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Richard H. Weisberg

*Benjamin N. Cardozo School of Law*, rhweisbg@yu.edu

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## CONFISCATED JEWISH PROPERTY IN VICHY, FRANCE: AN ATTEMPT TO UNDERSTAND THROUGH SHAKESPEARE

*Richard H. Weisberg\**

Now that the war is over, the question of how France treated property law and what it is doing to try to restore Jewish property leads me to as bleak a judgment about the matter as that rendered by Ambassador Lavie about the countries he is studying. In fact, Ambassador Lavie gave too bright a picture for France and the other western countries, which have not done much since the war to restore seized or *aryanized* property to the Jewish victims.<sup>1</sup>

Because so much of what happened in France has been covered over by various myths that have pervaded the atmosphere for so long—including the myth of universal resistance and the myth that whatever harm came to the Jews was largely the Germans' fault—it is fair to say that most people probably do not know very much about the basic scheme of *aryanization* of property, as it was called in France during those years.

Although I will get to the question of restitution later, I will first focus on what happened to Jewish property under the color of French law during 1940-1944. This Article also attempts to bring in a moral and religious component to answer the question why, as to these property matters and to the persecution of Jews in general, there was so little will to resist, even among the most decent members of the French population, for allegiance to some semblance of decency existed throughout France during the war.<sup>2</sup> These are difficult issues, and I want to discuss them within the framework of yet another difficult topic, which also involves

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\* Walter Floersheimer Professor of Constitutional Law, Benjamin N. Cardozo School of Law, Yeshiva University.

<sup>1</sup> See Naphtali Lau-Lavie, *In Pursuit of Justice: Recovering Looted Assets of European Jewry*, 20 CARDOZO L. REV. 583 (1998).

<sup>2</sup> Prior to the tragic events of World War II, French legal traditions were very similar to those we hold dear in our country. Both equal protection and due process of the laws had already been a 150-year-old tradition by the time World War II started. Indeed, France's commitment to equality predated ours, which took a Civil War to bring about and to codify into our Constitution. And there was much continuing talk of equality, especially by lawyers, during Vichy itself. See RICHARD H. WEISBERG, *VICHY LAW AND THE HOLOCAUST IN FRANCE* 6-81, 113-58, 386-429 (1996).

European anti-Semitism and the legalistic looting of Jewish property, Shakespeare's *The Merchant of Venice*.<sup>3</sup> This Article shows that there exists a connection between the fictional world of Venice and the all too real world of Vichy, France. As happens so often when we try to fathom the Holocaust, it turns out that meaning, if it can be found at all, needs to be sought in seemingly roundabout ways using all sources of the human imagination as well as of historical fact. We begin with Shakespeare's play.

Shylock is a Jewish moneylender doing business on the Rialto. Young Bassanio, a rake and an opportunist, needs money to court a wealthy heiress, Portia. He has no wealth of his own but does have a credit-worthy older friend, the merchant, Antonio. With Antonio as the middleman, Bassanio gets a three thousand ducat loan from the old Jew. Instead of charging interest, Shylock devises a scheme in which he demands only the principal back in three months' time but gets a pound of Antonio's flesh if he is not repaid by the end of those three months.<sup>4</sup>

Shylock and Antonio are very different in temperament, and they have never liked each other. Yet, the Christian merchant willingly takes this deal and utilizes Jewish wealth for his young friend's needs while risking very little, he thinks. In fact, Antonio has various ships at sea, plundering colonial wealth.<sup>5</sup> If even only one of them comes home within three months, he has nothing to fear about repaying the three thousand ducats. But all his ships fail, and he is unable to pay when the bond comes due.<sup>6</sup>

Shylock takes him to court, demanding judicial enforcement of the penalty provision. Through a series of legalistic tricks, the court turns the tables on him, and in the end Antonio gets to control almost all of Shylock's wealth. Antonio also forces Shylock to convert to Christianity in open court. This occurs when Portia, disguised in court as a doctor of law, produces a legalistic text called the Alien Statute, which instantly transforms Shylock's civil suit on the contract into a criminal action against Shylock for allegedly threatening a citizen's life.<sup>7</sup>

By the end of the play, Christians are busy enjoying Shylock's property, upon which Antonio's new-found legal power has devolved. One of them, named Lorenzo, who had previously made

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<sup>3</sup> WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE*.

<sup>4</sup> *See id.* act 1, sc. 3.

<sup>5</sup> *See, e.g.,* Judith S. Koffler, *Terror and Mutilation in the Golden Age*, 5 *HUM. RTS. Q.* 116 (1983).

<sup>6</sup> *See* SHAKESPEARE, *supra* note 3, act 3, sc. 1.

