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Judicial rehabilitation in France: Helping with the desisting process and acknowledging achieved desistance

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Abstract

Shadd Maruna, in his masterpiece, Making Good (Maruna, 2001, 2011) advocates the creation of an institutionalized redemption ritual which would reinforce the offender's own certitude that he or she has indeed desisted successfully, and convince the community and society itself, that he/she has now become a good citizen. Such a ritual , which would preferably be judicial, exists in the French legal system, under the name of Judicial Rehabilitation. However, prior to fully acknowledging achieved desistance, the French legal systems aims at helping with the desistance process through a host of procedures that expunge all or part of criminal records. In this jurisdiction, criminal records are seen as constituting obstacles to employment and thus, as being counter-productive. Drawing on legal methodology, this article will first explain the penological grounds of criminal records, of expunging techniques and lastly, of judicial rehabilitation.

Keywords: Judicial rehabilitation - Desistance - Criminal records - Employment ; Redemption - Resocialisation - Resettlement

Introduction

Shadd Maruna, in his masterpiece, *Making Good* (Maruna, 2001, 2011)[1], advocates the creation of an institutionalized redemption ritual which would reinforce the offender's

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[1] I want to thank Prof. Maruna (Queen Univ. Belfast) for the very interesting discussions we had on this particular subject, Rona Epstein (Univ. Coventry) for her suggestions for amendments, all the authors who took part in this special issue, for their added insights, and, lastly, the anonymous reviewers who asked me to try and make clearer the intricacies of the French legal system.

own certitude that he or she has indeed desisted successfully, and convince the community and society itself, that he/she has now become a good citizen. According to Maruna (2001), such a ritual (see also Maruna, 2011) would have to be part of the correctional system in order to have such an impact, and would require strict conditions. It would need to be 'highly exclusive' in the sense that it would only be achieved by a small percentage of ex offenders on the basis of 'agreed-on standards at high enough level'. Ultimately it would have to be a ceremony which would enable the ex offender to move on, on the basis of a 'forgive and forget' philosophy.

Other procedures are less demanding as we shall see in this article and in the present edition of this review. But then they can also be very useful with regard to desisting. Desistance may be achieved at a – very debatable – given time, but it is first and foremost a process (Maruna, 2001; Maruna and Ward, 2007). During this process, the person is exposed to temptations, can be fragile and even relapse. This does not necessarily mean the desistance process has not started: the new offence may be less serious; there may be fewer of them, etc. What practitioners (Farrall, 2002; McCulloch, 2005) and what society can do on a social and human level has now been well explored (also see McNeill and Farrall, forthcoming and Trotter, 2006). As with the law, it may be argued that former prisoners have a right to resettlement (Bain and Parkinson, 2010) or at least a right not to be barred from resettlement (Herzog-Evans, 2007 and 2008). Another side of the same legal coin may present things as follows: society, the community, has a right to see that everything possible is done to make sure offenders or ex offenders have all the necessary tools at their disposal to desist from crime. If the personal, social and environmental elements (positive and, if negative, taking the form of obstacles that social workers may help with) of the desisting process have now been well studied, legal support and obstacles have been less addressed.

There seems to be more research in the criminology (Ross and Richards, 2009) and legal literature on disenfranchisement (e.g. Foster, 2008 ; van Zyl Smit and Snacken, 2009; Easton, 2009 ; Herzog-Evans, forthcoming). Also, governments, reformers (see French Prison Law, of Nov. 24, 2009, n° 2009-1436) and courts (see *Hirst v/ Royaume-Uni*, 30 mars 2004, application n° 74025/01) seem to be more willing to address this particular dimension of the law. Disenfranchisement is in fact a very interesting and related issue, which, as with criminal record expunging techniques or judicial rehabilitation, shows extremely divergent cultural approaches (Department for Constitutional Affairs, 2006), that in turn reflect vast differences in public opinion (Manza et al. 2004). It also has an impact on further crime reduction (Uggen and Manza, 2004). In fact, it seems that French public opinion, albeit not very much studied, is not very punitive (Mayhew and van Kesteren, 2002) when compared to other countries (van Dijk et al., 2008), which a small poll with my own students has confirmed (Herzog-Evans, 2010a). This is reflected in the law itself: French law does not only acknowledge during a judicial court hearing, that a person has actually desisted; it also helps considerably by limiting the amount of information that is available on the basis of criminal records and the people who can

actually access those files; it even contains a large number of legal techniques designed to facilitate/or not to restrain the desisting process.

