

SYMPOSIUM ON INTERNATIONAL LAWS PUBLIC AND PRIVATE

LAWYERS, ARCHIVISTS, AND THE TURN TO TRANSPARENCY IN THE FRENCH STATE

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“It is important that this history be known, that it be observed with courage and lucidity. The healing and serenity of those who were hurt depend on this, of those whose fate was upended, in both Algeria and France. . . . This will open the possibility for our youth to move beyond memorial conflicts.”¹

“I firmly believe that the genocide of the Tutsi should have the place it deserves in our collective memory. This must first be done by deepening our knowledge and understanding of this terrifying operation of human destruction, with a view towards teaching it in France and educating the younger generations to be vigilant.”²

In 2021, the French government commissioned two reports on episodes of extreme violence involving France’s past: the Algerian War and the Rwandan genocide. Both reports grapple with how “the past haunts the present and the future,”³ a theme that is central to Karen Knop’s scholarly legacy. In both reports, legal, historical, and archival expertise are positioned to redraw and recast relations of France to Africa. We argue that the reports’ focus on the role of a particular class of experts (namely archivist and historians, rather than lawyers) reflects France’s current approach to narrating historical injustice, emphasizing public memory of violent pasts, rather than legal responsibility of the French state.

The reports were released in quick succession. In January 2021, the eminent French-Algerian historian Benjamin Stora delivered a report on *Les questions mémorielles portant sur la colonisation et la guerre d’Algérie* (*Memorial Questions Concerning Colonization and the Algerian War*). Just two months later came another report, also commissioned by French President Emmanuel Macron, from the French historian Vincent Duclert on *La France, le Rwanda et le génocide des Tutsi (1990–1994)* (*France, Rwanda and the Tutsi Genocide*), focusing on the conduct of French military and diplomatic services prior to and during the Rwandan genocide.

Algeria is not Rwanda. As Stora asserts in an interview, “[w]e still haven’t taken the full measure of how much this war, this history, this French presence in Algeria has marked and traumatized French society. . . . Everything—

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¹ Emmanuel Macron, Déclaration du Président de la République française sur la mort de Maurice Audin (Sept. 13, 2018), in BENJAMIN STORA, [LES QUESTIONS MÉMORIELLES PORTANT SUR LA COLONISATION ET LA GUERRE D’ALGÉRIE](#) (2021). Translations of this report are our own.

² Emmanuel Macron, Letter from the President of the Republic Addressed to Prof. Vincent Duclert (Apr. 5, 2019), in VINCENT DUCLERT, [FRANCE, RWANDA AND THE TUTSI GENOCIDE \(1990–1994\)](#) (2021).

³ Karen Knop & Annelise Riles, [Space, Time, and Historical Injustice: A Feminist Conflict-of-Laws Approach to the “Comfort Women” Agreement](#), 102 CORNELL L. REV. 853 (2017).

everything—stems from Algeria.”⁴ In contrast, Rwanda was a Belgian colony, and the issue of French complicity in the genocide begins with the Mitterrand government of the 1990s, as French military, diplomatic, and political officials looked to gain influence in francophone Africa. Yet there is an international political conjuncture that unites the two. Since the early 2020s, President Macron has sought to redeploy France’s influence across the African continent, including in Benin, Senegal, and Mali, both through military presence in the Sahel and reinvigorated financial investment and development aid. This French attempt to redefine its posture resonates across the two reports.

We draw from Knop’s work to study these reports as strategies for “narrating the past,” and repositioning state legacies for future generations. Many themes of Knop’s research reverberate throughout the commissioning and writing of these reports: colonialism and competing narratives of colonial identity; state attempts to grapple with and settle historical injustices across jurisdictions; the role of experts; the interlacing of groups and historical trajectories with national state sovereignty; and with these, the private and public dimensions of citizenship and belonging in colonial histories.

Archives, Law, and Empire

Recent work on empire emphasizes ongoing and dynamic connections between earlier metropolises and peripheries,⁵ and between imperial pasts and presents.⁶ We argue that understanding colonial histories requires us to examine the field of expertise and professional positions that connect past and present—particularly as politicians assert that there has been a rupture between empires and colonies.⁷

Drawing on Knop’s work, we examine how these histories, and the expertise that they invoke, are narrated. For instance, in her research on the Tokyo Women’s Tribunal, Knop emphasizes how the narrative device of a “faction,” which mixes historical fact with fiction,⁸ is key to grappling with the past. To this end, she examines how the “as if” fiction of the Tokyo Women’s Tribunal intervenes as a *prequel* to the story of prosecution of gender-based violence in international law.⁹ Knop’s work stresses that such narrations require the invocation of *experts*, as with the international judges invoked by the Tokyo Women’s Tribunal, that then enhance its legitimacy.¹⁰ Finally, she emphasizes the role of records, archives, and transparency for reckoning with historical injustice.¹¹

