁰ See Ernst Benz, *Der Übermensch: eine Diskussion* (Zürich: Rhein-Verlag, 1961) at 118. The "child" is also beyond good and evil, as Nietzsche wrote in *Beyond Good and Evil*: "Perhaps the most solemn conceptions that have caused the most fighting and suffering, the conceptions of 'God' and 'sin,' will one day seem to us of no more importance than a child's plaything or a child's pain seems to an old man; —and perhaps another plaything and another pain will then be necessary once more for 'the old man'—always childish enough, an eternal child!" Friedrich Nietzsche, *Beyond Good and Evil: Prelude to a Philosophy of the Future*, translated by Helen Zimmern, MobileReference, 2008, § 57.

⁸⁴¹ Vergès, *Avocat*, *supra* note 40 at 47. In another context Vergès referred to the poetry of President Senghor in support for his view that night and darkness were the real colour of life. See Vergès, *Journal*, *supra* note 83 at 12. Moreover, Senghor had a collection of poems titled *Chants d'ombre*, whose overarching theme was the opposition between the white and black race. See generally Léopold Sédar Senghor, Pierre Brunel, coordinateur, *Poésie complète* ([Paris]: CNRS éditions, 2007) at 3–123. Senghor referred to God as Obscure Presence. See Léopold Sédar Senghor, "Hosties noires: Prière des tirailleurs sénégalais," *Ibid*, p. 149–151 at 146. The reference was to *contemplatio in caligine divina* (contemplation in divine darkness), which became known in French literature thanks to Victor Hugo's references to the shadow in his poems. See Thomas Hilberer, *Victor Hugo, Les contemplations: Struktur und Sinn* (Bonn: Romanistischer Verlag, 1987) at 155n43. That idea is also expressed in the oxymorons "the night of light" and "black light" in certain non-Christian traditions, such as Sufism. See Henry Corbin, *L'homme de lumière dans le soufisme iranien* (Paris: Collection du Soleil dans le Cœur, 1971) at 19–20. Corbin also expressed the confusion between light and shadow in terms of divine and satanic: "Il y a ambiguïté du divin et du satanique tant que la conscience ne distingue pas entre ce qui est son Jour et ce qui est sa Nuit." *op. cit.* at 25.

⁸⁴² Vergès, *Avocat*, *supra* note 40 at 42.

Dostoyevsky distinguished different types of truth, the two most important of which were the “high truth” and the “low truth.” The “low truth” was to “high truth” as “demonic” was to “godly” (in its meaning of the absolute good).⁸⁴³ Like Dostoyevsky, Vergès did not consider those two truths separate from each other but complementary.

Vergès’ recognition of the divine in human beings did not mark a break with his political activism. Instead, his political views continued to inform his legal practice. However, to reconcile his insights into the divinity of man and politics, he expanded his political views to all-encompassing proportions. Instead of advocating anticolonialism in the name of any particular ideology, his political activity assumed the form of thirdworldism.⁸⁴⁴

⁸⁴³ See Ksana Blank, *Dostoevsky’s Dialectics and the Problem of Sin* (Evanston, Ill.: Northwestern University Press, 2010) at 99–101.

⁸⁴⁴ Third-worldism was part of the social protest of the late-1960’s and early-1970’s, especially in France. That social protest was spearheaded by the 1968 student revolt and diverse liberation and rights movements, such as women’s rights, antiwar and, especially in the United States, the civil rights movement. Third-worldism was preceded by the anticolonialist movements earlier in the 1960’s in Africa and Asia. See Renée Claire Fox, Judith P. Swazey, Judith C. Watkins, *Observing Bioethics* (New York: Oxford University Press, 2008) at 329.

7. VERGÈS' POST-BARBIE TURN TO RETROSPECTION AS A JUDICIAL STRATEGY (1987–)

The sixth period of Vergès' career is the period after the Barbie trial. In this period, his autobiography became part of his judicial strategy. His preoccupation changed from that of an "advocate" of the "devil," which was still tied to courtroom imagery, to "l'art d'être Vergès."⁸⁴⁵ This development of his strategy was not egocentric, as Isabelle Coutant suggested. On the contrary, it was an instance of a so-called decentration (*décentration*).⁸⁴⁶ Decentration is a process which proceeds by adopting different and apparently conflicting viewpoints or centres.⁸⁴⁷ It is true that Vergès continued to draw attention to himself but he did so to divert attention from the justice system, which in his view was in need of that decentring because of its *groupthink*. That diversion of attention from the justice system to himself was a sort of mental variant of the strategy of rupture. Once he had managed to draw attention to himself, the process of decentration continued. The attention that Vergès drew to himself ultimately ended up benefiting his clients. Once the decentration was more or less complete, Vergès pointed to his client as the origin of the decentration that he had executed. The decentring of the justice system thus did not translate into Vergès' egocentrism but in decentring his viewpoint by adopting rival views, such as that of a Gestapo officer.

Before reaching that point, Vergès left a trail of metamorphoses, summarized in Nietzsche's three metamorphoses. He started his career by fighting for *the* cause, which became *a* cause in the mid-1960's. After his clandestinity, which ended in 1978, Vergès shifted his attention

⁸⁴⁵ *Libération*, Par Pascale NIVELLE, mercredi 30 octobre 2002) at <http://www.denistouret.net/constit/Verges.html>

⁸⁴⁶ Décentration counterbalances – or breaks away from – the centering of perception, activity and thought, whether around ego (egocentrism) or a collectivity (sociocentrism). See Fondation Jean Piaget, "Décentration" at http://www.fondationjeanpiaget.ch/fjp/site/presentation/index_notion.php?PRESMODE=1&NOTIONID=277

⁸⁴⁷ *Grande dictionnaire de la psychologie* defines décentration (for which it gives the rare English equivalent "decentration") as "coordination entre centrations successives qui permet d'obtenir la régulation réciproque des déformations perceptives causées par ces centrations." See Éliane Vurpillot, "Décentration," in *Grand dictionnaire de la psychologie* / sous la direction de Henriette Bloch ... [et al.] (Paris: Larousse, 1992) at 190.

from “cause” to “client.” The client was the Devil in the person of Barbie. As Serge Klarsfeld said of Barbie, “He is a prototype of the Gestapo agent. He is a symbol of the Gestapo officer corps.”⁸⁴⁸ Vergès’ response was to portray Barbie not as a symbol but as an individual.

After Barbie, Vergès shifted his attention to himself to avoid the centrifugal forces created by his mutually incompatible cases. Vergès imposed unity on his past metamorphoses by redefining them in light of his present experiences. That corrective mechanism was provided by his retrospection. As Vergès’ discourse on strategy became increasingly autobiographical, he turned the tables on the justice system by elevating himself, as an individual, to a position in which he arrogated to himself the right to judge the justice system instead of accepting the authority of the justice system to judge individuals, such as himself and his clients. He deprived the justice system of its power to judge others by presenting his own story as coherent and that of the justice system as incoherent.

Vergès pointed out that cases which involved everyday people are at least as “passionants” as the *causes célèbres* for which he was best known.⁸⁴⁹ It is significant, however, that he portrayed those everyday people as larger than life by pitting them against the supposedly ruthless justice system. Vergès was in search of a kind of Joan-of-Arc effect that would elevate insignificant people to historical significance. He explained that he was fascinated and moved by Joan and her portrayals in literature because her greatness, as attested to by the proliferation of works of art devoted to her, was tied not to her extraordinary qualities but to her frailty.⁸⁵⁰ His increasingly frequent recourse to the diary format was also an attempt to bridge the gap between his relationships with common people and those with political figures, because Vergès reduced all of them to an equal footing in their interactions with him.

⁸⁴⁸ Murphy, *Butcher of Lyon*, *supra* note 753 at 312.

⁸⁴⁹ Television interview of Vergès with *Le Soir 3*, *bulletin de nouvelles françaises*, December 22, 2008. Radio France Outre-mer.

⁸⁵⁰ See Vergès, *Passion*, *supra* note 172 at 305. Vergès is aware of the numerous portrayals of Joan in art, of which he provides a truncated list. See Vergès, *Dictionnaire amoureux*, *supra* note 74 at 39.

That approach of evaluating people in the light of their biography reduced celebrities to their human dimensions and, conversely, elevated common people to universal proportions, which he captured in the titles of his diaries, such as *Rien de ce qui est humain ne m'est étranger*.⁸⁵¹ The peculiarity of Vergès' practice and theory was the apparent incommensurability between his practice that focused on common people and his theory that focused on prominent persons.

Vergès political prevarications in conjunction with his inclusive humanism resulted in a special outlook after the collapse of the Soviet bloc.⁸⁵² Politics always played a role in Vergès' legal career, but the collapse of the Soviet Union opened up a new world of clients to him. In a cynical view, the United States, the world's only remaining superpower (as it was called in the years following the Soviet collapse), disposed of its former client states, notably Yugoslavia and Iraq, through the indictments, trials and in some cases executions of their political leaders. Vergès was visible in those legal cases, although the nature of his role proved to be elusive. If we compare his role to that of a "theatre practitioner," we see that his discourse did not reflect his practical work.⁸⁵³ Apart from the media attention that he had gotten for his tenuous involvement in the Milošević and Saddam Hussein cases, Vergès remained secretive about the cases of African politicians, which, as we have seen, according

⁸⁵¹ To illustrate the bridging of the gap between different stations in life, Vergès explains in one of his entries in that diary that Terence (or Terentius), from whom he borrowed the phrase "nothing human is strange to me" (as in the title of Vergès' diary), was originally a slave although later generations remember him as playwright. See Vergès, *Journal*, *supra* note 83 at 204. Vergès' observation also resonates with Terence's ethnic background: Terence was a Berber. See generally Susan Raven, *Rome in Africa*, 3d ed (Abingdon: Routledge, 1993) at 122.

⁸⁵² Although Vergès does not use the expression "inclusive humanism," his humanism is in line with it. It is fitting that "inclusive humanism" had an African background. As Tobias Chikezie Ihejirika explained: "In an attempt to give the basis of a sound sociopolitical order for Africa, Uwalaka Jude, an Igbo African philosopher originated the concept of inclusive humanism. Here, humanism has a wholesome definition: By humanism, we mean to underline that man and every man is the focus of development. Man in his integrality should not be sacrificed at the altar of a certain economism, ideology, or certain mechanical or anonymous process." Tobias Chikezie Ihejirika, *Between Globalization and Globalism: Dangers of Pure Humanism* (Benin City, Nigeria: Barloz Publishers, 2002) at 124. In Vergès' case, that African input has a synergic effect with the Chinese thought of Confucianism, which is also characterized by its "inclusive humanism." See e.g. James Miller, *Chinese Religions in Contemporary Societies* (Santa Barbara, Calif.: ABC-CLIO, 2006) at 295.

