

Intercultural Justice in France: Origins and Evolution

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Abstract

This paper will highlight the mandate of the juvenile judge in the context of intercultural justice in France, in which juvenile judges are at the same time civil judges and criminal judges. Their role is to both pass judgement on juvenile offenders as well as to protect minors who may be at risk. It may even be the same adolescent who has committed a crime who is also a child at risk. Through the guidance process (children at risk), the judge must respect — as is necessary for all judges — the principles that all must have the opportunity to contradict the charges leveled against them. These decisions are made in the context of a hearing where the parties may be present with or without counsel, where reasoning must be given and will be subject to appeal. We therefore have the obligation to listen to the appeals of both parents and children; some juvenile judges will even accept the presence of other members of the family or other persons whose presence is desired and may help to establish a dialogue.

Before we begin it is necessary to outline the main principles that underlie the practices of the justice system in France. As with all democratic states, there is the requirement for the independence and impartiality of judges, the belief that all must have the opportunity to contradict the charges leveled against them, as well as the guarantee of a defence. French judges are part of a secular state with a policy of integration and as such, communities are not considered as separate entities, but rather as individuals with religious and philosophical opinions that are to be respected. It is in this context that a judge will exercise their mandate and this is of particular importance in questions of juvenile justice. The French children's judges have the responsibility for both passing

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judgement on juvenile offenders (ordinance of 2 February 1945) and for protecting at-risk minors (ordinance of 23 December 1958). It is within the framework of child protection (article 375 and following of the civil code) that the consideration of different cultures has emerged and been developed in the context of the arrival of numerous families from immigrant backgrounds.

How does a juvenile court judge encounter individuals who may come from very different cultural backgrounds? How may the judge come to comprehend just how these families understand their educational and social disadvantage, putting their child at risk or placing them in a position to commit an offense? How can the context of a juvenile judicial intervention be explained in a way that is both understandable and able to convey legitimacy through an explanation of how the decision was made? These important questions have been raised by me and my colleague, Thierry Baranger. We are both in charge of districts which have a high proportion of immigrant families, and have been confronted with the void created by the inability to communicate, where the measures demanded of parents become merely a formality, an empty shell.

To better explain the above, it appears necessary to highlight more clearly the mandate of the juvenile judge: juvenile judges are at the same time civil judges and criminal judges. Their role is to both pass judgment on juvenile offenders as well as to protect minors who may be at risk. It may even be the same adolescent who has committed a crime who is also a child at risk. Through the guidance process (children at risk), the judge must respect — as is necessary for all judges — the principles that all must have the opportunity to contradict the charges leveled against them. These decisions are made in the context of a hearing where the parties may be present with or without counsel, where reasoning must be given and will be subject to appeal. We therefore have the obligation to listen to the appeals of both parents and children; some juvenile judges will even accept the presence of other members of the family or other persons whose presence is desired and may help to establish a dialogue.

The guidance proceedings then impose another constraint on the judge: they must “endeavour to obtain the family’s agreement to the measures ordered”. It is therefore a question of justice which is in a sense negotiated rather than imposed, leading to a decision which is “co-constructed”, while still taking into account that the legal framework allows the imposition of measures if agreement isn’t reached. In any case,

this legal requirement changes the tone of the hearing, and is certainly a domain that requires further investigation.

However, if we want to make sure that adherence is not simply a box ticking exercise, it must take into account family difficulties, the elements of risk present in the referral, and that our purpose and role as judges are truly understood. These matters that are already difficult to comprehend for someone with a French background, are often even more so for families who have migrated relatively recently and are familiar with types of assistance and forms of conflict resolution that are very different.

There is a further peculiarity in the nature of the guidance given in derogation from general law: juvenile judges follow the enforcement of their decisions through the ordered measures (guidance or placement). As a result, these judges can see how a measure which did not carry with it genuine participation will be very difficult, if not impossible to implement. Finally, it is necessary once again to mention the duty of the juvenile judge to respect the religious or philosophical beliefs of the families involved.

