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Calvin Peeler

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Always a Victim and Never a Criminal: Juvenile Delinquency in France

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Always a Victim and Never a Criminal: Juvenile Delinquency in France

Calvin Peeler[†]

I. Introduction

Just a few years ago, the French bragged about their criminal justice system, boasting about its brilliance relative to systems in other countries and even suggesting it as a model for others to consider.¹ The French have been particularly critical of the United States and its policies of “police repression and absolute incarceration.”² In the last few years, however, the French criminal justice system itself has been the subject of critical debate. The debate has focused on the growing problem of serious juvenile delinquency. Conservative politics and the perception that the existing system cannot manage what is considered a new breed of juvenile delinquents has prompted significant policy changes. Consequently, with regard to juvenile justice, it appears that the French have taken a step towards modeling their system after measures long ago implemented in the United States.³

On July 1, 1996, the French legislature enacted, under an emergency measure,⁴ Public Law No. 96-585 over the signature of

[†] Calvin D. Peeler is an Assistant Professor of Law at Whittier Law School in Costa Mesa, California. In 1993 he was a Visiting Lecturer at the University of Paris X, School of Law in France. He received his B.A. and J.D. degrees from the University of California, Berkeley, and he earned a J.S.M. from Stanford University Law School. He is currently a Ph.D. Candidate in French literature at Stanford University.

¹ See Erich Inciyan, *Une Internationale pour la prevention de la delinquance* [An international system for the prevention of delinquency], LE MONDE (Paris), Apr. 3, 1990, at B13.

² *Id.*; see also Barry C. Feld, *The Transformation of Juvenile Court*, 75 MINN. L. REV. 691, 692 (1991).

³ See Jean Francois Burgelin, Cour d'Appel de Paris, Transcript, at 12 (speech by Burgelin, Attorney General of France, during the Opening Session of the Court of Appeals, Jan. 9, 1996); HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 72-73, 86-91 (1995).

⁴ “Justice penale des mineurs: ce qui change” [Juvenile criminal justice: what is

French President Jacques Chirac.⁵ This *ordonnance* recast, in part, the spirit of France's laws regarding juvenile delinquents. For certain types of juvenile offenders, the new *ordonnance* encouraged swift and absolute punishment instead of rehabilitation, which had become the "humanist" trademark of the French juvenile justice system in modern times.⁶ As the most recent reform to France's long-standing and seminal legislation on juvenile justice, which dated back to 1945,⁷ the *ordonnance* amended the existing law by incorporating a policy resembling what Americans have come to know for decades as the "get tough" policy for fighting crime.⁸

There has, in fact, been a new generation of criminality among French juveniles over the last few years. Its character has prompted a polemic about the efficacy of the existing laws to protect the public adequately against the realities of contemporary juvenile crime.⁹ Those realities are alarmingly evidenced by the fact that in France over the past few years the rate of juvenile crime has been on the rise, the types of crimes committed by juveniles are more serious, and the profile of the juvenile offender has undergone important changes. A juvenile offender is now more likely to be younger, to be a more violent recidivist, and very

changing], ACTUALITIES SOCIALES HEBDOMADAIRES, No. 1982, July 5, 1996, Section "Justice," at 25.

⁵ Law No. 96-585 of July 1, 1996, J.O., July 7, 1996, p. 9920.

⁶ See Burgelin, *supra* note 3, at 13; see also Jean-Michel Dumay, *Colleges de banlieu sous tension* [Suburban colleges under tension], LE MONDE (Paris), Apr. 8, 1993, at 14; Catherine Erhret, *La Justice s'equipe contre la delinquance urbaine* [Justice strategizes against urban delinquency], LA LIBERATION (Paris), June 4, 1992, at 30; Anne Chemin, *M. Vauzelle veut developper la 'justice de proximite'* [Mr. Vauzelle wants to develop local justice], LE MONDE (Paris), June 4, 1992, at 10.

⁷ Law No. 45-174 of Feb. 2, 1945, J.O., Feb. 4, 1945, p. 530.

⁸ See Burgelin, *supra* note 3, at 13; see also Erhret, *supra* note 6; SNYDER & SICKMUND, *supra* note 3, at 71-72, 85-89.

⁹ See Marie-Amelie Lombard, *L'Assemblee nationale examine un projet de reforme a partir d'aujourd'hui, mineurs delinquants: la loi s'adapte* [The national assembly examines a reform project starting today, delinquent minors: the law adapts], LE FIGARO (Paris), Mar. 27, 1996, at 8C; Marie-Amelie Lombard, *Jeunes delinquants: sever avant le naufrage* [Young delinquents: to jump before the shipwreck], LE FIGARO (Paris), Jan. 21, 1996, at 6 (reporting that juvenile judges have called into question whether the strictly educative approach can combat the problems facing the juvenile justice system).

importantly, is more likely to come from a suburban poor ethnic immigrant family.¹⁰ Many immigrant juvenile delinquents, however, were actually born in France, blurring any statistical distinction between immigrant and non-immigrant juvenile delinquents.¹¹

The French have a growing fear of and discomfort with ethnic immigrant minorities.¹² This discomfort has escalated, in part, as a result of juvenile crime,¹³ although other events, including terrorism, have contributed to recent cultural tensions as well. Two recent examples of terrorism are the 1995 bombings in Paris and the Paris subway bombing in December 1996, both of which were attributed to Arab extremists. These events exacerbated the fear and anger the French feel towards immigrants.¹⁴ The fact that

¹⁰ See Hans Koning, *A French Mirror*, 276 ATLANTIC MONTHLY 95, 102 (1995); see also Nathaniel Herzberg, *Les professeurs a l'ecole de l'insecurite* [Professors at the unsafe school], LA LIBERATION (Paris), Dec. 19, 1991, at 36; Armelle Heliot, *Comment sanctionner les mineurs* [How to punish minors], LE FIGARO (Paris), Aug. 10, 1995, at 6; Denis Robert, *Leila, 14 ans avoue avoir etrangle Sabrina, sa camarade de classe* [Leila, 14 year-old, strangled Sabrina, her classmate], LA LIBERATION (Paris), Mar. 8, 1995. Leila's story was very similar to that of many immigrant children implicated in the criminal justice system. Both she and her family had a record and history of involvement with the local police department. See *id.* Leila had previously been accused of stealing and attacking a teacher at school. See *id.* She and her family were Kurdish and lived in a suburban ethnic ghetto. The article was written after she strangled a classmate to death at her school. See also Erick Decouty, *Cinq communes contre la delinquance (Des villes de la banlieue parisienne font cause commune et signent un contrat avec l'Etat)* [Five cities against delinquency (Some cities in the Parisian suburbs make a community effort and sign a contract with the State)], LE MONDE (Paris), Dec. 2-3, 1996. The French school system is a key site for much of the new juvenile delinquency, particularly in lower socio-economic neighborhoods. See Paul Quino, *Enseignant, policier, chacun doit rester a la place* [Teacher, police officer, each should stay in their place], LA LIBERATION (Paris), July 12, 1996 at 12; Muriel Frat, *Violence a l'Ecole: le pacte officiel* [Violence in schools: the official pact], LE FIGARO (Paris), May 29, 1996.