In the Stora and Duclert reports, we see Knop’s emphasis on experts and narrative techniques reflected through the role given to archivists in the French state’s narration of historical injustice and its delineation of paths forward. Archivists play a prominent role in state-building and the consolidation of state sovereignty, particularly in times of transition after violence.¹² Despite the reports’ shared focus on past responsibilities, lawyers are ancillary experts whose role is to manage access to otherwise restricted or redacted archives. Finally, Stora and Duclert themselves

⁴ Scott Sayare, *A Life Spent Remembering a War France Has Tried to Forget*, N.Y. TIMES (Mar. 28, 2014).

⁵ George Steinmetz, *The Sociology of Empires, Colonies, and Postcolonialism*, 40 ANN. REV. SOC. 77 (2014).

⁶ YVES DEZALAY & BRYANT G. GARTH, *LAW AS REPRODUCTION AND REVOLUTION: AN INTERCONNECTED HISTORY* (2021).

⁷ Karen Knop, *Lorimer’s Private Citizens of the World*, 27 EUR. J. INT’L L. 447 (2016).

⁸ Knop & Riles, *supra* note 3; Karen Knop, *The Tokyo Women’s Tribunal and the Turn to Fiction*, in *EVENTS: THE FORCE OF INTERNATIONAL LAW* 149 (Fleur Johns, Richard Joyce & Sundhya Pahuja eds., 2011).

⁹ Knop, *supra* note 8.

¹⁰ *Id.* at 148, 151.

¹¹ *Id.* at 159.

¹² FRANCIS BLOUIN & WILLIAM ROSENBERG, *PROCESSING THE PAST: CONTESTING AUTHORITY IN HISTORY AND THE ARCHIVES* (2011); Jennifer Milligan, *The Problem of Publicité in the Archives of Second Empire France*, in *ARCHIVES, DOCUMENTATION, AND INSTITUTIONS OF SOCIAL MEMORY: ESSAYS FROM THE SAWYER SEMINAR* (Francis Blouin & William Rosenberg eds., 2007)

emerge as historian-experts, who are well positioned by virtue of their own professional and personal trajectories to redraw postcolonial relations. These reports then narrate the future of France-Africa relations by emphasizing the role of state archives in mitigating private memories of mass violence and producing a public memory in their place.

Algeria: Lawyers and Archivists in the Stora Report

Born in Constantine to a Jewish-Algerian family and exiled from Algeria in 1962, Stora is the preeminent historian of Algeria in France. As described in *The New York Times*, Stora has “spent his life remembering a war France has tried to forget,” and his work has shaped understandings of French colonialism and Algerian history.¹³ Stora himself thus occupies a multifaceted position in the history of the Algerian War and Algerian independence.

Commissioned ahead of the sixtieth anniversary of the Évian Accords that brokered the end of the Algerian War, the Stora report is grounded in President Macron’s electoral campaign declaration that colonization was a “crime against humanity.” This statement was a significant shift for a state that, until 1999, did not speak officially in terms of the “Algerian War” in framing France-Algeria relations.¹⁴ Stora writes that Macron went further than any prior president in recognizing France’s role in colonial violence.¹⁵ Yet the report also operates from the premise—explicit in President Macron’s charge—of the absence of legal responsibility, since “[t]hose who hold the future of Algeria and France in their hands have no responsibility for yesterday’s confrontations and cannot bear their burden.”¹⁶

The lawyers identified in the report are Algerian lawyers and French lawyers who legally defended Algeria’s National Liberation Front (*Front de Libération Nationale* (FLN)): Gisèle Halimi and Jean-Jacques de Felice, who both represented militant Algerian groups, and Ali Boumendjel, an FLN militant and litigator with Shell Oil, who was tortured and killed by the French military. All three served as go-betweens between Algeria and France.

