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Sentence-Serving within the Community : Caught between Criminological Diagnosis and Flow Management

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For the criminal justice system, measures and sanctions are said to be « within the community » when they are enforced « outside prison walls » but require some form of control. In that sense, the community differs both from prison and from sentences requiring no supervision, such as simple suspended sentences, sanctions of a monetary, material, or administrative nature (such as a fine, seizure of a vehicle, a suspended driving license). In France, the main measures involved here are suspended sentences under probation, community service orders, release on parole and social and judicial supervision. Other measures include arrangements such as electronic monitoring, semi-liberty and day-leave[1]. All are implemented by probation officers within the *département*-level[2] prison rehabilitation and probation services (SPIP).

Since their creation in 1999, in replacement of the former committees for probation and assistance to released prisoners, the SPIP have had to face new requirements which have considerably modified the context of sentence-serving within the community. Legislative changes have led to the creation of new sorts of measures (citizenship training workshops, judicial supervision, etc.) as well as to major changes in the code of criminal procedure, especially subsequent to the March 9, 2004 Act, known as « Perben II », and the November 24, 2009 Act on corrections. At the same time, the number of release measures and other sentence adjustments monitored by the SPIP rose by 44% between 2005 and 2011. To cope with the overload and the extended range of missions assigned to the SPIP, the number of probation agents increased from about 2,000 to close to 3,000, and was attended by a change in the profiles of these officers, many of whom are now young and overqualified (they often have a masters degree, whereas the requirement is two years of post-*high school* studies), and most have studied law.

At the same time, probation services have undergone gradual reorganisation and are now more conducive to specialisation and fragmented interventions, as opposed to the formerly preferred model of the polyvalent worker providing long-term support. The present study attempts to determine how this new pattern leads today's probation officers to develop clinical criminological diagnosis. It will try to show that this new, imported skill combines with a new bureaucratic rationale aimed at the efficient flow management of sentenced offenders, in order to handle a maximum number of measures while using minimal resources. Criminological diagnosis and managerial demands go hand in hand to improve the fluidity of penal sentence-serving by differentiating follow-ups ranging from simple administrative checks to more intense surveillance, depending on the person's profile.

Methodology

The fieldwork conducted for this thesis took place mostly between April 2007 and December 2008. It covered two SPIPs (prison rehabilitation and probation services) selected for their differences in terms of size, structure and environment. The SPIP we will call Beauchamp, located in a predominantly rural *département*, had 10 probation officers at the time. The SPIP called Durbain employed 27 officers assigned to a prevalently urban area. Observations in both services were conducted for six months each, at the pace of three visits a week (on varying days). Participation in staff meetings and access to various administrative documents provided considerable background material for our analysis. We were also given access to the records of the sentenced offenders and allowed to be present at sixty-odd meetings between the latter and their probation officers. This nourished our ethnographic approach and gave us a better understanding of actual practices. A campaign of 25 interviews with probation officers, selected for their diversity (criteria of sex, age and status), completed the information collected. The interviews were aimed mostly at determining the personal trajectory of these officers, as well as their view of their professional identity, their practices and the profiles of the individuals they supervised.

I - Developing a Criminological Diagnosis

The quantitative, administrative and legislative transformations affecting the world of probation add up to more than mere occasional adjustments: these present trends are central to a new pattern of reform encouraging the emergence of new actors and the implementa-

[1] Both latter measures allow a convict to leave the prison to work, train, undergo medical treatment and more generally let him participate in any social activity meant to facilitate their rehabilitation. One difference is that in the case of day leave, they may receive night accommodation in another facility than a prison (an association for instance or even a relative).

[2] The *département* is one of the basic territorial division of the French administrative organisation.

