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## Will France Americanize Its Legal System?

By Bruce Crumley / Paris

France's investigating magistrates have been a central pillar of the country's Napoleonic justice system for over 200 years. Acting as independent, neutral investigators into crimes, they collect evidence that is then used by justice officials to either try or dismiss a case. Feared and respected, hailed and derided, the *juge d'instruction* has been immortalized in literature and film. French novelist and playwright [Honor\[e\] de Balzac](#) once described his role as that of the "most powerful man" in the country.

Now, though, French President [Nicolas Sarkozy](#) says he wants to do away with the position in order to "guarantee the rights of people under investigation." Opponents say the move will leave the nation's legal process broken and vulnerable to political manipulation. ([See pictures of Sarkozy in the U.K.](#))

In an address to members of France's highest judicial tribunal on Jan. 7, Sarkozy revealed plans to transfer investigative powers in criminal inquiries currently involving specialized magistrates to state prosecutors. In doing so, Sarkozy said, the nation's legal system would get an injection of "habeas corpus à la française" by shifting much of the power involved in evidence collection, interrogation and detention decision-making from a single magistrate to a prosecutor overseeing cases. Under that authority, Sarkozy explained, judges whose authority and involvement in cases are at times denounced as excessive would cede direct investigative activity to subordinates they would oversee.

"It's time for the investigating magistrate to make way for a magistrate of the investigation, who will supervise inquiries but will no longer direct them," Sarkozy said. He argued that it has become impossible to demand the absolute neutrality and presumption of innocence Napoléon expected the independent judges to have when he created the post in 1804. "How can we ask him to take coercive measures, measures touching on the intimacy of private lives, while he is above all guided by the needs of his investigation?" Sarkozy asked.

But opponents say the change won't work unless France scraps its entire inquisitorial justice system and replaces it with the adversarial process that countries such as the U.S., the U.K. and Germany use. In contrast to those

systems, which allow the prosecution and defense to battle each other directly by building their own cases that are decided in court, France's system gives investigating judges the mission of collecting all possible evidence and testimony with an eye to presenting court officials the most complete picture of facts and the truth. Sometimes findings exonerate suspects; other times the investigation paints a picture of guilt leading to a slam-dunk conviction.

More frequently, however, findings are mixed, suspicions and verdicts are contested, and occasionally investigations and detentions are decried as abusive. Criticism of the system has grown in the wake of a 2004 legal debacle in which more than a dozen people were detained, tried and convicted in a lurid pedophilia case. The accused were finally retried and acquitted based on evidence that the investigating judge had become so convinced of their guilt that he ignored exonerating evidence as well as signs of other irregularities. More recently, a former newspaper executive was hauled from bed, allegedly insulted, then strip-searched on the orders of an investigating judge overseeing a slander case that even in the event of conviction carries no prison time.

"These are the extremely rare exceptions to the rule that are now being snatched up as justification for throwing the baby out with the bathwater," says Marc Trévidic, an investigating judge whose current post involves terrorism cases. Just three floors below Trévidic's office, a court is trying a German Islamist extremist charged with having overseen the deadly 2004 truck bombing of a Tunisian synagogue filled with European tourists. Trévidic notes that it took France's specialized investigating magistrates and laws to build that case and take it to court after it became clear that it wouldn't be possible under Germany's system.

"I don't deny improvements can be made, but the objective should be to prevent errors rather than suppress an important function in France's justice system to give it a little more of an Anglo-Saxon look," Trévidic argues. "Doing that will fix nothing and leave us with the inconveniences of both systems."

So why is Sarkozy so keen to do away with the investigating magistrate? Because unlike those independent judges, opponents argue, prosecutors are appointed by the justice ministry — meaning career advancement often relies on the patronage of politicians.

"It's the death of an independent judicial system," says Emmanuelle Perreux, head of the Magistrates Syndicate union of judges. "The prosecutor's office is in the hands of the government."


"We'd be returning to the 1970s and 1980s, when we still hadn't gained freedom from politicians and were constantly seeing cases taken out of our hands and quashed for purely political reasons," says one investigating judge who asks not to be identified. "Even today, who besides an independent magistrate will dare order a minister's house searched, or an important politician or businessperson questioned in a legitimate criminal case? Certainly not a prosecutor!"

Elysée officials dismiss claims that the move is designed to allow leaders to manipulate the course of justice,

noting that Sarkozy's stated objective is to enhance the presumption of innocence and rights of those under investigation. Perhaps, but the President has yet to persuade France's legal practitioners that the change will be worth it.

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