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**Judging Mohammed****France's "Color-blind" Juvenile Justice System on Trial – A Review Article**

Richard Derderian

Embedding herself for nearly a decade within France's juvenile justice system, Georgetown University anthropologist Susan Terrio offers an impressively researched and thoroughly readable insider account of an ominous development in France.<sup>1</sup> Since the mid-1990s, judges and prosecutors have increasingly abandoned an earlier conviction and commitment to a rehabilitative approach to juvenile justice. Incarceration and surveillance are now seen as the only solution to growing fears of insecurity centering on youth from recently settled ethnic minority populations. As youth delinquency and criminality have been recast as a problem of inassimilable immigrant communities, the French justice system has ratcheted up prosecutions and punishments imposed on minors of foreign ancestry. The disproportionate numbers of ethnic minority youth doing hard time not only represents the fundamental failure of the French legal system, but also the jettisoning France's heritage as the birthplace of human rights.

If cultural differences have become the chief culprit, Terrio explains in chapter 1 that new conceptions of delinquency are largely to blame. Magistrates, together with politicians and intellectuals across the political spectrum, no longer see delinquency as transitory transgressions in the lives of wayward youth. Delinquency is now encapsulated in the expansive and politically charged term "insecurity" and bound to the idea of alien populations permanently entrenched in neighborhoods divorced from mainstream norms and values. Instead of challenging fears of the new barbarians at the gates and defending basic rights and freedoms, sensationalist media coverage of ethnic minority criminality has only further inflamed political passions and popular demands for tougher law and order measures. Since the 1990s, French governments on both the right and left have responded by enacting legislation empowering courts to treat minors as adults and to

<sup>1</sup> Terrio, Susan J.: *Judging Mohammed. Juvenile Delinquency, Immigration, and Exclusion at the Paris Palace of Justice*. Stanford: Stanford University Press, 2009. 354 pp. ISBN 978-0-8047-5960-1. Price: \$ 24.95.

hold them personally accountable and punishable for their offenses.

Terrio is careful to note that the new approach to juvenile justice is less a departure from a rehabilitative system than a return to never fully abandoned punitive tradition. Beginning in the 1970s, intellectuals on the left, such as Michel Foucault, facilitated the discrediting of the rehabilitative model by deconstructing it as an even more oppressive mechanism of state control. During the 1980s, juvenile judges came under attack within the legal system for acting more like social workers and not upholding the same standards of jurisprudence as their peers. Two camps have since taken shape within the legal community, each with their external allies. The minority camp continues to support the preventative, rehabilitative approach to juvenile justice whereas the majority camp with even more powerful government and university supporters calls for ever tougher law enforcement measures and an increasingly expansive definition of the causes of insecurity.

In keeping with its revolutionary legacy which elevated shared individual over group rights and identities, the French government and justice system are officially color-blind. Once French citizenship is obtained, it is illegal in France to conduct surveys based on race or ethnicity. The difficulties of studying ethnic and racial groups and the French aversion to these very terms only masks the continued importance of race and ethnicity in shaping housing, education, and judicial policies and practices in France. By gaining access to the closed world of Paris's juvenile courts, Terrio sheds light on the ways in which culture – now a euphemism for behavior shaped by ones community of origin – matters within the French justice system.

Chapter 2 offers an overview of the development of the French judicial system and juvenile courts in particular. The particularity of the French system, Terrio explains, is the power wielded by judges. French judges take on a much more active role than their counterparts in the United States and the United Kingdom not only in determining the guilt or innocence of the accused, but also in establishing and interpreting the evidence needed to arrive at a verdict. Moreover, the authority of judges in French courts is not counterbalanced by the kind of influence enjoyed by defense attorneys in the United States. Popular juries only exist in felony courts where the outcome, Terrio asserts, is typically a foregone conclusion. To a considerable degree, French courts continue to owe much to the inquisitorial heritage of the old regime.

The advent of juvenile courts is quite recent, stemming from legislation enacted in the immedi-

ate aftermath of World War II. The purpose of these new courts was to move away from a repressive past of harsh punishments and to treat minors separately from adults with the goal of rehabilitation. Juvenile court judges acquired far-ranging powers to assess the prospects of rehabilitation and reintegration. Culture matters in that judges base their assessment in part on their knowledge of the family background and personal history of the accused. Moreover, the fluency of accused in the middle class speech, etiquette, and morays of the court can all have an important bearing on the outcome of a case.