It is therefore, at the beginning of the 1990s, under the framework of intervention, that we began to sense a real difficulty in being able to provide a full explanation of our decisions to certain families facing considerable difficulties, who found themselves helpless with no recognition, who were not present in the institutional understanding, had no support structures, due to a lack of true assessments of the reality of their needs, as well as being subject to forms of representation that caused them further difficulty, even to the point of abuse. We realised our own powerlessness in this context when a teacher from the educational service of the court invited a consulting therapist in ethnopsychiatry to one of our institutional meetings. The ethnopsychiatrist, Professor Tobie Nathan,² invited us to participate in one of his sessions. Returning from this brief introduction, we felt that we had been enlightened as to a possible way to deal with some of our most difficult cases.

2 Tobie Nathan, doctor of psychology, emeritus professor of universities, is one of the main representatives of ethnopsychiatry, a discipline founded by Georges Devereux, who offers a new vision of psychotherapy and of the patient considered in his cultural and family universe.

Similar to what happens in office of the juvenile judge, an ethnopsychiatric session involves a conversation that circulates within the group, under the direction of the primary therapist, with the interpretations of all those present being solicited. Once again, as with the juvenile court, parents and children were accompanied by an educator or social worker if available, or sometimes by one or more family members or neighbours. However, the ‘missing link’ was having a therapist of the same ethnicity as the family, one who spoke their language and understood their customs and how they conceived of the world. This eureka moment has led us to designate Professor Tobie Nathan as an expert of sorts in cases where a family’s culture of origin was unfamiliar to us.

The first case that I submitted for an ethnopsychiatric consultation was that of a child from Sub-Saharan Africa who was being monitored as part of a guidance proceeding. Let’s call him Moussa, he was 13 years of age, and had been identified as being violent at school, even to the point at which he punched the principal on school grounds. In the discussions with his son present, his father was perplexed highlighting that at home his son is quiet and respectful, being “the most gifted of his children”. In the face of this mutual incomprehension, I had proposed a consultation with Professor Tobie Nathan. Very quickly, the problem that the child had been confronted with began to emerge. He belonged to the caste of griots, who were musicians and poets and were regarded as the custodians of the oral tradition (Laye, 1953).³ Already within the family he had been identified as his grandfather’s — a renowned griot — successor. However, at school no one recognised his talents or status, and being deprived of the ability to communicate this, he became violent. Professor Tobie Nathan spoke to the child explaining that “one does not beat the drum in the water”. Moussa changed schools. His social workers informed his teachers of these issues and Moussa has not reappeared in court. One can legitimately hypothesize that without the particular talk that he had, and without the recognition of his nature, he may have continued to commit violent acts even to the point of being excluded from the education system. Obviously, not all cases that had been directed to a consultation with an ethnopsychiatrist were that simple to treat, however, these sessions provide them with dignity and carry with them at least the recognition of the family’s culture and the difficulties that they may face.

3 “The griot settled in, prepared his kora, which is our harp, and began to sing the praise of my father. For me, these songs were always great moments”.

In most cases we quickly order the involvement of psychologist to better understand the issues that are being faced by the family and to help them on the path to integration with the customs and values of French society. Procedurally we have framed this work as ordering “ethno-clinical mediations”. It is useful to emphasise that even if it is a consultation with an ethnopsychiatrist which led us adopt this new practice, we were working strictly within a judicial frame. This frame, given its strict procedural requirements, and in the respect of individual liberty, has a role in which people can be given a voice, even on subjects that may at one time have been considered incomprehensible or whose evidence was deemed inadmissible by the juvenile judge.

A few years later, though still in the 1990s, at the Juvenile court in Paris, under the aegis of the President Alain Bruel, we also worked with doctoral students from the Laboratory of Judicial Anthropology (*Laboratoire d'Anthropologie Juridique*, LAJP) based at the University of Paris I and directed by Professor Etienne Le Roy, which focused more specifically on the societies of Sub-Saharan Africa. We then set up what we later called hearings “of cultural intermediation” during which a member of LAJP, if possible, of the same ethnicity as the family involved, was included as part of the hearing. It was no longer an issue of directing parents and children to the services of an expert, but rather that expert now participated in the hearing. We therefore developed the status of “cultural intermediary” (Younes and Le Roy, 2002, p. 77).⁴ In other words, it was the task of the cultural intermediary to act as a bridge between “the legal world of the French judge and that of the litigant whose culture is not western, through the perspective of the anthropology of law where “law is given form through various struggles and the consensus that results from those struggles”) (Alliot, 2003, p. 282). The work of the cultural intermediary is to focus on the fact that “every meeting of cultures presupposes not only the work of translation but also of discovery and of the transposition of contested differences through a common experience that anthropologists of law call ‘dialogie’” (Le Roy, 2006, footnote 2). The meeting with and acceptance of “the other” necessitates a negotiation that is both precise and difficult, to avoid the malaise that may emerge from multicultural societies” (Loteteka-Kalala and de Maximy, 2010).