This article will draw upon extensive legal and empirical research which we have conducted throughout the years (Herzog-Evans, 2007; 2008a, forthcoming; Danet et al., 2008). As a lawyer operating in the French legal system, i.e. a Romano-German system where written law is paramount, we have first referred to the law (Penal code and Penal procedure code); then we have turned to case-law. But we also draw upon our own empirical knowledge, which is derived from a lengthy involvement with charities and lobbies working with offenders and their families, and a consistent participation in training or research, or informal discussions with Judges, particularly *juges de l'application des peines* (JAP), with judges working for the National Judicial Record, with prosecutors and solicitors. We have lastly, during our research, consulted court files and attended court hearings.

Criminal records

In France, criminal records are held by a special service called the National Judicial Record (NJR), based in Nantes, Loire Atlantique (Giacopelli, 2007; Lorho and Pelissier, 2003; Gunvald-Lamberthon, 1993). This service is managed by several judges and files are updated by specially trained civil servants. The files have been computerized since 1980. Since 2000, ordinary citizens have had access to their records online, via a security system which guarantees that only the person himself can obtain a copy (see below). The NJR is the only service allowed to hold criminal records. However there are numerous police and special files (labelled 'criminal records bis' by Grunvald-Lamberthon *op. cit*.), particularly the Sexual Offender National Judicial File (Herzog-Evans, 2007: Title 34). However, other files are exclusively used by the police or by the courts. The NJR, on the other hand, can be accessed by the person concerned and by administrations or public services he might want to work for and people are often asked by potential private sector employers to present an 'empty' criminal record extract ('extrait'). It can thus be directly detrimental to employment and is thus of interest for our present study.

So what does the NJR contain? It first records sentences, safety measures (i.e. supervision or detention applying after a sentence has been completed for dangerous offenders), disciplinary offences when they create a (professional) incapacity, judgements depriving parents of their rights, decisions to deport foreigners (Penal Procedure Code – PPC - art. 769), and sentences or measures concerning juvenile offenders (art. 8, 15, 15-1, 16, 16bis and 28 of the Ordinance of Feb. 2, 1945). Traditionally it only recorded sentences pronounced in France, but things have changed since criminal records have increasingly been shared within the EU and will change even more when the Frame-Decision of February 26, 2009, is implemented (for its transposition in French law: see art. 132-16-6 Penal Code). The NJR also keeps data concerning sentence management measures, such as conditional release, sentence suspension, remission, recall, along with pardons, and amnesty (PPC, art. 769, R 69 and D 49-26). All these information are received from courts, public prosecutors or administrations such as prisons. They are strictly controlled by the NJR for possible errors of identity (is it the right person, is the person still alive,

and so forth...) and legality. The legality of the sentence itself generates interesting legal issues: sentencing law being very complex, it does happen that courts pronounce sentences which either do not exist for a particular offence, or exceed the legal maximum. In simple cases, the computer merely beeps, thus signalling a mistake; in more complex cases, NJR judges have to conduct a legal analysis and inform the courts, if the sentence is indeed illegal. Convicted offenders can also challenge in court the legality of a sentence either via a traditional appeal or, later via a special procedure (Penal Procedure Code, art. 710 – Herzog-Evans, 2009 b).

In most countries, having a criminal record means one has been sentenced. In France, everyone has a criminal record. But it may be empty (in layman's language: one then has a 'virgin record') or it may contain information about past sentences or other sanctions. This record is actually divided into three files, called bulletins. These three files exist for each person living in France, an information which the NRJ obtains by consulting the national census and other databases. Bulletin number 1 contains all convictions to the above listed sentences and measures (Penal Pocedure Code, art. 768); Bulletin number 2 contains nearly all convictions except suspended sentences, juvenile records, contraventions (i.e. less serious offences which cannot be sanctioned by custody) (Penal Procedure Code, art. 775). Bulletin number 3 contains sentences of imprisonment of two years and more, and under two years if, and only if, the Court has decided it was necessary, along with sentences which prohibit certain professional activities. The detrimental impact of a criminal record depends entirely on the determination of who can access it.

Access to criminal records

In some jurisdictions (like the USA), access to criminal records is largely public. The idea is to protect public security by warning people that their neighbour, employee, or new partner, was previously an offender. It is based on the assumption that if a person previously offended, that person is more at risk of offending again than a regular citizen with no so such background. On the other hand, it is highly detrimental to desistance, which precisely requires for the person to have social and human capital. Consequently, it creates a public safety risk. Where should the balance lie? Other cultural dimensions might play a role: French people, for instance, are strong believers in privacy. Their tolerance for violations of their privacy is thus very limited and this shows in various domains such as the freedom of the press (Barendt, 2007), CCTV (Goold and Neylan, 2009) or police records (Gautron, 2007 and 2010). They also seem to believe in a sort of 'right to be forgotten' (Danet at al., 2008): after having served his sentence, and particularly if he has led a normal life for a certain time, a person should be left in peace. A third factor needs to be understood: French law regarding prison release, probation, community sanctions and re-entry is consistently based on the ideal of resocialization, which roughly corresponds to the social elements of desistance: the goal of imprisonment should be to help people succeed in resocializing (PPC, art. 707); most front door and back door measures require the person to have some elements (even if only 'embryo') of socialization (work or actively looking for a job, ongoing training, housing, and so forth...). Courts must make sure they do not destroy these 'embryos' of socialization (see

