

The French government is planning on creating a new probation order. This sentence should, in the long term (approx. 3 years), replace all the existing sentences and in particular our probation order with suspended custody, our community work and our mix of probation order plus suspended custody, plus community work.

The government pledges that this will be a complete revolution: the probation order will not be linked to a custodial suspended sentence. It imagines that less people will end up in custody.

This is a rather superficial and purely legalistic viewpoint as:

- 1) All will depend on courts' attitude. So long as courts are not convinced that the new sentence is really different (which it is not) and in particular more efficient and more credible than the previous ones, why should it work? (Herzog-Evans, 2013 c and d)
- 2) What courts do depends to a great extent on numerous other factors (Boone and Herzog-Evans, forthcoming) and none is addressed by the Bill.
- 3) We need much more probation officers. Granted the MoJ has just announced that it will hire 1000 new PO (a lot of them will merely replace retiring baby boomers however). However it does not address the urgent question of their skills. In France rather than looking for specific skills, we look for diplomas and academic knowledge. The result is that we have been essentially recruiting lawyers for the last twenty odd years, hence to too great an extent pen-pusher/computer savvy people who more often than not, tend to think their job is to be 'an interface' between offenders and the judiciary (Herzog-Evans, 2013 e)

The crucial question, however, was always going to be what to do in case of breach.

It is all nice and gentle to affirm that this sentence is not linked to imprisonment but unless when the offender breaches he/she is not sent back to prison this is just talk. Considering the French legal system only two solutions were possible

- Either the sentencing court pronounced along with the probation order a potential prison sentence which would be enforced should the offender breach and the sentences' implementation judge (*juge de l'application des peines* – JAP – see my book 2013, b) bit then there was hardly any difference with the former probation order with suspended custody;
- Or the JAP referred the offender to the sentencing court which could then sentence the offender, breach being an offence (as it is currently the case with community work). In this case, the JAP was ousted which would have had a predictably very bad result: JAP are very lenient (see Herzog-Evans, 2013 a and b) and very much aware of the complexity of the desistance process. They systematically first do of reminding of law procedure called 'recadrage' (very similar to the one which Raynor describes in

his chapter in the latest Ugwudike and Raynor publication) and only recall if – and not always if – the probationer further breaches his order. There is no way in the world that French McJustice correctional courts would have the same attitude, nor the time, nor the information... I thus predicted more recall than with our current system, in spite of the government's pledge to reduce incarceration.

So in its latest shape, the Bill opts for a similarly counter-productive solution: the JAP will refer the case to the president of the tribunal – who's just as ignorant about offenders, their desistance (or reoffending) paths and will definitely not have the time to do a recadrage procedure.

As usual France thinks in terms of legal reasoning rather than in terms of evidence and knowledge, of skills, of humans, of institutions and agencies, of collaboration and so forth.

There were, however, several avenues if one wants to be more efficient when dealing with non-compliance and here I shall draw upon the long body of literature which I am listing below. To name but a few:

- First, and foremost having skilled PO who are able – and institutionally encouraged – to develop a therapeutic alliance with offenders;
- Second, and in the same vein work collaboratively with offenders in order to develop their agency and sustain their substantive compliance;
- Third, work collaboratively with other agencies and the judiciary;
- Fourth, base probation work on evidence and science and constantly adapt to it (including RNR, core correctional practices and in particular problem-solving and motivational interviewing)
- Fifth, keep the only good thing that French probation has, i.e. judicial intervention with a holistic and humane judge who respects fair trial;
- Sixth, really react to every breach case and this swiftly – it does not mean harshly at all; but it does mean detecting and reacting to violations;
- Seven, using alternative sentences (the Bill suggests a few but has little imagination): placing offenders under EM for a few weeks; short custodial sanctions, which, for instance can be enforced over the week-ends, adding obligations, modifying obligations, having week-end curfews....
- Eight, using rewards – not material ones, but for instance, anticipating the end of the order (in a solemn way – see Maruna, 2001 and 2011) and above all, praising success (Wodahl et al. estimated that in order to have an impact on compliance there should be four rewards to a punishment). People react

more to human encouragement and cognitive enforcement than to being given material rewards:

Needless to say French probation does not tick any of these boxes (see M. Herzog-Evans, 2013 f)... and this is what the current government and prison services should address rather than enacting an umpteenth useless legal reform.