⁸⁵³ Compare Patrice Pavis, *Dictionary of the Theatre: Terms, Concepts, and Analysis*, Translated by Christine Shantz (Toronto: University of Toronto Press, 1998) at 280. See also Alan Perks, Jacqueline Porteous, *AS Drama and Theatre Studies: The Essential Introduction for Edexcel* (Abingdon, UK: Routledge, 2009) at 27.

to him formed one of the three segments of his legal practice alongside political and financial cases (that were not as clearly distinct from the African cases as he suggested).

7.1. Collapse of the Soviet Union and Vergès' Career

The period after the Barbie trial was marked by dramatic changes in international politics, which would have repercussions on Vergès' legal career. The Soviet Union collapsed in 1991, dealing a severe blow to communist causes all over the world. The USSR was survived by one-party communist governments only in the People's Republic of China, North Korea, Vietnam, Laos, and, outside Asia, in Cuba. Even though one might be tempted to attribute those governments' persistence to a hard-line variant of communism in contradiction to the supposed revisionism of the Soviet Union, their communism bears a relatively loose resemblance to what we might call hard-line. China adopted elements of capitalism since Deng Xiaoping came to power in 1978. That country had already adopted what it called "Socialism with Chinese characteristics" during Mao's Cultural Revolution from 1966 onward. North Korea did not refer to its official ideology as communism but as Juche. Vietnam had sided with the Soviets in the Sino-Soviet split and kept a distance from China since the collapse of the Soviet Union, thus constituting a slight anomaly among the Asian national appropriations of communism. As an ally of the Soviet Union, Vietnam could be accused of revisionism while Cuba had prided itself on having brought about a socialist revolution that was not communist. According to Fidel Castro, the Cuban revolution of January 1, 1959 led by him demonstrated that a socialist revolution could be realized by a

non-communist party.⁸⁵⁴ Cuba drew close to the Soviet Union only in the 1960's without being able to convince the Soviet Union of its stalwart adherence to communist orthodoxy.⁸⁵⁵

The collapse of the Soviet Union in 1991 initiated a domino effect across the communist world, which was reflected indirectly in Vergès' clientele. Vergès' new type of client was the "Head of State" of a so-called failed state. According to some commentators, Milošević's Yugoslavia was a failed state.⁸⁵⁶ So was Iraq.⁸⁵⁷ The interventions spearheaded by the United States in those two countries led to their leaders being indicted for multiple crimes, including genocide. Vergès presented himself as Milošević's lawyer. Milošević was indicted by the International Criminal Tribunal for the Former Yugoslavia in May 1999 during the NATO bombing of Yugoslavia. His trial began in The Hague on February 12, 2002 and was continuing when he was found dead in his jail cell on March 11, 2006. Vergès was involved in the defence of Iraqi President Saddam Hussein, who was charged by the Iraqi Special Tribunal in 2004.⁸⁵⁸ Vergès was also involved in the defence of Tariq Aziz, former Iraqi Deputy Prime Minister under Saddam, who went on trial before the Supreme Iraqi Criminal Tribunal on April 29, 2008.

The nature of Vergès' involvement in those cases is open to question. The French periodical *B.I.* (former *Balkan-Infos*) stated that Vergès had only a "relation tardive, éphémère et accessoire" with Milošević.⁸⁵⁹ However, Vergès wrote in one of his published diaries that

⁸⁵⁴ See generally Leo Huberman, Paul M. Sweezy, "Debray: the Strength and the Weakness" in Leo Huberman and Paul M. Sweezy (ed.), *Régis Debray and the Latin American Revolution* (New York: Monthly Review Press, 1968, p. 1–11) at 3.

⁸⁵⁵ The Soviet Union supported Castro for strategic reasons without being sure of his loyalty. See Claude Delmas, *La guerre révolutionnaire*, in the series *Que sais-je?* 826, 3e éd. refondue (Paris: Presses universitaires de France, 1972) at 110.

⁸⁵⁶ See generally John David Carlson and Erik C. Owens, "Reconsidering Westphalia's Legacy for Religion and International Politics, in John David Carlson and Erik C. Owens, ed, *The Sacred and the Sovereign: Religion and International Politics* (Washington, D.C.: Georgetown University Press, 2003) p. 1–37 at 20.

⁸⁵⁷ See e.g. The Fund for Peace, *Failed States Index Scores 2005* at http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=103&Itemid=325

⁸⁵⁸ The first hearing took place on July 1, 2004. Saddam was hanged on December 30, 2006.

⁸⁵⁹ Maurice Livernault in *B.I.* (former *Balkans-Infos*) No 124, September 2007 at 24–5, Quoted in opinions – correspondence in *B.I.* no 125 October 2007 at 22.

Milošević was allowed to call him from the detention centre on March 26, 2003 and he asked Vergès to come to visit him as soon as possible.⁸⁶⁰ However, his role was more properly that of a political agitator. He resorted to his old custom of publishing books that alerted public opinion to his position on the immanent or ongoing trials of his clients or, in this case, persons with whose defence he was associated. Although Vergès' use of political trials as a means of political agitation was not new, those trials differed from his political agitation during the Algerian War in the misalignment of his political views with those of the people he defended. As Heads of State, his defendants represented the political orientation of their states, though their states did not necessarily espouse their goals. The orientation of those states was distant from the hard-line communism to which Vergès adhered. Both Iraq and Yugoslavia were examples of states that had been relatively close to the United States despite their socialist ideology. Yugoslavia had broken ranks with the rest of the East European states when Tito broke ties with Stalin in 1948. Saddam's Baath Party had teamed up with the United States against Iran in the 1980's during the Soviet invasion of Afghanistan, even if the Baath Party's ideological orientation, Ba'athism, was a fusion of Arab nationalism and Arab socialism.

A related category of clients associated with the collapse of the Soviet Union was comprised of the protégés of the East Bloc countries, which had not broken ranks with the Soviet Union, as Yugoslavia and Iraq had. Those states did not become superfluous in the balance of power between the United States and the Soviet Union, as was the case with Iraq and Yugoslavia. East Germany, for instance, was in the Soviet sphere of influence in the so-called East Bloc. It disappeared with the German Reunification of 1990, which preceded the collapse of the

⁸⁶⁰ See Vergès, *Journal*, *supra* note 83 at 94.

Soviet Union by about a year. Its link with the Soviet Union had been so close that its unification with West Germany arguably accelerated the collapse of the Soviet Union.⁸⁶¹

The client of Vergès who is most closely associated with the collapse of East Germany and other East Bloc countries is Carlos the Jackal, pseudonym of the terrorist Ilich Ramírez Sánchez. Contrary to Vergès' defence of Milošević and Saddam, where he was distant, Vergès was officially Carlos' lead counsel in 1994. He was replaced as Carlos' lead counsel by his former partner Isabelle Coutant, who later became Carlos' wife. Vergès' connections with Carlos went back at least to 1982, when he was the lawyer of Magdalena Kopp and her bodyguard Bruno Bréguet in Paris.⁸⁶² Politically, it was significant that Carlos enjoyed the protection of East Bloc countries, such as East Germany, although he was not officially their agent.⁸⁶³ He was thus indirectly under the protection of the Soviet Union.

7.2. China's Rising Might

Although the political implications of those cases were palpable, the nature of their political orientation remains in doubt because Vergès would have had no affinity with the politics of Milošević, Saddam and Carlos, were it not for the United States' newly-gained standing as the world's only remaining superpower. Former political enemies appeared to turn into enemies of one's enemies and thus into friends. Vergès avoided seeing himself as a turncoat because of his loyalty to the People's Republic of China, which turned out to be the winner in its ideological war with the Soviet Union and an emergent superpower alongside the United

⁸⁶¹ China drew conclusions about the collapse of its archenemy, the Soviet Union, in cherishing its relationship with North Korea, as reported by the Russian news agency Voice of Russia on November 26, 2010 during a showdown between the two Koreas: "On Friday, news agencies quoted a Chinese official, whose name was not disclosed, who said: 'North Korea is our Eastern Germany. Do you remember what happened when Eastern Germany fell? The Soviet Union collapsed'." Voice of Russia, November 26, 2010 at <http://english.ruvr.ru/2010/11/26/35710357.html>

⁸⁶² See Coutant, *Carlos*, *supra* note 40 at 99

⁸⁶³ See generally Claude Moniquet, *La guerre sans visage: de Wadi Haddad à Oussama ben Laden: Les réseaux de la peur (1970–2002)* (Neuilly-sur-Seine: Michel Lafon, 2002) at 88 [Moniquet, *Sans visage*].

States. However, Vergès was not content with that position and insisted: “Chine, demain, sera de loin la première puissance mondiale.”⁸⁶⁴

Vergès’ affinity to China was of long date. The longevity of that relation allowed him to display his communist credentials while defending people whose views diverged radically from his own communist views because China had gone through as radical tergiversations as Vergès’ career without neither of them losing the sense of continuity.⁸⁶⁵ In telling symbolism, Mao’s picture still hangs on the Gate of Heavenly Peace.

In light of his continued loyalty to the People’s Republic of China, Vergès’ career is linked to the major events of recent Chinese history. His career began during the time of the launch and failure of the Great Leap Forward in the late-1950’s. He started his journalistic career at about the time of the Sino-Soviet split in the early 1960’s. He began his solo literary career during the Cultural Revolution in the late-1960’s.⁸⁶⁶ His “disappearance” coincided roughly with Mao’s fading from government. Vergès has been emphatic about the parallel between his own anticolonial battles and the Chinese policy of national liberation in the colonies, as we saw in his remark about peaceful co-existence. The exact role of these parallels is uncertain because Vergès has not elaborated on it. He has been adamantly reticent especially in regard to his eight-year disappearance, which probably holds the key to Vergès’ political development. However, we now expand those parallels not only to confirm that they existed in the past but also to interpret his more recent statements in a changed international environment.

Vergès returned to publicity in 1978, while China was in the midst of a major change of direction. When Deng Xiaoping became China’s *de facto* leader in 1978, he became known

⁸⁶⁴ Jean-Pierre, *Miroir*, *supra* note 113 at 157.

⁸⁶⁵ Alain Peyrefitte explained that Mao was not only a political leader but the father of China. See Peyrefitte, *Chine*, *supra* note 638 at 98.