4 The term “cultural intermediation” (intermédiation culturelle) was developed by professor Etienne Le Roy.

Hearings of Cultural Intermediation

This aspect is particularly important because these hearings may bring up certain cultural concepts that are foreign to Western culture; one example is the case of witchcraft, which is widespread in Africa and is often invoked as the primary cause of an individual's or a family's woes. Therefore, two key principles must be respected during a cultural intermediation hearing:

- The session cannot be held without first announcing it by the judge to the family at the preliminary hearing and obtaining the agreement of the parents. At that hearing, it is explained to them that the magistrate wishes to understand their comprehension of the situation, to understand them and, from their perspective, understand which outcome is envisaged and in what context. It is explained that the presence of an individual from their cultural background may not only be useful for the judge, but may also be useful to them as well.
- On the part of the Cultural Intermediator they must guarantee that they will work in a responsible manner that is also ethically sound. It is for this reason that they require a university diploma, and where possible to have completed some preliminary training in the office of a juvenile judge.

Other than the intermediations carried out by PhD candidates who have completed a course that we facilitate and the preliminary training, we have put together a think tank which includes Professor Etienne Le Roy, the director of the LAJP and the intermediators in one part, along with judges who are interested in these experiences.

Legal Reference Texts

In the context of the guidance that is provided, as in every civil proceeding, the juvenile judge could indeed use the expertise of a researcher of the social sciences, referred to as “a cultural intermediary of the justice system” (*Code de procédure civile*, Arts. 232, 256 and 1200). The Juvenile Judge, as part of the measures for the protection of the child, may instruct a cultural intermediary to provide assistance and counsel to the family

de civil, Art. 375-2).⁵ However this decision will be made in conjunction with child welfare services who are responsible for carrying out the measures for the protection of the child in question and for the protection of children in general.

Currently the educational services, or the ASE, may approach the juvenile judge for a ruling of cultural intermediation or may even deal with the intermediary directly to help provide them with some clarification. In this case, one may lament the absence of the formal agreement of the family, however the initial meeting in the judge's office allows structure to be given to the work that the cultural intermediary does with the family and the educational services.

The Progress of Cultural Intermediation Hearings

When these forms of hearings are proposed to a family, it is made clear that both parents and the children must participate, with the intention of ensuring the involvement of parents who are used not to come to the hearing. In general this order is respected, even to the point at which the presence of another member of the family or of the group will be accepted. On day of the hearing, everyone introduces themselves, and especially the cultural intermediary. It is made clear to participants that they are welcome to use their mother tongue, even if they understand and speak French perfectly, which is often the case. It is not uncommon for the meeting to begin in French and to continue quite fluidly in their language of origin when more intimate questions regarding history or family life are asked.

Many questions are asked throughout the course of these long hearings (which last on average two hours). Where does the family come from? To which ethnicity or ethnicities do the parents belong? Do the couples have kinship links to one another? How were they married? What is the social status of their own families? What did their fathers and grandfathers do? When and why did they arrive in France? Even more questions emerge throughout the course of these discussions.

5 Anytime it is possible, the child should remain in their current context. In this case the judge directs either a suitably qualified person or a service that provides observation, education or re-education in an open environment. They are given the role of providing assistance and advice to the family to help overcome the material or moral difficulties that they are facing. This person or service is responsible for following the development of the child and to report back to the judge periodically.