References (those quoted above and many useful others)

- Andrews, D.A. and Bonta, J. (2010). *The Psychology of Criminal Conduct*, LexisNexis, 5th ed.
- Ayers, I. and Braithwaite, J. (1992). *Responsive Regulation: Transcending the Deregulation Debate*. Oxford: Oxford University Press.
- Beccaria, C. (1764) *On Crimes and Punishments* Trans. H. Paolucci (1986). New York, NY: Macmillan.
- Boon, S. D. and Holmes, J. G. (1991) 'The dynamics of interpersonal trust: resolving uncertainty in the face of risk'. In R.A. Hinde and J. Groebel (eds) *Cooperation and Prosocial Behaviour*. (pp. 190-211) Cambridge: Cambridge University Press.
- Boone M. & Herzog-Evans M. (forthcoming), « Offender Supervision and Decision-Making in Europe, in F. McNeill et K. Beyens (eds.), *Offender Supervision in Europe*, Palgrave MacMillan.
- Bottoms, A.E. (2001) 'Compliance and Community Penalties', in A. Bottoms, L. Gelsthorpe and S. Rex (Eds) *Community Penalties: Change and Challenges*. (pp. 87-116) Cullompton: Willan
- Braithwaite, V. (2003). 'Dancing with Tax Authorities: Motivational Postures and Non-compliant Actions' In V. Braithwaite (Ed.) *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Aldershot: Ashgate.
- Burnett, R. and McNeill, F. (2005). The place of the officer-offender relationship in assisting offenders to desist from crime. *Probation Journal*, 52, 3, 221-242.
- Crawford, A. and Hucklesby, A. (Eds.) *Legitimacy and Compliance in Criminal Justice*. Abingdon, UK: Routledge
- Digard, L. (2010) When legitimacy is denied: Offender perceptions of the prison recall system. *Probation Journal*, 57, 1, 43-61.

Digard L. (forthcoming), 'Contemporary Approaches to Increasing Parole Compliance: the Roles of Structure and Relationships', in M. Herzog-Evans (ed.), *Offender release and supervision: The role of Courts and the use of discretion*, Nijmegen, Wolf Legal Publishers.

Digard, L. (unpublished doctoral thesis). *Sex Offenders' and their Probation Officers' Perceptions of Community Management in England and Wales.*

Dowden, C., and Andrews, D.A. (2004). The importance of staff practice in delivering effective correctional treatment: A meta-analytic review of core correctional practice. *International Journal of Offender Therapy and Comparative Criminology*, 48, 2, 203-214.

Fletcher, H. (2003) 'Prison Licence, Community Order Breaches and the Prison Population', *Napo News*, 149: 1.

Gendreau, P. (1996). 'The Principles of Effective Intervention with Offenders.' In A. Harland (Ed) *Choosing Correctional Options that Work* (pp. 117-130). Thousand Oaks, CA: Sage.

Giddens, A. (1990). *The Consequences of Modernity*. Stanford, CA: Stanford University Press.

Hawken, A. (2010). 'HOPE for probation: How Hawaii improved behavior with high-probability, low-severity Sanctions.' *The Journal of Global Drug Policy and Practice*, 4, 3, 9-16.

Hawken, A. and Kleinman, M. (2009). *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE.* Washington, DC: National Institute of Justice.

Hearnden, I. and Millie, A. (2004). 'Does tougher enforcement lead to lower reconviction?' *Probation Journal*, 51, 1, 48-58.

Her Majesty's Inspectorate of Probation (HMIP) (2007). *A Summary of Findings on the Enforcement of Community Penalties From Three Joint Area Inspections*. London: HMIP.

Herzog-Evans M. (2013 a), 'Offender recall for non-compliance in France and fairness: An analysis of 'sentences' implementation courts' ' practices, in Ugwudike, P. and Raynor P. (2013) (eds.), *What Works in Offender Compliance. International Perspectives and Evidence-Based Practice*, Palgrave MacMillan: 185-207.

Herzog-Evans M. (2013 c), '« Récidive et surpopulation: pas de baguette magique juridique » , *AJpénal* mars 2013: 136-139

Herzog-Evans M. (2013 d), « Conférence de consensus: trop de droit; pas assez d'envergure institutionnelle et scientifique », *Recueil Dalloz*, 2013, n° 11: 720-723

Herzog-Evans (2013 b), *French reentry courts and rehabilitation: Mister Jourdain of desistance*, Paris, l'Harmattan.

Herzog-Evans (2013 e), 'Explaining French Probation. Social work in a prison administration', in I. Durnescu and F. McNeill (eds.), *Understanding penal practice*, Routledge: 63-76.

Herzog-Evans (2013 f), *Moderniser la probation française: un défi à relever*, Paris, l'Harmattan.

Kennealy, P.J., Skeem, J.L., Manchak, S.M., and Loudon, J.E. (2012). 'Firm, fair, and caring officer-offender relationships protect against supervision failure.' *Law and Human Behavior*, 36, 6, 496-505.

Klockars, C.B. (1972). 'A theory of probation supervision.' *The Journal of Criminal Law, Criminology and Police Science*, 63, 4, 550-556.

Laura and John Arnold Foundation (2013). Hawaii Department of Public Safety, Hawaii State Judiciary, and Laura and John Arnold Foundation partner on first-ever HOPE Pretrial pilot program. <http://www.arnoldfoundation.org/hawaii-department-public-safety-hawaii-state-judiciary-and-laura-and-john-arnold-foundation-partner> accessed August 2013.