Sentences within the community: some figures

As of January 1, 2011, 173,022 individuals, according to the prison administration statistics, were supervised within the community, for a total of 193,112 measures, distributed as follows:
- Suspended sentence under probation: 74.4%
- Community service order: 15.9%
- Release on parole: 3.8%
- Other: 5.9%

Moreover, 8,457 of the 66,975 persons on correctional rolls at the same date actually benefited from an adjusted sentence subjected to supervision by probation officers:
- Electronic monitoring: 68%
- Semi-liberty: 20%
- Day-leave: 12%

All in all, then, 201,569 measures and adjusted sentences were supervised by the SPIP as of January 1, 2011. This figure does not include citizenship workshops, judicial supervision and many investigations (penal guidance) and occasional interventions (preparation of requests for adjusted measures) performed by probation officers. This tasks take much of their time, but the correctional administration actually makes no detailed reckoning of them.

tion of new skills. Nevertheless, the internal reorganisation of services clashes with probation officers' demand for autonomy. To succeed, this institutional « modernisation » project must therefore be reformulated in terms more acceptable to those most affected by it, so as to gain allies among field workers, susceptible of supporting those trends. An imported reference to criminology is a step in this direction in that it offers probation officers the prospect of a more technical approach, based on skills they alone possess. This opportunity is in step with the expectations of a growing number of new officers, often overeducated in respect to their status, and who welcome these changes in the hopes of improving their standing.

1) How important are psychological and behavioural factors?

In itself, the demand that probation officers have criminological skills, supported by some people in the upper echelons of the prison administration, says nothing about how the real skills of these professionals are actually built and developed. Officially, they are required to be capable of making a diagnosis, supposedly constituting « *the basis of the project for restructuring SPIPs* » : « *diagnosis for criminological purposes, established exclusively by the rehabilitation and probation personnel, corresponds to the most accurate definition possible of the situation and personality of the individual at a given point in time* »[3]. Formulated in such general terms, the idea of diagnosis is not fundamentally different from the comprehensive social-educational analysis previously achieved. As one woman probation officer said at a staff meeting in Durbain in July 2008, « *we do criminology work implicitly every day, without knowing it* ». In that sense, the criminology label that tends to prevail functions primarily as an occupational marker, a unifying vector within a profession with widely differing methods of intervention.

Actually, the term « criminology » covers a broad range of approaches, extending from criminal law to the biomedical sciences, and including sociology, political science or psychology. Moreover, whereas criminology is recognised as a discipline in its own right in countries such as Belgium and Canada, to mention only French-speaking countries, that is not the case in France, despite recent attempts at unifying the field. The project meets much opposition, for epistemological and academic as well as political reasons. Be that as it may, there is no real consensus in France as to what criminology covers, exactly. With these reservations in mind, we do witness a preference for the clinical approach, through which penal work is taken over, practically speaking, by probation officers explicitly designated as « clinical criminologists »[4] by the former assistant director of the prison administration in charge of sentences-serving within the community.

Traditionally based on face-to-face relationships, the activity of probation officers would then retain a personalised dimension through their diagnostic function, as opposed to the actuarial (or probabilistic) model according to which « *only the wrong done by the offender is taken into account (rather than his/her personality or personal situation), and each individual is classed in a (high or low risk) group* »[5]. This does not mean that these officers' work has not changed. Closer examination of the criteria established and circulated by the prison administration in its « directive on methods of intervention » shows emphasis on elements directly tied to the offender's psychological profile and behaviour while under supervision. More specifically, how the offender relates to the law and to the offenses he committed, his attitude toward victims and ability to develop a rehabilitation project (at least as much as the project itself) are scrutinized to assess his « potential for change » and possible dangerousness.

Under the banner of clinical criminology, then, the prevailing psycho-criminological standards are primarily in line with cognitive and behaviourist theories. In this perspective, a whole facet of work based on human relationship would henceforth take the back seat, including the attention traditionally paid to the offenders' biography, their milieu and everyday social and family context, or again the social environment and economic structures conditioning their rehabilitation, all of which are viewed as important elements by researchers studying criminal histories and careers. By focusing on the individual and his potential independently of the social conditions in which he lives, this perspective seems to lose sight of people's integration in collective supportive structures, whereas precisely, many sentenced offenders are among the most vulnerable, those most affected by precariousness of all sorts. What is evaluated, then, is the offender's ability to conform to the requirements of the penal measure rather than his potential for rehabilitation or social integration.