⁸⁶⁶ The Popular Front for the Liberation of Palestine, for the defence of whose operatives Vergès worked in the late-1960’s, was a Maoist organization. See generally Moniquet, *Sans visage*, *supra* note 863 at 41.

for apparently anti-communist statements such as “Poverty is not socialism. To be rich is glorious.”⁸⁶⁷ Deng’s policy soon translated into rapid economic development, which was the background of the international leadership role for which China vied after the collapse of the Soviet Union. Despite its apparent break with the previous politics of the People’s Republic of China, Deng’s policy was an extension of the ambiguous position that China had occupied between the Soviet Union and the United States. That ambiguity manifested itself in Chinese support for the apartheid regime of South Africa that the Chinese leadership placed in the context of its fight against the Soviet Union, which it deemed to be revisionist.⁸⁶⁸ That ambiguity was reflected in Vergès’ ambiguous defence of Barbie, which he situated in the context of his fight against Mitterrand’s Socialist regime. In Vergès’ eyes, the Socialists were responsible for the havoc that France had wreaked in Algeria when Mitterrand was Justice Minister and Minister of the Interior. In his eyes, they continued to wreak havoc in France when Mitterrand became President.

Vergès’ loyalty to China served at least five purposes for him. First, China’s survival of the crisis of communism allowed him to maintain vestiges of his communist identity. Second, it proved to him that his revolt against the Communist Party of France and ultimately the Soviet Union, which dictated to a great extent that party’s policy, was vindicated by history. Third, Deng’s model allowed Vergès to indulge in bourgeois culture without being called a revisionist. Fourth, it allowed him to preserve coherence in the midst of great changes just as China was able to maintain its identity in the turbulent world of international politics. Fifth,

⁸⁶⁷ Deng used the phrase “poverty is not socialism” in 1984, not in the late-1970’s. See Yan Sun, *The Chinese Reassessment of Socialism 1976–1992* (Princeton: Princeton University Press, 1995) at 69. However, as David S. G. Goodman observed, Deng could have uttered those words ever since the late-1930’s. See David S. G. Goodman, *Deng Xiaoping and the Chinese Revolution: a Political Biography* (London: Routledge, 1994) at 121. The phrase “to get rich is glorious” has a separate history. Orville Schell’s 1984 book “To Get Rich Is Glorious: China in the '80s” associated it with Deng’s revolutionary reforms without attributing it to Deng. See Orville Schell, *To Get Rich is Glorious: China in the Eighties* (New York: Pantheon Books, 1984). Those two phrases are often quoted together as coming from Deng. See e.g. Larry Johnston, *Politics: An Introduction to the Modern Democratic State*, 3d ed (Toronto: University of Toronto Press, 2007) at 162.

⁸⁶⁸ See e.g. Michel, *Chinafrique*, *supra* note 381 at 41.

China provided him with a model of support for the Third World as China had been consistent in that support ever since the Bandung Conference of 1955 (that recognized the *Front de la libération nationale*, the FLN, as the only liberation movement in Algeria). The Bandung Conference elevated the Third World to a powerful entity in international politics. As a historical precursor of Sino-African cooperation, that Conference became a reference point for the Forum of China-African Cooperation (FOCAC) in the dramatically changed political setting in the 2000's.⁸⁶⁹ That reference point would be relevant to Vergès' transition from the Algerian War to Third-World causes. Vergès could also point to his Asian racial background, which connected him with China. His identification with China was aided by the Chinese "intérêt pour mes origines."⁸⁷⁰

To reinforce his thirdworldism, Vergès displays a degree of vindictiveness towards American imperialism, which was demonstrated in his willingness to defend the heads of state of Iraq and Yugoslavia.⁸⁷¹ Vindictiveness in relation to the United States was in evidence in his concern about the Americanization of China in his discussion with his Chinese friends who assured him that China was not going to be Americanized.⁸⁷²

7.3. Vergès' Thirdworldism

Vergès' loyalty to China goes hand in hand with his affinity to the Third World. The Third World not only ties together the different strands of Vergès' political defences but also allows

⁸⁶⁹ Compare Michel, *Chinafrique*, *supra* note 381 at 34. The Chinese news agency described the FOCAC as follows: "China and Africa countries established FOCAC in 2000 as a vehicle to spearhead development in the economic, political, social and cultural spheres." "Zimbabwe gov't hails China-Africa co-op" in China Xinhua News Agency dispatch of November 18, 2010.

⁸⁷⁰ Vergès, *Journal*, *supra* note 83 at 26.

⁸⁷¹ The predicament of Saddam and Milošević was reminiscent of the regicides of Charles I of England in 1649 and of Louis XVI of France in 1793. Vergès referred to them both in *De la stratégie judiciaire*, in which he studied the trial of Louis XVI from the viewpoint of the revolutionary leaders Robespierre and Saint-Just and classified it, from the viewpoint of the prosecution, as a strategy of rupture. The defence strategy of Louis XIV was connivence and, in contrast, that of Charles I rupture. See Vergès, *Stratégie judiciaire* *supra* note 7 at 99–100. See also Vergès, *Crimes*, *supra* note 334 at 148.

⁸⁷² Vergès, *Journal*, *supra* note 83 at 10.

him to avoid a break with his own communist past as long as China adheres at least nominally to communism. Tying his thirdworldism to China's ascendancy to a world power status allows him to rationalize his political promiscuity as being in step with the dramatic changes that China has undergone in the name of communism. Regardless of its current political tendencies, China has a long history in Third World causes. Vergès was not alone in welcoming the Chinese to the African continent. The Senegalese historian and politician Cheikh Anta Diop attributed western, including French, apprehension of China's growing role in Africa to European racism, noting that China was considered in the West "au fond comme puissance jaune, de couleur."⁸⁷³ Vergès was particularly susceptible to that argument because of his own racial makeup. Being "Chinese" had assumed a political importance in his career as early as 1963, when *France-Observateur* alluded to a connection between his Far Eastern roots and his pro-Chinese political outlook.⁸⁷⁴ Although in the heated political climate of that time there was no mistaking the communist implications of being called "Chinese," the introduction of race to the political debate was detrimental to communist circles. For instance, Khrushchev criticized China for subordinating class struggle to race struggle.⁸⁷⁵ How fickle the race card could be in communist politics, it is significant that in his reflections on race, Vergès did not mention that the Japanese, who occupied vast areas in the Far East during the Second World War, were of the "yellow" race, too. In addition, although Vergès said that his birth in the colonies had cured him from blindness to the faults of the justice system, he was not apprehensive of Chinese colonization of Africa, or the "red

⁸⁷³ Cheikh Anta Diop, *Les fondements économiques et culturels d'un État fédéral d'Afrique Noire* (Paris: Présence africaine, [1974]) at 37–8. That book was the second revised and corrected edition of *Les Fondements culturels, techniques et industriels d'un futur état fédéral d'Afrique noire*, which was released in 1960.

⁸⁷⁴ See Violet, Vergès, *supra* note 5 at 151. Violet refers to *France-Observateur* of September 5, 1963.

⁸⁷⁵ Khrushchev called China racist because he viewed China's priorities subjecting class to race as skewed. See Ploncard, *Coexistence*, *supra* note 179 at 67.

carpet to the Black continent,” as Serge Michel and Michel Beuret called the unsuspecting welcome extended to the Chinese in Africa.⁸⁷⁶

The continued political monopoly of the Communist Party of China is little more than a fig leaf for the major changes which China has experienced since Deng Xiaoping came to power. The growing economic influence of China, especially in Africa, the supposedly “red carpet,” is largely due to the presence of émigrés who fled communist rule. Harnessing the economic potential of those predominantly anti-communist émigrés has been possible only through major changes in China’s political orientation.⁸⁷⁷ In retrospect, even the supposedly hard-line position adopted by Mao in the early-1960’s is in doubt. Was that position a sincere attempt to recapture the purportedly true Marxist-Leninist line, or was it a pretext to vent the growing political disgruntlement in the Communist countries with the Soviet Union? It is incongruous for Vergès to preach against Soviet revisionism and extol the virtues of the Chinese variant of revisionism unless he regards the Chinese-back thirdworldism as more credible than the Soviet-back thirdworldism because of racial considerations.

On the other hand, Vergès could observe that his support for the Chinese model has been consistent. In *Révolution africaine*, he published an article titled “L’infinie patience de sept cents millions d’hommes.” In that article, which we have already quoted, he wrote: “Ce qui frappe en Chine...c’est ce sentiment bouleversant...de libération non seulement collective

⁸⁷⁶ Michel, *Chinafrique*, *supra* note 381 at 27–51. In some passages those sinister overtones risked a stylistic overkill: “Des Chinois pour extraire le pétrole puis l’engouffrer dans un pipeline chinois surveillé par des miliciens chinois, à destination d’un port construit lui aussi par des Chinois, où le brut est chargé dans des tankers chinois à destination de la Chine. Des Chinois pour construire des routes, des ponts et un barrage géant qui provoque la déportation de dizaines de milliers de paysans. Des Chinois qui importent leur nourriture pour ne manger que chinois et qui, pour les produits frais, importent des maraîchers chinois pour en produire sur place. Des Chinois, enfin, pour armer un pays qui commet des crimes contre l’humanité et le protéger sans cesse au Conseil de sécurité.” *op. cit.* at 260.

⁸⁷⁷ *Ibid* at 54.

mais individuelle.” Vergès believed that Ben Bella had made a political mistake in emulating the Soviet Union and Algeria had not recovered from that mistake.⁸⁷⁸

However, there is a double standard between Vergès’ views of the Soviet Union and China. What China had dismissed as revisionism in the Soviet Union at the time of the Sino-Soviet split was commended as pragmatism by Vergès in the case of the Chinese. In his comparison of the Soviet and Chinese variants of communism, he observed European-style dogmatism in the former:

est une culture judéo-chrétienne où les notions de péché et de salut sont présentes; le résultat est que, pour certains, le marxisme finit par apparaître comme un millénarisme. Ce qui n'est pas le cas des camarades asiatiques, spécialement chinois, dont la vision est beaucoup plus ouverte, beaucoup plus attachée au sel de la terre.⁸⁷⁹

Pinning his coherence on China’s political line over the decades was thus precarious because it showed as many twists and turns as Vergès’ career did. He had two alternate strategies to counter the danger of exposing himself to accusations of political inconsistency. The first was to elevate France to the status of a China of Europe.⁸⁸⁰ Rarely, if ever, did he refer to China’s steadily growing influence in Africa. Instead, Vergès elaborated on France’s role as the benevolent superpower in Africa. He deplored the bad conscience that France demonstrated

⁸⁷⁸ See Jean-Pierre, *Miroir*, *supra* note 113 at 157. The former Governor-General of Algeria Jacques Soustelle expressed the opposite view. He suggested that Algeria’s problems were due to Ben Bella’s successor Boumedienne, under whose protection Vergès was since the 1965 coup. Boumedienne had unrealistic expectations for the economic effects of rapid industrialization, which led him to neglect agriculture with the consequence of large numbers of rural people coming to cities to face poverty. See Jacques Soustelle, *Lettre ouverte aux victimes de la décolonisation* (Paris: Albin Michel, 1973) at 124.

