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Fabien JOBARD

Sophie NEVANEN

COLOUR-TAINTED SENTENCING?

Racial Discrimination in Court Sentences Concerning Offences Committed against Police Officers (1965-2005)*

ABSTRACT

Research in France on possible prejudice on the part of the police or criminal court is scarce, surprisingly scarce given the explosive nature of the question that the November 2005 riots recently illustrated. The present research is an analysis of discrimination founded on the defendants' origins in criminal and civil affairs, taking as base all those defendants tried for offences against police officers by a Paris-area criminal court between 1965 and 2005. The defendants in the "North African" group and the "Black" group (defined on the basis of their birthplace and surname) are roughly twice as likely as the "European" group of defendants to be imprisoned; they are sentenced to longer prison terms, and run a greater risk of having the police officer involved sue for damages. Multivariate analysis, however, indicates that the court's discriminatory decisions can be attributed to technical and procedural factors alone that launch court machinery into over-penalization of its "regular customers" among which the two groups mentioned above are overrepresented. This does not seem to be the case, however when it comes to the police officer's individual decision as to whether or not to press charges for damages.

* Our most sincere thanks to the President of the *tribunal de grande instance* as well as to its Prosecutor for having welcomed our project and for facilitating data collection. Bruno Aubusson de Cavarlay, Hugues Lagrange and our CESDIP colleagues, as well as anonymous referees from the *RFS* editorial board, have given

vital assistance. We also thank John Atherton for the translation, and Renée Zauberger for her intense work on revising it.

Is Justice impartial? Does Justice, in keeping with the alleged virtues of its iconography, render decisions blindfolded without regard to class, age or origin? As far as origins are concerned, data derived from the census statistics compiled by the INSEE (*Institut National de la Statistique et des Études Économiques*/National Institute for Statistical and Economic Studies), from police crime rates and from the *Annuaire statistique de la justice* provide a clearly negative reply. In 2003 foreigners represented less than 6% of the French population, but 20% of those arrested by the police, 14% of those condemned and 31% of those imprisoned in the course of the year.

But it is a long way from this juxtaposition of data derived from a variety of sources to evidence of discrimination at the various stages of the penal process – as is immediately apparent in the discrepancy between the proportion of foreigners arrested by the police or the gendarmerie, and the proportion of foreigners actually convicted by the courts. On one hand administrative data do not furnish any means of assessing the attitude of the police and the courts with respect to the population of foreign origin, those that in Canada are given the more explicit appellation “visible minorities”¹; it is only through the data provided by surveys that this difficulty can be overcome.² On the other hand, no information is provided regarding the mechanisms that give rise to the differences in treatment at each stage of the penal process, nor on possible aggregate effects that the opposition French/foreigner or immigrant/non-immigrant might well conceal. It is thus essential to submit the collected data to a whole series of cross-tabulations in order to determine “all else being equal” what being classified under the heading 'foreigner' or 'immigrant' involves in terms of detrimental justice practices, and thus what is discriminatory.

¹ On the difficulty inherent in naming and the ensuing consequences in France, see contributions by Didier Fassin and Gérard Noiriel in Fassin and Fassin (2006).

² On the discrepancies between survey data and administrative data in assessing court and police activity see Robert, Zauberman, Pottier and Lagrange (1999) as well as Zauberman and Robert (2004).

With this double perspective in mind we investigated a particular set of offences, the IPDAPs (*Infractions à Personnes Dépositaires de l'Autorité Publique*/Offences against Persons Invested with Public Authority), known formerly (before 1993) by the less pompous term of “offences against police officers”. By nature these are the sole offences of which the police officers who report them are the very ones who claim to be the victims. The initial hypothesis was that this type of offence, more than any other, would provide evidence of discrimination throughout the penal process by the courts and by the police who feed them the cases³. We therefore collected a sampling of decisions handed down in IPDAP affairs between 1965 and 2005 by a criminal court (*Tribunal de Grande Instance*/ First Instance Jurisdiction) situated in one of the outlying Paris *banlieue*. The site was chosen so as to complement an ethnographic study, still underway, on the collective protests held in large-scale housing units in one of the communes within the court’s jurisdiction (Jobard, 2004, Jobard and Linhardt, 2008)⁴ – protests that were for the most part mounted by the police’s “regular customers”, which is to say young men mostly issued from North African immigration⁵. One of the incentives for this mobilization was to protest the charges of “contempt” or “obstruction” filed against them, charges that were denounced as the symbol of

³ The extent to which the reporting of these offences was up to the police officers themselves was revealed by Frédéric Ocqueteau’s study (2005) which showed how in 2001 the latter, by way of protest against the adoption of the June 10th 2000 Act that hampered their investigatory work by adding supplementary red tape, re-categorized a substantial number of cases of insult as insult-plus-rebellion so as to “force” the state prosecutor’s office to follow up on their dossiers. See also Jobard (2002, p. 151) on the police use of obstruction charge as a “front” for police abuse of force.

⁴ This qualitative study concerned the protests against police violence, particularly fierce in 1993, 1997 and 2002. Above and beyond the issue treated here (discrimination in court and police decisions) the assembled data was intended to contribute to an historical inquiry into the breakdown of routine that the years of heightened conflict with the police had brought about. That is why data collection has been longitudinal, a choice which entailed a number of problems when it came to their statistical processing (on this, see Annex).

⁵ The population of the district concerned by the qualitative survey almost doubled between the 1968 and 1975 censuses, due to the arrival of Algerian and Moroccan workers whose children are the protestors of today.

police discretion (evidenced by the decision to arrest) and of the unfairness of the courts (evidenced by the harshness of the sentences). The aim of this article is then, concentrating on this controversial type of offence, to determine how discrimination is produced.

Criminal Justice and Discrimination: A Brief Review of French Research

Quantitative data on issues of discrimination in the criminal justice system is scant in France, astonishingly scant, not only in comparison with the abundance of Anglo-American studies on the issue of discrimination in sentencing (for Great Britain, see Hood, 1992), but above all given the intensity of public debate on the question in France. The major obstacle is to be sure that the French public statistics do not collect any indicator pertaining to the national origin or ‘race’ of individuals, the only legal distinction being between ‘French nationals’ and ‘foreigners’ (see *Pénombre*, 2002, pp. 14-20).

Yet the innovative work of a Princeton University researcher has already furnished us with a first approximation that is, to put it mildly, eloquent as to the crucial role of the variable “young man of North African origin” in judicial decisions. Applying a research approach considered as exotic in France – so firm is the belief there in the centralization and the uniformity of judicial policies⁶ – Devah Pager identified a close correlation between the courts in which “severe” decisions were overrepresented (pre-trial detention, judiciary supervision, and prison sentences) and the *départements* (*i.e.* primary local administrative units, of which she studied 96) in which young men of North African origin (*i.e.* North

⁶ This belief, characteristic of French research in general, has ruled out any attempt to correlate differential sentencing by the various courts to other variables. Since criminal law is a state and not a federal competence in the U.S., there is a natural tendency to connect the observed differences with other variables (such as differences in death penalty rates or illiteracy rates, etc.). The first lesson drawn from D. Pager’s study was to bring to light the differences between courts, for example in pre-trial detention (from 19% to 65% of the cases handled), remanding to judicial supervision (4% to 66%) and of course sentencing to prison terms (27% to 66%).

African male minors) were the most numerous (Pager, 2008). No correlation was established with other contextual variables (foreigners, young foreigners, unemployment rates, number of recorded hate crimes, size of the *département* population and above all the total number of recorded offences)⁷ – a fact that served to reinforce the importance of the variable “young North African male”. The research provided only a general framework: it did not go into the mechanisms of the possible case for discrimination nor, in consequence, did it specify at what procedural stages decisions could be taken leading to discrimination; nor did it provide information on the reasons for the variations given the absence of any indication as to what type of offence was being tried and what type of trial was being held for each of the groups concerned, all of which would have required the compilation of extended data on the defendants.

