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## Chapter 2

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# Proximity justice in France: anything but ‘justice and community’?

Anne Wyvekens<sup>1</sup>

The word ‘community’ is not French at all. One could even say that French people, and French institutional personnel, *hate* the word ‘community’. They hate it because in French culture it has almost entirely negative connotations. The word ‘community’ refers to an *ethnic* community – which is viewed, consciously or not, as something not really civilised – but above all it refers to something the French political tradition cannot accept: highlighting and giving importance to what makes people different from each other, while the major national value is equality, republican equality. In France when someone is referring to ‘community’ the word that is nearly always used is *communautarisme*, as in, for example, *le repli communautaire* - withdrawal into one’s own community- i.e. the exact opposite of the major value for the French: that of the Republic, which emphasises unity and equality.

However, just because the French are ‘republican’ and value equality does not mean that they would not have anything to say about ‘justice and community’. Indeed, even if the French state distrusts communities, it tries, like every state everywhere, at least in Europe, to reach out more to, let us say, ‘people’. Most of the items that were pointed out by the broad framework of this book can more or less be found in French policies. This paper cannot deal with every aspect of the diverse policies surrounding the state reaching out to the people in relation to criminal justice matters. It will, for example, leave aside some judicial practices, internal to the operation of court procedures, such as those relating to witnesses, lay judges or how the public is informed by the judiciary. For everything relating

to mediation *per se* see the chapter by Philip Milburn. This chapter will focus on policies and practices that may appear at first sight as the nearest French equivalent to the English phrase 'justice and community': *la justice de proximité*. After some hesitation I shall use the literal translation of the French words, thus 'proximity justice' rather than 'community justice'. For even if the latter sounds more English, the literal rendering corresponds more closely to the situation in France, reflecting the gap existing between the French and the 'Anglo-American' ways to reach out to communities.

In contrast to the word 'community', the term 'proximity justice' is in common use in France, so much so that it seems clear and adopted by consensus by all concerned. Yet it has several shades of meaning. Both geographically and in its evolution over time proximity justice comes in not one but many forms. Therefore, rather than defining proximity justice the best way to present its current use is to trace the history of this movement by illustrating and analysing both the context in which it has been developed and the diversity of ways in which the system has been implemented and continues to evolve (section I). Section II will then address a few more general questions in order to enhance the debate from a comparative perspective and show how 'proximity justice', although based on a real concern about moving justice closer to people, has not much to do with either reinforcing 'communities' nor with giving citizens as such an active role in criminal justice practices.

## **I. From experimentation to the creation of a new jurisdiction**

### *The origins: fear of crime and troubled neighbourhoods*

Historically, French proximity justice first took shape in the context of law enforcement. In the beginning it was intended to provide the courts with better adapted responses to the rise in petty crime and misdemeanors that generated such a strong fear of crime among the population. The French justice system sought to do this by adopting a local approach, moving closer to certain geographical areas. Consequently, in the beginning the term 'proximity justice' meant criminal justice and geographical proximity.

Why adopt a local approach? Why 'proximity'? The reason lies in the situation that, when the issue of public security began to become important in the early 1980s, it was linked to the broader issue of disadvantaged urban areas or troubled neighbourhoods. In France,

unlike many countries, these neighbourhoods are not the inner cities but located far from the city or town centre, in the suburbs or on the outskirts of town (Delarue 1991; Coll. 1997). In these areas, housing is often very run-down and residents are particularly disadvantaged. As far as public security was concerned, a number of French suburbs at that time were described as 'no-go areas'. Initially, use of this term described the symptom itself: the difficulties encountered by police when they attempted to answer calls or take action in these areas. But more basically, the term translated two observations: that these neighbourhoods were governed by the unwritten laws of the parallel (informal or criminal) economy and trafficking (of illegal substances or stolen or smuggled goods) rather than the laws of the French Republic and, on another level (extending beyond these troubled suburbs), a 'no-go area' also meant that the basic laws of social interaction no longer seemed to apply.

It was especially in this second context that the criminal justice system was subject to severe criticism. It did not address, or very rarely addressed, what Americans call disorders or nuisance crime (which we in France translate by *incivilités*) nor petty offences – some of which are hard to define in criminal law and all of which are seldom prosecuted. There was a whole range of behaviour that made life insufferable in these neighbourhoods and gave residents the constant feeling they were never really safe, yet the authorities appeared to be doing nothing.

