

**THE ENFORCERS OF JUDICIAL TERROR:
FOUQUIER-TINVILLE, VYSHINSKY, FREISLER**
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Abstract

A review of some of the main legal terrorists in modern Western history, using the law and legal proceedings to establish and maintain political control. Through the examples of Fouquier-Tinville, Vyshinsky, and Freisler, an analysis is carried out of how the formality of law may add weight to repression, and how excellent jurists may lose sight of purpose of the law, and of the underlying, fundamental sense of justice, when involved with power, thus becoming prey of their own inner ghosts, and/or of political power making recourse to them. Introspection, cultivation of humanity, and humility keep being essential virtues of jurists involved in the creation and enforcement of the law.

Indice Contributo

THE ENFORCERS OF JUDICIAL TERROR:.....	301
FOUQUIER-TINVILLE, VYSHINSKY, FREISLER.....	301
Abstract.....	301
Keywords.....	303
Legal History - Judicial terror - Law, Politicsa, and justice.....	303
I. Introduction	303
A. Judicial Terror	304
B. Enforcers as tools and then architects.....	305

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C. Three epochs, three destinies, one common path	305
D. A universal phenomenon : Afghanistan, Iraq, Iran, ISIS	305
II. Inauspicious beginnings	307
A. Fouquier-Tinville: bankrupt member of the nobility of robe	307
B. Vyshinsky: rebellious child of the bourgeoisie	308
C. Freisler: son of a bourgeois family	309
III. The earthquake and the realignment.....	310
A. Fouquier-Tinville: surviving the death fight between the Girondins and the Montagnards: 1789-1794	310
B. Vyshinsky: surviving the death fight between the Mencheviks and the Bolcheviks: 1917-1935.....	310
C. Freisler: surviving the First World War and avenging the defeat: the rise of the Nazi party: 1917-1933	312
D. Know thyself: knowing one's strengths and weaknesses	313
a. Strengths	313
b. Weaknesses	314
c. Ambivalence: the exploitation of strengths and weaknesses by the Patron.....	314
IV. Instruments of judicial terror	315
A. The contexts of Judicial Terror	315
a. France: 1792-1794	315
b. Russia: 1917-1939	316
c. Germany: 1933-1945.....	322
B. The tools of Judicial Terror.....	324
a. Terrorist law	324
b. Terrorist institutions	351
c. Terrorist judiciary	353
d. Terrorist proceedings.....	357
C. The techniques of Judicial Terror	366
a. Techniques implying an appearance of legality:	366
b. Techniques outside of the Law:	366
c. Theatricality.....	367
D. The victims: an ever-enlarging ring	372

a. General principles: individual targeting, or the definition of categories of enemies	373
E. The justifications of Judicial Terror: Devil’s advocates as Devil's preachers.....	391
a. Legal writings of Fouquier-Tinville.....	391
b. Legal writings of Vychinsky.....	392
c. Legal writings of Freisler	393
V. The end.....	394
a. Judicial discredit.....	394
b. Cleansing	397
VI. Justice delayed, justice denied	402
A. The French ambivalence	402
B. The Soviet Judges and the revision of miscarriages of justice.....	403
C. The Nazi judges and the absence of revision of miscarriages of justice	404
VII. Conclusion	409
A complicit judiciary	410
a. Only a few known dissidents	410
b. The rest: authority and solidarity above all.....	413
B. The absence of responsibility.....	413
C. The rejection of responsibility	416
D. The need for self-introspection and humility	417

Keywords

Legal History - Judicial terror - Law, Politicsa, and justice

I. Introduction ¹

Clumsy despots are those who use bayonets: the art of tyranny is to do the same things with judges.
(Desmoulins) ²

There is no Terror without terrorists. The Law has its own Darth Vaders: the Enforcers who will eschew any form of ethics, or even legality, in order to carry on the orders of the Patron, or Ruler, whether he is The People, Stalin or Hitler.

They are Fouquier-Tinville, Vyshinsky and Freisler. Lawyers admitted to the Bar. Who pleaded for, or managed, the killing of thousands of innocents³ in parodies of proceedings. And eliminated the few, like Faina Niurina or Sophie Scholl, who tried to enforce the highest judicial or moral standards.

They could not have acted without legal accomplices: the judges who sat in their proceedings; the prosecutors who pleaded to send innocents to the Gulag or to death; and the lawyers who remained silent, acquiesced in the proceedings or even pleaded against their own clients.

From 1933 to 1945, only SIX French, German or Russian lawyers opposed publicly the Petainist, Nazi and Stalinist dictatorships.

And after the curtain fell on the regimes, usually following the natural or forced death of the Patron, very few of the monstrous prosecutors or judges were punished.

Fouquier-Tinville was judged and guillotined. But Freisler was killed in a bombing attack on Berlin, and Vyshinsky died from a heart attack in New York a year after Stalin's demise.

For the rest, it was authority and solidarity above all. Only a handful of the Revolutionary, Soviet or Nazi jurists were punished, however lightly. In fact, most of them continued their legal careers under the new regimes, whether democratic or dictatorial, in France, Russia and Germany. And some of those jurists have voiced proudly their support for the dictatorships they had faithfully served, while their victims were denied justice, or even monetary compensation.

And the same situation has been going on in Iran, Iraq, Syria and Afghanistan, under the Khomeinist, Baathist, ISIS and Communist regimes which have been ravaging those countries.

One damning lesson must thus be retained by all of us Jurists: before judging others, let us practice, personally and professionally, self-introspection and humility.

A. Judicial Terror

The deadline for punishing the enemies of the fatherland should only be the time to recognize them; it is less a question of punishing them than of annihilating them ... It is not a question of giving a few examples, but of exterminating the implacable satellites of tyranny or of perishing with the Republic.⁴

They looked for partial jurors, they accepted or even justified the use of torture to extract "confessions"; they amalgamated guilty, innocent and even incompetent persons in batch trials; they manipulated trial

procedures and administrative processes; they used, and created, false evidence; and they begged their political masters for the verdicts well before the arrests, let alone before the trials had begun.

And public prosecutors played a fundamental role in the transformation of the Courts into instruments, not only of repression, but of terrorization of individuals or groups perceived as competitors, or simply as passive onlookers.

The judicial process became, first, a parody, and, then, a show intended to terrorize the real or faked enemies of the new order.

B. Enforcers as tools and then architects

As public prosecutors, Fouquier-Tinville, Vyshinsky and Freisler begin merely as enforcers. But they quickly make themselves indispensable to their Patrons, thanks to their deep knowledge and experience of the judicial system, their enormous work capacity, their mastery of language and eloquence, their political and individual commitment to the powers-in-existence, and their crushing personal ambitions.

In particular, Vyshinsky and Freisler write extensively. Not only pleadings and judgments, but also laws, regulations, treatises and courses justifying, orienting and rooting legally the dictatorships.

C. Three epochs, three destinies, one common path

Although the three men live and work in very different cultural contexts, that is France at the end of the XVIIIth century, Russia at the beginning of the XXth century and Germany at the beginning of the second third of the XXth century, their three different destinies, that is one beheaded, the second killed by a heart attack and the third killed by a bomb, have an astonishingly similar common path: that of judicial enforcers of pitiless and genocidal dictatorships. Born in bourgeoisie, trained as lawyers, political opponents of the old regime who join the victorious Patron in order to eliminate the old elites and the present opposition and establish a new legal order.

Perhaps the most astonishing revelation of this study is the resemblance in the methodologies applied by the dictatorial regimes in which Fouquier-Tinville, Vyshinsky and Freisler act as enforcers responsible in the legal and judicial realms through special courts while the State is simultaneously conducting genocidal processes in which the Devil's Advocates are also involved actively:

D. A universal phenomenon : Afghanistan, Iraq, Iran, ISIS

Dictatorships use eight basic tools in order to tame the Judiciary:

1. exceptional laws and jurisdictions;
2. competition between the judiciary and political police;
3. purging of the Courts;
4. court packing;
5. limitation of jurisdictions;
6. creation of special courts;
7. persuasion; and
8. conditioning of legal minds. ⁶

The common path taken by Fouquier-Tinville, Vyshinsky and Freisler is by no means unique. As I have explained in a former article about the reformation of the judicial systems in Afghanistan and Iraq⁷, similar patterns of abuse of law (“dévolement du droit”) by legal and judicial authorities have taken place under the Communist and Baathist regimes.

And the same patterns and methods of judicial repression and oppression are found in Iran⁸, under the dictatorship of the mollahs, since the Revolution of 1979. One of the most revealing abuses of judicial authority is the massacre of prisoners, especially members of the Toudeh communist party in Evin and Gohar Dasht prisons in 1988.

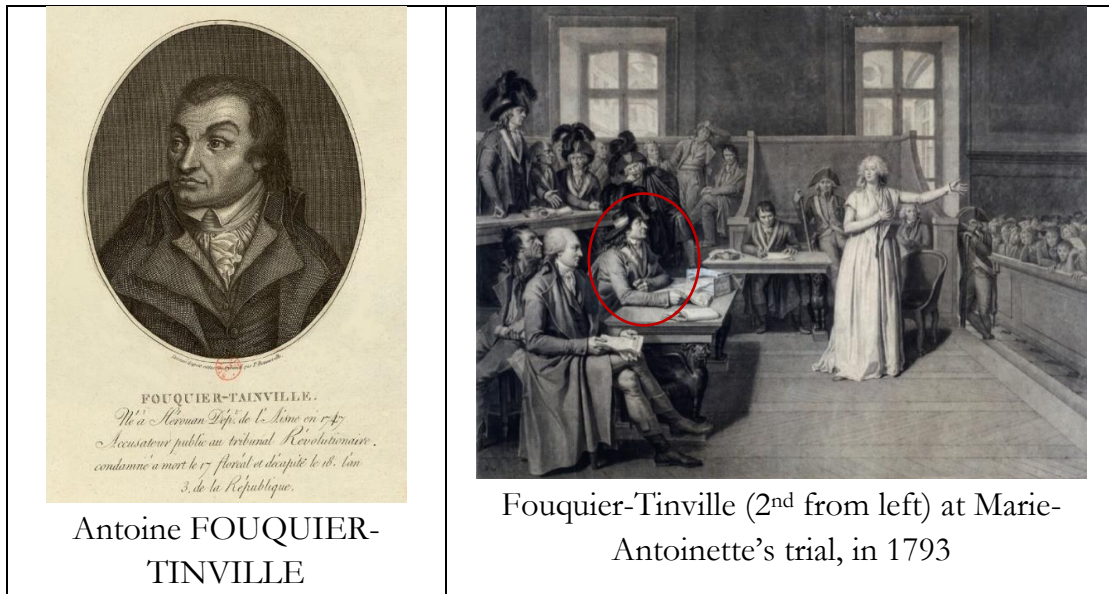
In ISIS administered territories, sharia courts have been used to repress the population and the religious critics, punish unmotivated soldiers, eliminate teenage girls “mocking the caliphate”, exterminate disabled children with Down Syndrome, and genocide⁹ the Yazidis – including ordering the sale of Yazidi women as sex slaves. ¹⁰ The key institution in charge of repression, both as intelligence collector and executioner, has been the ISIS Bureau of Justice & Grievances.

The oppression against the Yazidis has been so brutal and systematic that it has been characterized by the United Nations as a genocide which, according to ISIS’ own magazine *Dabiq*, has been authorized and supervised by religious judges.

In Iran as well as in ISIS controlled territories, religious judges are the Patrons¹¹, confusing purposely the judicial and executive powers.

II. Inauspicious beginnings

A. Fouquier-Tinville: bankrupt member of the nobility of robe



Antoine Fouquier-Tinville

Antoine Fouquier de Tinville is born in Hérouel on 10 June 1746, second of five children in a family of the lower nobility.¹² One of his cousins is Camille Desmoulins.¹³

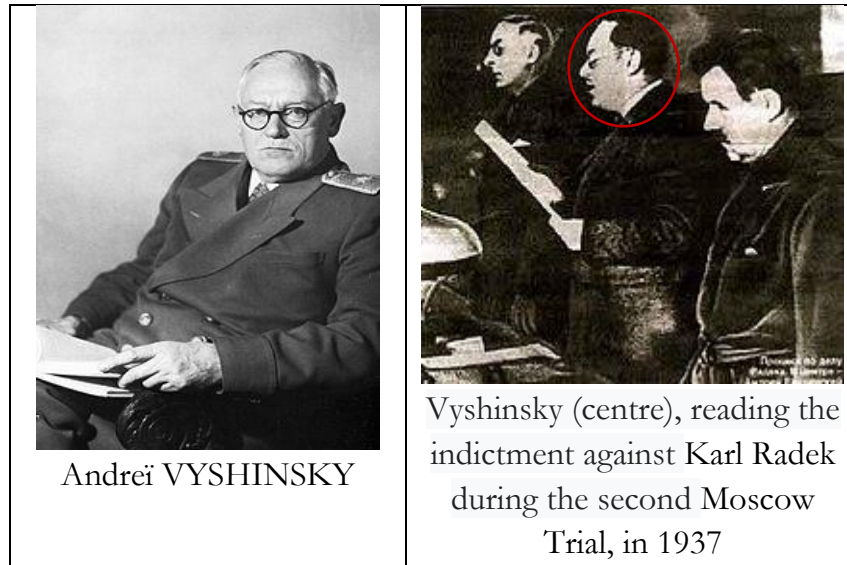
He starts articling in 1769 with two Crown prosecutors at the Châtelet, in Paris. Known to be hard working and very conscientious, he becomes First Clerk and, in 1774, he buys the office of Me Cornillier. On 21 January 1774, the Chamber of Prosecutors at the Châtelet gives him its admittatur after recognizing him “of good life and morals, catholic, apostolic and roman conversation and religion”.

In 1775, he marries a cousin, Dorothee Saugnier, who gives him five children but dies in 1782. A few months later, he marries Henriette Gérard d'Aucourt, who gives him two children.

Fouquier-Tinville occupies his charge at the Châtelet until 1783. His practice is prosperous, including many clients from the lower middle-classes and several religious congregations.

But, in September 1783, he has to abandon his practice and sell it to Me Bligny, for professional misconduct after falling into gaming debt. Thereafter, he engages into murky business and frequently changes his dwelling. He takes a clerical position under the Lieutenant-General of Police, which he occupies until 1789 when he sides with the revolutionaries by participating in the siege and fall of the Bastille fortress in Paris.

B. Vyshinsky: rebellious child of the bourgeoisie



Andrei Vyshinsky

Andrei Vyshinsky¹⁴ is born in Odessa on 28 November 1883, in a prosperous Polish Catholic family which emigrates to Baku. He marries Kara Mikhailova and they have in 1909 a daughter named Zinaida Andreyevna Vyshinskaya. As a law student at Kiev university in 1903, he joins the *Menshevik* faction of the *Social-Democratic Workers' Party of Russia* (POS DR)¹⁵ and participates in revolutionary activities for which he is expelled from the university. He then goes to university in Baku, where he takes part in disturbances organized by students and workers in 1905.

According to some sources, he would have been employed by the tsarist secret police, the *Okhrana*, as an agent provocateur in the POS DR. He also takes part in the assassination of the provocateurs Grigoriev, Movsumov and Plakida.¹⁶ For this, he is arrested in 1906 and sentenced in February 1908 by a special session of the Tiflis Court to one year of imprisonment in a fortress.

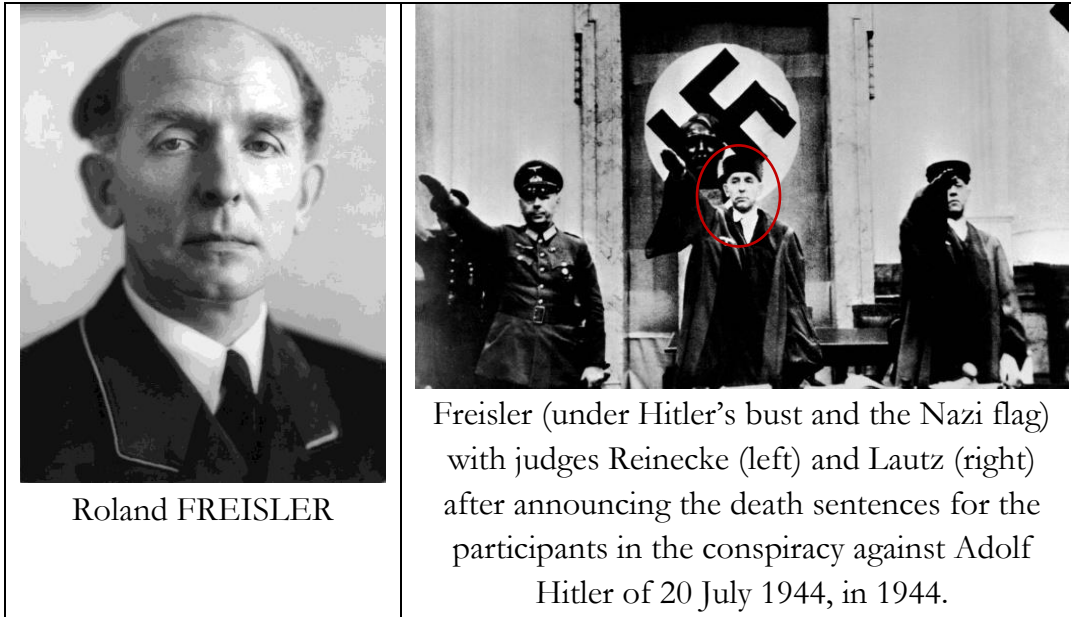
At the Bailovka Prison, he meets another revolutionary with whom he shares the food sent by his mother: “Koba”, or Iosif Vissarionovich Dzhugashvili, then “Stalin”, who might also have been an agent of the Okhrana from 1906 to 1910, when he is elected to the central committee of the Bolshevik party.¹⁷

In 1909, Vyshinsky is freed and enrolls again at the Faculty of Law of the University of Kiev. There, he is recognized as a talented and diligent student worthy of being kept in the Department of Criminal Legal Proceedings to study for a professorship.

But he is targeted again by the University authorities and obliged to go back to Baku, and then Moscow. There, he is spotted by Malyantovich, a counsel for the defence at numerous political trials who takes him as an assistant and helps him to become a lawyer before the Moscow courts.

In Moscow, Vyshinsky becomes a successful lawyer for a couple of years, while remaining an active Menshevik, giving many passionate speeches, and becoming involved in the municipal government.

C. Freisler: son of a bourgeois family



Roland Freisler

Roland Freisler¹⁸ is born on 30 October 1893 in Celle. His father is an engineer and a teacher. He passes his Abitur (German university entrance qualification) as the best in his class.

In 1914, after he has begun studying law, the war starts and he enlists as officer-cadet. In October 1915, he is wounded in action in Flanders. After his return, his regiment is sent to the Eastern front. In 1915, he is promoted to lieutenant and awarded the Iron Cross 2nd class, and then 1st class, for heroism in action on the front-line. He is taken as prisoner by Russian troops and interned in a war prisoners camp North of Moscow. There, he learns Russian and becomes interested in Communism. In 1917, after they have seized power, the Bolsheviks make Freisler one of the camp superintendents, responsible for organizing food supplies and start repatriating the German war prisoners. There are speculations that Freisler then delays his return to Germany until July 1920 because of his interest in Communism¹⁹. Later, Freisler does not deny having been a camp superintendent, but he denies any “Bolshevik past”.

Back in Germany, Freisler studies Law at the University of Jena, where in 1921 he presents his doctoral thesis which is rated ‘summa cum laude’ and published by the University. In 1922, he is awarded his Doctorate in Law, and in 1924 he opens a law office in Kassel. There, he has a reputation for being extremely competent and a skilled public speaker.

In 1924, Freisler wins a seat on the Kassel city council, representing the right-wing nationalist splinter party *Völkisch-Sozialer Block* (People's Social Block).

On 24 March 1928, he marries Marion Russegger.

III. The earthquake and the realignment

Fouquier-Tinville, Vyshinsky and Freisler share a life-shattering process which orients their present and future: in France, Russia and Germany, a social earthquake imposing a complete political and ideological realignment.

A. Fouquier-Tinville: surviving the death fight between the Girondins and the Montagnards: 1789-1794

In France, it is the fall of the absolute monarchy and the establishment of a constitutional monarchy in 1789, after the capture, on 14 July, of the symbol of the absolute power of the monarchy: the Bastille fortress-prison.

A few days later, Fouquier-Tinville's cousin Desmoulins takes the position of Secretary General of the Department of Justice.

In August 1792, the *Extraordinary Criminal Tribunal*, or *Extraordinary Tribunal*, is created to try as a final instance the authors of the "crimes" committed on 10 August and all participants to the "plot of the King's court". And on 25 August, Fouquier-Tinville is nominated by Desmoulins and elected as director of one of the accusatory juries of the Extraordinary Tribunal.

B. Vyshinsky: surviving the death fight between the Mencheviks and the Bolcheviks: 1917-1935

In Russia, the Revolution of February 1917 following disastrous war losses in the war against Germany provokes the abdication of the Tsar and the establishment of a provisional government.

In the Spring of 1917, Vyshinsky works with the legal bureau of the Provisional Government, where he undersigns a ministerial order to arrest Lenin.

In October 1917, the Bolsheviks establish the *Council of People's Commissars (Sovnarkom)*, of which Lenin declares himself Chairman, with the support of Stalin. And in December 1917, the *Sovnarkom* creates the *All-Russian Extraordinary Commission for Combating Counter-Revolution and Sabotage under the Council of People's Commissars of the RSFSR ("Cheka")*,

to liquidate to the root all of the counterrevolutionary and sabotage activities and all attempts to them in all of Russia, to hand over counter-revolutionaries and saboteurs to the revolutionary tribunals,

develop measures to combat them and relentlessly apply them in real world applications. The commission should only conduct a preliminary investigation.²⁰

Then, Vyshinsky resumes contacts with Stalin who has become an important Bolshevik leader and a close associate of Lenin. Later, he becomes a commissar of the first militia division of the Yakimanka district of Moscow and is elected chairman of its first division.

In 1920, he becomes member of the Communist Party and head of the requisition department of the Moscow Railways, where he confiscates food brought for sale in Moscow.

In 1922, he is appointed as President of the College of Lawyers of Moscow and takes part in the Party Congress, close to Lenin:



1922 Soviet Party Congress²¹

From 1923 to 1925, he acts as chairman of the Collegium of Lawyers for a few months and then is appointed as prosecutor in the judicial board of the Supreme Court of the RSFSR. When he is interviewed by Control Commission member Golkin, of the Supreme Court's Party cell, about the sincerity of his break with the *Mensheviks*, he sobs his way out and his Party card is given back to him. But thirteen years later, he has Golkin arrested by the NKVD.

From 1925 to 1928, he is Professor of Jurisprudence and rector of Moscow State University, which he clears of "unsuitable" students and professors".

In 1928 and 1930, he presides two *Special Judicial Presences* created to try fifty-three engineers and managers from the town of Shakhty for "wrecking" the Soviet economy (the *Shakhty Trial*), and then eleven economists and engineers for forming the anti-Soviet "Union of Engineers' Organisations" to wreck the Soviet industry and Transport (the *Industrial Party Trial*).

On 11 May 1931, he is appointed Procurator of the RSFSR, and ten days later he is also appointed as Deputy People's Commissar of Justice of the RSFSR.

His activities as a Procurator between 1931 and 1935 remain shrouded in secrecy. For example, on 28 December 1934, and 15 January 1935, he acts in secret trials before the Military Collegium. The first trial, of the “Nicolayev-Kolynov Group”, ends with the sentencing of 14 accused to death. The second trial remains secret.²²

In 1935, he is appointed by a secret Central Committee decree, to a Special Security Commission of Politburo members, including Stalin, Yezhov, Zhdanov, Malenkov and Shkiryatov, tasked to direct the liquidation of “enemies of the people”.

On 24 May 1935, he is appointed Procurator-General of the USSR. He immediately writes to Stalin:

Dear Iosif Vissarionovich,

Embarking upon my new appointment as Procurator-General of the USSR, I feel an insuperable desire to express to you my most profound gratitude, touching me to the very depths of my soul, to the Party, to the Government and to yourself, our leader and beloved teacher, for the trust you have bestowed upon me.

For fifteen years I have served our Communist Party and the cause of the working class, which has been working miracles under your great leadership.

Sparing neither my strength nor my life, I am ready to serve the great cause of Lenin-Stalin to the end of my days.

Please accept, deeply respected teacher and beloved leader, dear Iosif Vissarionovich, once again this expression of my sincere gratitude. ²³

C. Freisler: surviving the First World War and avenging the defeat: the rise of the Nazi party: 1917-1933

In December 1924, Hitler begins the reorganization of the *NSDAP* (*Nationalsozialistische Deutsche Arbeiterpartei*, or *National Socialist German Workers' Party*). In July 1925, Freisler joins the Nazi Party and starts defending Party members who need legal representation, drawing the attention of the Nazi hierarchy. In Northern Hesse, he is considered an invaluable member of the Party and a local celebrity, an outstanding speaker and lawyer. He is also renowned for his ‘business acumen’ in mixing political and private interests.

On 30 January 1933, Hitler is appointed chancellor by President Hindenburg. One month later, Freisler is appointed as the Department Head in the Prussian Ministry of Justice.²⁴

In 1934, Freisler is appointed as Secretary of State to the Reich Ministry of Justice, where he remains until his appointment on 20 August 1942 as president of the *People's Court* (*Volksgerichtshof*), which has been created in 1934 to hear cases of high treason and has its mandate extended later to other crimes against the security of the State.

In 1934 and 1936, Freisler makes public statements framing the roles of the People's Court, judges, political offences and sentencing in the Nazi judicial system:

There is no place in National Socialism for the recognition of political offenses. This would be tantamount to classifying the offender as a decent and respectable adversary and this is not possible under National Socialism.²⁵

For the enemy of the state and the community of the Volk there is only one course in prosecution and sentencing: unflinching severity and, if necessary, total annihilation.²⁶

He also plays an essential role, as representative of the Department of Justice, in the administrative conferences which organize *Aktion-T4*, the euthanasia of mentally and physically handicapped persons, and the *Shoah*, the deportation and extermination of Jews in Nazi-occupied Europe.

D. Know thyself: knowing one's strengths and weaknesses

Fouquier-Tinville, Vyshinsky and Freisler would not have achieved their high positions and their influence in their respective countries if they had not been endowed with very strong personal and professional qualities, and defects.

Their re-humanization is essential to describe and understand such strengths and weaknesses, which pushed them to the top while leaving them susceptible to coercion by the Patron and caused their ultimate demise.

a. Strengths

The three Devil's Advocates share the same strengths:

- technical knowledge: they have been successful law students, legal practitioners and writers;
- commitment and hard work: they are workaholic and very much involved in the legal profession;
- adaptability: they adapt to political change until they reach the top of the legal pyramid in the service of the Patron;
- anticipation: they foresee the possible political scenarios, and the losers and winner thereof;
- understanding of individuals and ideas: they understand the objectives and methods of the actors in presence;
- intelligence of situations in the new public order and in office dynamics: they take advantage of developing situations in order to survive or advance inside the system;
- intelligence of the strengths and weaknesses of other actors and of themselves: they see clearly the weak actors and rally the stronger ones;
- knowledge and cultivation of their own reputation: they publish and network extensively in order to become the top source and the top actor in their field;

- manifestations of humanity, or semblance thereof: they cultivate a public image of openness and generosity to the less fortunate, even when they betray simultaneously their rivals or their subordinates.

Fouquier-Tinville, Vyshinsky and Freisler are known and appreciated as good (Fouquier-Tinville), or even excellent (Vyshinsky and Freisler) lawyers.

b. Weaknesses

They also share similar weaknesses:

- lack of emotivity: their humanity is limited to their close family, as Desmoulins will learn after being sent to the guillotine by Fouquier-Tinville;
- objectification of future victims: they dehumanize their future victims, as “noblemen”, “kulaks” or “Jews”;
- absurd abstraction or ideological discourse: they do not hesitate to justify their pleadings and policies by absurdities such as sentencing children or elderly people, or ideological discourse such as condemning entire families of noble people;
- association with the old order: at the beginning of their careers, they have associated with the old regime;
- association with vanquished competitors: at the beginning of their careers, they have been associated with the losers in the party;
- cognitive challenges: they are used to be irresponsible, since until their Patron brings them down with him, they are unanswerable to anybody but him. And they also have some personal weaknesses: Fouquier-Tinville has been a gambler and is a drunk. Vyshinsky has been a double-agent for the Tsarist secret police and a murderer. Freisler is subject to abrupt mood swings and perceived as temperamental, unpredictable, arrogant and prompt to fanatical tirades on National Socialist ideology.

c. Ambivalence: the exploitation of strengths and weaknesses by the Patron

To keep away or deter all possible competitors, the Patron will detect ²⁷ and use against them and for his own purposes, the strengths and the weaknesses of his subordinates, going so far as fabricating evidence in order to test their fidelity.

The success and the fragility of Fouquier-Tinville, Vyshinsky and Freisler derive from the indisputable fact that each of them is BOTH very intelligent AND ideologically oriented. Their ideological commitment places them in the group which seizes control, and their intelligence allows them to survive close to the top. But there is a price to pay: survival is always precarious and based on infamous subjection to the top predator.

Thus, they are indispensable tools, but will never reach the top of the political ladder.

IV. Instruments of judicial terror

A. The contexts of Judicial Terror

a. France: 1792-1794

1792 is the year of all dangers: in April, France declares war to Austria and Prussia, but is quickly defeated on the northeastern and southeastern fronts. In August, the Royal Palace of Tuileries is seized by the Commune, the royal family is imprisoned, and an *Extraordinary Criminal Tribunal* is setup to repress the defenders of the Monarchy with the support of local Surveillance committees. The *National Convention* is elected and immediately abolishes the monarchy. On 25 August, Fouquier-Tinville is elected as director of one of the accusatory juries of the Extraordinary Criminal Tribunal.

In October, the *Convention* establishes the *Committee of General Safety and Public Surveillance* (or *Committee of General Safety*),²⁸ “tasked with ensuring the general security of the State”.

In November, the *Extraordinary Criminal Tribunal* is suppressed and Fouquier-Tinville becomes Substitute of the Public Prosecutor of the Criminal Court of the department of Seine, and First Substitute of the Public Prosecutor of the *Revolutionary Tribunal*.

After the discovery of his secret correspondence with several European kingdoms, King Louis XVI is tried, found guilty as enemy and usurper, and beheaded on 21 January 1793. The King’s execution causes a Coalition of European states as well as civil war against the nascent Republic. Insurrections in the Northwest (Normandie), West (Bretagne), Southwest (Vendée and Bordelais) and Southeast (Provence) are crushed. And at the end of the month, hundreds of priests, nuns, noble men and women are murdered in prisons, mainly in Paris.

On 12 March 1793, the *Convention* creates another *Extraordinary Criminal Tribunal*, the future *Revolutionary Tribunal*, which is suspended temporarily between 1 and 10 August 1794. On 13 March 1793, the *Convention* elects the members of this Tribunal. After the resignation of his predecessor, Fouquier-Tinville is elected by the *Convention* as Public Prosecutor of the *Revolutionary Tribunal*.

As Public Prosecutor, Fouquier-Tinville is tasked with greeting the judges and the members of the jury; choosing the court room; ordering the arrest, prosecution and judging of suspects on denunciation from authorities or citizens; drafting the accusations; pleading the accusations; ordering the carts transporting the condemned; ordering the executions; receiving the report of the executioner; reporting to the *Committee of Public Salvation* and taking orders from the Committee.

In April 1793, the *Convention* creates the *Committee of Public Salvation* and then the *Committee of General Safety* ²⁹, tasked with the presentation of accused before the *Revolutionary Tribunal*.

Girondins and *Montagnards* control alternatively the majority in the Committee until 17 September 1793, when the *Convention* adopts the *Decree on Suspects*³⁰, which deems “suspects” those:

who, either by their conduct, their relationships, their words or their writings, have shown themselves to be supporters of tyranny or federalism and enemies of freedom, those who cannot justify, in the manner prescribed by the decree of 21 March, of their means of existence and the achievement of their civic duties; those who were refused certificates of civic mindedness, public officials suspended or dismissed from their functions by the National Convention or by its commissioners and not reinstated, those of the above nobles, together husbands, wives, fathers, mothers, sons or daughters, brothers or sisters, and emigrant agents, who did not constantly manifest their attachment to the Revolution, those who emigrated in the interval from 1 July 1789 to the publication of the 30 March - 8 March 1792 decree, although they have returned to France within the time limit prescribed by this decree or previously. (My translation) ³¹

The *Decree* orders the arrest of all avowed or suspected enemies of the Revolution: nobles, parents of emigrants, dismissed officials, officers suspected of treachery and monopolists, and it entrusts the arrests to local *Committees of Surveillance* instead of legal authorities. In October 1793, the Commune of Paris describes the characteristics of suspects as: “Those who having done nothing against liberty, have done nothing for it”. ³² Marie-Antoinette, widow Capet and former queen of France, is tried on 14-16 October 1793 and executed immediately.

In March 1794, the partisans of Hébert in the *Convention* are arrested. They are tried from 21-23 March and executed immediately. And on 30 March 1794, the *Committee of Public Salvation* decrees the arrest of Danton, who is tried from 2-5 April and executed immediately.

In July 1794 (9 Thermidor, an II), the opposition to Robespierre in the *Convention* and the *Committee of Public Salvation* counters an anticipated coup by Robespierre, by outlawing him and his supporters with the *Jacobins* and the *Commune*. Fouquier-Tinville remains faithful to the *Convention*. The next day, the outlaws are brutally arrested by the National Guard and Fouquier-Tinville is called to recognize officially the identities of Robespierre, Saint-Just and Couthon before they are sent, without trial, to the guillotine.

b. Russia: 1917-1939

The revolution

In March 1917, Russian workers go on strike and take the streets in Saint-Petersburg to protest against food shortages and the continuation of the war. Tsar Nicholas II abdicates and a provisional government is formed.

In July, spontaneous armed demonstrations of workers and soldiers begin in Saint-Petersburg. Kerenski takes power, crushes the demonstrations, orders the arrest of Lenin and Bolshevik leaders.

In November, the *Bolsheviks* take control of Saint-Petersburg and seize the seat of the provisional government. They pass a number of decrees withdrawing Russia from the war (*Decree on Peace*); abolishing private property and redistributing land amongst the peasantry (*Decree on land*); abolishing the bourgeois press (*Decree on the press*); and imposing labour standards on working day, minimum wages and factories management (*Workers Decrees*). They also abolish the legal system, including property, contracts and business law. Stalin, who has been a member of the first *Bolshevik Central Committee* and editor of the party newspaper “*Pravda*” since 1912, becomes People’s Commissar for Nationalities in the Central Committee. At the end of the month, the *Constituent Assembly* is elected, with the *Socialist Revolutionaries* taking the largest number of seats and the *Bolsheviks* winning less than a quarter of the vote.

In December 1917, the *Bolsheviks* adopt a *Decree on Courts*, followed by another on 15 February 1918.

