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Probation in France: Some things old, some things new, some things borrowed, and often blue

Martine Herzog-Evans, University of Reims

Abstract French prison based probation services merged with their community based counterparts in 1999. This reform was aimed at placing the service under the wing of prison services and to reduce the influence of the judiciary. Despite still adhering to their rehabilitative goals and to a one-to-one pre-Martinson type of supervision, French probation services have long abandoned social work. Their exceptionally heavy caseload, a prevailing prison thinking, their newly acquired judicial work and managerialism explain this evolution. French probation services present an odd mix of old traits, insularism, and denial of recent scientific progress, with penal transferring, modern management and frenetic law reforming. All this has generated an identity crisis along with work-related stress.

Keywords community sentences and measures, conditional release, electronic monitoring, France, group work, managerialism, occupational stress, penal transfer, prison administration, probation, programmes

Introduction

Probation services were introduced into France in 1946 (Pélissier and Perrier, 2008). Initially they were responsible for the supervision of prisoners on conditional release (a measure created in 1885). Their duties were extended in 1958 to cover the supervision of offenders on suspended sentences, a measure clearly influenced by developments in England and Wales. During the years that followed, a host of new community based sentences (community work, day-fine, adjournment of sentencing with injunction or probation, etc.) were introduced and also new 'sentences' management measures' – an expression used in French to describe the various range of release or quasi release measures such as conditional release, electronic

monitoring, medical sentence suspension,¹ furlough,² furlough with escort, day-leave, and remission. Probation services located within prisons remained separate entities from those operating in the community. Prison-based probation officers were directly accountable to the prison administration (PA). Those working in the community came under the wing of the newly created *juge de l'application des peines* (JAP),³ which was introduced on an experimental basis after the Second World War and became available nationally in 1958. At the time, the JAP operated somewhat akin to a problem-solving court, and in an informal and non-adversarial manner. As such, there was less adherence to due process principles. JAPs decided on the release of inmates, recall and changes to conditions of release. Because it was not seen as a prestigious position, those who had chosen to become JAPs tended to be enthusiastic practitioners who had a strong pro-desistance attitude, and wanted to be innovative and more humane (see JAP such as Staechele, 1995). During this time, the French probation tradition could be described as having been of mainly one-to-one supervision with a strong emphasis on resettlement and rehabilitation.

In 1999, the prison and community probation services were unified into the 'Penitentiary Reinsertion and Probation Services' (SPIP), thereby placing all probation staff under the strong hierarchical leadership of the prison administration and this led to new senior and middle management structures. This reform was deemed necessary by the prison administration to counter-balance the powers exercised by the JAP who were perceived to exert too much influence on probation (Herzog-Evans, 1999), and who was just about to be acknowledged as a real court of law, applying due process – a shift which eventually occurred due to two important laws in 2000 and 2004. The AP never fully accepted either the 2000 or the 2004 reforms, which reduced its influence over release measures – initially as it meant losing a precious disciplinary tool and more recently to free prison space. Constant tensions, internal reforms and policy shifts became a feature of the ensuing years.

The 1999 reforms were presented by the prison administration as necessary in order to ensure continuity of offender supervision from prison to their release back into the community. However, in practice this hardly ever occurred. In retrospect, in the light of subsequent events, this could be seen as the first step towards a penitentiary 'colonization' of probation.⁴ Whilst the SPIP gained their autonomy from the JAP, this was at the cost of a culture of collaboration whereby previously problems could be solved informally by the coffee machine or during lunch breaks at the same cafeteria. Instead official communication between the SPIP and JAP would from then on be via a common computer server, 'APPI'.

Different generations of social workers had been recruited within probation. Formally recruited social assistants (suitably qualified social workers can also work in other capacities than the criminal justice system) would have to work with educators (closer, in their training and habitus to youth justice officers). At the time social work was still at the heart of probation officers' mission. In 1993, however, a new profession was created: that of Insertion and Probation Councillors (CPIP). These newly created posts were increasingly dominated by those trained to be lawyers (the recruitment exam being easier to pass for law students). Previously recruited staff were asked to join the ranks of CPIP. Although the new posts were more highly paid, still a number of them hesitated until the set deadline, as they disagreed with what

they perceived as being a move away from social work towards more tick boxing, paperwork and supervision at a distance.

Despite all these changes, France still adheres to its traditional practices whilst having embraced others, which have long been a part of the practice of other European countries. It has also borrowed practices and ideas from abroad, whilst keeping its own very original traits. This odd mix contributes to a current situation marked by role stress and a sense of pessimism amongst its staff.