¹¹ Interview with Edward Errante, Professor of Law, University of Paris X, in Nanterre, France (Feb. 12, 1997).

¹² See Koning, *supra* note 10, at 95.

¹³ Interview with Judge Catherine Samet, Investigative Judge, Tribunal de Grand Instance, in Nanterre Prefecture (suburb of Paris) (Aug. 1, 1996). See *infra* note 93 for a detailed discussion of this interview. See Anne Chemin, *Les actes d'incivilité des jeunes accroissent le sentiment d'insecurité* [Juveniles' acts of incivility increase the feeling of insecurity], LE MONDE (Paris), Dec. 6, 1995 at 12.

¹⁴ See CNN *Newsday Rep.* (CNN television broadcast, Dec. 3, 1996).

much of France's new juvenile crime is committed by ethnic immigrants underscores the political underpinnings of the recent debates about changing the juvenile justice system.¹⁵

This Article first discusses the contemporary juvenile justice system by surveying the legal history of juvenile delinquency in modern France. Second, it examines the scope of the contemporary problems of juvenile crime, along with the recent political climate that has prompted a significant policy shift in the French criminal system, which has culminated in the passage of the 1996 amendment to the law on juvenile delinquency. Finally, the Article concludes that the new "get tough" campaign in France appears to be a quick political move to mollify the increasing public anger directed at the ethnic minority youth of immigrant families.

II. History of Juvenile Justice in France

A. France's First Modern Law on Juvenile Delinquency: 1912

The law that developed over centuries during the old monarchies, now referred to as the Ancient Regime, never made any legal distinction between adults and children in the area of criminal law. Consequently, children and adults were treated the same with respect to criminal responsibility.¹⁶ By common practice, however, judges did make some exceptions for children. Children were legally defined as anyone who had not attained the age of seven, which was the legal age of reason.¹⁷

After the French Revolution ended the Ancient Regime, the criminal law in France was codified into the first comprehensive penal code in 1810.¹⁸ This code contained no special legal provisions to distinguish between children and adults. Consequently, the prosecution of all criminal offenders, regardless of age, continued to be presented before regular courts with

¹⁵ See Interview with Judge Samet, *supra* note 13.

¹⁶ See Daniel Amson, *Le lynchage signe par trois enfants (conscience et répression)* [*Lynching instigated by three children (conscience and repression)*], LE QUOTIDIEN DE PARIS [THE PARIS DAILY], Nov. 29, 1993, at 7.

¹⁷ See *id.*

¹⁸ *Id.*

regular judges presiding over criminal cases. The accused was still required to be seven years old, but now that age had been codified into the law as the age of reason for criminal purposes.¹⁹

Throughout the nineteenth century, however, there were European educational and labor reform movements that set the stage for modern laws regarding minors.²⁰ Influenced by the new concern for children, French judges began using their discretion to grant special considerations for minors. The common practice was to grant some privileges to children under the age of sixteen years, the age of majority at the time.²¹

In 1912 the French legislature inaugurated France's modern juvenile justice system²² by enacting the first law amending the 1810 code. The 1912 Amendment was designed to distinguish between adults, or those of the age of majority, and minors in the criminal justice system.²³ This law codified much of what had become discretionary common practice among judges. It required that minors be treated differently in criminal prosecutions by granting them, according to their age, limited and special consideration.²⁴

The first distinction was for children under the age of thirteen. There was no longer any issue about whether or not a child of that age was able to discern the gravity and nature of his acts. A child under the age of thirteen benefited from an absolute presumption of criminal irresponsibility.²⁵ This protection continues to be the law in France today. A second distinction was created for minors between the ages of thirteen and sixteen. A minor in this age group received special protection similar to the common practice, where the inquiry was to be whether or not the child had the ability to understand the nature of his actions.²⁶ If she was found to lack

¹⁹ *See id.*

²⁰ *See* Feld, *supra* note 2; SNYDER & SICKMUND, *supra* note 3.

²¹ *See* G. STEFANI, ET AL., *DROIT PENAL GENERAL*, 395 (2d ed. 1984).

²² *See id.* at 396.

²³ *See id.* at 396-97.

²⁴ *See id.*

²⁵ *See id.* at 396.

²⁶ *See id.* at 397.

the requisite discernment of her actions, the courts were empowered to use her age as a mitigating factor when administering punishment. For minors between the ages of sixteen and eighteen, no special protection was created and they were still punished like adults.²⁷ For criminal purposes, however, the age of majority had been raised from sixteen to eighteen years in 1906.²⁸

The law of 1912 also inaugurated the special courts and procedures that still exist in today's juvenile justice system in France. Prior to 1912, not only were juveniles tried in the same courts as adults, but no special training was required to investigate, evaluate or pass judgment on a minor. The courts were initially special chambers of regular criminal courts, and it was only later that they became independent tribunals.²⁹ These courts were granted jurisdiction over juvenile matters involving minors between the ages of thirteen and eighteen years.³⁰

Procedurally, the 1912 law established France's contemporary practice of seeking individualized solutions to juvenile problems by establishing what became known as "supervised liberty."³¹ This practice gave judges the authority to determine on an individual basis whether a juvenile under court surveillance could be returned to his home or to a guardian where he could live with some degree of normalcy while a program of reeducation and rehabilitation was tailored to his individual needs.³²

B. The Law of 1945

The Law of February 2, 1945, has dominated the evolution of modern legislation relative to juvenile delinquency in France.³³ This law, considered France's charter law on juvenile justice, completed the reform begun in 1912. Its underlying precept was to ensure that the judicial system placed a higher priority on the

²⁷ *See id.*

²⁸ *See id.* at 396. The age of majority for all purposes, penal and civil, became 18 years of age much later with the passage of the Law of July 5, 1974. *See id.*

²⁹ *See* Interview with Judge Samet, *supra* note 13.

³⁰ *See id.*

³¹ *See* STEFANI, ET AL., *supra* note 21, at 396.

³² *See id.*

³³ *See* Law No. 45-174, *supra* note 7.

protection and education of juvenile offenders than on their punishment. The fundamental principal of this law was that a minor was not a young adult, but a child who needed protection and reeducation by the state to safely reenter society.³⁴

As a result, the Law of 1945 completely eliminated the question of discernment³⁵ and extended the benefit of the age of minority to all minors as a mitigating factor whenever they faced criminal penalties.³⁶ In its preamble, the Law of 1945 explicitly set forth that the policies and goals of the law were to protect France's juvenile delinquents from the harsh realities of the criminal justice system.³⁷ The Law of 1945 condoned the judicially controlled and monitored protective and rehabilitative measures established in 1912.³⁸ It also authorized the expenditure of public resources and assistance, in addition to the continuation of court surveillance of juvenile delinquents.³⁹ Attributing the rate of juvenile delinquency at the time to the social upheaval caused by the ravages of World War II, the postwar government passed this law as one of many efforts to restore the social and moral fabric of French society.⁴⁰ Further, the government's concern about the declining population growth prompted the initiation of many postwar policies set privilege youth and to encourage population growth.⁴¹

The Law of 1945 extended the presumption of criminal

³⁴ Gerard Dupuy, *Le gouvernement veut accélérer le jugement des jeunes délinquants* [The government wants to speed up the adjudication of delinquent children], LA LIBERATION (Paris), Section L'Evenement, Jan. 5, 1996, at 2.