It is often noticed that the children may not know the history of their family. They may, for example, learn that their grandfather was the chief of a village and had considerable authority. One may imagine the impact that such a revelation may have on a child whose father is unemployed and may seem of little worth. The educational work with the adolescent may present the emergence of an identity other than the territorial. They will no longer say that “I am from north Bondy” but rather that they are the “son of X, the grandson of Y, who was the head of the village of Z”. The circumstances of their parents’ departure and arrival in France may suggest a reason for the family’s ill-being situation, as the child had revealed. It may be the case that the departure was brought about by a marriage that was contrary to local customs or where the families of the couple are part of an unresolvable conflict. Sometimes the reasons that emerge would never have done so without the active presence of the cultural intermediary, such as an accusation or fear of witchcraft. Indeed sorcery is central to explaining the traditional world in Africa, with important nuances within the various ethnic groups, however these considerations would not have emerged of their own accord in front of the French judge, if the judge hadn’t first introduced to the hearing someone who could comprehend these issues and make comprehensible. In this way, those involved respect the secularism of French justice that the judge makes reference to through his respect for the beliefs of the parents. The question then asked is that of possible care, knowing that the child, born or raised in France, rejects the interpretation given by the parents to their problems, or to the teenager problematic conduct. The educator’s presence at the hearing is therefore very useful. The questions raised are frequently anthropological : who is in a position of parental authority? Who is the mother? What is the role of the eldest child? etc.

Often it is appropriate to allow the cultural intermediary to follow the family for three to six months and to provide a report to the judge outlining their intervention. This task, based on an exchange, may in certain cases trigger a rehabilitation of the relations within the family, and help each member find their right place, as can be seen in the example which follows. As explained by Ms J. Loteteka, a cultural intermediary:

“Outside the judge’s office, the task of a cultural intermediary assisting a family is completed alone or through some form of collaboration with guidance teams who are responsible for implementing the measures for the protection of the child and to whom the child has been entrusted. These teams are often composed of educators, social workers and a

hologist attached to the educational service. Their work consists of providing assistance and advice to the family as per the terms outlined in article 375-2 of the civil code. Each of these measures, the guidance and the cultural intermediation, produce a report which will be given to the juvenile judge to help them comprehend the situation of the child and their actions in the familial context. This collaboration between the cultural intermediary and the social worker guarantees the specific goals will be met: it allows the child to be socialised despite the complexity of their status within the family and the family's heritage.”

Here one must make a judicial clarification: cultural intermediation is different from mediation. While both are means to resolve conflicts, they need to be distinguished from one another: mediation involves the engagement of a third party which is neutral in order to help shape a solution that is amenable to and developed by both parties. The cultural intermediary is mandated by the judge and not by the parties themselves. In that sense they represent a judicial institution. Solutions aren't reached with the family, but rather they provide a mutual understanding of both the family's context and workings for the judge, as well as an understanding of the role of the judge by the family.

It is now useful to question the importance and the procedural nature of the judicial context. The mandatory nature, the rituals, the confidentiality within the judge's office among others, allow those who are exposed to them the opportunity to explain aspects of the case that may not have emerged in a less limited context. Furthermore, juvenile justice intervenes in questions of belonging and affiliation and works to establish relations that have been lost or disrupted. The aims of these processes are therefore to allow minors and their families to settle in France, and in doing so to adopt the key foundational principles of the society, notably those which help maintain public order, while still recognising their differences and the modes of thought and organisation of their places of origin. Here we can reiterate the conclusion of Denis Salas, a Lecturer at the French National School of the Judiciary, to whom cultural intermediation is “completely balanced between the need for the recognition of difference and integration” (Maximy *et al* , 2000).

Here there is one example of the measures for the protection of the child which is particularly illuminating:

Laura or “the Child of Lineage”

A case was opened after eleven-year-old Laura⁶ ran away and sought refuge at the home of a friend complaining of violence regularly inflicted on her by her mother. Laura was then assigned to a children’s home by those prosecuting the case, where she wrote a letter to the juvenile judge exposing her shame in having left her home and having “betrayed her mother”, while at the same time reinforcing her decision not to return to live with her, who she also depicted as lacking emotion. A few days following her admission to the children’s home she made known to the judge that she had arrived in France at the age of five and half, and that she has never been understood by her mother. In Africa, she had been raised by her aunts and had only seen her father once. She reiterated her demand to continue residing in the children’s home.

At the same time Mrs F., her mother, refused a meeting between her and her daughter in the office of the judge who later ordered that Laura continued to reside at the children’s home, at least to the end of the vacation that had been organised by the home. Three days later the mother was seen alone by the judge, as the daughter had left on holiday.

She was very emotional, and she started with the following affirmation: “she’s my daughter and I love her a lot; maybe too much”. She explained that she had arrived in France to study when Laura was three years old. She had another daughter who was very young, the product of a marriage with a man that wasn’t Laura’s father, with whom she was involved with only very briefly. Laura gets on well with her, but Mrs F. believed that she was jealous of her little sister. She asked for the child to be allowed to return home.