Yet it is precisely the latter type of research that is lacking in France. The investigation recently conducted by the Montpellier CIMADE (*Comité inter-mouvements auprès des évacués* [a French NGO that assists undocumented immigrants]) deserves particular mention in this regard. So as to document instances of discrimination concerning foreigners, 16 volunteer observers compiled 382 court hearing records of the Montpellier TGI between March and June of 2002, for a total of 480 defendants (CIMADE, 2004). Surprisingly enough (either because the association was concentrating on its own concern for those who are not French nationals, or because of unquestioning acceptance of French legal categorizations and their underlying philosophy) this compilation of *observations* (literally speaking) of defendants face to face with their judges was based on a dichotomous classification French/foreigner with no mention of the defendants’ origins – and with no mention even of what one could suppose to be their origins on the basis for instance of the *sound* of their last

⁷ Another outcome was the seemingly close correlation with another variable, that of the *département*’s social welfare expenditures, which would appear to suggest that punitive policy evolved in inverse ratio to social policy.

name that was pronounced in the course of the trial. At any rate there was no doubt as to the overrepresentation of foreigners in criminal court hearings (one out of four cases with in addition an overrepresentation of illegal aliens), which did not appear to be due to the type of offence committed. Yet 30% of the French that were tried were given a prison sentence compared to 43% of foreigners; and this inequality held true as well for defendants with an equivalent criminal status, since 47% of the foreigners with a criminal record were sentenced to prison (as against 35% of the French) as were inversely 38% of foreigners with no criminal history (as against 25% of the French). The investigation took note of the multiplier effect of the “immediate trial procedure”⁸, a form of trial far less respectful of the principles of adversarial debate and of defendants’ rights, which was used in 51% of the cases involving foreigners, compared to 39% for the French. (We will see later, however, that the interpretations drawn from this overrepresentation of foreigners in immediate trials in reality inverted relations of cause and effect). And finally, the CIMADE, although it did not attempt to cross-tabulate the two sets of data, pointed to the overrepresentation in both groups (the French and the foreigner) of the unemployed⁹.

The work of this NGO is all the more precious because of its wide scope and of its exceptional character, as this type of research on foreigners, even if only in passing, is extremely rare in France. In 1972-1973 Nicolas Herpin and his team from Paris VII University observed 350 criminal court trials of the Paris TGI (*i.e.* roughly 450 defendants), categorizing them – taking each type of offence in turn – on the basis of the “success” of

⁸ Immediate trial is defined as follows since the 2002-1138 Acts: “If the maximum term of imprisonment provided for by law is not less than two years, the district prosecutor may, if he considers that the charges brought are sufficient and that the case is ready for trial, bring the defendant immediately before the court where he believes that the facts of the case call for an immediate trial. In the event of a flagrant misdemeanour, if the maximum term of imprisonment provided for by law is not less than six months, the district prosecutor may bring the defendant before the court forthwith, if he believes the facts of the case call for an immediate trial. The defendant is held until his appearance in court, which must take place on the same day. He is brought under escort before the court” (art. 395 Penal Procedure Code).

⁹ For a comparable analysis, conducted on the basis of case studies, see McKillop (1998).

the trial as established by comparison with data on average sentences drawn from the *Statistique annuelle de la justice*. A trial that was “won” was one in which the sentence was inferior to the average; a trial was “lost” when the sentence was superior¹⁰. This ingenious method neutralised the “type of offence” variable, a particularly critical one, as the foreigners observed during the hearings were on the average accused of more serious offences than the French defendants and in that the variable “foreigner” could be combined with other variables resulting in “a young foreign worker” being four times more likely to be held for a serious offence than “a 45 year-old French bourgeois” (Herpin, 1977, p. 94)¹¹. The research team reached two crucial conclusions. When the defendant was a repeat offender, or had a long criminal history, the difference between sentences handed down was minimal. But when neither the French nor the foreign defendant had a criminal record, then the foreigners were more likely to be held in pre-trial detention (two thirds as against one third) and also more likely to “lose” their trial (45% to 32%), since the decision to remand to pre-trial detention always encourages a judge to send the defendant to prison so as not to disavow the earlier decision taken by his fellow investigating magistrate or the Prosecutor’s office (Herpin, 1977, pp. 100-103).

Ten years later at a time when society still remained more concerned by class inequality than by discrimination based on origins, Bruno Aubusson de Cavarlay could draw from his study of 342,000 defendants including 12.7% of foreigners condemned in 1978 by *jugement contradictoire* (a sentence rendered after a trial held in the presence of the parties involved, as opposed to an *in absentia* trial) – a conclusion that left no room for doubt : “Do you want me to put it crudely? Fines are bourgeois or petit-bourgeois; imprisonment is for the sub-proletariat; suspended prison sentences are for the popular classes.” (1985, p. 293).

¹⁰ For a critical assessment see Aubusson de Cavarlay (1987, pp. 41-42).

¹¹ Due to immigration flows, the differences between foreigners and French citizens who were descendants of foreigners was less marked at that time than today; thus it was not necessary to set up a category “foreigners;+ descendants of foreigners”.

Indeed, controlling for offences¹², the unemployed were the only group that was more or less certain to serve a prison sentence; it is this group that provided the courts with their “regular customers”, *i.e.* those whose “status consisted, for a time, of their relation to the criminal justice system” (p. 289). For defendants with the same occupational profile, youth and foreign origin were factors that increased the likelihood of overly severe sentencing (p. 301).

The only in-depth research done – not on “foreigners” but on persons of foreign origin – remains that of René Lévy (1987) on the police squads that handle *flagrant délit* cases (caught-in-the-act cases) in Paris and deal with the selection and orientation of the cases once the arrest has taken place. In going over the contents of the dossiers forwarded to the Public prosecutor’s office (between 1979 and 1981) he employed the same identity categories used by the police: “European profile”, “North African profile”, “African profile” (pp.119-123). An analysis of the 538 court records of people arrested in *flagrant délit* revealed the key influence on the decision to refer the case to the Public prosecutor's Office of the arrestee's “North African” origin (N= 176), as compared to the “European” group (N= 285) but also in comparison with the “Black” group (66). The variable “North African” outperformed all the other variables, including those factors ‘guaranteeing due appearance in court’¹³: among those

¹² Aubusson de Cavarlay’s study also demonstrated that foreigners figure more often as defendants for offences calling for harsher punishment, which suggests (but suggests only – see below) that foreigners are tried for offences that on the average are more “serious” than French citizens. Recent research has attempted to throw some light on this overly simple conclusion. For example Monique Dagnaud and Sebastian Roché (2003) have shown that in the Isère *département* (Grenoble area) the offsprings of immigrant parents are particularly numerous among the minors tried for “serious offences”; two-thirds of the fathers were born outside of France, half of them in the Maghreb. But it seems that the figures vary depending on the location. Hugues Lagrange (2001, pp. 104-110) has studied, once again in the case of minors, regional disparities in the proportion of offenders from various “cultural” background (the term H. Lagrange himself uses). He showed for instance, on the basis of data he himself collected for one locality, an only “modest overrepresentation of 13 to 17 year-olds coming from immigrants families among the repeat offenders” (several arrests in the course of the same year). He also showed that when family and school contexts were roughly similar, the children of immigrants were in no way figured as exceptions in the court statistics.

¹³ Prosecutors and judges mean by this all those elements that raise doubts as to the probability of the person being present for a subsequent hearing or available for the sentence

suspects who could provide little guarantee of their appearance, “North Africans” were “somewhat more frequently brought to court than the others”. And R. Lévy concluded: “Even if other variables have a perceptible influence on the chances of court referral, they do not substantially modify the ranking of the different ethnic groups, which confirms the autonomous weight of this latter characteristic” (pp. 143-144). Having in addition observed police officers on patrol as they made the arrests, he also remarked on the overrepresentation of “North Africans” at that stage, which led him to conclude: “[...] The ethnic makeup of the group brought to the Public prosecutor is not the same as the ethnic make-up of those initially charged by the police. And likewise the ethnic makeup of the latter group differs from that of the population as a whole. The reason for these differences lies in the police’s selective procedures which operate both during the stage when they intervene to take charge of a situation or a person, and during the stage when the crucial decisions are taken afterwards” (p. 145).

This review of quantitative research on the discrimination within the criminal justice system provides a cluster of symptoms that suggest that the discriminatory mechanisms exist throughout the penal procedure from the police all the way to the judge. These studies also concur in finding that there are a multiplicity of explanatory factors involved (types of offence, types of prosecution, criminal records, types of trial) and in stressing the need to sort them through before introducing ethnic origin variables. It is this work that will now be presented, based on offences against the police officers.

Data

to be carried out. In this context, ties with a foreign country, by reason of birth for instance, can be a determining factor since it is no stretch of the imagination to suspect that the person concerned by a court decision can readily escape the law by taking refuge in his parents’ native country.

We compiled data from 1965 to 2005 on the IPDAPs tried during the months of March, June, August and October by the Paris *banlieue* criminal court that we had selected. An IPDAP consists, according to the current Penal Code, of **insult** (*outrage*, on occasion translated as “contempt”) which “punishes by a six-month prison term and a fine of 7,500 Euros words, gestures or threats [...] addressed to a person holding public authority acting in the discharge or on the occasion of his office and liable to undermine his dignity or the respect owed the office that he holds (art. 433-5, *Code pénal*); **obstruction** defined as “opposing violent resistance to a person holding public authority acting in the discharge of his office for the enforcement of laws, orders from public authorities, judicial decisions or warrants” (art. 433-6, *Code pénal*), which is also punished by six months in prison and a fine of 7,500 Euros. And **assault**: assault on a public officer in no way differs from other “wilful attacks” except that that it always constitutes a *délit*¹⁴, a category of offense always tried before a TGI. On the other hand, serious violence and battery, constituting a *crime*, are always tried by a jury and are thus excluded from our survey.