³⁵ See STEFANI, ET AL., *supra* note 21, at 397.

³⁶ See *id.*

³⁷ See Law No. 45-174, ch. 1, art. 2, *supra* note 7.

³⁸ See *id.* ch. 111, arts. 15, 16.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ "La France n'est pas assez riche d'enfants pour qu'elle ait le droit de négliger tout ce qui peut en faire des êtres sains." [France isn't rich enough in children to neglect any methods to make them (the children) into saints.] Law No. 45-174, *supra* note 7; see also J. SUZANNE RAVISE, TABLEAUX CULTURELS DE LA FRANCE [CULTURAL IMAGES OF FRANCE] 294-5 (3d ed. 1994). Since World War II, the French population has steadily increased primarily because of government intervention with social welfare programs designed to encourage fecundity. See *id.* Family support programs still exist that provide support for prenatal care as well as government subsidies for children up to the age of majority along with additional benefits to families with more than two children. See *id.*

irresponsibility to all minors up to the age of eighteen, and all minors up to the age of eighteen benefited from their minority as a mitigating factor when a judge rendered a criminal sentence.⁴² The law did, however, continue to make an important distinction in the application of this presumption. The original presumption for minors under thirteen remained absolute and unchanged. That is, no matter how serious the crime, if a minor was thirteen years of age or younger, he could never be held criminally responsible for his act,⁴³ although his parents might be held liable for civil remedies.⁴⁴

In contrast, for minors between the ages of thirteen and eighteen, the presumption of criminal irresponsibility was not absolute. The juvenile courts could sentence and incarcerate such offenders whenever the circumstances and the "personality of the delinquent minor" required it.⁴⁵ For example, the law required a minor within this age group to be punished for refusing to participate in a rehabilitative program designed by the court.⁴⁶ For all minors, however, regardless of their age, the prevailing policy was to give priority to rehabilitation via state intervention with protective measures and supervised surveillance.⁴⁷

The 1945 law provided for a more specialized juvenile court procedure than the system established under the 1912 law.⁴⁸ The

⁴² See STEFANI, ET AL., *supra* note 21, at 398.

⁴³ For example, in 1995, three children were guilty of killing a homeless man. In a closed session the judge placed two of them, ages 10 and 11, in the custody of their parents, and the third, who was 12 was placed under surveillance in a public home for children until his 18th birthday. Christoph Cornevin, *Le destin en pointilles des enfants meurtriers* [The uncertain future of child murderers], LE FIGARO (Paris), Dec. 11, 1995, at 7.

⁴⁴ See Interview with Judge Samet, *supra* note 13.

⁴⁵ Law No. 45-174, *supra* note 7, art. 2, para. 2. See also JEAN-CLAUDE SOYER, *MANUEL DROIT PENAL ET PROCEDURE PENAL* [MANUAL OF CRIMINAL LAW AND CRIMINAL PROCEDURE] 418 (11th ed. 1994).

⁴⁶ See STEFANI, ET AL., *supra* note 21, at 399. Shortly after the passage of the law in 1945, the number of minors sentenced under some exception to the general policy was about ten percent. However, the percentage has steadily increased so that by the 1980's more than thirty percent of those minors brought before juvenile courts were actually sentenced, although many of the sentences were suspended. See *id.* at 399-400.

⁴⁷ See Law No. 45-174, *supra* note 7, arts. 15-16.

⁴⁸ See Maurice Peyrot, *L'enfant coupable est surtout un enfant victime* [The guilty

courts became independent bodies and were staffed by specialists in the area of child development.⁴⁹ The goal was to have judges who would be career specialists, allowing them to develop substantial knowledge and experience with the pertinent issues affecting juveniles and to facilitate their ability to oversee individual cases.⁵⁰ The Ministry of Justice had the power to appoint additional personnel trained in juvenile matters to assist these specially trained judges.

As part of their newly defined responsibilities, the judges were required to investigate each case thoroughly. The judges had to consider all relevant external influences that may have contributed to the delinquency of the minor.⁵¹ Prior to a hearing in a juvenile proceeding, the presiding judge or an investigative judge ("juge d'instruction") was required to investigate certain preliminary matters pertaining to the accused minor.⁵² All "ordinary" means available to the judge had to be used to conduct an inquiry regarding the minor and his background. This information typically included data on the financial and moral status of the family of the accused minor, the conditions under which he was being raised, information regarding his personality, and his school record. The judge would complete his inquiry by reviewing a medical examination and sometimes a psychological evaluation of the accused minor. The judge was authorized to select any one of these measures alone or none at all, depending on his assessment of the needs of the particular case.⁵³

The Law of 1945 also restricted the court's power to detain a minor. It expressly prohibited the detention of a minor under the age of thirteen unless it was indispensable or impossible to make any other disposition. In the exceptional case where detention was absolutely necessary, the minor was to be placed in quarters

child is more than anything a child victim], LE MONDE (Paris), Société Section, Oct. 14, 1995.

⁴⁹ See *id.*

⁵⁰ See Interview with Judge Samet, *supra* note 13. Judge Samet is also trained in psychology.

⁵¹ See *id.*

⁵² See Law No. 45-174, art. 5, *supra* note 7.

⁵³ See *id.* art. 8.

separate from any adult.⁵⁴ Alternatively, if the circumstances so justified, the judge could order that the minor be placed temporarily in a special home or an appropriate public institution, such as a clinical setting suitable to his needs.⁵⁵

From the time the Law of 1945 was enacted until very recently, the French juvenile justice system focused primarily on examining and analyzing the personality of the juvenile offender. Very little attention was given to the criminology of the act committed, or to the nature and gravity of the offense, save a few exceptions.⁵⁶ In the last four to five years, however, the attitude about the value of this law has changed.⁵⁷

III. The Problem of Juvenile Crime in France Today

In the years following the passage of the Law of 1945, there was a constant decline in the number of minors brought before criminal courts. That number was 21,000 in 1949, down from 40,000 in 1943.⁵⁸ The decline continued through the years,

⁵⁴ See *id.* art. 4, sec. 1; see also Laurence Follea, *Deux pour cent des homicides commis par des moins de 18 ans* [Two percent of homicides committed by those under 18 years of age], LE MONDE (Paris), Mar. 1993, at 1.

⁵⁵ See Law No. 45-174, art. 10, § 2-5, *supra* note 7.