The first report from the children’s home, compiled for the hearing between mother and daughter that was to occur in 15 days’ time, highlighted that Laura had settled in well to the children’s home, and that her behaviour had been both positive and resolute. With regards to the relationship between mother and daughter, Laura continued to refuse any possibility of returning to her mother’s home, and was very critical of her during the interviews organised by the home despite the mother’s claims of affection.

6 In respect of the privacy of those involved, the names, dates and specific geographic origins of these individuals have been modified.

The most unexpected revelation was made to the social workers by Laura, who explained that her mother was in reality her aunt and her real mother had stayed in Africa. It was with her permission that Laura had arrived under this identity so that she could benefit from an education that her mother could not have provided for her back in Africa. Laura refused to discuss this in front of Mrs F. The juvenile judge raised this question during the hearing in the knowledge that the legal setting was private enough to be able to address an issue as sensitive as descent and the secrets which often surround it.

Mrs F. recognised without reticence this change in Laura's civil status, but explained that she had come to the aid of her sister who could no longer look after her daughter and that she had entrusted Laura to her so that she could complete her education in France. When Mrs F. had arrived in France it had been her father who was responsible for Laura, as Laura's own father had abandoned both mother and child. She emphasised that Laura still had a relationship with her mother via telephone, and that they met up when they visited Africa. When their relationship started to deteriorate she suggested that the girl return to live with her mother, but Laura refused, as did her mother.

Here we quite clearly find ourselves within the realm of the cultural. The locations and roles at the heart of the family are not the same in the culture of origin as they are in the host country. The judge, due to her knowledge of ethnopsychology, knew that the title of "mother" did not have the same meaning in France as it did in Africa, which is more extensive. She also knew that her words would not have the same effectiveness as those of an anthropologist of law, with a similar cultural background, a PhD candidate from the University of Paris I, and with exceptional knowledge of French culture. Laura was already integrated within French society, reasoning according to the customs and laws of her host country, but she still felt that she did not fit in, including with her classmates.

It is in this context that a cultural intermediation hearing was suggested to the family and they quickly accepted. This hearing included Ms L. a cultural intermediary, Mrs F., her husband, Laura, and social workers from social services and from the children's home.

Once the initial introductions had been completed, the judge brought up the issue of descent. Ms L. who had already familiarised herself with the case file, highlighted the principles of customary law: "When two sisters live with their parents, the child

of either of them becomes the child of the grandparents. All the children share that same status. If one of the sisters wishes to leave they may take one of the children. The mother and her sisters are all considered mothers, and they are all called “mother” followed by their first name. Ms L. continued by addressing the question of the travel from one country to another. She explained that in Africa, children do not ask questions, and the same is the case when they arrive in France. Furthermore, she highlighted, that in this case it is dangerous to use the title of “aunt” as it highlights the separation and attracts witchcraft.

Mrs F. explained that she had described her current difficulties to her family that stayed in Africa and Laura’s mother replied that she wanted the girl to stay where she was, a wish that she had also shared with Laura. Her mother had once again reiterated to Laura that she was Mrs F.’s daughter. During the hearing it was possible to explain to Laura, that far from being an act of transgression, her Aunt had only respected a law of their culture, which also showed her maternal love for the child. The child was able to both respect her belonging to her culture of origin, while at the same time being able to settle in France as she wished, and had already begun to do. Ms L. had played the role of “ferryman”: between the judge and the family, and between the society of origin and French society. The juvenile judge had decided to continue the intervention of Ms L. in the form of family interviews and co-operation with social services. Laura’s placement in the children’s home ended the following week. Measures to ensure the safety of the child had been put in place, but only lasted a few months, as the situation no longer needed any further assistance, and there was no further danger. Ms L. described her work which provided clarifications regarding the situation.