e.g. PPC, art. 723-15 and Penal Code, art. 132-24) and may ask the person himself to make more or less serious efforts at resocializing, these twin sides of the same coin being mentioned in numerous provisions of the PPC (for conditional release: art. 729; for sentence suspension: art. 720-1; for remission: art. 721-1 ; for electronic monitoring (EM) : art. 723-7 – also see art. 132-26 of the Penal Code, etc.). Resocialization is also the set objective of prisons (Prison Law, Nov. 24, 2009, art. 1) and social workers working in its premises are asked to fight against the 'de-socializating' effects of prison (PPC, art. D 460).

Given that state of mind and these legal provisions, it should come as no surprise that French law also strongly limits access to criminal records: such access could be seriously detrimental to employment and consequently to desistance/resocialization.

Access to criminal records actually varies according to the bulletin at stake. Bulletin 1 can only be consulted by penal courts (PPC, art. 768); Bulletin 2 can only be consulted by administrations and public services, generally for job applications (PPC, art. 775), but also, e.g., for academics or researchers who want to visit prisons. Bulletin 3 can only be consulted by the person himself, but a copy is often requested by private sector employers. When a person is looking for a position, Bulletins 2 and 3 can both be detrimental to employment: bulletin number 2 when that person seeks employment with a public service, which covers not only national jobs, but also local jobs (e.g. city council, department, regions...) and even menial tasks and temporary jobs; bulletin 3 whenever an employer asks an applicant for a copy. To be exact, employers do not ask for this with regard to most positions. However, they will typically do so for positions involving a high degree of trust (bank, private security companies, positions involving regular contact with children; etc...) or for positions where specific legal rules actually exclude people with a criminal record (solicitor, banks, firms...). It must be added that access to bulletin 3 will only give information on the nature of the sentence (e.g. a minimum of two years imprisonment) but not of the nature of the offence.
When a person is not asked for his criminal record, he has no legal obligation to mention it. Many probation officers actually tell naive offenders that they are better off not mentioning it and some go as far as to helping them with writing ‘ameliorated’ versions of their curriculum vitae, in order to try and explain why a person has not worked for several months or years. Even more significant for a desistance friendly culture, the highest judicial court, the Court of Cassation (Social Chamber), ruled in 1990 that an employee had a right not to divulge his criminal past and that his being made redundant based on his lying was null and void (Cass. Soc., July 3, 1990, *Recueil Dalloz*, 1991, Jurisp., pp. 507-511, note J. Mouly). If the employer is informed by other means of the offence and/or sentence, the Court of Cassation only allows for the employee to be dismissed if his actions have caused adverse publicity for the company (Cass. Soc., March 11, 1964, *JCP* 1964, II, n° 13678 ; also see Roger, 1980 and Sire 2003)

However, France’s open mindedness stops when it comes to sexual offenders. Recent laws have been passed which force sexual offenders to register on a National Judicial Record for Sexual and Violent Offenders (FJNAIS - PPC, art. 706-53-1 s.). These offenders have to report on a regular basis to the police and indicate their changes of

address. The FJNAIS is however only accessible by the courts and the police. So even if they cannot be expunged easily, as we shall see, at least these specific records do not limit employment per se (Herzog-Evans, 2007: Chap.153 and 163)[2].

France, is not alone in Europe in using various clemency institutions whereby a legal system tries and counterbalance the adverse consequences of criminal records on desistance (See in this issue, for the Netherlands, Boone, 2011; for Spain, Larrauri, 2011; for Germany, Morgenstern, 2011; for Australia, Naylor; for England and Wales, Padfield, 2011; also see Ruiz-Fabri et al., 2005). However, there are indeed numerous expunging techniques in its legal system.

