Judging Mohammed

JUVENILE DELINQUENCY, IMMIGRATION, AND EXCLUSION AT THE PARIS PALACE OF JUSTICE

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CONTENTS

PROLOGUE

THE FIRST FULL DAY I spent in a juvenile courtroom at the Paris Palace of Justice was a shock because all of the "suspects" were at-risk minors, and all but one were foreigners or minorities. Their offenses constituted less of a risk to public order or municipal security than to themselves and their future. Violence figured in only one of the infractions, and it involved grabbing a cell phone from a tourist who was making a call. It was a raw day in January 2001, but I decided to walk to the Ile de la Cité from my tiny studio apartment on the Left Bank. En route I passed many of the venerable state institutions that produce the nation's elite. In this part of the Latin Quarter, the monumental paeans to France's civilizational grandeur are everywhere—prestigious preparatory schools, elite public universities, research centers, ancient churches, and the national mausoleum itself. My destination, the Palace of Justice, is flanked by the imposing Conciergerie prison (where Marie Antoinette was held briefly before her execution) and encompasses within its walls the magnificent twelfth-century Sainte-Chapelle. The medieval gated fortress housing the Palace of Justice is where I came to know the "other" Paris—"the hoodlums, delinquents, recidivists, and marginal families" at court, which was one judge's parody of the public perception of the juvenile justice system.[1]

I was scheduled to attend penal hearings in the Eighteenth District South courtroom. When I arrived at the public entrance, I was unprepared for the large crowd of tense people waiting to enter the Palace of Justice, in contrast to the few intrepid tourists who had come to visit the Sainte-Chapelle. The police had divided the line in two. I soon found myself caught in the press of mostly brown and black people clutching court summonses and jostling for position

to pass through the metal detector. When one man on the Palace of Justice side set off the alarm by passing through with change in his pocket, everything stopped. People looked anxiously at one another or at their watches, and a young man behind me swore softly. An infant in the arms of his African mother began to whimper. It was close to 2:00 P.M. and the start of the afternoon hearings. I did not know then that if a person is absent when his or her case is called, it usually means an even longer wait or a rescheduled hearing. For the working-class and poor families who constitute the majority of the court's clientele, this is not an inconvenience but a hardship involving lost time and wages and the ordeal of dealing with the legal system.

Court proceedings in the Eighteenth South rarely started on time. This was fortunate, because after entering the court I was stopped by the policeman on duty. I had made eye contact and looked uncertain, two moves that attracted his attention. When I could produce only a Maryland driver's license as identification—not the summons or passport he requested—he had the excuse he needed to ask me to leave. When I insisted that he contact the judge or even the court president, he relented and allowed me to pass. I found the door to the chambers of the presiding judge around the next corner. Although judges normally supervise the cases of children and families who live in their districts, on this afternoon, in addition to normally scheduled hearings, the juvenile judge was on call (*de permanence*) and required to conduct hearings for all the minors who had been arrested during the preceding twenty-four-hour period, as well as urgent child endangerment cases, which required immediate investigation.

Because juvenile proceedings are closed to the public, the only outsiders ever permitted inside are judicial interns (*auditeurs de justice*) in their last year of training at the Ecole Nationale de la Magistrature (also called ENM, the elite public graduate school in Bordeaux that trains all French judges) or their counterparts from foreign institutions. After approval of a required research plan by the French Ministry of Justice, I was permitted to observe court proceedings and to interview court personnel. My ability to maneuver within a highly policed space and to make my presence understood not only to court personnel but to the children and families under supervision was contingent upon the adoption of a socioprofessional category that made sense to everyone concerned. After preliminary research the preceding summer and consultation with the president of the juvenile court, the head of the juvenile prosecutor's section, and the director of the Protection Judiciaire de la Jeunesse (Office of

Judicial Protection of Youth), I had the approval I needed to become an intern. This gave me unprecedented access to hearings and trials, even as it constrained me in other ways.

On this day I arrived just a few minutes before the court-affiliated caseworkers (*éducateurs*), also on duty, who conduct intake interviews with the teenagers in the juvenile quarter of the Paris jail, brief the judge on their backgrounds, and assess their physical and psychological states. The presiding judge, a senior magistrate with many years of experience in the juvenile court system, described her jurisdiction. The Eighteenth South is a district of approximately 100,000 residents unevenly divided between two groups: a large, poor multiethnic population dominated by African immigrants living in overcrowded apartments and makeshift public housing, and a smaller, affluent group in gentrified neighborhoods in the Montmartre area. Delinquency consists largely of public order violations, thefts, muggings, and petty extortion.

I did not know it then, but that afternoon's proceedings were largely representative of the civil and penal cases tried in the five courtrooms where I conducted my research. They involved parental abuse or neglect of minor children, or penal infractions of simple theft or theft aggravated by the circumstance of assault (*violence*) and/or in a group (*en réunion*). The overwhelming majority of the accused were Maghrebi, African, and Antillean males from working-class and underprivileged backgrounds, or eastern European (primarily Romanian) males and females who were unaccompanied, irregular migrants and lived in squats outside the city, then earning large sums of cash from the theft of parking meter receipts.

The éducateurs' briefing began with the case of a fifteen-year-old Ethiopian girl who had been arrested for an immigration violation. She was carrying a false passport on a train bound for London, where she hoped to study English and to get an education. She had come to Paris from Greece, where her widowed mother worked as a domestic, and had left with her mother's approval. She spoke fluent Amharic and Greek but knew no French, and she had learned English from watching American TV sitcoms. She had spent a night at a local police station before her transfer to the Palace jail, where a formal twenty-four-hour detention began. When questioned by the éducateurs, she indicated that she had not eaten or slept in two days and had "been treated like a criminal by the police." She wanted to get to Great Britain "because," she claimed, "immigrants were welcome there."

The second case involved an emotionally fragile young man from a mainstream working-class French family in northern France, who was arrested for a

first-time theft in the Paris metro. He had been tracked as an at-risk case after an unsuccessful attempt at suicide but had had no regular contact with French social services since that episode. His father told the caseworker that the boy was under the influence of a local "gang" and had "violent rages." In his intake interview the teenager complained that the police had tightened the handcuffs to the point of causing him pain.

The third case told the story of the abuse and neglect of a fifteen-year-old girl of Antillean ancestry, who became a mother at twelve and had just given birth to a second child, a boy. The teenager revealed for the first time that the father of both children was her mother's "companion," a single man from Guadeloupe who lived one floor down in the same makeshift facility housing welfare recipients, formerly a hotel. Next, the police brought in a French teenager of Algerian descent, a drug abuser with a long police record who was arrested for aggravated theft against an American tourist. Under French law, snatching a cell phone qualified as such an offense. He insisted that "this time" he wanted help for his drug problem. There was a brief break, after which the caseworker arrived to describe the last two cases as Romanian boys, aged twelve and fifteen, who were apprehended for the "umpteenth time for stealing from Paris parking meters." Turning to me, she added, "the little one escaped from an orphanage eight months ago. He met an adult who brought him to France via Italy. They live in an abandoned building outside the city and look like they have been beaten. They are caught in a criminal network, treated like slaves, and forced to work for adults." Later in the day more cases arrived in court—specifically, two French teenagers of North African ancestry, for arrests following an altercation with the police in which the charges were "insulting and resisting public authorities."

The hearings did not end until nearly 7:00 P.M. The pace was rushed, the attorneys took no active role in the defense of the accused, the caseworkers seemed overburdened, and the accumulated suffering to which we were exposed weighed heavily on me. The judge arranged for judicial protection orders and temporary placements for the Ethiopian migrant and the teenage mother. The judge was clearly concerned that the teenage girl had spent almost forty-eight hours in custody because of a "technical mishap." Nothing illegal had occurred, because the police had never officially extended the twenty-four-hour limit for police custody. Despite the teenager's allegations of abuse, the judge declined to elicit any further details about the girl's time in police custody from the minor. The judge transferred one penal case back to the Compiègne court in the north but indicted all the other suspects.[2]

When the judge questioned the two youths, they explained they were on a street corner talking when the police arrived in response to a neighbor's call about noise. The police demanded to see identification, using the condescending, familiar *tu* form of address with the teenagers. When one of the youths protested that it was the second identity check of the night, the police "got rough, I lost my temper, he slammed me up against the wall and put on the handcuffs." After finding out that the teenagers lived in the Eleventh District, the judge set a hearing date in that court for them.