⁸⁷⁹ Vergès, *Journal*, *supra* note 83 at 136.

⁸⁸⁰ The special relationship between France and the People’s Republic of China goes back to 1964 when France became the first big Western country to establish full diplomatic relations with Red China. See “Establishment of Sino-French Diplomatic Relations,” Ministry of Foreign Affairs, the People’s Republic of China, 2000/11/17 at <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18003.htm>. (The United Kingdom had recognized the People’s Republic of China in 1950 but did not established relations with it at the ambassador level until 1972.) Vincent Gouysse quoted an interview by the former French Prime Minister Jean-Pierre Raffarin in 2008, which showed that France continued to dismiss the supposed threat posed by China in the hope of concluding lucrative business deals. See Vincent Gouysse, *Crise du système impérialiste mondial: La décomposition finale de l’industrie de bazar’ et la naissance d’un nouvel ordre impérialiste mondial*, Vincent Gouysse, 2009 at 202.

in its relations with Africa, due to the mutually traumatic history of colonialism.⁸⁸¹ He said that there was no “ressentiment envers la France, une fois refermé le chapitre de la colonisation...” from the Arab world to Black Africa.⁸⁸² His implicit point of comparison was China, which did not have the same bad conscience as the West. Because China did not share the western emphasis on human rights, it had no qualms about doing business in Africa to supposedly mutual economic benefit for both China and Africa.⁸⁸³

Another strategy that Vergès used in the face of political inconsistencies was the elevation of his clients above political considerations by appealing to their humanity:

Il y a aussi le fait que j'étais – et demeure encore aujourd'hui – extrêmement curieux de la nature humaine. On peut le constater dans le choix de mes clients. J'ai défendu des personnes qui sont très différentes de moi et dont je n'épouse absolument pas la cause. Je ne parle pas ici de la guerre d'Algérie. Je pense aux affaires dont je m'occupe depuis.⁸⁸⁴

Vergès stated more or less explicitly that he had not identified with some of his “affaires” since the Algerian War of Independence. However, the line between recent cases in which he had espoused the political agenda of his defendants and those in which he had not is fluid. The cases in which he had identified with the politics of his clients after the Algerian War were numerous. For instance, Vergès’ book *Pour les fdayine* was an endorsement of the political battle of the Fedayeen. His reference to Arab causes also indicated his sympathy with those causes.⁸⁸⁵ On the other hand, some of the movements that he identified were more in line with an ideology other than Arab nationalism. For instance, the PFLP, which was the concrete group that Vergès called the Fedayeen, was pro-Maoist.⁸⁸⁶ Similarly, Georges

⁸⁸¹ By *Mauvaise conscience* Vergès means the postcolonial bad conscience that Europeans and especially the French have for the past colonization of Africa. See Debré, *Mauvaise conscience*, *supra* note 235 at 74 and 84. See also Michel, *Chinafrique*, *supra* note 381 at 60.

⁸⁸² Debré, *Mauvaise conscience*, *supra* note 235 at 53.

⁸⁸³ See Michel, *Chinafrique*, *supra* note 381 at 60–4.

⁸⁸⁴ Felissi, *Anticolonialiste*, *supra* note 6 at 73.

⁸⁸⁵ See Vergès, *Journal*, *supra* note 83 at 22.

⁸⁸⁶ See generally Moniquet, *Sans visage*, *supra* note 863 at 46.

Ibrahim Abdallah and his Lebanese Armed Revolutionary Factions could not have existed apart from its contacts with European terrorism.⁸⁸⁷ The divergence between the Arab cause and the connections of those movements suggested that Vergès identified with the cause that he recognized in those clients.

China's many changes of direction left Vergès the latitude to change his political direction, too. He compensated for the possible political incoherence by pointing to the strong link between China and the Third World. The power of the Third World, especially Africa, as a cohesive force in Vergès' erratic political causes even had an effect on the Barbie case.

During the last week of that trial, which had lasted for seven weeks, Vergès asked two colleagues to assist him. As we have seen, he chose a Congolese and an Algerian colleague for their publicity value: "Ils m'ont demandé: 'Qu'allons-nous dire? Nous ne connaissons pas le dossier.' – Je ne souhaite rien d'autre que votre présence muette. En face, il y a trente-neuf petits Blancs; nous, c'est l'humanité sous toutes ses couleurs pour défendre cet 'affreux'." ⁸⁸⁸

The choice of a Congolese and an Algerian underlined Vergès' previous comments about the support he received from colleagues in Africa and Arab countries.⁸⁸⁹ The former colonized peoples did not see in Barbie a Nazi but a white man. Vergès' argument resonated with Aimé Césaire's view that any white bourgeois had a Hitler in him and:

what he cannot forgive Hitler for ... is the crime against the white man, ...and the fact that he applied to Europe colonialist procedures which until then had been reserved exclusively for the Arabs of Algeria, the coolies of India, and the blacks of Africa.⁸⁹⁰

From the viewpoint of the colonized people, Barbie was not worse than any other white man, rather on the contrary. Vergès mentioned that in 1942 Barbie had freed Habib Bourguiba,

⁸⁸⁷ *Ibid* at 187.

⁸⁸⁸ Vergès, *Avocat*, *supra* note 40 at 34–5.

⁸⁸⁹ See Vergès, *Face cachée*, *supra* note 30 at 30.

⁸⁹⁰ Aimé Césaire, *Discourse on Colonialism*, Translated by Joan Pinkham (New York: Monthly Review Press, 1972) at 14.

who was to be the founder of the Republic of Tunisia. Barbie followed orders from Hitler, whose intention was to destabilize French rule in North Africa by supporting the independence movement. Whatever sympathy Vergès might have had with Barbie would then be subsumed into the war against French colonial rule.⁸⁹¹ Nazi support for liberation movements in the colonies was not in question. As the French historian Claude Moniquet, who was involved in extreme-left terrorism in his youth, explained especially in the context of the Middle East: “There were close relationships between Nazism and some revolutionary or independist groups in the Middle East.”⁸⁹² As a concrete example, the Axis powers issued a manifesto on November 22, 1940 in favour of the liberation of the Arab peoples. Hundreds of thousands of tracts were distributed in North Africa and in Muslim regiments fighting for France.⁸⁹³

7.4. Bourgeois Values in Vergès’ Communist Discourse

So far, we have seen from a distance that the theory and practice of Marxism-Leninism have the potential to accommodate aspects of what it would otherwise condemn as bourgeois elements. Now we see how that accommodation worked in practice in Vergès’ case. It was at work in the development of Chinese communism, to which Vergès had adhered at least in part to redeem his own bourgeois lifestyle in the eyes of communism. China’s hard-line self-image under Mao facilitated Vergès’ task. Some of those bourgeois elements, such as religious sentiment, could be tolerated or camouflaged, while others, such as humanism, Marxism-Leninism accommodated and repositioned in the complexity of Marxist-Leninist theory. Vergès’ relationship to those bourgeois elements was a blend of open defiance of Marxist-Leninist ideals and endorsement of Marxist-Leninist egalitarianism. On one hand, he

⁸⁹¹ See Jean-Pierre, *Miroir*, *supra* note 113 at 219.

⁸⁹² Schroeder, *Terror’s Advocate*, *supra* note 35 Chapter 6.

⁸⁹³ See Vétillard, *Sétif*, *supra* note 793 at 358.

rejected socialist realism.⁸⁹⁴ On the other, he endorsed the communist rejection of socialists as fascists, as we saw in his strategy in defence of Barbie. He would reduce his communism to the denunciation of a common enemy, the Social Democrats, whom he called fascists. As we shall see, the Chinese brand of communism, or “socialism with Chinese characteristics,” as it was called during the Cultural Revolution, provided Vergès with a communist justification for his own bourgeois lifestyle and outlook. We already saw a hint of that lifestyle in the lavish surroundings of Cliveden in Buckinghamshire, where the interview with Remilleux for *Le salaud lumineux* took place. Vergès made frequent reference to his adherence to the Chinese “line” under Mao, but he had never broken with the current Chinese brand of communism that was arguably quite different from Mao’s views. The task of identifying those discrepancies between Vergès’ communism and his bourgeois ambitions was facilitated by Vergès’ open references to ideals from France’s past, which we condense into chivalry, revolution, humanism, and the overall deification of France.⁸⁹⁵ We will study those aspects against his Marxist-Leninist background and his French cultural context.

7.4.1. *Bourgeois appropriation of chivalry*

The first of the values that Vergès imported from the bourgeois sphere to the communist sphere was chivalry, a concept that goes back to the Middle Ages. Strictly speaking, it is not a bourgeois value but a military value, when the military class existed as a separate aristocratic class in society. Aristocratic ideals survive to this day because they were appropriated by the

⁸⁹⁴ See Vergès, *Avocat*, *supra* note 40 at 46. Socialist realism was the official literary method of Soviet literature. It acquired a canonical status in the First Congress of the Writers’ Union in August 1934. The first cornerstone of socialist realism was *partiinost’* and the second the “positive hero.” *Partiinost’* meant that the writer was an “engineer of human souls” in service of the Communist Party. “Positive hero” was an emblematic figure whose virtues the readers were meant to emulate. See Katerina Clark, “Socialist Realism in Soviet Literature,” in Neil Cornwell, ed, *The Routledge Companion to Russian Literature* (London: Routledge, 2001) p. 174–183 at 174–6.

