

Criminal justice in France after September 11: Has the balance between liberty and security been disturbed?

September 11 has acted as a catalyst for reform for a number of criminal justice systems around the world. The securitarian obsession that has emerged from the ruins of the Twin Towers has quickly migrated to other western countries, not least France, where since 9/11 a plethora of criminal justice reforms have given law enforcement institutions unprecedented powers, especially with respect to the investigation of terrorist offences and organised crime, such as the power to conduct telephone interceptions throughout the national territory without the authorisation of the local prosecution authority, search places of residence without the consent of the owner, audio and video record private conversations taking place in cars or places of residence, conduct extended undercover operations, detain suspects at the police station without bringing charges against them for up to six days or impose pre-trial detention for up to nearly 5 years.

The legislative inflation in these areas seems to have progressively led to the emergence of a sui generis criminal justice system (*droit d'exception*), which derogates from traditional criminal justice values and ethics, endorsing a utilitarian approach to the treatment of those suspected of criminal offences. This system is based upon the belief that security outweighs the need to ensure the fair treatment of citizens, protect the rule of law and safeguard the human rights of defendants. It concentrates on the dangerousness of the defendant rather than his actual guilt, which marks a departure from a fundamental concept of criminal law. This particular aspect of post 9/11 developments in French criminal justice is perfectly mirrored in legislation introduced in 2008 that allows for the detention of dangerous offenders after they have served their sentence (*retention de sûreté*).

It is in this light that this paper will first seek to highlight the impact of the value of security on French criminal justice, exploring the extent to which the balance between liberty and security has been disturbed. The paper will then seek to put these developments into perspective by undertaking a comparison with similar developments in the United States. This comparison will demonstrate that no matter how far reaching the powers that French law enforcement authorities have obtained in recent years, they pale in comparison to extra-judicial methods adopted in the United States. This will shed light on the French Government's strategy to *fight terrorism within the law* (even if this means that law is stretched to the extremes in order to accommodate the increased focus on security and crime control).

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