Although the judge was inclined to offer protection to the Romanian teenagers, the Romanian interpreter and a defense attorney argued that they "did not want help" and would not benefit from state assistance. The caseworker commented that "they couldn't care less that they were arrested." The Romanian translator stepped out of her legally neutral role and offered insider knowledge on the irregular migration of the unaccompanied minors as well as the criminal networks that exploited them. She used her privileged perspective to refute the caseworker's portrayal of systematic abuse. The translator insisted that "torture was rare, that the Romanian rings that bring them to France usually include a family member, an uncle who plays the role of banker. They split the money from crime and pressure the families to keep their children here." When the case of the Algerian teenager was heard, the caseworker summarized his family background. His father was uneducated and had given up on his son. Given the boy's delinquent career and drug addiction, the attorney offered advice that seemed completely inconsistent with her role as his defense counsel. She was pessimistic about rehabilitation and implied that because he was out of school and unsupervised, his only "productivity seemed to be robbing tourists." The judge agreed, saying to him, "You'll surely end up in prison." The caseworker suggested giving custody to the teenager's paternal aunt, who had agreed to take him "on the condition that he return to Algeria." This was something the teenager adamantly opposed, because he was French. The judge exercised her prerogative to schedule hearings in chambers or the full juvenile court. She referred all three cases to the full juvenile court, which hears the cases of serious misdemeanors and crimes of thirteen- to sixteen-year-olds and can render prison sentences.

By the time these hearings ended I had more questions than answers. How did these cases square with the reputation of the French juvenile justice system? The French legal code governing minors has been widely viewed as a progressive welfare approach because it privileges prevention and rehabilitation and does not distinguish between delinquent and at-risk youth. First legislated in 1945,

this ordinance is celebrated as "famous" because it represented a shift away from a repressive prewar system that relied on punitive confinement in state institutions for both delinquent and endangered children to one that emphasized assistance and integration within the family setting. Its moniker as "famous" is partly ironic because it has been the subject of recurrent controversy and continuous reform since 1945. Although the 1945 law remains in effect, in the 1990s a punitive model attracted attention and resuscitated acrimonious debates among proponents of repression and defenders of rehabilitation. Since the 1990s there has been a marked shift from prevention and assistance to accountability, restitution, and retribution in the treatment of youth offenders. This occurred in response to what many viewed as a new, more threatening type of delinquency—a delinquency of exclusion. When I began my research in 2000, "a delinquency of exclusion" was a coded reference to the children of predominantly marginalized Muslim families from North and West Africa.

What did these hearings suggest about the individual-centered welfare approach still enshrined in French juvenile law? Was this the intrusive therapy and preventive protection widely associated with court supervision? Could one argue that this system still made no distinction between delinquent and at-risk children? Given increased attention to juvenile defense rights internationally, these hearings beg the question of what due process protections were extended to minor defendants in the French juvenile justice system. Were they accorded the presumption of innocence? What are we to make of a system that has an arsenal of antidiscrimination laws but recognizes no minority groups and permits only individuals to seek legal redress? How are we to understand a system that records only nationality in court documents but whose clientele in both civil and penal cases in the Paris court are overwhelmingly minors of immigrant and foreign ancestry from disadvantaged and working-class families? Court proceedings have much to teach us about evolving conceptions of childhood and the boundaries separating it from adulthood. Does the consensus on childhood as a malleable and perfectible stage extending to the late teens apply only to certain children and adolescents? Who is considered amenable to rehabilitation and, therefore, eligible for scarce therapeutic resources and educational opportunities in a stagnant labor market for young people?

. . .

When I left the court that evening, it was pouring rain and I was too exhausted to walk, so I took the metro. I ran across the bridge spanning the Seine to take

line seven at Châtelet. This is a line that runs along an axis from north to south as it wends its way through the multiethnic, mixed neighborhoods in the northeast arrondissements inhabited by working-class families, students, new immigrants, and young couples. It then moves through the city's wealthy commercial center and past the Opera, paralleling the river with stops at the Palais Royal and at points in the financial and fashion districts and the now upscale Marais neighborhood on the Right Bank before crossing under the Seine to the Left Bank and the Latin Quarter. At its terminus points on the city periphery, line seven connects suburbs in the red belt around Paris, Aubervilliers in the north, and Kremlin-Bicêtre in the south. Once known primarily as working-class strongholds of the Communist Party, the *banlieues* (suburbs) have come to be associated with youth crime and to signify the danger posed for the nation by high concentrations of immigrant "Others"—whether Maghrebi (North African), African (Sub-Saharan), or Antillean. That night I did not anticipate any unusual encounters on the subway and was not thinking about what Marc Augé describes as the numerous signs of alterity, "often provocative and even aggressive," in the Paris metro that function "as a magnifying glass, inviting us to consider a phenomenon we might otherwise not see or try to ignore."[3]

I boarded the train and collapsed in a seat near the end of a car. At first I did not see the three teenagers in the seats at the back, one of African ancestry and the two others of Arab descent. A few seconds later I was punched in the back. When I turned around, assuming it was a mistake and expecting an apology, they made a magnificent and uniform show of pleading ignorance. Although no one else was within three seats of us, they exchanged exaggerated, outraged looks suggesting, "Who, me?" and "What?" I turned back around, supremely annoyed and shocked out of my stupor. I decided to ignore them and bent over my newspaper until I noticed that a blunt metal hook had suddenly appeared, suspended over my head from behind. I could not think of how to respond so I just swung around and mustered my most professorial glare. This convulsed them with laughter but they promptly removed the offending hook.

What happened next could have been their response to the questions buzzing inside my head. They began a rap on who they were, in obvious counterpoint to me, the white, middle-aged woman with the supercilious manner and bourgeois demeanor whom they no doubt assumed to be French. I had descended to the level of their expectations by not seeing them and refusing to engage them verbally. They initiated what I interpreted as a call-and-response parody of the

mainstream discourse on the problematic cultural difference and identities of so-called immigrant youth born in France but not of France. "So who are you . . . are you French?" one of the boys sang out. "Oh no, I'm not French, I'm Algerian," was the rapid rejoinder followed immediately by the question, "So if you are Algerian and not French, are you an atheist (*athé*)?" That is, if you are not white and Christian and part of the unmarked majority category, but you are Arab and Muslim, does that assign you a marked and lesser status? Does that put you in the category of the unbeliever? The boys pressed on in their wordplay on French attitudes regarding Islam: "Are you an atheist or a Christian?" "No, not me, I'm just a cretin (*crétin*)." Here the boys used a play on the French words *crétin* and *chrétien*, which are pronounced the same with the exception of one syllable. He is not *chrétien* (Christian), so he is, therefore, an idiot.

The boys soon forgot about me and their conversation turned to other subjects. I overheard only bits and pieces about school, homework, and teachers. They rose to leave at the stop before mine and gave me a final knock on the head. As the train door opened, an elderly lady used a cane to steady herself as she entered. As they passed her, one of the boys grabbed the end and tugged gently on it as if to take it. She leveled an indignant stare at him, saying loudly, "*Et alors*?" ("What's this?") He immediately released the cane and the three friends jumped off the train, howling with laughter.

How could I not be struck by the timing of this encounter at the beginning of a fieldwork project on delinquency at the Paris court? I have lived and traveled in France periodically over a period of twenty-five years, much of that time in Paris, and I have never had a problem on the subway, even late at night during a year when I lived in a working-class neighborhood in the eleventh arrondissement. I was reminded of the writings of Azouz Begag, the Algerian novelist, sociologist, and former minister of the center-right government of Dominique de Villepin who grew up in a Lyonnais shantytown and experienced racism in French schools firsthand. Begag has repeatedly discussed the charged topic of juvenile delinquency. For him, youth crime is a phenomenon intimately linked to spatial configurations of power and the interactions among unequal groups, not the social origin of specific populations. The teenagers' stop and my stop were located in the fifth arrondissement, a trendy area popular with Parisians and tourists not only for civilizational landmarks, but for colorful open-air markets, shops, arthouse cinemas, and ethnic restaurants. In a 1999 newspaper editorial, Begag argued that the public visibility of youth of immigrant origin beyond the boundaries of the projects "provokes

discomfort, rejection, and relentless identity checks [by police]" and "fuels a powder keg of frustration."[4]

My encounter was illustrative of the type of incivilities that figure prominently in French talk about the cultural difference and delinquent potential of "immigrant" youth. The deterioration of inner-city neighborhoods is said to begin with incivilities such as offensive comments and rude behavior and to degenerate rapidly into criminal offenses. I described it to the senior judge of the Eighteenth South courtroom and shared my view that it was a plea for visibility on their part that revealed entrenched relations of inequality. She dismissed that theory as nonsense and insisted that it was a diversionary tactic; the boys were after my purse. Based on the scores of cases I had observed and the files I had read in which young men of immigrant or foreign ancestry were targeted for public order violations, such as attempted theft or aggravated theft; riot or incitement to riot; insulting, assaulting, or refusing to obey public authorities; or physical assault, I was certain that if the police had seen the youth hit me or hassle the elderly woman, I had no doubt they would have ended up in handcuffs and under arrest.