At the same time, the French authorities set up a general 'urban policy' (*politique de la ville*) in these areas. This ambitious policy, which has undergone several changes over time, had several elements. It originally aimed to both remedy the material degradation of these neighbourhoods by expending considerable efforts in renovation (which has gone as far as actually tearing down housing that has deteriorated too far) and also developing a series of social and community-based measures for residents themselves (Donzelot *et al.* 2003). The defining features of this policy were its geographical dimension and its focus on improving horizontal links between agencies. The primary tool in the realm of public safety was a series of local partnerships to prevent crime through setting up local councils for crime prevention (*conseils communaux de prévention de la délinquance*), initiated on the basis of the now famous *rapport Bonnemaison*, resulting from the work of a commission of mayors of large and medium-size cities (Commission des Maires sur la Sécurité 1982).



*Mediation, real-time processing, justice and law centres*

'Proximity justice' arose from this movement. For various reasons the judicial system did not really involve itself in those local consultative bodies, rather it 'invented' its own new methods to address what it saw as the 'lawlessness' affecting the most troubled neighbourhoods. The primary aim was to fight petty crime. The courts were overloaded, at least in highly urbanised areas, so that they had reached the point where reports on a number of minor offences were simply filed away. In France, the prosecutor has the power to decide whether cases should be pursued or not. Taking these minor offenders to court seemed to be too radical a solution and in any case would have come too late in the game. It became apparent at this time, however, that although dropping cases was tolerable up to a certain point, it ended up giving the victims of these minor offences the impression that the law had abandoned them, while making the perpetrators feel they ran no risk of punishment. On the one hand, there was a danger of playing into the hands of those who made public safety a political issue, in particular the extreme right wing, and on the other hand, if insufficient action was taken, especially when dealing with youth, there was the risk of reinforcing behaviour which seemed to reflect the disappearance of even the slightest reference to rules of social interaction.

This concern to find other solutions led the justice system to look elsewhere for ways to improve its work. The fashion in western Europe at that time was alternatives to the justice system, inspired by the concept of mediation, which was seen as close to the hearts of the Anglo-American countries, but yet so 'unFrench' (Crawford 2000). Mediation was thought to be especially successful in dealing with family conflicts. It was also then extended in France to a series of petty offences, on the basis of viewing them as a symptom of social breakdown, or as a conflict between individuals (an argument particularly suited to the situation of troubled neighbourhoods, particularly in disputes among residents, and somewhat linked to the problem of domestic violence). Some innovative prosecutors decided to entrust this type of offence to mediators from civil society (which would be termed 'community mediators' in England). This offered a solution at two different levels: it addressed the qualitative problem that prosecution was ill-adapted to and too severe for these petty offences, and it also took on some of the burden of the overloaded courts.

Quite quickly, however, these procedures which started off as experimental 'alternatives to the justice system' found their way

back into it. They became associated with another innovation, also an aspect of proximity justice but this time a very judicial one: real-time processing of criminal cases, which aimed to speed up the handling of petty offences. In French criminal procedure, the police transmit their reports on offences to a prosecutor who decides on the follow-up to be given. Before the real-time procedure was installed, these reports were submitted primarily in writing. Only serious cases were transmitted by phone or handled immediately. Real-time processing generalises what previously occurred only as an exception. Each time an offence is reported, no matter how minor, the person charged cannot leave the police station until the police officer has called the prosecutor about the case and the latter, on the basis of the officer's report 'in real time', has been able to recommend the follow-up that seems most appropriate. We can say that the procedure has found its way back into the judicial system because real-time processing covers all the different follow-ups that may be given to a case, from mediation to traditional criminal court procedures. It is also intended to reach a highly institutional objective – improving criminal caseload management.

Another aspect of this 'rejudicialisation' is that bit by bit responsibility for the 'criminal mediation' procedure started to shift to 'deputy prosecutors' (*délégués du procureur*). The people from outside criminal justice still involved in this form of mediation soon found themselves first under tighter control by the prosecutors and then subject to requirements for speedy processing. They were thus obliged to renounce some of the more specialised mediation facets of their practices (such as lengthy consultation between the parties). Mediation in criminal cases, therefore, often came to mean filing a case away, but subject to conditions (*classement sous condition*) which, if fulfilled by the offender, would mean the end of the prosecution. Thus, for petty crimes, proximity justice started to consist of a system drawn from mediation procedures but then transformed into a diversified method of criminal court intervention.

