

A DISTINCTIVELY FRENCH CUSTOM : RECURRENT PARDONS AND AMNESTIES

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The French habit consisting of periodically "deflating" the prison population through recurrent collective measures of clemency, be they pardons or amnesties, is a constant source of amazement for people in neighboring countries, who often view it as detrimental to the authority of the final judgment and to the equality of sentenced offenders.

Whereas these measures of clemency have received great attention from historians of the *Ancien Régime*, they have been neglected by sociologists. Moreover, most quantitative investigations of criminal justice view them as a disturbing element in statistics and are more intent on neutralizing their effects than on studying the facts themselves.

Pardon is dealt with in articles 133-7 and 133-8 of the Criminal Code. It is a discretionary act of the President of the Republic, aimed at partially or totally dispensing an offender from executing a sentence pronounced by a criminal court, or at diminishing the sanction by transforming it into a less severe sentence. It does not eliminate the civil responsibility of the offender and does not erase the sentence, which remains in the person's criminal record. It may be subjected to specific conditions such as compliance with specific monitoring or assistance measures or compensation victims, or again, absence of another sentence during a given lapse of time. The reasons for the pardon are not made public and the legality or constitutionality of the decision is not subject to control. The decision to grant a pardon takes the form of a ruling countersigned by the Prime Minister and the Minister of Justice, which is not published in the *Journal Officiel*.

Amnesty is a legislative measure described in articles 133-9 to 11 of the Criminal Code. As opposed to pardons, amnesties expunge the sentences pronounced and put an end to all (not yet served) sentences. Amnesties may be applied to criminal, professional or disciplinary offenses. There is no limit to the acts potentially amnestied by the legislator.

1. Frequency of These Measures

Amnesties

It is not always easy to count amnesties, since some are only tucked in as secondary aspects of laws on other matters. There is now something of a consensus in estimating the average since the turn of the 20th century at one measure every other year. For the period between 1946 and 2002, we have counted 36 measures (some researchers find 38).

All in all, two main categories may be defined for the period since 1946¹: amnesties following the election or reelection of a President of the Republic and amnesties connected with specific events, mainly – but not always – political or social disorders:

- Presidential amnesties (8 in all), are mainly amnesties decreed at each presidential election since the beginning of

the Fifth Republic.. They mostly affect common-law offenses, but may also contain more political clauses. Contrary to a commonly held belief, the habit of having an amnesty voted on that occasion is not a "republican tradition"... Under the 3rd Republic (1875-1940) there were only 5 amnesties for 12 elections, and under the 4th (1947-1958) there was only one, for two elections. This is a relatively recent custom, then. The present issue is concerned with the analysis of this category of amnesties.

- Political amnesties are tied to the great crises the country has experienced over the past half-century. In terms of numbers, those connected with the second world war come first, with 10 acts concentrated in the 1946-1959 period. These gradually eliminated the legal consequences of the 1940 defeat, the German occupation, collaboration, the Liberation and the purges. The Algerian War comes next, with 6 acts between 1962 and 1968. Then there are the amnesties covering events of a regional nature, usually less dramatic than the previous ones. The idea then was to put an end to prosecutions of members of autonomist or independence movements, at a time when a political solution was being found or attempted. These have to do with events occurring in Corsica, the French West Indies and New Caledonia (5 acts). Still others aim at the legal consequences of large-scale social disorders, including more or less violent strikes and demonstrations such as the May 1968 movement and peasant movements (3 cases). Last, there are occasional bills which (with the exception of one act aimed at veterans of the Indochina wars) are aimed at putting an end to prosecutions made useless by subsequent legislation, such as the amnesty of breaches of the monopoly on radio and television, following a reform of that sector (in 1978); or of customs officials involved in the illegal infiltration of drug trafficking networks once these practices were made legal (in 1990); or again, for prosecutions aimed at politicians for the illegal financing of political activities, following a reform of the rules on the subject (in 1991).

Pardons

It is impossible to determine the number of individual pardons, for lack of systematic study thereof. But the number of collective pardons is known, of course, although it is not easy to determine their actual impact, since they may affect sentence enforcement (the "influx" for different sorts of sentences) or exits, as will be shown below.

Collective pardons were used episodically between 1945 and 1988, with interruptions of varying lengths. During the Liberation period and during the 4th Republic, they were granted in 1945, 1949, 1951, 1953, 1954 and 1956. Under the 5th Republic there was one in 1959 and in 1960, then none until 1974, followed by 1980, 1981 and 1985. From 1988 on they became annual until the present, with the exception of 1990, when there was none, and 1999, when there were two.

The degree of indulgence varies with the years, as does the method of calculation. The extent of the reduction varies from year to year (between 5 and 15 days per month since

¹ We have included all of the texts we were able to identify, including those which simply extend the benefit of a previous act by broadening the field of its application or the time limit originally set for taking advantage of it.