2) Conditions behind the formulation of a diagnosis

The dominance of these theoretical debates and of the main stakes behind them are indications of how practitioners in charge actually implement the principles of this criminology. In reality, probation officers' work still depends on prevailing material and practical conditions, just as the offence committed cannot be disconnected from the social environment in which it took shape. It must be said, first of all, that whereas psychological and behavioural criteria are the proclaimed priority, probation officers still retain the possibility of going beyond them to direct their attention on the offender's environment and present a broader overview of his rehabilitation prospects. Interview guidelines developed by each service to assist officers meeting offenders actually still include parts on their family, occupational and social situation, along with headings on their general attitude and their « stance » with respect to the offence. In one SPIP, however, officers are reminded that evaluation must apply specifically to « the degree of compliance with the measure » and « the person's ability to respect obligations », in conformity with the prison administration recommendations.

But behind the relative flexibility of the model, one of the main constraints comes from the rapidity with which officers are obliged to make their diagnosis, and which incites them to concentrate on the individual. In the new organisation of SPIPs, a diagnosis must be reached at the first interview. This demand for speediness is contrary to the earlier habits prevailing in probation services. Previously, it took six months for an initial evaluation, required when the first overall report on the measure was sent to the sentences' implementation judge. That was the amount of time probation officers felt they needed to develop a relationship and understand the

[3] DIRECTION DE L'ADMINISTRATION PÉNITENTIAIRE, 2010, Organisation des SPIP, *Mémo SPIP*, 14, 18 mai.

[4] POTTIER Ph., 2008, Insertion et probation : évolutions et questionnements contemporains, *in* SENON J.L., LOPEZ G., CARIO R., *Psycho-criminologie. Clinique, prise en charge, expertise*, Paris, Dunod, 236-241.

[5] VACHERET M., 2010, La nouvelle pénologie constitue-t-elle l'avenir de l'exécution des peines privatives de liberté ?, *Les Chroniques du CIRAP*, 7.

different aspects of an offender's situation. Squeezing evaluation for initial diagnosis into a single interview now poses the same deontological problems to probation officers as to psychiatrists, recently faced with the same problem.

Under these conditions, the diagnosis is established to a large extent on the basis of the probation officer's first impression of the offender, leaving it largely open to a wide range of interpretations. Reading the dossierfile of some offenders retrospectively, one gets a good idea of the latitude this leaves, a latitude making evaluation criteria particularly elusive. Since the first interview is not conducted by the officer who will subsequently be in charge of monitoringsupervising the offender, radically different conclusions are found from one officer to another following each of their first talks with the same person. One particularly eloquent example will suffice. In Durbain, the officer on duty was extremely reserved about the offender's loquaciousness, viewed as a sort of hedging to confuse the interviewer, and recommended that the reference probation officer remain guarded. The latter, on the other hand, took this attitude to be an encouraging sign that the offender was open, willing to cooperate, and accepted the idea of the punishment.

The role of subjectivity in probation officers' diagnosis is all the greater inasmuch as they have neither the time nor the means needed to do crosschecks or verifications. Transmission of criminal records in particular is very faulty, so that at the first interview workers now very seldom have access to that document, which would afford some perspective on the offender's penal trajectory. Similarly, the penal dossier does not necessarily contain a copy of the decision regarding civil liability, which determines how much compensation, if any, is to be paid to the victims. The probation officer's only option then is to rely on the offender statements and try to assess their honesty.

Visibly, then, this produces a distortion between the offender's remarks, necessarily malleable and open to interpretation, and the cold, distant nature of the report written by the probation officer. Indeed, writing a report requires an effort to translate or shape one's observations to make them comply with the expectations of judges and of one's superiors. This tends to rigidify judgments whereas these actually change constantly in the course of interactions. The demands of criminological diagnosis therefore go hand in hand with and reinforce the decline in informal kinds of collaboration, with judges in particular, replaced by a preference for written documents, which deviates the meaningful elements of prolonged supportive work. This is in fact what probation officers say when they regret that they « *write the offenders' name more often than they pronounce it* ». Longer, more frequent written reports heighten the difficulties inflicted on officers by their heavy work load. In the end, the time spent writing a diagnosis impinges on the time actually devoted to meeting the individuals.