⁸⁹⁵ The appropriation of aristocratic values by the bourgeoisie under the aegis of the communist movement was also in evidence in the eulogy lavished on Felix Dzerzhinsky, born to a noble family, founder of the Bolshevik secret police, by Kim Philby, a British double agent, who called him “the Knight of the Revolution, that great humanist.” William R. Corson, Robert T. Crowley, *The New KGB, Engine of Soviet Power* (New York: Morrow, 1985) at 399.

bourgeoisie in the late-1800's current called romanticism.⁸⁹⁶ Vergès expressed his adherence to military virtues, attributed them to aristocracy and called them chivalry. He told Alain de la Morandais: "J'aime la chevalerie."⁸⁹⁷ Vergès supported that statement with other similar statements about chivalry and related ideals, such as his comment on the ethics of Nietzsche: "Chez Nietzsche, c'est différent. Chez lui, il y a un sens de l'honneur et un sens de l'aristocratie."⁸⁹⁸ Honour and aristocracy merged in chivalry.⁸⁹⁹

The two core values that Vergès identified as his, namely honour and fidelity, were a further elaboration of that romantic yearning for an aristocratic past: "J'ai deux valeurs: la fidélité et l'honneur... Pour moi la fidélité est une forme d'honneur."⁹⁰⁰ Both of them were military, and we can recognize them even today in the Code of Honour of the French Foreign Legion and the motto *Semper Fidelis*, which has been adopted by a number of military units around the world.

Vergès presented his respect for military values in contradistinction to socialists' supposed contempt for the military, which allowed him to reinforce his image as a communist. For instance, he said that he did not approve of socialists insulting the French army.⁹⁰¹ That denunciation was in stark contrast with his defence strategy in the Barbie case, which revolved around the accusation that was popular during the Algerian War, namely that the French army was comparable to the German army during the Second World War. Vergès suggested that an explanation for this contradiction in the distinction between communists

⁸⁹⁶ See generally Clara Tuite, *Jane Austen: Sexual Politics and the Literary Canon* (Cambridge: Cambridge University Press, 2002) at 146 and Jack Zipes, *The Brothers Grimm: From Enchanted Forests to the Modern World*, 2d ed (New York: Palgrave Macmillan, 2002) at 56.

⁸⁹⁷ Vergès, *Avocat*, *supra* note 40 at 200.

⁸⁹⁸ *Ibid* at 219.

⁸⁹⁹ Vergès elaborates on the theme of aristocracy in his conversation with Alain de la Morandais, who says that he is from an aristocratic family from Bretagne. See *Ibid* at 135. However, his family is listed as *fausse noblesse* in Pierre-Marie Dioudonnat, *Encyclopédie de la fausse noblesse et de la noblesse d'apparence*. To bridge the gap between the priest's moral theology and his claim to military virtues, Vergès dwells on the true meaning of aristocracy. He observes, for instance, that one does not say that "Bourgeoisie oblige" but "Noblesse oblige," which would make him a spiritual aristocrat. See *op. cit.* at 200.

⁹⁰⁰ Vergès, *Avocat*, *supra* note 40 at 104.

⁹⁰¹ See Debré, *Suicide*, *supra* note 188 at 87.

and socialists. The result could be perplexing. Vergès denounced torture by the French Army in Algeria as a communist, but he denounced the denunciation of that torture by the socialists as hypocrisy because they were guilty of condoning it when it took place: “Quand j’entends aujourd’hui les attaques de la gauche bien-pensante contre les paras français à propos de la torture en Algérie, je m’étrangle!”⁹⁰² There is a suspicion that Vergès would have defended the torturers against their socialist accusers. As we have seen, “Le communiste, celui qui franchit le Rubicon. Le socialiste se ménage une porte de sortie. Le communiste fait sauter les ponts derrière lui.”⁹⁰³

7.4.2. *Bourgeois appropriation of religion*

Vergès was quick to point out that in its heyday communism had many traits in common with religion, which accounted for its corrupt elements. In response to de la Morandais’ tirade that Stalin was demonic, Vergès stated that Stalin was corrupted by his seminary education. He was cynical about the posthumous tribute by Stalin to Lenin in which Stalin promised to supervise the unity of the Party: “veiller à l’unité du Parti comme sur la prunelle de nos yeux.”⁹⁰⁴

Vergès’ argument was that communism was in many respects reminiscent of religious faith. The quasi-religious dimension was manifested in a communist’s unswerving loyalty to the party. We could find countless examples. The loyalty to the Party translated into a belief in its salvific powers: “The people hold up the Communist Party and the people’s own soldiers as

⁹⁰² *Ibid* at 87.

⁹⁰³ Vergès explains the political choice of his father to join the Communists. Vergès, *Salaud*, *supra* note 202 at 31.

⁹⁰⁴ Vergès, *Avocat*, *supra* note 40 at 79. Vergès is referring to Stalin’s words: “Departing from us, comrade Lenin enjoined us to guard the unity our party as the apple of our eye. We vow to you, comrade Lenin, that this behest, too, we shall fulfil with honour.” J.V. Stalin, “On the Death of Lenin, A Speech Delivered at the Second All-Union Congress of Soviets on January 26, 1924,” in J.V. Stalin, *Works* (Moscow: Foreign Languages Publishing House, 1953) Volume 6, p. 47–53 at 48. The expression “prunelle de nos yeux” comes from Deuteronomy 32:10: “Il l’a gardé comme la prunelle de son œil.” *Holman Christian Standard Bible* renders that verse in English as “[God] guarded [Israel] as the pupil of His eye.”

their [...] roots of life.”⁹⁰⁵ As the Soviet poet Vladimir Mayakovsky wrote, “The Party embodies the immortality of our cause, our faith that will never fail or pass.”⁹⁰⁶ Party loyalty even assumed features of belief in the party’s infallibility, for instance in the Party Song (*Lied der Partei*) of the East German Communist Party, *Sozialistische Einheitspartei Deutschland*. That song is best known for its refrain “*Die Partei, die Partei, die hat immer recht*” (“The Party is always right”). As Jean Lacroix correctly observed, for a communist there is no truth outside the party.⁹⁰⁷

However, Vergès remained reserved in his irony. If he had satirized party loyalty too much, he would have undermined his own values of loyalty and honour. Vergès was further motivated to keep his reserve because he had appropriated the image of the devil, which some communists had used in reference to revisionists, as in Bulgarian Communist writer Hristo Smirnenski’s remarkable story *The Tale of the Stairs* (1923) about a young man who set out to transform society by reforming it. After the devil had deprived the vengeful young man little by little of his mental faculties in exchange for the opportunity to avenge himself against the ruling class, the young man believed he had been transported to paradise: “I am a prince by birth and the gods are my brothers. How beautiful the world is and how happy are the people!” Smirnenski’s devil manipulated the proletariat to settle for gradual change, reforms, without a revolution.⁹⁰⁸ Hoxha, too, used the image of the devil in comparing the errors of the

⁹⁰⁵ Zhang Laushi, “My Declaration of Withdrawal from the Party: A Letter from July 19, 2001,” in *Veteran Maoist Resigns from Communist Party of China* at <http://revintcan.wordpress.com/2010/08/12/veteran-maoist-resigns-from-communist-party-of-china/>

⁹⁰⁶ Vladimir Mayakovsky, “Vladimir Ilyich Lenin,” in Vladimir Mayakovsky, *Selected Works in Three Volumes*, Part 2: Longer Poems, Translated by Dorian Rottenberg ([Moscow]: Raduga, 1985), p. 139–206 at 170.

⁹⁰⁷ See Lacroix, *Marxisme*, *supra* note 639 at 24.

⁹⁰⁸ See Hristo Smirnenski, *Selected Poetry and Prose*; translated from the Bulgarian by Peter Tempest (Sofia: Sofia Press, 1980) at 140–2. An English translation is also available online at <http://www.slovo.bg/showwork.php3?AuID=386&WorkID=13571&Level=1>. Smirnenski joined the Communist Youth Union in 1920 and the Communist Party in 1921 before writing the tale. He did not leave the Party.

supposedly revisionist Communist Party of the Soviet Union to the devil who fears holy water.⁹⁰⁹

Vergès was cautious not to endorse the existence of God without denying God's existence either. He said he was agnostic.⁹¹⁰ However, he did not protest when de la Morandais noted that a person who believed in the devil must also believe in God: "Vous êtes un incroyant provisoire! Si vous vous mettez dans l'hypothèse du croyant, le Diable existe, bien entendu."⁹¹¹ Some of his clients had indeed been more consistent than him in their accommodation of religion. For instance, Carlos the Jackal would write in his book:

L'absence du sacré a marqué la limite du marxisme car en demeurant celui-ci, réduit à lui-même, n'est qu'une religion de l'homme! Si le marxisme avait su réintroduire assez tôt une dimension transcendante, il est à peu près certain qu'il se serait imposé presque partout.⁹¹²

To be able to present himself as a communist, Vergès refrained from using religion to criticize Marxism. However, he echoed Carlos' observation about the absence of the sacred in his criticism of the justice system: he deplored the tendency to remove the sacred from society, especially from the justice system:

ALM – La société a visiblement évacué le sacré de ses rues et de partout.
JV – Et du tribunal. Quand on nous dit que c'est par humanité qu'on l'a évacué, je demande si c'est humain de condamner quelqu'un à rester en prison en perpétuité.⁹¹³

Vergès introduced the sacred through his belief in the sacredness of human life: "... la vie humaine est traitée comme une marchandise, son côté sacré a disparu."⁹¹⁴ That respect for human life allowed him to identify with the religious sentiments of others: "Le sacré des

⁹⁰⁹ See Hoxha, *Réflexions*, *supra* note 448 at 49.

⁹¹⁰ See Vergès, *Avocat*, *supra* note 40 at 50.

⁹¹¹ *Ibid* at 43.

⁹¹² Ilich Ramírez Sánchez dit Carlos, *L'islam révolutionnaire*; textes et propos recueillis, rassemblés et présentés par Jean-Michel Vernochet (Monaco: Rocher, 2003) at 61

⁹¹³ Vergès, *Avocat*, *supra* note 40 at 44.

⁹¹⁴ *Ibid* at 124.

Peaux-Rouges est quelque chose de sacré pour moi aussi, même si je n'y adhère pas.”⁹¹⁵ Yet, he stressed that he respected religion because it was a natural need: “Vous remarquez que, tout en étant agnostique, j’ai pour les religions un grand respect...[la religion] est un besoin naturel chez l’homme – pas un besoin au sens matériel, mais c’est un manque pour l’homme de ne pouvoir croire.”⁹¹⁶

Tellingly, since Vergès made those statements in 2001, official Chinese policy has become increasingly sympathetic to religion. For instance, the French version of *People’s Daily Online* of October 15, 2010 declared after a meeting of Jia Qinglin, Chairman of the National Committee of the Chinese People's Political Consultative Conference (CPPCC), with a delegation of the Muslim World League on October 14, 2010: “La Chine accorde l’importance au rôle positif de la religion dans la promotion de l’harmonie sociale.”⁹¹⁷ Unsurprisingly, that accommodation of religion by the Chinese government met with consternation in hard-line communist circles.⁹¹⁸

7.4.3. *Bourgeois appropriation of humanism*

Vergès thus avoided religious commitment by evoking his respect for human beings. He transmuted religion to humanism, which was closer to the spirit of Marxism. In *Private Property and Communism*, Marx wrote:

... communism, as fully developed naturalism, equals humanism, and as fully developed humanism equals naturalism; it is the genuine resolution of the conflict between man and nature and between man and man – the true resolution of the strife between existence and essence, between objectification and self-confirmation,

⁹¹⁵ *Ibid* at 68.

