
What's in a name: Penological and institutional connotations of probation officers' labelling in Europe ¹

Professor Martine Herzog-Evans

Université de Reims, faculté de droit/ University of Rheims, Law Faculty

INTRODUCTION

'What's in a name?' asks Ros Burnett (Burnett, 2007: 221), who, trying to define probation for the *Dictionary of Probation and Offender Management*, adds that probation 'is a brand name that has international recognition'.

Practitioners and academics use the word 'probation', which has become a form of universal label for offender supervision, and yet do those who use this term assign the exact same meaning to it? When managers, practitioners and scholars from different countries meet to exchange ideas and endeavour to work together, do they share the same definition, and attach the same connotations and values to this word? When reading the European Probation Rules (EPR), for example, do French, Dutch or Romanian practitioners understand the same thing? This article, drawing on discussions and information received from colleagues in several different European countries, explores this question in some depth and concludes that many terms – and, crucially, the word 'probation' itself – have quite different connotations depending on the language, national culture and context.

The EPR were written in English, and then translated into other languages. Thus, it is English words, with their English connotation that were chosen first to draft the EPR. Would other nations have chosen the term 'probation'?ⁱ Would it not have been a better idea to translate EPR by their national equivalent rather than using this generic word? Words carry with them history and culture, and since English is the *Lingua Franca*, it is Anglophone history and culture that is inevitably imposed onto other nations. The very denomination of 'Probationⁱⁱ Rules', refers nearly word for word to the first attempts to regulate probation at national level in England and Wales at the beginning of the 20th century (see Mair and Burke, 2012).

Words also convey policies. For instance, in the EPR, Rule 66 refers to risk, need, responsivity, and positive (protective?) factors. This reflects research which puts emphasis on protective factors in risk assessment (see Lösel and Bliesener, 1990) and, more recently, in desistance (McNeill, 2009), in particular under the influence of the Good Lives Model (Maruna, 2001, Ward and Maruna, 2007). Indeed risk assessment tools increasingly include such factors (V. de Vogel, C. de Ruiter, Y. Bouman,

M. de Vries Robbes, 2009). Still, when the French official version of EPR literally translates Rule 66 as 'les risques, les facteurs positifs et les besoins... la réceptivité', this raises two concerns. First, 'réceptivité' will not make any sense, nor ring any bells in a context where French readers have never heard of the RNR literature; second, they will be totally oblivious of the context and consequences of the decision to add 'protective factors' to the list.

Words, and in particular official labels, can also convey political and policy changes and I posited, based on the French experience (see below), that this would be particularly the case with the title given to probation officers. One common denominator in European probation (van Kalmthout and Durnescu, 2009) is a backdrop of rapid evolution – if not revolution. Overall, and despite important differences (see special edition of *Probation Journal*, 2012, no 1), probation has become more punitive, more managerial, more accountable, less supportive, more evidence-based, more private sector based, involves more case management, more work, more structured work, more institutional control, and can also be plagued with prison thinking.

For all these reasons it seemed to me that it would be useful to raise a few linguistic questions. What connotations are attributed to the words 'probation' and 'officer' in various European languages and contexts? Do other jurisdictions use different terms to designate their probation officers and has this changed, due to political or institutional developments, in the recent past. These questions were the origins of a small research inquiry, initiated in the Community Sanctions and Measures (CSM) subgroup of the European Society of Criminology at a meeting in Edinburgh in April 2011.

METHODOLOGY

I first drafted a simple table with several items: the official name of probation officersⁱⁱⁱ in each country; its literal translation and, when relevant, the equivalent in English; whether this has changed and when; whether the expression 'social worker' was used. Several members of the CSM group filled in the table, yielding information for fifteen jurisdictions.

For more in depth information and analysis, I contacted all CSM members again with a written questionnaire. Twelve responded in writing, giving information for ten countries (Sweden, Scotland, Norway, Northern Ireland, England and Wales, Belgium, Germany, the Netherlands, Romania, Austria) and offering more details as necessary in further correspondence. Four others were interviewed. There was some further discussion with academic colleagues.

As a last minute thought, I added into the questionnaire an item concerning the labels used to designate offenders, both in probation services and in a legal context, as I assumed that this would give additional information on the goals and ethics of probation services.

FINDINGS

1) Probation officers

a) Use and connotation of the word 'probation'

The word **probation** is still widely used in Europe to label services, missions and staff. *France, Hungary, Northern Ireland, the Island of Jersey, Romania, Germany, Austria, and Sweden* use the term to refer to their staff. What the research strikingly reveals is that probation conveys vastly different meanings in each one of the fifteen European countries which have participated.

Probation as a talisman to defend against... the worst excesses of the culture of control'

(Burnett, 2007:221). Historically, probation meant a period of testing: being on probation implies that the person is given a trial period during which he/she has to prove something. In *England and Wales*, probably because of this literal sense, but also because of the 1907 Act which stated that the purpose of probation supervision was to 'advise, assist and befriend', it has always had a very positive connotation, linked to its welfarist and even former 'missionary' dimension. In such a context, it may appear to be a precious treasure which needs to be defended against the tides of the culture of control. The positive connotation attached to 'probation' is shared by its close neighbour, *Jersey*, where the expression 'probation officer', has always been

used. It designates social workers appointed by the Court as ‘délégués’ in criminal and non-criminal family matters. In *Austria*, ‘Bewährungshelfer’, likewise means those who support, care and help offenders under probation, probation meaning personal and social support during a probation period.

