

# CRIMINAL JUSTICE IN FRANCE DURING THE CIRCUM-WORLD WAR II PERIOD

## - STATISTICS -

An exceptional period should receive exceptional treatment. In criminal justice as elsewhere, this is the usual attitude toward the evolution of quantitative indicators for the World War II period. The authors of the present have broken with this point of view, in an attempt to describe the ordinary functioning of the criminal justice system at that time.

This work was based on the long-range statistical series in the DAVIDO database.

We chose to examine a period extending somewhat beyond the one comprised between the Occupation and the Liberation of France, so as to determine what long-term fractures and continuities, as well as short or intermediate-

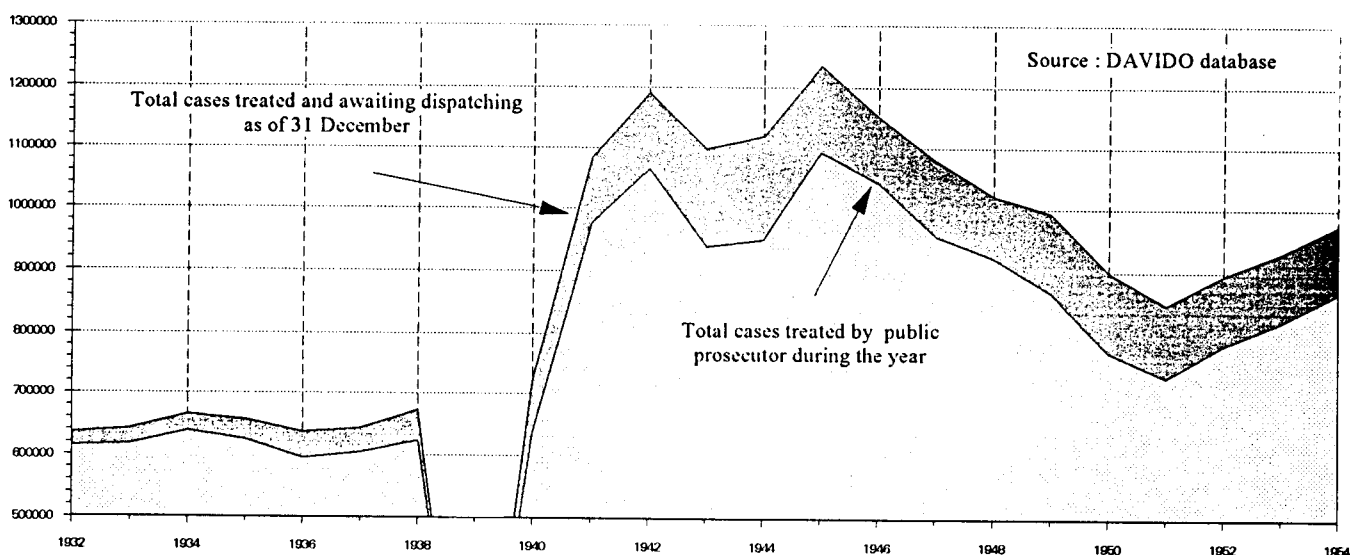
term ones, were at work for those indicators in use mid-20th century. Despite the fact that the latter are rich as for the 1831-1932 period, owing to the decline of the statistical apparatus during the 1930s, a most interesting perspective is gained as soon as this period ceases to be viewed, statistically, as parenthesis or as a hitch in the normal course of events.

What is interesting here is the connection between the different levels of criminal justice action and the cases followed by different types of cases, which form extremely varied patterns. We will chart these, and discuss some salient features of the sudden changes that affected criminal justice at the time.

*The Davido database contains statistics published in the Comptes généraux de l'administration de la justice criminelle for the 1931-1981 period. The first part is composed of a comprehensive series, while the sets in the second, some of which are used in the present study, are being broken down by type of offence. Davido was described in issue II (1990) of Questions Pénales.*

- Chart 1 -

Cases treated annually by the public prosecutor



Criminal justice activity reached its peak in 1945, with a volume double that of the pre-war period. New heights were first reached in 1942, however, when the 1938 volume was multiplied by 1.8. The indicator used here - the number of cases transmitted to the public prosecutor - cannot be considered a measure of crimes committed. An undetermined proportion of this plethora may be accounted for by changes in both the legal definitions of crime, as dictated by the wartime situation (see box) and in behaviour susceptible of prosecution, as well as in tendencies to take legal action or make denunciations and in the practices of judicial police agencies. Enquiries are lacking on the latter two aspects, but there is some indication of a break with the pre-war calm during the Occupation.