Locally based aspects of proximity justice – its geographic arm – mainly consists of a series of 'justice and law centres' (*maisons de justice et du droit*) set up in a number of urban areas starting in the early 1990s (Vignoble 1995; Wyvekens 1997). In these so-called 'no-go' neighbourhoods, the primary role of the justice centres, regardless almost of what they actually did, was visibility: to represent the law – put it on display – in neighbourhoods seemingly abandoned to lawlessness. Obviously, this is not to say that what the centres actually did was unimportant. Their prime activity has always been

to use mediation methods on criminal offences. They were the first location of the alternatives to prosecution with which prosecutors were experimenting at the same time. Gradually a second activity gained importance, one that was not judicial but instead geared toward legal advice or counselling: assisting victims and providing access to the legal system. Indeed, bringing the law back to lawless neighbourhoods not only meant exercising legal functions, but also enabling disadvantaged residents to gain access to the legal information they were lacking.

### *Justice and public safety partnership policies*

Proximity justice does not only imply the judiciary reaching out – or intending to reach out – to the population. As it developed within the framework of policies based on local approaches and partnership in the 1990s, it also involved reaching out to other institutions. If the judicial institution was reluctant to enter crime prevention partnerships, this was undoubtedly partly due to the fact that such partnerships had been placed under the leadership of the mayors. Gradually, the justice system instituted its own partnerships for which it was responsible.

First were the above-mentioned justice centres. Placed under the leadership of the prosecutor, they were (and still are) created through an agreement between the local court and the municipality – which thus created a considerable investment in the functioning of these structures, and which thus became a 'partner' of the judicial system. Gradually these centres provided an opportunity for the prosecutors to meet other local partners: school officials, social services and the police (Wyvekens 1996).

Another form of partnership initiated by the justice system involved more specifically schools: the 'school reporting scheme' (*signalement scolaire*) whereby school authorities report offences that occur in their establishments simultaneously to the police, the prosecutors and the educational authority (*inspection académique*). Under this scheme events that used to be dealt with internally (in a past when schools viewed themselves as 'sanctuaries', not to be broken into by the police) but which schools feel they can no longer handle adequately on their own are reported to the police.

The most sophisticated – though short-lived – form of partnership led by the justice system were the 'local groups to deal with crime' (*groupes locaux de traitement de la délinquance*) (Donzelot and Wyvekens 2004: 13–91). These complex arrangements, also initiated by the

prosecutors, target very small areas of neighbourhoods that are especially run-down. The first step of the approach consists of a fast and systematic response to disorder and crime. This aspect is linked with a partnership, led by the prosecutor, gathering together all local players (the municipality, businesses, schools, public transport and housing, social workers) in order to improve each agency's ability to enforce the law against petty and more serious offences as well as encouraging working together to prevent them.<sup>2</sup>

In 1997, when the word 'security' replaced the word 'prevention' as the thrust of local safety policies, the judicial system was then more than ready to participate in the local partnerships of that time: the 'local security contracts' (*contrats locaux de sécurité – CLS*). The purpose of these contracts was first to monitor the local amount of crime and fear of crime, then to draw up a set of actions intended to reduce crime and fear of crime. They could embody either one municipality or a group of municipalities. Municipalities were invited, not required, to draw up a CLS. The incentive took the form of giving the town the possibility of hiring 'assistant officers' in police stations and also 'social mediators' (*agents locaux de médiation sociale – ALMS*) (Faget 2003), partly paid for by the government. CLS are signed in each case by the mayor(s), the public prosecutor of the local court and the prefect of the department.<sup>3</sup>

CLS are 'contracts', but not in the traditional, legal, sense of the word. They are contracts because all the operations they involve – including analysis and action – are the result of different kinds of partnership. Quantifying the amount of crime means not only collecting police and justice data, but also collecting data from schools, public housing, transport companies, etc. Furthermore, the data that are collected are not only quantitative, but also qualitative, such as impressions about the times of day or the places where people do not feel safe in the neighbourhood, etc. In the same way, security 'action' programmes are supposed to be the result of cooperation between various institutions, for example new ways for public housing bodies to inform the police about instances of disorder, partnerships between the prosecutor and schools, setting up a justice centre as the result of cooperation between the city, the court and several social services, etc.