A technique which expunges part or all of the data in a criminal record must not be confused with other measures such as amnesty or pardon. These techniques often aim at keeping social peace (e.g. amnesty laws after a war destined to allow for a country to continue to function by showing leniency to previous collaborators with the enemy and thus put an end to ongoing national vengeance), or allow for everyone to rejoice during a national celebration (e.g. France's traditional collective pardon each 14th of July[3], or for the Second Bicentennial of the French revolution), whilst pursuing a utilitarian goal (with collective pardon, to free prison space and limit overcrowding; with amnesty, to relieve the courts from being burdened with too many minor cases). Individual pardon has also historically been used in order to alleviate the consequences of excessively harsh court rulings (Monteil, 1959; Renault, 1996; Danet et al. 2008; Herzog-Evans, 2007: Title 7). But pardon and amnesty do not aim at making employment easier. In fact they are sometimes detrimental to desistance: pardon as it means vast numbers of inmates are released at the same time without any preparation or supervision; amnesty by paralysing the functioning of penal courts several months before it is eventually granted, by way of anticipation.
These techniques can be broadly classified into two groups, those techniques which aim at helping with the desistance process by expunging part of the records which are detrimental to job applications and those which acknowledge full recovery from offending, by deleting all criminal records' files. With regard to this article, numerous techniques are desistance-supportive measures, but only one, called judicial rehabilitation, which we shall examine infra, fits in the second category. Desistance-supportive measures can never apply to the most serious offences which, in the French legal system, are called 'crimes' (see below); judicial rehabilitation can apply to all types of offences.

Expunging techniques: desistance-supporting measures

Desistance-supportive measures can in turn be classified into three sub-groups : those which are automatic, i.e. are granted without any requirement from the offender ; those

[2] Other limitations to employment can originate in obligations which are determined by the penal court or the juge de l'application des peines (J.A.P.).

[3] Made unconstitutional due to a reform in 2008, at the initiative of President Nicolas Sarkozy.

which are granted merely based on the absence of further reconviction ; those which require some form of modest and ongoing evidence of desistance. Within the limits of this article, it is impossible to list all the measures which would fit in the first category. We shall thus limit this article to a few.

Automatic measures

Measures which are automatic, i.e. require no merit, nor any condition from the offender, usually aim essentially at closing cold cases. The original purpose of these measures stemmed from the necessity to destroy old paper files which were kept by the NJR. Since the NJR has been computerized and computer systems are now more efficient, this rationale has disappeared; but the measures have not. Probably because, in the French (legal) culture, there is a strong implicit rule called 'the right to be forgotten' (*droit à l'oubli*): years and years after a person has committed an offence, and presumably has not reoffended – or at least has not been caught reoffending–, that person should be left in peace. Moreover, there is the idea that old people should die in peace. Two measures convey these ideas. The first is called the 'Hundred Years Rule' (PPC, art. R 70-1°). It thus allows the NJR to delete the files of offenders who are 100 years old, are not yet deceased (as naturally when people die their records are eliminated) and have not benefited from other expunging techniques.

Another technique, called the 'Forty Years Rule' (PPC, art. 769, al. 2) is a hybrid measure. It is not 'totally free', as we shall see, but at the same time it does not really aim at supporting desistance. It allows the NJR to clear criminal files which have not been deleted via shorter term techniques, forty years after the last conviction. No legal action is required on the part of the offender as it is automatic. The 'Forty Year Rule' is granted too late to help a criminal desist: by that time he is likely to be too old to apply for a job, start training or therapy. For these reasons, in practice, it typically applies to serious crimes or to offenders who have been reconvicted again and again in the past and who therefore never obtained more demanding expunging measures. There is however one condition attached to the 'Forty Year Rule': the person must not have been reconvicted during those forty years. Like the Hundred Year Rule, it is thus above all a file clearing technique and shows some sort of sympathy for old people. Unlike the Hundred Year Rule, however, it partly belongs to the second category of expunging measures, those which require the absence of reoffending.

Automatic measures based on the mere absence of further reconviction

In that second category of expunging measures, one, created in 1994, when the new Penal Code entered into force, is now the most serious competitor for all the measures which we are presenting here, as it is automatic and, like the Hundred Year and Forty Year Rules, does not require any legal action, yet benefits ex offenders reasonably quickly. 'Legal Rehabilitation' (art. 133-12 to 133-17 of the Penal Code. Hereafter, PC), benefits all offenders except those who committed 'legal crimes'. In France there are three categories of offences : 'contravention' (e.g., parking tickets, dog battering, slapping someone in the face…); '*délits'* (e.g., theft, robbery, assault on a human being, sexual assault but not rape, drug taking, menial forms of drug trafficking, arson…) ; crimes (e.g., homicide, armed robbery, rape, torture, serious or international drug trafficking,

terrorism…). Only *délits* and crimes can be punished by imprisonment. Each offence has its own set of procedures, courts, sentences and rules. To be precise, 'legal rehabilitation' only applies to contraventions and *délits*; it is not possible for crimes. 'Legal rehabilitation' is not very demanding, and does not require any legal action, hence the fact that it has marginalized other techniques (Danet et al., 2008): people with convictions only have to wait for legal rehabilitation to automatically happen, without the need for further efforts or judicial procedure, even though legal disputes may arise concerning its application (see Court of Cassation, May 19, 2010, n° 09-85.929). It only requires the passing of a certain amount of time (ranging from three years to ten years, or even twenty years for re-offenders: C.P., art. 133-13). During that time, the person must not have had further reconvictions. However, no desistance efforts or evidence are required. Once legally rehabilitated the person's criminal record, that is only bulletins 2 and 3, are deleted. In order to obtain the expunging of bulletin n° 1, a legal action is required, but the law does not add any merit conditions to this action (PPC, art. 798-1). Since 'legal rehabilitation' can occur rather quickly for people convicted of the less serious offences, it can help them desist, as it erases the most important parts of their criminal record and thus facilitates employment. However one might say that even three years are too long and that desistance should start quickly. With more serious offences, longer sentences and for re-offenders, other measures can be useful.