Between the summer of 2000, when I conducted preliminary research, and June 2007, when I finished the book, global attention focused on France's youth violence and bleak ghettos. The anger and frustration of the rioters in 2005, and the government's failure to deliver on the promises made that year (see Chapter 1), produced incidents in the fall of 2006, on the first anniversary of the unrest, that were considerably more violent than the property destruction of 2005 and included, for the first time, deadly assaults on French police and the torching of occupied buses in Marseille. Youth in the blighted and segregated regions of the public housing projects (*cités*) do not see themselves fully reflected in the promises or entitlements of the liberal democratic republic. The economic polarization wrought by deindustrialization and a shrinking welfare state have left them with few viable choices outside of the underground economy. Their sources of revenue—from the provision of illicit services, the fencing of stolen property, or participation at the low end of the drug trade—all hold risks and engender social alienation. Moreover, the meager educational opportunities offered them are premised on their own fraught social reproduction within marginal cités through low-level credentials in counseling for at-risk teenagers and positions in underprivileged areas.[5] Their isolation and disaffection are fueled by the stigma and discrimination they face, based on their social origin and cultural difference.

Silhouetted against burning cars, sporting hooded jackets and turning exuberant faces to the camera, the 2005 rioters, like offenders at court, are signified in the popular and scholarly French imagination by the collective noun *les jeunes issus de l'immigration*. "Youth of immigrant ancestry" indexes a physically powerful and threatening mass of underclass, violent male Others. Most often they are Arab or black, but the elasticity of the category means it can expand to incorporate new Others, such as vagrant foreigners from eastern Europe. My encounter on the metro in central Paris may be an ominous harbinger of things to come. These are youth who refuse to be invisible and to stay in the degraded internal colonies of the cités or in the miserable squatter settlements of the periphery, where they suffer the daily indignity of intensified surveillance and police intervention coupled with worsening social inequality and economic polarization. In November 2005 one young teenager of Arab descent, a certain Mohammed, brandished his French identity card in front of a TV camera with burning cars and buildings as a backdrop and insisted: "We are already French. We were born in French hospitals. Why do they talk about integration? We are French."

1 ARE THEY ALL DELINQUENTS?

ON 9 NOVEMBER 2005, when France 3 TV broadcast programming devoted to the French riots called the *Banlieues: The Big Scare*, it asked viewers to consider the nature of the events unfolding around them: "Is it guerrilla warfare? Barbarism? Civil war? Intifada?" Speaking over close-ups of young men of non-European ancestry against a backdrop of burning cars and smoky ruin, the hosts asked: "Are they all delinquents?" Urban violence in the impoverished Paris suburb of Clichy-sous-Bois, where 50 percent of the population are under twenty-five, one-third are foreign, and 25 percent are unemployed, focused unwelcome international attention on France's "immigrant" problem and youth crime.[1] It was here that three boys fleeing the police risked hiding in a power substation—where two died accidentally by electrocution and a third was severely burned—rather then face the likely ordeal of arrest, detention in police custody, and a hearing in court. When Interior Minister Nicolas Sarkozy insisted that the teenagers were possible suspects running from the crime scene, not from the police, rioting broke out.[2] The violence escalated rapidly when he promised to rid the suburbs of the "gangs of delinquent scum" (*bandes de racaille*) responsible for crime.[3]

The riots that spread across urban peripheries throughout France prompted Prime Minister Dominique de Villepin to declare a state of emergency for only the third time in half a century.[4] He justified his proposed policy of mass arrests and deportation orders for foreigners convicted of rioting by referring to "structured gangs and organized crime," despite any conclusive evidence that they were the main perpetrators.[5] Taking a cue from Interior Minister Sarkozy, conservative legislators blamed the violence on insufficient

controls over illegal immigration and on youth from polygamous families.[6] A quarter of those legislators signed a petition circulated by Deputy François Grosdidier denouncing seven rap artists for lyrics that endorsed "hatred for France" and "anti-white racism." Justice Minister Pascal Clément responded by initiating prosecution against them in November 2005 for promoting "incivility if not terrorism."[7] These events show the state resorting to the use of, in David Cole's felicitous phrase, "anticipatory coercion" against internal Others and foreign nationals to reinforce national security and lessen public fears linked to youth crime.[8] On one hand, issues of national sovereignty and public order were foregrounded; on the other, a specific category of person was debated. It is the relationship between these two lines of questioning that is at the heart of this book.

The FR3 journalists' rhetorical blurring of all young males in the projects speaks to a dramatic shift concerning juvenile delinquency, not only in French public and scholarly opinion but in the courts. In that one broadcast, the journalists naturalized the link between the juvenile delinquents who were burning cars and all young people of non-European ancestry living in the projects, whether in the suburban areas or in "bad" inner-city neighborhoods. By suggesting that the riots might represent a French intifada, the journalists evoked the threatening Muslim or the violent Jihadi whose alienation from mainstream society made him a ripe convert for terrorist plots. The reference to "barbarians" echoed colonial categorizations that separated the civilized from the uncivilized in the empire and at home mapped the "barbarians" onto groups of menacing Others, understood historically as the dangerous classes. The allusion to "civil war" played to postcolonial anxiety over the problem of "integrating" the children and grandchildren of the immigrants whose labor in French factories, construction, and agriculture was critical to the unparalleled economic growth of the "thirty glorious years" following World War II. These generations "born of immigration," as the phrase goes, did not enjoy the benefits of full employment in semi- or unskilled jobs or realize the promise of social mobility through French public education. Rather, by 2005 extended periods of low economic growth, deindustrialization, limited blue-collar work, and a difficult job market demanding greater professional credentials and longer schooling had combined to produce high youth unemployment and underemployment, particularly for those of working-class, "immigrant," and foreign backgrounds.[9]

A "DELINQUENCY OF EXCLUSION"

How did this new definition of France's non-European immigrant youth come about? In the 1990s, as juvenile arrest rates rose while overall crime declined, public attention centered on what was identified as a newly threatening social category, a "delinquency of exclusion." Some influential magistrates began to collaborate with a group of new sociologists who were studying urban violence and, drawing on their work, linked the foreign or immigrant delinquent to inherited cultural pathologies and dangerous social milieus. In a conference held to commemorate the fiftieth anniversary of the passage of modern juvenile law, it was eminent jurist and former juvenile judge Denis Salas—a judge with close ties to the Paris court—who coined the term *delinquency of exclusion*.[10] This was a category conflated with disadvantaged Muslim youth, both French citizens and immigrants, spatially rooted in stigmatized urban and suburban spaces. Many experts in the media, law enforcement, the bar, the magistracy, the academy, and the government depicted the "new" delinquents as younger, more violent, and irredeemable. These experts came to view an offender "from an immigrant background" through the lens of a cultural ecology model and as the product of deficient social milieus shaped by cultural pathologies and economic deprivation. The offender became associated with the 150,000 young people who leave French schools each year without degrees of any kind or with those who try to find work but fail because they have the wrong skills and worthless diplomas. Unlike his father or grandfather, this young man was no longer seen as part of a potential labor reserve but was viewed as permanently excluded from the fabric of mainstream society and condemned to resort to the informal economy for his survival. In a short time, this delinquent figure assumed monstrous proportions and his deviance was portrayed as unprecedented.[11] His offenses were depicted as a crisis of public order and as an assault on French values. The representation of youth crime gave rise to moral panics and created a collective amnesia regarding other historical episodes of juvenile delinquency that were understood by contemporaries in identically menacing terms—the hoards of Parisian vagrants in nineteenth-century Paris, the urban Apaches from southern Europe in the 1910s, the fatherless thieves during the German occupation of France of the 1940s, and the "black jackets" of the 1950s.[12]

As a result of extensive media coverage of short-term spikes in the rates of certain youth crimes, the topic of *insécurité*, or fear for public safety, became a highly politicized public issue in the 1990s. It resuscitated acrimonious debates

on the nature and causes of juvenile delinquency as well as the relative merits of punishment versus rehabilitation. It dominated opinion polls, shaped public policy agendas, produced legal reform, and helped to determine electoral outcomes, eliminating Prime Minister Lionel Jospin from the second round of the 2002 presidential elections and pitting far-right extremist candidate Jean-Marie Le Pen against incumbent president Jacques Chirac. In 2007 Nicolas Sarkozy's embrace of a leaner welfare state coupled with tough anticrime initiatives targeting minors contributed to his election as president. In a pivotal January 2007 speech he declared that "if we excuse violence we must expect barbarism."[13]

Jurists, politicians, academics, and public intellectuals on the left and the right reached a consensus on the new delinquents as being radically different from juvenile offenders of the past. They differentiated the new delinquency from earlier understandings of delinquency, prevalent until recently, that viewed it as the product of coming-of-age risk-taking and immaturity, individual pathology, or flawed parenting. As these minors came to be overrepresented in police custody, the courts, and in prison, the consensus on childhood as a malleable and perfectible stage extending to the late teens was shaken. The dispensations and protections normally granted to young teenagers for exposure to bad influences at an impressionable age or for the developmental immaturity that leads to risky behavior came under attack for this population. Formal penal reforms and informal judicial practices worked to separate French children from those born to immigrant and foreign parents and radically narrowed the boundary of the child for the latter group. In a campaign to protect public order, politicians, police, and court personnel began to "adultify" even young children from these families, ascribing conscious intention, bad character, or even total responsibility to them for offending.[14]

During the years from 2000 to 2005, the preventive welfare approach legislated in 1945 was challenged by critics on the left and the right and the legal codes governing minors were rapidly amended. This critique focused explicitly on the juvenile court, its judges, and the nationally uniform legal codes that have earned France its international reputation as a rehabilitative system. From the mid-1990s, an uneasy political consensus arose on the imperative to emphasize accountability, restitution, and more punitive retribution in the treatment of youth offenders. This change was supported by governments and politicians who drew selectively on the expert opinion of jurists, judges, social scientists, and security analysts.