What about the community? In other words, are local people, residents and the wider community also a 'partner' in this operation? When one interviews personnel from agencies or the criminal justice system about 'participation', the most frequent answer one gets is 'working with the residents is something we cannot do'. Meetings

with residents are rare, and most of the time they disappoint everybody. Only a few towns have organised meetings to include the population in the analysis of crime and disorder problems. At these meetings, it was as if neither the inhabitants nor the authorities were capable of listening to one another. While residents were asking the mayor and the police, for example, why they don't arrest the people involved in crime when the police know who they are, the police and mayor were telling the residents: 'you know them, you see them, why don't you come to the police station and give names?' On one side there were local people fearing retaliation; on the other, the police unable to reassure people about this. When the moment to implement 'action' comes, together with its evaluation, the question seems to be less 'can we deal with the people?' than 'do we really want to involve them?' In most towns, the residents do not attend the 'follow-up committees' (*comités de suivi*, which follow through the implementation of the action points decided), or when they do, they attend only half the time. Why are residents not taking part? It seems primarily to be because the agencies do not seem to want to familiarise people with how they work, which might sometimes demonstrate that they do not work too well. For an agency, whether a criminal justice agency or a municipal agency, it is hard for them to open themselves up in this way to their institutional partners, and definitely too much to have to expose themselves in front of the population.

The way in which CLSs try to be closer to the community is quite different from involving it as a full partner in a local security partnership. The 'mission statement' of almost every CLS mentions the fact that people feel 'abandoned' as the reason why they either withdraw from neighbourhood life or fall into crime. So what should the answer be? The answer is seen as 'proximity', getting closer to the people, but not in order to work with them. Instead CLSs propose to try to inform the local population about the services provided by the town and the different agencies through teaching them what their rights are, but also informing them of their responsibilities in order to 'restore the social bond' (*restaurer le lien social*) (Donzelot *et al.* 2003).

One example of this strategy in action involves 'mediators' (ALMS) that towns can hire with government support. Their task is sometimes to make public spaces safer by their presence, sometimes to solve conflicts between inhabitants or between customers and institutions, or sometimes merely to inform the population about all kinds of services. Another example can be found in the way justice centres, which often appear as an 'action point' in the CLS contracts, have been evolving.

*Expanding the scope of proximity justice*

The other facet of the diversity of proximity justice is its evolution over the years. The initial role of community justice centres, as we have seen, was oriented towards the criminal justice system and law enforcement. Indeed when the first centres were set up, the main concern of the mayors was to address the public's fear of crime and to fight petty crime, and they counted on the judicial sector to handle this aspect in their problem neighbourhoods. Yet from the very beginning the justice centres also assumed a role which was completely different from this judicial activity. They were entrusted with what is called in France *accès au droit* – 'access to the law' – in other words a whole series of both general and specialised legal methods of giving advice to the disadvantaged populations of these neighbourhoods, who were particularly deprived in this respect (as in many others). From that point on, proximity justice developed in separate directions: the judicial 'proximity' activity retreated into traditional judicial spheres and developed within that, while the 'second generation' justice centres, those set up from the mid-1990s onward, became more focused than their predecessors on access to the law.

What is gaining ground and becoming the new thrust of geographic 'proximity' measures are activities involving legal advice on a broad range of subjects: family law, housing law, employment law, the rights of foreigners and immigration law, assistance to robbery victims, etc. The staff at these centres mirror this diversity: specialised voluntary groups, young legal experts and experienced lawyers share the work according to various modes. It also mirrors the disinvestment of the judiciary: prosecutors are no longer present, only a clerk of the court. Thus the most recent justice centres no longer revolve around judicial activities *per se*. Alternatives to criminal prosecution are usually practised only marginally, taking up no more than one or two half days a week. Likewise, reconciliation in civil conflicts, a development recommended by a Parliamentary report (Vignoble 1995), has not really made much headway.