Measures requiring some form of merit

Other measures can be granted earlier than legal rehabilitation. However, they are more demanding. First, they require legal action, and thus a court decision; second they are discretionary and based on merit. The question that is raised in such instances is: does the claimant deserve it? However, the notion of merit is not as demanding as with judicial rehabilitation (see below). Contrary to the latter, these measures aim at helping a person to desist, not at rewarding desistance.

Two major measures belong to this category. The first and less demanding measure is called 'clearing of bulletins number 2 and 3'. It is the most frequently used in this category. To be exact there are two actions : one which aims only at clearing bulletin number 3 (PPC, art. 777); one which aims at clearing bulletin number 2 (PPC, art. 775-1). The latter is more interesting as in fact, it clears both bulletin 2 and 3. To these traditional procedures, one can now add, since the Prison Law (Nov. 24, 2009, n° 2009-1436; Céré 2009; Herzog-Evans, 2010 b)) another procedure. A person who applies to the Juge de l'application des peines (J.A.P.), i.e. the judge in charge of the implementation of sentences, for a release measure, or a measure which could transform his custody sentence of up to two years into a community sentence or measure (PPC, art. 723-15), can, at the same time, obtain clearance of bulletins number 2 and 3 (PPC, art. 712-22). The J.A.P. is thus a newcomer in the field of the expunging of criminal records. It is still unclear whether his or her newly acquired competence will marginalize traditional procedures. The procedures of article 777 and the one going through the J.A.P. both apply also to sexual offenders ; article 775-1's has been prohibited for sexual offenders since 2004 (Law n° 2004-204, March 9, 2004). The legislator has considered that public services and administrations along with the private sector should be made aware that a job applicant, especially for positions involving contacts with children, has previously committed sexual offences. Still, the common denominator of all these measures is that a

legal action is required. Another distinctive feature, which makes these procedures highly attractive for offenders, is that there is no required delay after the sentence. The claimant can even directly ask the court which sentences him, not to register the sanction in bulletins number 2 and 3. Because the 'clearing of bulletin 2 and/or 3' can be granted so soon after the sentence, its aim is purely utilitarian : the idea is to help the offender find a position rapidly. Thus he is not required to be a perfect citizen. For that reason, courts typically make sure that the person is actually applying for a given position which cannot be obtained without a clear criminal record (Court of cassation, Criminal Chamber, dec. 12, 1992, decision number 92-81.873). Courts can also be more demanding with regard to professions which require very high moral standards, as is the case for public servants (for a teacher : Court of cassation, Criminal Chamber, sept. 25, 1990, n° 89-86.085; for a policeman: Correctional tribunal of Nantes, 3rd chamber, April 26, 2005, n° BL). They also reject it if they consider that the offence is too serious (: e.g. university professor who had sexually harassed a minor : Court of cassation, Criminal Chamber, Feb. 8, 1995, n° 94-81.468) or if the person has committed too many offences (Court of cassation, Criminal Chamber, Oct.4, 2000, n° 00-80.181). Lastly they reject the application if the damages have not been paid to the victim (Court of cassation, Criminal Chamber, Nov. 28, 2001, n° 01-83.118).

Slightly more demanding is another measure called '*relèvement'*. To be exact, there are five different forms of *relèvement*. We shall only describe one: '*relèvement'* of professional prohibitions and bans (PPC, art. 702-1 and 703). With this measure, what is expected of the delinquent becomes more challenging. Surprisingly, though, for a written law jurisdiction, the law does not actually define what *relèvement's* conditions are. Courts have thus had to establish their jurisprudence over the years. When one studies court-cases, one sees rather clearly that *relèvement* is exactly in between the previously studied measures, which are not based on real merit, and judicial rehabilitation, where merit has to be persuasive and must have lasted for a significant amount of time, equipollent to desistance. With *relèvement*, courts take into consideration the offender's behaviour and acts: has he complied with the sentences; has he paid the damages; does he deny the offence; has he stopped offending? The more serious the offence is, the stricter is the court.