² On this amnesty, see R. Lévy, 2002, Controlled delivery of drugs: legal, and therefore easier to supervise?, *Penal Issues*, 15, 5, 4.

the measure has become annual) and is calculated either on the basis of the sentence pronounced (in 1981 and 1985) or of the sentence remaining to be served, and may or may not include a ceiling, itself variable. For some years, the automatic pardon mechanism was completed by the possibility for the judge in charge of sentence enforcement to grant an additional pardon. Furthermore, these pardons also usually include non-incarcerated sentenced offenders, with reductions generally limited to 2 months.

2. Impact of the Measures

Little research has been done on the impact of pardons and amnesties. As for the collective measures, they have only received sparse, rather uneven attention. We are therefore obliged to go against the grain, so as to glean information in research that attempted to minimize the effects of these measures on their findings³.

Individual pardons

Only one study has attempted to determine the identity of recipients of an individual pardon, the sentences and offenses involved and the reasons for the pardon⁴. It also showed the quantitative extent of the phenomenon at the time: of the 25,000 requests received by the Bureau of Pardons each year, only 8,000 to 9,000 were investigated, while the others were immediately rejected as without grounds or wrongly oriented. All in all, an average of only 6 % of the cases investigated received a positive response. Individual pardons were mostly to the benefit of offenders given an unsuspended prison sentence of less than 6 months (87 % of those pardoned), most of whom had been judged in their absence and had consequently received longer than ordinary sentences. The nature of the procedures, the profile of the people involved and the offenses (mostly bad checks or failure to pay alimony following divorce, which the offender had subsequently made good or promised to reimburse) show that pardon tends to be a sort of last resort in cases where the offenders were unaware of their rights and had failed to take advantage of the normal recourse procedures. Pardons were then a sort of administrative regulatory mechanism for the functioning of the justice system.

Collective Pardons and Amnesties

Measures of clemency may be applied at various phases of sentence-serving. In some cases they prevent enforcement, purely and simply; it is as if the sentence had never been pronounced. They also very often affect sentence-serving by interrupting it prematurely, or more often, by shortening it.

Impact on enforcement

A study recently conducted by the statistics department of the Ministry of Justice on the enforcement of sentences pronounced in November 2001 provides specifics on the impact of these measures, and especially of the pardon and amnesty granted in 2002 (a presidential election year)⁵.

For unsuspended prison sentences, the incidence is potentially considerable: among the *final judgments*, 7.9 % of deci-

sions were the object of a pardon and 5.4 % of an amnesty. However, if we add those sentences susceptible of being in the same case but among the *non-final judgments*, we find an additional 5.9 % for pardons and 4.5 % for amnesties. Consequently, the overall percentage of judgments affected by these two measures is 23.4 %⁶. In other words, if we consider unsuspended prison sentences only, close to one fourth are nullified (or susceptible of being nullified) by a pardon or amnesty, and will never be enforced, thus reducing the flow of incarcerations.

These figures do not include non-custodial sentences, a good many of which are also susceptible of being affected by these measures, as is shown by the above-mentioned study. Unfortunately, the study only gives information on the effects of the amnesty for these sentences. Table 1 shows the detailed findings.

Table 1: Non-enforcement of sentences pronounced in 2001⁷

Sanction	Enforceable	Non-enforcement owing to amnesty (after 18 months)
Restrictions on driver's license (suspension or withdrawal)	100 462 (100 %)	962 (0,96 %)
ERM	40 354 (100 %)	3471 (8,6 %)
Means-based fines	14 713 (100 %)	7 989 (54,3 %)
Fines	84 217 (100 %)	21 320 (25,3 %)

Clearly, the impact of amnesty, measured here 16 months after sentencing, varies considerably with the sanction. These differences are mainly due to the interaction of two factors: (a) the organization of sentence enforcement: enforcement is slower when the sanction is more complex, and there are greater chances that amnesty (or pardon) will come before enforcement. This is particularly visible for sentences enforced by an administrative agency other than the justice department, such as means-based fines and fines, involving action by the public revenue department; (b) the fact that all offenses are not equally susceptible of being amnestied, any more than all sanctions, since the amnesty acts stipulate a number of exclusions, as in the case of traffic violations involving restrictions on the driver's license (the latter, which are also very rapidly enforced, as shown by the same study, are less susceptible of being affected by an amnesty).

Impact on sentence-serving

Two investigations on cohorts of released prisoners were useful in evaluating the erosion of sanctions – that is, the gap between the sentence pronounced and the sentence effectively served – as well as the impact of the various measures reducing sanctions. However, their data are not immediately comparable owing to variations in the criteria used to constitute the cohorts studied.