This evolution is the result of several factors. One likely cause is that elected officials are in a sense now less preoccupied with public safety matters, especially because the problem has been at least partly addressed. Another cause is the justice system's wish not to fall foul of criticism often levelled at justice centres, citing the risk of excessive stigmatisation of the neighbourhoods where the centres were located. Two other elements play an important role and are strongly linked to

one another. From the mid-1990s the new responses to the problem of petty crime have gradually been generalised, often organised from the courthouse rather than from a neighbourhood base. After the implementation of penal mediation by deputy prosecutors, still in an experimental way, this kind of 'alternative to prosecution' has been given statutory form – the *composition pénale*<sup>4</sup> – and introduced into the ordinary criminal procedure. It is difficult not to see a connection with the reluctance of a majority of magistrates to the idea of exercising their function in 'justice centres' located in such deprived and dangerous parts of the city, and of becoming in that way more exposed to the expectations of ordinary people.

In a way it could be said that justice centres have lost their character as specific centres. They are no longer undertaking an innovative form of judicial activity, but what now goes on within their walls could be characterised as closer to a 'public service' by the judiciary. Along these lines it has much in common with modernisation happening throughout the public service sector, from the post office and social security to welfare and health services. France has recently seen a whole new wave of 'public service centres' or 'public service platforms' (*maisons ou plates-formes de services publics*), that are also part of the CLS's actions, and whose aim is to facilitate access to various services, especially in disadvantaged neighbourhoods.

#### *The creation of 'proximity judges'*

A recent episode in the story of proximity justice is the advent of 'proximity judges' (*juges de proximité*). Their creation was announced by candidate Jacques Chirac during the 2002 presidential election campaign. The Law Reform Bill of 9 September 2002<sup>5</sup> provides for the creation of a 'proximity jurisdiction' (*juridiction de proximité*) which is competent to deal with both civil (involving up to 1,500 euros in value) and minor criminal cases. The aim is reminiscent of that of the first alternatives to justice: 'a judicial dealing with little things of every day life for which no adequate response exists'. A statute dated 26 February 2003<sup>6</sup> is devoted to proximity judges, their status, their training, and the procedure they have to follow. They are not professional magistrates since this new jurisdiction is aimed to 'increase citizens' involvement in the judiciary'. Yet this community involvement remains limited. It is limited by the law itself, which requires proximity judges to have legal skills.<sup>7</sup> It is also limited above all in practice, as the creation of these judges, *because* they are not

professional magistrates, has given rise to considerable resistance from a number of magistrates in a way that can be qualified as 'corporatist'. The original programme envisaged hiring 3,300 proximity judges by 2007. Less than 500 proximity judges<sup>8</sup> were in office at the end of 2004. Most of them are former lawyers, notaries, judges and police officers. Most of them do not have a lot of work to do. The proposal to expand their competence by raising the value of cases they might deal with from 1,500 to 4,000 euros attracted the unanimous hostility of three magistrates' unions. The motion from the unions repeated the main argument of their opposition to the principle of bringing in non-professional judges: law is becoming ever more complex, even in minor cases, and the training in legal matters of these judges is too weak: 'what kind of justice do we want to build?' The law has nevertheless been passed<sup>9</sup> and also states that proximity judges can sit in the lower courts deciding on minor offences (*tribunal correctionnel*). In November 2005, a report was prepared for the Minister of Justice. After pondering over several problems due to lack of finance, the main question it raises is that of 'the identity of proximity justice: what should it be and how can it be closer to neighbourhoods? What is its added value? Its original aspects?' (*Rapport du Groupe de Travail sur les Juridictions de Proximité*, 2005: 87).<sup>10</sup>

## II. From proximity to community?

This story of French 'proximity justice', starting from observations of the inability of the penal system to deal with petty crime in deprived neighbourhoods, illustrates how the notion of proximity has gradually become part of a broader debate on the way the justice system functions as a whole. From the very beginning of the movement, 'proximity' has been a way to question at least three problematic aspects of the justice–society relation: people, geography and time. The first parliamentary report on the subject, *Propositions pour une Justice de Proximité* (Haenel and Arthuis 1994), pleaded for a justice that would be closer in these three respects, expanding its scope beyond criminal justice only in order to include civil justice. Several researchers and practitioners then developed this line of thinking, some of them adding yet further dimensions of proximity, either in a positive way by appealing to a symbolic and a social proximity (Peyrat, 2000) or venomously, criticising the notion by highlighting the less consensual aspects it might acquire (Kaminski 2001).

