

SOCI 446

PENOLOGY

SESSION 12 – Probation and Parole

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UNIVERSITY OF GHANA

College of Education

School of Continuing and Distance Education

2014/2015 – 2016/2017

Course Information

Course ID	SOCI 446
Course Name	PENOLOGY
Session # and Title	SESSION 12 – Probation and Parole
Semester/Year	SECOND SEMESTER /2018

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Session Overview

- Probation and parole are non-institutional forms of treatment designed to keep young offenders from coming into contact with the prison and adult offenders from the contaminating influences of the prison and to reduce congestion in the prison by releasing inmates who have been of good behavior to spend the remainder of their time in the open society under observation.
- While probation differs from parole in the sense that the probationer has never as yet set foot in the prison, both of these forms of treatment are stringently regulated by conditions designed to suit individual.
- Treatment of offenders outside institutional walls has some advantages and disadvantages. These and others will be examined in this session.



Session Outline

- The main topics to be covered in this session are as follows: -
- Topic One Probation, Definition, nature and origins
- Topic Two The conditions of probation and criticism
- Topic Three Parole, definition and utility

Objectives/Expected outcomes for the session.

On the completion of this session, you should be able to –

- Define probation, explain its nature and origins and discuss its relevance as punishment
- Describe the main conditions of probation, and explain whether the treatment justifies the criticisms levelled against it.
- Define and explain the utility of parole as a crime treatment option

Topic One

Probation, Definition and origins

Introduction

- Probation is one of the non-institutional measures devised for the treatment of both young and adult offenders. Its main objective is to prevent young offenders from coming in contact with adult correctional institutions such as the prison, so as to prevent the vicious cycle of sentence contamination.
- This is known as the **principle of diversion** in the treatment of juveniles. Although it is non-punitive, the rigorous requirements of probation may often make the probationer feel that he is enduring punitive treatment. But first, what is probation, and how did it originate?

Probation - definition

- Probation may be defined as **the act of releasing a convicted person to the care of an agent of the court who is normally a Probation Officer on condition that the person submits himself for supervision and abides by the conditions laid down for him.**
- The probationer is a **convicted person (that is, he/she has been found guilty of an offence by the court) but no punishment is imposed initially. In other words, an individual who has committed an offence/crime has been found guilty by a court, but the court withholds the imposition of a specific sentence/punishment on that person, immediately after his trial.**
- Such a person is being placed on probation as treatment either because of his/her age, or because the court feels that the person, even though he is an adult, would benefit from this treatment.

Probation - origins

- The probation of First Offenders Act was ratified in Britain in 1887 in response to the need to keep offenders out of prison so as to break the vicious cycle of sentence contamination. The probation system in Ghana follows closely the pattern of the system in England.
- **In the case of juvenile offenders, probation is often a mandatory requirement.**
- In the case of adults, probation is considered a **suspended sentence** and the consent of the adult offender is often sought after the Court has taken into account the mitigating circumstances of the offender's case and considers that he needed guidance.

Origins cont. – a suspended sentence for adults

- A suspended sentence – as you may have read earlier - is known also as a conditional discharge under which an accused person has been **found guilty but sentence has been suspended for a period of not more than twelve months, during which the person may be arraigned before court when he commits a fresh offence, and sentenced both for the original and the new offence.**
- Usually, the adult offender is asked whether he is willing to be placed on probation/suspended sentence or not. If he so desires, the Court makes the appropriate order.

Probation - duration

- The probation period lasts from a minimum of nine months to a maximum of three years.
- This means that a person cannot be placed on probation for a period less than nine months or for a period more than three years. In most cases, however, a maximum period of 18 months is imposed. This is however subject to the discretion of the probation officer.
- This means that the probation officer can request the court to reduce or extend the duration. Under no circumstance however can there be a discharge of the order before nine months have been spent, nor could the period be extended beyond 3 years.

Counselling during probation

- During the probation period a close interaction is established between the probation officer and the probationer. The officer is required to act as a guard, guide and a friend of the probationer.
- He/she is required to probe the case history of the client to understand why the probationer committed the offence he was charged with and to begin to counsel him/her relevantly, against falling into similar temptations in the future.
- In probing for factors of the offence, the supervisor will have to take into account a number of variables, These include the home environment of the individual to ascertain whether the home was broken – that is, whether parents were divorced, separated or antagonistic, which could have a significant impact on the upbringing of the probationer.