The definition and scope of these offences have remained constant over time, even if their designation has changed (before the new Penal Code was adopted in 1994 the term was “offences against police officers”). On the other hand the scope of a closely related offence has been considerably widened over the last years, namely that of offences addressed to “persons discharging a public service mission”, a category which has come to include an ever increasing number of persons *ex officio*¹⁵. But these latter offences have not been included in our analysis. Neither have we taken into account the newly defined offences (no doubt trivial) introduced by the March 18th 2003 Act: those referred to in article 59 of the law (“the threat to

¹⁴ The middle category of offences (more serious than *contraventions* and less serious than *crimes*).

¹⁵ In particular since passage of the July 22nd 1996 Act that reinforced repressive measures against terrorism and attacks on those invested with public authority or entrusted with a public service mission.

commit a *crime* or a *délit*” against a person invested etc. – art. 433-3 of the *Code Pénal*) or in article 113 (“publicly insulting the national anthem or the tricolour flag” – art. 433-5-1 of the *Code Pénal*).

Contempt and obstruction call for the same punishment. When the two offences are tried jointly, the sentence cannot exceed that of one offence or the other in application of the principle that penal sentences operate cumulatively, up to the limit of the highest legal maximum (arts. 132-2 to 132-7, *Code Pénal*). To be sure, the crime of assaulting a person invested with public authority calls for harsher sentencing, to be determined by the seriousness of the assault (art. 222, *Code Pénal*).

Our work is based on records of criminal court trials, the so-called *feuilletons* (notice papers) consisting of documents posted in court buildings on the days following the decisions.¹⁶ These documents provided us with a sampling of 1,735 defendants tried in criminal court for offences addressed to persons invested with public authority or those discharging a public service mission (including magistrates). If we retain only the IPDAPs (the first of these categories) we have in hand a set of 1,527 defendants. It was then necessary to limit our analysis to trials for IPDAPs alone, without any accompanying offence, so as to analyse a homogeneous set of infractions; for were we to include cases in which there was more than one offence, it would be most difficult to analyse the resulting sentences, given the fact that they would be merged. The relevant data base for our analysis then came down to 864 defendants tried in criminal court.

¹⁶ The technical appendix explains the changes in the content of those records during the period. As to the status of public officers, a review of the minutes of the year 2002 (which gives the most detailed information) revealed that the majority of those officers were from the national police force (*Police nationale*). Out of the 137 cases for which we have information, one involved a prison guard, four involved gendarmes, and nine municipal police officers. Thus, to simplify, we will in the following pages refer to “police officers” when designating “those invested with public authority”.

In order to investigate possible discriminatory sentencing by the criminal courts, or at least by the TGI concerned, we set up categories in terms of origins and what we could infer from the consonance of last names. At the start we distinguished four groups: the “Europeans”, the “North-African” group, the “African” group and a residual group. The designations of these groups mirror the categories of identification used by the first agents in the penal process, the police, whose criminal reports or photographic identity records are in most instances organized in terms of this tripartite division (“European type”, North African type”, “African type”) on the basis of the physical appearance of persons who are by definition unknown and for whom therefore no civil status data is available. We decided to keep this division into three phenotypic and/or skin-based identity groups used by the police, calling them simply the “European group”, the “North African group”, and the “Black group”. Yet with the difference that our own classifying process relied on a combination of birthplace and onomastic identification. Defendants born in the Maghreb appear in the “North African” group, except for those whose surname and first name are typically Christian French since we had to take into account the high number of “Europeans” there particularly in Algeria¹⁷. Defendants born in sub-Saharan Africa were considered as belonging to the “Black” group as well as those born in France’s overseas territories or *départements*, even if they bore a Christian French name given the naming practices in the former French colonies¹⁸. Moreover defendants with a North African or Berber surname or first name are labelled “North African”¹⁹. The defendants with a sub-Saharan surname or first name come under the heading “Black”²⁰. Subsequently, on the basis of birthplace, we shall fine-tune the make-up of these groups according to the differentiation “born in France/born outside France”. But it

¹⁷ Were Fabien Jobard born in Algeria, he would appear as “European”.

¹⁸ Were Fabien Jobard born in Bamako, he would appear as “Black”.

¹⁹ “Fabien Zerkaoui” or “Elyes Jobard” would belong to the “North African” group (unless they were born in sub-Saharan Africa in which case they would be classed as “Black”).

²⁰ Fabien M’Bokolo would belong to the “Black” group as would Samba Jobard.

must be remembered that the “European” group includes a certain (indeterminate) number of defendants who would belong to the police’s “African type” (on the basis of morphological and/or skin-colour identification) but who come under our heading “European” because they are born in mainland France and bear surnames and first names typical of French Christians²¹. Thus “Black” group membership is underestimated and the “European” group correspondingly overestimated.

Without going any further we can already observe on the basis of this categorization that 62.2% of the defendants for IPDAP belong to the “European” group, 20.1% to the “North African” group and 15.5% to the “Black” group (leaving 2.2% for the residual group)²².

Differences in Exposure to the Criminal Justice System

In dealing with potential indicators of discrimination we had to distinguish between the judge’s rulings and the individual decision taken by the police officers as to whether or not sue for damages.

Sentencing: sentence to an unsuspended prison²³ term or not

Within the selected sample (845 in all)²⁴ the groups were decidedly unequal in terms of sentencing. Only 13.6% of the “European” defendants were imprisoned as against 23.6%

²¹ Thus a Thierry Henry (born in France) would belong to our “European” group.

²² We have placed in this category all those defendants who came from Asia or Turkey.

²³ The reader should remember that in this paper, a sentence to imprisonment always means an unsuspended prison sentence, a specification we shall not systematically repeat, in order to alleviate the text.

²⁴ The 19 defendants of the residual group were eliminated from consideration so as to satisfy the significance criteria (chi2 test). Differences are thus significant at the 0.01 level. In the following pages the significance indicators (chi2 test) will be given as follows: ***significant

of the “North African” group and 25.4% of the “Black” group. In other words, for the same type of offence, somewhat more than ten percent of the “Europeans” were given prison sentences whereas one quarter of the others were... which means that the chances of being imprisoned were almost twice as high for “North African” or “Black” defendants than for the “Europeans.” The primary purpose of this article is to explain this difference²⁵.

This appears to make sense; after all, in public debate, it is imprisonment that is the essential criterion of “tough-minded” justice. Yet this view contrasts with the experience of the individuals actually concerned: in reality prison only marks a significant rupture for those for whom it is not frequent. On the contrary, for the “criminal courts’ regular customers” (Aubusson, 1985), prison becomes something of a routine and it is rather the pecuniary penalty (fines or day-fines), or even probation (with the order to seek medical care and/or a job etc.) that constitute the real burden in that they imply close and continuous control over everyday life by the probation officer. Focusing however on statistically significant results, we can observe that the contribution of the “unsuspended prison term” modality to the chi² is as high as the two-thirds: true discriminatory power lies in this modality of the variable²⁶.

at the 0.01 level ; ** significant at the 0.05 level; * significant at the 0.1 level; n.s. non significant.

²⁵ This difference in the severity of sentencing is to be found as well in the average length of the prison term (n.s.): 14% of those condemned to imprisonment in the “European” group (N=72) got a sentence of less than one month (as against 7% of those imprisoned in the “North African” group (N=41) and 3% of those condemned to imprisonment in the “Black” group (N=34); 36% of those condemned to prison in the “European” group got a month’s sentence (compared to 27% of the imprisoned in the “North African” group); 22% of those condemned to prison in the “European group” got a sentence of two months (compared to 32% of those sent to prison in the “North African” group). In the case of “long-term” sentences (over two months) those condemned in the “European” and “North African” groups were in equal proportion (roughly a third), but the condemned in the “Black” group were overrepresented (44% of them – it is also to them that most of the harshest sentences are handed out: one sentence to 7 months, one to 8 months, one to 18 months; but it should also be said that a defendant from the “North African” group was received a 12 month prison sentence.

²⁶ Crosstabulation of the three groups with the five kinds of sentence (no penalty, unsuspended prison sentence, suspended prison sentence, fine, other sentences) shows that

The police officer's decision: sue for damages... or not

The decision to sue for damages (and thus claim compensation for the alleged personal injury before the criminal court) is, unlike the decision taken by the judge, a personal act: the police officer (as any litigant) can file a civil action suit independently of what the criminal police, the prosecutor or the judge intends to make of the case. We have with this variable – interaction with the police – a key element of the first link of the chain that leads ultimately to the court decision. For even if our study is based on offences against officers invested with public authority, it in fact concerns decisions taken by the courts and not by the police officers themselves. Focusing our analysis on the decision whether or not to claim damages can shed light on the strictly “police” element of the interaction: what are the motivations that lead police officers to file for damages, consequently increasing the pressure on the criminal process, and in addition to claim pecuniary compensation for the alleged injury?