⁵⁶ Interview with Judge Alain Bruel, President of the Juvenile Tribunal, in Palais de Justice, Paris, France (Aug. 4, 1996).

⁵⁷ The Law of 1945 has been amended several times. In 1951, several amendments were made to the law. They included the provision that, if the circumstances and the personality of the delinquent minor demanded it, a juvenile court could sentence a minor, who was older than 13 years, to be incarcerated. See Law No. 92-1386 of Dec. 16, 1992, J.O., p. 6975. In 1974, there was an amendment that limited the length of any detention of a minor to no longer than his age of majority. See Law No. 74-6 31, art. 19 of July 5, 1974, J.O., p. 2657. In 1993, the law was amended to provide that all minors accused of offenses and held for observation had the right to have legal counsel, and they had the right to have their parents or legal guardians notified immediately of their arrest or detention. See Law No. 93-1013, art. 4 of Aug. 24, 1993, J.O., p. 5631. If neither the minor nor his parent nor guardian requested counsel, the court was authorized to appoint one. See *id.* In 1994, Article 4 was further amended by limiting the police's authority to detain minors for observation when they were suspected of criminal acts based on their age. A minor under the age of 13 years could not be detained, and if he was between 10 and 13 years and accused of committing or attempting to commit a serious offense that was punishable, by the penal code, for at least seven years, he could be held for observation, but not more than ten hours. See Law No. 94-89 of Feb. 1, 1994, art. 4, J.O., p. 7248.

⁵⁸ See STEFANI, ET AL., *supra* note 21, at 392.

reaching 13,975 in 1955, the lowest recorded number ever.⁵⁹ Since 1955, however, juvenile offenses have risen steadily.⁶⁰

In 1988, 29% of violent robberies were committed by juveniles, and 2% of the nation's homicides were committed by juveniles under the age of eighteen.⁶¹ In 1993 the number of minors brought before the criminal courts rose to 58,967, and by 1995, there were as many as 763,000 juveniles implicated in the juvenile criminal system in France.⁶² By July of 1992, juveniles under the age of eighteen years represented 1.2% of the 54,496 detainees in French prisons,⁶³ and between 1993 and 1994, police reports indicated that there was nearly a 17% increase in the number of juveniles implicated in the juvenile justice system.⁶⁴

In 1995, there was a 6.5% decrease in overall reported crime from 1994.⁶⁵ This was the first time since 1988 that the French were able to cite a decline in criminal activity nationwide. However, when the types of crimes were broken down, there was actually an increase in violent crimes against the person.⁶⁶

⁵⁹ See *id.* at 392-93.

⁶⁰ See *id.*

⁶¹ See Follea, *supra* note 54, at 1.

⁶² See Renee Barbier, *Quand la jeunesse se fait violence [When children commit violence]*, LE FIGARO (Paris), Jan. 1996.

⁶³ See Follea, *supra* note 54, at 1 (citing "Les chiffres clés de la justice," [The many keys of justice] from the Ministry of Justice, Oct. 1992).

⁶⁴ See Barbier, *supra* note 62; Veziene de Vezins, *L'épineux problème des mineurs délinquants [The thorny problem of delinquent minors]*, LE FIGARO (Paris), Nov. 3, 1995.

⁶⁵ See Franck Johannes, *La Délinquance a baissé de plus de 6% en 1995, Les violences contre les personnes connaissent en revanche une nette augmentation [Delinquency is down more than 6%, Violence against acquaintances for revenge shows a net increase]*, LA LIBERATION (Paris), Feb. 7, 1996, at 13; see also Barbier, *supra* note 62; Erich Inciyan, *Les chiffres de la délinquance ont nettement baissé en 1995 [The amount of delinquency is certainly dropping in 1995]*, LE MONDE (Paris), Feb. 7, 1996, at 2 (reporting that there was an appreciable decline in home and auto burglaries with reductions of almost eight and five percent, respectively); Patricia Tournancheau, *En 1994, criminalité et délinquance ont marqué le pas [In 1994, crime and delinquency have marked the pace]*, LA LIBERATION (Paris), Jan. 21, 1995 (reporting that the decline in crime in 1995 has been attributed to an increased public presence of police and security measures conducted by local governments).

⁶⁶ See Johannes, *supra* note 65; see also Barbier, *supra* note 62; Inciyan, *supra* note 65; Oberle, *supra* note 65.

Although the dangerous classes of crime constituted approximately 5.2% of all criminal behavior in 1995, there was an actual increase in juvenile offenses of violent crimes against the person.⁶⁷ Juvenile crime has continued a steady increase and actually made up 17% of all crimes in France in 1995.⁶⁸ However, more noteworthy was that juveniles under the age of eighteen were responsible for 45% of all violent robberies and 23% of all armed robberies during the first part of 1995.⁶⁹

France's humanist policy toward juvenile delinquents has created a dilemma. Although the French boast about their policy and see it as the cornerstone of French law on juvenile delinquency,⁷⁰ contemporary juvenile crime has overwhelmed the system,⁷¹ in part, because of the politics that surround the profile of the new juvenile offender. As in the United States, there has been a public outcry in France for a more punitive system⁷² in response to the mounting fear that the "humanist" system was not set up to respond to the problems that characterize contemporary juvenile crime.⁷³ "Things are changing quickly," according to Judge

⁶⁷ See Johannes, *supra* note 65.

⁶⁸ See Heliot, *supra* note 10, at 6; see also Thierry Oberle, *Les commissaires s'alarment de la violence des jeunes* [The commissioners are alarmed by youth violence], LE FIGARO (Paris), Oct. 6, 1995 (reporting that the overall increase in juvenile crime from 1994 to 1995 was fifteen percent).

⁶⁹ See Erich Inciyan, *La delinquance des mineurs a augmente de 15% en 1994* [Juvenile delinquency increased by 15 percent in 1994], LE MONDE (Paris), Oct. 29, 1995, at 10; see also Nidam Abdi, *A Paris, les delinquants rejeunissent* [In Paris, the delinquents are getting younger], LA LIBERATION (Paris), Mar. 9, 1996, at 30 (suggesting that gang activity is a major contributor to increased juvenile crime and violence).

⁷⁰ See Burgelin, *supra* note 3, at 13; see also Interview with Judge Samet, *supra* note 13; Interview with Judge Bruel, *supra* note 56.

⁷¹ See Interview with Judge Samet, *supra* note 13.

⁷² See Kelly Keimig Elsea, *The Juvenile Crime Debate: Rehabilitation, Punishment or Prevention*, 5 KAN. J.L. & PUB. POL'Y. 135, 137 (1995); see also Pierre Briancon, *Etats-Unis: Chicago sous le choc des enfants tueurs* [U.S.: Chicago under the shock of children who murder], LA LIBERATION (Paris), Sept. 5, 1994, at 15 (pointing out that in the State of Illinois a sixteen year-old adolescent was to be tried as an adult for a gang murder).