Some things old

As mentioned above, French probation services have maintained traditional traits whilst emulating some of the trends that have now become dominant in modern probation services.

France still adheres to a strong tradition of one-to-one supervision, which it refers to as an 'individual interview'. However it is a pre-Martinson type of interview, entirely unvisited by any 'what works?' or any other evidence-based methodology (e.g. pro-social modelling or motivational interviewing). During supervision, CPIP hold very few meetings. Intensive supervision consists in one interview per month. This lack of regular contact can mainly be explained by an exceptionally heavy caseload (approximately 108 cases per CPIP, but increasing to a caseload of 200 in certain services which is further compounded by the fact that some practitioners work part time). This makes it difficult to provide adequate support and assistance with desistance. As a result, such interventions, when they do exist, are provided by the third sector (Herzog-Evans, 2011a).

Given the current change of direction taking place in other countries, notably England and Wales, from a programme dominated approach to a less costly one-to-one supervision – with the help of stimulating examples such as the Structured Supervision Programme in London (Durrance et al., 2010) and the Citizenship programmes in Durham (Pearson et al., 2010) – it may appear, from the outside, that France has been wise not to follow the trend dominated by accredited group work interventions. However, in reality French probation services have actually long abandoned social work. Their hierarchy, particularly at national headquarters level, have made it clear that support is not their staff's core mission.⁵ Significantly, in this respect are recent decrees (23 December 2010), which have systematically deleted the term 'social worker' from all the rules appertaining to probation, within the Criminal Procedure Code. To sum up, over the last years, CPIP have in reality become somewhat remote supervisors.

What has been described, with regard to penal courts, as a form of 'Mcjustice'⁶ functioning (Berman and Feinblatt, 2005: 25), perfectly applies to the manner in which French SPIP have to operate. The sheer number of cases, the lack of practical help with desistance, their tick-boxing, and rather improvised and very irregular meetings,⁷ of only some offenders⁸ are all components of this factory-line treatment of individuals. It does not help that France also embraces, to a certain extent, managerialism.

Since 1999, the level of paperwork has increased significantly with a resulting standardization of practice. To be fair, there was certainly room for improvement, compared to the previous essentially oral culture that prevailed in SPIP. Being able to trace, if only for legal purposes, what had been done, by whom and when, was indispensable. Also, as noted previously, since direct collaboration with the JAP had diminished, other mechanisms were needed, such as a common computer application along with standardized reports. However, managerialism has not – yet? – reached the levels seen elsewhere, with targets to meet, quotas, etc. Discretion still prevails, in fact it could be argued to an excessive degree, and if their recently created local hierarchy has become central to the running of SPIP, their competence and adequate training as managers has yet to be established.

Politicians have discovered the electoral benefits associated with tough on crime discourses. The French president himself, formerly Minister of Interior, has built his career on such a stance. Even though it has been suggested that French public opinion is less punitive than others (Mayhew and Van Kesteren, 2002), it has become more receptive to tough-on-crime policies, especially after 9/11, which can be seen as a definitive turning point. The consequences of these changes became apparent as early as 2002 within the Prison Administration. Disciplinary governance is now the prevailing form of management of prisons (Chantraine, 2010; Herzog-Evans, forthcoming). It also has influenced recent reforms that have instrumentalized probation with the aim of freeing prison space, via automatic release, which is now taking up much of CPIP's time (Herzog-Evans, 2009). New internal guidelines do not allow home visits and do not require staff to investigate the individual's environment in order to ascertain whether measures such as Electronic Monitoring, are likely to work.⁹ Previously recruited staff have voiced their opposition to what they see as tick box automated methods and punitive models of practice which they view as being imported from other jurisdictions. However, despite this the French system still retains some original traits.

Some things new

The French probation system is original in several respects, although it would be wrong to claim that they are all positive. There remains a strong involvement of the Judiciary in the management of sentences. Traditionally, SPIP were in charge of supervision, whilst specialized courts (for long sentences a three judge tribunal, the tribunal de l'application des peines (TAP) and for shorter sentences, one judge, the JAP) were in charge of 'sentence management measures'. JAP were usually strong supporters of resocialization and generally exercised their discretion with care and caution.¹⁰ Inevitably, there were some disagreements but overall the relationship between the JAP and SPIP was good with tensions being more apparent between the Prison Administration and the courts.