In her report Ms L. described the anthropological and cultural context of the family as well as her activities:

Interviews

“In our first interviews with the young girl, different explanations of the history of the maternal side of Laura’s family challenged us: for her, the reason for her arrival in France was to take her away from her biological father. Laura claimed to know her father who lived in a different African country to her mother. He was married with three other children and was of Muslim faith which explained the existence of differences between her father and her mother who was in fact Christian. In simple terms, the family of the young girl wanted her to be raised in a Christian environment. Laura explained that her

mother preferred to entrust her to her sister, rather than to see her leave with her father. Laura wanted also to be able to maintain contact with him via telephone. He used to call her every year on her birthday. He even demanded that she spend her holidays with him, an offer which the young girl refused due to the fear that in living with her father she would become Muslim and would be forced into marriage.

An Anthropological Analysis of the Situation

The analysis of Laura's case shows to us how "kinship is given as something that seems to come from our biological foundations, which isn't the case [...] it is rather social rules which define the belonging of an individual to a group" (Héritier, 1996). Firstly, the interviews with Laura led us to believe that she had accepted to be under the authority of her aunt, but she claimed to feel lost within her family history. Mrs F., despite her genuine desire to provide her niece with a good life, seemed to have some difficulties in doing so. Her professional activities in Africa had not allowed her to fulfil her duties towards the young girl. Secondly, we note that her belonging to a matrilineal ethnic group helps explain why Laura was being raised by her aunt.⁷ We have learnt that the ethnic group of the young girl's maternal branch is very Christian, and that the complexity of the kinship system of this group is centred around a system of organisation where matrilineal descent is fundamental (Bonte and Izard, 2000).⁸ We also learnt that the inclusion of each individual in the lineage is via the mother.⁹ The place of the mother is therefore primordial, it's her who makes the decisions, is responsible for the family as well as the education of the children. This

7 Ethnic group: in current academic usage, the term "ethnicity" designates a linguistic, cultural and, at a particular scale, territorial group; the term "tribe" is reserved for smaller groupings. The category of "ethnic group" is a more recent example and it specifically designates a cultural minority.

8 Kinship systems: Kinship is not simply an expression of "natural" links. It is integrated within a system that is, in the first instance, related to action (defining the rules of conduct) and to thought (defining conceptual structures), kinship above all represents a cultural reality, responding to these correct determinations. One must therefore comprehend that relations of kinship can be approached from a number of diverse angles: emotional, normative, symbolic, strategic, etc.

9 Lineage: a group of kinship that is unilineal, so that the members claim either one's paternal line (patrilineal) or their maternal line (matrilineal) in terms of a known common ancestry. The members of this line are able to compile genealogical relations that link different individuals but that also lead back to the founders of the line. In the sense that it provides a form of social unity, the lineage combines residence (patrilocal or matrilocal), kinship (patrilineal or matrilineal), the principles of authority (organisation by age, sex, birth right etc.) and patrimony (heritage and lines of succession). Multiple lineages form a village.

family organisation also has a system of classification of kinship, where the duties of the mother are also undertaken by her sisters.

Understanding the Status of Laura's Mother and Aunt in light of their Lineage

Kinship in Africa is a set of links that unite groups of people either genetically (kinship, descent) or through will (alliances, blood pacts). The qualification of who is a parent is therefore essentially relative. Lineage is established through systems of kinship. It can be matrilineal, that is to say that children belong to their maternal line, and in this case paternal authority may come from a maternal uncle, who is therefore natural to consider as a father, in the general sense of that term. When kinship is patrilineal, that is to say that children belong to the paternal line, the father is in the position of authority. In western societies, kinship is neither patrilineal or matrilineal, it is undifferentiated, which means that grandparents all share the same title of grandparent for children.

There are two types of nomenclature in the system of naming parents (Mendras, 1989, p. 147): in the West, the naming practices of kinship are descriptive. One uses particular words which describes the situation and the position of the individual. The word "mother" defines a person who gave birth to the child and no one else. In the same manner, the sisters of one's mother or father are all aunts. They are, according to the child, in the same position. However, in Africa, the naming practices of kinship are classificatory. In a system which is classificatory, people are classed by the same name even when they are not in the same position. The mother and her sisters are all considered mothers for the child, and the child treats them in the same way and calls them all "mother".

