

# 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:
- ▣ EHRCt, 28 juin 1984, *Campbell & Fell v. UK*, n°. 7819/77 and 7878/77
- ▣ EHRCt, 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 (2<sup>nd</sup> 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)

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# Thank you!

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