In January 1918, the *Constituent Assembly* meets but is dissolved by the *Bolsheviks*, and the Red Army of workers and peasant is constituted by a decree of the *Sovnarkom* (*Council of People’s Commissars*).

An armistice is signed with Germany and Austria, followed by the peace *Treaty of Brest-Litovsk* on 3 March 1918. Russia loses one-third of its population, one-third of its railway network, half its industry, three-quarters of its supplies of iron ore, nine-tenths of its coal resources, much of its food supplies. It also loses its western provinces (today’s Baltic states), whose recuperation becomes an essential objective for Stalin, through the negotiation of the *Molotov-Ribbentrop Agreement* and then the invasion of Poland and the Baltic states, in 1939.

In February 1918, new district courts are established.

In March, the *Bolsheviks* adopt the name of *Russian Communist Party* and move the capital from Saint-Petersburg (renamed later Petrograd) to Moscow.

From the mid-1918, anti-Bolshevik militias and military units are formed in piecemeal fashion, without planning nor coordination, often spontaneously in response to local conditions, events or *Bolshevik* actions. They are characterized as “the Whites” and composed not only of monarchists but also of republicans, liberals, democrats and non-Bolshevik socialists which fight alone or together. The last White armies are defeated in Crimea in 1920, and in Siberia in 1922.³³

In July 1918, the first constitution of the *Russian Socialist Federated Soviet Republic* is adopted. It gives equal rights to men and women. The Tsar and his family are massacred by the *Bolsheviks*.

In March 1919, the *Third International*, or *Komintern*, is created in Moscow in order to spread revolution all over the world. The rouble has lost 96% of its pre-war value, industrial production has fallen to 10% of its 1913 level and the population of Petrograd has fallen to 600,000, from 2.5 million in 1917.

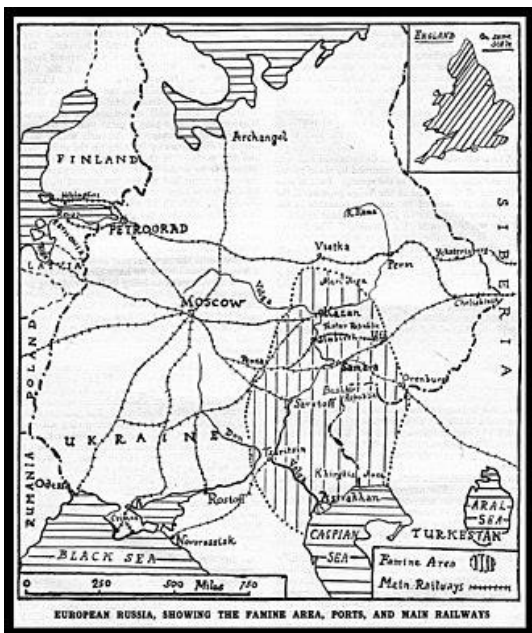
In March 1921, after the Kronstadt mutiny against the *Bolshevik* government, Lenin puts an end to “War Communism” and introduces the “New Economic Policy” (NEP).³⁴ The NEP permits the creation of a private sector and a currency in order to allow the peasantry, the vast majority of the population, to sell food surpluses so as to generate cash for the industrialization programs. Small businesses and light industry thrive and, by 1928, agricultural and industrial production are back to the 1913 level. The Communist establishment is profoundly divided by the NEP. For Lenin and his main supporter Bhukarin, “we are taking one step backward, to take two steps forward later”. But Trotsky and his supporters believe that socialism must impose state control of the entire economy.

In April 1922, Stalin is appointed General Secretary of the Communist Party. In June, the *Criminal Code* of the RSFR is adopted.³⁵ Its article 58, on *State crimes*, is rewritten and considerably expanded on 15 February 1927.³⁶ On 30 December, the Soviet Union is created.

The Red and the White Terrors

From December 1917 to February 1922, the *Bolsheviks* and the White Army wage a campaign of Terror against each other, but also peasants and industrial workers. The *Bolsheviks* have modelled their campaign on the French Terror and they implement it through their secret police, the *Cheka*. Estimates of the number of victims vary widely, between 100,000 and 200,000 victims.³⁷

In 1921, the Russian famine in the Volga and Ural rivers region, kills 5 millions, obliging many to resort to cannibalism. One of the direct consequences of the dire economic situation is the Kronstadt mutiny of March 1921, suppressed bloodily by Lenin.



1921 famine ³⁸

Between 1921 and 1923, Stalin takes advantage of Lenin’s aggravating health problems to consolidate his position in the Party. At the end of 1922, both men are in frequent disagreements, Lenin preferring Trotsky

to Stalin as his successor, even though they agree about the repression of the leaders of the *Socialist Revolutionary Party* ³⁹; or the eradication of the *Menshevik* faction.⁴⁰ After Lenin's death, on 21 January 1924, the competition begins for his succession, between Stalin, Trotsky, Zinoviev, Kamenev, Bukharin and Tomsy. Stalin moves against Kamenev and Zinoviev by removing their supporters from key positions. He also starts to build a police state whose secret police uses tanks and armored cars to stop riots, monitors telephone lines, reads mail, and plants informers everywhere.

The elimination of political competitors

In 1925, Stalin associates with Bukharin to eliminate their competitors. First, Trotsky is removed from his post in the war commissariat, expelled from the *Politburo*, deported to Alma-Ata in 1928, expelled from the Soviet Union in 1929 and murdered in Mexico in 1940 by an agent of the NKVD.

Then, Kamenev and Zinoviev join with Trotsky's supporters to form the United Opposition against Stalin, but Zinoviev and Kamenev are excluded from the Party and obliged to recognize publicly their mistakes. They are readmitted in the Communist Party as mid-level bureaucrats only.

Finally, Stalin turns against his former ally Bukharin, who is expelled from the *Politburo* and obliged to sign a declaration of submission to Stalin, whom he had characterized in 1928 as a “Genghis Khan” who “is not afraid to cut throats” and “is leading the country to famine and ruin”. ⁴¹

Succeeding agricultural and economic crisis between 1928 and 1933 bring Stalin to play on both sides.

In 1928, he abandons the NEP and adopts the first Five Years Plan, reinstates collectivization to “liquidate kulaks as a class”, creating massive internal migrations⁴². But in 1932, he has to backoff. On the one hand, he introduces *kolkhoz* markets where peasants can trade their surplus produce. On the other hand, in August 1932 the “spikelet decree” is taken, characterizing the theft of a handful of grain as a capital offense.

The second five-year plan reduces production quotas and emphasizes the improvement of living conditions, such as expansion of housing space and production of consumer goods.

But the collectivization of farms does not work because of poor planning. Once again, food production is disrupted and mass famines occur in Kazakhstan, Ukraine and the Caucasus from 1931 to 1933, causing between 3.3 and 7.5 million victims. The NKVD increases the use of prisoner labor, and Stalin blames the famine on hostile elements and wreckers within the peasantry.⁴³ The existence of the famines is denied to foreign observers.

In October 1933, Stalin initiates confidential communications with Hitler, whom he admires for his manoeuvres to remove his rivals in the Nazi Party.

Hesitations in criminal law policy

In April 1927, the *OGPU* is given the right to examine cases “extra-judicially, including the application of the death penalty”, for actions committed “both with and without malicious intent”.

In 1933, Stalin has released from prison many individuals convicted of minor offenses and orders the security services not to enact further mass arrests and deportations. And the Procuracy of the USSR is established with the aim of strengthening “socialist legality”.⁴⁴

In September 1934, Stalin has false imprisonments investigated, but also calls for the execution of workers at the Stalin Metallurgical Factory who were accused of being Japanese spies.

After Kirov’s murder in December 1934, Stalin becomes more concerned by the threat of assassination, increases his personal security and rarely goes out in public. He increases police repression and prioritizes security, issuing a decree establishing the *NKVD* “*troikas*” which are empowered to sentence individuals to imprisonment, or later death, outside the criminal justice process and system.

In 1935, Stalin orders the *NKVD* to expel suspected counter-revolutionaries from urban areas.

In 1936, as Yezhov becomes head of the *NKVD*, a new Soviet constitution is adopted.

Then, comes the Great Terror of 1937-1938.

The social purges: the Great Terror of 1937-1938 ⁴⁵

The Great Terror of 1937-38 is intended by Stalin as a form of social engineering enforced by the State’s

- justice apparatus: the courts;
- security apparatus: the *dvoikas*, *troikas* and *Special Board* tribunals of the *NKVD* secret police; and
- political jurisdictions: the *Special Judicial Presence*,

with three objectives:

1. to substitute a social class, the technicians raised and trained under Communism, to another: the technicians raised and trained under the monarchy;
2. to eliminate the “useless” class: the well-off peasantry (*kulaks*), the “people of the past” (*byvchie*), and the “socially harmful elements”;
3. to eliminate ethnic minorities in order to purge Russia ethnically.

Conceptualization of the Great Terror ⁴⁶

FORMS OF REPRESSION	NAME	OFFICIAL TARGETS	CONTENT	PROCEDURES
- "mass operations" - more than 90% of all victims)	<i>Kulak line</i>	"former- <i>kulaks</i> "	rich peasants	- rigorously secretive

<ul style="list-style-type: none"> - targeting categories of people: "contingents of elements" - "mass covert operations" are striving to "definitively" eradicate "elements" deemed "foreign" or "harmful" in a project of homogenization and "purification" of socialist society 		<i>byvchie</i> "people of the past"	elites of the Old Regime, members of the clergy, former members of non-Bolshevik political parties	<ul style="list-style-type: none"> - bureaucratically planned - incorporate police targeting by categories constructed of "objective enemies" (social or ethnic); it's a "professional matter"
		"socially harmful elements"	social, delinquent and criminals grouped under the generic term	
	<i>National line</i>	<ul style="list-style-type: none"> - Polish - German - Latvian - Finnish - Romanian - Japanese operations 	Soviet citizens of this origin	
			relationship: <ul style="list-style-type: none"> - professional - family - simply geographical 	
<ul style="list-style-type: none"> - purges of some of the elites, including <ul style="list-style-type: none"> - political, - intellectual, - industrial (up to 10% of victims) - intending to replace one elite with another 				public or semi-public meetings (party meetings, at various levels) that call for the participation of the public or activists, or even denunciations
		according to political expediency	from 1928: <ul style="list-style-type: none"> - trial of the Chakhty mining engineers, - Trial of the Union for the Liberation of Ukraine - trial of the so-called "industrial party." 	hundreds of "exemplary" trials, with a pedagogical function, are staged in 1937-1938

Conceptualization of the Great Terror

The epitome of this genocide is the adoption by the *Politburo* of the *NKVD Operational orders*, targeting political enemies and their families (“mass operations”), or specific ethnic groups (“national operations”), which we will see later.

Vyshinsky plays an important role in the enforcement of the Terror. For example, as Procurator-General of the USSR:

- he gives legal approval to the *NKVD* operations;
- he supports the establishment of secret *NKVD* extrajudicial organs, the “*dvoïkas*” and “*troïkas*”;
- he orders procurators to use the *troïki*, instead of the courts "when the evidence of guilt will not allow its use at trial", that is when it features denunciations or false testimony from provocateurs;
- he orders that courts should characterize negative opinions on Soviet and Party leaders under par. 58-8 (“Terrorist acts against representatives of Soviet power or of workers and peasants organisations”) rather than par. 58-10 (“Anti-Soviet and counter-revolutionary propaganda and agitation”);
- he supports the amendment of the *Code of procedure* to ban appeals of the sentences under articles 58-7 (“wrecking”) and 58-9 (“Damage of transport, communication, water supply, warehouses and other buildings or state and communal property with counter-revolutionary purpose”); and impose on convicted accused death penalty to be executed within one day after the court sentence.

c. Germany: 1933-1945

A deeply wounded country

The *Treaty of Versailles* which concludes World War I in 1919, leaves Germany profoundly wounded politically, geographically, psychologically and economically.

Politically, the situation is extremely unstable: the Weimar Republic proclaimed on 9 November 1918, has great difficulty to impose itself on the extreme left to the communists, and on the extreme right to the former monarchists and the military establishment.⁴⁷ Geographically, Germany has lost important territories in the North (to Denmark), East (to Poland), and West (to France, Belgium and the League of Nations). Psychologically, over 2 million German soldiers have been killed, a military and demographic catastrophe. Economically, the country is devastated by the priority attributed to armaments during the war and the transfer to France of the Rhine valley.

On 9 November 1923, Hitler and the Nazi militia, the *Sturmabteilung* (or *SA*), fail to overthrow the government of Bavaria during the “Brewery Putsch” in Munich. Hitler is found guilty and sentenced on to 5 years of imprisonment ⁴⁸, of which he serves only 9 months which he uses to dictate his programme for Germany: *Mein Kampf* (*My fight*). The foundational principles of the programme are simple:

- racial superiority and predestination of the “Aryan people”,
- vital space for the “Aryan people”,

- a “popular” State, and
- the “Principle of the Leader”, or *Führerprinzip*.⁴⁹

The Great Depression, in 1929, provides a political opportunity for Hitler. The moderate political parties are less and less able to control the extremist political factions, and the “German referendum” of 1929 against the *Treaty of Versailles* raises the popularity of Nazi ideology. In the elections of September 1930, the Nazi Party wins 18.3% of the votes and 107 seats, becoming the second-largest party in the legislative assembly. After the elections, the minority cabinet which replaces the grand coalition has to govern by emergency decrees issued by the President and general von Hindenburg, paving the way to authoritarian government. In 1932 and 1933, the political situation begins to shift in favour of Hitler, who prepares for the seizure of absolute power.

The establishment and consolidation of Nazi power

The next day after the fire of the *Reichstag*, the German Parliament, on 28 February 1933, president von Hindenburg signs the decree *For the protection of the people and the State*, awarding emergency powers to Hitler. Over the next year, the Nazis systematically abolish all political opposition and establish a dictatorship.

More than 400 legal restrictions are imposed on Jews and other groups during the first six years of the regime.⁵⁰ For example, on 15 September 1935, the *NSDAP* congress in Nuremberg adopts the racial laws : the *Law for the Protection of German Blood and German Honour*, and the *Reich Citizenship Law*, which come into force on 14 November when the term “Jew” is defined by Executory Ordinance .⁵¹ On 26 November, Romani people and Black people are included in the scope of the *Law for the Protection of German Blood and German Honour*, Romanis as "enemies of the race-based state" like Jews.⁵² And in November 1938, the *Kristallnacht* (“Broken Glass Night”) targets Jews everywhere in Germany.

From 1933 to 1939, Germany reindustrializes, remilitarizes and associates with the dictatorial governments of Japan, Hungary, Romania, Bulgaria, Yugoslavia, Italy and Spain. And in 1939, it associates with its ideological opponent Russia against the European democracies: the *Molotov-Ribbentrop Pact*.

On 1 September 1939, Hitler orders *Aktion-T4*, the genocide of mentally and physically handicapped Germans, and the invasion of Poland. Two days later, France and the United Kingdom declare war to Germany. The Second World War is on.

On 7 December 1941, he takes the *Nacht und Nebel Decree* (*Night and fog decree*), ordering the deportation without trace of all opponents to Nazi occupation.

And on 20 January 1942, the *Wannsee Conference* is held in Berlin, to plan the extermination of all European Jews.

B. The tools of Judicial Terror

Fouquier-Tinville, Vyshinsky and Freisler are enforcing laws, regulations, decrees and decisions adopted, passed or taken by their superior authorities, whether those are legislative, administrative or political. But, for two reasons, it is very difficult to establish a complete list of the authoritative instruments invoked as “legal” foundations of the legal, political or administrative operations of the Devil’s Advocates:

1. in all dictatorships there is no clear distinction, or boundary, between legal, administrative or political domains: the will of the Ruler is the law, whatever its method of formulation; and
2. many of those documents are still cloaked in official secrecy, have been obliterated from official memory or are deemed non-existent.

a. Terrorist law

The three dictatorships use the same means to consolidate power: terrorist law as an instrument of Judicial Terror:

- consolidation of power by the sovereignty of the Ruler, or Patron;
- the criminalization of difference or divergence;
- the annihilation of protections;
- the intimidation of the population: death for nothing;
- the annihilation of political and racial enemies.

You will notice the ever-enlarging scope and reach of terrorization.

i. Consolidation of power by the sovereignty of the Ruler, or Patron

One of the fundamental characteristics of the Devil’s advocate is his absolute devotion and unconditional commitment to his Patron, the Ruler. The Ruler is most often an individual, such as Stalin for Vyshinsky or Hitler for Freisler, but it can also be a concept:

- “The People”, for Fouquier-Tinville;
- “Comrade Stalin”, for Vyshinsky;
- “The Fuhrer as the Guardian of Justice”, for Freisler.

ii. The criminalization of difference or divergence

Revolutionaries, Bolsheviks and Nazis share a methodology concerning the social and then physical elimination of any real or perceived opposition.

First, entire categories of people are defined as “enemies” to be targeted (notice the common targets):

CATEGORIES OF ENEMIES	FRENCH REVOLUTION	BOLSHEVIK RUSSIA	NAZI GERMANY
Social groups	<ul style="list-style-type: none"> • noblemen • farmers • merchants • people without means of existence 	<ul style="list-style-type: none"> • noblemen • <i>kulaks</i> • merchants • managers • economic saboteurs • petty thieves 	<ul style="list-style-type: none"> • petty thieves
National groups	<ul style="list-style-type: none"> • « Vendéens » 	<ul style="list-style-type: none"> • Jews, Poles, Chinese, etc. 	<ul style="list-style-type: none"> • Jews, Gypsies
Political enemies	<ul style="list-style-type: none"> • partisans of Lafayette • supporters of foreign powers 	<ul style="list-style-type: none"> • Trotskyists-zinovievists • supporters of foreign powers 	<ul style="list-style-type: none"> • Communists • supporters of foreign powers

Categories of enemies

And second, a plethora of laws, regulations, decrees and orders are adopted, often secretly, to structure and organize the elimination of the "enemy".

LOIS FRANCAISES	SOVIET LAWS	NAZI LAWS
<p>1791 <i>Décret du 17 novembre 1791 relatif aux prêtres réfractaires</i> (Decree of 17 November 1791 relating to refractory priests)</p> <p>1792 <i>Décret du 17 août 1792 relatif à la formation d'un tribunal criminel pour juger les crimes commis dans la journée du 10 août 1792</i> (Decree of 17 August 1792 relating to the formation of a criminal court to</p>	<p>1918 <i>Leading Principles of the Criminal Law</i> <i>Decree on the Court</i></p> <p>1922 <i>Criminal Code</i></p> <p>1923 <i>Decree of the Presidium of the Central Executive Committee, Organizing the Unified State Political Administration of the Soviet Federation, of 15 November 1923</i></p>	<p>1933 <i>Law on Defence of the State Enabling Act</i> <i>Law on Dangerous Habitual Criminals</i> <i>Law for the Restoration of the Professional Civil Service</i> <i>Decree to Protect the Government of the National Socialist Revolution from Treacherous Attacks, of March 21, 1933</i></p>

<p><i>judge crimes committed on 10 August 1792)</i></p> <p>1793</p> <p><i>Loi du 10 mars 1793 portant création du tribunal criminel extraordinaire (Law of 10 March 1793 establishing the Extraordinary Criminal Court)</i></p> <p><i>Décret du 31 juillet 1793 relatif à une nouvelle organisation du tribunal extraordinaire et révolutionnaire (Decree of 31 July 1793 concerning a new organization of the Extraordinary and Revolutionary Tribunal)</i></p> <p><i>Loi des suspects du 17 septembre 1793 (Law of suspects of 17 September 1793)</i></p> <p>Caractères qui doivent distinguer les hommes suspects, et à qui on doit refuser le certificat de civisme (<i>Characteristics which should distinguish suspect men, and to whom the certificate of citizenship should be refused</i>)</p> <p>1794</p> <p><i>Décret du 19 floréal an II [8 mai 1794] (Decree of 19 Floreal Year II [8 May 1794])</i></p> <p><i>Décret du 22 prairial (10 juin 1794) relatif au tribunal révolutionnaire (Decree of 22 Prairial (June 10, 1794) concerning the Revolutionary Tribunal)</i></p> <p><i>Loi du 22 prairial an II (10 juin 1794) relative au Tribunal révolutionnaire et instaurant la Grande Terreur (Law of 22</i></p>	<p>1927</p> <p><i>Criminal Code</i></p> <p>1929</p> <p><i>Politburo instruction of January 1929</i></p> <p><i>Politburo resolution of May 1929, On the use of the labor of criminal convicts</i></p> <p><i>Decree of the CECe1 of the USSR from 21 November 1929, On the Outlawing of Government Officials, Citizens of the USSR Abroad, Who Have Fled to the Camp of Enemies of the Working Class and Peasantry, and Who Refuse to Return to the USSR</i></p> <p>1930</p> <p><i>Criminal Code, art. 57, 58, 69, 70, 72</i></p> <p><i>Politburo resolution of 14 March 1930, On the struggle against distortions of the party line in the collectivization movement</i></p> <p><i>Decree of 16 December 1930 of the plenum of the Supreme Court</i></p> <p><i>Edict on Revolutionary Legality</i></p> <p>1932</p> <p><i>Edict of 25 June 1932, On Revolutionary Legality</i></p> <p><i>Law of 7 August 1932</i></p> <p><i>Decree of the Central Executive Committee and the Council of People's Commissars of the USSR of 7 August 1932, About protection of the property of state enterprises, kolkhozes and cooperatives, and</i></p>	<p><i>Law for the Guarantee of Peace Based on Law, of 13 October 1933</i></p> <p><i>Law for the Prevention of Hereditarily Diseased Offspring, of 14 July 1933</i></p> <p><i>Decree of 30 November 1933</i></p> <p>1934</p> <p><i>Law against treacherous criticism of the government</i></p> <p><i>Law on Treason</i></p> <p>1935</p> <p>Nuremberg Laws:</p> <ul style="list-style-type: none"> - <i>Law for the Protection of German Blood and German Honor</i> - <i>Reich Citizenship Law</i> <p>1936</p> <p><i>Decree of 10 February 1936</i></p> <p>1937</p> <p>1938 (See US Holocaust Memorial Museum, Antisemitic Legislation 1933–1939)</p> <p><i>Law on the Alteration of Family and Personal Names, of 5 January 1938, forbidding Jews from changing their names</i></p> <p><i>Law on the Profession of Auctioneer, of 5 February 1938</i></p> <p><i>Gun Law of 18 March 1938, banning Jewish gun merchants</i></p> <p><i>Decree against the Camouflage of Jewish Firms, of 22 April 1938</i></p> <p><i>Order for the Disclosure of Jewish Assets, of 26 April 1938</i></p> <p><i>Reich Ministry of the Interior order of 11 July 1938, banning Jews from health spas</i></p> <p><i>Order of the Mayor of Berlin, of 17 August 1938, to public</i></p>
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<p><i>Prairial Year II</i> (June 10, 1794) concerning the Revolutionary Tribunal and establishing the Great Terror)</p>	<p><i>strengthening of the public (socialist) property</i> <i>Law of 21 August 1932</i> <i>Law of 16 September 1932, of Five ears of corn</i> 1933 Instruction to police of 22 January to prevent Ukrainian peasants from leaving their homes in search of food. <i>Law of 8 December 1933</i> 1934 Regulation of the Central Executive Committee of 10 July 1934 Regulation of the Central Executive Committee and the Council of People's Commissars U.S.S.R. of 5 November 1934 <i>Law of 1 December 1934</i> Circular 13/36/00728 of Akulov to all local procurators 1935 Supreme Court Directive of 7 March 1935 <i>Decree of 29 June 1935</i> - edict of 17 June 1935 - edict of 19 December 1935 1936 Regulation of the Council of People's Commissars U.S.S.R. and the Central Committee of the Communist Party of 7 March 1936 Article 131 of the <i>Soviet Constitution of 1936</i> 1938 <i>Law of December 1938</i></p>	<p>schools not to admit Jewish children until further notice <i>Wartime Special Penal Code</i>, of 17 August 1938 <i>Decree on the Confiscation of Jewish Property</i>, of 3 October 1938 Reich Ministry of the Interior order of 5 October 1938, invalidating all German passports held by Jews <i>Decree on the Exclusion of Jews from German Economic Life</i>, of 12 November 1938, closing all Jewish-owned businesses Reich Ministry of Education order, of 15 November 1938, expelling all Jewish children from public schools. Reich Ministry of the Interior order, of 28 November 1938, restricting the freedom of movement of Jews. Reich Ministry of the Interior order, of 29 November 1938, forbidding Jews to keep carrier pigeons Executive Order on the <i>Law on the Organization of National Work</i>, of 14 December 1938, cancelling all state contracts held with Jewish-owned firms. <i>Law on Midwives</i>, of 21 December 1938, banning all Jews from the profession 1939 <i>Decree concerning the Surrender of Precious Metals and Stones in Jewish Ownership</i>, of 21 February 1939, requiring Jews to turn in gold, silver,</p>
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	<p>Politburo resolution of 17 November 1938, <i>On Arrests, Procuracy Supervision and Conduct of Investigation</i></p> <p>1941</p> <p>GKO State Defense Committee directive of 17 November 1941</p> <p>1950</p> <p>Decree of the Presidium of the Supreme Soviet of the USSR, 12 January 1950, <i>On the Use of the Death Penalty</i></p>	<p>diamonds, and other valuables to the state without compensation</p> <p><i>Order of the President of the German Lottery</i>, of 1 August 1939, forbidding the sale of lottery tickets to Jews</p> <p>1941</p> <p>Decree of 30 March 1941, “<i>Barbarossa Decree</i>”</p> <p>Decree of 4 December 1941, <i>Concerning the Organisation and Criminal Jurisdiction against Poles and Jews in the Incorporated Eastern Territories</i></p> <p><i>Nacht und Nebel Decree</i>, of 7 December 1941</p> <p>1942</p> <p><i>Decree of 20 August 1942</i></p> <p>1944</p> <p>Decree of Minister of Justice Thierack of 13 December 1944</p> <p>1945</p> <p><i>Law of 15 February 1945</i></p>
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Laws against “enemies”

A more detailed table of the *Types of actors* is particularly revealing as to the legal methodology used in each country to define the categories of enemies:

TYPES OF ACTORS	USSR (RSFSR Penal Code)	GERMANY	FRANCE (<i>Decree on suspects</i> , my translation)
Counter-revolutionaries	58-1 : definition of "counterrevolutionary"		Are presumed suspects: (1) those who, either by their conduct, by their relations, or by their words or writings, have shown themselves to be supporters of tyranny or federalism, and enemies of freedom;
Ideological enemies	<p>Authors of counter-revolutionary activity</p> <p>58-2: bourgeois nationalists and separatists</p> <p>See also: <i>Law of 1 December 1934</i> and <i>NKVD Order 486 on repression of wives and children of enemies of the people</i></p>	<p><i>Reich Citizenship Law of 15 September 1935</i>: obligations of Reich citizens and subjects of the State</p> <p><i>Law for the Restoration of the Professional Civil Service 1933</i>: Jews and Communists purged from the public service</p>	<p>(1) those who, either by their conduct, by their relations, or by their words or writings, have shown themselves to be supporters of tyranny or federalism, and enemies of freedom;</p> <p>(5) those former members of the nobility, together husbands, wives, fathers, mothers, sons or daughters, brother or sisters, and agents of emigrants, who have not shown constantly their attachment to the Revolution;</p> <p>11. Those who signed counter-revolutionary petitions or frequented anticivic societies and clubs.</p>
Former internal enemies	58-13 : service to former (Tsarist) government		12. The partisans of Lafayette and the assassins who went to Champ-de-Mars.
“racial enemies”, such as Jews and Gypsies		<i>Law for the Protection of German Blood and German Honor of 15 September 1935</i> :	

		prohibiting sexual relations and marriages between Aryans and Jews, later extended to include "Gypsies, Negroes or their bastard offspring".	
"abnormal" people		<p><i>Law on Dangerous Habitual Criminals 1933</i></p> <p><i>Law for the Prevention of Hereditarily Diseased Offspring 1933</i></p> <p><i>Criminal Code 1935, Article 174, 175, 175a, 175b, prohibiting homosexuality</i></p> <p>See also euthanasia program <i>Aktion-T4</i> and the Wannsee Conference on the organization of the Holocaust.</p>	
Traitors	<p>58-1a: traitors to the motherland (including defectors)</p> <p>58-1b : military traitors</p> <p>58-1v family members of military traitors</p>	<p><i>Law on Defence of State (Reichstag Decree):</i> death penalty for arson, treason, and several other crimes</p> <p><i>Law of 29 March 1933 :</i> authors of crimes "committed in the period between January 31 and February 28."</p>	
Aiders and abettors	<p>58-3: abettors of the enemy</p> <p>58-11: members of a hostile group (aggravating factor)</p>		5. Those who, always having the words of freedom, Republic and country on their lips, frequent the former nobility, the counter-revolutionary priests, the aristocrats, the <i>Friends of the Constitution</i> , the

			<p>moderates and are interested by their fate.</p> <p>(3) those who have been refused citizenship certificates;</p> <p>6. Those who did not take any active part in everything that concerns the Revolution and who, to exculpate themselves, assert the payment of contributions, their patriotic gifts, their service in the National Guard, by replacement or otherwise, etc ...</p> <p>7. Those who received the republican constitution with indifference and reported false fears about its establishment and its duration.</p> <p>8. Those who, having done nothing against freedom, also did nothing for it.</p> <p>9. Those who do not attend their sections and who give as an excuse that they do not know how to talk, and their business prevents them from doing that.</p> <p>10. Those who speak with contempt of the constituted authorities, the signs of the law, the popular associations and the defenders of freedom.</p>
Accomplices of former internal enemy	58-4 : agents of the international bourgeoisie (eg		(3) those who have been refused certificates of civic mindedness;

	émigrés)		<p>(6) those who emigrated between 1 July 1789 and the publication of the decree of 30 March - 8 April 1792, even though they had returned to France before the deadline set by this decree, or previously.</p> <p>5. Those who, always having the words of freedom, Republic and country on their lips, frequent the former nobility, the counter-revolutionary priests, the aristocrats, the <i>Friends of the Constitution</i>, the moderates and are interested by their fate.</p>
Inciters and accomplices of foreign enemy state	58-5 : incitators of a foreign state to declare war on USSR		
Spies	58-6 : spies; including PSh (Suspicion of Espionage), NSh (Unproven Espionage), SVPSH (Contacts Leading to Suspicion of Espionage)		
Agitators and propagandists	58-10 : anti-Soviet agitators and propagandists		<p>1. Those who, in the assemblies of the people, stop its energy by shrewd speeches, boisterous cries and threats.</p> <p>2. Those who, more cautious, speak mysteriously of the misfortunes of the Republic, take pity on the plight of the people and are always ready to</p>

			<p>spread bad news with apparent pain.</p> <p>3. Those who have changed their behavior and language according to events; those who, silent about the crimes of royalists, of the federalists, criticize emphatically the slight faults of patriots and affect, to appear republicans, fake austerity and severity, and who give in as soon as the subject is a moderate or an aristocrat.</p> <p>11. Those who signed counter-revolutionary petitions or frequented anticivic societies and clubs.</p>
Subverters	58-8 : terrorists (may include TN, "Terrorist Intent," eg speaking rudely to an official)		
Authors of administrative sabotage and economic sabotage	<p>58-7: subversives</p> <p>58-8: terrorists (may include TN, "Terrorist Intent," eg speaking rudely to an official)</p> <p>58-9: saboteurs (wreckers)</p> <p>58-14: authors of economic sabotage: any failure to perform a task.</p> <p>See also NKVD Order No. 00447, on</p>	<p><i>Law on dangerous habitual 1933: thieves and other petty criminals</i></p> <p><i>Law of 1933 on the war on drugs (Rauschgiftbekämpfung)</i></p>	<p>(4) public officials suspended or removed from office by the <i>National Convention</i> or its commissioners, and not reinstated, including those who have been or must be removed under the decree of 14 August last;</p> <p>4. Those who feel sorry about the greedy farmers and merchants against whom the law is obliged to take measures.</p>

	“criminals and other anti-Soviet elements”		(2) those who will not be able to justify, in the manner prescribed by the decree of 21 March last, their means of existence and the execution of their civic duties; 4. Those who feel sorry about the greedy farmers and merchants against whom the law is obliged to take measures
Non-informers	58-1b : military traitors 58-12 : non-informers		

Types of actors

The official legal framework is completed by a secret one, through the mechanism of indirect reference to:

- Party directives, such as the joint decree No. 81 of Sovnarkom USSR and the Central Committee of CPSU *about Arrests, Prosecutor Supervision and Course of Investigation* of 17 November 1938, which refers to “spies”, “terrorists”, “diversionists”, “wreckers” and “enemies of the people”;
- political decisions, such as Hitler’s personal comments concerning plotters of July 1944; and
- the specific constitutions of the repressive institutions in charge, like the Military Collegium or the Special Collegium of the USSR NKVD (“OSO”), such as “spy”.

iii. The annihilation of legal protections

The role of the courts

The courts play an essential, although discrete, role in the enforcement of those mechanisms of elimination. For example, German lower courts are not behind but ahead in annulling tutorships, securities, attachments, debts, divorces, adoptions, leases, or employment contracts, on the motive that:

every law was to be understood as containing the "unwritten proviso" that "Jews should receive no advantages." They also noted that the legal position of Jews had by no means been fully and finally established yet: "The Nuremberg Laws were only a beginning. The process is not yet concluded."⁵³

The three Devil’s Advocates play very important roles in those activities.

Fouquier, by enforcing the *Decree on the Definition of Suspects* in the Revolutionary Tribunal.

Vyshinsky, by using his position as Procurator General of the USSR to enforce the *Criminal Code*. For example, the *Letter from the Procurator-General decreeing that "all hooliganism" having contra-revolutionary or chauvinistic*

motives is classified as a political crime, under par. 58-10 ("Anti-Soviet and counter-revolutionary propaganda or agitation"), or 59-7 ("Provoking national hatred") of the Soviet Criminal Code, of 7 July 1937.

Freisler, by participating in January 1942, as representative of the Minister of Justice, to the Wannsee conference organizing the Holocaust.

The three of them, by enforcing those laws and decrees as prosecutor or judge:

- Fouquier-Tinville, as Chief Prosecutor in the *Revolutionary Tribunal* in 1793 and 1794 ;
- Vyshinsky, as judge in the *Shakhty Trial* (1928) and the *Industrial Party Trial* (1930) and then as Prosecutor-General of the USSR in the *Moscow Trials* in 1936-38;
- Freisler, as president of the *Volksgerichtshof* from 1942 to 1945.

iv. The intimidation of the population: death for nothing

The purpose of those legal and judicial norms is very simple: the intimidation of the population by imposing social or physical elimination for nothing.

A few examples: joking, listening to radio, “wrecking”, “wilfully damaging official property by allegedly wounding the dog of a German policeman behind the ear”, or gleaning.