Maruna S. (2001), *Making Good. How Ex-Convicts Reform and Rebuild their Lives*, American Psychological Association

Maruna S. (2011 b), 'Reentry as a rite of passage', *Punishment and Society*, n° 13(1): 1-27

Maruschak, L.M. and Parks, E. (2012). *Probation and Parole in the United States, 2011*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

McNeill, F., and Robinson, G. (2012) Liquid legitimacy and community sanctions. In: Crawford, A. and Hucklesby, A. (Eds.) *Legitimacy and Compliance in Criminal Justice*. Abingdon, UK: Routledge.

Miltenberger, R.G. (2007) *Behavior Modification: Principles and Procedures*. Belmont, CA: Thomson Higher Education.

Murphy, K. (2005). 'Regulating more effectively: The relationship between procedural justice, legitimacy, and tax non-compliance.' *Journal of Law and Society*, 32, 4, 562-89.

Padfield, N. (2012). 'Recalling conditionally released prisoners in England and Wales.' *European Journal of Probation*, 4, 1, 34-35.

Padfield, N. and S. Maruna (2006) 'The revolving door at the prison gate: Exploring the dramatic increase in recalls to prison', *Criminology and Criminal Justice* 6, 3, 329-352.

Paternoster, R., Bachman, R., Brame, R., and Sherman, L.W. (1997). Do fair procedures matter? The effect of procedural justice on spouse assault. *Law and Society Review*, 31, 1, 163-204.

Petersilia, J. (2007). 'Employ behavioral contracting for 'earned discharge' parole.' *Criminology and Public Policy*, 6, 4: 807-814.

The Pew Center on the States (2011). *The Impact of Arizona's Probation Reforms*. Washington DC: The Pew Center on the States.

Phillips, J. (2011). 'The exercise of discretion in the probation service and Bottoms' model of compliance.' *The Howard League for Penal Reform ECAN Bulletin*, 11: 9-12.

Prochaska, J. O. and DiClemente, C.C. (1992). *Stages of Change in the Modification of Problem Behaviors*. Newbury Park, CA: Sage.

Robinson, G. (2005). What works in offender management? *The Howard Journal of Criminal Justice*, 44, 3, 307-318.

Robinson, G. and McNeill, F. (2004). 'Purposes matter: examining the 'ends' of probation.' In G. Mair (Ed) *What Matters in Probation?* (pp. 277-304) Cullompton: Willan Publishing.

Robinson, G. and McNeill, F. (2008). Exploring the dynamics of compliance with community penalties. *Theoretical Criminology*, 12, 431-449.

Sherman, L.W., Schmidt, J.D., Rogan, D.P., Smith, D.A., Gartin, P.R., Cohn, E.G., Collins, D.J., and Bacich, A.R. (1992). 'The variable effects of arrest on crime control: The Milwaukee domestic violence experiment'. *Journal of Criminal Law and Criminology*, 83, 137-69.

Skeem, J.L., Louden, J.E., Polaschek, D., Camp, J. (2007). 'Assessing relationship quality in mandated community treatment: Blending care with control.' *Psychological Assessment*, 19, 4, 397-410.

Solomon, A., Kachnowski, V., and Bhati, A. (2005) Does Parole Work? Analyzing the Impact of Postprison Supervision on Rearrest Outcomes, the Urban Institute, March

Taxman, F.S. (1999). 'Graduated sanctions: Stepping into accountable systems and offenders.' *Prison Journal*, 79, 2, 182-205.

Thompson, J. (2007) 'The Recall and Re-release of Determinate Sentence Prisoners', in N. Padfield (Ed.) *Who to Release? Parole, Fairness and Criminal Justice*. (pp. 147-58). Cullompton: Willan Publishing.

Turnbull, S. and Hannah-Moffat, K. (2009). 'Under these conditions: Gender, parole and the governance of reintegration.' *British Journal of Criminology*, 49, 532-551.

Tyler, T.R., (1990). *Why People Obey the Law*. Princeton: Princeton University Press.

Tyler, T.R. (2003) 'Procedural Justice, Legitimacy, and the Effective Rule of Law.', in M. Tonry (Ed.) *Crime and Justice: A Review of Research*, (pp. 283-357). Chicago: The University of Chicago Press.

Ugwudike, P. (2010). 'Compliance with community penalties: The importance of interactional dynamics.' In F. McNeill, P. Raynor, and C. Trotter (Eds) *Offender Supervision: New Directions in Theory, Research and Practice* (pp. 325-343). Abingdon: Willan.

Ugwudike, P. and Raynor P. (2013) (eds.), *What Works in Offender Compliance. International Perspectives and Evidence-Based Practice*, Palgrave MacMillan.

Werth, R. (2012). 'I do what I'm told, sort of: Reformed subjects, unruly citizens, and parole.' *Theoretical Criminology*, 16, 3, 329-346.

Whetzel, J., Paparozzi, M., Alexander, M., Lowenkamp, C.T. (2011). 'Goodbye to a worn-out dichotomy: Law enforcement, social work, and a balanced approach.' *Federal Probation*, 75, 2, 13-15.

Wodahl, E.J., Garland, B., Culhane, S.E., and McCarty, W.P. (2011). 'Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections.' *Criminal Justice and Behavior*, 38, 386-405.