In chapter 3 Terrio traces the shift in juvenile law and the public consensus that took shape in the 1990s around a new punitive approach to juvenile delinquency targeting ethnic minority youth in particular. Within the French justice system, Terrio notes that magistrates perpetuated a longer history of perceiving the causes of deviance in cultural terms. The very founders of the modern juvenile justice system maintained 19th-century notions about inherited personal traits and dysfunctional families as key cultural contributors to criminal behavior. Moreover, Terrio explains that recent recourse to ethnopsychiatry as a tool for explaining deviance among immigrant communities is a direct outgrowth of efforts by psychologists and psychiatrists in the imperial era to anchor the conduct of the colonized in fixed and unchanging notions of culture. It is this historical baggage, Terrio argues, that explains why French judges, as early as the 1970s, long before immigration became a political football, began to sentence disproportionate numbers of ethnic minority youth. The rehabilitative model of juvenile justice, Terrio claims, was never fully functional for youth of foreign ancestry, especially those over the age of sixteen.

Political leaders on the right began to voice concerns about lawless, tribalized ghettos taking shape in France in the period from 1977 to 1981. After a brief interlude of more tolerant Socialist government, the key turning point came with the return of the right from 1993 to 1997. It was during this period that the French penal code was substantially revised shifting greater weight to punishment and repression. With heavier sentences meted out for misdemeanors, the numbers of minors in prison, which had dropped during the Socialist era, increased dramatically under rule of the right.

During the 1990s, the media and French social scientists began to popularize fears of ethnic concentrations in former working-class communities as an unprecedented public security threat. Drawing from a long tradition of demonizing working-class neighborhoods and communities, the media cast

ethnic minority youth as the new barbarians at the gates. Sensationalized reports on crimes and riots implicating the sons of immigrant workers helped intensify concerns regarding immigrant populations. French social scientists borrowed from the Chicago School of Sociology to explain the rise of a new kind of “delinquency of exclusion.” In contrast to the traditional understanding of delinquency as a passing stage among wayward and ultimately redeemable youth, French social scientists now identified a more threatening and intractable problem stemming from culturally inassimilable populations cut off from mainstream norms and values.

Influenced by the media and social science literature, upon their return to power from 1997 to 2002, the center-left government of Lionel Jospin moved closer to the right in casting immigrant populations as a security problem. In particular, a culture of incivility was held to blame as a core source of unruliness found in neighborhoods with sizeable ethnic minority communities. Forms of behavior deemed offensive to middle class values, such as loitering or playing loud music, now became illegal. Socialist ministers increasingly echoed the center right in casting juvenile criminality as the product of cultural difference rather than socioeconomic disadvantages.

Chapter 4 turns to the divisions among French magistrates in response to the punitive trend in juvenile courts. Here Terrio begins to exploit the most original part of her research, the hundreds of court cases she attended and the countless hours she spent with juvenile judges over the span of nearly a decade. What we learn is that most judges never envisioned a career in what is widely considered among their peers as the most degraded and least prestigious branch of the judicial profession. We gain an appreciation of the burdens experienced by judges stigmatized as glorified social workers and laboring under heavy and emotionally wrenching case-loads with limited material and human resources. Most importantly, we discover how judges themselves were conflicted about the growing pressure for a more punitive approach to juvenile crime

The perspectives of juvenile judges were colored by debates inside and outside the judicial system. By the early 1990s, leading jurists began to attack the rehabilitative tradition by affirming the rise of a new kind of delinquency of exclusion. Deviance was now cast as the manifestation of pathologies associated with communities ill-adapted to the norms and values of French society. Violence and other forms of deviance were culturally ingrained and required adult-like sentences and more rigorous standards of jurisprudence. Top officials within the Min-

istry of Justice and the Interior Ministry disagreed about the need to reform the juvenile justice system but concurred about the necessity of enacting harsher penalties, imposing a wider range of sentences, and requiring youth to take more individual responsibility for their actions. During the 2002 presidential elections both Jospin and Chirac emphasized the need to crack down on escalating rates of criminality among juvenile offenders.

Within this context juvenile judges divided into two camps – anti-penal and pro-penal judges. Anti-penal judges generally looked at a broader range of factors in understanding delinquency, refused to blame minors, and rejected the trend toward punitive forms of justice. They continued to adhere to a protective and rehabilitative interpretation of juvenile law and lamented the tendency to expand the punitive powers of judges and the range of punishable offenses. Overlooking discriminatory policies in schools and the workplace, they remained proponents of the possibilities of educational success, hard work, and individual initiative. Pro-penal judges placed far greater stock in cultural origins as an explanatory for juvenile delinquency. Rather than looking at class or socioeconomic disadvantages, they focused blame on poor parenting and dysfunctional families. While approving of the harsher and more extensive penalties imposed on juvenile offenses, pro-penal judges believed that the existing justice system remained too permissive and overly tolerant of youth crime. Despite their differences, Terrio notes that both pro and anti-penal judges tended to regard non-Western cultures in France as unchanging and regressive.