⁷³ See Florence Aubenas, *Le projet du garde des sceaux entend une reforme majeure* [The Lord Chancellor's project undergoes a major reform], LA LIBERATION (Paris), July 11, 1990, at 2.

Catherine Samet, who explained that the French are confronted with a new class of juvenile offenders who commit dangerous crimes with guns, drugs and in gangs. However, "to be realistic," she said, "sending young juveniles to jail is not the solution."⁷⁴

In the early 1990's, the rate of juvenile crime among France's lower socio-economic classes had increased significantly.⁷⁵ The increase occurred against the backdrop of conservative politics, heightened racial tensions and a shift in the French juvenile system away from its protective origins and toward a more punitive system.⁷⁶

IV. Violent Crime Among Immigrant Juveniles

Many of the professionals⁷⁷ who were part of the juvenile protection, reeducation, and surveillance program created in 1945 argued that the new juvenile delinquent was a child in danger.⁷⁸ Although they recognized that juvenile delinquents were often themselves very dangerous, these offenders were likened to lost, disoriented "dogs without collars."⁷⁹ For many French professionals, violent young criminals are victims of the present social disorder: the high unemployment rate and a growing urban crisis characterized by intolerance and racism.⁸⁰ Juvenile crime is simply one manifestation of these social problems, rather than being primarily responsible for them.⁸¹

There are major social problems related to changing demographics in France.⁸² The system put into place in 1945 was

⁷⁴ See Interview with Judge Samet, *supra* note 13.

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See Annick Cojean, *Educateurs, magistrats et psychologues se penchent ensemble sur la protection judiciaire des jeunes* [Educators, judges, and psychologists meet to ponder judicial protection of children], LE MONDE (Paris), Feb. 3, 1993, at 9. The almost 700 professionals included educators, judges, psychologists and psychiatrists.

⁷⁸ See *id.*

⁷⁹ *Id.*

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² Judge Samet argued that the contemporary problems with immigrants are new although France has a long history of receiving large numbers of immigrants. The

designed to rehabilitate the delinquent minor, but it did not anticipate the nature of the contemporary juvenile offender. With the recent economic crisis in France⁸³ can be seen a growing poor immigrant population, mostly in major metropolitan centers. The new wave of urban juvenile crime is concentrated in the poorest neighborhoods where there are cultural barriers to social and economic mobility.

These social problems have contributed to a major fracture in French society. Much of the recent concern over juvenile delinquency is fear about the growing discontent of immigrant youth in metropolitan ghettos.⁸⁴ In France, ethnic minorities appear to account for a significant percentage of the increase in juvenile crime.⁸⁵ The root of much of the violence among

difference is that for the first time in history, there are major cultural and religious clashes with immigrants who do not wish to assimilate into the French culture. These are primarily the immigrants from Muslim North African countries. Since prior immigrants were Catholic, white, had similar languages, or were from former French colonies or territories, integration presented fewer problems for them. See Interview with Judge Samet, *supra* note 13.

⁸³ See Phillippe Maniere, *Les deux secrets de la BNP [The Two Secrets of the BNP]*, LE POINT, No. 1098, Oct. 2, 1993, at 67.

⁸⁴ The problem has many of the same characteristics of urban crime in the United States, where murder is cited as the number one cause of death for black men between 16 and 24 years of age, and where urban ghettos have become the battleground for ethnic youth and gang warfare. Stephane Marchand, *Les gangs recrutent de plus en plus de jeunes dans les ghettos noirs, Les enfants tueurs de Chicago [Gangs recruit more and more youths in the black ghettos; Chicago's children who murder]*, LE FIGARO (Paris), Sept. 3, 1994.

⁸⁵ The demographic information on juvenile crime in the official statistics reported by the French Ministry of Justice does not account for race. The data does, however, report the number of "non-French" or "foreign" juveniles who have committed crimes in France. The "Maghrebine" (or North Africans) category, which is further subdivided into Algerians, Moroccans and Tunisians, and who make up a significant percentage of the immigrant population, represent the largest number of foreign juveniles prosecuted for juvenile offenses. As official French government documents do not differentiate French citizens by their race, any French citizen of ethnic origins, i.e., children born in France to immigrant parents, are not accounted for separately. See "Les mineurs et la Justice" ["Minors and the Law"], ANNUAIRE STATISTIQUE DE LA JUSTICE (1990-1994), Ministry of Justice, The French Documentation, Paris, May 1996, pp. 225, 227.

Numerous journalists illustrate the fact that the French juvenile delinquency problem is significant among France's ethnic and immigrant populations. See Denis Lenseil, *La Violence à l'école à l'examen [School violence under study]*, LE QUOTIDIEN DE PARIS [THE PARIS DAILY], Sept. 1, 1992, at 9; Christophe Cornevin, *Meurtier pour un blouson [Murdering for a jacket]*, LE FIGARO (Paris), Mar. 16, 1995 (telling of the

immigrants and ethnic minorities has been attributed to a general social malaise emanating from feelings of exclusion caused by racism in French society.⁸⁶

The juvenile justice system has been besieged by large numbers of juveniles from ethnic immigrant families. They come from some of France's most economically deprived urban neighborhoods, where unemployment is alarmingly high⁸⁷ and

prosecution of "Aziz" for the January 1994 murder of his friend); Marie d'Aufresne, *Leila: le poids des mots* [*Leila: the weight of words*], LE FIGARO (Paris), Dec. 14, 1995, (reporting that the fifteen year old who killed her thirteen year old classmate was a Kurd); Marie-Laure de Leotard, *Agressions, rackets, déprédations . . . Dans 221 collèges et lycées français, l'insecurite est devenue insupportable. Il est urgent de réagir. Le Ministre de l'Education veut briser la loi de silence. Il nous révèle son plan. Celue-ci suffira-t-il?* [*Aggression, rackets, plundering . . . In 221 French grammar and high schools, the lack of safety has become intolerable. It is urgent to react. The Minister of Education wants to break the law of silence. He reveals his plan. Will it be enough?*], L'EXPRESS (Paris), Mar. 23, 1995, p. 85 (describing the juvenile violence at a school where most of the students are immigrants (24 different nationalities)); Muriel Frat, *Violence à l'école: la colère des professeurs* [*Violence in schools: the anger of teachers*], LE FIGARO (Paris), Jan. 21, 1996; *L'impossible sécurité dans les "lycées-usines"* [*The impossibility of safety in the "high school-factories"*], LE FIGARO (Paris), Dec. 9, 1992; F. Lemoine and F. Puyalte, *Violence dans les lycées: état d'urgence* [*Violence in the high schools: a state of emergency*], LE FIGARO (Paris), May 13, 1993; Anne Giudicelli, *Montfermeil: Des Gentils Flics en Territoire Ennemi* [*Montfermeil: Nice Cops in Enemy Territory*], LA LIBERATION (Paris), Aug. 27, 1990, at 28.