<sup>7</sup> *See id.* act 4, sc. 1.

off with Shylock's daughter, Jessica, and a large portion of Shylock's portable property in the bargain, cheerfully closes the play by calling Shylock's wealth "manna in the way of starved people."<sup>8</sup> Lorenzo had already squandered the earlier conversion of the money he took when he eloped with Jessica. Now, he inherits more of his father-in-law's property through the legalistic mechanisms of the trial scene, and he describes this as "manna in the way of starved people." The Jew who thought he had some rights against the Christians ends up as figurative food for their economic appetites.

Over time, Shakespeare's story has evoked, for me, Vichy's approach to Jewish wealth, at least as I learned about Vichy by researching France's wartime property laws through archival research, interviews, and other means.<sup>9</sup> Granted full legal rights in France during the prior 150 years, Jews suddenly found themselves made into criminals through the means of law, and their bodies and property made to serve Aryan needs.

In the mythmaking about them under Vichy, Jews were portrayed as Shylock at his worst, rather than the ethical figure Shakespeare presents until the Christian world drives him to excess. The prejudices that France's liberated Jews might have endured in the private worlds of prewar France, or in anti-Semitic flare-ups like the Dreyfus case,<sup>10</sup> were now legally embedded in codes of law, just as Shylock's suffering on the Rialto had suddenly been codified into Portia's Alien Statute.

As Pierre Birnbaum has recently shown in his excellent book, *Les fous de la République*,<sup>11</sup> the Jews of the Third Republic, who were proud of their participation in the mainstream culture, like Shylock, had now become pariahs. The alien statute for Jews on French soil was the Vichy law of July 22, 1941, which legally transformed their property into manna or, as Vichy put it, aryanized most of their wealth.<sup>12</sup>

The law signed by Vichy's leader, Philippe Pétain, who undoubtedly fought beside some of the new law's victims during World War I, affected not only old-line French Jews, but also those who had fled to France during the 1920s and 1930s and who had quietly built up small businesses, always counting on the equal

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<sup>8</sup> *Id.* act 5, sc. 1.

<sup>9</sup> See WEISBERG, *supra* note 2.

<sup>10</sup> See *id.* at 6.

<sup>11</sup> PIERRE BIRNBAUM, *LES FOUS DE LA RÉPUBLIQUE: HISTOIRE POLITIQUE DES JUIFS D'ÉTAT DE GAMBETTA À VICHY* (1992).

<sup>12</sup> See WEISBERG, *supra* note 2, at 248.

protection of French law and tradition.

Remarkably, this July 22 statute applied not only to the part of France under Nazi occupation, but also to the "free" zone under exclusive Vichy administration. Its stated aim was to eliminate all Jewish influence from the national economy.<sup>13</sup> After some debate in Vichy government meetings, the Jews were grudgingly vouchsafed their primary residences and the furniture therein.<sup>14</sup> Everything else was manna in the way of France's mainstream Aryan population.

The law vested administrative responsibility for aryanization in a new agency, the *Commissariat général aux questions juives* ("CGQJ"). That agency appointed, or was responsible for the appointment of, Aryan "trustees" to all manner of Jewish property holdings.<sup>15</sup> Contemporaneously, French bankers would anticipate German and Vichy laws that blocked at least half of all Jewish bank accounts.

These were not the only forms of legalistic pillage. Every area of French commercial and property law was implicated by Vichy racial legislation. Lawyers' offices were filled with the daily work of translating Vichy law into grim reality for Jews on French soil. Anti-Semitic property legislation was big business to lawyers from October 1940 until the day of the liberation of their towns and cities. Many of them assisted Aryan trustees.<sup>16</sup>

Some tried to help the victims, and such were the endless possibilities of French legalistic thought at the time that a few of these arguments succeeded. But those few favorable precedents only furthered a sense of the legitimacy of these laws, which are strange to the French tradition and sometimes worked against subsequent victims who could not sustain the same proofs.

Working largely within their own "Franco-French" system of legalistic logic, Vichy insisted on as much autonomy as they could from the Germans. Early on, Vichy cited Articles 43 and 46 of the Hague Convention<sup>17</sup> for the proposition that the occupiers had no right to regulate property matters since these did not affect order or other policing concerns.<sup>18</sup> Unlike the Belgians who vigorously protested all Nazi anti-Semitic legislation on the same grounds,

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<sup>13</sup> See *id.* at 253-54.

<sup>14</sup> See *id.* at 256.

<sup>15</sup> See *id.* at 251.

<sup>16</sup> See *id.* at 327-54.

<sup>17</sup> Convention Respecting the Laws and Customs of War on Land (Hague IV), Oct. 18, 1907, 36 Stat. 2277, 2306-07, 1 Bevans 631, 651.

<sup>18</sup> See *id.* at 236-37.