Chapter 5 takes us through juvenile system from the pre-trial phase to incarceration. The process begins when the accused and their immediate kin arrive at the Social Service Probation Office and undergo the emotional turmoil of their first contact with the juvenile justice system. Those charged with overseeing their cases before they reach a judge are called *éducateurs*. With the shift from rehabilitation to punishment in juvenile courts, the role of *éducateurs* now centers more on surveillance than assistance. A marked increase in sentences beginning in the mid-1990s, has most often taken the form of probation or conditional suspended sentences. With this development, *éducateurs* have increasingly taken on the role of probation officers while spending less time as social workers.

One of the central responsibilities of *éducateurs* is to conduct pretrial interviews which provide judges with a profile of the minor’s social and psychological background. Terrio notes that these reports, colored by middle class norms and values,

are instrumental in helping judges to determine the prospects for rehabilitation. In many respects the report tells us more about the social milieu and expectations of the profiler than the profiled. Short-hand comments and remarks in these reports can affirm or deny the minor's ability to conform to the dominant value system. With little experience with the realities of migration and even less of an understanding of the diverse cultural backgrounds of immigrant communities, *éducateur* reports inevitably misrepresent their subjects with potentially catastrophic consequences. But even those *éducateurs* with some ethnocultural training are at risk of relying on static and overly deterministic conceptions of culture in interpreting the behavior of their subjects. Terrio finds that not only *éducateurs* but also social workers, judges, and prosecutors are ill-equipped to contend with cases that involve complex and fluid cultural differences.

Juvenile court cases take place in two settings – courtrooms and judges' chambers. Chapter 6 focuses on three categories of cases witnessed by Terrio in judges' chambers – public order violations, theft, and incidents shaped in part by non-Western cultural difference. Central to the growing number of court cases and convictions involving ethnic minority youth since the mid-1990s has been the criminalization of acts of public disorder. Most public order violation cases witnessed by Terrio targeted children of immigrants, occurred within the boundaries of the French capital, and involved acts of disrespect – resisting orders, insulting, or assaulting public authorities. French police argued that insolent and aggressive youth were to blame while minors of foreign ancestry claimed that racist police who harassed them on a regular basis were at fault. In most cases judges upheld the arguments of French police. However, minors who came from middle-class families and were more conversant in the language and codes of French court had a better chance of being acquitted.

As part of the shift to the punitive system French laws now impose heavier sentences on various gradations of crimes involving theft. For example, punishments have been increased for acts of theft that entail violence and involve more than one person – even if these crimes rarely result in serious injury. In similar cases, however, Terrio finds that judges looked differently at French youth and minors of foreign ancestry seeing the problems of the former as personal and the later as cultural. Whereas as the crimes of immigrant youth were cast as the product of a culture of violence, similar offenses by French youth were explained as poor personal choices. Unbounded by a debilitating culture, only French de-

fendants enjoyed freedom of independent action, self-definition, and as a result, rehabilitation.

Examples of court cases involving non-Western cultural differences include efforts to control female sexuality, arranged marriages, corporal punishment, witchcraft, and sorcery. With far greater confidence in the ability of girls to find a place in French society, judges were often inclined to intervene on their behalf when parental authority was deemed oppressive and excessive. Corporal punishment, cast as a regressive feature of backward immigrant populations, could be used to explain delinquency in boys while ignoring a long history of child abuse in France. In child endangerment cases, Terrio finds that judges tended to regard cultural difference as a debilitating factor meriting intervention. While judges have increasingly turned to cultural mediators such as ethnopsychiatrists, Terrio finds the results to be disappointing. Just as juvenile judges tend to see North and Sub-Saharan Africans as less evolved and more resistant to change, ethnopsychiatrists cast immigrant families rather than the host society as the central problem.

Chapter 7 takes us inside the juvenile court where growing numbers of minors are now tried for what Terrio describes as petty crimes – stealing cell phones, sunglasses, wallets – rarely with the use of a firearm. Terrio begins by describing the courtroom as a highly ritualized, theatrical space where only the initiated know how to speak and conduct themselves. From their spatial positioning at the center of the courtroom, judges preside over and orchestrate the legal drama. Any chance of clemency hinges on the willingness of the accused to admit guilt and assume responsibility for his or her actions. In contrast with the American system, judges assume a prosecutorial role in their efforts to solicit an admission of guilt and can demonstrate considerable displeasure when such an admission is withheld.