While the police have always had the right to sue in proceedings in which they are opposed to an ordinary person (or a colleague), it is worth noting that the Ethics Code of the French national police (instituted by one of the last decrees issued under a left-wing government on March 18th 1986) included an at first hardly noticed provision that can be seen as motivating the police. Article 12 of the Code reads: “The Minister of the Interior is to defend police officers against threats, violence, abuse, defamation, or contempt of which they are victim in the discharge of their mission or on occasion of their office.” The effect was not immediately apparent (it had to wait on the implementing decrees detailing the procedure for

67.9% of the contribution to the chi2 is provided by the “unsuspended prison sentence” modality (chi2=19.24, ddl=8, p< 0.05).

claiming reimbursement of court expenses), but it was by no means negligible: in IPDAP cases police officers start suing as a matter of course from 1988 on²⁷.

We decided then, in regard to police officers filing suit, to take into account only the sentences handed out after 1986 (N=849). Here again we found significant differences between the various groups. 37.1% of the “European” group were confronted by police officers that filed claims for damages against them, compared to 50.8% of the “North African” group and 45.6% of the “Black” group (***)).

It is this twofold difference (in the proportion of prison sentences received and in the proportion sued) that was to be explained: did the judge, on the one hand, and the police officer on the other, make discriminatory decisions?

The Causes of the Differences

Procedural and non-procedural factors determining the sentences delivered

Research has, for some time now, identified the factors that influence judges’ sentencing (Aubusson de Cavarlay, 1987, 2006; Hood, 1992; Kensey, 2006). They can be classed in two categories: strictly judicial factors, stemming from criminal law itself, and extra-judicial factors. Among the latter figure the employment profile of the defendant and his marital status: judges, well aware of the disastrous effect of prison on defendants who are the breadwinners and jobholders, are reluctant to deliver a verdict of imprisonment in such cases so as not to ruin family and personal standing. We had no information concerning the defendant’s personal status, except for place of birth, which we will return to subsequently. In

²⁷ Therefore, as far as the analysis of the “suing for damages” is concerned, we have taken into account only those years during which police officers resorted to filing civil damages claims, that is from 1986 on.

respect to the judicial factors, several elements were to be considered: the seriousness of the offence, prior condemnation, the type of trial and the defendant's criminal record. While information concerning this latter aspect was sometimes missing, the other three elements always figured in the record.

Seriousness of the offence: while contempt and obstruction and are both punishable, as we have already pointed out, by six month's imprisonment and a fine of 7,500 euros, penalties for assault are far more severe, all the more so when they involve more than a week's work disability. *Prior condemnation:* when a person has already been condemned in the course of the previous five years for the same or a similar offence, the maximum sentence is doubled (*Code pénal*, art. 132-10). It appears that information concerning prior condemnation(s) is not systematically mentioned. Yet this element can be ascertained on the basis of the variable "type of prosecution". From July 1983 on the courts have made use of the *comparution immédiate* trials (*i.e.* 'immediate trials'), which replaced the former *procédure de flagrants délits* (trials for those "caught in the act"). This procedure makes it possible to bring the defendant before the court to be tried within 2 days after his arrest.

It is essential to grasp the distinctions between the various types of trials: *contradictoire* (adversarial – in the presence of the parties involved), *contradictoire à signifier* or *réputé contradictoire* (deemed adversarial where the defendant, although having been summoned, fails to appear), and *par défaut (in absentia)*. The various appellations indicate whether the defendant is present or not at his trial. If he is present, the trial is considered "contradictoire". When the defendant is not present at the hearing, there are two possibilities. In the case of a trial *réputé contradictoire* (*Code pénal*, art. 410) or in more recent terminology: *contradictoire à signifier*, the sentence given is as a rule more severe. A trial held *in absentia* (*Code pénal*, art. 42) allows the defendant to contest, within a specific time

limit, the sentence rendered. If the defendant, having appealed the sentence, is once again absent at the hearing, he is then tried in *itératif défaut* (repeated failure to appear).

We should add to this a factor that is not often taken into account in research devoted to the subject: the presence (or absence) at the hearing of the offended party claiming damages; it can be assumed that when the victim (*i.e.*, the police officer) is present, or at least represented as plaintiff by his lawyer, the judge will be more likely to pronounce a penal sentence.

These were the variables that had to be sorted out. First of all the seriousness of the offence, which had a determining effect on the type of punishment: 10.1% of contempt cases resulted in imprisonment, 18.4% of obstruction cases, 20.6% of contempt-plus-obstruction, and 36.9% of cases of assault (***). In other words the likelihood to be sentenced to prison is 1.8 in cases of obstruction, 2 in cases of contempt-plus-obstruction, and 3.7 in cases of assault against persons invested with public authority (with contempt as reference modality). For minors the situation was no different: in roughly 60% of contempt or obstruction cases they were exempted from penalty, as were 45% of cases of contempt-plus-obstruction and the same proportion of cases involving assault (**).

Whether or not the defendants were repeat offenders also played a determining role. 46.4% of the defendants were sentenced to imprisonment when facing an immediate trial as against 13.2% in “ordinary” trials (***). However most of the time immediate trials were reserved for cases involving assault (48 out of 112) which skews the overall proportions. Yet if, controlling for offences, we compare for immediate trials, the percentages of prison sentences the result is 31.8% for contempt, 33.3% for obstruction, 48.2% for contempt-plus-obstruction, and 56.3% for assault.

As one could expect the type of trial also has an impact. For the 861 defendants for whom this variable is known, 13.6% of the defendants tried in *contradictoire*, 25.7% of those

tried *par défaut* (or *iterative défaut*), and 24.1% tried in *contradiction à signifier* were sentenced to an prison term (***). There were not enough minors tried for the differences in sentences to be tested for statistical significance. Yet we did find in the case of minors that, of the decisions taken in *contradictoire*, two-thirds resulted in exemption from a penal sanction, but only half for *contradictoire à signifier* trials (5 out of 12), and none for the 18 defendants tried *par défaut*.

Finally, when the victim petitions to join proceedings as a civil party it also has the expected effect; 22.8% of defendants tried facing a civil party suing for damages were sentenced to imprisonment, as against 16.5% when there was no claim for damages. Data for minors were not available.

Impact of the various factors by group

We immediately noted important group differences in regard to exposure to the factors that determine sentencing. To begin with, the seriousness of the offence: of the defendants in the “European” category 61.5% appeared in court for contempt alone, and 15.5% for assault. In contrast the defendants with a “North African” profile or a “Black” profile appeared for contempt alone in respectively 41.4% and 43.3% of cases and in 19.5% and 17.9% for violent acts (***). The differences are equally convincing in regard to recidivists: immediate trials were held for 9.1% of the “European” group”, but for 20.9% of the “Black” group and 28.4% of the “North African” group (***)²⁸. The police officers also file damage claims in differing proportions, depending on which group of defendants is concerned (as seen earlier: 37% as against 46% and 51%)²⁹. The differences are, on the other hand, hardly significant in terms of the type of trial (12.7% of “Europeans” and of “North Africans”, 10.5% of “Blacks” are tried *in absentia*...): while one cannot exclude the hypothesis that the variables are independent of

²⁸ Base ‘immediate trials’ (N=683), see Appendix.

²⁹ Base ‘damage claim’ (N=849), see Appendix.

each other, the size of the sample is at this point too small for us to conclude that there are significant differences in this regard. Anyway, as far as the first two factors are concerned, there is without doubt a structural effect that explains all or part of the difference in sentencing that we found between the groups.

The Impact of each of the Contributing Variables Taken Separately

Having clarified the structure of each group, we have to pinpoint the relative influence of each of the contributing variables by means of multivariate analysis.