It could be argued that making probation part of the prison service organization has been a retrograde development. As in England and Wales, probation is now dominated by a prison hierarchy, at both the regional and national level, and SPIP directors are often former prison governors. As a result prison thinking has been

forced onto SPIP in such a way that is often detrimental to good supervision. Probation staff are trained at the National Penitentiary Academy of Agen, which is the same institution that trains prison officers and governors. Even though it has attempted to maintain some autonomy from the central administration in Paris, this does raise serious questions. Recently, a decree (30 December 2010) has changed the designation of probation officers. Previously 'Insertion and Probation Councilors' (in French CIP), they have now become 'Penitentiary Insertion and Probation Councillors' (CPIP). In the same vein, middle management and senior management staff have found that 'Penitentiary' was also added to their job titles. Undertaking research in SPIP is virtually impossible, as the traditional resistance of the prison system has rubbed off onto probation services.

If France has escaped Martinson's 'nothing works', it has unfortunately never acknowledged or attempted to introduce evidence-based practices in response to the 'nothing works' agenda as other countries have done. Evidence as a basis for probation work is largely unheard of in France and no scientific evaluation of French probation services' practices has ever been undertaken. The reasons for this are too complex to describe in detail here but one can briefly refer to the following factors:¹¹

- in the French culture, general poetic and philosophical ideas are deemed more valuable than hard science, facts and even common sense;
- there is an internal conflict between French scholars who still oppose for ideological and other irrational reasons,¹² the importation of criminology in France (Cario et al., 2011);
- there also exists a protection of the French language, which leads to a refusal to read, quote, or work in English;
- Overall, the idea prevails that the law reform can solve the problem of crime (e.g. France passed three laws 'against recidivism' from 2005 to 2010 and, during that same period numerous other penal laws);
- within probation services, the fears are: that this would be the vehicle for introducing more punitive practices; that this might bring in a host of human rights violations, but they are also probably afraid of a French Martinson effect (i.e. they would find it difficult to demonstrate their effectiveness).

Under such conditions it seems likely that real progress will only come from the importation of ideas from abroad.

Some things borrowed

As mentioned previously, France has followed trends that have existed elsewhere but this has happened largely independently of direct influence from the centre. Usually the French system finds it easier to import new 'measures' from other countries that can be used to formulate new laws rather than to emulate practices. France has, for instance, imported probation in 1958, community work in 1981, Electronic Monitoring in 1997, and GPS Electronic Monitoring in 2005.

More recently France has also imported the concept of mandatory probation based on two opposite models. The first relates to the supervision of dangerous sexual or violent offenders upon their release (Padfield et al., 2010). The second concerns the quasi automatically release of offenders sentenced to short to average length sentences (Herzog-Evans, 2009) under Electronic Monitoring, in a scheme which is very close to Home Detention Curfew. Mandatory release has had numerous adverse effects and does not seem to work as well as discretionary release (see Solomon et al., 2005). With both long term and short term sentences, this has meant that release is not based on a structured supervision plan, which offenders build with the SPIP and their lawyer, and consequently with which there is likely to be agreement, but instead is often something imposed upon them, sometimes with little regard for their personal circumstances and environment (Herzog-Evans, 2001). Other consequences are a serious degradation of prison atmosphere where long term prisoners are held and, for short term sentences, a total lack of supervision of those released under the French equivalent of HDC. The risk of large numbers of recalls, like in the USA (Petersilia, 2003; Travis and Visser, 2005) exists, even though it is less probable in a system where strong – probably excessive – discretion and flexibility are exercised and where there are no national or local guidelines regarding non-compliance.¹³

The Prison Administration, acting as the SPIP's central administration has instituted several national guidelines in 2008 and 2009, whereby it rather suddenly labelled CPIP as 'clinical criminologists' – which they are not, as they are well aware. Understandably impatient to see evidence-based practices implemented, senior members of the Prison Administration decided in 2010 to launch a form of evidence practice in the form of group work, imported from Quebec Canada, a jurisdiction with which France shares a common language.¹⁴ However, it was never accredited in a convincing manner. Its delivery was never monitored and lastly, its results were never scientifically evaluated. Thus there is no way to know whether they have had positive, neutral or negative effects on offenders. Still, this experience, which cannot technically be called a programme, is an interesting exception to the exclusively one-to-one amateurish type of supervision which prevails in France (Herzog-Evans, forthcoming). However, it would be a serious mistake to think that France is even remotely at risk of a programme invasion! It is also worth noting that French probation services have no training in risk assessment. For all these reasons, it would be another mistake to imagine that group work is even remotely responsible for the elimination of social work in French probation services.