The first investigation covered 2,654 individuals sentenced to an unsuspended prison term of at least 3 years and released in 1982⁸. It led to the conclusion that the 1982 pardons and amnesty had reduced length of detention by 7.6 %; that is, 6.3 % for pardons and 1.3 % for the amnesty. The latter only affected 17.2 % of inmates (unfortunately the proportion of individuals affected by pardons is not mentioned).

⁶ This proportion is for all types of judgments taken together: it is much lower for defended trials and higher for the others.

⁷ *Ibid.*, 23-39.

⁸ Tournier P.V., Leconte B., Meurs D., 1985, *L'érosion des peines. Analyse de la cohorte des condamnés à une peine de trois ans et plus libérés en 1982*, Paris, CESDIP.

³ The annual statistical series of "reasons for release" from prison published by the Ministry of Justice is of no use since these reasons are not mutually exclusive: a pardoned inmate may be recorded either as pardoned or as "end of sentence".

⁴ Godefroy Th., Laffargue B., Yordamian S., 1981, *Le droit de grâce et la justice pénale en France*, Paris, SEPC; Laffargue B., Godefroy Th., 1982, *Pratique de la grâce et justice pénale en France: l'usage ordinaire d'une mesure exceptionnelle*, *Revue de Science Criminelle*, 641-653.

⁵ Timbart O., Torterat J., 2005, *L'exécution des peines. Enquête sur un échantillon de peines et de tribunaux*, Paris, Ministry of Justice.

The second investigation, covering a cohort of inmates released in 1996-1997, independently of the length of the prison sentence, is much more detailed⁹.

Concerning the beneficiaries, it shows that only 1 % of all inmates released that year had benefited from the 1995 amnesty, whereas 43 % had been granted a collective pardon. If we look at the situation with respect to the offense, the amnesty affected between 0 and 7 % of those released. But this figure is not really significant, because of the very short reference period. On the other hand, between 10 % (for receiving/handling) and 85 % (for criminal thefts) were granted one (or several) collective pardons.

As for the length of the sentences, the study showed that the average reduction at the time was 27 %. Eight per cent of the reductions in sentences were due to pardons, whereas 19 % and 0 % respectively were ascribable to the judge in charge of sentence-enforcement (JSE) and amnesties. It is useless to delve into the impact of amnesties, then.

The case of collective pardons is different: their incidence on sentence reduction ranges from 3.7 % (breach of immigration laws) and 11.3 % (fraud). Although these figures are not negligible, they are definitely far below the incidence of ordinary sentence reductions (by the JSE), which ranges from 15.1 % (fraud) to 21.2 % (sexual crimes).

These two studies therefore corroborate the fact that in terms of effects on the stock of inmates, pardons play a much greater role in reducing sentences than do amnesties, and that the magnitude of the incidence of pardons did not change over a dozen-odd years (6.3 % in 1982 and 8 % in 1995)¹⁰.

Impact on the prison population

The last column of table 2 yields an assessment of the immediate impact of the measure, since it shows the proportion of inmates granted a pardon who were given *early release* within one month of the measure as compared to all prisoners released during that month. This number corresponds to the drops observable at regular intervals on the chart below. The proportion oscillated between 52.1 % in 2002 and 74 % in 1992, but it should be remembered that a fraction of these inmates only gained a few days of detention and would have been released during the same month anyway.

Table 2 : Impact of Collective Pardons during the Month Following the Measure

Year	Number of pardoned inmates released during the 1 st month	% of early releases during the 1 st month
1992	6 362	74,0
1993	3 571	62,5
1994	4 112	63,5
1995	4 898	67,3
1996	4 450	71,6
1997	4 163	66,8
1998	3 637	60,7
1999 (1)	3 570	58,7
1999 (2)	Unknown	Unkown
2000	3 194	61,4
2001	3 473	63,5
2002	3 502	52,1
2003	4 160	62,8
2004	7 911	73,6
2005	5 030	63,0

Source: Corrections Department

⁹ Kensey A., 2005, L'aménagement des peines dans sa diversité, *Cahiers de Démographie Pénitentiaire*, 13. The data pertains to inmates leaving prison between April 30, 1996 and May 1st, 1997.

¹⁰ It is difficult to be assertive on this point however, since the lengths of detention studied are not the same in the two cohorts.

The chart shows the effect of these measures since 1980. In particular, it shows that the annual cutbacks they produce apparently do not basically modify the upward trend in the prison population. This trend is consistently visible throughout the period, except for a downward turn between 1996 and 2001, mainly due to the fact that longer prison stays no longer balance out the drop in incarcerations observed since 1992¹¹.