It is in this way that we can also understand why Mrs F. presents herself as Laura's mother, having the same title as her sister, the biological mother of the young girl. These two individuals occupy symmetrical positions with regard to the child. In this group, each has a particular role with regards to their lineage. For Mrs F., that is of "Laura's second mother". The objective of the work of the cultural intermediary is to bring Mrs

F. to a point where she can use words to describe her role of mother and aunt. This situation was obvious to her, but not for Laura. It is also the task of the cultural intermediary to help Mrs F. and young Laura to understand the young girl's place in France and with her two parents who still live in Africa, but also the structure

of the family in France. Ms L. described a telephone interview between Mrs F. and Laura's father. He demanded to have her visit for the summer holidays. Mrs F. said to Ms L. that she wasn't opposed to such an idea if Laura agreed, but that she would accompany her as she was suspicious of the father's real intentions. In this way, the cultural intermediary, under the terms of her role concluded: "The work of cultural explanations in the context of this family, and putting their family history into words, seems to have permitted Laura to better understand her position among her family. There have been no further difficulties, with regards to the question of Laura's position within the family and their relationship with one another. She doesn't seem to be in any danger".

Similarly, the social workers underlined that Laura had seemed to have "regained trust in her mother, and that they have returned her to the role of a child of her age". In allowing her to once again recognise her aunt as her mother without the conflicting loyalties between these two cultures, cultural intermediation has also allowed Laura to recognise the legitimacy of Mrs F.'s parental authority. A long and without a doubt difficult placement of the child in another environment was also avoided.

The Intercultural in Criminal Cases

Once we had discovered and experimented with these tools, it became obvious that they may have applications in other processes. The required investment of time and the considerable financial costs has not allowed us to do so all that frequently, however this has proved to be very useful in cases where specific cultural references are made or that the progress of the file or the process has been blocked by withdrawal or incomprehension of the person being pursued.

When I subsequently changed my role and became an instructing judge in 1997, I had ordered ethnopsychiatric expertises. Furthermore, other instructing judges also used these services. They proved most useful at the moment of judgement, which is something that I was able to verify later when I became president of the criminal court (*cour d'assises*) in 2008. It is true to say that in the majority of case files there were no ethnopsychiatrical or ethnopsychological expertises. So, when this seemed necessary to me, I ordered such an expertise a few weeks before the hearing. As defined by Sandrine Dekens, a clinical psychologist, and expert to the International Criminal Court at The Hague:

“Clinical ethnopsychiatry centres the culture of the person as constitutive of their psychological functioning. As everyone has a culture, there is no real cultural specificity. Ethnopsychiatry is a clinical approach that can be used on all people regardless of their cultural origins, whether French, European, African or Asian... It means not thinking of the person as an individual, but rather as someone who belongs to a cultural social group, shaped by their milieu and the collective history that they have gone through. It is a psychology that leads to an archaeology of the self, as one’s psychological functioning carries with it traces of their emotional, cultural, political and historical attachments. A person is made by a singular cultural world, which are not reducible as “the same”, but are objects in themselves: languages, systems of kinship and alliances, judicial systems, values, a body of techniques and habits that govern daily life, the education of children, what constitutes normal and abnormal...”

To better illustrate these practices of ethnopsychiatry in the context of criminal matters, I will give the example of two cases which were heard in the *cour d’assises* where it provided a more in depth understanding of these cultural elements, allowed a greater freedom of speech for the accused, and enabled the debate to get closer to the truth of the matter.

The first case we will consider involves a Mrs L. who is of Sub Saharan African origin, who was before the court for having struck and injured her four-year-old daughter, occasioning her death. Through the examination of the case files, the fact emerged that one of her very old friends, also African, had convinced her that her daughter had been bewitched and wanted to kill her. It was therefore necessary to remove the dangerous forces that were living inside her, but in doing so she exercised such violence that the child was killed. I had ordered an expert report when I learned about this case, two months before the hearing. It seemed necessary to me to address this question of witchcraft in the court and in front of the jurors, not to excuse the crime, but to better understand the circumstances under which it occurred.

At the hearing, the accused continually referred to her grief in having killed her daughter. For her, her life was now worthless, and prison was her only future. At the hearing, the quality of the testimony of her “friend” was such that it showed that she had the accused under her influence. Still, it remained, at least in the psychological

sense of the term, that she was criminally responsible, and not subject to any mental incapacities. If we consider this from a point of view that is more psychoanalytical, as most French experts would generally do, one might also perceive issues within the mother-daughter relationship.