Not all authors are as positive, however. Mike Nellis wrote (personal communication): ‘My continuing reservation in the 21st century about probation as it was understood traditionally, is that it does not connote anything about restorative justice - it is unduly focused, in an anachronistic way, just on individual offenders. We should not lose sight of that, or of rehabilitation, but equally we should bring in concern for victims, as restorative justice does, and also the wider community context in which offenders live - as Justice Reinvestment strategies do.’

Indeed, probation, whether traditional or more punitive, certainly leaves out issues such as human rights, legitimacy of justice (but see Durnescu, 2010, Connolly and Ward, 2008; van Zyl Smit, forthcoming), and is rather silent concerning rights to fair legal procedures, or with matters of consent, and indeed, more often than not, ignores altogether the victim (Cario, 2004, Herzog-Evans, 2008), which may still be relevant in the course of carrying out a sentence (Herzog-Evans, 2011-2012). In this respect, if expressions such as probation officers, agents, supervisors, or helpers, may well apply to probation staff in charge of supervision, other designations may apply to the field in which they operate. For instance, in France, probation as a field is called ‘sentences’ implementation’ or ‘sentence management’.

As a matter of fact, ‘probation’ does not have an ‘anti-culture of control’ meaning in all languages and cultures. On the contrary, **probation can sometimes convey the worst excesses of the culture of control**. In France, it is used to counter-balance the word ‘insertion’ – roughly the operative word for desistance – in the official label of probation officers (the unnecessarily complicated ‘Penitentiary insertion and probation counsellors’ - CPIP.) France thus attempts to reconcile what it regards as contradictory terms. In *Northern Ireland*, the word

‘probation’ conveys the following: ‘Public protection through risk management, enforcement and offending programmes’. In other countries, probation may be **simply descriptive and neutral**, as I was told was the case in *Romania*.

Laws sometimes define exactly what probation is. In Scotland, for example, probation is defined in the national standards as a disposal which ‘*requires the offender to work towards an acknowledgement of responsibility for offending behaviour and seeks to reduce the risk of reoffending by combining supervision and control with help, encouragement and challenge*’ (Social Work Services Group 1991, para. 7.1). A similar complex mix of goals is apparent in *French* law. The mission of probation officers has recently been defined by the Prison Act of November 24, 2009 (art. 13), as being in charge of the preparation and execution of judicial decisions pertaining to both *insertion* and probation, which implies that they implement *insertion* and prevention of recidivism policies, supervise or control offenders and prepare their release, both in prison and community settings.

b) Use and connotation of the word ‘officer’

Four countries still use the word ‘**officer**’ to this day: Hungary, Northern Ireland, *Jersey*, *Sweden*. Such was formerly also the case in England and Wales, where it seems to have originated. Other countries, whilst adhering to the word ‘probation’, prefer to add other terms to it. Some use the word **counsellor**. Such is the case of both *Romania* and *France* (respectively ‘*consilier*’ and ‘*conseiller*’), a word which aims at being neutral and descriptive. However, at least in French, it may be seen as an echo of the English 1907 Act ‘advise’, as the verb ‘*conseiller*’ can precisely be translated into ‘advise’. Other countries refer to **helpers**. Two German speaking countries echo the second famous 1907 Act emblem, i.e. ‘assist’: *Germany* and *Austria* call their probation officers, ‘Bewährungshelfer’ - *those who help with probation*. It seems to also mean, but to a lesser degree, those who supervise.

The word ‘officer’ appears to come along with its own burden of **ambiguity**. It can mean both ‘a person in the armed services who holds a position

of responsibility, authority, and duty 'and a 'government official' (<http://www.collinsdictionary.com>). In other words, it can be both punitive and descriptive and neutral. In American English, according to Hans Toch, writing in the context of prison settings, 'the fact that prison officers are called "officers"... has invited us to envisage their mission and organisation as police-like, or as resembling the mission and organisation of the military' (Toch, 2011:437). In French, the word *officer* would cause strong opposition as it exclusively conveys a military or police meaning. In a previous research on desistance (Herzog-Evans, 2011), probation officers were asked what they imagined they would become five years from then and one answered: 'a criminologist with a gun in a holster'. This is the sort of image that the word 'officer' would convey in French.

In *Jersey*, if the word 'officer' is still used, its meaning seems to be blurred by the French heritage and the vocabulary that goes with it. Brian Heath explained: 'We talk about "probation officers" in English but the official translation of our Law refers to a "delegate"; the original and still correct title is "délégué." Some more recent legislation refers to "probation officer" but with the definition referring back to "délégué." (Legislation is now in English.) We do not use the term social worker but refer to probation officers using social work skills.' In *Jersey* probation officers are still seen, for the most part, as officers working *for* the courts. Most jurisdictions, however, use the classic 'officer' label.