Despite being more demanding than other measures which we examined earlier, the effects of *relèvement* are rather limited. They only consist in allowing the person to work in the specific field, in the specific profession from which he was barred by his criminal record. The criminal record is not per se expunged. This probably explains the limited success of this procedure. It may however become more popular now that the Prison Law has also made it possible for the J.A.P. to grant *relèvement*, when he is also about to grant a community sentence[4] or measure (release measure from custody).

At this point, courts are still merely betting on the person's success at desisting and trying to help with legal tools; it still remains unclear whether that person will actually desist. What happens when he actually does?

[4] The J.A.P. has the power to replace a custody sentence of up to two years into a community sentence or measure, this, before the person has served time.

Rehabilitation rituals: desistance acknowledgement measures

French law does provide for a rehabilitation ritual which celebrates full desistance. To put it in Shadd Maruna's words, it is a correctional 'honour roll' which is a 'meaningful achievement not only in the eyes of the public but also to the ex-offenders themselves in order to constitute the "authenticity test" that desisting ex-offenders so badly want' (Maruna, 2001: 163). For indeed its conditions are very hard to meet.

Conditions to rehabilitation

The conditions for judicial rehabilitation are extremely strict, which coheres with the very reasons underpinning this action: the ex offender must indeed have totally desisted from crime; he must also have been 'doing good' by becoming a nearly perfect citizen.

This being said, the scope of judicial rehabilitation is one of the largest of all: it can apply to all types of sentences, custody included, and all types of offences, even to the most serious ones, which are labelled 'crimes' in the French legal system.

Only a sentence passed by a French court can naturally be rehabilitated (Paris Court of Appeal, Feb. 11, 1914, *Dalloz Périodique* 1919, 2,9). The claimant can only present his case after a certain amount of time after having served his sentence after its 'prescription' (i.e. a statute of limitation, which varies in length according to the type of offence). If the offence was a contravention, the person must wait for a year; if it was a délit, he must wait for three years; if it was a crime, the delay is of five years. However, these rather short delays only apply to first time offenders. Recidivists must wait six years for *délits*, and ten years for crimes. Nevertheless, the law also makes an exception with 'heroes', probably because they are then deemed to have already 'done good' (Maruna, 2001). The penal procedure code thus excludes all delays for people who have helped the country at the 'peril of their own lives' (art. 789, C. 1076). If the court rejects the request, the ex offender must wait for two more years, which coheres there again with the reasons underpinning judicial rehabilitation: the court needs enough time to be sure that any improvement with the person's life and behaviour has been consistent enough.

However the passing of time does not create a right to obtain judicial rehabilitation. Just like Shadd Maruna advocates, it indeed is highly – maybe even excessively[5] - exclusive: there were 16 judicial rehabilitation decisions in 2009; 19 in 2008; 14 in 2007; 18 in 2006.

So just how demanding is judicial rehabilitation? First, the claimant must have paid all the damages to the victim(s) (PPC, art. 788, al. 1), a condition shared by the clearing of bulletins number 2 and 3 and *relèvement*. Legally, this condition refers to the rule which applies to both legal and judicial rehabilitation, namely that rehabilitation must not prejudice third parties (PC, art. 133-10). Criminologically, it refers to the idea that the first step to redemption is to acknowledge one's own faults and that paying damages is one way to do just that.

[5] But this excess of exclusivity is probably a consequence of the competition of desistance-supportive measures and particularly of legal rehabilitation.

Another aspect of this criminological ground for the rule set by article 788, is the assumption that a true desister takes full responsibility for his past actions before moving on: only then will he be forgiven. As we all know, this is not a very frequent occurrence. During the court hearing, he will be asked many questions and they notably aim at asserting how he views that previous period of his life. Interestingly, this is typically also what Courts who grant conditional release or one of the numerous other equivalent measures known in the French legal system typically try to ascertain. Thus the court embarks on a scrupulous examination of the person's past, present and even potential future actions. With regard to the past they do take into account how the sentence was served. Since most applicants committed a crime (with *délits*, the other expunging techniques being less demanding and are used more frequently), there has typically been a period of detention. Thus the court will verify what the person's behaviour was like in prison (PPC, art. 792-2°). Bad behaviour at the beginning of its execution is however not a cause for rejection of the request, if it improved significantly later. The typical case if that of a long term sentence where the inmate first had a few disciplinary sanctions, then cleaned up his act, pursuing an education, vocational training, treatment, and so forth. Courts also consider the nature of the offence, whether the criminal activity was a regular or unique occurrence, and whether it posed a serious threat to public security. However, the spirit of the law commands that judicial rehabilitation should not be denied a person on the sole basis of his past criminal activity.