Vichy used this argument to try to carve out greater dominion over Jewish property.<sup>19</sup>

The Germans, in part, accepted Vichy's argument. They realized that French legislation was a necessity if their own pillaging of Jewish property in France was to be legitimized under international law.<sup>20</sup> In their memorandum of August 26, 1940, they stated explicitly that "in order to avoid the appearance of international law violations, the transfer of Jewish enterprises into German hands must seem, to the outside world, as following the norms of private law."<sup>21</sup> The French, who proceeded autonomously, provided not only internally promulgated texts but also an entire industry of interpreting and implementing the laws in ordinary ways through their ordinary courts (regular and administrative), thus providing choice tidbits of Jewish wealth to the Germans as long as big chunks of the carcass were indeed left over for their delectation.<sup>22</sup> In the end, of course, they gave over the lion's share to their clever partners in legalistic greed.

This true collaboration—a word that should otherwise be avoided given Vichy's fierce independence in anti-Semitic legal areas not involving looting—reached its apex in the Vichy law of January 16, 1942.<sup>23</sup> That law was designed to facilitate the German-imposed "fine" on the Jewish community of one billion francs. Although the July 22 law and this one, of six months later, are the high-water marks of legalized looting, Vichy had actively entered the aryanization arena by an earlier law of September 10, 1940, which was promulgated very quickly after the fall of France.<sup>24</sup>

To the Germans' delight, by initiating involvement of its own ministers and courts in the seizure of property,<sup>25</sup> Vichy saved the Germans manpower and treasure and infinitely eased the political burden of demanding such behavior themselves.<sup>26</sup> Vis-à-vis the meager German ordinance then in effect, France considerably broadened the scope of coverage to include seizing businesses "where, for whatever reason, the qualified directors cannot possibly exercise their functions."<sup>27</sup> The Germans had mentioned only

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<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 255.

<sup>21</sup> *Id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.* at 251.

<sup>25</sup> See *id.* at 237.

<sup>26</sup> See *id.* at 252.

<sup>27</sup> *Id.* at 237 (quoting R. SARRAUTE & P. TAGER, *LES JUIFS SOUS L'OCCUPATION*:

absence and force majeure as a justification to take away a business,<sup>28</sup> but this Vichy wording was designed to include businesses and assets owned by people still willing to be active but unable to because Vichy laws defined them as Jewish and prohibited such activity.

In large ways and small, Vichy endeavored to make aryanization and the *de-Judaification* of the French economy its own projects. By April 1941 Vichy decided to take the lead in *liquidating* many Jewish businesses, a step not yet called for by any German ordinance. In mid-1941 they took the largely uncoerced step of extending by statute the process of aryanization to the "free" zone. At around the same time, the Germans interpreted French law to have extended to North Africa such aryanization measures as the blocking of Jewish bank accounts.<sup>29</sup>

By 1942 and 1943 Vichy had moved to seize even businesses that only Jews patronized among themselves, a domain largely untouched by the Germans. Thus, a young Parisian named Jacques Stutwoyner, whose parents had been deported in July, sought permission to keep his family bakery running in the Marais in order to support himself (aged nineteen) and his two younger brothers. Although the clientèle was "purely Jewish," and although the business grossed no more than 500 francs a day, it had been aryanized. The bakery was already in the hands of its Aryan "trustee," M. Gresley of the 15<sup>e</sup> arrondissement, but now the CGQJ was threatening to close it up and sell it.<sup>30</sup> Vichy would not permit the youthful Stutwoyner to continue the bakery even though that bakery had no Aryan clientèle who might somehow be compromised by his family business.

Occasionally, the Germans had to check what they viewed as Vichy legalistic excesses epitomized by Vichy's case-by-case analysis of aryanization. The Germans saw this as excess legalisms that slowed down the pace of looting.<sup>31</sup> They completely disagreed with such endless "process" as a jurisprudential matter, ironically casting the French in the same role as legalistic nitpickers that the anti-Semitic French had devolved on the "Talmudic Jews."

Article 3 of the July 22 law deseized the Jewish owner of any property interest.<sup>32</sup> That law gave the Aryan "trustee" the broad-

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RECEUIL DES TEXTES OFFICIELS FRANÇAIS ET ALLEMANDS 17 (1982)).

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 238.

<sup>30</sup> See *id.* at 239.

<sup>31</sup> See *id.* at 240.