⁹¹⁶ *Ibid* at 226.

⁹¹⁷ *Le Quotidien du Peuple en Ligne*, 15.10.2010 at <http://french.peopledaily.com.cn/Chine/7167175.html>

⁹¹⁸ Vincent Gouysse included that headline among other news headlines in his email of November 2, 2010 in allusion to his China-sceptic book *Le réveil du dragon*.

between freedom and necessity, between the individual and the species. Communism is the riddle of history solved, and it knows itself to be this solution.⁹¹⁹

Communism's idea of humanism was not an idle intellectual construct. The Turkish communist writer Nazim Hikmet expressed his passion for humankind in much the same terms as Vergès would: "I am a communist, love from top to toe. Love to the child that is born, love to the progressing light."⁹²⁰ Vergès applied that same unquestioning passion for humankind to his defence of Barbie:

Vous en faites un Diable, or c'est un être humain, comme vous et moi. Il a, comme nous, deux yeux, deux mains, un cœur et un sexe. C'est un être humain et il ne vous appartient pas de l'exclure du genre humain. Il est un être humain pour l'éternité.⁹²¹

However, simple humanism would not suffice to make one into a Marxist. There is a difference between Marxist humanism and other kinds of humanism. In so far as Marxism reduces an individual to his or her characteristics of class, gender, and the like, it loses sight of what other types of humanisms would call "man."⁹²² Vergès' defence of a Gestapo officer in the name of his love for humanity poses a problem from a communist viewpoint.

⁹¹⁹ Karl Marx, *Third Manuscript: Private Property and Labour* at page XXXIX. [This section, "Private Property and Communism," formed an appendix to page XXXIX of the incomplete Second Manuscript.] at <http://www.marxists.org/archive/marx/works/1844/manuscripts/comm.htm>

⁹²⁰ Hikmet's poem, which he wrote three months before his death in 1963, was made famous outside Turkey by the Finnish vocal quartet *Agit-Prop* in 1974. See The Finnish Institute of Recorded Sound, on-line data base at <http://www.aanitearkisto.fi/firs2/kappale.php?Id=Olen+kommunisti> .

⁹²¹ Vergès, *Avocat*, *supra* note 40 at 29.

⁹²² See *Encyclopedia of Marxism*, s.v. Humanism at <http://www.marxists.org/glossary/> Lucien Sève made an attempt to reconcile "man" with Marxist humanism by demystifying man: "It is profoundly incorrect that historical materialism is constituted by dispensing with the theoretical services of the concept of man ; quite on the contrary, it involves the production of a new, non-speculative concept of man which at once refers to a new essence: social relations...Man is always an idealist mystification which thinks the human essence is to be found directly in the abstract, isolated individual." Lucien Sève, *Man in Marxist Theory and the Psychology of Personality*, translated from the French by John McGreal (Sussex: Harvester Press, 1978) at 124. The supremacy of class struggle in relation to humanism was reiterated by the Communist Party of Afghanistan (Maoist): "D'ici à ce que l'on réalise cette société sans classes, la longue histoire des sociétés de classes – y compris dans les pays socialistes – nous enseigne que c'est la lutte de classe révolutionnaire qui est la locomotive de l'évolution de la société humaine, et non pas une quelconque forme d'« humanisme » au-dessus de la lutte des classes. On peut parler d'un humanisme communiste, mais jamais comme un principe supérieur à la lutte de classe." *Le Drapeau Rouge-Express* N° 249 – Le 26 novembre 2010 at <http://ledrapeaurouge.ca/sites/default/files/dre249.pdf>

Even if we impute Vergès' love for humanity to solidarity, the problem remains because solidarity is related to class consciousness, not to humans as members of a species. Marxism compensates for that specificity by extending the narrow sense of community to strangers. Solidarity with strangers still revolves around class. Solidarity retains a close link to class consciousness so that solidarity is the expression of that class consciousness. Whereas class consciousness is a realization, solidarity is a virtue. Solidarity is necessary for the survival of the working class, and is practised by working-class organizations. Therefore, being a proletarian entails developing the virtue of solidarity.⁹²³

Friedrich Engels was aware of the danger posed by humanism disguising itself as an "ism" related to Marxism. He criticized a certain Karl Heinzen who espoused a "Feuerbachian, Rugified humanism, and proclaimed it as the kingdom "of man" which was almost at hand." By the "Feuerbachian, Rugified humanism" he meant "a confused hotchpotch of Feuerbachian atheism and humanism, reminiscences of Hegel and rhetorical phrases from Stirner."⁹²⁴ Max Stirner was a principal proponent of individualism in Marx's time, and he was the object of Marx's attacks in *The German Ideology*.

Even Feuerbach's atheism was not safe from Engels' criticism. When we take a closer look at Feuerbach's *The Essence of Christianity* it is easy to see why Engels chose to call his atheism by the name of humanism. Feuerbach wrote: "But if it is only in human feelings and wants that the divine 'nothing' becomes something, obtains qualities, then the being of man is alone the real being of God, man is the real God."⁹²⁵ Feuerbach then explained that by "man" he did not mean individuals but "man" as a collective: "Man has his highest being, his God, in

⁹²³ See *Encyclopedia of Marxism*, s.v. Solidarity at <http://www.marxists.org/glossary/>

⁹²⁴ Friedrich Engels, *First Article*, Deutsche-Brüsseler-Zeitung No. 79, October 3, 1847 at <http://www.marxists.org/archive/marx/works/1847/09/26.htm>

⁹²⁵ Ludwig Feuerbach, *The Essence of Christianity*, translated by George Eliot (Mineola, N.Y.: Dover Publications, 2008) at 189 (Part II Chapter 23).

himself; not in himself as an individual, but in his essential nature, his species.”⁹²⁶ In *Theses on Feuerbach*, Marx criticized Feuerbach for neglecting man’s social dimension in his adulation of the individual: “Feuerbach resolves the religious essence into the human essence. But the human essence is no abstraction inherent in each single individual. In its reality it is the ensemble of the social relations.”

Vergès expressed his faith in humankind in terms that were reminiscent of Feuerbach: “Je n’ai pas la foi, mais je ne peux affirmer des choses dans un domaine qui m’échappe. Tout ce que je sais, c’est qu’il y a quelque chose de divin dans l’homme.”⁹²⁷ His defence of the humanity of Klaus Barbie showed how remote he had become from Marx’s humanism, which studied the individual in his social context. Marx’s project of situating people in their social contexts was also the background for his criticisms of Feuerbach in *Theses on Feuerbach*. Vergès in effect made a choice to expose his humanism to criticism by stating that the real revolution did not amount to the overturning of society but to a “revolution in spirit:” “La seule révolution à faire est dans les esprits.”⁹²⁸ Insofar as that view was Marxist, it was coloured by the Maoist project of “new man,” which in Vergès’ case drew on the “African personality.”⁹²⁹

Others have voiced skepticism about Vergès’ altruism and dismissed it as an extension of his egoism. One example is the exchange he had with his former colleague, Isabelle Coutant, who wrote that Vergès was “un véritable monstre d’égoïsme et d’égotisme. Il ne supporte pas la contradiction et encore moins l’esprit d’indépendance chez ceux qui travaillent avec lui.”⁹³⁰ Vergès caustically reminded his readers that there was a difference between an egoist

⁹²⁶ *Ibid* at 229 (Appendix I)

⁹²⁷ See Vergès, *Avocat*, *supra* note 40 at 194.

⁹²⁸ Vergès, *Erreurs*, *supra* 195 at 120.

⁹²⁹ In the African perspective, all behaviour is spiritual because humans are spiritual beings and human behaviour is understood from an anthropocentric point of view. See Terri Bakker, Mahgathi Mokwena, Russel Simons, “African Perspectives on Behaviour,” in Pauw, *Narrative Psychology*, *supra* note 50 at 195.

⁹³⁰ Coutant, *Carlos*, *supra* note 40 at 46.

and egotist: “L’égoïste est quelqu’un qui sacrifie tout à son intérêt, y compris sa propre dignité...L’égotiste est quelqu’un qui entend faire de sa vie, de ses sentiments, une expérience à tous.” He was equally quick to compare himself to great writers who were egotists: Michel de Montaigne, François-René de Chateaubriand, Maurice Barrès, Stendhal, and René Descartes were all egotists in that sense.⁹³¹ By counting himself in the company of renowned writers and thinkers, Vergès almost unwittingly confirmed the egoism that he set out to refute.

⁹³¹ Vergès, *Journal*, *supra* note 83 at 48. Montaigne wrote in Chapter II of Book III (*Du repentir*) of his Essays: “Si le monde se plaint de quoi je parle trop de moi: je me plains de quoi il ne pense seulement pas à soi.” Michel de Montaigne, *Essais de Michel de Montaigne*, édition présentée, établie et annotée par Emmanuel Naya, Delphine Reguig-Naya et Alexandre Tarrête ([Paris]: Gallimard, 2009) at 35. Maurice Barrès, known for his “culte de Moi,” put the following flippant words in the mouth of André Maltère, the protagonist in his novel *L’Ennemi des lois*: “Égoïste, toutefois je ne le suis pas d’une telle façon que je refuse aux autres le bénéfice de ma clairvoyance.” Maurice Barrès, *L’ennemi des lois* (Paris: G. Crès et cie, 1892. Descartes’ egotism was summed up in his famous *cogito ergo sum*.