Differential follow-up chart*

1 : Goal : control and surveillance
Regular monitoring of the individual's evolution, without supportive work, unlimited in time.

2 : Goal : internalising respect for rules
Follow-up for less than 6 months, for offenders « with potential for changing ».

3 : Goal : in-depth change for the offender
Follow-up for over 6 months of offenders « with potential for changing ».

4 : Goal : great vigilance and specific partnerships
Medical and psychological problems limiting change, unlimited in time.

5 : Goal : limiting risks of desocialisation
Imprisonment with follow-up for over 24 months.

* Based on the project circulated in 2009 by the Direction of the Correctional Administration.
Cf. DAP, 2009, *SPIP : enjeux de la nouvelle organisation*, ministère de la Justice, septembre.

II - Fluidifying the flow

In spite of these practical difficulties, the prison administration claims that this evaluation work is useful for adjusting to the offenders' profiles so as to better individualise their penal career. The outcome of diagnosis, then, is officially to determine the appropriate degree of attention and supervision required for each sentenced offender. At first, informal ways of differentiating follow-up were developed within different services, for the pragmatic adjustment of work loads, before an actual chart was developed and circulated by the correctional administration starting in 2009, to render interventions more homogeneous. The underlying idea was to improve management of resource allocation within services by easing the pressure on offenders deemed unproblematic, so as to focus resources on people evaluated as dangerous and/or at risk of recidivism. This develops a managerial strategy aimed at fluidifying sentence-serving so as to reduce lags in assignments and enable the SPIP to handle all the cases it receives.

1) Graduated supervision

The typology of treatment as defined by the correctional administration defines gradual forms of supportive work within four predetermined segments, the same for sentences served within the community and in prison, with the fifth segment for prison only. The prevailing idea when the chart was developed was to modulate sanctions by the ongoing adjustment of the diagnosis during sentence-serving, through which offenders would change categories: « *Evaluation, the specific core of the probation officers' job, will allow work with individuals in prison to evolve by orienting them to a given segment. This orientation should not be definitive: it may be reassessed in accordance with the person's evolution* »[6].

The existence of a graded chart is therefore supposed to contribute to individualisation by inserting sentenced offenders in a *Parcours d'Exécution des Peines (PEP)* (A Sentence-Serving Path) conceived as the extension to sentence-serving within the community of the previous Project for Sentence-Serving, adopted in 2000 for prisons. This avoided viewing community and prison as split into two fundamentally different, dissociated worlds for distinctly different « *clienteles* ». To the contrary, the chart explicitly shapes a continuum between prison and probation. This approach is consonant with the Council of Europe recommendations encouraging « *progressive movement through the prison system from more to less restrictive conditions with, ideally, a final phase spent under open conditions, preferably in the community* »[7]. The possibility of reviewing diagnosis at regular intervals is central to this perspective.

However, this codification clearly combines two contrasting logics: it is an extension of diagnosis, as it is based on the « potential for change » detected in the offender, and more generally on his behaviour (« respect of rules ») and personality. But the description of each segment also pays considerable attention to objective criteria such as length of supervisory care, partly depending on the type of measure, on which expert diagnosis has no control. So establishing a diagnosis is used to reinforce and justify more rational flow management in the overall context of overloaded services, as summarised by a probation officer in Beauchamp, who felt that « *we do differential follow-up simply because there are too many cases* ».

Concretely, diagnosis is mostly used to identify those offenders who respond best to penal demands, so as to orient them toward the first segment, where they are subjected to lighter, sometimes purely administrative supervision, with no prospect of receiving support: the person is never summoned by the probation officer, or only once every 4 to 6 months, but must regularly prove that he respects his obligations by sending evidence to the SPIP of work or training, a fixed place of residence or

[6] DIRECTION DE L'ADMINISTRATION PÉNITENTIAIRE, 2010.

[7] Recommendation Rec (2003)23 of the Committee of Ministers of the European Council to Member States.

medical follow-up, depending on the situation. The second segment corresponds to relatively short periods of supervision, such as community service work or participation in a citizenship training workshop, but also to the final period of long-term supervision, when the probation officer has to prepare to end supervision by devoting less and less time to the case.