Successive governments continued a long-standing territorialized approach to urban crime in state-classified or locally identified "bad" areas with high concentrations of "immigrant" and foreign populations and instituted aggressive modes of policing and control of minors who were deemed dangerous based on their origin. They constructed a new category of violent youth crime through systematic reform of penal codes that created new public order violations and heavier penalties for existing infractions. They extended the coercive force and reach of the state through the justice system by enhancing prosecutorial and police power and by accelerating the adjudication process to permit swifter prosecutions, investigations, and trials for juveniles. They reexamined the very notion of penal irresponsibility for minors and, in a dramatic reversal of postwar philosophy, they lowered the age at which children could be held accountable and given "rehabilitative" punishments from thirteen to ten.[15] Legislators also changed the rules for preventive detention, permitting a new "flexible incarceration" regime for minors aged thirteen to sixteen.[16] In early August 2007 a new law on adult and minor recidivists went into effect. This law created minimum sentences for the first time in modern French law, suspended the automatic application of the excuse of minority for sixteen- to eighteen-year-olds,[17] and mandated prison for a range of offenses.[18] By treating sixteen- to eighteen-year-olds as adults, this law effectively lowered the age of penal majority to sixteen years of age and returned France to the 1810 penal code.

Because the juvenile court's preventive and rehabilitative mandate is subject to constant challenge, it has become a site of competing discourses about the best way to deal with first-time and repeat offenders. Given the rapid increase in the proportion of penal to civil cases (from 50 percent to 75 percent of the total between 1998 and 2001) and in the numbers of endangerment warnings transmitted to the prosecutor's office by school and municipal authorities, the court is now discussed in terms of its many problems. The problems that are commonly cited include heavy caseloads, staff shortages, and hearing backlogs; a lack of specialized clinics in adolescent psychiatry; a scarcity of state-licensed emergency and long-term residential facilities and service providers for court-ordered measures; the increased power of prosecutors and judicial police; the creation of a new magistrate with no specialized training to preside over detention decisions for minors; the use of diversionary measures for first-time offenders presided over by prosecutorial representatives and not career magistrates; the insufficient guarantee of the presumption of innocence or a full

adversarial debate in hearings; deliberate profiling and intimidation or abuse of ethnic minorities by police; and the high percentage of court judgments and sentences rendered in the absence of irregular foreign defendants. The fact that there is some agreement on problems at court does not mean that there is any consensus on why they are problematic or how they should be resolved.[19]

RECONCEPTUALIZING CHILDREN AND ADOLESCENTS

Youth and childhood are social categories that signal important relations within and between generations. As such, they are often the object of intense debates on authority, obligation, and maturity.[20] In the 1990s, the category of the child became a highly contested domain of public policy and cultural politics.[21] This occurred in a global context marked by advancing neoliberalism, radical transitions to democracy, the transnational pursuit of human rights, and the specific recognition of children's rights in universal charters such as the International Convention for the Rights of the Child (CRC). The convention stipulated increased rights such as the freedom from discrimination, exploitation, and abuse. It also specified the right to special treatment in juvenile justice systems, notably the imperative to treat minors differently from adults, to limit the use of restrictive custody, and, building on earlier human rights conventions, the right to due process provisions and fairness in trial proceedings.

France's ratification of this law was consistent with the nation's historical status as a champion of human rights and as an enthusiastic signatory of international conventions advancing children's rights. Nonetheless, its ratification had the unintended consequence of highlighting the significant gap between new international norms and French legal codes and practices, particularly in the areas of policing, prisons, and trials of both juveniles and adults. The European Court of Human Rights has condemned France many times for violations that reveal systemic failures of the criminal justice system, such as police brutality, a lack of respect for defendants' rights, and the excessive length of pretrial detention.[22] In 1999 France became only the second country after Turkey to be condemned by the European Court of Human Rights for violation of article 3 on the grounds of inhuman treatment and torture.[23] After inspections of French prisons and police jails in 1991, 1996, and 2000, reports to the European Committee for the Prevention of Torture noted severe overcrowding and filthy conditions and strongly criticized France for its treatment of prisoners.[24]

Legal review of the lack of due process protections at juvenile courts prompted debate and pressure from within successive governments, professional groups, and nongovernmental organizations (NGOs) to mobilize to effect reforms. These included the legislation in 1991 to provide legal counsel to indigent clients, the 1994 creation of a Juvenile Defense Bureau at the Paris court (and other tribunals) to train and remunerate attorneys for juvenile defendants, legislation in 2000 to reinforce the presumption of innocence and due process protections, and the 2000 appointment of a children's rights commissioner with a mandate to criminalize human trafficking.

These gains obscure the fact that although the CRC is the most ratified of all human rights directives, it is also the most violated. It is possible to claim compliance with the human rights agendas while pursuing policies that exacerbate structural inequalities and punitive institutional regimes. International legal instruments such as the CRC construct children not only as vulnerable and developing beings but as rational and accountable agents. They engender new conceptions of childhood that emphasize children's decision-making abilities and justify harsher punishment for offending. Children are simultaneously celebrated through the new claims to rights and entitlements and hollowed out through the attendant expectations of enhanced moral and legal responsibility for their actions. The modern model of the protected and innocent child conceptualized by Ariès increasingly applies to the affluent classes alone.[25] In contrast, the shantytown notion of youth has wide currency. It evokes the premodern notion of the child as a miniature adult endowed with intentionality and malice.[26]

Reconceptions of childhood dovetail all too well with changes initiated in the United States and exported globally in criminal and youth justice systems, which place less emphasis on the social contexts of crime and the state provision of protection and more importance on punitive accountability.[27] The shift from state welfare–based approaches to privatized neoliberal modes of governance has decisive and unforeseen consequences for young people. The global spread of universal rights has bolstered Western notions of individualism and perpetuated postcolonial notions "of a barbaric and authoritarian 'global east' or 'global south.' "[28] As states lose control over global labor, capital, and culture flows, they struggle to reassert their power and authority over borders, identities, and legal codes through the criminalization of internal Others and undesirable outsiders. Many states have moved to enforce parental authority, institutionalize national norms through citizenship workshops or pro-marriage legislation, punish "bad" parents, and criminalize antisocial behavior.

This trend was evident in the decisions to open penal rather than civil cases for teenagers who acted out in French schools, as well as the treatment reserved for the unaccompanied, irregular minors who broke the law on Paris streets. In a pattern that began in the 1990s and rapidly accelerated in the twenty-first century, the legislature voted stiffer penalties for existing offenses, such as threatening or insulting the police, and created new infractions, such as anti-loitering laws.[29] Those most vulnerable were foreigners without legal status, verifiable identities, or adults to protect them. Unaccompanied, irregular migrants from poorer regions to the east and the south whose survival strategies in Paris included stealing, sex work, pimping, and burglary exemplified the principle of categorical mixture that produced higher anxiety and led to public rejection and legal sanction.[30] They were increasingly placed within the anomalous category of the child-adult, putting them at risk for more severe punishment.

A recent press report described an unaccompanied minor from eastern Europe who was arrested for theft without identity papers and detained in prison pending trial on the strength of a widely used but controversial test of skeletal development determining her age to be over sixteen (see Chapter 8). Although her correct age was finally established as eleven, the case was striking because the controversy centered on the age of the defendant, not her incarceration for theft. Based on her police record as a "recidivist," all involved assumed that she was a delinquent rather than an endangered teenager. These assumptions were a repudiation of the central tenet of French juvenile law, which theoretically makes no distinction between endangered and delinquent minors, considering them all at risk and eligible for rehabilitation on the optimistic belief that they are all redeemable. Despite the fact that violent juvenile crime targets mostly property, not people,[31] and crime rates remain low compared to other industrial nations such as the United States, new understandings of delinquency created a crisis of the rehabilitative ideal and generated public support for a punitive model. How did long-standing public support for prevention erode in just a decade? How did it translate into punitive policies at court?