7.5. Vergès' Strategy of Ambiguity about his Objectives

The process of political rarefaction, as we might call it, that Vergès had made a conscious choice to pursue in his defence of Barbie deepened after the Barbie trial. The political adventurousness that he demonstrated in taking on the defence of a Gestapo officer in the name of a communist protest against the socialist regime of Mitterrand had to come to grips with a dramatically changed international situation after the collapse of the Soviet Union. The protest that he levelled against the socialists, in line with the communist thesis that socialism is fascism, lost its edge when the Soviet Union collapsed. Vergès salvaged whatever credibility was left of that thesis by adhering to the Chinese model of communism. Vergès referred back to the episode in his life when he chose the Chinese side. Mao's China had broken with the Soviet Union, which in Mao's assessment had become revisionist and thus abandoned true Marxist-Leninist doctrine. Vergès had lashed out at the revisionists in his magazine *Révolution* in 1963 with thinly veiled reference to the Sino-Soviet Split and to the Chinese side which he chose in that conflict:

En Europe, le révisionnisme tente de pénétrer dans le mouvement ouvrier en remettant en cause les principes fondamentaux du marxisme... Révolution ne sera pas solidaire de ceux qui, prétextant cette trahison, tentent de mener l'opération que consiste à édulcorer le marxisme.⁹³²

Vergès transposed the high-minded ideals of the Sino-Soviet split, which had taken place in under the pretext of adhering to the correct interpretation of Marxism, to the China of the 1990's and beyond, despite the process of revisionism that had started soon after Mao's death in the 1970's and had deepened after the fall of the Soviet Union. We have seen that his apparently obstinate adherence to the Chinese line allowed Vergès to veer toward the same bourgeois mentality that was engulfing the Chinese communist leadership. In retrospect,

⁹³² Vergès' words in *France-Observateur* of September 5, 1963, quoted in Violet, *Vergès*, *supra* note 5 at 151.

Vergès' defence of Barbie appeared almost ominous of the profound political changes that would overtake Vergès along with the rest of the world after the collapse of the Soviet Union. He referred to that profound change in the political landscape in his reply to de la Morandais, which we have already quoted: "Je ne suis pas converti au capitalisme, je vis dans une société capitaliste."⁹³³

To compensate for that political attenuation, Vergès created a show of profundity with his recourse to the image of the Devil. That image resonated with some communists' criticism of the revisionism to which Vergès was in danger of falling prey. Hoxha had compared Soviet revisionist leadership to the Devil and Smirnenski had described how the Devil supposedly deceived those who aspired to change through gradual reforms instead of through a wholesale revolution. However, Vergès' strategy of devil's advocacy functioned at two levels: Firstly, by appropriating the image of the Devil, he created an air of supernatural power which allowed him to position himself as an equal of the justice system. Secondly, he proved himself superior to that system by accepting the demonization that the justice system had meted out to him. He did so by appropriating the image of the devil's advocate to show that he was not, in reality, the Devil that the moniker suggests he was: "Si j'étais vraiment le Diable, je ne rirais pas, je dirais. 'Je suis démasqué'."⁹³⁴ That dissimulation, in turn, brought Vergès close to Mao's philosophy of how communists should wage class war, although Mao's insights were applicable to any guerrilla warfare. As one observer noted about Mao's *Yóu Jī Zhàn* (On Guerrilla Warfare), "guerrillas are masters of the arts of simulation and dissimulation; they create pretenses and simultaneously disguise or conceal their true

⁹³³ Vergès, *Avocat*, *supra* note 40 at 158.

⁹³⁴ *Ibid* at 235.

semblance. Their tactical concepts, dynamic and flexible, are not cut to any particular pattern.”⁹³⁵

Vergès’ judicial strategy had evolved from rupture’s unequivocal break with the politics supposedly espoused by the justice system to the dissimulation of one’s own objectives. Instead of showing that Vergès still endorsed communist ideology, the convergence of his strategy with Mao’s strategy pointed to how inimical Mao’s strategy could be to Marxism-Leninism. On closer analysis, Mao’s military strategy, which he articulated in light of his experiences of the military aspects of the communist takeover in China, was applicable not only to the communist revolution but to any revolution. Mao did not address only revolutions of class type, such as a communist revolution, but other types as well: “[W]e must distinguish general revolutionary wars from those of a purely ‘class’ type.”⁹³⁶ Vergès had experience with general revolutionary wars since the Algerian War of Independence, and Mao’s strategy provided him with a semblance of loyalty to communism. However, the act of dissimulation that strengthened its position in Vergès’ strategies until it took them over was at variance with the Communist Manifesto, which stated in its conclusion: “The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions.”⁹³⁷

Vergès’ dissimulation was coupled with his insistence on unmasking the justice system. That element of unmasking was what remained of his strategy of rupture, and it was the element to which he pointed to demonstrate the coherence of his strategy of rupture despite apparent changes in it. He equated rupture with unmasking in his book *Crimes d’État*. The second

⁹³⁵ Mao Tse-Tung, *On Guerrilla Warfare [Yu Chi Chan]*, translated and with an introduction by Samuel B. Griffith (New York: Praeger 1961) at 26.

⁹³⁶ *Ibid* at 48.

⁹³⁷ Marx, *Communist Manifesto*, *supra* note 161 at 77.

section of that book was titled “La comédie judiciaire – La justice masquée” and the third section was titled “La comédie judiciaire – La justice démasquée: le procès de rupture.”⁹³⁸

However, clinging to an unmasking of the justice system served to mask Vergès’ own judicial strategy but could barely mask the utter attenuation of the political content that the word “rupture” was designed to convey. He couched those vestiges of political activism in reflections of human frailty: “L’excès permanent de la justice est de prétendre être absolue. C’est de ne pas comprendre qu’elle est une œuvre humaine, et spécialement imparfaite.”⁹³⁹

That hint of political activism was accounted for by our unfamiliarity with a lawyer who criticizes the justice system of which he is part. However, Vergès would insist that he was doing his work as a defence lawyer:

Dans ces hypothèses, je pense que notre rôle en tant qu’avocat est d’intercéder: il consiste à essayer de « faire comprendre » la transgression, car précisément, seul l’avocat qui a un contact humain avec l’accusé est en mesure de la faire. Les juges, eux, ne connaissent l’accusé qu’à partir d’un dossier. Or, un dossier est une abstraction et les juges ne le connaissent qu’à travers les questions posées et les réponses données. Ces questions et ces réponses sont toujours formulées en terme binaire: « Votre femme vous trompait? Votre compte en banque était dans le rouge? Cette lettre de menace est bien signée de vous? »⁹⁴⁰

Despite Vergès’ exorbitant claims, the accusations of human frailty that Vergès levelled at the justice system were not incompatible with that system’s self-perception. For instance, Judge Simone Rozès told another defence lawyer, Paul Lombard, who worked with Vergès on the Omar Raddad case, that the justice system expects defence lawyers to probe the secret reasons of the accused and to convey them to the judges: “...vous seul avez des contacts personnels avec le client, sa famille. Il vous est possible d’apprendre à le connaître pour

⁹³⁸ Vergès, *Crimes*, *supra* note 334 at 83 and 135.

⁹³⁹ Vergès, *Avocat*, *supra* note 40 at 230.

⁹⁴⁰ Felissi, *Anticolonialiste*, *supra* note 6 at 28–9. See also Vergès, *Avocat*, *supra* note 40 at 210.

mieux nous informer, éclairer le dossier par des considérations qui, sans vous, demeureraient ignorées; c'est ce que le tribunal attend."⁹⁴¹ That Vergès spoke of “la bataille que je mène contre les juges,” which was suggestive of a search for revolutionary credibility, was more indicative of nostalgia for a revolutionary past than a correct statement of his current settled existence.⁹⁴² To underline that the justice system was not as humane as the image that it portrayed of itself, Vergès dedicated a book to judicial errors, which supposedly showed that the justice system erred more often than not. Vergès' hard view of the justice system was epitomized in his comments on the 1861 case of Rosalie Doise in *Les erreurs judiciaires*. Rosalie was accused of killing her father. When the prosecution's case was demolished by counterevidence, the prosecutor pleaded:

Aux yeux de Dieu, qui lit dans les cœurs, elle était parricide! Proclamerai-je son innocence et dois-je déplorer une fatale erreur judiciaire? Non, je ferais, en allant jusque-là, aux magistrats, au jury et à la justice tout entière une injure imméritée.⁹⁴³

That remark showed to Vergès that the justice system pretends to be God. The time difference between the Doise case and his book did not seem to bother him. It is ironic that the thematic approach that Vergès adopted in *Les erreurs judiciaires* masked a chronological approach. For instance, the chapter on “religion of confessions” followed chronologically the opening chapter on “original fault,” in which he discussed the Doise case. The cases that he discussed in “religion of confessions” dated from the post-war period, but their impact was due to the historical perspective that Vergès adopted in that book. It is tempting to place those isolated cases in a historical period when cases were largely decided on the basis of confessions. The change came at the turn of the eighteenth and the nineteenth centuries when the Austrian examining magistrate Hans Gross developed scientific methods (later called

⁹⁴¹ Rozès, *Dialogue*, *supra* note 146 at 130.

⁹⁴² Vergès, *Dictionnaire amoureux*, *supra* note 74 at 475. Vergès' statement contains a pun. “Jeu de patience” is literally “game of patience” but means a card game that one plays alone.

⁹⁴³ Reproduced in Vergès, *Erreurs*, *supra* 195 at 28–9.

“forensic science”) to find perpetrators.⁹⁴⁴ Vergès dismissed them because there was no science apart from scientists who are fallible. The scientific experts, including psychiatrists, are part of the establishment and thus part of the problem that he believes needs to be addressed in the justice system:

Ainsi, parmi les experts judiciaires, c’est le psychiatre le plus dangereux de tous! Pourquoi ? On lui montre par exemple un dossier ... où M. Durand est accusé d’avoir tué Mme Dupont. Or, on se contente de demander au psychiatre si M. Durand peut tuer dans un excès de jalousie. L’expert répondra par l’affirmative, alors que tout le monde peut tuer dans un excès de jalousie. Ainsi, l’expertise qu’il rendra va jouer contre l’accusé alors qu’elle exprime une banalité.⁹⁴⁵

Vergès thus exposed himself to the same criticism he levelled at the justice system, all the more because he did not deny that he was still part of the system and did the job that he is supposed to do. He adopted a timeless, almost omniscient perspective that he concealed behind the mystification provided by the soubriquet “devil’s advocate.” Vergès’ imagery is often less ambitious, such as when he compares a lawyer (himself) to a novelist. “Notre travail est un travail de création, comme celui du peintre ou du romancier.”⁹⁴⁶ However, his effort was to approximate God’s omniscience. That effort was illustrated in his *De la stratégie judiciaire*:

⁹⁴⁴ Gross was particularly critical of the reliance on confessions in *Criminal Psychology*: “...the reasons for confessions, difficult both to find and to judge, are many indeed. The only way to attain certainty is through complete and thorough-going knowledge of all the external conditions, but primarily through sound psychological insight into the nature of both the confessor and those he accuses.” Hans Gross, *Criminal Psychology: a Manual for Judges, Practitioners, and Students*, translated from the 4th German ed by Horace M. Kallen, with an introduction by Joseph Jastrow, Boston: Little, Brown, and company, 1911 at 114 (§23). Chapter II of Vergès’ *Les erreurs judiciaires* was devoted to what he called the religion of confessions. See Vergès, *Erreurs*, *supra* 195 at 31ff. Gross also identified “preconceived theories” as “the most deadly enemy of all enquiries.” See Hans Gross, *Criminal Investigation: a Practical Textbook for Magistrates, Police Officers and Lawyers*, adapted from the “System der Kriminalistik” of Dr. Hans Gross by J. Collyer Adam (London: Sweet & Maxwell, 1924) at 10. Preconceived theories enter legal proceedings through one’s perception of witnesses and experts. Vergès delved into that subject in Chapter III and IV of *Les erreurs judiciaires*. Of course, resistance to preconceived ideas remains primordial as much today as it ever was. See e.g. Stephen Moston, Geoffrey Stephenson, “The changing face of police interrogation,” in *Journal of Community & Applied Social Psychology*, 1993, 3: 101–115.