See also Interview with Judge Samet, *supra* note 13. On the afternoon of August 1, 1996, I visited the police station at the criminal courts division of the Tribunal de Grand Instance in Nanterre, a suburb of Paris. The officer in charge of booking allowed me to review the registry listing the names of the people who had been arrested on that day. Of the ninety-eight people listed in the registry, the overwhelming majority of the names were to me obviously of Arabic origin. There were only a very few that I could not identify except to conclude that they did not appear to be ordinary French names.

⁸⁶ Stephanie Le Bars, *Initiale ou continue, La formation negligee* [*Start or continue, The negligent training*], LE MONDE DE L'EDUCATION (Paris), May 1995, at 39-40; "Mais il est certain que la violence est liee a une destruction du tissu social et familial. Les familles mal inserees, pour des raisons sociaux ou financieres, ont des difficultes a montrer les interdits. Il en resulte, chez leurs enfants, une defaillance dans l'interiorisation des interdits concernant la violence et les regles sociales. [But it is certain that the violence is leading to a destruction of the social and familial structure. The poorly situated families, for social or financial reasons, have difficulties overcoming differences. It results, in their children, in failing to internalize the differences between violence and the social rules.]" Beatrice Bantman, *Des difficultes a montrer l'interdi* [*Difficulties in overcoming differences*], LA LIBERATION (Paris), Sept. 21, 1993, at 24.

⁸⁷ See Francoise Vaysse, *Chomage en forte Hausse dans Plusieurs Quartiers* [*Sharp Increase in Unemployment in Some Quarters*], LE MONDE (Paris), Oct. 31 - Nov. 1, 1993, at 21.

where the immigrant population and the unemployed are concentrated.⁸⁸ Not only do eighty percent of the French immigrant population live in these urban ghettos, but one third of this population is under twenty years of age.⁸⁹ The immigrants are on the margins of French society because of racism and cultural alienation, and not surprisingly they account for a significant percentage of the increase in French delinquency, including serious juvenile crime.⁹⁰ The French, known to be xenophobic, have a strong bias against ethnic minorities that do not assimilate and completely adopt French culture.⁹¹ Although these ghettos are the principal site of the French melting pot, there seems to be little assimilation into traditional French culture.⁹² Judge Samet was of the opinion that the French public has become particularly alarmed by the criminal activity among young Algerian and North African immigrants⁹³ because there does not appear to be much cultural

⁸⁸ See Koning, *supra* note 10, at 102.

⁸⁹ See Veziane de Vezins, *Gros plans sur la violence urbaine [Extensive Plans About Urban Violence]*, LE FIGARO (Paris), Mar. 21, 1994, at 14.

⁹⁰ See Le Bars, *supra* note 86, at 40.

⁹¹ See Dominique Nora, *La Corneuve n'est pas Los Angeles, mais . . . Bientot la France? [La Corneuve isn't Los Angeles, but . . . soon France?]*, LE NOUVEL OBSERVATEUR (Paris), Nov. 25, 1993, at 86.

⁹² See Bantman, *supra* note 86.

⁹³ During my visit to the Tribunal de Grand Instance at Nanterre, Judge Samet allowed me to sit in on a *huis clos* [closed] session involving a crime committed by an Arab juvenile from Northern Africa. He was a nineteen year old illegal immigrant accused of robbing an eighty-four year old woman in her home. The case originated in juvenile court because of his age when he committed the offense, and it went to Judge Samet, an investigative judge, because of the gravity of the offense. During his interview with Judge Samet, the boy spoke of the desperation and hopelessness he felt, which she had indicated to me earlier characterized the plight of immigrant youth in French ghettos. In their desperation to survive, they live by any means possible. When she asked how many robberies he had committed, he responded, "Je passe mon temps a voler pour survivre, et je ne vis que de vols! [I pass my time stealing to survive and I don't live except to steal!]" Originally from Algeria, the boy left that country after his brother was killed there. He left for France, seeking a better life, and he had been in France for four and a half years.

Present in the closed session was the accused, his two lawyers, two police officers, the judge, myself, and the judge's assistant. The attorneys and police officers sat behind the juvenile. The accused sat alone close to the judge's desk. Throughout the entire session, the lawyers neither volunteered any information nor made any arguments. Twice they responded to questions directed to them by the judge. They were entirely

assimilation among this category of immigrants.⁹⁴

The legal actors have continued to apply the ideal of individualized rehabilitation to these new challenges of juvenile delinquency, holding fast to the notion that the underlying principles should not be compromised.⁹⁵ One of the biggest challenges currently facing a juvenile judge is how to develop a program of rehabilitation that is appropriate for today's juvenile delinquent, a child who typically grows up in suburban ghettos and is the victim of myriad external negative influences.⁹⁶ Many judges and officials advocate removing delinquents from the urban ghetto where they were raised. They argue that juveniles cannot be as easily influenced by the criminal elements responsible for their behavior when they no longer live within that environment.⁹⁷

passive. Afterwards, when I asked them why they did not advise the young man, they admitted his guilt and said that there was nothing they could do except to follow the judge's instructions. The only other person in the room was the judge's assistant, who made a record of the proceeding. The only information memorialized by the assistant, however, were the occasional conclusions dictated by the judge. The session primarily consisted of the judge reading from a prior record of an interview with the juvenile. She told me that she had spoken with him on numerous occasions over the months and that she was now very capable of assessing his veracity by his demeanor. The accused admitted several times that he had committed the crime. In fact, the record, as it was recalled by the judge, indicated that he and an accomplice entered the home of an elderly woman, took jewelry from her, and then ran right into the path of two police officers as they were fleeing the scene. He was immediately arrested with the jewelry in his possession while his accomplice escaped. The focus of the hearing was on finding out the identity of his accomplice. It was clear that the young man had no intention of revealing his identity, insisting that the judge accept his own admission as all that would be asked of him.

After the hearing, the judge indicated that her role was to ascertain the truth. She believed that she knew him well at this point, and that there was nothing that could be done for him. I asked if attorneys are always so passive, and wondered why the attorneys in this case did not use the opportunity to bargain the fate of their client in exchange for the identity of the accomplice. The judge's response to me was that French lawyers know better. "The process does not allow games," she said. In essence, if a lawyer tried to advocate for a client they knew to be guilty, he or she would be taking a risk with their own future credibility before a judge. See Interview with Judge Samet, *supra* note 13.

⁹⁴ See, e.g., de Vezins, *supra* note 89, at 14.

⁹⁵ See Interview with Judge Samet, *supra* note 13.

⁹⁶ See *id.*

⁹⁷ *Ces Deputes qui Veulent 'Delocaliser' les Jeunes Delinquants* [The Parliamentary Members Who Want to Delocalize the Delinquent Youth], LE QUOTIDIEN DE PARIS [THE PARIS DAILY], Nov. 26, 1993, at 7.