MEDIA HEADLINES AND THE JUVENILE JUSTICE SYSTEM

Sensationalist sound bites and headlines have been a staple of the coverage on youth crime since the urban unrest of the early 1980s. Current coverage of juvenile delinquency tends to focus on particularly egregious and largely unrepre-

sentative acts of physical violence committed by "immigrant" youth in public housing projects. It relies discursively and visually on the trope of the "time bomb" and of violent outsiders. The moniker "youth" (*les jeunes*), preferred by the media, is a complex signifier and is used interchangeably with "foreigner" (*étranger*), "immigrant" (*immigré*), of foreign origin (*d'origine étrangère*), of North African origin (*d'origine maghrébine*), or non-European foreigner (*étranger non-européen*), sometimes in the same sentence, when the topic is crime.[32] Those so signified are often represented as an internal threat that attacks the social body like an infectious "contagion," spreading without warning through the cités or public housing projects. Rather than center on increases in youth crime that resulted from aggressive policing, such as drug violations, insults, threats and assaults on public authorities, and physical assaults, the media reported on gang rapes, honor killings, revenge murders, or savage attacks.[33]

Journalists interviewed professional criminologists and quantitative sociologists as authoritative sources but ignored or silenced those analyses that contradicted the newly emerging visions of the ghetto predator.[34] Even tough law-and-order politicians, such as the former Interior Minister and now French president Nicolas Sarkozy, could spout incendiary rhetoric about the threat to public order from the constant increases in physical violence and in the next breath cite official statistics that belied this bleak image.[35]

Disputes over the "facts" regarding the severity of youth crime and the brandishing of warring statistics become weapons in a divisive topic. Accusations of both subjectivity and political bias are used to attack the credibility of different authorities with conflicting accounts. Inconsistent public talk surrounds juvenile delinquency, suggesting both knowledge and misrecognition, and has the power to shape public policy. Talk about juvenile offenders has the capacity to mesmerize and to frighten because it poses clear-cut distinctions and radically simplifies good and evil as well as danger and threat. Teresa Caldeira argues that it relies on stereotype and generalization to bring order to the disorder of crime by locating the offender outside of the social order. This category elides nuances, masks complexity, and downplays events that contradict the dominant narrative. As a distortion of reality, the category of the violent offender is necessary to make sense of a terrifying experience—for example, only fifteen minutes away from Paris, cars may be burning and schools destroyed, and within the city, people are mugged and homes are burglarized, or worse. Talk based on categories of deviance is important because it assumes

the language of political contests over crime and conditions legal debates concerning the capacity of the juvenile justice system to deter crime and to protect victims. It frames larger discussions about the shifting boundaries between the child and adult, the origin of the problem, and the nature of solutions to treat it. It works to facilitate new alliances between political elites and expert consultants whose specialized knowledge of the problem will be deemed authoritative.[36]

FRANCE AS A REHABILITATIVE MODEL

Modern juvenile law was legislated in a 1945 ordinance after the political upheaval and economic crisis of World War II. In contrast to the United States, France never adopted the model of the blameless child and moved haltingly toward a rehabilitative approach. Although many scholars depict France's move toward a rehabilitative model as a unilinear process that was definitely achieved with passage of the 1945 ordinance,[37] I argue instead that juvenile law has always remained firmly grounded in French penal law and has remained more or less punitive, depending on the period. Although most French scholars treat the justice system as an autonomously functioning system or transcendent, disembodied apparatus—the preferred term is *regalian*—I connect it not only to its twentieth-century history but also to politicized notions of the family and the child, reigning therapeutic models, legal debates, and state immigration and labor policies. The juvenile justice system has displayed both continuity and change since the legislation of an embryonic juvenile court system in 1912. Despite the 1945 reformist attempts to reduce the punitive aspects of the law and recent reforms to enhance due process protections, French penal codes still privilege the protection of the social order over individual rights and parental authority over children's rights and give enormous power to judicial police, *procureurs* (prosecutors), *juges d'instruction* (JIs, or investigating magistrates), and trial judges versus lawyers.

Given this larger pattern, the period after 1945 may be viewed less as a permanent paradigm shift than as an exceptional period in which adherence to a rehabilitative model gained support for a variety of reasons. These include sustained and expansive economic growth, full employment, demographic vitality, and social optimism. With the beginning of deindustrialization, the rapid rise of youth unemployment, the reconception of immigrant populations as social problems and labor liabilities, and the failures of a public education system ill prepared to convert to a mass education model, the consensus on assis-

tance and rehabilitation began to unravel in the 1980s. This process accelerated in the 1990s. In the sections that follow, the debates over juvenile law, sociological models, and judicial practice constitute an integral part of the data. I examine them critically to explain how powerful actors have positioned themselves on a contested issue and shaped the debate in a highly charged political context.

It should come as no surprise to those familiar with French elites that judges who were all trained at the highly selective Ecole Nationale de la Magistrature (ENM) were conversant with sociological theory on crime, prisons, and social control. In short, they were all familiar with Foucault.

Contesting a Rehabilitative Model

Even before a "delinquency of exclusion" began to dominate debates on youth crime, the juvenile justice system was subjected to a withering critique from the Left for its therapeutic paternalism. This critique was launched in the late 1970s and early 1980s by Michel Foucault and those influenced by his writings. Foucault was one of the first influential intellectuals to reject the view that the modern juvenile justice system constituted a more humane alternative than its predecessors. He described the nineteenth-century agricultural penal colony for boys at Mettray as the embodiment of the more efficient and pervasive techniques of social control heralded by the modern prison. Foucault dismissed depictions of Mettray as an enlightened model of penal reform, noting that the inmates included not only boys who were judged to be delinquent but also boys who were merely rebellious, homeless, unwanted, abused, and even boys whom the court had acquitted of penal responsibility for wrongdoing. Nonetheless, they were all subjected to a regimen of uninterrupted surveillance, relentless regulation, and punitive correction. This was intended to produce docile subjects who internalized the institutional norms and supervised themselves.[38]

Foucault's critique of disciplinary institutions powerfully influenced sociologists who studied the treatment of children and the policing of families in twentieth-century institutions as well as the contemporary juvenile court. They published their findings in the late 1970s and early 1980s, a period dominated in France and elsewhere by Foucauldian critiques of penal systems and disciplinary knowledge regimes. Jacques Donzelot and Philippe Meyer documented the existence of a new intrusive sphere of state intervention directed at families. Born in the nineteenth century, this new sphere of the social—what Donzelot

termed the *tutelary complex*—designated a specific scientific field of knowledge and new modes of social control.[39] It relied on a corpus of law, medicine, psychology, psychiatry, and social professionals, from child psychiatrists and social workers to juvenile judges, whose primary function was to assign labels, assess risks, construct norms, and sanction deviance.

Donzelot linked the creation of the first juvenile courts in France in 1912 to urgent demands created by a growing market in incorrigible and maladjusted children and by public scandals surrounding the brutality of children's prisons. He charted the shift from the routine confinement in prisons, penal colonies, and houses of correction notorious for their brutal disciplinary regimes to the supervision and treatment of children within their families in open settings.[40] Systematic incarceration at penal colonies was largely replaced by new normalizing instruments such as clinical observations, psychiatric tests, personality evaluations, family counseling, social worker visits, and court hearings. Like Foucault before him, Donzelot rejected received wisdom on the juvenile court as a progressive alternative to the more repressive systems in the past. He argued that rehabilitative measures were modeled on penal sanctions and that social inquiry reports into family backgrounds merely empowered social services and juvenile courts by indicting parents' child-rearing abilities. He noted that a substantive shift from nature to nurture in French child psychiatry after 1945 supported rehabilitation but saw it as a more pervasive means of social control.[41] Scientific psychiatric tests became normative instruments that justified long-term court supervision through recurring demands to assess abnormality and impose treatment. Philippe Meyer has also studied social reformers, criticizing them as agents of state paternalism and coercive intrusion into private spheres.[42]

Legal and Sociological Debates

The crisis of the rehabilitative model has been accompanied by legal and sociological debates among the proponents of penal versus rehabilitative approaches. International pressure following ratification of the CRC put renewed attention on the impartiality of juvenile judges, the fairness of sentences, their sovereign and arbitrary powers, and the adequacy of due process protections for the accused. Beginning in the late 1980s when a punitive trend was gathering attention, legal experts elaborated a critique of the therapeutic paternalism, arbitrary powers, and personalized justice dispensed at juvenile court. As we shall see, juvenile judges gained public legitimacy after 1945, if not recognition by

their legal peers, because of their commitment to child advocacy and social justice. They were viewed less as rigorous jurists than as social workers. Their embrace of their work as a vocation resulted in their marginalization within the legal establishment. This critique of juvenile law and courtroom practice occurred at a time when the feminization of the profession came to be constructed as a problem. It coincided with a turn to legalism and a challenge to social activism among both new and older judges. By the 1990s many were eager to erase the stigma of juvenile justice as a lesser justice and willing to assume the penalizing function that has always been implicit in the 1945 ordinance.