2) Other Titles

a) Mixed Titles

As we have seen, in *France*, a complex label is used in order to reflect the opposite meanings that this country attaches to supervision and 'insertion'. To this already complex label a recent decree (Dec. 2010) recently added 'penitentiary', in order to underline the ever growing ties to the prison services. This also reflects a cultural trait: France is above all a country of lawyers – and probably of 'labellers' – and given the syllogistic nature of its legal reasoning, it always tries to refer to an exact label which conveys precisely what a person is or does. Other nations prefer to use more subjective titles.

b) Carer, supporter and helper

Norway clearly stands out as the only country in our research which refers exclusively to care. It designates its probation officers with the rather poetic term of '*Frimsorgsmed-arbeidere*', i.e. literally 'those employed in care in freedom'. It refers to carers who work in the community, or rather in the free world as opposed to prison. However, in practice, it seems that staff use a term that translates as 'probation worker'.

Other countries also refer to the help that probation officers can give to probationers, as in *Germany* and *Austria*. In *The Netherlands*, the label 'reclasseringwerker' means 'employees/workers concerned with social recovery'. This is worlds apart from countries which use more punitive labels.

c) Offender managers

In *England and Wales*, with the creation of NOMS in 2004, 'offender managers' replaced the traditional 'probation officer' title. Both 'probation' and 'officer' have disappeared from laws, guidelines and official documents, whilst still being used by practitioners and probably by service users. Superimposing this new title over the familiar label of 'probation' is a definite move towards the above-mentioned 'culture of control': the rather afflictive word 'offender' puts emphasis on the offender's personal responsibility, on the offence and on risks (see section 5), rather than on the individual's environment and needs. Replacing 'officer' by 'manager' reflects the increasing managerialism which is plaguing many European probation services (Kalmthout and Durnescu, 2008).

Spain also uses the word 'manager'. However, it does not link it to offenders, but to measures executed in the community. In that context, it is rather close to the French concept of 'sentence management' (see *supra*) and refers to the idea that sentences are not static, but can be adapted as time passes to the person's changing circumstances. Precisely, it belongs to a group of countries which looks for more neutral terminology.

d) Sentence assistants

Several countries prefer to refer to the role that probation officers play in the implementation of sentences. Such is the case of *Spain with its Servicios de gestión de penas y medidas alternativas* which translates as 'Management of alternative sanctions and measures services'. *Italy* too refers to *Operatori UEPE*, which literally means 'External Penal Execution worker'. *Belgium* refers even more directly to the judicial mandate, calling probation officers 'Justitie assistant/assistant de justice', i.e. justice assistants'. It is not surprising that these countries would refer to their judicial mandate given the fact that courts still play an important role in the *post sententiam* phase of the penal process (Padfield et al, 2010). This does not mean that they are more punitive, more sentence-oriented, nor that they have necessarily forsaken social work.

3) Use of social work

The use of the term 'social work' has been described as a 'potent symbol of the organisation's ... heritage and aspirations' (Nellis, 2004: 120). **Some 10 countries still use the term 'social worker' to various degrees.** *Scotland*, for instance, has 'Criminal justice social workers'. However, while only a few have made it their official label, several countries use the expression 'social worker' in practice - in *Hungary, Austria*, sometimes in *Italy* and, occasionally, but increasingly rarely, in *France*.

Other countries do not use the expression 'social worker', but nonetheless **refer to resettlement, support, help, rehabilitation**, etc. These countries are: *Germany, Austria, Romania, The Netherlands* and *Norway*. In other countries probation officers may **not necessarily be called social workers but they do have a social worker background** or training. Such a training is required in the following 8/15 jurisdictions: *Scotland, Northern Ireland, Jersey and British Isles, Spain* (and apparently also in *Catalonia*), *Belgium, Romania, the Netherlands* and in *Sweden*.

In *Romania*, approximately 40% of probation officers are in fact social workers, whilst 60% are lawyers, educators or sociologists. In *Sweden*, recruiters look for people who have a degree in social work or a similar training, i.e. who have a university degree in social sciences, behavioural sciences or law. Perhaps 50 to 65% have a social work background. In *Catalonia* it has been estimated that 90% of probation officers have a social worker background, the other 10% being psychologists.

Should part or all probation officers be trained social workers is a question which this article does not endeavour to address. And indeed, in other countries, **a clear difference is made between probation and social work**. Such is the case in: *Jersey, Northern Ireland*, and *Sweden*. In *England and Wales*, 'POs were always "officers of the court" and answerable to the court - rather than social workers^{iv}'. Another respondent added: 'There was a time in our history when probation officers saw themselves as social workers in the criminal justice system and they trained ... in the same way as social workers. This was set aside for political reasons, since their task was redefined as *punishment in the community*, and social work gave unwanted implications of help and support'. In other words, social work has been deemed not in line with current punitive policies. In *France*, the same tendency is apparent: most probation officers, except those who were recruited a long time ago, typically say that social work is not their job. This can be explained by an increasing emphasis on control and supervision in its literal sense, by enormous caseloads and by a changed recruitment and training system (Herzog-Evans, 2011, 2012).

In other countries, social work may well have a **negative connotation**. *Italy* is one of the jurisdictions which have changed the official label of probation officers in order to reflect policy or institutional changes. Rarely if ever is the term 'social workers' used as an alternative to 'operatori'. This is partly because it is thought important to differentiate between those who work in the field of social work and probation services.