The decline of social work in French probation has its roots elsewhere, some of which have been listed above, such as: punitive discourses and policies; an automated tick box form of supervision; excessive caseloads; the increasing recruitment of lawyers; and prison disciplinary governance. All these have fundamentally changed the work of probation practitioners. This has been compounded by other factors such as the end of home visits in 2010, restrictions into the offenders' circumstances; the lack of desistance support, and the prevailing tendency to refer to other agencies or charities – without, however, any determined, organized or even rational approach of case-management. It is therefore understandable that French probation staff are often left disillusioned and disheartened.

Often blue

Probation staff often struggle to deal with the stress generated by a combination of huge caseloads and role ambiguity (Lhuilier, 2007). On the one hand they are viewed as criminologists although they do not receive any formal training in criminology; whilst on the other hand, they are asked to work in an increasingly prescribed way, with offenders they cannot or will not treat; whilst being burdened with other tasks including those that used to be the responsibility of the courts. Previously hired CPIP staff often long for a former era where social work was prevalent, and where they spent more time with offenders than in front of computers. In some services, prison guards are now in charge of supervising those deemed non-dangerous (bearing in mind the absence of evidence-based risk assessment) and this experiment is likely to be expanded in the future. CPIP hardly ever interact with offenders in a meaningful way and it is the charities and other agencies that provide support, when it actually takes place.

The future does not look good for French Probation. Unless the next government realizes that the prison system's domination of probation has damaged its efficiency and can have adverse consequences vis-à-vis the electorate, the DAP will remain the most powerful subdivision of the French Ministry of Justice. With the current state of the economy, it is highly unlikely that a significant number of CPIP positions will be created in the near future. Implementing evidence-based programmes, practices and culture will take years of determined and persistent efforts. It is to be hoped that the combined influence of the Council of Europe and the European Union, and bodies such as the European Conference of Probation (CEP) along with the lobbying of a few, will eventually overcome France's resistance in this respect. Worryingly, however, at the time that this article was finalized, an important number of academics (lawyers and sociologists) were lobbying and campaigning 'against criminology in France' (Cario et al., 2011).

In conclusion, it would be rather presumptuous to forecast the future of probation in France. As in other countries, French criminal justice policies are strongly dependent both on media representations of high profile crimes and on ideology. Whether the opposition wins the next election in 2012 is certainly going to be a key element when trying to guess what the future might hold.

Notes

1. Medical sentence suspension is a measure which allows for the release of inmates who are either terminally ill or are in such physical condition that maintaining them in prison would infringe Article 3 of the European Human Rights Convention.
2. Furlough is a measure which allows an inmate to leave the prison for up to three days (in some cases up to five days) in order to maintain his family links, to seek employment, to get medical treatment, to pass an exam or to attend a court hearing.
3. The JAP is a one man/woman judge who: makes the decisions to release inmates (under EM, conditional release, suspended sentence, day-leave and other measures); grants furlough and remission; can change a prison sentence of up to two years,

before it is actually executed, into a community measure; can modify the obligations that are imposed on probationers serving a community sentence or a release measure; can expunge criminal records when they are at risk of preventing a released offender to find employment; and recalls or sanctions probationers when they are in breach or commit a new offense. Since 2004, a three judges court, the 'tribunal de l'application des peines' (TAP), has been in charge of conditional release, medical sentence suspension and tariff reduction for prisoners serving long term sentences. The decisions thus made are subject to appeal and a special chamber of the Court of Appeal dealing with sentences' implementation (the chamber of sentences implementation: CHAP) has been created in 2004. See Padfield et al. (2010), and 'France', by K. Reufllet.

4. In order to best understand this desire to colonize probation, one must bear in mind that France is a highly centralized country, where the executive is extremely powerful and does not share its power easily with the judiciary and the legislative. Under the current government, these cultural and legal traditions have been reinforced by a 'super president' who aspires to control, via the executive leaders he appoints, that his policies are being fully implemented everywhere. The PA is the most powerful of all Criminal Justice agencies, receives the most important part of the Justice budget and it has become patent that it aims at eliminating the JAP and all judicial intervention from probation.
5. According to the PA authorities, their PO missions are first and foremost to prevent reoffending and to implement sentences.
6. That is, a Justice where a mass of cases are dealt with in a Fordian factory-line way.
7. In France, meetings are rare and no guidelines regulate their number.
8. A recent high profile crime revealed that a significant number of SPIP do not supervise the files that they deem not serious enough; this, given the lack of assessment tools in this country, being based on the nature of the offence (Inspection des services de l'AP, 2011; Inspection des services judiciaires, 2011).
9. We have recently interviewed several JAP who complained that they were forced by their own hierarchy and the strong pressure of the PA to sign contracts with SPIP, whereby they accepted that their decisions to release under EM would not involve an investigation into the offenders' circumstances.
10. We are currently conducting a research pertaining to their professional culture and habitus, which has so far confirmed this.
11. For more details on these cultural traits, listen to Herzog-Evans (2011b).
12. In France, most issues are discussed through a political prism. The 'left' imagines that if criminology progresses in France under a right wing government, criminology will be *per se* punitive. Others see criminology as a threat for their career and status. A number of law academics have recently said that they already viewed themselves as criminologists and were concerned that criminology as a separate field would marginalize them amongst their other law academic peers (a petition was recently signed in that vein by a great number of them). Lastly, the strongest opposition has come from sociologists and other researchers working in state funded research agencies, who were so far the only persons doing true criminology research in France, and who do not welcome the threat of future competition.