Debates about the unprecedented nature of the new delinquency generated two opposing but by no means uniform groups of experts. The majority demands more restitution and repression in contrast to a minority, who defend, to varying degrees, prevention and rehabilitation. Both groups include public intellectuals and media-savvy activists with privileged access to national print and visual outlets as well as to prestigious Parisian publishing houses as a means to shape public opinion and government policy. The pro-penal group includes police commissioners, juvenile judges, and new crime and security experts, some with close ties to the private corporate security sector as well as to French police unions, prosecutors, JIs, and conservative public institutes on domestic security. Their alarmist newspaper editorials, crime forecasts, testimony before state commissions, and book publications—some in eminent French university presses—draw public attention to the issue and build political support for more accountability for offenders. Social scientific opinion is solicited and informs public policy in governments on the left and the right. Since 2002, security experts in particular have gained legitimacy at the highest levels of the center-right governments of Prime Ministers Raffarin and de Villepin. They have secured an institutional base in the French public university system, where they direct graduate programs on criminology and organized crime. One such security analyst, Alain Bauer, now heads the National Observatory of Delinquency within the conservative Institut National des Hautes Etudes de Sécurité, created in 2003 by Interior Minister Nicolas Sarkozy. The Institut publishes monthly crime statistics that are defined in terms of public order and police control. Security experts have advocated for more prosecutorial power, more police, faster adjudication procedures, and the increased penalization of juvenile justice. The containment of "lawless zones" and the management of the enemy within—by implication, the disaffected "immigrant"

delinquent—are at the top of their agenda. The most extreme writings link disadvantaged youth of Muslim heritage to the menacing global specter of Islamic terrorism and organized crime.[43]

In contrast, pro-prevention advocates include a loose and shifting coalition of juvenile and family court judges, jurists, attorneys, public caseworkers, child psychologists, human rights activists, and social service providers. Through their writings, professional organizations, collaborations with NGOs such as the League of the Rights of Man, media appearances, and street demonstrations, they are vocal critics of the new punitive trend. Their critique focuses on the defense of the rehabilitative ideal and the goal of socioprofessional integration within French society. They criticize the new powers of prosecutors, aggressive policing, lack of institutional resources, and legal reforms that created new categories of violent juvenile crime and public order violations. This group also includes leftist academics who denounce institutional injustices and who are suspicious of the rehabilitative intent of the current system. Once again, sociologists, influenced by Marx, draw attention to structural inequality and pervasive class bias in the courts and social service agencies that work against the interests of working-class and disadvantaged youth, making them more vulnerable to state control and punitive correction. They are distrustful of specialized child professionals and judicial authorities with the power to define deviance. In their view, the personalized sentences, consensus building, and negotiated agreements that characterize the court proceedings serve to mask, legitimatize, and reproduce unequal and exploitative relations of power.[44]

RACE AND ETHNICITY AT COURT

Although both sociologists and jurists have argued that the force of law is grounded in ideologies that support and reproduce unequal class structures, most conspicuously ignore the question of ethnic or racial discrimination in the justice system. Although the gap between abstract principles guaranteeing equality under the law and the reality of the criminal prosecution of disproportionate numbers of disadvantaged minorities is hardly new, what is distinctive about the French case is the silencing of race and ethnicity in the law and the constitution. This remains true despite the historical significance of race and ethnicity as salient social categories and their current importance to the sociopolitical construction of deviance. The question of racism in the court and the overrepresentation of minority and foreign defendants there is impos-

sible to know from official sources. Beginning with the 1789 revolution, nationality, in contrast to birthright and rank, became the only legal category of difference as a means to bind individual citizens within the nascent Republic. French law thus recognizes no collective versus individual rights and the constitution rejects the very notion of minority status. The issue of whether one should infer the rule of color-blindness from the principle of equality was incorporated into article 1 of the 1958 Constitution rather than being left to the courts. Since the end of the racist policies of the World War II Vichy period, it has been illegal in France to collect data on ethnic, racial, religious, or cultural origin or to track racial or ethnic distributions in jobs or institutions. With the goal of rejecting racial categorization and institutionalized discrimination, public bodies have refused to permit any official recognition of racial or ethnic difference.[45]

The legal void on race must be interpreted within the still dominant narrative of the French nation that is actively and continuously reproduced in the juvenile court and other public and private institutions. France represents itself as the original color-blind Republic as well as an exemplar and champion of universal human rights. The universalist, egalitarian rhetoric on equality and the inclusive logic informing the "one and indivisible" Republic nonetheless perpetuates the official myth that because France recognizes no legal minorities, it has no minority problem or ghettos segregated by race and ethnicity. In a logic mirroring French antiracist law, racism is viewed primarily as overt individual behavior, not indirect action or institutional discrimination. Because only individuals can seek redress under current law, proving discrimination based on race is extremely difficult, in part because it signifies origin and belonging in an unofficial legal category.[46]

As Laurent Dubois argues, "there is ultimately no language or method" with which to confront and seek redress for systemic racism in French institutions such as schools or the courts because the discrimination that people of color experience is a result of color-blindness inscribed in French law.[47] The critique of color-blind policies articulated by American critical race theorists in the wake of attacks on U.S. affirmative action is particularly useful as a means to unsettle enduring myths and political consensus on the topic of French racism. In the 1980s American conservative legal scholars rejected affirmative action law, arguing that a race-neutral view of civil rights was the surest way to avoid future discrimination, end judicial activism, prevent collective conflict, and ensure sociopolitical stability. In a vivid critique that speaks directly to the

French situation, Kimberlé Crenshaw and others suggest that color-blind policies offer less protection for civil rights than promised, for a number of reasons. First, the focus on present wrongdoing ignores past injustices as well as the racist stereotypes, "Othering" devices, and unequal conditions that created and continue to sustain them. Second, under race-neutral laws, discrimination is seen as isolated actions against individuals rather than social policies aimed at entire groups. These laws effectively remove the courts from playing an active role in redressing past racism rather than merely policing and eliminating narrowly proscribed discriminatory practices.[48]

Crenshaw warns that the adoption of race-neutral law and the embrace of color-blindness entails neither a commitment nor an ability to end racial inequality. In fact, race-neutral law may constitute a formidable obstacle to the alleviation of inequality based on white dominance and, in the case of France, on unacknowledged ethnoracial hierarchies. A color-blind society built on the subordination of persons of color—in this case, ethnoracial minorities from former colonies—cannot correct that subordination because it cannot recognize it.[49] Although difference in France is framed primarily in terms of culture, phenotype as a marker of difference is also part of the ideology defining belonging and foreignness. Although racism begins with discussions of cultural differences judged to be qualitatively different, it also draws on racial stereotypes. It substitutes the rhetoric of racial inferiority in popular consciousness for the presumed cultural deficits and pathologies of Arabs and Africans.[50] This has serious consequences for those who "hang" together as racial crews within public housing projects or are identified in police reports on the basis of phenotype, as in the common description of the accused as "an individual of African or North African descent." This is all the more significant in that the "new" Frenchness is marked by the increasing visibility of groups who self-identify in multiracial and multicultural ways. The fact that no social scientific literature exists on race or race relations, and that groups are identified discursively in national cultural terms as ethnicities rather than as "generic black people," should not imply an absence of racism based on race-based characteristics.[51]

The constitutional ban on statistics other than nationality means that there are no de jure mechanisms in place to assess and address the treatment of French minors of immigrant ancestry within the justice system.[52] As French nationals, they disappear from figures on arrest, prosecution, conviction, and incarceration rates. The only way to know who gets prosecuted, for what of-

fenses, and in what proportion is to get inside the courts and, through ethnographic observation, to see who arrives for a hearing from jail; who will be issued a warning and returned to his parents after an offense; or whether, and under what circumstances, the judge will revoke a probation (*contrôle judiciaire*) and send a teenager to prison.

Some note a new phenomenon in French political rhetoric, namely the explicit racialization of the 2005 conflict. They argue, for example, that the racialized language used by legislators to denounce rap lyrics represents a denial of long-standing understandings of France as "race-less" and the beginnings of a national reimagining in terms of "racialized political actors." They note that this shift can be seen in public policies that draw on an American-style model of social management combining elements of affirmative action, neoliberal privatization, and domestic militarization.[53] I argue that from the viewpoint of French courts, and in contrast to political rhetoric, the appropriation and acceptance of such an American model, a subject of considerable debate, are premised on an explicit rejection of racialized understandings of social personhood and political activism and on the preservation of certain legal fictions. These fictions are that France recognizes only individual citizens and in this way ensures those citizens' equal treatment under the law.[54]

During my time at the French court, the only times I provoked outright defensiveness and charges of inability to see beyond American racial categories were times when I raised the issue of racism within the justice system. One French colleague was shocked and angry that I even suggested it. She retorted hotly, "they [defendants including youth of immigrant ancestry] are all treated the same in the French system." Other jurists and judges saw racism in the courts as a much more pervasive problem in the United States than in France. Although I eventually learned to censor myself, when French court personnel (rarely) asked how I viewed the system, I did point out the glaring reality that the overwhelming majority, if not all, of the defendants awaiting trial outside the juvenile correctional court on any given day were teenagers of color or foreigners. Some court personnel responded that the discussion was misplaced because "it is not about races or ethnic groups but individuals who get arrested." Others insisted that if youths got arrested "it was for a reason." Some judges naturalized the links between delinquency, immigration, and foreigners. They mirrored public discourses that racialized crime, saying, "of course they constitute the majority of the court's clientele." Some readily agreed that discrimination was a problem and even cited examples of colleagues whose

aversion to Maghrebis or Africans was notorious but situated the origin of the problem outside the court, within other institutions or among misguided individuals.