4) Changing titles to reflect changes

“Any new name should convey, in shorthand, what the service is, does and aspires to be, and also provides a peg on which the public can eventually hang a deeper understanding of its work” (Nellis, 1999)

Very few countries have experienced no change at all in modern times, although in Jersey the label ‘probation officer’ seems to have existed from the beginning. In *Germany*, since probation services were created in 1953, probation officers have been called in exactly the same way. This may reflect a consistency in their mission over the last decades. Indeed, one can detect the inevitable signs of managerialism and some restructuring in certain *Länder* or privatisation in others, but the core missions of these officers have not changed. Likewise, in *Austria*, there has been no attempt to change the designation of probation officers.

One of the goals of this research was to determine whether **recent changes in probation and probation services** and their goals had been **reflected in the way probation officers were designated**. Such was the case in 11/15 countries:

- *France* (2010)
- *Scotland* (1970; 1991)
- *England and Wales* (2004)
- *Belgium* (1999)
- *Sweden* (1989)
- *Italy* (2005)
- *The Netherlands* (2006)
- *Norway* (2001)
- *Northern Ireland* (roughly in 1950)
- *Spain* (2011)
- *Romania* (2006)

However, the reasons behind such changes vary considerably.

a) Change of title to reflect institutional changes

In **seven countries**, reforms essentially convey institutional changes; however, as we shall see, in several of them they also reflect policy agendas. The case of *Belgium* is particularly interesting. Here

staff used to be called ‘probation officers’, but this label was abandoned after the infamous 1996 Dutroux case and replaced by ‘justice assistant’. This reform, which took place in 1999 (Act of 13 June 1999), can be explained by the fact that the Dutroux case had questioned the functioning of police services, and of the penal system as a whole. The very legitimacy of the entire Belgian political system became the subject of an intense societal debate and prolonged media attention. Pressure was placed onto politicians to act and reform in a significant way. A first move consisted in merging all community social work services and to assign them to unique buildings, called ‘Houses of Justice’. These Houses would host a variety of personnel:

- external social workers of the Prison Service;
- probation workers;
- Victim Support Service workers;
- Employees of the Penal Mediation Service.

A common label, ‘justice assistant’, was chosen in order to designate all these practitioners. Houses of Justice were to be responsible to offer initial legal aid to all citizens, in both penal and civil spheres. Justice was first and foremost a service due to citizens and should, consequently, be close to them and easily available. In other words, the label change reflects both an institutional and philosophical revolution (Bauwens, 2011).

Changes in other countries have not been as radical. Previously, in *Spain*, there was no clearly official name for probation officers, but since 2011 they have been called ‘Delegat de gestión de penas y medidas alternativas’ – i.e. delegates for the management of alternative sanctions and measures. This change probably reflects the creation of a new body, the ‘Service for the Execution of Alternative Sanctions and Measures’ which has more autonomy, and distinguishes more clearly between those who work in prison settings and those who work in the community and makes them more visible than before.

In *The Netherlands* a reorganisation of services in 2006 created two different types of ‘reclasseringswerker’: on the one hand, ‘adviseurs’ (advisors), i.e. workers in charge of assessing probationers and preparing pre-sentence reports;

on the other hand, ‘toezichhouders’ (offender supervisors), i.e. workers in charge of supervising probationers. However, in Dutch, ‘supervisor’ refers to supervising the compliance of offenders with the judicially designed obligations of the order or sentence. These officers also oversee other professionals who are in charge of helping the offender comply.

In *Italy*, at first glance, the change of label appears slight. Originally called CSSA workers (Centre for Adult Social Services workers), they became UEPE workers (*operatori*) in 2005 (Law 27 July n. 154, 2005), i.e. Office for the External Penal Execution workers. The slight change intends to reflect that these social workers operate in the field of sentence’s implementation, making it clearer that they are a ‘specialised service’, in charge of the *post sentenciam* phase of the penal process, in partnership with specialised Supervision Courts.

With the Probation Act of 1950, *Northern Ireland* went (without much debate) from ‘police court missionaries’ to ‘probation officers’. This followed a 1946 agreement whereby Northern Ireland would benefit from the same level of social services as the rest of the United Kingdom. Probation was severed from its original court connection and became the responsibility of the Ministry of Home Affairs, bringing better funding, recruitment and organisation (Fulton, 2008). Unsurprisingly, staff would be called probation officers, attending the same training programme as in England, and developing from a traditional charity base to a professionalised probation service, as in England (Mair and Burke, 2012).

In *Norway*, the change from ‘Those employed in care in freedom related to criminality’ to ‘Those employed in care in freedom’, which occurred in 2001 (the Execution of Sentences Act), only echoed an organisational change. Before 2001, probation officers were managed directly at national level and yet were at the same time and to a large extent autonomous in practice. With the law reform of 2001, a regional management-level was introduced between the national and the local (individual unit) level. Prison and probation were to have joint management at both national and regional level, while remaining separate at the local unit level.