But these two different readings of the situation, allowed the accused's story to be more fully heard, and also for her to better understand her own responsibility, which she continually highlighted during the hearing. At the trial she had been strongly condemned, but she had explained to her lawyer that it was important for her that she could express herself freely without fear of the incomprehension and contempt from the court and the jurors. With regards to the jurors, the testimony of the ethnopsychological expert allowed them to overcome or even dismiss their prejudices and also draw conclusions on the case in the calmest way possible.

The second case concerned a young Chinese woman who was accused of having occasioned the death of a six-month old baby that she had been minding, by violently shaking him. Throughout the process she had continually modified her version of the events and in the end she denied the fact that the shaking had been violent. In reading the case files, it was not possible to understand the way of life of this woman and her family (she was the mother of three children) as well as her mental state. She had barely said anything during the assessments of the usual experts and the expert psychologist had concluded that she had been unable to complete her evaluation. I had therefore ordered an ethnopsychological expert to consider the case some time prior to the hearing. In the initially meeting with the expert, Mrs J. was very cooperative and had an almost therapeutic connection with the expert who was from a western cultural background, but has been trained in ethnopsychological methods. Her way of addressing the various problems and the interest given to her culture, had allowed Mrs J. to truly cooperate as per the method that had been described by Georges Devereaux to whom we can attribute the birth of ethnopsychiatry (Devereux, 1951). She had listened to Mrs J. with the assistance of an interpreter which she had employed not only for the translation of the language, but also as "a cultural mediator able to explain Chinese socio-cultural elements".

The expert had described the poor rural upbringing of Mrs J. who, despite having her education interrupted at a young age, managed to continue her learning independently and spoke Mandarin in a way that gave little indication of her social class. She started

working very early, but described an affectionate family environment. She met the man who was to be her husband at the age of 18, and despite being Buddhist, she converted to his religion of Protestantism. She gave birth to a little girl, but it was required by Mr J. that they have a son, which his brother and sister had not been able to achieve. The Chinese political system of only one child necessitated that they leave the country in order to have another child. Mrs J. explained how she had left her family including her child, and that she had cried a great deal.

Two years following her arrival in France, she had given birth to another girl, to which they gave a French first name that was of Christian origin. Eleven months after that they gave birth to a boy named Christian. Once they were able to leave Mr J.'s sister's apartment, they had their eldest daughter brought to them and had her baptised again, this time with a French first name that was similar to the others. Living in an apartment of 20m² she sought to improve the family's life by minding the children of other Chinese families. It is under these circumstances that the parents of the child who was killed came to put their infant in her care. This couple lived in the same precarious conditions as Mrs J., and quickly formed the habit of leaving their child with her day and night including when he was sick. As a result Mrs J. was given heavy responsibilities, made worse by the fact that in China, if you are responsible for minding a child, they must prosper (this clarification was given by the expert during the course of the hearing). Throughout the course of the expert analysis across two long sessions, Mrs J. was highly emotional, showed a great deal of guilt as well as symptoms of Post-Traumatic Stress Disorder.

Regarding the situation, she had spoken to the expert of the shaking that had occurred following a malaise of the child, but at the same time expressed both significant guilt and the incomprehension of her actions. One can assume that it was being listened to empathetically by an expert who was not researching the truth of the facts, but who was describing with precision the customs and conceptions of Mrs J.'s society of origin, as well as the manifestations of her emotional suffering, which had provoked Mrs J.'s confession during the course of which she could not stop crying. Collapsing, she recalled having forcefully shaken the baby which would not eat, as a result of which she risked failing in the eyes of the parents, as well as in her own eyes, if the child didn't grow or worse, lost weight.

This confession, uncalculated and born of emotions, as well as her taking of responsibility for these actions, had certainly brought about a sentence that was more lenient than if she had continued to deny what she had done.

Justice humanizes by the stories of those who have committed acts that could be considered monstrous. In order to bring about these speeches, one must search the depths of the particular individual, which may necessitate the consideration of their culture of origin.

Whilst maintaining an awareness of the complexity of the question of cultures, over the last few years, The National School for Judges has been making future judges aware of these issues during the course of their initial training. In the context of ongoing development, I lead and contribute to training sessions on this topic. Judges have shown themselves to be very interested in cultural intermediation and ethnopsychological expertise. However, the resources required for their use, exist unevenly across the country.

In conclusion, these procedures could very easily be considered within the reflections and research that emerged from North America, which are currently being carried out in France on the concept and the practice of therapeutic jurisprudence.

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