Counselling cont.

- The socio-economic status of the parents also forms a part of the home environment. Are the parents earning enough income to be in a position to provide all or at least the essential needs of their child?
- Children from broken or poor home could have the predisposition to commit offences because of their deprivation or because they want to be like their more affluent friends.
- Further the school environment is investigated to ascertain the possible impact of peer pressure from his/her mates. Other mediating factors such as the personality of the individual, his self image, all play a part in the predisposition to delinquency and would require attention.
- As a counselor, the probation officer discusses these and other relevant issues with the probationer, acting as his confidant.

Topic Two

The conditions of probation and criticism

Introduction

- It is important to keep in mind that the probationer is a convicted offender—someone who has broken the laws of the land and is deserving of punishment. However because of his/her age, (or because of relevant considerations by the court in the case of an adult) he/she is sent back home.
- However, because crimes are punishable, anyone who has been convicted of an offence should not be allowed to go with impunity. **Thus, with reference to the definition of punishment as ‘any interference with the liberty of the individual’, the conditions attached to probation are necessarily meant to be felt as punitive.**
- It is useful to keep in mind as well that the conditions of probation have been prescribed in general terms and are often not the same for every probationer. Each potential probationer may have committed a different type of offence, or their personal circumstances may vary, each from the other.
- **Thus, the probation officer has the discretion to design or tailor the conditions to fit the specific situations of each probationer.** What are the general conditions?

The General conditions

- Among the measures required of a person during the period he is on probation are:
- **His residential address much be clearly indicated.** Under the probation order, the probationer's place of residence cannot be changed without the notification and consent of the probation officer.
- This condition is to ensure that the probation officer has no difficulty in accessing the home of the probationer at all times, during the period he/she is on probation.
- In situations where a home address is not available – as in locations where the probationer resides in un-numbered derelict slum dwellings or shanty communities or interstitial/newly developing areas, definitive indicators close to his/her dwelling place must be provided

Conditions of probation cont.

- **He should be in a gainful employment**, and cannot change jobs without first obtaining permission from his supervisor.
- This condition often poses problems when probationers insist on getting jobs in public or private organizations which would often refuse to offer them employment because of their criminal status, The alternative therefore is to encourage the probationer to get into a self-employed job or an apprenticeship.
- This condition is in keeping with the general principles applicable in the training of offenders, namely offenders should experience not only inward reformation but also be habilitated through the inculcation of vocational skills.

Conditions cont.

- **He is expected to be in touch with his supervisor by reporting at places and times stipulated by the supervisor.** This condition illustrates the punitive content of the probation order because it involves a deprivation of liberty.
- Reporting frequently to a supervisor on specified times and specified places means that the probationer would have to forgo the freedom to do anything else during those reporting periods.
- Depending on the discretion of the supervisor, the reporting could be done on a daily basis or four times every week or twice weekly. The frequency of the reporting is usually high initially, becoming relaxed as the probationer settles down or as his supervisor is convinced that the probationer could be trusted.

Conditions cont.

- **The probationer should be available at home and at work at specified times** to enable the officer to visit him to assess his progress. This measure is equally punitive because it deprives the probationer of the freedom of leaving his/her home to go to the mall or visit a friend or to the club at those specified times.
- The periodic assessment of progress carried out by probation officers is a mandatory requirement by the Courts and is helpful to the Probation officer because it enables him to ascertain whether the current conditions imposed on his client are working, or needed to be redesigned to reflect circumstances which have not been anticipated

Conditions cont.

- **The probationer should avoid bad company, keep away from vice, and cultivate moral virtues.**
- Getting into bad company is a significant factor in the predisposition to criminality because of peer pressure.
- Sutherland (1947) in his Differential Association theory, established that criminal behavior is learnt during interaction with other criminals in intimate personal groups.
- The learning includes both the techniques of committing specific crimes as well as the motives, the drives rationalizations and attitudes related to criminal behavior.

Conditions cont.

- A young person interacting with criminals in this kind of intimate personal group will eventually be convinced and decide to get into crime if he/she is sufficiently persuaded that breaking the criminal law is real easy.
- It is important to remember that the persuasion that doing crime is real easy is a function of the frequent and intense interactivity between the probationer and his group of bad friends.
- This explains why those on probation should abstain from any interaction with these groups through which they could become contaminated.