An example in the case of “wrecking”: a letter from Chief Prosecutor Vyshinsky to Stalin in January 1938:

I inform you that the Prosecutor's Office of the Leningrad region has completed its examination of the case concerning the trolleybus accident that occurred on December 26 in Leningrad. The investigation showed the existence, in the trolleybus park of the city of Leningrad, of a group of saboteurs composed of the director of the park, PI Iakovlev, the chief engineer AM Gousseff, engineers ED Ouimian, MV Reizmakh, the head of the FA Ivanov depot, the foreman KI Padin. This group aimed to cause accidents and ruin the city's public transport. The counter-revolutionary activity of this group of saboteurs resulted, during the year 1937, in 44 accidents for a fleet of trolleybuses of 50 units. These accidents resulted in 105 victims; in addition, 140 accidents without casualties were recorded. The accident that occurred on December 26 is also the result of the activity of this group. While the trolley bus was traveling on the Fontanka quay, the tire on the right front wheel burst. Driver Baikov jumped out of the vehicle, leaving it uncontrolled, as a result of which the trolleybus fell into the canal. 13 of the 50 passengers died.

I propose to take this case behind closed doors before the Military Court of the Leningrad region. Condemn all participants to the death penalty. Baikov to 10 years. Have a short article published in the press.

I ask for your instructions.

Vyshinskii

In red pencil, Stalin scribbles on the letter: "Qualify Baikov as 58-7". Under article 58-7 of the *Criminal Code*: "(u)ndermining of state industry, transport, monetary circulation or credit system, as well as of cooperative societies and organizations, with counter-revolutionary purpose ..." [death, confiscation of property and loss of citizenship].

v. The annihilation of political and racial enemies

In the 3 countries, both

- a form of State terrorism, aiming at a “rational instrumentalization of violence, its premeditated and calculated use including its intensity”, in order to create a governing system based on arbitrariness and fear imposed to the whole social body; and
- a system of terrorist overbidding operated by some actors to dominate their enemies in permanent power competitions.

In summary:

	Revolutionary France	Nazi régime	Bolshevik régime
Form of State terrorism	<ul style="list-style-type: none">• genocide of Vendée• drownings of Nantes• massacres of Lyon	<ul style="list-style-type: none">• Wannsee conference• Aktion T-4	<ul style="list-style-type: none">• NKVD Orders
System of terrorist overbidding	<ul style="list-style-type: none">• trials of the Girondins and of Danton	<ul style="list-style-type: none">• elimination of Rohm and the SA	<ul style="list-style-type: none">• Moscow trials

Now, the details.

1. French Laws

In 1791, the *Constituant Assembly* starts the spiral by outlawing emigrants.

1793 sees an avalanche of legal measures for the elimination of perceived enemies, such as the creation of the *Extraordinary Criminal Tribunal* in March, and the *Law of Suspects* in September. They are used to frame repressive campaigns such as the genocide in Vendée, and the political trials of Marie-Antoinette and the Girondists in October.

2. Soviet Laws

From its beginning, the Soviet regime uses legal, para-judicial and administrative procedures to eliminate its enemies:

- legal, such as the Decrees and resolutions of 1918 and 1934;

- para-judicial, such as the show trials in Moscow and elsewhere, the special procedures for NKVD and military officials, and the subdelegation of authority from the Military Collegium to a local tribunal or *troika*; and
- administrative, such as the NKVD Secret Orders for “mass operations” and “national operations”, which we will examine later.

The legal setting

As soon as 1917-18, the Soviets pass a number of Decrees and resolutions confiscating all power, such as the *Resolution Giving All Power to the Soviets and the Soviet Institutions* of 3 January 1918 and the decree *Socialist Homeland is in Danger!* of 21 February 1918.

In 1934, those laws are completed by the legal foundations of the Great Terror:

- the *Law of 8 June 1934* which punishes the “act of betrayal of the Fatherland” with death, deportation to Siberia, loss of Soviet citizenship or loss of civil rights; all adult members of the family are held responsible and can be sentenced to 2-5 years imprisonment or exile in Siberia, and
- the *Decree of 1 December 1934 on the procedure to be followed in dealing with terrorist acts against officials of the Soviet regime*,⁵⁴ after Kirov’s murder :

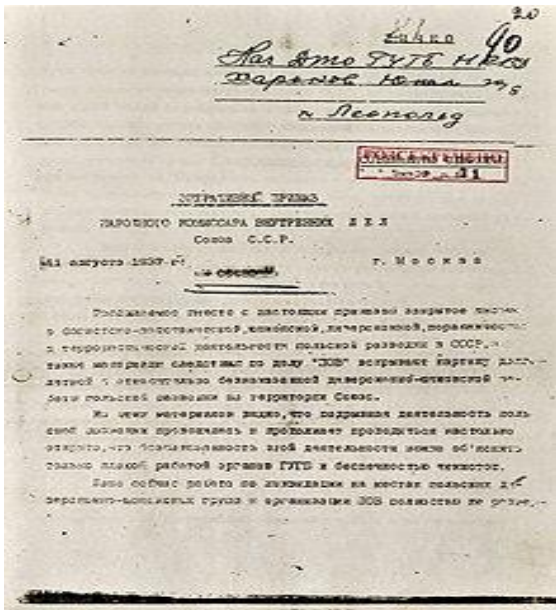
To amend the present Union Republic codes of criminal procedure with regard to investigation and trial of cases of terrorist organizations and terrorist acts against the functionaries of Soviet power:

- Investigation in these cases shall be concluded in not more than ten days.
- The indictment shall be handed to the accused 24 hours before the trial.
- The cases shall be tried without the parties present.
- There shall be no cassational review of the judgments or acceptance of petitions for clemency.
- The sentence of the supreme punishment shall be executed immediately upon rendering judgment.⁵⁵

The para-judicial and administrative settings

We have seen above, under **Conceptualization of the Great Terror**, a table summarizing the forms of repression used by Stalin in order to effect ”social engineering”.

One of the most important tools for the mass repression and elimination of any opposition are the Secret NKVD Orders.



NKVD Order No 00485 (*Polish Operation*)



Politburo's acquiescence (26 April 1938) to demand by Irkutsk NKVD to increase by 4000 the quota of persons to be shot

A summary of the most relevant of those NKVD Orders:

A summary of the most relevant of those NKVD Orders:

TYPES	TARGETS	ACTIONS AND RESULTS
Mass operations of NKVD 56	- <i>Ex-kulaks, criminals, and other anti-Soviet elements</i> ⁵⁷ NKVD Order No. 00447 ("About repression of former kulaks, criminals, and other anti-Soviet elements") (30 July 1937) ⁵⁸	- by August 15, 1937, 101,000 are arrested and 14,000 convicted - by the end of 1938, 387,000 Soviet citizens executed by NKVD
	- <i>Traitor of Motherland Family Members</i> ⁵⁹ NKVD Order No. 00486 (15 August 1937) ⁶⁰ NKVD Order № 00689 (17 October 1938) State Defense Committee resolution No 1926SS "On the Family Members of Traitors of the Motherland" (24 June 1942)	- criminal prosecution of wives and children (kin punishment) of all people arrested and convicted as "traitors of the Motherland" - women sent to Gulag, children to state orphanages - all cases considered by <i>the Special Council of the NKVD (OSO)</i> , empowered to punish without trial: banishment, exile,

		corrective labor camps up to five years, deportation
	- <i>Kharbin operation of the NKVD</i> ⁶¹ NKVD Order No. 00593 (NKVD Order about Harbinites) (20 September 1937) ⁶²	~30,992 killed - orders arrest (from 1 October to 25 December 1937) and prosecution of former personnel of the China Far East Railway (KVZhD), who had lived in Harbin and reemigrated into the Soviet Union after 1935
National operations of the NKVD	- <i>Polish Operation of the NKVD</i> ⁶³ NKVD Order № 00485 ("On the liquidation of the Polish diversionist and espionage groups and POW units") (9 August 1937) ⁶⁴	139,835 people sentenced; ~111,091 killed - adopted the simplified "album procedure" lists of Poles condemned by lower NKVD " <i>dvoikas</i> " collected into "albums" sent to midrange NKVD offices for stamp of approval by a <i>troika</i> (communist official, NKVD leader, and party procurator) - after the approval of the entire "album", executions carried out immediately - same procedure used later on in other mass operations of the NKVD
	- <i>German Operation of the NKVD</i> ⁶⁵ NKVD Order № 00439 ⁶⁶	55,005 persons sentenced ; ~41,898 killed - German citizens who worked at railways and defense enterprises qualified as "penetrated agents of the German General Staff and Gestapo", ready for diversion activity "during the war period"
	- <i>Greek Operation of the NKVD</i> ⁶⁷ NKVD Order № 00485 ("On the liquidation of the Polish diversionist and espionage groups and POW units") (9 August 1937) ⁶⁸	~20,000—50,000 dead - targeting "subversive activities of Polish intelligence" in the Soviet Union - later expanded to Latvians, Germans, Estonians, Finns, Greeks, Iranians and Chinese
	- <i>Latvian Operation of the NKVD</i> ⁶⁹	22,369 convictions; 16,573 shot; est. 73,000 dead

	<i>NKVD Order No. 49990</i> (30 November 1937)	
	- <i>Korean Operation of the NKVD</i> ⁷⁰ joint decree #1428-326cc of the USSR Sovnarkom and VKP(b) Central Committee of 21 August 1937, "About Deportation of the Korean Population from the Border Regions of the Far Eastern Krai", signed by Stalin and Molotov	~40,000 killed in 1937 and 1938 from starvation, exposure - almost the entire Soviet population of ethnic Koreans (171,781 persons) forcefully moved to unpopulated areas of the Kazakh and the Uzbek SSRs in October 1937 - deportation executed by NKVD <i>troikas</i> of several levels — <i>oblast troikas</i> , <i>raion troikas</i> , and "group" <i>troikas</i> (кустовая тройка) — under monitoring of deadlines.
	<i>Romanian Operation of the NKVD</i> ⁷¹	undocumented
	<i>Estonian Operation of the NKVD</i> ⁷²	undocumented
	<i>Finnish Operation of the NKVD</i> ⁷³	undocumented
END	joint decree No. 81 of Sovnarkom USSR and Central Committee of Communist Party of the Soviet Union <i>Decree about Arrests, Prosecutor Supervision and Course of Investigation</i> (17 November 1938) ⁷⁴	Cancels most NKVD orders of mass type BUT not all: see, e.g., <i>NKVD Order no. 00689</i> ⁷⁵ suspends implementation of death sentences

Summary of NKVD Secret Orders

The NKVD Orders establish regional quotas of targeted of victims to be shot ("1st category") or deported to the gulag ("2nd category"). For example, under Order No 00447, the Byelorussian SSR is estimated to have 12,000 anti-Soviet social elements divided into 2,000 Category I and 10,000 Category II elements.

NKVD officers in the field are attributed quotas under the Orders. Officers who do not observe the quotas are punished, which starts a frantic search for victims to fill the quotas and demands for supplementary quotas of victims in order to demonstrate political commitment and administrative efficiency.

Quotas are filled in two ways: lists of isolated individuals and grouped cases, who are forced into confessing. Two examples:

- in Gorkii, to find a sufficient number of German spies from the categories indicated by NKVD Order № 00439, the regional head of the NKVD simply reverses the category from "ex-German prisoners of war who remained in the USSR" to "ex-Russian prisoners of the imperialist war who were in captivity in Germany", which enables his agents to arrest 440 Russian war veterans; and

- to fill in the German or Polish “lines”, it is common to search for German or Polish names in companies deemed “strategic” for espionage work, such as railway or defence production.

The files (“Protocols”) are a few lines and sent in “binders” to *troïkas* and *dvoïkas* special tribunals⁷⁶, or to the Politburo, to be decided in abstentia. Two examples of *troïka* verdicts:

Case No. 3, File No. 11027, presented by the NKVD Department of the Doubovo-Ummetsky district, and concerning the citizen Riabets Mikhail Ivanovich, born in 1907 in Malaïa Tokmashka, Ukrainian SSR, Ukrainian, kulak expelled from the collective farm.

Accused of being hostile to Soviet power. This hostility manifested itself in systematic anti-Soviet propaganda, undermining the collective farm before being expelled from it. Willfully broke a 12 horsepower engine, tried to convince collective farm workers to throw metal forks into the combine harvester system, all these facts falling under articles 58-7 and 58-10, al. 1 of the Penal Code of the RSFSR.

Riabets has been, since 31 July 1937, imprisoned in Kriajsk prison.

Verdict of the *troïka*: SHOOT Riabets Mikhail Ivanovich.

Case No. 4, File No. 11026, presented by the NKVD Department of the Doubovo-Ummetsky district, and concerning the citizen Rodin, Vassilii Vassilievitch, born in 1900 in Mikhailovka, Doubovo-Ummetskyi district, Kuybyshev region, Mordve, citizen of the RSFSR, kulak. Until his arrest, worked as a tractor driver in Mikhailovka's Success collective farm.

Accused of being hostile to Soviet power. In doing so, he carried out anti-Soviet propaganda and acts of sabotage in his workplace: he allowed a kolkhoz horse to die under the pretext that it was too old, systematically neglected the care of horses, slowed down the operation of tractors. on the pretext of jerks in the fuel supply, all these facts falling within the scope of articles 58-7 and 58-10, al. 1 of the Penal Code of the RSFSR.

Rodin has been, since 31 July 1937, imprisoned in Kriajsk prison.

Verdict of the *troïka*: Lock up Rodin for a period of 10 years in a concentration camp.⁷⁷

The “binders” or “albums”

To expedite sentencing, the *dvoïkas* and *troïkas* special tribunals circulate binders between the NKVD and the Procurator General’s representatives on the tribunal:

As men and women were shot, their names were struck off endless typed lists which bore the signatures of an NKVD *troïka* or, if the condemned were of any importance, of Politburo members. Attached to the lists were photographs of harrowed and beaten faces, taken shortly after arrest — the NKVD owned perhaps the world’s largest photographic archive, of some 10 million faces. The execution orders bore just one instruction: “When carrying out the sentence it is obligatory to check the person against the photograph”.⁷⁸

After an investigation is finished, the local bodies of the NKVD write minutes for each prisoner with a sentencing proposal (execution or 5–10 years of imprisonment). The minutes, collected in “albums,” are signed by a panel of two people: the head of the regional NKVD and the prosecutor (the “*dvoika*”).

The album is then forwarded to Moscow, where the final sentence is imposed by the People’s Commissar for Internal Affairs, Yezhov, and the Prosecutor of the USSR, Vyshinsky. Typically, the albums are not carefully considered in Moscow, where the proposals of the local bodies are usually approved mechanically.

On return of the album to the local bodies of the NKVD, sentences are executed.

In the cases of party members and cadres, the “albums” are sent to Stalin, to be circulated among Stalin and “the five” before being sent to the Military Collegium of the Supreme Court for “official” sentencing.

The Party members and cadres are condemned by Stalin’s personal signature - often associated with vicious invectives - , to death for 85% of them:

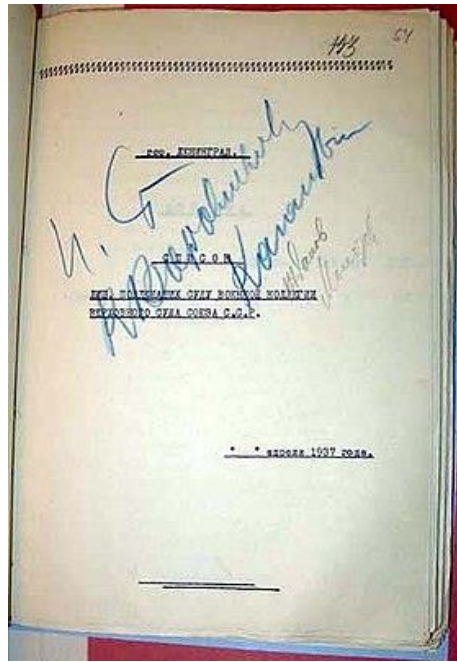
Whenever senior party members or key professionals were sentenced, lists went to the Politburo — to Stalin , Kaganovich , Molotov , and Voroshilov — for their emendations . The names of some 7 percent of the victims of the Great Terror — 40,000 — were perused by one or more of these four. Occasionally Stalin crossed out a name or substituted imprisonment for death; Molotov, for reasons he would not later recall, did the opposite. All four added comments: “deserves it”, “prostitute”, “scum”. On one day they confirmed over 3,000 death sentences.⁷⁹

Molotov signs 372 execution lists, more than Stalin himself; Vorochilov signs 195 lists; Kaganovitch, 191; Jdanov, 177.⁸⁰

Frinovsky, Yezjov’s deputy is particularly lax in his processing of the albums:

On his tour of the Far East in July 1938, Frinovskii brought with him piles of albums for thousands of convicts, asking Listenbourg, Lulov and Ushakov to take a look. The albums were read around watered tables and to the sound of the gramophone. Listenbourg, Lulov and Ushakov were in "competition" - who would get the most records. Usually the notices weren't even read, officials just put R's (for Rasstreliat " - shoot). In this way, during the train journey, all the albums taken were locked and returned by special courier to Moscow for execution of the sentences.⁸¹

383 such “binders” are sent, concerning 44,465 individuals.



List (“binder” or “album”) of persons to be sentenced by the Military Collegium of the USSR Supreme Court, April 1937.

Annotated and signed by Stalin, Vorochilov, Kaganovitch, Jdanov and Molotov ⁸²

The killings extend to the wives and the children:

On 5 July 1937, the Politburo ordered the NKVD to “confine all wives of condemned traitors . . . in camps for 5–8 years” and to take under State protection children under fifteen: 18,000 wives and 25,000 children were taken away. But this was not enough: on 15 August, Yezhov decreed that children between one and three were to be confined in orphanages but “socially dangerous children between three and fifteen” could be imprisoned “depending on the degree of danger.” Almost a million of these children were raised in orphanages and often did not see their mothers for twenty years.⁸³

The result: 1.5 million people are arrested, 1.4 million sentenced, 800,000 executed in secret. More than half under Order N° 00447: over 16 months: 50,000 executions per month, or 1 700 per day for nearly 500 days.

Vyshinsky’s role

From 1935 until 1939, Vyshinsky is the Prosecutor General of the RSFSR, and it is under his authority on the judicial apparatus that two categories of repressive actions take place in parallel:

1. the adoption of the deadliest NKVD Orders and their enforcement by secret jurisdictions; and
2. the trials of the political and military oppositions to Stalin.

On 7 August 1937, he issues a *Letter from Procurator-General Vyshinsky* stating that executions and imprisonments under Order 00447 do not require confirmation from any judicial body.

3. Nazi Laws

At the same time in Germany, several laws are adopted to destroy democracy and freedoms, some even before the Nazi assume total control of the government:

1933	<ul style="list-style-type: none"> - the <i>Malicious Practices Act</i>: criminalizes criticism or expression of dissent concerning the Nazi government or its leaders; - the <i>Decree on Defence of the State (Reichstag Fire Decree)</i>: declares a state of emergency; - the <i>Decree on Treason against the German People and Activities of High Treason</i>: characterizes as treason all criticism of the regime; - the <i>Enabling Act</i>: grants full legislative power to the government, and thus Chancellor Hitler, for 4 years; - the <i>Law concerning the imposition and implementation of the death penalty</i>: imposes the death penalty for crimes "committed in the period between January 31 and February 28", in fact the Reichstag arsonists;
1934	<ul style="list-style-type: none"> - the <i>Law against the treacherous criticism of the government</i>: criminalizes remarks damaging the prestige of the Nazi government; - the <i>Law for the Reconstruction of the Reich</i>: abolishes the landers; - the <i>Law against Insidious Attacks upon the State and Party and for the Protection of the Party Uniform</i>: reinstates special tribunals;
1935	<ul style="list-style-type: none"> - the <i>Law for the Restoration of the Professional Civil Service</i>: purges the civil service, universities and bars from Jews, communists, non-desirable and Non-Aryans elements; - the <i>Law for the Protection of German Blood and German Honor</i>, and the <i>Reich Citizenship Law</i>: punish "race defilement" (sexual relations between an Aryan and a member of an "inferior race"); defines Reich citizens as individuals with "German or related blood";
1938	<ul style="list-style-type: none"> - the <i>Special Wartime Penal Code</i>;
1939	<ul style="list-style-type: none"> - the <i>Decree against Public Enemies</i>: punishes by death offences against persons, property, community or public security during blackouts.

As a senior executive in the Justice department, Freisler is heavily involved into the setting up of this network of repressive legislation. Two examples of his involvement:

The *Nacht und Nebel Decree* of 1941

The "*Night and Fog Decree*" is issued by Hitler on 7 December 1941. It condemns "hostile elements" in occupied countries to be disappeared, either

- by immediate execution after a death sentence; or
- by ill treatment and starvation in a concentration camp after purging a prison sentence,

in either case pronounced by a civilian Special Court (*Sondergerichte*) or by military judges, at the discretion of the Army's High Command.

The scope of the decree is extended on 16 April 1942, to individuals sentenced to reclusion by military courts and women sentenced to death in occupied countries.

On the personal insistence of Freisler, then Secretary of State in the Justice department, the *People's Court* (*Volksgerichtshof*) is granted jurisdiction in Night and Fog trials. The first Night and Fog trials begin in August 1942, after his appointment as President of the *Volksgerichtshof*. By the end of the year, more than 1,000 cases have been assigned to the *Volksgerichtshof*.

The Wannsee conference of 1942

An essential marker of the importance of Freisler's role in the Nazi legal system is his participation as Secretary of State representing the Reich Minister Franz Schlegelberger, to the Wannsee Conference in January 1942 in Berlin, which establishes the administrative framework of the Holocaust.

Other Nazi laws

The Nazi adopt many other repressive laws and decrees, such as the *Decree on Violent Criminals*, the *Decree on Asocial Elements*, the *Decree on the War Economy*, the *Decree on Continued Use of Motor Vehicles* and the *Regulation for Consumption of Vital Commercial Products*.

Those legislative instruments share some essentially repressive characteristics:

- they are often retroactive;
- they apply to crimes of omission;
- they impose extreme sanctions, often the death penalty;
- they are written in general terms, which allow the repressive courts like the *Volksgerichtshof* to extend their jurisdictions and impose more brutal sentences by analogy.

In conclusion, we find a common characteristic to the legal systems of the French Revolution, the Soviet Union and Nazi Germany: the absolute necessity of legal norms to enunciate, organize, rationalize and enforce savagery.

vi. Exceptional jurisdictions

Terrorist Laws are enforced by “exceptional jurisdictions” which, with the passage of time, become “ordinary”. Such jurisdictions are developed – often with the complicity of the judges - in 3 ways, not necessarily exclusive of each other:

1. the politization or elimination of existing jurisdictions, such as Criminal Courts;
2. the creation of specialized jurisdictions, which become more and more politicized, such as the *Extraordinary Criminal Tribunal*; and
3. the creation of purely political jurisdictions, such as a *Special Judicial Presence*, or the *Volksgerichtshof*.

The Revolutionary, Bolshevik and Nazi régimes developed a plethora of exceptional jurisdictions, divided in 3 categories:

1. civilian jurisdictions, such as the *Hereditary Health Courts* and the factories courts;
2. military jurisdictions, such as the *Military Collegium of the USSR Supreme Court*; and
3. secret police (= political) jurisdictions, such as the *dvoïkas*, the *troïkas* and the *OSO*.

The purpose of such diversity, is not logic or administrative rigor, but systemic and merciless competition between institutions in order to protect:

- the powers of local leaders, OR/AND
- the physical security and the political dominance of the Leader and his henchmen, in the framework of geographic AND political competitions.

1. Civilian jurisdictions

In France

The Revolutionary regime begins by extending the jurisdiction of ordinary criminal courts to "counter-revolutionary crimes", such as emigration, "uncivic speech" or trafficking in assignats. Then, it establishes people's commissions, an *Extraordinary Revolutionary Tribunal* and a *Revolutionary Tribunal*, which is transformed into a terrorist organization.⁸⁴

Between April 1793, and July 1794, the *Revolutionary Tribunal* pronounces 4,032 judgments, of which 2,625 death sentences and 1,306 acquittals.

Fouquier-Tinville is elected by the *National Convention* as "Public Accuser" on 13 March 1793, and invested with enormous powers: to "arrest, pursue and deliver to the tribunal" anyone suspected of having committed any of the crimes enumerated in article 1 of the *Decree of 10 March 1793*.

Until his arrest on 1 August 1794, he acts as Public Prosecutor in many important trials, such as those of Charlotte Corday (17 July 1793); Queen Marie-Antoinette, (14-16 October 1793); the Girondins (24-30 October 1793); the Hebertists (21-24 March 1794); the Dantonists (2-5 April 1794); the Carmelite Nuns of Compiègne (17 July 1794).

In Russia

The Bolsheviks begin in December 1917 by abolishing all courts and establishing Worker's and Peasant's revolutionary tribunals to repress counterrevolutionary and sabotage crimes.⁸⁵ In May 1918, the jurisdiction

on common crimes is transferred to local courts and the *Revolutionary Tribunals* are constrained to struggling against pogroms, bribery, forgery, illegal use of the Soviet documents, hooliganism and espionage. And in 1922, the Revolutionary Tribunals are abolished.

But many exceptional jurisdictions are created as organs of the NKVD (*dvoïkas*, *troïkas* and *OSO*) or the Supreme Court (*Military Collegium*), or *Special Judicial Presences*. Between 1921 and 1953, those exceptional jurisdictions will pronounce 70% of death penalties.⁸⁶

And from 1922 to 1937, hundreds of show trials are setup in factories and localities everywhere in the USSR, in order to support a vast program of social engineering by "educating the people" against political enemies and "social problems" like pilfering or drunkenness. The trials of September-October 1937 in the countryside are initiated by an instruction of 3 August 1937, issued by Stalin personally only four days after *NKVD Order No 00447*.⁸⁷ The instruction warns the regional party organizations of the discovery of a plan of sabotage of Soviet agriculture by "enemies of the people" infiltrated in the management of collective farms, local administrations, tractor stations and district committees of the Party. It also orders the organization of two or three public trials in each district, with large press coverage and strong participation of "simple collective farm workers" as witnesses.⁸⁸

We will see later, under **c. Theatricality**, the theatrical organization of the proceedings in order to, literally, "setup" judicial proceedings.

Vyshinsky plays an important role in those jurisdictions,

- as prosecutor, as in the *Semenchuk* trial in 1936 and in the Moscow Trials of 1936-38; or
- as a judge, as *Special Judicial Presence* in the *Shakhty Trial* in 1928.

In Germany

The Nazi regime creates a profusion of special jurisdictions destined to eliminate political enemies and mentally incompetent people inside, and to crush opposition to Nazi occupation outside. They are:

- the *Special Tribunals*,
- the *People's Courts* (*Volksgerichtshof*), and
- the *Hereditary Health Courts*.

The *Special Tribunals* are reinstated on 21 March 1933, by the *Decree to Protect the Government of the National Socialist Revolution from Treacherous Attacks*, and their powers are broadened by the *Law for the Guarantee of Peace Based on Law* of 13 October 1933, and the *Law against Treacherous Attacks on the State and Party and for the Protection of the Party Uniform*, of 20 December 1934. Their number is increased from 26, in 1933, to 74 in 1942.⁸⁹ Citizens of occupied countries placed by the Wehrmacht under the authority of the Reich's department of justice are judged by *Special Tribunals*.

The *People's Court* (*Volksgerichtshof*) is created on 24 April 1934 and invested with the same powers as the former *Reichsgericht*, the Imperial Court of Justice, to hear cases concerning the most serious political crimes:

- high treason;
- treason;
- attacks on the Reichspräsident;
- particularly serious damage to military resources;
- murder or attempted murder of members of the government of the Reich or state governments.⁹⁰

It becomes a regular court with extended jurisdiction in 1936 and in 1944 it is empowered to hear the cases against the July 1944 plot against Hitler.

According to Freisler's own report on 11 January 1943, for the period from 1 January to 31 December 1942, out of the 2,573 defendants brought before the *People's Court*, 1,192 receive death sentences, 107 are acquitted and the rest are sentenced to life imprisonment or detention in prison camps.

Then, in the first six months of 1943, after Freisler has been given sole responsibility for the Court, it tries 1,730 cases, imposes 804 death sentences and acquits only 95 defendants.⁹¹

The *Hereditary Health Courts* are created by the *Law for the Prevention of Hereditarily Diseased Offspring* of 1933 to impose sterilization to "any person suffering from a hereditary disease". They are composed of three members, two of whom are close to the Nazi régime. Their decisions to sterilize can be enforced by force. Between 200,000 and 350,000 people are sterilized.⁹² The administrative infrastructure developed to support them is used later to enforce Hitler's memorandum of 1 September 1939, allowing *Aktion-T4* to euthanize between 80,000 and 100,000 people.⁹³

2. Military jurisdictions

Military jurisdictions are used in the three countries to discipline military staff, including for political errancy. But in the USSR, Stalin uses them also to eliminate his real or perceived political competitors, whether civilian or military.

According to Snegov, a survivor sentenced to "only" 18 years in labor camps:

A prisoner used to be called from his cell and taken to the yard of the Interior [Lubyanka] Prison, where he was put in a bus called 'Black Raven'. Usually several prisoners were transported together. The vehicle left through the iron gates at the back of the complex of the GUGB NKVD buildings and... moved backward into the closed narrow yard of the Military Collegium...

The accused were taken from the vehicle one by one, and brought, using the back stairs, to the second floor, where the Military Collegium was sitting. Usually the Army Jurist Vasilii Vasilievich Ulrikh presided during the 'trial'.

The hearing was short, ten minutes per person. The verdicts— usually a sentence of death by shooting for everyone— were prepared in advance. After the announcement of the verdict, the condemned was brought to the deep basement by the same stairs, and was shot in the back of the head. The executioner was the commandant on duty at the Military Collegium.

The body was dragged to the corner of the basement, where a shoe was taken off the right foot [of the corpse], and a tag made of plywood was attached to the toe. The Investigation File number was

written on the tag with a pencil. From this moment on the name of the person was never mentioned again.⁹⁴

The *Military Collegium of the Supreme Court of the USSR* is created in 1924 as one of the three colleges of the *Supreme Court*, to hear cases against high-ranking officers of the Red Army and the Red fleet, and act as appeal authority above ordinary military tribunals.⁹⁵

In June 1934, cases concerning counter-revolutionary activity under sec. 58-1, 58-6, 58-8 and 58-9 of the *RSFSR Criminal Code* are transferred from the *OGPU Collegium* to the *Military Collegium*.

Members of the *Military Collegium* are appointed by joint orders of the Justice and *NKO* commissariats.

The “trials” are held by the *Military Collegium* in accordance with the *Law of 1 December 1934*, that is within 24 hours after the communication of the indictment to the accused, *in camera*, in no more than 10 minutes per accused, without examination of the evidence and without the presence of prosecutors, defenders or witnesses.⁹⁶

During the 1930s and 1940s, Marshal Tukhachevsky and his seven co-defendants; 25 USSR commissars; 19 republic commissars; 131 brigade, corps, and army commanders; more than 100 professors from various universities and institutes; and over 300 directors of the most important industrial plants, among others, are sentenced to death.

During the Great Terror, in 1937-38, the *Military Collegium* is in charge of the repression of the Communist Party leaders, including the trials of Zinoviev, Kamenev, Bukharin and Yezhov. It hears 44,465 cases, 85% of whom are sentenced to death after Stalin and *Politburo* members have ordered the verdict in advance, by their own hand in “binders” containing the names of the individuals to be sentenced.⁹⁷ And between 1941 and 1945, the *Military Collegium* pronounces more than 471,000 convictions on the basis of article 58.

Although he is formally responsible to the chairman of the Supreme Court, Ulrikh knows who his real boss is. As he writes to Stalin :

Although formally the Military Collegium is part of the Supreme Court, in fact it acts as an independent court... While hearing the cases on treason against the Motherland, preparation of terrorist acts, espionage, and diversions, the Military Collegium has been and still is working under the *direct* [italics in the original] guidance of the highest directive organs.⁹⁸

That is Stalin and the *Politburo*.

3. Secret police jurisdictions

In the three dictatorships, police forces are absorbed into the political security forces to develop into a tentacular repressive system which creates its own administrative mechanisms of repression. This is the story of the *SS*, the *Gestapo*, the *Kripo*, the *Orpo*, the *droïkas*, the *troïkas* and the *OSO*: the administrative terror machine.

We refer you to the book *Devil's Advocates* for more details about the first four.

The *dvoikas* and *troikas*

The best way of envisaging the *dvoikas* (“two members”), *troikas* (“three members”) and the *NKVD Special Board (OSO)* is as bureaucratic committees endowed with power of life or death. It is precisely their absence of judicial status which renders them so lethal.

Dvoikas are extrajudicial commissions created by NKVD Order No 00485 *On liquidation of Polish sabotage*, composed of two persons: a Committee of the People's Commissar for Internal Affairs (chief of the NKVD) and the Procurator or adjunct-procurator of the USSR. They are supervised by the NKVD's *Special Board*, led by Yezhov, and the Prosecutor general of the USSR, led by Vyshinsky, who confirm the verdicts issued by the *dvoiki*. From time to time, Yezhov and Vyshinsky browse themselves the “albums”: on 10 January 1938, they confirm 1,667 convictions; on 14 January, 1,569; and on 21 January, 2,164.⁹⁹ The same procedure is applied to all other national operations of 1937-1938: German, Latvian, Finnish, Estonian, Romanian, Greek, and others. And in September 1938, the process is accelerated: regional NKVD units are ordered to set up *Special Troikas*, or *troikas*, mandated to dispose locally of the cases concerning “national operations”.

The *OSO*

The *Special Board of the NKVD (OSO)* is created on 10 July 1934, by the same decree as the NKVD. It remains attached to the secret police whatever the latter's change of name. It is composed of the NKVD Commissar and two of his deputies. The Chief Prosecutor of the USSR, thus Vyshinsky after his nomination as Procurator General of the USSR in 1935, or his deputy attends the sessions. The sessions are held without the defendant and in secrecy. Decisions are typed by the *OSO* secretariat before the sessions, on the basis of pre-approved indictments written by NKVD investigators. Cases are those which are investigated by the NKVD under art. 58 or 59 of the *Penal Code* and cannot be heard by civilian or military courts “because of operational reasons”. Practically, those are cases which could not stand in an open trial and in which the NKVD does not want to identify its informants.

The meeting of the [NKVD] Special Board took place in an office on the so-called Narkoms' Floor [i.e., where Commissar Beria's huge office was located]. The office was small, and the walls were painted a deep crimson color. Curtains on the windows were closed.

To the left from the window, there were two desks positioned perpendicular to each other; on them were desk lamps, turned on. [Sergei] Kruglov, deputy NKVD Commissar, was sitting behind one of the desks, and [Viktor] Bochkov, USSR Chief Prosecutor, was behind the other...

There was a row of chairs in front of the desks occupied by investigators who would make presentations of their cases... Each of them held a sheet of paper (some had several sheets) with a number that corresponded to the number in the files that were lying in front of the two members of the Special Board.