Semantically, it is interesting that the words ‘care’ and ‘freedom’ were kept, whereas ‘related to criminality’ was deleted raising a question about whether there was some deeper meaning to this change. One explanation may be that a new form of punishment, community sentence, was introduced. Before 2001, there had been a community *service*, in the form of unpaid work for the benefit of the community. The unpaid work element remained in the community *sentence*, but became one of the numerous possibilities to fill the number of hours imposed by the court. The probation service now had the authority to decide what the content of the sentence would be. About 40% of this order consists in activities related to improving employment or educational possibilities, receiving treatment, programme participation or mediation. In other words, rehabilitation is now part of the sentence. This change, mirrored by the probation officers’ designation, can thus be interpreted as having reduced the punishing, retributive character of the court sentence. At the same time, the reform of 2001 has, in a Foucauldian way, drawn these rehabilitative activities – which were previously carried out by the community at large – into the retributive context of a court sentence. If that is the case, then there might be a hidden punitive connotation to the reform and the change in label.

The *French* situation is equally complex. Before 1993, probation officers did not really have an official label. They were recruited in the ranks of educators and social assistants. Prison and community services were also separated. In 1993, probation officers obtained a new status and were called ‘insertion and probation counsellors’ (CIP) which, as noted previously, was meant to reflect what was seen as the dual penological goals of these services: insertion and probation. Former educators and social assistants were strongly encouraged to change their status and name; a lot were reluctant, regarding the new name as emphasising a new punitive trend (because of the use of probation and the absence of reference to social work), but most gave in as there were strong financial incentives. In 1999, prison and community services fully merged – a first step to an ever growing prison service colonisation of probation services (Herzog-Evans, 2012a; forthcoming). Indeed a decree passed in

December 2010 for the application of a 2009 Prison law, which had considerably increased the prison orientation of their missions and goals, changed the name of probation officers to 'penitentiary insertion and probation counsellors'. This was the flag that was planted in the prison service's newly fully conquered terrain. The decree also eradicated from the Criminal Procedure Code any mention of 'social worker' and replaced it by the new CPIP label. In other words, the reform does reflect a fully achieved institutional colonisation; in addition, it reflects a more punitive trend: it is about not doing social work anymore, which was already apparent in the field – except with 'older' practitioners. Probation officers recruited after 1993 and 1999 have fully accepted this shift.

b) Change of title to reflect punitive changes

So indeed, in four countries, changes do reflect punitive changes, which vary in intensity. In 1989, Sweden went from 'treatment assistants' to 'free work inspectors', reflecting a change in policy, from assisting treatment to controlling in the community. This also coincided with a new focus, made apparent in the legal system, from an assessment of how the offender could be enabled to change to a focus on the nature of the crime and value of the punishment. It was also in the line of societal changes due to difficult economic times, which led to many changes in the welfare state (Kuhnle, 2012).

As was mentioned above, *England and Wales* has forsaken the traditional 'probation officer label' for a new more managerial and more offender centred 'offender manager'. In practice, the traditional label is still used, but almost all official documents refer to 'offender managers'. As noted previously, this shift is resented by many practitioners because of its punitive and managerial connotations. Respondents remarked that 'Management sounds very efficient and business-like' and 'The changes reflect the arrival of new public management, a growing belief that probation was not delivering effective sanctions in the community, and anxiety about loss of public faith in the probation service. Thus, the changes in the Probation Service mirror changes in late modernity and the emerging 'culture of control' as a consequence'. It was felt that probation services barely escaped the North

American label of 'correctional officers', thanks in part to the role played by Napo (the professional association and trade union).

Peter Raynor asks whether probation is still possible, explaining: 'The word 'probation' itself survives mainly in the titles of jobs and organisations, though in the former case it appears precarious: the term 'offender manager' is increasingly replacing 'probation officer', and the most durable continuing use of the term appears to be in titles like Probation Trust, or in organisations such as the Probation Association, the Probation Chiefs' Association, the Inspectorate of Probation and the National Association of Probation Officers (NAPO). Some of these residual uses may be less secure or prevalent if the vision outlined in the recent Green Paper comes to pass (Ministry of Justice 2010)' (Raynor, 2012).

Mike Nellis^v is of a slightly different opinion, however^{vi}: 'I was not actually as wedded to keeping probation as some of my colleagues and spent a while pushing the idea that in order to resist having a bad name imposed on us we should promote our own new name - so I suggested we should move to the term "community justice service". I intended "community justice" to connote not "social work" as such but three inter-related things: anti-custodialism (a minimalist approach to using prison), restorative justice (which can encompass the needs, rights and interests of both victims and offenders, and community safety (reducing crime and creating a positive sense of security and wellbeing). I was never in a majority on this - most colleagues preferred to press for keeping probation, because of its traditional connotations and because it was a term that still had international credibility. I am not unhappy to see probation survive, but as I worried at the time, it has survived while having its real-meaning hollowed out - we fought successfully to preserve a word but not what the word stood for.'^{vii}

From this perspective, the situation in *Scotland* may *prima facie* seem ideal as the expression 'social worker' still prevails. One must remember that this new label was adopted in 1970: previously Scotland used the English 'probation officer' label. With the 1991 reform, however, these practitioners have been called 'Criminal justice social workers', and

not merely ‘social workers’. This does reflect a change towards a more punitive penology. Respondents said ‘Since 1991, the intent of governments has been to make community sanctions more effective and more credible with sentencers and the public, both so as to reduce the use of custody (which has in fact gone up) and so as to better protect the public by reducing reoffending. The old welfarist approach was seen as being too lax, and so there has been more of a focus on deeds as well as needs, on tackling offending as well as social problems’. But the change was also meant to reflect organisational changes. Services would be ‘required to re-organize the delivery of offender services along specialist lines to facilitate strategic planning and funding processes. This led in larger regions to the creation of specialist teams and in smaller authorities to the identification of designated specialist staff with caseloads devoted solely or primarily to 100 per cent funded criminal justice work’.