The transformation of judicial treatment of this material is suggestive of a shock wave penetrating a medium with its resistances and weak points. Every possible faculty of adaptation seems to have been mustered.

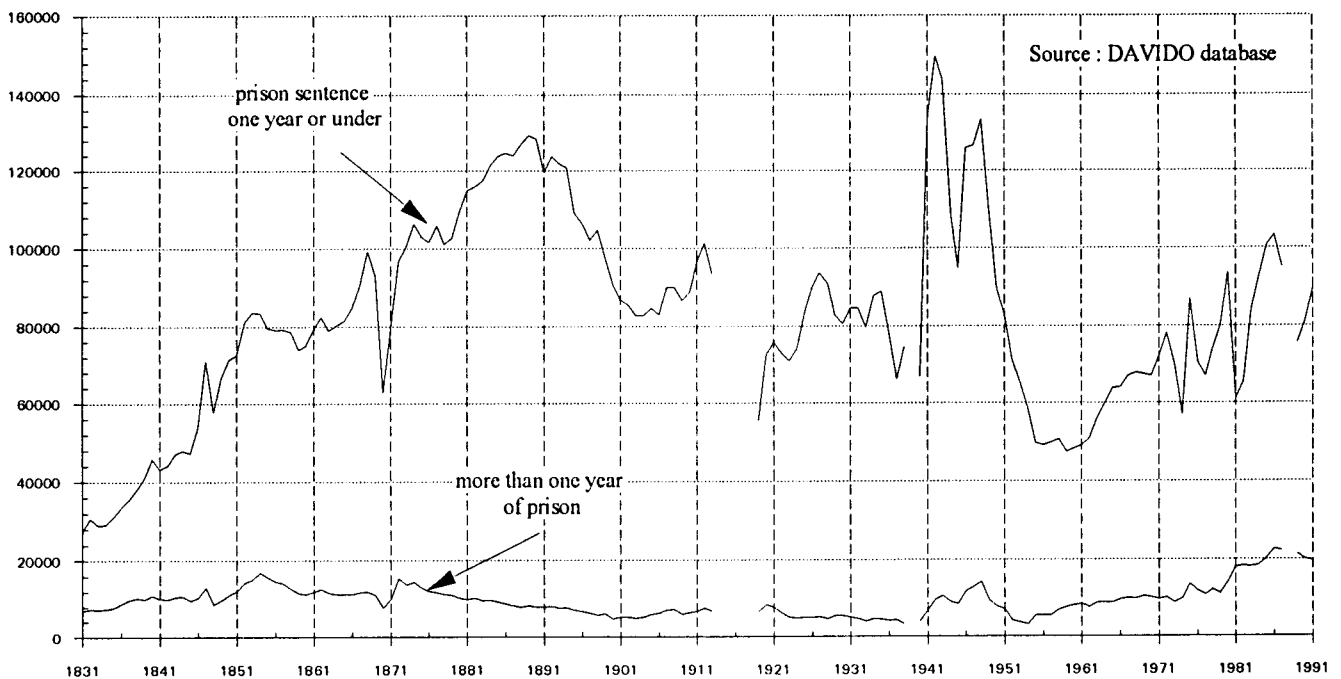
Firstly, adjournment : the delays in treatment increased at all levels, as is seen for the public prosecutor in chart 1 (cases awaiting dispatching at the end of the year). While these delays in treatment were gradually shortened at the end of the 1940s, they never resumed their earlier level. Furthermore, viewed in the long term, the rise in the number of cases referred to the public prosecutor has gone hand in hand with a growing tendency to dismissal. The proportionate stability of the number of prosecutions during these years of upheaval

with the exception of 1945 and 1946 - is worth noting, then. With the exception of these two years, in which over 70% of cases were dismissed, the figure is somewhere around 64% for the rest of the decade extending from 1937 to 1947. Until 1944, however, a growing fraction of proceedings involved judicial inquiries (up to 15% in 1944, in contrast to 11% before the war), a reversal of the long-term trend toward increased direct proceedings. The proportion of summary procedures actually dropped considerably at that time (12% of correctional proceedings, versus 17% in 1938), which corroborates the extreme saturation of the courts. This also implies an extensive change in pretrial detention practices,

and in the enforcement of unsuspended prison sentences. There is evidence that delayed treatment tended to increase the length of pretrial detention, whereas the pressure of numbers led to the implementation, at long last, of some of the solutions that had been neglected before the war, despite the efforts of lawmakers, including release pending trial (12.5% of committals in 1941 versus 8% in 1938) and unsuspended prison sentences for offenders appearing in court undetained. The latter category rose from 43% of people given unsuspended prison sentences in 1938 to 61% in 1942, while the proportion of sentences not served because of offender absconding dropped.