This silence on race and ethnicity belies the persistent use of ethnoracial categories to discriminate against populations of immigrant and foreign ancestry in housing, in education, and at work.[55] State authorities in employment agencies have long facilitated and/or engaged in systematic discrimination against minority groups based not only on addresses and last names but also on skin color. Public housing representatives have used unofficial quotas, imposed limits on ethnic minorities based on a putative "threshold of tolerance" for difference among native French residents, and relegated them to poorer-quality properties. Racially motivated incidents of police brutality and intentionally provocative tactics such as excessive force, racist slurs, recurrent identity checks for youths who are known, and unwarranted arrest have been denounced by human rights organizations, the leftist union of magistrates, and its counterpart among French lawyers as factors that reinforce hatred for public authorities and produce violent unrest.[56]

CULTURE AND DELINQUENCY: A CULTURE OF POVERTY?

If race was absent from discussions at court, culture was not. Politicians on the left and the right attributed the causes of the new delinquency of exclusion to culture. Two variants of this culturalist argument emerged in the 1990s. The first views youth violence as the result of an inevitable culture clash between mainstream French values and backward immigrant traditions magnified by poverty and exclusion. The second variant blames a total lack of culture within immigrant families whose children are said to lack moral values, social norms, and grounded identities.[57] The French social scientists who support this explanation borrowed liberally from a cultural ecology model originating with the Chicago School of Sociology. French analysts appropriated the concept of a culture of poverty to link the "new" delinquency to negative environmental influences in closed, ethnic neighborhoods.

Some delinquency studies were commissioned by governments on the left and the right seeking to document the rise of youth crime, others were written by academics anxious to provide the insider ethnographic view of street culture in an effort to counter media stereotypes, and still others were produced by a pro-penal group of security experts and police motivated to influence public policy. In their role as newly visible public intellectuals and legal author-

ities on a highly charged public issue, Parisian jurists and magistrates were familiar with and drew on this work in diverse ways to interpret the cases they saw in court as instances of aberrant cultural norms and dangerous social milieus. Judges attended to the role played by cultural difference in one of two ways, particularly when it involved non-Western values and practices such as arranged marriages, family honor, control over sexuality, polygamous arrangements, and belief in witchcraft. Either they stigmatized and neutralized it through the standard interventions at their disposal or they medicalized and treated it through the specialized services of university-affiliated ethnopsychiatrists whose consultations were reimbursed by the state. In either event, culture was an obstacle to be surmounted.

Court personnel draw not only on social theory and cultural psychiatry but also on folk ideologies that conceive of culture as an internally homogeneous and geographically bounded system. In this understanding, a mosaic of ethnic or national groups under court supervision, such as Antilleans, Algerians, Moroccans, Bamberas, Soninkés, or Romanians, are hierarchically ordered into discrete, qualitatively different systems regardless of the nationality they hold. These cultural hierarchies function like race to ascribe certain immutable traits to the peoples born within them. Because culture, like biology, is understood to determine the practices of the people born into it, particularly in what many French people see as less evolved non-Western cultures, it is thought to be resistant to adaptation or change and, thus, even rehabilitative intervention. Such cultural hierarchies are a direct legacy of colonialism. The imperative of the civilizing mission that the French imposed on their African, Asian, and Caribbean subjects borrowed from dominant understandings of them as culturally inferior. The contemporary corollary of the need to civilize colonial subjects is the punishing expectation that their postcolonial descendants who are now settled in France must forget their parents' languages and cultures in order to integrate fully within French society.

THIS PROJECT TAKES SHAPE

I was initially attracted to the study of French juvenile delinquency for personal reasons and because of my advocacy of rehabilitative approaches. The French media focus on "youth as trouble" rather than "youth as risk" resonated with me, especially because of my own experiences with my family. I grew up with a sibling who was labeled a delinquent by the time he was in middle school; thus I have intimate, long-term experience with a complex reality and a personal

investment in the debates surrounding the issue. I had been personally hurt by the stigmas school authorities consciously or unconsciously assign to the younger siblings of troubled children. I could understand the responses of parents who felt guilt, shame, anger, or bewilderment when social professionals scrutinized the family background and the child's upbringing in a search for answers. In my family's case, the origin of the "bad" behaviors that got my sibling into serious trouble—attention deficit hyperactivity disorder (ADHD), mild dyslexia, and disruptive behavioral disorders such as oppositional defiant disorder (ODD)—were not recognized psychiatric conditions or cognitive handicaps in the 1950s. The result was a misrecognition of the problems by many authorities that produced misguided solutions, and also, at least for a time, a certain leniency based on the reigning developmental model in the American juvenile justice system of that period.[58] Much later, I recognized that this initial indulgence was also premised on the white, middle-class respectability of my parents—my father was a civil engineer and my mother taught elementary school.

I should point out that my position as an objective observer of the juvenile court proceedings was compromised by the fact that, given my family background, I am a strong proponent of prevention and rehabilitation. I have watched with growing dismay as federal and state laws in the United States have progressively dismantled a system that was once viewed internationally as a model of rehabilitative justice. Human Rights Watch and Amnesty International report the horrifying statistic that in 2004 there were at least (and probably many more than) 2,225 juvenile offenders serving life sentences in U.S. prisons without the possibility of parole.[59] I had watched the rhetoric heat up in France and tracked French politicians, judges, and legislators who traveled to the United States in the 1990s because of what I viewed as a misguided interest in the purported success of a "broken windows" crime prevention initiative, and zero-tolerance policing in American cities (see Chapter 2). It seemed imperative to understand why and in what ways American punitive trends were being adopted in the land of the Rights of Man.

Given the centralization and dominance of public institutions in France, I thought that it was logical to begin with Paris, the site of the largest and most influential juvenile court in the nation. I began preliminary fieldwork in Paris in the summer of 2000 with only two names—those of a caseworker and a judge. My contacts with both opened many doors, initially to the refined and urbane head of the juvenile prosecutor's section, Yvon Tallec, whose persis-

tence in negotiating the labyrinth of the French Chancellery bureaucracy was invaluable to me in designing a research project they would approve, and to the genteel and intellectual president of the minor court, Hervé Hamon, who, during our first meeting, gave me a stack of reading materials so I could become fluent in the language, concepts, and norms of the institution I would later describe.

SUBJECT POSITION

Given my unusual access to the court and tolerance of my presence by most court personnel, I did not anticipate that the space of the court as a technology of power and an architecture of control would constrain me to the extent that it did. Paradoxically, these limitations resulted from my spatial contiguity to a vulnerable population and my social proximity to the judges who enforce legal norms. When I arrived in the courtroom of Judge de Maximy in January 2001, the first problem that presented itself was what to do with me. The question of where to put me was significant because of what my placement would signify to court personnel, children, and families. The demarcation of space and the movement within it are directly linked to judicial power and professional function. Juvenile judges sit at desks in the center of their chambers and control all communicative exchanges. An invisible but rigid line separates them from the children and families who sit directly in front of them and the attorneys and court social workers who flank them. When minors arrived disheveled and dirty from lockup, they were accompanied by armed police who stood at the back of chambers. In some cases where the quarters were close and the families were large, my proximity to the accused risked blurring crucial boundaries. Judges always instructed me to move nearer to them, even if it placed us so close that movement of our arms was difficult.

Most judges were careful, as least at first, to introduce me as a visiting researcher from the United States, to ask the families' permission to have me attend, and to assure them that strict confidentiality would be observed. All of the judges I observed gave me permission to write about the cases provided that I changed minors' names and distinguishing characteristics. Nonetheless, because I looked like the judges—similarly educated women from the mainstream majority population—and spoke French without an American accent, given the fraught circumstances of the hearing, I am sure that few actually heard any of these details. Most were ready to believe I was a judge or affiliated with the court. As time went on, court personnel also saw me this way. One

bailiff, whose job is to announce the cases being tried and to escort defendants into court, saw me sitting with the defendants and their families during a recess. She insisted that I move to a different area of the hallway where the attorneys normally examined case files. When I attempted to resist, she authoritatively motioned me away insisting, "No, you will be more comfortable here." The issue had less to do with my comfort and more to do with my "proper" place and proximity to those waiting for the verdicts.

This posed the question of my subject position in anthropological research and presented ethical and methodological dilemmas. As a novice to the French legal system, I was expected to listen and to observe. As a judicial intern, my subject position was assimilated to that of the judge and my role was to learn how judges applied the specialized law governing juveniles. At the same time, I was observing in courtrooms governed by extraordinary time and labor constraints. As an anthropologist, I wanted to participate in the lives of the judges and the judged. Despite my access to unfolding proceedings and active case files, I could not interview the children and families with open cases at court. It was out of the question for me to conduct interviews outside of the courtroom or in homes on cases involving allegations of illegal activity by minors or child endangerment by parents before judgment. Since I was so closely associated with the judicial apparatus and the court, how could families speak freely? Why would they? The fact that I was older, a foreigner, and had no clearly defined status beyond that of trainee was also a problem. They were constrained to appear in court but under no such obligation to me.