Many judges approach the social and family problems of the immigrant child in the same manner they approach French juvenile delinquents. Where they prefer rehabilitative measures to punishment for the native French delinquent, so too they look to this philosophy for the immigrant offender.⁹⁸ They attempt to "break the structure of the personality" of the more difficult juvenile offender by provoking a human reaction.⁹⁹

Judge Samet provided an interesting example of the extent to which some judges have gone to rehabilitate the more troublesome juvenile delinquent. She recalled a thirteen year old who was presented to her after being accused of selling drugs. Her profile assessment was that his family were recent immigrants to France with minimal family structure. After reviewing his case and taking some time to get to know him during numerous interviews in her office, she decided to send him to Romania. It was an experiment to see how he might respond to the human tragedies in that country. Even though she admitted that she did not have the legal authority to send a juvenile outside the borders of France without the permission of his parents, such permission was not possible in this case. Negotiations took place between the judge and the juvenile's attorneys, and the child consented to the arrangement. Accompanied by a specialist in child development, the minor traveled to Romania with the goal that he observe the young people of Romania who had lost their families. He spent three weeks there, and according to Judge Samet, he returned to France a very different person. "He had a renewed sense of life," she recalled, and he exhibited for the first time before her the sensibilities of a child.¹⁰⁰ She said that she even saw him cry for the first time upon his return to France.¹⁰¹

Violence among the very young in urban ghettos has become a regular occurrence.¹⁰² Specialists attribute the violence to a general

⁹⁸ See Sylviane Stein, *Justice: Leur Epargner le Pire [Justice: Saving Them From the Worst]*, L'EXPRESS (Paris), Mar. 23, 1995, at 91.

⁹⁹ Interview with Judge Samet, *supra* note 13.

¹⁰⁰ *Id.*

¹⁰¹ See *id.*

¹⁰² See Benoit Charpentier, *La Violence Force les Portes de l'Enfance [The Violence Takes Away Their Childhood]*, LE FIGARO (Paris), June 2, 1993.

malaise among ethnic youth, primarily the immigrant and former immigrant population referred to as the *Maghrebins*.¹⁰³ Within the *Maghrebins* community, adult unemployment is high, children are failing in school at a progressively younger age, and a feeling of hopelessness about the future is a common sentiment, even for the very young.¹⁰⁴

In many ways the problem of juvenile crime in France resembles the problem in the United States. In both countries, there is cause for alarm at the rate of juvenile delinquency. The number of children who turn to crime is rising, while at the same time, the age at which children turn to a life of very serious crime grows younger and younger.¹⁰⁵ While both countries recognize this trend, each has responded differently to it. In the United States, state legislatures have responded to modern juvenile crime with "get tough" policies designed both to deter crime and to punish juvenile offenders more severely who commit serious crimes and who are repeat offenders of certain crimes.¹⁰⁶ In contrast, the French have been reluctant to move in that direction, preferring instead to maintain the integrity of the policies and the philosophies that were the underpinnings of the original laws. But as the wave of juvenile crime continues to endanger the public sense of security, the French government has become more willing to look for alternative solutions, perhaps for political reasons if nothing else.¹⁰⁷ It appears the American model has influenced the development of current French policies regarding juvenile

¹⁰³ See *id.*

¹⁰⁴ See *id.*

¹⁰⁵ See, e.g., Burgelin, *supra* note 3; Charpentier, *supra* note 102; Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965 (1995).

As bad as violent crime is today, it is predicted to get even worse Arrest trends indicate that the willingness to commit violence is reaching younger and younger children. The arrest rate for homicide for 13- and 14- year olds rose a staggering 145 percent from 1987 to 1992.

Louis J. Freeh, Director of Federal Bureau of Investigation, Statement Before the House Committee on the Judiciary Subcommittee on Crime, Mar. 30, 1995, cited in the official memo of the Office of the Director of the FBI at 2 (on file with the author).

¹⁰⁶ See SNYDER & SICKMUND, *supra* note 3.

¹⁰⁷ See Interview with Judge Bruel, *supra* note 56.

delinquents, although it has not entirely usurped the more traditional, and more humanistic, model preferred by the French up until this time.¹⁰⁸

V. The Politics and Effects of the 1996 Amendment

In response to the changing nature of juvenile crime in France, French lawmakers began discussions to amend the Law of 1945. Recognizing that education and rehabilitation had long been the trademarks of the French juvenile justice system, it was paramount to these lawmakers that these principles not be lost in this new legislation.¹⁰⁹ It was equally important, however, that there be reforms that would respond to the problems of contemporary juvenile crime.¹¹⁰ Therefore, the 1996 amendments were a political compromise. The new law added significant provisions to the existing law regarding juvenile delinquents without compromising the character of the Law of 1945. The several additions enacted in 1996¹¹¹ were designed to enable prosecutors and judges to take a tougher line of response to juvenile crime. The 1996 Amendment sets time limits on delays to judicial hearings on juvenile matters and creates special conditions for repeat offenders.

The reforms were not intended to replace the existing juvenile justice system for the typical French youth, but instead it was a special measure prompted by a contemporary juvenile crisis. That crisis had been primarily characterized as a socio-economic and cultural dilemma manifesting itself in the most economically depressed areas of France. In these areas there was massive unemployment, at times over several generations, and children were often in academic difficulty.¹¹² Although the traditional approach to juvenile delinquency was to expend resources to

¹⁰⁸ See Burgelin, *supra* note 3, at 13; Interview with Judge Samet, *supra* note 13. But see Stephanie J. Millet, *The Age of Criminal Responsibility in an Era of Violence: Has Great Britain Set a New International Standard?* 28 VAND. J. TRANSNAT'L L. 295, 340 (1995) (referring to the French juvenile justice system as a "welfare model").

¹⁰⁹ See Lombard, *supra* note 9.

¹¹⁰ See Dupuy, *supra* note 34, at 2.

¹¹¹ Law No. 96-585 of July 1, 1996, J.O., p. 9920 (revising Articles 5, 8, 10, 16, and 20 of Law No. 45-174, *supra* note 7).

¹¹² See Dupuy, *supra* note 34, at 2.

facilitate psychological and social maturation, the drastic increase in juvenile violence over the past few years, particularly in "certains banlieues" [certain suburbs],¹¹³ has exasperated all traditional efforts and has created public resentment towards certain segments of French society.¹¹⁴ These events culminated in the 1996 amendment as a consequence of the call for a more repressive juvenile justice system.

Under the Law of 1945, the juvenile judges had great discretion to use all necessary resources both to determine the truth of the events surrounding the offense as well as to learn about the personality of the minor and the appropriate means for his particular reeducation.¹¹⁵ The 1996 modification, however, creates a new procedure that requires a hearing on the offense charged as close in time as possible to when the alleged offense was committed.¹¹⁶ At this hearing, the 1996 law authorizes the juvenile judge to order either a rehabilitative measure or a penalty, and in either case, the judge is authorized to order that the juvenile be confined to a public facility.¹¹⁷

There was growing concern that the old law failed to discourage juveniles from committing crimes, and failed to help them appreciate the connection between their acts and whatever judicial measures were taken.¹¹⁸ It had been reported that even the police had become complacent about arresting juveniles. They would very often arrest a juvenile, detaining him only momentarily before releasing him because they, too, knew he would ultimately be returned to the streets with impunity.¹¹⁹ As the economic crisis in France has worsened and the poor, particularly ethnic, immigrant families and their children become

¹¹³ *Id.*

¹¹⁴ *See id.*; see also Interview with Judge Samet, *supra* note 13.