- Chart 2 -

Unsuspended prison sentences  
pronounced by Assize and correctional courts



The number of individuals judged increased considerably between 1938 and 1942, declined until 1945, then rose until 1948, to return to the pre-war level in the early 1950s. This trend did not affect the assize courts during the Occupation. It was not simply linked to delays in the examination of criminal cases (these delays were invoked at the time to account for the rise in criminal cases at the Liberation and thereafter) but also with judges' long-standing distrust of juries, expressed by the Vichy administration, including in its legislation.

Criminal court decisions increased in volume (multiplication by 1.7 between 1938 and 1942) and in severity. Unsuspended prison sentences were again as frequent as they had been before the inception of suspended incarceration in 1891. Not only were prison sentences proportionally more frequent, they were also longer. While this situation seems to have returned to its original level at the turn of the 1950s, a closer look at the long-term evolution of prison sentences exceeding one year (chart 2)

definitely shows that the downward trend observed at least since the beginning of the Third Republic and possibly since the Second Empire came to an end with World War II. The increase seen in France since the mid-1980s heightens a trend that is probably rooted in these troubled years. During the period of inflated prison populations experienced in France since the mid-1960s, dismissal by the public prosecutor has been the only limiting factor.

*Some cues to the French criminal justice system*

*There are three level of court : The assizes courts judge felonies (crimes) ; the correctional courts judge misdemeanors (délits), and the police courts judge minor offenses (contraventions). A case can be referred to the assizes court only after a judicial inquiry by the examining magistrate. A judicial inquiry is optional for misdemeanors, and the accused can be summoned directly before the correctional court at the request of the public prosecutor.*

**Special legislation**

The period under study operated many changes in the legislation on earlier criminal law incriminations such as infanticide, alien residency and infringement on the regulations of drinking establishments. The new incriminations also covered fields specific to the period : although political offences (anti-communist repression) come to mind first, the largest category of offences is connected with the black market.

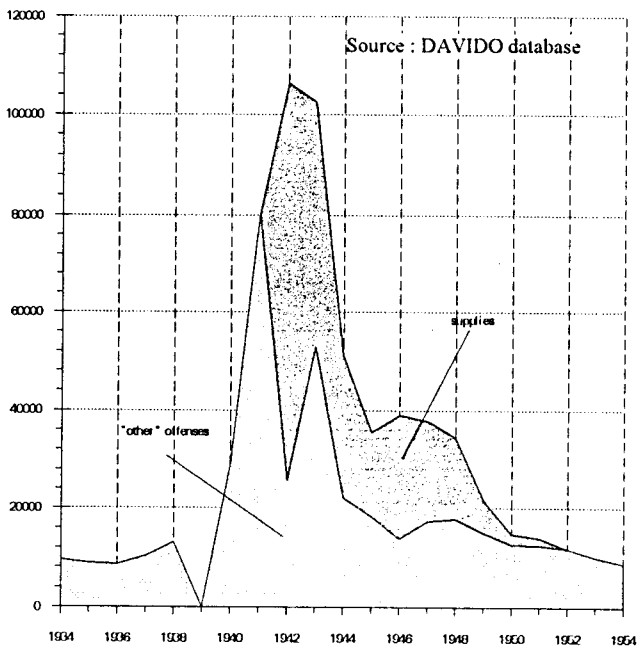
Statistical classification adapted itself slowly and imperfectly to this state of affairs. As often in such cases, the catch-all heading entitled "other" included sentences for these new offences. Then, in 1942, headings corresponding strictly to punishment of black market offences (trafficking in rationed goods ; printing, trafficking in and illicit use of rationing tickets) or more generally, to the control of retailing practices (illegal price rises) were created.

The series at our disposal do not allow strict measurement of control of the black market. For chart 3, we have chosen to combine those series susceptible of containing such sentences, to determine the approximate pattern taken.

Control of the black market and application of the special trade laws (chart 3) yielded much of the case load.