After the Deputy Commissar called my number, I (as well as the other investigators in their turn), was obliged to say the following: “‘N’ is accused under Article 58-6 of the Russian Federation Criminal Code of espionage for German intelligence. He pleaded guilty, which is confirmed by such-and-such investigation materials.” My presentation took no more than a minute. The Deputy Commissar suggested sentencing ‘N’ to a 10-year imprisonment. The prosecutor agreed, and the fate of the accused ‘N’ was sealed. I left the room.

Description of an *OSO* procedure ¹⁰⁰

The *OSO* meets twice a week, hearing about between two and three hundred cases per session, which will increase later to as many as 980 cases.

The *OSO* sentences automatically the family members (*chisly*) of those who had been condemned to death by the *Military Collegium* as “traitors” or “spies”, under NKVD Order No 00486.

In twenty years, the *OSO* sentences close to half a million people, most of them to camps and half of them between 1941 and 1945.

b. Terrorist institutions

Exceptional jurisdictions are fed by terrorist institutions, which are sometimes empowered to exercise themselves judicial functions by administrative mechanisms. The *Comity of General Safety*, the NKVD, the RSHA and the *Gestapo* have many things in common. The most important one is that, although legally they are responsible before the legislative assembly, in reality they are answerable only to the Boss, the ruler of the day.

Concerning the *Comity of General Safety*, the NKVD and the RSHA, we refer you to the book *Devil's Advocates* for more details, but we will see hereafter some aspects of the relationships between the Terrorist institutions and the Procurators.

The relationships with the Procurators

The relationships between those repressive jurisdictions and the Procurators are essential: they feed each other and work together to eliminate “enemies”. But they are also complex or even brutal, since the intensity of the administrative and individual competition is enormous, as wanted by the Ruler.

An example: the office of the Procurator General of the USSR. It is created in 1936 and is responsible for all public procurators offices and the supervision of their activities in the Soviet Union. According to the *1936 Constitution*, the Public Procurator controls, indirectly through subordinate public procurators, the execution of laws by ministries and their subordinate establishments, administrative bodies of local Soviets, cooperatives, officials, judges in court proceedings, and citizens on behalf of the state.¹⁰¹ The Procurator General is appointed by the Supreme Soviet of the USSR for a 7-year term, his deputies and the Procurator General of the Military are appointed on his recommendation by the Presidium of the *Supreme Soviet of the USSR*. The Procurator General appoints public procurators of the Soviet republics and, on their recommendation, the local public procurators at the levels of republics, krais and oblasts. He also issues orders and instructions for all public procurators.¹⁰²

Thus, as Procurator of the RSFR (1931-1935) and then Procurator General of the USSR (1935-1939), Vyshinsky and his subordinates work closely with the representatives of the political police at all

administrative and geographical levels. For example, in 1936 Yagoda, as Head of the *NKVD*, works closely with Vyshinsky, as Procurator General, in the organization of the trial of the *Anti-Soviet Trotskyist Center* which results in the execution of Zinoviev and Kamenev.¹⁰³

The closeness of the relationship does not prevent bitter competition, as evidenced in correspondence between Vyshinsky¹⁰⁴ and Yagoda¹⁰⁵ through Stalin in 1936, just before Yagoda's arrest and his replacement by Yezhov.

The closeness of the relationship between the élites goes both ways: to and from the Procuracy.

In one way, heads of the political police can become Procurators, as in the case of Pyotr Krasikov and Ivan Akulov, Vyshinsky's predecessors as Procurator General. And in the other way, in the small world of the Bolsheviks in the 1920s and 30s, procurators are also *related* to political police officials.

For example, Ida Averbakh,¹⁰⁶ who is the niece of the revolutionary leader Sverdlov. She becomes Assistant Prosecutor of Moscow and writes an idealization of the Gulag, *From Crime to Work*,¹⁰⁷ edited by Vyshinsky. But she is also Yagoda's wife and, in 1938, she shares his fate after his condemnation to death in the *Trial of the Twenty-One*, the third Moscow Trial prosecuted by Vyshinsky.



Ida Averbakh and Genrikh Yagoda, 1922¹⁰⁸

As a general rule, familial proximity in the top political/judicial échelons is deadly dangerous. An example: Mikhail Frinovsky, who is appointed as head of the border and internal troops of the *NKVD* under Yagoda, is then appointed deputy-chairman of the *NKVD* a month after Yagoda's arrest. He then sets up with Yezhov the 383 "albums" of party members submitted to Stalin before their trial in the *Military College of the Supreme Court* in 1937-1938, when 117,000 Party members are arrested by the *NKVD*, 39,000 of whom

executed through the album process.¹⁰⁹ Frinovsky himself is arrested in 1939 and executed in 1940, as well as his wife Nina and their 17 years old son Oleg.

c. Terrorist judiciary

Fanatical judges and prosecutors

In the three regimes, judges and prosecutors are selected for their political opinions and not their legal competence, without debate. As witnessed by this debate at the highest level of the State, in the Politburo:

When Bukharin explains, with factual evidence in support, that he did not meet Trotskyists, when he points out the contradictions of his various accusers, when he demonstrates the inexistence of the facts with which he is accused, his colleagues from the Politburo reply to him that "the facts prove nothing" because Bukharin "stinks politically". "You are a political hypocrite," Molotov told him, "and we are now going to prove this political hypocrisy legally." ¹¹⁰

The consequences are deadly: according to recent research, the depth of the ideological commitment of the judge to the Nazi Party worldview was an important determinant of the imposition of the death sentence. Judges who were more ideologically committed to the Nazi Party were more likely to impose the death sentence on those who belonged to the most organised political opposition groups to the Nazi state:

- those whose acts of treason or high treason involved violent resistance against the state, and
- those with characteristics to which Nazism was intolerant. ¹¹¹

Some examples of French and Soviet judges:



Martial Herman

Martial Herman

Herman is President of the *Revolutionary Tribunal* from August 1793 to April 1794. He presides the trials of Marie-Antoinette, the Girondins, the Hébertists and the Dantonists. He then acts as minister of the Interior, and minister of the Interior and Justice until the crisis of 9 Thermidor.



Leonid Zakovsky ¹¹²

Leonid Zakovsky

Zakovsky is one of the founding members of the *Cheka* in 1917, in which he suppresses anti-communist rebellions in Astrakhan, Saratov, Kazan, etc. In 1926, he is appointed head of the *OGPU* in Siberia, where he enforces Stalin's orders to seize grain from farmers who are unwilling to sell. ¹¹³ In 1928, he is head of the *troika* system, where he imposes reprisals against peasants who resist the confiscation of their property. Under his direction, in 1930 the *troikas* pronounce 16,553 convictions, out of which 4,762 to death (28.8%) and 8,576 to labor camp (51.8%). ¹¹⁴ In 1932, he is appointed head of the *OGPU* in the Belorussian Soviet Republic. In 1935, he is head of the Leningrad *NKVD*, where he organizes the secret trial of the *Leningrad counter-revolutionary group of Safarov, Zalutsky and others* against supporters of Zinoviev, and the mass deportation of 11,702 'Leningrad aristocrats'. He is then promoted to Commissar of State Security, First Rank. In 1937, he denounces his former boss, Yagoda, for impeding investigations and repression against oppositionists in the Party, and starts a purge of the Leningrad party. In 1937, he is awarded the Order of Lenin and he writes a guide on torture. ¹¹⁵ He is said to have boasted that if he had Karl Marx to interrogate he would make him confess to being an agent of Bismarck. In January 1938, he is transferred to Moscow as First deputy head of the *NKVD*, second to Yezhov, where he kills the head of the *NKVD* foreign department, Slutsky, and tortures his former boss Yagoda to oblige him to confess that he is a terrorist. In April 1938, his origin as a Latvian and his association with Yagoda place him in the sights of the new boss, Beria, and of Order No. 49990, the "Latvian Operation". He is sacked, arrested, accused of being a member of the "Yagoda conspiracy" and organizing a Latvian clique in the *NKVD*, tortured and, finally, shot on 29 August 1938 on the orders of his successor Frinovsky who wants to prevent his predecessor from incriminating him.

And, of course, Andrei Vyshinsky and Roland Freisler.

ii. Pliant or amateurish judiciary and prosecutors

The second worst case scenario is the pliant or amateurish judge. The first is most common in Nazi Germany and France; and the second, in Soviet Russia.

In the three countries, a similar chronological scenario is discernible.

First, the support of lawyers and judges to the change of regime.

Second, a distancing between the legal establishment and the ideologically driven revolutionary parties.

Third, institutional replacement, through the control of judicial careers or judicial decisions.

Judicial careers can be controlled in three ways:

1. the firing of moderate judges and their replacement by more ideologically pliant ones, as in France through the election of judges, or the replacement of Montané by Herman.
2. The firing of all judges and their replacement by ideologically close ones, as in Russia in 1918.
3. The creation of new jurisdictions, such as the *Volksgerichtshof*, or the soviet courts in 1935 in which 85% of the new magistrates have only a secondary education and 90% only 3 months of training.

Judicial decisions can be controlled ideologically, for example in France by obliging judges to deliberate and opine publicly.

Fourth, case by case manipulation, as in the case of *Danton* in 1793.

Fifth, the abandonment of legal practise. For example, in Moscow after the Revolution 90% of lawyers abandon legal practise. And in the late 1930s, about 160 lawyers in Moscow alone are accused of counterrevolutionary plots, sentenced to death, and shot; several die in custody; 60 are sent to labor camps or exiled to far-away Russian regions.¹¹⁶

Sixth, repression. For example, in France during the Terror, lawyers and judges are systematically targeted as potential opposition. First, they are denounced as political enemies by their former colleagues such as Robespierre, Couthon and Barrère. Then, they are targeted administratively by the obligation to produce a “certificate of civic mindedness”. Finally, they are accused and tried before the *Revolutionary Tribunal*. Lawyers and judges are the most represented professional category of victims of the bloodbath during the Terror: 433 of them are arrested, judged and guillotined, representing 3% of the 14,080 victims of the Terror.¹¹⁷

Seven, opposition. For example, in France on 2 September 1941, judge Paul Didier refuses to swear the oath of fidelity to Marshall Pétain. As we will see later, he is suspended, revoked and sent to a prison camp. In Russia, in 1922 for the *trial of the Socialist Revolutionaries* in 1922, three of the nine defense lawyers have acted in defense during the tsarist regime. One of the three is Nikolai Muravyov, one of the founding members of the Political Red Cross which rescued or provided material help to political prisoners until 1935.

Eight, collaboration. Collaboration can be motivated egoistically, by one’s hope for amelioration, or ideologically, by one’s support to the regime.

There is a sharp contrast between the French and Soviet situations, on the one hand, and the Nazi one, on the other.

In France and Russia, there is little collaboration between the regime and the judges: judges are simply eliminated for their political and legal opinions when those are simply perceived to be in opposition or merely critical of the régime. On the other hand, judges in special courts such as the *Section Spéciale de la Cour d'appel de Paris* (Special Section of the Paris Court of Appeal) created in 1942 to judge and sentence to death communists, are selected for their devotion to the State. ¹¹⁸

Whereas in the Nazi regime, judges are slowly, but efficiently, coopted until most become collaborative or partisan.

iii. Absent or pliant Bars and Law professors



“Defense” attorney addressing the Court in the trial of Semenchuk and Startsev (1936) ¹¹⁹

In most political jurisdictions such as *Volksgerichtshof* or *Special Judicial Presence*, lawyers are selected for their political opinions as Nazis or Bolsheviks.

After the elimination of politically non-compliant lawyers, professional organizations are also politicized. For example, in the spring of 1933, the *Federation of National Socialist German Jurists* vows solemnly that it would "never cease to demand that Jews must be utterly excluded from all forms of legal life".

For legal practitioners, such statements have two important consequences.

- first, they can no longer represent the interests of their clients; and
- second, after Noack's report, on 25 September 1930 the fifth decree for administering the *Reich Citizenship Law* revokes the right to practice of all remaining "non-Aryan" attorneys and demotes them to the status of "Jewish legal advisers" who are permitted to act only on behalf of Jewish clients. ¹²⁰

Thus, they no longer defend their "clients" but they opine in their guilt, like Ilya Braude about Knyazev's defense in the *Trial of the seventeen, Parallel anti-Soviet Trotskyist Center* of January 1937:

Comrade Judges, I am not going to conceal from you the exceptionally difficult and immeasurably hard position a counsel for the defence finds himself in this case. After all, a counsel for the defence,

Comrade Judges, is first and foremost a son of his Motherland, he is also a citizen of the great Soviet Union, and the feelings of great indignation, wrath, horror which all our country, both young and old, are now seized with, the feelings which the Prosecutor expressed so clearly in his speech, these feelings are inevitably shared by the counsels for the defence as well.... I am defending Knyazev, the head of the railway, who in order to please the Japanese Intelligence Service derailed trains carrying workers and Red Army men. ¹²¹

Alternatively, they refuse on the basis of political arguments to protect them after the verdict, as illustrated vividly by Arthur London in his biography *The confession* :

That's when the lawyers arrive. First contacts of defenders with their clients ... When they are already condemned ! ... With a rapid flow, they tell us that they have just consulted the most knowledgeable personalities and that they strongly advise against appealing. "You do not realize the situation that exists outside. There are trucks full of resolutions arriving from all corners of the Republic, emanating from factories, administrations, villages, which demand the death penalty for the fourteen. Moreover, is the international situation not very serious? Eisenhower has just been elected president of the United States. We are on the threshold of a new war. (My translation) ¹²²

iv. Absence of review

Another important common characteristic of the three regimes is that in all, parliamentary review of judicial activities has been suppressed.

d. Terrorist proceedings

An individual was arrested as a suspect. The official report of his arrest was drawn up at the committee of surveillance of his Section. This document contained the cross-examination he had undergone before the members of that committee. The accused person was then sent, with the documents relating to him, before the Committee of General safety, where he was again questioned. Thence he was despatched to the Revolutionary Tribunal. The documents were sent by the Committee of General safety to the Public Prosecutor, who examined them, made a summary of the facts, arranged the charges, quoted the incriminating words or writings, noted the denials of the accused. In a word he drew up his indictment. He took care to indicate that the accused person acted " wickedly and intentionally " with a view " to provoke the national dissolution and the re-establishment of royalty." In consequence, he demanded that the assembled Tribunal should grant him a writ of indictment, that the person of the accused be seized, and that he be entered on the gaol-book of the house of detention of the Conciergerie, to remain there as in a house of justice. At the hearing of the case before the Tribunal, Fouquier-Tinville supported the accusation. If the declaration of the jury were negative, the accused was set at liberty, at least unless Fouquier demanded his detention in prison as a measure of general safety. (We shall see that in this way some accused persons, such as Freteau, were acquitted by the jury, to be rearrested afterwards by Fouquier, again brought before the Tribunal,

and this time condemned.) If the declaration of the jury were affirmative, the Public Prosecutor moved that the law be applied, which meant sending the prisoner to the guillotine. (My translation)¹²³

One of the fundamental attributes of the Devil's Advocates is their deliberate use of terrorist proceedings, deliberately ignoring the most fundamental constitutional protections, such as the right to be heard, or to an impartial tribunal. We will see now several practical illustrations of terror trials in France, the USSR and Germany.

Terror trials in France

During the first months of its existence, the court strictly observed judicial procedures and applied in all respects the procedure in force in the ordinary criminal courts. The trials were conducted following examinations for discovery, witness statements and investigations aimed at gathering evidence, mainly consisting of documents from the General Security Committee and local authorities, letters of denunciation written by individuals and papers found in the suspects' homes. (My translation)¹²⁴

But one can see in October 1793 a sudden and brutal increase in the numbers and nature of sentences pronounced by the *Revolutionary Tribunal* between April 1793 and May 1794.

NUMBER AND NATURES OF SENTENCES PRONOUNCED BY THE <i>REVOLUTIONARY TRIBUNAL</i>									
	TOTAL JUDGED	Discharges	Acquittals	Death	Deportation	Detention	Forced labour	Referral to another jurisdiction	Banishment
6 April to 21 October 1793	349 (12,5/week)	130	214	92 (26,4% of sentences; about 60/month)	14	14	8	7	
22 October 1793 to 9 June 1794	2,009 (60,7/week)		756	1,167 (58,1% of sentences)	20	29	20	15	2

Jan-Feb			106	about 60/month					
Feb-March			59	116					
April-May				354					

Sentences pronounced by the *Revolutionary Tribunal*¹²⁵

In political trials in particular, basic legal protections are ignored and procedures turned against the accused. Two examples: the trials of *Queen Marie-Antoinette*, and *Danton and the Indulgents*. In both, the President and the Chief Prosecutor of the Revolutionary tribunal use a succession of vicious and illegal tricks to exhaust, disconcert and discredit the accused.¹²⁶

In the case of Marie-Antoinette,

- many accusations are founded on rumor or hatred;
- the President, Hermann, and the jury have been selected for their partiality;
- her lawyer is appointed late, sees her only the day before the trial and isn't given the time to read the whole file before the trial.

She is sentenced to death and executed the next day.



Sketch of Marie-Antoinette Queen of France driven to her execution, by painter David¹²⁷

In the case of Danton and the *Indulgents*, the procedure is a cascade of procedural and substantive irregularities:

- **by the President Herman:** personal partiality against the accused, refusal to call defense witnesses, refusal to let the defendants speak, exclusion of the accused from the public proclamation of the verdict and sentences;
- **by the Prosecutor Fouquier-Tinville:** prior screening of jurors, amalgamation with other accused (ex. robber and bankers), absence of real indictment, absence of material evidence;
- **by the President and the Prosecutor:** they exert secretly pressures on the jurors while they are deliberating, and they obtain secretly a decree from the Committee of Public Salvation prohibiting public debates and pleadings by the accused;
- **by members of the Committee of General Security,** who are standing behind the jurors.

Danton is sentenced to death *in absentia* and immediately executed.



Danton going to his execution, drawing from Wille ¹²⁸

Terror trials in Russia

The Bolsheviks organize two categories of highly irregular “trials”:

- economic trials: from 1922 to 1932, in order to deflect the public’s attention from the disastrous economic policies; and
- political trials (*Moscow trials*): from 1936 to 1938, in order to eliminate the possible opponents to Stalin’s seizure of power, including the top military officers.

The reader will find hereafter two tables summarizing the economic trials and the Moscow trials.

The economic trials

Socialist Revolutionaries (1922)	Elimination by Lenin of the Party of Socialist Revolutionaries. During the trial, a “public protest” takes place in Moscow to support the proletarian court and demand the execution of the accused. Based on the retroactive application of the <i>1922 Criminal Code</i> .	10 sentenced to death, none shot	Presided by Pyatakov; prosecuted by Krylenko
Engineers, <i>Shakhty</i> trial, (1928)	55 engineers and managers tried for “wrecking” the Soviet economy	11 sentenced to death, 5 shot	presided by Vyshinsky; prosecuted by Krylenko
Scientists (1930)	8 scientists holding key posts in the State Planning Commission (Gosplan) and the Supreme Economic Council	5 sentenced to death, none executed	presided by Vyshinsky; prosecuted by Krylenko
<i>Industrial Party Trial</i> (1930)	11 economists and engineers for forming the anti-Soviet "Union of Engineers' Organisations"	5 sentenced to death, none executed	presided by Vyshinsky; prosecuted by Krylenko
Mensheviks (1932)	14 economists of the Gosplan for setting up the "All-Union Bureau of Mensheviks" counterrevolutionary group in Gosplan in 1923 to try to "influence the economic policy of the Soviet authorities"	14 sentenced to imprisonment from 5 to 10 years	presided by Shvernik, prosecuted by Krylenko

And,

The Moscow trials			
Trial of the Sixteen, Anti-Soviet Trotskyist Center, August 1936	16 including Zinoviev, Kamenev, Yevdokimov, accused of forming a terrorist organization for the purpose of killing Stalin and other members of the Soviet government. On 31 March 1936, Stalin instructs Yagoda and Vishinsky to submit a concrete proposal on the trial of suspected	16 sentenced to death	presided by Ulrikh; prosecuted by Vyshinsky

	<p>Trotskyite underground terrorist groups, of whom they give 82 names. In July, after an all-night interrogation, Kamenev and Zinoviev agreed to go on trial with the condition that Stalin would promise to spare their lives in the presence of the whole <i>Politburo</i>. Stalin answers "that goes without saying", but the <i>Politburo</i> seized of the issue is composed only of Stalin, Voroshilov and Yezhov. Smirnov confesses only after intense interrogations and threats against his family. During the trial, behind the defendants there is a door, with an area where Yagoda and Vyshinsky can discuss with the accused to criticize their performances and give them instructions. When the court withdraws to consider the verdict, Yagoda has prepared it for them in the Council Chamber. A few hours after the conviction, Stalin orders their execution that night. Vyshinsky as Procurator-General was meant to attend important executions but was said to be so squeamish that he usually sent one of his chief investigators, Lev Sheinin.</p>		
<p>Parallel anti-Soviet Trotskyist Center, January 1937</p>	<p>17, amongst whom Radek, Pyatakov, Sokolnikov, accused of being Trotskyists. When Stalin briefs Vyshinsky on the trial, he addresses the accused thus: "You lost faith"—and they must die for losing it. He tells Beria: "An Enemy of the People is not only one who does sabotage but one who doubts the rightness of the Party line. And there are a lot of them and we must liquidate them."</p>	<p>13 sentenced to death; 4 to labor camp</p>	<p>presided by Ulrikh; prosecuted by Vyshinsky</p>
<p>Trial of the Generals, June 1937</p>	<p>9 top ranking officers including Tukhachevsky, Iakir, Uborevich, Kork, Eideman, Feldman, Primakov and Putna, are accused of conspiracy as a military-Trotskyite organization operating on the instructions of the German High Command and Trotsky, linked with men already executed and others still to be convicted (Bukharin, Rykov), as well as wrecking, sabotage and terror. Before the trial begins, the accused are beaten into making incriminating statements against their 7 military judges in the</p>		<p>presided by Ulrikh as Special Judicial Presence with 7 generals (5 of whom will be shot within 18</p>

	<p>Special Presence. On 7 June, before the investigation ended, Vyshinsky and Yezhov see Stalin, Molotov, Kaganovich and Voroshilov to acquaint them with the indictment that Vyshinsky has compiled before the end of the investigation and make the necessary corrections. Stalin's instructions are carried out the very same day, and the final text of the indictment is edited and printed. Only then are the arrested military commanders formally charged, and the aim of the ensuing interrogations is to get their answers to fit the formulas Stalin has put in the indictment. After a one-day hearing, the Special Presence pronounces its judgement. Late in the evening, Ulrikh visits Stalin, who, in the presence of Molotov, Kaganovich and Yezhov, orders him to execute all the defendants.</p>		<p>months); prosecuted by Vyshinsky</p>
<p>Trial of the Twenty-One, Anti-Soviet "Bloc of Rightists and Trotskyites", March 1938</p>	<p>21, including Bukharin, Rykov, Krestinsky, Yagoda and 3 Kremlin doctors, accused of murdering Gorky, attempting to murder Lenin and Stalin from 1918, plotting the dismemberment of the USSR, espionage, wrecking, undermining Soviet military power, provoking a military attack on the Soviet Union, and overthrowing the social system in favor of a return to capitalism. Bukharin's confession has been personally amended by Stalin and given for him to sign. Krestinsky refuses to confess but is then removed and tortured so as to confess the next day. Stalin prepares personally the stenographic record of the trial for publication and edits the speeches, deleting words used by the deceased and writing in others.</p>	<p>18 sentenced to death; 3 to imprisonment between 15 and 25 years</p>	<p>presided by Ulrikh; prosecuted by Vyshinsky</p>
<p>Trial of the Sixteen, Anti-Soviet Trotskyist Center, August 1936</p>	<p>16 including Zinoviev, Kamenev, Yevdokimov, accused of forming a terror organization for the purpose of killing Stalin and other members of the Soviet government. On 31 March 1936, Stalin instructs Yagoda and Vishinsky to submit a concrete proposal on the trial of suspected Trotskyite underground terrorist groups, of whom they give 82 names. In July, after an all-</p>	<p>16 sentenced to death</p>	<p>presided by Ulrikh; prosecuted by Vyshinsky</p>

	<p>night interrogation, Kamenev and Zinoviev agreed to go on trial with the condition that Stalin would promise to spare their lives in the presence of the whole <i>Politburo</i>. Stalin answers "that goes without saying", but the <i>Politburo</i> seized of the issue is composed only of Stalin, Voroshilov and Yezhov. Smirnov confesses only after intense interrogations and threats against his family. During the trial, behind the defendants there is a door, with an area where Yagoda and Vyshinsky can discuss with the accused to criticize their performances and give them instructions. When the court withdraws to consider the verdict, Yagoda has prepared it for them in the Council Chamber. A few hours after the conviction, Stalin orders their execution that night. Vyshinsky as Procurator-General was meant to attend important executions but was said to be so squeamish that he usually sent one of his chief investigators, Lev Sheinin.</p>		
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The economic trials and the Moscow Trials

Vyshinsky's performance as Chief prosecutor of the USSR in the Moscow trials is particularly abject, as shown in the video on the author's website : *Devil's Advocates - Moscow Trials - Vyshinsky at Bukharin Trial 1938*.

129

Terror trials in Germany

We will summarize two particularly significant categories of political trials, those of the plotters of the bombing against Hitler on 20 July 1944, and those of ordinary citizens.

The Plot of 20 July 1944

After the failed attempt to kill Hitler on 21 July 1944, the plotters are tried on 8 August 1944 before Freisler in the *People's Court*. The verdicts, delays and method of execution - hanging by piano string to a butcher's hook - are decided in advance by Hitler.

The accused are humiliated by wearing dirty clothing and being kept dirty themselves. The audience is entirely Nazi. And Freisler uses the opportunity to humiliate and scorn the accused.

On 20 August 1944, Kaltenbrunner reports to Hitler on the contrasted effects of Freisler's presidency of the *Volksgerichtshof*:

The President's sharp, often ironical and extremely quick-witted manner was received by broad sections of the workforce with enthusiasm and satisfaction. The President's criticism of the criminal intentions of the accused was completely in accord with the indignation of the public over this base deed. The details of the preparation for the assassination attempt were discussed with particular revulsion, especially the traitors' previous plan to carry out the attempt during an exhibition.¹³⁰

But 'the intelligentsia and legal professionals' comment that the 'cheap way' in which the President insulted and ridiculed the defendants was 'unbecoming to the highest German court' and reminded many of the Soviet show trials:

In particular, there have been objections to the President engaging in a discussion with the defendant Hoepner on whether the word 'Schweinehund' or 'ass' most aptly described him [Hoepner].¹³¹

Freisler's performance as President of the *People's Court* is particularly abject, as shown in the video on the author's website: *Devil's Advocates - Examination and cross examination by Freisler of Schwerin von Schwanenfeld*.¹³²

Ordinary people

We will see in **D. The victims** the categories of victims targeted:

- Political enemies: the old order
 - o the nobility,
 - o the clergy,
 - o the communists,
 - o the old élites,
 - o the dehumanized: Jews, Poles, etc.,
 - o the forced laborers.
- Political competitors:
 - o the new patrons,
 - o their clients.
- Power competitors :
 - o the military,
 - o the idea-makers: the artists.
- Enemies of circumstances :
 - o engineers,
 - o doctors,
 - o water managers,
 - o economic offenders.
- Imagined enemies :
 - o prisoners,
 - o freed prisoners,
 - o minors,
 - o innocents and incompetents,

- lovers,
- drunks,
- women.

C. The techniques of Judicial Terror

The Devil's Advocates employ a huge array of terrorization techniques, which can be divided into two general categories:

a. Techniques implying an appearance of legality:

- i. vagueness of accusations,
- ii. confusion of criminal and political offences: abuse of law (détournement du droit),
- iii. confusion of investigation and prosecution,
- iv. tardiness of communication of the file,
- v. restriction to right to defend oneself,
- vi. limitation or manipulation of hearings,
- vii. substitution of propaganda to legal motives,
- viii. pressures on judges or jurors,
- ix. political offences,
- x. lack of evidence,
- xi. destruction, or silencing, of evidence,
- xii. inefficient or wrong rules of evidence, including the absence of intent,
- xiii. maximization of sentences,
- xiv. guilt by association,
- xv. retroactive application of criminal law,
- xvi. manipulation or incompetence of administrative process.

b. Techniques outside of the Law:

- i. confession or punishment by torture, spying or pressures on family,
- ii. false or exaggerated accusations, falsification of evidence, false witness, public or accused,
- iii. describing the accused with words of negative connotation
 - a. insulting,
 - b. silencing,
 - c. humiliating,
- iv. sentencing without trial, or false sentencing,
- v. confusion of innocent and guilty accused ("amalgame"),
- vi. verdict decided in advance, partiality and theatricality,
- vii. disappearance,

- viii. execution without trial,
- ix. secret communication with repressive institutions,
- x. abuse or lack of jurisdiction, incl. substitution of political decision to judgment,
- xi. defilement of body,
- xii. physical exhaustion of the accused,
- xiii. quotas of guilty accused.

We refer you to the book *Devil's Advocates* for specific examples concerning each technique.

But all have in common the deliberate setup of the proceedings as *theatrical events*.

c. Theatricality

The Soviet court should, above all, persuade, prove and subordinate the public attention to its moral influence and authority. ¹³³



Soviet Show Trial ¹³⁴

“Show trials” are exercises in “public education”, that is political propaganda **framing** the accused and the public psychologically, physically and socially in order to create a new “truth”. In other words, justice is a cognitive exercise.

To convince himself or herself, the reader should look at the videos on the author’s website:

- *Devil's Advocates - Examination and cross examination by Freisler of Schwerin von Schwanenfeld*
- *Devil's Advocates - Moscow Trials - Vyshinsky at Bukharin Trial 1938* ¹³⁵

The most elaborate model of “theatricalization” is the Moscow Trials of 1936-1938, which we will analyze now.

On the psychological plane, “confessions” are obtained in two steps: breaking resistance and imposing collaboration.

First, the resistance of the accused is broken

- *physically*, by sleep deprivation, endless walking, beating, drugging, etc.; and
- *psychologically*, by false promises of leniency, threats against his or her family, manipulation of interpersonal conflicts, voluntary or desperate “revolutionary sacrifice”, etc.

Second, the accused is *forced to memorize and regurgitate the script* prepared in advance by the NKVD in accordance with its present objectives and ideology, which are constantly changed by the Ruler to impose fear.

Public confession is an extraordinarily efficient, and painful, method of intellectual and social suicide, as testified by Fedorov in tears:

Today the circumstantial testimonies of Mr. Oren, London and Lobl leave no doubt: When I had learned everything by heart, we proceeded to a rehearsal. My “personal rapporteur”, a decent man [...] asked me questions which I answered. I remained standing as if in court, while he took care of the staging. He told me if I spoke loud enough, too slowly or too fast. The terrible thing was that I was not even aware of my humiliating and stupid position.¹ That the thesis of the ultimate revolutionary sacrifice is a simplification, if not a mystification, we have moreover two proofs a contrario. On the one hand, in the Soviet Union, men who were not Communists and therefore had no reason to trample on their honor for the Cause “confessed” in the same terms and in the same tone as the old men had to confess. Bolsheviks of the Great Trials: I confess my guilt. I am guilty of having been a member of the Central Committee of the Industrial Party, of having served on the governing body of a group of industries, of having inspired, contemplated and recommended the adoption of measures of sabotage which disintegrates to a greater or lesser extent the functioning of our industry.

136

The failures of the early political trials have obliged the NKVD to perfect its techniques, including the staged repetition of the trials without the accused’ knowledge. According to General Bogoutsky to Alexander Weissberg:

A Chekist told me something that I refused to believe but which sheds light on things if it is true. He got close to me. “We apparently made repetitions of these trials. The room was filled with Guepeou agents. Some were disguised as foreign journalists. During these rehearsals we tested the confidence that we could have in the accused at the time of the real hearing. The session was short. The accused were asked if they admitted to being guilty. Anyone who changed their testimony was subjected to torture and then shot.”¹³⁷

The physical and social staging of the proceedings are based on techniques created at the same epoch by “avant-garde” soviet drama and cinema:

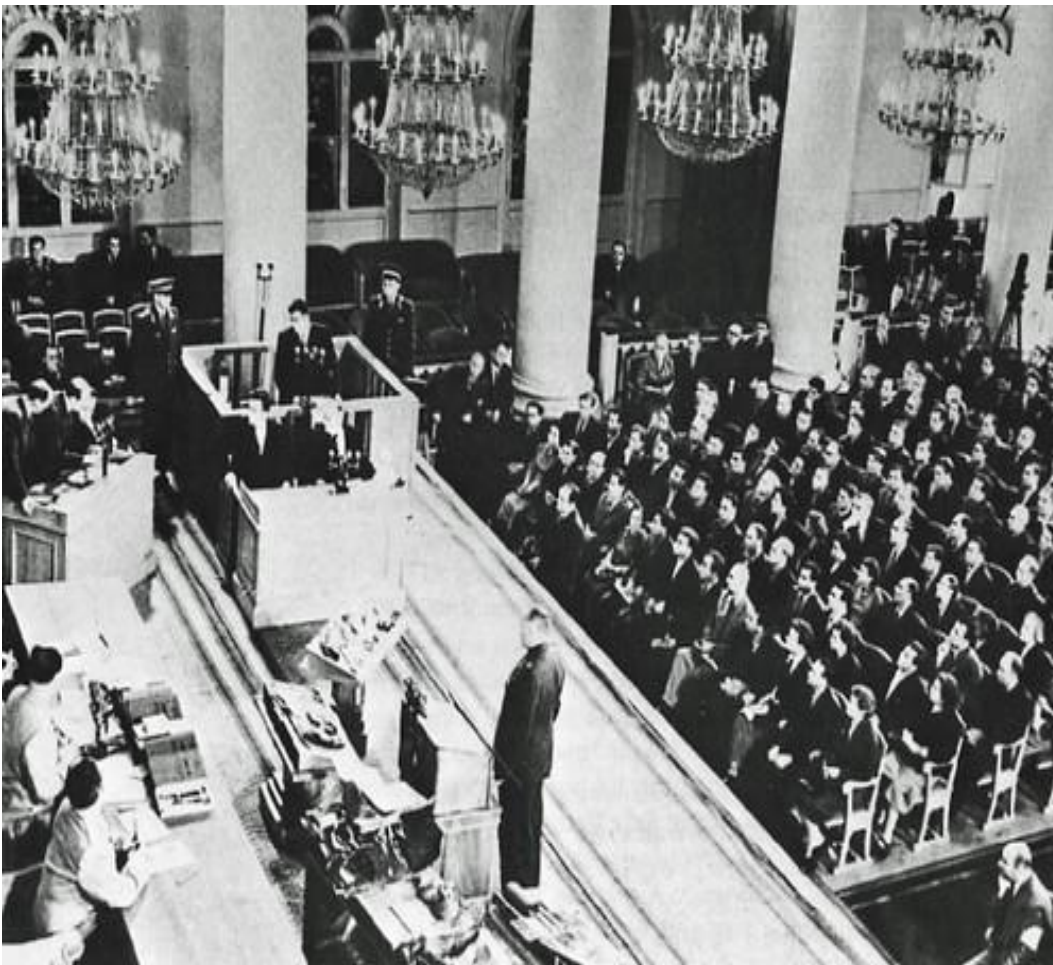
- choice of the *place of the trial* as a symbol of socialist majesty or production;
- choice of the *clothing of the participants* to the trial;
- manipulation of the proceedings to remain within a *pre-ordained time-script*;
- *obligation imposed on the public to assist and to comment* publicly within a politicized labor context;
- *substitution of political police to the public* if there is a risk of contradiction;
- organization of *public rallies and media propaganda* against the defendants.