The third segment represents the most frequent case: it corresponds to basic supervision within the community, inasmuch as release on probation for an average of two years represents the majority of sanctions (over 75% of the stock of measures in our two fieldwork districts). Next, the great vigilance recommended for segment 4 is aimed in particular for people sentenced for violent offenses or those of a sexual nature, who often served part of their sentence in prison with social-judicial supervision or a judicial supervisory measure. While these constitute the smallest group, by far, their numbers are rising fast. In any case, the probation officers in our two districts, who supervised a total of 90 to 130 offenders each, managed to summon the people supposed to be under intensive surveillance about once every two or three weeks, at best. This gives an idea of how much the other kinds of follow-up would have to be reduced if the intention was to achieve such close supervision for those offenders without increasing the available resources.

2) Rigidity of the system

Just as medical parlance has replaced the notion of efficiency, with its overly economic connotations in a value-oriented milieu, by the requirement of "high-quality" care, the legitimizing theme here is individualisation: « *in a perspective of dynamic supervision of offenders in the hands of the law and of the individualisation of sanctions, the SPIP should conduct differential supervision so as to give meaning and content to sentence-serving* »[8]. Actually, the notion itself is a weak one, meaningful for a number of actors but sufficiently pliable as to not contradict the bureaucratic model of rationalisation within which it operates.

The fact is that behind the catchword of graduated paths, the use of this scale sometimes reveals how the process is turned into a routine and tends to be more formal than real: at the local level, the protocol for differential follow-up adopted collectively by the Durbain SPIP states « *the postulate... that graduation from one category to the next is automatic* », in the sense that supervision is alleviated after the first six months of follow-up. Furthermore, « *a social worker who deems necessary to maintain the offender in the same category must motivate the recommendation and defend his position orally before his superiors* ». Where the organised management of a shortage of resources prevails, the logic of assessment tends to be reversed: the basics consist in automatically alleviating control as time passes, so as to save labour and resources, whereas diagnosis becomes a mere brake, liable to slow down the process instead of being the motor for guiding the offender along a path.

This situation causes probation officers to develop a distorted perception, in that they tend to focus on the most difficult cases, and therefore to develop a biased view of the profile of the people they supervise. This leads some officers to feel discouraged about the people they see, as their tendency to work hardest on the failures may give them the impression that they « don't get anywhere ». Even if this system saves some time, one woman probation worker at Beauchamp felt that differential supervision may turn out to be « depressing and trying » as it deprives workers of the fulfilment they may derive from meeting those people for whom things are going well, and whose follow-up is purely administrative.

On a more general level, the new legislative arrangements also further rigidify the system, especially with respect to the transition from prison to sentence-serving within the community. The law on prisons voted in 2009, calling for automatic sentence alleviation in the form of electronic monitoring for persons sentenced to up to five years and who have only four months left to serve in prison is in line with this logic of standardisation. This shows that the stakes of flow management for sentence-serving within the community and in prison are linked, reminding us that the problems of overcrowding do not end at the prison gates. Before the issue of sentence serving, at the end of the penal process, the problem is how the system is fed, given the continuous increase in the number of people in the hands of the law in recent years.

Conclusion

By concentrating on individual risk factors, criminological evaluation neglects the economic and social environment of sentenced offenders, entertaining the illusion that they alone are responsible for their fate. There is a political dimension to this trend, which partakes of a broader tendency to transform the Welfare State into an « active social State ». The idea is that the benefit of welfare payments or of alleviated penal obligations is conditional on the person's involvement and participation, so as to raise their level of self-responsibility. But this change of orientation is a strategy as well, which rationalises through differential supervision the management of the flow of sentenced offenders. Behind the combination of these two logics, shortage of time and means devoted to making diagnoses combined with the rigidity of the system for modulating follow-up raises the question of both the content and the form of present-day sentence-serving within the community.

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[8] Quotation from the DAP instruction n° 113/PMJ1 dated March 19, 2008 on the missions and methods of intervention of prison services for rehabilitation and probation (SPIP).

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