¹¹⁵ Law No. 45-174, art. 8, *supra* note 7 (subsequently modified by ordinances passed on May 24, 1951 and January 4, 1993).

¹¹⁶ Law No. 96-585, *supra* note 111, arts. 1, 2, 5.

¹¹⁷ *Id.* art. 7.

¹¹⁸ *See* Lombard, *supra* note 9.

¹¹⁹ *L'Impossible Chasse aux 'Bebes Bandit'* [The Impossible Chase of the "Baby Bandits"], LE FIGARO (Paris), July 19, 1995.

more isolated from the economic mainstream,¹²⁰ more and more juveniles are committing violent crimes and even murder. The passage of the 1996 amendment became inevitable as a legal and political measure to keep in step with the current juvenile crisis.¹²¹

As a consequence of the amendment, however, judges are able to circumvent the lengthy delays with regard to certain types of cases and in particular when dealing with repeat offenders. The amendment requires that the hearings be without the delays that were caused by traditional investigation into the juvenile's background.¹²² Although judges previously had the legal authority to incarcerate juveniles over the age of thirteen years, historically such detention was discouraged and not widely used. It was the exception to the underlying policy of juvenile justice.¹²³ The new law enables judges to seek immediate detention of certain juveniles without seeking individualized solutions to rehabilitate juvenile delinquents. These changes significantly depart from the policies that have been in place since 1945.¹²⁴

The Law of 1945 required that juveniles appear before the juvenile judge at least two times before the judge would determine the disposition of the case.¹²⁵ The first time was to allow the judge to conduct his preliminary evaluation of the minor and the second time was to render his judgment.¹²⁶ The 1996 *ordonnance* revised this requirement. No longer would two appearances be required in all cases if the judge determined that any case presented facts simple enough to warrant rendering a disposition of the case after an initial appearance.¹²⁷

The new policy of accelerating the judicial resolution of juvenile offenses is contrary to the spirit and the letter of the Law of 1945. That law specifically excluded immediate determinations

¹²⁰ See Herzberg, *supra* note 10, at 37.

¹²¹ See Lombard, *supra* note 9.

¹²² See Law No. 96-585, *supra* note 111, art. 1, para. 1.

¹²³ See STEFANI, ET AL., *supra* note 21 at 397.

¹²⁴ See Interview with Judge Bruel, *supra* note 56.

¹²⁵ See Didier Arnaud, *Dans le Huis Clos du Tribunal pour Enfants [In Camera of the Child Court]*, LA LIBERATION (Paris), Feb. 14, 1996.

¹²⁶ See "Justice penale des mineurs: ce qui change," *supra* note 4, at 21.

¹²⁷ See *id.*

in juvenile cases.¹²⁸ Juvenile justice prior to 1996 was founded on the notion that specialized actors in the juvenile justice system were to take the time necessary to conduct reasonable investigations to inform themselves about the personality of the accused juvenile delinquent as well as to learn about and understand the family and social environment from which the juvenile came. These measures were a legal prerequisite imposed on all juvenile judges before formal proceedings were to be initiated. The quintessence of the 1996 modification, however, was that a quick judicial response to rising juvenile crime was one of the principal conditions that would render the juvenile justice system more efficient.¹²⁹ When there must be an immediate response to a juvenile problem, the only sanction available is some form of detention. Ironically, progenitors of this legislation envisioned that increased detention rates would necessitate future construction of detention centers for juvenile delinquents.¹³⁰

VI. Conclusion

France as a country has experienced several changes during the last few years. There has been a shift in the nation's politics to a more conservative position, a decline in the national economy, and an increase in serious crimes committed by juveniles. These changes, coupled with the public fear of ethnic minorities, have led to the public perception that the growing delinquency problem is dominated by immigrant youth. The 1996 amendment was an attempt to mollify the public anger directed at the growing violence among the immigrant youth,¹³¹ and was as much a political response by the conservative right-winged government as it was an attempt to make the law fit the current social crises. The current trend is to punish more juveniles more often, and to resurrect detention centers that had been abolished since the end of World War II.

Up until the 1950s and 1960s, the development of the law

¹²⁸ See Law No. 96-585 of July 1, 1996, J.O., p. 9920 (revising Articles 5, 8, 10, 16, and 20 of Law No. 45-174, *supra* note 7).

¹²⁹ See Dupuy, *supra* note 34, at 2.

¹³⁰ See *id.*

¹³¹ See Interview with Judge Samet, *supra* note 13.

governing juvenile delinquents in France paralleled that of the United States. However, beginning in the 1950s, major changes in the juvenile justice system in the United States were prompted by a diminishing public confidence in the ability of juvenile courts to successfully rehabilitate delinquent youth.¹³² These movements, while prompting major changes in the United States juvenile justice system, also marked the end of any similarities between the juvenile justice systems of France and the United States.

During the prosperous time that followed World War II, and for the thirty years thereafter, the French juvenile justice system was primarily concerned with rehabilitation. The preoccupation with rehabilitation was so great that it often led to great economic expenses and enormous consumption of public resources,¹³³ earning it the label of a social welfare system.¹³⁴ The goal of discovering, understanding and correcting the social elements that prompted the deviant behavior in a young person had the practical effect of treating each juvenile delinquent as a specific victim of the elements of society.

Although the 1996 amendment was not meant to jeopardize the underlying philosophies of this humanistic and long-standing law, it was intended to attack head on a juvenile delinquency crisis which was not being served by the 1945 provisions. These amendments, however, risk eroding the humanistic character of the French juvenile justice system. They explicitly provide for reducing the social and psychological inquiry into the life of each juvenile. This is particularly true when the juvenile is a repeat offender, when the law allows a conclusion that he can no longer be helped through the mechanisms established in 1945. Additionally, the new modifications encourage some new form of detention as a measure to achieve an immediate and visible response to juvenile violence. Consequently, the underlying policies of 1945 have, in fact, been severely undermined.

¹³² See SNYDER & SICKMUND, *supra* note 3; cf. Katia Hetter, *A Pittsburgh Court Battles the Tide; Can Judges Succeed Where Parents have Failed?*, U.S. NEWS & WORLD REP., Mar. 25, 1996, at 37-38; Gordon Witkin, *Colorado has New a Brand of Tough Love*, U.S. NEWS & WORLD REP., Mar. 25, 1996, at 38-39; Feld, *supra* note 2.

¹³³ See Interview with Judge Samet, *supra* note 13.

¹³⁴ See Millet, *supra* note 108, at 340.