Parents also have the opportunity to speak on behalf of their children. Those who show sufficient deference to the court, speak in fluent French, and are able to offer a positive depiction of their children, stand the best chance of their sons or daughters receiving a favorable ruling. However, for most parents, the experience of time in court is one of public shaming and humiliation. Parenting skills and the cultural values that underpin them are put on display for close public scrutiny and criticism. Indeed, a frequent strategy used by prosecutors and judges alike is to cast the criminal conduct of minors of foreign ancestry as the product of culturally deficient and backward parenting.

In addition to consulting a file complete with psychological, social, and family history informa-

tion, judges rely heavily on oral reports by *éducateurs*. Terrio describes these reports as succinct and highly selective family histories used to encapsulate formative experiences and to predict the future of the accused. *Éducateur* narratives about the ability of the accused to form fully developed personalities and identities separate from their families are influential in helping judges to determine the prospects for rehabilitation and reintegration into French society. However, Terrio is quick to note that judges always remain the final arbiters and are free to offer their own damning or redemptive narrative of the accused.

Collaborating closely with judges, prosecutors are responsible for selectively interpreting all available evidence to craft the strongest case against the accused. While court cases target individuals not groups, Terrio finds that prosecutors typically aim their charges at the cultures of the accused. Playing on public preconceptions of dangerous predatory youth and immigrant communities at odds with French culture, the prosecutor's *réquisitoire*, or formal charges, a central element in the courtroom drama, frequently evokes and reinforces negative stereotypes.

In keeping with the prosecutorial history of the French court system, it was not until the 1990s, and only under international pressure, that suspects under police custody were allowed to know their rights and to gain access to legal counsel. It was during the same decade that the Juvenile Defense Bureau was created and defendants were assigned a court appointed attorney. However, Terrio notes that defense attorneys remain at a distinct disadvantage within the justice system. Indifferent and uninformed clients often only met their attorneys at court on the day of the trial and attorneys are frequently unable to access or lack time to review case files. When defense attorneys craft their *plaideoirie*, or plea, they are forced to rely more on flair and theatrics than detail. Last to speak before the verdict, defense attorneys typically accept the guilt of their clients while focusing on making the strongest possible case in favor of their client's potential for rehabilitation.

Chapter 8 addresses the recent fixation with undocumented minors from Eastern Europe and Romania in particular who began to arrive in France in the late 1990s. As home to the Declaration of the Rights of Man, yet caught up in politically charged concerns about insecurity that center of foreign populations, the plight of undocumented minors represents an especially thorny dilemma. Increased media attention has given this issue even greater public prominence and helped anchor concerns about crime and insecurity to undocumented non- and

Roma Romanians – a population long stigmatized in France and throughout Europe.

French authorities have responded to the perceived danger of undocumented minors by denying access to schools and social services, increasing arrests, detentions, and convictions, and reclassifying them as adults. In the last instance, wrist x-rays used in conjunction with a North American database established in the 1930s, have been the dubious scientific means used to recategorize minors as adults. Once stripped of their status as minors, it becomes possible to expedite legal proceedings in adult courts and incarceration in the much deplored national prison system. As Interior minister in 2002 and 2003, Nicholas Sarkozy negotiated with Romanian authorities for the repatriation of undocumented Romanians and ordered French police to use force to dismantle and expel Romanians from temporary camps along the Seine.

Terrio notes that the justice system has devoted disproportional attention and resources to the street crimes and illegal activities of these new arrivals who now represent half of all cases brought before juvenile courts. Although a special Court L was created in 2001 to address the needs of these populations and to prevent their criminalization, most judges see it as a failure which has only augmented the high level of convictions in *absentia*, pretrial detentions, and prison sentences. Terrio situates the treatment of undocumented minors as part of a larger international move to adultify children and to see them less in traditional terms as a vulnerable population at risk of adult abuse.

Terrio concludes by reminding us of the scale and dangerous potential consequences of the shift to a punitive model of juvenile justice. In addition to the more than doubling of prison sentences and pretrial detentions, from 1994 to 2001, some 13,000 inmates were added to the already overcrowded prison population between 2001 and 2003. As security has been narrowly redefined in terms of criminality, less attention is paid to the importance education, housing, healthcare, and a myriad of other important factors in fostering the general well-being of communities and French society as a whole. Moreover, the focus on the criminality of ethnic minority youth ignores the pernicious effects of white collar crime and deviance among members of the middle class.