Is probation a let-off?

- There has been some confusion in the minds of many, as to what is meant when an offender is placed on probation. Some people believe that it is too lenient, a 'let-off' – 'a second chance without strings attached'. As is quite obvious this assumption is very far from the truth. Before one can speak of probation as it is currently practiced all of the following conditions must be present:
- **No punishment is imposed initially.** This means that although the court has found the probationer guilty, it does not immediately prescribe a specific sentence or penalty.
- **The offender is given a free period to redeem himself.** In other words the probationer is given the opportunity to get back to the comfort of his home, but to submit himself to supervision and abide by the conditions laid down for her/her. The choice to conform to the conditions or not to, is for the probationer to make.

A let-off ? cont.

- **During the period, he is placed under a probation officer who keeps the court informed of his progress and helps the probationer make the best of the opportunity given him.**
- The probation officer is required by his training to get to know the circumstances that transformed the young offender from ‘an adorable baby into a Hitler’ as the saying goes, and to give him preventive counselling.
- **If the probationer makes good (that is, if he fully satisfies the conditions of his probation during the period), the original crime is considered to be purged; but if he fails to do so (that is, if he proved to be incorrigible and commits a fresh crime), he shall be brought back into court and sentenced for his earlier and any other crimes he may have committed since.**

A let off? cont.

- Probation cannot thus be regarded as a let-off, because the probationer must either redeem himself by making good his probation or suffer punishment later.
- As a matter of fact, the obligation of reporting to a probation officer, and accounting for one's behavior to him over a long period is much more painful than some formal punishments, as for example, the imposition of a fine, especially if, as often is the case, additional duties and restrictions are also imposed under the terms of the probation order.
- **Thus, in theory, the probationer must often feel that to be placed on probation is in itself punishment.**



Reasons why probation might fail - incorrigible probationers

- Not all persons placed on probation however make good the opportunity. The failure may be due to several causes.
- **The person placed under probation may not be probationable**, in the sense that he may require more than the usual discipline – in other words he may be incorrigible.
- Some probationers, either by reason of their abnormal personality, or in response to pressure from peers deliberately refuse to satisfy some or all of the conditions contained in the probation order. They may give wrong or misleading home addresses, or refuse to either stay at home for a visit by their supervisors, or refuse to report as frequently as they are required.

Failure of probation

Poorly trained probation officers

- **Probation may fail because the probation officer is not properly trained.**
- Some of these officers are prone to think of their work as 'a job' but not as a vocation, in other words such officers are more interested in earning salaries and therefore have no dedication to their work.
- The quality of the professional status of a social worker/sociologist appointed as a probation officer may indeed be a constraint on the outcome of a probation order. Two categories of social workers can be identified:
- Firstly, those who are indeed poorly trained because their classroom education either lacked focus on the need for them to visualize their training as a vocation/calling and to pursue their duties not for the monetary reward but for the good of the people under their care and society as a whole, or -

Poorly trained officers cont.

- Secondly, there are those officers who may have been well trained but have subsequently lost their calling. These are individuals who may have consumed or contaminated either by greed and the inordinate desires of worldliness to profit from their profession monetarily.
- They may relegate their calling to the background and instead of ministering to the delinquents under their care, they take advantage of the flexible hours under which they work, to get involved in other preoccupations to supplement their income and loose focus on the pious motives of their calling,

Unreasonable conditions?

- **Conditions imposed on juvenile probationers may be considered unreasonable by them.**
- **For example, one of the conditions requires that the probationer should keep away from vice and cultivate moral virtues.**
- One of the ways of ensuring that that a probationer cultivates moral virtues is perhaps to demand that he/she regularly attends attend church every Sunday or goes to the mosque every Friday.
- Some probationers are known to have rebelled against this imposition because they may not have adequately prepared for the renewal of their minds. Obviously, there's a need for the young offenders to have gone firstly through the process of being born-again to prepare them to conform to this order.

Absence of facilities

Facilities may be lacking:

- For example when a court orders a juvenile to attend school, or get into some gainful employment; both the school and job vacancies may not be available.
- As was explained earlier, public/private organizations may refuse to recruit persons with a criminal stigma. And school admissions may be full leaving no vacancies for any further intake.
- In Ghana, the absence of job openings and school vacancies inhibits some probation orders.