What counts the most is what happened since the sentence was completed and what is happening in the here and now. Article 787 section 4 of the PPC requires that the claimant has displayed 'irreproachable behaviour' since his release. Courts have total discretion when analysing this. The rather obsolete notion of good behaviour actually refers to more pertinent criteria like employment, family life, training, peers, environment, and so forth. Regarding employment, even though one cannot be too demanding in times of crisis (France has known chronic unemployment since 1974 and courts are well aware of the difficulty for ex convicts and offenders in finding a position), courts usually want a full curriculum with persistent or nearly persistent employment, or require some valid proof that the claimant has looked very actively for a job, or has gone through training or passed diplomas in order to better his chances on the job market. They particularly appreciate training which allows a person to gain a professional qualification and which shows a U-turn in his life. They particularly value cases where the person had made persistent efforts over the years, for instance where he came from an underprivileged background, and went on to pass school exams during custody and continued at university before and/or after their release.

Judicial rehabilitation is easier to obtain for people who also went through radical changes in their family lives. Such would be the case of a previously persistent offender who neglected his family and who is now a good parent and spouse, supporting his or her family financially. U-turns also refer to a new committed relationship and other signs of life change like persistent attendance at AA or NA, cutting all contacts with criminal friends or peers, or relocating, are taken into account. The court naturally does not rely entirely on the dossier presented by the ex offender (who is usually helped by a solicitor). There will be a systematic police investigation in order to verify whether the ex offender still has contacts with ex convicts or accomplices or simply with people involved in criminal activities and whether what he presents as evidence is true. Prison authorities

and the J.A.P. are consulted. There also is a discreet community investigation. It must be discreet so as not to jeopardize the efforts made by the ex offenders to desist (PPC, art. C 1077) by drawing attention to his criminal past. Again, there is a definite 'right to be forgotten' for people who are thought to be potential true desisters. Albeit discreet, the community investigation must be thorough (PPC, art. 792).

The generative aspects of Maruna's *Making Good* concepts are also part of the analysis carried out by the courts. Involvement in charities, adoption of the spouse's child or of an orphaned family member, taking in a sick grandmother, and so forth, would all be taken into account in the courts' ruling.

Procedure leading to rehabilitation

The procedure for judicial rehabilitation is unique in many respects. The first original aspect is that not only the ex offender, but also his parents or children can also act in lieu of him after his death (PPC, art. 785, al. 1). Desistance is a family business too; clearing the person's name, even if after the person's death, can be important for his relatives, although during our research, we have not been made aware of a recent case where the family was at the origin of the claim. People who have been sentenced several times should not apply for the rehabilitation of a single sanction; they must apply for the rehabilitation of all: judicial rehabilitation must concern their entire life and behaviour, and all their past offences must be put on the table (PPC, art. 785, al. 2). A solicitor may be useful, but his participation is not mandatory, which is another original trait.

A third original trait is the high level of competence required for this measure. Maruna believed this rehabilitation ritual should be part of the correctional system. France has pushed this a little further. The court which is competent for judicial rehabilitation is not only part of the penal system; it is also a chamber of the Court of Appeal ('Instruction' Chamber). The idea is both to put the decision into more experienced hands, because the matter is deemed a very serious one, and to make it even more solemn, which in turn reinforces the seriousness of the statement that indeed, the ex offender is now a true desister. The impact on the latter, on his family and society itself is thus even greater.

Once the Court of Appeal has been appraised of the case by the public prosecutor (here again at a high level in the hierarchy of prosecutors) it must give its ruling within two months (PPC, art. 794). This, also is a very distinctive trait, only shared by the J.A.P. and other courts which deal with the implementation of sentences (see PPC, art. D 49-32, D 49-33, D 49-36).

More traditional is the fact that the Court holds an adversarial debate (i.e. France's equivalent of cross examining). The claimant can be assisted by a solicitor, but he can also present his case alone.

The Court can reject the claim, decide that it is premature and that it needs more evidence that the ex offender has indeed desisted; it can also grant judicial rehabilitation. Alas the decision is often made after the hearing, during a separate hearing, which diminishes its declaratory effect. This can be explained by the need for the judges to think things over a little longer. Still, this is not entirely compatible with Maruna's conditions for a ritual exoneration.

Another procedural element does not meet the perfect ideal set by Maruna (2011). Although Maruna is not overly prescriptive in his discussion of possible ritual processes, it would be assumed that for judicial rehabilitation to make a full impact, the court hearing or decision should be a public event. In a similar vein, with problem-solving courts, where progress is also acknowledged by a court, the hearings are public. The impact on the ex offender is already immense, as we shall see in the next paragraph; but what about his family and society? Would it not be positive not only for the desister himself but also for public opinion, to be told of such success stories on a regular basis, by the press, for instance? As it is, the hearing and the decision are held in camera. This type of procedure, which is common to all post-sentence decisions, and to the decisions of judges (and tribunals) de l'application des peines, can be explained by one common reason (Herzog-Evans, 2007, n° 01.202 s.). Even when the ex-offender has successfully desisted, making his criminal record public could have serious repercussions: he might lose his job, be ostracised by his neighbours or worse, his children might be treated badly at school, etc. However, in some instances (high profile cases, for example) or when the ex offender never tried to hide his past, there should be no reason not to at least give him a say in the matter. It would, in many instances, be in his best interests for the case to be heard publicly. Whatever the procedure, the effects of the ruling are very positive.