*'Human proximity'*

The term 'human proximity' is closely linked with the origin of proximity justice, the mediation approach. It calls for a less formal way of dealing with cases, taking more into account the actual expectations of the parties and speaking a less complicated language. It also evokes, as far as minor criminal offences are concerned, a less severe way of dealing with them than using traditional criminal prosecution: a *justice douce* (soft justice), as it has been called in France (Bonafé-Schmitt, 1992).

This concern can be found throughout the story of proximity justice, from the observation of the inadequate response the criminal system gives to minor offences and the introduction of the law creating proximity judges, through to the emphasis put on the need to improve people's knowledge of their rights and the development of 'access to the law' services in justice centres and houses for public services.

One objection has been raised about 'human proximity'. The concept would be deceitful: not at all a way to deal with minor cases with less severity, but actually a way to deal with *more* minor offences, those that would not be prosecuted if there was no 'proximity justice'. One can recognise here the thesis of 'penalising the social' (Mary 1997), the more sophisticated version of Wacquant's (1999) notorious denunciation of a supposed switch from the welfare state to the 'crimefare state'. However, even though deprived people certainly are more frequently picked up by criminal justice, one may deplore that ideological considerations could be an obstacle against the creation of positive change in such a conservative institution as the criminal justice system.

More interesting is the discussion about *how* and *for what reasons* the justice system may be reaching out to people through proximity justice. One has noticed the evolution of justice centres, from a new judicial way of dealing with minor offences to the stress put on 'access to the law'. Two points are interesting here. First and most importantly, the judges' reluctance to serve in the justice centres indicates their unwillingness to 'expose' themselves, both 'physically' by getting closer to the 'no-go' neighbourhoods, and above all by lack of preparedness to serve as representatives of an 'authority' supposed to be holding court hearings in places where the relationship to the population is supposed to be less formal. This observation is confirmed by the way proximity justice has been institutionalised – *inside* the existing judiciary. Secondly, and in close connection with

the first point, the switch of the 'justice *and law* centres' from hearing judicial cases to a more 'access to the law' approach illustrates a more general feature of the French justice system: the French judiciary does not reach out to the inhabitants as people in front of which it should be accountable, but only as people that have to be taught and mentored in order to better know their rights *and* their duties. In France, getting closer to the community means establishing a pedagogic relationship with that community, where the institution is the teacher, rather than putting residents on an equal footing with institutions (Donzelot and Wyvekens 2004).

With regard to involving people in dispensing justice, that has never been the purpose in justice centres. One prosecutor<sup>11</sup> suggested one day that a justice centre could be the place where the neighbourhood's inhabitants would come and list problems of disorder and try to solve them: she remained an exception and her idea was never implemented. As far as proximity judges are concerned, even though the rhetoric has evolved that the aim of the new jurisdiction is 'to increase citizens' involvement in the judiciary', implementation of this remains extremely limited. On the one hand, the legal requirement for legal knowledge and skills to be a proximity judge means that, so far, all proximity judges can be said to belong to the 'lawyers' family': former magistrates (8.5 per cent), barristers or former barristers (about 30 per cent), business lawyers (*juristes d'entreprise*) (about 40 per cent) (*Rapport du Groupe de Travail sur les Juridictions de Proximité*, 2005: 43). On the other hand, judges remain extremely suspicious of even those professionals. Judges' corporatism and professional elitism is another expression of the French difficulty of accepting any measure that would involve the community more in judicial matters.

### 'Geographical proximity'

Likewise, the need for a geographical expression of proximity has been present throughout the history of proximity justice. So justice centres were established with the objective of making justice more visible in deprived neighbourhoods. In fact, French 'proximity' consists much more of reaching out to *places* than to *people*. The origin of proximity justice, in the broader framework of the *politique de la ville* lies above all in a concern to deal with territories – the point is about 'local policies', not about 'communities' – in the administrative (and Republican) French way of dealing with problems. Our French *politique de la ville* itself tends much more to deal with places (i.e. to

address urban and housing issues, or to take care of people *within* their neighbourhood) than to try to help them to cross the barriers existing between them and a better way of life, possibly *out of* their neighbourhood (Donzelot *et al.* 2003). This is even more obvious with the recent law on urban renovation:<sup>12</sup> although its aim is one of 'social mixing' the means it implements are focused first and foremost on buildings – demolition of deteriorated housing – with scant attention paid to the social aspects of its consequences.