Topic Three

Parole, definition and utility

Introduction

- The main, original rationale for parole is to reduce overcrowding in prisons and to lessen the impact of prison contamination.
- Thus, parole is a treatment measure under which prisoners who have served a part of their sentence, and have been a good behavior are released to serve the remainder outside the prison.
- Technically, probation and parole are forms of **community corrections** in the sense that their aim is to provide habilitative services to offenders based on conditions organized legally.

Work release and study release programs

- These two forms of community treatment have lately incorporated work release and study release programs.
- Under these programs, qualified incarcerated offenders are allowed to leave the prison or leave home (as in probation) during the day to either work as self employed operatives or in public/private organizations in the community willing to hire their service or accept to train them as apprentices.
- Alternatively they could attend classes in local educational facilities. Supporters of these release programs argue that they serve as a 'bridge' between the offender and the community.

Differences between parole and probation conditions

- The bridging of the gap between the prison experience and the outside world enables the offender to maintain a positive tie in the community and to develop skills and work experience.
- The conditions for a parolee are similar to those of a probationer, but there are some essential differences, given the dissimilar backgrounds of the two - namely one, the probationer, has not yet been in prison, but the other, the parolee, has.
- The differences and similarities will be outlined subsequently

Definition of parole

- Parole is defined as **the act of releasing, or the status of being released from a penal institution in which an offender has served a part of his maximum sentence, on the condition of his maintaining good behavior and remaining in custody under the supervision of the institution or some other agency.**
- This means in effect that parole is a conditional discharge. The parolee is discharged on license on condition that he will abide by the rules of parole.

The Parole Board

The Prerequisites/criteria for granting parole

There is a parole board in the prison to which a prisoner applies when he considers that he is due for parole. Among the important criteria considered by the board before granting a license are:

- **Whether the prisoner already has a trade , that is, before his/her incarceration, or has learnt some trade while in prison which could enable him find useful employment.**
- **Whether he has a home to go;** The availability of a place of residence is critical for the successful outcome of the parole practice. Without a residential address, it would be impossible to have any contact with the parolee, and this would defeat the purpose of the treatment.
- **Whether he will find employment.** This would ultimately depend on the skills of the individual inmate, acquired either through vocational training within the prison wall or through the work release program where there is exposure to modern technology and work habits.

Prerequisites cont.

- If the board is satisfied usually after a probation officer has made enquiries about the application and submitted a report to the board, the prisoner is granted a two-week home leave.
- The objective of this is to enable the probation officer to draw up an appropriate program and to assess its feasibility.
- The board also considers some basic requirements of the prisoners. These include their need for clothing, tools, cash for transport and cash advances for feeding initially and to set up some work.

Conditions of parole

The following are the main rules regulating the behavior of the parolee. Some of these conditions are similar to those required of probationers, and have been explained earlier.

- **The parolee must lead a law-abiding life:**
- Because of their criminal background, prisoners on parole must be kept under strict surveillance until they have made good their release. Thus the police are alerted in the event of a criminal being granted parole for them to take notice.
- Thus parolees would normally be considered as prime suspects in the event of any crime being committed in the community in which they live. The need to conform to this condition thus compels them to be of good behavior during the transitional period,

Conditions cont. -

- **He is required to keep from intoxicating liquor and other drugs.**
- There is a clear relationship between drugs and crime. Firstly the ingestion of certain drugs can lead to hormonal changes in the drug-taker and a consequent predisposition to criminal behavior.
- These drugs could be either naturally occurring like cocaine marijuana or opium, or laboratory produced drugs like Benzedrine, LCD Or psilocybin.
- Secondly addiction to drugs has a significant effect on criminality. Those addicted may be forced to commit crimes to either access the drugs or money to keep up their addiction.
- Thirdly, the mere possession or sale of some drugs could be criminal

Conditions cont.-

- **He could not change his employment or living premises without his supervisor's permission.** This condition is to ensure that the probation officer or supervisor has unimpeded access to the parolee at times to perform his professional duties and to assess his progress.
- **He is to report regularly to his supervisor as and when required.** This condition is similarly imposed on probationers and was explained earlier.
- **A female parolee may not marry without permission.** On getting married, a female parolee may have to change her residential address when she leaves her parent's home or her own rented premises to join the husband, and is thus obligated to notify her supervisor prior to getting married.