One country stands out as it has opted for a new name as the result of **a desire to acquire the label ‘probation’**. *Romania* went from ‘counsellor of social reintegration and supervision’ to ‘probation counsellor’. Civil servants wanted ‘probation’ to be included in their designation and obtained satisfaction in 2006.

5) Addendum: probationers label

As mentioned, a question was inserted about the way probationers were designated both by practitioners and in the law. I had become interested in the designation of offenders in the course of another research, on the professional culture of French sentence’s implementation judges. I had noticed that in their rulings, some judges would call offenders ‘Mr’ or ‘Mrs’ whilst others would simply call them First Name SURNAME and I started to draw statistics and to try and link this to the nature of their rulings. In this endeavour, I was strongly convinced by the legitimacy (Tyler, 2006 and 2007) and therapeutic jurisprudence (Petrucchi, 2002) literature emphasis on respect for offenders. I was also influenced by the convict criminology movement. As Jones, Ross, Richards, and Murphy (2009: 166) argued: ‘The group has also called for a careful review of stigmatizing language commonly

used in criminal justice articles and textbooks. For example, the use of the term “offenders” is derogatory and detrimental to defendants, convicts, and ex-convicts trying to re-enter the community.’

I only obtained answers from ten out of the fifteen countries. Oddly, a few people did not quite get the meaning of my question: enquiring about how probation officers should be defined was instantly understood, but wondering how probationers were labelled seemed to have taken quite a lot of my colleagues aback. Of those ten countries, two categories emerged: those who tried and be neutral; those who had no problem with using the word ‘offender’.

a) Neutral and/or respectful labels

In the first group, the word ‘offender’ seems to be carefully avoided and a more neutral term preferred. Some do this by referring exactly to probationers’ legal status. It may be argued that this is not entirely neutral or descriptive but still emphasises their offending history. However, it also reflects a careful attempt to avoid using the more derogatory term of ‘offender’, which only refers to the offence. Conversely, referring to the person’s legal status implies that this is just a moment in his or her life, whilst referring to the fact that he or she is subjected to supervision.

In this vein, in *France*, laws and court cases refer to ‘the sentenced’ or ‘the interested’ (literal translation), whilst practitioners use ‘the sentenced’, or ‘the probationer’ or even ‘the proba.’ for short. People who are supervised by probation services whilst incarcerated are called ‘detainees’ (*les détenus*) – rather than ‘the prisoners’ (*les prisonniers*), both in legal documents and in practice. In fact, the recent Prison Law (2009) has even carefully replaced in all legal documents, codes and norms the former expression ‘the incarcerated’ by ‘the incarcerated *person*’ in order to emphasise that a detainee is first and foremost a person and should be treated as such^{viii}. It is plain that all practitioners, be they judges or probation officers do try hard not to use derogatory labels. The lawyer in most of them also dictates that they should use words that are as precise as possible and reflect exactly what the legal status of a person is.

Equally, in *Italy*, practitioners and the law usually refer to 'the person', and less frequently to 'the sentenced person'. During the *post sententiam* phase, they also refer to 'the probationer' or, again 'the person'. These words, like in French, are designed to describe at what stage of the penal process the person is. Similarly before someone has been tried, he is called 'the charged' or 'the accused', but also, again, the 'person'. With the same intent, in *Romania*, probationers are called 'convicted persons' or 'supervised persons' (Persoane condamnate or Persoane supravegheate). In *Jersey*, laws refer to the French old term 'l'inculpé'^{ix}, but policy documents and practitioners use 'Probationer' or 'child' or other non-derogatory terms wherever possible, though the word 'offender' is still used from time to time. In *Germany*, laws use the expression 'convicted person' (*die verurteilte Person*). A respondent explains: 'The professional language of probation workers has moved from "Proband", which, I think would be probationer, to "Klient" – easy: client. The website of the institution in our Federal State speaks of "fellow citizens who have offended", not as a technical term but to show who are the people they work with'. In *Spain and Catalonia*, courts are very formal, and refer to 'the accused', 'the sentenced person' (*el condenado*). Probation services also use 'the sentenced person'. Offender is never used, and in fact, just like in French, 'does not even sound right in Spanish'.

In *Belgium*, in the Houses of Justice, an offender is referred to as 'justitiabele' (Dutch) or 'justiciable' (French). In *France*, 'justiciable' is also used to describe any person in contact with the justice system and is often used by probation staff or sentence implementation judges. It implies that the 'justiciable' is entitled to receive a service from the Justice Public Service. Since Houses of Justice deal equally with offenders, victims and other members of the population in need of legal assistance, the word 'justiciable' suits their overall reach to the entire population.