If one considers the justice system as a whole, 'geographical proximity' raises the matter of adapting the jurisdiction map to demographic change: urbanisation has developed in such a way that the geographical competence/administrative area of most of the urban jurisdictions no longer fits with where the population are located. However, the concern for a 'geographical proximity' should not be equated with genuine change. Reform in this area still remains hypothetical. Justice centres, settled in heavily built-up areas, continue to represent a marginal branch of justice. They are not given the means to become real places of justice, whereas proximity judges are located in the *tribunaux d'instance*, most of which are located outside the more urbanised parts of the country. One could even say that 'geographical proximity' has become the sign that an innovative practice remains in the realm of experiment and has few chances to become generalised.

#### 'Time proximity'

'Time proximity' is the third tier of 'proximity justice'. Justice must not only be closer to people, it also has to act more quickly. This concern appeared in the early 1990s, at the same time as the idea of making justice more human and more local. Criminal courts were congested and their decisions came too long after the crime had occurred, especially in the case of young offenders, so it was necessary to find alternatives. That field is probably the one where the judiciary has shown most change. Real-time processing has been rolled out nationwide, whereas the creation of justice centres has been left to the initiative of mayors or prosecutors. Alternatives to prosecution have also been institutionalised: the 'pretorian' practices based on mediation have not only been legally recognised<sup>13</sup> but also complemented by new ones like *composition pénale*, all of them playing a large part in the speeding up of criminal justice.

## Conclusion

The 'rejudicialisation' of proximity justice seems to have reached a final point. It has evolved from local experimentation in deprived neighbourhoods to the creation of a new jurisdiction whose competence is defined in statute. But it has evolved in a way that has also provided its boundaries. Concern about proximity is regularly expressed, several things change, but never really in a way that would radically change the French way of dispensing justice, nor the French vertical relationship between institutions and citizens. A strong institutional paternalism on the collective level and judges' ingrained practices and culture on the individual level combine to create an ambivalence about proximity justice, 'tantôt dénigrée, tantôt affichée, souvent récupérée en même temps que vidée de son sens' (Peyrat 2005: 164 – 'sometimes derided, sometimes displayed, often instrumental while deprived of its meaning'). Another expression of this ambivalence (or hypocrisy?) is the following: when one visits the Ministry of Justice website, the proximity judge is described in the *dossier de presse*<sup>14</sup> as 'un citoyen au service de la justice' ('a citizen at the service of justice'). But when one checks the page called 'la participation des citoyens à la justice'<sup>15</sup> ('participation of citizens in the justice system') there is no trace of any proximity judge.

## Notes

- 1 CERSA-CNRS (National Centre for Scientific Research) and previously director of research INHES, Paris (National Institute for Advanced Studies on Security).
- 2 It must be stressed here that 'proximity justice' practices from the beginning have differed from one city to another, and one court to another. This is because all these schemes have resulted from individual initiatives, reflecting the dynamism and inventiveness of local players, without being the subject of a national effort to unify them and without any legal obligation (for example, like that in the United Kingdom under the Crime and Disorder Act 1998). So, depending on locality in France, there may or may not be justice centres, school information systems, local groups to deal with crime, etc.
- 3 Sometimes they are also signed by the person in charge of public sector education in the *département* (the *recteur d'académie*) and by the *conseil général* (departmental governing authority).
- 4 LOI no 99-515 du 23 juin 1999 renforçant l'efficacité de la procédure pénale, *J.O.*, 24 juin 1999. Instead of taking proceedings the prosecutor