The staging is organized at the macro and micro levels: the macro-structure and the micro-structure.

The macro-structure

The macro structure is the courthouse and the courtroom. In Moscow, the courthouse is the former club of the high aristocracy under the Tsarist regime. In Paris, the courthouse varies according to the accused: Marie-Antoinette is judged in the Conciergerie, like common criminals. Danton is judged in the Great Chamber of the Parliament.¹³⁸

Hereafter, the trial of Francis Gary Powers in 1962, in the same courtroom where the Moscow Trials were in held in 1936-1938:



Show trial of U2 Pilot Francis Gary Powers (1962)¹³⁹

The stage designers had turned the October Room into a revolutionary court, decorated in different shades of red. The judge's desk was covered with bright red cloth. There were monumental chairs embossed with the arms of the Soviet Union. The defendants were near the right-hand wall, behind a wooden barrier. In back of them stood Red army soldiers with rifles and fixed bayonets. Also behind the defendants was a door, beyond which was, shall we say, the "Wings of His Theater," with a buffet, restrooms for the defendants, and an area for Yagoda and the prosecutor, Vyshinsky, to hold friendly discussions with the accused in the course of the trial, to criticize their performances and give them instructions. There were additional actors in the body of the hall, NKVD agents in mufti acting the part of "the people." If the accused departed from the script as rehearsed, "the people's" job was to drown their voices with cries of indignation.

The charge against the defendants was that acting on Trotsky's instructions they had organized a "center" for the purpose of assassinating the leaders of the Party and the state. They had succeeded in murdering Kirov and created a number of terrorist groups to kill Stalin and his loyal comrades-in-arms.

The state prosecutor, A. Vyshinsky, demanded that these "mad dogs" (the sixteen accused) be executed by shooting. After that the accused, all famous Bolsheviks, eagerly confessed their guilt and declared themselves repentant.¹⁴⁰

An interesting example of the use of the micro-structure in order to influence the process of communication is the positioning of the judge, the accused and the defence.

As we can see in those pictures of trials before Vyshinsky and Freisler, the accused is placed only a few feet before the court, with his back to the public. The message is clear: the people see that the accused is not one of them and that he is alone before the representatives of power.



Ramzin testifying at the Industrial Party Trial, August 1930 ¹⁴¹ (encircled: Vyshinsky)

The structuring is even more apparent from the perspective of the judge in Freisler's courtroom:



Trial of the participants in the July 1944 plot to assassinate Hitler ¹⁴² (encircled: Freisler)

The micro-structure – Dehumanization by insulting

Since one of the essential purposes of the political trial is the dehumanization of the victim, the physical proximity between the accused and the judge is calculated to foster an atmosphere of contempt, reinforced by the flow of insults from the judge or the prosecutor against the accused.



Trial of Josef Wirmer, 8 September 1944 ¹⁴³ (encircled: Freisler)

Freisler: "Joseph Wirmer, yes you belong to a black faction (Catholic Centre Party), yes that's what you're taken for, that can't be otherwise. It's weird. How important the position as a civilian lawyer that you have had must have been that you never once became a soldier at that age. And from then on you have been mobilized, which also speaks for your attitude, that you first wait, until someone mobilizes you. Fine rascal. (Shouting loudly) Yes, yes, yes, fine rascal!"

Wirmer: "When I hang, I'll have no fear, but you will!"

Freisler retorts that Wirmer will soon be going to hell.

Wirmer answers with a "courtly bow", "I'll look forward to your own imminent arrival, Mr. President!"

The striking similarity between the Soviet and Nazi hearing rooms is another indicia of the close proximity, at least intellectual, between Freisler and Vyshinsky.

But ordinary people are not necessarily fooled, in particular in the local trials. Because of the obvious politicization of the procedures, the public is not convinced or the accused turn the trial against the accuser. In consequence, the authorities put an end to the local trials in 1936.

D. The victims: an ever-enlarging ring

Three reasonable ¹⁴⁴ hypotheses have been made to explain the "Great Terror" and its constant and systemic enlargement of the ring of victims: paranoia, flight forward and police management of society. ¹⁴⁵

According to Conquest's paranoia hypothesis, the major Moscow trials, the systematic and planned destruction of the "Bolshevik old guard" and the purges of political, military and economic executives and the intelligentsia, were caused by Stalin's "paranoia" as an "architect of terror". This explanation is based mainly on the testimonies and memoirs of survivors or those who had defected and who had "passed to the West", as well as on the few Soviet publications of the time of the Khrushchev's thaw. But little is known about ordinary victims. ¹⁴⁶

According to Getty' flight forward hypothesis, the Great Terror was not a carefully planned project of a paranoid dictator. It was a "headlong rush towards chaos". The extent of the repressions can be explained by the fact that the local communist cadres would have been targeted by the Stalinist group wishing to "put order" in the Party and to break the networks of solidarity and the "family circles" of the nomenklaturas provincial authorities. Thus, they would have tried to demonstrate their loyalty and their vigilance by exercising repressive zeal and the process would then have run amok in an anarchic and uncontrolled manner, reflecting latent social violence, settlements of accounts, conflicts between clans and local cliques. The "Great Terror" would have anticipated the turn taken, thirty years later, by the Chinese "Cultural Revolution". ¹⁴⁷

According to Werth and Blum's hypothesis of police management of society, the Great Terror was the point of culmination of a practice of police management of the social inaugurated in the early 1930s by "dekulakisation" and continued from 1933 by a policy of expulsion of "socially harmful" elements from the

cities and “cleansing” of ethnic minorities from border areas, both groups being perceived by Stalin as a mythical “fifth column of terrorists in the pay of foreign Powers hostile to the USSR”. The “Great Terror” concentrated nearly 75% of the death sentences handed down between 1921 and 1953 by political courts or military tribunals. This explanation is based on the authors’ opinion that great secret terrorist operations, at the origin of more than 90% of the arrests, convictions and executions in 1937-1938, seem to have to be clearly differentiated from the purges of the elites and political, economic, military and intellectual executives. Both were held in parallel, but used different extra-judicial procedures and responded to other objectives and to another political function. The 1937-1938 purges aimed at the replacement of one elite by another, younger, often better trained, politically and ideologically more obedient and malleable, shaped in “the Stalinist spirit of the 1930s”. The mean to achieve that objective was the destruction of all political, administrative, professional and personal bonds that generate solidarity (what Stalin called “family circles”) and the promotion of a new layer of young leaders who would owe their careers to the Ruler and would be absolutely devoted to him.¹⁴⁸

But these explanations are not mutually exclusive: Stalin was diagnosed as psychopathic, his objectives were to wipe out the old guard and the old élites, and he was preparing a nuclear war in 1953.

a. General principles: individual targeting, or the definition of categories of enemies

The targeting of victims is individual as in the case of political enemies, and collective as in the case of the “kulaks” or the “suspect people” (*gens suspects*).

The Devil’s Advocates target five main categories of victims, the last two of which revealing a growing paranoia of the perpetrators:

1. political enemies: the old order;
2. political competitors ;
3. power competitors ;
4. enemies of circumstances ;
5. imagined enemies.

We will now give a few examples of victims in each subcategory.

b. Political enemies: the old order

a. The nobility

The policy of elimination of the nobility is particularly obvious in France and Russia, where Robespierrists and *Bolsheviks* want to establish a “New Society”.

In France, according to the *Law on Suspects* of 17 September 1793:

Art. 2. Are deemed suspects (...)

5 ° those of the former nobles, together husbands, wives, fathers, mothers, sons or daughters, brothers or sisters, and agents of émigrés, who have not constantly shown their attachment to the revolution; (My translation)

And Fouquier-Tinville targets specifically many of them, such as Marie-Antoinette, Philippe-Égalité, the Comte de Fleury, Madame de Lavergne.

He is not alone, as seen in the case of the Maréchale de Noailles in July 1794:

You were a party in the Luxembourg conspiracy?", dares to ask President Dumas to the Maréchale de Noailles, 70 years old, almost blind, almost deaf, who has to wear an acoustic instrument to her ear. She pronounces these words: "Citizen President, I am extremely deaf, I have not heard." Dumas launches this crude wit very loudly: "So you were conspiring silently!" And judges and jurors burst out laughing. ¹⁴⁹ (My translation)

b. The clergy

For the same reason, in France and Russia the second main category of victims is the clergy, without gender discrimination. Since many members of the clergy have entered into open or quiet opposition to the new political order, they are targeted generally or as members opposition groups.

For example, in July 1794, Fouquier charges the Carmelites of the little town of Compiègne for "having formed councils of counter-revolution and having continued to live subject to their rule and to their superior". Since they refuse to take an oath to the Republic, they are sentenced and executed immediately as "fanatics and seditious". ¹⁵⁰

And in the Soviet Union, in 1932-35, the potential punishment against believers under art. 58-10 is exile or three to five years in the Gulag. But in 1937, 132 out of 175 cases end in "Execution by shooting" and prison sentences are increased to "ten years of correctional labor camp".

c. The communists

Communists are targeted in Nazi Germany, as well as in Stalinist Russia.

For example, Liselotte Hermann is a member of the Communist Youth Federation as a student in chemistry and biology since 1928 and then a member of the German Communist Party since 1931. ¹⁵¹ In December 1935, she is arrested for collecting intelligence on the secret rearmament programme. She is held in solitary confinement for eighteen months and on 12 June 1937, she appears in the *People's Court* where she is sentenced to death for "treason and acts preparatory to high treason". Treated as a Communist spy, she remains in isolation and is subjected to repeated interrogations. ¹⁵² On 20 June 1938, she is executed in the Plötzensee prison.

And in the Soviet Union, we have already discussed the Moscow Trials conducted by Vyshinsky in 1936-1938:

- the *Case of the Trotskyite-Zinovievite Terrorist Center*, or *Zinoviev-Kamenev Trial*, or *Trial of the Sixteen*, in August 1936;
- the *Case of the Anti-Soviet Trotskyist Center*, or *Pyatakov-Radek Trial*, in January 1937; and
- the *Case of the Anti-Soviet Bloc of Rights and Trotskyites*, or *Bukharin-Rykov Trial*, or *Trial of the Twenty-One*, in March 1938.

d. The old élites

In France and in the Soviet Union, the old elites are programmed for extinction, if necessary by genocide. One example: NKVD Operational Order 00447, *About repression of former kulaks* ¹⁵³, *criminals, and other anti-Soviet elements*, of 30 July 1937:

ON THE OPERATION TO REPRESS FORMER KULAKS, CRIMINALS AND OTHER ANTI-SOVIET ELEMENTS

30 July 1937.

Mountains. Moscow.

The materials of the investigation into the cases of anti-Soviet formations establish that a significant number of former kulaks, previously repressed, who fled from repressions, fled from camps, exile and labor settlements settled in the village. Many formerly repressed churchmen and sectarians, former active participants in anti-Soviet armed uprisings, settled. Significant cadres of anti-Soviet political parties (SRs, Gruzmeks, Dashnaks, Mussavatists, Ittihadists, etc.), as well as cadres of former active participants in bandit uprisings, whites, punishers, repatriates, etc., remained almost untouched in the village.

Some of the elements listed above, having gone from the village to the cities, penetrated into industrial enterprises, transport and construction.

In addition, significant cadres of criminal offenders still nest in the village and the city - cattle and concert robbers, repeat thieves, robbers, etc. who served their sentences, escaped from prisons and are hiding from repression. The inability to combat these criminal populations has created a climate of impunity for them that is conducive to their criminal activities.

As established, all these anti-Soviet elements are the main instigators of all kinds of anti-Soviet and sabotage crimes, both in collective and state farms, and in transport and in some areas of industry.

The task of the state security organs is to crush this whole gang of anti-Soviet elements in the most ruthless way, to protect the working Soviet people from their counterrevolutionary machinations and, finally, to put an end once and for all to their dastardly subversive work against the foundations of the Soviet state.

In accordance with this, I ORDER - FROM AUGUST 5, 1937 IN ALL REPUBLICS, TERRITORIES AND REGIONS TO BEGIN AN OPERATION TO REPRESS FORMER KULAKS, ACTIVE ANTI-SOVIET ELEMENTS AND CRIMINALS.

IN THE UZBEK, TURKMEN, TAJIK AND KYRGYZ SSR, THE OPERATION WILL BEGIN ON AUGUST 10 OF THIS YEAR, AND IN THE FAR EASTERN AND KRASNOYARSK TERRITORIES AND THE EAST SIBERIAN REGION - FROM AUGUST 15 of this year.

When organizing and conducting operations, be guided by the following: (...)

I. CONTINGENTS SUBJECT TO REPRESSION.

1. Former kulaks who returned after serving their sentences and continue to conduct active anti-Soviet subversive activities.

2. Former kulaks who fled from camps or labor settlements, as well as kulaks who hid from dekulakization, who conduct anti-Soviet activities.
3. Former kulaks and socially dangerous elements who were members of insurgent, fascist, terrorist and bandit formations, who have served their sentences, who have fled from repression or who have escaped from places of detention and resumed their anti-Soviet criminal activities.
4. Members of anti-Soviet parties (SRs, Gruzmeks, Mussavatists, Ittihadists and Dashnaks), former whites, gendarmes, officials, punishers, bandits, bandits, bandits, ferrymen, re-emigrants, who hid from repressions, fled from places of detention and continue to conduct active anti-Soviet activities.
5. The most hostile and active members of the Cossack-White Guard insurgent organizations, fascist, terrorist and espionage-sabotage counter-revolutionary formations exposed by investigative and verified intelligence materials.

Elements of this category currently in custody whose investigations have been completed but whose cases have not yet been examined by the judicial authorities are also subject to repression.

6. The most active anti-Soviet elements from former kulaks, punishers, bandits, whites, sectarian activists, churchmen and others, who are now held in prisons, camps, labor settlements and colonies and continue to conduct active anti-Soviet subversive work there.

7. Criminals (bandits, robbers, repeat thieves, professional smugglers, repeat offenders, cattle thieves) who conduct criminal activities and are associated with the criminal environment.

Elements of this category who are currently in custody whose investigation has been completed but whose cases have not yet been examined by the judicial authorities are also subject to repression.

8. Criminal elements who are in camps and labor settlements and conduct criminal activities in them.

9. All the above-mentioned contingents currently in the countryside — in collective farms, *sovkhozes*, agricultural enterprises and in the city — in industrial and commercial enterprises, transport, Soviet institutions and construction shall be subject to repression.

II. ON THE MEASURES OF PUNISHMENT OF THE REPRESSED AND THE NUMBER OF THOSE SUBJECT TO REPRESSION.

1. All repressed kulaks, criminals, and other anti-Soviet elements shall be divided into two categories:

(a) The first category includes all the most hostile of the elements listed above. They are subject to immediate arrest and, upon consideration of their cases in *troikas*, to EXECUTION.

b) the second category includes all other less active, but still hostile elements. They are subject to arrest and imprisonment in camps for a period of 8 to 10 years, and the most malicious and socially dangerous of them, imprisonment for the same terms in prisons according to the definition of the *troika*.

(...)

V. ORGANIZATION AND WORK OF THE TROÏKAS

1. I approve the following personal composition of the republican, regional and regional *troikas*:

(...)

2. A republican regional or regional prosecutor may be present at the meetings of the *troika* (where he is not a member of the *troika*).

3. The *troika* shall conduct its work either at the location of the relevant NKVD, UNKVD or regional departments of the NKVD or traveling to the locations of operational sectors.

4. The *troikas* shall examine the materials submitted by them for each arrested person or group of those arrested, as well as for each family to be evicted individually.

Troikas, depending on the nature of the materials and the degree of social danger of the arrested person, can refer persons scheduled for repression in 2 categories - to the first category and persons scheduled for repression in the first category - to the second.

5. The *troikas* shall keep minutes of their meetings, in which they shall record the sentences they have handed down against each convicted person.

The minutes of the meeting of the *troika* are sent to the head of the operational group for the execution of sentences. Extracts from the protocols in respect of each convicted person shall be attached to the investigation files.

VI. PROCEDURE FOR EXECUTION OF SENTENCES.

1. Sentences shall be carried out by persons on the instructions of the chairmen of the *troikas*, i.e. people's commissars of the republican *NKVD*, heads of departments or regional departments of the *NKVD*.

The grounds for the execution of the sentence are a certified extract from the minutes of the meeting of the *troika* setting out the sentence in respect of each convict and a special order signed by the chairman of the *troika*, handed to the person carrying out the sentence.

2. Sentences in the first category shall be carried out in places and in order on the instructions of the People's Commissars of Internal Affairs, heads of the department and regional departments of the *NKVD* with the obligatory full preservation of the time and place of execution of the sentence.

Documents on the execution of the sentence are attached in a separate envelope to the investigation file of each convict.

3. Persons convicted in category 2 shall be sent to the camps on the basis of orders reported by the GULAG of the *NKVD* of the USSR.

(...)

PEOPLE'S COMMISSAR OF INTERNAL AFFAIRS OF THE USSR

COMMISSIONER GENERAL OF STATE SECURITY

(N. YEZHOV)

TRUE: M. FRINOVSKY (My translation) ¹⁵⁴

e. The dehumanized: Jews, Poles, etc.

In Nazi Germany and in Soviet Russia, entire ethnic groups are dehumanized and targeted for genocide. Two of those groups are particularly targeted: the Jews and the Poles.

In 1935, the Nazi régime adopts the *Law for the Protection of German Blood and German Honor*, whose Section 1 decrees that:

Marriages between Jews and citizens of German or kindred blood are forbidden. Marriages concluded in defiance of this law are void, even if, for the purpose of evading this law, they were concluded abroad.

Under this law, Leo Katzenberg is sentenced to death for “racial defilement” by Oswald Rothaug in March 1942. ¹⁵⁵

In the Soviet Union, the publication on 9 August 1937 of *NKVD Operational Order № 00485, On the liquidation of the Polish diversionist and espionage groups and POW units*, followed by Yezhov's letter *On fascist-resurrectionist, spying, diversionist, defeatist, and terrorist activity of Polish intelligence in the USSR*, launches the *NKVD's* National Operations. On application of that Order alone, 139,835 people are sentenced and around 111,091 are killed. ¹⁵⁶

f. The forced laborers

On 5 July 1937, the Politburo orders the NKVD to “confine all wives of condemned traitors . . . in camps for 5–8 years” and to take under State protection children under fifteen: 18,000 wives and 25,000 children are taken away. All cases are to be decided by the NKVD’s *Special Council* (OSO).

And on 15 August 1937, NKVD Operational Order No 00486, *Traitor of Motherland Family members*, orders that children between one and three should be confined in orphanages and “socially dangerous children between three and fifteen” can, “depending on the degree of danger”, be placed in labor camps, corrective labor colonies, or special-regimen orphanages. Almost a million of these children are raised in orphanages and often will not see their mothers for twenty years.¹⁵⁷

All persons sentenced under the quotas imposed for “category 2” in NKVD Operational Orders are sent for ten years to the Gulag, where they work under extreme duress, under starvation and in appalling conditions¹⁵⁸ for example cutting trees in “Forest Gulags” or digging canals like the Moscow canal.

Out of the seven million Russians arrested in 1937 and 1938 alone, two millions die in the Gulag. From 1934 to 1939, the total number of victims is estimated conservatively at 15 million. Among those:

- 44,000 are sentenced by the *Military College of the Supreme Court*, which deals mostly with the “elites”;
- 800,000 are sentenced by the NKVD’s *troikas* under NKVD Operation 00447 ;
- 335,000 are sentenced within NKVD’s “National Operations” ;
- 190,000 are sentenced by the military tribunals and special colleges of ordinary courts ; and
- 70,000 are sentenced by the NKVD’s “Special Conference” (OSO).¹⁵⁹

c. Political competitors

Devil’s Advocates are important, although secondary, players in deadly political games between political patrons and their clients. Three examples:

- in France, the trial of the Girondins in October 1793;
- in the Soviet Union, the elimination of the Trotskyists in the Moscow Trials;
- in Nazi Germany, the elimination of Hitler’s opponents after the plot of 21 July 1944.

Vyshinsky is particularly adept at eliminating political or administrative rivals under the vigilant eyes of the Patron. Three examples among his own subordinates in 1937 and 1938:

- Faina Niurina, because she had refused to allow the NKVD to dictate the verdicts¹⁶⁰;
- then Grigori Roginsky, who he has used to eliminate rival prosecutor Krylenko and is handed by Beria to torturers Kobulov and Vlodzimirsky;¹⁶¹
- and then procurator Ishoy, who had arrested NKVD henchmen and freed their victims.¹⁶²

All are shot.

Shortly thereafter, on 29 January 1939, Beria and Malenkov write to Stalin:

(...) 5. There was serious negligence in the work of the *troikas* of the *NKVD* of the union republics, the directorates of the *NKVDs* of the *krais* and independent *oblasts*, and also in the work of verifying materials sent from the local areas to the *NKVD* of the USSR (in the so-called “large collegia” at a single session in a single evening between 600 and 1000 – 2000 cases were reviewed).

(...)

Arbitrariness was permitted also in the work of the *troikas* of the *NKVDs* of the republics and the *UNKVDs* of the *krais* and *oblasts*. There was no supervision at all over the work of these *troikas* from the *NKVD* of the USSR.

Approximately 200 thousand persons were sentenced to sentences of up to 5 years by the so-called police *troikas*, whose existence had no legal basis.

There has not been a single session of the special conference of the *NKVD* of the USSR with its lawful composition.

(...)

In addition we believe it essential to note that all the above disgraceful actions, distortions and excesses <in the matter of arrests and the conduct of investigation> were carried out with the sanction and knowledge of the organs of the Procuracy of the USSR (coms. Vyshinsky and Roginsky). Assistant Procurator of the USSR Roginsky has been especially zealous in this matter.

Roginsky’s practice of work raises serious doubts about this political honesty <and reliability>. ¹⁶³

And the Supervisors of those atrocities, Yejhov and Beria, are themselves eliminated later by their own competitors for the top job. ¹⁶⁴

d. Power competitors

In the three countries, the Patron is jealous and mistrustful of the army officers

a. The military

In Revolutionary France in September 1793, General Houchard, winner of the battle of Honschootte against English and Austrian forces a few days earlier, is tried and sentenced to death for ordering rest to his troops and ignoring the order of the Public Safety Committee to pursue the enemy after the battle:

After blaming him for not pursuing the Anglo-Austrian army, Vice-President Dumas called him a coward. Count Beugnot recounts that "at this word, which began the torment of the old warrior, he tore his clothes and exclaimed, presenting his chest covered with scars: ‘Jurors, read my answer, this is where it is written’, and he fell back on the fatal armchair, lost in his tears. (My translation) ¹⁶⁵

In Soviet Russia, during the civil war, Stalin tries and fails to gain a reputation as a general. In the 1930s, he is still pushing for obsolete techniques, such as cavalry charges. He is extremely jealous and distrustful of high-ranking military officers, especially Marshal Tukhachevsky who had criticized him for lack of support which cost him the victory in the Polish war of 1920, and whom he sees as a potential competitor. In the first Moscow trial in 1936, the *Trial of the Anti-Soviet Trotskyist Center*, Vyshinsky has Tukhachevsky involved implicitly by the accused Radek, himself sentenced to ten years imprisonment. And in May 1937, Yejhov

and Voroshilov arrest most of the Soviet Army's high command. At a meeting with Stalin, Vyshinsky recommends the use of torture against Tukhachevsky and Stalin sends him to Lubyanka prison to supervise such torture. A few days later, Tukhachevsky confesses that he has been a German agent plotting since 1928 with Yenukidze and Bukharin to seize power. His written confession is spattered with his blood. On 11 June 1937, the Supreme Court convenes a *Special Military Tribunal* presided by Ulrikh and staffed by other generals, who will be eliminated soon after,¹⁶⁶ to try secretly Tukhachevsky and seven other generals. They are sentenced to death at 23:35 and Ulrikh reports immediately to Stalin, who answers: « Agreed ». They are shot a few hours later. Tukhachevsky's wife is arrested and becomes mad; their 12 years old daughter hangs herself; his mother, his 3 brothers and one of his sisters are shot.¹⁶⁷

b. The idea-makers: the artists

In Soviet Russia, idea-makers are carefully supervised, and vetted. Two examples:

Between 27 October and 4 November 1937, almost 300 Ukrainian artists representative of the Ukrainian Renaissance are shot at Sandarmokh.

The same year, the interrogator of poet Nikolai Oleinikov, Major Iakov Perelmutter, tells him:

I know you're innocent , but the lot has fallen on you and you must sign this fake statement, or else you will be beaten until you sign it or die.

Oleinikov is shot as a Japanese spy on 24 November 1937. Perelmutter is shot in 1940.¹⁶⁸

e. Enemies of circumstances

They are engineers, doctors, water managers, economic offenders, scientists and academics. They have nothing in common, except being easy targets for political gain, or for social or ideological resentment, and being setup with Vyshinsky's complicity.

In the 3 countries, the technical elites can be targeted for elimination for four reasons:

1. they are the “old guard”, such as early *Bolsheviks* linked with Lenin and the New Economic Policy;
2. they are potential political competitors;
3. they can be blamed by the public for the failures of agricultural and industrial policies;
4. they are subjects of personal resentment, often by reason of their ethnic origin as Jews, Poles, etc.¹⁶⁹

In the USSR, several great trials target the “class enemies” between 1927 and 1938.

a. Engineers

In 1927-1928, the *Shakhty Trial* targets fifty-three Soviet and foreign engineers and technicians who were supposed to have acted as a “wrecking organization” on the orders of France to fight against the *Bolsheviks* by blowing up and destroying the Donbass mines. The trial innovates in several respects:

- it is based on a new provision of the *Criminal Code* on “wrecking”;
- it is staged in the marbled Hall of Columns in Trade Union House, the former Moscow Club of the Nobility;
- it is not based on evidence – which is nonexistent - but on ideological drama managed by Prosecutor Krylenko;
- it is presided by Vyshinsky as a *Special Judicial Presence*.¹⁷⁰

Eleven of the fifty-three accused engineers are sentenced to death, thirty-four sentenced to prison, four acquitted and four given suspended sentences. Six of the death sentences are commuted as a reward for their confessions, but two are executed later for their political opinions.

In 1930, the *Industrial Party Trial* targets eight top engineers who are charged with sabotage and wrecking. Once again, Vyshinsky presides a *Special Judicial Presence*. Five of the nine accused are sentenced to death, but later amnestied, and the others to prison terms.

The great novelty of that trial is the public confessions of all accused, and in particular Professor Ramzin:

I unreservedly admit my guilt. I do not intend to defend or justify myself before the Supreme Court and the country as a whole. For how can I defend myself or justify the tremendous crimes which I have committed? I can only succeed in mitigating my guilt by frank and truthful testimony and by sincerely admitting my crimes and my mistakes. Therefore, by making here my full and wholehearted repentance, by undertaking to cut off all my connections with the anti-Soviet circles both in the USSR and abroad, by fully disarming myself and discontinuing forever my struggle against the Soviet government, I wish to reveal with merciless clarity the whole truth before the Supreme Court and before the wide masses in our Union as well as the proletariat the world over.¹⁷¹

The *Industrial Party Trial* is also the opportunity for the legalization of public confessions, for political and ideological reasons.

On the political plane, during the investigation Stalin read transcripts of interrogations of the arrestees and suggests questions for interrogations.

And on the ideological plane, Prosecutor Krylenko declares during the trial, on 4 December 1930, that in political cases a confession from perpetrators prevails over the proof of their guilt:

In all circumstances the defendants’ confession is the best evidence.

Krylenko deliberately goes back to the principle *Confessio est regina probatum* (“Confession is the Queen of evidence”) used earlier in Roman Law and by the Inquisition, in order to create a legal basis for the extraction

of evidence by torture by the Secret Police.¹⁷² And in 1933, Vyshinsky adopts the same principle as a legal theorist and as a Public Prosecutor in the *Metro-Vickers Trial*.¹⁷³

b. Doctors

In the Soviet Union, doctors are targeted specifically by the Prosecutor General as imaginary plotters against the life of the Ruler.

In the *Trial of the Twenty-One*, the 3rd Moscow trial in 1938, three Kremlin doctors are accused by Vyshinsky :

- Dr Pletnyov, is accused of killing Gorky;
- Dr Levin, is accused of membership in a counter-revolutionary plot to eliminate the leadership;
- Dr Kazakov, who had had created the NKVD's "special room" (poison lab) in 1927, is accused of poisoning soviet leaders.

Levin and Kazakov are shot on 15 March 1938, Pletnyov on 11 September 1941.¹⁷⁴

c. Water managers

The industrialization of the Soviet Union imposes a lot of pressure on the primitive transportation system, in particular the waterways which are used to carry crops to be sold abroad in order to buy industrial machinery.

While Vyshinsky is Procurator General of the USSR, the Instruction of the NKVD of 24 July 1937, *For the prevention of bacteriological diversions*, orders the arrest of all people with foreign connections and "anti-Soviet elements" working in water supply.¹⁷⁵

And on 15 September 1937, *Amendments to the Code of procedure* ban appeals of the sentences under art. 58-9 of the *Criminal Code*¹⁷⁶ ("Damage of transport, communication, water supply, warehouses and other buildings or state and communal property with counter-revolutionary purpose") and impose on convicted accused the death penalty to be executed within one day after the court sentence.

In 1945, individuals sentenced under art. 58-9 of the *Criminal Code* represent 0.8% of prisoners, or 3 206 individuals, in NKVD labor camps.¹⁷⁷

d. Economic offenders

In Revolutionary France and in the Soviet Union, "rich people" are specifically targeted as supporters of the old regime or as "bourgeois". In Nazi Germany, they are not targeted as such but as "Jews", or simply "harvested".

In Revolutionary France, the *Trial of the Farmers-General*, from 5 to 12 May 1794, aims at the tax collectors and bankers of the Monarchy. Thirty-five of them are charged with falsifying their accounts and the products sold.

The trial, presided by Coffinhal and prosecuted by Fouquier-Tinville, is undermined by irregularities. For example:

- Fouquier-Tinville prepares his writ of indictment before the decree of indictment is sent to the Tribunal;
- the facts on which the accusations are based are common delicts, outside the jurisdiction of the *Revolutionary Tribunal*;
- the accused are not allowed to defend themselves:
 - o their defences are neither communicated to the tribunal nor contradicted before the jury;
 - o their witnesses are prevented from testifying;
 - o their detailed arguments are ignored;
 - o the hearings are cut short by president Coffinhal, who limits the accused to answering by “yes” or “no”;
- the requisitions are a mere copy of the report of the investigator;
- the questions asked to the jurors are vague, political and unrelated to the evidence:

Has there been a plot against the French people to promote, by all possible means, the success of the enemies of France, by exerting all kinds of abuses and concussions on the French people by mixing water tobacco with ingredients harmful to the health of citizens, ... and by plundering and stealing by all possible means the people and the National Treasury, to take away from the Nation, the immense sums and necessary for the war against the despots coalesced against the Republic and supply them to them?

All the accused are sentenced to death, including the great chemist and biologist Lavoisier who is rehabilitated, for “false conviction”, a year and a half after his execution. ¹⁷⁸

In the USSR, after the establishment of the *Gosplan*, following the cancellation of the New Economic Policy, Stalin needs victims to be blamed for the failures of central planning and the merciless pillaging of the peasant class. As we have seen above, he uses the *Shakhty Trial* and the *Industrial Party Trial*, both presided by Vyshinsky, to target managers from the top of the Gosplan to local factories as “spies” and “wreckers”.

In Nazi Germany, during the war, petty "economic" offenses such as illegal slaughtering of animals, hoarding of goods, fraud involving food or rationing, or minor violations of the *Decree on the War Economy*, the *Decree on Continued Use of Motor Vehicles*, and the *Regulations for Consumption of Vital Commercial Products* are transformed into capital crimes. ¹⁷⁹

f. Imagined enemies

Since the security services must fulfill quotas, they do not hesitate to make vague or unfounded accusations against imagined categories of enemies like

- prisoners and ex-prisoners,

- minors,
- innocents and incompetents,
- lovers,
- drunks, or
- women.

A few examples.

In Revolutionary France, many judicial errors are committed negligently or deliberately by the *Revolutionary Tribunal*.

Many elderly people appeared when they were deaf, blind or manifestly senile, such as Durand Pierre Puy de Vérine, a seventy-year-old former master of accounts, who was sentenced to death without understanding what he was accused of. On June 24, three young Bretons convicted of having felled a tree of freedom were tried and sentenced to death despite not understanding French, no interpreter having been available. Due to lack of time, the court doctors no longer examined women who claimed to be pregnant – only those convicted whose pregnancy was visible were now taken to the court's hospice – and it is therefore very likely that many defendants who were in contact with men during their detention and expecting a child were convicted and executed. (My translation) ¹⁸⁰

According to Fouquier-Tinville himself during his trial in 1795,

In the matter of young de Maillé, who was condemned to death as a conspirator for having thrown a rotten herring at the head of a turnkey in Saint-Lazare, his mother, Madame de Maillé appeared, and was asked by Ardenne : “Can you prove that your son was only sixteen years old ?” The witness produced a copy of his birth certificate certifying that he was born on August 25, 1777. And he had been condemned to death on the 6th of Thermidor in the year II. Fouquier answered : "If young Maillé is included in the indictment, the reason is that he was impeached by a resolution of the Committee of Public Safety." Ardenne : "I submit to Fouquier that no resolution of the Committee of Public Safety is to be found among the documents relating to the case, and that there is no date on this indictment." Fouquier : " There ought to be a list on which is written, 'To be sent to the Public Prosecutor'. It is signed by three members of the Committee." Ardenne : "It is not in existence" . Fouquier : " Documents have been taken away. That being so, I have nothing more to say". ¹⁸¹

Madame de Lavergne is twenty-six and beautiful. Her husband, lieutenant-colonel de Lavergne-Champlaurier, is accused of having delivered Longwy to the enemy. He is old and infirm, and is about to be tried by the *Revolutionary Tribunal*. Despite her pleas, Dumas and other members of the Tribunal refuse to release him. On 1 April 1794, the day before Danton's trial, she goes to the Tribunal, where she sees her husband being brought in, on a mattress and in a dying condition. The writ of indictment is read, and he is sentenced to death. Then, in a room adjacent to the Tribunal, Madame de Lavergne shouts several times: "Long live the King!" She is arrested and before the police, she declares:

I have asked for a King. I want to be guillotined. They are going to murder my husband. I want to go to bed.

