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?
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’
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
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:
  - EHRCt, 28 juin 1984, Campbell & Fell v. UK, n° 7819/77 and 7878/77

- But EHR law not static... could thus improve
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 (2^{nd} 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.
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

- Connolly M. & Ward T. (2008), Morals, Rights and Practice in the Human Services, JKP.
- Desprez F. (2009), Rituel judiciaire et procès pénal, Paris, LGDJ.
Thank you!

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