13. Causes of recall are specified in great detail in the Criminal Procedure Code. However, Courts do exercise discretion when it comes to actually recalling or using other sanctions.
14. It is interesting to note that whereas the European Prison Rules have been widely advertised within the prison system and even used as a communication tool with the media, the Probation Rules (2010) have been totally ignored.

References

- Berman, G. and J. Feinblatt** (2001), 'Problem-Solving Courts: A Brief Primer', *Law and Policy* 23(2): 125–140.
- Cario R., M. Herzog-Evans and L. Villerbu** (2011), 'Pourquoi il est urgent de créer des UFR de criminologie', *Recueil Dalloz* 11: 766–767.
- Chantraine, G.** (2010), 'French Prisons of Yesterday and Today: Two Conflicting Modernities – A Socio-historical View', *Punishment and Society* 12(1): 27–46.
- Durrance, P., N. Hosking and N. Thorburn** (2010), 'Can Structured Programmes Improve One-to-one Supervision?', in F. McNeill, P. Raynor and C. Trotter, *Offender Supervision. New Directions in Theory, Research and Practice*, pp. 193–214. Cullompton: Willan Publishing.
- Herzog-Evans, M.** (1999), 'Le juge de l'application des peines, juridiction de premier degré?', *Revue de sciences criminelles et de droit pénal comparé*, 1999: 289–301.
- Herzog-Evans, M.** (2009), 'Application des peines: la prétendue « bonne partie » de la loi pénitentiaire', *AJPénal*: 483-490.
- Herzog-Evans, M.** (2011a), 'Desisting in France: What Probation Officers Know and Do. A First Approach', *European Probation Journal* 3(2): 29–46.
- Herzog-Evans, M.** (2011b), 'Programmes in France: What Next?', audio conference at the Starr conference 'Strengthening Transnational Approaches to Reducing Reoffending', Sofia, 8 June 2011. Available at: <http://herzog-evans.com/activites/conferences.php>.
- Herzog-Evans, M.** (forthcoming), *Droit pénitentiaire*, Dalloz, Paris.
- Lhuillier, D.** (2007), *Changements et construction des identités professionnelles: les travailleurs sociaux pénitentiaires*, Rapport final, July.
- Mayhew, P. and J. Van Kesteren** (2002), 'Cross-national attitudes to punishment', in M. Hough and J. V. Roberts (ed.), *Changing Attitudes to Punishment. Public Opinion, Crime and Justice*, pp. 63–92. Cullompton: Willan Publishing.
- Padfield N., D. van Zyl Smit and F. Dünkel** (eds.) (2010), *Release from Prison. European Policy and Practice*. Cullompton: Willan Publishing.
- Pearson, D.A.S., C. McDougall, M. Kanaan, R. A. Bowles and D. J. Torgerson** (2010), 'Reducing Criminal Recidivism: Evaluation of a Structured Process for Probation Supervision', *Journal of Experimental Criminology* 7(1): 73–102.
- Pelissier, P. and P. Verdier** (2008) 'France', in A. M. van Kalmthout and I. Durnescu (eds), *Probation in Europe*, pp. 349–380. Nijmegen: Wolf Legal Publishers.
- Petersilia, J.** (2003), *When Prisoners Come Home. Parole and Prisoner Reentry*. Oxford: Oxford University Press.
- Solomon, A. L., A. Bhati and V. Kachowski** (2005), *Does Parole Work? Analyzing the Impact of Post-Prison Supervision and Recidivism*. Washington DC: Xxxxxxxx.

Staechelé, F. (1995) *Pratiques de l'application des peines*. Paris: Litec.

Travis, J. and T. Visher (2005), *Prisoner Re-entry and Crime in America*. Cambridge: Cambridge University Press.

Martine Herzog-Evans, PhD, Professor at the Law Faculty, University of Rheims, France. Email: martineevans@ymail.com; <http://herzog-evans.com>