She is tried, sentenced to death and sent to the guillotine with her husband the same day. ¹⁸²

On 25 May 1793, fish merchant Pierre Prudhomme, his wife Françoise Lambert (60 years old), and laundress Catherine Perrard (39 years old) appear before the *Revolutionary Tribunal*. Judge Masson notes on the cover of their files:

Two drunk women were confined to the jail and shouted “Long live the King!” They were accompanied by the husband of one of them. They agree on the fact. All say they were drunk. They wear the most pantless exterior. However, it is known that among these women in the hall there were aristocrats.

All three are sentenced to death and guillotined. ¹⁸³

Among the 2800 sentenced to death by the Revolutionary Tribunal, many women including 116 noble ladies, 100 wealthy ladies, 30 nuns, 28 servants and a hundred workers. ¹⁸⁴

In Soviet Russia, genocide by famine in Ukraine - the Holodomor – is accepted by the legal establishment without protest. On 14 April 1937, Procurator-General Vyshinsky writes to the Premier to inform him of a cluster of cases of cannibalism in Cheliabinsk in the Urals in which one woman ate a four-month-old child, another ate an eight-year-old with her thirteen-year-old, while yet another consumed her three-month-old baby. But the real cause of the tragedy is not mentioned. ¹⁸⁵



Cannibalism and famine in Russia in the 1920s ¹⁸⁶

In 1937, NKVD's boss, Yehjov, issues NKVD Secret Order 00486, *On repression of the family members of traitors, Trotskyists, and other citizens sentenced by the Military Collegium and the Special Commission*, which targets children specifically.

I will reproduce hereafter the whole Order, in order to document its infamy:

OPERATIONAL ORDER
PEOPLE'S COMMISSAR OF THE INTERNAL AFFAIRS OF THE USSR
15 August 1937 Moscow

No. 00486

Upon receipt of this order, proceed with the repression of the wives of traitors to the motherland, members of right-wing Trotskyist espionage and sabotage organizations convicted by the military collegium and military tribunals in the first and second categories, starting from August 1, 1936.

When carrying out this operation, be guided by the following:

Content

- 1 PREPARATION OF THE OPERATION:
- 2 ARRESTS AND SEARCHES
- 3 PROCEDURE FOR REGISTRATION OF CASES:
- 4 PROCESS AND PENALTY
- 5 PROCEDURE FOR ENFORCEMENT OF SENTENCES
- 6 ACCOMMODATION OF CHILDREN OF CONVICTS
- 7 PREPARATION FOR THE RECEPTION AND DISTRIBUTION OF CHILDREN
- 8 REGISTRATION OF THE CHILDREN OF CONVICTS
- 9 SUPERVISION OF THE CHILDREN OF CONVICTS
- 10 REPORTING
- 11 See also

PREPARATION OF THE OPERATION:

1) In relation to each family scheduled for repression, a thorough check is carried out, additional installation data and compromising materials are collected.

Based on the collected materials are compiled:

- a) a detailed general certificate for the family indicating: the last name, first name and patronym of the convicted head of the family, for what crimes, when, by whom and what punishment they will be subjected to; a personal list of family members (including all persons dependent on the convict and living with him), detailed identification data for each family member; compromising materials on the convict's wife; characteristics regarding the degree of social danger of children over 15 years of age; data on the presence in the family of elderly and parents in need of care, the presence of seriously or contagiously ill patients, the presence of children who, according to their physical condition, require care.
- b) A separate brief reference to socially dangerous and capable of anti-Soviet actions children older than 15 years of age.
- c) Personal lists of children under 15 years of age separately of preschool and school age.

2) The certificates are considered respectively by the people's commissars of internal affairs of the republics and the heads of the departments of the *NKVD* of the territories and regions.

Last:

- a) authorize the arrest and search of the wives of traitors to the motherland;
- b) determine measures in relation to the children of the arrested person;

c) indicate measures taken in relation to parents and other relatives who were dependent on the convict and who live together with him.

ARRESTS AND SEARCHES

3) Those who are scheduled for repression are arrested. The arrest is issued by warrant.

4) Wives who were legally or de facto married to the convicted person at the time of his arrest are subject to arrest.

Wives are also subject to arrest, although they were divorced with the convict at the time of his arrest, but:

a) involved in the counter-revolutionary activities of the convict;

b) sheltering the convict;

c) those who knew about the counter-revolutionary activities of the convict, but did not inform the relevant authorities about it.

5) The following are not subject to arrest:

a) pregnant women; wives of convicts who have babies, are seriously or contagiously ill; having sick children in need of care; having advanced age.

In relation to such persons, temporarily limited to the withdrawal of a written undertaking not to leave with the establishment of careful monitoring of the family.

b) Wives of convicts who exposed their husbands and reported information about them to the authorities, which served as the basis for the development and arrest of their husbands.

6) Simultaneously with the arrest, a thorough search is carried out. During the search, the following are confiscated: weapons, cartridges, explosives and chemicals, military equipment, duplicating devices (shapirographs, glass printers, typewriters, etc.), counter-revolutionary literature, correspondence, foreign currency, precious metals in ingots, coins and products, personal documents and monetary documents.

7) All property personally owned by the arrested (with the exception of necessary underwear, upper and lower dresses, shoes and bedding that the arrested take with them) is confiscated. The apartments of the arrested are sealed.

In cases where their adult children, parents and other relatives live together with the arrested person, they, in addition to their personal belongings, are left for use with the necessary: living space, furniture and household utensils of the arrested persons.

8) After the arrest and search, the arrested wives of the convicts are escorted to the prison. At the same time, in the order indicated below, children are also taken out.

CASE PROCEDURE:

9) For each arrested and for each socially dangerous child over 15 years of age, an investigation file is opened, in which, in addition to the established documents, certificates are placed (see subparagraphs "a" and "b" of article 1) and a brief closing indictment.

10) The investigation file is sent for consideration by the Special Meeting of the *NKVD* of the USSR.

The heads of the *NKVD* departments for the Far East and Krasnoyarsk Territories and the East Siberian Region, do not send investigative files on those arrested to the Special Conference. Instead, communicate by telegraph general information about the families of the convicts (paragraph "a", art. 1), which will be considered by the Special Meeting. The latest decisions on each family with a simultaneous indication of the place of detention (camp) informs the heads of the listed *UNKVD*, also by telegraph.

PROCESS AND PENALTY

- 11) A special meeting considers cases against the wives of convicted traitors and those of their children older than 15 years of age who are socially dangerous and capable of committing anti-Soviet actions.
- 12) The wives of convicted traitors to the motherland are subject to imprisonment in camps for terms, depending on the degree of social danger, not less than 5-8 years.
- 13) Socially dangerous children of convicts, depending on their age, degree of danger and possibilities of correction, are subject to imprisonment in camps or correctional labor colonies of the *NKVD*, or placement in orphanages of special regime of the People's Commissariat of Education of the Republics.
- 14) The verdicts of the Special Conference are communicated to the People's Commissars of the republican *NKVD* and the heads of the *NKVD* departments of the territories and regions by telegraph for enforcement.
- 15) Investigative cases are handed over to the archives of the *NKVD* of the USSR.

PROCEDURE FOR ENFORCEMENT OF SENTENCES

- 16) The wives of traitors convicted by the Special Meeting should be sent to serve their sentences in a special department of the Temnikovsky forced labor camp, according to the personal outfits of the *GULAG* and the *NKVD* of the USSR.

Direction to the camps to produce the existing order.

- 17) Convicted wives of traitors to the motherland, who are not arrested, due to illness and the presence of sick children in their arms, are arrested upon recovery and sent to the camp. The wives of traitors who have babies, after the verdict is passed, are immediately arrested and sent directly to the camp without being brought to prison.

Do the same with convicted wives who are of advanced age.

- 18) Convicted socially dangerous children are sent to camps, correctional labor colonies of the *NKVD* or to special regime houses of the People's Commissariat of Education of the Republics for personal outfits of the *GULAG* and the *NKVD* for the first and second groups and the Academy of Arts of the *NKVD* of the USSR - for the third group.

ACCOMMODATION OF CHILDREN OF CONVICTS

- 19) Place all orphans remaining after conviction:
 - a) children aged from 1-1 1/2 years and up to 3 full years - in orphanages and nurseries of the People's Commissariat of Health of the republics at the places of residence of convicts;
 - b) children aged from 3 full years to 15 years old - in orphanages of the People's Commissariat of Education of other republics, territories and regions (according to the established location) and outside Moscow, Leningrad, Kyiv, Tbilisi, Minsk, coastal and border cities.
- 20) For children over 15 years of age, the issue is decided individually. Depending on age, ability to work independently, or ability to live as dependents of relatives, such children may be:
 - a) sent to orphanages of the People's Commissariat of Education of the republics in accordance with paragraph "b" of Article 19;
 - b) sent to other republics, territories and regions (to points, with the exception of the cities listed above) for employment or placement for study.
- 21) Infants are sent along with their convicted mothers to camps, from where, upon reaching the age of 1-1 1/2 years, they are transferred to orphanages and nurseries of the People's Commissariat of Health of the republics.
- 22) Children between the ages of 3 and 15 are admitted to state care.

23) In the event that other relatives (not repressed) wish to take the remaining orphans to their full dependency, do not interfere with this.

PREPARATION FOR THE RECEPTION AND DISTRIBUTION OF CHILDREN

24) In each city in which the operation will be carried out, specially equipped:

a) reception and distribution centers to which children will be delivered immediately after the arrest of their mothers and from where the children will be sent, then to orphanages.

b) Premises are specially organized and equipped in which socially dangerous children will be kept until the decision of the Special Conference. For the children mentioned above, where they are available, children's receivers of the departments of labor colonies of the *NKVD* are used.

25) The heads of the *NKVD* bodies of the points where the children's homes of the People's Commissariat of Education are located, designed to receive children of convicts, together with the heads or representatives of the *OBLONO*, check the staff of the houses and persons who are politically unstable, anti-Soviet and decomposed - fired. Instead of the dismissed personnel of the houses, they are understaffed with a proven, politically reliable staff capable of conducting educational work with the children arriving to them.

26) The heads of the *NKVD* bodies determine in which orphanages and nurseries of the People's Commissariat for Health it is possible to place children under 3 years of age and ensure the immediate and trouble-free reception of these children.

27) People's commissars of internal affairs of the republics and heads of departments of the *NKVD* of the territories and regions, report by telegraph personally to the deputy head of the *AHU* of the *NKVD* of the USSR comrade SCHNEERSON name lists of children whose mothers are being arrested. The lists should indicate: surname, name, patronym, year of birth of the child, in which class he is studying. In the lists, children are listed in groups, completed in such a way that children related to each other by kinship or acquaintance do not end up in the same house.

28) The distribution of children to orphanages is carried out by the deputy head of the *AHU* of the *NKVD* of the USSR. He informs by telegraph the people's commissars of the republican *NKVD* and the heads of the *NKVD* departments of the territories and regions which children and to which house to send. A copy of the telegram is sent to the head of the corresponding orphanage. For the latter, this telegram should be the basis for receiving children.

29) During the arrest of the wives of convicts, their children are confiscated and, together with their personal documents (birth certificates, student documents), accompanied by an employee or employee of the *NKVD*, specially dressed up as part of the group making the arrest, are taken away:

a) children under 3 years of age - in orphanages and nurseries of the People's Commissariat of Health;

b) children from 3 to 15 years of age - to the reception and distribution centers;

c) socially dangerous children older than 15 years of age in rooms specially designed for them.

Sending children to orphanages:

30) Children at the reception and distribution center are received by the head of the center or the head of the children's reception center of the *NKVD OTK* and a specially assigned operative (worker) of the *UGB*.

Each adopted child is recorded in a special book, and his documents are sealed in a separate envelope.

Then the children are grouped according to their destinations and, accompanied by specially selected workers, are sent in groups to the orphanages of the People's Commissariat of Education, where they are handed over, along with their documents, to the head of the house against his personal receipt.

31) Children under 3 years of age are handed over personally to the head of orphanages or nurseries of the People's Commissariat of Health under their personal receipt. Together with the child, his birth certificate is also handed over.

REGISTRATION OF THE CHILDREN OF CONVICTS

32) Children of convicts placed in orphanages and nurseries of the People's Commissariat of Education and the People's Commissariat of Health of the republics are taken into account by the *ACS* of the *NKVD* of the USSR.

Children over 15 years of age and convicted socially dangerous children are taken into account by the 8th department of the *GUGB* of the *NKVD* of the USSR.

SUPERVISION OF THE CHILDREN OF CONVICTS

33) I entrust the supervision of the political moods of the children of convicts, their study and educational life to the People's Commissars of Internal Affairs of the republics, the heads of the *NKVD* departments of the territories and regions.

REPORTING

34) Report the progress of the operation to me by telegraph in three days. About all excesses and emergencies immediately.

35) The operation to repress the wives of already convicted traitors to the motherland should be completed by 25/X/X.

36) From now on, all wives of exposed traitors to the motherland, right-wing Trotskyist spies, are to be arrested simultaneously with their husbands, guided by the procedure established by this order.

PEOPLE'S COMMISSAR OF INTERNAL AFFAIRS OF THE UNION OF THE SSR
GENERAL COMMISSIONER OF STATE SECURITY (Ezhov) (My translation) ¹⁸⁷

In late 1938 or early 1939, Vyshinsky reports that the *NKVD* has faked the arrests of hundreds of teenagers in Novosibirsk:

the children were innocent and have been released but three senior officials including the head of the *NKVD* and the town Procurator were guilty of 'betraying revolutionary loyalty' and expelled from the Party." What should be done with them?

On 2 January 1939, Stalin responds by hand: "It's necessary to have a public trial of the guilty." ¹⁸⁸

On 1 December 1937 Alexandra Petrovna Nikolaieva, a 74 years old former seamstress, is interrogated in Leningrad by an *NKVD* officer two days after having been arrested at her domicile. The subject-matter is the circulation of rumors according to which people who have been shot are secretly buried in a cemetery where Mrs Nikolaieva is selling flowers.

Question [State Security Lieutenant Vassiliev]: "You are lying when you say that no one told you that the shots [shot people] were buried at night, we demand that you tell us who spoke to you in this way. »

Answer [Alexandra Petrovna Nikolaieva]: "I admit that I lied. It was the gravedigger Pavel who told me about the shots."

Question: "Tell us exactly what Pavel said to you and if anyone was present when this conversation took place."

Answer: "That we were bringing shots to the cemetery, the gravedigger Pavel told me in the presence of my daughter-in-law Maria Vasilievna Nikolayeva in October at the beginning of the

month, or perhaps around the middle of the month, in the evening, around 5 hours, at the entrance to the cemetery, where I sell my flowers.”

Question: “Tell us the precise circumstances of this conversation.”

Answer: “With my daughter-in-law, I was about to leave the cemetery, we were putting away our flowers when we saw the gravedigger Pavel pass by, who had had a good drink. I asked him: how many deaths will there be tomorrow, to know how many flowers I should prepare for the next day, to which Pavel replied: “Tomorrow there will be no ordinary deaths, but on the other hand there will be shots, and for those, no need to bring flowers.” With these words, we left, without asking for anything more.”

Question: "And Pavel drinks often?"

Answer: “After every funeral.

Question: "And who was buried that day?"

Answer: “That day, if I remember correctly, there were three burials, a man, a woman and a child.”

Question: “Why have you hidden what Pavel told you so far?”

Answer: “I was afraid of getting into trouble, and I have to go to the cemetery every day to earn a living.”

According to the Protocol of the Leningrad *troika* of 15 December 1937 concerning AP Nikolaieva:

Nikolaieva A. P., while selling flowers at the Preobrajenskii cemetery, systematically spread provocative and hostile counter-revolutionary rumours among the peasants (sic) who went to the cemetery. There was also terrorist propaganda against Communist Party leaders. Troika Verdict: SHOOT Nikolaieva A. P. ¹⁸⁹

And **in Nazi Germany**, on 5 August 1943, Maria Terziel is found guilty, by the *People's Court*, of assisting Jews by providing food ration cards and identity papers. She is sentenced to death and executed on 5 August 1943 ¹⁹⁰

We refer you to the book *Devil's Advocates* for more details.

E. The justifications of Judicial Terror: Devil's advocates as Devil's preachers

The Devil's Advocates are abundant writers, for recognition as well as legal and political influence.

a. Legal writings of Fouquier-Tinville

Fouquier-Tinville did not leave any writings apart from his abundant pleadings and – after his arrest – defences, which are available today. ¹⁹¹

b. Legal writings of Vychinsky

Starting in 1925, Vyshinsky publishes an important literature, which by 1941 reaches more than 300 books and articles on the theory of law, legal history, criminal law and procedure.

In a book rewarded in 1947 by the Stalin Prize, he summarized as follows the five principles of his *Theory of Judicial Evidence in Soviet Law*:

1. the judge is not obliged to establish the absolute truth, but only the probability of the facts submitted to the appreciation of the Court;
2. the accused is presumed to be guilty, and it belongs to him to prove his innocence;
3. in matters regarding plotting, admission is irrefutable evidence;
4. guilt can be recognized without evidence of an intention to cause damage;
5. one can be held guilty of a crime committed by someone else without having participated to the crime or even while ignoring the crime.¹⁹²

And in 1948, he publishes *The Law of the Soviet State*, which must be read by anyone interested to the legal framework and the rhetoric of the *Bolshevik* dictatorship.

The book is full of hateful rhetoric, metaphors and apologetical rhetoric, such as:

The theory of Marx and Engels on the revolutionary overthrow and annihilation of the bourgeois machinery of state power is organically connected with the entire Marxist theory of the state. Suppression and the use of force by the state are still essential during the transition period (...) The indispensability of this force necessitates a special apparatus adapted to realize these purposes. The Soviet state is the particular apparatus, the special machinery, to crush enemies and all elements hostile to socialism. ¹⁹³

Marxism revealed the pseudoscientific character of diverse trends in the field of legal science. It put an end, once and for all, to the conceptions of formal jurisprudence and abstract idealism which had so completely muddled the idea of law and the state. Marxism explained all the hitherto inexplicable questions and problems, and brought into a strictly scientific and logical system the solution to these questions, which were thus raised to the level of truly scientific theory. (...) ¹⁹⁴

NOTE 20: One of the most brilliant examples of uniting measures of repression and measures of economic organization is the conduct (in the villages, under the guidance of the proletariat, 1929-1931) of the liquidation of the kulaks as a class, on the basis of complete collectivization. The mass *kolkhoz* (collective farm) movement arose on the basis of such measures as the development of socialist industry and the equipment of the country with machines and tractors (...) and, finally, the decisive struggle with the kulaks. (...) . The "theory" that the kulaks would "peacefully" assimilate into socialism is a provocative snare of fascist agents of Japan and Germany, who strove to prepare the defeat of the proletariat (...). ¹⁹⁵

The exploitation of man by man is annihilated and exploiter classes are liquidated. ¹⁹⁶

But Vyshinsky demonstrates constantly a fundamental ambivalence between prosecutorial and educational roles.

Three examples:

- Vyshinsky's discourse as a law professor and his actions as Chief Prosecutor;
- Vyshinsky's support for the principle that "confession of the accused is the queen of evidence"; and
- Vyshinsky's use of his judgments in his publications.

c. Legal writings of Freisler

Freisler is a prolific and influential writer who publishes numerous essays in influential professional journals ¹⁹⁷, and co-authors in 1935 *Das kommende deutsche Strafrecht* (*Future German Criminal Law*), a two-volume report on the 'work of the official criminal law commission' published by the Reich' Department of Justice. ¹⁹⁸

His works revolve around four basic themes:

- the Leader principle;
- the People;
- the Party and the State;
- Law and the judiciary.

Four examples :

National Socialism is characterized by its biological perspective. It looks at the *Volk*, its internal and external growth, biologically, sees its history as biologically determined, biologically determined through the people's selection of its life goal and the selection of the correct path to achieve this life goal. The National Socialist also sees the law as biological. Our view of the nature of the law differs from that held by others who wrestled with themselves and the world to achieve knowledge of and insight into the law. ¹⁹⁹

It is the duty of the German nation and of every individual to practise racial hygiene; failure to fulfil this duty is tantamount to treason. ²⁰⁰

The German judiciary has every reason to be proud of being the first state institution to have implemented the unity of the movement, the *Volk* and the state in its staffing policy, throughout the Reich and on all levels of the civil service. ²⁰¹

It is indeed possible that though the letters, words and paragraphs of the law have not changed, a judge's decision underpinned by the objectivity of a neutral age may differ from a judge's decision underpinned by the exercise of judicial freedom in the spirit of National Socialism. One cannot

approach the question of the judge's position on right and law in his professional work only from the same standpoint as that from which a soldier who has been assigned a task sets about doing his duty: respect for the will of the *Führer* as the natural expression of law and pride in the trust invested in us ... and the sense of obligation to take into account all circumstances in accordance with the National Socialist directive. ²⁰²

V. The end

The end of the Ruler brings the end of his Advocate. First, by discrediting his work, and then by causing his physical elimination.

a. Judicial discredit

What do you see in common between Fouquier, Vyshinsky and Freisler's writings?

The use of law to define, exclude and eliminate anybody who does not fit the ideological prototype: "citizen", "proletarian" or "*volk*".

In France, Russia and Germany, the judicial system is discredited by the ideological contradictions, the corruption and the trauma engendered by the revolutionary courts and the terrorist tribunals.

i. Ideological contradictions

Contradictions abound in the political as well as in the judicial hierarchies concerning the administration of Justice and the courts.

For example, in Soviet Russia, the paranoia for control of the Soviet leadership is reflected in its own hesitations and contradictions concerning the jurisdiction of the *dvoikas* and *troikas*.

And in each of the three countries, despite its frantic efforts to maintain ideological purity the entire judicial system is discredited by its self-contradictions. Three examples:

- the sentencing to death of people known for their patriotism, such as Danton, Desmoulins, Bukharin, Kamenev, Zinoviev;
- the terrorization of critics of the courts and tribunals: judges and Procuracy denounce the political police for arresting thousands of people without legal basis, while blindly signing off arrest and death warrants; and
- careerism: both in Germany and in Soviet Russia, the Departments of Justice cooperate administratively with the secret police (*RSHA* or *NKVD*), recognizing therefore tacitly the primacy of the second.

ii. Judicial corruption

Despite their ideological commitments, or maybe because of them, the three Devil's Advocates are not opposed to taking advantage of their positions to obtain material advantages.

Fouquier's indictment in 1795 details his appropriation of money or property belonging to accused. He also has a reputation for taking bribes to influence proceedings, as witnessed by Manon Roland, a pro-Girondin saloon owner guillotined on 8 novembre 1793, who says that Fouquier-Tinville received 80,000 pounds from Mme de Rochechouart in order to acquit Reviers de Mauny who had been accused of emigration.²⁰³ There are also rumors of Fouquier's involvement in the trafficking of false assignats,²⁰⁴ then a capital crime, and in sexual orgies.²⁰⁵

Vyshinsky is proven to have abused his position as Prosecutor on at least one occasion. After the First Moscow trial (*Anti-Soviet Trotskyist Center*) in August 1936, he takes possession of the personal villa of Leonid Serebryakov, former commissar for roads who is accused during the *Second Moscow Trial (Trial of the 17)* in January 1937 of damaging attacks on Soviet railways, although he was then the head of Soviet automobile transport. Vyshinsky calls him an "enraged dog of capitalism" and asks for the death penalty. Serebryakov is found guilty and shot; his wife and daughter are sent to the Gulag. After Stalin's death, the Serebryakovs obtain the return of half of the property, but the Vyshinskys keep the other half.²⁰⁶

Nazi judges, including Freisler, are encouraged in their ideological commitment by material advantages: on 12 October 1942, a circular from Minister of Justice Thierack grants them a special status, different than that of other civil servants

Traumatic stress and psychopathy

Berlin-Plötzensee 3 June 1937

Dear Mother, dear Father,

I have just been told that my appeal for clemency was turned down. I must die then.

We need not say anything anymore to each other. You know that in these last months I have really found the way to myself and to life. Real beauty must stand before unswerving honesty. You know that I have lived every moment fervently and that I have remained true to myself until the end. You must live on. There can be no giving up for you. No becoming soft or sentimental. In these days I have learned to say 'yes' to life. Not only to endure it, but to love life as it is. It is our own inner gravity, the force by which we have entered life.

It must help you in some way that I know I have finally reached my own inner image and feel complete. And in this feeling is much of our time and our world.

The only way I know how to thank you is by showing you until the last moment that I have used all your love and goodness towards becoming a whole being of my time and my heritage. Do not think of the unused possibilities, but take my life as a whole. A great search, a foolish error, but on the path to finding final truth, final peace.

Please care for Vally as for a child [his girlfriend at the time of his death]. I embrace you, dear mother and you, my father, once more for a long, long time. Only now have I realized how much I love you.

Yours forever,
Helmuth.

Last letter of Helmut Hirsch ²⁰⁷

It is important not to underestimate the ambivalent consequences of the social pressures and psychological stress imposed on the magistrates and jurors in the terror courts and tribunals.

At the beginning, judges and jurors are emotively involved negatively (fear, disgust, pity) in the proceedings, especially when they sentence accused to death. But later, they are less and less involved negatively and render a growing number of excessive sentences, because of

- radical convictions of a growing number of them;
- growing numbers of accused to try;
- hardening of the legislation;
- submission of the courts to political or administrative institutions;
- fear to be characterized as counter-revolutionary;
- exhaustion and nervous tension.

Five paths are open to them:

1. to leave the institution, by resigning;
2. to enter into open opposition, as judge Roussillon who writes to the Convention a memorandum in favour of proportionality of penalties and indicates that death penalty is not conceivable in many cases (for which he is arrested and imprisoned);
3. to enter into hidden opposition, such as moderating as many sentences as possible;
4. to show docility;
5. cooperation, which often transforms into open partisanship and mockery of the accused as in the case of President Herman.

The paths are not mutually exclusive and with increasing and more and more hidden stress, except the last one which is for the psychopaths.

So, where to put each of the Devil's Advocates: terrorist, fanatical, pliant or amateurish?

Vyshinsky, Freisler and Fouquier-Tinville are:

- NOT AMATEURISH: they write extensively; take part in trials; take part in legislative drafting; write orders, letters, etc., interpreting and enforcing terrorist laws;
- NOT PLIANT: they take the initiative in manipulating trials.

The only difference between them is in the degree to which they are TERRORISTS AND FANATICAL: Vyshinsky and Freisler have murdered, and plotted to murder individuals themselves, whereas there is no evidence that Fouquier-Tinville murdered anybody, even though he plotted to murder specific individuals.

Thus, it is not necessary to kill by oneself to become a Devil's Advocate, even if it helps.

b. Cleansing

Terror is exhausting. The French Judicial Terror lasted only 11 months, but the Nazi Judicial Terror lasted 12 years and the *Bolshevik* one lasted 71. And in all cases, the judicial system crashed down with the entire political system.

The Thermidor Revolution and the trial of Fouquier-Tinville

"I was the axe of the Revolution, do you punish an axe?"

Fouquier-Tinville's defense at his trial ²⁰⁸

On 9 Thermidor year II (27 July 1794), Robespierre is outlawed by the National Assembly after threatening to unseat his opponents there. After a short flight, he is arrested on 10 Thermidor, identified by Fouquier-Tinville and sent to the guillotine. The same day, the *Decree of 22 Prairial* is abrogated, the Committee of Public Salvation renews the staff of the *Revolutionary Tribunal* and Fouquier is proposed again for the position of Public Accuser. But 3 days later, deputy Fréron asks for his arrest: "I ask that the earth be purged of this monster, and that Fouquier go vat in the underworld the blood he has shed!" Sure of himself, Fouquier surrenders himself the next day.

In the next months, the exceptional rules and jurisdictions are abolished, including the *Revolutionary Tribunal* on 31 May 1795.

From 28 March to 1 May 1795, Fouquier is tried with 23 co-accused in front of the reorganized *Revolutionary Tribunal*, presided by one of its former judges. Fouquier faces 25 accusations: amalgamation, lack of evidence, sentencing of innocents, influencing the judges and jurors, hampering the defence, etc. On 1 and 2 May, the prosecution presents its pleadings. On 2 and 3 May 1795, Fouquier presents his defence:

It is not I who should be presented here, but the leaders whose orders I have carried out. I have acted only under the laws of a Convention invested with all powers. Because of the absence of its members, I find myself as leader of a conspiracy that I have never known. Here I am facing slander, from a people always eager to find culprits."

(...)

I was the axe of the Revolution, are we punishing an axe? (My translation) ²⁰⁹

On 4 and 5 May, the defenders of his co-accused are heard. And on 6 May, the jury deliberates for 5 hours before coming back with a guilty verdict against Fouquier and 15 other accused. On 6 May, they are

convicted of manoeuvres and plots aimed at promoting the liberticidal projects of the enemies of the people and the Republic, provoking the dissolution of national representation, and the overthrow of the republican regime, and of arming the citizens against each other, notably by killing in the disguised form of judgment an innumerable crowd of Frenchmen, of all ages and sex; by imagining, for this

purpose, plans for conspiracy in the various prisons of Paris; by drawing up lists of proscriptions, etc., in these different houses, and for acting with bad intentions. (My translation) ²¹⁰

All are then sentenced to death.

Back into prison, Fouquier writes:

I have nothing to reproach myself for: I have always complied with the laws, I have never been the creature of Robespierre or Saint-Just; on the contrary, I was about to be arrested four times. I die for my homeland and blameless. I am satisfied: later, my innocence will be recognized. (My translation) ²¹¹

The next day, he is the last of the sixteen to be guillotined, under the insults of the public. His last words, to one of his insulters:

Go on then, scoundrel, go to the section and get your 3 ounces of bread. I go with a full stomach! ²¹²

The end of Stalin and Vyshinsky's exile to the United Nations

Vyshinsky: "I feel ill!"

Zinaida Andreyevna (his daughter): "They've killed him!" (...)

Henry Cabot Lodge (US permanent delegate to the UN): "What's going on?" (...)

The Soviet diplomat on duty: "Nothing, Mr Ambassador."

Cabot Lodge: "Are you sure? maybe you need some medical aid?"

The diplomat: "No, thank you, Mr Ambassador." ²¹³

Vyshinsky's late career is characterized by his ascension to the top of the establishment from 1939 to 1953, notably in intelligence and foreign affairs, and his sudden demise, exile and death following Stalin's death.

The following table summarizes Vyshinsky's late career, his brief ascension to the Presidium of the Communist Party, and his brutal exile and death in 1953.

DATE	POSITION	ACTIVITIES
1938	Chief Prosecutor of the USSR	On 17 November 1938, the <i>Sovnarkom</i> and Central Committee Decree of 17 November 1938, <i>On Arrests</i> , <i>Prosecutorial Supervision and Investigation</i> rebalances power between <i>NKVD</i> and the Ministry of Justice. BUT it does not affect ongoing files and is not retroactive. ²¹⁴
1939	Deputy Chairman of the People's Commissariat (1939)	Oversees culture and education, which are incorporated more fully into the USSR (1 June).

	Academician in the Soviet Academy of Sciences (1939-54)	Director of the <i>Institute of State and Law</i> of the <i>Soviet Academy of Sciences</i> .
1939-44	Vice-Premier (1939-44)	Transferred to the shadow capital at Kuibyshev.
1940	First Deputy Minister of Foreign Affairs, under Molotov (1940-49) ²¹⁵	<p>Sent to Latvia to supervise the establishment of a pro-Soviet government and incorporation of that country into the USSR; and to purge the Latvian Communist Party of Trotskyists, Bukharinites, and possible foreign agents. (June). The Latvian Soviet Republic is proclaimed and admitted in the USSR (21 July). Then appointed First Deputy Minister of Foreign Affairs.</p> <p>Remains in the Soviet Union to "keep shop" while Stalin at <i>Tebran Conference</i>.</p>
1943		<p>Appointed by Stalin to the <i>Allied Control Council on Italian affairs</i> where he</p> <ul style="list-style-type: none"> - begins organizing the repatriation of Soviet POWs (including those who do not want to return to the Soviet Union), - liaises with the Italian Communist Party in Naples. <p>Accompanies Stalin, Molotov and Beria to the <i>Yalta Conference</i> (4-11 February).</p>
1945		<p>Sent to Romania to arrange the seizure of control by a Communist regime (26 February).</p> <p>Participates to the ceremony of surrender of the Nazi forces (8 May).</p> <p>Accompanies again the Soviet leadership to the <i>Potsdam Conference</i> (17 July-2 August).</p> <p>Heads the <i>Commission on the Guidance of the Work of Soviet Representatives in the International Tribunal in Nuremberg</i> responsible for the Soviet preparations for the trial of the major German war criminals by the International Military Tribunal, directly under the control of the <i>Politburo</i> and composed of representatives of <i>NKGB</i>, <i>SMERSH</i>, General Prosecutor, USSR Supreme Court, Justice Department. The Commission prevents the examination by the IMT of Nazi/Soviet cooperation and the Katyn massacres. ²¹⁶</p> <p>Sends to Molotov a list of proposed defendants for Nuremberg who are in <i>SMERSH</i>'s custody (18 August).</p>

1949	Minister of Foreign Affairs (4 March 1949-5 March 1953)	Appointed Minister of Foreign Affairs (4 March) and chairman of the Committee of Information combining <i>MGB</i> and <i>GRU</i> 's foreign intelligence directorates. ²¹⁷
1952		Appointed Candidate Member of the Presidium of the Communist Party (16 October).
1953		Accused by the U.S. Congress Kersten Committee during its investigation of the Soviet occupation of the Baltic states.
	Death of Stalin (5 March). The same day, the 'leading group' (Malenkov, Beria, Molotov, Bulgarin and Kaganovich) dismiss him from the Central Committee's Presidium and strip him of his ministerial portfolio. ²¹⁸	
	First Deputy Minister of Foreign Affairs (5 March 1953-22 November 1954)	Appointed First Deputy Minister of Foreign Affairs (5 March)
		Trial and execution of Beria (26 June), for treason, terrorism and anti-Soviet activities under articles 58-1B, 58-8, 58-13, 58-11 of the <i>Penal Code</i> .
		Appointed by the <i>Politburo</i> as permanent representative of the USSR to the UN (5 March).
1954		Dies of a “heart attack” in New York (21-22 November). The medical report, in Moscow, attributes his death to “a sharp interruption in the coronary circulation of the blood”. ²¹⁹

Vyshinsky's late career

Five important issues remain to be examined by historians:

1. his role at the top of the Soviet *Commission on the Guidance of the Work of Soviet Representatives in the International Tribunal in Nuremberg* in 1945 to prevent the International Military tribunal from investigating the Soviet role in the Katyn massacres of 22,000 Polish officers and intelligentsia members.
2. His role before Stalin's death, between 1949 and 1953, as Minister of Foreign Affairs and chairman of the *Committee of Information* combining *MGB* and *GRU*'s foreign intelligence directorates.
3. His collaboration in Beria's rise and fall in 1952 and 1953.
4. The political reasons for his dismissal as Minister of Foreign Affairs and his eviction from the Presidium of the Communist Party immediately after Stalin's death on 5 March 1953.
5. The circumstances and motives of his sudden death in New-York on 21 November 1954: was he poisoned and, if yes, was it because he had been a supporter of Beria, or because he knew too much about the new Ruler?