- can offer a person who admits he or she has committed a (minor) offence several options, including paying a fine or doing community work, and then drop the charges.
- 5 Loi no 2002–1138 du 9 septembre 2002 d'orientation et de programmation pour la justice, *J.O.*, 10 septembre 2002.
  - 6 Loi organique no 2003–153 du 26 février 2003 relative aux juges de proximité, *J.O.*, 27 février 2003.
  - 7 Moreover, the initial version of the project, which stated that people having occupied functions 'in the law, administrative, economic or social field' has been censured by the Constitutional Council, arguing that the three last were not sufficient to precise the required level of legal knowledge (Décision no 2003–466 DC du 20 février 2003).
  - 8 That is one half of the number of professional judges.
  - 9 Loi no 2005–47 du 26 janvier 2005 relative aux compétences du tribunal d'instance, de la juridiction de proximité et du tribunal de grande instance, *J.O.*, 27 janvier 2005.
  - 10 For more recent information about proximity jurisdiction see Wyvekens (2006).
  - 11 Interview with a deputy prosecutor, 2000.
  - 12 Loi no. 2003–710 du 1er août 2003 'd'orientation et de programmation pour la ville et la rénovation urbaine', *J.O.*, 8 septembre 2003.
  - 13 Loi no 99–515 du 23 juin 1999 renforçant l'efficacité de la procédure pénale, *J.O.*, 24 juin 1999.
  - 14 [www.justice.gouv.fr/presse/conf020403a.htm](http://www.justice.gouv.fr/presse/conf020403a.htm)
  - 15 [www.justice.gouv.fr/justorg/justorg11.htm](http://www.justice.gouv.fr/justorg/justorg11.htm)

## References

- Bonafé-Schmitt, J.-P. (1992) *La Médiation: Une Justice Douce*. Paris: Syros.
- Coll. (1997) *Ces Quartiers dont on Parle. En Marge de la Ville, au Cœur de la Société*. La Tour d'Aigues: éd. de l'Aube.
- Commission des Maires sur la Sécurité (1982) *Face à la Délinquance: Prévention, Répression, Solidarité*. Paris: La Documentation Française.
- Crawford, A. (2000) 'Justice de proximité – the growth of "houses of justice" and victim/offender mediation in France: a very un-French legal response?', *Social and Legal Studies*, 9 (1): 29–53.
- Delarue, J.-M. (1991) *Banlieues en Difficulté: la Relégation*. Paris: Syros.
- Donzelot, J. and Wyvekens, A. (2004) *La Magistrature Sociale. Enquêtes sur les Politiques Locales de Sécurité*. Paris: La Documentation Française.
- Donzelot, J., Mével, C. and Wyvekens, A. (2003) *Faire Société. La Politique de la Ville aux Etats-Unis et en France*. Paris: Seuil.
- Faget, J. (2003) *Les Agents Locaux de Médiation Sociale en Quête d'Identité*. Paris: IHESI, coll. Etudes et Recherches.

- Haenel, H. and Arthuis, J. (1994) *Propositions pour une Justice de Proximité*.
- Kaminski, D. (2001) 'De l'amour du prochain et de son châtement', in A. Wyvekens and J. Faget (eds), *La Justice de Proximité en Europe. Pratiques et Enjeux*. Toulouse: Erès, pp. 131–43.
- Mary, Ph. (1997) 'Le travail d'intérêt général et la médiation pénale face à la crise de l'état social: dépolitisation de la question criminelle et pénalisation du social', in *Travail d'Intérêt Général et Médiation Pénale. Socialisation du Pénal ou Pénalisation du Social?* Bruxelles: Bruylant, Coll. Travaux de l'Ecole des sciences criminologiques Léon Cornil, pp. 325–47.
- Peyrat, D. (2000) 'La politique judiciaire de la ville', *Gazette du Palais*, 86–8: 8–17.
- Peyrat, D. (2005) *En Manque de Civilité*. Paris: Textuel.
- Rapport du Groupe de Travail sur les Juridictions de Proximité, Septembre 2003 – Novembre 2005, Bilan et Propositions*. Novembre 2005.
- Vignoble, G. (1995) *Les Maisons de Justice et du Droit*. Rapport présenté au Garde des Sceaux.
- Wacquand, L. (1999) *Les Prisons de la Misère*. Paris: Editions Raisons d'Agir.
- Wyvekens, A. (1996) 'Justice de proximité et proximité de la justice. Les maisons de justice et du droit', *Droit et Société*, 33: 363–88.
- Wyvekens, A. (1997) 'Les maisons de justice: sous la médiation, quelle troisième voie', in R. Cario (ed.), *La Médiation Pénale. Entre Répression et Réparation*. Paris: L'Harmattan, coll. Logiques juridiques, pp. 61–81.
- Wyvekens, A. (2006) 'La justice de proximité, rapprocher la justice des citoyens?', *Les Cahiers Français*, 334, Septembre–Octobre: 4–47.