Classification of the defendants

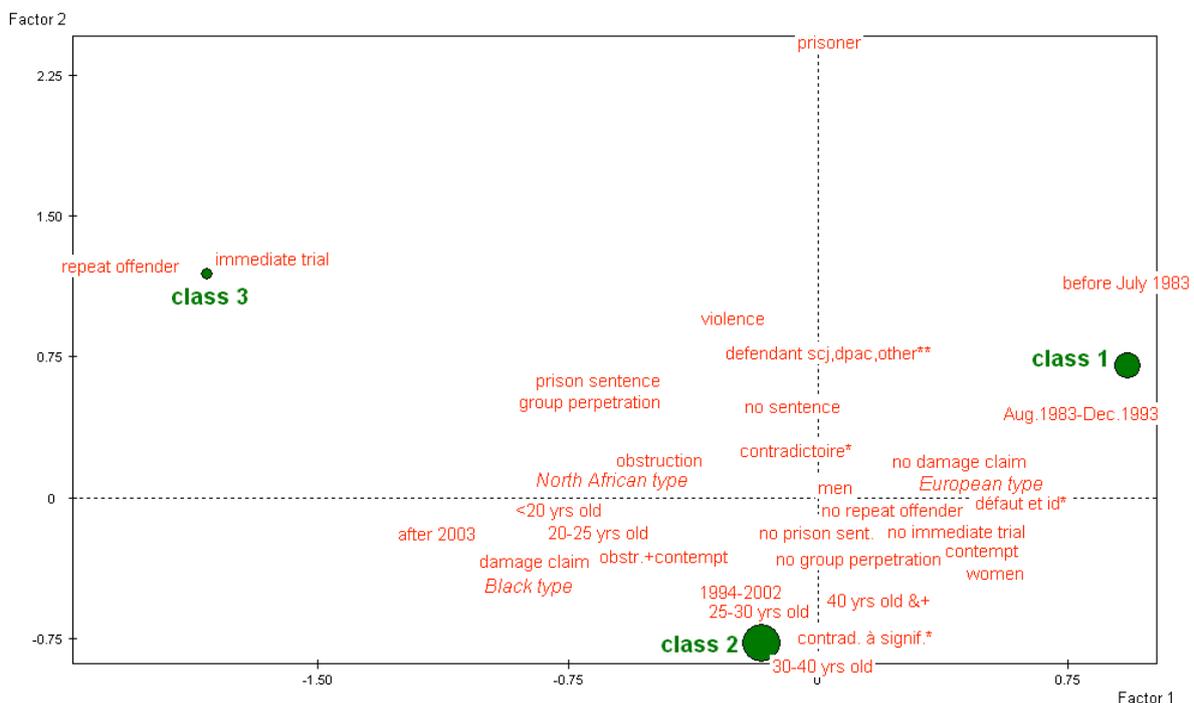
In order to ascertain the distribution of the defendants according to the different variables, we set up a correspondence analysis on the variables previously handled separately: the nature of the offence, the type of trial, the type of prosecution, and the presence at the trial of the victims claiming damages. We added to these variables additional penal information that appears less systematically on court registers (see Appendix): the defendant's legal status at the time of the trial and whether or not the offence was committed by a group, as well as the sociodemographic variables (sex, age) as well as the "period" of the sentencing³⁰.

A first factor (that explains 12.1% of the variance) opposes the so-called "regular customers" of the criminal court to the others: on one side of the axis appear the immediate trials (and repeat offenders), the filing of claims for damages, IPDAPs committed by a group of two or more alleged offenders, and sentences handed down after 2002 – and, as consequence, a prison sentence. It is on this side that the "Black" and "North African" groups are to be found. On the other side of the axis are those defendants tried before 1994: they are

³⁰ The ascending hierarchical classification was worked out, using SPAD software.

issued a “normal” summons, without any damage claims and tried for acts of contempt which were not identified as having been committed collectively. Here are to be found the “Europeans”. A second factor (that accounts for 8% of the variance) contrasts on one hand the defendants tried between 1994 and 2002, older (between 30 and 40 years of age), for the most part absent at the trial, first offenders and non-violent – and on the other side defendants tried before July 1983, who committed violent acts and were tried in an immediate trial. Graph I charts the design of these two first factors. It positions as well the three classes of defendants that we have identified through a hierarchical ascending classification based on the nine elements of the factor analysis. The representation takes into account the size of each of the classes. The various groups of defendants are printed in italics, and the “periods” in boldface.

GRAPH 1 – Factorial design



**: *scj* : sous contrôle judiciaire (under judicial supervision), *dpac* : détenu pour autre cause (already incarcerated for another offence)

The primary factor differentiating the three classes is in effect the “period”. 90% of the defendants tried before 1994 belong in the first class, 87% of those tried between 1994 and

2002 belong in the second, and 32% of those tried after 2002 belong to the third. Thus the major classifying principle of our analysis is, as could be expected, the period during which the trial takes place... as could be expected, given the span of time covered by the trial records that we assembled: 41 years, during which the number of cases, but also the penal procedures, were to undergo major changes. The quantitative increase in IPDAP cases tried is crystal clear: whereas less than one IPDAP case was tried per month in 1965, there were between 4 to 10 between 1975 and 1994, then between 16 and 20 from 1995 to 1999 and 30 to 37 from 2000 to 2005 (in other words 1.5 to 2 cases every day that hearings were held); while not, strictly speaking, a mass phenomenon, IPDAPs have become a permanent feature of this jurisdiction located in an outlying Paris *banlieue*³¹.

Moreover procedures have evolved considerably, to the extent that they determined our division into time periods. There have in effect been three turning points. In 1983 the law on immediate trials (applicable as of July 1983) considerably stiffened decisions handed down by doubling the maximum sentence (see Appendix). The first class thus groups together the total number of defendants tried before July 1983. The second turning point is marked by the adoption of the “new penal code” (March 1st 1994), as well as new laws governing criminal proceedings in 1993 (January 10th and August 23rd), the combined effects of which resulted, according to national court statistics, in an across-the-board toughening of penal policy in particular through the spread of so-called *temps réel* (real time) proceedings³² that significantly increased the number of misdemeanours prosecuted and tried³³. The second “period” then concerns the totality of defendants tried between August 1983 and December

³¹ I refer here to Ocqueteau – who comes to the same conclusion – for a comparison with national police and court data (limited however to the years 1994 to 2004). See Ocqueteau (2005).

³² a series of procedures devised to bring the arrested perpetrator before a court within the shortest possible time, by means of a swift contact between the police and the public prosecutor's Office.

³³ On the basis of our data alone, the partitioning into decades as presented clearly indicates the increase in the number of IPDAPs tried from the 1995-2005 decade on.

1993. The “Perben I” Act of September 10th 2002 [named after the then Minister of Justice] reduced to six months the maximum incurred sentence required for offenders caught in the act to be subjected to an immediate trial, thus expanding the reach of this type of proceeding to cover all the defendants in our contempt, obstruction, and contempt-plus-obstruction categories, even first offenders who were not subjected to this procedure under the former legal provisions³⁴. This considerably increased the number of persons brought to court on the basis of this type of prosecution which, as we have seen, is highly predictive of the harshness of the sentence. Thus we set aside as our third “period” the years 1994 to 2002, and as a fourth and final period the years from 2003 on.

It is not surprising then given the manner in which our “periods” have been defined that the first class of defendants is “the class of yesteryear” which includes 90% of the defendants tried before August 1994, that is to say one-third of the total (35.1%). It’s the class of bygone days, the good old days when everything was simpler (summonses – by definition – excluded immediate trials and hardly any police officers [4%] filed suit for damages) and when everything was more temperate (64.4% of defendants were tried for contempt alone whereas this category of offence counted for 54.05% of the total number of IPDAPs for all periods combined; as a consequence sentences other than prison were more frequent than in the other classes – 83.2% of the defendants, as against a 78.6% average. And in this bygone class there were a high number of “European” defendants (84.8% of the class, as against 62.15% of all defendants), a characteristic mainly due to changes in the demographic make-up of the *département*.

The next class is for the most part clustered around the period 1994-2002 (70.6% of the defendants in this class were tried during this period; 25.2% after 2002). As a result of the overall increase in IPDAP trials, this class includes the majority of the defendants in the total

³⁴ In other words, recourse to an “immediate trials” procedure no longer means that the defendant is a repeat offender, as was the case between 1983 and 2003.

sample (52%). It represented a “new penal regime, non-violent” class. “New penal regime” in the sense that *contradictaires à signifier* trials (for which the summoned defendant does not appear) are more frequent (32.3% of the class, compared to 22.1% of the sample) and the police officers filing suit for damages becomes more of a matter of course (46.55% as against 34.1%). This class is also that of “non-violent” defendants, or more precisely less violent than they tend to be elsewhere, as the contempt-plus-obstruction offence is its best marker (25.4% of the class as against 19.7 % of the sample). This class does not include the court system’s regular customers; there are hardly any immediate trials (0.66%), no repeat offenders, hardly any defendants already in custody or under judicial supervision at the time of the offence, and consequently few sentences to prison terms (16.7% of the class as against 21.4% of the sample). Defendants with “Black” profile are more numerous here than elsewhere (20.7% of the class as against 15.5% of the sample; and 69.4% of the “Black” defendants are to be found in this category).

Finally, there is a last class that is not primarily defined in terms of the period (although it does include far more cases from the years after 2002 than does the preceding class: 48.2% as against 19.3% overall), but differs mainly because it covers, to put it bluntly, the penal system’s “regular customers”. It is here that are to be found all those tried as repeat offenders and almost all those brought to court for immediate trials although these ‘regular customers’ represents only 13% of the total sample. A sure sign of the seriousness of these cases: the victims sue for damages twice as frequently as in the rest of the sample (claims for damages are in any case more frequent in recent years than previously). The “customer” class includes more than twice as many instances of assault than does the sample (40.2% as against 17.25%) and thus, as a result of all these factors, almost three times as many condemnations to imprisonment (48.2% as against/compared to 17.5%). In this class are to be found twice as

many defendants of the “North African” group than in the total sample (38.4% versus 20.1%) and twice as many “Black” defendants (30.4% versus 15.5%), whereas there are half as many “Europeans” (31.25% versus 62.15%).