- Chart 3 -

Conviction pertaining to supplies and "other" offenses

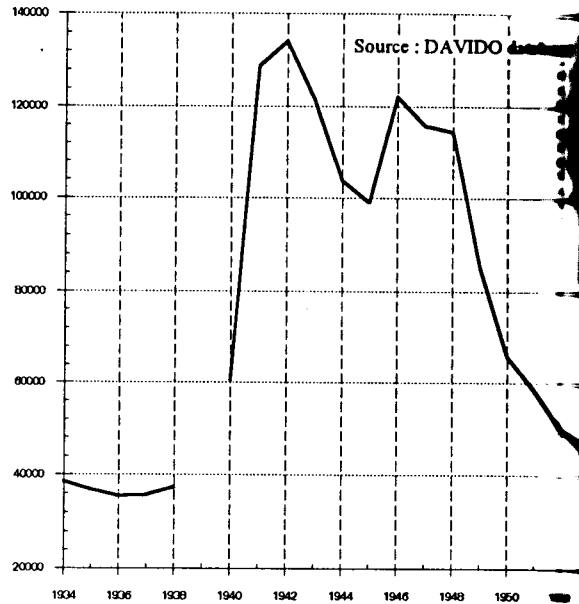


Note : Because of changes in the statistical classification, convictions for black market activities are sometimes found under the heading "other" offences and at other times under specific headings. This is clearly brought out here by the cumulative figures. Control is then seen to be more severe under the Occupation than at the Liberation.

Punishment of simple thefts closely paralleled trend found for the comprehensive indicators (chart 4)

- Chart 4 -

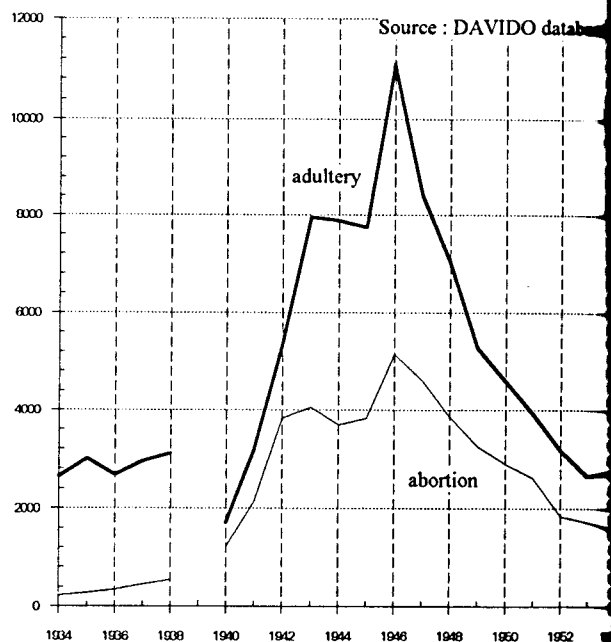
Convictions for theft



The same is not true for most of the other litigations, which followed relatively varied patterns, to cancel out, on the whole. This first fact accounts, to a large extent, for the increased recourse to unsuspended prison sentences : of the additional (in comparison with 1938) 80,000 offenders given unsuspended prison sentences in 1942, one third were tried for offences connected with the black market (including theft of rationed goods and packages in stations) and the other two thirds for other

- Chart 5 -

Convictions for adultery and abortion



Note : Comparison of these two curves may suggest a number of interpretations. Punishment of abortion peaked in 1946 ; in the case of adultery, the betrayed husband must lodge a complaint in order for the case to be taken, a difficult feat for prisoners of war.

The prison population practically tripled between 1938 and 1944, according to available information. This is the outcome of a combination of the tremendous increase in control of theft and offences connected with the black market, the slow-down in procedures and the pronouncement of longer sentences. It is further compounded by the law enforcement policy exerted through special procedures and courts, the extent of which is unfortunately not known. While there is some evidence of the consequences of the purges that took place during the Liberation period, the level of activity of the special courts and other exceptional judicial procedures remains to be determined. The only established fact is that a non-negligible part of the increase in the number of cases referred to the examining magistrate for judicial

inquiry corresponds to cases that were subsequently judged by such agencies. However, the available statistics show that the tightening of control resorted essentially to the conventional channels of criminal justice procedure, the implementation of which was considerably modified.

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Note : The present study was part of a collaborative effort involving the CESDIP and the *Institut d'Histoire du Temps Présent*, and of the research seminar conducted by Denis Peschanski and Henry Rousso on *Justice, control and persecutions in France from the late 1930s to the early 1950s*. Its findings are published in full in the first issue of a collection entitled *Justice* within the *Cahiers de l'IHTP*.