Effects of rehabilitation

The legal consequences of judicial rehabilitation are extensive. First, the sentence itself retroactively disappears: legally, it never existed. Consequently, it was traditionally erased from all NJR bulletins. However a law passed in 2007 (n° 2007-297, March 5, 2007) decided that unless the court specifically decided that bulletin number 1 would be expunged, only bulletins 2 and 3 would be (PPC, art. 769 and 798). This law, which has been strongly criticized (Herzog-Evans, 2008b), has not made much of an impact. For indeed either the court considers a person has totally and truly desisted and is now a good law abiding citizen, actually doing good to the community, in which case there should be no reason whatsoever not to fully erase his criminal record, or it does not consider that these elements are present, and then the ex offender should not be worthy of judicial rehabilitation. Or this reason, the old rule still applies in most cases. The 2007 Law has had another impact on the effects of judicial rehabilitation. Previously, since the sentence was deemed never to have existed, it could not count as the 'first term' of recidivism (legal recidivism requires two terms: a first sentence meeting certain conditions; a second sentence, meeting others). This is not true any more (PC, art. 133-16; PPC, art. 783). However, such an effect is not possible when the court has decided to expunge bulletin number 1: the courts will then have no way of knowing that the offender has a previous criminal record. Besides, the new rule is in contradiction with an older one, which is still valid, which states that any person who is aware, due to his profession, of the rehabilitated ex offender's past criminal record, cannot mention it in any way whatsoever nor even leave a mention of such record in any document or file, with the exception of court documents and files (PC, art. 133-11; PPC, art. 783).

The rehabilitated person can now also vote (if he was legally barred from it, which is not the case for all offenders and cannot last for more than 10 years after the sentence), which is highly symbolic. That person could even technically be eligible for any public position and for local or national elections. However, the public would be made aware by the

media of the person's criminal past. Still, politicians being re-elected despite having previously been sentenced is not unheard of in France (see e.g. mayor of Bordeaux, Alain Juppé, now a member of the present government). The person could lastly be selected as a member of a criminal jury, if bulletin number 1 had been cleared.

The criminological and emotional effects of judicial rehabilitation are just as powerful as its legal consequences. Judges and lawyers we interviewed for previous research on that subject (Herzog-Evans, 2008a; Danet et al., 2008), all testified that the atmosphere in the court was poignant. Many ex offenders have a trembling voice and cry when the ruling is voiced. The effect resembles citizenship ceremonies. There is a shared feeling of extreme satisfaction, elation even, both for the Court (which is also 'making good' on such occasions) and the ex-offender. The sense of pride, of being welcomed (in this instance back) into the community – 'after shame, reintegration' (Braithwaite, 1989) – is palpable and mirrored by the court's obvious pleasure at having thus ruled.
The consequence of judicial rehabilitation on further offending has never been studied. However the feelings of ex-offenders have (Danet and al., 2008): they see judicial rehabilitation as being both the recognition of their efforts, and a form of contract. Citizenship ceremonies are again a good comparison. There is a subliminal contract between the society and the rehabilitated person with the latter promising to continue to make good in order to merit the highly desired ruling.

Conclusion

The concept of desistance is notoriously difficult to define and measure (see for example Farrall and Calverley, 2006; Maruna, 2001). Desistance certainly is a process. Still in order to de-label the offender as such, people need certitude. We can indeed wait until the person is dead and try to assess whether he has offended since he was released or served his sentence; but then again only the person himself knows the truth. Still, society, the community, his family, friends and colleagues need to know for sure. He himself needs to see in the eyes of society that he is acknowledged as a desister – and this helps in sustaining the 'maintenance process' that Maruna (Maruna, 2001: 26-27) refers to. Taking aside the importance of rituals, preferably solemn, Courts, the law (laywers), have a solid advantage over criminologists: they can state what the truth is. Thus a court can declare that a person has desisted and because the court has said so, it is, or at least it becomes the truth that is 'Judicial truth' ('*vérité judiciaire'*). This legal magic may be what actually helps the desister continue to desist.
In the meantime, the recovering ex offender needs to be supported in his journey towards desistance. This is when other techniques, such as French legal rehabilitation or the expunging of criminal records can be essential.
If the actual desister deserves to have his or her crimes forgotten ('*droit à l'oubli'*), the ongoing desister deserves to be helped ('*droit à la réinsertion'*). This is in our – best – common interest.

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