

JUDGES, THE LAW AND SOCIETY

By Claude MONIQUET, President of ESISC

No-one will deny that the security situation in France is not all it should be. Day after day, aggression and damage are carried out, as entire neighbourhoods become virtual outlaw zones, handed over to organised gangs carrying out all forms of trafficking, and where honest citizens – who essentially have the right to pay their taxes and shut up – aren't leave the house after nightfall. Better yet, or worse if you prefer, the same honest citizen can often count himself lucky if he doesn't wake up in the morning to find his car burned out. If it is, he can console himself with the sound of some politician (as they did in November 2005 on the day after those unforgettable riots) that the situation has "returned to normal" since "only a hundred cars were burned in the night".

And the honest citizen, who has made the mistake of living in what are called, with all available political correctness, the "estate" for fear of attaching the least sort of negative epithet, is in general someone of modest means, so of little interest to the right-thinking Left who prefer to build new worlds in St. Germain, and of equally little interest to the bourgeois, comfortably-off Right.

By pure chance – if indeed Chance exists in politics, at only eight months from the presidential elections – two political notables of the first rank, both from democratic movements – Nicolas Sarkozy on the Right and Ségolène Royal from the Left, have made mention of this reality (it is not a "feeling") of insecurity such as it is experienced by too many French people. They both were attacked for their comments, Mme. Royal within her own party, and Mr. Sarkozy was the victim at the same time of the brickbats of his party and the corporatist complaints of the magistrature.

All this for having stated, several days ago: "I'd like someone to explain to me how we prevent a criminal from offending again if we don't have the courage to put him in prison". Sarkozy was even accused of an assault on the sacrosanct "independence of magistrates". But what are they going on about?

There are in France three powers: the legislature, the executive and the judiciary. That much is clear. The constitution requires the first two of those to give an account of themselves – before the voters for elected members, and before Parliament for the executive. It also allows for judges, the third power, to prosecute members of the first two powers. Fortunately so, for this power of Justice to demand a reckoning whoever you may be (except, apparently, the President of the Republic, but enough said about that) is precisely the difference between democracy and dictatorship.

But does that mean that the judge who applies the law – and who often in fact makes the law – must be above all criticism, and the justice system must be the only power to govern itself, to escape all form of external audit, and to decide for itself what sanctions – if any – can be applied to its own members? As far as we know, France being a secular republic and not some kind of caliphate, laws are not administered in the name of God, nor do they derive from the Deity. The judge does not judge, and does not punish, in his own name or according to his own desire.

Justice, in France, is handed down "in the name of the French people". Now, whether it pleases the judicial corporatists or not, the "French people" have had enough of the state of affairs we mention above. Doubtless they are not seeking a "more repressive" justice system, but one that is faster and more effective, giving better protection to the weak and the victim. If they ignore that fact, out of corporatism, out of intellectual conviction or out of ideology, the judges will be forgetting where their terrible power comes from, and paving the way for extremism.