The analysis by class suggests a likely pattern of distribution between the indicators as such. However it tells us nothing about the intrinsic explanatory value of these variables, which can be better approached through a logistic regression model to which we will now turn.

Is the group variable the key variable?

Whereas analysis by class of the defendants situates all the variables in terms of their proximity to the various clusters, the question of the hierarchy of the decisive variables is no nearer solution. We have established that belonging to the “North African” or the “Black” group increases the likelihood that the defendant is under 25 years of age... has faced trial during the last ten years... in an immediate trial... for obstruction or assault that warrant imprisonment; but it is determining the relative significance of these variables that remains the critical issue. Does the variable “group” have, all else being equal, a significant effect on the likelihood of being sentenced to imprisonment, and if so, what is the precise weight of this effect, all else being equal?

To provide an answer to these questions we have applied logistic regression to the sum total of the variables³⁵ with – as dependent variable – the sentence to an unsuspended prison term. The results are given in Table 1.

³⁵ Status of the defendant at the time of the trial, group membership, repeat offender, type of hearing, type of trial, nature of the IPDAP, possibly committed by two or more acting as perpetrators or accomplices, file for damages.

TABLE 1. –*likelihood of imprisonment (logistic regression)*

Base CI (N = 678)		Odds ratios	Confidence intervals 95 %	N=
Status of defendant	Free	1		651
	Other (<i>scj,dpac</i>)	1,98	[0,56-6,94]	19
	Prisoner	9,64	[1,09-85,12]	8
Type of prosecution	No immediate trial	1		572
	Immediate trial	6,95	[2,59-18,69]	106
Type of trial	<i>Contradictoire</i>	1		436
	Défaut and itératif défaut	6,46	[2,93-14,25]	74
	<i>Contradictoire à signifier</i>	7,37	[3,84-14,17]	168
Offence	contempt	1		360
	Obstruction	1,03	[0,45-2,35]	64
	contempt-plus-obstruction	1,44	[0,80-2,60]	155
	Assault	3,88	[1,73-8,69]	99

Note : * scj: *sous contrôle judiciaire* (under judicial supervision) dpac : *détenu pour autre cause* (already in prison for another offence).

Only significant variables are displayed in this table, significant odds ratios are given in boldface.

Four variables can be seen to have, after logistic regression, an influence on the sentence handed down: the status of the defendant at the time of the trial, the type of prosecution, the kind of trial and the nature of the IPDAP. Logistic regression analysis indicates that the “group” is not significant. On the other hand it is, as one would expect, the fact of being held in pre-trial detention that is the factor most closely linked to a prison sentence (the defendant who has already served time in pre-trial detention is 9.6 times more likely to go to prison than a defendant who is free at the time of the hearing)³⁶. Immediate trials and failure to appear for the trial are also leading factors associated with a prison sentence (a risk between three and nineteen times higher, all else being equal). On the other hand, as regards the type of offence against police officers, only assault contributes to the likelihood of a prison sentence.

³⁶ The width of the confidence interval here indicates that only 8 defendants were brought to court after having served pre-trial detention.

Groups are not screened as significant by logistic analysis. This indicates that this variable only crystallizes other variables which are, on the contrary, significant: defendants from the “North African” and “Black” groups, since they are more likely than others to be tried in an immediate trial or to be absent at the time of the trial, or be tried for assault, run a greater risk, when all other variables are held constant, of being condemned to a prison sentence. But simply being a member of one of these groups is not in itself a determining factor for the judge to decide on a prison sentence. The judges – colour-blind – hand down their decisions on the basis of legal criteria only.

The situation is, on the other hand, markedly different when it come to the victim suing for damages as shown in Table 2, which gives the result of a logistic regression analysis with the variable to be explained the decision to sue.

TABLE 2. – *Likelihood of police officers suing for damages (logistic regression)*

Base PC (N = 823)		Odds ratios	Confidence Interval at 95%	Numbers
Group	European profile	1		N = 489
	Black profile	1,28	[0,87-1,87]	N = 187
	North African profile	1,48	[1,04-2,11]	N = 147
Offence	Insult	1		N = 409
	Obstruction	1,13	[0,72-1,77]	N = 103
	Insult-plus-obstruction	1,63	[1,14-2,34]	N = 184
	Assault	1,78	[1,15-2,76]	N = 127
Type of prosecution	No immediate trial	1		N = 666
	Immediate trial	1,78	[1,21-2,62]	N = 157

Note : Only significant variables are displayed in this table, significant odds ratios are given in boldface.

It is immediately apparent that in terms of suing for damages, the variable “group” does indeed have a degree of significance³⁷. Given the fact, as we have noted, that the percentages of cases in which victims sue for damages are approximately the same for “North Africans” and “Blacks” (46 and 51%), we have merged these two groups in Table 3.

TABLE 3. – *Likelihood of police officers suing for damages with the groups reduced to two (logistic regression)*

Base PC (N = 823)		Odds ratios	Confidence interval at 95%	N=
Grouping of groups	European group	1		489
	Other groups	1,39	[1,03-1,86]	334
Offence	Contempt	1		409
	Obstruction	1,13	[0,72-1,78]	103
	contempt-plus-obstruction	1,62	[1,13-2,32]	184
	Assault	1,77	[1,14-2,75]	127
Type of prosecution	No immediate trial	1		666
	Immediate trial	1,80	[1,22-2,65]	157

This time the two decisive offences are without question assault and contempt-plus-obstruction. An immediate trial also encourages police officers to sue for damages, no doubt because this type of prosecution is frequently used for defendants that are repeat offenders. If “the “Europeans” are used as reference group, in comparison with a group formed by merging both “Blacks” and “North Africans” the chances of having a police officer sue for damages are 1.4 time higher for defendants in this meta-group than for “Europeans”.

Thus, whereas the judge's decision, according to logistic regression analysis, appears to be taken without “seeing” the skin colour or the origin of the defendant, the decisions taken by individual police officers do not appear – all else being equal – to be unrelated to these

³⁷ The odds ratios are here markedly inferior to the regression values of the court decisions: unlike the latter, the police officer’s individual decision is to a far lesser degree correlated with strictly procedural variables.

factors. But here again the high and low ends of the confidence interval should be kept in mind: given the size of the sample (823 individuals) the risk of a North African or Black being sued is up to 86% higher than for a “European” defendant, but it can also be of scant importance (<5%), since the confidence interval figures range from 1.03 to 1.86. There is no guarantee that that a larger sampling would reduce this risk to around 1.4. We can thus assume that the police officer’s decision to sue for damages is, all else being equal, not unrelated to the skin colour or origin of the individual, subject to confirmation by a survey concerning a larger number of defendants.

This qualification concerning the statistical significance of the variables should be supplemented by introducing a further complexity, namely taking into account the defendants’ birthplace.

Differentiating the groups according to birthplace

As we stated in reviewing earlier research: one of the major determinants of the sentence decided on by the judge is the guarantee that the defendant will show up for his trial, a prediction that is generally based on his/her family situation and nationality. As concerns the latter issue, it is surmised that a convicted foreigner will have, far more than a French citizen, the option of forgoing the criminal fine by simply “going home” (to a foreign country....) where the French authorities will have no means of enforcing the sentence. In such cases judges prefer a prison sentence that leaves the defendant with practically no way to escape his punishment, in particular when a committal order is issued, for example right after the immediate trial (in which case the defendant will have been in the hands of the law from the very moment of his arrest on).

As said before, we have no data on these extrajudicial elements, on the family and personal status that are considered by the judges as the main factors that determine the likelihood of absconding. The only element that can get us started in the right direction is the defendant's birthplace that has been systematically registered since 1989 (along with the date of birth). We will use the binary variable born inside/outside France as a proxy for the nationality variable. This approximation does not, to be sure, make great sense with respect to civil status given the thicket of specific provisions governing the acquisition of citizenship, but it is the sole indication available. Be that as it may, we can work on the basis of the 578 defendants whose birthplace is known³⁸, making use this time of more differentiated groups. The "Black" group is in fact divided into an "Africa-F" group that assembles the defendants born in France (N=65, 11.3% of the sub-sample whose birthplace is mentioned), an "Africa-A" group consisting of those born in sub-Saharan Africa (N=47, 8.1%) and the "DOM-TOM" group consisting of those born in the (French) overseas departments and territories (N=15, 2.6%). The "North African" group is divided into "North African-F", those born in France (N=103, 17.8% of the sub-sample) and the "North African-NA", those born in North Africa (N=40, 6.9%). Within the "European profile" we have set aside the defendants from Iberia (Spain and Portugal) and further distinguished between those born in Spain or Portugal ("Iberia-I", N=24, 4.2% of the sub-sample) and those whose names sound Spanish or Portuguese, but who are born in France ("Iberia-F", N=33; 5.7%). The residual group ("France") consists of defendants born on mainland France with a typically French-sounding name (N=251, 43.4% of the sub-sample).