In contrast to its minimal focus on lawyers, the Stora report emphasizes the historian and the archivist. The historian is identified as the necessary go-between, a “smuggler between the past and the present,” who can broker “an exchange between all the groups that are affected by the war.” To this end, the historian’s role is juxtaposed with the “community origins” of collective memory:¹⁷

The Algerian War, a dark period in the national consciousness, thus emerges from the turbulence of passion and collective trauma to offer itself, at last, to the scrutiny of the historian. The pace of historical research is accelerating thanks to the opening of archives, particularly in France.¹⁸

In turn, the archivist is given center stage, through terms like “cooperation,” “collaboration,” and “reciprocity,” offering transparency (in contrast to legal responsibility) as justice:

The Algerian War . . . has long waited to be recognized and named in the arena of French memory. The transition to history has been made possible by the opening up of new archives, in particular state archives,

¹³ [Sayare](#), *supra* note 4.

¹⁴ [STORA](#), *supra* note 1, at 41.

¹⁵ *Id.* at 57.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 22.

the emergence of a new generation of researchers, and the need to testify, at the end of a lifetime, by many of those involved in the conflict.¹⁹

As in Knop's analysis of the Tokyo Women's Tribunal, lawyers remain key to telling this story, even if not for the purposes of facilitating legal responsibility as such. To recast future France-Algeria relations, lawyers are to facilitate access to the archives by citizens, and thereby ensure access to the state's historical account. As Stora asks, "How can France examine these issues with serenity, if it is in fact impossible to access national defense archives that are over 50 years old, and thus freely communicable by law?"²⁰

Rwanda: Lawyers and Archivists in the Duclert Report

Vincent Duclert is a French historian, known for his scholarship on the Third Republic. In contrast to Stora's relation to Algeria, Duclert is not an expert on Rwanda or the Great Lakes region: he is an expert on state violence, including the Dreyfus Affair and the Armenian genocide, and chaired the ministerial mission on genocides and mass crimes under former French President François Hollande.²¹ Echoing the timing of the Stora report, the Duclert report was released just ahead of the twenty-fifth commemoration of the Rwandan genocide.

The Duclert report introduces the Rwandan genocide with a historical overview that embeds the genocide within a legal discussion of the International Criminal Tribunal for Rwanda and the Genocide Convention.²² However, it then asserts that legal accountability has not "calm[ed] the conflict over memory," leading to judicial contestation and diplomatic "tensions":²³

A recurrent, bitter and violent debate, commensurate with the stakes and passions involved, grew in France but also in Africa, Europe and throughout the world. Accusations are multiplying on the one hand, while denial and retaliation, including legal action, are increasing on the other, to the point of profoundly hindering the search for historical truth.²⁴

The report calls for a break from these legal narratives to offer "a new age of resistance to genocide and mass crimes."²⁵ In what we might call a *sequel*, the Duclert report emphasizes the role of historians and archivists, suggesting "[t]he question of the responsibility of the French authorities in the genocide of the Tutsi must be addressed through research."²⁶ To do so, it relies on nearly eight thousand French archival documents from before and during the genocide, across Ministries, to which the researchers working with Duclert were granted access. The report emphasizes the importance of these archives for grappling with the potential responsibility of the French state.

The report's conclusions set aside the legal responsibility of the French state: "nothing in the archives we examined," it reads, "demonstrates a willingness to join the genocidal operation."²⁷ It then opens a new narrative path by displacing prior judicially focused attempts to recount the past. The Duclert report points to "a set of

¹⁹ *Id.* at 78.

²⁰ *Id.* at 69.

²¹ The composition of the Duclert commission garnered criticism over the lack of specialists of the Rwandan context. See Mathilde Beauflis, *Construire Une Légitimité Scientifique: Les Polémiques autour de la composition et de la réception de la commission française sur le rôle de la France au Rwanda*, 166 POL. AFRICAINE 65 (2022).

²² DUCLERT, *supra* note 2, at 9–10, 14–15.

²³ *Id.* at 16.

²⁴ *Id.* at 15.

²⁵ *Id.* at 10.

²⁶ *Id.* at 14.

²⁷ *Id.* at 972.

responsibilities, both serious and overwhelming.”²⁸ These are understood in political, institutional, intellectual, cognitive, and moral terms. Responsibility is *political*, for example, insofar as “the French authority demonstrated a continual blindness in their support for a racist, corrupt and violent regime, conceived originally as a model for a new French policy in Africa”; it is *institutional* given “irregular administrative practices,” “opaque” decision-making, and the “circumvention” of proper procedures; and it is *cognitive* due to “the mental inability” of French authorities “to think about genocide as it is defined and to distinguish it from mass murder.”²⁹ The report’s recommendations include establishing a position of Archivist of the Republic, a comprehensive law on archives, resources for archival centers and personnel, research on the prevention and repression of genocide, and teaching about genocide in school curricula.³⁰

These recommendations confront the past through the promotion of education and research, with a focus on archives and history. Instead of turning to law to narrate responsibility, they call for law to support an official public memory.

