

DEFINING PROBATION PRACTITIONERS: BEYOND PROBATION STAFF

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Introduction

- ▣ History: volunteers
- ▣ Current trends:
 - ▣ - privatisation & the return of the Third sector
 - ▣ - 'polibation' (Nash, 1999)
 - ▣ - citizens' participation (e.g. COSA)
 - ▣ - problem-solving courts
 - ▣

Focus on judicial participation in probation

- ▣ Context:
- ▣ - French 68 year old judicial participation in probation and release: *juge de l'application des peines* (J.A.P.)
- ▣ - five years research into 'who works in supervision' (probation officers/JAP.... attorneys)
 - to be continued (clerks' office, prosecutors, prison guards...)
- ▣ Question: what can possibly be the role of judges and attorneys in probation? Is there an added bonus?

Judicial participation: why? : Theoretical analysis

- ▣ 1) legitimacy of justice literature, following TYLER (2012)
- ▣ - 'People want to have a forum in which they can tell their story
- ▣ - 'people react to evidence that the authorities with whom they are dealing are neutral'.
- ▣ 'people are 'sensitive to whether they are treated with dignity and politeness and to whether their rights as citizens are respected'
- ▣ 'people focus on cues that communicate information about the intentions and character of the legal authority with whom they are dealing'

Judicial participation: why? : Theoretical analysis

▣ 2) Rituals literature

- ▣ = Maruna, Tait and French authors Garapon and Desprez

Have all showed how important judicial rituals are. Maruna has focused on judicial desistance rituals.

▣ 3) Compliance literature

Fairness matters + Raynor (2013) = compliance interviews in Jersey = French '*recadrages*'

▣ 4) Desistance literature

- ▣ = collaboration with the person + agency

Judicial participation: why? : Human rights issues

- ▣ Burgeoning interest for human rights issues in probation (Nellis & Gelsthorpe, 2003; Canton & Eadie, 2008; Connolly & Ward, 2008)
- ▣ This is an avenue of research long explored by legal scholars:
- ▣ E.g. Herzog-Evans, PhD 1994... publications since then.

Judicial participation: why? : Human rights issues

- ▣ European human rights court: article 5 does not apply
- ▣ See Van Zyl Smit & Spencer, 2010

- ▣ ... but article 6 does re some sanctions:
- ▣ EHR Ct, 28 juin 1984, *Campbell & Fell v. UK*, n°. 7819/77 and 7878/77
- ▣ EHR Ct, 15 juill. 2001, *Ezeh & Connors v. UK*,, n°s 39665 et 40086/98.

- ▣ But EHR law not static... could thus improve

Judicial participation: why?

: Human rights issues

- ▣ **Legal analysis:**
- ▣ - fair trial & judicial decision-making are essential as:
 - ▣ 1) parole boards and prison governors are not independent from the executive;
 - ▣ 2) early release ends a sentence = should be dealt with by another court of law;
 - ▣ 3) appeal essential (2nd chance+ control discretionary power + uniformity of application of the law + more legitimate + rulings must explain why the decision was made ;
- ▣ 3) breach raises proof/ presumption of innocence issues.

Judicial participation: what?

Short focus on....

- ▣ What courts do. Example: French JAP- They are in charge of:
 - ❖ Releasing inmates;
 - ❖ Granting inmates furlough and remission;
 - ❖ Transforming custody sentences of up to two years (one year for recidivists) into various community sentences or measures before they are executed;
 - ❖ Dealing with or sanctioning breach;
 - ❖ Defining and modifying people serving community sentences or measures' obligations;
 - ❖ Expunging criminal records for released offenders if they need it to find employment;
 - ❖ Being informed of incidents and breach and asking probation services (at times the police or gendarmes) to write reports or doing investigations;
 - ❖ In some cases notifying offenders their obligations.

Judicial participation: what?

Short focus on....

- ▣ **Attorneys:**
- ▣ - defend their clients in breach cases;
- ▣ - present application for early release or sentences transformation.

- ▣ Research shows there are 2 types of attorneys:
- ▣ - classic penal attorneys : minimum service
- ▣ - holistic attorneys: global support & collaborative & participative = desistance support?
- ▣ We need more research into what clients expect – which type of attorney obtains best results (winning cases and... desistance)

References

- Canton R. & Eadie T. (2008), 'Accountability, legitimacy and discretion: applying criminology in professional practice', in: Stout, B., Yates, J. and Williams, B. (eds.) *Applied Criminology*, London: Sage: 86-102
- Connolly M. & Ward T. (2008), *Morals, Rights and Practice in the Human Services*, JKP
- Crawford A. & Hucklesby A. (eds.) (2012), *Legitimacy and compliance in criminal justice*, Routledge
- Garapon A. (2001), *Bien juger. Essai sur le rituel judiciaire*, Paris, Odile Jacob
- Desprez F. (2009), *Rituel judiciaire et procès pénal*, Paris, LGDJ
- Herzog-Evans M. (1994), *La gestion du comportement du détenu*, Thesis, Poitiers.
- Herzog-Evans M. (2002, 2005, 2007 & 2013), *Droit de l'exécution des peines*, Paris, Dalloz.

- Herzog-Evans M. (2013), *French reentry courts and rehabilitation: Monsieur Jourdain of desistance*, Paris, l'Harmattan
- Maruna S. (2011 b), 'Reentry as a rite of passage', *Punishment and Society*, n° 13(1): 1-27
- Nellis M. & Gelsthorpe, L. (2003), « Human rights and the probation value debate », in WH Chui & M Nellis (eds), *Moving probation forward: evidence, arguments and practice*: 227-241.
- Padfield N., Morgan R. & Maguire M. (2012) 'Out of court, out of sight? Criminal sanctions and non-judicial decision-making', in M. Maguire, R. Morgan et R. Reiner (dir.), *The Oxford Handbook of Criminology*, Oxford Univ. Press, 5th edition, p. 955-985

- Raynor P. (2013), 'Compliance through Discussion: The Jersey Experience', in P. Ugwu-dike and P. Raynor (eds), *What works in offender compliance. International perspective and evidence-based practice*, Palgrave MacMillan: 107-118
- Tait D. (2002), 'Sentencing as Performance: Restoring Drama to the Courtroom', in Tata C. and Hutton N. (eds.), *Sentencing and Society*, Aldershot, Ashgate, 469-480
- Tyler T. R. (2006), *Why People Obey the Law*, New Haven, CT, Yale University Press, 2nd ed.
- Tyler T.R. (ed.) (2007), *Legitimacy and Criminal Justice. International Perspectives*, Russel, Sage Foundation, New York
- van Zyl Smit D. & Spencer J. R (2010), 'The European dimension to the release of sentenced prisoners', in N. Padfield, D. van Zyl Smit and F. Dünkel, *Release from Prison. European policy and practice*, Willan Publishing, 2010: 9-46

Thank you!

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