The least one can say is that the groups that we have worked with so far are mergers of defendants with the most diverse characteristics... as can be seen from Table 4 below that

³⁸ Database "Birthplace", see Appendix.

displays how each of the sub-groups responds in terms of the predictive variables that we have already identified.

TABLE 4. – *Reactions of the sub-groups in terms of the predictor variables*

Database “Birthplace”	Nr	Prison term*** in %	Contempt*** in %	Assault ^{n.s} in %	Adversarial ^{n.s.} in %	Immediate trial*** in %	Claim for damages
« France »	251	12	59	13	70	10	42
« Iberia-F »	33	18	51	15	55	9	33
« Iberia-I »	24	8	71	4	63	17	46
« North Africa- F »	103	28	38	23	67	36	57
« North Africa- NA »	40	15	43	13	60	18	58
« Africa-F »	65	28	46	15	72	26	43
« Africa-A »	47	23	32	21	64	19	51
« Dom-Tom »	15	13	67	13	40	7	67
Total	578	17.82	50.52	15.57	66.61	17.82	47.06

Note : Given the low number of the DOM-TOM group we have dichotomised the predictor variables (unsuspended prison/other, immediate trial/other, damage suit/other).

As to the “realism” of the profiles taken from police typology, their artificial character is striking from the outset: they merge together sub-groups whose experience differs greatly, for example, as regards prison terms. The “European” group would appear to be made up of three distinct sub-groups, for which the percentage of imprisonment varies from 1 to 2.2. In the “North African” group of defendants, the percentage of those sentenced to prison (23.6%) is in fact an artificial weighted average of the two sub-groups for which the percentage of sentences to imprisonment can double depending on whether they are born in France or not. The same holds true, in most instances, for the explanatory variables (the percentage of defendants in the “North African” group born in France and sentenced for assault against a “person invested with public authority”*** or summonsed to an immediate trial is twice that for those born outside of France; one third more defendants from the “Black” group are tried for contempt when they are born in France, one third fewer for assault, and almost half more are tried in immediate trials)³⁹. Differences are even wider for those sub-groups that are

³⁹ It was clear, incidentally, that except for “immediate trials” the explanatory variables do not work in the expected direction for defendants in the sub-group “Africa-F”, unlike the explanatory variables for defendants in the group “North African-F”.

comparable in terms of birthplace: multiplier coefficients of more than two separate the percentage of imprisonment for defendants born in France when their surname is typically French (neither Iberian, nor East European⁴⁰) and those whose surname is African or North African. This is firstly due to the presence, in the European group, of defendants born in France whose surname indicates a Portuguese or Spanish origin, for whom the percentage of imprisonment is far superior (18%); but is above all due to the fact that prison sentences are no longer handed down to a mere 23% or 24% of the defendants coming from the “North African” or the “Black” group but around 28% if those born in France are singled out.

But these striking differences within our groups as reconstructed on the basis of the trial records, lead to a conclusion that is on the face of it totally counter-intuitive: it is the defendants born in France that end up with the harshest sentences, regardless of what group they come from. Birthplace then does not really operate as proxy variable for French nationality. It is hard to imagine that defendants born in France have less stable family and professional situations (*i.e.* less convincing guarantees they will be present at their trial) than their peers born outside of France. On the other hand, if we focus on cases of immediate trial (a proxy indicator of repeated offenders) we can hypothesize that these defendants, because they are born in France, have a longer record of contact with the criminal justice system – hence a greater chance of having been convicted, even as a minor, and thus an earlier entry into a “regular customer” relationship with the criminal justice system. In addition, the differences between the various types of IPDAPs would suggest (at least as concerns the “North African” group) a longer history of confrontational encounters with the police, and over time a unquestionable radicalisation of their modes of expression, which shows up in the far higher percentage of assault cases they were tried for.

⁴⁰ The latter were removed from the sub-group, but do not figure in the recapitulative table since there was not a sufficient number (N=6).

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Our study took as point of departure the set of grievances entered against the court and police system in housing developments of the outlying Paris *banlieue* (Jobard, 2004, 2005). The protesters we had previously studied were convinced that accusations of contempt and/or obstruction against police officers were a targeted technique of domination, yet another weapon in the arsenal of the judiciary, the police and even the local authorities that was designed to guarantee the perpetuation of territorial inequalities and by extension the permanence of the social and political order.

The data that we gathered is limited to the trial stage of the penal system, that is to say the judge's decision. While we can, on the basis of this data, work our way back up the chain by repeated deductions (from the judge's decision to that of the prosecutor, from the prosecutor's to that of the criminal investigation unit, and from the latter to the decision taken by the police officer as individual plaintiff), these reconstitutions can for the moment only be considered as hypotheses: the judge who examines the facts brought to his attention is far distant from the police officer who, as potential victim, establishes them. However, within the scope of the data found in the trial records of criminal courts, the decision to sue for "moral" (*i.e.* non-physical) damage immediately appears, when all other factors are held constant, as the most likely site for the exercise of firsthand discrimination based on the identity of the person concerned. It is undeniable that police officers are more inclined to sue for moral damages when the person they arrest for offences against them was born in North Africa or had a North African name. Suing for damages is a means of *personalizing* the relation between the police officer and youngsters of North African origin; the end result sought by the officer who claims to have been injured is far less pecuniary gain than the hope that a

criminal conviction will ensue. This is a twofold indicator. It points first of all to a growing tension between police officers and youth particularly those who come from this immigrant background. However the increasing number of cases handled by the criminal justice system rather than reflecting increasing violence in police-civilians encounters, could be construed as a form of a ‘civilization process’ in the Norbert Elias’s sense of the term: instead of being settled by interpersonal violence, conflicts are increasingly brought to the courts. This inference would necessarily require further research on larger samples, since the size of our group of defendants is not sufficient to indicate whether discrimination, when all other factors are held constant, is massive (around twice as many decisions to sue for damages when the defendant is North African) or insignificant (the likelihood multiplied by a factor of hardly more than one).

In regard to penal sentences, our findings indicate beyond doubt a systematic discrimination against defendants of the “North African” and “Black” groups: more frequent prison sentences and to longer terms. Such discrimination should be understood simply as a series of statistically significant differences. Does this mean then that “discrimination” in the ordinary sense of the word, that is to say “unequal treatment” exists? At this point, things become more complicated since the “North African” and “Black” defendants are those who are tried for the more serious IPDAP offences, they are also those who are more often tried as repeat offenders, and those who are more often tried *in absentia*... to the extent that, all else being equal, the “group” variable no longer plays a significant role. The variable “group”, in this perspective, only sums up a number of distinct elements that, in and of themselves, result in differential treatment in regard to punishment; as such, the variable “group” is inoperative.

Court decisions, implacable, both record and reinforce the particular characteristics of those defendants who, in addition to their distinctive origins, also have a distinctive relationship to the penal system, constituting in effect, to a far greater degree than the others,

the “regular customers” of the criminal justice system. In this regard, our study confirms the results of René Lévy’s research (1987) which demonstrated that at two stages of the decision-making process, that of the police officer and that of the public prosecutor’s office, the “Europeans” are always more leniently treated, followed by the “Africans”, while the “North African” group ends up with the harshest treatment; and this holds true independently of the type of offence committed and independently of the social structure of the group concerned. Our study both extends and rectifies these results by establishing that the decisions taken during the last stage, the actual court decisions, can only ratify a prior state of affairs, without however adding an additional measure of inequality of treatment. In fact, disparities in sentences between groups do not appear for equal offences: it is for the most part the varying distribution of offences and the different types of trial and of prosecution that generate the observed inequalities. If there is “differential treatment”, that is to say an accumulation of differences for which there is no alternative explanation, these differences are likely to be uncovered at the level of the police officer and of the public prosecutor, not at the level of the courts.