The bombing of Berlin and the death of Freisler

On 3 February 1945, Freisler conducts a hearing of the *People's Court* against Fabian von Schlabrendorff, a jurist before the war who had attempted in 1943 to kill Hitler and a suspected conspirator in the July 1944 plot. An air raid alarm interrupts the hearing. Freisler stays in the building to collect some documents. A bomb pierces the roof and explodes, collapsing a roof beam which falls on Freisler. He is killed instantly. ²²⁰

From Nazi to Communist dictatorship

Liberation from the oppressive regime is only the beginning of a complex and ambivalent process of elimination of the Judicial Terror.

The case of Nazi Germany is particularly revealing: after their Victory, Allied Powers adopt opposite policies concerning the cleansing of the Nazi judicial establishment.

In the British Zone of Occupation, faced with the lack of judicial opponents to the Nazi judiciary, the British military administration adopts the 'piggyback procedure' according to which up to 50 per cent of judges and public prosecutors in the Zone could be former NSDAP members.

In East Germany, the Soviet military administration wipes out 90% of the judicial establishment and imports the Soviet justice system. *NKVD Order No. 00315*, of 18 April 1945, orders the internment without prior investigation by the Soviet military of:

- "spies, saboteurs, terrorists and active NSDAP members";
- heads of Nazi organizations;
- people maintaining "illegal" print and broadcasting devices or weapon deposits; and
- members of the civil administration and journalists.

In all, 123,000 Germans and 35,000 Russians are imprisoned, most in ten NKVD Special camps in East Germany where at least 43,000 will die. ²²¹

In September 1945, almost 90% of the legal personnel is fired. Nazi public prosecutors and judges are accused of 'crimes against humanity' and 'fundamental support' of the Hitler regime. The majority of the defendants receive prison sentences of ten years or more, and twenty-four are executed on the night of 3 to 4 November 1950. ²²²

Laymen receive crash courses in the administration of justice *Volksrichterschulen* (schools for the training of people's judges).²²³

Proceedings in the courtrooms are frequently show trials incompatible with the rule of law:

- the accused have few rights;
- there are no independent lawyers, or the defendants have no lawyers;
- there are no witnesses for the defence;
- the public is usually excluded;

- public prosecutors use the courtroom as an ideological tribune;
- judges hand down sentences dictated in advance by the *SED* and the *Staatssicherheit* (East German *Ministry for State Security*). ²²⁴

One example: Hilde Benjamin is a judge in many show trials before the *East German Supreme Court* from 1949 to 1953 and Minister of Justice of the GDR from 1953 to 1967. She declares that: “criminal justice should be a political act”, subjects defendants to tirades of insults or shouts them down, and is known for her propensity for handing down death sentences.

She is nicknamed “the Red guillotine”, or ... “the Red Freisler”. ²²⁵



Hilde Benjamin ²²⁶

VI. Justice delayed, justice denied

A. The French ambivalence

On 28 December 1794, the *National Convention* votes the reorganization of the *Revolutionary Tribunal*, which is put into effect a month later. New judges are appointed, who come from the provinces and cannot officiate in Paris for more than 3 months. ²²⁷

Between 6 April 1793 and 27 July 1794, the *Revolutionary Tribunal* has sent 2,625 people to death. Its successor pronounces only 17 death sentences, including those of Fouquier and his 15 co-accused.

An example of the revived clemency: Fouquier-Tinville’s deputy, Gilbert-Liendon, escapes execution and continues his judicial career under the First Empire. ²²⁸

Some victims will even receive justice, such as the Duchess of Saint-Aignan, who was sentenced to death despite being pregnant but saved by 9 Thermidor. She was freed, her trial quashed and she was put back into possession of the remnants of her property. ²²⁹

But bad habits are difficult to lose: France will use special jurisdictions again a century later, during World War II. In August 1941, after an attack in the Paris metro against a German officer, the Petain regime establishes a special jurisdiction, the *Special Section of the Court of Appeal*, to try summarily communist resistance fighters; at least 12 are sentenced to death and guillotined after secret trials. ²³⁰

B. The Soviet Judges and the revision of miscarriages of justice

From Stalin to Putin, contradictions are a favorite instrument of Rulers to distinguish the real from the fake followers.

In 1934-1936, Stalin develops two parallel strategies to overcome obstacles to his power, each of which having long-term consequences for Soviet criminal justice.

First, the reinforcement of the autonomy of the judicial apparatus, through

- the reorganization of the legal agencies to produce a more centralized and pliant administration of justice, with an increase in the power of the procuracy through the binding of *Narkomiust* [Justice Secretariat] and *OGPU*, as well as the weakening of local power and reinforcing of criminal sanctions as a reliable weapon for the Patron;
- the elimination of weakly prepared legal officials and provision of remedial legal education for the rest, leading in 1936-1937 to universal legal preparation, expansion of higher legal education and infusion of more lawyers into the ranks of legal officialdom.

Second, at the same time, Kirov's murder becomes the justification for the Great Terror targeting prosecutors, *Narkomiust* and the USSR Supreme Court in 1937, before ending abruptly in 1938:

- in the second half of 1937 and early 1938, close to half of all procurators and judges in the USSR lose their jobs and in most cases are also arrested;
- as of 1 January 1939, 35.9% of *People's court* judges have served less than one year, and another 31.0% less than three years;
- in 1938, 40% of the members of regional and republican supreme courts are changed;
- lenient judges are condemned as “enemies of the people” and denounced to the *NKVD* by Ulrikh, as in the cases of Vinokurov and Solts.

The consequences for procuracies are devastating, with a general decline in standards and a huge work overload.

And the problem is this is still going on NOW.

In February and June 1988, under the pressure of the families and young historians who have access to the official records, the *Soviet Supreme Court* rehabilitates Bukharin, Zinoviev, Kamenev, Radek and 49 other Bolsheviks sentenced during the Moscow Trials. But not Trotsky and his son Sedov.

And now, in 2022, efforts to obtain *perestroika* (revision) are limited to private initiatives which are systematically blocked by authorities and society. At the end of December 2021, Russia's Supreme Court orders the closing of Russian human rights organization *Memorial* following charges by the Prosecutor General that it "creates a false image of the USSR as a terrorist state, whitewashes and rehabilitates Nazi criminals", and the list of dissidents contains "Nazi offenders with blood of Soviet citizens on their hands".

231

C. The Nazi judges and the absence of revision of miscarriages of justice

Three factors will play an essential role in the evolution of the policies of cleansing of former Nazi judges after the war:

- the largely exemplary punishment of selected members of the former judicial establishment;
- the paralysis of the judicial system in the Occupied zones stemming from serious personnel shortages caused by the removal of all incriminated persons; and
- the opposition of former Nazi judges to the "law of the vainquor", which contradicts their own precedent as judges in the territories conquered by the Reich in the early 1940s.

a. The *Alstotter* trial: a slap on the wrist

In 1947, fourteen members of the Nazi legal and judicial establishment are judged by the International Military Tribunal on 4 counts:

- Count 1 — CONSPIRACY to commit crimes alleged in the next three counts;
- Count 2 — CRIMES AGAINST PEACE including planning, preparing, starting, or waging aggressive war;
- Count 3 — WAR CRIMES including violations of laws or customs of war;
- Count 4 — CRIMES AGAINST HUMANITY including murder, extermination, enslavement, persecution on political or racial grounds, involuntary deportment, and inhumane acts against civilian populations. ²³²

The *Alstotter Trial* produces three acquittals, four life sentences, six sentences from 5 to 10 years, and one mistrial. ²³³

Freisler is characterized as "the most evil, brutal and bloody judge in the entire German legal administration".

234

But not a single former member of the *Volksgerichtshof* figures among the convicted war criminals, and the heads of the Justice system have died: Reich Minister of Justice Gürtner died in 1941, his successor Thierack committed suicide in a British internment camp in 1946, and Bumke, the President of the *Reichsgericht*, committed suicide in 1945 when the US Army entered Leipzig. ²³⁵

b. The reintegration of Nazi judges in the German judiciary: a political dilemma or professional complicity?

Most former Nazi agents of Judicial Terror are not prosecuted and pursue their careers in the judicial system after the war.

In the Post second-world war period, the German judicial system goes through four steps:

- de-nazification (1945);
- institutional continuity and re-nazification (1948-1949);
- officialization of re-Nazification (1950s-1989); and
- German re-unification (post-1989).

De-nazification (1945)

In April 1945, ordinary courts are suspended and extraordinary courts are abolished. By November 1945, some courts are back in operation and the de-nazification of the judicial system begins officially, but immediately the objective appears unattainable: between 93% (Westphalia) and 100% (Schweinfurt) of the existing court staff have been Nazi.

Several methods are used to try to run around the problem:

- calling back judges who had retired before 1933;
- appointing attorneys as part time judges;
- treating as “clean” all jurists who joined the Nazi Party after 1937; or
- employing a “tainted” judge for every untainted one (the "piggy-back method").

In the Soviet zone, the occupant forces enforce a method reminiscent of the *Bolshevik* 1920s: all judges are fired and replaced by lay judges specially trained and politically reliable.

Institutional continuity and re-nazification (1948-1949)

In 1948, 30% of the presiding judges and 80 to 90% of the assisting judges in the County Courts of the British Zone and other Western zones are former Nazi Party members. ²³⁶

Western Allies end their restrictions on jurists with a Nazi past. Slowly, Nazi judges and prosecutors return to office in the positions occupied by former Weimar judges, exonerated by the de-Nazification procedures

which classified virtually everyone as "followers" or "exonerated". In 1949, according to the report *Some Aspects of ReNazification in Bavaria*, 752 of 924 judges and public prosecutors (81%) are former Nazis. ²³⁷

Officialization of re-Nazification (1950s-1989)

In the 1950s, through the support of the Minister of Justice and legal scholars, German caselaw and legislation officialize the "continuity" of the State and grant effective exoneration to Nazi-era judges.

For example, in 1950, a judgement of the *Bundesgerichtshof* (*Federal Court of Justice*) grants to all Nazi-era judges a practical exoneration through the *Rechtsbeugungs-Prinzip* ("perversion of the law principle"): a judge can be convicted of murder or other serious crimes ONLY if he is at the same time found guilty of perverting the course of justice. This theory obliges the prosecutor to prove without doubt that the accused had knowingly or intentionally violated laws valid at the time.

In 1951, the *131 Law* gives retroactively a legal foundation to the reintegration of Nazi officials in the civil service. It is amended in August 1953 by :

- giving to all public servants of the Nazi state a legal claim to reemployment and the right to claim back pay for the time they have not been able to work; and
- requiring that at least 20 percent of employees in all departments of public administration be former Nazis; departments failing to meet this requirement would be fined an amount equal to the salaries thus "saved".

The only exceptions are agents of the *Gestapo* and civil servants who have been characterized as "major offenders" in de-Nazification proceedings.

The practical consequence is that old Nazi Party members must be given first priority in hiring, and thus more than 90% of the Nazi officials dismissed after 1945 come back to the public service. Because of financial difficulties of landers and bureaucracy overstaffing, for all practical purposes former membership in the Nazi party becomes a requirement for joining the civil service.

In 1956, the *Committee for German Unity* voices serious concerns over the evidence that the majority of Nazi judges have been returned to office and that 800 *Special Court* and *Military Court* judges particularly implicated with the Nazi Party are then occupying responsible positions.

On 19 October 1958, the West German Federal Prosecutor-General, Dr Max Güde, admits that:

the mass of today's judges and public prosecutors were already active in legal office between 1933 and 1945 ... they were tools of illegality, and instruments of terror" (...) "the rule of law perished, but they survived. ²³⁸

In the 1970s, attempts are made to establish a new, democratic legal culture. But the attempts are not always successful, as demonstrated by the cases of Chapeaurouge and Weber-Lortsch.

On 6 February 1975, the Second Criminal Panel of the *Federal Supreme Administrative Court* must decide whether members of the German Communist party can join the civil service. But two of the judges on the panel have served in the Nazi courts and police:

- Edmund de Chapeaurouge has served on the bench in *Race Law* trials in Hamburg, and decided the case of Leon Abel, whom he characterized as "an inferior human being".
- Rudolf Weber-Lortsch has been a high-ranking officer in the *SA* in 1933, acting chief of police in Kattowitz, Konigshurte (Kro-dewska Huta), and Sosnowiec in occupied Poland, and later an *SS* and police officer in the "Reich Territory of the Ukraine". From 1942 on, Lortsch is the head of the Legal and Administrative Office of the Senior Officer of the *SS* and Police Forces in Norway. On 25 November 1942, his office reports that under its direction 700 Norwegian Jews have been "transferred to Auschwitz". ²³⁹

By 1984, the Nazi jurists still alive who served on the bench after the War include:

- two county court judges;
- one chief judge of a county court;
- two associate judges in regional courts;
- four chief judges in regional courts;
- four associate judges in higher regional courts;
- six public prosecutors;
- three senior public prosecutors; and
- two senate presidents. ²⁴⁰

The West German government employed 181 former Nazi public prosecutors, and *Volksgerichtshof* judges who were not employed by the Federal Republic after the end of the Second World War have been the exception.

German re-unification (post-1989)

With the reunification, the same problems which have plagued the de-nazification of the West German judiciary in 1945 arise again concerning the East German judiciary.

The East German judiciary is a copy of **both** the Nazi and the Soviet ones, in its objectives and in its methods.

Until 1987, the German Democratic Republic (GDR) imposes the death penalty for capital crimes such as murder, espionage, and economic offenses. After the mid-1950s, nearly all executions are carried out in secrecy, initially by guillotine and later by a pistol shot to the neck. In most cases, the relatives are informed, neither of the sentence, nor of the execution. The corpses are cremated and the ashes buried secretly at construction sites. ²⁴¹

At least 300 such executions are documented, although the real number will probably never be known because no complete record of death sentences imposed by civil or military tribunals can be found.

Similarly, there are no precise figures concerning the number of victims shot for attempting to escape to the West (at least 825), or the members of the *Stasi* who were executed for various crimes including attempts to escape to the West (at least 200).

At least 40,000 sentences are handed out by the courts for “political offences”.²⁴²

The East German judiciary is particularly vicious: several judges and prosecutors have, in collusion with the *State Secret Police*, the *Stasi*, requested or handed down more severe sentences in political cases in order to allow the East German government to collect larger ransoms from the West German government for the liberation of such “convicts”.²⁴³

We have seen above, with the case of the “Red Freisler”, Hilde Benjamin, a particularly visible example of the viciousness of the East German judiciary.

The failure of West Germany to bring the Nazi judges to justice, *die Jauche der Justiz* (the cesspool of justice), plays an important role in motivating a strong investigative policy after the reunification, from the end of 1990 to July 1996:

- 52,050 investigations are launched into charges of murder, attempted murder, manslaughter, kidnapping, election fraud, and perversion of justice; and
- 29,557 investigations are stopped for various reasons including death, severe illness, old age, or insufficient evidence.

The disappointment is in the results of those efforts: only 139 convictions in those five years.²⁴⁴ Although that is still 139 times better than the results concerning the Nazi judges...

c. The continuance of financial benefits

After the war, Nazi jurists benefit handsomely from their crimes, by receiving generous sums and pensions.

For example, Schlegelberger, who has been State Secretary in the Ministry of Justice from 1931 to 1942 and Director of the Ministry of Justice for the last 17 months of his service, receives 100,000 marks from Hitler at his retirement in 1942 and, later, DM 160,000 in back pension as well as a monthly pension of 2,894 marks.

The legal basis for such treatment is an amendment to the *Law on Judges*, on 8 September 1961, which gives to all judges and public prosecutors who had "participated in the administration of criminal law from September 1, 1939, to May 9, 1945" the opportunity to resign with no reduction in pension by 30 June 1962. But only 149 former Nazi jurists take advantage of it.²⁴⁵

d. The denial of benefits to the victims

By contrast, victims of the Nazi agents of Terror are left struggling for survival.²⁴⁶

For example, between November 1948 and March 1949 in the district of Lower Bavaria Upper Palatinate, new staff is hired to fill positions in reopened government agencies. But while 69 former Nazi Party members are reemployed, no jobs are offered to 58 non-Nazi former government employees.

Victims of the Nazi regime are entitled to compensation **only** if they can prove that they have committed no crime, aided and abetted no tyrannical regime, never violated United Nations or international law, and never been a member of a National Socialist organization. ²⁴⁷

In the case of Gypsies, insult is wilfully added to injury: although they were sent to concentration camps for racial reasons, until 1956 the administrations and courts seize the fact that their deportation was justified by their being “asocial” and “work shy” - because they were characterized in the beginning as “Indo-Germanic race” - to hold that they have no claim to reparations for harm suffered before 1 March 1943. ²⁴⁸

VII. Conclusion

The lessons: characteristics of the Repressive State

Pozdnakova introduces an important concept for our comparative analysis of the Revolutionary, Bolshevik and Nazi institutions, the concept of the Dual State: the Prerogative State and the Normative State. In short, the Devil’s Advocate’ Repressive State, whether Revolutionary, Soviet or Nazi, can be divided into

- a **Prerogative State** governed directly by the rule of force, supported by
 - special laws, such as the *Decree on suspects*, art. 58 of the *Penal Code* or the *Law against treacherous criticism of the government*; and
 - special courts, such as the *Revolutionary Tribunal*, the *dvoïkas* and *troïkas*, the *Sondergerichtshof* and *Volksgerichtshof*; and
- a **Normative State** regulated through a system of sanctioned legal norms prescribing the permissible boundaries of interpersonal relations and citizen-state relations, to ensure stability, predictability and the strict implementation of policies decreed by the Party.

The Normative State can be more or less cut from the past. For example,

- in Russia: nihilism is opposed to Socialist Legality, itself based on Marxist precepts according to Vyshinsky. The system is stabilized in the 1920s with the *Criminal Code*, the *Civil Code* and the *Code of Procedure* of the 1920s.
- Whereas in France and Germany: the previous legal orders are preserved except in some areas, such as racial and political exclusion, or war law.

But in the Prerogative State, the law can be broken for any reason of political expediency decided by the Patron without justification.

For example, the trial of the Girondins, “The Führer is the Law”, the *NKVD* Secret Orders, the Moscow Trials.

In consequence,

- the Normative State is subordinated to the Prerogative State, and
- its limits are defined by the Prerogative State.

The transition from Normative State to Prerogative State is very fast, but brutal, like the Soviet Revolution in 1918, and the seizure of power by the Nazi in 1933.

The transition back to an exclusively Normative State, following the fall of the Robespierrists, Hitler and Stalin, is extremely difficult, especially in the legal and judicial domains, because of two categories of factors:

- the continued physical existence of individuals linked to the Prerogative State as judges or administrators, like the German judiciary or Mornet after World War II; and
- the physical and administrative consequences of the rules or legal situations they created, such as the legal “disappearance” of the victims of the Gulag (“10 years without right to correspond”), and the physical disappearance of victims of the *Revolutionary Tribunal* or the *volksgerichtshofs*.

A complicit judiciary

While some are indeed fanatical Revolutionaries, *Bolsheviks* or National Socialists like Fouquier-Tinville, Vyshinsky or Freisler, others are typical conservative representatives of the national legal system, a fact which only underscores how closely it is intertwined with the political terror regime. They are revealed as the very type of compliant jurists without whom the Revolutionary, *Bolshevik* or Nazi regime could not have survived.

a. Only a few known dissidents

In the three countries, only a handful of judges or prosecutors manifest openly their dissidence.

France

In France, we have no example of open dissidence to the *Revolutionary Tribunal*. But during World War II, there are only two known French dissidents judges to the Pétain régime: Didier and Lambert.



Paul Didier

Justice Paul Didier is admitted to the Bar of Paris in 1911. In 1914, he is mobilized and fights on the front, where he is taken as prisoner and detained in Mainz. He is admitted to the judiciary in 1919 but refuses to take the oath of office as long as he is still officially counted as a soldier. He works in the Chancery from 1922 to 1937, when he becomes deputy-director responsible for naturalizations. On 22 September 1940, he is set aside for his public opposition to the measures of de-naturalization to be taken by the Vichy regime. He is appointed as simple judge to the tribunal of the department of Seine. A year later, he opposes the creation of the *Sections spéciales* and the obligation imposed on 14 August 1941 on all judges to swear allegiance to Marshall Pétain. After he has refused to swear allegiance, he is suspended by the Minister of Justice Barthélémy, dismissed, arrested and imprisoned. He is freed and placed under house arrest in February 1942, and then sent into retirement on 11 August 1942. He supports the Resistance and takes part in several actions in the region of Corbières. He is reinstated in the judiciary in October 1944 as one of the presidents of the Court of Appeal of Paris. Later, he is in charge of the presidency of one of the sections of the court of justice of the department of the Seine. In 1950, he is appointed to preside over the indictment chamber of the Paris Court of Appeal. In 1951, he declines his proposed promotion to the *Cour de Cassation*. He retires in 1958.²⁴⁹

Nazi Germany

Nazi Germany treats dissident judges and lawyers very differently.

Between 1932 and 1941, five German judges are removed, all on the basis of their behavior outside their judicial role such as engaging in political opposition against the Nazis or refusing to adopt Nazi conventions. Two of them, Dr Karl Sack, a general staff judge, and Dr Johann von Dohanyi, a *Supreme Court* judge, participate in the plot of July 1944 against Hitler. They are both arrested and murdered in 1945 in concentration camps.²⁵⁰ Two others, Kreyssig, a judge in the *Petty Court* in Brandenburg, and Hermanns, oppose the T-4 euthanasia program or abuse of authority by local party or government officials. Both are forcefully “retired”.²⁵¹

The situation of opposing lawyers is much worse, as exemplified by the fate of Hans Litten.

Hans Litten is born in 1903 in a Jewish family but converts to Lutherianism. In 1927, he is admitted to the Bar and in 1928 he opens a law office with a Communist friend. In 1930, in the *Tanzpalast Eden* case, he

sues the SA for attempted manslaughter, breach of the peace and assault. He wants to show that the Nazis used terror intentionally in order to destroy the democratic structures of the Weimar Republic. Hitler is summoned to appear as a witness in court on 8 May 1931. During his cross-examination, Litten shreds Hitler's argument that the Nazi party is a democratic organization:

Litten: (...) Did you know that in the circles of the SA there is talk of a special *rollkommando* (mobile paramilitary unit) ?

Hitler: I haven't heard anything about a *rollkommando*. (...)

Litten: You said that there will be no violent acts on the part of the National Socialist Party. Didn't Goebbels create the slogan, "one must pound the adversary to a pulp?"

Hitler: This is to be understood as "one must dispatch and destroy opposing organizations". (...) (The presiding judge read a question formulated by Litten): Did Hitler, as he named Goebbels "*Reichsleiter*" (Leader for the empire) of Public Enlightenment and Propaganda, know of the passage from his book, where Goebbels declares that fear of the coup d'état cannot be permitted, that parliament should be blown up and the government hunted to hell and where the call to revolution was made again, letter-spaced?

Hitler: I can no longer testify under oath, if I knew Goebbels' book at the time. The theme (...) is absolutely of no account to the Party, as the booklet doesn't bear the Party emblem and is also not officially sanctioned by the Party. (...)

Litten: Must it not be measured against Goebbels' example, to awaken the notion in the Party, that the legality scheme is not far away, if you neither reprimanded nor shut out a man like Goebbels, rather straightaway made him head of Reich Propaganda?

Hitler: The entire Party stands on legal ground and Goebbels (...) likewise. (...) He is in Berlin and can be called here any time.

Litten: Has Herr Goebbels prohibited the further dissemination of his work?

Hitler: I don't know.

[In the afternoon, Litten returns to the subject.]

Litten: Is it correct that Goebbels' revolutionary journal, *The Commitment to Illegality* [*Das Bekenntnis zur Illegalität*], has now been taken over by the Party and has reached a circulation of 120,000? (...) I have concluded that the journal is sanctioned by the Party. (...)

Presiding judge: Herr Hitler, in point of fact, you testified this morning, that Goebbels' work is not official Party [material].

Hitler: And it isn't, either. A publication is an official Party [organ] when it bears the emblem of the Party.

Hitler (shouting, red-faced): How dare you say, Herr Attorney, that is an invitation to illegality? That is a statement without proof!

Litten: How is it possible that the Party publishing house takes over a journal that stands in stark contrast to the Party line?

Presiding judge: That doesn't have anything to do with this trial. ²⁵²

In 1932, in the *Felsenbeck Trial* Litten sues five Nazis for the murders of five residents of the Felsenbeck colony. With the support of the prosecutor, the court expels him as counsel and ancillary counsel for the plaintiff because he has "unfurled unrestrained partisan propaganda in the trial" and "made the courtroom a hotbed of political passions". Later, Litten is removed again from a high court for influencing a witness,

raising the ire of the defense lawyers in Berlin. And after being threatened by the Nazi press, he needs a bodyguard to go out in public.

On the night of the *Reichstag* fire, he is arrested and “taken into protective custody”. He is then sent, as a Jew, into various concentration camps where he is beaten and forced into hard labour. So much that he attempts several times to commit suicide, and succeeds in Dachau on 4 February 1938.

According to Freisler, when Minister of Justice Franz Gürtner says: “No one will be able to do anything for Litten”, Hitler turns red with rage and shouts: “Anyone who advocates for Litten lands in the concentration camp, even you.”²⁵³

Soviet Union

In the Soviet Union, some Soviet prosecutors oppose the *NKVD*’s arrests and tortures, at the risk of their lives.

In 1937, Prosecutor Ishov arrests an *NKVD* henchman and frees his victims; he is later arrested and tortured by the same man, but survives and is reinstated.

In 1937 also, Acting Chief Prosecutor of the Russian Federation Faina Niurina, a Jew, signs her own death warrant when she quotes the guillotined French revolutionary Olympe de Gouge : “If a woman has the right to mount the scaffold , she has the right to join the tribunal”. Vyshinsky denounces her to Yejhov, and she is arrested. She is shot in 1938.²⁵⁴

b. The rest: authority and solidarity above all

For the others, “silence is gold”.

B. The absence of responsibility

In most cases, criminal judges and prosecutors have not been held responsible.

a. France

Apart from the trial of Fouquier and his colleagues in Paris, there is either people’s justice, or no justice at all.

People’s justice

In Lyon, judge Fernex is responsible for the Terror in the city after its recapture from the insurgents in 1793. He is a former silk worker, ascetic and especially severe against wealthy people. He is mentioned on

the “list of patriots” made by Robespierre. He is a member of the Revolutionary Commission, nicknamed “Tribunal of the Seven”, which judges all prisoners either by acquitting or sentencing them to death. There is no public prosecutor or clerk, but only a secretary. Judgments are not signed. The members of the Commission wear around their neck a tricolor ribbon with a small steel axe. Each accused is heard separately and publicly. The hearing lasts on average two minutes for the discussion of the file of the Commission, the examination and the judgment. From 27 November 1793 to 16 April 1794, the Commission sentences 1,684 accused to death, frees 1,682 and keeps 162 in detention. It is dissolved on 6 April but continues its operations until 16 April 1794.

After the judgment has been rendered, the prisoners descend by a small winding staircase into the cellars of the City Hall; one of the cellars lead to freedom, the other to the guillotine.

In 1795, Fernex tries to escape from Lyon, but he is recognized, massacred and thrown into the Rhône. ²⁵⁵

No justice

Fouquier-Tinville and Fernex are the exception.

Proconsul Magnet, “Robespierre’s monkey”, becomes a moderate, registers to the Bar in Ambert, is banned as regicide in 1816 but his pardon is requested in 1821. ²⁵⁶ Cottier, chief secretary and friend of the Public prosecutor Viot, becomes a well known lawyer in Carpentras and dies in 1854. ²⁵⁷ Gilbert-Liendon, Fouquier-Tinville’s deputy, escapes execution after 9 Thermidor and continues his legal career as a judge under the First Empire. ²⁵⁸

b. Russia

Many, but not all, of Stalin’s victims are rehabilitated by Khrushchev and by the USSR Supreme Court after Stalin’s death.

But then, none of the members of the political tribunals or secret police is tried or accused even after the disappearance of the Soviet Union.

For example, Alexander Rekunkov, Prosecutor General of the USSR from 1981 to 1988, dies in 1996 without having faced any consequence for his persecution of Sakharov in 1980. ²⁵⁹

See also the videos on the author’s website: *Devil’s Advocates – Survivors – Vera – Ludmila – Fainsten*. ²⁶⁰

c. Germany

Only Germany has taken things seriously, but after a long delay and without much result.

Until very recently, the judicial system of the Federal Republic of Germany has failed to confront the legacy of its Nazi past.

Acquittals for former Nazi jurists have not been the exception, but the rule. Injustice has been routinely legitimized.

Inhumane sentences have been declared ‘valid under rule of law’ or as ‘just about acceptable’.

Denials and excuses have come in five categories, in a cascade of bad and contradictory arguments:

CATEGORY	SUBCATEGORY	EXAMPLES
Denial of victimhood	Distinction between categories of victims	Only former Nazi civil servants are protected in the Federal Republic.
	Emphasis on the loyalty of the defendants	Loyalty of the judiciary to state leadership.
	Characterization as mercy killings	The killing of human beings in the T-4 program was seen "chiefly as an act of humanitarianism".
Denial of wrongfulness	Framing as exceptional circumstances	It is ‘necessary to take into consideration the ‘special circumstances of war’, which created ‘an atmosphere of sensitivity towards law-breakers of any kind’. BUT there are contradictions: in the <i>Rehse</i> case (1967), it is held that the characterization of the <i>Volksgerichtshof</i> as a court implies that it acted in accordance with the ‘exceptional circumstances’ of that time; CONTRA: in 1985, the <i>Bundestag</i> declares that “the institution known as the “ <i>Volksgerichtshof</i> ” had not been a court as defined by rule of law, but rather an instrument of terror for the implementation of arbitrary National Socialist rule”.
	Denial of “injustice as such”	The combination of the <i>Blood Protection Law</i> and the <i>Blackout Regulations</i> to convict Katzenberger is not "injustice as such".
	Enforcement of valid law at the time	The sentences during the Third Reich were based on "valid law at the time”, including the laws and "Führer's decrees", since it is "the right of a nation to protect its own interests".
Wrongful legal consequences	Annulment of sentences of <i>Volksgerichtshofs</i> would annul exonerations pronounced by <i>People’s Courts</i>	<i>Volksgerichtshof</i> sentences should not be declared void because its few verdicts of not guilty would then be legally invalid. BUT: on 25 August 1998 and 23 July 2002, Nazi-era sentences are removed from the German criminal justice system.

Denial of capacity to be sued	Hitler's fault or Freisler's fault	"With reference to the killing of these four officers in Danzig, the perpetrator was the former Fuhrer and chancellor of the Reich, Adolf Hitler. In so doing, he acted in violation of the law and with intent."
	Incapacity to stand trial	"Dr. Hoffmann is unfit to stand trial not because of physical infirmity but rather because he suffers from intellectual and emotional disturbances. The intent of the accused to continue ... to devote himself to the practice of law does not contradict the finding that he is unfit to stand trial."
	Exoneration of accomplices	Accomplices can be sentenced only to a maximum sentence of 15 years, which is now prescribed.
Minimization of consequences	Characterization as misdemeanor	Nazi behaviors are characterized as mere "misdemeanour" if they are rooted not in National Socialism, but in "German nationalist sentiment".

Denials and excuses in Germany

C. The rejection of responsibility

Not only the agents of judicial terror have been punished rarely, they have themselves rejected any responsibility for their crimes.

a. France

During his trial, Fouquier-Tinville denies any responsibility:

This woman [Marquise de Feuquières, guillotined without evidence] was arraigned before the Tribunal. The proceedings opened. She confessed. There were no further proceedings. You are here trying the Tribunal as if a Revolutionary Tribunal were an ordinary tribunal! You ought to refer to the Revolutionary laws. ²⁶¹

b. Russia

Russian justice is torn apart.

On the one hand, private individuals such as Yuri Dmitriev, the association *Memorial* and the editor Rosspen research actively, and often find, evidence of the cruelties inflicted to their families and to the country as a whole by the *Bolshevik* terrorists. ²⁶²

But, on the other hand, as we have seen earlier the present Patrons and their agents do not hesitate to rehabilitate Stalinism in history schoolbooks, to bring false accusations to punish the memory hunters:

SANDARMOKH, Russia — The day began, like many others in her childhood years, with hours of tramping through an insect-infested forest with the family dog while her eccentric father, Yuri Dmitriev, wandered off to hunt in vain for corpses buried among the trees.

On that day more than 20 years ago, however, Mr. Dmitriev, an amateur but very determined historian, finally found the gruesome prize he had long been searching for — burial mounds containing the remains of political prisoners executed by Stalin's secret police.

"Everything started here," said Mr. Dmitriev's 35-year-old daughter, Katerina Klodt, during a recent visit to the forest at Sandarmokh in Karelia, a peninsula in northern Russia. "My dad's work has clearly made some people very uncomfortable."

Mr. Dmitriev is now in jail, awaiting trial on what his family, friends and supporters dismiss as blatantly fabricated charges of pedophilia, an accusation that has frequently been used to discredit and silence voices the Russian authorities do not like. ²⁶³

Even by dissolving the *Memorial* association.

c. Germany

German justice is still facing a cascade of dilemmas.

First, many German jurists reject the judgments of the *International Military Tribunal* in the cases of *Alstotter et al.*, dismissing it as "victor's justice". But wasn't that same principle invoked by Nazi jurists to justify their jurisdiction in conquered countries like Poland?

Second, it is essential that the Courts rehumanize both victims and perpetrators. Some German courts have shown remarkably little tact in their characterization of survivors: in a decision of 24 October 1951, the *Cologne County Court*, refers to the victims of the T-4 program as "burned out human beings"; "creatures vegetating below the level of animals". ²⁶⁴ On the other hand, the dehumanization of the perpetrators does not help in understanding their motives and their actions, so as to be able to prevent their repetition.

Third, it is essential to continue pursuing justice: war crimes, crimes against humanity and grave crimes such as murder are imprescriptible. That is why the heroic efforts of individuals like Robert Kempner, Gerhard Meyer or Rupert Scholz should never be stopped, or forgiven. ²⁶⁵

Justice may be slow, but it can erupt in a totally unpredictable manner. I know, I was myself Her agent when I excluded from Canada, as a refugee judge, a major accomplice of the perpetrators of the Rwandese genocide and a major judicial official in the communist government of Afghanistan.