Reception

Knop’s work calls attention to how closure and redress for historical injustice are devised.³¹ As she highlights in the context of the Tokyo Women’s Tribunal, divisions over “the right approach to the problem” are often “refracted through the power dynamics and social attitudes of colonialism.”³² These dynamics are evident in critiques leveled at the Stora and Duclert reports in Algeria and Rwanda.³³

In response to the Stora report, the director general of Algeria’s National Archives called for the restitution of all documents transferred to France at the end of the Algerian War. The Algerian minister of communication criticized the report’s rejection of reparations or official apologies, responding that “[t]he criminal is doing everything to avoid admitting his crimes.”³⁴

In Kigali, the Duclert report was welcomed as “an important step toward a common understanding of France’s role in the Genocide against the Tutsi,” yet the government emphasized that its conclusions should be “complement[ed] and enrich[ed]” by an investigative report commissioned by the Rwandan government³⁵ that characterizes the genocide as “foreseeable.”³⁶ Others denounced the Duclert report’s turn from legal accountability to the “court of history,”³⁷ with activist NGOs critiquing the “numbing” of the debate,³⁸ and questioning whether historical truth alone can deliver justice.³⁹

²⁸ *Id.* at 973.

²⁹ *Id.* at 973–75.

³⁰ *Id.* at 975–76.

³¹ [Knop & Riles](#), *supra* note 3, at 862.

³² [Knop](#), *supra* note 8, at 159.

³³ Robert Mortimer, [The Stora Report](#), 31 *MOD. & CONTEMP. FRANCE* 7 (2023).

³⁴ Pauline Le Troquier, [Rapport Stora: Le gouvernement algérien déplore la non-reconnaissance des « crimes coloniaux » de l’État français](#), *COURRIER INT’L* (Feb. 10, 2021).

³⁵ Republic of Rwanda, [Statement on the Release of the Duclert Commission Report](#) (2021).

³⁶ ROBERT MUSE, [A FORESEEABLE GENOCIDE: THE ROLE OF THE FRENCH GOVERNMENT IN CONNECTION WITH THE GENOCIDE AGAINST THE TUTSI IN RWANDA](#) (2021).

³⁷ [Beaufils](#), *supra* note 21, at 84.

³⁸ *Id.* at 86.

³⁹ Étienne Smith, [Introduction to the Topic: The France-Rwanda Dispute \(1994–2022\)](#), 166 *POL. AFRICAINE* 30 (2022).

Conclusion

In their research on the Comfort Women Agreement, Annelise Riles and Karen Knop emphasize how “experiences of historical injustice” are “continually transformed” by people, resources, documents, and forms of legal argument.⁴⁰ We argue that the Stora and Duclert reports offer contemporary narratives of the arc of historical injustices—accounts that reflect the current state of French politics and are embedded in the French government’s broader strategy regarding Africa.

In her analysis of the Tokyo Women’s Tribunal, Knop notes how this initiative used narrative devices to present an alternative path to that taken by the Tokyo Tribunal, and went on to recommend greater transparency and release of records about the Comfort Women system than was offered by the original tribunal.⁴¹ At some level, the Stora and Duclert reports invert this logic: in contrast to Knop’s emphasis on the *prequel*, they offer a *sequel* to the histories of violence of Algeria and Rwanda by positioning archives as the official, state-produced solvent for private and collective memories.

This repositions the role of experts within a changing field of colonial and post-colonial relations. Rather than lawyers, archivists and historians take over the role of intermediaries between France and its interlocutors in Africa. Rather than facilitating legal accountability, lawyers are now central for ensuring fair access to state archives. This shift in expert positions promotes access to an official public memory, which aims to stand in for—and potentially displace—private or collectively held impassioned memories of violent pasts.

This turn to publicity also echoes earlier developments in the evolution of the French state, which in the nineteenth century turned to publicity of archives to consolidate the shift from the *Ancien Régime*—archives that until that point were the preserve of lawyers.⁴² In the current political moment, the Stora and Duclert reports sit at the crossroads of international law, domestic politics, and international relations. They invoke the past, the present, and the future. And in so doing, they reposition state experts to manage histories of violence in a continually restructured field of colonial relations.

⁴⁰ [Knop & Riles](#), *supra* note 3, at 859.

⁴¹ [Knop](#), *supra* note 8.

⁴² [Milligan](#), *supra* note 10; PIERRE BOURDIEU, [ON THE STATE: LECTURES AT THE COLLÈGE DE FRANCE, 1989–1992](#) (2015).