The rules of interaction in a court of law shape how people produce speech and have enormous implications for justice in the sense of who controls language, who assigns labels, who can contest charges, and who, in the end, has the power to assign blame and punish. There are serious implications for minor defendants from families of foreign and immigrant ancestry when interacting with judges and prosecutors from middle and upper-class social milieus. They can be intimidated by their ignorance of the law and judicial protocols, the emphasis that judges place on middle-class social norms such as correct linguistic usage and proper demeanor, and the social distance between them and court personnel. Many minors and families nourished a hearty distrust and disdain of the court and its motives. In the end, this produced many silences in court but, at times, it also produced strident resistance. Too often, they did not have the language to explain or defend themselves. I had the language but not the opportunity to use my voice in

court, except with the powerful. Over the years that I observed court proceedings in the Paris court, I did see some young people and their families use their voices in court to attempt to resist and reframe hegemonic constructions of juvenile delinquency.

LEGAL SUBJECTS

The growing violent unrest of young people who feel excluded and the increasing role of punitive sanction in the French legal system lead us to consider Gramsci's notion of hegemony. The political authority of any state relies on the consent of the governed and on the willingness of the dominated to accept their subordination. A state's capacity to legitimize its political authority, to rationalize its use of force, and to maintain the consent of the dominated within an unequal social order finds its limits, particularly when it engages in or tolerates discrimination against that group. The French state has been successful in asserting its political hegemony through the power and prestige of national public institutions, the civil service, and the legal system itself. It has been far less successful in ensuring its ideological hegemony among disadvantaged minority youth in the face of unequal opportunity, socioeconomic polarization, and institutional racism within public and private institutions.[60] Those who suffer discrimination have little reason to accord legitimacy to French institutions, whether in the public schools or the juvenile court, because, despite vigorous official denials, many know they have been tracked on the basis of collective origin and their rights have been denied or restricted. The ways in which French authorities have used the law and the legal system to control and contain politically disaffected minorities have in turn shaped the ways youth in "lawless zones" see themselves as legal subjects, make sense of the choices they have, and view (or not) the law as a counter-hegemonic tool available to protect and advance their interests.

The growing French interest in repression begs the question of what the late Paul Ricoeur has called "the just" in the process of accusation, the act of judging, the application of sanctions, and the meaning of rehabilitation. His queries in *The Just*[61] speak directly to the question of rights when he asks who is assigned blame, held accountable, and recognized as the subject of both rights and obligations. He argues that claims to rights are grounded in individual notions of agency and responsibility that allow political subjects to recognize, trust, and respect one another. These are not abstract rights merely encoded in the law. Entitlements are created and reproduced as individuals claim them in

personal interactions and through recourse to institutions such as the courts. He implies that the legitimacy of democratic systems is underwritten by able subjects whose responsibility to one another is enhanced by mutual recognition of shared rules. As we move into the juvenile court, we must ask if the judges, victims, defendants, and their families in these cases recognized themselves and one another as political subjects with the same rights and obligations before the law. How did the accused and their parents position themselves with regard to the law? Did they view the justice system as a site where they enjoyed equal treatment under the law? As defendants in penal cases, how well were they able to refute charges and mount a credible defense? Did their accusers—police, prosecutors, and victims—see them, as so many allege, not only as above the law but outside it, the products of lawless zones? At a time when victims enjoy greater rights in French law, it bears reminding that the French police are the ones increasingly constituting themselves as civil plaintiffs and claiming restitution for offenses that involve minor physical injuries or merely symbolic insults. Their status as victims and demands for damages rest on their very power to accuse and arrest, begging the salient question of who would hold them accountable. Finally, the increase in warnings involving endangered children, the majority concerning lower-class or disadvantaged families, raises further questions. How did the legal mandate for protection, based on mainstream middle-class norms of family and childhood, affect their ability to contest expert opinion and deflect accusations of abuse or neglect even as they sought assistance?

AN ETHNOGRAPHIC AND ARCHIVAL STUDY OF THE COURT

This book is based on both ethnographic and archival research conducted at the Paris juvenile court. I routinely observed proceedings in four regular courtrooms, including three serving densely populated and multiethnic northeastern districts of the city (the Eighteenth South, Nineteenth East, and Twentieth North), the Eleventh, as well as the special court (Court L) created for unaccompanied, undocumented foreigners. I limited my observations to select courtrooms to which I was permitted access, preferring to concentrate on a long-term and in-depth investigation of court cases and judicial practices in fewer courts rather than attempt to cover all courts more superficially. Nonetheless, the choice of cases is representative of the tenor and substance of hearings in other courtrooms as reported in judges' meetings, interviews with them and attorneys, the head juvenile prosecutor, the presi-

dent of the minor court, and the 2004 Justice Ministry Inspection Report of the juvenile court.

I attended mediation sessions, evidentiary hearings, trials, judgments, and sentencing procedures. I accompanied caseworkers to the Paris jail for intake interviews and rode with them to visit teenagers serving time at the Fleury-Mérogis prison outside Paris, one of the largest prisons in Europe. I observed the nonpublic deliberations of the juvenile judge and her assessors that produced the verdict and the sentence and also waited outside the court with anxious families. Mediation sessions—especially those pitting illiterate Algerian parents against their French-educated daughters, an appeal of a custody decision by a Soninké mother on the grounds that sorcery poisoned the process, and a civil case in which a French middle-class convert to fundamentalist Islam was accused of child abuse by her own mother—have much to teach us.

Although I conducted many interviews, both formal and informal, with the main participants within the system, such as judges, prosecutors, attorneys, court caseworkers, and social workers, the richest data came from my observation of court proceedings as well as the dense texture of my interactions there, including informal conversations before and after hearings or over meals with judges. I found it essential to concentrate on the court as an institution in order to understand how it works, why various participants perceive it as they do, and how they came to view one another in a process that is designed to elicit the active participation of the people under supervision. Furthermore, the court provided an excellent angle from which to view salient tensions at the core of French society, an insight provided to me by a Paris juvenile judge. These are tensions involving national sovereignty and immigration; race, ethnicity, and culture; gender and sexuality; secularism and religious expression; changing parental models and a shrinking welfare state; social class and professional mobility; and the newly porous boundary between the child, the adolescent, and the adult.

In this book I focus on how newly dominant notions of a delinquency of exclusion are produced and reproduced within civil and penal hearings at court. I center on the language of judging and its relationship to the written file—social worker evaluations, police reports, criminal records, and previous judgments—and the more dynamic, face-to-face interactions among minors, their families, and court personnel that involve complex negotiations, contestations, and accommodations concerning the law, legality, and legitimacy.

These interactions produce new intertextual relations among written and spoken material and differing interpretations of both the law and the social.[62]

Many people asked why I chose the provocative title of *Judging Mohammed*. The present participle indexes the hidden discrimination within the justice system that officially recognizes only individuals but prosecutes certain groups such as marginalized Muslims and unaccompanied minors in disproportionate numbers. The use of Mohammed suggests that what is at issue now is a dangerous conflation of Islam, violence, and youth crime that builds on negative stereotypes. Many of those who land in court are not delinquents but at-risk minors. One additional layer of meaning invites a rethinking of the judgment of these young people and an admonishment for all law courts to live up to higher ideals of justice. The title does not imply that large numbers of the accused were actually named Mohammed, although many young men, particularly first-generation immigrants, had this name.

The progression of this book mirrors the historical evolution of juvenile delinquency, its contemporary construction as an urgent public policy issue, and the treatment of both delinquent and at-risk children at the largest and most influential court in the nation. Chapter 2 provides an overview of the French criminal and juvenile justice systems. Chapter 3 charts the shift from a focus on the individual-centered model legislated in 1945 back to the current cultural ecology model, centering on the social milieu, and it traces evolving conceptions of childhood and shifting psychoanalytic models. It also examines public discourses and media coverage that ethnicize delinquency, pathologize culture, and produce consensus across the political spectrum. Chapter 4 focuses on judges as a professional group and considers their ambiguous position within the legal establishment. It examines how judges frame their work experientially, cope with its demands, and endow it with meaning, even as they strive to manage the twin constraints imposed on the court by increased retribution and scarce resources. Chapter 5 takes readers into the court the same way young people experience it: arrest, detention in the Paris jail, and a court hearing before a judge. In Chapter 6 I center first on hearings held within the chambers, site of the informal justice that has fueled debates on the quality of judgments and the impartiality of judges, before examining the trials within the formal correctional juvenile court in Chapter 7. This latter is the scene of flamboyant and highly ritualized confrontations between prosecutors, judges, defense attorneys, victims, and the accused. Chapter 8 is devoted exclusively to the identification and treatment of undocumented, unaccompanied minors

within the Paris court. The chapter compares the situation before and after the 2001 creation of a special court and centers on the gaps between the official state rhetoric depicting them as victims in need of protection and the judicial practices treating these minors as delinquents deserving punishment. The concluding chapter considers the dangerous effects of the new penology in France and the United States.