There remains the question of the exogenous factors that bring about these disparities resulting in 13.6% of the defendants of the “European” group” (12% if those born in Southern Europe or with an Iberian surname are subtracted) being sentenced to imprisonment, while for the “North Africans” the proportion is 23.6% and for “Blacks” 25.4%...disparities resulting likewise in only 37.1% of the defendants from the “European” group being confronted by claims for “moral” prejudice while it is the case for 50.8.% of the “North African” defendants and 45.6% of “Black” defendants. Bruno Aubusson de Cavarlay puts it this way: “People are convicted before the events take place” (1985, p. 293), referring to the fact that the unemployed are, for the same offence, always over-sentenced. Extrapolating from our first set of data we could say that the “North African” group is not only a group in which “usual

customers” are overrepresented, but one in which “those who do not respond to summonses” are overrepresented and “those tried for acts that in themselves call for unsuspended prison sentences” are overrepresented. Comparing the distinctive effect of belonging to our study’s “North African” or “Black” groups and that of belonging to B. Aubusson de Cavarlay’s “unemployed” category, we have an unquestionable sense of déjà-vu. In this perspective the high proportion of defendants among the “Black” and “North African” groups who do not reply when summoned to appear at their trial is a possible indicator of the breakdown of socialisation process: when there is no family member, no peer, no boss with sufficient authority to convince the defendant to show up for his trial (or when the employment contract makes leave for a trial too risky)... when the defendant appears convinced that the die is already cast... one can assume that the socialisation process has broken down. These results closely mirror the findings of more extensive surveys conducted on this subject in Great Britain. The Royal Commission for Racial Equality pinpointed an “unexplainable” difference of 7% between the penal decisions regarding Blacks and those regarding Whites: 80% of the difference could be accounted for by the type of trial, the nature and circumstance of the offence, and the choice of a “not guilty” plea (Hood, 1992)⁴¹.

What is left, then, of these apparent discriminations? Answer: it is the impact of appearances themselves; the impact which makes it almost impossible, when an event occurs, for each side not to react by invoking the simplest we/they mode of classification. In a courtroom, when cases come up involving offences against officers holding public authority, the overrepresentation of the sons of North African immigrants is strikingly obvious.. However, careful analysis invalidates this way of seeing things. What we observe from our seat in the courtroom, the judge – bent over his dossiers on the other side of the bench – does not appear to notice. On one hand the observer sees the offspring of North African

⁴¹ See, in regard to insults addressed to a police officer, Mooney and Young (2000, p. 73), as well as a more qualitative analysis by Waddington (1999, p. 52).

immigrants. On the other, the judge punishes criminal acts and criminal histories. The judge registers, and establishes within his own frame of reference, the inequalities that, having been constituted elsewhere, are then filed with the bar by the Prosecutor and the police officer. Analysis of the data, by refuting the unfairness of criminal trials, still does document the inexorable tensions pervasive in police-civilian encounters that result in a significant proportion of young Black or North African males becoming, more than ever, the patrons of criminal courts.

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APPENDIX

1. The various databases

The data consists of the information published in the *feuilletons des audiences* [trial records] or court minute-books that we presented in the section “Material”.

Since 1989 this information has been assembled in large ledgers (42x59.4 centimetres) that present the data in tables of the sort found below:

Dossier	Defendants	Offences	Type of trial	Court decision
Case number	Surname	IPDAP	<i>Contradictoire</i> (adversial)/	Criminal sentence
	First name	Where applicable: additional offence	<i>Défault</i> (defendant absent, has not received summons)/	(Acquittal/unsuspended /suspended prison sentence/ / fine)
Type of summons	Date and place of birth	Date	<i>Itératif défaut</i> (defendant again absent)/	
	Status of defendant		<i>Contradictoire à signifier</i> (defendant summoned but does not appear)	Civil damages (claim for damages; acceptance/refusal; compensation; legal costs)

The format as well as the presentation (computerised or not) have nonetheless changed over time (from 1985 up to 1988 the minute-books were handwritten by the court clerk; from 1982 to 1984 decisions were recorded, always by hand, in small notebooks; before 1981 court decisions were entered in large-sized minute-books). More to the point, the changes in court referrals introduced by the clerk or stemming from modifications in criminal procedures meant that separate databases had to be formed according to the variables recorded.

The database “Birthplace” (N=578) contains all those defendants charged with only IPDAP offences for whom we know the place (and date) of birth, which appears in the

records only from 1989 on. This database is thus made up of defendants tried between 1989 and 2006; it is the *absence* of certain factual elements that determines the make-up of this base. The next two databases are, on the other hand, defined by procedural elements.

The database “PC” (N=849) brings together all those defendants charged with only IPDAP offences that were tried after 1986, year in which was adopted the Ethics Code of the *Police Nationale* that reaffirmed police officers the right to file for damages. We have added to this group those defendants against whom claims for damages were recorded in the minute-books when the IPDAP offence was accompanied by a “victimless” offence: namely, violation of drug laws, violation of laws concerning foreigners (illegal residence) or drunk or anti-social behaviour in public.

The database “CI” (N=683) includes all those defendants tried beginning in July 1983, at which time the June 10th 1983 law (in force as of the 27th of June of the same year) was applied replacing the former “*flagrant délit*” (caught-in-the-act) procedure by the immediate trial procedure known also as a *jugement à délai rapproché* (“right-after-the-act” trial). The major innovation that resulted from this provision consisted, as far as its effect on the analysis of trial decisions is concerned, of the fact that repeat offenders are included when they are tried for offences calling for a prison sentence of under two years. Of course, when applying logical regression techniques in order to weigh the relative effects of the variables on the court decision, it was necessary to taken into account only those defendants tried after July 1983; just as we have taken into account only those defendants tried after 1986 in regard to claims for damages.

The data collected, as we have made clear, was designed to shed light on possible discrimination at the hands of the judge or the police officer, but also to trace, by way of contribution to a local history of tensions with the police, the evolution of cases of this nature over the last four decades. The analysis was based on a first collection of data and preliminary

analysis by F. Jobard of six months of court rulings in 2002, which was a way of establishing a coding grid. The data was then assembled and processed by Marta Zimolág, at the time research assistant at the CESDIP, and subsequently put through a second phase of statistical processing, with the actual analysis being done by F. Jobard (Jobard and Zimolág, 2005). Comments on the first version of this text, published in the *Revue*, prompted further data collection with the collaboration of Sophie Névanen, covering the years 2004 and 2005 plus a fourth month. Sophie Névanen ran the statistical multivariate processing of the entire corpus thus established. All of this research was financed by the CESDIP's own funds.

2. The limits of analysis concerning minor defendants

A database on “minors” was also constituted, financed by the Judicial Protection of Youth department (PJJ, Ministry of Justice) with the help of Hélène Lotodé. This database is made up of 268 defendants tried between 1989 and 2005 either in juvenile court or in the chambers of the juvenile magistrate (complete inventory)⁴². Of these 45% come from the “North African” group, 39% from the “European” group, and 12% from the “Black” group.

The differences between decisions taken in regard to minors are far less clear-cut, which explains why (in addition to the low number) we have not included them in our study. The most severe punishment, an unsuspended prison term, concerned only 15 defendants, among which 6 “Europeans”, 6 “North Africans” and 3 “Blacks”. Even if there is a slight

⁴² “Adults” refers those defendants who were adult at the time of the incident and who were thus tried in magistrate’s court. “Minor” refers to those defendants who were minors at the time of the misdemeanour, who were thus tried according to the procedures applied to minors, even though they may be adult at the time of sentencing (which turns out to be true in half the cases).

overrepresentation of the latter group in the “unsuspended prison term” category⁴³ in comparison with the total number of minor defendants, the infrequency of this sentence does not provide us with a sufficient database to work with. If we take evidence of clemency (for instance the judge’s decision to forgo a penal sanction) as an indicator, 147 defendants are concerned of which 67% are “European”, 39% are “North African” and 55% are “Black”, which means that there is a slighter higher probability for “Europeans” to be released without a penal sanction, and a slighter high probability of *not* being exempted in the case of “North Africans” (n.s.)⁴⁴.

Structural effects are also less clear-cut in the case of minors given the size of the sample population. However, as far as regards the offences tried, the two groups “North African” and “Black” appear in the same proportion for offences calling for severe punishment (46% for insult-plus-obstruction or assault, as against 41% for the “European” defendants – n.s.). In addition 82% of the “European” defendants attended their trials, but 71% of the other two groups did not (*). Finally, in the case of minors, age is as expected a determining variable in that minors less than 13 years of age cannot be imprisoned, while minors over 16 can in effect be held in pre-trial detention. The result of these measures is that 64% of the “minors” under 18 are not condemned as against 41% of minors over 18 (**). While 37% of the “European” defendants are adults, for the other groups the figure is 48%, but this difference is not statistically significant. Our research on minors points to a more complex situation than for adults, which makes the collection of larger-sized samples an urgent priority.

⁴³ “Prison term” is to be sure an expression of doubtful meaning since one knows nothing as regards the carrying out of the sentence; do those condemned to an unsuspended prison term actually end up in prison?

⁴⁴ The low numbers involved (66 “European” defendants, 58 “North Africans”, 18 “Blacks”), and particularly the low number of “Blacks”, led us to adopt a dichotomous approach and to separate the defendants into a “European” group and “the others”. In this case, 63% of the “Europeans” tried were not sentenced, but only 50% of the “others” (*).