Scandinavian countries stand out as they use words which are intended to be neutral, but which are not necessarily based on the judicial and penal process. In *Sweden*, people who are incarcerated are referred to as 'inmates' and people who are in the

community are referred to as 'clients'. Equally, in *Norway*, those in prison are called 'inmates' (*innsatte*) – but, like in France, not 'prisoners' (*fanger*). In the course of probation, the word 'client' is also in use, along with a more continental and legal 'domfelte', i.e. 'those who are sentenced'. A respondent said: 'In general, one might say that semantics indicate that offenders are considered to be "people who have broken the law", instead of "law-breakers" or "criminals". An offence is considered to be something that at some point happened in someone's life, an incident in an otherwise different life. It is not a sign of a permanent characteristic that will define him or her as a person.' Such is not the case with the more derogatory word 'offender'.

b) Offender

Other countries seem to have no problem with the word offender or equivalents. In *Northern Ireland*, they are called "offenders", which some feel contradicts the aim of enabling them to change their identity and behaviour. This term is also widely used in *England and Wales*. However, in this jurisdiction, terminology may vary in the law, in the courts or in probation services. For instance, in the courtroom the person being prosecuted or tried is referred to as 'the defendant', but those who have already been convicted and who are on a Community Order are called 'offenders under supervision'. One must remember at this point that probation officers are now called 'offender managers'. Still, practitioners also refer to 'probationers'. While 'the official language is "offender", the back-stage language might be "probationer"'^x.

CONCLUSION

As we posited, identical words, and crucially, the word 'probation' itself, have different meanings depending on the language and the national culture and context, ranging from being perceived as punitive to being perceived as the embodiment of social work. Language does reflect the penology and organisational structure of probation. Labels are indeed intended to convey meaning. They are also vectors which draw attention to change and express its nature. If most European probation services have been trying to become better organised, more professional and sometimes more

accountable^{xi}, they also have for a good part – but with interesting exceptions – become more punitive and/or more controlling, which has usually been flagged in the official terminology. Conversely, when designating probation services' clients, these punitive trends are not apparent: most countries stay away from derogatory or stigmatising labels which would reduce a person to its offence. It is to be hoped that things remain that way.

NOTES

- ⁱ Official European translations can get it seriously wrong. For instance, the French official translation has regrettably translated 'assessment' by 'appreciation' (see Rules 66 to 71). It could not have been a poorer choice. In French, 'appreciation' is never used in such a context. To put it bluntly, in EPR, it has no understandable meaning, and certainly does not mean assessment. The correct translation would have been 'évaluation' (and for risk assessment: 'évaluation du risque').
- ⁱⁱ While the term is borrowed from the English language, it actually originates in the Latin word, 'probatio'.⁴
- ⁱⁱⁱ Even using the expression 'probation officer', a near universal designation in the literature, risks supporting the English language (unintentional) 'imperialism'!
- ^{iv} However, according to Ros Burnett, "The duality of the role was made explicit when I worked in the service during the 1970s and 1980s. We prided ourselves on being social workers attached to the court and in being able to perform both roles, though the 'care-control' balance would shift depending on the specific case and circumstances. It also varied with each practitioner's character and working style".
- ^v He also presents a series of periods with various goals and guiding philosophies: From the 1890s to the 1920s, probation was about saving souls (in the Christian sense); from 1920 to the 1960s, it was more about 'treating' the offender (in the psychodynamic sense); from the 1970s to the 1980s, it became 'providing alternatives to custody'; in the 1990s, it was about challenging offending behaviour; since 2000, it has become about protecting the public.
- ^{vi} However, in the Cambrian Law Review he earlier did write about 'the end of English probation in the early 21st century' (Nellis, 2004: 115).
- ^{vii} Personal communication with the author.
- ^{viii} A rather contradictory move given that over the last ten years French prisons have changed for a more punitive and American type of governance (Chantraine, 2010). However, this can also be explained by the increasing judicial overview over French prisons (Herzog-Evans, 2012b).

- ^{ix} In France, this term only applied to untried offenders. Interestingly in this country, it was abandoned in 2000 because of its stigmatising connotation and because it implied that the person was already guilty. Instead, a more descriptive 'person put under scrutiny' ('mis en examen' – roughly the equivalent of the US 'person of interest') was chosen. If, in practice 'inculpé' is not used any more, the public soon understood that 'mis en examen' meant to be suspected of being guilty and the new label has become just as stigmatising as the old one: labels can convey reality; they cannot change it.
- ^x Interestingly, one or two voluntary sector organisations avoid using the word 'offender' wherever possible.
- ^{xi} Whether they have succeeded is another question.

ENDNOTES

- ¹ With the kind help of Aline Bauwens, Miranda Boone, Ros Burnett, Robert Canton, Tim Chapman, Jane Dominey, Ioan Durnescu, Loraine Gelsthorpe, Brian Heath, Elena Larrauri, Gill McIvor, Fergus McNeill, Mike Nellis, Christine Morgenstern, Gerhard Ploeg, Luisa Ravagnani, Peter Raynor, Hans Jörg Schlechter and Kerstin Svensson.