⁹⁴⁵ Felissi, *Anticolonialiste*, *supra* note 6 at 29–31.

⁹⁴⁶ Vergès, *Avocat*, *supra* note 40 at 96.

Dans la vie, les juges sont imparfaits comme les hommes. Ils sont sourds et aveugles aux mouvements secrets des cœurs. Mais, dans les romans, un homme a ce don de voyance: l'auteur. Il ne récuse pas les témoins les plus proches de l'accusé ou de la victime comme le fait le président.⁹⁴⁷

Just as a novelist has unerring insight into the psyche of his characters, the lawyer, like Vergès and unlike the judge, has the God-like ability to see a person's heart. Whatever problems that claim caused theologically, it marked an unequivocal break with a *political* judicial strategy, which was suggested by the title of the book in which Vergès made that statement, *De la stratégie judiciaire*. Vergès' project of empathizing with his clients assumed the dimension of surpassing the limitations of a normal individual, which in turn assumed an element of omniscience on his part. Vergès honed his skills to overstep the limitations of an individual, which was necessary in his fight against *groupthink*. His attack on *groupthink* culminated in his defence of Barbie, which earned him the name of devil's advocate, suggestion being that Vergès was on a par with the justice system, which took itself to be God, but assumed a standpoint that was opposite to it. After Barbie, Vergès operated from that transcendental viewpoint by looking at himself and his clients in retrospect as a novelist would look at his characters.

⁹⁴⁷ Vergès, *Stratégie judiciaire* *supra* note 7 at 73.

8. CONCLUSION

This study has explored Jacques Vergès' judicial strategy, starting from the strategy of rupture and its counter-strategy, the strategy of connivence. He introduced both those strategies in his work *De la stratégie judiciaire* in 1968, and conflated them into devil's advocacy. Devil's advocacy adheres to the precepts of a legal order to the point where those precepts turn against the legal order. The exact meaning of those strategies remains elusive in light of *De la stratégie judiciaire*.

Their correct interpretation calls for a historical analysis of the concept that is at the root of both rupture and connivence, namely "strategy". The application of "strategy" to judicial settings was initiated by Marxist lawyer Marcel Willard, who wrote *La défense accuse* based on his experiences as legal counsel for Georgi Dimitrov, who was accused of setting the German *Reichstag* on fire in 1933. Willard regarded his defence of Dimitrov as political agitation in his book.

Vergès referred to Willard in his 1961 book *La défense politique* and in his *De la stratégie judiciaire*. In *De la stratégie judiciaire*, Vergès also referred to V.I. Lenin, who was Willard's inspiration. Willard quoted Lenin's letter to Elena Stassova and other comrades who were detained in a Moscow prison. Vergès referred to Willard's book in *De la stratégie judiciaire*. Although the references to Willard and Lenin are not prominent, they assume a particular significance in light of Vergès' earlier communist past.

We have followed the development of Vergès' judicial strategy and discerned stages in it. As sketched in *De la stratégie judiciaire*, the strategy of rupture was the judicial strategy which provided a platform for the revolutionary cause of the accused. Vergès identified its opposite and called it the strategy of connivence. Both of them address the relationship between

politics and law. Whereas the rupture corresponds to “the political,” connivence corresponds to “politics.” Insofar as “the political” corresponds to “legitimacy” and “politics” to “legality,” the strategy of rupture operates within legitimacy while the strategy of connivence is restricted to operating within legality.

Vergès was confronted with a problem in relation to his two strategies. It was the inexorability with which connivence had the tendency to prevail over rupture: each revolution turned into another establishment, as his experiences with the overthrow of two regime in Algeria taught him. The Ben Bella administration became as repressive as the French colonial regime, and the Boumedienne administration became as repressive as the Ben Bella administration which it had replaced. A revolutionary lawyer faced the choice of accepting the legitimacy of that new establishment, while remaining aware of the discrepancy between one’s convictions and the surrounding society, or of carrying over the original revolution by turning against it, too.

Vergès implicitly accepted the label of revolutionary lawyer in *De la stratégie judiciaire*, in which he quoted V.I. Lenin as saying that lawyers are the most reactionary of all people. A revolutionary lawyer faced the choice between those two alternatives while the supposedly reactionary lawyers did not. They adopted the strategy of connivence without necessarily being even aware of it. A difference between a revolutionary lawyer’s connivence and a reactionary lawyer’s connivence was that a revolutionary lawyer engaged in what Vergès recognized as connivence with full awareness of what he was doing while a reactionary lawyer did not.

Unfortunately, Vergès’ articulation of those two strategies in 1968 did not revive the revolutionary zeal of his pre-1968 period. Instead, his career veered towards connivence, first unconsciously and then consciously, in the late-1960’s. He faced that inevitability in 1970,

when he went into clandestinity. We have interpreted that move as his way to recapture rupture after his attempts to apply the strategy of rupture in court had failed. His rupture was to extract the individual (himself) from the system that held the individual under its sway. Instead of seeking rupture in causes or political movements which would turn into new establishments before long, Vergès pitted the individual against the system, starting with himself during his clandestinity and continuing to his client. Especially in the course of the Barbie case, the strategy of rupture transmuted into devil's advocacy, which reached its peak in his defence of Barbie in the 1980's. Vergès did so in the name of his client, as "devil's advocate," who defends clients who appear indefensible in the eyes of the majority. After the Barbie trial, when the diabolical image shifted from his client to himself, he pitted himself against the "establishment," to borrow his expression.

When Vergès embarked on the battle between the individual and the system, he pitted an individual's narrative against the system's narrative. He considers it a typically French trait to support someone who is "seul contre tous et surtout contre l'establishment."⁹⁴⁸ Once postmodernism sounded the death knell of metanarratives, which is how François Lyotard defined postmodernism in his book *The Postmodern Condition*, the balance between narratives and metanarratives shifted in favour of individual narratives. There was a reshuffling of narratives and metanarratives, with the promotion of overriding individual to metanarratives and the demotion of lesser individual narratives to micronarratives, as Paula C. Rodríguez Rust has suggested.

In Vergès' case, the dominant metanarrative (in the sense in which Lyotard used that term), has been that of communism. His terminology of "strategy" and "rupture" already suggest it. However, Vergès has also been alive to the existence of competing metanarratives even

⁹⁴⁸ See Vergès, *Avocat*, *supra* note 40 at 235.

within communism and has expanded his supply of metanarratives to those of his clients without, however, subscribing to them.

In the commotion generated by rival and conflicting narratives and metanarratives, Vergès has provided his own life story with coherence by adhering to the Chinese cause. His continuing loyalty to China has provided his discourse with a semblance of ideological coherence because China continues to subscribe to communism, although that coherence is undermined by the dramatic redefinition of communism during the transition from Mao to Deng. China has also become a world power which is in a position to shape world history and also to be shaped by it, which provides Vergès with the flexibility to redefine his political views in light of political exigencies.

Vergès is able to appropriate the Chinese story and turn it into his metanarrative (in Rodríguez Rust's sense of the term), thanks to his oriental appearance and his identification with Africa, where Chinese influence has been on the ascendancy. His half-Vietname racial makeup allows him to gloss over the deep rifts between Chinese communist policies because it reinforces the impression of his coherence among non-oriental observers. On the other hand, his biracial appearance is also a testament to the historical vicissitudes of French colonialism, which allows him to indulge in the same contradictions as French colonialism. Although Vergès is not African in a racial sense, he has identified himself as African especially since the Barbie trial, evoking his childhood and youth on the African island of Réunion and his professional activities in Algeria. Africa provides him with a geographical and political setting in which his oriental and French sides reach an equilibrium. Vergès portrays both France and China as the two main benefactors of Africa.

Our application of psychohistory to Vergès' judicial strategy has recognized the central role that is played by metanarratives and narratives in his psychological makeup and in his

judicial strategy. The narratives and metanarratives bridge the gap between his specific personal history and they are translated into his judicial strategy.

Fundamentally, Vergès' narratives and metanarratives correct what we have identified as *groupthink*. *Groupthink* means that a group, big or small, becomes blind to its faults and instead projects them to outsiders. It depends on and propagates a certain metanarrative. We have identified the establishment and its justice system as *groupthink*. Vergès' overall strategy is to provide a counternarrative to remedy the *groupthink*. The psychological mechanism at play is called in French *décentration*. It means that he breaks with "centrisms," such as egocentrism and ethnocentrism, and invites groups or individuals to see themselves through an outsider's eyes.

Vergès' constant battle against *groupthink* has not taken place in an intellectual vacuum. Those interpretations include the concept of singularity, which in Vergès' case was influenced by French intellectual trends, the Maoist project of the "new man" and the Afrocentric constitution of the African personality. Vergès appropriated the collectivism of Maoism and Afrocentricism to enhance his own individualism by positioning them in a predominantly non-Maoist and non-Afrocentric environments. Vergès' intellectual development has also answered Derrida's question "in the name of what" implicitly by suggesting that that "name" has shifted from "the political" to ethics, in particular "the ethics of singularity." That philosophical level has a historical dimension of its own. We have focused on the reduction of absolutes. Those absolutes lost their status of being absolutes when they became simply larger versions of individual narratives, metanarratives. Vergès' originality resides in his skill in turning his personal narrative into a "case study" of the

paradoxical metanarrative of a shift from metanarrative to smaller narratives. His life is a “case study” of what Julian Bourg called a French shift “from revolution to ethics.”⁹⁴⁹

⁹⁴⁹ See generally Bourg, *Ethics*, *supra* note 656.

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