D. The need for self-introspection and humility

Muller's comments apply without any doubt to ALL agents of Judicial Terror:

The judicial system of the Third Reich remains an open chapter. The *People's Court* was the chief symbol of a system without justice and no doubt its most openly brutal institution, but it was only a part of that system. If its judges had been tried and found guilty, then it would have been

impossible to acquit the numerous others who had handed down sentences on the Race Laws elsewhere or had presided at the *Special* and *Military Courts*. Conviction of a single judge of the Third Reich would have started an avalanche that would inevitably have engulfed the majority of postwar West German judges. Only with difficulty could it have been prevented from reaching the judges of the Federal Supreme Court, the Federal Administrative Court, and even the Federal Constitutional Court. As the journalist Jorg Friedrich observed bitinglly, "Judge Rehse of the *People's Court* could not have committed murder, for this would have meant that the West German judicial system had been established by murderers in the hundreds. ²⁶⁶

But is it possible to go forward and, if yes, how?

I think that this boils down to two fundamental issues:

- a question: as prosecutors and judges, deciding what is more important: authority, or justice?
- a step forward: as human beings, acknowledging and forgiving.

An example: the grandchildren of Stepan Karagodin and Nikolai Zyryanov.



Stepan Karagodin

In 1937, Stepan Karagodin, a peasant, is arrested by *NKVD* officers in Tomsk, tried by a *dvoika* and sentenced to death as a Japanese spy (*NKVD Harbin Operation*) and organizer of an espionage and saboteur group. He is shot in January 1938 and fully rehabilitated in the 1950s.

His grandchild, Denis Karagodin, searches for the individuals involved in his grandfather's death. He compiles a list of dozens of names, from Stalin to Vyshinsky, *NKVD* typists and driver, and the three signatories of the death report including Nikolai Zyryanov, an aide to the head of the Tomsk prison whom he thinks was an executioner of Stepan.

Zyryanov's granddaughter, Yuliya, writes to Denis:

I haven't been able to sleep for several days, I just can't... [...] I am very ashamed about everything. I physically feel this pain. I bitterly regret that there is nothing I can do to make amends apart from admit to being a relative of N.I. Zyryanov and remember your great-grandfather in my prayers.

She adds that her maternal great-grandfather has also been killed in the purges, and thus "there were victims and executioners within one family." In his reply addressed to "the granddaughter of the executioner who killed Stepan Karagodin", Denis writes:

I extend you my hand in reconciliation, no matter how hard it is for me to do it. ²⁶⁷

As the final word, let us answer Fouquier-Tinville's last words of defence at his trial on 3rd May 1795:

« J'étais la hache de la Révolution, punit-on une hache ? » - "I was the ax of the Revolution, does one punish an ax?"

Antoine, tu n'étais pas un objet, mais une *personne* dotée d'une tête ***et d'un cœur***.

Antoine, you were not an object, but a *person* with a brain ***and a heart***.

ENDNOTES:

¹ Thank you to Michael Ellman and Hans Petter Graver.

² Jansen, *A Show Trial Under Lenin. The Trial of the Socialist Revolutionaries, Moscow 1922* (1982), 186

³ Fouquier-Tinville: 2755 victims from 25 January 1793 to 29 July 1794; see [Liste des Victimes du Tribunal Révolutionnaire à Paris](#). Freisler: at least 2600 victims. Vyshinsky: the total number of his victims is unknown, since he prosecuted in many secret trials. But he requested 49 death sentences against 54 accused in the “public” Moscow Trials: in the *Case of the Anti-Soviet Trotskyist Center*: 16 accused, 16 executed; in the *Case of the Parallel anti-Soviet Trotskyist Center*: 17 accused, 13 executed; in the *Case of the Bloc of Rightists and Trotskyites*: 21 accused, 18 executed.

⁴ Couthon, as rapporteur to the Convention on the draft law for the creation of the Revolutionary Tribunal, Décret du 22 Prairial an II (10 June 1794); in Des Essarts, *Procès fameux, extraits de l'Essai sur l'histoire générale des tribunaux des peuples tant anciens que modernes* (1796), Tome XIII, p. 75.

⁵ For France: the genocides of Vendée, the nobility and the clergy; for the Soviet Union: the Holodomor and the Gulag; for Germany: the Shoah and the genocide of the Gypsies.

⁶ Graver, *Judges Against Justice. On Judges When the Rule of Law is Under Attack* (2015), 35

⁷ See [CRIMINAL JUSTICE SYSTEMS - The criminality and the reformation of the Afghan and Iraqi justice systems / Des systèmes judiciaires criminels: la réforme des systèmes judiciaires afghan et irakien - rev 070105](#).

⁸ See: [IRAN: explanatory note on amnesty international's use of the term “extrajudicial executions” in reference to 1988 prison massacres](#); [Iran: Blood-soaked secrets: Why Iran's 1988 prison massacres are ongoing crimes against humanity](#); [Iran's 1988 Massacre: Ebrahim Raisi, key member of Tehran death committee planning presidential bid](#); [Abolqasem Salavati - Wikipedia](#); [Hard-line judge in Iran is assigned case of jailed Post Reporter Jason Rezaian](#); [Human rights violator: Abolghassem Salavati](#); [Six judges accused of leading role in Iranian crackdown](#); [abolghassem salavati – Center for Human Rights in Iran](#); [Iran imprisons journalist for reporting on judiciary corruption allegations](#); [Report: Iran Tortured, Sexually Abused, and Killed Protesters in Detention](#); [1988 executions of Iranian political prisoners explained](#); [In Iran, It Is a Crime to Be a Christian](#); [Iran's hostage factory](#); [US should sanction Iran's notorious 'hanging judge'](#); [1988 executions of Iranian political prisoners](#); [1988 massacre of political prisoners in Iran](#); [The Forgotten Mass Execution of Prisoners in Iran in 1988](#); [Images de executions Erin Prison 1988](#); [Evin prison: the hell on earth](#); [The 1988 massacre in Iran](#); [Exécution des prisonniers politiques iraniens de 1988](#); [Iran executes man for heresy](#); [Abolqasem Salavati - Wikipedia](#); [US denounces Iran rights abuses, imposes sanctions on judges](#); [Islamic Revolutionary Court](#).

⁹ [UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis](#).

¹⁰ See: concerning the application of Sharia law: [Abdullah Qardash: IS Successor to Al-Baghdadi?](#); [ISIS Sharia judge killed by gunmen in Raqqa](#); [Inside the former ISIS Sharia school in Manbij](#); [Head of ISIS-led Sharia Court in Iraq's Tel Afar killed in U.S. strike](#); [ISIS-linked Sharia Court sentenced four Muslim clerics to death for refusing orders](#); [ISIS executes two Iraqi teenage girls for 'mocking the caliphate'](#); [ISIS jihadis behead Imam of Mosul mosque for 'fighting the Caliphate'](#); [Islamic State beheads two of its own jihadis in Mosul on charges of 'treason'](#); [ISIS beheads Syria imam for 'insulting God': activists](#); [Prosecuting Gender-Based Persecution: The Islamic State at the ICC](#); [Judge, Jury and Executioner: the ISIS Bureau of Justice and Grievances](#); [REPORT RELEASE: SJAC Unmasks Decision-Makers Behind ISIS Brutality](#).

[Concerning the elimination of disabled children: Is ISIS Killing Babies with Down Syndrome?](#); [ISIS issues fatwa to exterminate disabled children, 38 cases of babies killed through lethal injection or suffocation](#); [ISIS issues fatwa to kill children with Down syndrome: is that wrong?](#); [ISIS orders killing of kids with Down's Syndrome in latest sickening attack on the innocent](#); [ISIS is slaughtering babies born with disabilities](#); [How much more depraved can ISIS get? Group's Sharia judges order children with Down syndrome and other disabilities to be killed in chilling echo of the Nazis](#).

[Concerning the genocide of the Yazidis: UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis](#); [ISIS Enshrines a Theology of Rape](#); [Surviving Islamic State: The Plight Of The Yazidi Community](#); [The prosecution at national level of sexual and gender-based violence \(SGBV\) committed by the Islamic State in Iraq and the Levant \(ISIL\)](#); [Slavery: The ISIS Rules](#).

¹¹ In Iran, Grand Ayatollahs Khomeiny and Khamenei; in ISIS, Ibrahim Awad Ibrahim al-Badri (“Abu Bakr al-Baghdadi”) and Amir Mohammed Abdul Rahman al-Mawli al-Salbi (“Abu Ibrahim al-Hashimi al-Qurashi”).

¹² [Antoine Fouquier-Tinville](#) ; ‘Odious beyond its original perversion’: [Fouquier-Tinville and the Tribunal Revolutionnaire of Paris](#) ; Boulant, *Le Tribunal Révolutionnaire. Punir les ennemis du peuple* (2018), 640; Dunoyer, *The public prosecutor of the terror* (1883; translated by Evans) ; [FOUQUIER-TINVILLE ANTOINE](#).

¹³ [Antoine Fouquier-Tinville](#).

¹⁴ Vaksberg, *Stalin’s Prosecutor* (1991) ; [Andreï Vychinski](#) ; [Andrey Vyshinsky](#) ; Frerejean, *Les procès staliniens* (2017)

¹⁵ Social-Democratic Workers’ Party of Russia, a Marxist revolutionary party created in 1898 which, in 1903, split in two factions: *bolsheviks* and *mensheviks*.

¹⁶ [Andreï Vychinski](#) ; Vaksberg, *Stalin’s Prosecutor* (1991), 17

¹⁷ [Report: Stalin was a secret police agent in czarist era](#)

¹⁸ Ortner, *Hitler’s Executioner* (2018), 556; Pateman, [Beheaded by Hitler. Cruelty of the Nazis. Civilian executions and judicial terror 1933-1945](#) ; Muller, *Hitler’s Justice* (1991), 145

¹⁹ Schirer, *Le 3ème Reich, des origines à la chute* (1960), tome 2, 574

²⁰ [Cheka](#)

²¹ [https://en.wikipedia.org/wiki/Andrey_Vyshinsky#/media/File:Lenin_Zinoviev_Kamenov_Vyshinsky_\(cropped\).jpg](https://en.wikipedia.org/wiki/Andrey_Vyshinsky#/media/File:Lenin_Zinoviev_Kamenov_Vyshinsky_(cropped).jpg) ; Vyshinsky circled in red.

²² Vaksberg, *Stalin’s Prosecutor* (1991), 69, 70

²³ Vaksberg, *Stalin’s Prosecutor* (1991), 71

²⁴ Shirer, *La montée du nazisme* (1959), vol. 1, p. 93

²⁵ Muller, *Hitler’s Justice* (1991), 76

²⁶ Muller, *Hitler’s Justice* (1991), 76

²⁷ When the author was a refugee judge at the Immigration and Refugee Board of Canada, he noticed that the most impressive quality of a dictator, such as Saddam or Mobutu, was the ability to detect instantly the weakness, and thus the malleability, of his interlocutors.

²⁸ Comité de sûreté générale et de surveillance

²⁹ Comité de sûreté générale

³⁰ [Loi des suspects du 17 septembre 1793](#) ; [Loi des suspects](#)

³¹ [Loi des suspects du 17 septembre 1793](#) ; [Loi des suspects](#)

³² [Caractères qui doivent distinguer les hommes suspects, et à qui on doit refuser le certificat de civisme](#)

³³ [White Russians - Russian Revolution](#) ; [White movement](#)

³⁴ [New Economic Policy](#)

³⁵ [Criminal Code of the RSFSR 1922](#)

³⁶ [Article 58 \(RSFSR Penal Code\) - Wikipedia](#)

³⁷ [Red Terror](#)

³⁸ [The Povolzhye Famine & Cannibalism – 1921-1922](#)

³⁹ Lenin called for their immediate execution after their trial for conspiracy against the government, in August 1922; they were imprisoned until their executions during the Great Purges in 1937-1938.

⁴⁰ See above : **The competition between Mensheviks and Bolsheviks.**

⁴¹ [Nikolai Boukharine](#)

⁴² Wegren, [Patterns of Internal Migration During the Russian Transition](#) (2001), 20

⁴³ Stalin’s intent to enforce a policy of starvation of the peasants during the famine is strongly debated: Ellman, [Stalin and the Soviet famine of 1932-33 Revisited](#) (2007), Rozenas, [Mass Repression and Political Loyalty: Evidence from Stalin’s ‘Terror by Hunger’](#) (2019); but see also Davies, Wheatcroft, [Stalin and the Soviet Famine of 1932 - 33: A Reply to Ellman*](#) (2006). Davies and Wheatcroft argue that they

“found no evidence, either direct or indirect, that Stalin sought deliberately to starve the peasants. The top-secret decisions of the Politburo, endorsed by Stalin, never hint at a policy of deliberate starvation. Moreover, in their most secret letters and telegrams to Stalin, his closest associates Molotov and Kaganovich treat hunger and death from famine as an evil for which the kulaks or wider sections of the peasants, and inefficient local organization, are largely responsible, but which must be mitigated as far as possible by local and central measures.”

But such arguments are very weak:

- as witnessed by the Wannsee conference, in 1942,

- the Shoah was ordered verbally by Hitler to Heydrich, despite Hitler's opposite declarations to his close staff, as witnessed by the reaction of the representative of the Department of Justice during the conference in January 1942;
- It is highly improbable that an order to commit genocide would be committed in writing, or communicated to anybody except the enforcer, like Yagoda, or Iejov;
- the physical elimination of Yagoda and Iejov is strong corroborative evidence of their involvement in a genocidal process;
- even the NKVD Orders were communicated in writing to less than a hundred people;
- Molotov and Kaganovich's comments are not evidence of the lack of genocidal intention from Stalin, but merely ideological statements;
- Bukharin was very clear in 1928 in his characterization of Stalin as a "Genghis Khan" who "is not afraid to cut throats" and "is leading the country to famine and ruin";
- the famine of 1932 had been preceded by another famine in 1921, in the same region and with the same victims; the repetition in 1932 of the famine which happened 10 years earlier is at least evidence of criminal negligence with genocidal results.

⁴⁴ [Davies, The crime of "anti-Soviet agitation" in the Soviet Union in the 1930's \(1998\), 151](#)

⁴⁵ Werth, [LA GRANDE TERREUR DES ANNÉES 1937-1938. Un profond renouveau historiographique](#) (2010)

⁴⁶ Werth, [LA GRANDE TERREUR DES ANNÉES 1937-1938. Un profond renouveau historiographique](#) (2010)

⁴⁷ Shirer, *La montée du Nazisme* (1965), 68

⁴⁸ Whereas sec. 81 GCC imposed a sentence of life imprisonment. See Shirer, *La montée du Nazisme* (1965), 93.

⁴⁹ Shirer, *La montée du Nazisme* (1965), 95

⁵⁰ [Part II: SELECTED DOCUMENTS SHOWING KEY LEGAL MECHANISMS USED TO IMPLEMENT THE NAZI AGENDA](#), 26

⁵¹ Loewenstein, [Dictatorship and the German Constitution: 1933-1937](#) (1937), 571, note 118

⁵² [Nuremberg Laws](#)

⁵³ Muller, *Hitler's Justice* (1991), 118

⁵⁴ Taken by Stalin on the 1st of December and published officially, after ratification by the Sovnarkom on December 8th.

⁵⁵ [The Kirov Law at 75](#)

⁵⁶ [Mass operations of NKVD](#)

⁵⁷ [Mass operations of NKVD](#)

⁵⁸ [Mass operations of NKVD](#)

⁵⁹ [Traitor of Motherland Family Members](#)

⁶⁰ [NKVD Order No 00486](#)

⁶¹ [Kharbin operation of the NKVD](#)

⁶² [NKVD Order No. 00593](#)

⁶³ [Polish Operation of the NKVD](#)

⁶⁴ [NKVD Order № 00485](#)

⁶⁵ [German Operation of the NKVD](#)

⁶⁶ [NKVD Order № 00439](#)

⁶⁷ [Greek Operation of the NKVD](#)

⁶⁸ [NKVD Order № 00485](#)

⁶⁹ [Latvian Operation of the NKVD](#)

⁷⁰ [Korean Operation of the NKVD](#)

⁷¹ [Romanian Operation of the NKVD](#)

⁷² [Estonian Operation of the NKVD](#)

⁷³ [Finnish Operation of the NKVD](#)

⁷⁴ [Decree about Arrests, Prosecutor Supervision and Course of Investigation](#)

⁷⁵ [NKVD Order no. 00689](#)

⁷⁶ Created by NKVD Special Order 00485, 'On liquidation of Polish diversion-spying groups and elements of Polish Military Organization'. See below IV,B,vii,4 - Secret police jurisdictions, b - The dvoikas and troikas

⁷⁷ Werth, *L'ivrogne et la marchande de fleurs, autopsie d'un meurtre de masse 1937-1938* (2013), 3508

⁷⁸ Rayfield, *Stalin and His Hangmen* (2005), 5545

- ⁷⁹ Rayfield, *Stalin and his Hangmen* (2005) 5554
- ⁸⁰ Werth, *Les « opérations de masse » de la « Grande Terreur » en URSS 1937-1938* (2006), 32
- ⁸¹ Werth, *L'ivrogne et la marchande de fleurs, autopsie d'un meurtre de masse 1937-1938* (2013), 2479
- ⁸² [Liste de personnes à juger par le Collège militaire de la Cour suprême de l'URSS, avril 1937. Paraphes de J. Staline, K. Vorochilov, L. Kaganovitch, A. Jdanov, V. Molotov](#) ; this list is compiled by Senior Major of State Security Gendin, Deputy Chief of the 4th Department of the Main Directorate of State Security of the NKVD, it contains 145 names in the first category (to be executed by firing squad), 50 names in the second category (to be imprisoned for 10 years) and one name in the third category (to be imprisoned for 5 to 8 years).
- ⁸³ Montefiore, *Stalin. The court of the Red Tsar* (2003), 306
- ⁸⁴ Boulant, *Le Tribunal Révolutionnaire. Punir les ennemis du peuple* (2018), 482; Gautherot, *Les suppliciés de la Terreur* (1926), 60
- ⁸⁵ [Decrees on Abolition of Existing Legal Institutions](#)
- ⁸⁶ Werth, *LA GRANDE TERREUR DES ANNÉES 1937-1938. Un profond renouveau historiographique* (2010)
- ⁸⁷ Ellman, [The Soviet 1937 Provincial Show Trials: Carnival or Terror?](#) (2001), 1221
- ⁸⁸ Werth, [La mise en scène pédagogique des grands procès staliniens](#) (2010), 151
- ⁸⁹ [Sondergericht](#) ; Shirer, *La montée du nazisme* (1965), 280; [Authority, Control, and Class Justice: The Role of the Sondergerichte in the Transition From Weimar Germany to the Third Reich](#) (From Criminal Justice History: An International Annual, Volume 15, P 209-233. ; Pateman, *Beheaded by Hitler* (2014), 3947 ; Broszat, *The Hitler State. The Foundation And Development Of The Internal Structure Of The Third Reich* (2013), 328
- ⁹⁰ Ortner, *Hitler's Executioner* (2018), 388
- ⁹¹ Ortner, *Hitler's Executioner* (2018), 1866
- ⁹² Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (1986) 25, 27
- ⁹³ [Nazi Eugenics ; Lifton, THE NAZI DOCTORS: Medical Killing and the Psychology of Genocide](#) (1986)
- ⁹⁴ Birstein, *SMERSH* (2011) 1974
- ⁹⁵ [Collège militaire de la Cour suprême de l'URSS](#) ; Crowe, *Stalin's Soviet Justice: "Show" Trials, War Crimes Trials, and Nuremberg* (2019), 52-54, 57
- ⁹⁶ Janssen, [Mass terror and the court the military collegium of the USSR](#) (2006), 589
- ⁹⁷ [Collège militaire de la Cour suprême de l'URSS](#) ; [Military Collegium of the Supreme Court of the Soviet Union](#)
- ⁹⁸ Birstein, *SMERSH* (2011), 1974
- ⁹⁹ Werth, *L'ivrogne et la marchande de fleurs, autopsie d'un meurtre de masse 1937-1938* (2013), 2479
- ¹⁰⁰ Birstein, *SMERSH* (2011) 1974 ; described by Nikolai Mesyatsev, who worked from 1942– 43 as an investigator at the Investigation Department of the Military Counterintelligence (UOO).
- ¹⁰¹ [Petr Ananievich Krasikov](#)
- ¹⁰² [Petr Ananievich Krasikov](#)
- ¹⁰³ [Genrikh Yagoda](#)
- ¹⁰⁴ Khlevniuk, *The History of the Gulag: From Collectivization to the Great Terror* (2004), 294, 296-299
- ¹⁰⁵ Khlevniuk, *The History of the Gulag: From Collectivization to the Great Terror* (2004), 294, 296-299
- ¹⁰⁶ [Ida Averbach](#)
- ¹⁰⁷ Averbakh, [From crime to labor. Under the editorship of A. Y. Vyshinsky](#) ; Averbakh, [From Crime to Labour](#)
- ¹⁰⁸ [Авербах, Ида Леонидовна](#)
- ¹⁰⁹ Werth, *Les « opérations de masse » de la « Grande Terreur » en URSS 1937-1938* (2006), 10; [Mikhail Frinovsky](#)
- ¹¹⁰ Werth, [La mise en scène pédagogique des grands procès staliniens](#) (2010), 147
- ¹¹¹ Geerling, [Hitler's Judges: Ideological Commitment and the Death Penalty in Nazi Germany](#) (2018)
- ¹¹² [Leonid Zakovsky](#)
- ¹¹³ [Leonid Zakovsky](#)
- ¹¹⁴ [Leonid Zakovsky - Wikipedia](#)
- ¹¹⁵ Montefiore, *Stalin. The court of the Red Tsar* (2003), 322
- ¹¹⁶ Shabelnikov, [Why Did Stalin Kill \(Not All\) the Lawyers?](#) (2019). See also : Loryi, [The role of defence counsel in political trials in the USSR](#) (1977) ; Cadot, [Accessory and witness – The profession of lawyer under Stalin \(1945-1953\)](#) (2016) ; Huskey, [The politics of the Soviet criminal process: expanding the right to counsel in pre-trial proceedings](#) (1986)
- ¹¹⁷ Varrault, *La terreur judiciaire* (2017), 185
- ¹¹⁸ [Sections spéciales en France pendant la Seconde Guerre mondiale](#)
- ¹¹⁹ Lukina, [The Soviet Court as a Propaganda Instrument](#) (2017)
- ¹²⁰ Muller, *Hitler's Justice* (1991), 62

¹²¹ Vaksberg, *Stalin's Prosecutor* (1991), 98; the counterarguments are explained in [Not Guilty. Report of the Commission of Inquiry into the Charges Made Against Leon Trotsky in the Moscow Trials. John Dewey, et al. \(1938\), PR 369, 383](#)

¹²² London, *L'Aveu* (1970), 266, 322

¹²³ Dunoyer, *The Public Prosecutor of the Terror, Antoine Quentin Fouquier-Tinville* (1913), 39

¹²⁴ Boulant, *Le Tribunal Révolutionnaire. Punir les ennemis du peuple* (2018), 980

¹²⁵ Boulant, *Le Tribunal Révolutionnaire. Punir les ennemis du peuple* (2018), 1072

¹²⁶ For a more sympathetic vision of Fouquier-Tinville's job, see Dunoyer, *The Public Prosecutor of the Terror, Antoine Quentin Fouquier-Tinville* (1913), 39

¹²⁷ [711ejjHlqaL_ AC SY445 QL70 ML2 .jpg \(312×445\) \(ssl-images-amazon.com\)](#)

¹²⁸ [Le procès de Danton](#)

¹²⁹ [Emmanuel Didier \(academia.edu\)](#)

¹³⁰ Ortner, *Hitler's Executioner* (2018), 2877

¹³¹ Ortner, *Hitler's Executioner* (2018), 2877

¹³² [Emmanuel Didier \(academia.edu\)](#)

¹³³ Vyshinskii, *Theory of Evidence in the Soviet Law* (1946)

¹³⁴ [SOVIET SHOW TRIAL MOSCOW - Dr. Rich Swier \(drrichswier.com\)](#)

¹³⁵ [\(99+\) Emmanuel Didier - Academia.edu](#) ; <https://independent.academia.edu/EmmanuelDidier>

¹³⁶ Kriegel, *Les grands procès dans les systèmes communistes. La Pédagogie infernale* (1972), 72

¹³⁷ Weissberg, *L'accusé* (1953), in Kriegel, *Les grands procès dans les systèmes communistes. La Pédagogie infernale* (1972), 72

¹³⁸ *Les grands procès de l'histoire de France, Marie-Antoinette - Ney* (1966), 13 ; *Les grands procès de l'histoire de France, Louis XVI - Danton*, 159

¹³⁹ [The Show Trial of U2 Pilot Francis Gary Power](#)

¹⁴⁰ Radzinski, *Stalin The First In-depth Biography* (1996), 335

¹⁴¹ [soviet-show-trials.jpg \(320×240\) \(russiantumble.com \(left\), and Industrial_Party_Trial.jpg \(264×378\) \(wikimedia.org \(right\)](#)

¹⁴² [Trial of participants in the July 1944 plot to assassinate Hitler | Holocaust Encyclopedia \(ushmm.org\)](#)

¹⁴³ [Trial of Josef Wirmer, 8 September 1944 Josef Wirmer VGH.jpg \(600×468\) \(bp.blogspot.com\)](#) ; see also [The Nazi Party: The "People's Court"](#) ; Ortner, *Hitler's Executioner* (2018), 3007, 3061 ; Ortner, *Hitler's Executioner* (2018)

¹⁴⁴ But some patently unreasonable ones have also been made, such as Furr, [Yezhov vs. Stalin: The Causes of the Mass Repressions of 1937–1938 in the USSR](#) (2017), according to whom:

Primary-source evidence strongly supports the hypothesis that these repressions were the result of anti-Stalin conspiracies by two groups, which overlapped somewhat: the political Opposition of supporters of Grigorii Zinoviev, of Trotskyists, of Rightists (Bukharin, Rykov, and their adherents); and of military men (Marshal Mikhail Tukhachevsky and others); and high-ranking Party leaders, nominally supporters of Stalin, who opposed the democratic aspects of the "Stalin" Constitution of 1936. It discusses Stalin's struggle for democratic reform and its defeat. The prevailing "anti-Stalin paradigm" of Soviet history is exposed as the reason mainstream scholarship has failed to understand the mass repressions, misnamed "Great Terror."

¹⁴⁵ [The NKVD Mass Secret National Operations \(August 1937 - November 1938\)](#)

¹⁴⁶ Conquest, [The Great Terror: A Reassessment](#) (2007)

¹⁴⁷ [The NKVD Mass Secret National Operations \(August 1937 - November 1938\)](#) ; Getty, *The Road to Terror: Stalin and the Self-destruction of the Bolsheviks, 1932-39* (2010) ; Getty, *Les bureaucrates bolcheviques et l'État stalinien* (1992),

¹⁴⁸ Werth, Blum, *LA GRANDE TERREUR DES ANNÉES 1937-1938. Un profond renouveau historiographique* (2010), 8

¹⁴⁹ Gautherot, *Les suppliciés de la Terreur* (1926), 65

¹⁵⁰ [Carmélites de Compiègne](#)

¹⁵¹ She married a fellow communist, Fritz Rau, who was tortured to death by the Gestapo.

¹⁵² Pateman, *Beheaded by Hitler* (2014), 1412

¹⁵³ In Tsarist Russia, "Kulaks" are peasants who own over 8 acres (3.2 hectares) of land. Lenin describes them as "bloodsuckers, vampires, plunderers of the people and profiteers, who fatten themselves during famines". See: [Kulak](#).

¹⁵⁴ [NKVD Order No. 00447](#)

¹⁵⁵ [Katzenberger case](#)

¹⁵⁶ [NKVD Order № 00485](#)

¹⁵⁷ Montefiore, *Stalin. The court of the Red Tsar* (2003), 4113

¹⁵⁸ *Inspection from Vyshinsky to Yezhov*, 19 February 1938, in Werth, *L'ivrogne et la marchande de fleurs, autopsie d'un meurtre de masse 1937-1938* (2013), 4723

¹⁵⁹ Werth, Blum, *LA GRANDE TERREUR DES ANNÉES 1937-1938. Un profond renouveau historiographique* (2010), 17

- ¹⁶⁰ Rayfield, *Stalin and His Hangmen* (2005), 4638, 6312; [Faina Niurina](#)
- ¹⁶¹ Rayfield, *Stalin and His Hangmen* (2005), 6312
- ¹⁶² Sharlet, Beirne, [In Search of Vyshinsky: The Paradox of Law and Terror](#) (1984), 137; Rayfield, *Stalin and His Hangmen* (2005), 5475; Sharlet, Beirne, [In Search of Vyshinsky: The Paradox of Law and Terror](#) (1984), 136, 137
- ¹⁶³ Letter Accompanying the document of transfer of Cases into the NKVD USSR from People's Commissar for Internal Affairs of the USSR L.P. Beria, Secretary of the CC of the ACP(b) A. A. Andreev and the Head of the Department of Organizational-Party Work of the CC ACP(b) G. M. Malenkov to J. V. Stalin, in [No. 18. Letter Accompanying the document of transfer of Cases into the NKVD USSR from People's Commissar for Internal Affairs of the USSR L.P. Beria](#)
- ¹⁶⁴ [\(1\) The BRUTAL Execution Of Nikolay Yezhov - Stalin's Great Purger - YouTube](#), 8:23 ; and Wittlin, Beria. Vie et mort du chef de la police secrète soviétique (1972)
- ¹⁶⁵ Boulant, *Le Tribunal Révolutionnaire. Punir les ennemis du peuple* (2018), 2661
- ¹⁶⁶ Montefiore, *Stalin. The court of the Red Tsar* (2003), 4004
- ¹⁶⁷ Birstein, *SMERSH* (2011), 1974; Crowe, *Stalin's Soviet Justice: "Show" Trials, War Crimes Trials, and Nuremberg* (2019), 57 ; [Vasily Blokhin - Wikipedia](#) ; [Vasily Ulrikh - Wikipedia](#) ; Vaksberg, *Stalin's Prosecutor* (1991), 105 ; Montefiore, *Stalin. The court of the Red Tsar* (2003), 1271, 3955, 3967, 4004
- ¹⁶⁸ Rayfield, *Stalin and His Hangmen* (2005), 5838
- ¹⁶⁹ Kriegel, *Les grands procès dans les systèmes communistes. La Pédagogie infernale* (1972), 39
- ¹⁷⁰ Vaksberg, *Stalin's Prosecutor* (1991), 42, 44, 46; Montefiore, *Stalin. The court of the Red Tsar* (2003), 924
- ¹⁷¹ Dewar, [The modern Inquisition](#) (1953), 17
- ¹⁷² Birstein, *SMERSH* (2011), 674
- ¹⁷³ [Façade d'état de droit et procès truqués](#)
- ¹⁷⁴ [Case of the Anti-Soviet "Bloc of Rightists and Trotskyites"](#) ; Radzinski, *Stalin The First In-depth Biography* (1996), 371 ; Dewar, *The Modern Inquisition* (1953) ; Vaksberg, *Stalin's Prosecutor* (1991), 117 ; [Dmitry Pletnyov \(doctor\) - Wikipedia](#)
- ¹⁷⁵ [Timeline of the Great Purge - Wikipedia](#)
- ¹⁷⁶ [Article 58, Criminal Code of the RSFSR \(1934\) \(cyberussr.com\)](#)
- ¹⁷⁷ See in ii. **The criminalization of difference or divergence, Soviet laws,**
- ¹⁷⁸ Dunoyer, *The Public Prosecutor of the Terror, Antoine Quentin Fouquier-Tinville* (1913), 63 ; [Antoine Lavoisier](#)
- ¹⁷⁹ Muller, *Hitler's Justice* (1991), 156
- ¹⁸⁰ Boulant, *Le Tribunal Révolutionnaire. Punir les ennemis du peuple* (2018), 2714
- ¹⁸¹ Dunoyer, *The Public Prosecutor of the Terror, Antoine Quentin Fouquier-Tinville* (1913), 297
- ¹⁸² Dunoyer, *The Public Prosecutor of the Terror, Antoine Quentin Fouquier-Tinville* (1913), 56
- ¹⁸³ Gautherot, *Les suppliciées de la Terreur* (1926), 239
- ¹⁸⁴ Gautherot, *Les suppliciées de la Terreur* (1926), 218
- ¹⁸⁵ Montefiore, *Stalin. The court of the Red Tsar* (2003), 11612 (note 1)
- ¹⁸⁶ [How starving Russians became CANNIBALS and sold human body parts as meat in World Cup city where England clash with Sweden](#)
- ¹⁸⁷ [Приказ НКВД от 15.08.1937 № 00486](#)
- ¹⁸⁸ Montefiore, *Stalin. The court of the Red Tsar* (2003), 11706
- ¹⁸⁹ Werth, *L'invroge et la marchande de fleurs, autopsie d'un meurtre de masse, 1937-1938* (2013), 5444
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- ¹⁹¹ Fleischmann, *Réquisitoires de Fouquier-Tinville* (1911)
- ¹⁹² Frerejean, *Les procès staliniens* (2017), 72
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- ¹⁹⁴ Vyshinsky, *The Law of the Soviet State* (1948), 8 ; Ch 1 Sec 2: *The Foundations of the Marxist-Leninist Theory of State and Law*
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- ²⁰⁶ Frerejean, *Les procès staliniens* (2017), 132 ; Montefiore, *Stalin. The court of the Red Tsar* (2003), 11661; Vaksberg, *Stalin's Prosecutor* (1991), 86-93.
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- ²⁰⁸ [FOUQUIER-TINVILLE ANTOINE \(1746-1795\)](#)
- ²⁰⁹ [Antoine Fouquier-Tinville](#)
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- ²¹² De la Mahérie, [Le Livre rouge: Histoire de l'échafaud en France](#) (1863), 207
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- ²¹⁴ [DECREE of November 17, 1938 No 81, ON ARRESTS, PROSECUTORIAL SUPERVISION AND INVESTIGATION \(Постановление СНК СССР и ЦК ВКП\(б\) № П 4387 от 17.11.1938 «Об арестах, прокурорском надзоре и ведении следствия» — Викитека \(wikisource.org\)\)](#) ; [Decree about Arrests, Prosecutor Supervision and Course of Investigation - Wikipedia](#)
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- ²²⁵ [Hilde Benjamin](#)
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- ²²⁷ [Antoine Fouquier-Tinville ; SÉRIE W JURIDICTIONS EXTRAORDINAIRES](#)
- ²²⁸ [‘Odious beyond its original perversion’: Fouquier-Tinville and the Tribunal Revolutionnaire of Paris](#)
- ²²⁹ Gautherot, *Les suppliciées de la Terreur* (1926), 280
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- ²³³ [The Nuremberg Trials: The Justice Trial](#)
- ²³⁴ Ortner, *Hitler's Executioner* (2018), 3385
- ²³⁵ Muller, *Hitler's Justice* (1991), 270, 241, 278
- ²³⁶ Muller, *Hitler's Justice* (1991), 201
- ²³⁷ Muller, *Hitler's Justice* (1991), 201
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