Conditions are tailored to fit

- The conditions of parole, like those of probation, can be extremely broad, and are required, in most cases therefore, to be tailored to meet the needs of each parolee.
- Some of these conditions may be considered severe because even law-abiding citizens are not required to observe similar regulations.
- Supervising officers are required to submit quarterly report on parolees. If the parolee makes good his conditional discharge, he is set free at the end of his term; otherwise, he is recalled to serve the full term in prison.

Advantages of parole

Parole has certain advantages for the state in the sense that -

- **The cost of maintaining a parolee is a lot cheaper than the cost of maintaining a prisoner.**
- Prisoners are fed three meals everyday and provided healthcare, all at the expense of the taxpayer. Thus when a prisoner is released to be on his own, he is obliged to care for himself, and thus the state benefits from saving the costs involved from his incarceration.
- **The parolee benefits from the guidance of his supervising officers.**
- The counselling and guidance given the parolee during the transitional period is expected to positively influence his behavior during and after transition into the open society,

Advantages cont.

- **The parolee is assisted to make his transition from prison to society less bitter.**
- When the regulations imposed on parolees are satisfactorily internalized and satisfactorily carried out, it significantly helps them to get back to normal social life without much difficulty
- **Hypothetically society benefits from parole system.**
- This is based on the assumption that if all offenders are kept under surveillance after discharge on parole, the chances that they would be involved in further crimes would be minimized, thus ensuring greater public safety.

Problems

- The problems of parole management are similar to those of probation.
- **The dominant draw back being the absence of facilities like employment openings – particularly for prisoners because of the prison stigma.**
- No employer is under any obligation to employ workers whom they are not sure they can trust.
- In the developed societies, for example Britain, there are hostels and mid-way homes to shelter parolees until a job opening or a home is available.

Ghana yet to adopt the parole system

- Parole has hitherto not been operational in Ghana - apparently because of the absence of adequate trained personnel like professional social workers and adequate police numbers to carry out the surveillance requirements of parole. Additionally there are no midway homes or hostels for homeless parolees
- Given that the requisite facilities and qualified personnel are not as yet in place, it is practically impossible to implement the parole system in the Ghana Prison Service.
- The Bill for the establishment of the system has been pending before Parliament as at the time of writing this discussion in 2018..
- **Parole, like probation, is not a 'let off', nor does it constitute leniency,** While probation helps reduce the impact of prison contamination of first offenders, parole provides the opportunity for effective after-care work to be done.

Summary

- Probation is the act of releasing a convicted person to the care of an agent of the court who is normally a Probation Officer on condition that the person submits himself for supervision and abides by the conditions laid down for him.
- The broad conditions of probation require that a probationer should provide a clear residential address; he should be in a gainful employment and be in touch with his supervisor by reporting to him regularly at specified places and times. Further, the probationer should be available at home and at work at specified times. Finally he should avoid bad company, keep away from vice and cultivate moral virtues.
- Probation cannot be regarded as a let-off, because the probationer must either make good or suffer punishment later. As a matter of fact, the obligation of reporting to a probation officer, and accounting for one's behavior to him over a long period is much more painful than some formal punishments. In theory, the probationer must often feel that to be placed on probation is in itself punishment.

Summary cont.

- Parole is the act of releasing, or the status of being released from a penal institution in which an offender has served a part of his maximum sentence, on the condition of his maintaining good behavior and remaining in custody under the supervision of the institution or some other agency.
- Parole has some utility in the sense that the cost of maintaining a parolee is a lot cheaper than the cost of maintaining a prisoner; the parolee benefits from the guidance of his supervising officers; he is assisted to make his transition from prison to society less bitter and hypothetically if all offenders are kept under surveillance after release, they would refrain from committing crimes.

Assignment

- What is your reaction to the criticism that probation is too lenient, 'a let-off, and 'a second chance without any strings attached? How useful is probation as a crime treatment measure ?

Reading List

REQUIRED TEXT

Chris Abotchie (2011)

Distance

Abotchie, C., (2018)

Crime Prevention

Publishing

Penology, Accra,

Institute of Continuing and

Education

Treatment of Criminals and

Accra, Olive Tree Printing and

Chapter One pp 1-12