REFERENCES

- Bauwens, A. (2011). 'Organisational change, increasing managerialism and social work values in the Belgian Houses of Justice, Department of Offender Guidance', *European Journal of Probation*, no. 3(3): 15-30.
- Burnett, R. (2007). 'Probation', in R. Canton and D. Hancock (eds.), *Dictionary of Probation and Offender Management*, Willan Publishing: 220-221.
- Cario, R. (2004). 'La place de la victime dans l'exécution des peines', *Recueil Dalloz*, Chron., 145.
- Chantraine, G. (2010). 'French prisons of yesterday and today: two conflicting modernities - a socio-historical view', *Punishment and Society*, no. 12(1): 27-46.
- Connoll, M. and Wart, T. (2008). *Morals, rights and practice in the human services: Effective and fair decision-making in health, social care and criminal justice*, Jessica Kingsley.

- De Vogel, V., de Ruiter, C., Bouman, Y. and de Vries Robbes, M. (2009). *SAPROF, Structured Assessment of Protective Factors for Violence Risk*, Utrecht, Netherlands, Forum Educatief.
- Durnescu, I. (2010). 'Pains of Probation: Effective Practice and Human Rights', *International Journal of Offender Therapy and Comparative Criminology*, vol. 20(10): 11-16.
- Fulton, B. (2008). 'Northern Ireland', in A. M. van Kalmthout and I. Durnescu (eds.), *Probation in Europe*, Nijmegen, Wolf Legal Publishers: 725-763.
- Herzog-Evans, M. (2008). 'Les victimes et l'exécution des peines. En finir avec le déni et l'idéologie', *Ajpénal*, pp. 356-360.
- Herzog-Evans, M. (2011). 'Desisting in France: What probation officers know and do. A first approach', *European Journal of Probation* (Ejprob), no. 3(2): 29-46, available at <http://www.ejprob.ro>
- Herzog-Evans, M. (2011-2012). *Droit de l'exécution des peines*, 4th ed., Paris, Dalloz-Action.
- Herzog-Evans, M. (2012a). 'Probation in France: Some things old, some things new, some things borrowed, and often blue', *Probation Journal*, no. 58(4): 345-354.
- Herzog-Evans, M. (2012). *Droit pénitentiaire*, 2nd ed., Paris, Dalloz-Action.
- Herzog-Evans, M. (forthcoming). 'Explaining French Probation: Social Work in a Prison Administration', in I. Durnescu and F. McNeill (eds.), *Who Works? Understanding and developing probation practices*, Hart Publishing.
- Jones, R. S., Ross, J. I., Richards, S. C. and Murphy, D. S. (2009). 'The first dime: A decade of Convict Criminology', *The Prison Journal*, no. 89(2): 151-171.
- Kuhnle, S. (2012). 'The Scandinavian path to welfare', in S. Snacken and E. Dumortier (eds.), *Resisting Punitiveness in Europe? Welfare, human rights and democracy*, Routledge: 73-85.
- Lösel, F. and Bliesener, T. (1990). 'Resilience in adolescence: A study on generalizability of protective factors'. In K. Hurrelman et F. Lösel (dir.), *Health Hazards in Adolescence*, New York: de Gruyter: 299-32.
- Mair, G. and Burke, L. (2012). *Redemption, Rehabilitation and Risk Management*. A history of probation, Routledge.
- Maruna, S. (2001). *Making Good, How ex-convicts reform and rebuild their lives*, American Psychological Association.
- McNeill, F. (2009). *Towards effective practice in offender supervision*, the Scottish Centre for Crime and Justice Research, Report, 01/09.
- Nellis, M. (1999). 'Politics, probation and the English language', *Vista*, vol. 4(3): 233-240.
- Nellis, M. (2004). "Into the fields of corrections": the end of English probation in the early 21st century', *Cambrian Law Review*, 35; 115-133.
- Padfield, N., van Zyl Smit, D. and Dünkel, F. (2010). *Release from Prison. European Policy and Practice*, Cullompton, Willan, 2010.
- Petrucchi, C. J. (2002). 'Respect as a component in the judge-defendant interaction in a specialized domestic violence court that utilizes therapeutic jurisprudence', *Criminal Law Bulletin*, no. 38(2): 263-295.
- Raynor, P. (2012). 'Is probation still possible?', *Howard Journal*, no. 51(2): 173-189.
- Social Work Services Group (1991). *National Objectives and Standards for Social Work, Services in the Criminal Justice System*, Edinburgh, The Scottish Office.
- Toch, H. (2011). 'Furnishing care, custody and data for research', *European Journal of Criminology*, 2011, no. 8(6): 437-439.
- 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*, Russell, Sage Foundation, New York.

Van Zyl Smit, D. (forthcoming). 'Non-custodial sanctions and European human rights law', for a Festschrift for Andrew Ashworth, Oxford University Press.

Ward, T. and Maruna, S. (2007). *Rehabilitation*, Routledge.

Ward, T. and Connolly, M. (2008). 'A human-rights based practice framework for sexual offenders', *Journal of Sexual Aggression*, 2008, no. 14(2): 87-98.