The most troubling trend is the adultification of minors. Ironically, it was Rachida Dati, President Nicholas Sarkozy's appointment as France's first Justice Minister of Algerian ancestry, who lowered the age of penal majority to sixteen. Here, Terrio stresses, the French have much to learn from

the results of the treatment of minors as adults in the American juvenile justice system. Rather than fostering a greater degree of security, the inevitable psychological trauma and lasting stigma of doing hard time alongside adult inmates has only increased the number of repeat offenders. The policy of treating minors as adults in the United States is now widely criticized by juvenile judges and legal experts.

Susan Terrio's study is an invaluable contribution for all those interested in a deeper understanding of racial and ethnic tensions in France. Not only does she shatter the notion of a colorblind justice system, but she also provides an insightful and exhaustively researched account of the rise of a punitive juvenile justice system targeting minors of foreign ancestry and undocumented youth from Eastern Europe. The special value of this study, however, is the author's inside account of the normally closed world of the juvenile justice system. In true anthropological fashion, Terrio draws from countless hours spent in courtrooms and with French magistrates to offer a fascinating reading of the actors, language, and power dynamics at play in juvenile justice cases. Rather than simply lambasting judges for ethnocentric views of minority defendants, she gives us an appreciation of how the political, intellectual, professional, and media charged world which French magistrates inhabit shapes their thinking.

As a historian with a particular interest in the Algerian community, I would have liked to have read more than the few tantalizing comments about how altercations between police and ethnic minority youth are shaped by still vivid memories of the Algerian War. Terrio is right to point out how disrespect and distrust are at the root of tenuous relations between French authorities and ethnic minority youth. But as numerous second-generation Algerian novelists, movie directors, singers, and television producers have chronicled in their work, these sentiments stem from an acute awareness of a long history of past injustices. While I appreciated how Terrio underscores the agency of ethnic minority actors entangled in the juvenile justice system, some mention could be made of past efforts made by the sons and daughters of immigrant workers to take a stand against racially motivated violence and discriminatory policies. Despite these omissions, Terrio's pathbreaking study is well worth the read.

## Zwei neue Arbeiten über Franz Boas

### Ein Rezensionsartikel

Michael Knüppel

Im Jahre 2008 erschienen – weithin unbeachtet geblieben – anlässlich des 150. Geburtstages von Franz Boas (9. 7. 1858–21. 12. 1942) in dessen Vaterstadt Minden zwei neue Arbeiten über das Leben und Wirken des großen Anthropologen und wichtigsten Vertreters des (seit M. Spiro sogenannten) „deskriptiven“ Kulturrelativismus.<sup>1</sup> Diese verdienen allein schon aufgrund der in ihnen gegebenen, bislang nahezu (oder auch gänzlich) unbekannten Materialien zum Leben des außergewöhnlichen Gelehrten, über eine einfache Anzeige hinaus ausführlicher vorgestellt zu werden. Die beiden Bände – eine Edition des Tagebuchs seines „Mitarbeiters“ (eher „bediensteten Mitreisenden“) und Hausangestellten der Familie Boas, W. Weike, und ein Sammelband mit zwei Beiträgen zur Biografie des „Geistesriesen“, wie C. Lévi-Strauss Boas einmal nannte, – haben recht unterschiedliche Aspekte seines Lebens und Schaffens zum Gegenstand und leisten (was in der Natur der beiden Arbeiten begründet liegt) recht unterschiedliche Zugänge zu selbigen.

Das von L. Müller-Wille und B. Giesecking herausgegebene „Arktische Tagebuch“ des Wilhelm Weike (1859–1917), welches neben dem eigentlichen Tagebuch auch einige Briefe Weikes umfasst, ist die Edition eines einzigartigen Zeugnisses über die arktische Expedition von Franz Boas in den Jahren 1883–1884, welche diesen – gemeinsam mit Weike, einem Hausangestellten der Familie Boas in Minden – von Norddeutschland, vorbei an den Küsten Schottlands und Grönlands nach Baffin-Land und zurück über St. John's, Halifax, New York nach Hamburg führte. Das Tagebuch, aus welchem in der Vergangenheit gelegentlich einige Auszüge publiziert wurden (Müller-Wille 1994, 1998), ist insofern von großem Wert, als es die Beobachtungen eines Nichtwissenschaftlers enthält, und sich ergänzend zu den Aufzeichnungen, welche Boas im Verlaufe der Expedition angefertigt hat (Tagebücher,

<sup>1</sup> Müller-Wille, Ludger, und Bernd Giesecking (Hrsg.): Bei den Inuit und Walfängern auf Baffin-Land (1883/1884). Das arktische Tagebuch des Wilhelm Weike. Minden: Mindener Geschichtsverein, 2008. 321 pp. ISBN 978-3-929894-31-8. (Mindener Beiträge, 30). Preis: € 16.00

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