<sup>32</sup> Article 3 provided that:

est powers over the property, but Article 7 required that the Aryan "trustee" who took over the property be held to a standard of care known as "bon père de famille."<sup>33</sup> This is not the same standard as in the United States, for the French have no such institution as the trust.<sup>34</sup> Rather, the standard as "a good father or head of a family" was drawn from some prewar equivalents involving bankruptcy estates. Despite this standard, very little affection, love, or loyalty seems to have been shown by the Aryan to the rightful owner of the property that he was administering. There were many, many breaches of duty by the Aryan "trustees," and French law, perhaps to its credit, actually gave parties standing to go into court to say that the property had been terribly mismanaged and sold for too low a price, that there was self-dealing, and that there were other acts of greed and carelessness that had very little to do with the applicable standard.<sup>35</sup>

There were many wartime cases in French courts and agencies that dealt with breach of fiduciary responsibility, although in those cases the French ordinary (or civil) courts sometimes believed that they had to yield jurisdiction to their colleagues in the usually harsher administrative courts. They also believed that the aryanaization and the cleansing by France of Jewish economic interests were administrative matters and therefore could not be brought before ordinary courts.<sup>36</sup> As a result, many Jews were left without any recourse in these particular matters.

By early 1942 the CGQJ reported that 1500 of 3000 Jewish enterprises had been aryanaized in the "free" zone. Of 26,570 such enterprises in the Occupied Zone, 4540 were already under Aryan control. By July 1943 the numbers were up to 39,000 in the Occupied Zone, of which 12,000 had been either wholly or partly sold to non-Jewish owners. The aryanaized wealth in that zone then amounted to 1,289,139,095 francs.<sup>37</sup>

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The [administrateur provisoire] enjoys the fullest administrative and dispositive rights, and from the moment of his nomination, he exercises them instead and in place of the named owners of any rights or shares, or of their agents; and, in a company, in place of any proxy or partner, with or without their agreement.

*Id.* at 270 (quoting SARRAUTE & TAGER, *supra* note 27, at 63).

<sup>33</sup> Article 7 provided that: "The [administrateur provisoire] must administrate as would a head-of-family [en bon père de famille]. He is accountable before judicial tribunals, as a salaried agent, conforming to the rules of the common law." *Id.* at 254 (quoting SARRAUTE & TAGER, *supra* note 27, at 63).

<sup>34</sup> *See id.* at 281-82.

<sup>35</sup> *See id.* at 283.

<sup>36</sup> *See id.* at 285-86.

<sup>37</sup> *See id.* at 281.

By the end of the war, aryанизation seems not to have diminished one whit. The changing fortunes in the war generally did not stop the process of Vichy anti-Semitic legalistic reasoning, and judges in Vichy were determining racial status and property matters as allied bombs were falling on their courthouses. Despite the obvious approach of the liberating armies, there was an internal logic that played itself out. Sales of Jewish property continued; a percentage of the proceeds from these sales went to the Aryan "trustee" as a commission, and ten percent went directly into the coffers of the anti-Semitic agency, the CGQJ, for its own upkeep. The rest wound up in state coffers.

All of these figures bear on the question of postwar restitution. How to retrieve, if at all possible, the sold-off wealth? How to account for the various commissions, the various steps, the chunks that were taken out by the administrative structure of aryанизation? How to trace the assets through?

The report released in France in December 1997 by the Mattéoli Commission—an excellent group of scholars and historians that are examining questions of looting for the first time—indicates that the global number of enterprises aryанизized during the war was 62,460.<sup>38</sup> Some of the property in the most tragic cases that we can think of were literally stripped and taken from individuals who were awaiting deportation in the Drancy prison camp. In many such cases, what happened to that property, both money and personalty, is still unknown. We have cases reported during the war of those individuals, spouses, or families desperately trying to retrieve what was often a pittance or a family heirloom. The final remnants of deportees, this property, too was definitively denied to the Jewish survivors.

The Mattéoli Commission also reports that far less is known about restoring looted assets than about the looting itself. While there was some immediate postwar legislation seeking to restore some categories of Jewish wealth to their rightful owners, most wealth has not been accounted for. Eighty-five percent of *known* aryанизations are still cloaked in mystery as to whether there was any restitution. According to the Commission, only 166 of more than 7000 *known* blocked bank accounts, which covers the 1,000,000,000 franc "fine" and the sales in gross of Jewish securities, have been reimbursed, mostly in the immediate postwar

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<sup>38</sup> MISSION D'ÉTUDE SUR LA SPOLIATION DES JUIFS DE FRANCE, PREMIER MINISTRE, RAPPORT D'ÉTAPE: AVRIL-DÉCEMBRE (1997). A second Mattéoli report will be issued in early 1999 and will appear too late for assimilation into these remarks.

years. This may be why, fifty years later, a newly awakened community utilized all means to seek just restitution from a still grudging group of institutional forces.

If I have been right in my readings, then Shakespeare's fictional world prefigures the factual horrors of the Holocaust in France, and a long process dotted with tragedy has reversed the centuries' old myth of Jewish greed. Beyond perhaps even this reversal, we must grapple with the terrible irony that codes of law promulgated by mainstream Europeans cruelly inflicted legalistic horror on the lives and property of peaceful innocents, whose only crime appears to have been that they truly believed in law.