Amnesties and above all, collective pardons, have now become tools for the short-range management of prison overcrowding. Viewed as exceptional measures up to the mid-1980s, they are now quite routine, to the point where the Corrections Department takes them into consideration in its annual projections of the prison population, and where inmates themselves, and their families, expect them. The considerable increase in the capacity of correctional facilities, which has risen by 50 % since 1980 (from about 35,000 to 51,000) has had no effect. Indeed, as shown by this chart, that capacity has constantly remained far below the stock of inmates, except for a very short period between 2000 and 2002, producing a degree of overpopulation – variable, of course, depending on the type of facility – which has made living conditions in prison difficult and heightened tensions, particularly in summertime, due to the heat. The July 14th pardon thus serves as a safety valve, used to let off steam in the prospect, constantly feared, of a revolt among inmates.

Nonetheless, non-political collective pardons and amnesties have been criticized for many years now. They are said to discourage the police and judges, and to reduce their work to naught. They are accused of generating inequalities among offenders depending on when they are sentenced, of not considering the individual merits of those involved. Above all, they are said to call into question the effectiveness of sanctions, thus undermining punishment, jeopardizing efforts at rehabilitation – the agenda for which is upset – and preventing adequate preparation for prison-leaving.

Another reproach has to do with the foresee ability of the measures, which – according to its critics – voids some penal schemes of any dissuasiveness. This criticism was mainly directed at "presidential" amnesties and the case of traffic offenses in particular. However, the combined efforts of various pressure groups, including associations of victims of traffic accidents, traumatologists, specialists in accidentology and public health and local authorities in charge of infrastructures and transportation services, have fortified the belief that the prospect of an amnesty was the cause of a rise in fatal traffic accidents, leading to a gradual exclusion of that category of offenses from measures of clemency.

The narrowing of the area of amnesty is particularly spectacular in the field of road safety since the latter affects the entire citizenry, but it actually reflects a basic trend clearly at work over the past 25 years. Starting in 1974, presidential amnesties include a chapter specifically devoted to those offenses that are excluded, the number of which has risen constantly: 3 series of offenses in 1969, 8 in 1974, 14 in 1981, 22 in 1988, 28 in 1995 and 49 in 2002, with each series corresponding to a specific field.

The same is true for collective pardons. Whereas the 1991 pardon only excluded terrorism, the list of exclusions has grown longer from year to year. The most recent one, in

¹¹ A more consequential drop was also seen in 1988-1989, owing to the cumulative effect of the 1988 amnesty and two collective pardons in 1988 and 1989. However, since there were no pardons in 1990, the curve had returned to the pre-1988 level by 1991.

2005, also excludes crimes against humanity, a great many acts of physical violence exerted on juveniles under 15, drug trafficking, obstruction and assault on the police or agents of the Corrections Department, corruption, non-intentional manslaughter connected with traffic offenses, "hate crimes", physical and/or sexual violence, absconding, recidivism for any offense. These exclusions apply to the main offender, accomplices and attempts.

The decision as to whether or not to exclude a given category of offenses theoretically depends on criminal justice policy considerations, as in the case of traffic offenses, or even on purely political considerations. In 2005, the exclusion of recidivists reflected several recent incidents involving recidivism in murderers who had served their previous sentence, and the Minister of Justice made no attempt to conceal the electoral objective of that provision. The long list of exclusions ends up making these measures increasingly obscure and complex, and creates numerous inconsistencies as well as some possible inequities. Many observers point out that these exclusions upset the hierarchy of offenses set by the Criminal Code, and rearrange it in accordance with the sensitivity or concerns of the moment.

So, if presidential amnesties and collective pardons continue, it is at the cost of increasingly numerous restrictions which end up making them meaningless. It will be interesting to see whether this tradition will stand up against the accelerated pace of amnesties now that the presidential term has been cut down from 7 years to 5.

Amnesties, and especially pardons, as measures of clemency aimed at reducing the prison population, attempt to solve the

contradiction between the proclaimed objectives of criminal justice policies closely translating what the people in power believe to be the expectations of their constituency, and on the other hand, the practical impossibility for the judicial and correctional administrations to cope with the consequences of those policies. Over the last 25 years, governments have tried to rationalize the functioning of the judicial institution by speeding up criminal procedures and above all by increasing the role of the public prosecutor's office. But independently of the government's intentions, it cannot steer the judicial machine more delicately because its mechanisms escape the government's influence almost entirely. The administration controls neither citizens' demand for justice nor the productivity of the police, nor, actually, the judicial decisions made at the various stages in the criminal procedure (including sentence-enforcement), nor, lastly, the combination of the effects of that myriad of decisions, which are mutually independent for the most part. Pardons and amnesties are therefore both an archaic relic of the sovereign's regal prerogative (in the case of the former) and also, at the same time, a palliative to the political powerlessness to truly govern the criminal justice process.

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For further information :

LÉVY (R.), 2006, Pardons and amnesties as instruments of criminal policy in France, *Crime and Justice : a Review of Research*, vol. 36.

